



May 23, 2018

Dear Attorney General Underwood:

The Philanthropy Roundtable would like to submit comments regarding the proposed sale of assets from the New York State Catholic Health Plan (doing business as Fidelis Care New York) to Centene Corporation. As a result of this transaction, a new private foundation will be created, the Mother Cabrini Health Foundation, Inc.

The Philanthropy Roundtable is America's leading network of charitable donors working to foster excellence in philanthropy, protect philanthropic freedom, assist donors in achieving their philanthropic intent, and help donors advance liberty, opportunity, and personal responsibility in America and abroad. Our 660 members include individual philanthropists, family foundations, and community foundations located in New York and around the country.

The Philanthropy Roundtable is deeply concerned about comments submitted to your office on May 22 by the National Committee for Responsive Philanthropy (NCRP). Those comments urge you to set aside the decisions and intent of the people responsible for creating the Mother Cabrini Health Foundation and to instead force it to accept board members based on NCRP's preferences. This would represent a significant intrusion on the independence of civil society, an assault on philanthropic freedom, and a threat to religious liberty.

Commentators on civil society often talk about it as the "third sector" in America, independent from government and business, the two other societal sectors where Americans come together to accomplish what they would often struggle to do alone. While government must appropriately compel people to obey the law and businesses must seek a profit, civil society is an independent actor in society that relies on voluntary association in service to others instead of compulsion or the profit motive to get people to work together.

But if the state dictates the board composition of a private foundation at its formation or any other time, the independence of civil society is severely jeopardized. Forcing the Mother Cabrini Health Foundation to accept a different slate of board members than what its creators have chosen would very clearly represent an attempt to subordinate civil society to the state, giving the latter authority over the leadership of the former. It is impossible to conceive of civil society as a truly independent sector if its leadership is determined by government officials.

Philanthropic freedom means that Americans, both individually and corporately, have the right to choose how and where to spend their charitable assets, including the freedom to make key governance decisions such as the board composition of private foundations. Without philanthropic

freedom, giving by Americans would wither as the state attempted to steer giving to causes and organizations that satisfy the preferences of elected officials, political appointees, and civil servants but not those of givers, who ultimately have the freedom to decide not to give at all or, in the case of foundations, spend down.

Religious liberty is also at stake here – the Mother Cabrini Health Foundation will be grounded in faith, as are many institutions of civil society. Describing in the petition filed with your office how it will operate, it notes that “...the Foundation will adhere to the tenets and teachings of the Roman Catholic Faith as reflected in the doctrines and directives published by the United States Conference of Catholic Bishops.” There are obvious religious liberty concerns if the state is allowed to dictate the board composition of a religious foundation, in particular in such a way that might force the institution to accept members not in alignment with its faith doctrines and traditions, or even in opposition to them.

It should also be noted that a decision by your office to follow NCRP’s demands would send a clear signal to philanthropists considering establishing a foundation in your state. If the State of New York asserts the authority to dictate board composition for private foundations, it is unlikely that many philanthropists would find New York a welcoming jurisdiction to domicile their foundation. It is even possible that some existing New York foundations would seek to move to states that are more respectful of philanthropic freedom.

Your office has the authority and responsibility to ensure that the proceeds from the sale of Fidelis to Centene are dedicated to the public’s welfare, and to expect the Mother Cabrini Health Foundation to follow all relevant laws for the operations of a 501(c)3 private foundation. Beyond these requirements however, the principles of an independent civil society, philanthropic freedom, and religious liberty should guide your office’s decision in this and similar matters, and lead you to reject the comments submitted by the National Committee for Responsive Philanthropy.

Respectfully,

Sean Parnell
Vice President of Public Policy
The Philanthropy Roundtable