

11-1-2022

## COVID-19 & The Illinois Health Care Right of Conscience Act: A Legal Analysis

Matthew Moustis  
*Northern Illinois University*

Follow this and additional works at: <https://huskiecommons.lib.niu.edu/niulr>



Part of the [Law Commons](#)

---

### Suggested Citation

Matthew Moustis, *COVID-19 & The Illinois Health Care Right of Conscience Act: A Legal Analysis*, 43 N. Ill. Univ. L. Rev. 1 (2022).

This Article is brought to you for free and open access by the College of Law at Huskie Commons. It has been accepted for inclusion in Northern Illinois University Law Review by an authorized editor of Huskie Commons. For more information, please contact [jschumacher@niu.edu](mailto:jschumacher@niu.edu).

# COVID-19 & The Illinois Health Care Right of Conscience Act: A Legal Analysis

MATTHEW MOUSTIS\*

*During the COVID-19 pandemic, many people who refused to be vaccinated because of their religious or moral beliefs tried to use the Illinois Health Care Right of Conscience Act to block their employers' vaccination requirements. In response, some elected officials argued that the Act was being misinterpreted. They believed it was intended only to protect health care providers who refused to provide certain services to patients, not to allow people to avoid measures taken to ensure public health during a pandemic. Their interpretations were incorrect. The Illinois Health Care Right of Conscience Act was properly construed as a right to refuse COVID-19 vaccines on religious or moral grounds. And it was properly construed as applying to anyone, not solely to health care providers. Contrary interpretations are inconsistent with the public policy, the statutory language, and the interpretive caselaw. Furthermore, the latest amendment was not a legislative clarification but a substantive change to the law.\**

---

\* J.D. Candidate, Northern Illinois University College of Law, Class of 2023. Thank you to everyone who supported and encouraged me throughout the writing process: Professor Meredith Geller and Professor Marc Falkoff; my wonderful girlfriend, Samantha Janis; and all my colleagues on the Review. Thank you to my father, James Moustis, who continues to be my greatest teacher. Thank you to the entire College of Law faculty for teaching me how to think like a lawyer.

I. INTRODUCTION .....	2
II. BACKGROUND .....	6
A. THE CHURCH AMENDMENT .....	7
B. DOE V. BOLTON .....	8
C. THE ILLINOIS ABORTION ACT OF 1975.....	8
III. THE ILLINOIS HEALTH CARE RIGHT OF CONSCIENCE ACT .....	9
A. TEXT & LEGISLATIVE HISTORY .....	9
B. INTERPRETIVE CASELAW .....	12
C. APPLICATION TO COVID-19 VACCINE REFUSALS .....	16
IV. SECTION 13.5: A SUBSTANTIVE CHANGE TO THE LAW.....	17
V. CONCLUSION .....	19

## I. INTRODUCTION

The tragic loss of life,<sup>1</sup> seemingly never-ending sickness, and severe social disruption<sup>2</sup> brought about by COVID-19 have created “a world that feels and is very different from just a few years ago.”<sup>3</sup> As Justice Gorsuch put it, “No one doubts that the COVID-19 pandemic has posed challenges for every American.”<sup>4</sup> Crafting and implementing public policy to effectively navigate the pandemic has been incredibly difficult, resulting in increased political polarization in the United States.<sup>5</sup> And perhaps no contemporary policy has amplified the political divide more than vaccine mandates.<sup>6</sup> “Such mandates have . . . led to collisions between the interests of public health, personal

---

1. See *COVID Data Tracker*, [https://covid.cdc.gov/covid-data-tracker/#trends\\_totaldeaths](https://covid.cdc.gov/covid-data-tracker/#trends_totaldeaths) (providing a live count of COVID-19 related deaths).

2. John Carroll, *The Social Disruption of COVID-19*, LA TROBE UNIV. (Mar. 23, 2020), <https://www.latrobe.edu.au/news/articles/2020/opinion/the-social-disruption-of-covid-19> [<https://perma.cc/UM86-XMPZ>].

3. E-mail from Therese Clarke-Arado, Dir., N. Ill. Univ. L. Libr., to author (Jan. 07, 2022, 12:26 PM CST) (on file with author).

4. Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab., 142 S. Ct. 661, 667 (2022) (Gorsuch, J., concurring).

5. Erwin Chemerinsky, *Op-Ed: Will the Supreme Court Back Sensible Workplace Vaccine Mandates?*, L. A. TIMES (Jan. 3, 2022), <https://www.latimes.com/opinion/story/2022-01-03/supreme-court-covid-mandates> [<https://perma.cc/NR4W-JLV5>].

6. See Margaret Talev, *Axios-Ipsos Poll: 60% of Voters Back Biden Vaccine Mandates*, AXIOS (Sept. 14, 2021), <https://www.axios.com/axios-ipsos-poll-covid-vaccine-mandates-biden-c0b7af63-6de0-4ec2-82bf-fb85e3e021ea.html> [<https://perma.cc/PGE7-NZG6>].

liberty, and public policy”<sup>7</sup> while simultaneously flooding our legal system with complex and unique issues.<sup>8</sup>

Such issues arose in Illinois after Governor J.B. Pritzker ordered health care workers,<sup>9</sup> school personnel,<sup>10</sup> higher education personnel,<sup>11</sup> and employees of state-owned or state-operated congregate facilities<sup>12</sup> to be vaccinated against COVID-19. Employers followed by implementing vaccine requirements of their own and threatening to remove unvaccinated employees from the workplace. But many workers refused to comply with the mandates, “citing a range of religious, moral, political, and conscience objections” to the vaccines.<sup>13</sup> Some of these objections were based on notions of natural immunity;<sup>14</sup> concerns about the expedited nature of the available vaccines<sup>15</sup> and unidentified side effects;<sup>16</sup> a general distrust of the government;<sup>17</sup> concurrent, chronic health issues; or the inherent lack of informed consent in vaccine mandates.<sup>18</sup> In addition, people of various religious backgrounds often objected because of “what they view as an impermissible connection between the vaccines and the cell lines of aborted fetuses.”<sup>19</sup>

---

7. *Does 1-14 v. NorthShore Univ. HealthSystem*, No. 21-cv-05683, 2021 WL 5578790, at \*1 (N.D. Ill. Nov. 30, 2021).

8. See Jill Turner Lever & David I. Rosen, *Religious Exemptions from Mandated COVID-19 Vaccines: Must Employers Consider Those Employee Requests?*, NAT’L L. REV. (Nov. 3, 2021), <https://www.natlawreview.com/article/religious-exemptions-mandated-covid-19-vaccines-must-employers-consider-those> [<https://perma.cc/48GT-V27U>].

9. Ill. Exec. Order No. 87 § 2 (Aug. 26, 2021), <https://www.illinois.gov/government/executive-orders/executive-order.executive-order-number-20.2021.html> [<https://perma.cc/64BP-6H4W>].

