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

THE PREGNANCY CARE CENTER OF ROCKFORD; **THE DIOCESE OF SPRINGFIELD IN ILLINOIS**,

Plaintiffs,

v.

JAMES BENNETT, in his official capacity as Director of the Illinois Department of Human Rights; **KWAME RAOUL**, in his official capacity as Illinois Attorney General,

Defendants.

Case No.: 3:25-cv-50127

Hon. Rebecca R. Pallmeyer

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Oral Argument Requested

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INTRODUCTION

This case is about an Illinois law that forbids religious employers from speaking and acting consistent with their mission-critical beliefs on reproduction. For nearly 2,000 years, the Christian tradition has taught that anti-reproductive decisions like abortion, sterilization, and contraception violate the sanctity of human life. While vigorously encouraging reproductive assistance by licit means, the Church opposes acts that discard human life or undermine the marital union. Plaintiffs The Pregnancy Care Center of Rockford ("PCC of Rockford") and The Diocese of Springfield in Illinois ("Diocese of Springfield") proclaim and strive to live out these beliefs. And both immediately need to fill positions with people who abide by these religious beliefs.

But the State recently enacted H.B. 4867 ("New Bill"), which amended the Illinois Human Rights Act ("Act") to create a new protected characteristic: "reproductive health decisions." 775 ILL. COMP. STAT. ANN. § 5/1-102(A). The Act now forbids employers from disciplining or refusing to hire employees based on reproductive decisions. *Id.* § 5/2-102(A) ("Employment Clause"). It forbids speech on the topic that some find "unwelcome" or "offensive." *Id.* §§ 5/2-102(A) & 5/2-101(E-1) ("Offensive Speech Clause"). It requires employers to give accommodations and equal benefits for reproductive decisions. *Id.* § 5/2-102(J) ("Accommodation Clause"); *Id.* § 5/102(A) ("Benefit Clause"). And it requires employers to broadcast all of these requirements in employee handbooks and workplace posters. *Id.* § 5/2-102(K)(1) ("Notice Clause").

The Act thus interferes with Plaintiffs' ability to control deeply theological internal matters and to separate themselves from conduct that undermines their mission and message. This violates Plaintiffs' religious beliefs and policies. It also violates the First Amendment. By dictating how religious groups must respond to

their members' voluntary reproductive decisions, the Act goes far beyond protecting immutable characteristics and enters a "religious thicket." *Serbian E. Orthodox Diocese for United States and Canada v. Milivojevich*, 426 U.S. 696, 619 (1976). Indeed, Lieutenant Governor Juliana Stratton admitted that the New Bill "is not just protecting a right; it is championing fundamental principles" on reproduction contrary to Plaintiffs' beliefs. Office of Gov. J.B. Pritzker, *New Law Expands Reproductive Rights*, https://perma.cc/6TCW-SDWS. The Act violates Plaintiffs' constitutional rights, and this Court should issue a preliminary injunction.

FACTUAL BACKGROUND

I. Plaintiffs' religious beliefs and open employment positions.

A. PCC of Rockford.

PCC of Rockford is a pro-life religious nonprofit that has served its community for more than 40 years. Declaration of Nicole Tibbetts ("Tibbetts Decl."), **Exhibit 1** at ¶¶ 3–4. It provides free services and resources, but the heart of its ministry is communicating the Gospel and counseling families. *Id.* ¶¶ 5–7. In person, on the telephone, on its website, on its blog, and through its social media, PCC of Rockford engages in expression to educate women and families about their options and resources when facing an unplanned pregnancy. *Id.* ¶ 8–10. The ministry affirms that all life is sacred, and thus believes that abortion is immoral and unjustified. *Id.* ¶¶ 11–15; Articles of Incorporation, ECF No. 1-1 at 3; Bylaws, ECF No. 1-2 at 4. Its religious mission is to offer "help and hope in the name of Jesus Christ to those facing pregnancy decisions . . . so that choosing abundant life today and for future generations is celebrated." Employee Handbook, ECF No. 1-3 at 3. It also seeks "[t]o share by word and deed the Gospel of Jesus Christ with all who seek our services." Articles of Incorporation, ECF No. 1-1 at 3.

PCC of Rockford relies on its employees to advance its religious mission and message. Tibbetts Decl. ¶¶ 13, 16–18. "A personal relationship with Jesus Christ is a requirement for any employee, as well as believing that abortion is never a morally acceptable option." Employee Handbook, ECF No. 1-3 at 6. Its pro-life beliefs are "implemented on all levels of operations including client counsel, school presentations, and the expected lifestyle of all volunteers and staff." *Id.* Because the ministry is "embodied in its staff" who represent it "in word and deed," all employees "are expected to walk in a personal relationship with Jesus Christ and seek to live a lifestyle that reflects Him." *Id.* at 3–4. PCC of Rockford's employees "represent The PCC—and more importantly, the Gospel of Jesus Christ—in their work as well as in their private lives." Conduct Policy, ECF No. 1-4 at 2. "As a Christian organization, The PCC expects biblically faithful conduct both inside and outside the workplace" because "[s]uch conduct reinforces the center's core mission, instead of distracting from it." *Id.* at 4.

"[T]o maintain the core values of our faith-based organization and operate as the hands and feet of Jesus Christ, The Pregnancy Care Center and all employees and volunteers must never violate the sixth commandment or Genesis 9:6 by referring, assisting in the procurement of, providing, or receiving an abortion." Employee Handbook, ECF No. 1-3 at 6. "Violation of this policy is cause for refusal to hire, and/or discipline up to and including termination." *Id.* All employees must sign an Employee Commitment promising to refrain from "referring, assisting in the procurement of, providing, or receiving an abortion." Tibbetts Decl. ¶ 38; Conduct Policy, ECF No. 1-4 at 5. PCC of Rockford has refused to hire people who fail to satisfy its pro-life requirements. Tibbetts Decl. ¶ 18.

PCC of Rockford has about 14 employees and typically hires 2-4 employees each year. *Id.* ¶¶ 27–28. It is common for the ministry to receive multiple applications for each opening, and not all applicants are aligned with its pro-life mission. *Id.* ¶¶ 29–30. PCC of Rockford seeks to immediately hire a Staff Nurse, who communicates the ministry's religious beliefs and counsels pregnant women in the intimate moments when they first learn of new life. *Id.* ¶ 31–36; Staff Nurse Position Description, ECF No. 1-5 at 1–2.

