

115TH CONGRESS
1ST SESSION

S. 811

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

IN THE SENATE OF THE UNITED STATES

APRIL 4, 2017

Mr. ENZI (for himself, Mr. LANKFORD, Mr. LEE, Mr. CORNYN, Mr. RISCH, Mr. INHOFE, Mr. COTTON, Mr. RUBIO, and Mr. SASSE) introduced the following bill; which was read twice and referred to the Committee on Finance

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:

8 (1) Child welfare service providers, both individ-
9 uals and organizations, have the inherent, funda-

1 mental, and inalienable right to free exercise of reli-
2 gion protected by the United States Constitution.

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

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

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

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

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

22 (7) Religious organizations display particular
23 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) IN GENERAL.—The Federal Government, and
6 any State that receives Federal funding for any program
7 that provides child welfare services under part B or E of
8 title IV of the Social Security Act (42 U.S.C. 621 et seq.,
9 671 et seq.) (and any subdivision, office or department
10 of such State) shall not discriminate or take an adverse
11 action against a child welfare service provider on the basis
12 that the provider has declined or will decline to provide,
13 facilitate, or refer for a child welfare service that conflicts
14 with, or under circumstances that conflict with, the pro-
15 vider’s sincerely held religious beliefs or moral convictions.

16 (b) LIMITATION.—Subsection (a) does not apply to
17 conduct forbidden by paragraph (18) of section 471(a) of
18 such Act (42 U.S.C. 671(a)(18)).

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

20 The Secretary of Health and Human Services shall
21 withhold from a State 15 percent of the Federal funds
22 the State receives for a program that provides child wel-
23 fare services under part B or E of title IV of the Social
24 Security Act (42 U.S.C. 621 et seq., 671 et seq.) if the

1 State violates section 3 when administering or disbursing
2 funds under such program.

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

4 (a) IN GENERAL.—A child welfare service provider
5 aggrieved by a violation of section 3 may assert that viola-
6 tion as a claim or defense in a judicial proceeding and
7 obtain all appropriate relief, including declaratory relief,
8 injunctive relief, and compensatory damages, with respect
9 to that violation.

10 (b) ATTORNEYS' FEES AND COSTS.—A child welfare
11 service provider that prevails in an action by establishing
12 a violation of section 3 is entitled to recover reasonable
13 attorneys' fees and costs.

14 (c) WAIVER OF SOVEREIGN IMMUNITY.—By accept-
15 ing or expending Federal funds in connection with a pro-
16 gram that provides child welfare services under part B or
17 E of title IV of the Social Security Act (42 U.S.C. 621
18 et seq., 671 et seq.), a State waives its sovereign immunity
19 for any claim or defense that is raised under this section.

20 **SEC. 6. SEVERABILITY.**

21 If any provision of this Act, or any application of such
22 provision to any person or circumstance, is held to be un-
23 constitutional, the remainder of this Act and the applica-
24 tion of the provision to any other person or circumstance
25 shall not be affected.

1 **SEC. 7. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided in subsection
3 (b), the amendments made by this Act shall take effect
4 on the 1st day of the 1st fiscal year beginning on or after
5 the date of the enactment of this Act, and the withholding
6 of funds authorized by section 4 shall apply to payments
7 under parts B and E of title IV of the Social Security
8 Act (42 U.S.C. 621 et seq., 671 et seq.) for calendar quar-
9 ters beginning on or after such date.

10 (b) EXCEPTION.—If legislation (other than legisla-
11 tion appropriating funds) is required for a governmental
12 entity to bring itself into compliance with this Act, the
13 governmental entity shall not be regarded as violating this
14 Act before the 1st day of the 1st calendar quarter begin-
15 ning after the first regular session of the legislative body
16 that begins after the date of the enactment of this Act.
17 For purposes of the preceding sentence, if the govern-
18 mental entity has a 2-year legislative session, each year
19 of the session is deemed to be a separate regular session.

20 **SEC. 8. DEFINITIONS.**

21 In this Act:

22 (1) CHILD WELFARE SERVICE PROVIDER.—The
23 term “child welfare service provider” includes orga-
24 nizations, corporations, groups, entities, or individ-
25 uals that provide or seek to provide, or that apply
26 for or receive a contract, subcontract, grant, or

1 subgrant for the provision of, child welfare services.
2 A provider need not be engaged exclusively in child
3 welfare services to be considered a child welfare
4 service provider for purposes of this Act.

5 (2) CHILD WELFARE SERVICES.—The term
6 “child welfare services” means social services pro-
7 vided to or on behalf of children, including assisting
8 abused, neglected, or troubled children, counseling
9 children or parents, promoting foster parenting, pro-
10 viding foster homes or temporary group shelters for
11 children, recruiting foster parents, placing children
12 in foster homes, licensing foster homes, promoting
13 adoption, recruiting adoptive parents, assisting
14 adoptions, supporting adoptive families, assisting
15 kinship guardianships, assisting kinship caregivers,
16 providing family preservation services, providing
17 family support services, and providing time-limited
18 family reunification services.

19 (3) STATE.—The term “State” includes each of
20 the 50 States, the District of Columbia, any com-
21 monwealth, territory or possession of the United
22 States, and any political subdivision thereof, and any
23 Indian tribe, tribal organization, or tribal consortium
24 that has a plan approved in accordance with section
25 479B of the Social Security Act (42 U.S.C. 679c) or

1 that has a cooperative agreement or contract with
2 one of the 50 States for the administration or pay-
3 ment of funds under part B or E of title IV of the
4 Social Security Act.

5 (4) FUNDING; FUNDED; FUNDS.—The terms
6 “funding”, “funded”, or “funds” include money paid
7 pursuant to a contract, grant, voucher, or similar
8 means.

9 (5) ADVERSE ACTION.—The term “adverse ac-
10 tion” includes, but is not limited to, denying a child
11 welfare service provider’s application for funding, re-
12 fusing to renew the provider’s funding, canceling the
13 provider’s funding, declining to enter into a contract
14 with the provider, refusing to renew a contract with
15 the provider, canceling a contract with the provider,
16 declining to issue a license to the provider, refusing
17 to renew the provider’s license, canceling the pro-
18 vider’s license, terminating the provider’s employ-
19 ment, or any other adverse action that materially al-
20 ters the terms or conditions of the provider’s em-
21 ployment, funding, contract, or license.

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