



Right to Life League
1208 N. Lake Ave, Ste. 207
Pasadena, CA 91104

April 11, 2022

Assemblymember Jim Wood, Chair
Assembly Health Committee
1020 North Street, Room 390
Sacramento, CA 95814

Re: Letter in Opposition AB 2134

Dear Chairman Wood and Members of the Assembly Health Committee,

On behalf of the Right to Life League and tens of thousands of pro-life Californians, I urge you to vote NO on AB 2134. The bill will amend sections of the Health and Safety Code in order to fund abortion and contraception. It creates state and private funding for abortion in violation of the California constitution. It also compels health insurers of religious employers to provide information regarding abortion and contraception benefits in violation of the First Amendment.

AB 2134 creates a “Reproductive Health Equity Fund”, the primary purpose of which is to provide grant funding to abortion providers. Funding will come from taxpayers and private donors. Grant applicants must provide abortion services. The bill is unconstitutional on its face. Its unequal financial treatment of abortion over childbirth violates the California Constitution, pursuant to *Committee to Defend Reproductive Rights v. Myers*, 29 Cal.3d 252 (1981).

In 1981, conservative forces in the state legislature sought to limit access to abortion services through various budget acts. In *CDRR v. Myers*, the California Supreme Court struck down the legislature’s ban on Medi-Cal funding of abortion. The Court emphasized that the state could not intervene in the very intimate decision about whether to give birth or have an abortion, e.g.,:

By virtue of the explicit protection afforded an individual's inalienable right of privacy by article I, section 1 of the California Constitution, however, the decision whether to bear a child or to have an abortion is so private and so intimate that each woman in this state -- rich or poor -- is guaranteed the constitutional right to make that decision as an individual, uncoerced by governmental intrusion. Because a woman's right to choose whether or not to bear a child is explicitly afforded this constitutional protection, in

California the question of whether an individual woman should or should not terminate her pregnancy is not a matter that may be put to a vote of the Legislature.

If the state cannot directly prohibit a woman's right to obtain an abortion, may the state by discriminatory financing indirectly nullify that constitutional right? Can the state tell an indigent person that the state will provide him with welfare benefits only upon the condition that he join a designated political party or subscribe to a particular newspaper that is favored by the government? Can the state tell a poor woman that it will pay for her needed medical care but only if she gives up her constitutional right to choose whether or not to have a child?

There is no greater power than the power of the purse. If the government can use it to nullify constitutional rights, by conditioning benefits only upon the sacrifice of such rights, the Bill of Rights could eventually become a yellowing scrap of paper.

In *CDRR*, the Court ruled the legislature violated the California constitution by financially favoring childbirth over abortion using a “conditioning of public benefits” framework.

Moreover, AB 2134 violates the First Amendment of the U.S. Constitution by compelling professional speech by third party health insurers to inform employees of religious employers regarding abortion and contraception benefits and services not included under the employer’s health insurance policy. The Supreme Court of the United States in *NIFLA v. Becerra*¹ recently rebuked California for its similar attempt to compel pro-life businesses to advertise abortion services.

[T]he Court’s precedents have long protected the First Amendment rights of professionals....And it has stressed the danger of content-based regulations “in the fields of medicine and public health, where information can save lives.” Such dangers are also present in the context of professional speech, where content-based regulation poses the same “risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information,” ... When the government polices the content of professional speech, it can fail to “ ‘preserve an uninhibited marketplace of ideas in which truth will ultimately prevail.’ ”²

This Court’s precedents are deeply skeptical of laws that “distinguish among different speakers, allowing speech by some but not others.”³

¹ *NIFLA v. Becerra*, 585 U.S. ___, 138 S. Ct. 2361; 201 L. Ed. 2d 835

² *Id.* (Syllabus, citations omitted).

³ *Id.* (Opinion quoting *Citizens United v. Federal Election Comm’n*, 558 U. S. 310, 340 (2010)).

Speaker-based laws run the risk that “the State has left unburdened those speakers whose messages are in accord with its own views.”⁴

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.”⁵

Finally, by targeting religious employers and compelling professional speech in contravention of employers’ religious tenets concerning abortion and contraception, AB 2134’s language may also violate religious liberties protected by the Free Exercise clause of the First Amendment.

AB 2134 clearly violates both the California state constitution as well as the First Amendment freedom of speech and free exercise of religion, and should be rejected by this committee.

For all these reasons, we oppose AB 2134. Please Vote NO on the bill.

Very Truly Yours,



Susan S. Arnall, Esq.
Vice President of Legal Affairs



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⁴ *Id.* (Opinion quoting *Sorrell v. IMS Health Inc.*, 564 U. S. 552, 580 (2011)).

⁵ *Id.* (Opinion quoting *Cincinnati v. Discovery Network, Inc.*, 507 U. S. 410, 423–424, n. 19 (1993)).