Professor Griffin was quoted in an article in the *National Catholic Reporter* regarding new regulations that aim to protect health care workers from having to perform procedures they find morally objectionable.

The following article appeared in the *National Catholic Reporter* on March 4, 2011.

**Mixed verdict on new conscience rules**
Michael Sean Winters

The Obama administration released new conscience regulations Feb. 18 that aim to protect health care workers from having to perform procedures they find morally objectionable.

The new rules are designed to clarify several statutes, most enacted in the 1970s after Roe v. Wade, the Supreme Court decision that legalized abortion. The new rules replace, and in part rescind, earlier regulations proposed by President George W. Bush in his final days in office.

The new rules strengthen conscience protections for those health care workers who refuse to perform abortions, by clearly establishing an enforcement mechanism through the Office for Civil Rights at the Department of Health and Human Services. Additionally, the new rule calls for Health and Human Services to institute programs to instruct health care workers about their conscience rights, something the Bush-era regulations ignored.

Dropped from the Bush-era regulations were certain definitions that attempted to explain the statutory language and requirements that health care providers certify, in writing, that they are following the conscience regulations.

The definitions in the Bush rules were considered "vague" and "overbroad" by some states, which brought suit in federal court to stay the Bush regulations. That suit was stayed pending the Obama administration's issuing the new rules.

In an analysis published by Catholics in Alliance for the Common Good, Stephen Schneck of The Catholic University of America in Washington wrote, "For abortion, as defined by existing statutes, the Obama changes give protection more teeth. It clarifies and sharpens the enforcement mechanisms available to authorities."

Schneck, director of Catholic University's Institute for Policy Research & Catholic Studies, argued that the stronger abortion language outweighed concerns that the new regulations weakened other conscience provisions.

The U.S. bishops' conference adopted a mixed verdict on the new regulations. "The administration's action today is cause for disappointment, but also offers reasons for hope
regarding an emerging consensus in Washington on the need for clear conscience protections for health care providers," said Deirdre McQuade of the bishops' Pro-Life Secretariat.

McQuade expressed disappointment that the Bush definitions had been dropped, arguing that they "would have helped in interpreting and enforcing long-standing federal statutes protecting the conscience rights of health care providers."

She praised the announcement that the Department of Health and Human Services would seek to educate health care workers about their conscience rights.

In an analysis published online at NCR's Distinctly Catholic blog, Robert Vischer of the University of St. Thomas Law School in Minneapolis expressed concern that neither the Bush nor the Obama regulations provided workers with the ability to bring a private suit if their conscience rights are violated.

Vischer also expressed concern that referring complaints to the Health and Human Services Civil Rights Office might not be an ideal remedy. "The fear is that when action is discretionary with the agency, the corresponding rights will be left to jockey for priority with a laundry list of other regulatory initiatives and enforcement actions," he wrote. "Given that the Democratic base has hardly been clamoring for more aggressive enforcement in this area, one cannot help but be skeptical."

Vischer also voiced skepticism that the Bush-mandated certification process would yield any genuine protection of conscience rights.

Leslie Griffin, a law professor at the University of Houston, suggested that the new rules essentially skirted the most difficult issues.

"It's a good way to punt, to free up everyone to argue about what the statutes mean," Griffin said in a phone interview with NCR. She said the principal effect of the new regulations will be to inaugurate "a battle among the states," which are free to adopt whatever conscience regulations they desire for procedures such as in vitro fertilization and emergency contraception.

Griffin also questioned the need for the Obama administration to join the conscience protection fight. "We don't really have evidence that conscience is being violated," Griffin said. "In fact, reproductive freedom is more under attack today."

Griffin warned that over time, "the conscience regulations begin to set the standards of care, not the patients."
The National Abortion Rights Action League praised the new regulations and placed them in the context of the debate on Capitol Hill about cutting funding for Planned Parenthood. "The language published today reaffirms the principles of protecting the doctor-patient relationship by repealing the most onerous and intrusive parts of Bush's last-minute refusal rule," league president Nancy Keenan said in a press release. "As the Obama administration seeks to protect women's access to birth control, lawmakers on Capitol Hill are preparing to vote for a bill that would eliminate funding for family-planning services nationwide."

As part of its efforts to cut federal spending, the House of Representatives voted 240-185 to deny federal funding to Planned Parenthood of America or its affiliates. The bill's sponsor, Rep. Mike Pence, R-Ind., called the group "the largest abortion provider in America," while opponents said denying funds to the group would prevent it from offering other forms of health care to women.

Observers say that the Obama administration seems to have successfully navigated treacherous waters with the new regulations; neither pro-life nor pro-choice groups are up in arms. But Vischer and Griffin observed that with many of the most contentious issues left to future resolution, the issue of conscience protection is not going away anytime soon.

[Michael Sean Winters is an NCR contributor and writes about religion and politics on the Distinctly Catholic blog at NCRonline.org/blogs/distinctly-catholic.]