To amend the Public Health Service Act to prohibit governmental discrimination against health care providers that do not participate in abortion.

IN THE SENATE OF THE UNITED STATES

Mr. LANKFORD introduced the following bill; which was read twice and referred to the Committee on ____________

A BILL

To amend the Public Health Service Act to prohibit governmental discrimination against health care providers that do not participate in abortion.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Conscience Protection
5 Act of 2021”.

6 SEC. 2. FINDINGS.

7 Congress finds as follows:

8 (1) Thomas Jefferson stated a conviction com-
9 mon to our Nation’s founders when he declared in
10 1809 that “[n]o provision in our Constitution ought
to be dearer to man than that which protects the
ing the government must leave the abortion decision “to
(3) Religious diversity adds to the strength of our medical field, and no doctor should have to choose between giving up their faith or moral convictions and abandoning a vital medical mission. Congress’ enactments to protect this right of conscience in health care include the Church amendments (42 U.S.C. 300a–7), the Coats/Snowe amendment (42 U.S.C. 238n), and the Weldon amendment approved by Congresses and Presidents of both parties every year since 2004 (including in section 507(d) of divi-
sion A of the Further Consolidated Appropriations Act, 2020 (Public Law 116–94; 133 Stat. 2534, 2607)).

(4) Courts have declined to find that these laws provide a “private right of action” thereby leaving victims of discrimination unable to defend their conscience rights in court, while at the same time administrative enforcement by the Office for Civil Rights of the Department of Health and Human Services has been inconsistent, at times allowing cases to languish for years without resolution.

(5) Defying the Weldon amendment, California’s Department of Managed Health Care has mandated coverage for elective abortions in all health plans under its jurisdiction. Other States such as New York, Illinois, and Washington have taken or considered similar action, and some States may go farther to require all physicians and hospitals to provide or facilitate abortions. On June 21, 2016, the Office for Civil Rights of the Department of Health and Human Services under the Obama Administration concluded a nearly 2-year investigation of this matter by determining that California’s decision to require insurance plans under the California Department for Managed Health Care authority to cover
abortion services did not violate the Weldon amend-
ment. At least 28,000 individuals and families sub-
sequently lost abortion-free health plans as a result
of this mandate.

(6) On January 24, 2020, the Office for Civil
Rights of the Department of Health and Human
Services disavowed its prior findings and issued a
notice of violation of the Weldon amendment to Cali-
ifornia. After the State’s continued noncompliance
with the Weldon amendment, the Centers for Medi-
care & Medicaid Services, on December 16, 2020,
announced the disallowance of $200,000,000 per
quarter in Federal funds to California beginning in
the first quarter of 2021. Unless the Biden Adminis-
tration provides effective and continuing enforce-
ment against California and other States, individuals
will continue to be coerced contrary to law into
choosing between violating their consciences or for-
going health care coverage for themselves, their em-
ployees, or their families.

(7) On May 21, 2019, the Secretary of Health
and Human Services issued a final conscience rule
that implements approximately 25 Federal con-
science protection provisions and provides mecha-
nisms to enforce protections enacted by Congress to
ensure that the government and government-funded 
entities are not unlawfully discriminating against in-
dividuals, health care providers, or health care enti-
ties. Despite this regulation providing for enforce-
ment of laws passed by Congress, a Federal district 
court vacated the rule. Now, litigation is pending be-
fore the United States Court of Appeals for the Sec-
ond Circuit where 78 members of Congress have 
filed a brief in support of the rule, as well as the 
United States Court of Appeals for the Ninth Cir-
cuit. Litigation in both Circuits have been halted be-
cause the Biden Administration has indicated its in-
tent to revisit the rule.

(8) The vast majority of medical professionals 
do not perform abortions, with up to 86 percent of 
obstetricians/gynecologists unwilling to provide them 
(Obstetrics & Gynecology, Sept. 2011) and the great 
majority of hospitals choosing to do so only in rare 
cases or not at all.

(9) A health care provider’s decision not to par-
icipate in an abortion, like Congress’ decision not to 
fund most abortions, erects no barrier to those seek-
ing to perform or undergo abortions but leaves each 
party free to act as he or she wishes.
(10) Such protection poses no conflict with other Federal laws, such as the law requiring stabilizing treatment for a pregnant woman and her unborn child when either needs emergency care (Emergency Medical Treatment and Active Labor Act). As previous Administrations have said, these areas of law have operated side by side for many years and both should be fully enforced (76 Fed. Reg. 9968–77 (2011) at 9973).

(11) Reaffirming longstanding Federal policy on conscience rights and providing a right of action in cases where it is violated allows longstanding and widely supported Federal laws to work as intended.

SEC. 3. PROHIBITING DISCRIMINATION AGAINST HEALTH CARE PROVIDERS THAT DO NOT PARTICIPATE IN ABORTION.

Title II of the Public Health Service Act (42 U.S.C. 202 et seq.) is amended by inserting after section 245 the following:

“SEC. 245A. PROHIBITING DISCRIMINATION AGAINST HEALTH CARE PROVIDERS THAT DO NOT PARTICIPATE IN ABORTION.

“(a) IN GENERAL.—Notwithstanding any other law, the Federal Government, and any person or entity that receives Federal financial assistance, including any State
or local government, may not penalize, retaliate against, or otherwise discriminate against a health care provider on the basis that the provider does not or declines to—

“(1) perform, refer for, pay for, or otherwise participate in abortion;

“(2) provide or sponsor abortion coverage; or

“(3) facilitate or make arrangements for any of the activities specified in this subsection.

