

APPEAL No. 24-3124

**United States Court of Appeals
for the Third Circuit**

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.,
Plaintiff-Appellant,

v.

MATTHEW PLATKIN, in his official capacity as Attorney General of the
State of New Jersey,

Defendant-Appellee.

On Appeal from the United States District Court for the
District of New Jersey
Case No.: 3:23-cv-23076

**AMICI BRIEF OF THE PENNSYLVANIA PREGNANCY WELLNESS
COLLABORATIVE, NEW JERSEY RIGHT TO LIFE, AND NATIONAL
INSTITUTE OF FAMILY AND LIFE ADVOCATES IN SUPPORT OF
PLAINTIFF-APPELLANT'S MOTION FOR INJUNCTION PENDING
APPEAL AND IN SUPPORT OF ITS POSITION ON THE MERITS**

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INTEREST OF AMICI¹

Amicus Pennsylvania Pregnancy Wellness Collaborative (“Collaborative”) is composed of multiple faith-based pregnancy centers that provide free and low-cost services for Pennsylvania residents. PPWC advances the work of these pregnancy help organizations in Pennsylvania by providing a unified voice for pregnancy centers.

Amicus New Jersey Right to Life Committee, Inc. (NJRTL) is the state’s largest and most active pro-life, non-partisan organization dedicated to protecting and fostering the most basic value of our society – human life.

Amicus the National Institute of Family and Life Advocates (NIFLA) is a national legal network for pro-life pregnancy resource centers and medical clinics and provides legal training, consultation, and

¹ Pursuant to Federal Rule of Civil Procedure 29(a)(2), Amici state that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from amici curiae, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief. Pursuant to Federal Rule of Civil Procedure 29(a)(2), all parties received timely notice and consented to the filing of this brief.

education to its 1,700 member centers (including centers in New Jersey), over 1,400 of which operate as medical clinics.

Collectively, *Amici's* interest in submitting this brief is to demonstrate that the kind of targeting to which First Women's Resource Centers, Inc., has been subject is far from an isolated event; indeed, it is the product of increasing weaponized state action taken to unconstitutionally shut down the morally and religiously motivated speech and conduct in which these organizations engage.

ARGUMENT

Pregnancy Resource Centers (PRCs) are generally faith-based non-profit organizations that generally provide free assistance to millions of women, children, and families annually, including medical services, education, referrals, and hundreds of thousands of free ultrasounds each year (nearly 547,000 in 2022). MOIRA GAUL & MICHAEL J. NEW, PREGNANCY CENTERS OFFER HOPE FOR A NEW GENERATION 28 (Ben Cook & Genevieve Plaster eds., 2024). In New Jersey alone, PRCs helped “35,138 women, men, youth, and families in 2019, [by] providing free services and materials valued at nearly \$3 million.” *Community Impact: New Jersey Pro-Life Pregnancy Centers Served 35,138 in 2019*,

Charlotte Lozier Inst. (Feb. 15, 2023), <https://lozierinstitute.org/community-impact-new-jersey-pro-life-pregnancy-centers-served-35138-in-2019>. These services “included 5,614 free ultrasounds performed by registered nurses or medical sonographers and 9,431 free pregnancy tests.” *Id.*

These PRCs, and the medical professionals and workers that staff them, also provide invaluable information and resources that help ensure that a woman is *fully aware* of all the facts and options available to her—allowing her to make a *true* choice. Consistent with their moral and religious views that pre-born life is sacred and valuable, PRCs provide facts about abortion, including the fact that abortion is an act that is intended to end the life of a pre-born child.²

In pro-abortion states, the moral and religious objections that these PRCs have to abortion, and their determination to share information regarding the negative consequences of abortion, may be at odds with the views of state lawmakers and officials who are pursuing a policy of abortion on demand. *See i.e.*, Press Release, Acting AG Platkin

² *Gonzales v. Carhart*, 550 U.S. 124, 134 (2007) (“The Act proscribes a particular manner of ending fetal life . . .”).

