June 7, 2018

Councilmember Charles Allen, Chairperson
Committee on the Judiciary & Public Safety
Council of the District of Columbia

Re: Testimony of Rachel N. Busick, Esq., Staff Counsel, Americans United for Life, Against Bill 22-0571, the "Abortion Provider Non-Discrimination Amendment Act of 2017."

Chairperson Allen and Honorable Members:

Thank you for the opportunity to provide legal testimony concerning the D.C. Council's proposed Bill 22-0571, the "Abortion Provider Non-Discrimination Amendment Act of 2017." My name is Rachel Busick, and I am Staff Counsel at Americans United for Life, the oldest and most active pro-life non-profit advocacy organization. Since its founding in 1971, AUL has been active in all fifty states, as well as the District of Columbia. AUL attorneys are experts on constitutional law and abortion jurisprudence, with over 45 years of dedicated commitment to comprehensive legal protections for human life from conception to natural death, including the protection of conscience rights in health care and for health care providers.

I have thoroughly reviewed the Act, and it is my opinion that the Act violates the First Amendment, including the free exercise of religion, the freedom of speech, and the freedom of association. More specifically, the Act is unconstitutional as applied to health care providers that object to abortion based on conscience.

The Act Applies to All Religious Health Care Providers

The Act defines "health care provider" as "[a]ny person, group of persons, institution, corporation organization, or board engaged in the provision of health care in any manner, or . . . engaged in, or authorized for, credentialing or licensing of a health care professional." Act § 291(a)(2)(A)–(B). "Health care" is not defined in the Act, but the *Law Dictionary* broadly defines "health care" as: "Taking the necessary medical and preventative procedures to improve well being. It can be medical or change a lifestyle."[1] In addition, the phrase "in any manner" directly after "health care" lends itself to defining "health care," for purposes of the Act, in the broadest sense possible.

[1] *Health Care*, THE LAW DICTIONARY (2d ed. 1910), https://thelawdictionary.org/health-care/ (featuring Black's Law Dictionary).

Not only is "health care" defined broadly, but the group "health care providers" is likewise expansive. Under the Act, "health care providers" includes all health care providers without distinction. Thus, the Act would apply to everyone in the spectrum of healthcare from traditional primary health providers, including hospitals and clinics, to nonprimary care providers such as Catholic Charities and the Little Sisters of the Poor.[2] Also swept up in the definition are pro-life pregnancy centers, school nurses, religious medical schools, case workers, and mental health providers, among others.

The Act is massively overbroad in its scope and includes persons and organizations unrelated to the stated purpose of the Act—to prevent "discrimination." In doing so, it exposes that the Act's prima facie intent is to force individuals who have conscience objections to providing or facilitating abortions to condone the provision and facilitation of abortions. Such government coercion, without consideration of conscience objections is unconstitutional. By failing to exclude health care providers who have conscience objections to abortion, the Act violates the First Amendment rights of the freedom of religion, the freedom of speech, and the freedom of association.

The Act Violates the First Amendment

The freedom of conscience and the freedom of religious exercise are foundational rights protected by the First Amendment. This Act contravenes both those constitutional guarantees by stripping away the rights of health care providers to act in accordance with their sincerely held religious beliefs and moral convictions regarding abortion.

Under the Act, health care providers are prohibited from disassociating themselves from a health care professional "based on the health care professional's participation in abortion . . . procedures or based on the fact that the health care professional is willing to participate in abortion . . . procedures." Act § 291(b). If the Act passes, it would be an "unlawful discriminatory practice" for a health care provider to fail or refuse to hire, discharge, or transfer a health care professional; discriminate against a health care professional with respect to compensation or promotion, or with respect to residency training opportunities, staff privileges, admitting privileges, staff appointments, or licensure or board certification; take adverse administrative action against a health care professional; cause a loss of career specialty for a health care professional; otherwise penalize, discipline or take adverse action against a health care professional; or "prohibit public statements or manifestations of attitudes or views related to abortion . . . that are made outside the scope of employment by an individual who is employed, enrolled in a training program, has an academic appointment, or who has staff privileges with that health care provider." Act § 291(b)(1), (c).

[2] The Little Sisters of the Poor's facility in D.C. contains "40 Nursing Facility rooms" and they provide regular medical services on-site, including "physical therapy, medical, podiatry, and dental and psychiatry services." *Our Home*, LITTLE SISTERS OF THE POOR OF WASHINGTON D.C., http://littlesistersofthepoorwashingtondc.org/our-home/.

In effect, the Act would require health care providers to support, promote, and, by association, condone acts antithetical to their sincerely held religious beliefs and moral convictions. This is a blatant violation of their First Amendment rights to the free exercise of religion, the freedom of speech, and the freedom of association (and disassociation).

Under the Act, religious health care providers would be prohibited from operating according to their mission and statement of faith, being coerced by the Act's requirements to introduce ideology in opposition to both. As a result, religious health care providers would no longer be able to maintain the integrity of their mission and would be coerced by the government into being a platform for ideology that they conscientiously oppose. By forcing these providers to accept or retain individuals who directly contradict their religious beliefs and methodology of care, the Act is certain to undermine the health care providers' ability to provide care in the first place.

The Act would force health care providers who conscientiously oppose abortion to hire or retain a person who is pro-abortion. For example, the Act would require a pro-life pregnancy center, which exists to support women in crisis pregnancies and to provide counsel regarding pregnancy, to open its doors to pro-abortion health care professionals whose beliefs and actions are directly contrary to its very purpose for existence.

If the Act passes, health care providers would be required to promote and facilitate the performance of abortion. For instance, religious hospitals and medical schools would now be required to give health care professionals who facilitate or perform abortions staff privileges, admitting privileges, and staff appointments, effectively requiring these hospitals and medical schools to facilitate the performance of abortions in violation of their deeply held religious convictions. Religious hospitals and medical schools would also likely have to recognize, give credit to, subsidize, or offer training opportunities for abortion procedures, thereby giving a stamp of approval by a health care provider that is conscientiously opposed to abortion.

The Committee Should Reject the Bill

Like Congress's long history of protecting conscience, religious beliefs, and moral convictions under federal law,[3] this Committee should likewise protect the First Amendment rights of health care providers who have conscientious objection to abortion under D.C. law. Thus, we urge this Committee to **reject** Bill 22-0571. Thank you for your time.

[3] Federal law has a rich history of protecting individuals and entities with religious and conscience objections to performing, assisting, providing, providing coverage of, or referring for abortion. *See, e.g.*, 42 U.S.C. § 300a-7 et seq. (The Church Amendments); 42 U.S.C. § 238n (The Coates-Snowe Amendment); Consolidated Appropriations Act, 2017, Pub. L. 115-31, Div. H., Tit. V, § 507(d) (The Weldon Amendment).