IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PASTORS PROTECTING YOUTH, *et al.*	)	
Plaintiffs,	)	Case No. 1:16-cv-08034
v.	)	Honorable Ronald A. Guzman
Lisa Madigan, Illinois Attorney General, in her Official Capacity,	)	
Defendant.	)	

PLAINTIFFS' RESPONSE TO DEFENDANT'S RULE 12(b)(1) AND 12(b)(6) MOTION TO DISMISS

Plaintiffs Pastors Protecting Youth, *et al.*, respond to Defendant's 12(b)(1) and 12(b)(6) Motion to Dismiss and state as follows:

INTRODUCTION

I. Background of Section 25 of the Challenged Act

Because Defendant provided a factual background for this dispute, Plaintiffs need not reiterate the same points. Instead, Plaintiffs will focus on the key provision of the Youth Mental Health Protection Act ("Act") which they believe restricts their speech and religious activities.

Section 25 of the Act, entitled "Advertisement and sales; misrepresentation" states that:

> *No person or entity* may, in the conduct of any trade or commerce, use or employ any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact in advertising *or otherwise offering conversion therapy services in a manner that represents homosexuality as a mental disease, disorder, or illness*, with intent that others rely upon the concealment, suppression, or omission of such material fact. A violation of this Section constitutes an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act. 405 ILCS 48/25. (emphasis added).

Unlike other sections of the Act, Section 25 goes beyond regulating licensed "mental health providers" and instead regulates "*any* person or entity . . . in the conduct of any trade or commerce." Id. Moreover, the restrictions in Section 25 are not limited to counseling minors but apply to counseling any person regardless of age. Section 25 does not, as Defendant suggests, merely ban "deceptive advertising" (Dkt. 21, p. 1), it also prohibits any person or entity in "trade or commerce" from "offering conversion therapy services in a manner that represents homosexuality as mental disease, disorder, or illness . . . ." 405 ILCS 48/25. A plain reading of Section 25 threatens Plaintiffs with financial liability under the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA") if they continue to represent, in the course of their pastoral counseling, that homosexuality is a disorder or illness. Plaintiffs are also subject to other penalties, damages, and injunctions because the Act allows private action against their pastoral counseling activities.

II. "Trade or Commerce" and the Illinois Consumer Fraud Act

Section 25 of the Act applies to anyone who, in "trade or commerce," offers conversion therapy services. Because the government has traditionally taken an expansive view of "commerce," it is unclear to Plaintiffs whether their counseling services, which they are compensated for as ministers and which are an alternative to licensed professional counseling, are "in trade or commerce." An expansive view of "commerce," for example, is found in a United States Supreme Court decision which held that Congress' power to regulate "commerce" extended to growing wheat for home use, even if it never entered commerce at all. Wickard v. Filburn, 317 U.S. 111, 125 (1942). The Supreme Court held that even an activity that had an "indirect effect" on interstate commerce was properly regulated by the commerce clause in the United States Constitution. Id. More recently, the United States government argued, and four

United States Supreme Court justices agreed, that even inactivity falls within the government's ability to regulate "commerce." Nat'l Fed'n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2621-22 (2012)(Ginsburg dissenting).

Likewise, the ICFA defines "trade or commerce" broadly to mean:

> the advertising, offering for sale, sale, ***or distribution of any services*** and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce ***directly or indirectly*** affecting the people of this State. 815 ILCS 505/1. (emphasis added).

Because Plaintiffs provide services in the form of pastoral counseling, they believe that the Act threatens their freedom to counsel and speak. (Dkt. 1 at ¶ 38). The ICFA, moreover, is broader than it appears. Section 2 of the ICFA enumerates certain "unfair or deceptive acts or practices" which includes "the use or employment of any practice described in Section 2 of the Uniform Deceptive Trade Practices Act . . . ." 815 ILCS 505/2. Section 2 of the Uniform Deceptive Trade Practices Act ("UDTPA") provides that "[a] person engages in a deceptive trade practice when, in the course of his or her business, ***vocation***, ***or occupation***, the person:

> (5) represents that goods or ***services*** have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have . . .;
>
> (7) represents that goods or ***services*** are of a particular standard, quality, or grade . . . if they are of another;
>
> (12) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding. 815 ILCS 510/2 (emphasis added).

