



THE NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES

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Pregnancy Centers and the Law

INTRODUCTION

There are more than 2,750 life-affirming pregnancy centers nationwide performing incredible work supporting women and their choice for life. In 2022 alone, these centers provided more than \$385 million in free services and goods in their communities.¹ This workshop will review the current legal challenges that pregnancy centers are facing and review legal topics that are of concerns for pregnancy centers.

History of Attacks against Pregnancy Centers

Pregnancy centers have been in existence for more than 50 years. From almost the beginning they have been under attack by those that oppose them. In 1987, Dr. Marvin Olasky, Ph.D., a professor of journalism at the University of Texas in Austin, undertook research to uncover the roots of the ongoing hostile opposition to the work of pregnancy centers. His findings were published in *Anatomy of a Negative Campaign, Public Relations Review, Autumn 1987*. The impact of the negative public relations campaign generated political and legal activity by abortion proponents against the work of pregnancy centers. Since the 1980s, pregnancy centers have faced the following types of opposition: Congressional hearings, state legislation, legal actions, not to mention the onslaught of attacks from media and academia as well as physical violence against their facilities.

Recent Litigation Involving Pregnancy Centers

NIFLA v. Becerra, 138 S. Ct. 2361 (2018). US Supreme Court held (5-4) that the California law requiring pregnancy center to post certain signs and statements unduly burdened their free speech rights. In 2015 California passed the “Reproductive FACT Act.” Under the law, medically licensed pregnancy centers were required to post signs and in all advertising that the state offers free or low-cost abortions. Not only that, but the pregnancy centers must also include a phone number where women can call to get referrals for abortion providers. The law required the disclosure be in at least 48-point font, or font the size of the advertisement. It also required centers to make the state-

¹ Hope for a New Generation, Charlotte Lozier Institute, 2023, www.lozierinstitute.org/pcr

imposed disclosure stand out against their own advertisement. Furthermore, the law required non-medical centers to disclose that they were not medical facilities.

NIFLA, represented by Alliance Defending Freedom, sued on behalf of pregnancy centers in the United States District Court for the Southern District of California requesting a preliminary injunction while the court decided if the law was constitutional. The District Court denied the preliminary injunction, and NIFLA appealed to the Ninth Circuit, which affirmed the District Court. NIFLA then sought review by the United States Supreme Court on a writ of certiorari. The writ was granted on November 13, 2017, and argument took place on March 20, 2018.

The United States Supreme Court held that the law's requirement was underinclusive in relation to the stated goal of the FACT Act and the FACT Act's requirement that unlicensed covered facilities give notice of their unlicensed status was unjustified and unduly burdensome, even if subject to deferential review. Even if California had offered more than a hypothetical justification for the notice, the FACT Act unduly burdened protected speech by imposing a government-scripted, speaker-based disclosure requirement that was wholly disconnected from California's informational interest.

NIFLA v. Bonta. (US District Court, Central District Court California) On behalf of NIFLA and the SCV Pregnancy Center, Alliance Defending Freedom recently filed suit against the California attorney general for using his power to censor pro-life pregnancy centers because they tell women about the option of taking supplemental progesterone for abortion pill reversal (APR). Progesterone is a safe and naturally occurring hormone that can be used to counteract the life-ending effects of abortion drugs. The California Attorney General Rob Bonta last fall aggressively went after groups that promote abortion pill reversal, including Heartbeat International, which runs the Abortion Pill Rescue network, and Real Options Obria Medical Clinics, a multi-site pro-life medical clinic in northern California. Abortion pill reversal is safe and can be an effective treatment in reversing the effects of the first chemical abortion pill and should be a choice if a woman changes her mind. Bonta's politically motivated lawsuit sent a chilling effect to the rest of the pregnancy centers in the state that have made, or would like to make, similar statements about APR. A companion case: *Culture of Life Family Services v. Bonta*. On July 30, 2024, Thomas More filed a federal lawsuit in CA against Bonta on behalf of Culture for Life Family Services, where Dr. DelGado, one of the founders of APR, is the Medical Director, for chilling their First Amendment speech to tell women about APR. Another federal lawsuit is anticipated to be filed shortly on the behalf of pregnancy centers in CA.

