IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES, et al.,	)	
Plaintiffs,	)	
v.	)	
	)	No. 16 CV 50310
BRUCE RAUNER and BRYAN A. SCHNEIDER,	)	Judge Frederick J. Kapala
	)	Magistrate Judge Ian D. Johnston
Defendants.	)	

Noel W. Sterett, Bar No. 6292008
John W. Mauck
Mauck & Baker, LLC
1 N. LaSalle, Suite 600
Chicago, IL 60602
(312) 726-1243
(866) 619-8661 (fax)
nsterett@mauckbaker.com
jmauck@mauckbaker.com

Kevin H. Theriot*
Elissa M. Graves*
Steven H. Aden*
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260
480.444.0020
480.444.0028 (fax)
ktheriot@ADFlegal.org
egraves@ADFlegal.org
saden@ADFlegal.org

Anne O'Connor**
National Institute of Family and Life Advocates
5601 Southpoint Centre Blvd.
Fredericksburg, VA 22407
(540) 372-3930
AOConnor@nifla.org

Counsel for Plaintiffs

TABLE OF CONTENTS

TABLE OF AUTHORITIES

***Cases*:**

Federal Statutes

***State Statutes*:**

Other Authorities:

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs hereby submit this reply memorandum in support of their Motion for Preliminary Injunction. SB 1564 impermissibly targets pro-life medical professionals and facilities, requiring them to promote abortion by discussing the "benefits" of abortion with patients, and to provide women a list of doctors that may perform them. Defendants admit that SB 1564 singles out conscientious objectors for regulation. The State attempts to justify this egregious targeting of religious beliefs by arguing that all medical professionals are already subject to the SB 1564, but presents no legal evidence supporting this argument. SB 1564's regulation of protected speech violates the Free Speech Clause of the First Amendment where it forces Plaintiffs to speak a particular content-based message and impermissibly targets conscientious objectors on the basis of their viewpoint. SB 1564 additionally violates the Free Exercise Clause of the First Amendment, because it is neither neutral toward religion nor generally applicable. SB 1564 cannot survive constitutional scrutiny because compelling Plaintiffs to provide SB 1564's information is completely unnecessary. A state court has already issued an injunction against SB 1564 on the basis that the plaintiffs there demonstrated a likelihood of success on the merits of their free speech claim under the Illinois Constitution, protecting parties substantially similar to Plaintiffs. *See Pregnancy Care Center of Rockford v. Rauner*, No. 2016-MR-741, Mem. Op. and Order (Ill. 17th Judicial District, Winnebago County Dec. 20, 2016).

I. SB 1564 VIOLATES THE RIGHT TO FREE SPEECH PROTECTED BY THE FIRST AMENDMENT.

a. SB 1564 is subject to strict scrutiny because it is a content- and viewpoint-based restriction.

SB 1564 is subject to strict scrutiny because it is content and viewpoint discriminatory. *See Reed v. Town of Gilbert,* 135 S. Ct. 2218, 2228 (2015); *McCullen v. Coakley,* 134 S. Ct. 2518,

2530 (2014). A compelled speech law such as SB 1564 is "content-based," because "[m]andating speech that a speaker would not otherwise make necessarily alters the content of the speech." *Riley v. Nat'l Federation of the Blind*, 487 U.S. 781, 795 (1988) SB 1564 is subject to strict scrutiny because it forces Plaintiffs to give information about doctors who may offer abortions and to speak about abortion, including its benefits as a treatment option.

