



REPRODUCTIVE RIGHTS & HEALTH

## **NIFLA V. BECERRA: DECEPTIVE TACTICS OF ANTI-ABORTION COUNSELING CENTERS HARM WOMEN**

This term, the Supreme Court is reviewing a case that asks whether the First Amendment's free speech clause allows anti-abortion counseling centers to deceive women. The case challenges a California law, the Reproductive FACT (Freedom, Accountability, Comprehensive Care, and Transparency) Act,<sup>1</sup> which requires disclosures that make sure that women have information about comprehensive reproductive health care services, including prenatal care, birth control, and abortion, offered by the state of California. The law also makes sure that that women know whether they are getting care and advice from medical professionals.<sup>2</sup>

Anti-abortion counseling centers, which have been misleading women about their services and intentions, want to overturn this straightforward consumer protection law. Their practices run afoul of the FACT Act because they use deceptive practices to lure women who have decided to have an abortion into their centers and refuse to provide the full range of reproductive health options.

These anti-abortion counseling centers, represented by several national organizations, sued as soon as the FACT Act was passed in 2015, claiming that the disclosures violate their First Amendment rights. A federal district court rejected their arguments,<sup>3</sup> and the Court of Appeals for the Ninth Circuit affirmed that ruling, acknowledging that anti-abortion counseling centers use intentionally deceptive practices that deceive and intimidate women from making informed decisions about time-sensitive reproductive health care.<sup>4</sup> Because the anti-abortion counseling centers lost at the lower courts, they appealed to the Supreme Court, which agreed to hear whether the disclosures violate the First Amendment's free speech clause.

### **The FACT Act is Necessary to Protect Women from Deceptive Anti-Abortion Counseling Centers**

Patients' needs should always come first. And it is vital that women seeking health care information and services receive timely, complete, unbiased, and medically accurate reproductive health care, regardless of whether they are seeking abortion, family planning services, prenatal care, or counseling to help them determine their options. The FACT Act does just that, protecting women from the deceptive tactics of anti-abortion counseling centers and providing women with access to full and accurate information about their reproductive health care options.

While the law at issue in NIFLA v. Becerra is California-specific, anti-abortion counseling centers reflect a national network of more than 2,700<sup>5</sup> centers with a long and well-documented history of using deceptive practices.

### ***Anti-abortion counseling centers use deceptive advertising and conceal what services are available***

Anti-abortion counseling centers hide their real ideology and motivations, and use deceptive websites and advertisements to make women believe that they are comprehensive health care clinics, and particularly target women seeking abortion services. One anti-abortion counseling center boasts that it "reaches the most abortion determined" women, and another organization that works with anti-abortion counseling centers states, "[w]e are experts at making sure your website is attracting the abortion-minded client."<sup>6</sup>

Because of this, a woman who searches online for information about a pregnancy can be tricked into thinking that these centers are real health care facilities that offer the full-range of family planning services. Some anti-abortion counseling centers – that do not offer abortion – nonetheless use geo-targeting and search optimization with terms like "abortion pill" or "abortion clinic near me" to direct users to their website.<sup>7</sup> They also advertise in public places – like billboards, buses, and newspapers – in ways that imply that they provide abortion.<sup>8</sup> Even when directly asked, some



anti-abortion counseling centers do not disclose that they do not offer abortion services.<sup>9</sup> Some even market pre-abortion appointments and free ultrasounds to draw women who have decided on abortion into their centers.

Anti-abortion counseling centers also often intentionally resemble full-service reproductive health clinics, and even set-up their centers near comprehensive clinics that offer abortions. Some anti-abortion counseling centers use similar names for themselves to confuse women. For example, anti-abortion counseling centers AAA Women for Choice<sup>10</sup> and A Women's Choice<sup>11</sup> have names that imply that they offer abortion, but do not. If a woman enters an anti-abortion counseling center thinking that it is the abortion clinic for which she has an appointment, she is often not told she is in the wrong place, resulting in delay and even a missed scheduled appointment for the care she was seeking.<sup>12</sup>

### **Anti-abortion counseling centers hide their religious affiliation**

Anti-abortion counseling centers deliberately conceal their religious affiliations to present themselves to the public as neutral, unbiased providers of medical information and services, rather than religiously-affiliated entities whose sole purpose is to deter women from obtaining abortion.<sup>13</sup> For many women who visit anti-abortion counseling centers, it is only after they have made an appointment, entered the facility, and begun meeting with the staff that they learn that that the center is religiously-affiliated - when they are subjected to overtly religious messages and ideological counseling.

### **Many anti-abortion counseling centers pretend to be real medical facilities and give out false and damaging information to women**

Women seeking health care or counseling during pregnancy require and deserve accurate information, and those who present themselves as health care providers should not be allowed to mislead women about medical facts. But unfortunately, some anti-abortion counseling centers present themselves as medical clinics, despite offering limited medical services and information. They typically provide false information to dissuade women from having an abortion, falsely claiming that abortions pose health risks such as infertility, breast cancer, and birth defects in future pregnancies, and use graphic images to frighten and misinform women.<sup>14</sup> Many centers tell women about "post-abortion syndrome," despite the scientific evidence that shows that abortion is not associated with long-term psychological harm.<sup>15</sup> This information is meant to coerce women into continuing their pregnancies and prevents them from making informed decisions based on complete and accurate information.

