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Conscience at Work

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INTRODUCTION

In ancient Athens about 2500 years ago, Sophocles examined the relationship between moral or divine law and human law in his classic play, *Antigone* (Sophocles 2005). Antigone was ordered by Creon, King of Thebes, to leave the body of her brother unburied and outside the city walls to be eaten by vultures, as punishment for his treachery. Antigone, ordinarily a loyal citizen, followed her conscience and answered in the name of her religion and her gods and buried her brother, thereby defying the order of the king, who subsequently sentenced her to death.

Fast forward several millennia and the words of founding father James Madison resound: "The Religion then of every man must be left to the convictions and conscience of every man, and it is the right of every man to exercise it as these may dictate" (Madison 1999,29). Madison's opinion regarding the sanctity of individual conscience has become a well-established value in the U.S. that continues to this day. Nevertheless, the sanctity of conscience has become an increasingly contentious issue in contemporary America. For example, conscience may drive a woman to conclude that an abortion is her best option to prevent an unplanned child, but conscience may also drive her physician to decline to perform it. Conscience compels a school teacher to talk about intelligent design during science class, but also compels the parents of his student to insist that he be prohibited from doing so. Conscience requires a federally funded drug rehabilitation program leader to integrate biblical teachings into group discussions, but also requires a program participant to object to such proselytizing (Vischer 2006).

Nowhere is this controversy more pronounced than in the well-publicized battle over the extent to which pharmacists may allow their religiously shaped moral judgments to narrow the range of services they offer consumers, particularly women. Both sides ask government to enshrine collectively a particular vision of the individual's prerogative (Stein 2005). On one side, conscience is invoked to justify legislation that would enable individual pharmacists to refuse to fill prescriptions on moral grounds. On the other side, conscience is invoked to support laws that would enable individual consumers to compel pharmacies to fill any legally obtained prescriptions without delay or inconvenience.

This article examines the historical importance of conscience in various world and U.S. laws and regulations and the implications for employers in the modern American workplace.

CONSCIENCE AND RELIGION

While there are many definitions of conscience, the one included in the Illinois Health Care Right of Conscience Act is cited, because it was the first of its kind and has been named as model legislation in the conscience area: "Conscience means 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 the life of its possessor parallel to that filled by God among adherents to religious faiths" (Health Care Right of Conscience Act n.d.). It is not to be construed as one's mere ideas and opinions, or whatever vagrant and morally vacuous thoughts race through one's mind.

Most definitions of conscience in the U.S. legal context are broadly defined as including moral, ethical, and religious principles. Indeed, some authors believe that the definitions of religion and conscience involves a "distinction without a difference" (Smith 2005, 911) while others have suggested that "the framers viewed 'free exercise of religion' and 'freedom of conscience' as virtually interchangeable concepts" (Smith 2005, 912). Similarly, the Supreme Court has construed religion broadly to include convictions that are deeply-held, but not religious in any conventional sense of the term (*United States v. Seeger* 1965; *Welsh v. United States* 1970).

FREEDOM OF CONSCIENCE IN THE INTERNATIONAL ARENA

The right to freedom of conscience is represented in all international conventions concerning human rights. For example, Article 18 of the Universal Decla-

ration of Human Rights adopted by the General Assembly of the United Nations (UN) on December 10, 1948 states:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance (United Nations 1948).

A similar formulation appears in Article 18.1 of the International Covenant on Civil and Political Rights, which was adopted and opened for signature, ratification and accession by UN's General Assembly Resolution 2200 on December 16, 1966 and entered into force in March 1976 (Office of the High Commissioner for Human Rights 1976). The recognition of the right to freedom of conscience, as it appears in the UN Declaration of 1948, is quoted also in Articles 12.1 and 12.2 of the American Convention on Human Rights, signed in 1969, which has been in legal force since 1978, and prohibits any oppression of persons as a result of their faith (Human & Constitutional Rights Document 1969a). Interestingly, Articles 27.1 and 27.2 of the American convention address the state's privilege to limit some human and civil rights in case of a war or national emergency, ensuring, however, the right to freedom of conscience even in these extreme circumstances (Human & Constitutional Rights Document 1969b).

