



July 25, 2022

Secretary Xavier Becerra
U.S. Department of Health & Human Services
200 Independence Ave., S.W.
Washington, DC 20201

RE: “Executive Order on Protecting Access to Reproductive Healthcare Services”

Dear Secretary Becerra:

The following letter is on behalf of the American Center for Law & Justice (ACLJ) and over 235,000 of its members who value and support prolife Pregnancy Resource Centers across the country.¹ The American Center for Law & Justice (“ACLJ”) is an organization dedicated to the defense of constitutional liberties secured by law, including the defense of the sanctity of human life. Counsel for the ACLJ have presented expert testimony before state and federal legislative bodies, and have presented oral argument, represented parties, and submitted amicus curiae briefs before the Supreme Court of the United States and numerous state and federal courts in cases involving a variety of issues, including the right to life. *See, e.g., Pleasant Grove City v. Sumnum*, 555 U.S. 460 (2009); *Livingwell Med. Clinic, Inc. v. Becerra*, 138 S. Ct. 2701 (2018); *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022); *June Medical Servs. v. Russo*, 140 S. Ct. 2103 (2020); *Nat’l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2368 (2018); *Whole Woman’s Health v. Hellerstedt*, 579 U.S. 582 (2016); *Gonzales v. Carhart*, 550 U.S. 124 (2007); *Schenck v. Pro-Choice Network*, 519 U.S. 357 (1997).

¹ *Petition: Stop the Shutdown of Pro-life Pregnancy Centers*, ACLJ.org, <https://aclj.org/pro-life/stop-the-shutdown-of-pro-life-pregnancy-centers> (last visited July 25, 2022).

I. INTRODUCTION

On July 8, 2022, President Biden issued an Executive Order on Protecting Access to Reproductive Healthcare Services. While the entire Executive Order is of concern to the ACLJ and its members, of particular concern are the portions of the Executive Order that call on the Secretary of Health and Human Services to first:

submit a report to the president: (ii) identifying ways to increase outreach and education about access to reproductive healthcare services, including by launching a public awareness initiative to provide timely and accurate information about such access, which shall:

(A) share information about how to obtain free or reduced cost reproductive healthcare services through Health Resources and Services Administration-Funded Health Centers, Title X clinics, and other providers . . . ;²

and second,

The Secretary of Health and Human Services shall, in consultation with the Attorney General and the Chair of the FTC, *consider options to address deceptive or fraudulent practices related to reproductive healthcare services*, including online, and to protect access to accurate information.³

II. SUMMARY OF MAIN CONCERN

Recently, Pregnancy Resource Centers, also known as Crisis Pregnancy Centers, have been under increasing attack, both by pro-abortion activists who have firebombed and vandalized Pregnancy Resource Centers across the nation⁴ without any condemnation from President Biden or other pro-abortion supporters, and by pro-abortion politicians and Attorneys General. President Biden's Executive Order posed yet another threat to Pregnancy Resource Centers by calling on the Secretary of Health and Human Services, the U.S. Attorney General, and the Chair of the FTC to "address deceptive or fraudulent practices related to reproductive healthcare services." As we have detailed below, this language is frequently used in direct reference to Pregnancy Resource Centers, and it is the concern of the ACLJ that the administrative officials will use the language in the

² President Joseph R. Biden, Jr., Executive Order on Protecting Access to Reproductive Healthcare Services (July 8, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/07/08/executive-order-on-protecting-access-to-reproductive-healthcare-services/> [hereinafter "Executive Order"].

³ *Id.* (emphasis added).

⁴ Emma Colton, *New York Pro-Life Pregnancy Center Allegedly 'Firebombed' by Left-Wing Group*, FOX NEWS *Investigation Launched* (Jun. 7, 2022, 3:51 PM), <https://www.foxnews.com/us/pro-life-pregnancy-firebombed-left-wing>; Jessica Chasmar, *At Least 5 Pro-Life Pregnancy Centers Vandalized Within a Week of SCOTUS Opinion Leak*, FOX NEWS (May 11, 2022, 1:37 PM), <https://www.foxnews.com/politics/5-pro-life-pregnancy-centers-vandalized-scotus-leak>.

Executive Order as a basis to justify potentially unconstitutional targeting of Pregnancy Resource Centers for censorship and for elimination. The ACLJ opposes any such action, and stands ready to rigorously defend Pregnancy Resource Centers across the country.

