



MEMORANDUM

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Freedom of Religion and Speech for Pregnancy Resource Centers

There is a growing concern that policymakers and administrative officials are using the language in executive orders, ordinances, and legislation to unconstitutionally censor Pregnancy Resource Centers and eliminate the frontline workers of the pro-life movement. Pro-abortion advocates frequently describe Pregnancy Resource Centers (PRCs) as “Misinformation spreaders,” “Public health risks,” and “Fake medical scams.” Pro-abortion advocates isolate, degrade, and lie about PRCs while seeking to shut them down. In reality, PRCs “provide support to women who are facing a difficult or unplanned pregnancy and seek to provide women with the support they need to give their children the gift of life.”¹ These centers do not provide or recommend abortions because PRCs are life-affirming and, often, faith-based organizations. Instead, PRCs provide a wide range of services, from medical care, sexual healthcare, pregnancy tests, and ultrasounds, to parenting classes, material resources, adoption support, and counseling.

According to a 2021 report by the Charlotte Lozier Institute, there are more than 3,000 PRCs across the country.² Eighty percent of PRCs offer free ultrasounds, 810 offer sexually transmitted disease testing (563 locations offer on-site treatment), and 2,525 locations offer material assistance to women.³ Of the approximately 54,000 PRC volunteers, 12% are licensed medical professionals.⁴ More than 99% of clients who are seen by major network affiliates report full satisfaction with their care.⁵ Health departments regularly refer women to PRCs in at least 20 states, and some states even partially fund in-state PRCs.⁶ However, PRCs are primarily funded by local efforts from community members who recognize and appreciate the services PRCs provide to their community.⁷

PRCs, like other organizations, are recognized as having constitutional rights, including the First Amendment rights to free speech and the free exercise of religion. Regulations that violate the First Amendment rights of PRCs are unconstitutional. There have been attempts at the state and federal levels to restrict PRCs’ First Amendment rights by passing anti-life regulations that would force PRCs to effectively halt their pro-life message or close down.

Freedom of Religion: New York’s Local Law 17

In 2011, pro-abortion advocates and the abortion industry lobbied the city council in New York City, to pass legislation aimed at shutting down their competition—pro-life pregnancy centers. New York City Mayor Mike Bloomberg signed Local Law 17, which required PRCs to make certain mandatory disclosures concerning their services.⁸ These disclosures threatened PRCs’ right to free speech by effectively attempting to force PRCs to become abortion advocates or shut down. If PRCs refused to obey the regulations, they would be subjected to crippling fines and penalties. The ordinance would force PRCs “to express . . . opinions about abortion that they not only disagree[d] with but that cut at the very core of their mission – to help women and save lives.”⁹

As a result, Evergreen Association, represented by the American Center for Law and Justice (ACLJ), among others, sued the City for infringement of Evergreen’s free speech rights under the US and NY constitutions. The Second Circuit Court of Appeals in *Evergreen Association v. City of New York*, struck down two of the provisions that compelled PRCs to provide information regarding abortion and abortion-related services, even in their own advertisements promoting life, which contravenes the very purpose of PRCs’ existence. The Second Circuit held requiring such disclosures was unconstitutional.¹⁰

Freedom of Religion: Baltimore’s Ordinance 09-252

In 2013, Greater Baltimore Center for Pregnancy Concerns (GBCPC) filed a lawsuit against the Mayor of Baltimore, Rawlings-Blake, and the Baltimore City Council¹¹ challenging the constitutionality of Ordinance 09-252. The ordinance required pregnancy clinics that did not offer or recommend abortions to disclose that fact in their waiting rooms.¹² GBCPC—supported by the ACLJ—asserted that the ordinance violated its First Amendment right to free speech and asked the court for a permanent injunction.¹³ After several months of battling in court, the Fourth Circuit Court of Appeals held that “states must have room for reasonable regulation. . . . There is a limit to how much they can dictate core beliefs.”¹⁴ The court explained that it had previously struck down attempts to compel speech from abortion providers and therefore, it would also strike down the compelled speech from pro-life pregnancy centers in this case.¹⁵ The court stated, “earnest advocates on all sides of this issue should not be forced by the state into a corner and required essentially to renounce and forswear what they have come as a matter of deepest conviction to believe.”¹⁶ The court warned of the dangers of compelled speech stating, “Weaponizing the means of government against ideological foes risks a grave violation of one of our nation’s dearest principles”—the protections required by the First Amendment.¹⁷