Thus, many countries, including the U.S., have made great efforts to advance freedom of conscience in their cultures. Indeed, Jesuit scholar Richard I. Regan noted "no culture without some idea of moral conscience has yet been discovered" (Regan 1972, 207). There is no question, then, that an individual's "sovereignty of conscience" (Little 2001, 607) is something that is accorded a significant level of respect in culture and law and that across numerous societies freedom of thought, conscience, belief, and religion is one of the most basic of all human rights, and assigned special rights and protection.

CONSCIENCE-PROTECTION IN THE UNITED STATES OUTSIDE THE EMPLOYMENT CONTEXT

Legislatures and courts in the U.S. have protected the right of conscience in areas outside the employment framework in two key areas: the First Amendment and conscientious objection to war.

The First Amendment Protection against Coerced Expression

The Supreme Court has held that the First Amendment prevents the government from forcing individuals to voice or promote viewpoints with which they disagree. The model cases are *West Virginia Board of Education v. Barnette* (1943) and *Wooley v. Maynard* (1977). In *Barnette* and *Maynard*, respectively, the court struck down a statute requiring a compulsory flag salute and a law requiring compulsory display of the state motto ("Live Free or Die") on license plates. These cases sought to protect "the sphere of intellect and spirit" (*West Virginia Board of Education v. Barnette* 1943, 642) and "individual freedom of mind" (*Wooley v. Maynard* 1977, 714). Moreover, Chief Justice Rehnquist characterized these cases as protecting "the broader constitutional interest of natural persons in freedom of conscience" (*Pacific Gas & Electric Company v. Public Utilities Commission of California* 1986, 32).

Conscientious Objection to War

Another area where American society has shown sensitivity to the right of conscience is in exempting from military service those who conscientiously object. Indeed, conscientious objectors have been included in every federal statutory scheme authorizing compulsory military service in the U.S. since the Civil War (Davis 1991). The statute defined religious faith as belief "in relation to a Supreme Being" and "does not include essentially political, sociological, or philosophical views or a merely personal code" (Davis 1991, 192). In cases that arose during the Vietnam War, however, the Supreme Court fundamentally broadened the statute to encompass nonreligious conscientious objection (*United States v. Seeger*, 1965; *Welsh v. United States* 1970). Seeking to avoid Establishment Clause problems, the court reversed the convictions of conscientious objectors who explicitly disavowed belief in a Supreme Being.

CONSCIENCE-PROTECTION IN THE UNITED STATES RELATED TO THE WORKPLACE

Federal Level

The issue of conscience became more prominent in the 1970s, when health-care providers and facilities were permitted to decline to provide services to which they were morally or ethically opposed (National Conference of State Legislatures 2008). It began with the Supreme Court's decision to legalize abortion in *Roe v. Wade* (1973). Literally within weeks, in response to *Roe*, Congress passed the so-called "Church Amendment"—named after former Sen. Frank Church

(R-ID)-as part of the Health Programs Extension Act (1973). The amendment states that public officials may not require individuals or organizations who receive certain public funds to perform abortion or sterilization procedures or to make facilities or personnel available for the performance of such procedures if such performance "would be contrary to [the individual or entity's] religious beliefs or moral convictions" (Health Programs Extension Act 1973, at § 300a-7-(b)).

This amendment, which remains in force today, provides that the receipt of federal funds in various health programs will not require hospitals or individuals to participate in abortions, if they object based on moral or religious convictions. It also forbids hospitals in these programs to make willingness or unwillingness to perform these procedures a condition of employment. The Church Amendment is considered by many, albeit primarily in the abortion context, to be the first freedom-of-conscience clause in an employment context (Briggs 2005).

Protection-of-conscience laws are generally designed to reconcile "the conflict between religious health care providers who provide care in accordance with their religious beliefs and the patients who want access to medical care that these religious providers find objectionable" (White 1999, 1703). These activities may include abortion, capital punishment, contraception, sterilization, artificial reproduction, euthanasia, assisted suicide, human experimentation, torture, etc. Conscience laws protect conscientious objectors from coercive hiring or employment practices, discrimination and other forms of punishment or pressure. They generally also include protection from civil liability. Conscience clauses, on the other hand, are usually less comprehensive than protection-of-conscience laws and afford varying degrees of protection for conscientious objectors. They may appear in statutes or in the policies of organizations or institutions (The Protection of Conscience Project 2008). Those individuals who believe that people should not be forced to facilitate practices or procedures to which they object for moral reasons often refer to "conscience clauses," while reproductive rights groups and patients'-rights advocates call such wording "refusal clauses." This is not a semantic difference, but a significantly different worldview.