III. IMPORTANCE OF PREGNANCY RESOURCE CENTERS AND THEIR CONTRIBUTION TO THE AMERICAN PEOPLE

In direct response to President Biden’s Executive Order, also on July 8, 2022, your office issued a press release stating, among other things, that: “HHS is committed to providing *accurate and up-to-date information about access to and coverage of reproductive health care and resources*. The Department’s goal is to make sure patients and providers have *appropriate information and support*.”⁵ As is defined in President Biden’s Executive Order, “‘reproductive healthcare services’ means *medical, surgical, counseling, or referral services* relating to the human reproductive system, *including services relating to pregnancy* or the termination of a pregnancy.”⁶

First, while President Biden and your agency have both made it quite clear that the overarching purpose of the Executive Order is to advance abortion and access to abortion, the ACLJ would like to take this opportunity to point out that prolife Pregnancy Resource Centers clearly fall under the Executive Order’s definition of “reproductive healthcare services.” Consequentially, the Department of Health and Human Services should make every effort to ensure that the services that Pregnancy Resource Centers provide for pregnant women are included in the “accurate and up-to-date information about access to and coverage of reproductive health care and resources”⁷ that your department is committed to providing. Pregnancy Resource Centers play a critical role in providing choices to women experiencing unplanned pregnancies, such as the support necessary for keeping the baby, adoption, etc., that extend well beyond the one option that abortion clinics provide for women – namely ending the life of their unborn child.

As we detailed in our brief before the Supreme Court in *Livingwell Med. Clinic, Inc. v. Becerra*, 138 S. Ct. 2701 (2018), Pregnancy Resource Centers provide essential and professional services at no, or on occasion nominal, cost, such as: “pregnancy options education and consultation; pregnancy testing and verification; limited obstetrical ultrasounds; STI/STD testing, education, and treatment; past abortion healing retreats; community education presentations; and material support.”⁸ Other services Pregnancy Resource Centers provide “help[] women deal with unplanned pregnancies by offering, free of charge, a variety of educational, medical, and material

⁵ Press Release, Statement by HHS Secretary Xavier Becerra on President Biden’s Executive Order to Protect Access to Reproductive Health Care (July 8, 2022), <https://www.hhs.gov/about/news/2022/07/08/statement-hhs-secretary-xavier-becerra-president-bidens-executive-order-protect-access-reproductive-health-care.html> (emphasis added) [hereinafter “Statement by HHS Secretary Becerra”].

⁶ Executive Order, *supra* note 2 (emphasis added).

⁷ Statement by HHS Secretary Becerra, *supra* note 5.

⁸ Petition for Writ of Certiorari, *Livingwell Med. Clinic, Inc. v. Becerra*, 138 S. Ct. 2701 (2018), 4, available at http://media.aclj.org/pdf/Living-Well-Petition-Final-w_o-App_Redacted.pdf.

resources, including ultrasounds, counseling and emotional support, and maternity and baby items.”⁹

In fact, Pregnancy Resource Centers provide free or nominal cost assistance to millions of women annually, including hundreds of thousands of free ultrasounds each year (over 486,000 in 2019) along with medical services, education, and referrals.¹⁰ In 2019, over 10,000 licensed medical professional served as paid or volunteer workers in 2,700 Pregnancy Resource Centers across the United States.¹¹ Thousands more people serve voluntarily at Pregnancy Resource Centers on an annual basis. Pregnancy Resource Centers save taxpayers countless millions of dollars each year, again because many of the services that they provide for free—through the work of volunteers and the support of donors—would otherwise have to be provided by government agencies through publicly funded programs.¹²

Pregnancy Resource Centers provide invaluable information and resources that help ensure that a woman is fully aware of all the facts and options truly available to her – to help inform her decision and truly gives her *choices*. Including the fact that abortion is an act that is intended to permanently end the life of an unborn child the act is extremely grave, gruesome, and irreversible. Thus, a woman’s decision should be fully informed, and should be made only after careful consideration of all the facts. If you only have one option, it is not a real choice, and Pregnancy Resource Centers play a vital role in providing alternatives to the one option pushed by abortion clinics.

