
SENT VIA EMAIL AND FEDEX

December 17, 2024

Senate Health, Human Services and Senior Citizens 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 Senate Bill, No. 3700, formally No. 5070*

Dear Senate Health, Human Services and Senior Citizens Committee members:

We write on behalf of our client, ICAN Legislate, to urge you to oppose Senate bill 3700. The bill has numerous egregious issues and, should it pass, will be challenged through litigation. Accordingly, ICAN Legislate urges you to vote no on S.B. 3700.

S.B. 3700 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.

S.B. 3700 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 and contradicted by contemporary scientific consensus contrary to the standard of care”—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 invariably will lead to unequal and inconsistent treatment under this law.

S.B. 3700 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.¹ 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.

¹ N.J. Stat. § 45.

As you are surely aware, the Supreme Court has deemed laws that target speech based on content or viewpoint unconstitutional.² 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.”³

S.B. 3700’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 masking⁴ or the inability of the vaccine to prevent infection and transmission⁵ 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 S.B. 3700.

Regards,



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² *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)).

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

⁴ 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>.

⁵ 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/>.