New York State Catholic Conference

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MEMORANDUM OF OPPOSITION

Re: S.2796 Krueger, or any state constitutional amendment
In relation to abortion expansion

The above-reference legislation, S.2796 by Senator Krueger, has already passed the Assembly as A.1748. It is a dangerous and extreme expansion of abortion policy in New York State. In addition to this bill, the Governor has announced his intention to submit an amendment to the State Constitution to accomplish the same objectives. **The New York State Catholic Conference opposes S.2796, as well as a state constitutional amendment, or any other proposal which expands late-term abortion and endangers women and infants in our state.**

The reasons we oppose these proposals are outlined below.

They are late-term abortion expansions.

No matter how the proposal is re-worded, the primary objective is to expand late-term abortion. Current state law says abortions are legal in New York through 24 weeks of pregnancy (Article 125 Penal Law), but outlawed after that unless they are necessary to save a woman's life. This bill would repeal the Penal Law references to abortion and insert a "health" exception into the newly-written Public Health Law. Such a "health" exception has been broadly interpreted by the courts to include age, economic, social and emotional factors. As a result, this bill will allow abortion for any reason and at any time during a pregnancy, including into the ninth month. It will encourage more late-term abortionists to come into New York and it will lead to more third-trimester abortions in New York State.

Moreover, the language of S.2796 specifically allows the abortionist to determine the "absence of fetal viability;" he could determine viability is absent at 24 weeks gestation, or 29 weeks or even 32 weeks gestation. This language will most certainly result in viable unborn children being aborted.

They empower non-doctors to perform abortions.

Current New York State statutes and regulations are clear in requiring that only licensed physicians may perform abortions in New York. No federal law has ever given permission to non-doctors to perform abortions. S.2796 is very specific in reversing these protections, by stating that any health care practitioner licensed under Title Eight of the Education Law may perform an abortion. Practitioners licensed under Title Eight include nurse practitioners,

physician assistants, nurse midwives, as well as a broad range of other non-physicians. S.2796 would allow the Education Department to authorize any of these non-doctors to do both chemical and surgical abortions.

Empowering non-physicians to perform abortions is a specific goal of abortion advocates as they seek to boost access in the face of a declining number of doctors willing to perform the procedure. It should stand to reason that allowing non-doctors to perform surgery is dangerous for women and infants.

They could compel participation in abortion.

Because the intent of these proposals would ordain abortion as a "fundamental right," the right to abortion could supersede everything, even the right of conscience. The government would have the task of ensuring that there is no "discrimination" against this fundamental right being exercised. This means that doctors could be compelled to perform abortions or risk losing their license to practice. Hospitals and medical facilities, even religious ones, could be forced to allow abortions on site or risk fines, penalties, loss of funding/operational certificates or other punishment. Likewise, health insurance plans could be forced to cover abortion and employers could be forced to purchase such coverage.

They eliminate protections for pregnant women and their unborn children.

Moving abortion from the Penal Law to the Public Health Law is a major policy shift that removes accountability for those who would harm unborn children *outside the context of abortion.* The crime of "abortional act" is the only place in New York law that allows for criminal charges for violent attacks against pregnant women and their unborn children, which occur with some frequency in cases of domestic violence.

S.2796 would remove all current Penal law protections for pregnant women in cases of illegal or unwanted abortion (Penal Law Sections 125.05, 125.40 and 125.45). Repealing these laws – and proposing no penalties whatsoever for violation of the proposed new law -- does a grave disservice to pregnant women, the very-much-wanted unborn children they may carry, and any possibility of justice for them when crimes are committed against them.

They jeopardize live-born children.

Shockingly, S.2796 repeals Public Health Law Section 4164, part of which gives full legal protection to any child who might (mistakenly) be born alive as the result of an abortion. It also requires a second doctor to be available during a late-term abortion to help give medical care to any such child. It is difficult to imagine the motivation of bill sponsors in removing these protections, which have been upheld as constitutional.

In 2013, America saw the face of late-term abortion during the trial of former Philadelphia abortionist Kermit Gosnell, who was convicted of numerous crimes, including murdering three infants born alive during attempted abortion procedures. The grand jury report on Gosnell states that "he regularly and illegally delivered live, viable babies in the third trimester of pregnancy, and then murdered these newborns by severing their spinal cords with scissors."

In addition, there have been documented cases of babies born alive during attempted abortions who were left to die of neglect. The intersection of late-term abortions, the potential for live births, and the recent revelations of the transfer of fetal tissues or whole cadavers from clinics to researchers raise grave concerns.

Thankfully, Kermit Gosnell is serving a sentence of life imprisonment and no longer endangers women and infants. But removing this protection from our statute will send a New York "welcome" signal to other late-term abortionists, who are often notorious for disregarding the health and safety of women and children.

The right to abortion does not extend so far as to justify the denial of fundamental civil rights and protections to born, living human children.

They will increase the state's abortion rate.

As outlined above, we believe this legislation or a state constitutional amendment would have dangerous consequences for women and infants. New York's abortion numbers have been steadily decreasing, from 118,381 reported induced abortions in 2008 to 93,299 reported induced abortions in 2014, according to the most recent report of the NYS Department of Health. We believe these misguided proposals would reverse this encouraging trend and only increase the tragedy of abortion.

We urge you to pause to consider the curious paradox created by these measures: In one unit of your public hospital, physicians will be taking extreme measures and heroic actions to save the lives of prematurely delivered viable infants, while in another unit, an abortionist will be destroying infants of the very same age, viable babies who could very well survive outside the womb. Can we, as a society, comfortably live with such arbitrary distinctions and callous inconsistencies regarding who lives and who dies?

We strongly urge you to **oppose** S.2796 and any state constitutional amendment which seeks to expand abortion policy in New York State. Similar to the failed tenth plank of the 2013-2015 "women's equality agenda," these are not simple updates to New York's laws. They are bold and dangerous expansions of current abortion jurisprudence and go well beyond *Roe v. Wade*.