Establishes “Reproductive Rights Strike Force” to Protect Access to Abortion Care for New Jerseyans and Residents of Other States, Office of the Attorney General (Jul. 11, 2022), <https://www.njoag.gov/acting-ag-platkin-establishes-reproductive-rights-strike-force-to-protect-access-to-abortion-care-for-new-jerseyans-and-residents-of-other-states> (“But make no mistake: Abortion remains legal in New Jersey. The Freedom of Reproductive Choice Act, signed into law this January by Governor Murphy, protects the right to choose to terminate a pregnancy in New Jersey. And legislation signed into law by Governor Murphy earlier this month provides additional critical protections for individuals who seek to access reproductive health care services in New Jersey. The Strike Force we are creating today will ensure that these laws are enforced to the full extent possible, and that we use every available resource to protect access to abortion care in New Jersey.”).

While this has long been true, after the Supreme Court’s decision in *Dobbs*³ there is a growing nation-wide trend of policymakers and government officials invoking investigatory powers, executive orders,

³ 597 U.S. 215.

and legislation to censor unconstitutionally PRCs, such as the ones at the center of this case—First Choice Women’s Resource Centers, Inc.

A. State Level Efforts to Restrict or Eliminate Pregnancy Resource Centers.

In October 2023, sixteen state attorneys general issued a joint letter, headed by Rob Bonta, Attorney General of California, entitled “Open Letter From Attorneys General Regarding CPC Misinformation and Harm.” Letter from Sixteen Attorneys General, Open Letter From Attorneys General Regarding CPC Misinformation and Harm (Oct. 23, 2023), <https://tinyurl.com/56ptjxby>. The letter was joined by the attorneys general of Connecticut, Michigan, Delaware, Minnesota, District of Columbia, New Jersey, Hawaii, New Mexico, Maine, New York, Massachusetts, Nevada, Oregon, Vermont, and Washington. *Id.*

In the letter, the attorneys general wrote:

We have watched with increasing concern in recent years as anti-abortion crisis pregnancy centers (CPCs) have proliferated in our states, outnumbering abortion clinics by a three-to-one ratio, while misleading consumers and delaying access to critical, time-sensitive reproduction healthcare. . . . and often use deceptive tactics to lure in patients seeking reproductive healthcare. These tactics can have dire health consequences and rob patients of their healthcare choices.

Id.

Those attorneys general, and other state actors, have launched attacks on the PRCs within their states, specifically targeting the speech of PRCs.

In California, Attorney General Bonta issued a “Consumer Alert,” warning Californians about PRCs and soliciting complaints against them, claiming that PRCs “may provide inaccurate health information,” and “may attempt to delay appointments or provide misinformation about the legality or safety of abortions.” Press Release, Attorney General Bonta Issues Consumer Alert Warning Californians That Crisis Pregnancy Centers Do Not Offer Abortion or Comprehensive Reproductive Care, Office of the Attorney General (June 1, 2022), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-issues-consumer-alert-warning-californians-crisis>. Of course, misinformation about the safety of abortion is rampant in advocacy *for* abortion. See Amicus Brief of the Elliot Institute in Support of Petitioners, *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022) (No. 19-1392) (refuting claim that abortion is safer than continuing pregnancy). The abortion movement shows no signs of policing its own on such false claims.

In Colorado, the governor signed into law Colorado SB23-190, “Deceptive Trade Practice Pregnancy-related Service Act,” that specifically regulates the ability of pro-life health-care provider to “provide[], proscribe[], administer[], or attempt[] medication abortion reversal” within Colorado. SB23-190, Deceptive Trade Practice Pregnancy-related Service (2023), <https://leg.colorado.gov/bills/sb23-190>.