B. The Diocese of Springfield

The Diocese of Springfield was established in 1923 and serves over 120,000 Catholics in western Illinois through 129 parishes. Declaration of Msgr. David J. Hoefler ("Hoefler Decl."), **Exhibit 2** at ¶¶ 3–4. Its mission is "to build a fervent community of intentional and dedicated missionary disciples of the Risen Lord and steadfast stewards of God's creation who seek to become saints." *Id.* ¶ 5; Diocese Standards of Conduct, ECF No. 1-7 at 1. The Diocese proclaims and encourages individuals to live out all Catholic Church teachings, including indispensable beliefs supporting the sanctity of life and marriage. Hoefler Decl. ¶ 6. The Diocese thus opposes abortion, contraception, sterilization, and certain reproductive technologies that destroy human life or undermine the marital union, including IVF, ZIFT, ICSI, ovum donation, and surrogacy. *Id.* It promotes these beliefs through expression in many contexts, including in its Office for Pro-Life Activities and its Office of Marriage and Family Life. *Id.* ¶¶ 7–13.

The Diocese relies on employees to advance its religious mission and message, *id.* ¶ 7–8, noting that every staff member "represent[s] the Catholic Church" and plays a role in its ministry. *Id.* ¶ 14–15; Diocese Standards of Conduct, ECF No. 1-7 at 1. For this reason, the Diocese uses interview questions to clarify

that employees must "avoid actions and lifestyles that are contrary to the teachings and values of the Catholic Church," and that "living contrary to the teachings of the Catholic Church can be grounds for dismissal." Interview Questions for Ministries, ECF No. 1-13 at 1; Interview Questions for Schools, ECF No. 1-14 at 1–2. The Diocese adopted Standards of Conduct requiring all employees to "conduct themselves in a moral and ethical manner consistent with Catholic principles," living in a way "that does not contradict the doctrine and moral teaching of the Catholic Church." Diocese Standards of Conduct, ECF No. 1-7 at 1. The Diocese believes that employees violate its conduct policy by engaging in abortion, contraception, sterilization, or reproductive technologies that violate Catholic doctrine. Hoefler Decl. ¶ 16. The Diocese has taken adverse action against employees for violating its conduct policy in matters of human sexuality. *Id.*

The Diocese of Springfield has about 125 employees and hires about 15 employees each year. *Id.* ¶¶ 20–21. It is common for the Diocese to receive multiple applications for each opening, and not all applicants are aligned with its pro-life mission. *Id.* ¶¶ 22–23. It seeks to immediately fill two employee positions: (1) Respect Life Advocate; and (2) Associate General Counsel. *Id.* ¶ 24. Both of these positions are responsible for communicating and abiding by the Diocese's religious beliefs on reproduction. *Id.* ¶¶ 25–34; Respect Life Advocate Position Description, ECF No. 1-8 at 1–2; Assoc. Gen. Counsel Position Description, ECF No. 1-9 at 1–2.

II. The Act, the New Bill, and their effect on Plaintiffs.

The Illinois Human Rights Act ("Act") forbids "unlawful discrimination" and harassment in several contexts, including employment, real estate, financial credit, public accommodations, and education. 775 ILL. COMP. STAT. ANN. § 5/1-101, *et seq*. It covers many protected characteristics, including race, color, religion, sex, national

origin, ancestry, age, marital status, physical or mental disability, military status, sexual orientation, pregnancy, and unfavorable discharge from military service. *Id.* §§ 5/1-102(A), 5/1-103(Q). Defendants solicit, receive, investigate, adjudicate, and even initiate charges of discrimination under the Act. *Id.* §§ 5/7-101, 5/7A-102(A)(1); 56 ILL. ADMIN. CODE 2520.10. Violations trigger harsh penalties, including damages, cease-and-desist orders, orders to hire employees with backpay, orders to provide accommodations, paying costs and attorneys' fees, and any other relief that the State considers necessary. *See* 775 ILL. COMP. STAT. ANN. § 5/8A-104.

The New Bill recently amended the Act to add "reproductive health decisions" as a new protected characteristic. *Id.* §§ 5/1-102(A), 5/1-103(Q).[1] The New Bill defines "reproductive health decisions" to mean "a person's decisions regarding the person's use of: contraception; fertility or sterilization care; assisted reproductive technologies; miscarriage management care; healthcare related to the continuation or termination of pregnancy; or prenatal, intranatal, or postnatal care." *Id.* § 5/1-103(O-5). Five provisions of the amended Act unconstitutionally interfere with Plaintiffs' religious beliefs, policies, and imminent employment decisions:

Employment Clause. The Act's Employment Clause states that it is a civil-rights violation for any employer to "refuse to hire . . . or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, [or] tenure [. . .] on the basis of unlawful discrimination, citizenship status, or work authorization status." 775 ILL. COMP. STAT. ANN. § 5/2-102(A). Defendants interpret the Employment Clause to prohibit employers from taking "adverse action against an employee for choosing to use or not use contraception, terminating an unplanned pregnancy, or seeking treatment

[1] The New Bill became effective January 1, 2025. H.B. 4867, 103rd General Assemb. (2024).

for fertility issues . . . ." ILL. ATT'Y GEN. & ILL. DEP'T OF HUM. RTS., *Non-Regulatory Guidance*, ECF No. 1-12 at 5 (March 2023) ("Defendants' Guidance").

But Plaintiffs' missions require that they separate from certain reproductive decisions. Tibbetts Decl. ¶¶ 37–42; Hoefler Decl. ¶¶ 35–39. So they only recruit applicants who will abide by their conduct policies. Tibbetts Decl. ¶¶ 37–38, 42; Hoefler Decl. ¶¶ 35, 38. PCC of Rockford screens applicants by conditioning employment on signing an Employee Commitment promising not to obtain or facilitate an abortion. Tibbetts Decl. ¶ 38. The Diocese screens applicants through interview questions committing them to conform their conduct to Catholic doctrine. Hoefler Decl. ¶ 38. Plaintiffs also impose different requirements on individuals based on whether they have obtained or facilitated an abortion. Tibbetts Decl. ¶ 41; Hoefler Decl. ¶ 39. Plaintiffs do not hire, retain, train, or apprentice anyone who has obtained or facilitated an abortion unless they show true repentance, and PCC of Rockford also requires an abortion recovery program. Tibbetts Decl. ¶ 41; Hoefler Decl. ¶ 39. The Employment Clause prohibits all of this faith-based conduct and has chilled Plaintiffs from publishing statements clarifying the requirements for their open positions. Tibbetts Decl. ¶¶ 43–44; Hoefler Decl. ¶¶ 40–41.

