Statement in Opposition to Raised Bill No: 7070
"An Act Concerning Deceptive Advertising Practices of Limited Services Pregnancy Centers"
State of Connecticut General Assembly, Public Health Committee
Monday, February 11, 2019

By
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This statement is **in OPPOSITION to RB 7070 entitled: "An Act Concerning Deceptive Advertising Practices of Limited Services Pregnancy Centers."**

Thousands of citizens of the state of Connecticut—women, men, and children—have been assisted by pregnancy service centers during their greatest time of need. Pregnancy service centers provide pregnancy support and have promoted healthy sexual choices in adolescents, provided parenting classes, offered needed medical and prenatal health services, and organized support groups for post-abortive women and men. Pregnancy service centers offer these services at no cost to their clients. After today, I am confident you will understand the positive impact pregnancy service centers provide to Connecticut and its citizens, and understand that the proposed legislation needlessly and unfairly attacks the integrity of these worthy institutions. I also am confident that you will see the numerous constitutional and legal concerns, which very likely will subject the proposed legislation to costly legal challenge, needlessly wasting the State's resources.

I. Constitutional Violations

The proposed regulation raises clear Constitutional concerns. When successfully challenged in a court of law, the Raised Bill will result in the unnecessary waste of public resources and funds that could be used to provide for

the citizens of Connecticut. The proposed regulation would mandate heightened regulation of only pregnancy service centers, which by definition in Raised Bill 7070 are only those that do not provide abortions or emergency contraception.

A. Unconstitutional Viewpoint Discrimination

On its face, the proposed legislation is not viewpoint neutral. Specifically, the proposed legislation regulates only those pregnancy service centers that do "not provide referrals to clients for abortions or emergency contraception," and only is designed to protect those clients who are "inquiring or seeking services at a pregnancy services center." In other words, it would not matter how professional, honest, forthright, and/or legally compliant the pregnancy service center is; the proposed legislation would still apply only because the pregnancy service center holds a pro-life viewpoint. Conversely, clients of organizations that provide abortion or emergency contraception are afforded no protection regardless of how blatant any lies or deception might be from abortion providers solely because they hold a pro-choice viewpoint.

Courts have found that "viewpoint discrimination" is an egregious form of content discrimination and that the government must, accordingly, abstain from regulating speech when a specific motivating ideology or opinion of the speaker is the rationale for the restriction. *See Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 115 S. Ct. 2510, 132 L. Ed. 2d 700, 101 Ed. Law Rep. 552 (1995). Because this proposed legislation regulates only pregnancy service centers that oppose abortion, the proposed regulation constitutes unconstitutional viewpoint discrimination.

In application, Raised Bill No. 7070 would necessarily regulate the speech of pregnancy services centers in an arbitrary and unconstitutional manner. The proposed bill empowers the Connecticut Attorney General to seek injunctive relief and courts to force the speech of pregnancy service centers in the following ways;

"(1) Pay for and disseminate appropriate corrective advertising…";
"(2) Post a remedial notice…"; and
"(3) Provide such other relief as the court deems necessary."

The Bill further allows the State to recover civil penalties between $50 and $500 per violation, plus attorney's fees and costs. Additionally, the Raised Bill does not cap the amount of money a pregnancy service center may be required to pay in "corrective advertising."

Such compelled speech triggers the First Amendment's strict scrutiny test, under which courts will find a law unconstitutional unless it is narrowly tailored to serve a compelling state interest.

> The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits laws that abridge the freedom of speech. When enforcing this prohibition, our precedents distinguish between content-based and content-neutral regulations of speech. Content-based regulations "target speech based on its communicative content."
> *NIFLA v. Becerra*, 585 U.S.___(2018), citing *Reed v. Town of Gilbert, 576 U.S. ___. See also Riley v. National Federation of the Blind*, 487 U.S. 781, 798 (1988); *see also Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 256 (1974) (statute compelling speech held unconstitutional).

"[T]he government, even with the purest of motives, may not substitute its judgment as to how best to speak for that of speakers and listeners; free and robust debate cannot thrive if directed by the government." *Riley,* 487 U.S. at 791, 799 (1988). In this context, government action restricting speech must meet the highest standard of scrutiny: it must be narrowly tailored to serve a compelling state interest. *See*, *e.g.*, *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 655 (1990); *Shelton v. Tucker*, 364 U.S. 479 (1960).

