



March 11, 2014

RE: Oppose H.R. 1814, the EACH Act

Mr. Sander M. Levin
Ranking Member
Committee on Ways and Means
1106 Longworth House Office Building
Washington, DC 20515

Dear Representative Levin:

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On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of individual liberty and justice embodied in the U.S. Constitution, we write today to share our serious concerns with H.R. 1814, which will be considered on the suspension calendar today. This bill, which would create a broad loophole to the individual coverage requirement under the Affordable Care Act, would be dangerously far-reaching and impermissibly override critical governmental interests.

Freedom of religion and belief has long been a treasured American value and a centerpiece of our constitutional system. As a result, religion has flourished and we are one of the most religiously diverse nations in the world. Religious freedom, however, is not absolute. Other values—such as fairness, equality, health and safety, and the government’s ability to administer laws and programs—also affect the way we order society.

H.R. 1814 would create a new, very broad exemption from the ACA’s individual coverage requirement. The exemption would not be limited to Christian Scientists—as proponents suggest—but rather would be available to *any* individual whose “sincerely held religious beliefs would cause the individual to object to medical health care that would be covered under such coverage.”

H.R. 1814’s exemption differs significantly from existing religious exemptions under the ACA

Currently, there are two religious exemptions¹ from the individual requirement for minimum essential coverage. These exemptions are limited to two groups who

¹ First, is an exemption for members and adherents of religions that are “conscientiously opposed to acceptance of the benefits of any private or public insurance.” (26 U.S.C. § 1402(g)(1).) This very limited exemption is for members of religions that both teach that the community itself is responsible for the care of its members and the community has historically done so. It’s generally limited to some members of the Amish and Mennonite faiths, because of their teaching about reliance on mutual aid within the community. This tenet results in the community taking care of its own, and ensures that community members’ health care costs are covered.

Second, is an exemption for those who belong to a health care sharing ministry. These entities permit health care costs to be shared among members who share similar religious beliefs and practices. Again, the entities are alternative arrangements akin to insurance.

effectively get health care coverage from other sources. These groups object to *insurance* but have alternative arrangements to cover their health care costs.

The exemption proposed in H.R. 1814, however, is different. It would not be based on an individual's objection to insurance, rather it would create an exemption based on an individual's objection to some or all of the services covered by the insurance. Moreover, the bill provides no alternative arrangement to cover any health or medical costs incurred by those who use an exemption from the coverage requirement.²

Many insurance plans cover Christian Science care

Nothing in the Affordable Care Act prohibits insurance plans from covering Christian Science care. In fact, Members of Congress specifically addressed this issue during debate on the bill.³ The Church of Christ, Scientist explains that “[v]arious U.S. federal, state, and private health insurance plans provide for the reimbursement of Christian Science nursing care and practitioner treatment” and that it is working to make even more insurance options available.⁴ Moreover, “Christian Science nursing care at 17 Christian Science nursing facilities throughout the U.S. are reimbursed under Medicare Part A.”⁵

Requiring minimum essential health insurance does not burden religious exercise

Statutory accommodations of religion, like the one proposed in H.R. 1814, must lift an actual burden on religious exercise.⁶ But, a requirement to purchase individual health insurance coverage is in no way a burden on Christian Science practice.⁷

Adherents to Christian Science believe in healing through prayer. Some pay practitioners to pray on their behalf. They may also engage nurses or seek care at nursing facilities. These services are nonmedical, simply providing physical care to people who are attempting to heal through prayer. The insurance coverage requirement does not—in any way—prohibit or interfere with anyone's ability to rely on prayer, hire prayer practitioners, or use Christian Science nurses or nursing facilities.

A federal court has rejected a challenge to the coverage requirement, concluding that it did not impose a substantial burden on plaintiffs' religious exercise, despite claims that the plaintiffs “believe[] in trusting

² Under H.R. 1814, individuals who get an exemption would be permitted to get some medical care, including vaccinations, other medical care required by law, chiropractic treatment, dental care, midwifery, and optometry, without nullifying the exemption. Exempt individuals may also need emergency medical care.

