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We, the leaders of Catholic healthcare in Illinois, write to express our opposition to Senate Bill 1564, as proposed by the ACLU. This legislation seeks to limit, and we believe fundamentally undermine, the Illinois Health Care Right of Conscience Act (the “**Act**”).

Similar to federal health care right of conscience laws, the Act has ensured the right of conscience protections for Illinois patients, physicians, and health care practitioners, providers and payers since its enactment in 1977. The ACLU has not demonstrated, nor are we aware of, any evidence that the Act causes material harm to patients or their ability to obtain desired healthcare services. To meet existing obligations to assure that patients have access to necessary information, Catholic and other healthcare facilities and providers maintain appropriate processes for situations in which a provider’s sincerely-held religious beliefs prevent the provision of a specific form of treatment by that provider. These protocols ensure that patients who come to us for care receive care consistent with sound clinical and medical practices and information concerning their condition and treatment options.

The undersigned therefore oppose Senate Bill 1564 on the following grounds:

- The Proposed Amendment Effectively Negates the Right of Conscience by Conditioning the Recognition of Such Right on the Provision of Detailed Information and Referrals that Providers May Feel Unable to Give Consistent with their View or Knowledge of Objected-to Procedures. Proposed new Section 6.1 states that a provider has a right to refuse to provide a specific procedure or service to which the provider has a conscience-based objection **only if** specific information is provided regarding alternative providers and the risks and benefits of **all** relevant treatment options, in light of the patient’s condition. The extent of information required may in many cases be legitimately viewed by the provider as facilitating objected-to procedures. In addition, if a provider does not perform a requested procedure, he or she may not have the necessary knowledge to appropriately advise the patient. The Amendment’s heavy-handed mandates are in contrast to common practice, in which a provider advises a patient of certain procedures/services the provider does not perform, and where appropriate, suggests other providers who can assist the patient.
- The Proposed Amendment May be an Unconstitutional Infringement of a Provider’s Right to the Free Exercise of Religion, and in Some Cases May Violate Federal Rights of Conscience Laws. The detailed information and referral requirements, coupled with the imposition of potentially punishing penalties for any provider who is found not to have

met the detailed information and referral requirements specified in the Amendment, creates a substantial interference with and burden on the right of an Illinois healthcare provider to act in accordance with a sincerely-held religious belief, in the absence of a compelling state interest. Accordingly, we believe that as applied, the Amendment may violate the Free Exercise Clause of the First Amendment of the U.S. Constitution, as well as certain federal rights of conscience laws.

- No Compelling State Interest. The ACLU has not been able to demonstrate that the current Act is being actively used in a manner that controverts patient rights. They have thereby failed to demonstrate a compelling State need for effectively gutting Illinois healthcare providers' right of conscience through this Bill.

The ACLU proposal to effectively eliminate providers' right of conscience in Illinois is part of a national campaign. The Illinois ACLU posts on its website an inflammatory and misleading "Campaign to Stop Religious Refusals" that highlights a case currently in litigation in another state – Michigan – with no basis for claiming that similar concerns exist in Illinois. Other examples provided are drawn from a variety of other states.

The ACLU claims, again with no basis or data, that the Illinois Health Care Right of Conscience Act is "the broadest, and most radical, religious health care refusal law in the country." The actual facts are far different. In the years of the Act's existence, patients and providers have relied upon the law, with little controversy. Research indicates only 2 reported court cases in the over 35 years the law has been in effect: (1) In 1995, **a patient** asserted a right of conscience to be treated in a certain manner, based on her religious beliefs; and (2) in 2012, two pharmacists brought suit challenging an Illinois administrative rule requiring them to dispense emergency contraceptives, which the pharmacists alleged violated their religious beliefs. Provider and patient rights have co-existed effectively under the Act for decades. There is no basis for radically upending the fundamental structure of the Act at this time.

The ACLU ignores the fact that there are already in place a host of federal and state laws that ensure the provision of care and assisting patients with alternate care such as the Illinois Health Care Surrogate Act, the CMS Hospital Conditions of Participation, EMTALA, and also national accreditation standards. These existing legal protections contradict the ACLU's assertion that their proposed amendment is necessary to protect patients' rights.

- The Amendment Creates a New Standard of Medical Negligence With Punitive Level of Damages, for Providers who Seek to Exercise their Rights of Conscience, Consistent with the U.S. Constitution and the Current Act. Proposed new Section 70/6.1 imposes a medical negligence standard of care, which when read together with Section 70/12 (the current provision for damages designed to protect providers), could result in treble damages, including for pain and suffering, in addition to any recovery under a

malpractice lawsuit. The damages provisions that had been a shield for providers who exercised their right of conscience now becomes a sword that chills such exercise.

We appreciate your thoughtful consideration of our concerns about the dangers and fundamental flaws of SB 1564, and we urge you to oppose this bill. Please contact Patrick Cacchione at 312 368-0011 if you have any questions or would like additional information.

Sincerely,

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