Offensive Speech Clause. The Act's Offensive Speech Clause forbids "harassment," which is defined to include "any unwelcome conduct" based on a protected characteristic that has the "effect of [1] substantially interfering with the individual's work performance or [2] creating an intimidating, hostile, or offensive working environment." 775 ILL. COMP. STAT. ANN. §§ 5/2-102(A), 5/2-101(E-1). Defendants say that "[e]ither one extremely serious act of harassment, or a series of less severe acts, could be severe or pervasive enough" to constitute harassment.

Defendants' Guidance, ECF No. 1-12 at 4. Defendants also say employers violate the law by using "derogatory terms" about a decision "to have an abortion." *Id.* at 6.

But Plaintiffs' missions require them to speak in a manner that the Act forbids. Both Plaintiffs engage in speech deemed pervasive and severe to express a message that all life is sacred. Tibbetts Decl. ¶ 45; Hoefler Decl. ¶ 42. Their speech is pervasive because it occurs in many contexts, including homilies, spiritual counseling, marriage counseling, pregnancy center counseling, conferences, educational programs, Respect Life events, marches, internal leadership meetings, internal staff meetings, internal retreats, and through digital and print media. Tibbetts Decl. ¶ 46; Hoefler Decl. ¶ 43. Their expression is also severe because it communicates a message that certain reproductive decisions are mortally sinful, immoral, unreasonable, unjust, unloving, and contrary to eternal salvation—terms that are generally considered unwelcome, offensive, hostile, or derogatory. Tibbetts Decl. ¶ 47; Hoefler Decl. ¶ 44. Each of Plaintiffs' open positions participate in—and are recipients of—such expression. Tibbetts Decl. ¶¶ 48–49; Hoefler Decl. ¶¶ 45–49.

Accommodation Clause. The Act's Accommodation Clause provides that it is a civil-rights violation "for an employer to not make reasonable accommodations for any medical or common condition of a job applicant or employee related to pregnancy or childbirth, unless the employer can demonstrate that the accommodation would impose an undue hardship on the ordinary operation of the business of the employer." 775 ILL. COMP. STAT. ANN. § 5/2-102(J)(1). Defendants say that employers violate the law by denying requests for time off related to "abortion care" and "fertility treatments." Defendants' Guidance, ECF No. 1-12 at 6–7.

But Plaintiffs' faith requires them to deny accommodations for reproductive decisions that violate their religious beliefs. Tibbetts Decl. ¶¶ 50–51; Hoefler Decl.

¶¶ 50–51. Both Plaintiffs provide time off in connection with pregnancy, childbirth, and major medical conditions, but consistent with their religious beliefs, they do not grant leave or other accommodations related to abortion, contraception, sterilization, and reproductive treatments that discard human life. *See id.*

Benefit Clause. The Act's Benefit Clause forbids employers from providing unequal "terms, privileges or conditions of employment" based on reproductive decisions. 775 ILL. COMP. STAT. ANN. § 5/2-102(A). But Plaintiffs' faith requires them to give differential treatment in employee benefits based on reproductive decisions. As explained above, Plaintiffs offer employees time off from work, but they do not provide time off for certain reproductive decisions. Tibbetts Decl. ¶¶ 50–51; Hoefler Decl. ¶¶ 50–51. Similarly, the Diocese of Springfield's employee health plan covers reproductive decisions that it condones, but it does not—and will not—cover abortion, contraception, sterilization, or certain reproductive technologies that destroy human life or undermine the marital union. Hoefler Decl. ¶ 52.

Notice Clause. Under the Act's Notice Clause, it is a civil-rights violation for any employer to "[1] fail to post or keep posted in a conspicuous location on the premises of the employer where notices to employees are customarily posted, or [2] fail to include in any employee handbook information concerning an employee's rights under this Article, a notice, to be prepared or approved by the Department, summarizing the requirements of this Article and information pertaining to the filing of a charge, including the right to be free from unlawful discrimination, the right to be free from sexual harassment, and the right to certain reasonable accommodations." 775 ILL. COMP. STAT. ANN. § 5/2-102(K)(1); ILL. DEP'T OF HUM. RTS., *Employer Notice*, https://perma.cc/PK9A-SVUB.

Plaintiffs have employee handbooks and workplaces where notices are posted. Tibbetts Decl. ¶¶ 52–53; Hoefler Decl. ¶¶ 53–54. But Plaintiffs do not—and will not—broadcast the Department's notice in their handbooks or workplaces. They believe that doing so would communicate a lie that they are bound by the Act's provisions on reproduction and that their employees can violate their faith-based policies on reproduction. Tibbetts Decl. ¶¶ 54–56; Hoefler Decl. ¶¶ 55–57.

III. Defendants refuse to grant religious exemptions and confirm that they will enforce the New Bill against religious groups.

On behalf of the Diocese of Springfield and other Catholic organizations, the Catholic Conference of Illinois emailed the Department, asserting that the New Bill violates their constitutional rights. Hoefler Decl. ¶¶ 58–59. The Catholic Conference urged that subjecting churches to charges of reproductive discrimination would enter a "religious thicket." Email from Robert Gilligan to IDHR, ECF No. 1-15 at 1–3. "The very process of trying to figure what is, and what is not religious in sifting claims arising from that venue would violate the anti-entanglement provisions of the establishment clause . . . and/or interfere with our internal doctrinal speech in violation of the free exercise clause." *Id.*

The Catholic Conference offered two recommendations to address these concerns. *Id.* The first would have clarified that the religious exclusion in the definition of "employer," 775 ILL. COMP. STAT. ANN. § 5/2-101(B)(2), applies to the reproductive decisions of employees at religious organizations. *Id.* The second would have added language to the Act's "exemption" statutes to clarify that expressive associations may consider the reproductive decisions of employees or applicants. *Id.*

The Department rejected the Catholic Conference's recommendations without even engaging its constitutional concerns. *See id.* It said "the application of these protections, existing and new, to religious organizations has been and will continue

to be appropriate . . . ." *Id.* "[O]ur view is that the harms or concerns you expressed are not reasons to exempt religious organizations, with a principal reason being that religious organizations must already contend with the issues and scenarios you mentioned around gender identity and sexual orientation, which are already fully protected classes in the [Act] that do not carry exemptions like your proposals." *Id.*

LEGAL STANDARD

Plaintiffs deserve a preliminary injunction because (1) they are likely to win on the merits; (2) they suffer irreparable harm; (3) the equities favor them; and (4) an injunction serves the public interest. *See Illinois Republican Party v. Pritzker*, 973 F.3d 760, 762 (7th Cir. 2020). In First Amendment cases, the analysis "begins and ends with the likelihood of success on the merits." *Korte v. Sebelius*, 735 F.3d 654, 666 (7th Cir. 2013). That's because "even short deprivations of First Amendment rights constitute irreparable harm," the balance of equities favors constitutional protection, and the public interest is served by enjoining a likely unconstitutional law. *ACLU of Ill. v. Alvarez*, 679 F.3d 583, 589–90 (7th Cir. 2012).