Moreover, SB 1564 is a law disfavoring Plaintiffs' viewpoint, and therefore impermissibly viewpoint-based. "The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Rosenberger v. Rector & Visitors of Univ. of Va*. 515 U.S. 819, 829 (1995). SB 1564 does not apply to all medical providers or all those that do not provide abortions: it singles out conscientious objectors and only applies its compelled speech requirement in the context of "conscience-based refusals." V.C. Exh. A. The law is an explicit attack grounded on one's conscientious belief, and punishes those who assert those beliefs. Therefore, it is viewpoint based, and unconstitutional *per se*. *See Hurley v. Irish-Am. Gay, Lesbian, & Bisexual Grp. of Boston*, 515 U.S. 557, 579 (1995) ("The Speech Clause has no more certain antithesis" than to "interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government."). On its face, the law only compels the speech of medical professionals "if conscience-based refusals occur," and in no other situations. V.C. Exh. A. By definition, the law is triggered by the perspective of the speaker, who must recite particular disclosures that are not mandated for others who hold different views. This is impermissible viewpoint discrimination under *Rosenberger*.

Defendants argue that SB 1564 is not viewpoint based because it "was amended to ensure that providers with a conscientious objection to providing certain treatments nevertheless provide

their patients with sufficient information to make an informed decision about their health." Ds. Opp. at 3. But this only confirms the viewpoint-based nature of SB 1564: Defendants admit that it applies only to conscientious objectors. It is therefore explicitly based on the viewpoint and perspective of the speaker, and constitutes viewpoint discrimination. SB 1564 is accordingly subject to strict scrutiny.

b. The State's argument that the standard of care already required SB 1564's compelled disclosures is simply incorrect.

The State's primary argument that SB 1564 survives constitutional scrutiny is that it is not a new regulation, but that pro-life medical facilities and personnel have always been required to hand out contact information for abortion providers. This is incorrect. No law until SB 1564 imposed such a requirement—this was the reason SB 1564 was enacted. Most notably, the State and the amici briefs filed in its support fail to cite a single legal case or licensing proceeding where a pro-life physician or facility was found to be in violation of a standard of care for not distributing abortion providers' contact information or otherwise speaking about abortion's benefits and options. No such case exists, either in Illinois or anywhere in the country, because the State is wrong about the standard.

For decades federal and state laws have recognized that medical facilities and personnel cannot be forced to promote abortion. Of course, abortion was itself illegal nationwide 50 years ago. Originally, the American Medical Association opposed abortion. *Roe v. Wade*, while mandating legal abortion throughout the country, says that the physician is "free to determine" whether to have any involvement in abortion, 410 U.S. 113, 163 (1973), and the court favorably cites an American Medical Association policy declaring no personnel or facility can be required to violate their "personally-held moral principles." *Id*. at 143 n.38. Shortly after *Roe*, nearly every state enacted a law prohibiting a requirement that doctors provide information assisting abortion.

See Congressional Research Service, "The History and Effect of Abortion Conscience Clause Laws," (Jan. 14, 2005), http://www.law.umaryland.edu/marshall/crsreports/crsdocuments/RS2142801142005.pdf.

Illinois was no exception, enacting its conscience law in October 1973, declaring that no health personnel can be required to "recommend" abortion. 745 ILCS 30/1. Until SB 1564, the Conscience Act prohibited requiring health personnel to "counsel, suggest, recommend, refer or participate in any way in any particular form of health care." 745 ILCS 70/4. Under existing federal law, SB 1564 actually violates the conditions of the State's federal funding. *See* 42 U.S.C. § 238n (banning a state from requiring a "health care entity" to "provide referrals" or "make arrangements" for referrals for abortion); 42 U.S.C. § 300a-7 (protecting, inter alia, personnel's "reluctance … to counsel, suggest, recommend…the performance of abortion or sterilizations"). SB 1564's Fiscal Note admits this, saying that "[t]he requirement in SB 1564 that the provider refer individuals to other providers who perform the procedure, especially if abortion or sterilization, violates the Church amendment [§ 300a-7]."

The State urges the Court to not only override this longstanding network of conscience laws, but to suppose that it never existed. The State has no legal source for this alleged universal standard of care. Its only sources are various private medical organizations stating their opinions. And two amicus briefs stating the opinions of additional medical organizations were submitted in support of the State, both of which were unable to cite to any legal authority that the State of Illinois has ever required abortion referrals or information by conscientious objectors as part of the standard of care. *See* Br. Amici Curiae American College of Obstetricians and Gynecologists, et al., ECF No. 46 (filed Mar. 24, 2017); Br. Amici Curiae Physicians for Reproductive Health, ECF No. 39-1 (filed Mar. 23, 2017). The standards cited by the State and amici are neither pertinent to

the present case nor do they eliminate the legal right not to provide SB 1564's required information.

