

# THE CRISIS INSIDE CRISIS PREGNANCY CENTERS: HOW TO STOP THESE FACILITIES FROM DEPRIVING WOMEN OF THEIR REPRODUCTIVE FREEDOM

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**Abstract:** Since the late 1960s, pro-life activists have been flooding the United States with crisis pregnancy centers (CPCs), facilities disguised as legitimate reproductive health clinics but, in reality, are mostly unlicensed centers that do not provide contraception or abortion services. These facilities deprive women of their reproductive freedom when they engage in deceptive practices to coerce women out of terminating their pregnancies. This Note examines recent unsuccessful attempts to curb CPC practices and highlights the destructive impacts of CPCs, particularly on young, low-income, and minority women. Misleading CPC tactics bar women from exercising their constitutional right to command their reproductive decisions, including if and when to have an abortion. To better protect a woman's reproductive liberty, this Note demands the discontinuation of government funding to CPCs, and advocates for contemporary strategies to challenge and regulate CPCs through the use of consumer protection laws and medical conduct claims.

## INTRODUCTION

It is not easy to get an abortion in South Dakota.<sup>1</sup> There is only one healthcare clinic that performs abortion services in the entire state: a Planned Parenthood that has been forced to recruit out-of-state physicians to perform these services for patients because most local doctors are unwilling to participate in the termination of a pregnancy.<sup>2</sup> The Planned Parenthood facility is

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<sup>1</sup> See Meaghan Winter, *What Some Pregnancy Centers Are Really Saying to Women with Unplanned Pregnancies*, COSMOPOLITAN (July 14, 2015), <http://www.cosmopolitan.com/politics/news/a43101/pregnancy-centers-august-2015/> [<https://perma.cc/BX69-GWYU>]. South Dakota is not alone. See Esmé E. Deprez, *The Vanishing U.S. Abortion Clinic*, BLOOMBERG QUICKTAKE, <http://www.bloombergview.com/quicktake/abortion-and-the-decline-of-clinics> [<https://perma.cc/5J8N-Y478>] (last updated Mar. 1, 2016, 11:48 AM). Abortion clinics in the United States are already limited across the board, and many are rapidly closing. *Id.* Currently, North and South Dakota, Mississippi, Missouri, and Wyoming each have only one abortion clinic within their borders. *Id.*

<sup>2</sup> Maria L. La Ganga, *Doctor Goes to Great Lengths to Keep Abortions Accessible*, L.A. TIMES (Oct. 14, 2014), <http://www.latimes.com/nation/la-na-abortion-south-dakota-20141014-story.html> [<http://perma.cc/D2MP-RCMY>]; Winter, *supra* note 1.

located in Sioux Falls, a city tucked alongside the eastern border of the state.<sup>3</sup> Women who live in the western half of the state need to travel more than 350 miles for the clinic's abortion services or for general reproductive health-related consultations.<sup>4</sup> Distance, however, is not the only limitation to women seeking abortions in South Dakota.<sup>5</sup> Under current South Dakota law, a woman is legally required to have an initial consultation with a physician, and then wait seventy-two hours—which cannot include weekends or holidays—before she can lawfully undergo an abortion procedure.<sup>6</sup> Because of its limited schedule and low staffing, appointments at the Sioux Falls Planned Parenthood regularly fill up weeks in advance, making it more difficult for women to be treated by the clinic.<sup>7</sup>

Like many other women, these temporal and geographical limitations impeded twenty-six-year-old “Nicole” of Rapid City's ability to undergo an abortion in 2014.<sup>8</sup> Nicole was a bartender and a student when she unexpectedly became pregnant.<sup>9</sup> With her boyfriend living out of state, she decided that an abortion was the best option for her, and ultimately chose to undergo a medication abortion.<sup>10</sup> Because medication abortions are only available to women in the first nine weeks of pregnancy, Nicole immediately needed an ultrasound to reveal how far along she was in her pregnancy.<sup>11</sup> Unfortunately, because the Sioux Falls Planned Parenthood clinic was completely booked three weeks out, and located 350 miles from Rapid City, she was forced to look beyond the state's only abortion clinic for the ultrasound.<sup>12</sup> Nicole eventually found a local Care Net facility online that advertised “free ultrasounds” in addition to “emergency contraception” and “abortion education” on its website, and made an appointment for an ultrasound the following week.<sup>13</sup>

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<sup>3</sup> Winter, *supra* note 1.

<sup>4</sup> *Id.*

<sup>5</sup> See S.D. CODIFIED LAWS § 34-23A-56 (2016).

<sup>6</sup> *Id.* The South Dakota Legislature enacted this law in 2011 in an attempt to “establish certain procedures to better insure that such decisions are voluntary, uncoerced, and informed.” H.B. 1217, 2011 Leg., 86th Sess. (S.D. 2011).

<sup>7</sup> Winter, *supra* note 1.

<sup>8</sup> *Id.* Nicole is this woman's middle name. *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* A medication abortion, as opposed to a surgical abortion, “consists of a two-drug regimen that ends a pregnancy” and can be beneficial to a woman who is early on in her pregnancy. See *Medication Abortion*, OUR BODIES OURSELVES (Mar. 27, 2014), <http://www.ourbodiesourselves.org/health-info/medication-abortion/> [<https://perma.cc/P26Q-JS72>]. Medication abortions are safe and highly effective. *Id.* Some women choose to undergo a medication abortion because the procedure is non-invasive, more private, and often perceived as a “more ‘natural’” process, similar to a miscarriage. *Id.*

<sup>11</sup> Winter, *supra* note 1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* Care Net is the largest network of CPCs within the United States, operating more than one thousand locations nationwide that see at least five hundred thousand women per year. NAT'L ABOR-

Five days after her positive pregnancy test, Nicole arrived at a shopping center in Rapid City that housed little more than a credit union, a KFC, and the Care Net facility.<sup>14</sup> After she checked in for her ultrasound appointment and used the bathroom to provide a urine sample, one of the clinic's nurses and one other woman guided Nicole from the waiting room to a smaller room and sat her down on a couch.<sup>15</sup> The women gave Nicole a forty-five minute lecture on the harmful consequences of abortion, and presented her with informational pamphlets and Bible verses relating to embryonic development and adoption, in an attempt to dissuade Nicole from following through with the abortion procedure.<sup>16</sup> They pointed out fingertips on the diagrams while explaining fetal development, and emphasized fetal pain, telling Nicole, "The baby feels everything you're feeling."<sup>17</sup> Focusing on the personal impact of abortion, the women also claimed that the procedure could jeopardize future pregnancies and motivate suicidal ideation.<sup>18</sup>