10. *Id.* § 3.

11. *Id.* § 4.

12. *Id.* § 5.

13. Adam R. Young, Melissa A. Ortega & Craig B. Simonson, *A Swing and a Miss: Right to Conscience Objections to COVID-19 Vaccinations to Endure Until June 2022*, SEYFARTH (Nov. 2, 2021), <https://www.seyfarth.com/news-insights/swing-and-a-miss-right-to-conscience-objections-to-covid-19-vaccinations-to-endure-until-june-2022.html> [<https://perma.cc/RH8Q-77AZ>].

14. Emma Bloomfield, *3 Common COVID Vaccination Objections*, UNLV (Aug. 17, 2021), <https://www.unlv.edu/news/article/3-common-covid-vaccination-objections> [<https://perma.cc/TG2F-GGPA>].

15. *Id.* See also *This is How the COVID-19 Vaccine was Expedited*, ST. JOSEPH HEALTH (Apr. 14, 2021), <https://stjoseph.stlukeshhealth.org/healthy-resources/blogs/this-is-how-the-covid-19-vaccine-was-expedited> [<https://perma.cc/U9N8-77AP>].

16. Bloomfield, *supra* note 14.

17. Henry Enten, *How Long-Standing Mistrust of Government is Hurting Our Vaccination Efforts*, CNN (July 10, 2021, 9:24 AM EST), <https://www.cnn.com/2021/07/10/politics/vaccinations-government-mistrust-analysis/index.html> [<https://perma.cc/9ENN-2RNH>].

18. See generally *Ethics: Informed Consent*, AM. MED. ASS’N, <https://www.ama-assn.org/delivering-care/ethics/informed-consent> (last visited Jan. 16, 2022) [<https://perma.cc/TYH4-S8Z2>].

19. *Does 1-3 v. Mills*, 595 U.S. \_\_\_, \_\_\_, 142 S. Ct. 17, 19 (2021) (Gorsuch, J. dissenting) (“More specifically, they allege that the Johnson & Johnson vaccine required the use

Some employers nonetheless refused to provide religious exemptions to their vaccine policies, forcing employees of faith to choose between their conscience and their careers. “Very few scenarios paint a bleaker picture than giving up your livelihood in order to follow your religious beliefs.”<sup>20</sup> Seemingly overnight, the “essential workers” who labored tirelessly to protect others and provide necessary services during the early stages of the pandemic became easily dispensable: “They can elect to comply with the policy, or they can seek other employment.”<sup>21</sup>

Searching for a form of redress, some people sued their employers under the Illinois Health Care Right of Conscience Act (“Conscience Act” or “Act”).<sup>22</sup> The Act provides, in part, that “It shall be unlawful for any person, public or private institution . . . to discriminate against any person in any manner . . . because of such person’s conscientious refusal to receive, obtain, accept . . . any particular form of health care services contrary to his or her conscience.”<sup>23</sup> One of the broadest conscience clauses in the country, the Act protects the individual right to refuse health care services that conflict with one’s religious or moral beliefs. Those services specifically include “medication” and “other treatment . . . intended for the physical, emotional, and mental well-being of persons,”<sup>24</sup> so vaccines were commonly thought to fall within the Act’s scope.

But in response to the rise in lawsuits challenging vaccine mandates, some elected officials argued that the Conscience Act was being misinterpreted. “The Healthcare Right of Conscience Act is being misinterpreted . . . and used in court cases to try to allow people who just don’t want to get vaccinated, or anti-vaxxers . . . to avoid the rules,” Governor Pritzker stated.<sup>25</sup> His administration advocated for a legislative clarification to prevent

---

of abortion-related materials in its production, and that Moderna and Pfizer relied on aborted fetal cell lines to develop their vaccines.”). *See also* Memorandum of Law in Support of Motion for Temporary Restraining Order and Preliminary Injunction, at 1, *Does 1-14 v. NorthShore Univ. HealthSystem*, No. 21-cv-05683 (N.D. Ill. 2021) (“Plaintiffs are healthcare professionals, all of whom have sincerely held religious beliefs against the COVID-19 vaccines because they were either developed from, or tested with, aborted fetal cell lines.”).

20. *See Air Force Officer v. Austin*, No. 5:22-cv-00009, 2022 WL 468799 at \*23 (M.D. Ga. Feb 15, 2022).

21. Defendant City of Chicago’s Response to Plaintiffs’ Emergency Petition for A Temporary Restraining Order and Preliminary Injunction at 2, *Troogstad v. City of Chi.*, 576 F. Supp. 3d 578 (N.D. Ill. 2021) (No. 21-cv-05600), 2021 WL 9219789.

22. Peter Hancock, *Pritzker Signs Health Care Right of Conscience Change*, CAP. NEWS ILL. (Nov. 09, 2021), <https://www.capitolnewsillinois.com/NEWS/pritzker-signs-health-care-right-of-conscience-change> [<https://perma.cc/4MW8-TMHT>].

23. 745 ILL. COMP. STAT. 70/5 (2022).

24. 745 ILL. COMP. STAT. 70/3(a) (2022).

25. Illinois in Focus, *Episode 162: Democrats Carve COVID out of Right of Conscience Act*, THE CTR. SQUARE ILL., at 3:12-3:28 (Oct. 29, 2021) (accessed using Apple Podcasts).

the Act from being “misinterpreted by fringe elements.”<sup>26</sup> Other Democrats echoed these thoughts. “The Act is being intentionally distorted by those who favor misinformation over fact, and those who are using this Act to justify their desire to thumb their noses at the mitigation efforts imposed by employers to stop the spread of COVID-19, a deadly virus,”<sup>27</sup> said Representative Robyn Gabel. Similarly, a spokesperson for Illinois Attorney General Kwame Raoul stated that those trying to use the Act to block their employers’ vaccine requirements were relying on misinterpretations of the law and urged the legislature to “clarify its intent when passing the law” to “help ensure that it is not misinterpreted or misapplied in ways the [l]egislature did not intend.”<sup>28</sup>

These elected officials took the position that the Conscience Act was intended only to protect health care providers who refused to provide certain services to patients, and that the legislature never intended it to allow people to disregard measures taken to protect the public during a pandemic.<sup>29</sup> But others felt that those interpretations were disingenuous and that the Act explicitly protected those who refused vaccines on moral or religious grounds. As they saw it, losing your career because of a vaccine mandate was the exact type of harm the Act was intended to prevent.

