(UN)CONSCIENTIOUS OBJECTIONS & MEDICAL MISINFORMATION: RESTRICTING THE REFUSAL TO PROVIDE REPRODUCTIVE HEALTH CARE THROUGH MILITARY CONSCIENTIOUS OBJECTION STANDARDS

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> If you have gone [through] a miscarriage you know the pain and emotional roller it can be. I left Walgreens in tears, ashamed and feeling humiliated by a man who knows nothing of my struggles but feels it is his right to deny medication prescribed to me by my doctor.
>
> - Nicole Artega on Facebook after a pharmacist refused to fill her prescription for misoprostol.[1]

I. INTRODUCTION

While anti-choice[2] medical professionals have raised conscientious[3] objections to providing reproductive health care since the 1970s,[4] the landscape of

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[1] Kat Chow, *Walgreens Pharmacist Refuses to Provide Drug for Ariz. Women with Unviable Pregnancy*, NPR (June 25, 2018, 7:12 PM), https://www.npr.org/2018/06/25/623307762/walgreens-pharmacist-denies-drug-for-woman-with-unviable-pregnancy [https://perma.cc/UZ4X-ABT8] ("Misoprostol is approved by the Food and Drug Administration for what is called a medical abortion.").

[2] While "choice" presumes a level of privilege, this Article uses "anti-choice" rather than "anti-abortion" to describe providers generally opposed to reproductive health care services, including abortion, contraception, and sterilization. "Anti-abortion" is used when discussing providers' opposition specifically to abortion rather than reproductive health care more generally.

[3] "Conscientious" and "conscience" are often used interchangeably by physicians and scholars. However, "conscientious" will be used for the purposes of this Article, unless a "conscience clause," *see infra* note 33, is referenced or "conscience" is used by a court or in a direct quote.

[4] Cynthia Jones-Nosacek, *Conscientious Objection, Not Refusal: The Power of a Word*, 88 CATH. MED. ASS'N 242, 242 (2021) ("[Conscientious objection] in medicine grew out of the need to protect healthcare professionals who did not wish to be involved in performing abortions after the

conscientious objection laws adapted to the changes brought by *Dobbs v. Jackson Women's Health Organization*.[5] *Dobbs* not only reversed half a century of reliance on the federal constitutional right to abortion;[6] it also emboldened anti-choice legislators to push for broader protections for conscientious objectors who attempt to justify their refusal to provide abortion, contraception, and sterilization services or referrals.[7] Religiously motivated providers raising conscientious objections are driven by a mission deliberately intertwined with reproductive health misinformation,[8] and some courts have adopted such misinformation when analyzing challenges from anti-choice providers.[9]

Anti-choice providers weaponize medical misinformation to justify conscientious objections raised in the provision of requested, medically necessary, and lifesaving medical care.[10] Some objectors assert that laws requiring physicians to provide medical treatment or referrals deny providers the right to conscientiously object.[11] Others contend that the First Amendment's right to freely exercise religion is burdened when conscientious objection protections are restricted.[12] Acceptance of these arguments has serious ramifications, and courts should be cautious in enabling the dissemination of reproductive health misinformation disguised as religious liberty.[13]

This Article argues that overly deferential conscientious objection laws and a grossly inadequate legal standard empowers anti-choice providers to refuse to

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Roe v. Wade decision in 1973. For decades, this precept was allowed to stand with minimal comment or opposition . . . .").

[5] Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022) (overturning a federal constitutional right to abortion); *State Legislation Tracker*, GUTTMACHER INST., https://www.guttmacher.org/state-legislation-tracker [https://perma.cc/GPM9-U4CF] (last updated Oct. 1, 2024) (reporting that twenty-four bills expanding protections for conscientious objectors were introduced across state legislatures in 2024).

[6] *Dobbs*, 597 U.S. at 405 (Breyer, J., dissenting) ("[A]ll women now of childbearing age have grown up expecting that they would be able to avail themselves of *Roe*'s and *Casey*'s protections.").

[7] *See* GUTTMACHER INST., *supra* note 5.

[8] *See infra* Part II.B.

[9] *See, e.g.,* All. for Hippocratic Med. v. U.S. Food & Drug Admin., 78 F.4th 210, 232–33 (5th Cir. 2023) (reiterating the plaintiffs' argument that abortion causes trauma and regret, and poses a higher health risk than pregnancy and childbirth).

[10] Adelle M. Banks, *Texas Judge Blocks HHS Enforcement of Emergency Room Abortions, Cites Religious Objections,* NAT'L CATH. REP. (Aug. 25, 2022), https://www.ncronline.org/news/texas-judge-blocks-hhs-enforcement-emergency-room-abortions-cites-religious-objections [https://perma.cc/C7ZX-BFUE] (reporting that provider-objectors believed a medically necessary abortion to be an "elective abortion," and that "[e]lective abortion is not life-saving care — it ends the life of the unborn — and the government can't force doctors to perform procedures that violate their conscience and religious beliefs.").

[11] Cedar Park Assembly of God of Kirkland, Wash. v. Kreidler, 683 F. Supp. 3d 1172, 1178 (W.D. Wash. 2023).

[12] *Id.* at 1179; Nat'l Inst. for Fam. & Life Advocs. v. Schneider, 484 F. Supp. 3d 596, 603 (N.D. Ill. 2020).

[13] *Law & Policy Recommendation 22: Conscientious Objection (3.3.9)*, WORLD HEALTH ORG. (Mar. 8, 2022), https://srhr.org/abortioncare/chapter-3/pre-abortion-3-3/law-policy-recommendation-22-conscientious-objection-3-3-9/ [https://perma.cc/DC3M-HDPV] ("Refusal of abortion care on the basis of conscience operates as a barrier to access to safe and timely abortion, and unregulated conscientious refusal/objection can result in human rights violations, or lead women to seek unsafe abortion.").

provide requested, potentially emergency, reproductive care. Moreover, this Article asserts that providers often justify their refusal to provide legitimate health care with medical misinformation, which is legally indefensible. Rather than granting substantial deference to provider-objectors' claims, providers should be required to satisfy a legal standard similar to the legal standard for conscientious objection claims raised in the military context.

Part II provides an overview of conscientious objection laws and explains the overlap between reproductive health misinformation and conscientious objections.[14] Part III discusses the legal standard applied to traditional conscientious objection claims in the context of military service.[15] Part IV describes how modern conscientious objection laws in the context of reproductive health care perpetuate medical misinformation by giving objectors significant deference and imposing minimal, if any, burdens of proof.[16] Part V proposes two solutions to the legal quandary of provider-objectors relying on misinformation or discriminatory stereotypes to justify their refusal to provide reproductive health care, including the application of the military conscientious objection standard to this issue.[17] Lastly, Part VI examines the grave ramifications of expansive conscientious objection laws in a legal ecosystem with virtually no legal standard.[18]

II. CONSCIENTIOUS OBJECTIONS & MEDICAL MISINFORMATION

A conscientious objection is the refusal to participate in or facilitate an activity that an individual states is incompatible with their religious, moral, or philosophical beliefs.[19] Conscientious objection claims were first legally recognized in the military context, and were defined as the refusal to participate in mandatory military service because of personal, religious, or moral objections to killing.[20] Today, however, most conscientious objections appear in the health care context.[21]

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[14] *See infra* Part II.
[15] *See infra* Part III.
[16] *See infra* Part IV.
[17] *See infra* Part V.
[18] *See infra* Part VI.
[19] Luisa Cabal, Monica Arango Olaya & Valentina Montoya Robledo, *Striking a Balance: Conscientious Objection and Reproductive Health Care from the Colombian Perspective*, 16 HEALTH & HUM. RTS. J. 73, 74 (2014).
[20] Christian Fiala & Joyce H. Arthur, *"Dishonourable Disobedience" - Why Refusal to Treat in Reproductive Healthcare is Not Conscientious Objection*, 1 PSYCHOSOMATIC GYNAECOLOGY & OBSTETRICS 12, 13 (2014).
[21] Christian Fiala & Joyce H. Arthur, *There is No Defence for 'Conscientious Objection' in Reproductive Health Care*, 216 Eur. J. OBSTETRICS & GYNECOLOGY & REPROD. BIOLOGY 254, 255 (2017).

A. What are Conscientious Objections in the Health Care Context?

Objections in health care arise when providers or institutions believe providing certain services would conflict with their "moral integrity."[22] Such objections are most commonly raised for abortion, contraception, and sterilization services or referrals.[23] Conflicts regarding conscientious objections and ethical patient care arise when the refusal to offer services or referrals results in a failure of the provider's fiduciary duty to patients and the public.[24] This conflict is further exacerbated by a legal framework that provides total deference to providers, which is a gross deviation from the original conscientious objection standards established in the military service context.[25]

In response to the Supreme Court's 1973 decision in *Roe v. Wade* recognizing a federal constitutional right to abortion,[26] Congress passed the first federal conscientious objection law related to reproductive health care: the Church Amendments.[27] The Church Amendments prohibit recipients of federal funds from requiring medical professionals to perform or facilitate abortion or sterilization services when those services conflict with the provider's religious or moral beliefs.[28] For decades the federal government has expanded protections for conscientious objections, most recently in 2018 by the Department of Health and Human Services (DHHS) under the Trump administration.[29] Although much of the final rule promulgated by Trump's DHHS was blocked in federal court and was effectively

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[22] Samuel Reis-Dennis & Abram L. Brummett, *Are Conscientious Objectors Morally Obligated to Refer?*, 0 J. MED. ETHICS 547, 548 (2021) ("Objections to referral, like objections to providing unethical treatment, allow providers to preserve their integrity."); *The Limits of Conscientious Refusal in Reproductive Medicine*, AM. COLL. OBSTETRICIANS & GYNECOLOGISTS 1203, 1204 (Nov. 2007), https://journals.lww.com/greenjournal/citation/2007/11000/acog_committee_opinion_no__385__the_limits_of.50.aspx [https://perma.cc/3CYY-92S9] (stating that conscience objections are not a mere "broad claim to provider autonomy," but a claimed "right to protect his or her *moral integrity*") (emphasis added) [hereinafter ACOG].

[23] Fiala & Arthur, *supra* note 21.

[24] *See id.* (explaining that objectors choose to enter the medical field, and, in their duty to provide ethical care to the public, they exert their position of power over patients); *see also WMA Statement on Medically-Indicated Termination of Pregnancy*, WORLD MED. ASS'N (Sept. 6, 2022), https://www.wma.net/policies-post/wma-declaration-on-therapeutic-abortion/ [https://perma.cc/4C5P-MZFW] (declaring that an individual with a conscientious objection to certain reproductive care has an ethical duty to provide a referral to ensure "continuity of medical care"); Hasan Shanawani, *The Challenges of Conscientious Objection in Health Care*, 55 J. RELIG. & HEALTH 384, 388 (2016) ("It is generally accepted that when physicians enter practice, they voluntarily accept a set of core professional obligations."); *Policy Statement—Physician Refusal to Provide Information or Treatment on the Basis of Claims of Conscience*, AM. ACAD. PEDIATRICS, 1689, 1692 (2009) (stating that providers have a professional obligation to provide care, regardless of a conscientious objection, when the patient's health or safety is at risk).

[25] *See infra* Part III outlining the legal standard for conscientious objections to military service.

[26] Roe v. Wade, 410 U.S. 113 (1973).

[27] 42 U.S.C. § 300a-7.

[28] *Id.*

[29] Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23170 (May 21, 2018).

reversed by the Biden administration,[30] if enforced, the rule likely would have paved the way for anti-choice providers to evoke an even broader right to refuse.[31]

The Church Amendments offer broad federal protections for conscientious objectors, and anti-choice advocates pushed to expand such protections at the state level.[32] Thirty states enacted "conscience clause rules" in the eight years after *Roe* was decided, and only a few states are without such clauses today.[33] Forty-six states allow providers to conscientiously object to providing abortion services;[34] eighteen states permit providers to refuse to provide sterilization services;[35] and seven states allow pharmacists to refuse to fill prescriptions for contraceptives.[36] Furthermore, thirty-seven states have conscience clauses that protect objectors from civil liability for medical malpractice, and thirty states shield conscientious objectors from "disciplinary action," although the exact extent of this protection is unclear.[37]

Doctors and scholars debate the use, and potential abuse, of conscientious objections.[38] Medical professionals have a duty to provide compassionate care free of bias or discrimination while respecting patient dignity and agency.[39] The World Medical Association's International Code of Ethics declared that a conscientious objection to a lawful medical intervention is permissible only if the disruption in care does not harm or discriminate against a patient.[40] Furthermore, providers that

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[30] Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services, 86 Feg. Reg. 56144 (Oct. 7, 2021).

[31] *See* Alice Miranda Ollstein & Adam Canryn, *Biden Admin to Rescind Trump "Conscience" Rule for Health Workers*, POLITICO (April 19, 2022, 9:29 AM), https://www.politico.com/news/2022/04/19/biden-trump-conscience-rule-00026082 [https://perma.cc/PD74-64HF] ("Had [the rule not been blocked in court], it would have allowed doctors, nurses, medical students, pharmacists, and other health workers to refuse to provide abortions, contraception, gender affirming care, HIV and STD services, vasectomies or any procedure to which they object.").

