Case No. _____

IN THE SUPREME COURT OF ILLINOIS

MORR-FITZ, INC., an Illinois corporation D/B/A **FITZGERALD PHARMACY**, Licensed and Practicing in the State of Illinois as a Pharmacy; **L. DOYLE, INC**., an Illinois corporation D/B/A **EGGLESTON PHARMACY**, Licensed and Practicing in the state of Illinois as a Pharmacy; **KOSIROG PHARMACY, INC**., an Illinois corporation D/B/A **KOSIROG REXALL PHARMACY**, Licensed and Practicing in the State of Illinois as a Pharmacy; **LUKE VANDER BLEEK**; AND **GLEN KOSIROG**,

Plaintiffs-Appellants,

v.

ROD R. BLAGOJEVICH, Governor, State of Illinois; **FERNANDO E. GRILLO**, Secretary, Illinois Department of Financial and Professional Regulation; **DANIEL E. BLUTHARDT**, Acting Director, Division of Professional Regulation; and the **STATE BOARD OF PHARMACY**, in their official capacities,

Defendants-Appellees.

On Appeal from the Appellate Court of Illinois Fourth Judicial District
and the Circuit Court for the Seventh Judicial Circuit, Sangamon County Circuit Court,
Honorable John. W. Belz, Judge Presiding

AMICUS CURIAE BRIEF OF AMERICAN ASSOCIATION OF PRO LIFE OBSTETRICIANS AND GYNECOLOGISTS, CHRISTIAN MEDICAL & DENTAL ASSOCIATIONS, CATHOLIC MEDICAL ASSOCIATION, PHYSICIANS FOR LIFE, AND NATIONAL ASSOCIATION OF PROLIFE NURSES, IN SUPPORT OF PLAINTIFFS-APPELLANTS

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INTEREST OF *AMICI CURIAE*[1]

Amici Curiae are national medical organizations with member-physicians and nurses who could be drastically affected by the outcome of this case**.** The logical extension of this case is that, if pharmacists are forced to provide prescriptions against their consciences, *Amici's* members could be forced to provide healthcare services in violation of their consciences and without judicial recourse.

Specifically, *Amicus* American Association of Pro Life Obstetricians and Gynecologists (AAPLOG) is a non-profit professional medical organization consisting of over 2,000 obstetrician-gynecologist members and associates. The American College of Obstetricians and Gynecologists (ACOG) recognizes AAPLOG as one of its largest special interest groups. AAPLOG maintains the position that physicians and healthcare professionals may refuse to perform a medical procedure for reasons of conscience, and in particular religious, ethical, or moral reasons.

Amicus Christian Medical & Dental Associations (CMDA) is a non-profit professional medical organization consisting of over 17,000 physicians, with over 600 members in the State of Illinois whose professional careers and practices would be directly impacted by any rulings in this case. After much thoughtful consideration and debate, CMDA has adopted the position that physicians may refuse to offer certain medical procedures or treatments based upon conscience, including religious, moral, or ethical beliefs. CMDA supports reasonable accommodation for the provision of prescriptions.

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[1] In accordance with Illinois Civil Appellate Court Rule 345, *Amici* have filed a Motion for Leave to File this Brief.

Amicus Catholic Medical Association (CMA) consists of as many as 4,000 physician members nationwide. CMA seeks to uphold the principles of Catholic faith and morality as related to the science and practice of medicine—including the belief that human life begins at conception. CMA also exists to lead the Christian community in the work of communicating Catholic medical ethics to the medical profession and the community-at-large.

Amicus Physicians for Life is also a national nonprofit medical organization. The organization seeks to encourage physicians to educate their patients regarding the innate value of human life at all stages of development and affirms a physician's right to refuse, on religious, moral, or ethical grounds, to perform medical procedures adverse to his or her conscience.

Amicus National Association of Prolife Nurses (NAPN) is a national nurses' organization with members in every state of the union, including Illinois. NAPN is dedicated to promoting respect for every human life from conception to natural death and to affirming that the destruction of that life, for whatever reason and by whatever means, does not meet the ideals and standards of good nursing practice.