In Connecticut, the governor signed into law S.B. No. 835, “An Act Concerning Deceptive Advertising Practices of Limited Services Pregnancy Centers,” broadly regulating PRCs by preventing them from making any public statement “that is deceptive, whether by statement or omission, . . . that a [PRC] knows or reasonably should know to be deceptive.” Public Act No. 21-17, An Act Concerning Deceptive Advertising Practices of Limited Services Pregnancy Centers (2021), <https://www.cga.ct.gov/2021/ACT/PA/PDF/2021PA-00017-R00SB-00835-PA.PDF>.

Illinois adopted a similar law, the “Deceptive Practices of Limited Services Pregnancy Centers Act,” SB1909, Deceptive Practices of Limited Services Pregnancy Centers Act (2023), which was backed by Illinois Attorney General Kwame Raoul. Press Release, Attorney General Raoul

Applauds Governor Pritzker for Signing Legislation to Address Deceptive Practices by Crisis Pregnancy Centers, Office of the Illinois Attorney General (July 27, 2023), <https://illinoisattorneygeneral.gov/news/story/attorney-general-raoul-applauds-governor-pritzker-for-signing-legislation-to-address-deceptive-practices-by-crisis-pregnancy-centers>; *see also* Press Release, Attorney General Raoul Applauds House Committee Passage of Legislation to Address Deceptive Practices by Crisis Pregnancy Centers, Office of the Illinois Attorney General (Apr. 25, 2023), <https://www.illinoisattorneygeneral.gov/news/story/attorney-general-raoul-applauds-house-committee-passage-of-legislation-to-address-deceptive-practices-by-crisis-pregnancy-centers> (“Attorney General Kwame Raoul applauded a House committee’s passage of his legislation to hold crisis pregnancy centers that engage in deceptive practices accountable.”). This law targets public statements by PRCs and grants the state’s attorney general the ability to prosecute PRCs for “consumer fraud.” SB1909, *supra* p. 7. The law was immediately challenged, and the state ultimately agreed to a permanent injunction, “enjoin[ing] it from enforcing” the newly enacted sections of the law against the challenging PRCs. *NIFLA v. Raoul*, Order, Case No. 3:23-cv-

50279 at 1 (N.D. Ill. 2023), [https://news.wttw.com/sites/default/files/article/file-attachments/Limited%20Service%20Pregnancy %20Crisis%20Center%20Final%20Order.pdf](https://news.wttw.com/sites/default/files/article/file-attachments/Limited%20Service%20Pregnancy%20Crisis%20Center%20Final%20Order.pdf).

In Maine, a pro-abortion state representative proposed a bill entitled “An Act to Prohibit Deceptive Advertising in Limited Pregnancy Services Centers.” Had the law been passed, it would have allowed the state attorney general to pursue action against a PRC, and, in terms nearly identical to the Connecticut law, obtain a court order forcing the PRC to “[d]isseminate, or pay for the dissemination of, information that corrects the information identified to be deceptive or misleading,” and/or “[p]ost, in locations determined by the court, a remedial notice that corrects the effects of the information to be deceptive or misleading” H.P. 723, An Act to Prohibit Deceptive Advertising in Limited Pregnancy Services Centers, 131st Leg., First Reg. Sess. (Me. 2023), <https://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP0723&item=1&snum=131>.

Via a consumer alert, Minnesota Attorney General Keith Ellison accused PRCs of “misleading, misinforming, or deceiving people.” Press Release, Attorney General Ellison Issues Consumer Alert About Crisis

Pregnancy Centers, The Office of Minnesota Attorney General (Aug. 22, 2022), https://www.ag.state.mn.us/Office/Communications/2022/08/23_CrisisPregnancyCenters.asp.