Enacted in 1996, section 245 of the Public Health Service Act (PHS Act) (1996) prohibits the federal government and any state or local government receiving federal financial assistance from discriminating against any health care entity on the basis that the entity: (1) refuses to receive

training in the performance of abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions, (2) refuses to make arrangements for such activities, or (3) attends or attended a post-graduate physician training program or any other training program in the health professions that does not (or did not) perform abortions or require, provide, or refer for training in the performance of abortions or make arrangements for the provision of such training. In addition, PHS Act Section 245 requires that, in determining whether to grant legal status to a health-care entity (including a state's determination of whether to issue a license or certificate, such as a medical license), the federal government and any state or local government receiving federal financial assistance deem accredited any post-graduate physician-training program that otherwise would be accredited but for the reliance on an accrediting standard that requires an entity: (1) to perform induced abortions, or (2) to require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training.

A conscience-clause provision, also known as the Weldon Amendment (enacted as part of the Consolidated Appropriations Act 2008)-named after Congressman Dave Weldon (R-FL)-provides that

"[n]one of the funds made available under this Act may be made available to a federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions" (Consolidated Appropriations Act 2008, at § 508 (d)(1)).

The act also defines "health care entity" to include "an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan" (Consolidated Appropriations Act 2008, at § 508 (d)(2)).

The primary federal law that arguably concerns conscience, albeit of the religious variety, is Title VII (1964). Title VII covers most private and public employers with fifteen or more workers, and, along with a host of other bases (e.g., race, gender, ethnicity), prohibits employment discrimination because of religion. Title VII defines religion to include

"all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business" (Title VII 1964, at § 2000e-2(a)).

The Equal Employment Opportunity Commission (EEOC), Title VII's chief enforcement agency, declared that it "will define religious practice to include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views" (Guidelines on Discrimination Because of Religion, n.d., at § 1605.1). Although these merely provide "guidance," and do "not carry the force of regulation," (Wolf, Friedman, and Sutherland 1998, 16), the courts have consistently followed the EEOC's lead" (Wolf, Friedman, and Sutherland 1998, 28). It is more likely that many "beliefs" fit this definition of religion, including freedom of conscience.

Physicians, nurses, and prison employees also have a right to refuse, based on conscientious objection, to participate in any way in executions (Refusal to Participate in Executions or in Prosecution of a Capital Crime n.d.). This statute also ensures that employees in the U.S. Department of Justice, the Federal Bureau of Prisons, or the U.S. Marshals Service who object to capital punishment for reasons of conscience cannot be forced to participate in an execution or even in a prosecution for a capital offence.

Additionally, federal statutes and cases protecting whistleblowers (those who believe that the public interest overrides the organization they serve, and report incidences of corrupt, unlawful, fraudulent, or harmful activity) have been construed as protecting individuals' right to conscience. For example, in *Mgmt. Info. Techs. v. Alyeska Pipeline Servo Co.*, whistleblowers were described as "employees who speak out as a matter of conscience" (*Mgmt. Info. Techs v. Alyeska Pipeline Servo Co.* 1993, 481).

Most recently, the Bush administration, shortly before leaving office, implemented a controversial regulation designed to protect doctors, nurses, and other health care workers who object to abortion from being forced to deliver services that violate their personal beliefs (Department of Health and Human Services 2008). The rule empowers federal health authorities to deny funding to more than 584,000 hospitals, clinics, health plans, doctor's offices, and other entities, if they do not accommodate employees who refuse to participate in care they find objectionable on personal, moral, or religious grounds (Stein 2008). "People

should not be forced to say or do things they believe are morally wrong. Health care workers should not be forced to provide services that violate their own conscience" said Health and Human Services Secretary Mike Leavitt (Stein 2008).

State Level

The states have truly been the trendsetters for the recent expansion of conscience protection in the workplace. This has been most evident in the battle over the extent to which pharmacists may allow their religiously shaped moral judgments to narrow the range of services they offer consumers (Stein 2005). Journalists and others have reported cases of individual pharmacists refusing to fill prescriptions for emergency contraceptives. Because emergency contraception can act to block implantation of a fertilized egg, individuals who believe in protection of human life after conception find them morally objectionable and support the right of refusal (Dresser 2005). The American Pharmacists Association appears to support this position and indicated that it "recognizes the individual pharmacist's right to exercise conscientious refusal and supports the establishment of systems to ensure patients' access to legally prescribed therapy without compromising the pharmacist's right of refusal" (Winckler and Gans, 2006, p. 13).