Despite strong public opposition, the Illinois legislature eventually resolved the dispute by amending the Act.<sup>30</sup> The amendment added Section 13.5, which provides that it is not a violation of the Act for “any person or public official, or for any public or private . . . employer, to take any measures or impose any requirements, including . . . provision of services by a physician or health care personnel, intended to prevent contraction or transmission of COVID-19.”<sup>31</sup> The legislature labeled this provision “a declaration of existing law” that should not be “construed as a new enactment,”<sup>32</sup> and instructed the courts to apply it retroactively “to all actions commenced or pending on or after” June 1, 2022.<sup>33</sup>

This Comment argues that the Health Care Right of Conscience Act was properly construed as a right to refuse COVID-19 vaccines on religious or

---

26. Dylan Sharkey, *Pritzker Wants to End Health Conscience Law’s Use to Avoid COVID-19 Vax*, ILL. POL’Y (Oct. 16, 2021), <https://www.illinoispolicy.org/pritzker-wants-to-end-health-conscience-laws-use-to-avoid-covid-19-vax/> [<https://perma.cc/CUU9-HK8J>].

27. WCIA News, *Illinois House Alters Health Care Right of Conscience Act*, YOUTUBE (Oct. 27, 2021), <https://youtu.be/8tN-Y8Yzj00> [<https://perma.cc/4DD3-WDPY>].

28. See Hancock, *supra* note 22.

29. See, e.g., Jerry Nowicki, *House Approves Changes to Health Care Right of Conscience Act*, ILLINOIS NEWS ROOM, Oct. 28, 2021, <https://illinoisnewsroom.org/house-approves-changes-to-health-care-right-of-conscience-act/> [<https://perma.cc/2E39-YNWX>].

30. See *id.* (“More than 50,000 witness slips were filed against it on the Illinois General Assembly website.”).

31. 745 ILL. COMP STAT. 70/13.5 (2022).

32. *Id.*

33. *Id.*

moral grounds, and is applicable to anyone, not solely to health care providers. Contrary interpretations are inconsistent with the public policy, the statutory language, and the interpretive caselaw. Furthermore, the latest amendment was not a legislative clarification but a substantive change to the law. Section II of this Comment provides a background of conscience clauses.<sup>34</sup> Section III examines the Conscience Act.<sup>35</sup> Part A analyzes the text and legislative history;<sup>36</sup> Part B discusses how courts have interpreted the Act;<sup>37</sup> Part C applies principles of statutory interpretation to decipher the Act's proper application to COVID-19 vaccine refusals.<sup>38</sup> Section IV invokes the Doctrine of Clarifications<sup>39</sup> and analyzes the latest amendment under the legal standard used by the Seventh Circuit Court of Appeals to determine whether a statutory amendment constitutes a clarification or, alternatively, a substantive change to the law.<sup>40</sup>

## II. BACKGROUND

To understand the scope and function of the Conscience Act, some background on other conscience clauses is necessary. A “conscience clause”<sup>41</sup> is a law that protects the individual right to refuse to partake in certain health care services that conflict with that person’s religious or moral beliefs. Such laws emerged after the Supreme Court’s 1973 decisions in *Roe v. Wade*<sup>42</sup> and *Doe v. Bolton*.<sup>43</sup> Before these cases, “46 of 50 states prohibited all or almost all abortions.”<sup>44</sup> Then *Roe* established a constitutional right to have an abortion and struck down virtually every state’s criminal abortion statute.<sup>45</sup> Post *Roe*, abortions became “more accessible to women throughout

---

34. See *infra* text accompanying notes 41-66.

35. See *infra* text accompanying notes 67-160; 745 ILL. COMP. STAT. 70 (2022).

36. See *infra* text accompanying notes 67-98.

37. See *infra* text accompanying notes 99-148.

38. See *infra* text accompanying notes 149-60.

39. See *infra* text accompanying notes 161-84. See generally Pat McDonell, Note, *The Doctrine of Clarifications*, 119 MICH. L. REV. 797 (2021).

40. See *Middleton v. Chicago*, 578 F.3d 655, 664 (7th Cir. 2009).

41. Also known as a refusal law. See Douglas Nejaime & Reva B. Siegel, *Conscience Wars: Complicity-Based Conscience Claims in Religion and Politics*, 124 YALE L.J. 2516, 2534 (2015).

42. *Roe v. Wade*, 410 U.S. 113 (1973), overruled by *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

43. *Doe v. Bolton*, 410 U.S. 179 (1973).

44. Erwin Chemerinsky, *Ruling in Abortion Cases Will Greatly Affect Women’s Lives but Won’t End Controversy*, A.B.A. J. (Nov. 30, 2021), <https://www.abajournal.com/columns/article/chemerinsky-ruling-in-abortion-cases-will-greatly-affect-womens-lives-but-wont-end-controversy> [https://perma.cc/84ZA-K8Z8].

45. John Hart Ely, *The Wages of Crying Wolf: A Comment on Roe v. Wade*, 82 YALE L.J. 920 (1973).

the country,”<sup>46</sup> causing many health care providers to fear that they may be required to perform or assist with the procedure despite their religious and moral beliefs.<sup>47</sup>

Such was the case in *Taylor v. St. Vincent’s Hospital*,<sup>48</sup> where a Catholic hospital was required “to allow its facilities to be used for sterilization, specifically, a tubal ligation procedure.”<sup>49</sup> Lawmakers responded to this case by enacting conscience clauses in order to “address the moral dilemma in which health care providers might find themselves if called upon to provide services that are contrary to their consciences.”<sup>50</sup> Thus, conscience clauses typically apply only to health care providers, allowing them “to refuse to perform certain services that they oppose on religious and moral grounds without fear of retribution.”<sup>51</sup> Such services usually include abortions, sterilizations, and dispensing contraceptives.<sup>52</sup>

#### A. THE CHURCH AMENDMENT

The first federal conscience clause was the Church Amendment.<sup>53</sup> This law prohibited individuals and entities receiving federal grants from being forced to perform or assist with abortions or sterilizations despite their religious or moral beliefs.<sup>54</sup> The law also prohibited such entities from being required to host abortions or sterilizations in their facilities<sup>55</sup> and prohibited them from discriminating against employees who refused to partake in those services.<sup>56</sup> The statutory language applied only to individuals and entities involved in providing abortions or sterilization procedures.

---

46. *Roe v. Wade: Its History and Impact*, PLANNED PARENTHOOD, [https://www.plannedparenthood.org/files/3013/9611/5870/Abortion\\_Roe\\_History.pdf](https://www.plannedparenthood.org/files/3013/9611/5870/Abortion_Roe_History.pdf) (last updated Jan. 2014) [<https://perma.cc/H3SN-243S>].

47. See Mark Hinds, Note, *Balancing Medical Conscience Clauses and Life-Threatening Scenarios--It Is Time for Congress to Create Emergency Exceptions to The Church Amendment*, 15 CHARLESTON L. REV. 509, 513 (2021).

48. *Taylor v. St. Vincent’s Hosp.*, 369 F. Supp. 948, 950 n.1 (D. Mont. 1973), *aff’d*, 523 F.2d 75 (9th Cir. 1975).

49. *City & Cnty. of S.F. v. Azar*, 411 F. Supp. 3d 1001, 1006 (N.D. Cal. 2019).