Following the educational discourse, the Care Net nurse made preparations for Nicole's ultrasound.<sup>19</sup> The nurse attempted an external ultrasound, but because she claimed that the images were unclear, the nurse told Nicole she needed to perform a transvaginal scan instead, without explaining the intricacies of the procedure.<sup>20</sup> During the scan, the nurse projected embryonic images of Nicole's uterus onto a display screen and indicated the embryo's features.<sup>21</sup> As the nurse printed the images, the other woman audibly prayed

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TION FED'N, CRISIS PREGNANCY CENTERS: AN AFFRONT TO CHOICE 4 (2006) [hereinafter NAF CPC Report], [https://www.prochoice.org/wp-content/uploads/cpc\\_report.pdf](https://www.prochoice.org/wp-content/uploads/cpc_report.pdf) [<https://perma.cc/C6HT-23US>]; *Misconception*, VICE NEWS (Sept. 17, 2014), <https://news.vice.com/video/misconception> [<https://perma.cc/33V6-TYLU>]. Care Net is a Christian-based organization that aims to provide "women and men with realistic alternatives to abortion so that they choose life for their unborn children" through its pregnancy centers. CARE NET, <http://www.care-net.org> [<https://perma.cc/K5H8-ZLMB>]; *Care Net Saves 73,000 Lives in 2014*, CARE NET (Aug. 26, 2015), <http://www.care-net.org/abundant-life-blog/care-net-saves-73000-lives-in-2014> [<https://perma.cc/AR6Q-6PRB>]. Care Net provides "Christ-centered support" and "pregnancy decision coaching" through its call center. *About Care Net*, CARE NET, <http://www.care-net.org/about> [<https://perma.cc/FQ3S-LFGN>]. The organization funds billboards and pays internet search engines to gain high placement on the results page for certain affiliated searches. Dawn Stacey, *The Pregnancy Center Movement: History of Crisis Pregnancy Centers*, MOTHER JONES, <http://www.motherjones.com/files/cpchistory2.pdf> [<https://perma.cc/RWU5-RVGX>].

<sup>14</sup> Winter, *supra* note 1.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *See id.*

<sup>20</sup> *Id.* A transvaginal ultrasound is an intricate internal procedure that allows a medical professional to examine the female reproductive organs by "inserting an ultrasound probe about two or three inches" into a woman's vaginal canal, and can be used to examine a pregnancy. Jaime Haddon & Valencía Higuera, *Transvaginal Ultrasound*, HEALTHLINE (Sept. 26, 2015), <http://www.healthline.com/health/transvaginal-ultrasound#Overview1> [<https://perma.cc/3VY7-4FGL>].

<sup>21</sup> Winter, *supra* note 1.

in front of Nicole and “asked to be invited to her baby shower.”<sup>22</sup> Nicole ultimately left the Care Net facility without getting an abortion.<sup>23</sup> One week later, with her ultrasound results in hand, Nicole drove herself more than six hours and spent the night in a hotel to reach a legitimate abortion clinic in Denver, Colorado to undergo her medication abortion.<sup>24</sup>

The South Dakota Care Net facility that Nicole visited is just one of the approximately four thousand crisis pregnancy clinics (CPCs) that operate throughout the United States today.<sup>25</sup> CPCs are nonprofit anti-abortion centers, typically affiliated with Christian organizations, that offer limited support to women facing unintended or unwanted pregnancies.<sup>26</sup> CPCs use deceptive tactics and distribute misleading and oftentimes false medical information to attract pregnant women into their offices, and then attempt to counsel them out of having abortions.<sup>27</sup> Although their advertisements suggest otherwise, they do not actually provide abortion services, and most are not licensed medical facilities.<sup>28</sup> CPCs specifically target low-income communities, minority populations, and places with young, vulnerable women, like high schools and colleges.<sup>29</sup> CPCs believe their efforts are best suited for these demographics because they have higher rates of pregnancy and abortion, and thus, are more susceptible to CPC practices.<sup>30</sup> The confusing and disingenuous strategies that CPCs employ impede women from making informed reproductive choices, thereby stripping women of their reproductive

<sup>22</sup> *Id.*

<sup>23</sup> *See id.*

<sup>24</sup> *Id.* Although Nicole never returned to the Care Net facility, following her ultrasound appointment the nurse “called her every day for two weeks,” sometimes from a restricted telephone number. *Id.*

<sup>25</sup> Meaghan Winter, *Why Are Crisis Pregnancy Centers Not Illegal?*, SLATE (June 17, 2015), [http://www.slate.com/articles/double\\_x/doublex/2015/06/crisis\\_pregnancy\\_centers\\_three\\_legal\\_strategies\\_for\\_bringing\\_them\\_down.html](http://www.slate.com/articles/double_x/doublex/2015/06/crisis_pregnancy_centers_three_legal_strategies_for_bringing_them_down.html) [<https://perma.cc/N5PU-TWD9>]; *see* Winter, *supra* note 1.

<sup>26</sup> *Mother & Unborn Baby Care of N. Tex., Inc. v. State*, 749 S.W.2d 533, 538 (Tex. Ct. App. 1988); Nancy Gibbs, *The Grassroots Abortion War*, TIME (Feb. 15, 2007), <http://content.time.com/time/magazine/article/0,9171,1590444,00.html> [<https://perma.cc/XZJ8-4T6A>].

<sup>27</sup> Rachel M. Cohen, *California’s New Crisis Pregnancy Center Law Creates a Roadblock for Anti-Abortion Activists*, IN THESE TIMES (Oct. 29, 2015), <http://inthesetimes.com/article/18550/californias-new-crisis-pregnancy-center-law-creates-a-new-roadblock-for-ant> [<https://perma.cc/CN5X-QHB7>].

<sup>28</sup> NARAL PRO-CHOICE AM. FOUND., THE TRUTH ABOUT CRISIS PREGNANCY CENTERS 2 (Jan. 1, 2016) [hereinafter NARAL CPC Report], <http://www.prochoiceamerica.org/media/fact-sheets/abortion-cpcs.pdf> [<https://perma.cc/CJ4T-LNTZ>].