Generally, state officials have responded in two ways to the refusal issue. Some have endorsed legal requirements that protect women's access to the drugs; others have sought to protect pharmacists' conscientious-objection rights. In this and other contexts, there is disagreement over when to protect the professional's freedom to reject on moral grounds a practice that is ordinarily required of the professional. The dispute over pharmacist refusals and workplace demands offers an opportunity to examine this issue in more detail.

By 1978—five years after the decision in *Roe v. Wade*—virtually all of the states had enacted conscience clause legislation in one form or another (Rambaud 2006). Similarly, most states offer protection for religion discrimination (similar to Title VII) and procedure-specific protection in the areas of abortion, sterilization, and artificial contraception (similar to the Church Amendment). Additionally, an increased number of states have expanded into general conscience protection, albeit still primarily limited to health care, without any procedural restrictions (Nelson 2005). Following the Church Amendment, forty-seven states have conscience clauses addressing the refusal to perform abortions and, of these, forty offer direct protection from related employment discrimination and/or recrimination (Sonne 2006- 7).

Moreover, a growing trend in state legislation involves more general "health care" clauses (Illinois, Mississippi, and Washington). For example, the Illinois statute indicates:

"It shall be unlawful for any person, public or private institution, or public official to discriminate against any person in any manner, including but not limited to, licensing, hiring, promotion, transfer, staff appointment, hospital, managed care entity, or any other privileges, because of such person's conscientious refusal to receive, obtain, accept, perform, assist, counsel, suggest, recommend, refer or participate in any way in any particular form of health care services contrary to his or her conscience" (Health Care Right of Conscience Act n.d., §70/5).

The Mississippi statute shields health-care providers from being held "civilly, criminally, or administratively liable for declining to participate in a health care service that violates his or her conscience" (Mississippi Code Annotated 2004, at § 41-107-3), and forbids any employment discrimination based on such exercises of conscience (Mississippi Code Annotated 2004). In covering all health-care services, the statutes in Illinois, Mississippi, and Washington go well beyond the procedure-specific laws (National Conference of State Legislatures 2008). Other states having broad refusal clauses for health-care providers include Colorado, Florida, Maine, Tennessee, Georgia, Arkansas, and South Dakota. Furthermore, refusing to include an "undue hardship" or other accommodation limit of any significance, they go further than their counterparts in Title VII or analogous state provisions on religious practice accommodation.

Although the trend supports increased freedom of conscience for health-care professionals, there are states that view the situation differently. For example, New Jersey's 2007 law prohibits pharmacists from refusing to fill prescriptions on solely moral, religious or ethical grounds (Emergency Contraception for Sexual Assault Victims 2007) and California pharmacists have a duty to dispense prescriptions and can only refuse to dispense a prescription, including contraceptives, when their employer approves the refusal and the woman can still access her prescription in a timely manner (California Labor Code 2005). More recently, the California Supreme Court unanimously ruled that doctors may not refuse non-emergency medical treatment to gay men or lesbians for religious reasons (*North Coast Women's Care Medical Care Group, Inc. et. al. v. San Diego County Superior Court [Guadalupe T. Benitez]* 2008). The court ruled that physicians' constitutional right to the free exercise of religion does not

exempt businesses that serve the public from following state laws that prohibit discrimination on the basis of sexual orientation "even if compliance poses an incidental conflict with the defendants' religious beliefs" (Surdin 2008). The lawsuit was filed by Guadalupe Benitez, who said her doctors and their employer, a San Diego-based fertility clinic, refused her a standard fertility treatment because of her sexual orientation. The doctors, who are Christian, said that they denied the treatment because Benitez was unmarried, and that they were allowed to do so under the First Amendment's guarantee of freedom of religion. Benitez sought the treatment in 1999 after two years of trying to conceive using an at-home insemination kit. When she informed her doctor, Christine Brody, of her sexual orientation, Brody replied that she could not perform intrauterine insemination, should it later be required. Benitez asserted that Brody said it was her sexual orientation; Brody said it was Benitez's marital status.