This Court's determination as to whether the Governor's Rule infringes on the Plaintiffs' right of conscience will significantly impact *Amici's* abilities to effectively commend ethical standards to their members as guiding principles for their practices and to continue to encourage their members to adhere to their principles in their practice of medicine. This Court's determination will also impact the ability of *Amici's* members to seek judicial recourse when forced to violate their consciences.

For these reasons, *Amici* urge this Court to grant the petition for review and reverse the lower courts.

ARGUMENT

The right of conscience is a fundamental right that has been revered since the founding of our nation. Healthcare providers, including pharmacists, are granted extensive right of conscience protection under the Illinois Healthcare Right of Conscience Act, the Illinois Religious Freedom Restoration Act, and the First Amendment of the United States Constitution. However, Governor Blagojevich's Rule requiring that pharmacists dispense contraceptives—drugs which indisputably have a post-fertilization effect[2] that is objectionable to countless Americans—directly and harshly violates these protections.

I. PLAINTIFFS' RIGHT OF CONSCIENCE IS GUARANTEED UNDER STATE AND FEDERAL LAW

On April 1, 2005, Defendant Governor Blagojevich issued an Emergency Rule (Rule) requiring Division I Pharmacists to fill all legal prescriptions for contraceptives, along with the threat that any pharmacist that violated the Rule would face significant penalties. *See* 29 Ill. Reg. 5586. That Rule subsequently became permanent. *See* ILL. ADMIN. CODE tit. 68, § 1330.91.

Thereafter, the Governor made certain public statements emphasizing that the goal of the Rule is to coerce compliance by pharmacists who have religious objections to dispensing certain contraceptives. The Governor acknowledged that the Rule was

[2] *I.e.*, Emergency contraception prevents an already-fertilized egg from implanting in the uterus. *See infra* Part II.

prompted by the actions of individual pharmacists who had declined to fill contraceptive prescriptions because of religious and moral opposition to emergency contraception (EC).[3] *See Menges v. Blagojevich*, 451 F. Supp. 2d 992, 997 (C.D. Ill. 2006). In a press release issued shortly after the Rule, the Governor plainly stated that "pharmacies are not free to let [religious] beliefs stand in the way of their obligation to their customers." Governor's Press Release (Apr. 13, 2005).

In a letter issued to licensed physicians statewide on or about April 26, 2005, the Governor again affirmed that his Rule was in response to the actions of pharmacists opposed to EC and asked the physicians to report any pharmacists who refused to fill such prescriptions. *See Menges*, 451 F. Supp. 2d at 997. In a separate letter to the organization Family-Pac, the Governor again stated that his Rule was in reaction to pharmacists who disagree with certain methods of birth control, advising that if individual pharmacists refused to fill birth control prescriptions, their employers would face significant penalties. *Id.*

In March 2006, the Governor reaffirmed that the Rule is directed at pharmacists who object to dispensing certain drugs on moral grounds. *Id.* At the time, he even went so far as to announce that pharmacists who hold such moral views *should find another profession*. *Id.*

As this Court is well aware, the individual Plaintiffs object to the use of EC, will not partake in the use or effects of EC by issuing it to customers, and will not allow their businesses to be run in such a way as to comply with the use and effects of EC. Yet the Governor has made clear in his Rule and in his conduct that if the Plaintiffs continue in

[3] EC is also known as the "morning-after pill" and "Plan B," its brand name.

their refusal to provide EC to customers, they will face significant penalties. The Governor has instructed the Plaintiffs to either provide EC or forfeit their occupations.

Fortunately, the Plaintiffs have a form of judicial recourse. Both state and federal law protect the Plaintiffs from exactly this kind of invidious coercion.

A. The Right Of Conscience Is Guaranteed Under The Illinois Healthcare Right Of Conscience Act And The Illinois Religious Freedom Restoration Act.