<sup>29</sup> LISA MCINTIRE, NARAL PRO-CHOICE AM. FOUND., CRISIS PREGNANCY CENTERS LIE: THE INSIDIOUS THREAT TO REPRODUCTIVE FREEDOM 4, 16 (2015), <http://www.prochoiceamerica.org/assets/download-files/cpc-report-2015.pdf> [<https://perma.cc/T6PH-9ZYT>]; Katie J.M. Baker, *Crisis Pregnancy Centers Want to ‘Save’ Black Babies*, JEZEBEL (May 2, 2013), <http://jezebel.com/crisis-pregnancy-centers-want-to-save-black-babies-487316880> [<https://perma.cc/E5EK-R3H4>].

<sup>30</sup> *See Crisis Pregnancy Centers Are Targeting Women of Color, Endangering Their Health*, NAT’L WOMEN’S LAW CTR. (Mar. 6, 2013), <http://nwlc.org/resources/crisis-pregnancy-centers-are-targeting-women-color-endangering-their-health/> [<https://perma.cc/9EVT-Z5FX>].

freedom.<sup>31</sup> Although several states have attempted to regulate CPCs to bar them from misinforming and deceiving women from exercising their right to choose to terminate a pregnancy, CPCs remain largely unregulated in the United States.<sup>32</sup>

This Note examines the dangerous threat CPCs pose to women's reproductive health and assesses the legality of these facilities. Part I discusses the history of CPCs and certain states' unsuccessful attempts to regulate CPCs through disclosure ordinances. Part II presents the particular tactics CPCs utilize to misinform and mislead women, and the impacts that those tactics have on the vulnerable communities CPCs target, including low-income areas and communities of color. Finally, Part III proposes that states should approach the CPC crisis through an alternate lens and prioritize women's access to legitimate information about abortion by ceasing federal and state funding to these facilities and regulating them through consumer protection and medical malpractice avenues. It argues that these strategies are the most effective way to prevent CPCs from engaging in deceptive practices, to successfully challenge CPCs in the courtroom, and to weaken their main source of power: money.

## I. THE HISTORY OF CRISIS PREGNANCY CENTERS IN THE UNITED STATES

Since their inception in the 1960s, crisis pregnancy centers (CPCs) have proliferated throughout the United States and now exist in every state.<sup>33</sup> Although several states and localities have attempted to regulate CPCs and prevent these facilities from disseminating false information about reproductive health to women seeking abortions, most have been unsuccessful.<sup>34</sup> CPCs have largely been protected by courts on either First Amendment grounds or because they are seen as noncommercial entities.<sup>35</sup>

### A. An Overview of CPCs

CPCs are nonprofit, usually faith-based organizations "that provide counseling and other prenatal services from an anti-abortion (pro-life) perspective."<sup>36</sup> These centers are motivated by and attempt to instill their anti-

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<sup>31</sup> See Cohen, *supra* note 27.

<sup>32</sup> *Id.*; Jennifer Ludden, *States Fund Pregnancy Centers That Discourage Abortion*, NPR (Mar. 9, 2015), <http://www.npr.org/sections/health-shots/2015/03/09/391877614/states-fund-pregnancy-centers-that-discourage-abortion> [https://perma.cc/Q42H-P4B8].

<sup>33</sup> NARAL CPC Report, *supra* note 28, at 1; Cohen, *supra* note 27.

<sup>34</sup> Cohen, *supra* note 27.

<sup>35</sup> *Id.*

<sup>36</sup> Joanne D. Rosen, *The Public Health Risks of Crisis Pregnancy Centers*, 44 PERSP. ON SEXUAL & REPROD. HEALTH 201, 201 (2012), <http://onlinelibrary.wiley.com/doi/10.1363/4420112/epdf> [https://perma.cc/3BA2-W7EV].

choice, Christian agenda of valuing human life from the first day of conception into the minds of vulnerable women seeking abortion services.<sup>37</sup> Although some CPCs provide information and limited support to women experiencing unintended or unwanted pregnancies, most centers are untraditional, unlicensed facilities that do not provide abortions; instead they attempt to dissuade women who seek contraception or abortion services.<sup>38</sup> For example, CPCs often lure vulnerable pregnant women to their facilities by advertising online or in phone books under the search tags for “‘abortion,’ ‘abortion alternatives,’ ‘abortion services,’ ‘family-planning information centers,’ or ‘women’s organizations’” to give the appearance that they provide abortions or abortion-related education.<sup>39</sup> CPCs also intentionally disseminate misleading and often false information to women in need of pregnancy-related services, which can delay a woman’s access to legitimate abortion and contraceptive services and impede her from making informed reproductive health decisions.<sup>40</sup>

One of CPCs’ more effective strategies in counseling women out of abortion is to lie about the so-called risks of abortion, claiming that abortion causes breast cancer or “cervix incompetence,” which can lead to miscarriages or later infertility.<sup>41</sup> In reality, abortions are very safe in most cases.<sup>42</sup> A medication abortion is a highly effective, easy procedure that results in serious complication in less than one percent of women undergoing the proce-

<sup>37</sup> O’Brien v. Mayor of Balt., 768 F. Supp. 2d 804, 813 (D. Md. 2011); *Misconception*, *supra* note 13; *About Care Net*, *supra* note 13.

<sup>38</sup> See NARAL CPC Report, *supra* note 28, at 1, 2. These centers can be beneficial to women who do carry to term by offering counseling and parenting classes, and often assist women who cannot afford basic childcare needs, like diapers, formula, and maternity and baby clothes. *Crisis Pregnancy Centers*, ARK. RIGHT TO LIFE, [http://www.artl.org/our-issues/crisis\\_pregnancy\\_centers](http://www.artl.org/our-issues/crisis_pregnancy_centers) [<https://perma.cc/K384-PG5D>]; Jenny Kutner, *How Crisis Pregnancy Centers Are Using Taxpayer Dollars to Lie to Women*, SALON (July 14, 2015), [http://www.salon.com/2015/07/14/how\\_crisis\\_pregnancy\\_centers\\_are\\_using\\_taxpayer\\_dollars\\_to\\_lie\\_to\\_women/](http://www.salon.com/2015/07/14/how_crisis_pregnancy_centers_are_using_taxpayer_dollars_to_lie_to_women/) [<https://perma.cc/NA4Y-M4CR>].

