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February 10, 2023

Chair of the Assembly Judiciary Committee
Assemblymember Brian Maienschein
Assembly Judiciary Committee
1020 N Street, Room 104
Sacramento, CA 95814

Re: Letter in Opposition to AB 315, a bill targeting pro-life advertising

Dear Chair and Members of the Assembly Judiciary Committee,

On behalf of the Right to Life League and our supporters, we urge you to reject AB 315. It is yet another unconstitutional attempt by the state to impermissibly regulate pro-life professional speech.

The bill purports to prevent an entity performing a “pregnancy-related service” from using false or misleading statements “related to the person’s provision, or lack of provision, of abortion.”

AB 315 will add Section 847.5 to the Penal Code to read:

***SECTION 1.** Article 10 (commencing with Section 17620) is added to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, to read:*

Article 10. Abortion

***17620.** For purposes of this article:*

- (a) “Abortion” means a medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.*
- (b) “Advertise” means to offer or provide goods or services to the public, regardless of whether or not the goods or services are offered for payment or result in a profit.*
- (c) “Person” means a natural person, corporation, limited liability company, partnership, joint venture, association, or other legal entity or any combination thereof.*
- (d) “Pregnancy-related service” means a medical or health counseling service related to pregnancy or pregnancy prevention, including contraception and contraceptive counseling,*

pregnancy testing, pregnancy diagnosis, pregnancy options counseling, obstetric ultrasound, obstetric sonogram, and prenatal care.

17621. *A person doing business in California who is performing, has performed, or intends to perform a pregnancy-related service shall not advertise using a false or misleading statement related to the person's provision, or lack of provision, of abortion.*

17622. (a) *A violation of this article is an unfair business practice, as specified in Section 17200.*

(b) *The Attorney General, a district attorney, or a city attorney may file for injunctive relief or seek a civil penalty against a person for a violation of this article, pursuant to Chapter 5 (commencing with Section 17200) of Part 2.*

(c) *A violation of this article is enforceable by a private right of action. The available remedies for a private right of action are injunctive relief, a monetary penalty of at least one thousand dollars (\$1,000), and recovery of reasonable attorney's fees.*

In *NIFLA v. Becerra*¹, the United States Supreme Court found that California Reproductive Freedom, Accountability, Comprehensive Care, and Transparency Act (the “FACT Act”), which mandated that crisis pregnancy centers provide certain disclosures about state services, violated the free speech and free exercise rights under the First Amendment:

Content-based laws “target speech based on its communicative content” and “are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Reed v. Town of Gilbert*, 576 U. S. ___, ___. The licensed notice is a content-based regulation. By compelling petitioners to speak a particular message, it “alters the content of [their] speech.” *Riley v. National Federation of Blind of N. C., Inc.*, 487 U. S. 781, 795. For example, one of the state-sponsored services that the licensed notice requires petitioners to advertise is abortion—the very practice that petitioners are devoted to opposing.²

Like the “FACT Act”, AB 315 is another attempt by the state to dictate to pro-life clinics and pregnancy centers how they are permitted to advertise their services.

Existing state law already prohibits false and misleading advertising by all business entities.³ AB 315’s attempted modification of existing law is cumbersome, vague and overbroad, and far from clear.

¹ 585 U.S. ___ (2018).

² *Id.* Pp. 6–7.

³ See Cal. Bus. & Prof. Code § 17200, *et. sec.*



The bill does not explain what sorts of advertising relating to abortion would be false or misleading. For example, may a duly licensed medical clinic that provides free ultrasounds and gestational dating but does not provide abortion services advertise as follows without running afoul of AB 315?

Pregnant? Considering abortion? We provide free testing, ultrasound and no judgment. Learn about all your options. Call Women’s Medical Clinic for a same day appointment.

Does such advertising “relate to . . . provision, or lack of provision, of abortion?” If so, how? Is such an advertisement false or misleading under AB 315? If so, why? AB 315 gives no explanation or guidance.

Laws must be sufficiently clear so that one can know whether or not he is in violation of the law. Vague laws violate constitutional rights to Due Process.⁴ Section 1 of the Fourteenth Amendment to the U.S. Constitution states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In *Rabe v. Washington*⁵, the U.S. Supreme Court ruled that state law violates the due process clause of the 14th Amendment when its language fails to explain exactly what conduct is prohibited.

AB 315 runs afoul of the Due Process Clause because the bill fails to give adequate guidance as to what conduct is prohibited. What constitutes a false or misleading statement relating to provision of abortion? The proposed statute provides no means of understanding what a false or misleading statement “related to the person’s provision, or lack of provision, of abortion” is.

AB 315’s vague language invites arbitrary enforcement by the state that threatens constitutionally protected professional speech by pro-life clinics and centers. “States cannot choose the protection that speech receives under the First Amendment, as that would give them a powerful tool to impose ‘invidious discrimination of disfavored subjects.’” *NIFLA v. Becerra*, 585 U.S. ___, ___ (2018) (quoting *Cincinnati v. Discovery Network, Inc.*, 507 U. S. 410, 423–424, n. 19 (1993)).

⁴ Library of Congress. (n.d.). *AMDT14.S1.7.3 void for vagueness - constitution.congress.gov*. Constitution Annotated. Retrieved February 10, 2023, from https://constitution.congress.gov/browse/essay/amdt14-S1-7-3/ALDE_00000261/.

⁵ 405 U.S. 313 (1972)



Without clear definitions, AB 315 will encourage a rabid pro-abortion plaintiff's bar to target pro-life clinics and centers for legal shake downs. Proposed section 17622 (c) provides a private cause of action awarding costs and unsustainable fines of \$1,000 per occurrence in an age of internet advertising. AB 315 will chill constitutionally protected pro-life professional speech in an effort to avoid these crushing litigation costs, discouraging small pro-life clinics and centers from defending their rights when a judge can arbitrarily rewrite a vague statute to fit the state's pro-abortion views.

For these reasons, this committee should vote NO on AB 315.

Very Truly Yours,



Susan S. Arnall, Esq.

Vice President of Legal Affairs

Right to Life League