

Congress of the United States
Washington, DC 20515

August 11, 2021

The Honorable Merrick Garland
United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The Honorable Xavier Becerra
Secretary of Health and Human Services
U.S. Department of Health & Human Services
200 Independence Avenue SW
Washington, D.C. 20201

Dear Attorney General Garland and Secretary Becerra,

We write to express our concerns with your coordinated decision to seek a voluntary dismissal in the lawsuit against the University of Vermont Medical Center (UVMMC) for knowingly, willfully, and repeatedly violating federal conscience-protection laws.

On August 28, 2019, the Office for Civil Rights at the U.S. Department of Health and Human Services (HHS OCR) issued a notice of violation against UVMMC after it violated federal law by forcing a nurse to assist in an elective abortion, despite her well-known objections to abortion.¹ UVMMC's actions violated the Church Amendments, passed unanimously by Congress, which have been a component of federal conscience protections since 1973 and prohibit HHS grant recipients from discriminating against healthcare personnel who "refused to perform or assist in the performance of...[an] abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions."² As noted in the notice of violation that was sent to UVMMC on August 28, 2019, the Church Amendments create an unqualified right for healthcare personnel "to decline to participate in abortions without fear of adverse employment actions or loss of staff privileges."³ The burden to apply the law and allow for accommodations is not on the objectors, but rather the providers.

UVMMC not only violated one nurse's conscience rights, but it kept policies in place that explicitly required members with conscience objections to participate in procedures to "ensure that patient care is not negatively impacted."⁴ HHS OCR found that the hospital scheduled approximately 10 nurses who had

¹ <https://www.hhs.gov/guidance/document/ocr-issues-notice-violation-university-vermont-medical-center-after-it-unlawfully-forced>

² <https://www.law.cornell.edu/uscode/text/42/300a-7>

³ <https://www.justice.gov/opa/pr/justice-department-defends-health-care-workers-being-forced-perform-abortions-vermont-lawsuit>

⁴ <https://www.justice.gov/opa/press-release/file/1345321/download>

registered conscience objections to assist with approximately 20 abortion procedures.⁵ UVMMC easily could have accommodated objections without any disturbance to the services it provided, as it had for other non-religious and non-abortion-related objections, but instead continued to perpetuate a work environment that was hostile toward people of faith both in policy and practice.

UVMMC has received grant funding from HHS since 1998, including more than \$1.6 million dollars in FY2018-FY2020. It is thereby bound to abide by the Church Amendments as a condition of receiving federal funds. HHS informed UVMMC that it needed to conform its policies to the Church Amendments and take other corrective action. HHS even offered to work with UVMMC to help bring it into compliance. Unfortunately, UVMMC refused to comply with federal law and its contractual obligations as a federal grant recipient.⁶

Upon the referral of HHS, the Department of Justice (DOJ) rightfully sued UVMMC on December 16, 2020, for violating the Church Amendments. The lawsuit stated that UVMMC's violation was actually a part of an "ongoing pattern, practice, and policy of discriminating against health care providers who believe that the performance, or the assistance in the performance, of abortions is contrary to their religious beliefs or moral convictions."⁷

However, under your leadership, HHS revoked its notice of violation, withdrew the referral, and requested that DOJ dismiss the lawsuit against UVMMC. The DOJ did in fact voluntarily dismiss the case on Friday, July 30, 2021, without any binding settlement or requirement that UVMMC remedy its unlawful policies or make restitution to, or even acknowledge, the nurse whose rights it violated.

Further, you withdrew this lawsuit knowing that there are no additional legal remedies for victims of discrimination in this case. Although Congress has enacted more than 25 federal conscience laws, courts have not found protections like the Church Amendments to provide for a private right of action for individuals who have been discriminated against.⁸ Instead of supporting proposed legislation like the *Conscience Protection Act* to allow victims of discrimination to have their day in court, by reportedly unraveling the Conscience and Religious Freedom Division within HHS OCR and dropping this lawsuit, you have spent your time blocking any possible legal remedy for victims of discrimination and making it harder for any further discrimination claims to be filed, investigated, and remedied.⁹ In a pluralistic society, laws that allow people to live by their conscience should not even be necessary. Nevertheless, due to the coercive actions of employers like UVMMC and the hostility toward religious and moral convictions shown by your agencies in this case, the importance of these laws is plainly demonstrated.

Your handling of this case is a profound miscarriage of justice and a rejection of your commitment to enforce federal conscience laws for Americans of all religious beliefs and creeds—and especially for doctors, nurses, and other healthcare professionals who object to abortion. Your actions signal to employers all around the country that they don't need to comply with the law because your agencies will not enforce it. They also signal that this administration would rather allow consciences to be violated at the behest of the abortion lobby rather enforce the law and protect religious liberty. We demand a full explanation of your agencies' actions.

