KRIEG DEVAULT

Insights

Conscience and Religious Freedom Division of the Office of Civil Rights Concludes California Violated Conscience Protection Laws

January 22, 2019

By: Robert A. Anderson

In 2015, California enacted the “Reproductive Freedom, Accountability, Comprehensive Care, and Transparency Act” (the “FACT Act”) requiring pregnancy centers to post notices in their facilities advising women that the State of California provided free or low-cost family planning services and abortions. Two pregnancy centers filed suit and sought an injunction on the basis that the legislation was unconstitutional. The case made its way to the U.S. Supreme Court which reversed the lower courts, preliminarily enjoined enforcement of the FACT Act, and remanded the case to the U.S. District Court. That Court permanently enjoined California from enforcing the FACT Act.

Several pregnancy centers had also filed complaints with the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS). The Conscience and Religious Freedom Division (CRFD) of the OCR, which had been created in January 2018, performed an independent investigation. On January 18, 2019, the OCR issued a 12 page Notice of Violation and a press release stating that that the California FACT Act violated the federal conscience protection laws known as the Weldon and Coats-Snowe Amendments. For state and local governments that receive federal funds, the Weldon and Coats-Snowe Amendments prohibit discrimination against a health care entity or provider on the basis that it does not perform, train, or refer for abortions.

This marks the first time since the CRFD’s inception that it has found a violation of these federal protections. Because of this finding, in combination with the district court’s issuance of a permanent injunction, the OCR closed the complaints as favorably resolved for the complainants and other similarly situated parties. Should California violate the terms of the permanent injunction, the OCR indicated that it would re-open the complaints for further enforcement action by the OCR. In the press release, Roger Severino, director of the OCR stated that the OCR’s “violation finding underscores not only that California must follow the Constitution, but that it also must respect federal conscience protection laws when it accepts federal funds.”