Legislative Testimony
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Written Testimony on Senate Bill 3, An Act Concerning Online Privacy, Data, and Safety Protections and an Employer's Duty to Disclose Known Instances of Sexual Harassment or Assault Committed By an Employee When Making Employment Recommendations

Senator Winfield, Representative Stafstrom, Ranking Members Kissel and Fishbein, and distinguished members of the Judiciary Committee:

My name is Jess Zaccagnino, and I am the policy counsel for the American Civil Liberties Union of Connecticut (ACLU-CT). I am writing to testify on Senate Bill 3, An Act Concerning Online Privacy, Data, and Safety Protections and an Employer's Duty to Disclose Known Instances of Sexual Harassment or Assault Committed By an Employee When Making Employment Recommendations.

Reproductive Rights

Across the country, states are passing increasingly radical, restrictive laws designed to ban abortion outright. When states pass abortion bans, the burden falls on the patient who needs access to essential, time-sensitive care; providers; and clinics in neighboring states that allow abortion care. When one state passes a restrictive abortion ban, other states follow the same playbook and take it even further, leading to a wave of increasingly radical and extreme abortion bans across the country in the wake of the *Dobbs* decision.

Access to abortion is not just about its legality, but also about humanity, dignity, and freedom. Now that the U.S. Supreme Court has turned its back on nearly fifty years of precedent in *Roe v. Wade* and its progeny, people across the country will be — and already have been — forced to remain pregnant against their will, endangering their mental and physical health, their lives and futures, and their family's lives and

futures. Because of systemic racism, we know that those hurt first and worst are Black and brown people, and those who are low income.

There is a dire need to protect private health-related data as abortion access is under attack. Currently, consumers including Connecticut residents generally expect sensitive health information and data to remain confidential. But unfortunately, the Health Insurance Portability and Accountability Act (HIPAA) only protects personally identifiable health information as confidential. Non-HIPAA entities, like crisis pregnancy centers, are not required to keep people's medical information confidential. These entities lawfully collect, share, and sell sensitive medical information in the same manner as all other data, including data related to medical history, diagnoses, and treatment. Black and brown communities are disproportionately targeted and harmed by the lack of strong data privacy protections first and worst. Laws that criminalize reproductive health are already being used by police and prosecutors to surveil, penalize, and control people who are disproportionately Black and Brown. According to the National Advocates for Pregnant Women, the past 15 years have seen a shocking increase in arrests and prosecutions for crimes related to stillbirths, miscarriages, and alleged drug and alcohol use during pregnancy.

The absence of specific protections for consumer health data not otherwise protected under HIPAA raises serious particular concerns due to ongoing practices by anti-abortion limited service pregnancy centers. These centers, also referred to as "crisis pregnancy centers" and "CPCs", typically present as medical providers, but are not licensed medical providers– thus, are not beholden to the same level of oversight and regulation set forth by state and federal regulations. In recent years, the anti-abortion movement has expanded and elevated the role of CPCs within the broader movement, in part by facilitating the coordination of sophisticated data collection and exploitation systems through their national and/or international affiliate networks-even right here in Connecticut.

Senate Bill 3 is an important step forward to protect sensitive consumer health data. While not bound HIPAA, limited service pregnancy centers collect particularly sensitive and personal consumer health data. Here in Connecticut, the majority of limited service pregnancy centers are registered as 501(c)(3) organizations, and as the bill is currently drafted, are exempt from provisions of the drafted bill.

> Section 7 of the bill states "(a) The provisions of sections 1,3 to 6, inclusive, and 8 of this act shall not apply to any: (1) Body, authority, board, bureau, commission, district or agency of this state or of any political subdivision of this state; (2) organization that is exempt from taxation under Section 501(c)(3), 501(c)(4), 501(c)(6) or 501(c)(12) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time;"

As such, we recommend amendment to include limited service pregnancy centers. This is critical in ensuring the protection of consumer health data, and to addressing the concerning data collection practices by limited service pregnancy centers.

Warrants

The ACLU-CT is opposed to Section 9 of Senate Bill 3, which would require a court to order a provider of electronic communications services or remote computing service not to disclose to the data owner the existence of a search warrant for a 90 day period "if there is reason to believe that notification of the existence of the warrant may result in: (1) endangering the life or physical safety of an individual; (2) flight from prosecution; (3) destruction of or tampering with evidence; (4) intimidation of potential witnesses; or (5) otherwise seriously jeopardizing the investigation." This bill language is borrowed from a federal law,[1] enacted in 1986 and last updated in 1999, well before smart phones became commonplace. This law, as noted by the Office of the Chief Public Defender, was intended to cover data that was "inherently less

[1] 18 U.S.C. § 2705.

private and invasive than data from a cellphone." In fact, the United States Supreme Court has recognized that searches of cellphones are more intrusive than searches of homes because of the sheer volume of information contained on a person's phone.[2] This section of Senate Bill 3 would impermissibly infringe on privacy rights, and as such, the ACLU-CT opposes this section and urges this Committee to do the same.

[2] *See, e.g.*, Riley v. California, 573 U.S. 373 (2014).