Given the State's broad definitions in the ICFA and the UDTPA, as well as the extensive nature of its regulatory scheme, Plaintiffs feel threatened in their ability to continue speaking and counseling according to their faith.

III. Legislative History and Executive Efforts

Because of the State's vague and broad language, as well as the overall uncertainty surrounding the regulatory scheme, Plaintiffs gave the numerous State opportunities to clarify scope of the Act and to reassure pastors that their activities are not covered by it. To that end, Plaintiffs worked with Robert Vanden Bosch, a lobbyist and Executive Director of Concerned Christian Americans in order to obtain a religious exemption specifying that pastors are not in "trade or commerce," or otherwise be subject to Act. Plaintiffs' efforts included the following:

i. Efforts in the State Legislature

Plaintiffs' efforts to obtain a religious exemption began prior to passage of the Act. Seeing that the Act was problematic, Plaintiffs, through Mr. Vanden Bosch, spoke with representatives of the State legislature about the need for a clear religious exemption. (**Exh. A, Bosch Decl**. at ¶ 5). The Act's sponsors, however, refused to provide an exemption and instead made statements on the floor of the assembly that the Act does not violate religious rights. Id. at ¶ 7. Those advocating for a specific exemption were disappointed because a statement on the floor does not carry the same weight as an exemption written into the Act.[1] Id. at ¶ 8.

ii. Efforts on behalf of an Amendatory Veto

After the passage of the Act, Plaintiffs and others concerned with the Act lobbied Governor Rauner for an amendatory veto clarifying that the Act did not apply to pastors. Id. at ¶ 9. Governor Rauner declined the opportunity to do an amendatory veto and signed the Act into law as written. Id. at ¶ 10.

[1] Defendant cites to legislative history to show that the Act was not meant to target pastors. While legislative history may aid a court in statutory interpretation, legislative history is not binding upon the courts. Kodrick v. Ferguson, 54 F. Supp. 2d 788, 794 (N.D. Ill. 1999)(" . . . legislative history is not binding on this court . . . .").

iii. Efforts at the Administrative Level

Plaintiffs continued their efforts to clarify that the Act did not apply to them through the administrative process. Id. at ¶ 11. Here, Mr. Vanden Bosch presented exemption language to Jennifer Hammer, a member of Governor Rauner's legal staff, to make certain that the language in the administrative rules clarified that no one would attempt to prosecute a pastor or church for their teaching of biblical values on homosexuality. Id. Because Mr. Vanden Bosch did not receive any reply, he decided to meet with Mike Zolnierowicz, Governor Rauner's chief of staff, to ensure that Governor Rauner was aware of Plaintiffs' concerns. Id. at ¶ 12. After the meeting, Mike Zolnierowicz, set up a conference with Jennifer Hammer to make sure she was specifically aware of Plaintiffs' concerns. Id. at ¶ 12. Mr. Vanden Bosch was informed at a follow-up meeting that the Governor's staff would not do any administrative rules on the Act. Id. at ¶ 14.

iv. Efforts on Behalf of a Consent Decree

Having exhausted their efforts to obtain a religious exemption at the legislative and executive branches, Plaintiffs retained the law firm of Mauck & Baker, LLC ("MB") in order to secure a declaratory judgment specifying that the Act does not apply to pastors, or if it does, that it is unconstitutional as applied them. Defendant has declared its position to be that pastors are "[not] engaged in trade or commerce-" (Dkt. 21. p. 1). MB has sought to end this litigation with a court ordered consent decree reflecting the terms and agreements of the parties. MB requested a consent decree for a number of reasons, including the fact that consent decrees are court orders enforceable by the issuing federal court, and because consent decrees, as opposed to an agreed dismissal by the Attorney General, are binding and more available to the public.

STANDARD OF REVIEW

"When considering a motion to dismiss for lack of standing under Fed.R.Civ.P. 12(b)(1), this court accepts all well-pled factual allegations as true and draws all reasonable inferences in favor of the plaintiff." Winkler v. Chicago Sch. Reform Bd. of Trustees, No. 99 C 2424, 2000 U.S. Dist. LEXIS 240, at *8 (N.D. Ill. Jan. 6, 2000). Additionally, Federal Rule 8(a)(2) only calls for "a short and plain statement of the claim showing that the pleader is entitled to relief." Plaintiffs need only plead sufficient facts to show that their claims have "substantive plausibility." Johnson v. City of Shelby, 135 S. Ct. 346, 347 (November 10, 2014) (per curiam) citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), and Ashcroft v. Iqbal, 556 U. S. 662 (2009).