[32] Carly Graf, *"Conscience" Bills Let Medical Providers Opt Out of Providing a Wide Range of Care*, USA TODAY, https://www.usatoday.com/story/news/nation/2023/07/31/conscience-bills-healthcare-providers-not-give-medical-care/70470186007/ [https://perma.cc/EK82-WHQV] (last updated Aug. 9, 2023, 2:26 PM).

[33] Shanawani, *supra* note 24, at 386; Graf, *supra* note 32.

[34] *Refusing to Provide Health Services*, GUTTMACHER INST. (Aug. 31, 2023), https://www.guttmacher.org/state-policy/explore/refusing-provide-health-services [https://perma.cc/H2D2-5WP2].

[35] *Id.*

[36] *Id.*

[37] Rachel Kogan, Katherine L. Kraschel & Claudia E. Haupt, *Which Legal Approaches Help Limit Harms to Patients From Clinicians' Conscience-Based Refusals?*, 22 AMA J. ETHICS 209, 211–12 (2020); *see* Nadia N. Sawicki, *The Conscience Defense to Malpractice*, 108 CAL. L. REV. 1255, 1274 (2020) (describing how state "conscience laws" shield providers from civil liability, criminal prosecution, and in some states discipline from professional or licensing boards).

[38] *Compare* Cabal, et al., *supra* note 19, at 75 (arguing there is a degree of nuance within conscientious objection claims), *with* Fiala & Authur, *supra* note 21 (arguing that all refusals to provide care based on a conscientious objection are irrelevant).

[39] *WMA International Code of Medical Ethics*, WORLD MED. ASS'N, (Apr. 14, 2023) https://www.wma.net/policies-post/wma-international-code-of-medical-ethics/ [https://perma.cc/6JQQ-8SMP].

[40] *Id.*

refuse to provide care then have an ethical obligation to timely refer the patient to another provider.[41]

Opponents contend that conscientious objections often conflict with these duties.[42] Some opponents of modern conscientious objection laws argue that such clauses are invoked for one of two reasons: either the act genuinely conflicts with the objector's beliefs, or the objection allows the provider to obstruct lawful reproductive care.[43] Other opponents argue that all refusals are based on "the provider's subjective, personal belief that the treatment is immoral," but that the provider's belief is irrelevant because refusing care is harmful in all cases.[44] This camp of opponents believe that all refusals, even those that result in a relatively short delay of care, require providers to "abando[n] their fiduciary duty to patients."[45] Thus, refusals result in denying patients' right to moral and bodily autonomy.[46] Some opponents also consider objections to be a manifestation of sex or gender discrimination since refusals in reproductive health care predominantly affect women.[47]

Alternatively, some proponents of "reasonable" conscientious refusals believe that providers must deliver care in "emergency cases threatening grave morbidity or mortality," even if their actions conflict with their religious or moral beliefs.[48] Advocates of broad conscientious objection protections— conscience absolutists— assert that exercising the right to conscientiously object to providing medical care is "the only legal way to refuse to provide abortions that are permitted by law."[49] Therefore, there is evidence suggesting that conscientious objections are weaponized by medical providers in an effort to circumvent laws that would otherwise require them to provide abortion, contraception, or sterilization services or referrals.[50]

Conscientious objections have a valid place in medicine in certain circumstances,[51] but courts are ill-equipped to identify and invalidate disingenuous

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[41] WORLD MED. ASS'N, *supra* note 39. ("The physician must immediately and respectfully inform the patient of this objection and of the patient's right to consult another qualified physician and provide sufficient information to enable the patient to initiate such a consultation in a timely manner.").

[42] Fiala & Arthur, *supra* note 21.

[43] Laura Florence Harris, Jodi Halpern, Ndola Prata, Wendy Chavkin & Caitlin Gerdts, *Conscientious Objection to Abortion Provision: Why Context Matters*, 13 GLOB. PUB. HEALTH 556, 559 (2016).

[44] Fiala & Arthur, *supra* note 21.

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] Jason T. Eberl, *Protecting Reasonable Conscientious Refusals in Health Care*, 40 THEORETICAL MED. & BIOETHICS 565, 577 (2019).

[49] Harris, et al., *supra* note 43 at 556; Rebecca J. Cook & Bernard M. Dickens, *The Growing Abuse of Conscientious Objection*, 8 ETHICS J. AMA 337, 338 (2006) (reporting that many medical professionals use conscientious objections to restrict or eliminate patients' legal right to abortion, contraception, or sterilization).

[50] Harris, et al., *supra* note 43; Cook & Dickens, *supra* note 49, at 339.

[51] ACOG, *supra* note 22, at 1203 (explaining that there is an appropriate place for ethical conscientious objections in health care).

objections or objections raised for ulterior motives.[52] For example, refusals based on "respect for unborn life" involve religious or moral beliefs that may not be objectively verified or invalidated.[53] It may be inappropriate and unrealistic to ask courts to police disingenuous objections, especially as current conscience clauses do not require objectors to legally justify their refusal.[54] This results in the inference that providers possess an unrestricted right to refuse medical care to patients.[55] The limited right to conscientiously object to providing certain care is important,[56] but the right must be restricted when it interferes with the patient's right to give informed consent based on accurate medical information and to receive timely, quality comprehensive health care.[57]

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[52] AM. ACAD. PEDIATRICS, *supra* note 24, at 1689; *see* U.S. v. Seeger, 380 U.S. 163, 184–85 (1965) (stating that, in the military context, courts may not require proof of religious doctrines or reject beliefs that they view as "incomprehensible").

[53] Fiala & Arthur, *supra* note 21, at 255–56.

[54] Fiala & Arthur, *supra* note 20, at 15; Fiala & Arthur, *supra* note 21, at 256.

[55] Fiala & Arthur, *supra* note 21 (explaining that modern conscience objection laws as applied to reproductive health care include the assumption that objectors have the right to refuse to provide treatment for any reason); Steve Clarke, *Conscientious Objection in Healthcare, Referral and the Military Analogy*, 43 J. MED. ETHICS 218, 218 (2016) (discussing how many objectors believe they are entitled to conscience objections, resulting in an "unlimited in practice" conscience objection policy); *but cf.* Julia Kaye, Brigitte Amiri, Louise Melling & Jennifer Dalven, *Health Care Denied*, ACLU (Mar. 3, 2016), https://www.aclu.org/publications/report-health-care-denied#:~:text=This%20report%20shares%20firsthand%20accounts,were%20turned%20away%20from%20a [https://perma.cc/L58S-8XUT] (demonstrating that a small handful of states do not allow providers to conscientiously object to providing medically necessary abortions in cases of an emergency) [hereinafter ACLU].

[56] ACOG, *supra* note 22, at 1204 (discussing how conscience objections may be necessary and valid when the required or requested action conflicts with the provider's obligations as a medical professional, such as if the police mandated providers to report undocumented patients to the authorities, which would conflict with the provider's duty to protect privacy and confidentiality).

[57] *Id.* at 1203. ("Although respect for conscience is important, conscientious refusals should be limited if they constitute an imposition of religious or moral beliefs on patients, negatively affect a patient's health, are based on scientific misinformation, or create or reinforce racial or socioeconomic inequalities."); Sarah C. Hull, *Not so Conscientious Objection: When can Doctors Refuse to Treat?*, STAT (Nov. 8, 2019) https://www.statnews.com/2019/11/08/conscientious-objection-doctors-refuse-treatment/ [https://perma.cc/3HXJ-82VW] (explaining that the United States has long followed the concept of liberty that individual rights must be protected until those rights infringe on another person's rights; for example, "religious liberty" through conscience objections limits the rights of patients to receive medical information and care free from religious interference).

B. How are Conscientious Objections in Health Care Rooted in Medical Misinformation?

Conscientious objection laws allow providers to reinforce abortion-related stigma[58] and reproductive health misinformation.[59] It is nearly impossible to determine the validity of a provider's refusal based on religious or moral beliefs, and courts largely decline to scrutinize the legitimacy of objections.[60] Because of this, providers are permitted to discriminate against women and weaponize misinformation to justify a refusal to provide medical care.[61] However, conscientious objections made by medical professionals that generate or reinforce discrimination, inequities, stigma, or misinformation must not be legitimized.[62]

The blanket grant of conscientious objections reinforces the notion that abortion, contraceptives, and sterilization result in the death of human life and interfere with God's plan for unencumbered human procreation.[63] This assertion can be traced to the expansion of the conscientious objection that effectively led medical professionals to equate the killing of a human during war (military conscientious objection) to the killing of an embryo or fetus (abortion) or to the impediment of the creation of life (contraception and sterilization).[64] Placing fetuses, embryos, or unfertilized eggs on equal footing with human life reinforces the conservative religious notion that any medical care negatively impacting "unborn life"—abortion, contraceptives, or sterilization—is morally unjust and can be conscientiously objected to.[65] Anti-abortion objectors rely on this principle when determining the

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[58] Abortion-related stigma is defined as "a negative attribute ascribed to women who seek to terminate a pregnancy that marks them, internally or externally, as inferior to ideals of womanhood." Anuradha Kumar, Leila Hessini & Ellen M.H. Mitchell, *Conceptualising Abortion Stigma*, 11 CULTURE, HEALTH, & SEXUALITY 625, 628 (2009). Abortion-related stigma includes restrictive abortion laws, such as bans, as well as societal stigmatization of abortion for those who terminate a pregnancy. Janet M. Turan & Henna Budhwani, *Restrictive Abortion Laws Exacerbate Stigma, Resulting in Harm to Patients and Providers*, 111 AM. J. PUB. HEALTH 37, 37 (2021).

[59] Fiala & Arthur, *supra* note 20, at 17.

[60] *See* Fiala & Arthur, *supra* note 21, at 256 ("The debate about where to draw the line between 'true and false' [conscience objections] is an illogical attempt to distinguish between true and false religious beliefs . . . .").

[61] Fiala & Arthur, *supra* note 20, at 15 (arguing that conscientious objections is a form of gender discrimination).

[62] Hull, *supra* note 57 (stating that a provider's personal religious or moral beliefs must not interfere with their professional responsibility to use evidence-based medicine to promote patient health); ACOG, *supra* note 22, at 1206 ("[C]laims of conscientious refusals should be considered invalid when the rationale for a refusal contradicts the body of scientific evidence.").

[63] Fiala & Arthur, *supra* note 20, at 15; Fr. Denis St. Marie & Fr. Paul Marx, *Voluntary Sterilization Severs God's Perfect Creative Plan for Our Lives*, CATH. NEWS AGENCY, https://www.ewtn.com/catholicism/library/voluntary-sterilization-severs-gods-perfect-creative-plan-for-our-lives-12177 [https://perma.cc/YH38-8MPW] ("[D]eliberate human sterilization to avoid conception poses an enormous threat to the Church; indeed to the entire world. . . . Through sterilization, God's precious gift of life and its transmission mankind's most special sharing in the creative aspect of God's character—is being rejected[.]").

[64] Fiala & Arthur, *supra* note 20, at 15.

[65] *See* Fiala & Arthur, *supra* note 21.

outer limits of their care.[66] For instance, providers often refer to abortion as "murder" or a "killing" and the fertilized egg or embryo as a "baby" or "unborn child."[67] Conscientious objectors continuously rely on the belief that "life begins at conception,"[68] despite a lack of consensus from the general medical community regarding when life or personhood begins.[69]

Refusing to provide medically necessary reproductive care because of one's subjective, moral beliefs also "send[s] a negative message that stigmatizes" a pregnant person's needs.[70] Abortion is health care and may be medically necessary to protect the health or life of the pregnant person.[71] However, granting all refusals "gives legitimacy to the religiously-based assumption that abortion is wrong," even when it is medically necessary.[72]

Discrimination cannot legally justify a conscientious objection, and objections to abortion, contraception, or sterilization are rooted in sexism and misogynist attitudes toward women.[73] Refusals disproportionately impact women because most objections are raised in the provision of reproductive health care.[74] Objections, thus, "perpetuate gender stereotypes around motherhood and pregnancy."[75] Refusing to provide or refer a patient for an abortion is based on the belief that abortion is immoral, and this belief reinforces patriarchal principles "that abortion is selfish and a deviation from women's biological duty to become mothers."[76] Therefore, not only are women disproportionately denied care as a result of refusals, but women are stigmatized by anti-choice providers' personal beliefs about pregnancy and motherhood.[77]

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[66] *See* All. for Hippocratic Med. v. U.S. Food & Drug Admin., 78 F.4th 210, at 222–32, 236, 239 (5th Cir. 2023) (explaining that providers objected to providing emergency medical care after a failed medication abortion because of the need to protect "unborn life" or "preborn child[ren]").

[67] *Crisis Pregnancy Centers Lie: The Insidious Threat to Reproductive Freedom*, NARAL PRO-CHOICE AM. 13 (2015), https://reproductivefreedomforall.org/wp-content/uploads/2017/04/cpc-report-2015.pdf [https://perma.cc/7GT3-2RDS].