Moreover, Pregnancy Resource Centers provide material assistance and support beyond merely consultation or medical services. As such, we respectfully request that information about the services and resources that Pregnancy Resource Centers provide for women be included in the information that the Department of Health and Human Services is dedicated to providing the American public in the weeks and months ahead.

IV. POTENTIAL TARGETING OF PREGNANCY RESOURCE CENTERS FOR CENSORSHIP AND ELIMINATION

Second, the ACLJ finds the language of the Executive Order directing action to be taken regarding “deceptive or fraudulent practices” of great concern not only because of current and extremely charged political rhetoric regarding Pregnancy Resource Centers, but because of the history pro-abortion governments have of government overreach that has resulted in the abridgement of the constitutional rights of Pregnancy Resource Centers.

⁹ *Id.* at 6.

¹⁰ *Fact Sheet: Pregnancy Centers – Serving Women and Saving Lives (2020 Study)*, CHARLOTTE LOZIER INSTITUTE (July 19, 2021), <https://lozierinstitute.org/fact-sheet-pregnancy-centers-serving-women-and-saving-lives-2020/>.

¹¹ *Id.*

¹² *Id.*

On June 17, 2022, pro-abortion members of Congress sent a letter to the Chief Executive Officer of Google. In that letter the Members of Congress referred to “crisis pregnancy centers,” or “pregnancy resource centers,” as “fake clinics.”¹³ The letter goes on to call on Google to, *inter alia*, “limit the appearance of . . . fake clinics or so-called ‘crisis pregnancy centers’ in Google search results, Google Ads, and on Google Maps”¹⁴ The Office of Letitia James, Attorney General of the State of New York, wrote a similar letter to General Counsel for Google, stating:

[O]rganizations known as “crisis pregnancy centers” (CPCs) are not health care providers **CPCs exist solely to intercept and dissuade pregnant people from making fully informed decisions about their healthcare** such as the choice to obtain an abortion. Including these organizations in a list for an individual seeking abortion services is dangerous and misleading. . . . For example, a Google Maps search for “abortion Binghamton, NY” *lists several crisis pregnancy centers such as Life Choices Center and Women’s Life Services along with legitimate health care* providers who offer abortion and abortion counseling . . . it is imperative that pregnant people are receiving accurate information and are able to obtain *the medical services they need* efficiently and with minimal confusion.¹⁵

Recently, Senator Elizabeth Warren has made a series of remarks regarding Pregnancy Resource Centers: “We need to shut them down here in Massachusetts, and we need to shut them down all around the country.”¹⁶ She also accused Pregnancy Resource Centers of “[d]eceiving people in order to provide services,” “[springing] up to prey on people who are pregnant and vulnerable and seek[ing] help . . . ,”¹⁷ accused Pregnancy Resource Centers of “wishing [women] harm,”¹⁸ and stated “[they] should not be able to torture a pregnant person like that.”¹⁹

¹³ Letter from Members of Congress to Sundar Pichai, Chief Executive Officer of Google (June 17, 2022), *available at* https://www.warner.senate.gov/public/_cache/files/5/6/5698c724-cc0d-42f6-bbb6-b05e472b4564/26F26BB28841042A7931EEC58AC80E08.anti-abortion-letter-to-google-final.pdf.

¹⁴ *Id.*

¹⁵ Letter from Darsana Srinivasan, Chief, Health Care Bureau, Office of the Attorney General, State of New York, to Hamilmah DeLaine Prado, General Counsel, Google (June 28, 2022), *available at* https://ag.ny.gov/sites/default/files/2022.06.28_letter_to_google_re_cpccs.pdf (emphasis added).

¹⁶ Greg Price (@greg_price11), TWITTER (July 12, 2022, 4:41 PM), https://twitter.com/greg_price11/status/1546957961439969280.

¹⁷ Kate Selig, *Elizabeth Warren Calls for Action Against ‘Crisis Pregnancy Centers’ in Wake of Supreme Court Overturning Roe* (June 29, 2022), <https://www.msn.com/en-us/news/politics/elizabeth-warren-calls-for-action-against-crisis-pregnancy-centers-in-wake-of-supreme-court-overturning-roe/ar-AAZ0wK6>.

¹⁸ RNC Research (@RNCResearch), TWITTER (July 6, 2022, 11:39 AM), <https://twitter.com/RNCResearch/status/1544707511906930690?s=20&t=iumDjtgeoBXVKChVio2Zjg>.