ARGUMENT

I. The Plaintiffs Have Standing to Seek Declaratory Judgment

In order to establish standing, a plaintiff must show that he or she has suffered (1) an injury in fact; (2) that the injury is fairly traceable to defendant's actions; and (3) that the injury will be redressed by a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992).

A. Injury in Fact

An "injury in fact" must be one that is "concrete and particularized" and "actual or imminent." Id. Courts have held that "actual injury can exist for standing purposes . . . as long as the plaintiff is objectively reasonably chilled from exercising his First Amendment right to free expression in order to avoid enforcement consequences." Republican Party v. Klobuchar, 381 F.3d 785, 792 (8th Cir. 2004). A plaintiff's freedom of speech is "objectively reasonably chilled" "if there exists a credible threat of prosecution under that statute . . . ." Id. For a credible threat of prosecution to exist, a plaintiff's conduct must be proscribed by the statute at issue. Id. at 793.

The Seventh Circuit has held that a credible threat of prosecution exists if the challenged law "arguably covers" a plaintiff's conduct. Majors v. Abell, 317 F.3d 719, 721 (7th Cir. 2003). A credible threat of prosecution is lacking where the challenged statute "clearly fails to cover [plaintiff's] conduct . . . ." Id. As explained earlier, however, the State's regulatory scheme is anything but clear on this point. The State's use of broad definitions, vague language, and interwoven statutes make it unclear to Plaintiffs whether their activities are covered by the Act or not. It can be argued, based on the statutes as written, that their activities are, or are not, covered under the Act. It is this concern that led the Plaintiffs to seek declaratory relief in order to establish that they are exempt from Act.

Defendant's argument that it "has not enforced or threatened to enforce the Act against [Plaintiffs] of their membership" misses the point for two reasons. (Dkt. 21, p. 9). First, "A plaintiff who mounts a pre-enforcement challenge to a statute that he claims violates his freedom of speech need not show that the authorities have threatened to prosecute him" because "the threat is latent in the existence of the statute." Abell, at 721. So long as the Act "arguably covers" the Plaintiffs' actions, a credible threat of prosecution exists. ("But if it arguably covers it, and so may deter constitutionally protected expression because most people are frightened of violating criminal statutes . . . there is standing." Id.). Second, even if Defendant took an oath never to sue the pastors, private counselees could still sue for "fraud" under the Act.

Here the Plaintiffs have alleged that the Act, as written, may deprive them of their right to speak and counsel according to their faith. (Dkt. 1 at ¶¶ 38, 40). Plaintiffs have also alleged that they have restricted their activities in order to comply with the Act. (See e.g., Dkt. 1, Decl. Teesdale at ¶ 9). The Plaintiffs' allegations have made it clear that the Act has chilled their speech. This is only reinforced by the fact that the State specifically refused to remove any

uncertainty and exempt pastors directly. Section 25 also arguably covers Plaintiffs' actions because it was written to more broadly capture those who practice sexual orientation counseling beyond licensed therapist and counselors. To the best of Plaintiffs' knowledge, pastors and other clergy are the only significant category or counselors that provide these services apart from licensed counselors and therapists. The implication, therefore, is that the State sought to restrict or chill the activities of pastors as well.

Plaintiffs need only show, and have shown, that the Act could arguably be used against them and that the Act has chilled their freedom of speech. (See Susan B. Anthony List v. Driehaus, 134 S. Ct. 2334, 2344 (2014)("we have no difficulty concluding that petitioners' intended speech is 'arguably proscribed' by the law."). The Plaintiffs also remind the Court that "when the threatened enforcement effort implicates First Amendment rights, the inquiry tilts dramatically toward a finding of standing." LSO, Ltd. v. Stroh, 205 F.3d 1146, 1155 (9th Cir. 2000).