Please provide a response to the following requests for information by August 27, 2021:

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ <https://www.lankford.senate.gov/news/press-releases/lankford-colleagues-protect-health-care-workers-from-discrimination->

⁹ <https://www.nationalreview.com/2021/06/the-biden-becerra-budget-equity-is-in-religious-freedom-is-out/>

1. According to an HHS spokesperson, HHS conducted “a detailed evaluation of the underlying legal theory used to issue a referral to the Department of Justice.”¹⁰
 - a. Please explain what this “detailed evaluation” consisted of and the legal support for HHS’s change in position.
 - b. Please provide any written documentation or notes that your agency produced in the course of this re-evaluation, including any documents constituting final agency action.
 - c. Was this evaluation conducted at your request or at the request of any White House official? If so, who made the request? If not, who made the determination to begin this evaluation?
 - d. Did any attorney(s) from the White House Counsel’s Office or any official(s) from the Office of Management and Budget participate in the re-evaluation process? If so, please provide their name and any correspondence regarding this matter.
 - e. Did HHS consult with any career professional of the Conscience and Religious Freedom Division (CRFD), who worked on this matter for years, before the change in position?
 - f. Did HHS or DOJ officials overrule or go against the position of any career lawyers or career professionals who had recommended the notice of violation, referral, and suit?
2. Will HHS continue to provide federal funds to UVMMC, an unrepentant violator of federal law?
3. What was HHS’s reasoning for seeking to voluntarily dismiss a case in which a plaintiff was known to be violating federal law and refused to comply with federal law?
4. What new facts, if any, did HHS discover that prompted its decision to request the dismissal of the lawsuit against UVMMC? If no new facts were discovered, what prompted HHS to change its referral and withdraw its notice?
5. Provide a copy of UVMMC’s staffing policies as of the date of your change in position. Are there any circumstances where the UVMMC policy may require employees to participate in and assist with abortion procedures in spite of their objections to abortion?
6. Has UVMMC made restitution to the nurse whose conscience rights it violated, per HHS’s own determination?
7. Have there been any changes to the structure, leadership, or funding of the CRFD at HHS since you became Secretary or are there any plans in process regarding the same? Will the CRFD be eliminated as a separate division?
8. Provide all communications exchanged between HHS, DOJ, and the defendant/respondent regarding this matter, including all case files and interview notes residing in the OCR “PIMS” system or elsewhere at HHS.
9. Provide all communications between HHS, DOJ, and any outside organizations concerning this case, including organizations that expressed opposition to litigation on this case.
10. As you are aware, your actions in withdrawing the Notice of Violation and filing a Voluntary Dismissal in the UVMMC matters purport to be based on new legal interpretations of the applicable federal conscience statutes, including the Church Amendments. These new interpretations completely contradict the positions you took in the cases of *New York v. HHS*, 414 F.Supp.3d 475, 536 (S.D.N.Y. 2019) (appeal in abeyance) and *Washington v. Azar*, 426 F.Supp.3d 704, 722 (W.D. Wash. 2019). Moreover, in at least the *New York* matter, you filed extensive briefing at the Second Circuit as recently as April 2020 vigorously urging the Circuit Court to adopt the interpretations which you now appear to reject as unwarranted under the law.
 - a. Were the pleadings that your office filed in the Southern District of New York, the Western District of Washington, and Second Circuit in 2019 and 2020 “not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation . . .” and “. . . warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for

¹⁰ <https://www.foxnews.com/politics/doj-drops-case-vermont-abortion>

establishing new law,” or not, as you represented to the courts in each of those cases? See FRCP 11(b) (1) and (2)

While testifying before Congress earlier this year, one of you stated that HHS would “continue to provide protections for the civil constitutional rights of all Americans, including those that involve religion,” and that nothing would change in the agency’s handling of those weighty matters.¹¹ During your confirmation hearings before the Senate Finance and Senate Health, Education, Labor and Pensions Committees, you promised multiple times to follow federal law as it relates to the issues of abortion, religious liberty, and conscience protection. HHS’s actions in this case directly contradict those assurances. Moreover, they call into question your honesty before Congress and willingness to enforce the law in all other matters.

We will continue to monitor the actions of both HHS and DOJ to ensure that the laws as enacted by Congress are fully enforced.

Sincerely,



Tom Cotton
United States Senator



James Lankford
United States Senator



Marsha Blackburn
United States Senator



John Boozman
United States Senator



Mike Braun
United States Senator



Kevin Cramer
United States Senator



Ted Cruz
United States Senator



Steve Daines
United States Senator



Bill Hagerty
United States Senator



Josh Hawley
United States Senator

¹¹ <https://www.nationalreview.com/corner/becerra-and-biden-betray-medical-professionals-being-forced-to-assist-in-abortions/>