[68] *See* Bjørn K. Myskja & Morten Magelssen, *Conscientious Objection to Intentional Killing: An Argument for Toleration*, 19 BIO. MED. CTR. MED. ETHICS 1, 7 (2018) ("[A]ll that are human beings in a biological sense are also human persons morally speaking, thus including also human foetuses, embryos and even zygotes within the ambit of morally valuable human lives worthy of protection."); *see also* Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 703 (2014) ("[T]he Greens believe that life begins at conception and that it would violate their religion to facilitate access to contraceptive drugs or devices that operate after that point.").

[69] *E.g.,* Asim Kurjak & Ana Tripalo, *The Facts and Doubts About Beginning of the Human Life and Personality*, 4 BOSNIAN J. BASIC MED. SCIS. 5, at 12 (2004).

[70] Fiala & Arthur, *supra* note 21; Zoe L. Tongue, *On Conscientious Objection to Abortion: Questioning Mandatory Referral as Compromise in the International Human Rights Framework*, 22 MED. L. INT'L 349, 362 (2022) (explaining how selective objection may reinforce sexual and gender stereotypes, further stigmatize certain sexual activities, and discriminate against marginalized groups).

[71] WORLD MED. ASS'N, *supra* note 24.

[72] Fiala & Arthur, *supra* note 21; *see also* Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania, 140 S. Ct. 2367, 2376 (2020) ("Consistent with their Catholic faith, the Little Sisters hold the religious conviction 'that deliberately avoiding reproduction through medical means is immoral.'").

[73] Fiala & Arthur, *supra* note 21, at 256.

[74] *Id.* at 255.

[75] Tongue, *supra* note 70.

[76] *Id.*

[77] Fiala & Arthur, *supra* note 21; Tongue, *supra* note 70 at 360.

Anti-abortion providers also stigmatize a pregnant person's needs by citing misinformation that abortion generates trauma and regret.[78] Objections to abortion services or referrals are sometimes based on the belief that patients will regret their decision to kill what objectors consider to be an unborn child.[79] However, this concept of abortion regret is factually inaccurate; pregnant people are overwhelmingly likely to experience relief after an abortion, rather than regret or other negative emotions, and this remains true even five years after the abortion.[80] Conscientious objections based on beliefs of abortion trauma or regret are, therefore, rooted in misinformation.

Conscientious objections to contraception are also "complicated by misinformation."[81] Proponents of medical conscientious objections argue that contraceptives, including emergency contraceptives such as Plan B, prevent implantation.[82] Anti-choice advocates assert that drugs or medical devices that delay or impair the implantation of an embryo are abortifacients,[83] something these groups are fundamentally against.[84] However, studies overwhelming reveal that emergency contraceptives prevent fertilization, effectively debunking the post-fertilization theory peddled by anti-choice advocates.[85] Implantation occurs after fertilization once the zygote (a fertilized egg) travels down the fallopian tube and attaches to the uterus.[86] This distinction is important because pregnancy begins after implantation, not fertilization.[87] Anti-choice advocates believe that life begins at conception

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[78] Corinne H. Rocca, Goleen Samari, Diana G. Foster, Heather Gould & Katrina Kimport, *Emotions and Decision Rightness Over Five Years Following an Abortion: An Examination of Decision Difficulty and Abortion Stigma*, 248 SOC. SCI. & MED. 1, 1 (2020) ("In the later decades of the twentieth century, opponents of abortion put forward an argument against access to legal abortion premised on the idea that abortion harms women by causing negative emotions and regret.").

[79] *See* All. for Hippocratic Med. v. U.S. Food & Drug Admin., 78 F.4th 210, 232 (5th Cir. 2023) (stating that the anti-abortion plaintiff-doctors believe that "chemical abortion" causes regret or trauma for patients).

[80] Laura Kurtzman, *Five Years After Abortion, Nearly All Women Say it was the Right Decision, Study Finds*, UNIV. CAL. S.F. (Jan. 13, 2020), https://www.ucsf.edu/news/2020/01/416421/five-years-after-abortion-nearly-all-women-say-it-was-right-decision-study [https://perma.cc/R6R3-AR3H] (explaining that, five years after the treatment or procedure, only 5% of women regret terminating their pregnancy).

[81] ACOG, *supra* note 22, at 1206.

[82] *Id.*

[83] Cook & Dickens, *supra* note 49.

[84] Myskja & Magelssen, *supra* note 68 ("An interesting case is conscientious objections to inserting intrauterine devices (IUDs) for contraception, where such objections are grounded in the belief that the IUD can act as an abortifacient."); NARAL PRO-CHOICE AM., *supra* note 67, at 11 (reporting that crisis pregnancy centers and anti-abortion physicians refer to contraception as an "abortifacient," which implies that using barrier contraceptives or hormonal birth control to prevent an unplanned pregnancy is the equivalent of terminating a pregnancy); *see also* Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682, 691 (2014) ("The owners of the businesses have religious objections to abortion, and according to their religious beliefs the four contraceptive methods at issue are abortifacients.").

[85] ACOG, *supra* note 22.

[86] *Conception*, CLEVELAND CLINIC, https://my.clevelandclinic.org/health/articles/11585-conception [https://perma.cc/7Z6N-4NB2].

[87] *Id.*

(fertilization),[88] so if an IUD, for example, precludes implantation of a fertilized zygote, then the IUD is impeding the development of life. However, contraceptives prevent fertilization, not implantation.[89]

Refusals to provide abortions may also be based on misinformation about the risks of abortion.[90] Anti-abortion providers routinely argue that abortion increases a patient's risk of breast cancer, infertility, and mental illness.[91] Published, peer-reviewed scientific literature demonstrates that these are not outcomes associated with terminating a pregnancy.[92] Thus, objectors are relying on unsubstantiated health risks—medical misinformation— to justify their refusals.

The data above demonstrates that there is no compelling medical reason justifying the refusal to provide or refer individuals for abortion, contraception, or sterilization. Rather, conscientious objections are largely rooted in religious or moral beliefs of motherhood, a woman's role in society, and pregnancy.[93] Since "it is impossible to reconcile faith-based medicine with evidence-based medicine,"[94] medicine grounded in moral beliefs and misinformation, rather than science and respect for patient autonomy and dignity, cannot be reasonably or rationally justified.[95]

III. THE ORIGINS OF TRADITIONAL CONSCIENTIOUS OBJECTIONS & THE LEGAL STANDARD FOR SUCH CLAIMS IN THE MILITARY CONTEXT

Despite being applied in the health care context today, legal protections for conscientious objectors originated in the context of mandatory military service (i.e., the draft).[96] Conscientious objection laws were later expanded to protect those who voluntarily enlisted in military service, but federal courts concluded that

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[88] Richard J. Paulson, *It Is Worth Repeating: "Life Begins at Conception" is a Religious, Not Scientific, Concept*, 3 F&S REPS. 177, 177 (2022); *see* Sarah Varney, *When Does Life Begin? As State Laws Define It, Science, Politics, and Religion Clash*, NPR (Aug. 27, 2022 5:00 AM), https://www.npr.org/sections/health-shots/2022/08/27/1119684376/when-does-life-begin-as-state-laws-define-it-science-politics-and-religion-clash [https://perma.cc/EDT8-NGGM] ("A handful of Republican-led states, including Arkansas, Kentucky, Missouri, and Oklahoma, have passed laws declaring that life begins at fertilization, a contention that opens the door to a host of pregnancy-related litigation.").

[89] ACOG, *supra* note 22.

[90] *Id.* at 1206; Tongue, *supra* note 70, at 359 (explaining that studies have demonstrated that "extreme" objectors not only refuse to provide abortion care, but disseminate "legally or medically inaccurate information to prevent patients from accessing legal abortions").

[91] ACOG, *supra* note 22, at 1206*; see also* Amy G. Bryant, Subasri Narasimhana, Katelyn Bryant-Comstockb & Erika E. Levi, *Crisis Pregnancy Center Websites: Information, Misinformation, and Disinformation*, 90 CONTRACEPTION 601, 604 (2014) (reporting that religious, anti-abortion crisis pregnancy centers tell clients that abortion is linked to mental illness, preterm birth, breast cancer, and infertility).

[92] ACOG, *supra* note 22, at 1206.

[93] Tongue, *supra* note 70.

[94] Fiala & Arthur, *supra* note 21.

[95] *See* Julian Savulescu, *Conscientious Objection in Medicine*, 332 BRIT. MED. J. 294, 294 (2006) ("Conscience, indeed, can be an excuse for vice or invoked to avoid doing one's duty. When the duty is a true duty, conscientious objection is wrong and immoral.").

[96] Fiala & Arthur, *supra* note 20.

"[d]ischarge of a voluntary enlistee for conscientious objection is a privilege granted by the executive branch, not a constitutional right."[97]

The first conscientious objection law in the United States was a provision in the Draft Act, formally known as the Selective Service Act of 1917.[98] The Draft Act mandated military service but allowed objectors belonging to a "well-recognized religious sect or organization . . . whose existing creed or principles [forbade] its members to participate in war in any form" to be exempt from combative positions.[99] Instead, these objectors were placed in noncombative military positions.[100] In 1940, Congress passed the Selective Training and Service Act, which expanded conscientious objections provided by the Draft Act of 1917.[101] The 1940 law eliminated the requirement that objectors belong to a religious sect, so long as the objections were based on an individual's religious trainings or beliefs.[102]

Federal conscientious objection laws in the military were further updated in 1951 by the Universal Military Training and Service Act ("the Act").[103] The Act intended to clarify the standards for conscientious objection claims that were expanded by the 1940 Selective Training and Service Act.[104] Previous laws considered objectors opposed only to combative positions and failed to properly consider objectors opposed to all military service, even noncombative positions, but the Act took both types of objectors into consideration.[105]

Conscientious objections to military service require the following test:

> The burden to establish conscientious objector status rests with the applicant, who must show by clear and convincing evidence that he or she is conscientiously opposed to participation in all wars, that the opposition is based on religious training or belief, and that these views are firm, fixed, and sincerely and deeply held.[106]

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[97] Watson v. Geren, 569 F.3d 115, 127 (2d Cir. 2009) (citing Nurnberg v. Froehlke, 489 F.2d 843, 849 (2d Cir. 1973)); *see* Sanger v. Seamans, 507 F.2d 814, 816 (9th Cir. 1974) ("[W]e must bear in mind that when a person enters into a contractual commitment with the government to serve his country, it is anticipated that he will fulfill his promise.").

[98] Selective Service Act of 1917, Pub. L. No. 65-12, 40 Stat. 76 (codified as 50 U.S.C. app. §§ 201–211, 213, 214).

[99] *Id.* at 40 Stat. 78.

[100] *See id.*

[101] Selective Training & Service Act of 1940, Pub. L. No. 76-783, 54 Stat. 885 (codified as 50 U.S.C. app. § 301 *et seq.*).

[102] *Id.* at 54 Stat. 889.

[103] *See* Universal Military Training & Service Act, Pub. L. No. 51-144, 65 Stat. 75 (codified as 50 U.S.C. § 3806(j)).

[104] U.S. v. Seeger, 380 U.S. 163, 179 (1965).

[105] *See* 76 CONG. REC. 11418 (DAILY ED. SEPT. 4, 1940) (STATEMENT OF REP. CHARLES I. FADDIS) ("We have made provision to take care of conscientious objectors. I am sure the committee has had all the sympathy in the world with those who appeared claiming to have religious scruples against rendering military service in its various degrees. Some appeared who had conscientious scruples against handling lethal weapons, but who had no scruples against performing other duties which did not actually bring them into combat. Others appeared who claimed to have conscientious scruples against participating in any of the activities that would go along with the Army. The committee took all of these into consideration and has written a bill which, I believe, will take care of all the reasonable objections of this class of people.").

[106] Kanai v. McHugh, 638 F.3d 251, 258 (4th Cir. 2011).