ARGUMENT

I. The Act triggers and fails strict scrutiny under the First Amendment.

A. The Act forces Plaintiffs to expressively associate with others who undermine their message.

The First Amendment protects the right "to associate with others" in pursuit of educational and religious ends. *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 647 (2000) (quotation omitted). This "presupposes a freedom not to associate" with others who impair a group's message, even when exclusion would otherwise violate a nondiscrimination law. *Id.* at 647–53. A law triggers strict scrutiny when (1) a

group engages in expressive activity, and (2) the forced inclusion of others would significantly affect the group's ability to promote its views. *Id.* at 648–59.

1. Plaintiffs engage in expressive activity.

Plaintiffs "must merely engage in expressive activity that could be impaired in order to be entitled to protection." *Dale*, 530 U.S. at 655. "Religious groups" satisfy this element because they are "the archetype of" expressive associations. *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171, 200 (2012) (Alito, J., concurring). This is especially true when they "aim to share their pro-life message with the world" and offer services "in the context of sharing [] their message concerning abortion, sex outside of marriage, and contraception." *Slattery v. Hochul*, 61 F.4th 278, 287 (2d Cir. 2023); *see Our Lady's Inn v. City of St. Louis*, 349 F. Supp. 3d 805, 821 (E.D. Mo. 2018) (pro-life religious group "squarely fits the description of an expressive association").

Plaintiffs promote a pro-life message and offer resources in that context. PCC of Rockford engages in expression every time it shares the Gospel, answers a call from a distressed mother, counsels expecting parents, teaches classes, posts messages on its website and social media, and promotes internal communications to encourage members in its mission. The Diocese of Springfield engages in expression every time it shares the Gospel, promotes Catholic teachings, provides spiritual guidance, offers marriage counseling, teaches classes, organizes pro-life events and marches, communicates through print and digital media, and fosters internal discussions to advance its mission. Both Plaintiffs engage in expression by choosing employees who will advance—rather than contradict—their religious beliefs about reproduction. Plaintiffs satisfy the first element.

2. The forced inclusion of people who make anti-life decisions destroys Plaintiffs' mission and message.

Courts must "give deference to an association's view of what would impair its expression." *Dale*, 530 U.S. at 653. When a religious group teaches that certain acts are "immoral," the Seventh Circuit has "no difficulty concluding" that the forced inclusion of people committing those acts violates the right to expressive association. *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 862–63 (7th Cir. 2006) (enjoining law for group requiring members "not engage in" homosexual conduct). This is especially true when a religious group's beliefs about reproduction are "among its defining values." *Id.* "It would be difficult for [a religious group] to sincerely and effectively convey a message of disapproval of certain types of conduct if, at the same time, it must accept members who engage in that conduct." *Id.* The forced inclusion of members who engage in disapproved reproductive conduct "would cause the group as it currently identifies itself to cease to exist." *Id.*

Other courts recognize that laws regulating "reproductive health decision[s]" significantly affect pro-life groups' expression. *Slattery*, 61 F.4th at 287–88; *Our Lady's Inn*, 349 F. Supp. 3d at 821–22. A group's "ability to organize its staff and circulate expressive materials with their views on controversial reproductive rights issues would be hindered if they were required to employ dissenters from their pro-life message." *Our Lady's Inn*, 349 F. Supp. 3d at 821. When pro-life groups "impose upon their [employees] a code of religious moral conduct" and "expect them to follow, in their personal life and behavior, the recognized moral precepts" of their religion, the forced inclusion of "staff who do not adhere to those values would significantly affect" their ability to advocate their viewpoints. *Id.* at 821–22.

Plaintiffs' policies about reproduction are not incidental; they are essential "to maintain the core values of our faith-based organization and operate as the

hands and feet of Jesus Christ." PCC of Rockford Employee Handbook, ECF No. 1-3 at 6; *see* Hoefler Decl. ¶ 15. That's because the forced inclusion of people who make anti-life decisions impairs their very mission. Tibbetts Decl. ¶¶ 18–22; Hoefler Decl. ¶¶ 14–16. Plaintiffs believe that they cannot credibly counsel others to forgo objectionable decisions through employees who made the very same unrepentant decisions. Tibbetts Decl. ¶ 23; Hoefler Decl. ¶ 17. No matter if an unwanted employee directly counsels families, Plaintiffs believe that maintaining employees who make such decisions contradicts the message that they are sincerely committed to their beliefs. Tibbetts Decl. ¶ 24; Hoefler Decl. ¶ 18. And Plaintiffs believe that members find it harder to speak freely on sensitive topics like reproduction around coworkers who made objectionable decisions. Tibbetts Decl. ¶ 25; Hoefler Decl. ¶ 19. Thus, the Act severely impairs Plaintiffs' ability to preach the Gospel, advance their views, enforce codes of conduct, and maintain support from donors who expect fidelity.

These problems affect the positions that Plaintiffs imminently seek to fill. They want to publish prepared statements to clarify that they cannot hire people who make certain reproductive decisions, but the Act chills their speech. Tibbetts Decl. ¶¶ 43–44; Hoefler Decl. ¶¶ 40–41. But these statements are critical. PCC of Rockford believes that its Staff Nurse must avoid anti-life decisions to effectively counsel clients, engage in internal pro-life meetings and retreats, and faithfully represent the ministry in public relations roles. Tibbetts Decl. ¶¶ 22, 32–36. People who violate PCC of Rockford's conduct policy cannot credibly perform these responsibilities. *Id.* ¶¶ 22–25.

Likewise, the Diocese of Springfield's Respect Life Advocate—which *leads* its pro-life office—must avoid anti-reproductive decisions to promote the Diocese's pro-

life mission by educating on reproductive issues, planning pro-life events, preparing materials and training, and serving as the primary contact for internal and external audiences to advance a consistent pro-life message. Hoefler Decl. ¶¶ 25–30. The Diocese believes that its Associate General Counsel must avoid objectionable decisions to credibly communicate legal and practical advice to internal stakeholders, develop policies on employment and reproductive matters, provide education to Catholic entities, and represent the Diocese before internal and external audiences. *Id.* ¶¶ 31–34. People who violate the Diocese's conduct policy cannot credibly perform these responsibilities. *Id.* ¶¶ 16–19.