He claimed that “crisis pregnancy centers often do not offer the services they claim to offer, and that the information about abortion and contraception they offer may be inaccurate or misleading.” *Id.*

In addition to the investigation at issue in this case and consumer alert, New Jersey Assemblywomen have introduced a bill to “make it a crime under the state’s Consumer Fraud Act for crisis pregnancy centers to use deceptive or misleading advertising to lure pregnant people through their doors.” Dana Difilippo, *Deceptive Marketing by Crisis Pregnancy Centers Prompts Bills, Consumer Alert*, N.J. Monitor (Jan. 17, 2023, 6:53 AM), <https://newjerseymonitor.com/2023/01/17/deceptive-marketing-by-crisis-pregnancy-centers-prompts-bills-consumer-alert>.

In 2022, New York passed a measure to authorize “health officials . . . review[] [of] the services provided by facilities in New York that offer pregnancy-related care, but stop short of providing access to abortions or contraceptives.” Nick Reisman, *Anti-Abortion Pregnancy Centers Face Scrutiny in New York*, Spectrum Local News (June 22, 2022,

11:09 AM), <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2022/06/20/anti-abortion-pregnancy-centers-face-scrutiny-in-new-york>. This law was used to initiate an investigation against CompassCare Pregnancy Services, a PRC which had been the victim of a fire bomb attack. Carole Novielli, *Now Under Attack, NY Pregnancy Centers Provided Nearly \$4M in Free Services in One Year*, Live Action (July 8, 2022, 5:34 PM), <https://www.liveaction.org/news/new-york-pregnancy-centers-4-million-services/>. “[P]ro-life centers are being targeted and investigated simply for *not committing or referring for abortions*.” *Id.*

In Pennsylvania, the attorney general issued a “warning” regarding pregnancy resource centers. Press Release, *AG Henry Encourages Pennsylvanians to Seek Information From Providers to Make Informed Pregnancy-Related Health Care Choices*, Pennsylvania Office of Attorney General (Nov. 24, 2023), <https://www.attorneygeneral.gov/taking-action/ag-henry-encourages-pennsylvanians-to-seek-information-from-providers-to-make-informed-pregnancy-related-health-care-choices/>. According to the attorney general’s official website, crisis pregnancy centers or pregnancy resource centers “are not staffed by licensed medical

professionals and therefore cannot provide medical care.” *Id.* Though not explicitly labeled as a “consumer alert,” the attorney general encouraged consumers not to go to pregnancy resource centers and suggested that such centers will not provide accurate information. *Id.*

In Washington, the attorney general issued civil investigative demands to pregnancy centers. Michael Gryboski, *Pro-life Christian Nonprofits Sue Washington Stat* (Dec. 4, 2023), <https://www.christianpost.com/news/pro-life-nonprofits-sue-wash-ag-over-private-records-query.html>.

Without citing to any customer complaints or other evidence, he launched this investigation, which even required records going far beyond the statute of limitations. *Id.* These demands required the pregnancy centers to spend a great amount of time and financial resources to try to comply with the attorney general’s unreasonable requests. *Id.*

These are just a few of the state legislative and executive efforts that have been undertaken in recent years to bully PRCs and target them for investigations and censorship of their morally and religiously

motivated pro-life speech.

B. If This Court Denies Plaintiff's Motion for Injunction, It Will Embolden Other Pro-Abortion Attorneys General to Take Similar State Action Against PRCs to Shut Down Dissenting Pro-Life Voices.

While some of the states' actions described above have undergone or are currently undergoing legal challenges, they serve to illustrate a pervasive effort on the part of pro-abortion state governments to target PRCs with action that serves to, among other things, chill their morally and religiously informed speech concerning abortion. Adam Edelman, *Democrats Eye a New Approach to Rein In Crisis Pregnancy Centers*, NBC News (May 18, 2023, 2:06 PM), <https://www.nbcnews.com/politics/politics-news/democrats-eye-new-approach-rein-crisis-pregnancy-centers-rcna81603>. (“Hampered by the Broader legal landscape, Democratic state lawmakers have introduced or advanced at least 26 bills in their 2023 legislative sessions that seek to regulate [Pregnancy Resource Centers] in far more targeted ways . . .”).