“(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

“(1) to prevent any health care provider from voluntarily electing to participate in abortions or abortion referrals where not prohibited by any other law;

“(2) to prevent any health care provider from voluntarily electing to provide or sponsor abortion coverage or health benefits coverage that includes abortion where not prohibited by any other law;

“(3) to prevent an accrediting agency, the Federal Government, or a State or local government from establishing standards of medical competency applicable only to those who have knowingly, voluntarily, and specifically elected to perform abortions, or from enforcing contractual obligations applicable only to those who, as part of such contract, know-
ingly, voluntarily, and specifically elect to provide abortions;

“(4) to affect, or be affected by, section 1867 of the Social Security Act (42 U.S.C. 1395dd, commonly referred to as the ‘Emergency Medical Treatment and Active Labor Act’); or

“(5) to supersede any law enacted by any State for the purpose of regulating insurance, except as specified in subsection (a).

“(c) ADMINISTRATION.—The Secretary—

“(1) may issue regulations under—

“(A) this section;

“(B) the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.), with respect to any program or activity funded, administered, or conducted by the Department of Health and Human Services;

“(C) any of subsections (b) through (e) of section 401 of the Health Programs Extensions Act of 1973 (42 U.S.C. 300a–7) regarding an objection based on a religious belief or moral conviction; and

“(D) any other law protecting the exercise of conscience or religious freedom under programs or activities funded, administered, or
conducted by the Department of Health and Human Services, including any laws listed under the final rule issued by the Secretary of Health and Human Services titled ‘Protecting Statutory Conscience Rights in Health Care; Delegations of Authority’ (84 Fed. Reg. 23170; May 21, 2019);

“(2) shall designate the Director of the Office for Civil Rights of the Department of Health and Human Services—

“(A) to receive complaints alleging a violation of any provision of this section or any provision of law referred to or listed under paragraph (1); and

“(B) to promptly investigate such complaints, issue findings, and require corrective action in cases of such a violation; and

“(3) shall, as permitted under law (including the Constitution of the United States), induce compliance of a person or entity, including a State or local government, refusing to comply with a provision of this section, or any provision of law referred to or listed under paragraph (1), by terminating, in whole or in part, any Federal financial assistance provided by the Secretary to such person or entity.
“(d) Definitions.—For purposes of this section:

“(1) Federal financial assistance.—The term ‘Federal financial assistance’ means Federal payments to cover the cost of health care services or benefits, or other Federal payments, grants, or loans to promote or otherwise facilitate health-related activities.

“(2) Health care provider.—The term ‘health care provider’ includes—

“(A) an individual physician, health care assistant, nurse, pharmacist, health researcher, or other health care personnel;

“(B) a hospital, laboratory, pharmacy, health system, or other health care or medical research facility or organization (including a party to a proposed merger or other collaborative arrangement relating to health services, and an entity resulting therefrom);

“(C) a provider-sponsored organization, an accountable care organization, or a health maintenance organization;

“(D) a social services provider that provides or authorizes referrals for health care services;
“(E) a program of training or education in the health professions or medical research, a participant in such a program, or any individual applying or otherwise aspiring to participate in such a program;

“(F) an issuer of health insurance coverage or of a health plan; or

“(G) a health care sharing ministry;

“(H) a health insurance plan, including group, individual, or student health plans, or a sponsor or administrator thereof; or

“(I) any other health care organization, program, facility, or plan.

“(3) STATE OR LOCAL GOVERNMENT.—The term ‘State or local government’ includes every agency and other governmental unit and subdivision of a State or local government, if such State or local government, or any agency or governmental unit or subdivision thereof, receives Federal financial assistance.

“SEC. 245B. CIVIL ACTION FOR CERTAIN VIOLATIONS.

“(a) IN GENERAL.—A qualified party may, in a civil action, obtain appropriate relief with regard to a designated violation.

“(b) DEFINITIONS.—For purposes of this section:
“(1) QUALIFIED PARTY.—The term ‘qualified party’ means—

“(A) the Attorney General of the United States; or

“(B) any person or entity adversely affected by the designated violation without regard to whether such person or entity is a health care provider.

“(2) DESIGNATED VIOLATION.—The term ‘designated violation’ means an actual or threatened violation of section 245A or of any other provision of law referred to or listed under section 245A(c)(1).

“(c) ADMINISTRATIVE REMEDIES NOT REQUIRED.—An action under this section may be commenced, and relief may be granted, without regard to whether the party commencing the action has sought or exhausted any available administrative remedies.

“(d) DEFENDANTS IN ACTIONS UNDER THIS SECTION MAY INCLUDE GOVERNMENTAL ENTITIES AS WELL AS OTHERS.—

“(1) IN GENERAL.—An action under this section may be maintained against any person or entity receiving Federal financial assistance, including a State governmental entity. Relief in an action under
this section may include money damages even if the
defendant is a governmental entity.

“(2) DEFINITION.—For the purposes of this
subsection, the term ‘State governmental entity’
means a State, a local government within a State,
and any agency or other governmental unit or sub-
division of a State, or of such a local government.

“(e) NATURE OF RELIEF.—In an action under this
section, the court shall grant—

“(1) all appropriate relief, including injunctive
relief, declaratory relief, and compensatory damages
to prevent the occurrence, continuance, or repetition
of the designated violation and to compensate for
losses resulting from the designated violation; and

“(2) to a prevailing plaintiff, reasonable attor-
neys’ fees and litigation costs.”.