50. See *id.* See also *Rojas v. Martell*, 2020 IL App (2d) 190215, 161 N.E.3d 336.

51. Tom C.W. Lin, *Treating an Unhealthy Conscience: A Prescription for Medical Conscience Clauses*, 31 VT. L. REV. 105 (2006).

52. *Id.* at 107.

53. 42 U.S.C.A. § 300a-7 (West 2021).

54. *Id.* § 300a-7(b).

55. *Id.* § 300a-7(b)(2)(A).

56. *Id.* § 300a-7(c)(1)(A)-(B).



B. *DOE V. BOLTON*

Another conscience clause was at issue in the Supreme Court case *Doe v. Bolton*.<sup>57</sup> Here, the Court struck down several provisions of a Georgia statute that regulated abortions.<sup>58</sup> But the Court upheld the statute's conscience clause provision, which prevented hospitals from being required to admit abortion patients, forcing their employees to perform abortions, and being held liable for refusing to admit abortion patients.<sup>59</sup> Writing for the Court in *Doe*, Justice Blackmun explained that this clause gave hospitals "the right not to admit an abortion patient" and gave health care providers "the right, on moral or religious grounds, not to participate in the procedure."<sup>60</sup> Again, the statutory language applied only to individuals and entities involved in providing abortions.

C. *THE ILLINOIS ABORTION ACT OF 1975*

In response to *Roe* and *Doe*, the Illinois legislature enacted the Abortion Act of 1975.<sup>61</sup> The law regulated abortions in accordance with the framework set forth in *Roe*.<sup>62</sup> It also contained a conscience clause: "No physician, hospital, . . . nor employee thereof, shall be required against his or its conscience declared in writing to perform, permit or participate in any abortion . . ."<sup>63</sup> Under this clause, religious and moral objections to performing abortions could not form the basis for "any civil, criminal, administrative or disciplinary action, proceeding, penalty, or punishment" against the health care provider.<sup>64</sup> Like the conscience clauses discussed above, this provision only protected individuals and entities involved in providing abortions.<sup>65</sup> Its language directly reflected this purpose. Important to our discussion, this law was enacted before—and remained in effect when—the Conscience Act was passed.<sup>66</sup> This law's existence is therefore evidence that the legislature did not intend the Conscience Act to apply only to health care providers, because providers were already protected under the Abortion Act.

---

57. *Doe v. Bolton*, 410 U.S. 179 (1973).

58. Richard Wasserman, *Implications of The Abortion Decisions: Post Roe and Doe Litigation and Legislation*, 74 COLUM. L. REV. 237, 239-40 (1974).

59. *Doe v. Bolton*, 410 U.S. at 205 app. A §(e).

60. *Doe*, 410 U.S. at 184.

61. 720 ILL. COMP. STAT. 510/1 (2018) (repealed by P.A. 101-13) ("It is the intention of the General Assembly of the State of Illinois to reasonably regulate abortion in conformance with the decisions of the United States Supreme Court of January 22, 1973.").

62. *Roe v. Wade*, 410 U.S. 113, 164-65 (1973), *overruled by* *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022).

63. 720 ILL. COMP. STAT. 510/13 (repealed by P.A. 101-13).

64. *Id.*

65. *See* sources cited *supra* notes 54-61.

66. 720 ILL. COMP. STAT. 510/13 (repealed by P.A. 101-13).

### III. THE ILLINOIS HEALTH CARE RIGHT OF CONSCIENCE ACT

#### A. TEXT & LEGISLATIVE HISTORY

First, a quick look at the legislative history. A single, brief discussion that took place during the legislative debate before the Act was passed supports the argument that it was only intended to protect health care providers. Senator Phillip Rock stated that the Conscience Act would “allow hospitals and medical personnel the right not to participate in medical procedures with which they . . . do not agree in conscience.”<sup>67</sup> He then referenced a law passed two sessions prior that created a right of conscience for hospitals and medical personnel concerning abortion (seemingly a reference to the Abortion Act, discussed above).<sup>68</sup> “The Conscience Act,” he explained, “frankly, is a little broader. It includes other medical procedures such as sterilization or advice on family planning.”<sup>69</sup>

He was then asked, “How about the reverse situation where there is a Christian Science participant . . . can they have a right to refuse treatment . . . if a patient or the parent of a patient does not want any services?”<sup>70</sup> “No,” he responded, “they have that right currently, and this Act doesn’t change that.”<sup>71</sup> But as it happens, the language enacted by the legislature was much broader than Senator Rock described. In fact, his statements directly conflicted with the Act’s language.<sup>72</sup> Unlike the conscience clauses discussed above, the Conscience Act was not limited to protecting health care providers.

Take the original preamble, for example: “An Act concerning the right of medical personnel, medical facilities, and *persons receiving medical care* to be free to act in accord with their conscience and to be free from any form of discrimination due to acts in accord with their conscience.”<sup>73</sup>

Section 2 describes the policy underlying the Act: “to respect and protect the right of all persons who refuse to obtain, receive or accept . . . the delivery of . . . health care services and medical care”<sup>74</sup> and to “prohibit all forms of discrimination, disqualification, coercion, disability or imposition

---

67. S. Transcripts, 80th Gen. Assem., Reg. Sess., at 377 (Ill. June 22, 1977).

68. *Id.*

69. *Id.*

70. *Id.* at 377-78.

71. *Id.* at 378.

72. See *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1737 (2020) (“When the express terms of a statute give us one answer and extra textual considerations suggest another, it’s no contest. Only the written word is law, and all persons are entitled to its benefit.”).

73. Right of Conscience Act, Pub. Act 80-616, 1977 Ill. Laws 1912 (emphasis added).

74. 745 ILL. COMP. STAT. 70/2 (2022).

of liability upon such persons or entities by reason of their refusing to act contrary to their conscience.”<sup>75</sup>

Under the Act, the term “conscience” is defined as “a sincerely held set of moral convictions arising from belief in and relation to God, or which, though not so derived, arises from a place in the life of its possessor parallel to that filled by God among adherents to religious faiths.”<sup>76</sup>

The term “health care” means “any phase of patient care, including . . . testing . . . medication . . . or other treatment rendered by a physician . . . nurses, paraprofessionals or medical facility, intended for the physical emotional, and mental well-being of persons.”<sup>77</sup>

The Act also defines the terms “physician,” “health care personnel,” and “health care facility” and frequently uses those terms to limit the scope of certain provisions.<sup>78</sup>

The substantive anti-discrimination provisions start at Section 4. Here, we find another distinct clause applicable only to physicians and health care personnel.<sup>79</sup> Section 4 provides that “No physician or health care personnel shall be civilly or criminally liable . . . by reason of his or her refusal to perform, assist, counsel, suggest, recommend, refer or participate in any way in any particular form of health care service which is contrary to the conscience of such physician or health care personnel.”<sup>80</sup> Again, the language of this provision applies only to individuals involved in providing health care services. But now, in contrast to the Abortion Act,<sup>81</sup> the covered services were expanded.