B. Fairly Traceable

A plaintiff must also demonstrate a "causal connection between the injury and the conduct complained of -- the injury has to be 'fairly . . . trace[able] to the challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the court.'" Lujan, 504 U.S. at 560. "It is well-established that when a plaintiff brings a pre-enforcement challenge to the constitutionality of a particular statutory provision, the causation element of standing requires the named defendants to possess authority to enforce the complained-of provision." Bronson v. Swensen, 500 F.3d 1099, 1110 (10th Cir. 2007).

The State argued that no "alleged injury is traceable to the Attorney General's conduct . . . since the Attorney General has not enforced or threatened to enforce the Act . . . ." (Dkt. 21. p. 9). Once again, whether the State has enforced or threatened to enforce the Act is irrelevant. "A

plaintiff who mounts a pre-enforcement challenge to a statute that he claims violates his freedom of speech need not show that the authorities have threatened to prosecute him . . . .” Abell, 317 F.3d at 721. Moreover, the question here is not whether the Defendant has enforced or threatened to enforce the Act, but whether the Defendant has the *authority* to enforce the Act. There is no doubt, as Plaintiffs have alleged, that Defendant has the authority to enforce the Act. (Dkt. at ¶ 23). Plaintiffs have therefore met their burden on this point.

C. Redressability

Finally, Plaintiffs must show “that the injury will be ‘redressed by a favorable decision.’” Lujan, 504 U.S. at 561. Defendant does not argue this point. It is clear that a declaratory judgment specifying that pastors are not in “trade or commerce”, or that the Act does not otherwise apply to them for constitutional reasons, would alleviate the chill on Plaintiffs’ freedom of speech and permit them continue speaking and counseling without fear of liability or penalties.

II. Plaintiffs Have Standing to Assert Rights of Counselees

Because the Plaintiffs have shown that they have standing to bring their claims, they also have standing to assert the rights of their counselees. Third party standing is appropriate if a plaintiff “suffered an injury in fact,” has a “close relation to the third party,” and there is some “hindrance to the third party's ability to protect his or her own interest.” Marin-Garcia v. Holder, 647 F.3d 666, 670 (7th Cir. 2011).

Here, Defendant’s argument once again is that the Plaintiffs have no injury in fact “because the Attorney General has not enforced or threatened to enforce the Act . . . .” (Dkt. 21, p. 10). The Plaintiffs have already rebutted this argument. Defendant then argues that Plaintiffs did not provide enough “detail on who the counselees are and insufficient detail on the nature of the

claims on behalf of the counselees . . . .” Id. On the contrary, Plaintiffs pled all that is necessary to convey upon them third party standing on behalf of their counselees under Federal notice pleading requirements. Plaintiffs, for example, stated that they seek to protect the rights of the counselees in their congregations. (Dkt. 1 at ¶ 39). Plaintiffs explained the counselees’ claims which include, due process claims, free speech claims, privacy claims, and free exercise claims. (Dkt. 1 at ¶¶ 39-48).

Plaintiffs have also pled that they have a close relationship to their counselees, which Illinois law recognizes with a clergy-penitent privilege. (Dkt. 1 at ¶ 41). Plaintiffs further explained that requiring their counselees, many of them young and inexperienced, to bring suit individually would subject them to unnecessary hardship, loss of privacy, and make them vulnerable to the pressures of trial. (Dkt. 1 at ¶ 42). *The Defendant has not challenged any of these assertions*. Thus, Plaintiffs do have standing to pursue the claims of their counselees.

III. The Plaintiffs’ Actions are Ripe

Defendant has also argued that this present action is not ripe. (Dkt. 21, p. 6). Defendant’s ripeness argument fails for some of the same reasons as discussed above. Defendant continues to argue the point that there has not been a threat of enforcement. But the Seventh Circuit has rejected this requirement in pre-enforcement challenges like the one at hand. (Wis. Right to Life, Inc. v. Schober, 366 F.3d 485, 489 (7th Cir. 2004)(“’A plaintiff who mounts a pre-enforcement challenge to a statute that he claims violates his freedom of speech need not show that the authorities have threatened to prosecute him; the threat is latent in the existence of the statute.’” (quoting Majors v. Abell, 317 F.3d 719, 721 (7th Cir. 2003)). Defendant also argues that because Section 25 is limited to those in “trade or commerce,” no exemption was ever necessary. But as explained above, this is not a clear as Defendant makes it out to be. The law as written arguably

covers Plaintiffs' actions. Because the State declined numerous opportunities to make a religious exemption explicit, the courts became the Plaintiffs' last resort.