Woman's Concern v. Healy (U.S. District Court of MA) was filed on August 18, 2024 against the state and Reproductive Equity Now – an abortion lobbying group that has colluded with the state to violate the constitutional rights of pregnancy centers. The

Attorney General is targeting pregnancy centers resulting in administrative inquiries against three pregnancy medical centers and one of the centers is also defending a class action medical malpractice case and fraudulent advertising claim. Another center is facing a legal challenge accusing them of cyber-security attacks against an abortion clinic. The state is also participating in a multi-million dollar smear campaign against pregnancy centers – “Avoid Anti-Abortion Centers.”

NIFLA v. Leticia James. (U.S. District Court, Western District New York) ADF filed a lawsuit in federal court on May 24, 2024, against the Attorney General of New York on behalf of NIFLA and two of our centers, Gianna’s House and Options Care Center. James is using her power as AG to try to censor pro-life pregnancy centers from telling women about the option of using progesterone for abortion pill reversal. On August 16th a hearing on our request for a preliminary injunction was held and a week later the Judge granted the preliminary injunction holding that the state cannot chill our First Amendment rights to speak about abortion pill reversal.

NIFLA v. Raoul, Case No. 3:23-cv-50279 (N.D. Illinois 2023). The District Court entered a permanent injunction on December 14, 2023 against an Illinois law that targeted the advertising of pregnancy centers as a violation of the First Amendment. Illinois passed a law (SB1909) in 2023 targeting pregnancy centers by labeling their constitutionally protected speech—but not abortion facilities’ speech—as so-called “deceptive business practices,” on account of their pro-life viewpoint. NIFLA, represented by the Thomas More Society, challenged the law on behalf of its member centers. The law openly targeted alleged pro-life “misinformation” on the basis that that pro-life views conflict with Illinois’s rampant pro-abortion ideology. In doing so the law ran headlong into bedrock protections of the First Amendment, which prohibit government from cutting off one side of ongoing controversies by censoring speech with which it disagrees, and from discriminating against religiously motivated speech. The “Deceptive Practices of Limited Services Pregnancy Centers Act” was a blatant attempt to stamp out access to vital women’s pregnancy resources across the state, simply because pregnancy help centers do not provide abortions and “emergency contraception.”

Judge Johnston issued a Preliminary Injunction against the law in August 2023. In his order granting the preliminary injunction, Judge Johnston wrote:

SB 1909 is both stupid and very likely unconstitutional. It is stupid because its own supporter admitted it was unneeded and was unsupported by evidence when challenged. It is likely unconstitutional because it is a blatant example of government taking the side of whose speech is sanctionable and whose speech is immunized—on the very same subject no less. SB 1909 is likely classic content and viewpoint discrimination prohibited by the First Amendment.

NIFLA v. Treto, Case No. 16 C 50310 (N. D. Ill. 2017). At Issue: Constitutionality of Illinois law requiring medical providers who oppose abortion to provide referrals to abortion providers and to counsel their patients on the benefits of abortion. The state of Illinois SB 1564 passed in 2016 which would force pregnancy care centers, medical facilities, and physicians who conscientiously object to involvement in abortions to adopt policies that provide women who ask for abortions with a list of providers “they reasonably believe may offer” abortion and to counsel them on the benefits of abortion. NIFLA, represented by Alliance Defending Freedom, filed suit requesting a preliminary injunction against the law. In July of 2017 the United States District Court for the Northern District of Illinois granted the preliminary injunction. A bench trial occurred in September 2023 and a decision is being awaited.