<sup>39</sup> NARAL CPC Report, *supra* note 28, at 2.

<sup>40</sup> MCINTIRE, *supra* note 29, at 12; Cohen, *supra* note 27. When a CPC delays a woman’s access to abortion services, she can lose the opportunity to obtain an abortion entirely. MCINTIRE, *supra*, at 12. Although states individually regulate when a woman can undergo an abortion, the procedure typically must be performed before the twentieth week of pregnancy. GUTTMACHER INST., STATE POLICIES IN BRIEF: AN OVERVIEW OF ABORTION LAWS 1 (2016), [http://www.guttmacher.org/statecenter/spibs/spib\\_OAL.pdf](http://www.guttmacher.org/statecenter/spibs/spib_OAL.pdf) [<https://perma.cc/4VAW-FCGC>]; *Pregnancy: Unplanned Pregnancy—About Abortion*, CTR. FOR YOUNG WOMEN’S HEALTH (Sept. 5, 2014), <http://youngwomenshealth.org/2014/09/05/pregnancy-abortion/> [<https://perma.cc/FXR6-XU2W>].

<sup>41</sup> MCINTIRE, *supra* note 29, at 8. Cervix incompetence “is a condition that occurs when weak cervical tissue causes or contributes to premature birth or the loss of an otherwise healthy pregnancy.” *Incompetent Cervix*, MAYO CLINIC, <http://www.mayoclinic.org/diseases-conditions/incompetent-cervix/basics/definition/con-20035375> [<https://perma.cc/VD4V-528J>].

<sup>42</sup> SUSAN DUDLEY & BETH KRUSE, SAFETY OF ABORTION 1 (revised Dec. 2006), [http://prochoice.org/wp-content/uploads/safety\\_of\\_abortion.pdf](http://prochoice.org/wp-content/uploads/safety_of_abortion.pdf) [<https://perma.cc/RJ2Y-ZUAN>]; *Medication Abortion*, *supra* note 10.

dure.<sup>43</sup> Similarly, women experience fewer complications from a first-trimester surgical abortion than they do from giving birth.<sup>44</sup>

Nationwide, CPCs outnumber legitimate abortion clinics three-to-one, and most receive state and federal funding.<sup>45</sup> CPCs receive federal funding specifically in the form of federal grants and taxpayer dollars allocated to abstinence-only education programs.<sup>46</sup> States often match these funds and provide additional funding to CPCs through their own specific grants, direct budget allocations, tax incentives, and state-sponsored programs like anti-choice vehicle license plates.<sup>47</sup> Additionally, most CPCs are backed by massive evangelical Christian umbrella networks that aim to further a pro-life agenda.<sup>48</sup> Although CPCs receive ample government and private funding to promote their religious agenda, a majority of states receive no money to fund abortions for low-income women, women who become pregnant due to rape, or women facing serious health complications during pregnancy, like a deformed fetus.<sup>49</sup>

CPCs are amorphous centers that exist without regulation or oversight; thus, few safeguards exist to guarantee that these facilities provide women with accurate and truthful information.<sup>50</sup> CPCs target communities of color and low-income areas in an attempt to prey upon vulnerable populations that do not have abortion-related services readily available.<sup>51</sup> Because these specific populations of women have higher rates of unintended pregnancy and abortion, they are “more likely to be susceptible to the false medical infor-

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<sup>43</sup> *Medication Abortion*, *supra* note 10.

<sup>44</sup> DUDLEY & KRUSE, *supra* note 42, at 1. Death occurs in only one in 160,000 cases of surgical abortions, whereas a woman’s risk of death throughout pregnancy and birth is tenfold. *Id.* at 2.

<sup>45</sup> NARAL CPC Report, *supra* note 28, at 9, 10; Cohen, *supra* note 27.

<sup>46</sup> NAF CPC Report, *supra* note 13, at 11–12. The federal government directs more than \$100 million of taxpayer money to anti-abortion programs each year, part of which is allocated directly to CPCs. *Id.*

<sup>47</sup> *Id.* at 12–13. Pennsylvania alone will give \$30 million to Real Alternatives, a nonprofit agency that provides alternatives to abortion within the state, between 2012 and 2017. Winter, *supra* note 1. Real Alternatives in turn reimburses CPCs, maternity homes, adoptions centers, and social service agencies for the services they provide to women. *Id.* However, the state-sponsored program incentivizes CPCs to provide anti-abortion counseling, which is reimbursed at a much higher rate than services that women actually need, like basic childcare resources and accurate medical information. *Id.*

<sup>48</sup> NARAL CPC Report, *supra* note 28, at 1–2; Rosen, *supra* note 36, at 201.

<sup>49</sup> NAF CPC Report, *supra* note 13, at 11, 12, 14; Sharon Smith, *Abortion: Every Woman’s Right*, SOCIALIST WORKER (last updated Nov. 1, 2013), <http://socialistworker.org/2013/11/01/abortion-every-womans-right> [<https://perma.cc/GMS4-4BJT>].

<sup>50</sup> MCINTIRE, *supra* note 29, at 15; PHOEBE LYMAN, UNDERSTANDING CRISIS PREGNANCY CENTERS (CPCs) 1, 2 (2013), <http://familyplanning.uchicago.edu/policy/publications-resources/Crisis%20Pregnancy%20Center%20Fact%20Sheet%20FINAL.pdf> [<https://perma.cc/E5ZA-VHAW>].