By empowering the Connecticut Attorney General and courts to arbitrarily determine whether a pro-life pregnancy service center's speech is "false, misleading or deceptive," and mandate a pregnancy service center engage in (and pay for) forced "corrective advertising," Raised Bill 7070 will necessarily violate the First Amendment and is unlikely to achieve success on the merits when it is challenged in a Court of Law. In fact, the U.S. Supreme Court recently reversed and remanded an option of the 9th Circuit concerning a similar bill arising from California. *See NIFLA v. Becerra,* 585 U.S. _____(2018).

B. Equal Protection Violation and Lack of Compelling Government Interest.

Along the same vein, the proposed legislation violates the rights of pro-life pregnancy service centers provided under Equal Protection Clause of the Fourteenth Amendment of the Constitution by failing to regulate similar organizations and organizations with differing ideologies, such as abortion clinics or family planning organizations. Such organizations are not subject to regulation or punishment for deceptive advertisements they might provide. Likewise, there are many companies and organizations that discuss medical issues with customers and clients that are not required to subject to the regulations of Raised Bill 7070, such as GNC stores and Weight Watchers. Such regulatory under-inclusiveness is a strong indication that that the proposed legislation's purpose is merely to subject pregnancy service centers that oppose abortion to heightened regulation. *See Carey v. Brown*, 447 U.S. 455, 465 (1980) (under-inclusiveness of a picketing statute undermined state's claim of interest); *Florida Star v. B.J.F.*, 491 U.S. 524, 542 (1989) (Scalia, J., concurring in part and in the judgment) (content-discriminatory law unconstitutional because it was under-inclusive).

The fact that the proposed legislation regulates only those pregnancy service centers that oppose abortion also "suggests that the government itself does not see the interest as compelling enough to justify a broader statute." Eugene Volokh, *Freedom of Speech, Permissible Tailoring and Transcending Strict Scrutiny*, 144 U. Pennsylvania L. Rev. 2417 (1997); *see also City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989); *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 450 (1985) (law's under-inclusiveness indicated that its true purpose was something else).

C. Due Process Violations

The proposed legislation also presents serious due process concerns. The language of the proposed legislation is vague and ambiguous, yet it would subject pro-life pregnancy service centers to action by the Attorney General and courts, which could result in civil sanctions for violations. In order to be constitutional, statutes challenged as vague must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited and provide explicit standards for those who apply the statute in order to avoid arbitrary and discriminatory enforcement. *See Upton vs. S.E.C.,* 75 F.3d 92, Fed. Sec. L. Rep. (CCH) ¶99011 (2d Cir. 1996); U*.S. v. Wunsch*, 84 F.3d 1110 (9th Cir. 1996); *Smith v. Avino*, 91 F.3d 105 (11th Cir. 1996).

Important language in the proposed regulation is undefined and subjective, such as, "The Attorney General may apply to any court of competent jurisdiction for injunctive relief to compel compliance…and correct the effects of <u>false</u>, <u>misleading</u>, or <u>deceptive</u> advertising." What constitutes "false, misleading or deceptive" advertising is not defined by the statute and is subject to the Attorney General's subjective understanding. Furthermore, the Raised Bill fails to require the Attorney General to provide any evidence indicating a pregnancy service center's advertising is "false, misleading or deceptive" to justify their decision to bring action against a pregnancy service center before subjecting it to costly court proceedings potentially resulting in harsh civil sanctions.

This concern is amplified by the fact that the power to bring legal action against pregnancy service centers lies solely within the Attorney General, and not the clients themselves, who overwhelmingly report high levels of satisfaction. *See* "The Truth About Crisis Pregnancy Centers." Care Net. 2015. Available at: https://www.care-net.org/hubfs/Downloads/The_Truth_About_Crisis_Pregnancy_Centers.pdf?hsCtaTracking=a06cb313-a1fe-45c0-813a-236ab3c8fbfe%7C19a83cca-5f9e-4352-8c70-bb7f26222f7c (Accessed 8 Jan. 2019) (clients in 2015 reported a 97.7% satisfaction rate).

Likewise, the proposed regulation does not define what constitutes the "advertising." This is problematic because many pregnancy service centers may provide information on their services through religious organizations (e.g. church

bulletins and pulpit announcements) and by way of oral communication when with clients or potential clients.

Moreover, as noted above, the Raised Bill fails to cap what a pregnancy service center may be required to pay for "corrective advertising" and allows a court unlimited power to punish a pregnancy service center for exercising its right to free speech by allowing the court to require a pregnancy service center to "Provide such other relief as the court deems necessary." The potential for mass civil prosecution due to vagueness appears limitless.