In contrast to Section 4, the anti-discrimination provision found in Section 5 is not limited to protecting health care providers; it applies to everyone. It provides that

It shall be unlawful for any person, public or private institution, or public official to discriminate against *any person* in any manner . . . because of such person’s conscientious refusal to receive, obtain, accept, perform, assist, counsel, suggest, recommend, refer or participate in any way in any particular form of health care service contrary to his or her conscience.<sup>82</sup>

---

75. *Id.*

76. 745 ILL. COMP. STAT. 70/3(e) (2022).

77. 745 ILL. COMP. STAT. 70/3(a) (2022).

78. 745 ILL. COMP. STAT. 70/3 (2022).

79. 745 ILL. COMP. STAT. 70/4 (2022).

80. *Id.*

81. *See supra* text accompanying notes 61-64.

82. 745 ILL. COMP. STAT. 70/5 (2022) (emphasis added).

This provision indirectly defines discrimination by providing a non-exhaustive list of “activities for which discrimination is prohibited.”<sup>83</sup> These include “licensing, hiring, promotion, transfer, . . . or any other privileges. . . .”<sup>84</sup>

Section 7 is similarly broad. It provides that “It shall be unlawful for any public or private employer . . . to deny admission because of, to place any reference in its application form concerning, to orally question about, to impose any burdens in terms and conditions of employment on, or to otherwise discriminate against, any applicant” because of their “refusal to receive, obtain, accept, perform, counsel, suggest, recommend, refer, assist, or participate in any way in any forms of health care services contrary to his or her conscience.”<sup>85</sup>

Section 12 provides for the damages available under the Act. It provides that “*Any person . . . injured . . . by reason of any action prohibited by this Act . . . shall recover threefold the actual damages, including pain and suffering,*” as well as reasonable attorney’s fees.<sup>86</sup>

The legislature first amended the Act in 1997.<sup>87</sup> Following a national trend, it was expanded to protect religious entities that pay for health care services.<sup>88</sup> The terminology used in the Act also changed: references to “medical care” were replaced with “health care.”<sup>89</sup> And the public policy statement was prefaced by adding the following language: “The General Assembly finds and declares that people and organizations hold different beliefs about whether certain health care services are morally acceptable.”<sup>90</sup> Sound familiar?

It was amended again in 2017.<sup>91</sup> This time around the Act was changed to ensure that patients would receive “timely, medically accurate information about the range of legal treatment options available”<sup>92</sup> when they were denied access to treatment. Additional requirements were placed on providers who refused to provide services: they now had to inform the patient of their condition, prognosis, legal treatment options, and the risks and benefits associated with those options; refer or transfer the patient upon request; tell the patient about other providers who might perform those services; and deliver to those providers copies of the patient’s medical records.<sup>93</sup> In order for

---

83. *Glass v. Dep’t of Corr.*, 2022 IL App (4th) 220270, ¶ 39.

84. 745 ILL. COMP. STAT. 70/5 (2022).

85. 745 ILL. COMP. STAT. 70/7 (2022).

86. 745 ILL. COMP. STAT. 70/12 (2022) (emphasis added).

87. Act of Jan. 1, 1998, Pub. Act 90-246, 1997 Ill. Laws 2917.

88. *Id.*

89. *Id.*

90. *Id.*

91. Act of Jan. 1, 2017, Pub. Act 99-690, 2016 Ill. Laws 2844.

92. S. Deb., 99th Gen. Assemb., 31st Reg. Sess. (Ill. 2015).

93. *See* 745 ILL. COMP. STAT. 70/6.1 (2022).

providers to avail themselves of the Act's protections, they had to abide by all of these protocols.<sup>94</sup>

Finally, during the COVID-19 pandemic, the Act was amended once more.<sup>95</sup> This amendment added Section 13.5, which provides that:

It is not a violation of this Act for any person or public official, or for any public or private association, agency, corporation, entity, institution, or employer to take any measures or impose any requirements, including . . . any measures or requirements that involve the provision of services by a physician or health care personnel, intended to prevent contraction or transmission of COVID-19.<sup>96</sup>

It further provides that "It is not a violation of this Act to enforce such measures or requirements," clearing the path for employers to rid unvaccinated employees from the workplace without facing liability under the Conscience Act.<sup>97</sup> The legislature labeled this provision a legislative clarification rather than acknowledging that it substantively changed law.<sup>98</sup>

#### B. INTERPRETIVE CASELAW

Caselaw interpreting the Conscience Act was relatively limited before it was used to challenge COVID-19 vaccine requirements.<sup>99</sup> So understanding how the courts had interpreted the Act did not require a searching inquiry. Still, no court ever ruled on the Act's applicability to vaccine mandates. As such, while not determinative on the issue of vaccine refusals, the courts' analysis in the following cases provide insight as to the proper interpretation of the Act.

In *Vandersand v. Wal-Mart Stores, Inc.*, the court held that the Conscience Act's anti-discrimination provisions apply to all individuals, not solely to health care providers.<sup>100</sup> The plaintiff in this case was a pharmacist working for Wal-Mart.<sup>101</sup> An administrative regulation required pharmacists to dispense contraceptives,<sup>102</sup> but the plaintiff refused because his religion forbade him "from directly or indirectly participating in causing the death of

---

94. *See id.*

95. *See* 745 ILL. COM. STAT. 70/13.5 (2022).

96. *Id.*

97. *See id.*

98. *Id.*

99. There were less than 20 published opinions citing the Act.

100. *Vandersand v. Wal-Mart Stores, Inc.*, 525 F. Supp. 2d 1052, 1057 (C.D. Ill. 2007).

101. *Id.* at 1053.

102. *Id.* at 1053-55.

an innocent human life.”<sup>103</sup> Wal-Mart then placed him on unpaid leave,<sup>104</sup> so the plaintiff sued Wal-Mart for violating the Conscience Act.<sup>105</sup> As a defense, Wal-Mart appealed to the Act’s legislative history and argued that its protections should apply only to health care personnel; a pharmacist, they argued, did not fit that description.<sup>106</sup> The court declined to resort to the legislative history because the Act was unambiguous.<sup>107</sup> It then rejected Wal-Mart’s limited interpretation, holding that “the anti-discrimination provisions are not limited to health care personnel” but rather “prohibit[] discrimination against any person.”<sup>108</sup>