Conscientious objectors to military service must demonstrate to a local board "how he arrived at his beliefs" and "the influence his beliefs have had on how he lives his life."[107] To be relieved from military service, conscientious objectors must establish that they are against war "in any form."[108] An objection to one war, but not all wars, is insufficient to be exempt from military service.[109] This is true even if the objection to a certain war is based on religious or moral beliefs.[110] Local boards and courts also consider topics tangentially related to war, death, and aggression when assessing whether an objector is against war in all forms.[111] For instance, courts consider whether objectors support or oppose the death penalty, abortion, or gun control, as well as participation in certain organizations or "aggressive" sports.[112]

Objectors also have the burden of demonstrating that their sincere and deeply held opposition to military service is based on their religious training or beliefs.[113] Federal appellate circuits follow a similar analysis even if they have slightly different tests for determining the depth of an objector's conviction.[114] Sincerity and depth of beliefs demonstrate that the objector's religious, moral, or ethical beliefs are guiding the conscientious objection and that those beliefs are at the core of the objector's conscience.[115] While religious, moral, or ethical beliefs may justify objections, objections based on "politics, expediency, or self-interest" will not.[116] Local boards and courts may only determine whether the objector's religious training or beliefs support the objection and not whether the objector's certain beliefs are valid.[117]

The objector's beliefs may be illustrated through written documentation or by testimony from individuals who can attest to the authenticity of the objector's claims.[118] In *Welsh v. United States*, the Supreme Court relied on forms completed

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[107] *Conscientious Objectors*, SELECTIVE SERV. SYS., https://www.sss.gov/conscientious-objectors/ [https://perma.cc/LZZ8-6YYM].
[108] 50 U.S.C. § 3806(j); Welsh v. U.S., 398 U.S. 333, 336 (1970).
[109] Watson v. Geren, 569 F.3d 115, 131 (2d Cir. 2009) (observing that the board found the objector to only be opposed to the war in Afghanistan rather than all wars).
[110] Gillette v. U.S., 401 U.S. 437, 443 (1971).
[111] *E.g.*, *Watson*, 569 F.3d at 121.
[112] *Id.* at 121–22 (explaining that the objector to military service was "morally opposed to the death penalty under any circumstances" and participated in organizations that supported gun control and environmental justice policies).
[113] U.S. v. Seeger, 380 U.S. 163, 171 (1965).
[114] *Compare* Roby v. U.S. Dep't of Navy, 76 F.3d 1052, 1058 (9th Cir. 1996) ("We have often applied a depth of conviction test based on the Court's language and military regulations."), *with* Kemp v. Bradley, 457 F.2d 627, 629 (8th Cir. 1972) ("'Depth of conviction' requires theological or philosophical evaluation. We think it unwise to adopt this more complex concept as the requirement which a Selective Service registrant or member of the Armed Forces must fulfill in order to qualify for conscientious objector classification.").
[115] *Seeger*, 380 U.S. at 186 ("[T]here was no question of the applicant's sincerity. He was a product of a devout Roman Catholic home; he was a close student of Quaker beliefs from which he said 'much of (his) thought is derived[.]'"); Kanai v. McHugh, 638 F.3d 251, 264 (4th Cir. 2011) ("[The Army Board President concluded] that Kanai's guiding principle was his desire to leave West Point rather, than to oppose all wars.").
[116] SELECTIVE SERV. SYS., *supra* note 107.
[117] *Seeger*, 380 U.S. at 184–85 ("The validity of what he believes cannot be questioned.").
[118] SELECTIVE SERV. SYS., *supra* note 107; Watson v. Geren, 569 F.3d 115, 122–25 (2d Cir. 2009) (stating that three members of the objector's family and seven professional references and colleagues attested to the sincerity of the objector's beliefs).

by the objector to examine his childhood, religious upbringing, and present beliefs.[119] Similarly, in *Kanai v. McHugh*, the Army Board and the Fourth Circuit considered the nature of the objector's recently adopted pacifist views, testimony detailing his personality and treatment of others, and his hobbies, all of which provided insight as to his sincerely held beliefs and motives behind his conscientious objection.[120]

Federal courts follow a clear standard for reviewing the decisions of local boards; courts must uphold a board's decisions regarding a conscientious objector's claim if the board's conclusion is supported by a "basis in fact."[121]

> A "basis in fact" exists when conflicting inferences can be drawn from the same evidence. (citation omitted) Thus, if any inferences can be drawn from the evidence that conflict with the [objector's claims], there is a basis in fact to deny the application, and the [local board's] decision must be upheld.[122]

This standard of review provides considerable deference to the military board's findings pursuant to internal military regulations.[123] Despite the deference to the local boards, courts and boards "are not free to reject beliefs because they consider them 'incomprehensible.'"[124] Instead, courts must defer to the board's findings, unless there is no basis in fact supporting the board's determination.[125]

Traditional conscientious objection claims in the military context greatly differ from conscientious objection claims raised today in the health care context.[126] Keep in mind while reading Part IV that modern conscientious objectors to military service must satisfy a legal standard before being relieved of any contractual obligation with the government.[127] In the health care context, consider whether providers are burdened with demonstrating that their beliefs are "firm, fixed, and sincerely and deeply held;" whether providers' beliefs, including those grounded in medical misinformation, actually support their refusal; and whether providers' refusals are substantially justified by "politics, expediency, or self-interest."[128]

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[119] Welsh v. U.S., 398 U.S. 333, 336–37 (1970).
[120] *Kanai*, 638 F.3d at 266–68.
[121] *Id.* at 260.
[122] *Id.* at 267.
[123] Roby v. U.S. Dep't of Navy, 76 F.3d 1052, 1056–57 (9th Cir. 1996).
[124] U.S. v. Seeger, 380 U.S. 163, 184–85 (1965) ("[W]hile the 'truth' of a belief is not open to question, there remains the significant question whether it is 'truly held.'").
[125] *Id.*
[126] *See infra* Part IV.
[127] Selective Service Act of 1917, Pub. L. No. 65-12, 40 Stat. 76 (codified as 50 U.S.C. app. §§ 201–211, 213, 214).
[128] *Kanai*, 638 F.3d at 258; *see also supra* note 118 and accompanying text.

IV. MODERN CONSCIENTIOUS OBJECTIONS TO PROVIDING OR REFERRING FOR REPRODUCTIVE HEALTH CARE

Contrary to conscientious objections to military service, modern conscientious objection laws in the context of health care afford near-absolute deference to providers and lack a legal standard for courts to apply.[129] Because of this, modern conscience clauses legally permit refusals of reproductive care based on a belief in medical misinformation.[130] Objectors have done just that in two areas in reproductive health care: (1) emergency services for medically necessary abortions and (2) the facilitation of reproductive health services, such as referrals. More specifically, anti-choice objectors assert that policies requiring the provision of reproductive care violate the right to conscience or the right to free exercise of religion.[131] This section will demonstrate that courts fail to inspect objections that anti-choice providers cite to support alleged violations of a right to conscience or free exercise of religion.

A. Refusal to Provide Emergency Abortion Services

Providers may conscientiously object to providing abortion services because they believe abortion is "elective," and therefore not a life-saving procedure.[132] This reasoning may even extend to emergency situations in which an abortion truly *is* necessary to preserve the life or health of the pregnant person.[133] A stark example of providers rejecting the unfortunate reality of medically necessary abortions and instead promoting medical misinformation disguised as religious beliefs to support conscientious objections can be found in the Fifth Circuit Court of Appeals's decision in *Alliance for Hippocratic Medicine v. United States Food and Drug Administration.*[134]

In *Alliance for Hippocratic Medicine*, anti-abortion obstetrician-gynecologists and emergency room doctors challenged four Food and Drug Administration ("FDA") rules regarding a medication abortion drug, mifepristone.[135] Although the Supreme Court reversed the case because the plaintiffs failed to state an injury in fact, the Fifth Circuit's opinion exemplifies how conscientious objectors can persuade sympathetic courts to adopt medical misinformation as fact to support a conscientious objection without a legal standard in place.[136] Most relevant for this discussion is the 2021 Non-Enforcement Rule.[137] The FDA stated it would not

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[129] Fiala & Arthur, *supra* note 21.
[130] *See* All. for Hippocratic Med. v. U.S. Food & Drug Admin., 78 F.4th 210, 236 (5th Cir. 2023).
[131] *See id.* at 229 (right to conscience); *see also* Nat'l Inst. for Fam. & Life Advocs. v. Schneider, 484 F. Supp. 3d 596, 622 (N.D. Ill. 2020) (right to free exercise of religion).
[132] Banks, *supra* note 10 (reporting that emergency room doctors objected to performing emergency abortions after a failed medication abortion because they would be participating in an "elective abortion," which they deemed was "not life-saving care" because it would "end[] the life of the unborn").
[133] ACLU, *supra* note 55 at 8–17 (emphasis added) (detailing the stories of women who suffered a miscarriage and were denied emergency abortion services by Catholic hospitals).
[134] *All. for Hippocratic Med.*, 78 F.4th 210 (5th Cir. 2023).
[135] *Id.* at 222.
[136] *See* Food & Drug Admin. v. All. For Hippocratic Med., 602 U.S. 367, 393 (2024).
[137] *Id.*

enforce its own regulation requiring mifepristone to be prescribed and dispensed in person.[138] In application, the 2021 Non-Enforcement Rule expanded how pregnant people could induce a medication abortion with mifepristone.[139]

Anti-abortion providers in *Alliance for Hippocratic Medicine* peddled arguments similar to those discussed in Part II regarding providers' justifications for conscientious objections to providing abortion care.[140] For example, the providers argued that they would be injured if required to perform emergency care for women who have taken mifepristone.[141]According to the providers, administering emergency abortion care would require them to participate in or complete an abortion, and would "conflict[] with their sincerely held moral beliefs and violate[] their rights of conscience."[142]

The court ultimately sided with the providers and held that the 2021 Non-Enforcement Rule harmed their conscience rights.[143] Unlike in the military context, the court neither applied a test nor examined evidence as to the authenticity of the providers' beliefs.[144] Instead, the court expressed sympathy for the "harms" the regulation inflicted on the anti-abortion medical professionals.[145]

Not only is it troubling that the provider-plaintiffs advanced conscientious objection arguments rooted in medical misinformation, but it is awfully worrisome that the Fifth Circuit adopted much of the misinformation as fact. First, the providers' testimony, also cited by the court, included the notion that a surgical abortion after an unsuccessful medication abortion is not medically necessary.[146] One doctor testified, "the FDA's actions may force me to end the life of a human being in the womb for *no medical reason*."[147] The court failed to adequately scrutinize the doctor's statement that there is not a medical reason to complete a failed medication abortion.[148] Rather, the court accepted the testimony at face value, stating that the doctors' "declarations illustrate that they experience aesthetic injury from the destruction of unborn life."[149] While it is incredibly rare, pregnant people having taken mifepristone may experience complications, such as an incomplete

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[138] *Food & Drug Admin.*, 602 U.S. at 393.
[139] *Id.*
[140] All. for Hippocratic Med. v. U.S. Food & Drug Admin., 78 F.4th 210, 228–29, 232–33 (5th Cir. 2023) (reiterating the objectors' misleading and harmful language about abortion and pregnancy)."
[141] *Id.* at 229 (explaining other reasons the regulation causes them harm, including that (1) treating patients who have taken mifepristone "imposes mental and emotional strain above what is ordinarily experienced in an emergency-room setting;" (2) providing emergency treatment for mifepristone patients makes doctors "divert their time and resources away from their ordinary patients;" and (3) patients who have ingested mifepristone "involve more risk of complication than the average patient," which increases the doctors' risk of liability and insurance costs).
[142] *Id.* at 229.
[143] *Id.* at 253.
[144] *See id.*
[145] *Id.* at 237 (explaining that the plaintiffs' conscience injury is a cognizable harm because "the threat of being forced to violate a sincerely held moral belief" leads to "acute emotional and psychological harm").
[146] *Id.* at 232.
[147] *Id.* (emphasis added).
[148] *Id.*
[149] *Id.*

abortion, hospitalization, or, in extreme cases, a blood transfusion.[150] As the tragic death of Amber Nicole Thurman demonstrates, in the event of a rare but severe complication, the expertise of emergency room medical professionals is essential to preserve the patient's health or life.[151]

Second, the Fifth Circuit suggested that complications resulting from mifepristone requiring emergency room care are common occurrences.[152] This is also an inaccurate depiction of scientific truths held by the medical community.[153] Although complications from ingesting mifepristone for purposes of a medication abortion are not one-off incidents, they are not as frequent or predictable as the providers and court made it seem.[154] This is another example of the court subtly adopting medical misinformation put forth by the plaintiffs.

Third, the court accepted the providers' assertion that treating complications from mifepristone was "naturally higher risk" and required more time and resources than "typical OB/Gyn patient[s]."[155] Underpinning the plaintiffs' argument is the notion that "typical" patients—those experiencing pregnancy—face less risks than patients with an incomplete medication abortion. This argument by the providers is a classic example of a routine tactic deployed by anti-abortion advocates: highlighting, and even overstating, the risks of abortion while simultaneously neglecting the risks of pregnancy and childbirth.[156] However, pregnancy and childbirth are exponentially more dangerous than abortion; medication abortion has a mortality rate of 0.27 deaths per 100,000 medication abortions, while pregnancy has a mortality rate of 17.3 deaths per 100,000 live births.[157] This contrast is even greater when looking at the mortality rate of Black pregnant people.[158] Moreover, serious complications from pregnancy often mirror the serious complications

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[150] Elizabeth G. Raymond, Caitlin Shannon, Mark A. Weaver & Beverly Winikoffa, *First-trimester Medical Abortion with Mifepristone 200 mg and Misoprostol: A Systematic Review*, 87 CONTRACEPTION 26, 30 (2013) (finding that medication abortion when taken as directed by the FDA results in severe complications in only 0.4% of cases).

[151] *See* Kavitha Surana, *Abortion Bans Have Delayed Emergency Medical Care. In Georgia, Experts Say This Mother's Death Was Preventable.*, PROPUBLICA (Sept. 16, 2024, 5 AM), https://www.propublica.org/article/georgia-abortion-ban-amber-thurman-death [https://perma.cc/EM8S-W6X7].

[152] *All. for Hippocratic Med.*, 78 F.4th at 233 (stating that emergency room complications as a result of medication abortion are "predictable," "consistent," and "not speculative").

[153] *See* Raymond, et al., *supra* note 149.