Because the Act interferes with these employment decisions, Plaintiffs satisfy the second element, and the Act triggers strict scrutiny.

B. The Act triggers strict scrutiny because it impermissibly burdens Plaintiffs' religious exercise.

"Supreme Court authority sets forth three bedrock requirements of the Free Exercise Clause that the government may not transgress, absent a showing that satisfies strict scrutiny." *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.* ("*FCA*"), 82 F.4th 664, 686 (9th Cir. 2023). First, the State may not burden religious exercise while maintaining "a mechanism for individualized exemptions" or "permitting secular conduct" that undermines the State's asserted interests. *Fulton v. City of Philadelphia, Pennsylvania*, 593 U.S. 522, 533–34 (2021) (citing *Employment Division, Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872 (1990)).[2] Second, the State may not treat comparable "secular activity more favorably than religious exercise." *Tandon v. Newsom*, 593 U.S. 61, 62 (2021). Third,

[2] *Smith* should be overruled because its test "provides no protection" from laws that have "a devastating effect on religious freedom." *Fulton*, 593 U.S. at 545 (2021) (Alito, J., joined by Thomas & Gorsuch, JJ., concurring). Plaintiffs preserve this argument for appeal.

the State may not show hostility to religious beliefs or allow even "subtle departures from neutrality." *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993) (quotation omitted). The Act fails all three.

1. The Act is not generally applicable.

To begin, the Act is not generally applicable for at least three reasons:

First, the Act contains many exemptions. It exempts from *all* of its requirements—including those on reproductive decisions—employers whose workers are excluded from the definition of "employee." The Act's definition of "employee" exempts: (1) elected public officials or the members of their immediate personal staffs; (2) principal administrative officers of the State or of any political subdivision, municipal corporation, or other governmental unit or agency; and (3) a person in a vocational rehabilitation facility certified under federal law who has been designated an evaluee, trainee, or work activity client. 775 ILL. COMP. STAT. ANN. § 5/2-101(A)(1). These exemptions destroy general applicability.

The Act allows dozens more exemptions in appropriately titled "exemption" statutes. 775 ILL. COMP. STAT. ANN. § 5/2-104 ("exemptions" for employment); *id.* § 5/3-106 ("exemptions" for real estate); *id.* § 5/4-104 ("exemptions" for financial credit); *id.* § 5/5-103 ("exemption[s]" for public accommodations). For public accommodations—but not for employers like Plaintiffs—the Act exempts "the exercise of free speech, free expression, free exercise of religion or expression of religiously based views." 775 ILL. COMP. STAT. ANN. § 5/5-102.1(b). The "exemptions" statute for real estate allows religious organizations to discriminate on any basis other than race, color, and national origin in limiting the sale or occupancy of property to those who abide by their religious beliefs. 775 ILL. COMP. STAT. ANN. § 5/3-106(E). It doesn't matter that some exemptions appear outside the Act's

employment article because courts consider the entire statutory scheme when evaluating whether exemptions undermine the government's interests. *See Lukumi*, 508 U.S. at 537–38. Because these exemptions undermine the State's asserted interest in stopping discrimination based on reproductive decisions, the Act is not generally applicable.

Second, the Act creates a mechanism of individualized assessments about whether an employer's hiring qualification—here, avoiding certain reproductive decisions—is a "bona fide occupational qualification" (BFOQ). Plaintiffs' missions depend on employees who avoid objectionable reproductive decisions, but the BFOQ exemption "is a narrow one," and "is available only when the employer can show that no one [who makes objectionable reproductive decisions] is capable of performing the duties essential to the job." *River Bend Cmty. Unit Sch. Dist. No. 2 v. Hum. Rts. Comm'n*, 232 Ill. App. 3d 838, 844 (1992). Defendants have discretion to determine whether avoiding certain reproductive decisions is really "essential" to Plaintiffs' work, a determination which itself intrudes on religious autonomy. The mere existence of this discretionary system destroys general applicability regardless of whether the State uses it to grant exemptions. *Fulton*, 593 U.S. at 537.

Third, the Act has another mechanism of individualized assessments about whether an employer's conduct is "harassment." Defendants make individualized and discretionary assessments about whether an employer's speech is "unwelcome" and creates an "intimidating, hostile, or offensive" environment. 775 ILL. COMP. STAT. ANN. § 5/2-101(E-1). The Act does not define these terms and Defendants exercise unfettered discretion in deciding whether Plaintiffs violate the Offensive Speech Clause. Because the Act has a system for granting discretionary exemptions,

"it may not refuse to extend that system to cases of 'religious hardship' without compelling reason." *Fulton*, 593 U.S. at 534.

2. The Act is not neutral.

The State also departed from the required neutrality in two ways:

First, the Department showed hostility and suspicion toward the Diocese's religious beliefs by summarily dismissing its request for protection under the Act's statutory religious exemption. Hoefler Decl. ¶¶ 58–61; Email from Robert Gilligan to IDHR, ECF No. 1-15. By its own terms, the Act does not apply to a religious corporation's conduct concerning the "employment of individuals of a particular religion to perform work connected with the carrying on . . . its activities." 775 ILL. COMP. STAT. ANN. § 5/2-101(B)(2). Here, "religion" includes "all aspects of religious observance and practice, as well as belief." *Id.* § 5/2-101(F). Reading these provisions together, the State can—and should—protect Plaintiffs' right to take action when an employee's conduct does "not conform with the employer's religious expectations." *Fitzgerald v. Roncalli High Sch., Inc.*, 73 F.4th 529, 534–37 (7th Cir. 2023) (Brennan, J., concurring) (applying identical language in Title VII); *see Starkey v. Roman Cath. Archdiocese of Indianapolis, Inc.*, 41 F.4th 931, 946 (7th Cir. 2022) (Easterbrook, J., concurring) (same).

Plaintiffs are religious corporations, and they believe that compliance with their policies on reproduction is necessary to be of their religion and to carry on their activities. Tibbetts Decl. ¶¶ 3, 11–25; Hoefler Decl. ¶¶ 3, 6–19. Yet the Department did not credit these beliefs; it showed suspicion and hostility and toward them by refusing to apply the exemption. Indeed, it is the exclusive prerogative of Plaintiffs—not the State—to decide what is necessary to be of their

particular religion, to carry on their activities, and to align with their beliefs. *Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989).

