



September 8, 2022

The Honorable Alejandro Mayorkas  
Secretary of Homeland Security  
Washington, DC 20528

Ms. Lina M. Khan  
Chair  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580

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

Dear Secretary Mayorkas and Chair Khan:

The following letter is on behalf of the American Center for Law & Justice and over 236,500 of its supporters who value and support prolife Pregnancy Resource Centers across the country.<sup>1</sup> 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. Summum*, 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);

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<sup>1</sup> *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 Sept. 7, 2022).

*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)

## 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 supporters, of particular concern are the portions of the Executive Order that call on the Secretary of Homeland Security and the Chair of the Federal Trade Commission to first,

address potential heightened safety and security risks related to the provision of reproductive healthcare services[.] [T]he Attorney General and the Secretary of Homeland Security shall consider actions, as appropriate and consistent with applicable law, to ensure the safety of patients, providers, and third parties, and to protect the security of clinics (including mobile clinics), pharmacies, and other entities providing, dispensing, or delivering reproductive and related healthcare services.<sup>2</sup>

Second,

[t]he Chair of the Federal Trade Commission (FTC) is encouraged to consider actions, as appropriate and consistent with applicable law (including the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*), to protect consumers' privacy when seeking information about and provision of reproductive healthcare services.<sup>3</sup>

And finally,

[t]he 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.<sup>4</sup>

## 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

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<sup>2</sup> 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].

<sup>3</sup> *Id.* (emphasis added).

<sup>4</sup> *Id.* (emphasis added).

Pregnancy Resource Centers across the nation<sup>5</sup> without any condemnation from President Biden, the Department of Homeland Security (DHS), the FTC, other pro-abortion supporters, or by pro-abortion politicians or state Attorneys General. President Biden's Executive Order poses 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."<sup>6</sup> 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 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 RIGHT TO PROTECTION

In direct response to President Biden's Executive Order, on July 29, 2022, Attorney General Garland delivered remarks stating, among other things, that: "The Justice Department is *working relentlessly . . . [and] has a tremendous responsibility to do everything in our power to protect access to reproductive services. That is what we intend to do.*"<sup>7</sup> Moreover, he stated that "the Department will continue to **enforce the FACE Act and protect healthcare providers and individuals** seeking reproductive health services . . . ."<sup>8</sup>

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."<sup>9</sup>

First, while President Biden and his administration have 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." Consequently, not only must the Justice Department ensure that Pregnancy Resource Centers are included as part of the enforcement of the FACE Act and provide protection to those facilities as

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<sup>5</sup> 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>.

<sup>6</sup> Executive Order, *supra* note 2.

<sup>7</sup> Merrick B. Garland, U.S. Att'y Gen., Remarks at the White House Convening of Lawyers in Defense of Reproductive Rights (July 29, 2022), <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-white-house-convening-lawyers-defense> (emphasis added) [hereinafter Statement by AG Garland].

<sup>8</sup> *Id.* (emphasis added).

<sup>9</sup> Executive Order, *supra* note 2 (emphasis added).

well as do anything in its power to bring to justice those who have vandalized and threatened Pregnancy Resource Centers across the country,<sup>10</sup> but the Department of Homeland Security and the FTC should likewise equally consider Pregnancy Centers and their healthcare workers and patients in any and all protective policies that are created in response to President Biden’s Executive Order. 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 – 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.”<sup>11</sup> Other services Pregnancy Resource Centers provide “help[] women deal with unplanned pregnancies by offering, free of charge, a variety of educational, medical, and material resources, including ultrasounds, counseling and emotional support, and maternity and baby items.”<sup>12</sup>

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.<sup>13</sup> In 2019, over 10,000 licensed medical professional served as paid or volunteer workers in 2,700 Pregnancy Resource Centers across the United States.<sup>14</sup> 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.<sup>15</sup>

Pregnancy Resource Centers provide invaluable information and resources that help ensure that a woman is fully aware of all the facts and options available to her – to help inform her decision and truly give her *choices*; including the fact that abortion is intended to permanently end the life of an unborn child, an act that is extremely grave, gruesome, and irreversible. Thus, a woman’s

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<sup>10</sup> Statement by AG Garland, *supra* note 7.

<sup>11</sup> 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](http://media.aclj.org/pdf/Living-Well-Petition-Final-w_o-App_Redacted.pdf).

