



August 8, 2022

Attorney General Merrick B. Garland
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

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

Dear Attorney General Garland:

The following letter is on behalf of the American Center for Law & Justice (ACLJ) and over 236,000 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. 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); *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 Aug. 4, 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 Attorney General 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.²

Second,

[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.³

And finally,

The Secretary of Health and Human Services and the Director of the Gender Policy Council shall establish and co-chair an Interagency Task Force on Reproductive Healthcare Access (Task Force). **Additional members shall include the Attorney General** and the heads of other agencies as determined by the Secretary of Health and Human Services and the Director of the Gender Policy Council. The Task Force shall work to identify and coordinate activities to protect and strengthen access to essential reproductive healthcare services. In addition, the Task Force shall coordinate *Federal interagency policymaking, program development, and outreach efforts to address barriers that individuals and entities may face in seeking and providing reproductive healthcare services*.⁴

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 *Id.* (emphasis added).

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 nation⁵ without any condemnation from President Biden, your Department, 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."⁶ 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, you 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.*"⁷ Moreover, you stated that "the Department will continue to **enforce the FACE Act and protect healthcare providers and individuals seeking reproductive health services**"⁸ Finally, you stated that "[t]he Justice Department's Reproductive Rights Task Force . . . is *vigilantly monitoring state laws and enforcement actions to ensure that states do not infringe upon these . . . rights.*"⁹

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."¹⁰

⁵ 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>.

⁶ Executive Order, *supra* note 2.

⁷ 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].

⁸ *Id.* (emphasis added).

⁹ *Id.* (emphasis added).

¹⁰ Executive Order, *supra* note 2 (emphasis added).

First, while President Biden, the Secretary of Health and Human Services, and your office 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, the Department of Justice should ensure that Pregnancy Resource Centers are included as part of the Department’s enforcement of the FACE Act and provide protection to those facilities as well as do anything in its power to bring to justice those who have vandalized and threatened Pregnancy Resource Centers across the country.¹¹ 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.”¹² 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.”¹³

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.¹⁴ In 2019, over 10,000 licensed medical professional served as paid or volunteer workers in 2,700 Pregnancy Resource Centers across the United States.¹⁵ 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.¹⁶

¹¹ Statement by AG Garland, *supra* note 7.

¹² 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.

¹³ *Id.* at 6.

¹⁴ *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.

¹⁵ *Id.*

¹⁶ *Id.*

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 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 Justice 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 pro-abortion governments have of government overreach that has resulted in the abridgement of the constitutional rights of Pregnancy Resource Centers.

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.”¹⁷ 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”¹⁸ 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*

¹⁷ 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.

¹⁸ *Id.*

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.¹⁹

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.”²⁰ 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 . . . ,”²¹ accused Pregnancy Resource Centers of “wishing [women] harm,”²² and stated “[they] should not be able to torture a pregnant person like that.”²³

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.

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,

¹⁹ 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_cpcs.pdf (emphasis added).

²⁰ Greg Price (@greg_price11), TWITTER (July 12, 2022, 4:41 PM), https://twitter.com/greg_price11/status/1546957961439969280.

²¹ 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>.

²² RNC Research (@RNCResearch), TWITTER (July 6, 2022, 11:39 AM), <https://twitter.com/RNCResearch/status/1544707511906930690?s=20&t=iumDjtgeoBXVKChVlo2Zjg>.

²³ 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).

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.²⁴

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.

V. CONCLUSION

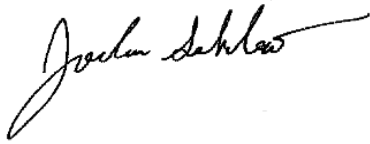
The ACLJ greatly values and appreciates the important role of Pregnancy Resource Centers in providing healthcare, counseling, and material resources and support, among other things, to women, babies, and families across the United States. Not only is this work vitally important, it is protected under 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 you, the Attorney General, and the Department of Justice’s Reproductive Rights Task Force develop and implement 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

²⁴ 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>.

Department of Justice, or any other administrative department, promulgates that constitutes an abridgement of the rights of Pregnancy Resource Centers.

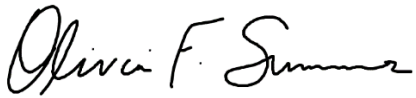
Sincerely,

A handwritten signature in black ink, appearing to read "Jordan Sekulow".

Jordan Sekulow
Executive Director
American Center for Law & Justice

A handwritten signature in blue ink, appearing to read "CeCe Heil".

CeCe Heil
Senior Counsel
American Center for Law & Justice

A handwritten signature in black ink, appearing to read "Olivia F. Summers".

Olivia F. Summers
Associate Counsel for Public Policy
American Center for Law & Justice