Second, Defendants showed more than a subtle departure from neutrality when they revealed their preference for protecting certain reproductive decisions that Plaintiffs oppose. Defendant Raoul cheered the New Bill and "committed to using the authority of [his] office" to ensure that Illinois is an "oasis" and "safe haven" specifically for "abortion and gender-affirming care." Office of the Governor, *Gov. Pritzker Signs Landmark Legislation Further Expanding Reproductive Rights in Illinois*, https://perma.cc/K868-PRC2. Defendant Bennett similarly praised the New Bill by lamenting the Supreme Court's decision overruling *Roe v. Wade* and stating that it will work "diligently" to "strengthen protections for reproductive rights." *Id.* These statements betray a lack of neutrality in favor of reproductive decisions that violate Plaintiffs' faith.

C. The Act triggers strict scrutiny by restricting and compelling Plaintiffs' speech.

1. The Employment and Offensive Speech Clauses restrict speech based on content and viewpoint.

A law regulates speech based on content when it applies "because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015) (citations omitted). A law regulates speech based on viewpoint when it applies because of the "particular views taken by speakers on a subject." *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). Both kinds of speech regulation are "presumptively unconstitutional" and trigger strict scrutiny. *Id.* at 830; *Reed*, 576 U.S. at 163.

Start with the Offensive Speech Clause. It doesn't forbid all speech, but only communications that relate to a protected characteristic, are "unwelcome," and

express content that some find "intimidating, hostile, or offensive." 775 ILL. COMP. STAT. ANN. §§ 5/2-102(A), 5/2-101(E-1) (defining "harassment"). A welcome comment on reproductive matters ("congratulations on the birth of your child") is treated differently than an unwelcome comment on the same topic ("it's wrong to abort your child"), which are both treated differently from welcome *or* unwelcome comments on characteristics that the Act does not regulate. The Offensive Speech Clause is content-based because its application "depend[s] entirely on the communicative content" of an employer's message. *Reed*, 576 U.S. at 164.

The Offensive Speech Clause is also viewpoint-based because it permits speech on a "subject otherwise permitted" while prohibiting some viewpoints on that topic. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 109 (2001); *see Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 393–95 (1993) (policy was viewpoint-based when it banned the use of school buildings for "religious purposes" but allowed the use of those buildings for other civic purposes addressing the same topic). Those who condone reproductive decisions listed in the Act remain free to speak because their affirming views are not unwelcome, hostile, or offensive to employees who make those decisions. Also free to speak are those with permissive viewpoints. Only those who *oppose* certain reproductive decisions like abortion express critical views that are unwelcome, hostile, or offensive to employees who make those decisions. Thus, the law purports to cover all speakers, but it only "bites" speakers who take a critical stand on reproductive matters. That's viewpoint-based. *See Brown v. Kemp*, 86 F.4th 745, 780–83 (7th Cir. 2023) (statute was viewpoint-based because it only penalized speech that impedes hunting).

The Employment Clause fares no better. It is content-based because the statute applies only if a communication relates to protected characteristics and

concerns the subjects of "recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, [or] tenure . . . ." 775 ILL. COMP. STAT. ANN. § 5/2-102(A). Plaintiffs can make statements in their policies, employment handbooks, position descriptions, and job postings expressing preferences for education requirements, work experience, community involvement, and other subjects. But they cannot do the same for topics like reproductive decisions. Because the application of the Employment Clause depends on the topic discussed, it is content-based.

Worse, the Employment Clause regulates based on viewpoint. Plaintiffs remain free to say that employees should not face employment consequences for aborting their children, using abortifacient drugs, or violating reproductive ethics. That's one view, but it's not Plaintiffs'—it's the State's. The law prohibits Plaintiffs from expressing their message—in policies, handbooks, position descriptions, job postings, and interview questions—that they will not hire or retain individuals who make unrepentant reproductive decisions that violate their faith. Because the law allows affirming or agnostic viewpoints on reproductive matters while prohibiting Plaintiffs' message, the Employment Clause is also viewpoint-based.

This has real and harmful consequences for Plaintiffs. Both Plaintiffs imminently need to fill positions responsible for advancing pro-life messages. Tibbetts Decl. ¶¶ 26–36; Hoefler Decl. ¶¶ 20–34. They want to publish prepared statements to clarify that they will not recruit and hire individuals who make reproductive decisions that violate their religious beliefs. Tibbetts Decl. ¶¶ 43–44; Hoefler Decl. ¶¶ 40–41. But they self-censor that message—chilling their religious speech—because it violates the Act. *Id.* The Employment and Offensive Speech Clauses trigger strict scrutiny.

2. The Notice Clause compels Plaintiffs' speech.

Freedom of speech "includes both the right to speak freely and the right to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). The compelled speech doctrine bars the government from coercing unwanted expression by protecting "a speaker['s] … autonomy to choose the content of his own message." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995).

The Notice Clause violates the compelled speech doctrine because it requires Plaintiffs to say that their employees may make objectionable reproductive decisions without adverse action. 775 ILL. COMP. STAT. ANN. § 5/2-102(K)(1). The notice prepared by the Department forces Plaintiffs to tell their employees that Plaintiffs "may not treat people differently based on . . . any [] protected class named in the Act," including reproductive decisions, and "[t]his applies to all employer actions, including hiring, promotion, discipline, and discharge." ILL. DEP'T OF HUM. RTS., *Employer Notice*, https://perma.cc/PK9A-SVUB. Plaintiffs don't want to speak that message, but the State insists. That's compelled speech. *See Nat'l Inst. of Fam. & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2371 (2018) (rejecting state's attempt to compel pregnancy centers to provide government notice on abortions).

To be clear, Plaintiffs don't object to stating the mere fact that the State enacted the New Bill. They readily do so here. But the Notice Clause requires more. Plaintiffs must make a statement directly addressed and tailored to their particular employees, saying to each that "*you* have the right to be free from" what the State calls "unlawful discrimination" and "harassment" related to reproductive decisions. ILL. DEP'T OF HUM. RTS., *Employer Notice*, https://perma.cc/PK9A-SVUB (emphasis added). That statement goes beyond conveying purely factual and uncontroversial information about a statute; it forces Plaintiffs to adopt and mouth a particularized message addressed to specific employees in a ministry context that violates their

beliefs and policies. Tibbetts Decl. ¶¶ 54–56; Hoefler Decl. ¶¶ 55–57. Because the Notice Clause compels Plaintiffs to speak a particularized message that contradicts their beliefs, the Act triggers strict scrutiny.

