

3/15/17

Teresa Harke
Oregon Family Council
P.O. Box 13367
Portland, OR 97213

House Committee on Health Care

Testimony on HB 3391

Chair Greenlick, members of the committee,

My name is Teresa Harke and I am with the Oregon Family Council. I'm here today to testify in **opposition** to **HB 3391**.

House Bill 3391 is a sweeping assault on religious freedom by requiring all Oregon health insurance policies to provide free abortion coverage. Many Oregonians have a moral and religious opposition to abortion and this bill would require them to violate their conscience and participate in abortion coverage.

Our legal analysis (attached) by attorney Shawn Lindsay, shows that this bill ultimately fails in its attempt to protect our first amendment rights of religious freedom. The religious exemption only applies to non-profit religious employers leaving "individuals of faith, unincorporated associations, and religious owners of for-profit entities" in conflict. Individuals and organizations not included in the exemption find themselves in a cruel predicament; they must either violate their conscience or violate the law.

Furthermore, House Bill 3391 does not provide religious employers any specified access to plans that do not cover abortion or contraceptives, leaving even those exempted, to the whims of state insurers as to whether they can even find such a plan. It also requires a religious employer to notify all employees of the abortion and contraceptives that they will not cover. This makes the current exemption antagonistic to religious organizations and persons.

A bill requiring all insurers to cover abortion leaves it vulnerable to court challenges on basis of constitutionality. Recent Supreme Court cases cited in our legal analysis upheld that government should accommodate religious beliefs and "that individuals do not lose their religious freedom when they open a family business." Attorney Shawn Lindsay also noted, "HB 3391 does not comply with...U.S. Supreme Court rulings and, consequently, it is at high risk of being struck down as unconstitutional."

We strongly urge you to vote "no" on HB 3391 to protect religious freedom rights of conscience.



March 14, 2017

VIA ELECTRONIC MAIL (teresa@oregonfamilycouncil.org)

Teresa Harke
Oregon Family Council, Inc.
11935 NE Sumner St.
Portland, OR 97220

Re: Legal Analysis of HB 3391

Dear Mrs. Harke,

HB 3391, if made law, would require all Oregon health insurance policies to provide coverage for abortions and contraceptive drugs. See Section 2(2)(g) and (j). HB 3391 would also require all Oregon health insurance policies to provide this coverage at no cost to the enrollee. See Section 2(3). Pursuing such “free” coverage suggests zealotry because it is not currently part of federal or state law and never has been.

HB 3391 Section 2(9) attempts to comply with religious freedoms by stating an insurer may offer to a “religious employer” a health benefit plan that does not include coverage for abortions and contraceptives that are contrary to the religious employer’s religious tenets SO LONG AS the insurer notifies in writing all employees of the abortions and contraceptives that the employer refuses to cover for religious reasons. But Section 2(9) woefully fails to comply with religious freedoms guaranteed by the U.S. and Oregon Constitutions.

Section 2(9) limits protection from violations of conscience to “religious employers,” which must be formally structured nonprofit corporations (See ORS. 743A.066). It provides no protection to individuals of faith, unincorporated associations, or religious owners of for-profit entities. These individuals’ only options would be to either violate their consciences or violate the law . . . an unconscionable and cruel position to put them in. Further, Section 2(9) gives religious employers no specific access to plans that do not contain abortion and contraceptive coverage (nor to religious individuals, unincorporated associations, or owners of for-profit entities). It only states insurers have the *discretion* to offer or not offer such a plan. With no express provision giving religious individuals access to health plans that do not violate their consciences, HB 3391 is hostile and merciless to millions of Oregonians of faith.

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Because of the limited religious freedom protections of HB 3391, it is vulnerable to court challenges for being unconstitutional. In *Zubik/Little Sisters of the Poor*, the U.S. Supreme Court unanimously overturned lower court rulings against the Little Sisters and directed that the government should “arrive at an approach going forward that accommodates the petitioners’ religious beliefs.” In *Burwell v. Hobby Lobby*, the U.S. Supreme Court ruled that individuals do not lose their religious freedom when they open a family business. The court ruled in favor of the David and Barbara Green and their family business, Hobby Lobby, that they would not be required to violate their faith by having abortifacient drugs included in their company’s health insurance plan. HB 3391 does not comply with either of the above U.S. Supreme Court rulings and, consequently, it is at high risk of being struck down as unconstitutional.

Very truly yours,

HARRIS BERNE CHRISTENSEN LLP

A handwritten signature in cursive script that reads "Shawn M. Lindsay".

Shawn M. Lindsay

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