Freedom Not to Speak: California’s FACT Act and Hawaii’s Senate Bill 501

In 2015, California passed AB 775, colloquially known as The Reproductive FACT Act. The FACT Act required all pregnancy centers licensed as clinics to post the following notice: “California has public programs that provide immediate free or low-cost access to comprehensive family planning services (including all FDA-approved methods of contraception), prenatal care, and abortion for eligible women. To determine whether you qualify, contact the county social services office.”¹⁸ It also penalized PRCs that failed to display this message stating “Covered

facilities that fail to comply with the requirements of this article are liable for a civil penalty of five hundred dollars (\$500) for a first offense and one thousand dollars (\$1,000) for each subsequent offense.”¹⁹

In response, the ACLJ—on behalf of LivingWell Medical Clinic and two other California pregnancy resource centers—filed a lawsuit against then California Attorney General Kamala Harris, asserting violations of free speech, free assembly, free exercise of religion, and other state constitutional rights and requested a permanent injunction to stop the bill from going into effect.²⁰ After the lower courts rejected LivingWell’s claim,²¹ LivingWell appealed to the Supreme Court.²² In the meantime, before the Court could hear LivingWell’s case, the Supreme Court had already ruled on another similar case, *NIFLA v. Becerra*, which dealt with the FACT Act’s constitutionality.²³ In *NIFLA v. Becerra*, the Supreme Court found that the FACT Act violated the PRC’s right to free speech by placing an undue burden on it.²⁴ The Supreme Court held that the state has “no power to restrict expression because of its message, its ideas, its subject matter, or its content,” conveyed.²⁵ This meant that both the right to speak and the right to remain silent were protected under the Constitution. As a result of the *NIFLA v. Becerra*, the Supreme Court sent LivingWell’s case back to the lower courts for further review.²⁶ The Ninth Circuit held that the FACT Act was unconstitutional because it violated the Free Speech Clause of the First Amendment, and permanently barred Attorney General Becerra (Harris’s successor) from enforcing it.²⁷

Shortly after California passed the FACT Act, Hawaii passed Senate Bill 501. Similar to the FACT Act, SB 501 required “limited service pregnancy centers” to inform clients that “Hawaii has public programs that provide immediate free or low-cost access to comprehensive family planning services, including, but not limited to, all FDA-approved methods of contraception and pregnancy-related services for eligible women,” including abortion.²⁸ In other words, Hawaii required pro-life centers to promote abortion.²⁹ The day after the law became effective in 2018, the ACLJ filed suit against Hawaii Attorney General Chin on behalf of Aloha Pregnancy Care and Counseling Center, alleging that the law violated Aloha’s constitutional rights and asking the court to stop the law from being enforced.³⁰ Before the court was able to rule on the motion, the Supreme Court decided *NIFLA v. Becerra*, and the Hawaii court declared SB 501 unconstitutional.³¹

Now, Pregnancy Resource Centers are facing a barrage of attacks in various, yet common, forms. The following are a few examples of the more recent legal issues PRCs are facing.

Freedom of Speech: False Advertising in Colorado Bill SB 23-190 and Vermont Bill S.37

On April 14, 2023, Colorado passed the “Deceptive Trade Practice Pregnancy-related Service,” Senate Bill 23-190.³² Though promoted as a positive benefit to pregnant women in need of health services, Section 1 depicts the underlying anti-PRC intent, stating “[a]ccording to the American Medical Association’s Journal of Ethics, anti-abortion centers, also known as ‘crisis pregnancy centers’, aim ‘to prevent abortions by persuading people that adoption or parenting is a better option.’”³³ Additionally, the bill declares promoting and prescribing the abortion pill reversal (APR) procedure, progesterone, to be unprofessional conduct, unless it is approved by the Colorado Medical Board, State Board of Pharmacy, and the State Board of Nursing.³⁴ Yet, progesterone is a naturally occurring hormone needed for the pregnancy to continue and commonly

prescribed to pregnant women.³⁵ One of the abortion pills, mifepristone, blocks progesterone.³⁶ APR is merely an influx of progesterone in an attempt to overcome the lethal effect of mifepristone.³⁷ Despite evidence that APR is effective up to 68% of the time,³⁸ abortion advocates continue to aggressively oppose it, calling it “unproven and unethical.”³⁹