The guidelines that the State cites (Ds.' Opp. at 6–7, n. 2–6) are all generic: declaring physicians should generally inform patients of risks and benefits, but not declaring they must hand out contact information for abortion providers, and leaving it to the physician's own judgment what counts as a "benefit" of abortion, or whether aborting an unborn child is a legitimate treatment option in the first place. To the extent that some of these organizations have more recently declared that medical professionals must refer for practices they oppose (Ds.' Opp. at 8, n. 7), those statements violate the above-cited panoply of state and federal laws that protect health care professionals from needing to refer for, recommend, or suggest abortion.

As mentioned above, even after the American Medical Association changed its position to favor abortion, it declared at the time of *Roe* that no medical facility or personnel should be required to do anything with respect to abortion that violates their "personally held moral principles," and affirmed their right to "withdraw from the case." 410 U.S. at 143 n.38. Later AMA positions maintained the right of physicians not to promote abortion. The fact that private organizations are subject to political changes is partly why courts often reject their alleged standards of care favoring abortion. For example, the American Nurses Association submitted a letter in the congressional record opposing the federal partial birth abortion ban, and their submission was cited in multiple amicus briefs urging the Supreme Court to strike it down. But the Supreme Court upheld the ban in *Gonzales v. Carhart*, 550 U.S. 124 (2007), notwithstanding the ANA's position that partial birth abortion was an important aspect of women's access to healthcare.

The fact that some private medical organizations have adopted recent positions in favor of abortion and against conscience rights does not make it an ethical requirement or the standard of care for pro-life medical facilities and personnel. This is a matter of religious and ethical disagreement on the most important and sensitive matters in society—disagreements that the Constitution was written to protect. As the Arizona Court of Appeals declared in rejecting a challenge to a pro-life conscience law, "a woman's right to an abortion or to contraception does not compel a private person or entity to facilitate either." *Planned Parenthood Arizona, Inc. v. Am. Ass'n of Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 277 (Ct. App. 2011).

c. SB 1564 cannot survive strict scrutiny.

i. SB 1564 does not serve any compelling government interest.

In order to satisfy strict scrutiny, the government must demonstrate that SB 1564 is narrowly tailored to achieve a compelling government interest. *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). It cannot meet this exacting standard.

The State does not demonstrate a compelling interest to impose SB 1564 on religious objectors, nor that doing so is the least restrictive means to solve an actual problem. The State's brief misunderstands the compelling interest test itself, which, as explained in Plaintiffs' opening brief, does not allow the recitation of broadly formulated interests like public health and maintaining the standard of care. Instead Illinois must show a compelling interest to coerce *these parties*—pro-life doctors and pro-life pregnancy centers—not that there is generally a compelling interest to support SB 1564. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006). The State does not even try to do so, because it has no evidence that there is an "actual problem" among pro-life pregnancy centers or pro-life Ob/Gyn offices.

There is literally no evidence that patients at the Plaintiff centers, or at other pro-life pregnancy centers and Ob/Gyn practices in Illinois, suffer any harm at all because the personnel there do not hand out abortion provider contact information or describe the benefits of abortion as the State views those benefits. There is no evidence that Dr. Gingrich's patients suffer any harm at all from her not handing out abortion provider contact information, identifying alleged benefits of abortion, or telling her patients one treatment option is to destroy their unborn children. There is no evidence that exempting such religious objectors would harm any compelling interest.

The State also fails to show abortion provider information is not readily available elsewhere. It must prove that the women who attend Plaintiffs' facilities are harmed, and that they suffer *because* they did not receive this information. Every such woman could easily receive this information on the internet, in a phone book, or at a library. If a woman wants abortion or birth control, she will have to go to another medical source for it, and those facilities can describe their benefits, if any.