D. The Act fails strict scrutiny.

The Act triggers and fails strict scrutiny, the "most demanding test known to constitutional law." *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). Defendants have "the burden to establish that" that Act passes the test. *Tandon v. Newsom*, 593 U.S. 61, 62 (2021). A law can survive strict scrutiny "only if it advances 'interests of the highest order' and is narrowly tailored to achieve those interests." *Fulton*, 593 U.S. at 541 (quotation omitted). Laws pass this test "only in rare cases," *Lukumi*, 508 U.S. at 546, and this isn't one of them.

1. The State lacks a compelling interest in denying an exemption for Plaintiffs.

According to the New Bill's sponsors, the State's interest in enacting the New Bill is to "give[] Illinoisans the freedom to consider and make whatever reproductive health decisions they wish without fear of discrimination or retaliation . . . ." Transcript of House Debate, ECF No. 1-11 at 72–73. As applied to Plaintiffs, the State's asserted interests are not compelling for three reasons.

First, when applying strict scrutiny, courts must look beyond "broadly formulated interests" and instead "scrutinize the asserted harm of granting specific exemptions to particular religious claimants." *Fulton*, 593 U.S. at 541 (cleaned up). The question is "not whether the [State] has a compelling interest in enforcing its non-discrimination policies generally, but whether it has such an interest in denying an exception to [Plaintiffs]." *Id.* There is no good reason why the State could not pursue its general interests while allowing Plaintiffs to operate according

to their faith. *See Slattery*, 61 F.4th at 289. This is because the Act's provisions on reproductive decisions would still apply to all other employers. *Id.*

Second, even when applied to pro-life religious groups in particular, courts have declined to recognize a compelling interest in preventing discrimination based on reproductive decisions. *Our Lady's Inn*, 349 F. Supp. 3d at 822. This is especially true when, as here, the government has failed to show that such discrimination is rampant or that "those making reproductive health decisions are historically disadvantaged." *Id.* (internal quotations omitted). Also, the State's interest is limited to the "unique evils" of "*invidious* discrimination". *Roberts v. U.S. Jaycees*, 468 U.S. 609, 628 (1984) (emphasis added). But Plaintiffs' religious beliefs on reproduction are not invidious. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 223 (2022) (noting the popular and reasonable belief "that a human person comes into being at conception and that abortion ends an innocent life").

Third, the existence of exemptions (described in Section I.B.1, *supra*) "undermines" any contention that the State has a compelling interest that "can brook no departures." *Fulton*, 593 U.S. at 542.

2. The Act is not narrowly tailored.

"A statute is narrowly tailored if it targets and eliminates no more than the exact source of the evil it seeks to remedy." *Frisby v. Schultz*, 487 U.S. 474, 485 (1988) (internal citations omitted). "Put another way, so long as the government can achieve its interests in a manner that does not burden religion, it must do so." *Fulton*, 593 U.S. at 541 (quotation omitted). The Act is not narrowly tailored for two reasons.

First, the Act fails narrow tailoring because its reach is overbroad. The State could advance its asserted—and highly generalized—interest without burdening religious exercise. It could have done so by protecting religious speech and conduct on reproduction under the Act's religious exemption. *See* 775 ILL. COMP. STAT. ANN.

§ 5/2-101(B)(2). It could have added religious speech and conduct on reproduction to one of the Act's many "exemption" statutes. *See* 775 ILL. COMP. STAT. ANN. § 5/1-104. And it could have granted Plaintiffs' discretionary requests for an exemption. Hoefler Decl. ¶¶ 59–62. These missed opportunities show a lack of narrow tailoring.

Second, the Act is underinclusive because it burdens religious exercise while granting secular exemptions. *Lukumi*, 508 U.S. at 546. As explained above, *supra* Section I.B.1, the Act has dozens of statutory exemptions and provides still more avenues for State officials to grant discretionary exemptions. Thus, the Act is not narrowly tailored, and it fails strict scrutiny.

II. The church autonomy doctrine altogether precludes enforcement of the Act's reproductive provisions against Plaintiffs.

The First Amendment's Religion Clauses protect the autonomy of churches and religious organizations "to decide for themselves, free from state interference, matters of [internal] government." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). The Act violates the church autonomy doctrine in three ways: (1) by prohibiting Plaintiffs' workplace speech on important matters of faith and doctrine; (2) by interfering with Plaintiffs' right to select and discipline *ministerial* employees; and (3) by interfering with Plaintiffs' conduct toward *non-ministerial* employees.

1. The Offensive Speech Clause audits Plaintiffs' internal speech on deeply theological matters.

The Act's Offensive Speech Clause prohibits Plaintiffs from engaging in any "unwelcome" speech about reproductive decisions that may create an "intimidating, hostile, or offensive working environment." 775 ILL. COMP. STAT. ANN. §§ 5/2-102(A); 5/2-101(E-1). Defendants say this includes using "derogatory" language about decisions to obtain an abortion. Defendants' Guidance, ECF No. 1-12 at 6. But

dictating what churches and religious groups say about deeply theological matters like abortion runs headlong into a "religious thicket." *Milivojevich*, 426 U.S. at 619.

The Seventh Circuit confirmed that such hostile work environment laws "interfere with a religious organization's internal governance." *Demkovich v. St. Andrew the Apostle Par., Calumet City*, 3 F.4th 968, 981 (7th Cir. 2021). "A religious organization shapes its faith and mission through its work environment just as much as 'through its appointments.'" *Id.* at 980 (citation omitted). "Fear of potential liability might affect the way an organization carried out what it understood to be its religious mission." *Id.* (quotation omitted). In a religious context where comments are "stern counsel to some" but "bigotry to others," "[h]ow is a court to determine discipline from discrimination" or "advice from animus?" *Id.* at 981 (citation omitted). "These questions and others like them cannot be answered without infringing upon a religious organization's rights." *Id.* (citation omitted).

2. The Employment Clause violates the ministerial exception.

The ministerial exception protects the right of religious organizations to "select, supervise, and if necessary, remove" individuals who advance its mission "without interference by secular authorities." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2060–61 (2020). The ministerial exception acquired its name from the "ministers" in pioneering cases, but the rule is not limited to members of the clergy. *Id.* The Supreme Court has declined to adopt a rigid formula for deciding when an employee qualifies as a "minister," but it has made clear that the exception includes employees whose "job duties reflected a role in conveying the [ministry's] message and carrying out its mission." *Id.* at 2062 (citing *Hosanna-Tabor*, 565 U.S. at 192).