Illinois grants comprehensive conscience protection to its citizens through both the Illinois Healthcare Right of Conscience Act and the Illinois Religious Freedom Restoration Act. These laws specifically and intentionally protect members of the healthcare profession and also provide judicial recourse to those harmed by the State in violation of these laws.

Illinois Healthcare Right of Conscience Act

Illinois maintains one of the most comprehensive right of conscience laws in the nation, protecting *all healthcare providers* in *all healthcare settings*. The Illinois Healthcare Right of Conscience Act (the Act) sets forth the clear public policy of the state: "***to respect and protect the right of conscience*** of ***all persons*** who refuse to obtain, receive or accept, or who are engaged in, the delivery of, arrangement for, or payment of health care services and medical care…." 745 ILL. COMP. STAT. 70/2. It is also the public policy of the state "***to prohibit all forms of*** discrimination, disqualification, ***coercion***, disability or imposition of liability" upon persons who refuse to act contrary to their conscience or conscientious convictions in "refusing to obtain, receive, accept, deliver, pay for, or arrange for the payment of healthcare services and medical care." *Id.*

According to the Act, no health care personnel can be held civilly or criminally liable to a person or public official for refusing to perform, assist, counsel, suggest, recommend, refer, or participate in a form of heath care service which is contrary to his or her conscience. *Id*. at 70/4. Likewise, it is unlawful for the State to discriminate against any person because of that person's conscientious refusal to receive, obtain, accept, perform, assist, counsel, suggest, recommend, refer, or participate in any way in a health care service contrary to his or her conscience. *Id*. at 70/5. Corporations which own or operate a health care facility are afforded similar protection. *Id*. at 70/9.

In other words, ***the State cannot force either an individual or a corporation to violate his or her conscience***. Furthermore, when a public or private person or entity commits "any action prohibited" under the Act, the injured person or corporation may commence a lawsuit. *Id*. at 70/12.

Under the Act, the following broad definitions apply:

- "**health care**" means "any phase of patient care," including family planning and medicine;
- "**health care personnel**" means any person "who furnishes, or assists in furnishing of, health care services;"
- "**health care facility**" means any dispensary[4] or "location wherein health care services are provided;" and
- "**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

[4] One definition of "dispensary" is "an outpatient pharmacy." TABER'S CYCLOPEDIC MEDICAL DICTIONARY 619 (20th ed. 2001).

life of its possessor parallel to that filled by God among adherents to religious faiths."

Id. at 70/3.

These definitions are further illuminated by the Illinois Pharmacy Practice Act, which provides the following broad definitions:

- "**pharmacist**" is "an individual health care professional and provider currently licensed by this State to engage in the practice of pharmacy;" and
- "**practice of pharmacy**" includes the provision of pharmaceutical care including patient counseling and providing information.

225 ILL. COMP. STAT. 85/3(d) & (k-5).

Read together, these statutes clearly indicate that "health care personnel" covers not only physicians and nurses, but a host of healthcare providers, including pharmacists; likewise, a pharmacy is encompassed within the meaning of "health care facility." As such, Plaintiffs are protected by the Illinois Healthcare Right of Conscience Act and cannot be coerced by the State into choosing between their livelihood and their religious and ethical convictions.

Under the language of the Act itself, the Plaintiffs are afforded legal recourse when the State commits "any action" prohibited under the Act. Plaintiffs are not restricted to using the Act defensively. If that were the case, then the State could do exactly what the law forbids—force citizens to choose between their livelihood and their consciences—merely by threatening to punish them for failing to comply. Such coercion would go unchallenged unless and until an individual decided to risk losing his or her career. Yet it is exactly that kind of forbidden coercion at work in the Governor's Rule,

placing it in direct violation of Illinois' Healthcare Right of Conscience Act. As such, Plaintiffs have judicial recourse provided under the Act, and the Rule should be struck down under the Act's provisions.