Some anti-abortion counseling centers employ non-medical personnel who wear scrubs or lab coats to offer limited services, such as pregnancy tests and ultrasounds. However, their limited medical services are not offered to provide pre-natal care, but instead as tools to shame women and steer them away from abortion. For example, one anti-abortion counseling center advises its member centers to provide ultrasound services primarily "for abortion-minded and abortion-vulnerable women."<sup>16</sup>

The FACT Act's disclosure requirements respond directly to the problem of anti-abortion counseling centers using deceptive advertising and creating the appearance of a reproductive health clinic offering comprehensive medical services, and ensure that women have the information they need to access timely, complete, unbiased, and medically accurate information and care.

### **ANTI-ABORTION COUNSELING CENTERS' DECEPTIVE TACTICS HARM WOMEN**

Women facing time-sensitive pregnancy-related decisions need timely and unbiased information about the full range of options delivered in a professional, non-judgmental, and compassionate manner. However, when a woman visits an anti-abortion counseling center, she will instead likely experience confusion, shame, and may be given false and misleading information, which can lead to other serious harms.

By providing false, misleading, or incomplete information, and frightening or coercing women, anti-abortion counseling centers prevent women from making fully-informed decisions and endanger women's health and future fertility. Anti-abortion counseling centers' deceptive tactics have also caused women to rely on false information to continue unwanted pregnancies to term. For example, one woman was told by an anti-abortion counseling center that an abortion would perforate her uterus, and she would never be able to have children; she relied on that medically-inaccurate information in deciding to continue her pregnancy.<sup>17</sup> Another woman was repeatedly deceived by an anti-abortion counseling center, who kept telling her to return to their center every few weeks for her abortion. By the time she realized they were never going to provide the procedure, she was past the legal limit in her state.<sup>18</sup>

Further, because a woman is deceived into thinking she has been provided adequate health care, she may delay seeking care elsewhere, resulting in threats to her health and future fertility. The time-sensitive nature of decision-making about reproductive health care heightens this harm, because delayed care can mean forgone care, including the escalation of dangerous complications. This might result in a failure to diagnose a medical condition, an increased risk of medical complications, additional health care costs if a delay results in a woman needing a more advanced abortion procedure, or a serious complication or loss of a wanted pregnancy.



For example, one woman was told by an anti-abortion counseling center that she was not pregnant; in fact, she had a life-threatening ectopic pregnancy. She later had to have emergency surgery that resulted in the removal of her Fallopian tube and reduced fertility, all of which was the direct result of the inappropriate care she received at the anti-abortion counseling center.<sup>9</sup>

Harms from anti-abortion counseling centers' deceptive tactics are magnified for women who are living in poverty or facing the pressures of low-wage work, who face logistical barriers around scheduling, wages, travel, and childcare. More than one in eight women live in poverty according to the most recent census figures, and the figures are higher for women of color.<sup>20</sup> Women are overrepresented in low wage jobs, holding about three-fifths of jobs that pay less than \$11 per hour; women of color are overrepresented in the low-wage workforce.<sup>21</sup> Women are also more likely than men

to hold part-time positions that lack benefits and stability in scheduling.<sup>22</sup> For low-income women, taking time off of work and arranging for childcare in order to visit an anti-abortion counseling center is a significant burden; doing it again to obtain the care they actually seek is an even heavier burden.

Decisions about a pregnancy are time sensitive and women need accurate information about their full range of options right away. In *NIFLA v. Becerra*, the Supreme Court should take this opportunity to make clear that laws - like the California FACT Act - that do just that and protect women from anti-abortion counseling centers' deception and harm will stand.

*For more information on anti-abortion counseling centers and NIFLA v. Becerra, please read the [amicus brief](#) of the National Women's Law Center and the Center for Reproductive Rights, joined by 49 other reproductive rights, civil rights, and social justice organizations.*