<sup>51</sup> Baker, *supra* note 29; *Crisis Pregnancy Centers Are Targeting Women of Color, Endangering Their Health*, *supra* note 30. Additionally, CPCs will strategically establish near legitimate abortion clinics to target vulnerable women seeking abortions and abortion education. Baker, *supra*.

mation and high-pressure counseling [CPCs] dole out alongside free pregnancy tests.”<sup>52</sup>

### B. *The History of Abortion and Establishment of CPCs*

Until the mid-nineteenth century, abortion was legal and commonly practiced throughout the United States.<sup>53</sup> Most states followed the English common law tradition, recognizing that an abortion performed before quickening, the “first recognizable movement of the fetus in utero, appearing usually from the sixteenth to the eighteenth week of pregnancy,” was not a crime.<sup>54</sup> After the Civil War, individual states began to veer from the English common law and adopted legislation imposing criminal punishment for abortion, primarily post-quickening abortions.<sup>55</sup> This shift was motivated by a pro-life campaign initiated by the American Medical Association.<sup>56</sup> By the 1950s, the majority of U.S. jurisdictions had banned abortion entirely, unless the abortion was performed to save the mother’s life.<sup>57</sup> At the same time, some physicians challenged abortion laws, and in the early 1960s, the American Law Institute released a Model Penal Code provision that justified abortion under certain circumstances, prompting roughly one-third of the states to liberalize their abortion laws.<sup>58</sup>

The first CPCs arose in the United States in the late 1960s as a response to the individual states that had begun repealing laws criminalizing abortion.<sup>59</sup> Shortly after the very first CPCs were born, in 1973, the U.S. Supreme Court in *Roe v. Wade* ruled that a Texas abortion law that prohibited abortion (except in circumstances to save the mother’s life) was unconstitutional.<sup>60</sup> In this landmark case, the Court held that the constitutional right to privacy encompasses a woman’s decision to have an abortion.<sup>61</sup> The *Roe* decision was a critical step in the evolution of abortion law because in its most general form, it legalized abortion for women across the country and attempted to reduce

<sup>52</sup> Baker, *supra* note 29; *Crisis Pregnancy Centers Are Targeting Women of Color, Endangering Their Health*, *supra* note 30.

<sup>53</sup> *Roe v. Wade*, 410 U.S. 113, 138 (1973); LESLIE J. REAGAN, *WHEN ABORTION WAS A CRIME: WOMEN, MEDICINE, AND LAW IN THE UNITED STATES, 1867–1973*, at 10 (1997), <http://publishing.cdlib.org/ucpressebooks/view?docId=ft967nb5z5&chunk.id=d0e71&toc.depth=1&toc.id=d0e71&brand=ucpress>. [<https://perma.cc/K5CT-UW78>].

<sup>54</sup> *Roe*, 410 U.S. at 132.

<sup>55</sup> *Id.* at 138–39.

<sup>56</sup> *Id.* at 141; REAGAN, *supra* note 53, at 10.

<sup>57</sup> *Roe*, 410 U.S. at 139.

<sup>58</sup> *Id.* at 139–40; REAGAN, *supra* note 53, at 15.

<sup>59</sup> Cohen, *supra* note 27. Robert Pearson founded the first CPC in Hawaii in 1967. NAF CPC Report, *supra* note 13, at 1. Pearson believed that a woman “who wants to kill her baby[] has no right to information that will help her kill her baby.” *Id.*

<sup>60</sup> 410 U.S. at 164.

<sup>61</sup> *Id.* at 153.



the stigma surrounding reproductive health services and equalize the societal status of women.<sup>62</sup>

While the nation was seemingly becoming more progressive, opposition to the abortion movement emerged from Christian groups that were outraged by *Roe*'s expansive, pro-choice opinion.<sup>63</sup> Conservative groups also opposed the decision and the movement as a whole, largely in an effort to attract Catholic Democratic voters.<sup>64</sup> Among the movement's many challengers was Robert Pearson, the founder of the first CPC.<sup>65</sup> In response to *Roe*, Pearson established The Pearson Institute to assist other anti-abortion advocates in launching CPCs throughout the United States.<sup>66</sup> In 1984, Pearson published a manual outlining the practices that modern CPCs continue to embrace today.<sup>67</sup>

Since the 1970s, CPCs have only become more prevalent.<sup>68</sup> The centers expanded throughout the 1980s and 1990s by garnering support from many anti-abortion organizations that continue to fund CPCs today, including the National Institute of Family and Life Advocates (NIFLA), Heartbeat International, and Care Net.<sup>69</sup> A 1996 federal welfare reform law distributed more than \$50 million of federal funding to CPCs, enabling hundreds to expand

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<sup>62</sup> *Id.*; REAGAN, *supra* note 53, at 245.

<sup>63</sup> REAGAN, *supra* note 53, at 248; Robert N. Karrer, *The National Right to Life Committee: Its Founding, Its History, and the Emergence of the Pro-Life Movement Prior to Roe v. Wade*, 97 CATH. HIST. REV. 527, 548 (2011).

<sup>64</sup> Linda Greenhouse & Reva B. Siegel, *Before (and After) Roe v. Wade: New Questions About Backlash*, 120 YALE L.J. 2028, 2079 (2011). The abortion conflict accounts for much of the political polarization in the United States today and remains a highly divisive topic. Carol Joffe, *Roe v. Wade and Beyond: Forty Years of Legal Abortion in the United States*, DISSENT MAG. (Winter 2013), <https://www.dissentmagazine.org/article/roe-v-wade-and-beyond-forty-years-of-legal-abortion-in-the-united-states> [<https://perma.cc/RX87-5K35>].

<sup>65</sup> NAF CPC Report, *supra* note 13, at 1.

<sup>66</sup> *Id.* The foundation has claimed that "the mother and the baby are our work—or our apostolate." Jane Gross, *Pregnancy Centers: Anti-Abortion Role Challenged*, N.Y. TIMES, Jan. 23, 1987, at B1, <http://www.nytimes.com/1987/01/23/nyregion/pregnancy-centers-anti-abortion-role-challenged.html> [<https://perma.cc/5FE6-SPLQ>].

<sup>67</sup> Stacey, *supra* note 13. Pearson's manual instructs CPCs "to seek listings in the Yellow Pages telephone directory alongside abortion clinics and to adopt 'dual names,' one to 'draw abortion-bound women' and one to attract donations from people against abortion." Gross, *supra* note 66. The manual also reassures CPC employees that "there is nothing wrong or dishonest if you don't want to answer a question that may reveal your pro-life position by changing the caller's train of thought by asking a question in return." *Id.*

<sup>68</sup> See Stacey, *supra* note 13.