Illinois Religious Freedom Restoration Act

After the United States Supreme Court issued its decision in *Employment Division v. Smith, see infra* Part I.B., the Illinois General Assembly reacted by passing the Illinois Religious Freedom Restoration Act (RFRA). The General Assembly made the following findings:

- The free exercise of religion is an inherent, fundamental, and inalienable right secured by *Article I, Section 3 of the Constitution of the State of Illinois*;
- Laws "neutral" toward religion, as well as laws intended to interfere with the exercise of religion, may burden the exercise of religion;
- Government should not substantially burden the exercise of religion without compelling justification.

775 ILL. COMP. STAT. 35/10(a)(1), (2), (3) (emphasis in the original). The purpose of RFRA was to restore the compelling interest test utilized in free exercise claims before the Supreme Court issued its decision in *Smith*, and "*to provide a claim or defense* to persons whose exercise of religion is substantially burdened by government." *Id*. at 35/10(b) (emphasis added).

Specifically, RFRA provides that "Government may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of

furthering that compelling governmental interest." *Id*. at 35/15. "Exercise of religion" is defined as "an act or refusal to act that is substantially motivated by religious belief." *Id*. at 35/5.

The Plaintiffs' refusal to provide EC is motivated by religious belief, bringing that refusal to act under the ambit of RFRA—and the compelling interest test. While the State's motivation here may be to ensure healthcare services to women, the Rule fails to satisfy the compelling interest test because it is not narrowly tailored to meet that goal. In fact, the Rule is not tailored in any way to meet that goal. The Rule only applies to Division I Pharmacies, and it does not apply to hospitals or emergency rooms—arguably the locations most likely to receive requests for EC. This failure to even come close to reaching the alleged goal, coupled with the Governor's own statements acknowledging his distaste for pharmacists and pharmacies such as the Plaintiffs, demonstrates that the purpose of this Rule was not to provide healthcare to women, but to target pharmacists with worldviews contrary to the Governor's.

As such, the Plaintiffs are provided judicial relief under Section 20 of RFRA: "If a person's exercise of religion has been burdened in violation of this Act, that person may assert that violation as a claim or defense in a judicial proceeding." *Id*. at 35/20. This section provides not only a defense against government action, but also an affirmative right to bring an action in court to seek protection. Because the Plaintiffs' exercise of religion has been burdened by a rule coercing them to either submit or be penalized for following their conscience, the Plaintiffs are due their day in court, and this Rule should be struck down on the basis that it is not narrowly tailored to achieve its imaginary goal.

B. The Right Of Conscience Is A Historic Right Steeped In The Tradition Of The United States And Its Constitution.

The First Amendment promises that Congress shall make no law prohibiting the free exercise of religion. U.S. CONST. amend. I. At the very root of that promise is the guarantee that the government cannot force a person to commit an act in violation of his or her religion.[5] As Thomas Jefferson wrote, "*[n]o provision in our Constitution ought to be dearer to man than that which protects the rights of conscience* against the enterprises of civil authority." Thomas Jefferson to New London Methodists (1809). Jefferson also stated,

> The rights of conscience we never submitted [to rulers], we could not submit. We are answerable for them to our God. The legitimate powers of government extend to such acts only as are injurious to others.

Thomas Jefferson, *Notes on Virginia* (1785).

Likewise, James Madison stated,

> The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate…. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him.

James Madison, *Memorial and Remonstrance Against Religious Assessments* ¶ 15 (reprinted in *Everson v. Bd. of Ed*., 330 U.S. 1, 64 (Rutledge, J., dissenting)).

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[5] *See generally* McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 HARV. L. REV. 1409 (1990).

Indeed, it cannot be disputed that the right of conscience lies at the very core of the nation. Over the years, the United States Supreme Court has shaped free exercise jurisprudence. That jurisprudence can be summarized as follows.