<sup>12</sup> *Id.* at 6.

<sup>13</sup> *Fact Sheet: Pregnancy Centers – Serving Women and Saving Lives (2020 Study)*, CHARLOTTE LOZIER INSTITUTE (July 2021), [https://s27589.pcdn.co/wp-content/uploads/2021/07/2020-Pregnancy-Centers-Fact-Sheet\\_FINAL-7.23.21.pdf](https://s27589.pcdn.co/wp-content/uploads/2021/07/2020-Pregnancy-Centers-Fact-Sheet_FINAL-7.23.21.pdf).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

decision should be fully informed, and should be made only after careful consideration of all the facts. One option does not constitute choice, and, therefore, Pregnancy Resource Centers play a vital role in providing the alternatives to the only 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 Pregnancy Resource Centers, their healthcare workers, and patients be provided the same vigilant protection that the Department of Homeland Security and FTC is dedicated to providing abortion clinics and those women seeking abortion 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 of pro-abortion governments have of government overreach that has resulted in the abridgment of the constitutional rights of Pregnancy Resource Centers.

On June 7, 2022, the DHS issued a National Terrorism Advisory System (NTAS) bulletin warning that:

[t]he continued proliferation of false or misleading narratives regarding current events could reinforce existing personal grievances or ideologies, and in combination with other factors, could inspire individuals to mobilize to violence.

Given a high-profile U.S. Supreme Court case about abortion rights, individuals who advocate both for and against abortion have, on public forums, *encouraged violence, including against government, religious, and reproductive healthcare personnel and facilities, as well as those with opposing ideologies.*<sup>16</sup>

In the early morning hours of that same day, a Pregnancy Resource Center in Buffalo, New York was firebombed.<sup>17</sup> In addition to being firebombed, vandals spray-painted the phrase, “Jane Was Here,” onto the building, referencing the pro-abortion anarchist group Jane’s Revenge, which took credit for attacks on pro-life organizations that occurred the weeks before in Wisconsin and Washington, DC.<sup>18</sup> Similarly, three days later, at a Pregnancy Resource Center in Gresham,

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<sup>16</sup> *DHS Issues National Terrorism Advisory System (NTAS) Bulletin*, U.S. Department of Homeland Security (June 7, 2022 9:00 AM), <https://www.dhs.gov/ntas/advisory/national-terrorism-advisory-system-bulletin-june-7-2022> (emphasis added).

<sup>17</sup> Colton, *supra* note 5.

<sup>18</sup> *Id.*

Oregon, an incendiary device was thrown through a window, lighting the facility on fire and leaving one office and other parts of the building with extensive damage.<sup>19</sup> These are just a few of the many examples of criminal acts and vandalism against Pregnancy Resource Centers in recent weeks.

Any violent attack against a nonprofit institution or group of people due to religious or political beliefs is an attack on Constitutionally protected rights. The citizens of this country must be assured that the DHS is acting as an apolitical entity and working to protect all people and businesses of any background or belief without bias or basis in ideology. Despite the fact that nearly forty Pregnancy Resource Centers across the United States have been attacked or vandalized since just May of 2022,<sup>20</sup> DHS has not included nor has it updated its bulletin to highlight or condemn these *multiple violent attacks* on pro-life institutions and Pregnancy Resource Centers. Groups, such as Jane’s Revenge,<sup>21</sup> are openly claiming responsibility and calling for more: “As more people discover the joy in attacking the infrastructure of the patriarchy, the attacks will surely continue with increasing frequency. To anyone reading this thinking that it sounds like a good time, consider this your invitation to join the party.”<sup>22</sup> But none of these attacks or calls to violence have been condemned by President Biden or his Administration, and by ignoring them, the Biden Administration appears to be generating its own “false or misleading” and dangerous narrative that pro-abortion violence does not exist.

In fact, partisan politicians are actively pushing the kinds of false and misleading narratives that DHS referenced in its June 7 bulletin. For example, 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.”<sup>23</sup> 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 . . . .”<sup>24</sup> 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**

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<sup>19</sup> Caroline Downey, *Pro-Abortion Terrorists Firebomb Oregon Pregnancy Center*, NATIONAL REVIEW (June 13, 2022 12:44 PM), <https://www.nationalreview.com/news/pro-abortion-terrorists-firebomb-oregon-pregnancy-center>.