Defendant also misunderstands the nature of Plaintiffs' claim. Plaintiffs have alleged that the Act, as written, chills their freedom of speech. These claims are presumptively ripe. "Claims that present purely legal issues are normally fit for judicial decision. (citation omitted). And in challenges to laws that chill protected speech, the hardship of postponing judicial review weighs heavily in favor of hearing the case." Wis. Right to Life State PAC v. Barland, 664 F.3d 139, 148 (7th Cir. 2011). Here, the "issue presented requires no further factual development, is largely a legal question, and chills allegedly protected First Amendment expression." 281 Care Comm. v. Arneson, 638 F.3d 621, 631 (8th Cir. 2011). (See also, Initiative & Referendum Inst. v. Walker, 450 F.3d 1082, 1098 (10th Cir. 2006) (a claim is ripe if a law "by its very existence, chills the exercise of the Plaintiffs' First Amendment Rights.").

IV. Defendant's Representations do not Moot this Case

Defendant also argues that there is no actual controversy in this matter because "Plaintiffs specifically aver that the Act does *not* apply to their conduct." (Def. Br. 5). (emphasis in the original). Defendant then states "[s]ince the parties agree that the Plaintiffs are not covered by the Act, there is no actual controversy between the parties . . . ." Id.

Defendant is fundamentally wrong on this point. The Plaintiffs have not averred that the Act does not apply to them; they have said repeatedly that they fear it does apply to them and are seeking a declaration that it *should not* apply to them. (Dkt. 1 at ¶¶ 10, 12, 32, 38). Plaintiffs do not "aver" that they are not in "trade or commerce", they *request* a declaratory judgment that they are not in "trade or commerce." The Plaintiffs do not have the authority to declare themselves in or out of "trade or commerce," that is the role of the courts and why they have

sought declaratory judgment on this legal issue. As explained earlier, the legal issue of whether someone is in "trade or commerce" is not as clear cut as the Defendant suggests.[2] This is especially true when the State utilizes broad definitions and maintains an extensive regulatory scheme that regulates everything from the distribution of services to deceptive practices pertaining to vocation and occupation.

Furthermore, Defendant's representations that pastors are not in "trade or commerce" may serve to bring this action to quick resolution but it does not moot this case. The State was given every opportunity to specify that the Act did not apply to pastors. When it refused, the Plaintiffs had no choice but to seek declaratory relief. The Defendant's legal opinion that pastors are not subject to the Act comes after Plaintiffs were forced to take legal action and in no way lessens the legal risk pastors face.

More to the point, a declaratory judgment is necessary to protect the rights of pastors because "[a]n Attorney General's opinion is not binding on a reviewing court in this state." Ill. Educ. Ass'n v. Ill. State Bd. of Educ., 762 N.E.2d 1190, 1194 (2002). In fact, the Defendant's assertions as to the applicability of the Act are not even binding on future Attorney Generals. Apart from a declaratory judgement, Defendant would be free to enforce the Act broadly at a later time. Courts have routinely upheld standing in these scenarios stating "the United States Court of Appeals for the Seventh Circuit has 'long recognized that a defendant cannot moot a claim simply by voluntarily ceasing behavior when it is free to resume that behavior at any

[2] Defendant cites to three cases arguing that the IFCA is applied narrowly. But Illinois courts have not been reluctant to apply the statute broadly as well. (Nichols Motorcycle Supply Inc. v. Dunlop Tire Corp., 913 F. Supp. 1088 (N.D. Ill. 1995)("Plaintiff is not required to show an effect upon Illinois consumers to properly bring a claim under this Act; the Act was not strictly intended to protect only Illinois consumers, but also to prohibit fraud in the conduct of any trade or commerce."); (People ex rel. Daley v. Datacom Systems Corp.,531 N.E.2d 839, 845 (1988)("The phrase 'trade or commerce' is to be given a liberal construction so that the broad purposes of this Act might be achieved.").

time.'" (citations omitted). Horina v. City of Granite City, No. 05-cv-0079-MJR, 2005 U.S. Dist. LEXIS 36386, at *11-12 (S.D. Ill. Aug. 29, 2005). The Horina court further explained:

> "For instance, . . . the United States Court of Appeals for the Tenth Circuit found that the plaintiff therein faced a credible threat of prosecution even though the state had insisted throughout the litigation it would not prosecute groups like plaintiff. The court held that ***the state's assertions during the litigation were not binding on future administrations*** . . . . This Court finds the same to be true in the case at bar. Accordingly, the Court finds that Horina's ***claims are not moot even in light of Granite City's latest representations to the Court that it will not enforce the ordinance***." Id. (emphasis added).