*Morr-Fitz, Inc. v. Quinn* was much of the same.<sup>109</sup> Here, the plaintiffs sued state officials to enjoin the enforcement of an administrative rule requiring pharmacies to “dispense or aid in the dispensing of emergency contraception.”<sup>110</sup> Asserting religious objections, the plaintiffs refused to comply and argued that the rule violated the Conscience Act.<sup>111</sup> The court explained that “the statutory language is clear,” and that Section 5 prohibits discrimination in licensing against anyone.<sup>112</sup> The court also explained that the Act’s purpose was to bolster the individual right to exercise religion “by offering protections to those who seek not to act in the healthcare setting due to religious convictions.”<sup>113</sup> The court found that the plaintiff’s refusal to dispense contraceptives was covered by the Act, so it blocked the enforcement of the administrative rule against them.<sup>114</sup>

In *Cohen v. Smith*, the court allowed a patient to state a claim against a hospital and a nurse under the Conscience Act.<sup>115</sup> In that case, the plaintiff was at the hospital preparing to deliver her baby when she was informed that she would need to undergo a C-Section.<sup>116</sup> Before the procedure began, the plaintiff and her husband told their doctor and the hospital staff that their “religious beliefs prohibited Cohen from being seen unclothed by a male.”<sup>117</sup> Despite being assured that their beliefs would be honored, a “male nurse . . . allegedly observed and touched [the plaintiff’s] naked body” during the

---

103. *Id.* at 1054-55.

104. *Id.* at 1055.

105. *Vandersand*, 525 F. Supp. 2d at 1053.

106. *Id.* at 1057.

107. *Id.* at 1057.

108. *Id.* at 1057 (internal quotations omitted).

109. *See Morr-Fitz, Inc. v. Quinn*, 2012 IL App (4th) 110398, 976 N.E.2d 1160.

110. *Id.* ¶ 1, 976 N.E.2d at 1163.

111. *Id.* ¶¶ 1-2, 976 N.E.2d at 1163.

112. *Id.* ¶ 61, 976 N.E.2d at 1172.

113. *See id.* ¶ 54, 976 N.E.2d at 1171.

114. *Morr-Fitz, Inc. v. Quinn*, 2012 IL App (4th) 110398, ¶ 84, 976 N.E.2d 1160, 1176.

115. *Cohen v. Smith*, 648 N.E.2d 329, 335-36 (Ill. App. Ct. 5th Dist. 1995).

116. *Id.* at 331.

117. *Id.*

procedure.<sup>118</sup> The plaintiff and her husband sued the hospital and the nurse separately for violating the Conscience Act. The trial court originally dismissed their claims,<sup>119</sup> but the appellate court reversed, holding that the plaintiff had stated a claim under the Act.<sup>120</sup> This case demonstrates that patients also have a right to refuse treatment under the Conscience Act; its protections are not limited to health care providers.

In *Rojas v. Martell*, the court rejected the argument that the term “discriminate,” in Section 5 of the Conscience Act, was ambiguous.<sup>121</sup> The plaintiff here was a nurse working for a county health department.<sup>122</sup> When the department began requiring all of its nurses to provide family planning and women’s health services, the plaintiff refused because her Catholic faith prevented her from providing contraceptives, birth-control, and from referring patients for abortions.<sup>123</sup> The department declined to provide her a religious accommodation, so she resigned and sued under the Conscience Act.<sup>124</sup> As part of its defense, the department argued that the term “discriminate” as used in Section 5 was ambiguous.<sup>125</sup> The court rejected this argument, noting that the ordinary meaning of the word is set forth in its dictionary definition.<sup>126</sup>

But more recently, the court in *Glass v. Department of Corrections* held that the term “discriminate” in Section 5 was ambiguous in the context of a vaccinate-or-test policy.<sup>127</sup> In *Glass*, public employees sued their employers and Governor Pritzker to prevent them from requiring the employees to either be vaccinated for COVID-19 or submit to weekly testing.<sup>128</sup> The circuit court relied on the latest amendment to the Act<sup>129</sup> and denied the plaintiffs’ relief.<sup>130</sup> On appeal, the district court attempted to determine whether the term “discriminate” in Section 5 was sufficiently obscure or ambiguous to justify the circuit court’s reliance on the latest amendment as an interpretive guide to statutory language.<sup>131</sup> The district court first declined to adopt the *Rojas*’ analysis, explaining that a dictionary definition alone is insufficient to render

118. *Id.*

119. *Id.*

120. *See* Cohen v. Smith, 648 N.E.2d 329, 336 (Ill. App. Ct. 5th Dist. 1995).

121. *Rojas v. Martell*, 2020 IL App (2d) 190215, ¶ 32, 161 N.E.3d 336, 345-46.

122. *Id.* ¶ 1, 161 N.E.3d at 339.

123. *Id.* ¶¶ 5, 7, 161 N.E.3d at 339-40.

124. *Id.* ¶¶ 7-11, 161 N.E.3d at 340-41.

125. *Id.* ¶ 28, 161 N.E.3d at 344.

126. *Rojas v. Martell*, 2020 IL App (2d) 190215, ¶ 32, 161 N.E.3d 336, 345-46.

127. *Glass v. Dep’t of Corr.*, 2022 IL App (4th) 220270, ¶ 24.

128. *Id.* ¶ 1.

129. *See* 745 ILL. COMP. STAT. 70/5 (2022) (stating that it is not a violation of the act for any employer to take measures calculated to prevent the spread of COVID-19).

130. *Glass v. Dep’t of Corr.*, 2022 IL App (4th) 220270, ¶ 15.

131. *Id.* ¶ 17.

a word unambiguous.<sup>132</sup> “By that logic,” the court reasoned, “a term in a statute would be ambiguous only if the term were a non-word.”<sup>133</sup>

The district court instead conducted its own analysis, beginning with the dictionary definition of “discriminate”: to “fail[] to treat all persons equally when no reasonable distinction can be found between those favored and those not favored . . . [or] to make a difference in treatment or favor on a class or categorical basis in disregard of individual merit.”<sup>134</sup> The district court reasoned that, so long as the employers fired all employees who refused to vaccinate or test, for reasons of conscience or otherwise, the employer could not be said to have “discriminated” against anyone within the traditional sense of the term.<sup>135</sup>

But the majority acknowledged that ascribing this meaning of “discriminate” conflicts with the plain language of the Act.<sup>136</sup> It also conflicts with underlying public policy<sup>137</sup> because employees “who refused on the grounds of conscience would incur a penalty for his or her exercise of conscience.”<sup>138</sup> Thus, the majority found that the enacting legislature intended to use the term “discriminate in an unconventional sense, as meaning taking an unfavorable action against someone who, for reasons of conscience, refuse[s] to submit to or participate in any form of health care.”<sup>139</sup> For the court, this unconventional use was sufficient to find the term “discriminate” ambiguous and affirm the circuit court’s denial of relief.<sup>140</sup>

The dissent however believed that *Rojas* was decided correctly<sup>141</sup> and the term “discriminate” was unambiguous.<sup>142</sup> Section 5 makes it unlawful to discriminate “in any manner” against an individual who refuses health care services that conflict with their religious or moral beliefs.<sup>143</sup> The dissent explained that by using the “in any manner” language, the legislature intended a broad meaning of the term “discriminate” and “made clear [that] a court evaluating claims of discrimination should not be concerned with identifying precisely how that discrimination occurred.”<sup>144</sup> Furthermore, because the public policy is to “prohibit all forms of discrimination,”<sup>145</sup> and the text sets forth numerous “examples of activities for which discrimination is

---

132. *Id.* ¶ 19.