[154] *See id.*

[155] All. for Hippocratic Med. v. U.S. Food & Drug Admin., 78 F.4th at 233 (5th Cir. 2023) ("Patients who suffer complications from chemical abortions require significantly more time and attention from providers than the typical OB/Gyn patient requires.") (citation omitted).

[156] *See id.* at 232 (recognizing doctors who testified that complications from medication abortion require "extended physician attention, blood for transfusions, and other hospital resources," and therefore deprive healthcare from pregnant patients).

[157] *Analysis of Medication Abortion Risk and the FDA Report "Mifepristone US Post-Marketing Adverse Events Summary through 6/30/2021*," ADVANCING NEW STANDARDS IN REPROD. HEALTH (Nov. 2022), https://www.ansirh.org/sites/default/files/2022-11/mifepristone_safety_11-15-22_Updated_0.pdf [https://perma.cc/EJ43-2AG4].

[158] *Id.* (reporting that Black women have a mortality rate of 41 deaths per 100,000 live births, a number over 14 times higher than the mortality rate associated with medication abortion).

resulting from an incomplete medication abortion.[159] Most notably, the symptoms associated with miscarriage, such as hemorrhage or infection, can present nearly identically to symptoms from an incomplete medication abortion.[160] Nonetheless, the court accepted as fact the plaintiffs' mistaken contention that mifepristone is riskier than other reproductive health care.

Fourth, the Fifth Circuit failed to scrutinize the providers' claims that medication abortion results in regret and trauma.[161] Instead the court concluded that, because medication abortions "frequently cause 'regret' or 'trauma' for the patients and, by extension, the physicians," "treating mifepristone patients imposes considerable mental and emotional stress on emergency-room doctors."[162] As discussed in Part II of this Article, the Fifth Circuit overstated the negative emotional effects associated with abortion.[163]

Lastly, both the Fifth Circuit and the providers often referred to the fetus as an "unborn child" or "preborn baby."[164] Regardless of the absence of scientific and philosophical consensus of when life begins, the patients discussed in *Alliance for Hippocratic Medicine* were not carrying viable fetuses.[165] Medication abortion is administered before seventy days, or ten weeks, gestation—long before potential fetal viability.[166] Therefore, it is nearly impossible that patients experiencing complications or in need of an emergency abortion due to an incomplete medication abortion would also be carrying viable fetuses capable of life outside the womb.[167]

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[159] *See* Jody Ravida, *My Miscarriage Looked Like an Abortion. Today I Would be a Suspect*., WASH. POST, (June 28, 2022, 4:09 PM) https://www.washingtonpost.com/outlook/2022/06/28/miscarriage-dobbs-roe-abortion/ [https://perma.cc/XL3E-Z9QD].

[160] *Compare* Krissi Danielsson*, What to Know About Incomplete Miscarriage,* PARENTS (Jul. 1, 2024), https://www.parents.com/incomplete-miscarriage-symptoms-causes-treatment-8645920 [https://perma.cc/W7FD-L8QX] (citing heavy bleeding and infection as symptoms of an incomplete miscarriage), *with All. for Hippocratic Med.,* 78 F.4th at 230 (citing doctors' testimony that hemorrhage and infection are complications from an incomplete abortion).

[161] *See All. For Hippocratic Med.*, 78 F.4th at 230–33.

[162] *Id.*

[163] *See* Laura Kurtzman, *Five Years After Abortion, Nearly All Women Say it was the Right Decision, Study Finds*, UNIV. CAL. S.F. (Jan. 13, 2020), https://www.ucsf.edu/news/2020/01/416421/five-years-after-abortion-nearly-all-women-say-it-was-right-decision-study [https://perma.cc/8JLG-JY2J].

[164] *All. for Hippocratic Med.*, 78 F.4th at 222–32, 236, 239 ("I object to abortion because it ends a human life. My moral and ethical obligation to my patients is to promote human life and health.") ("The woman [who took mifepristone] had a subsequent ultrasound, which showed that her unborn child was still alive. I advised the internists treating this patient to avoid administering certain medications that could harm the patient and her unborn child.") ("And because the preborn baby still had a heartbeat when the patient presented, my partner felt as though she was forced to participate in something that she did not want to be a part of—completing the abortion."); *Id.* at 259 (Ho, J., concurring in part and dissenting in part) ("Doctors delight in working with their unborn patients—and experience an aesthetic injury when they are aborted.").

[165] *Id*. at 261–62 (Ho, J., concurring in part and dissenting in part) (stating that the "abortifacient"—mifepristone— was approved for use of up to ten weeks gestation).

[166] Marygrace Taylor, *What is the Age of Fetal Viability?,* WHAT TO EXPECT (Aug. 2, 2021) https://www.verywellfamily.com/premature-birth-and-viability-2371529 [https://perma.cc/4V8W-DNYH] (explaining that viability cannot be easily defined, but that most physicians consider twenty-four weeks the "point of potential [fetal] viability").

[167] *See Id.*

The court's language supports this Article's argument that there is no standard upon which courts evaluate the legitimacy or depth of an objector's beliefs.[168] The absence of a meaningful standard allows for the dissemination of medical misinformation and abortion-related stigma at the expense of patients.[169]

As this case demonstrates, conscientious objections to medically necessary abortions in emergency settings receive great deference from courts.[170] The validity and depth of the objectors' beliefs undergo little scrutiny, as well as whether the beliefs actually support the activity that is being objected to.[171] *Alliance for Hippocratic Medicine* makes it clear that providers, even those with the expertise and an obligation to act in emergency situations, are entitled to refuse to provide life- or health-saving reproductive care.[172]

B. Refusal to Refer Patients for Reproductive Services

Providers that refuse to refer patients for services that the provider is religiously, morally, or ethically against is a growing problem in the United States.[173] This issue was recently exacerbated with the *Dobbs* decision,[174] and it is a point of controversy for doctors and scholars.[175] Further discussion of the Church Amendment is vital to understand providers' arguments regarding the alleged right to refuse to refer.[176]

The Church Amendments intended to protect individuals who "perform" or "assist in the performance" of abortions and sterilizations.[177] A federal district court in California noted that the language "assist in the performance" was only intended to protect "individuals in the operating room who actually assisted the physician in carrying out the abortion or sterilization procedure."[178]

However, anti-choice advocates, including those in the Trump administration, sought to use the Church Amendments to cover any individual even remotely connected to the provision of abortion, contraceptive, or sterilization services.[179] In 2018, Secretary Azar of DHHS—an anti-abortion advocate[180]—promulgated a final

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[168] *See supra* Part II.B.
[169] *Id.*
[170] *See All. for Hippocratic Med.*, 78 F.4th at 232–33.
[171] *Id.* at 230–33 (deciding the case with little to no discussion with respect to the validity and depth of the providers' beliefs underpinning their conscientious objection).
[172] *Id.*
[173] *Refusals to Provide Health Care Threaten the Health and Lives of Patients Nationwide*, NAT'L WOMEN'S L. CTR. (Dec. 2020), https://nwlc.org/wp-content/uploads/2017/08/NWLC_FactSheet_Refusals-to-Provide-Health-Care-Threaten-the-Health-and-Lives-of-Patients-Nationwide-2.18.22.pdf [https://perma.cc/5675-CMDD].
[174] *See* Jones-Nosacek, *supra* note 4 and accompanying text.
[175] Eberl, *supra* note 48 (arguing for "reasonable" conscientious objections laws); Fiala & Arthur, *supra* note 21 (arguing categorically against conscientious objection laws).
[176] *See supra* notes 27–31 and accompanying text (describing the Church Amendments briefly).
[177] *See* 119 Cong. Rec. 9597 (1973) (statement of Sen. Church).
[178] City & Cnty. of S.F. v. Azar, 411 F. Supp. 3d 1001, 1013 (N.D. Ca. 2019).
[179] *See* Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23170, 23170 (May 21, 2018) (expanding federal conscientious objection protections to "ensure vigorous enforcement of Federal conscience and anti-discrimination laws . . . .").
[180] *See* Kathryn Krawczyk, Alex Azar Just Called Health and Human Services "The Department of Life," THE WEEK, (Jan. 24, 2020) https://theweek.com/speedreads/891410/alex-azar-just-called-

rule that redefined "assist in the performance" of a service for purposes of federal conscience protections.[181] The rule expanded the phrase's definition to include an action with "a specific, reasonable, and articulable connection" in furtherance of a procedure, health service program, or research activity.[182] "Assist in the performance" explicitly included any supportive action for "counseling, referral, training, or otherwise making arrangements for the procedure or health service program or research . . . ."[183] Under the Trump administration's rule, verbally telling a patient the name of a clinic that provides abortion,[184] providing medical insurance that covers abortion,[185] driving a person to a scheduled abortion,[186] or prescribing medication may be considered "assisting in the performance" of abortion, and are thus protected by federal conscience laws.[187]

The DHHS continued expand federal conscience protections in *City and County of San Franscisco vs. Azar*, arguing that the rule would also cover ambulance drivers because the transportation of an individual for an abortion "assists in the performance" of an abortion.[188] The Trump administration also asserted that the rule would protect schedulers and hospital housekeeping staff who conscientiously object to abortion because "[s]cheduling an abortion or preparing a room and the instruments for an abortion are necessary parts of the process of providing an abortion, and it is reasonable to consider performing these actions as constituting

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health-human-services-department-life [https://perma.cc/VZS8-8G7X] ("Azar debuted the 'Department of Life' in a Thursday night statement in which he voiced his pride in being 'part of the most pro-life administration in this country's history.' HHS specifically took 'numerous actions in 2019' that align with those views, including introducing a new rule that mandates abortion providers fit strict new requirements or risk losing federal funding.").

[181] Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23170, 23263 (May 21, 2018).

[182] *Id.*

[183] *Id.*

[184] *Id.* at 23264 (stating that a "referral" includes providing oral, written, or electronic information, such as the "names, addresses, phone numbers, email or web addresses, direction, instructions, descriptions, or other information resources" where the "purpose or reasonably foreseeable outcome" of providing the information is to assist the person in, among other things, obtaining a health care service or procedure).

[185] *Id.* (defining a "health service program" to include "the provision or administration of any health or health-related services . . . health benefits, health or health-related insurance coverage, or any other service related to health or wellness, whether directly; through payments . . . through insurance; or otherwise").

[186] *Id.* at 23186–88 (May 21, 2018). ("[T]he Department believes driving a person to a hospital or clinic for a scheduled abortion could constitute "assisting in the performance of" an abortion, as would physically delivering drugs for inducing abortion.").

[187] *Id.* at 23196 (including pharmacists and pharmacies in the definition of "health care entity").

[188] City & Cnty. of S.F. v. Azar, 411 F. Supp. 3d 1001, 1014 (N.D. Ca. 2019).; *but see* Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23170, 23183, 23188 (May 21, 2018) ("With respect to EMTALA, the Department generally agrees with its explanation in the [2008 Rule] that the requirement under EMTALA that certain hospitals treat and stabilize patients who present in an emergency does not conflict with Federal conscience and anti-discrimination laws.:) ([T]he Department does not believe such a scenario would implicate the definition of 'assist in the performance of' an abortion, because the complications in need of treatment would be an unforeseen and unintended byproduct of a completed procedure.").

'assistance.'"[189] Under this reasoning, any individual even vaguely connected to a service which they object to would be covered by the Church Amendments, despite this line of reasoning directly conflicting with the statute's intent.[190]

Objectors also claim that "assisting in the performance" of abortion or sterilization includes facilitating such services through informational referrals.[191] The Church Amendments as originally enacted do not mention referrals,[192] and another federal conscience provision further protecting objectors—the Weldon Amendment[193]—also offers little support for the right to refuse to provide information.[194] Despite the weak statutory support of a right to refuse to refer, "[f]rom the perspective of a doctor with a conscientious objection to abortion, referral to another practitioner is like saying, 'I can't rob the bank for you myself. But I know someone down the road who can.' . . . [R]eferral involves becoming complicit in the abortion."[195]

This alleged right to refuse to refer perpetuates misinformation of reproductive health care. For instance, in *National Institute for Family and Life Advocates v. Schneider,* the plaintiffs—a group of anti-choice, unlicensed crisis pregnancy centers[196] and licensed medical providers—alleged that an amendment to Illinois's conscience clause violated their First Amendment right to free exercise because the law burdened their "ability to promote their religiously-motivated pro-life

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[189] Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23186–87 (May 21, 2018).

[190] *See* 119 Cong. Rec. 9597 (1973) (statements of Sen. Long) (declaring that the amendment would not cover situations in which an individual "seeks a sterilization procedure or an abortion, [and] it could not be performed because there might be a nurse or an attendant somewhere in the hospital who objected to it.").

[191] *See e.g.,* Nat'l Inst. for Fam. & Life Advocs. v. Schneider*,* 484 F. Supp. 3d 596, 617 (N.D. Ill. 2020).

[192] National Research Act, 1974, Pub. L. No. 93-348 , § 214, 88 Stat. 342, 353 (1974) (amending the Health Programs Extension Act of 1973 to state that "[n]o individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part [by DHHS] if his performance or assistance in the performance . . . would be contrary to his religious beliefs or moral convictions").