The State's alleged compelling interests are also undermined by the fact that SB 1564 only compels provision of abortion information by medical facilities that have a conscientious objection to abortion, not to those that do not provide abortion for other non-conscientious reasons. The State's response fails to account for this discrepancy. If women who want abortions need to know where abortion providers are, they need to know regardless of *why* the doctor not performing their abortion is choosing to not perform it. But the State only forces SB 1564's disclosures on conscientious objectors, not on everyone. This undermines the compelling interest by leaving "appreciable damage to that supposedly vital interest unprohibited." *Lukumi*, 508 U.S. at 547. Indeed, in *Pregnancy Care Center of Rockford*, the court noted—in holding that SB 1564 did not even survive intermediate scrutiny— "[i]t is highly problematic that this expansion is effective

only as to conscientious objectors in particular, and not health care providers in general." No. 2016-MR-741, Mem. Op. and Order at 14 (Ill. 17th Judicial District, Winnebago County Dec. 20, 2016). There is no compelling or substantial interest for the state to discriminatorily target conscientious objectors.

ii. SB 1564 is not narrowly tailored to Illinois' alleged interests.

Defendants allege there is "no less restrictive alternative that will provide patients with the information that they need to make informed decisions about their health." Ds. Opp. at 9. The least restrictive means test demanded by strict scrutiny requires a "serious, good faith consideration of workable … alternatives that will achieve" the alleged interests. *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003). Even when the government insists it must force persons to speak, the least restrictive means test requires the government to use alternative methods such as engaging in speech itself, or prosecuting alleged harms directly instead of imposing prophylactic disclosures. *Riley*, 487 U.S. at 799–800.

The State has failed to rebut Plaintiffs' key cases. The Second Circuit struck down, using the same intermediate scrutiny the State urges here, a requirement that pro-life pregnancy centers speak a government message mentioning abortion and birth control. *Evergreen Ass'n v. City of New York*, 740 F.3d 233, 249–50 (2d Cir. 2014). The message in *Evergreen* was much smaller in scope than SB 1564: whereas in *Evergreen* the court held it unconstitutional to require a pro-life facility to simply say that they do not offer abortion or birth control, SB 1564 requires the Plaintiffs to provide specific contact information for abortion providers, speak of abortion's benefits, and recite it as a treatment option. SB 1564's mandates warrant strict scrutiny, even under *Evergreen*'s rationale, as they act as "a law that requires a speaker to advertise on behalf of the government," namely, for those abortion providers whose contact information Plaintiffs must distribute. *Id.* at

250. The State likewise fails to distinguish *Stuart v. Camnitz*, 774 F.3d 238, 246 (4th Cir. 2014), where the court struck down a requirement that doctors describe fetal facts to women about to receive abortions. The court admitted the disclosure was factual and was incident to performing surgery, but deemed it too politically charged.

Defendants attempt to distinguish these two cases by arguing SB 1564 does not "conscript private persons or entities to convey the government's message." Ds.' Opp. at 11–12. But that is exactly what SB 1564 does: it requires medical professionals to deliver a government message by mandating that medical professionals talk about the "benefits" of abortion with every pregnant patient, and to provide abortion referral information when a woman asks for further information about abortion. The government has refused to employ narrowly tailored, less restrictive alternatives to get its message out. Moreover, as discussed above, Defendants have produced no evidence that a medical professional's ethical duties have ever required the compelled speech mandated by SB 1564. SB 1564 is not narrowly tailored.

d. Lower levels of scrutiny are inapplicable.

Defendants contend that strict scrutiny does not apply because SB 1564 regulates the medical profession. Ds.' Opp. at 2–3. But content and viewpoint based restrictions on the speech of professionals are still subject to strict scrutiny.