133. *Id.*

134. *Id.* ¶ 20 (internal quotations and edits omitted).

135. *Glass v. Dep’t of Corr.*, 2022 IL App (4th) 220270, ¶ 21.

136. *Id.* ¶ 22.

137. *See* 745 ILL. COMP. STAT. 70/2 (2022).

138. *Glass v. Dep’t of Corr.*, 2022 IL App (4th) 220270, ¶ 23.

139. *Id.* (internal quotations omitted).

140. *Id.* ¶ 32.

141. *Id.* ¶ 44.

142. *Id.* ¶ 36.

143. 745 ILL. COMP. STAT. 70/5 (2022).

144. *Glass v. Dep’t of Corr.*, 2022 IL App (4th) 220270, ¶ 38.

145. 745 ILL. COMP. STAT. 70/2 (2022).



prohibited,”<sup>146</sup> the legislature intended that “the protections of the Conscience Act be read as broadly as possible.”<sup>147</sup> And given the “importance of the civil rights at issue,” the majority’s “parsing of a single word in the statute is insufficient.”<sup>148</sup>

C. APPLICATION TO COVID-19 VACCINE REFUSALS

The primary goal of statutory construction is to interpret and give effect to the legislature’s intent.<sup>149</sup> The best evidence of legislative intent is the language of the statute, which must be given its plain and ordinary meaning.<sup>150</sup> When the statute is unambiguous, courts “may not depart from the statute’s terms.”<sup>151</sup> And those terms aren’t to be considered in isolation; they must be read in light of other provisions of the statute to determine their meaning, as to ensure that no term is rendered superfluous or meaningless.<sup>152</sup>

First, the Conscience Act was not intended to apply only to health care providers. The original preamble explained that the Act concerned “persons receiving medical care” and was intended to allow them “to be free to act in accord with their conscience.”<sup>153</sup> The public policy is to protect the rights of “all persons who refuse to obtain, receive or accept . . . the delivery of . . . health care services and medical care.”<sup>154</sup> To be sure, a few of the Act’s provisions—Sections 4, 6, and 6.1—apply only to “physicians” and “health care personnel.”<sup>155</sup> But Sections 5 and 7 are much broader; they prohibit discrimination against “any person” and “any applicant,” respectively.<sup>156</sup> And Section 12 allows “any person . . . injured” in violation of the Act to recover damages.<sup>157</sup> Thus, Sections 5, 7, and 12 function to protect the individual right to refuse health care services that conflict with one’s religious and moral beliefs. Contrary interpretations are inconsistent with the statutory language and would render the phrases “any person” and “any applicant” used in Sections 5, 7, and 12 meaningless, and Sections 5 and 7 would be entirely superfluous.

Second, the plain meaning of the term “health care service” encompasses COVID-19 vaccines. Section 5 prohibits discrimination against any

---

146. *Glass v. Dep’t of Corr.*, 2022 IL App (4th) 220270, ¶ 40.

147. *Id.* ¶ 43.

148. *Id.*

149. *People v. Grant*, 2022 IL 126824, ¶ 24 (citation omitted).

150. *Id.*

151. *Id.*

152. *Pence v. Ill. Hum. Rts. Comm’n*, 2020 IL App (3d) 190384, ¶ 25, 157 N.E.3d 1027, 1033.

153. Right of Conscience Act, Pub. Act 80-616, 1977 Ill. Laws 1912.

154. 745 ILL. COMP. STAT. 70/2 (2022).

155. *See* 745 ILL. COMP. STAT. 70/4, 70/6, 70/6.1 (2022).

156. *See* 745 ILL. COMP. STAT. 70/5, 70/7 (2022).

157. 745 ILL. COMP. STAT. 70/12 (2022).

person who refuses to participate in any health care service contrary to his religious or moral beliefs.<sup>158</sup> Those services include “medication” and “other care or treatment rendered by a physician . . . intended for the physical . . . well-being of persons.”<sup>159</sup> COVID-19 vaccines are a form of medication intended to protect people’s physical well-being from the harmful effects of a COVID-19 infection. And perhaps no form of health care service is more in-line with the public policy because “people and organizations” certainly “hold different beliefs about whether” COVID-19 vaccines “are morally acceptable.”<sup>160</sup> Thus, the Act was properly construed as protecting the rights of conscience of individuals who refuse COVID-19 vaccines on religious or moral grounds.

#### IV. SECTION 13.5: A SUBSTANTIVE CHANGE TO THE LAW

The latest amendment “clarifies” that it is “not a violation of the Conscience Act for any employer to take measures calculated to prevent the spread of COVID-19.”<sup>161</sup> This implicates the Doctrine of Clarifications.<sup>162</sup> “When a legislative body or agency amends a prior enactment, the amendment serves one of two purposes. The amendment either changes the substantive content of the law, or amends the previous language without actually changing the law’s meaning.”<sup>163</sup> This Comment refers to the former as a substantive change and the latter as a legislative clarification.<sup>164</sup> True clarifications simply restate what the law has always been.<sup>165</sup> In so doing, the law is, in essence, “reworded to better reflect what it already meant.”<sup>166</sup> As such, no new legal consequences result from the change.<sup>167</sup> “By contrast, a substantive change establishes, creates, or defines rights,”<sup>168</sup> resulting in new legal consequences.<sup>169</sup>

The distinction between a clarification and a substantive change is most significant when a court considers whether to apply an amendment retroactively.<sup>170</sup> As restatements of the law, clarifications do not technically apply

---

158. See 745 ILL. COMP. STAT. 70/5 (2022).

159. See 745 ILL. COMP. STAT. 70/3(a) (2022).

160. See 745 ILL. COMP. STAT. 70/2 (2022).

161. See *Glass v. Dep’t of Corr.*, 2022 IL App (4th) 220270, ¶ 15.

162. See generally McDonell, *supra* note 39.

163. McDonell, *supra* note 39, at 800.

164. See McDonell, *supra* note 39, at 801.

165. McDonell, *supra* note 39, at 799.

166. McDonell, *supra* note 39, at 803.

167. McDonell, *supra* note 39, at 802.

168. 1 ROBERT S. HUNTER, ET AL., TRIAL HANDBOOK FOR ILLINOIS LAWYERS-CIVIL § 2:13 (8th ed. 2021).