[193] Consolidated Appropriations Act, 2022, Pub. L. No. 117-103 § 507(d)(1), 136 Stat. 49, 496 (2022). The Weldon Amendment prohibits the Department of Health and Human Services from providing federal funding to any agency, program, or governmental entity that discriminates against institutions or individuals that refuse to "provide, pay for, provide coverage of, or refer for abortions." The Weldon Amendment was originally adopted in 2004 and has been included in every appropriations bill since.

[194] *See* 150 Cong. Rec. 10090 (2004) (STATEMENT OF REP. WELDON) ("This provision is intended to protect the decisions of [providers] from being forced by the government to . . . refer . . . for abortions) (Therefore, contrary to what has been said, this provision will not affect . . . the provision of abortion-related information . . . by willing providers.").

[195] Fiala & Arthur, *supra* note 20 at 14.

[196] Crisis pregnancy centers ("CPCs") refer to facilities that purport to provide licensed, comprehensive reproductive health care but actually operate under a religious, often Christian, mission to dissuade people from accessing abortion, contraception, and sterilization services. *Crisis Pregnancy Centers*, ACOG, https://www.acog.org/advocacy/abortion-is-essential/trending-issues/issue-brief-crisis-pregnancy-centers#:~:text=CPC%20is%20a%20term%20used,care%20and%20even%20contraceptive%20options [https://perma.cc/9874-L5PY]. CPCs frequently use deceptive and misleading tactics to undermine fully informed consent and access to timely care. *Id.*

messaging."[197] The plaintiffs' "pro-life messaging" relied heavily on arguments about reproductive care that studies establish as medical misinformation.[198] The plaintiffs' arguments reflected misguided beliefs about abortion regret,[199] when life begins,[200] and gender stereotypes regarding motherhood.[201]

Like many states post-*Roe*, Illinois adopted the Healthcare Right of Conscious Act ("HCRCA") to grant immunity from civil liability to healthcare providers with religious conscientious objections to providing certain care.[202] The amendment to HCRCA at issue in *National Institute for Family and Life Advocates* narrowed the scope of immunity provided by HCRCA's conscientious objection provision.[203] Under the new provision, all health care facilities were required to ensure that individuals requesting treatment can receive it, regardless of any conscientious objections that a medical provider may hold.[204] Thus, under the new version of HCRCA, the plaintiffs must refer clients to or provide information to clients about facilities that offer abortion, contraceptive, or sterilization services.[205]

The three crisis pregnancy centers refused to discuss abortion, contraceptive, or sterilization services with their clients or refer their clients to receive this care elsewhere.[206] The plaintiffs neither provided obstetrical or gynecological care nor disclosed to clients that their mission is to dissuade pregnant people from having abortions.[207] The plaintiffs spread misinformation to clients, including that abortion results in "excessive bleeding, perforation of the uterus, or not being able to bear children again," as well as damage to their mental and spiritual health.[208] Also, the plaintiffs testified that they only inform clients of the risks of abortion and contraception, and they do not discuss the benefits of contraception or sterilization, as they believe there are no benefits.[209]

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[197] Nat'l Inst. for Fam. & Life Advocs. v. Schneider, 484 F. Supp. 3d 596, 603, 626–27 (N.D. Ill. 2020).

[198] *Compare id.* at 602 (quoting plaintiffs as testifying that their messaging includes informing patients of the "medical risks of abortion," such as excessive bleeding, perforation of the uterus, or infertility, as well as the "spiritual" risks of abortion), *with* ACOG, *supra* note 22, at 1206 (summarizing information debunking medical misinformation frequently peddled by anti-abortion advocates).

[199] *Nat'l Inst. for Fam. & Life Advocs.*, 484 F. Supp. 3d at 601 ("Plaintiff Dr. Schroeder testified that viewing an ultrasound that shows movement or a heartbeat might change a woman's mind about having an abortion.").

[200] *Id.* at 602 (stating that the plaintiffs discourage abortion with the intent to "preserve the life of the unborn child").

[201] *Id.* (testifying that abortion carries the "risk" of not being able to mother future children).

[202] 754 ILL. COMP. STAT. §70/3(e) (2019) (defining "conscience" as "a sincerely held set of moral convictions arising from belief in and relation to God, or which, though not so derived, arises from a place in their life of its possessor parallel to that filled by God among adherents to religious faiths").

[203] Nat'l Inst. for Fam. & Life Advocs. v. Schneider, 484 F. Supp. 3d 596, 606–07 (N.D. Ill. 2020).

[204] *Id.* at 607.

[205] *Id.* at 607–08.

[206] *Id*. at 603.

[207] *Id*. at 602–03 ("For instance, TLC Pregnancy Services, according to its executive director, does not disclose its pro-life policy on its website, verbally, or in advertisements.").

[208] *Id.* at 602.

[209] *Id.* at 603.

In rejecting the plaintiffs' motion for summary judgment, the court looked to HCRCA's legislative history, which indicated that the amendment was adopted out of "legitimate concerns about patient access to healthcare[.]"[210] The legislature narrowed the scope of protections for conscientious objections because of serious complaints received about anti-choice providers.[211] One complaint detailed an incident in which a neurologist told a patient that her medically necessary abortion was actually *not* medically necessary because "[t]here is no such thing as a medically necessary abortion."[212] The neurologist also made other medically incorrect statements: that abortion, rather than delivery, causes more health problems, and that abortion is "[t]he highest risk factor for developing breast cancer."[213] As discussed in Part IV.A, this is factually inaccurate.[214] Under Illinois's previous conscience objection clause, the broad immunity granted to providers, like the neurologist, created significant obstacles to pregnant patients seeking medically necessary care.[215]

The Illinois legislature also considered incidents in which Catholic hospitals refused to provide abortions to pregnant women experiencing life-threatening miscarriages.[216] The legislature was also presented testimony concerning refusals of care, including those from Catholic facilities, that resulted in a threat to patient safety, and refusals to refer the patients to another provider that would perform abortions resulted in an increase in health care costs at the patients' expense.[217]

Objectors also argue that "facilitating" an abortion or sterilization includes providing insurance coverage for such services through insurance plans.[218] For instance, in *Cedar Park Assembly of God of Kirkland, Washington v. Kreidler*, a church with anti-choice beliefs alleged that a Washington state law violated its First Amendment right to free exercise because it required the church to "facilitate abortion," which goes against its religious beliefs.[219]

Under Washington state conscientious objection laws, objectors to certain services are not required to purchase medical insurance coverage for those services, but they must ensure enrollees still have access to the services.[220] However, the plaintiff-church in *Kreidler* believed that merely providing access to abortion

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[210] *Nat'l Inst. for Fam. & Life Advocs.*, 484 F. Supp. 3d at 625.
[211] *Id.* at 605–6.
[212] *Id.* at 605.
[213] *Id.*
[214] *See supra* notes 91–92 and accompanying text.
[215] *Nat'l Inst. for Fam. & Life Advocs.*, 484 F. Supp. 3d at 604.
[216] *Id.* at 606 (noting that a woman provided legislative testimony that doctors at a Catholic hospital refused to provide a life-saving abortion after she had experienced a miscarriage and was going to hemorrhage and go into septic shock).
[217] *Id.* at 606–07 (describing testimony of a pregnant woman denied care who had to travel hours to a secular facility that could not apply her insurance to cover the medically necessary abortion because the Catholic hospital failed to make her health information available, causing her to pay for the procedure completely out of pocket).
[218] *See* Cedar Park Assembly of God of Kirkland, Wash. v. Kreidler, 683 F. Supp. 3d 1172, 1176 (W.D. Wash. 2023).
[219] *Id.*
[220] *Id.* at 1177.

through its health care insurance plan was an act of "facilitating" abortion.[221] The plaintiff-church objected to providing coverage or access to contraceptives, which they repeatedly referred to as "abortifacient contraceptives."[222]

While the law was upheld and the court largely avoided the church's stigmatizing language, the court stated that the law did require the church "to facilitate access to covered abortion services contrary to Cedar Park's religious beliefs."[223] Such conclusions may become a slippery slope. If an employer is "facilitating" an abortion by simply providing employees with the option to access services on their own through an employee insurance plan, then virtually anyone—an ambulance driver, a scheduler, or hospital housekeeping staff—could be found to be "facilitating" an abortion.[224] Broad conscience clauses that protect objectors only tangentially associated with the administration of reproductive health care need to be narrowed if patients are to be protected.[225]

V. PROPOSED SOLUTIONS

Anti-choice conscientious objectors in health care have long evaded legal scrutiny that their counterparts in the military have faced. As such, this Article proposes two solutions to reduce the abuse of objections rooted in discrimination, stigma, and medical misinformation. Part A in this section argues that the legal standard for conscientious objections in the military context should be applied to the refusal to provide health care. Next, Part B advocates for the elimination of conscientious objections in the provision of certain health care services. Anti-choice advocates may ultimately claim that the First Amendment right to conscience—to refuse others care—overrides other interests, but the government's actions would be legally justified by the compelling interest of safeguarding patient safety and dignity.

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[221] *Kreidler,* 683 F. Supp. 3d at 1181 ("[I]n Cedar Park's view, the fact that its insureds gain coverage to the services under the insurance plan Cedar Park provides means that Cedar Park is 'facilitating' that abortion coverage.").

[222] *Id.* at 1177–78 ("Cedar Park also asserts that it 'offer[ed] health insurance coverage to its employees in a way that does not also cause it to pay for abortions or abortifacient contraceptives, including, *inter alia*, emergency contraception and intrauterine devices[.]'").

[223] *Id.* at 1182.

[224] *Compare* City & Cnty. of S.F. v. Azar, 411 F. Supp. 3d 1001, 1014 (N.D. Ca. 2019) (stating that, under the 2019 rule, ambulance drivers, schedulers, and housekeeping staff can raise conscientious objections to reproductive services because they "facilitate" such services), *with* 119 Cong. Rec. 9597 (1973) (STATEMENTS OF SEN. LONG AND SEN. CHURCH) (intending for Church Amendment protections to extend to only those in the operating room and not to those remotely connected to an abortion or sterilization procedure).

[225] *See Kreidler,* 683 F. Supp. 3d at 1188 (noting that the Washington law's health insurance requirements did not implicate the right to free exercise because "purchasing a health insurance plan is not an ecclesiastical decision").

A. Apply the Legal Standard for Conscientious Objections in the Military Context to Conscientious Objection Claims in the Healthcare Context

Provider-objectors should be required to satisfy the legal standard for conscientious objection claims raised by those opposed to military service.[226] Providers that refuse to provide services or referrals due to a conscientious objection have the burden to demonstrate to an ethics committee or a state licensing board, with "clear and convincing evidence," that (1) they are opposed to death of human life "in any form;" (2) their "opposition is based on religious training or belief," rather than "politics, expediency, or self-interest;" and (3) their religious or moral views underpinning their opposition to an activity are "firm, fixed, and sincerely and deeply held."[227] Additionally, medical misinformation should not be accepted as evidence that can support providers' belief or opposition to an activity.

Just as military conscientious objectors must demonstrate, providers that conscientiously object to providing reproductive services or referrals because of religious beliefs opposed to death should be required to demonstrate that they are opposed to death "in any form."[228] In the military context, local boards and courts consider objectors' views regarding the death penalty, gun control, and "aggressive" sports.[229] The same standard should apply to objectors in the health care context.

This standard would have the effect of eliminating conscientious objection claims for emergency or medically necessary reproductive care. A provider-objector cannot be against death in all forms when their refusal to provide a medically necessary abortion, for example, threatens the health or life of the pregnant person.[230] The same is true for individuals who require medically necessary sterilization procedures because pregnancy would endanger their health or life.[231] The provider's beliefs—opposition to death—would be in direct conflict with the consequences of their refusal: death or life-threatening harm to the patient.

Providers would also be unable to raise conscientious objections to providing contraception or sterilization services or referrals based on a moral opposition to murder. A provider-objector that is religiously or morally opposed to killing or murder would be unable to refuse to provide said services or referrals because this

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[226] *See* Fiona Griffin, *Conscientious Objection to Emergency Contraception in the Context of COVID-19*, 8 VOICES IN BIOETHICS 1, 1 (2022) ("Conscientious objection deserves heightened scrutiny.").

[227] *See supra* Part III (explaining the standard for conscientious objections in the military context).

[228] *See* case cited *supra* note 108–12 and accompanying text.

[229] *See* cases cited *supra* note 112 and accompanying text.

[230] *See* Reuters Fact Check, *Termination of Pregnancy Can be Necessary to Save a Woman's Life, Experts Say*, REUTERS (Dec. 27, 2021), https://www.reuters.com/article/idUSL1N2TC0VD/ [https://perma.cc/L7JA-2RQS] (reporting that not completing an abortion or delaying abortion care in emergency situations "can be deadly").