The Horina court made clear that "disavowal of a statute requires that the state do more than say during the litigation that it might never prosecute plaintiff or that it does not intend to prosecute plaintiff. (citations omitted). In order to disavow the statute, the state must instead take some affirmative step against enforcement." Id. at 10-11. Defendant could agree to a Consent Decree but does not offer that solution in its motion to dismiss. Plaintiffs therefore have standing to seek declaratory judgment irrespective of Defendant's current representations.

V. Sovereign Immunity does not Apply in this Case

It is true, as Defendant asserts, that "the Eleventh Amendment precludes actions in federal courts against a state, state agency or state officials acting in their official capacities." (Dkt. 21, p. 10). Defendant is also correct to note that Ex parte Young has created an exception to the Eleventh Amendment rule, holding that "a plaintiff may file a federal suit against a state official seeking prospective equitable relief for ongoing violations of federal law." Id. Defendant is incorrect, however, to suggest that this exception is inapplicable because "Plaintiffs have not alleged that the Act has been enforced against them" and because there is no "threat from the Attorney General to enforce the Act against Plaintiffs." Id. 10-11.

Plaintiffs have already addressed the false notion that there must enforcement or threat of enforcement in order for Plaintiffs to challenge this Act. Plaintiffs have alleged that the Act has,

among other things, chilled and continues to chill their free speech activities. (Dkt. 1 at ¶¶ 10, 12, 38). Plaintiffs, therefore, have alleged an ongoing violation of federal law making declaratory relief appropriate. Not only have Plaintiffs alleged an ongoing violation of their First Amendment rights, Defendant is a proper defendant in this case because the Illinois Attorney General is charged with the enforcement of the State's laws. (Digital Recognition Network, Inc. v. Hutchinson, 803 F.3d 952, 957 (8th Cir. 2015) ("The Eleventh Amendment does not preclude jurisdiction over the state officials if there is 'some connection' between the officials and enforcement of the challenged state law.'"). Because Defendant is charged with enforcement of the State's laws, there is sufficient connection between Defendant and the challenged Act to make Defendant a proper defendant under Ex Parte Young.

VI. Plaintiffs As-Applied Challenges Were Properly Pled

Defendant concludes by claiming that Plaintiffs' additional as applied requests for declaratory judgment should be dismissed because they "make no allegations supporting the assertion that the Act actually applies to them or that the Act is being applied to them." (Dkt. 21, p. 11). Once again, the purpose for seeking declaratory judgment is because Plaintiffs believe that the Act *could* apply to them. A court order is necessary to establish that it does not. It this court's role to determine, using the State's definitions and analyzing the State's regulatory scheme, whether pastors are in "trade or commerce" and if they are, whether the Act is unconstitutional as applied to pastors.

If this Court finds that Plaintiffs are in "trade or commerce," they have pled overwhelming constitutional reasons why the Act would be unconstitutional as applied to them. These reasons, to name a few, include fundamental rights protected by the United States Constitution such as free speech, free exercise, and the due process rights of counselees. With respect to the free

speech claim, not only does the Act chill speech, its content based restrictions must, but cannot, survive the strictest scrutiny. (Cincinnati v. Discovery Network, Inc., 507 U. S. 410, 429 (1993)("innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech."). Plaintiffs' claims are equally strong under its other First and Fourteenth Amendment arguments and Defendant's motion to dismiss is therefore unwarranted.

CONCLUSION

Plaintiffs have demonstrated that they have standing to seek declaratory relief. Because the Defendant's position is that pastors are not in "trade or commerce" and that the Act does not apply to them, all that is needed to resolve this matter is a Consent Decree to that effect. Should Defendant continue to avoid this option, Plaintiffs pray that this Court enter a declaratory judgment that pastors are not in "trade or commerce," or if the Court believes they are, that the Act, as applied to them, is unconstitutional. Plaintiffs also pray for any other relief this Court deems just.