<sup>69</sup> *Id.* NIFLA is a pro-life organization that provides CPCs with "legal counsel, education, and training." *What We Do*, NIFLA, <http://www.nifla.org/about-us-what-we-do.asp> [<https://perma.cc/QF32-NZ7X>]. Heartbeat International is a network of CPCs that aims to "make abortion unwanted today and unthinkable for future generations." *Our Passion*, HEARTBEAT INT'L, <https://www.heartbeatinternational.org/about/our-passion> [<https://perma.cc/L4BU-HDVR>].

their staffs and resources.<sup>70</sup> Today, CPCs continue to receive federal funding through federal grants allocated for abstinence-only programs and state funding through state-sponsored programs, grants, and tax credits.<sup>71</sup>

CPCs initially came under attack in the 1990s and 2000s when their practices were first scrutinized as false advertising.<sup>72</sup> Since then, there have been a number of notable investigations into CPCs and the practices they employ to induce women to forgo abortion.<sup>73</sup> For instance, in 2006, U.S. Representative Henry Waxman of California conducted a congressional investigation of federally funded CPCs, uncovering a number of misleading CPC practices.<sup>74</sup> His report, known as the Waxman Report, documented significant inaccuracies in the information that CPCs disseminate to women.<sup>75</sup> The report found that CPCs misinform and deceive women about reproductive health and the health risks of abortion, including by incorrectly warning that abortion increases the risk of breast cancer, suicide, and infertility, and providing “erroneous effectiveness rates for condoms.”<sup>76</sup> Since the release of the Waxman Report in 2006, several organizations, including the National Abortion Federation, a network of abortion providers, and the National Abortion and

<sup>70</sup> See Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. No. 104-193, 110 Stat. 2105; NAF CPC Report, *supra* note 13, at 11; Cohen, *supra* note 27.

<sup>71</sup> NAF CPC Report, *supra* note 13, at 11, 12.

<sup>72</sup> Cohen, *supra* note 27; see Kate Shatzkin, *Inquiry Sought for Pregnancy Crisis Sites*, BALTIMORE SUN (Aug. 17, 2002), [http://articles.baltimoresun.com/2002-08-17/news/0208170017\\_1\\_crisis-pregnancy-centers-abortion-attorney-general-office](http://articles.baltimoresun.com/2002-08-17/news/0208170017_1_crisis-pregnancy-centers-abortion-attorney-general-office) [<https://perma.cc/M272-FJDE>]. In 1991, Congress examined reports of CPCs’ misleading tactics and found two thousand “bogus clinics” were operating nationally at the time, forcefully pushing anti-abortion propaganda upon “unsuspecting and vulnerable consumers.” *Congressional Inquiry Examines Reports of Bogus Abortion Clinics*, N.Y. TIMES, Sept. 21, 1991, at 6, <http://www.nytimes.com/1991/09/21/us/congressional-inquiry-examines-reports-of-bogus-abortion-clinics.html> [<https://perma.cc/5X5L-54RW>]. In 2002, the New York Attorney General investigated ten New York CPCs for false advertising, but ultimately took no further legal action; instead, he reached agreements with several centers to establish mandated advertising and counseling standards. Shatzkin, *supra*; Press Release, N.Y. State Office of the Attorney General, Spitzer Reaches Agreement with Upstate Crisis Pregnancy Center (Feb. 28, 2002), <http://www.ag.ny.gov/press-release/spitzer-reaches-agreement-upstate-crisis-pregnancy-center> [<https://perma.cc/TS2J-6L9R>]. That same year, abortion-rights advocates asked the Maryland Attorney General to investigate the CPCs in their state, charging that CPCs deceptively “present themselves as offering unbiased advice about a pregnant woman’s options.” Shatzkin, *supra*.

<sup>73</sup> Cohen, *supra* note 27.

<sup>74</sup> MINORITY STAFF OF H.R. COMM. ON GOV’T REFORM SPECIAL INVESTIGATIONS DIV., 109TH CONG., FALSE AND MISLEADING HEALTH INFORMATION PROVIDED BY FEDERALLY FUNDED PREGNANCY RESOURCE CENTERS 14 (2006) (prepared for Rep. Waxman) [hereinafter Waxman Report], <http://www.chsourcebook.com/articles/waxman2.pdf> [<https://perma.cc/2TP3-TR49>]; Cohen, *supra* note 27.

<sup>75</sup> Waxman Report, *supra* note 74, at i; Dahlia Lithwick, *A Woman’s Right to Know*, SLATE (Oct. 20, 2015), [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2015/10/california\\_reproductive\\_fact\\_act\\_challenged\\_by\\_crisis\\_pregnancy\\_centers.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2015/10/california_reproductive_fact_act_challenged_by_crisis_pregnancy_centers.html) [<http://perma.cc/UPQ7-5CG8>]. The 2006 Waxman Report would become one of the most influential and frequently cited CPC research reports of its time. See Cohen, *supra* note 27; Lithwick, *supra*.

<sup>76</sup> See Waxman Report, *supra* note 74, at i, 6, 8, 9, 12.

Reproductive Rights Action League (NARAL) Pro-Choice America, a pro-choice activist group, have investigated CPCs across the country and have discovered similar results.<sup>77</sup> These organizations found that CPCs continue to attract vulnerable women to dissuade them from exercising their right to choose to terminate a pregnancy and prevent them from accessing legitimate reproductive health options.<sup>78</sup>

### C. Unsuccessful Legal Efforts to Regulate CPCs

Based primarily on the research unmasking CPCs and their practices, in the late 2000s, several states began taking legal action to address deceptive CPC methods.<sup>79</sup> Unfortunately, these legal challenges have been overwhelmingly unsuccessful in achieving their goals of regulating CPCs to prevent them from deceiving women and limiting their reproductive freedom.<sup>80</sup> In 2006, U.S. Representative Carolyn Maloney of New York proposed the Stop Deceptive Advertising for Women's Act (SDAWA), a federal bill—the first of its kind in the United States—that would prevent CPCs from falsely advertising abortion services.<sup>81</sup> Since its proposal, the bill has been introduced in several sessions of Congress, but has failed to garner the requisite votes for its enactment.<sup>82</sup>

Several cities and states throughout the nation have also attempted to curb deceptive CPC practices through disclosure ordinances.<sup>83</sup> These laws have required CPCs “to disclose that they do not offer or provide referrals for abortion or contraceptive services, and, if applicable, that they do not have medically trained staff on-site.”<sup>84</sup> Baltimore, Maryland introduced the leading CPC disclosure legislation in 2009 in response to complaints from abortion rights advocacy groups that some of the city's CPCs disseminated inaccurate

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<sup>77</sup> NAF CPC Report, *supra* note 13, at 1; NARAL CPC Report, *supra* note 28, at 1; MCINTIRE, *supra* note 29, at 1.