Many of Plaintiffs' employees qualify as "ministers." PCC of Rockford relies on its employees to advance its Christian mission and message. Tibbetts Decl. ¶¶ 18–21. PCC of Rockford affirms that "[a] personal relationship with Jesus Christ is a requirement for any employee, as well as believing that abortion is never a morally acceptable option." PCC of Rockford Employee Handbook, ECF No. 1-3 at 6. "[A]ll staff, volunteers, and Board Members represent The PCC—and more importantly, the Gospel of Jesus Christ—in their work as well as in their private lives." PCC of Rockford Conduct Policy, ECF No. 1-4 at 1. Its Staff Nurse is a minister because it conveys its message as a committed Christ-follower, who provides pro-life counseling to women in the first moments that they learn of new life and serves public relations roles at fundraisers and facility tours. Staff Nurse Position Description, ECF No. 1-5 at 1–2.

The Diocese of Springfield's employees "represent the Catholic Church" and have a calling to advance its religious mission. Diocese of Springfield Standards of Conduct, ECF No. 1-7 at 1. Its Respect Life Advocate is a minister who conveys its message as a practicing Catholic who leads the Office for Pro-Life Activities and plays a crucial role in fostering education on reproductive issues consistent with Church teaching. Respect Life Advocate Position Description, ECF No. 1-8 at 1–2. Its Associate General Counsel position qualifies as a minister or coreligionist position that conveys its message as a practicing Catholic who provides advice, counsel, and representation in internal and external fora to promote the teachings of the Catholic Church, including its teachings on reproduction. Assoc. Gen. Counsel Position Description, ECF No. 1-9 at 1–2.

The Act's Employment Clause violates the ministerial exception because it prohibits Plaintiffs from using reproductive decisions as a basis to "refuse to hire" or

to take any other "act" in "recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, [or] tenure . . . ." 775 ILL. COMP. STAT. ANN. § 5/2-102(A). But the Religion Clauses protect Plaintiffs' right to follow faith-based policies, which require them to discipline or refuse to hire ministerial employees based on reproductive decisions.

3. The Employment, Accommodation, and Benefit Clauses violate the broader church autonomy doctrine.

Beyond the ministerial exception, the church autonomy doctrine protects Plaintiffs' ability to make "internal management decisions" like employee selection. *Our Lady*, 140 S. Ct. at 2060. "Determining that certain activities are in furtherance of an organization's religious mission, and that only those committed to that mission should conduct them," is a fundamental "means by which a religious community defines itself." *Corp. of Presiding Bishop v. Amos*, 483 U.S. 327, 342 (1987) (Brennan, J., concurring). The church autonomy doctrine includes the right to prefer coreligionists and make personnel decisions based on religious doctrine, even when a position is non-ministerial. *See Little v. Wuerl*, 929 F.2d 944, 951 (3d Cir. 1991); *Hall v. Baptist Mem'l Health Care Corp.*, 215 F.3d 618, 623 (6th Cir. 2000); *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648 (10th Cir. 2002).

For Plaintiffs' non-ministerial employees, the church autonomy doctrine protects their right to prefer individuals who avoid objectionable reproductive decisions because such preference is rooted in their religious beliefs and practices. *See Little*, 929 F.2d at 951. As explained above, all of Plaintiffs' employees help advance their Christian mission and message. If Plaintiffs were forced to accept employees whose actions fatally contradict their faith—as the Employment Clause

requires—they could no longer advance their mission or control their internal religious affairs.

The church autonomy doctrine also precludes the Act's Accommodation Clause, which forces Plaintiffs to grant employee accommodations for objectionable reproductive decisions. 775 ILL. COMP. STAT. ANN. § 5/2-102(J)(1). Defendants even say that this requires Plaintiffs to grant "time off for abortion." Defendants' Guidance, ECF No. 1-12 at 7. Forcing religious organizations to accept and facilitate the destruction of human life violates the very essence of religious autonomy.

The same goes for the Benefit Clause, which prohibits differential treatment in the "terms, privileges or conditions of employment" based on reproductive decisions. 775 ILL. COMP. STAT. ANN. § 5/2-101(A). Both Plaintiffs offer employees time off, but they do not allow time off related to reproductive decisions that violate their faith. Tibbetts Decl. ¶ 50–51; Hoefler Decl. ¶¶ 50–51. Also, the Diocese's health plan covers employees who make reproductive decisions that it condones but does not cover decisions that it opposes. Hoefler Decl. ¶ 52. By requiring Plaintiffs to provide benefits regardless of the reproductive decision involved—and arguably to require insurance coverage for abortion—the Benefit Clause intrudes on Plaintiffs' right to manage its internal religious affairs. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 724 (2014) (governments cannot force religious employers to facilitate abortion in health plans).

III. Plaintiffs satisfy the other preliminary injunction factors.

Plaintiffs' likelihood of success on even one of their claims is "determinative," *Korte*, 735 F.3d at 666, but Plaintiffs satisfy the other factors as well.

Likelihood of Irreparable Harm. "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). It is enough that Defendants violated Plaintiffs' constitutional rights by "putting [them] to the choice" of violating their religious beliefs or curtailing their mission. *Fulton*, 593 U.S. at 532. The Act already chills Plaintiffs' speech. Tibbetts Decl. ¶¶ 43–44; Hoefler Decl. ¶¶ 40–41. It inhibits their ability to fill open positions with applicants who abide by their beliefs and prohibits them from screening applicants with interview questions and employee commitment forms. Tibbetts Decl. ¶¶ 38, 44; Hoefler Decl. ¶¶ 2, 38. And every day, the Act forces Plaintiffs to choose between remaining faithful to their missions or abandoning their faith-based policies on hiring, discipline, religious speech, accommodations, and benefits. Plaintiffs suffer irreparable harm under these circumstances. *Our Lady's Inn*, 349 F. Supp. 3d at 824.

Equities and Public Interest. The last two preliminary injunction factors merge when the State is the opposing party. *Nken v. Holder*, 556 U.S. 7 (2008). Here, the equities and public interest strongly favor an injunction. If Plaintiffs obtain relief to operate according to their beliefs, "the right to be free of discrimination for having an abortion will be impaired only to the limited extent that a person cannot join" Plaintiffs' staffs in particular. *Slattery*, 61 F.4th at 289. "But if the state could require an association that expressly opposes abortion to accept members who engage in the conduct the organization opposes, it would severely burden the organization's" constitutional rights. *Id.* at 289–90. Thus, the equities and public interest favor an injunction. *Id.* at 290.

CONCLUSION

For these reasons, the Court should grant the motion and issue the requested preliminary injunction.

Respectfully submitted this 25th day of April, 2025,

s/ David Cortman

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CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system.

s/ David Cortman
David Cortman