Compass Care, NIFLA and First Bible Baptist Church v. Andrew Cuomo, et al. Case No. 1:19-CV-1409 (N.D. N.Y.). In 2019, then N.Y. Governor Cuomo signed the “Boss Bill” which forces pro-life organizations to hire employees who are pro-abortion. We were not able to obtain an injunction preventing the law from going into effect and the District Court held the law was not unconstitutional (except for a compelled speech component required in employee handbooks). The case was appealed to the Second Circuit Court of Appeals. On February 27, 2023, our companion case, *Slattery v. Hochul*, Case No. 21-911(2nd Cir. 2023) received a ruling from the Second Circuit which held that there is a plausible claim that the Boss Bill unconstitutionally burdens the center’s right to freedom of expressive association—as guaranteed by the First and Fourteenth Amendments—by preventing it from disassociating itself from employees who, among other things, seek or advocate for abortions. Oral Argument in our case occurred on December 12, 2023 in the Second Circuit Court of Appeals in New York City. Awaiting the decision.

Sisters of Life v. McDonald, Case No. 22-cv-7529 (S.D. N.Y. 2022). New York passed a law targeting life-affirming pregnancy centers by authorizing the New York Commissioner of Health to demand private information from pregnancy centers that do not offer abortion services. The law would have allowed government officials access to sensitive internal documents and force centers to turn over private information that would jeopardize their trusting relationships with women in need. Sisters of Life sued New York in federal court challenging the law and the State agreed to back down in a settlement agreeing not to seek enforcement against the Sisters.

NIFLA v. Clark, Case No. 2:23-cv-00229 (D.C. VT 2023). Vermont passed a new unfair and deceptive act prohibiting pregnancy centers from publishing any untrue or misleading. It also made it unprofessional conduct to implement APR. Alliance Defending Freedom is representing NIFLA and our member centers in Vermont challenging the constitutionality of the law. Mediation attempts are in process.

Obria v. Ferguson, Case No. 3:23-cv-06093 (W.D. WA 2023). Obria, a network of pregnancy centers, filed a lawsuit against Washington Attorney General Robert Ferguson after he conducted civil investigations into the organizations. While AG Ferguson claims that the investigations were made to ensure compliance with Washington’s Consumer Protection Act, the nonprofits argue that the investigations are both unlawful and unrelated to the AG’s stated purpose. The nonprofit organizations, represented by attorneys at ADF, argue that the civil investigative demands are unconstitutional and unlawfully target the organizations’ free speech and religious exercise. Oral Arguments were held in District Court on Feb 28, 2024 for Declaratory Relief.

State of California v. Heartbeat International, Case No.: 23CV044940 (CA Sup. Ct.) The California Attorney General, Robert Bonta, filed suit against Heartbeat International (HBI) and a pregnancy medical center in September 2023 alleging their advertisements about APR are fraudulent and misleading. Thomas More Society is representing HBI and Real Options and they have filed a Demurrer to the Complaint.

First Choice Women’s Resource Center v. Platkin, AG of New Jersey. The Attorney General served extensive subpoena requests upon two centers in New Jersey asking for years’ worth of advertising, all their manuals, etc.... ADF Alliance Defending Freedom filed a constitutional challenge in federal court but on December 12, 2023, the judge dismissed the complaint stating that the case was not ripe because it had to be litigated in state court first. An appeal to the federal appellate court was unsuccessful. ADF petitioned for a Writ of Mandamus to the US Supreme Court on February 26, 2024 asking the Court to require the District Court to address the constitutional issues in the case – it was denied. First Choice answered the subpoena on July 18th and the state was not satisfied with the 100s of pages of documents turned over and has filed a motion to compel First Choice to comply further. A hearing in state court occurred on September 20, 2024 wherein the judge said she could not decide the constitutional issues. Back to federal court on October 15, 2024 to enjoin the AG from unconstitutionally targeting the center. Awaiting decision.