<sup>78</sup> NAF CPC Report, *supra* note 13, at 1; NARAL CPC Report, *supra* note 28, at 1; MCINTIRE, *supra* note 29, at 1.

<sup>79</sup> Cohen, *supra* note 27. New York City, Austin, and San Francisco are just a few of the localities that have challenged CPCs. *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> H.R. 5052, 109th Cong. §§ 1, 2 (2d. Sess. 2006). Specifically, the bill would have required the U.S. Federal Trade Commission to “promulgate rules to prohibit any person to advertise with the intent to deceptively create the impression that such person is a provider of abortion services if such person does not provide abortion services.” *Id.* § 2.

<sup>82</sup> H.R. 5052; Emily Crockett, *Democrats Push to Hold Crisis Pregnancy Centers Accountable*, REWIRE (Aug. 4, 2015), <https://rewire.news/article/2015/08/04/democrats-push-hold-crisis-pregnancy-centers-accountable/> [<https://perma.cc/MBZ5-NSMK>]. The SDAWA was most recently reintroduced in July 2015. H.R. 3378, 114th Cong. (1st Sess. 2015).

<sup>83</sup> Rosen, *supra* note 36, at 203.

<sup>84</sup> *Id.*

information to women regarding abortion.<sup>85</sup> The city ordinance requires a limited-service pregnancy center to post one or more “easily readable” signs in the center’s waiting area, in both English and Spanish, disclosing that it does not provide or refer for abortion or contraceptive services.<sup>86</sup>

Following Baltimore’s lead, several other localities have since passed similar disclosure laws.<sup>87</sup> In 2010, Austin, Texas enacted an ordinance requiring any CPC to display a sign disclosing whether the center provides medical services, and if it does, whether the facility is licensed and supervised by a licensed health care provider.<sup>88</sup> That same year, Montgomery County, Maryland passed a resolution requiring a local CPC to post a sign in its waiting room disclosing that “the center does not have a licensed medical professional on staff” and “the Montgomery County Health Officer encourages women who are or may be pregnant to consult with a licensed health care provider.”<sup>89</sup> In 2011, New York City passed a law similar to Maryland’s, also requiring that CPCs disclose whether or not they provide abortion or contraceptive services, abortion referrals, or prenatal care.<sup>90</sup> That same year, San Francisco, California passed an ordinance generally banning CPCs from disseminating false or misleading advertising regarding the services they offer.<sup>91</sup>

Although legislative attempts to address CPCs’ misleading practices are evidently growing, they have not been consistently successful.<sup>92</sup> All of the ordinances passed in the United States to address deceptive CPC practices have thus far been challenged on constitutional grounds.<sup>93</sup> Specifically, CPC advocates argue that these laws violate their First Amendment rights, primarily freedom of speech.<sup>94</sup> For example, the CPC-plaintiffs in *First Resort, Inc.*

<sup>85</sup> *Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Balt. (Greater Baltimore II)*, 683 F.3d 539, 548–49 (4th Cir. 2012), *aff’d in part, vacated in part*, 721 F.3d 264 (4th Cir. 2013).

<sup>86</sup> *Id.* at 548–49 (citing BALT., MD., HEALTH CODE § 3-502(b)). Under the ordinance, a limited-service pregnancy center is one “whose primary purpose is to provide pregnancy-related services,” but “does not provide or refer for” abortion services or “nondirective and comprehensive birth-control services.” *Id.* at 548 (citing HEALTH § 3-501).

<sup>87</sup> Cohen, *supra* note 27.

<sup>88</sup> AUSTIN, TEX., ORDINANCE NO. 20120126-045 (2012), <http://www.austintexas.gov/edims/document.cfm?id=163551> [https://perma.cc/JS52-5AZC].

<sup>89</sup> *Centro Tepeyac v. Montgomery County (Centro Tepeyac II)*, 722 F.3d 184, 186 (4th Cir. 2013) (citing Montgomery Cnty. Bd. of Health Res. No. 16-1252 (2010)).

<sup>90</sup> *Evergreen Ass’n v. City of New York*, 740 F.3d 233, 238 (2d Cir. 2014) (citing N.Y.C. ADMIN. CODE 20-816(a)-(e) (2011)).

<sup>91</sup> *First Resort, Inc. v. Herrera*, 80 F. Supp. 3d 1043, 1047 (N.D. Cal. 2015).

<sup>92</sup> *See Evergreen*, 740 F.3d at 251; *Centro Tepeyac II*, 722 F.3d at 193; *Austin Lifecare Inc. v. City of Austin*, No. A-11-CA-875-LY (W.D. Tex. June 23, 2014).

<sup>93</sup> *Evergreen*, 740 F.3d at 237; *Centro Tepeyac II*, 722 F.3d at 189; *Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Balt. (Greater Baltimore III)*, 721 F.3d 264, 272–73 (4th Cir. 2013); *Herrera*, 80 F. Supp. 3d at 1048.

<sup>94</sup> *Greater Baltimore III*, 721 F.3d at 272–73; *Herrera*, 80 F. Supp. 3d at 1048.

v. *Herrera* and *Centro Tepeyac v. Montgomery County* both argued that the ordinances unconstitutionally regulated content and viewpoint-based speech and inappropriately compelled speech.<sup>95</sup> When a law is challenged on First Amendment grounds, it typically faces a court's highest level of scrutiny, meaning that these ordinances rarely meet the strict requisite constitutional elements and are subsequently struck down.<sup>96</sup>

Thus far, very few ordinances have withstood challenge.<sup>97</sup> Baltimore's law initially did not pass constitutional muster in 2011, and has been tangled up in appeals ever since.<sup>98</sup> The Austin and Montgomery County ordinances, as well as portions of New York's disclosure law, have been struck down.<sup>99</sup> Notwithstanding its own legal protests, San Francisco's ordinance generally prohibiting CPCs from engaging in false or misleading advertising is one of the only laws to have survived constitutional scrutiny thus far in the CPC arena.<sup>100</sup>

Most courts have held that CPC disclosure ordinances regulate non-commercial, instead of commercial, speech and are thus subject to the stand-

<sup>95</sup> *Herrera*, 80 F. Supp. 3d at 1049; *Centro Tepeyac v. Montgomery County (Centro Tepeyac I)*, 779 F. Supp. 2d 456, 461 (D. Md. 2011), *aff'd in part, rev'd in part*, 683 F.3d 591 (4th Cir. 2012), *aff'd*, 722 F.3d 184 (4th Cir. 2013).