¹⁹ Isabel Brown, *Senator Elizabeth Warren Calls for Crisis Pregnancy Centers to be Shut Down*, TURNING POINT USA, <https://www.tpusa.com/live/senator-elizabeth-warren-calls-for-crisis-pregnancy-centers-to-be-shut-down> (last visited July 21, 2022).

These disparaging remarks regarding Pregnancy Resource Centers are not only incorrect, but blatantly so. As we detailed above, Pregnancy Resource Centers provide *legitimate* and invaluable healthcare in addition to counseling and material support to women, babies, and families. However, these remarks are far from extraordinary, and we have seen Pregnancy Resource Centers targeted unconstitutionally in, among other places, states like California and New York.

As you may recall, in California, ACLJ sued on behalf of three Pregnancy Resource Centers challenging the California Reproductive FACT Act. *LivingWell Med. Clinic v. Becerra*, 138 S. Ct. 2701 (2018), *cert. granted* (vacating and remanding *LivingWell Med. Clinic v. Harris*, 669 F. App'x 493 (9th Cir. 2016)). The FACT Act attempted to force our clients to tell every one of their visitors, no matter the reason for their visit, that California provides free or low-cost abortions to eligible women. The Act not only attempted to force the centers to advertise the State's abortion subsidy program, it required that the centers provide a telephone number that women could call to see if they were eligible for a free abortion.

In *Nat'l Inst. of Family & Life Advocates v. Becerra*, the Supreme Court reversed a decision by the U.S. Court of Appeals for the Ninth Circuit, concluding that the Pregnancy Resource Centers challenging the Act were likely to succeed on the merits of their claim that the California Reproductive Fact Act violated the First Amendment. Ultimately, a federal court in Oakland, California permanently blocked the State of California from violating the rights of Pregnancy Resource Centers as guaranteed under the First Amendment of the Constitution:

It is hereby ORDERED that Defendant Xavier Becerra, in his official capacity as the Attorney General of California, shall be permanently enjoined from enforcing the Reproductive FACT Act, California Health and Safety Code section 123470, et seq. (“the Act”).

It is further ORDERED that judgment is entered in favor of Plaintiffs and against Defendant on Plaintiffs' claim under the free speech clause of the First Amendment.²⁰

In New York, the ACLJ successfully sued on behalf of two organizations that run Pregnancy Resource Centers in New York City. *Evergreen Ass'n. v. City of New York*, 740 F. 3d 233 (2d Cir. 2014). In that case, the Second Circuit considered New York City's misguided attempt to regulate the centers on the same pretext as that appearing in the current Executive Order, i.e, trumped up, politically motivated charges of “deceptive practices.” The Court held that by requiring Pregnancy Resource Centers to disclose at the beginning of contact with potential clients

²⁰ Ord. Regarding Permanent Injunction, *Livingwell Med. Clinic, Inc. v. Becerra*, Nov. 26, 2018, 4:15-cv-04939-JSW, <http://media.aclj.org/pdf/LivingWell-Court-Order.pdf>.

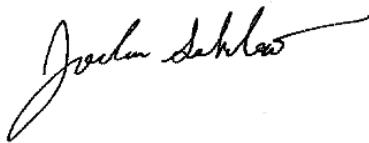
whether they provided referrals for abortion, emergency contraception, or prenatal care and to disclose that the New York City Department of Health and Mental Hygiene encouraged pregnant women to consult with a licensed provider was overly burdensome in violation of the First Amendment.

V. CONCLUSION

The ACLJ greatly values and appreciates the important role of Pregnancy Resource Centers in providing healthcare, counseling, and material resources and support, among other things, to women, babies, and families across the United States. Not only is this work vitally important, it is protected under the law, as we have succeeded in establishing in litigation on more than one occasion.

Because of the ACLJ's concern that President Biden's Executive Order may be interpreted in a way that could lead to government overreach and an unconstitutional targeting of Pregnancy Resource Centers, we will be closely monitoring the reports, recommendations, and strategies that the Department of Health and Human Services develops and implements in fulfillment of the Executive Order. The ACLJ will also be prepared to immediately challenge in court any guidance, order, or other form of regulation, that the Department of Health and Human Services, or any other administrative department, promulgates that constitutes an abridgement of the rights of Pregnancy Resource Centers.

Sincerely,



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