[231] *Sterilization,* CTRS. FOR MEDICARE & MEDICAID SERV., https://www.cms.gov/medicare-coverage-database/view/article.aspx?articleid=53356#:~:text=An%20example%20of%20necessary%20treatment,the%20case%20of%20prostate%20cancer [https://perma.cc/HU3N-8UCF] (explaining that sterilization may be medically necessary when an individual has cancer or a tumor, which are illnesses that also threaten the fetus).

care does not result in a "killing."[232] While anti-choice providers often consider contraception to be an "abortifacient," science says otherwise.[233] Providers, therefore, would be unable to rely on misinformation (that contraception is a form of abortion, for example) in their refusal to provide or refer a patient for contraception.

Just as in the military context, conscientious objectors in health care must demonstrate that their "opposition is based on religious training or belief," not "politics, expediency, or self-interest."[234] Providers that refuse to provide care, not because of religious or moral beliefs, but because they wish to eliminate patients' legal right to abortion, contraception, or sterilization would fail this legal standard.[235] Hence, a valid conscientious objection claim must be substantially grounded in a religious or moral belief rather than politics or a self-interest to evade professional obligations.[236]

Provider-objectors should be burdened with demonstrating that their religious or moral belief at the foundation of their opposition to an activity is "firm, fixed, and sincerely and deeply held."[237] Providers may demonstrate the nature of their belief through written documentation and testimony from individuals who can attest to the validity of the objector's beliefs.[238] Review boards or courts may examine other factors that provide insight as to the objector's "guiding principle," such as their childhood, upbringing, personality and temperament, and hobbies.[239] Review boards or courts may also assess whether the provider previously participated in the activity objected to, or whether the provider invoked a conscientious objection claim in a discriminatory manner. If there is evidence that a provider raises objections for certain patients or procedures but not for others similarly situated, then the provider's beliefs are not "firm, fixed, and sincerely, and deeply held."[240] For example, a physician that performs vasectomies but conscientiously objects to performing female sterilization procedures or providing contraception care does not have a firm or fixed belief to support their opposition to providing female birth control services. This standard would help combat harm inflicted on patients and uphold high standards of care by barring providers from discriminating against historically marginalized groups.[241]

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[232] *See supra* notes 81–89 and accompanying text (explaining that contraceptives do not result in the death of life because contraceptives prevent implantation, not fertilization).
[233] *Id.*
[234] *See supra* notes 106, 116 and accompanying text.
[235] *See* Cook & Dickens, *supra* note 49.
[236] *See* Kanai v. McHugh, 638 F.3d 251, 264 (4th Cir. 2011) (deferring to a local military board's decision to deny a conscientious objection claim because the objector used the claim to "avoid his service obligation").
[237] *Id.* at 258; *see also supra* note 107 and accompanying text (providing the test for conscientious objections in the military).
[238] *Kanai*, 638 F.3d at 260, 266–68.
[239] *Id* at 262.; U.S. v. Seeger, 380 U.S. 163, 187 (1965).
[240] *Kanai*, 638 F.3d at 258.
[241] *See* Abram Brummett & Lisa Campo-Engelstein, *Conscientious Objection and LGBTQ Discrimination in the United States*, 42 J. PUB. HEALTH POL. 322, 327 ("Supporting clinicians who refuse to treat members of a marginalized group based solely on their group membership conflicts with national initiatives to reduce healthcare inequalities for historically disadvantaged groups and

Conscientious objections to military service also provide a guide for adjudication and standard of review.[242] Objectors in the military context must present evidence to a local board, and a reviewing court must uphold the board's determination if there is a "basis in fact" to deny the objector's claim.[243] A standard providing deference to the conclusion of the respective experts in the field should apply to conscientious objections in the health care context.[244] Whether it is an ethics committee at the institution where the provider has admitting privileges or a state licensing board, provider-objectors should have to present evidence justifying their objection to the military equivalent of a local board.[245] Ethics committees are comprised of medical professionals, lawyers, social workers, and clergy who are best situated to determine whether a provider's conscientious objection claim has satisfied the appropriate legal standard.[246] Ethics committees offer vital guidance in addressing ethical issues and are a source of "sound decision making that respects participants' values, concerns, and interests."[247] Because of this, ethics committees are properly situated to determine the best course of action for the patient and the institution if a conscientious objection claim is invoked.

Improper conscientious objection claims may still occur under this solution, but this proposal in the very least operates as a starting point to push against the current widespread approval of illegitimate conscientious objections.

B. Eliminate Conscientious Objections in Certain Health Care Contexts

If the military standard for conscientious objections cannot be adopted, then governments should eliminate such refusals raised in the provision of certain health care services.[248] Providers that voluntarily enter a profession in which they assume a fiduciary duty to the public and their patients should not be relieved of their

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violates core virtues of the medical profession, namely the ethical tenet to do no harm. While there is a proper role for respecting clinicians' beliefs, permitting conscientious objection to LGBTQ individuals goes too far by insidiously upholding systemic disadvantages common for this population, and leading to discriminatory practices based on personal characteristics that have no place in medicine.").

[242] *See supra* notes 108–114, 123–125 and accompanying text (outlining the adjudication process and standard of review for conscientious objection claims in the military context).

[243] *See* Roby v. U.S. Dep't of Navy, 76 F.3d 1052, 1058 (9th Cir. 1996) (explaining the limit of the court's role in adjudication is to weigh the evidence and determine if the board's findings were justified); *see also* U.S. v. Seeger, 380 U.S. 163, 185 (1965) (explaining the "basis in fact" standard).

[244] *See supra* notes 121–125 and accompanying text (describing the substantial deference courts provide to determinations made by local boards).

[245] *See supra* notes 107–112 and accompanying text (explaining that conscientious objections are evaluated by a local board and what evidence the local boards examine to make a determination).

[246] Cassandra Rivais DiNova, *Hospital Ethics Committee Explainer*, ALB. L. SCH. GOV'T L. CTR. 1–2 (2020).

[247] *Ethics Committees in Health Care Institutions*, AMA CODE OF ETHICS, https://code-medical-ethics.ama-assn.org/ethics-opinions/ethics-committees-health-care-institutions [https://perma.cc/7U6J-LGJ8].

[248] WORLD HEALTH ORG., *supra* note 13 ("If it proves impossible to regulate conscientious objection in a way that respects, protects and fulfils abortion seekers' rights, conscientious objection in abortion provision may become indefensible.").

responsibilities by merely invoking a standardless conscientious objection.[249] As discussed in Part III, voluntary enlistees in the military are not entitled to a constitutional right to be discharged from their military duties just by raising a conscientious objection.[250] The same should apply to providers voluntarily entering the medical profession, especially for providers who voluntarily enter a field in which reproductive health services or referrals are reasonably expected to be part of their position.[251]

For instance, obstetricians and gynecologists should not be entitled to conscientious objections. Obstetricians and gynecologists routinely provide information, services, and referrals for many reproductive health services, including abortion, contraceptives, and sterilization.[252] Therefore, as providers that assume a duty to provide quality, equitable, comprehensive reproductive care, obstetricians and gynecologists should be barred from raising conscientious objections in opposition to abortion, contraception, or sterilization services or referrals.[253] It is unlikely there is another field where institutions, the public, and the profession provide employees with the unrestricted right to refuse to perform a substantial portion of their job, particularly one that may save a patient from harm or death.[254] Obstetricians and gynecologists are perceived by the public as experts in their field, and it is illogical to allow these experts to refuse to execute the main duties of their position.[255]

The same holds true for emergency room medical professionals and pharmacists. Emergency room doctors and pharmacists could reasonably expect reproductive health services or referrals to be part of their responsibilities, and individuals entering these fields should not be given the right to object to providing

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[249] Isa Ryan, Ashish Premkumar, & Katie Watson, *Why the Post-Roe Era Requires Protecting Conscientious Provision as We Protect Conscientious Refusal in Health Care*, 24 AMA J. ETHICS 906, 909 (2022) ("Exploiting conscience as a club betrays the fiduciary obligation of the clinical relationship through actions that obstruct patients' ability to get abortion care.").

[250] *See supra* Part III (discussing the appropriate legal standard for conscientious objection claims raised by voluntary enlistees in the military context).

[251] *See* Ryan et al., *supra* note 249, at 910 ("When engaging in clinical care, physicians make an explicit agreement to put themselves in uncomfortable, vulnerable, ethically challenging spaces.").

[252] Brittni Frederiksen, Usha Ranji, Ivette Gomez & Alina Salganicoff, *A National Survey of OBGYNs' Experiences After Dobbs*, KFF (June 21, 2023), https://www.kff.org/womens-health-policy/report/a-national-survey-of-obgyns-experiences-after-dobbs/ [https://perma.cc/6BZM-5W2D] (stating that nearly all OBGYNs offer some kind of contraceptive care, and that almost half (48%) of OBGYNs practicing in states with abortion bans offer information on abortion).

[253] *See* AM. ACAD. PEDIATRICS, *supra* note 24, at 1691 (declaring that individuals should not voluntarily enter the medical field or adopt a specialty that conflicts with their religious or moral beliefs).

[254] Fiala & Authur, *supra* note 20, at 18 ("No other sector of medicine or other kind of service delivery would allow a service refusal with so little resistance. . . . [Conscientious objection] gives a person a pretext not to do their job, even though they were specifically hired to do that job and are being paid for it. Indeed, if you can opt out of part of your work without being punished, why wouldn't you?").

[255] Shanawani, *supra* note 24, at 388–89 (stating that "professional societies charge physicians with the obligation to provide their expertise to all members of society," even if providing care would conflict with personal religious or moral beliefs).

care on religious grounds.[256] Take the plaintiffs in *Alliance for Hippocratic Medicine v. U.S. Food & Drug Administration.* The plaintiffs were emergency room doctors, and it is likely they could reasonably expect reproductive health services—emergency abortion care for an ectopic pregnancy, a serious or fatal fetal abnormality, an incomplete medication abortion, or other severe pregnancy complication—to be a regular part of their role.[257] Under this proposed standard, the plaintiffs would not have been given the unfettered right to conscientiously object to fulfilling their voluntarily assumed duty to the public.[258]

Anti-choice providers may argue that the First Amendment grants a constitutional right to object to providing care under the Free Exercise Clause.[259] While the First Amendment bestows the right to practice religion as one pleases,[260] the practice may be limited by a compelling government interest.[261] Burdens on the right to free exercise have been upheld when the practice of religion "invariably posed some substantial threat to public safety."[262] For instance, the Supreme Court upheld a compulsory vaccination law,[263] a ban on child labor,[264] and mandatory military service,[265] concluding that the government's secular interest outweighed the infringement of free exercise.[266] Further, if prohibiting the exercise of religion is "merely the incidental effect," rather than the goal, of a generally applicable policy, then there is likely no free exercise violation.[267] For example, a law requiring emergency room doctors to provide health- or life-saving care to patients would be generally applicable to all doctors, regardless of whether they objected to the necessary care. The law's goal would be to preserve patient safety, dignity, and autonomy, rather than to prohibit religion.

All medical professionals have the duty to provide competent, timely, compassionate care that is in the best interest of patient safety and dignity. The abuse of conscientious objections by anti-choice providers prevents patients from receiving this type of care, and the government should incidentally infringe on free exercise rights to further the compelling interest of patient safety and autonomy.

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[256] Savulescu, *supra* note 95 ("If people are not prepared to offer legally permitted, efficient, and beneficial care to a patient because it conflicts with their values, they should not be doctors.").
[257] *See* All. for Hippocratic Med. v. U.S. Food & Drug Admin., 78 F.4th 210 (5th Cir. 2023) *rev'd sub nom.* U.S. Food & Drug Admin. v. All. for Hippocratic Med., 602 U.S. 367 (2024).
[258] *See e.g.* Arthur L. Caplan, *Should Clinicians with Conscientious Objections Be Protected?*, MEDSCAPE, (Mar. 20, 2018) https://www.medscape.com/viewarticle/894239?form=fpf [https://perma.cc/8HD4-E9KJ].
[259] *See* Nat'l Inst. for Fam. & Life Advocs. v. Schneider, 484 F. Supp. 3d 596 (N.D. Ill. 2020) (arguing for a right to refuse care based on the free exercise of religion).
[260] U.S. CONST. amend. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]").
[261] Emp. Div., Dep't of Hum. Res. of Or. v. Smith, 494 U.S. 872, 894 (1990) (O'Connor, J., concurring).
[262] Sherbert v. Verner, 374 U.S. 398, 403 (1963).
[263] *See* Jacobson v. Massachusetts, 197 U.S. 11 (1905).
[264] *See* Prince v. Massachusetts, 321 U.S. 158 (1944).
[265] *See* Gillette v. United States, 401 U.S. 437 (1971).
[266] *Id.* at 454.
[267] Emp. Div., Dep't of Hum. Res. of Or. v. Smith, 494 U.S. 872, 878 (1990).