Legislative efforts to regulate the pro-life speech of PRCs have been met with legal challenges, which has been noticed by states attempting to pass legislation like those already being challenged in other states. For

example, in a recent legal opinion authored by the New Jersey State Legislature’s Office of Legislative Services (OLS), the OLS noted that “A861 is particularly similar to the overturned Illinois statute, as well as the Massachusetts, Vermont, and North Carolina bills, in seeking to regulate the speech of crisis pregnancy centers using consumer fraud laws.” Letter from Gabriel R. Neville, Legislative Counsel, New Jersey State Legislature Office of Legislative Services, to Jay Webber, Assemblyman, New Jersey General Assembly, (Feb. 21, 2024), at 4, <http://media.aclj.org/pdf/I.O.-1551.pdf>.

In that opinion, the OLS concluded that “A861 [which] prohibits nonprofit, pro-life crisis pregnancy centers from making false or misleading advertisements or other such communications about abortion,” *id.* at 1, would “likely be ruled unconstitutional, due to it not being narrowly tailored, or serving a compelling interest that is actually, and not hypothetically, under threat by false or misleading crisis pregnancy center speech.” *Id.* at 2.

In supporting this conclusion, the OLS reasoned that “A861 potentially implicates the right of free speech . . . under the First Amendment of the U.S. Constitution, in that it seeks to regulate certain

speech based on its content . . . and the identity of its speaker (i.e., a ‘crisis pregnancy center’),” *id.* at 4, and that one of the limitations on A861 passing constitutional muster is that it likely does not regulate commercial speech:

In Greater Balto., 879 F.3d at 106, 108, the U.S. Fourth Circuit Court of Appeals held that the plaintiff, a nonprofit crisis pregnancy center that advertised the services it offered without “expressly broadcast[ing] its religious opposition to abortion,” was not engaging in commercial speech because “[a] morally and religiously motivated offering of free services cannot be described as a bare ‘commercial transaction.’”

Id. at 5.

This OLS opinion demonstrates some of the constitutional defects of legislation to limit and silence the pro-life speech of PRCs. It also demonstrates why pro-abortion attorneys general may attempt to use strategies similar to the ones at issue in this case, especially if the lower court’s ruling is allowed to stand and PRCs are limited in their ability to legally challenge unconstitutional restrictions on their morally and religiously motivated speech in opposition to abortion.

Pro-abortion states and officials have multiple ways to advance their pro-abortion agenda. Trampling on the First Amendment’s

guarantee of free speech and religion, under the false guise of enforcing consumer fraud laws, is not one of them.

CONCLUSION

Amici curiae respectfully request that this Court enjoin the Attorney General from enforcing the Subpoena pending appeal and find in favor of Plaintiff-Appellant.

Dated: November 22, 2024

Respectfully submitted,

/s/ Olivia F. Summers

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), I certify that this brief of *Amici Curiae* complies with Fed. R. App. P. 29 because it contains 2,530 words, excluding parts exempted by Fed. R. App. P. 32(f).

This brief complies with Fed. R. App. P. 32(a)(5) and the type style requirements of Rule 32(a)(6) because this brief has been prepared in a proportionally spaced typeface, 14-point Century Schoolbook font, using Microsoft Word.

This brief complies with the electronic filing requirements of Local Rule 31.1(c) because the text of this electronic brief is identical to the text of the paper copies, and ESET Endpoint Security, version 8.1.6.0, has been run on the file containing the electronic version of this brief and no viruses have been detected.

I further certify that I am a member in good standing of the Bar of this Court.

Dated: November 22, 2024

/s/ Olivia F. Summers

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CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2024, I electronically filed the foregoing *amici curiae* brief in support of Plaintiff-Appellant with the Clerk of the Court for the United States Court of Appeals for the Third Circuit using the CM/ECF system, which will accomplish service on counsel for all parties through the Court's electronic filing system.

Dated: November 22, 2024

/s/ Olivia F. Summers

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