The highest level of protection applies to speech regulations of professionals providing services for no charge and to advance public advocacy. *See In re Primus*, 436 U.S. 412 (1978) (requiring strict scrutiny, not intermediate scrutiny, to be imposed on a law burdening the speech of attorneys at the ACLU). In *In re Primus*, the Supreme Court held that regulations of attorney speech are subject to strict scrutiny where the attorney is offering services free of charge for public interest purposes. 436 U.S. at 437–38 & n. 2. The Court acknowledged that any regulation of pro

bono advocacy speech must be done with "significantly greater precision" than regulations of the speech of licensed professionals for pecuniary gain. *Id*. at 438. Likewise, *NAACP v. Button* held that "only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms." 371 U.S. 415, 438 (1963).

Additionally, in either a for-profit or non-profit context, speech by doctors to patients about controversial issues "may be entitled to 'the strongest protection our Constitution has to offer.'" *Conant v. Walters*, 309 F.3d 629, 637 (9th Cir. 2002) (citing *Fla. Bar v. Went-For-It, Inc.*, 515 U.S. 618, 634 (1995)). SB 1564 was designed to target Plaintiffs' pro-life viewpoint, and is therefore subject to strict scrutiny, even where an organization is for-profit, such as with Dr. Gingrich's private practice. *See Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011) (heightened scrutiny required when government regulates speech because it disagrees with the message in a case involving the advertising of for-profit pharmaceutical companies).

SB 1564 is not an informed consent law such as that permitted by *Planned Parenthood of Southeastern Pennsylvania. v. Casey*, 505 U.S. 833 (1992). *Casey* allowed states to require physicians to disclose certain items to women before an abortion, but only as part of the process of obtaining their informed consent, and pursuant to the state's interest in protecting unborn life. 505 U.S. at 881–83. This requirement served a particularized interest in ensuring that "relevant" information is provided to the patient so that a necessary step—informed consent for a surgical procedure—is actually obtained. *Id*. The State claims that it can require doctors to recite information regardless of whether doing so is incident to surgery. This, however, was not the holding of *Casey*, 505 U.S. at, 881–83, where the Supreme Court was careful not to give the government free reign to use doctors as sock puppets to recite all State messages. *Casey* did not give states *carte blanche* authority to force doctors to recite information regarding abortion outside

the context of obtaining informed consent before a woman undergoes a surgical abortion. SB 1564 requires the disclosure in a situation where the recommendation is not to have a medical procedure. The information that the SB 1564 requires has nothing to do with informed consent in the context of a surgical procedure like an abortion, which the centers do not perform, and nothing to do with nonsurgical medical procedures that a licensed center might actually perform, such as an ultrasound. Instead, it imposes its requirements regardless if any treatment or procedure is actually performed or discussed. It is not subject to a lower standard of scrutiny as an informed consent law.

II. SB 1564 violates the Free Exercise Clause of the First Amendment.

SB 1564 violates the Free Exercise Clause of the First Amendment because it is neither neutral toward religion nor is it generally applicable. "At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Lukumi*, 508 U.S. at 532. *Smith* established that burdens on religiously-motivated conduct are subject to strict scrutiny under the Free Exercise Clause when a regulation lacks neutrality or general applicability. *Emp. Div. Dep't of Hum. Resources of Or. v. Smith*, 494 U.S. 872, 879 (1990); *see also Lukumi*, 508 U.S. at 531 (same). Both are missing here. "If the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral." *Lukumi*, 508 U.S. at 532. Furthermore, laws that are "underinclusive" to a government's asserted interests are not generally applicable. *See id.* at 543.

a. SB 1564 burdens Plaintiffs' religious exercise.

SB 1564 unquestionably implicates Plaintiffs' religious exercise, and clearly discriminates against religious objectors to providing abortion services, because such religious conduct "is

undertaken for religious reasons." *See Lukumi*, 508 U.S. at 532. SB 1564 requires conscientious objectors like Plaintiffs to adopt written protocols, which "must" include provisions by which Plaintiffs and their medical staff "shall" tell women of the abortion's "benefits" and that it is a "treatment option" for pregnancy, and then they must either provide abortion or inform women of providers they reasonably believe may offer her an abortion. V.C. Exh A. But Plaintiffs have deep religious objections to doing so.