A state law designed to discriminate against an individual because of his or her religious beliefs and practices is subject to strict scrutiny. Thus, the state must show that the law serves a compelling interest and is narrowly tailored to meet that interest. When a law is religiously neutral and of general applicability, it is not subject to strict scrutiny, even if it affects an individual's religious beliefs or practices. *See Employment Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872 (1990). However,

> [o]fficial action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality. The Free Exercise Clause protects against government hostility which is masked, as well as overt. "The Court must survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders."

Church of Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 534 (1993) (quoting *Walz v. Tax Comm'n of New York City*, 397 U.S. 664, 696 (1970) (Harlan, J., concurring)).

Thus, there is a two-part process under federal law. First, a court must initially look at the face of a rule. *See Menges*, 451 F. Supp. 2d at 999. Second, if the rule is

facially neutral, the court must go beyond the face of the rule to determine the true object of the rule. *Id*. at 1000.[6]

There is no reference to religion in the Rule, thereby taking it over the first free exercise hurdle. The second hurdle poses a significant problem for the Governor, however. First, his statements described above demonstrate that the intent of the Rule was to force individuals who have religious objections to contraceptives to violate their consciences or leave the practice of pharmacy.

Second, the fact that the Rule does not cover hospitals and emergency rooms demonstrates that the object of the Rule was not to make EC more readily available, but to specifically target pharmacists objecting to EC.

Third, there is a blatant lack of consistency in the Rule which also indicates its coercive intent. For example, the Defendants allege that in order to avoid punishment, pharmacies can elect not to carry any form of contraceptives. But this alleged option under the Rule would serve to decrease the availability of contraceptives, not increase it. Moreover, the Rule allows for a delay if a pharmacy does not keep EC in stock; but that same delay is not allowed when a pharmacist on duty simply cannot fill a prescription for reasons of conscience.

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[6] In denying a motion to dismiss in a separate but related lawsuit in the Central District of Illinois, that court concluded that the plaintiffs alleged facts which would demonstrate that the Governor's Rule violates the free exercise of Illinois pharmacists. *See generally Menges*, 451 F. Supp. 2d 992.

Fourth, the Rule is not truly generally applicable. It does not apply to hospitals or emergency rooms. It also allows Division I pharmacists to refuse to dispense EC for reasons other than conscience.

Each of these facts demonstrates that the Rule was promulgated to target religious conduct for distinctive treatment. *See Church of Lukumi Babalu Aye,* 508 U.S. at 534. As such, it is subject to strict scrutiny. Because the alleged purpose for the Rule was to guarantee access to EC, and because the Rule only addresses Division I pharmacies and leaves out a host of other sources, it is not narrowly tailored and must be struck as a violation of the Plaintiffs' free exercise rights.

II. THE POTENTIAL POST-FERTILIZATION EFFECT OF EMERGENCY CONTRACEPTION IS OBJECTIONABLE TO A LARGE NUMBER OF HEALTHCARE PROVIDERS AND PROVIDES GROUND FOR THE RIGHT TO REFUSE ITS PROVISION

The Defendants and other proponents of the widespread use of emergency contraception take great strides to downplay the effects of EC and its implications on the beliefs of a large number of the nation's citizens. Such proponents paint a picture that individuals opposed to EC are a radical minority and are out of touch with the true nature of EC, claiming that EC does not terminate pregnancy, but "prevents" pregnancy.

Yet the very explanation by the Food and Drug Administration (FDA) demonstrates that the Plaintiffs are not exaggerating the effects of EC:

> Plan B works like other birth control pills to prevent pregnancy. Plan B acts primarily by stopping the release of an egg from the ovary (ovulation). It may prevent the union of sperm and egg (fertilization). ***If fertilization does occur, Plan B may prevent a fertilized egg from attaching to the womb (implantation).***

FDA, *FDA's Decision Regarding Plan B: Questions and Answers* (updated Aug. 24, 2006) (emphasis added).[7]