Legal Concerns for Pregnancy Centers

1. Since *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215 (2022), the landmark case overturning *Roe v. Wade*, 410 U.S. 113 (1973), abortion laws have returned to the states. Assistance in understanding state laws regarding abortion limitations.
2. Religious Freedom guarantees protected. Assure religious foundations in the non-profit’s Article of Incorporation, Bylaws, Mission Statement, Statement of Faith, etc... *Spencer v. World Vision*, 633 F. 3d 723(2011)

- a. The Religious Freedom Restoration Act (RFRA) forbids the federal government from ‘substantially burdening a person’s exercise of religion’ unless it show that burden is in furtherance of a compelling governmental interest and is the least restrictive means of doing so. *Singh v. Berger*, 56 F.4th 88 (D.C. Cir. 2022).
 - b. Employment protections through the Title VII exemption. See *Corp. of the Presiding Bishop v. Amos*, 483 U.S. 327 (1987). Section 702 of the Civil Rights Act of 1964, exempting religious organizations from the Act’s ban in Section 703 on religious discrimination, does not violate the Establishment Clause. Centers need to make sure they are formed with religious purposes in order to be exempt.
 - c. Assistance with the constitutional “ministerial exemption” as it applies to employees of pregnancy centers. — *Hosanna-Tabor v. EEOC*, 565 U.S. 171 (2012), and *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049 (2020) — employment decisions of religious entities with respect to ministerial and teaching positions are not subject to review under civil rights and employment discrimination laws.
3. Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 and state medical privacy laws provide protection of patient’s private health information.
 4. State medical licensing laws and scope of practice. Pregnancy centers that offer medical services do so under the direction and supervision of a licensed physician. State laws vary as to clinic licensing, scope of practice of medical professionals, use of standing orders, medical record retention periods, release of records, etc...
 5. Mandatory Reporting Requirements. Medical professionals and facilities are most likely mandatory reporters for child abuse/neglect. Child Welfare Information Gateway at http://childwelfare.gov/systemwide/laws_policies/ is a useful website to start the research into state laws as far as definitions of child abuse, especially in the area of consensual sexual relations with a minor.
 6. Minor’s ability to consent to medical services varies state to state. See this AAP publication: “State-by-State Variability in Adolescent Privacy Laws.” <https://publications.aap.org/pediatrics/article/149/6/e2021053458/187003/State-by-State-Variability-in-Adolescent-Privacy>.
 7. Telehealth compliance is a growing area and also governed by state law: (<https://www.cchpca.org/all-telehealth-policies/>)
 8. Employment laws. While the Fair Labor Standards Act, 29 U.S.C. Chapter 8 provides federal guidelines, states can add their own rules in many areas, including increases of the minimum wage, provision of sick time and rest period, etc... Pregnancy centers need assistance in figuring out state labor laws that apply to them.

Action Going Forward

Join our NIFLA Attorney Coalition (NAC) to network with like-minded attorneys and provide needed services and support to local pregnancy centers. There is no fee to join. For more information go to: <https://nifla.org/training/nifla-attorney-coalition-nac/>

Come to NIFLA's Leadership Summit on March 17-20, 2025 in historic Williamsburg, Virginia. This conference brings together those leaders foremost in the fight for life and on the front lines at pregnancy centers. It is geared towards pregnancy center leadership, medical providers and attorneys. CLEs for attorneys and CEUs for nurses will be provided. For more information visit: <https://niflaleadershipsummit.com>

About us: NIFLA has existed for 31 years to protect life-affirming pregnancy centers targeted by pro-abortion groups and legislation. Through legal counsel, education and training, NIFLA enables member centers to avoid legal pitfalls in their operations. NIFLA now represents more than 1,750 pregnancy centers nationwide. Thomas Glessner, J.D. is the founder and President of NIFLA. Anne O'Connor, J.D. is the Vice President of Legal Affairs.

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