It is axiomatic that the government may not condition a benefit on the relinquishment of protected rights. *See Sherbert v. Verner*, 374 U.S. 398, 404 (1963) (Requiring one to "choose between following the precepts of [their] religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of [their] religion in order to accept work, on the other hand" is a burden on religious exercise.). "[T]he imposition of . . . a condition upon even a gratuitous benefit inevitably deter[s] or discourage[s] the exercise of First Amendment rights of expression and thereby threaten[s] to produce a result which the State could not command directly." *Id*. at 405–06. "[T]o condition the availability of benefits upon [one's] willingness to violate a cardinal principle of her religious faith effectively penalizes the free exercise of her constitutional liberties." *Id*. at 406. SB 1564 conditions an important benefit—the ability to refuse to refer for or perform abortion—on the relinquishment of constitutional rights by requiring a conscientious objector to provide information about the "benefits" of abortion and to provide abortion referral information. This unquestionably burdens the religious beliefs of Plaintiffs.

The penalties for violating SB 1564 are immense. The IDFPR has broad authority to not only revoke the licenses of Plaintiffs' doctors and nurses, but to fine those professionals $10,000 per offense. 225 ILCS 60/22; 225 ILCS 65/70-5(a). These medical professionals could risk their

entire career if they refuse to relinquish their constitutionally protected rights. SB 1564 therefore unquestionably burdens Plaintiffs' religious beliefs.

b. SB 1564 is neither neutral nor generally applicable.

Defendants allege that SB 1564 is neutral because its purpose "is to protect patients, not to infringe on the Plaintiffs' religious beliefs or practices," but they admit it "only applies to medical providers with conscientious objections to providing medical services." Ds.' Opp. at 14. SB 1564 defines "conscience" in explicitly religious terms: "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 life of its possessor parallel to that filled by God among adherents to religious faiths." V.C. Exh. A. Under *Lukumi*, "if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral." 508 U.S. at 533. SB 1564 is clearly targeted only at religious exercise because it applies only to conscientious objectors. However, SB 1564 does not apply to medical professionals who object to providing or referring for abortion for any other reason. For example, a doctor could simply refuse to refer for abortion due to the possible liability for medical malpractice claims against her if the abortion doctor harms a referred patient. This doctor would not be subject to SB 1564, but a doctor who refuses to refer for a conscience-based reason would be forced to speak SB 1564's compelled messages. SB 1564 therefore "devalues religious reasons" for acting, and is not neutral. *See Lukumi*, 508 U.S. at 537.

Likewise, SB 1564 is not generally applicable. SB 1564 applies only to conscientious objectors, and not to medical professionals at large. SB 1564 does not apply to all medical providers or all those that do not provide abortions, but only imposes its compelled speech requirement on health care professionals and organizations in the context of "conscience-based refusals." V.C. Exh. A. SB 1564 only imposes its requirements on medical providers who do not

do abortions because of their conscience. If they do not do abortions for any other reason, SB 1564 does not apply. Defendants again claim that "all medical providers are required to adhere to the same standards," and that the law is therefore generally applicable. Ds.' Opp. at 14. But that would make the law completely unnecessary. Moreover, as discussed above, neither Defendants nor amici in support of Defendants have introduced any legal evidence to support this contention. SB 1564 is not generally applicable. Because SB 1564 is neither neutral nor generally applicable, it is subject to strict scrutiny. As discussed above, SB 1564 cannot meet strict scrutiny, and is therefore invalid under the Free Exercise Clause.