In Missouri, House Bill 1625 offers protection for pharmacies in the state that refuse to dispense drugs or devices that are abortifacients, and identifies not only RU486 (Mifepristone), but the morning after pill (Plan B) as abortifacient. The bill appears to be a response to House Bill 1720, which would suppress freedom of conscience by requiring pharmacies to dispense drugs like Plan B without delay. Both bills are still under consideration by the Missouri legislature at the time of this publication.

CONSCIENCE IN THE GENERAL WORKPLACE

Although the significance of conscience in American culture has existed since the country's founding, its protection in the private workplace is a new and rising phenomenon. While such conscience protection statutes at both the federal and state level have been primarily limited to the health-care arena today, there is little question of their future expansion into the larger workplace (Sonne 2006-7). There is a growing trend in employment law that employees should be protected in the exercise of their consciences (notwithstanding the California Supreme Court's recent ruling)--even if such exercise is contrary to their employers' wishes or the demands of their jobs (Nader and Hirsch 2004). This rapidly expanding and intensifying conflict centers on the role that religious faith should play in the provision of goods in American society (Vischer 2006).

While the conscientious-objection controversy continues in the health-care field (see Table 1), it has expanded to other workers (see Table 2) seeking exemptions from requirements to perform actions that violate their moral integrity. Indeed, the conflict about conscience clauses may represent "the latest struggle

Table 1
**Cases Involving Health-care Workers Who Object to Work
That Is in Opposition to Their Conscience**

- A health care professional refuses to fill prescriptions from medical products and treatments resulting from stem cell research when they are introduced into the market (Greenberger and Vogelstein, 2005).
- A physician refuses to discuss, provide information, or refer patients for medical interventions to which they have moral objections (Curlin et. al. 2007).
- A pharmacist refuses to fill a prescription for antibiotics because it came from a facility that provides abortion medications (Davidow 2006).
- A gynecologist declines to prescribe birth control pills (Weidner 2008).
- A pharmacist refuses to fill prescriptions for "morning-after" pills, saying that dispensing the medications violates his or her personal moral or religious beliefs (Stein 2005).
- A physician refuses requests for Viagra from unmarried men (Weidner 2008).
- A health-related professional declines to participate in physician-assisted suicide (The Oregon Death with Dignity Act 1997).
- An ambulance driver refuses to transport a patient for an abortion (Stein 2006).
- A pharmacist job applicant indicates that he will refuse to sell condoms due to his religious beliefs and is not hired (Helinger v. Eckerd Corp. 1999).

with regard to religion in America" (Charo 2005, 2471) and is rapidly becoming one of the more controversial issues confronting employers (Kelly 2008). The objection to the work may be based on religious beliefs founded on the tenets or beliefs of a church, sect, denomination, or other religious group, or on ethical, philosophical, or moral grounds and requires employers to accommodate the religious needs of their workers as mandated by Title VII the Civil Rights Act of 1964 (Title VII § 2000e(j)).

CONCLUSION

Freedom of conscience is a particularly contentious issue in America, because the U.S. is a highly individualistic society that emphasizes personal freedom and choice (Fijneman, Willemsen, and Poortinga 1996), leading to claims of absolute rights across a myriad of issues including reproduction, religious, and work-related matters. One effect of such intense individualism is that restrictions on individual freedom be limited. Persons should be entitled to exercise their freedom of conscience just so long as those individual decisions do not impinge on the freedom of others. Balance is necessary but difficult to achieve.

Table 2

Cases Involving Employees in the General Workplace Who Have Objected to Work That Is in Opposition to Their Conscience

- A worker balks at participating in the production of military weapons (Thomas v. Review Board of the Indiana Employment Security Division 1981).
- A Baptist law enforcement official refuses to work at casinos (Ben Endres v. Indiana State Police 2004).
- An organization prohibited a consultant from working on their premises who wore a kirpan, a small, curved, ornamental sword, which is one of five articles of faith that initiated Sikh males are required to carry on their person at all times (Sikh Coalition 2007),
- A Muslim police officer refuses to remove her khimar, a headpiece which covers the hair, forehead, sides of the head, neck, shoulders, and chest (Webb v. City of Philadelphia 2007).
- A photographer refuses to take pictures of a civil-commitment ceremony planned by a lesbian couple (Vanessa Willock v. Elane Photography 2008).
- A Jehovah's Witness wait person refuses to sing happy birthday to guests at a restaurant (Equal Employment Opportunity Commission v. Razzoo's 2007).
- Prison employees are unwilling to participate in executions (Gawande 2006).
- An Orthodox Jewish police detective refuses to cut his beard (Associated Press 2008).
- A technician refuses to provide help to a client that manufactures violent computer-software games (Equal Employment Opportunity Commission v. Sykes Enterprises, Inc. 2004).