Similar legislation is underway in Vermont. As currently amended, Senate Bill 37 would prohibit “any advertising about the services or proposed services performed at that center that is untrue or clearly designed to mislead the public about the nature of services provided.”⁴⁰

While at face value legislation prohibiting deception seems reasonable, abortionists are pushing these bills in attempts to undermine and silence PRCs by redefining false advertising. An article published earlier this year, in promotion of New Jersey’s Bill A2145, is critical of a PRC it claims is engaged in “deceptive advertising” because its website “features a woman in medical scrubs and information about abortion procedures and pills, sexually transmitted diseases, and pregnancy symptoms.”⁴¹ The speech protections affirmed by the Court in *NIFLA* should support PRCs in any undue prosecution under these hostile new laws.

The ACLJ is monitoring these and similar bills across the country and stands ready to defend PRCs from false advertising claims.

Freedom of Conscience: Illinois’s Senate Bill 1564

In 2017, Illinois passed Senate Bill 1564 (“SB 1546”), which amend the Health Care Right of Conscience Act and virtually gutted the protections the Act provided healthcare workers.⁴² The Act provided healthcare workers the right to refuse to perform abortions on the basis of their conscientious objections.⁴³ While SB 1564 still allowed PRCs workers to decline to offer abortions or objectionable contraceptive services, it forced PRCs to discuss abortion as a legitimate option for their pregnant patients in direct violation of their moral and religious beliefs.⁴⁴ Additionally, under SB 1564, if a patient requested assistance or a procedure the physician morally objected to, the physician was required to point the patient to another physician who would provide the requested procedure.⁴⁵ The state of Illinois was trying to mandate that PRCs and other similarly-minded healthcare workers discuss abortion services and offer explanations of their alleged benefits from a supportive perspective.⁴⁶ That is unconstitutional viewpoint discrimination.

SB 1564 did exactly what the First Amendment forbids. It provided pro-abortion advocates an unfair advantage in influencing the conversation around crisis pregnancies and how women should make decisions regarding their options. SB 1564 infringed on PRCs right to freedom of assembly protected by the First Amendment.

The National Institute of Family and Life Advocates (“NIFLA”), on behalf of four pregnancy resource centers and a doctor, filed suit against Illinois Governor Bruce Rauner and Secretary of the Department of Financial & Professional Regulation Bryan Schneider.⁴⁷ NIFLA’s claim challenged the constitutionality of the amendment to the Healthcare Right of Conscience Act.⁴⁸ NIFLA asked the court for a preliminary injunction to protect the right to freedom of religion and equal protection.⁴⁹ The court granted the preliminary injunction, holding that the law unconstitutionally restricted religious freedom and equal protection because “religious and pro-

life beliefs prohibit [crisis pregnancy centers and doctors] from providing women with the names of other health care providers who may perform abortions because that would implicate them in destroying a human life. . . . It is clear that the amended act targets the free speech rights of people who have a specific viewpoint.”⁵⁰

Conclusion

PRCs provide valuable resources and support to women facing unplanned pregnancies. One option does not constitute a choice, and therefore, PRCs play a vital role in providing alternatives to the only option pushed by abortion clinics. PRCs 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.”⁵¹ 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.”⁵²

The constitutional right to free speech and religious liberty protects PRCs’ ability to operate according to their deeply held beliefs and to provide their services without government interference. Attempts by state and local governments to force PRCs to violate their beliefs or mission by requiring them to promote or perform abortions have been deemed unconstitutional by courts. PRCs should be able to continue providing the valuable services they offer, without fear of government interference or shutdown. It is imperative that we safeguard the constitutional rights of all organizations, including PRCs, as they continue to provide women with viable alternatives to abortion and equip them with the knowledge necessary to make informed decisions regarding their health and the welfare of their unborn children.

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¹ Elizabeth Slattery and Melanie Israel, *The First Amendment and the Freedom Not to Speak: California Pro-Life Pregnancy Centers Take Their Case to the Supreme Court*, THE HERITAGE FOUNDATION (Mar. 8, 2018), https://www.heritage.org/sites/default/files/2018-03/LM-228_1.pdf.

² Moira Gaul, *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>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Evergreen Ass'n v. City of N.Y.*, 740 F.3d 233, 237 (2d Cir. 2014).

