

Good morning Chair and members of the committee. Thank you for having me today. My name is Michael Murray. I represent the Alliance of Health Care Sharing Ministries in First Amendment litigation over Colorado legislation. I am here today to discuss the constitutional concerns raised by the proposed legislation.

The bill under consideration raises significant constitutional concerns. The First Amendment provides protections for religious liberty, free speech, and freedom of association. The bill raises concerns under the First Amendment because it seeks to monitor the minutiae of religious groups, including their speech and organization. These features of the bill raise four separate concerns.

The first two concern religious liberty. The First Amendment's religious liberty protections consist primarily of the Establishment Clause and the Free Exercise Clause. 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. The basic principle is that government may not, as the Supreme Court put it in *Lemon v. Kurtzman* and a variety of precedents, "foster an excessive entanglement with religion." In light of this principle, federal appellate courts have held that subjecting church employee benefits plan to the monitoring of ERISA is not permissible (*Medina v. Catholic Health Initiatives*) and subjecting religious organization to the requirement of reporting the percentage of funds it expends on particular activities is not permissible (*Church of Scientology Flag Service Organization v. City of Clearwater*). Yet the bill does just that, requiring the reporting of detailed financial information and requiring the state to publish detailed financial information.

The second relevant First Amendment provision regarding religious liberty is the Free Exercise Clause. Under the Free Exercise Clause, the government may not target religious organizations for burdensome treatment. Laws must be neutral and generally applicable and not gerrymandered to religious activity. Specifically, that means that laws must not take the religious nature of an organization into account even in part, as the Supreme Court stated in *Kennedy v. Bremerton School District*. Yet the bill disproportionately and intentionally burdens religious organizations with burdensome requirements and singles out ministries for special treatment.

The third First Amendment provision is the Free Speech Clause. 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 of the members' monthly contributions is designated for sharing other members' medical expenses versus communications, that is, charitable contributions versus evangelization. It also requires ministries to disclose communication materials.

The fourth First Amendment protection at issue is the Freedom of Association. Under the First Amendment, the government cannot compel an organization to disclose its members or affiliates without a compelling interest. That is the holding of the Supreme Court's decision in *Americans for Prosperity v. Bonta*, where the Court held that requiring such disclosure was impermissible. Yet here, without any interest shown, the bill requires ministries to disclose their officials and organization and their vendors.

Many of these constitutional concerns would subject the legislation to strict scrutiny. To survive strict scrutiny, legislative must be narrowly tailored to serve a compelling government interest and be the least restrictive means of service that interest. It is hard to see how this legislation could survive that test.

In conclusion, this bill raises significant constitutional concerns.