



April 21, 2015
(updated May 1, 2015)

Re: Risk of Losing Federal Funding for Illinois and Federal Constitutional Violations in
SB 1564, Amending the Health Care Right of Conscience Act
LRB099 05684 HEP 25727 b

Dear Legislator:

I am an attorney for Alliance Defending Freedom, a non-profit legal organization. I am writing on behalf of the below named Illinois physicians, Illinois pregnancy help organizations that have medical directors, and national organizations with members in Illinois who are physicians or medical pregnancy help organizations.

In serving Illinois women and families, these doctors and organizations unconditionally respect and value the lives of women and their preborn children, and they are committed to “do no harm” to their patients including children in the womb.

When the patients, families and women choose to be served by these doctors and organizations, they are exercising their right to be assisted by a medical professional who shares their respect for human life.

But the Illinois legislature is considering a measure that would deprive Illinois women of their right to choose a pro-life doctor. The state could lose its federal funding, including reimbursements through the Medicaid program, and subject itself to court liability if it enacts SB 1564, which passed the Illinois Senate on April 22, 2015.

SB 1564 takes away the rights of Illinois women to be treated by a pro-life doctor, because it would force medical facilities and physicians who conscientiously object to involvement in abortions (and other procedures) to refer for, make arrangements for someone else to perform, or arrange referral information that lists willing providers, for abortions.¹

By violating the pro-life principles of pro-life physicians and medical organizations, SB 1564 would deprive Illinois women of their choice of a medical provider that does not refer or arrange for abortions in any way.

The federal government has long declared that states cannot receive federal funding if they rob women of the right to choose a pro-life doctor by forcing pro-life physicians and entities to refer or arrange for abortions. In this respect SB 1564 squarely violates the “Coats-Snowe”

¹ Reference to abortions throughout this letter generally concerns abortions that are not spontaneous.

amendment, 42 U.S.C. § 238n (Public Health Service Act Section 245), and the “Hyde-Weldon” amendment, see P.L. 113-235, div. G, § 507(d)(1). Coats-Snowe declares that “any State or local government that receives Federal financial assistance, may not subject any health care entity to discrimination on the basis that” it (1) “refuses to . . . perform [induced] abortions, or to provide referrals for . . . such abortions,” or it (2) “refuses to make arrangements for any of the activities specified in paragraph (1).” In addition to protecting “entities,” Coats-Snowe protects “individual physician[s].” The federal funding that is jeopardized by violating Coats-Snowe “includes” but is not limited to “governmental payments provided as reimbursement for carrying out health-related activities.” Separately, Hyde-Weldon prohibits states that receive certain federal funding from requiring physicians or health care entities to refer for abortions.

SB 1564 blatantly violates these federal conscience statutes, and would put at risk all of Illinois’ federal funding—including reimbursements under such programs as Medicaid. Its requirement that medical facilities and physicians refer for abortion violates the federal bans on a state forcing a person or entity to refer for abortion. Its requirement that they find another physician in the facility to perform the abortion, or transfer the patient to an abortion provider, violates the ban on requiring someone to “make arrangements” for abortion. Its requirement that they provide information of willing abortion providers violates both the ban on requiring abortion referrals and the ban on making arrangements for abortion or for its referral.

Alliance Defending Freedom has filed multiple actions to enforce federal conscience statutes. To reverse illegal decisions by federal funding recipients, we have represented many health care professionals in lawsuits and in administrative complaints with the United States Department of Health and Human Services (HHS). Alliance Defending Freedom’s successful legal action on such matters is featured as the primary example in the HHS Office of Civil Rights’ own Power Point presentation describing how federal funding recipients will be required to comply with federal conscience laws.² Alliance Defending Freedom is ready and willing to bring legal action against the state of Illinois on behalf of pro-life physicians and medical organizations if SB 1564 were to become law.

SB 1564 also violates the United States Constitution. Under the Freedom of Speech Clause of the First Amendment, no state may force a person or entity to refer or provide information for abortion, birth control, or other services to which the person objects. Freedom of speech includes the right not to speak, and how to address or not to address a particular topic, as equally as it protects the right to speak. *Wooley v. Maynard*, 430 U.S. 705, 714 (1977); *see also Pacific Gas & Electric Company v. Public Utilities Commission of California*, 475 U.S. 1, 11 (1986) (“There is necessarily . . . a concomitant freedom not to speak publicly, one which serves

² See HHS Office of Civil Rights, “Enforcement of the Federal Health Care Provider Conscience Protection Laws,” at 24–25, *available at* http://www.hhs.gov/ocr/civilrights/provider_conscience_ppt.pdf (last visited April 20, 2015) (referring to Alliance Defending Freedom’s client nurses who filed a complaint against Vanderbilt University, *see* ADF, “Vanderbilt University abandons illegal policy,” *available at* <http://www.alliancedefendingfreedom.org/News/PRDetail/4513> (last visited April 20, 2015)).

the same ultimate end as freedom of speech in its affirmative aspect.”) (citation omitted); *Hurley v. Irish-American Gay, Lesbian, & Bisexual Group of Boston*, 515 U.S. 557, 573 (1995) (“one important manifestation of the principle of free speech is that one who chooses to speak may also decide ‘what not to say’”); *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 796–97 (1988) (the “difference between compelled speech and compelled silence . . . is without constitutional significance”).

Pro-life pregnancy centers offer real help and hope to women and families who are experiencing a pregnancy and wish to make a choice other than abortion. They are non-profit organizations that provide their services for free to thousands of people in Illinois, saving taxpayers many thousands of dollars. Many pro-life pregnancy centers, including those among the undersigned, are actually medical facilities and/or they operate under the official supervision of a licensed physician. These centers offer free medical services in conjunction with their pro-life information and assistance. Consequently when SB 1564 requires medical facilities and physicians to refer or provide information for abortion, it forces them to engage in speech that directly contradicts their non-profit mission. This deprives thousands of women and family members of free medical and other services to make a choice that values life.

Alliance Defending Freedom has represented multiple pro-life pregnancy help organizations in federal lawsuits in which we have obtained court orders against laws that attempted to force the pregnancy centers to recite government’s messages. Several of the cases specifically struck down the requirement that pregnancy centers tell women certain things about abortion or birth control, or that they give the women information about alternative service providers. *See Centro Tepeyac v. Montgomery County*, 5 F. Supp. 3d 745 (D. Md. 2014). After receiving the permanent injunction in *Centro Tepeyac*, Alliance Defending Freedom and its co-counsel obtained an attorney fees award against the government in the amount of \$374,999. Alliance Defending Freedom is ready and willing to represent Illinois pro-life pregnancy centers if SB 1564 becomes law.

Respectfully submitted,

s/ Matthew S. Bowman

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