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VIA ELECTRONIC MAIL

Clinton County Board
850 Fairfax Street
Carlyle, Illinois 62231

Clinton County Health Department
930 Fairfax Street
Carlyle, Illinois 62231

Dear members of the Clinton County Board and Clinton County Board of Health:

It has come to our attention that the Clinton County Board and the Board of Health (BOH) are considering a proposal from HSHS St. Joseph's Hospital (HSHS) for a new Department of Health (DOH) building. Accepting such a proposal would be contrary to DOH's mission statement and would violate the First Amendment and state law. The ACLU of Illinois therefore urges the Clinton County Board and the BOH to reject this proposal.

HSHS, a Catholic hospital system located in Breese, proposes to donate a tract of land for DOH's new public health center. The deed for the property includes use restrictions that limit the types of services DOH can offer and requires DOH to provide treatment that complies with the Ethical and Religious Directives for Catholic Health Care Services ("religious directives") promulgated by the Roman Catholic Church.¹

1. The proposal violates the mission of the DOH.

The DOH aims "to protect and enhance the quality of life of the people [it] serve[s]."² It accomplishes this goal, in part, by offering a variety of services through its public health center. Currently located in Carlyle, the County seat, the public health center is one of the only health

¹ *Ethical and Religious Directives for Catholic Health Care Services (ERDs)*, United States Conference of Catholic Bishops (6th ed. 2018), <http://www.usccb.org/about/doctrine/ethical-and-religious-directives/upload/ethical-religious-directives-catholic-health-service-sixth-edition-2016-06.pdf> (last visited June 13, 2019).

² CLINTON COUNTY HEALTH DEPARTMENT, <http://clintoncountyhealth.com/> (last visited June 13, 2019).

care providers that offers affordable and basic healthcare in Carlyle.³ The property offered by HSHS is located in Breese, roughly ten miles outside Carlyle.

Building on the property in Breese would displace the care now available to over 3,000 Carlyle residents.⁴ Those residents would be required to travel to Breese for immunizations, DNA testing, drug screenings, allergy and medical injections, labs, and many other forms of basic health care. Although this might be a mere inconvenience for some, it is an onerous task for many, such as a person who does not have a car, who works two or more jobs, who lacks child care, or who cares for ailing relatives. Of course, these are precisely the residents who most need access to affordable health care.

Moreover, the deed restrictions would vastly limit the types of care that the DOH could offer at the public health center.⁵ First, it includes a long list of services that the DOH may not provide.⁶ Second, it requires compliance with the Church's religious directives,⁷ which prohibit any treatment that prevents or ends pregnancy, or "separates procreation from the marital act in its unitive significance."⁸ Combined, these restrictions would prohibit important treatments that the DOH currently provides, such as contraception, testosterone, and lab and imaging services.⁹ Furthermore, they limit the DOH's ability to offer additional medical services that it might deem appropriate in the future.

The move to Breese and these arbitrary restrictions on health services would undermine the access to health care they currently enjoy and neither protects nor enhances the quality of life of the people the DOH serves.

2. The proposal violates the First Amendment to the United States Constitution.

A government action violates the Establishment Clause of the First Amendment if it has a "principal or primary effect . . . that . . . advances [or] inhibits religion" or if it "foster[s] an

³ The only other option appears to be the Clinton County Rural Health Practice located in Carlyle, which is managed by HSHS. This is a religiously-affiliated clinic that limits the services that are available and tends to consistently charge more than the public health center. See <https://www.hshsmedicalgroup.org/find-care/practice/practice.aspx?id=ccrhcarlylerivera>

⁴ WORLD POPULATION REVIEW, *Carlyle, Illinois Population*, <http://worldpopulationreview.com/us-cities/carlyle-il-population/> (last visited June 13, 2019).

⁵ Minutes from the February 2019 County Board meeting suggest that only abortions would be restricted. Minutes of *Clinton County Board Meeting, February 2019*, <https://www.clintonco.illinois.gov/wp-content/uploads/2019-February-County-Board-minutes.pdf> (last visited June 13, 2019). The plain language of the proposed deed belies that claim.

⁶ Deed Restrictions from HSHS St. Joseph's Hospital, Breese, provided to Clinton County, §2

⁷ *Id.* at §3

⁸ *ERDs*, *supra* note 1, at 18-25.