- 1 See CAL. HEALTH & SAFETY CODE §§ 123470-123473 (2015).
- 2 See *id.* § 123472.
- 3 See *Nat. Institute of Family and Life Advocates v. Harris*, 2016 WL 3627327 (S.D. Cal. Feb. 9, 2016).
- 4 See *Nat. Institute of Family and Life Advocates v. Harris*, 839 F.3d 823 (9th Cir. 2016).
- 5 See Brief of Care Net as Amicus Curiae in Support of Petitioners at 1, *Nat. Institute of Family and Life Advocates v. Becerra*, No. 16-1140 (petition for cert. filed March 20, 2017) (stating Care Net has "more than 1,100 affiliates"); Brief of Heartbeat Int'l, Inc. as Amicus Curiae in Support of Petitioners at 1 (stating "Heartbeat serves approximately 2,400 pro-life centers"); *About NIFLA*, NIFLA, <http://www.nifla.org/about-us-what-we-do.asp> (last visited March 12, 2018) (stating "NIFLA now represents more than 1,400 pro-life pregnancy centers across the country").
- 6 *About us*, EXTEND WEB SERVICES, <https://www.extendwebservices.com/about> (last visited March 12, 2018) (stating on its website that "[w]e are experts at making sure your website is attracting the abortion-minded client"). See also Brief of Appellants at 668, *Greater Baltimore Ctr. for Pregnancy Concerns, Inc. v. Baltimore*, No. 16-2325 (4th Cir. Jan. 30, 2017).
- 7 See, e.g., Recordings: Optimizing Google Ads, 2017 Care Net National Conference Care Net (Barker Productions 2018), available at <http://www.care-net.org/conference>.
- 8 See, e.g., *Discovery at 698-705, Greater Baltimore Ctr. for Pregnancy Concerns, Inc. v. Baltimore*, No. 16-2325 (4th Cir. Jan. 30, 2017) (discussing an anti-abortion counseling center's bus advertisement campaign that promoted "FREE Abortion Alternatives," "FREE Confidential Options Counseling," "FREE Pregnancy Tests," and "FREE Services, which led to an increase in "abortion minded callers" who "were under the impression from the bus advertisements that [PCs] assisted in paying for abortions" and "wanted to schedule an abortion").
- 9 See Brief of Appellants at 667, *Greater Baltimore Ctr. for Pregnancy Concerns, Inc. v. Baltimore*, No. 16-2325 (4th Cir. Jan. 30, 2017); (discussing a Care Net report with sample client conversations instructing the "pregnancy coach" to respond to a woman who has decided on abortion by diverting the conversation to ask about "the father of the baby" and then providing contact information for an anti-abortion counseling center without telling the caller that abortion is not available).
- 10 See, e.g., AAA WOMEN FOR CHOICE, <http://www.aawomenforchoice.com/> (last visited March 13, 2018).
- 11 See, e.g., A WOMEN'S CHOICE, <http://www.awomanschoicecenter.com/> (last visited March 13, 2018).
- 12 See Brief of 51 Reproductive Rights, Civil Rights, and Social Justice Organizations as Amicus Curiae, at 22, *NIFLA v. Becerra*, 16-1140 (2018).
- 13 See CARE NET MANUAL, HOW TO START A CRISIS PREGNANCY CENTER 72 (1997) (instructing affiliate anti-abortion counseling centers to downplay their religious nature and avoid religious language, symbols, or images including "Christian wallhangings" or "Christian music," which clients may find "uncomfortable or uninviting.") See also *id.* at 76 (noting that the waiting room should include pictures that "appeal to a wide variety of women" and should "not reflect[] pro-life or Christian themes").
- 14 See U.S. H.R. COM. ON GOV. REFORM, FALSE AND MISLEADING HEALTH INFORMATION PROVIDED BY FEDERALLY FUNDED PREGNANCY RESOURCE CENTERS 7 (2006), available at <http://www.chsourcebook.com/articles/waxman2.pdf>.
- 15 See *id.* at 11-12.
- 16 FOCUS ON THE FAMILY, EXCELLENCE OF CARE: STANDARDS OF CARE FOR PROVIDING SONOGRAMS AND OTHER MEDICAL SERVICES IN A PREGNANCY MEDICAL CLINIC 1 (2009), available at <http://media.focusonthefamily.com/heartlink/pdf/standardsofcare.pdf>.
- 17 See Brief of 51 Reproductive Rights, Civil Rights, and Social Justice Organizations as Amicus Curiae, at 19, *NIFLA v. Becerra*, 16-1140 (2018).
- 18 See *id.* at 27.
- 19 See *id.* at 23.
- 20 KAYLA PATRICK, NAT'L. WOMEN'S LAW CTR., NATIONAL SNAPSHOT: POVERTY AMONG WOMEN AND FAMILIES, 2016, 1 (2017), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/09/Poverty-Snapshot-Factsheet-2017.pdf>.
- 21 JASMINE TUCKER & KAYLA PATRICK, NAT'L WOMEN'S LAW CTR., LOW WAGE JOBS ARE WOMEN'S JOBS: THE OVERREPRESENTATION OF WOMEN IN LOW-WAGE WORK 1 (2017), <https://nwlc.org/resources/low-wage-jobs-are-womens-jobs-the-overrepresentation-of-women-in-low-wage-work/>.
- 22 JULIE VOGTMAN & JASMINE TUCKER, NAT'L WOMEN'S LAW CTR., COLLATERAL DAMAGE: SCHEDULING CHALLENGES FOR WORKERS IN LOW-WAGE JOBS AND THEIR CONSEQUENCES 1, 4 (2017), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/04/Collateral-Damage.pdf>.