The same explanation is provided in the Plan B label, authored by the drug company itself, detailing to consumers that EC either 1) stops the release of the egg from the ovary; 2) prevents fertilization of an egg; or 3) prevents "it"[8] [a fertilized egg] from attaching to the uterus. Barr Pharmaceuticals, Inc., *How Plan B Works* (2007).[9]

What all of this really comes down to is the definition of pregnancy, and whether an individual views pregnancy as beginning at fertilization (conception) or after implantation. For example, the American College of Obstetricians and Gynecologists defines pregnancy as beginning when a fertilized egg is implanted in the lining of the uterus. Yet this is a clear distortion of traditional embryologic teaching. The *Langman's Medical Embryology* medical textbook defines pregnancy as beginning at fertilization of the egg by the sperm; *Stedman's Medical Dictionary* defines pregnancy as the period of development "from conception until birth." O'Brian & Sadler, *Langman's Medical*

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[7] *Available at* http://www.fda.gov/cder/drug/infopage/planB/planBQandA.htm (last visited May 16, 2007).

[8] When describing the first two mechanisms of action, the drug label is specific in labeling the egg, ovary, etc. Yet when detailing the fertilized egg, the label simply refers to the fertilized egg as "it" rather than forthrightly explaining that the label is discussing a *fertilized* egg that will be prevented from implanting. In other words, the label downplays that *conception has occurred*.

[9] *Available at* http://www.go2planb.com/ForConsumers/AboutPlanB/HowItWorks.aspx (last visited May 16, 2007).

Embryology 117 (Lippincott et al., eds. 2004); *Stedman's Medical Dictionary* (Houghton Mifflin Co. 2002).

What is important here, however, is that the *Plaintiffs' religious beliefs* hold that the life of a human being begins at conception—not implantation—and they cannot dispense EC because the drug may prevent an already-fertilized egg from implanting in the uterus. And Plaintiffs are not alone in their beliefs. Being complicit in causing this post-fertilization effect is morally objectionable for many. For example, the Catholic Church—which in 2006 was comprised of 69.1 million Americans, or 23 percent of the U.S. population[10]—teaches that the life of each human being begins at the moment of conception. *Catechism of the Catholic Church* ¶ 2322 (2d ed. 1997). Numerous Protestant denominations as well as other religions echo this belief.

Furthermore, national medical organizations support healthcare providers' freedom to abide by their consciences, including their religious and moral beliefs. Most relevant here, the American Pharmaceutical Association (APhA) states in its *Code of Ethics* that pharmacists should avoid any behavior that compromises their "dedication to the best interests of the patients," but also holds that *pharmacists have a duty to "act with*

[10] Catholic Information Project, *The Catholic Church in America: Meeting Real Needs in Your Neighborhood* 3 (USCCB 2006), *available at* http://www.usccb.org/comm/2006CIPFinal.pdf (last visited May 16, 2007).

conviction of conscience." APhA, *Code of Ethics for Pharmacists* (adopted 1994) (emphasis added).[11] In its *Pharmacist Conscience Clause,* APhA states:

> 1. APhA recognizes the individual pharmacist's right to exercise conscientious refusal and supports the establishment of systems to ensure patient's access to legally prescribed therapy without compromising the pharmacist's right of conscientious refusal.
> 2. APhA shall appoint a council on an as needed basis to serve as a resource for the profession in addressing and understanding ethical issues.

APhA, *Pharmacist Conscience Clause*, in *2004 Action of the APhA House of Delegates* 6 (2004).[12]

Likewise, the policy of the American Society of Health-System Pharmacists (ASHP) recognizes "the right of pharmacists … to decline to participate in therapies they

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[11] *Available at* http://www.aphanet.org/AM/Template.cfm?Section=About_APhA&CONTENTID=2654&TEMPLATE=/CM/HTMLDisplay.cfm (last visited May 16, 2007).