⁹ Matthew Clark, *Life Prevails Despite Supreme Court Denial of Review in Pro-Life Pregnancy Center Case*, ACLJ (Nov. 3, 2014), <https://aclj.org/pro-life/life-prevails-despite-supreme-court>.

¹⁰ *Id.*

¹¹ *Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Balt.*, 879 F.3d 101, 105 (4th Cir. 2018).

¹² *Id.* at 106.

¹³ *Id.*

¹⁴ *Id.* at 113.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Cal. Health & Safety Code § 123472 (a) (1) (Deering 2022).

¹⁹ Cal. Health & Safety Code § 123473 (a) (Deering 2022).

²⁰ Olivia Summers, *Biden Nominee Xavier Becerra Could Be the Most Pro-Abortion Secretary of Health and Human Services Ever* (Feb. 17, 2021), <https://aclj.org/pro-life/biden-nominee-xavier-becerra-could-be-the-most-pro-abortion-secretary-of-health-and-human-services-ever>.

²¹ *Livingwell Med. Clinic, Inc. v. Harris*, No. C 15-04939, 2015 U.S. Dist. LEXIS 183230 at *2 (N.D. Cal. Dec. 18, 2015).

²² Petition for Writ of Certiorari at 38, *Livingwell Med. Clinic, Inc. v. Becerra*, 138 S. Ct. 2701 (2018) (No. 16-1153), 2018 U.S. LEXIS 4052.

²³ *Livingwell Medical Clinic, Inc. v. Becerra*, SCOTUSBLOG, <https://www.scotusblog.com/case-files/cases/livingwell-medical-clinic-inc-v-becerra> (last visited Mar. 29, 2023).

²⁴ *Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018).

²⁵ *Id.* at 2371 (quoting *Reed v. Town of Gilbert*, 576 U.S. 155 (2015)).

²⁶ SCOTUSBLOG, *supra* note 20.

²⁷ *Livingwell Med. Clinic, Inc. v. Becerra*, 901 F.3d 1168 (9th Cir. 2018).

²⁸ Geoffrey Surtees, *Major Federal Court Victory for Pro-Life Pregnancy Centers in Hawaii*, ACLJ (Sept. 18, 2018), <https://aclj.org/pro-life/major-federal-court-victory-for-pro-life-pregnancy-centers-in-hawaii>.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² S.B. 23-190, 74th Gen. Assembly (Colo. 2023).

³³ *Id.*

³⁴ *Id.*

³⁵ *Progestin (Oral Route, Parenteral Route, Vaginal Route)*, MAYO CLINIC, <https://www.mayoclinic.org/drugs-supplements/progestin-oral-route-parenteral-route-vaginal-route/description/drg-20069443> (Apr. 1, 2023).

³⁶ *Abortion Pill Reversal*, AMERICAN PREGNANCY ASSOCIATION, <https://americanpregnancy.org/unplanned-pregnancy/abortion-pill-reversal/> (last visited Apr. 1, 2023).

³⁷ *Id.*

³⁸ George Delgado et. al., *A case series detailing the successful reversal of the effects of mifepristone using progesterone*, 33 ISSUES IN L. & MED. 21, 22 (2018).

³⁹ *Facts Are Important: Medication Abortion “Reversal” Is Not Supported by Science*, THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS ADVOCACY, <https://www.acog.org/advocacy/facts-are-important/medication-abortion-reversal-is-not-supported-by-science> (last visited Mar. 28, 2023).

⁴⁰ S. 37, 2023-2024 Sess. (Vt. 2023).

⁴¹ Dana Difilippo, *Deceptive marketing by crisis pregnancy centers prompts bills, consumer alert*, NEW JERSEY MONITOR (Jan. 17, 2023), <https://newjerseymonitor.com/2023/01/17/deceptive-marketing-by-crisis-pregnancy-centers-prompts-bills-consumer-alert>.

⁴² Michelle Terry, *Stop Forcing Pro-Life Pregnancy Centers to Promote Abortion*, ACLJ (June 9, 2017), <https://aclj.org/pro-life/stop-forcing-pro-life-pregnancy-centers-to-promote-abortion>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Nat'l Inst. of Family & Life Advocates v. Rauner*, No. 16 C 50310, 2017 U.S. Dist. LEXIS 233461 (N.D. Ill. July 19, 2017).

⁴⁸ *Id.*

⁴⁹ *Id.* at *31.

⁵⁰ *Id.* at *15, *28.

⁵¹ 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.

⁵² *Id.* at 6.