Respectfully submitted this 22nd day of November, 2016.

PASTORS PROTECTING YOUTH, *ET AL*.

By: /s John W. Mauck
One of their Attorneys

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Counsel for Plaintiffs

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

PASTORS PROTECTING YOUTH, *et. al* Plaintiffs,	)	
v.	)	Case No. 1:16-cv-08034
Lisa Madigan, Illinois Attorney General, in her Official Capacity, Defendant.	)	Honorable Ronald A. Guzman

DECLARATION OF ROBERT VANDEN BOSCH

I, Robert Vanden Bosch, make this declaration pursuant to 28 U.S.C. §1746 based on my personal knowledge and upon information and belief.

1. My name is Robert Vanden Bosch, and I am a minister of the Gospel of Jesus Christ. I have been a pastor since 1983, ministering in various aspects of church ministry.
2. As a minister of the Gospel, I have been commissioned to minister on behalf of churches and ministries to help protect religious freedom and liberties of believers in Jesus Christ.
3. I am the Executive Director of Concerned Christian Americans and have lobbied primarily before Illinois governmental bodies in Springfield on behalf of churches, pastors, and biblical values since March, 1993. I have also lobbied specifically against the Youth Mental Health Protection Act ("Act") because of its infringement upon religious beliefs.

4. The Act was amended to add section 25 shortly before its passage in 2015.
5. I have spoken with representatives of the State legislature concerning the need for a clear religious exemption under the Act for pastors who counsel people with unwanted same-sex attraction.
6. Many legislators agreed that a religious exemption should be specified and made their opinion to known to the Act's sponsors.
7. Instead of providing a religious exemption, the sponsors instead choose to make statements on the floor claiming that this Act does not implicate religious rights.
8. Those of us lobbying for a specific exemption were disappointed because a statement on the floor does not carry the same weight as an exemption written into the Act.
9. After the Legislature rejected a specific religious exemption, I and other concerned groups lobbied Governor Rauner in order to obtain an amendatory veto clarifying that the Act did not apply to pastors. Our efforts here included conversations with the Governor's staff and phone calls to his office requesting an amendatory veto.
10. The Governor decided to ignore our petitions and signed the legislation as it was written and as it exists today.
11. After the Act was passed, I continued efforts to secure a religious exemption through the administrative process. I presented exemption language to Jennifer Hammer, a member of Governor Rauner's legal staff, to make

certain that the language in the administrative rules made certain that no one would attempt to prosecute a pastor or church for their teaching of biblical values on homosexuality.

12. After receiving no reply from the legal staff, I met with Mike Zolnierowicz, Governor Rauner's chief of staff, to make certain that the governor was aware of our concerns.

13. After meeting with Mike Zolnierowicz, he set up a meeting with Jennifer Hammer in his office to make sure she was specifically aware of our concerns on the legislation.

14. On a follow-up meeting, I was informed that the Governor's staff had decided not to do any administrative rules on this legislation.

15. Because we are not able to get clarification on administrative rules, it became necessary to file a lawsuit seeking a declaratory judgment that pastors are not subject to the Act.

Under penalties as provided by law, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

November 22, 2016

ROBERT VANDEN BOSCH

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PASTORS PROTECTING YOUTH, *et al.*	)	
Plaintiffs,	)	Case No. 1:16-cv-08034
v.	)	Honorable Ronald A. Guzman
Lisa Madigan, Illinois Attorney General, in her Official Capacity,	)	
Defendant.	)	

NOTICE OF FILING

To: Attached Service List.

PLEASE TAKE NOTICE that on **Tuesday, November 22, 2016,** Plaintiffs Pastors Protecting Youth, et al., caused to be filed with the Clerk of the Court for the Northern District of Illinois, **Plaintiffs' Response to Defendant's Rule 12(b)(1) and 12(b)(6) Motion to Dismiss**, copies of which are attached and served upon you.

Respectfully submitted this 22nd day of November, 2016.

PASTORS PROTECTING YOUTH, *ET AL*.

By: /s John W. Mauck
One of their Attorneys

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CERTIFICATE OF SERVICE

I, John W. Mauck, an attorney herby certify that on November 22, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will automatically send notification of said filing to all parties listed in the service list who are of record and who are registered e-filing users.

By: /s John W. Mauck
One of their Attorneys

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