



WHAT ARE “CRISIS PREGNANCY CENTERS”?

“Scared? Pregnant? We can Help.” If you have seen these billboards, then you have seen advertising for Crisis Pregnancy Centers aka Fake Women’s clinics. Crisis Pregnancy Centers (CPCs) have become a battleground between the pro-life and pro-choice movements. These centers falsely (yet legally) present as clinics in an attempt to lure in persons seeking an abortion and persuade them to carry their pregnancy to term. On the face, CPCs appear benign, if a little ethically flexible. However, these religiously backed, volunteer run, fake clinics take a ‘by any means necessary’ approach. Staff do not disclose that they are not licensed medical providers, and most facilities do not have licensed providers on staff. Those who enter their doors seeking an abortion, or basic information about all potential options for their pregnancy, are led by duplicitous language and misleading webpages to think that these fake clinics offer all comprehensive treatment options, including providing abortions. These centers are providing outright false information about the laws and risks associated with abortion services, and, if the patient remains resolute, then many CPCs have been known to resort to emotional blackmail by forcing the patient to watch graphic anti-abortion videos. It is not uncommon to read patients accounts of CPCs lying about gestational age and fetal development to delay patients seeking abortions until the procedure is no longer possible.¹

The battle between advocates of free and accurate information and proponents of crisis pregnancy centers has made its way into the Supreme Court in *National Institute of Family and Life Advocates (NIFLA) v. Becerra*. The case challenges California’s Reproductive FACT act which is intended to “ensure that California residents make their personal reproductive health care decisions knowing their rights and the health care services available to them” (leginfo.legislature.ca.gov). The bill requires a notice posted in English and the primary languages for Medi-Cal (state Medicaid) beneficiaries to state the availability of immediate free or low-cost family planning, pre-natal care and abortion. Under the law, CPCs must also disclose that they are not licensed medical facilities, nor do they have licensed medical providers on staff. The regulation also stipulates how this message is to be displayed.

This legislation echoes the sentiments of pro-choice advocates across the country. Crisis Pregnancy Centers have come under public scrutiny for deceptive, often borderline abusive tactics used to deter people seeking abortions from terminating their pregnancies. These centers rely on disproven information when counseling patients as to the risks of abortion. Many facilities routinely provide inaccurate literature and tell their visitors that abortion leads to breast cancer, has a much higher rate of death or injury than is proven, and leads to a host of mental health issues following the procedure.² Their statements diverge significantly from common medical knowledge. However, at this time, most states do not regulate CPCs as commercial entities and therefore must accord them the full protection of the first amendment.

Crisis Pregnancy Centers have framed the argument in terms of a violation of their free speech. They argue that if the government forces them to display advice on how to get an abortion when they are explicitly anti-abortion then that infringes on their ability to unequivocally express their beliefs. On the face it may seem obvious that an organization seeking to provide “health services” and counseling to a vulnerable population ought to be properly regulated by the government. However, CPCs exist in a regulatory no-man’s land. The centers are not “technically commercial” since they offer services to the public but do not receive payment and therefore have no economic interests. Economic interest is one of few guidelines created by court precedents to classify commercial (and therefore strictly regulated) speech by organizations. Though they use duplicitous language to convey an air of authority, they are not licensed medical facilities and so are not regulated by healthcare policies, practices, and legislation either.



Laws regulating non-commercial speech in the United States have always been accorded the highest level of scrutiny in the courts. This means that in order for the government to curtail any form of non-commercial speech they must first prove that the challenged legislation serves a “compelling” state interest and that the legislation is necessary to serve that interest. In other words, such a law must be a last resort. Regulation of CPCs would depend heavily on the court determining a) that their speech is not the same as individual or purely ideological speech, or b) the only way to curb the harm done by CPCs is to enact the proposed legislation. At this time, legislators are hesitant to enact laws regulating CPCs largely because of the possible implications for other ideological organizations such as churches with which CPCs are usually affiliated. Given the ill-defined categories of speech, it is difficult to legally distinguish between the two, though the practical difference is stark.

If the Supreme Court determines that the state has a compelling interest in regulating CPCs, then that will bolster legislation proposed across the country to enact regulations similar to those proposed in California. Depending on how the decision is written, this case could also act as a step toward clearer definitions of speech, making it easier to regulate organizations that occupy the same legal grey area as Crisis Pregnancy Centers. At best, the resolution of *NIFLA v. Becerra* will give a green light to legislators to act on pressure from reproductive rights groups. With the likelihood of a suit filed by CPCs reduced, legislators would be able to confidently pass regulatory bills for the over seventy CPCs in Georgia.

The case of *NIFLA v. Becerra* may have implications not just for Crisis Pregnancy Centers but also for those who knowingly or naively seek their services. Further, the court, first and foremost, has an obligation to protect the individual; that is, the persons without religious conglomerates backing them. In the case of commercial speech toward the individual, the answer is legally and morally clear. Commercial entities selling a service to the public are obliged to provide accurate information. One can only hope that practicality and jurisprudence intersect in this instance. Perhaps, if we’re lucky, the Supreme Court may even finally define once and for all, classes of speech as they truly exist, in a world of grey. A decision finding CPCs to be some version of commercial speech would necessitate a review of what is and is not accurate information being disseminated about abortion. It would allow organizations like SPARK Reproduce Justice NOW!, Inc to hold accountable groups that use false information to impede the health of our communities. Additionally, this may aid in enabling pro-choice activists to push for the replacement of government approved misinformation (forced to be recited by abortion providers to patients) with updated science and researched facts. In theory, the regulation of these facilities would result in CPCs and abortion providers being given the same script under ‘right to know’ laws. With pressure from reproductive health organizations, we could reasonably expect the review of that script to result in the correction of existing misinformation.

Of course, the replacement of the current script recited to abortion patients with accurate unbiased information depends greatly on the input of the public along with reproductive health and justice organizations. Legislators need to know that such measures would be supported by constituents. In other words, we need to contact our representatives and back our convictions at the polls.

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1. NARAL. “The Truth About Crisis Pregnancy Centers”. <http://www.prochoiceamerica.org/wp-content/uploads/2016/12/6.-The-Truth-About-Crisis-Pregnancy-Centers.pdf>
 2. “Abortion Risks: A list of major physical complications related to abortion”. <http://afterabortion.org/1999/abortion-risks-a-list-of-major-physical-complications-related-to-abortion/>

This essay was researched and written by Zhorelle Brown.

SPARK Reproductive Justice NOW

P.O. Box 89210, Atlanta, GA 30312 T 404.331.3250 E info@sparkrj.org   [sparkrjnow](https://www.facebook.com/sparkrjnow) www.sparkrj.org