

115TH CONGRESS  
1ST SESSION

# H. R. 1881

To ensure that organizations with religious or moral convictions are allowed to continue to provide services for children.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 2017

Mr. KELLY of Pennsylvania (for himself, Mr. PITTENGER, Mr. DUNCAN of South Carolina, Mr. ROTHFUS, Mr. SMITH of New Jersey, Mr. HULTGREN, Mr. JONES, Mr. PALAZZO, Mr. RENACCI, Mr. KING of Iowa, Mr. PALMER, Mr. MOONEY of West Virginia, Mr. GROTHMAN, and Mr. SESSIONS) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To ensure that organizations with religious or moral convictions are allowed to continue to provide services for children.

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 “Child Welfare Provider  
5 Inclusion Act of 2017”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds the following:

1           (1) Child welfare service providers, both individ-  
2           uals and organizations, have the inherent, funda-  
3           mental, and inalienable right to free exercise of reli-  
4           gion protected by the United States Constitution.

5           (2) The right to free exercise of religion for  
6           child welfare service providers includes the freedom  
7           to refrain from conduct that conflicts with their sin-  
8           cerely held religious beliefs.

9           (3) Most States provide government-funded  
10          child welfare services through various charitable, re-  
11          ligious, and private organizations.

12          (4) Religious organizations, in particular, have  
13          a lengthy and distinguished history of providing  
14          child welfare services that predates government in-  
15          volvement.

16          (5) Religious organizations have long been and  
17          should continue contracting with and receiving  
18          grants from governmental entities to provide child  
19          welfare services.

20          (6) Religious organizations cannot provide cer-  
21          tain child welfare services, such as foster-care or  
22          adoption placements, without receiving a government  
23          contract, grant or license.

24          (7) Religious organizations display particular  
25          excellence when providing child welfare services.

1           (8) Children and families benefit greatly from  
2 the child welfare services provided by religious orga-  
3 nizations.

4           (9) Governmental entities and officials admin-  
5 istering federally funded child welfare services in  
6 some States, including Massachusetts, California, Il-  
7 linois, and the District of Columbia, have refused to  
8 contract with religious organizations that are unable,  
9 due to sincerely held religious beliefs or moral con-  
10 victions, to provide a child welfare service that con-  
11 flicts, or under circumstances that conflict, with  
12 those beliefs or convictions; and that refusal has  
13 forced many religious organizations to end their long  
14 and distinguished history of excellence in the provi-  
15 sion of child welfare services.

16           (10) Ensuring that religious organizations can  
17 continue to provide child welfare services will benefit  
18 the children and families that receive those federally  
19 funded services.

20           (11) States also provide government-funded  
21 child welfare services through individual child wel-  
22 fare service providers with varying religious and  
23 moral convictions.

24           (12) Many individual child welfare service pro-  
25 viders maintain sincerely held religious beliefs or

1 moral convictions that relate to their work and  
2 should not be forced to choose between their liveli-  
3 hood and adherence to those beliefs or convictions.

4 (13) Because governmental entities provide  
5 child welfare services through many charitable, reli-  
6 gious, and private organizations, each with varying  
7 religious beliefs or moral convictions, and through  
8 diverse individuals with varying religious beliefs or  
9 moral convictions, the religiously impelled inability  
10 of some religious organizations or individuals to pro-  
11 vide certain services will not have a material effect  
12 on a person's ability to access federally funded child  
13 welfare services.

14 (14) The activities of funding and admin-  
15 istering these child welfare services substantially af-  
16 fect interstate commerce.

17 (15) Taking adverse actions against child wel-  
18 fare service providers that are unable, due to their  
19 sincerely held religious beliefs or moral convictions,  
20 to provide certain services (or provide services under  
21 certain circumstances) substantially affects inter-  
22 state commerce.

23 (16) The provisions of this Act are remedial  
24 measures that are congruent and proportional to  
25 protecting the constitutional rights of child welfare

1 service providers guaranteed under the Fourteenth  
2 Amendment to the United States Constitution.

3 (17) Congress has the authority to pass this  
4 Act pursuant to its spending clause power, com-  
5 merce clause power, and enforcement power under  
6 section 5 of the Fourteenth Amendment to the  
7 United States Constitution.

8 (b) PURPOSES.—The purposes of this Act are as fol-  
9 lows:

10 (1) To prohibit governmental entities from dis-  
11 criminating or taking an adverse action against a  
12 child welfare service provider on the basis that the  
13 provider declines to provide a child welfare service  
14 that conflicts, or under circumstances that conflict,  
15 with the sincerely held religious beliefs or moral con-  
16 victions of the provider.

17 (2) To protect child welfare service providers'  
18 exercise of religion and to ensure that governmental  
19 entities will not be able to force those providers, ei-  
20 ther directly or indirectly, to discontinue all or some  
21 of their child welfare services because they decline to  
22 provide a child welfare service that conflicts, or  
23 under circumstances that conflict, with their sin-  
24 cerely held religious beliefs or moral convictions.

1           (3) To provide relief to child welfare service  
2 providers whose rights have been violated.