⁹ Even if HSHS attempted to fill the gap by offering these services at their hospital, the cost would increase given the current disparity of rates between the two sites

excessive government entanglement with religion.”¹⁰ The Establishment Clause also prohibits the government from coercing any person to adopt any religious practices or doctrine.¹¹

Under the HSHS proposal, Catholic religious directives would govern the treatment decisions of the DOH, a government entity. The Supreme Court has held that “delegating a governmental power to religious institutions . . . inescapably implicates the Establishment Clause.”¹² For example, the Court overturned a state law that gave churches and synagogues “veto power” over liquor licenses for nearby restaurants and stores. The veto power impermissibly advanced religion because “it could be employed for explicitly religious goals” such as “favoring liquor licenses for . . . adherents of that faith.”¹³ Because the statute enmeshed government and church authority, the Court found that “few entanglements could be more offensive to the spirit of the Constitution.”¹⁴

The HSHS proposal has all of the constitutional deficiencies of the church veto statute, and then some. First, rather than give religious entities power over a few liquor licenses in their neighborhood, the proposal would give the Church, through its religious directives, power to tell the DOH what services it can offer to residents in its own health care center. Second, it would grant this power to a single denomination with its own, singular, religious directives, even though “[t]he clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.”¹⁵ Third, it would advance the Church’s national strategy to extend its religious directives to non-Catholic health facilities through mergers, partnerships, and the sale or lease of property.¹⁶ Fourth, it would coerce current and future DOH employees to comply with religious directives when providing care to patients. Fifth, it would coerce Clinton County residents—other than those who can afford to go elsewhere—to forego treatment options that violate Catholic doctrine.

Moreover, if the deed restrictions run with the land, the County could not sell the property in the future without imposing the restrictions on the buyer. This would raise additional constitutional issues, since the government may not require any person to comply with religious directives – either directly or as a condition for government benefits.¹⁷

3. The proposal violates Illinois law.

The proposal runs afoul of the recently enacted Illinois Reproductive Health Act (“RHA”).¹⁸ The RHA grants everyone in Illinois the fundamental right to make autonomous

¹⁰ *Lemon v. Kurtzman*, 403 U.S. 602, 612-614, 123 (1971).

¹¹ *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 312 (2000); *Lee v. Weisman*, 505 U.S. 577, 587 (1992)

¹² *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 123 (1982).

¹³ *Id.* at 125.

¹⁴ *Id.* at 127.

¹⁵ *Larson v. Valente*, 456 U.S. 228, 244 (1982)

¹⁶ Elizabeth Sepper, *Zombie Religious Institutions*, 112 NW. LAW REV. 929, 937-947 (2018); *see also*, Patrick Guinan, *Catholic hospitals, are mergers the way to go?*, 81 THE LINACRE QUARTERLY 2, 107-110 (2014).

¹⁷ *See supra*, n.2.

¹⁸ Illinois Reproductive Health Act, Pub. Act 101-13.

decisions about their reproductive health.¹⁹ State and local governments may not “deny, restrict, interfere with, or discriminate against any individual’s exercise” of this right.²⁰ DOH thus may not commit itself in advance to refuse to provide contraception or other types of reproductive health care for as long as its public health center is on a particular location. Such decisions about services to be provided must involve an assessment of community needs and the agency’s capacity to meet them; the RHA does not permit the DOH to single out any type of reproductive health care as a service that it will never provide regardless of such an assessment.

Because the terms of the deed are contrary to the First Amendment, state statute, and DOH’s own mission, we urge you to reject the HSHS proposal. If the DOH accepts the property with these deed restrictions, it is subject to liability on many fronts.

Additionally, since the site of the Clinton County public health center is a matter of great public concern, both the County Board and the BOH must move forward with the utmost transparency, to ensure that the community has sufficient information to engage fully in the decision making process. In particular, the BOH has violated the Open Meetings Act²¹ by failing to post the minutes of its meetings within the time required, depriving residents of important information for months, and exposing itself to liability under the statute.

Please do not hesitate to get in touch with any questions or concerns. We hope that Clinton County will continue to act in the best of interests of its residents.

Sincerely,



Sapna Khatri
Staff Attorney*

*Currently barred in the state of Missouri and working under the supervision of attorneys barred in the state of Illinois.

¹⁹ *Id.*, §1-15

²⁰ *Id.*, §1-20

²¹ 5 ILCS 120.