

MEMORANDUM

date: January 31, 2025
to: Alliance of Health Care Sharing Ministries
from: Michael F. Murray
subject: Vermont House Bill 102

Vermont House Bill 102 is constitutionally flawed and unworkable. It likely violates critical First Amendment protections for religious liberty, free speech, and freedom of association. It also likely is equally unworkable. It requires the detailed reporting of financial statistics and other information, and yet uses ambiguous terms that will befuddle regulators and regulated alike, including sweeping in unsuspecting, common practices such as direct primary care and crowdfunding.

I. The Bill Likely Is Unconstitutional

The bill seeks to monitor the minutiae of religious groups, including their speech and organization, in direct conflict with the First Amendment. There are at least nine provisions of the bill that pose severe constitutional concerns.

A. Religious Liberty

Under the Establishment Clause, the government may not subject religious organizations to continuous monitoring or require them to report to the government or the public the percentage of funds that they expend on particular activities. Yet the bill:

- Requires ministries to report detailed financial information, including with respect to activities and employees, to the state (Sec. (a)(1)(A)-(S))
- Requires the state to publish detailed financial information regarding ministries, thereby exposing the private information of religious organizations (Sec. (c)(2))
- Requires ministries to submit their speech to their members, including religious newsletters, to the government (Sec. (a)(1)(P))

Under the Free Exercise Clause, the government may not target religious organizations for burdensome treatment. Yet the bill:

- Disproportionately and intentionally burdens religious organizations for burdensome requirements (Sec. (a) (defining coverage of statute))
- Singles out ministries for special treatment (preamble and Sec. (a))

B. Free Speech

Under the Free Speech Clause, the government may not condition an organization's right to speak on how it organizes its finances and may not compel speech beyond factual information. Yet the bill:

- Requires ministries to disclose to the government how much they spend on sharing versus communications, that is, charitable contributions versus evangelization (Sec. (a)(F)-(K))
- Requires ministries to disclose communication materials (Sec. (a)(1)(P))

C. Freedom of Association

Under the First Amendment, the government cannot compel an organization to disclose its members or affiliates without a compelling interest. Yet here, without any interest shown, the bill:

- Requires ministries to disclose their officials and organization (Sec. (a)(1)(S))
- Requires ministries to disclose their vendors (Sec. (a)(1)(D))

II. The Bill Likely Is Unworkable

A. The Requirements Likely Are Unworkable

The bill imposes detailed yet ambiguous financial reporting requirements. These problems will chill ministries and subject them to process and reporting burdens that are divorced from consumer protection concerns. The ambiguities in the requirements of the bill include:

- The bill requires reporting of "administrative expenses," but different entities use that term differently (Sec. (a)(1)(E))
- The bill requires submission of the "total amount" of "fees, dues or other payments," but defines none of those terms. That is especially problematic because ministries do not use these terms commonly or consistently (Sec. (a)(1)(E))
- The bill requires submission of the "total amount" of "requests for reimbursement" "that were submitted" but those terms are undefined and do not account for the fact that the initial "submitted" amount is essentially irrelevant and misleading (Sec. (a)(1)(F))
- The bill requires reporting of what "qualifies" for reimbursement and what was "denied" but does not specify whether amounts outside sharing guidelines fall in that category. (Sec. (a)(1)(G), (J))

- The bill requires submission of speech used for “marketing” but does not define that term (Sec. (a)(1)(P))

B. The Definitions Are Unworkable

The bill’s definitions are over-inclusive or vague, or non-existent.

- The definition of “health care cost sharing agreement” would include common charitable endeavors such as crowdfunding, direct primary care, cost assistance plans, university health care, and fraternal benefit societies. (Sec. 2(3))
- There are no other definitions, creating significant ambiguity.

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The bill raises significant constitutional and workability concerns.