III. PLAINTIFFS HAVE DEMONSTRATED THE REMAINING PRELIMINARY INJUNCTION FACTORS.

Plaintiffs will suffer irreparable harm absent an injunction, and traditional legal remedies cannot cure such harm. The Seventh Circuit has unequivocally held that "[t]he loss of First Amendment freedoms is presumed to constitute an irreparable injury for which money damages are not adequate, and injunctions protecting First Amendment freedoms are always in the public interest." *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006) (internal citations omitted). "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Because the law is currently in effect and pressuring Plaintiffs to engage in government-mandated speech, in violation of their First Amendment right to freedom of speech, as well as their rights under the Free Exercise Clause of the First Amendment, damages are an inadequate remedy for the violation of constitutional rights. *See Walker*, 453 F.3d at 859.

Furthermore, the balance of hardships sharply favors the Plaintiffs. Plaintiffs' and other like-minded citizens' hardships if the injunction is not granted far outweigh the State's if the injunction is granted. The State is requiring Plaintiffs to "engage in conduct that seriously violates

their religious beliefs" or comply with draconian penalties. *See Burwell v. Hobby Lobby*, 134 S. Ct. 2751, 2775 (2014). Plaintiffs will unquestionably be harmed if SB 1564 is enforced against them. The public will not be harmed by enjoining SB 1564 because the contact information for abortion providers is readily available in many places, for example on the internet or in phone books. Doctors who provide those services can then describe their benefits, and women who want the services will have to speak with those doctors anyway.

The lack of harm to the public or the State from an injunction is especially apparent in light of the State's proposal that the medical standard of care *already* requires pro-life doctors, nurses, and medical facilities to distribute contact information for abortion providers and SB 1564's other abortion information. Plaintiffs disagree with this interpretation of the standard of care, as discussed above. But it is not possible for Illinois to contend that enjoining SB 1564 for pro-life doctors and facilities will injure the public, but that all this information has already been required by the existing standard of care. If the State is right, SB 1564 is not needed and can be enjoined with no substantive ill effects.

Finally, an injunction serves the public interest. "[F]ree speech 'serves significant societal interests' …. By protecting those who wish to enter the marketplace of ideas from government attack, the First Amendment protects the public's interest in receiving information." *Pac. Gas & Elec. Co. v. Public Util. Comm'n of Cal.*, 475 U.S. 1, 8 (1986). Plaintiffs are therefore entitled to a preliminary injunction.

CONCLUSION

For all of the reasons offered above, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion for Preliminary Injunction.

Respectfully submitted this 12th day of June, 2017,

/s/ Elissa M. Graves
Elissa M. Graves*
Kevin H. Theriot*
Steven H. Aden*
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260
480.444.0020
480.444.0028 (fax)
ktheriot@ADFlegal.org
egraves@ADFlegal.org
saden@ADFlegal.org

Noel W. Sterett, Bar No. 6292008
John W. Mauck
Mauck & Baker, LLC
1 N. LaSalle, Suite 600
Chicago, IL 60602
(312) 726-1243
(866) 619-8661 (fax)
nsterett@mauckbaker.com
jmauck@mauckbaker.com

Anne O'Connor**
National Institute of Family and Life Advocates
5601 Southpoint Centre Blvd.
Fredericksburg, VA 22407
(540) 372-3930
AOConnor@nifla.org

Counsel for Plaintiffs

***** Admitted *pro hac vice*
** Motion for *pro hac vice* forthcoming

THIS DOCUMENT HAS BEEN ELECTRONICALLY FILED

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2017, I electronically filed the foregoing paper with the Clerk of Court for the by using the ECF system which will send notification of such filing to the following:

Lisa Madigan
Attorney General of Illinois
Sarah H. Newman
Michael T. Dierkes
Assistant Attorneys General
General Law Bureau
100 W. Randolph St., 13th Fl.
Chicago, Illinois 60601
312-814-6131/312-814-3672
lmadigan@atg.state.il.us
snewman@atg.state.il.us
mdierkes@atg.state.il.us

/s/ Elissa M. Graves

Elissa M. Graves*
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260
480.444.0020
480.444.0028 (fax)
egraves@ADFlegal.org