[12] *Available at* http://www.aphanet.org/AM/Template.cfm?Section=About_APhA&Template=/CM/ContentDisplay.cfm&ContentID=2472 (last visited May 16, 2007).

consider to be morally, religiously, or ethically troubling." ASHP, *Pharmacist's Right of Conscience and Patient's Right of Access to Therapy*.[13]

Analogously, leading professional physicians' organizations have consistently held that physicians should be free to determine which procedures they will perform, in what type of practice they will engage, and what patients they will serve. The American Medical Association (AMA) provides that, with the exception of medical emergencies, a physician shall "be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care." AMA, *Principles of Medical Ethics* (adopted 2001, updated 2006).[14]

In E-9.06 of the AMA's *Code of Medical Ethics* (Code), the AMA provides that every individual has "free choice" of which physician to use. However, "[i]n choosing to subscribe to a health maintenance organization or in choosing or accepting treatment in a particular hospital, the patient is thereby accepting limitations upon free choice of medical services." *See* AMA, *Code of Medical Ethics* (2005).[15] Similarly, a patient has free choice in selecting a pharmacy, but that patient is accepting the limitations that come along with that particular pharmacy.

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[13] *Available at* http://www.ashp.org/s_ashp/bin.asp?CID=6&DID=4011&DOC=FILE.PDF (last visited May 16, 2007).

[14] *Available at* http://www.ama-assn.org/ama/pub/category/2512.html (last visited May 16, 2007).

[15] *Available at*: http://www.ama-assn.org/apps/pf_new/pf_online (last visited May 16, 2007).

E-9.06 continues by stating, "[a]lthough the concept of free choice assures that an individual can generally choose a physician, *likewise a physician may decline to accept that individual as a patient*." *Id*. (emphasis added). Thus, the Code is replete with guidelines allowing physicians to refuse to treat certain persons. E.906 even takes into account differences in insurance coverage, stating, "[i]n selecting the physician of choice, the patient may sometimes be obliged to pay for medical services which might otherwise be paid by a third party." *Id*. Thus, the AMA places the responsibility of choosing the appropriate healthcare provider on the patient's shoulders, regardless of the financial obstacles for the patient.

In the World Medical Association's (WMA) *Statement on Professional Responsibility for Standards of Medical Care*, the organization recognizes that a "physician should be free to make clinical and *ethical judgements* [sic] *without* inappropriate *outside interference*." WMA, *Statement on Professional Responsibility for Standards of Medical Care* (2006) (emphasis added).[16] Likewise, pharmacists should be free to make ethical decisions for their practice without inappropriate interference from outside the medical profession. WMA's statement goes on to affirm that "[p]rofessional autonomy and the duty to engage in vigilant self-regulation are essential requirements for high quality care" which benefit patients. *Id*.

In summary, EC undisputedly possesses a post-fertilization effect that is objectionable to a large number of healthcare providers nationwide. To require that the Plaintiffs provide EC clearly conflicts with their sincerely held religious beliefs that preventing a fertilized egg from implanting is terminating a human life. And not only

[16] *Available at*: http://www.wma.net/e/policy/m8.htm (last visited May 16, 2007).

does the Rule conflict with the conscience of the Plaintiffs, but it also conflicts with the conscience provisions of both pharmaceutical and physicians' organizations alike.

CONCLUSION

Under the guise of protecting consumers, Governor Blagojevich issued a Rule which, as demonstrated above, unilaterally violated the Illinois Healthcare Right of Conscience Act, the Illinois Religious Freedom Restoration Act, and the free exercise guarantees of both the State and U.S. Constitutions. No medical professional is safe from the reach of the Governor's Rule, because the Governor has demonstrated that his rules preempt established State law. As such, the Governor's actions have stripped the Illinois General Assembly of its power to promulgate such laws.

As demonstrated, the Plaintiffs have standing under both state and federal law to challenge the Rule. For these reasons, this Court should grant the Plaintiffs' petition and reverse the lower courts.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding an appendix, is 19 pages.

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2007, I served three (3) paper copies of the foregoing *Amicus Curiae* Brief to counsel listed below by depositing said copies in U.S.P.S. first-class mail, postage paid.

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