America is filled with claims for the rights of airline passengers, smokers, nonsmokers, obese persons, AIDS victims, and immigrants (Carroll and Buchholtz 2006), just to name a few, and when those rights conflict with others' rights difficulties surface.

The wave of state and federal laws and bills supporting conscience protection for medical personnel is increasingly covering all health care services- not only abortion- and this has created challenges to the idea that health-related professionals may deny legally and medically permitted therapeutic interventions, particularly if their objections are personal and religious. This controversy has become particularly acute with one researcher arguing that "a doctor's conscience has little place in the delivery of modern medical care" (Savulescu 2006, 294) and that "if people are not prepared to offer legally permitted, efficient, and beneficial care to a patient because it conflicts with their values, [then] they should not be doctors," (Savulescu 2006, 294) and that they "can escape

this burden by merely taking another job" (Nader and Hirsch 2004, 327). The question is not whether the compulsory activity can be escaped. The question is whether Americans deem it proper to put a person in the position of leaving their job or violating their conscience. Because conscience is defined in a virtually boundless fashion to include religion, moral, or ethical principles and convictions (Sonne 2006- 7), it may bring the freedom of conscious debate clearly within the purview of Title VII and its prohibition of religious discrimination, which has gained much recent attention, compelling the EEOC to issue "Section 12: Religious Discrimination" to its Compliance Manual on July 22, 2008 (Equal Employment Opportunity Commission 2008).

Like religion in the workplace, the "conscience trend" presents an extraordinary challenge to employers. In light of the blanket nature of the relevant exemptions and the broad definitions of conscience that are offered both in existing law and in pending legislation, there is no question that employers will face an increasingly serious challenge regarding how they choose to conduct their business. Indeed, as one commentator noted, "this issue is the San Andreas Fault of our culture" (Stein 2006).

Yet this need not be. While American courts and legislatures have historically shown themselves solicitous of the conscience of employees, the protection is minimal when compared with that provided in Germany. The German Constitution contains a provision providing for freedom of conscience (Schafer and Dannemann 1998). This provision has been construed to permit *all* employees to decline to perform a task they deem incompatible with their conscience (Gerhart 1995). The determination is left to the employee, who may not be discharged because of its exercise (Gerhart 1995).

While this broad right of conscience in the German Constitution can pose difficulties of implementation, with judges wrestling with a "reasonable" conscience justifying a refusal to do certain work and an "unreasonable" conscience deemed irrelevant (Weiss and Geck 1995), it has hardly wreaked havoc on Germany's economy or society. Indeed, Germany has not suffered because all employees have a right of conscience, just as America has not suffered because of respect for the conscience of citizens in assorted situations. Our society has shown sensitivity to the call of individual conscience. Americans respect the conscience of draftees who oppose war, physicians who oppose abortion, employees who oppose their superiors' misconduct, and citizens who oppose government dogma (e.g., on license plates and in the classroom).

While thorny issues remain, organizations should not overreact. Employers are becoming more adept at accommodating and balancing the rights of workers and this should provide a measure of closure and aid practitioners who might be hoping to develop acceptable policies. Having said this, however, one factor alone may change or negate everything. This involves a contentious debate anticipated early in President Obama's term concerning the controversial "Freedom of Choice Act" (FOCA) (n.d.). **In** the days after the U.S. Supreme Court's historic decision in *Gonzales v. Carhart* (2007), upholding the federal ban on partial-birth abortion, Senator Barack Obama, along with Senator Hillary Clinton and others, introduced the federal FOCA, a key provision of which indicates that physicians, hospitals, and hospital staff members would no longer have the protection of state or federal laws to refuse to provide abortions based on moral or ethical beliefs. In the 2008 presidential campaign Mr. Obama promised to sign FOCA if he was elected, and if he keeps this pledge then the conscience at work issue will be front and center and uncertainty will prevail for the foreseeable future.

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