Cindy Hyde-Smith
United States Senator



James Inhofe
United States Senator



John Kennedy
United States Senator



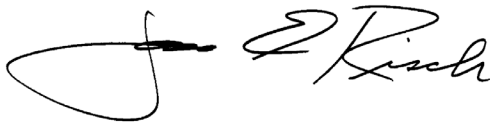
Michael S. Lee
United States Senator



Roger Marshall, M.D.
United States Senator



Jerry Moran
United States Senator



James E. Risch
United States Senator



Marco Rubio
United States Senator



Ben Sasse
United States Senator



Rick Scott
United States Senator



John Thune
United States Senator



Andy Harris, M.D.
Member of Congress



Christopher H. Smith
Member of Congress



Kat Cammack
Member of Congress



Kevin McCarthy
Member of Congress



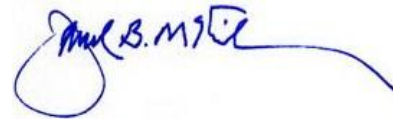
Gregory F. Murphy, M.D.
Member of Congress



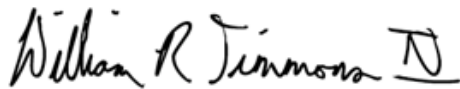
Billy Long
Member of Congress



Rick Crawford
Member of Congress



David B. McKinley P.E.
Member of Congress



William Timmons
Member of Congress



Kevin Hern
Member of Congress



Paul A. Gosar, D.D.S.
Member of Congress



Jeff Fortenberry
Member of Congress



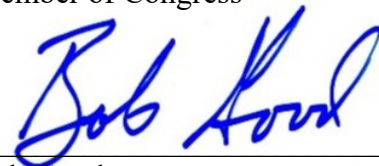
Alex X. Mooney
Member of Congress



Louie Gohmert
Member of Congress



Jeff Duncan
Member of Congress



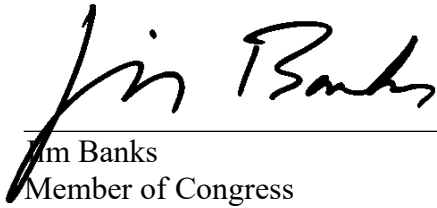
Bob Good
Member of Congress



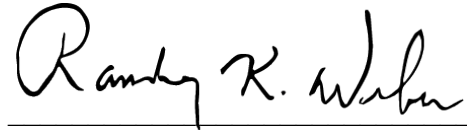
Bob Gibbs
Member of Congress



Mike D. Rogers
Member of Congress



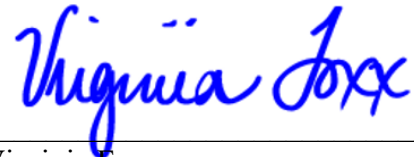
Jim Banks
Member of Congress



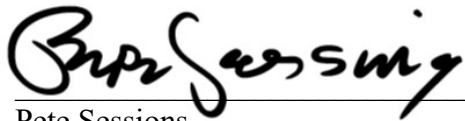
Randy K. Weber
Member of Congress



Richard Hudson
Member of Congress



Virginia Foxx
Member of Congress



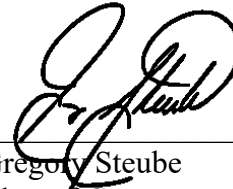
Pete Sessions
Member of Congress



Steve Chabot
Member of Congress



Andrew S. Clyde
Member of Congress



W. Gregory Steube
Member of Congress



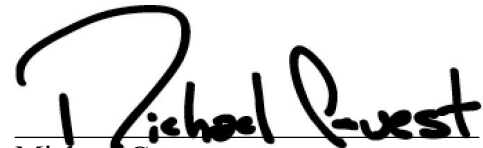
Ben Cline
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Randy Feenstra
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Debbie Lesko
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Ronny L. Jackson, M.D.
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Andy Biggs

Andy Biggs
Member of Congress

Gus M. Bilirakis

Gus M. Bilirakis
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Doug LaMalfa

Doug LaMalfa
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Blake D. Moore

Blake Moore
Member of Congress

Lance Gooden

Lance Gooden
Member of Congress



Barry Moore
Member of Congress



Robert B. Aderholt
Member of Congress



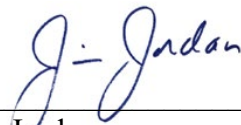
Ted Budd
Member of Congress



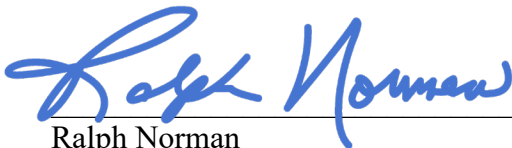
Glenn Grothman
Member of Congress



Scott Franklin
Member of Congress



Jim Jordan
Member of Congress



Ralph Norman
Member of Congress



Joe Wilson
Member of Congress



Jodey C. Arrington
Member of Congress



Pat Fallon
Member of Congress



Tim Walberg
Member of Congress



Mike Bost
Member of Congress



Robert E. Latta
Member of Congress



Glenn "GT" Thompson
Member of Congress



Jack Bergman
Member of Congress



John H. Rutherford
Member of Congress



Diana Harshbarger
Member of Congress



Earl L. "Buddy" Carter
Member of Congress



Jody Hice
Member of Congress