³ Cong. Record, E506 (Mar. 21, 2010) (Statement of Rep. Waxman); Cong. Record, S2235 (Apr. 13, 2010) (Statement of Sens. Kerry, Sherrod Brown, and Harkin). See also “Health Care Reform FAQs,” Question 2 (explaining that nothing in the Affordable Care Act “would prohibit insurance plans participating in the new health insurance exchanges from offering coverage for spiritual care”), [http://christianscience.com/member-resources/for-churches/committee-on-publication/u.s.-federal-office/health-care-reform/frequently-asked-questions/\(language\)/eng-US](http://christianscience.com/member-resources/for-churches/committee-on-publication/u.s.-federal-office/health-care-reform/frequently-asked-questions/(language)/eng-US).

⁴ “Insurance,” <http://christianscience.com/member-resources/for-churches/committee-on-publication/us-federal-office/health-care-reform/insurance>.

⁵ “Affordable Care Act FAQs,” <http://christianscience.com/member-resources/for-churches/committee-on-publication/us-federal-office/health-care-reform/frequently-asked-questions>.

⁶ E.g., *County of Allegheny v. ACLU*, 492 U.S. 573, 613 n.59 (quoting *Corp. of Presiding Bishop v. Amos*, 483 U.S. 327, 348 (1987) (O'Connor, J., concurring)).

⁷ Moreover, in recent years, Christian Science leaders “have been encouraging members to see a physician if they feel it is necessary.” Paul Vitello, “Christian Science Church Seeks Truce With Modern Medicine,” *N.Y. Times*, Mar. 23, 2010. The church's website explains: “It's up to each person who practices Christian Science to choose the form of health care he or she wants.” “The Practice of Christian Science: Relationship with Western medicine,” <http://christianscience.com/what-is-christian-science#practice-of-cs>. “Every Christian Scientist makes his or her own financial and health decisions,” and some purchase health insurance. North Carolina Christian Science Committee on Publications, “FAQ,” <http://www.christiansciencenorthcarolina.com/faq/>.

in God to protect [them] from illness or injury” and did not “want to be forced to buy . . . health insurance coverage.”⁸

In the cases challenging the rule ensuring that contraceptives are covered in employees’ insurance plans, the claims made by employers that the requirement burdens their religion are attenuated at best.⁹ The same is true here. Having insurance coverage for medical care or prescriptions does not mean individuals are actually required to use such care or prescriptions. In fact, insurance covers treatments that we all hope we will never need.

H.R. 1814 states that this exemption would be nullified if the individual receives “medical health care” during the year. However, vaccinations, other medical care required by law, chiropractic treatment, dental care, midwifery, and optometry don’t count as “medical health care” for purposes of this bill. This bill lets people have it both ways—they can refuse to have health insurance but still receive some medical care.

Requiring individuals to have coverage for health care is critical

Any accommodation of religious exercise “must be measured so that it does not override other significant interests.”¹⁰ H.R. 1814, however, overrides interests of the highest order and clearly ignores why requiring health insurance is critical. This is yet another attempt to undermine the Affordable Care Act.

Like the tax or social security systems, regulation of the health care and insurance markets relies upon near comprehensive participation for success.¹¹ Maintaining these systems “is of such a high order [that] religious belief in conflict with [participation] affords no basis for” an exemption.¹²

The government has a compelling interest in “safeguarding the public health by regulating the health care and insurance markets.”¹³ In passing the Affordable Care Act, Congress sought to “reform[] the health care market by increasing coverage” and thus, sought “to achieve near-universal health insurance coverage.”¹⁴ The requirement decreases “financial risks to households and medical providers.”¹⁵ The costs of uncompensated care for the uninsured are enormous. “To pay for this cost, health care providers pass on the cost to private insurers, which pass on the cost to families.”¹⁶ Requiring nearly every individual to have coverage for health care squarely addresses this problem.

For example, people who refuse to obtain health insurance because they object to the medical health care it covers are not immune from suffering critical injuries in accidents. There are legal requirements that

⁸ *Mead v. Holder*, 766 F. Supp. 2d 16, 42 (D.D.C. 2011), *aff’d*, *Seven-Sky v. Holder*, 661 F.3d 1, 5 n.4 (D.C. Cir. 2011), *cert. denied*, 2012 WL 2470101 (U.S. June 29, 2012) (No. 11-679).