169. McDonell, *supra* note 39, at 802.

170. McDonell, *supra* note 39.

retroactively because the law has not changed.<sup>171</sup> But clarifications can seem retroactive in the sense that they impact the resolution of pending cases.<sup>172</sup> But because clarifications “do not change the prior state of the law, there is no injustice in allowing them to apply retroactively,”<sup>173</sup> whereas substantive changes to the law typically only apply prospectively. This presumption against retroactivity “is founded upon the premise that fundamental fairness requires that citizens be given notice of a statute so they may conform their behavior to new or revised requirements.”<sup>174</sup> However, this presumption can be overcome, and legislatures can apply civil statutes retroactively if they expressly declare an intention to do so. This assures the courts “that the enacting body itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits.”<sup>175</sup>

In *Middleton v. City of Chicago*, the Seventh Circuit Court of Appeals articulated the standard it uses to determine whether a statutory amendment constitutes a legislative clarification, or a substantive change: (1) whether the enacting body declared that it was clarifying a prior enactment; (2) whether a conflict or ambiguity existed prior to the amendment; and (3) whether the amendment is consistent with a reasonable interpretation of the prior enactment and its legislative history.<sup>176</sup>

Let us apply this standard to the Conscience Act. First, the legislature labeled Section 13.5 as a “declaration of existing law.”<sup>177</sup> Stated differently, a legislative clarification. But the legislature went one step further to ensure that this provision would apply retroactively by providing that “[t]his Section shall apply to all actions commenced or pending on or after the effective date.”<sup>178</sup> If this amendment were truly a clarification of existing law, it would automatically apply back to the date of the original enactment and there would be no need to include a statement of retroactivity. This casts a shadow of doubt on the legislature’s description; it appears that the legislature instructed the courts to apply the law retroactively *even if* they determined that the amendment substantively changed the law.

Second, prior to the amendment, no court had ever determined that the Act was ambiguous. And there were not any conflicting interpretations among the courts. In *Vandersand*, the court explained that “[t]he language is

---

171. McDonell, *supra* note 39.

172. McDonell, *supra* note 39, at 803.

173. 1A NORMAN SINGER & SHAMBIE SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 26:6 (7th ed. 2021).

174. 2 NORMAN SINGER & SHAMBIE SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 41:2 (7th ed. 2022).

175. McDonell, *supra* note 39, at 806.

176. *Middleton v. Chicago*, 578 F.3d 655, 664 (7th Cir. 2009).

177. 745 ILL. COMP. STAT. 70/13.5 (2022).

178. *Id.*

clear. Health Care includes any phase of patient care, and specifically includes medication. The Court has no need to resort to legislative history to understand the plain meaning of this definition. The statute prohibits discrimination against any person.”<sup>179</sup>

The *Rojas* court also found the Act unambiguous,<sup>180</sup> holding that “the statute prohibits discrimination against any person because of such person’s conscientious refusal to receive, obtain, accept . . . any particular form of health care services contrary to his or her conscience.”<sup>181</sup> And in *Morr-Fitz*, the court stated that “the statutory language is clear,” and that Section 5 “prohibits discrimination against anyone.”<sup>182</sup> So the Act was not amended to clarify an ambiguity or to mend inconsistent interpretations; it was changed because legislature’s majority did not approve of it being used to block vaccine mandates.

Finally, the amendment is inconsistent with a reasonable interpretation of the Act and its legislative history. Regarding the text, the plain meaning of the term “health care service” includes COVID-19 vaccines.<sup>183</sup> With regards to the legislative history, the amendment is inconsistent because when the law was originally enacted, COVID-19 did not exist, so the enacting legislature could not have considered how the Act would apply to COVID-19 vaccines. Thus, it is impossible to say that the Act has *never* prohibited employers from imposing “any measures or requirements . . . intended to prevent contraction or transmission of COVID-19.”<sup>184</sup> But when the Act was passed, other contagious diseases like COVID-19 *did exist*, and vaccines were commonly used to treat them. Still, the Conscience Act gave individuals the right to refuse any health care service—including medications—on religious and moral grounds. Thus, the amendment is inconsistent with a reasonable interpretation of the statute and its legislative history. All that to say, the latest amendment to Conscience Act was not a clarification of existing law; it was a substantive change.

## V. CONCLUSION

Our elected official’s actions concerning the Conscience Act have significant implications. By amending the Conscience Act, and by calling that amendment a legislative clarification rather than acknowledging that they changed the substance of the law, individuals who were discriminated against because they refused a COVID-19 vaccine on moral or religious grounds are

---

179. *Vandersand v. Wal-Mart Stores, Inc.*, 525 F. Supp. 2d 1052, 1057 (C.D. Ill. 2007).

180. *Rojas v. Martell*, 2020 IL App (2d) 190215, ¶ 27, 161 N.E.3d 336, 344.

181. *Id.* ¶ 34, 161 N.E.3d at 346 (internal quotations omitted).

182. *Morr-Fitz, Inc. v. Quinn*, 2012 IL App (4th) 110398, ¶ 58, 976 N.E.2d 1160, 1171-1172.

183. *See* sources cited *supra* notes 158-60.

184. 745 ILL. COMP. STAT. 70/13.5 (2022).

unable to assert their statutory right of conscience, and are left without a remedy for violations of the Act.<sup>185</sup>

By declaring that the Act was being “misinterpreted,” our elected officials in the legislative and executive branches violated the separation of powers. The framers believed that the separation of powers was the key to liberty,<sup>186</sup> and was essential to preserving minority rights.<sup>187</sup> The Illinois Constitution enshrines separation of powers principles by providing that “[t]he legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.”<sup>188</sup> “It is emphatically the province and duty of the judicial department to say what the law is.”<sup>189</sup> Our elected officials intruded on the judicial sphere by declaring the proper meaning of the Conscience Act, rather than deferring to the courts’ interpretations. In doing so, they undermined the settled expectations of the citizenry, such that the people of the State of Illinois could no longer rely on the accepted meaning of the law and arrange their affairs accordingly. This further diminished the public’s confidence in our elected officials. One can only wonder what liberties the next “clarification” will dispense with.

---

185. See, e.g., Troogstad v. City of Chicago, 576 F. Supp. 3d (N.D. Ill. 2021); Does 1-14 v. NorthShore Univ. HealthSystem, No. 21-cv-05683, 2021 WL 5578790 (N.D. Ill. Nov. 30, 2021); Darnell v. Quincy Physicians and Surgeons Clinic, No. 2021-MR-193 (Ill. 8th Cir. Ct. Oct. 1, 2021).

186. The Bush Center, *A Conversation with Supreme Court Justice Neil Gorsuch*, YOUTUBE, at 33:42 (July 29, 2022), <https://www.youtube.com/watch?v=iYM6a6aY6fo&t=3022s> [<https://perma.cc/A7EZ-TBBZ>].

187. *Id.*

188. ILL. CONST. art. II, § 1.

189. *Marbury v. Madison*, 5 U.S. 137, 177 (1803).