

## VIA EMAIL AND FEDERAL EXPRESS

December 17, 2024

Assembly Regulated Professions Committee  
The Office of Legislative Service  
Office of Public Information  
Room B50  
State House Annex  
P.O. Box 068  
Trenton, NJ 08625-0068  
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Re: *Letter in Opposition to New Jersey Assembly Bill, No. 1884*

Dear Assembly Health Committee members:

We write on behalf of our client, ICAN Legislate, to urge you to oppose assembly bill 1884. The bill has numerous egregious issues and, should it pass, will be challenged through litigation. Accordingly, ICAN Legislate urges you to vote **no** on A.B. 1884.

A.B. 1884 is an unconstitutional bill intended to punish health care professionals for what the state considers disfavored opinions by classifying those opinions as “misinformation” and “disinformation.” In so doing, this bill plainly violates health care professionals’ free speech rights, and inevitably will have a chilling effect on their ability to opine upon issues of public concern.

A.B. 1884 additionally violates due process by virtue of its impermissibly vague construction, which leaves health care professionals with no real way of knowing what constitutes a “health-related claim of fact that is false”—the bill’s definition for “misinformation.” To fill in that gap, the bill instructs licensing boards to “establish by rule or regulation” the “general causes which constitute grounds for professional misconduct.” No doubt this was intended to grant these boards a tremendous amount of latitude to define such “causes,” and will lead to unequal and inconsistent treatment under this law.

A.B. 1884 is also unconstitutionally vague with respect to which boards it is intended to apply to. “Health care professional” is defined as “an individual licensed or certified to practice health care pursuant to Title 45 of the Revised Statutes.” Yet, Title 45 covers all licensed professionals in the State of New Jersey, from accountants to veterinarians.<sup>1</sup> Consequently, the operative phrase is “practice health care,” which is problematic because it goes undefined, leaving individuals such as family therapists, ophthalmic technicians, pharmacists, physical therapists, or speech-language pathologists in the dark as to whether this bill applies to them.

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<sup>1</sup> N.J. Stat. § 45.

As you are surely aware, the Supreme Court has deemed laws that target speech based on content or viewpoint unconstitutional.<sup>2</sup> Relevant here, the Court has also rejected prior attempts to demote “professional speech” as a less protected subcategory under the First Amendment, even specifically saying that “regulating the content of professionals’ speech pose[s] the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information.”<sup>3</sup>

A.B. 1884’s highly subjective definition of “misinformation” guarantees the chilling of legitimate speech, which is especially dangerous in the medical field. The very nature of medical science means that what is believed to be “true” or “false” is constantly evolving. It is, after all, the *practice* of medicine. Statements and policies made by health authorities are rarely certainties and time has shown that they often later prove to be factually and scientifically incorrect. For example, healthcare workers who questioned or opposed certain COVID-19 policies, or who offered evidence contrary to government pronouncements, were often accused of spreading “disinformation,” despite their accurate statements about the inefficacy of masking<sup>4</sup> or the inability of the vaccine to prevent infection and transmission<sup>5</sup> later being accepted true. As the pandemic should have reminded us all, medical science is constantly evolving.

For all of the above reasons, we strongly encourage you to vote **no** on A.B. 1884.

Regards,



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<sup>2</sup> *Nat’l Endowment for the Arts v. Finley*, 524 U.S. 569, 616 (1998); see also *Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd.*, 502 U.S. 105, 116 (1991) (“Regulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment.” (internal quotation marks omitted)).

<sup>3</sup> *Nat’l Inst. of Fam. & Life Advocates v. Becerra*, 585 U.S. 755 (2018) (internal quotation marks omitted).

<sup>4</sup> See, e.g., Netburn, Deborah, *A Timeline of the CDC’s Advice on Face Masks*, Los Angeles Times (July 21, 2021), <https://www.latimes.com/science/story/2021-07-27/timeline-cdc-mask-guidance-during-covid-19-pandemic>.

<sup>5</sup> See Kasen K. Riemersma et. al, *Shedding of Infectious SARS-CoV-2 Despite Vaccination*, 18(9) PloS Pathog. (Sept. 30, 2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9555632/>.