3 **SEC. 3. DISCRIMINATION AND ADVERSE ACTIONS PROHIB-**  
4 **ITED.**

5           (a) The Federal Government, and any State that re-  
6 ceives Federal funding for any program that provides child  
7 welfare services under part B or part E of title IV of the  
8 Social Security Act (and any subdivision, office or depart-  
9 ment of such State) shall not discriminate or take an ad-  
10 verse action against a child welfare service provider on the  
11 basis that the provider has declined or will decline to pro-  
12 vide, facilitate, or refer for a child welfare service that con-  
13 flicts with, or under circumstances that conflict with, the  
14 provider's sincerely held religious beliefs or moral convic-  
15 tions.

16           (b) Subsection (a) does not apply to conduct forbid-  
17 den by paragraph (18) of section 471(a) of such Act.

18 **SEC. 4. FUNDS WITHHELD FOR VIOLATION.**

19           The Secretary of Health and Human Services shall  
20 withhold from a State 15 percent of the Federal funds  
21 the State receives for a program that provides child wel-  
22 fare services under part B or part E of title IV of the  
23 Social Security Act if the State violates section 3 when  
24 administering or disbursing funds under such program.

1 **SEC. 5. PRIVATE RIGHT OF ACTION.**

2 (a) A child welfare service provider aggrieved by a  
3 violation of section 3 may assert that violation as a claim  
4 or defense in a judicial proceeding and obtain all appro-  
5 priate relief, including declaratory relief, injunctive relief,  
6 and compensatory damages, with respect to that violation.

7 (b) A child welfare service provider that prevails in  
8 an action by establishing a violation of section 3 is entitled  
9 to recover reasonable attorneys' fees and costs.

10 (c) By accepting or expending Federal funds in con-  
11 nection with a program that provides child welfare services  
12 under part B or part E of title IV of the Social Security  
13 Act, a State waives its sovereign immunity for any claim  
14 or defense that is raised under this section.

15 **SEC. 6. SEVERABILITY.**

16 If any provision of this Act, or any application of such  
17 provision to any person or circumstance, is held to be un-  
18 constitutional, the remainder of this Act and the applica-  
19 tion of the provision to any other person or circumstance  
20 shall not be affected.

21 **SEC. 7. EFFECTIVE DATE.**

22 (a) The amendments made by this Act shall take ef-  
23 fect on the 1st day of the 1st fiscal year beginning on  
24 or after the date of the enactment of this Act, and the  
25 withholding of funds authorized by section 4 shall apply

1 to payments under parts B and E of such Act for calendar  
2 quarters beginning on or after such date.

3 (b) If legislation (other than legislation appropriating  
4 funds) is required for a governmental entity to bring itself  
5 into compliance with this Act, the governmental entity  
6 shall not be regarded as violating this Act before the 1st  
7 day of the 1st calendar quarter beginning after the first  
8 regular session of the legislative body that begins after the  
9 date of the enactment of this Act. For purposes of the  
10 preceding sentence, if the governmental entity has a 2-  
11 year legislative session, each year of the session is deemed  
12 to be a separate regular session.

13 **SEC. 8. DEFINITIONS.**

14 The following definitions apply throughout this Act:

15 (1) The term “child welfare service provider”  
16 includes organizations, corporations, groups, entities,  
17 or individuals that provide or seek to provide, or  
18 that apply for or receive a contract, subcontract,  
19 grant, or subgrant for the provision of, child welfare  
20 services. The provider need not be engaged exclu-  
21 sively in child welfare services to be considered a  
22 child welfare service provider.

23 (2) The term “child welfare services” means so-  
24 cial services provided to or on behalf of children, in-  
25 cluding assisting abused, neglected, or troubled chil-

1       dren, counseling children or parents, promoting fos-  
2       ter parenting, providing foster homes or temporary  
3       group shelters for children, recruiting foster parents,  
4       placing children in foster homes, licensing foster  
5       homes, promoting adoption, recruiting adoptive par-  
6       ents, assisting adoptions, supporting adoptive fami-  
7       lies, assisting kinship guardianships, assisting kin-  
8       ship caregivers, providing family preservation serv-  
9       ices, providing family support services, and providing  
10      time-limited family reunification services.

11           (3) The term “State” includes any of the sev-  
12      eral States, the District of Columbia, any common-  
13      wealth, territory or possession of the United States,  
14      and any political subdivision thereof.

15           (4) The terms “funding”, “funded”, or “funds”  
16      include money paid pursuant to a contract, grant,  
17      voucher, or similar means.

18           (5) The term “adverse action” includes, but is  
19      not limited to, denying a child welfare service pro-  
20      vider’s application for funding, refusing to renew the  
21      provider’s funding, canceling the provider’s funding,  
22      declining to enter into a contract with the provider,  
23      refusing to renew a contract with the provider, can-  
24      celing a contract with the provider, declining to issue  
25      a license to the provider, refusing to renew the pro-

1 vider's license, canceling the provider's license, ter-  
2 minating the provider's employment, or any other  
3 adverse action that materially alters the terms or  
4 conditions of the provider's employment, funding,  
5 contract, or license.

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