VI. THE HARMFUL IMPLICATIONS OF MODERN CONSCIENTIOUS OBJECTIONS

The expansion of conscience objection clauses sanctions the abuse of conscientious objections for the purpose of denying patients access to health care.[268] These clauses and the frequent abuse of conscientious objections threaten women's equality, autonomy, and health by reinforcing abortion-related stigma; delaying or denying desired medical care; circulating medical misinformation; and violating fundamental principles of informed consent and respect for patient decision-making.[269]

Abortion-related stigma reinforced by objectors can lead to heightened levels of stress, shame, and guilt for patients, which may result in "reduced self-efficacy around decision making, decreased perceptions of social support, and increased psychological distress."[270] Exposure to abortion-related stigma also decreases a pregnant person's likelihood of seeking reproductive health care, including abortions, which can have negative, life-altering consequences on one's health.[271] Individuals that are refused abortions face heightened financial burdens, a delay in care, and, therefore, an increased risk of morbidity or mortality.[272] Refusals to refer for abortion lead to delayed care, which may contribute to the continuation of an unwanted pregnancy.[273]

Pregnant people that are forced to travel farther for an abortion access care at a later gestational age experience adverse mental health outcomes and may attempt to terminate their pregnancy in unsafe ways.[274] Even if the pregnant person eventually obtains an abortion, they may experience stigmatization, psychological stress, and difficulties related to the gestational age of the fetus.[275] These burdens disproportionately impact historically marginalized communities, including low income individuals, people of color, individuals in rural areas, and pregnant people experiencing intimate partner violence.[276]

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[268] Fiala & Arthur, *supra* note 21.
[269] *See id.*
[270] Sara K. Redd, Roula AbiSamra, Sarah C. Blake, Kelli A. Komro, Rachel Neal, Whitney S. Rice, & Kelli S. Hall, *Medication Abortion "Reversal" Laws: How Unsound Science Paved the Way for Dangerous Abortion Policy*, 113 AM. J. PUB. HEALTH 202, 210 (2023).
[271] Turan & Budhwani, *supra* note 58, at 38; *see also* Aliza Adler, Antonia Biggs, Shelly Kaller, Rosalyn Schroeder, & Lauren Ralph, *Changes in the Frequency and Type of Barriers to Reproductive Health Care Between 2017 and 2021*, JAMA NETWORK OPEN, (Apr. 10, 2023), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2803644 [perma.cc/MN27-MWJF] ("Delaying or forgoing reproductive health care not only can result in morbidity but also, in situations such as untreated sexually transmitted infections, can result in an increased risk of serious complications, such as infertility and pelvic inflammatory disease.").
[272] *See* Fiona de Londras, Amanda Cleeve, Maria I. Rodriguez, Alana Farrell, Magdalena Furgalska, & Antonella F. Lavelanet, *The Impact of 'Conscientious Objection' on Abortion-Related Outcomes: A Synthesis of Legal and Health Evidence*, 129 HEALTH POL. 1, 6 tbl. 2 (2023).
[273] *Id.*
[274] *Id.*
[275] Tongue, *supra* note 70.
[276] Melissa N. Montoya, Colleen Judge-Golden, Jonas J. Swartz, *The Problems with Crisis Pregnancy Centers: Reviewing the Literature and Identifying New Directions for Future Research*, 14 INT. J. WOMEN'S HEALTH 757, 759 (2022) (reporting that Black women in a representative

Unlimited conscientious refusals are not part of being a medical professional.[277] Rather, professionals have the duty, underpinned by respect for autonomy and dignity, to provide informed consent on the risks, benefits, and alternatives of care.[278] Medical professionals who refuse to provide medically accurate information for services or referrals disregard their duty and "significantly undermine the practice of medicine."[279]

The blanket grant of all conscientious objections to providing medical care or referrals essentially means that any provider can object to any treatment for any reason, valid or not.[280] Because an objector's belief does not need to be substantiated and will likely not be questioned or regulated by the government or the judiciary, objectors basically get a free pass.[281] Additionally, as previously mentioned, some objection laws shield providers that refuse to provide reproductive health care services or referrals from civil liability.[282] Numerous states provide civil immunity to institutions for harm caused by a provider's conscientious objection, which often leaves the patient without judicial recourse.[283] Even if a patient has a legal avenue to seek a remedy for the harm experienced, courts may be sympathetic to refusals based on misinformation disguised as religious convictions.[284] Vast statutory protections for objectors, barring justice for those affected, the absence of a legal

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study in Ohio are the most likely group to visit a crisis pregnancy center, which frequently employ anti-choice physicians and volunteers to disseminate religiously motivated misinformation intended to dissuade individuals from abortion and contraceptive care); Nancy F. Berglas, Valerie Williams, Katrina Mark, & Sarah C. M. Roberts, *Should Prenatal Care Providers Offer Pregnancy Options Counseling?*, 18 BMC PREGNANCY & CHILDBIRTH 1, 4 (2018) (finding a direct relationship between food insecurity and an interest in discussing pregnancy options, suggesting that food insecure populations are more susceptible to abortion-related stigma and medical misinformation than food secure populations); Fiala & Arthur, *supra* note 20, at 16 (explaining that being refused an abortion can lead to increased costs for travel or daycare, loss wages for more time off, and increased or worsened symptoms).

[277] AM. ACAD. PEDIATRICS, *supra* note 24, at 1691.

[278] *Id.*; Hull, *supra* note 57 ("[F]orcing women to carry unwanted pregnancies fundamentally violates their autonomy, and thus their personhood."); *WMA Declaration of Geneva*, WORLD MED. ASS'N (May 31, 2024), https://www.wma.net/policies-post/wma-declaration-of-geneva/ [perma.cc/7662-WQHK] (stating that the World Medical Association's oath requires medical professionals to assert that "[t]he health of my patient will be my first consideration;" the "autonomy and dignity of my patient" will be "respect[ed];" and will not permit "considerations of . . . political affiliation . . . or any other factor to intervene between my duty and my patient"); Fiala & Arthur, *supra* note 20, at 15 (declaring that refusing medically necessary reproductive care because of one's subjective, moral beliefs undermines notions of patient autonomy).

[279] AM. ACAD. PEDIATRICS, *supra* note 24, at 1691; Fiala & Arthur, *supra* note 21, at 256 ("When we allow religious beliefs to dictate medical decisions, we fail patients and we fail society, because we have surrendered evidence-based medicine to irrationality."); Caplan, *supra* note 258 ("You can't be an ethical doctor, pharmacist, or nurse and just say, 'I'm not doing it, and I'm not going to tell you where it could be done.'").

[280] *See supra* Part IV (discussing cases where the validity of the provider-objectors' claims were not examined).

[281] *Id.*

[282] Kogan, *supra* note 37, at 212 and accompanying text.

[283] *Id.*; Sawicki, *supra* note 37, at 1256 ("In a majority of states, civil immunity is absolute—providing no exceptions in cases of malpractice, denial of emergency treatment, or even patient death.").

[284] *See supra* Part IV (discussing cases where judges were sympathetic to religious, conscientious objections grounded in misinformation and discrimination).

standard, and courts willing to accept misinformation as evidence amount to a system that shifts power to providers at the expense of vulnerable patients.

Unfettered conscience objection clauses permit providers to violate the democratic will of the people.[285] "[T]he state is allowing objectors to personally boycott democratically-decided laws, usually for religious reasons, without having to pay any price for it."[286] Broad conscientious objection protections create vulnerabilities across the country, regardless of whether the state protects reproductive freedom.[287] In other words, states that enshrined a right to abortion in their state constitution still allow for unsubstantiated conscientious objections and are introducing bills to expand a right to refuse under state law.[288] For example, in 2023, the Vermont legislature introduced the Health Care Freedom of Conscience Act.[289] While Vermont offers statutory and constitutional protections for reproductive freedom,[290] this bill sought to shield health care institutions that refuse to provide care from civil, criminal, and administrative liability.[291] The goals of Vermont's reproductive freedom amendment and the statutory protection of unsubstantiated objections are in opposition—reproductive freedom is unattainable when providers can evade legal liability for refusing to provide care.

Many attempts to expand conscientious objection laws are introduced in states with stricter abortion laws, leaving individuals in the South and Midwest particularly vulnerable.[292] In the 2023-2024 legislative session, nearly all states with a six-week or less abortion ban introduced legislation to expand conscience protections.[293] For instance, with the exception of Texas, all states that criminalize abortion—Idaho, Oklahoma, Tennessee, and Kentucky—introduced bills to create a fundamental right

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[285] Fiala & Arthur, *supra* note 21.
[286] *Id.*
[287] *See* Graf, *supra* note 32 (reporting that, on average, one in six patients in the United States receive care in a Catholic health care facility); *see also* ACLU *supra* note 56, at 24 (finding that in ten states over 30% of hospital beds are in Catholic hospitals).
[288] *See* GUTTMACHER INST., *supra* note 5 (reporting states that introduced legislation related to refusal laws).
[289] Health Care Freedom of Conscience Act, H.183, Reg. Session 2023-2024 (Vt. 2023).
[290] VT. STAT. ANN. tit. 18, § 5222 (2023); VT. CONST. art. XXII.
[291] Health Care Freedom of Conscience Act, H.183, Reg. Session 2023-2024 (Vt. 2023).
[292] *See* GUTTMACHER INST., *supra* note 5 (showing that, in 2024, 24 bills were introduced across 15 states that would expand refusal laws, including in Florida, Iowa, Idaho, Kentucky, Missouri, North Carolina, Nebraska, Oklahoma, South Carolina, Tennessee, Virginia, and West Virginia); *see also* Varney, *supra* note 88 (reporting that, with respect to the idea that life begins at conception for purposes of pregnancy-related bills, "red states across much of the South and portions of the Midwest are adopting language drafted by elected officials that is informed by conservative Christian doctrine, often with little scientific underpinning").
[293] *Compare* GUTTMACHER INST., *supra* note 5 (reporting states that introduced legislation related to refusal laws), *with After Roe Fell: Abortion Laws by State,* CTR. REPRODUCTIVE RTS., https://reproductiverights.org/maps/abortion-laws-by-state/ [https://perma.cc/VB6N-ZMQ6].

to conscience;[294] shield objectors from civil, criminal, or administrative liability;[295] or suggest that objectors have a limited duty to act in situations requiring stabilizing care.[296] Proposed expansions of refusal laws such as these will continue to harm patients in states with already limited access to timely and quality care.

In a post-*Dobbs* world where comprehensive reproductive health care facilities may be sparse or nonexistent, pregnant people in states with vast protections for conscientious objectors are especially threatened by providers' unsubstantiated refusal to provide abortion, contraception, or sterilization services or referrals.[297] The harms discussed underscore the need for restricting conscientious objection claims through either the adoption of a clear legal standard similar to that in the military context, or the elimination of conscientious objection claims in certain health care contexts.[298] Furthermore, the democratic will of the people to codify protections for safe, timely reproductive care must not be subjugated by the indiscriminate approval of conscientious objection claims raised by anti-choice providers.[299]

VII. CONCLUSION

Broadly deferential conscientious objection laws and an utterly inadequate legal standard embolden anti-choice providers to refuse to provide requested, and potentially emergent, reproductive services or referrals. Providers often justify their refusal to provide health care with medical misinformation, which is legally indefensible under the proposed legal standard borrowed from conscientious objection claims in the military context. Religious conscientious objection claims by providers must either be regulated by ethics committees or state licensing boards, or outright prohibited in certain health care contexts. Courts reviewing these claims must be vigilant and work against legitimizing harmful medical misinformation and gender discrimination masquerading as religious freedom. Unsubstantiated conscientious objections grounded in misinformation, stereotypes, and motives to circumvent the law shift power to anti-choice providers at the detriment of patient

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[294] *See* Med. Ethics Def. Act, H.B. 672, 67th Leg. 2nd Reg. Sess. 2023-2024 (Idaho, 2024) ("The legislature finds that the right of conscience is a fundamental and inalienable right."); *see also* S.B. 239, Ky. Gen. Assemb. Reg. Sess. 2023-2024 (Ky. 2024); Med. Ethics Def. Act, S.B. 2747, 113th Leg. Reg. Sess. 2023-2024 (Tenn. 2024) (cross-filed as H.B. 2935) (including in the findings that "the right of conscience is a fundamental right rooted in the history and tradition of the United States and central to the practice of medicine[.]"); Med. Ethics Def. Act, S.B. 887, 59th Leg. 1st Reg. Sess. 2023-2024 (Okla. 2023).

[295] Med. Ethics Def. Act, H.B. 672, 67th Leg. 2nd Reg. Sess. 2023-2024 (Idaho, 2024); S.B. 239, Ky. Gen. Assemb. Reg. Sess. 2023-2024 (Ky. 2024); S.B. 1883, 59th Leg. 2nd Reg. Sess. 2023-2024 (Okla. 2024) (cross-filed as H.R. 3214); Med. Ethics Def. Act, S.B. 2747, 113th Leg. Reg. Sess. 2023-2024 (Tenn. 2024) (cross-filed as H.B.2935); S.B. 29, S.C. Gen. Assemb. 125th Leg. Reg. Sess. 2023-2024 (S.C. 2023).

[296] Med. Ethics Def. Act, H.B. 672, 67th Leg. 2nd Reg. Sess. 2023-2024 (Idaho 2024) (requiring health care professionals to act in a "life-threatening situation," but declining to explicitly require action when stabilizing or other non-emergency, but still medically necessary, care is necessary to preserve patient safety).

[297] *See supra* Part IV.

[298] *See supra* Part V.

[299] *See* Fiala & Arthur, *supra* note 21.

autonomy and the democratic will of the electorate seeking to protect reproductive freedom.