II. The Proposed Legislation Improperly Infringes on Federal and Connecticut Rights of Conscience Protections

The proposed legislation improperly infringes upon rights of conscience protections provided by Federal and Connecticut law by subjecting pregnancy service centers, which oppose abortion, to regulation involving civil discipline for exercising their right to not refer or perform abortion.

The Federal government has long protected the rights of citizens to engage in services without compromising their religious, moral and philosophical objections to abortion, abortion referrals, and related services. *See* 42 U.S.C. § 300a-7 et seq. (the "Church Amendment."); 42 U.S.C. § 238n (Public Health Service Act); and Pub. L. No. 111-117, 123 Stat 3034 (the "Weldon Amendment).

Additionally, Connecticut Public Health Code 19-13-D54 provides: "No person shall be required to participate in ***any phase*** of an abortion that violates his or her judgment, philosophical, moral or religious beliefs." Conn. Agencies Reg. § 19-13-D54(f) (emphasis added). The proposed regulation, however, specifically regulates: "[A] pregnancy service center that does not provide referrals to clients for abortion or emergency contraception."

The proposed regulation subjects pregnancy service centers to regulation and the potential for sanctions and limitless civil actions merely because they hold religious and moral conscience objections to abortion, in violation of both Federal and Connecticut state law.

III. The Proposed Legislation Is Ideologically Driven By Politically Charged Individuals' Misuse Of A Government Actor and Outside the Jurisdiction of the State of Connecticut.

Organizations that advocate for abortion, such as NARAL Pro-choice Connecticut and Planned Parenthood of Southern New England, have been the primary proponents of this legislation. The abortion debate is better suited for the public square without activists enlisting a government actor to needlessly harass pro-life charities. This is a misuse of the resources of the State of Connecticut and is

outside its jurisdiction and proper functions. Neither these proponents of the regulation nor the State of Connecticut have demonstrated a need for the proposed legislation. Rather, the proposed legislation is designed to emphasize an ideological complaint that its proponents have with regard to pregnancy service centers.

IV. The Proposed Legislation Unnecessarily and Unfairly Targets Centers For Regulation

In a similar vein, the regulation unnecessarily regulates pregnancy service centers, which already voluntarily operate under high standards of professionalism. National pregnancy service center affiliation organizations such as Care Net, the National Institute for Family and Life Advocates (NIFLA), and Heartbeat International provide centers with legal education, marketing compliance, medical service training/education, client service education, and other services. The legal education and other services offered by these groups are designed to ensure that centers are operating in compliance with state and federal laws and providing only truthful and accurate information. All centers within these affiliation networks agree to abide by the "Commitment of Care and Competence," which I include as an attachment with my testimony.

Approximately 2,600 pregnancy service centers in the United States effectively served nearly 2 million clients in 2017 with a wide range of services at no cost to the clients, saving their communities over $161 million. *See* Gaul, M. and Bean, M. "1968-2018 A Half Century of Hope: A Legacy of Life and Love." Charlotte Lozier Institute. 2018. Available at: https://lozierinstitute.org/a-half-century-of-hope-a-legacy-of-life-and-love/ (Accessed 8 Jan. 2019).

No group can better speak to the honesty, care and quality of services provided at pro-life pregnancy service centers than the clients themselves. In 2015, clients of pregnancy service centers affiliated with Care Net reported a 97.7% satisfaction rate. *See* "The Truth About Crisis Pregnancy Centers." Care Net. 2015. Available at: https://www.care-net.org/hubfs/Downloads/The_Truth_About_Crisis_Pregnancy_Centers.pdf?hsCtaTracking=a06cb313-a1fe-45c0-813a-236ab3c8fbfe%7C19a83cca-5f9e-4352-8c70-bb7f26222f7c (Accessed 8 Jan. 2019).

Pregnancy service centers are credible institutions held to high standards set by professionals in the industry. Pregnancy service centers comply with laws and offer a tremendous service to their communities saving millions of dollars annually. The proposed regulation seeks only to unfairly discredit these worthy organizations and will ultimately harm the clients and communities they serve.

For these reasons, **I urge the Connecticut General Assembly, Public Health Committee to vote against Raised Bill 7070 entitled: "An Act Concerning Deceptive Advertising Practices of Limited Services Pregnancy Centers."**