⁹ *See, e.g.*, Brief Amicus Curiae of ACLU et al., *Hobby Lobby, Inc. v. Sebelius*, No. 12-6924 (10th Cir. filed Mar. 22, 2013) at 13-17 (providing comprehensive health insurance “neither requires employers to physically provide contraception to their employees, nor endorse the use of contraception, and does not prohibit any religious practice or otherwise substantially burden [employers’] religious beliefs”); *see also, e.g.*, Brief Amicus Curiae of Religious Organizations, *Sebelius v. Hobby Lobby, Inc.*, Nos. 13-354/13/-256 (U.S. filed Jan. 28, 2014) at 25-36.

¹⁰ *Cutter v. Wilkinson*, 544 U.S. 709, 722 (2005).

¹¹ The Supreme Court held that the ACA imposes a tax on those who choose to go without health insurance. *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2608 (2012). In general, conscientious objections to paying taxes are not permitted. *See, e.g., United States v. Lee*, 455 U.S. 252, 260 (1982).

¹² *Lee*, 455 U.S. at 260.

¹³ *Mead*, 766 F. Supp. 2d at 43, (citing *Olsen v. Drug Enforcement Admin.*, 878 F.2d 1458, 1462 (D.C. Cir. 1989)).

¹⁴ *Id.*

¹⁵ 42 U.S.C. § 18091.

¹⁶ *Id.*

medical care be provided to injured people who are taken to the hospital. Such emergency medical care is expensive and hospitals will have to absorb the costs, passing them on to other patients.¹⁷

The exemption is dangerously broad

The exemption is available to *anyone* whose “sincerely held religious beliefs would cause [him or her] to object to medical health care that would be covered under” the minimum essential coverage. “Medical health care” in turn is defined as “voluntary health treatment by or supervised by a medical doctor.” In a “cosmopolitan nation made up of people of almost every conceivable religious preference,”¹⁸ innumerable medical procedures will be disfavored by adherents of one religion or another. This is clearly *not just limited to members of the Christian Science church*, but would also apply to other sects that eschew some or all kinds of medical treatment.¹⁹

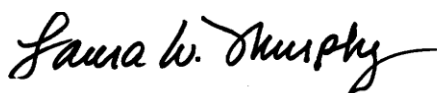
By creating an exemption to the Affordable Care Act’s requirements based on objections to some (or all) health care services, this bill would create a dangerous precedent. The calls for exemptions to insurance coverage requirements would know no limits. For instance, this bill would allow individuals who object to services like contraception, HIV treatment, and mental health care to skirt the requirement to purchase insurance if they are willing to avoid medical services—aside from vaccinations, chiropractic treatment, dental care, midwifery, and optometry.

* * *

We appreciate your attention to this matter and for the opportunity to share our concerns with H.R. 1814.

Please contact Legislative Counsel Dena Sher at (202) 715-0829 or dsher@aclu.org if you have questions or comments about our concerns.

Sincerely,



Laura W. Murphy
Director, Washington Legislative Office



Dena Sher
Legislative Counsel

¹⁷ Some emergency care, if accepted voluntarily, may nullify the exemption; other emergency care may not. It is entirely unclear, however, how nullification would work. H.R. 1814 does not create a process to report “voluntary” medical care that might have been received. Even if a reporting process were established and the exemption were nullified, there is no way to retroactively cover medical care like this that has already been provided.

¹⁸ *Braunfeld v. Brown*, 36 U.S. 599, 606 (1961).

¹⁹ Examples of sects that shun medical treatment include the Church of the Firstborn (Jack Moran, “Couple charged in son’s death: The two face manslaughter counts accusing them of failing to get a teen medical help for a treatable illness,” *Eugene Register-Guard*, Feb. 11, 2012.), the Followers of Christ (Steve Mayes, “Another faith-healing death of a child puts Oregon City parents on trial,” *Portland Oregonian*, Sept. 11, 2011.), and the Unleavened Bread Ministries (Deena Guzder, “When Parents Call God Instead of the Doctor,” *Time*, Feb. 5, 2009.). In these examples, the safety—and sometimes lives—of children have been put at risk.