<sup>20</sup> Virginia Allen, *Inside a Pregnancy Center that Pro-Abortion Vandals Attacked*, THE DAILY SIGNAL (Aug. 7, 2022), <https://www.dailysignal.com/2022/08/07/inside-a-pregnancy-center-that-pro-abortion-vandals-attacked/>.

<sup>21</sup> Jane’s Revenge: The Time Is Now – Stand Up – Take Action, <https://janesrevenge.noblogs.org/> (last visited Aug. 12, 2022).

<sup>22</sup> *Two Fake Clinics Attacked – Worcester, MA*, JANE’S REVENGE (July 8, 2022), <https://janesrevenge.noblogs.org/2022/07/08/two-fake-clinics-in-worcester-ma-attacked/>.

<sup>23</sup> 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](https://www.warner.senate.gov/public/_cache/files/5/6/5698c724-cc0d-42f6-bbb6-b05e472b4564/26F26BB28841042A7931EEC58AC80E08.anti-abortion-letter-to-google-final.pdf).

<sup>24</sup> *Id.*

**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.<sup>25</sup>

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.”<sup>26</sup> 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 . . . ,”<sup>27</sup> accused Pregnancy Resource Centers of “wishing [women] harm,”<sup>28</sup> and stated “[they] should not be able to torture a pregnant person like that.”<sup>29</sup>

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, as we have seen Pregnancy Resource Centers targeted unconstitutionally in, among other places, states like California and New York.

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.

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<sup>25</sup> 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](https://ag.ny.gov/sites/default/files/2022.06.28_letter_to_google_re_cpccs.pdf) (emphasis added).

<sup>26</sup> Greg Price (@greg\_price11), TWITTER (July 12, 2022, 4:41 PM), [https://twitter.com/greg\\_price11/status/1546957961439969280](https://twitter.com/greg_price11/status/1546957961439969280).

<sup>27</sup> 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>.

<sup>28</sup> RNC Research (@RNCResearch), TWITTER (July 6, 2022, 11:39 AM), <https://twitter.com/RNCResearch/status/1544707511906930690?s=20&t=iumDjtgeoBXVKChVlo2Zjg>.

<sup>29</sup> 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).

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.<sup>30</sup>

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 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.

The ACLJ is further concerned that the language of President Biden’s executive order may be construed by DHS as authorizing a sort of abortion “Disinformation Governance Board,” to target Pregnancy Resource Centers. Secretary Mayorkas testified that a “Disinformation Governance Board” was created to combat misinformation ahead of the 2022 midterm elections.<sup>31</sup> However, DHS must refrain from using the Disinformation Governance Board, or any such similar board, committee, agency program, etc., to target, censor, or surveil pro-life Pregnancy Resource Centers. If DHS were to engage in such efforts, they would be in clear violation of the free speech rights of Pregnancy Resource Centers as protected by the First Amendment, especially in the political climate as described above where Pregnancy Resource Centers are the target of both

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<sup>30</sup> 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>.

<sup>31</sup> Bradford Betz, *Mayorkas testifies DHS is creating ‘Disinformation Governance Board,’* FOXNEWS.COM (Apr. 27, 2022), <https://www.foxnews.com/politics/mayorkas-dhs-disinformation-governance-board>.

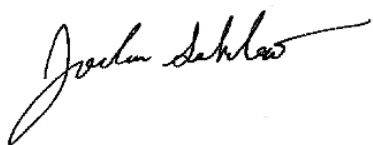
disparaging and inaccurate statements and violence merely because they provide women with an alternative to abortion. The ACLJ has already filed a Freedom of Information Act lawsuit against DHS for refusing to provide details about its “Disinformation Governance Board” and we have won many free speech cases against the federal government. We stand ready, willing, and able to challenge DHS in court to protect pro-life Pregnancy Resource Centers should such unconstitutional targeting and harassment be engaged in by DHS.

## 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 you develop and implement in fulfillment of the Executive Order. The ACLJ will also be prepared to immediately challenge in court any guidance, order, board, committee, or other form of regulation, that the Federal Trade Commission, Department of Homeland Security, or any other administrative department, creates or uses that constitutes an abridgement of the rights of Pregnancy Resource Centers.

Sincerely,



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