<sup>96</sup> See, e.g., *Sherbert v. Verner*, 374 U.S. 398, 406–07 (1963); *Centro Tepeyac II*, 722 F.3d at 189, 193; *Greater Baltimore II*, 683 F.3d at 559.

<sup>97</sup> Compare *Centro Tepeyac II*, 722 F.3d at 193 (striking down Montgomery County disclosure ordinance), and *Greater Baltimore II*, 683 F.3d at 559 (holding Baltimore disclosure ordinance invalid), and *Austin Lifecare Inc.*, No. A-11-CA-875-LY, at 1 (finding Austin disclosure ordinance void for vagueness), with *Herrera*, 80 F. Supp. 3d at 1057 (upholding San Francisco's disclosure ordinance).

<sup>98</sup> Cohen, *supra* note 27; see *Greater Baltimore III*, 721 F.3d at 279.

<sup>99</sup> *Evergreen*, 740 F.3d at 246, 249, 250; *Centro Tepeyac II*, 722 F.3d at 193; *Austin Lifecare Inc.*, No. A-11-CA-875-LY, at 1. With respect to New York's disclosure ordinance, the court held that the part of the provision requiring CPCs to disclose whether or not they have a licensed medical provider on staff does not violate the First Amendment. *Evergreen*, 740 F.3d at 246. However, the provision requiring CPCs to disclose whether they "provide referrals for abortion, emergency contraception, or prenatal care" and the provision requiring CPCs to disclose that the city "Department of Health and Mental Hygiene encourages women who are or who may be pregnant to consult with a licensed provider" both violate the First Amendment. *Id.* at 238, 249, 250.

<sup>100</sup> See Nat'l Inst. of Family & Life Advocates v. Harris, 839 F.3d 823, 828 (9th Cir. 2016); *Herrera*, 80 F. Supp. 3d at 1057. California also recently enacted a CPC disclosure law that has surprisingly withstood First Amendment challenges. *Harris*, 839 F.3d at 828; Erwin Chemerinsky, *In California, Free Speech Meets Abortion*, L.A. TIMES (Oct. 16, 2015), <http://www.latimes.com/opinion/op-ed/la-oe-1016-chemerinsky-reproductive-fact-act-20151016-story.html> [<https://perma.cc/V264-PQUU>]. California's Reproductive Freedom, Accountability, Comprehensive Care and Transparency Act requires licensed health care facilities to post or distribute a notice stating, "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." CAL. HEALTH & SAFETY CODE § 123472 (West 2016); Chemerinsky, *supra*. It also requires unlicensed facilities to inform all clients via a notice that it is not licensed. HEALTH & SAFETY CODE § 123472.

ard of strict scrutiny.<sup>101</sup> Under this standard, limiting fundamental rights such as First Amendment protection is only justified when there is a compelling state interest to do so, like preserving public health.<sup>102</sup> Additionally, laws that do limit such rights must be drawn narrowly enough so as to only express the state interests at stake.<sup>103</sup> Courts have held that these disclosure laws do in fact inappropriately regulate noncommercial speech, and are unconstitutional because the laws are not sufficiently narrowly tailored.<sup>104</sup> This is generally because the laws are too broad because they apply to CPCs that engage in deceptive practices as well as ones that do not, or because there are alternatives that would address the problem without restricting the centers' speech.<sup>105</sup> CPC opponents have yet to challenge CPCs for engaging in deceptive and false advertising, which is not protected by the First Amendment.<sup>106</sup>

## II. HOW CRISIS PREGNANCY CENTERS ARE STRIPPING WOMEN OF REPRODUCTIVE CHOICE

Despite the moral and legal concerns that crisis pregnancy centers (CPCs) present to women, CPC advocates stand behind their practices and believe these facilities provide women with many purported benefits.<sup>107</sup> CPCs offer a slew of free health services to women who need them, including preg-

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<sup>101</sup> See *Centro Tepeyac II*, 722 F.3d at 189; *Greater Baltimore II*, 683 F.3d at 555. The U.S. Supreme Court has defined commercial speech as speech that “propose[s] a commercial transaction.” *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66 (1983) (citing *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 762 (1976)). Pursuant to a First Amendment analysis, commercial speech is speech that relates “solely to the economic interest of the speaker in its audience, generally in the form of commercial advertisement for the sale of goods and services, or speech proposing a commercial transaction.” GEORGE BLUM ET AL., 16A AM. JUR. 2D *Constitutional Law* § 499 (2016). Commercial speech faces limited protection under the First Amendment and is thus subject to more regulation, whereas noncommercial speech is afforded extensive protection. *Id.*

<sup>102</sup> *Roe v. Wade*, 410 U.S. 113, 155 (1973); *Centro Tepeyac II*, 722 F.3d at 189.

<sup>103</sup> *Roe*, 410 U.S. at 155.

<sup>104</sup> *Centro Tepeyac II*, 722 F.3d at 189; *Greater Baltimore II*, 683 F.3d at 555, 558.

<sup>105</sup> *Evergreen Ass’n v. City of New York*, 740 F.3d 233, 250 (2d Cir. 2014); *Centro Tepeyac II*, 722 F.3d at 190; *Greater Baltimore II*, 683 F.3d at 558. Some of these less restrictive alternatives that courts have suggested localities could engage in are launching a campaign to educate the public on the dangers of CPCs, disseminating information indicating nearby CPCs and what services those centers offer, or utilizing applicable criminal and civil laws to penalize CPCs for misleading advertising. *Greater Baltimore II*, 683 F.3d at 558.

<sup>106</sup> *Bates v. State Bar of Ariz.*, 433 U.S. 350, 383 (1977); *Va. State Bd. of Pharm.*, 425 U.S. at 770–72.

<sup>107</sup> Meaghan Winter, “Save the Mother, Save the Baby:” *An Inside Look at a Pregnancy Center Conference*, COSMOPOLITAN (Apr. 6, 2015), <http://www.cosmopolitan.com/politics/a38642/heartbeat-international-conference-crisis-pregnancy-centers-abortion/> [<https://perma.cc/DJ79-A8DA>]; see *O’Brien v. Mayor of Balt.*, 768 F. Supp. 2d 804, 813 (D. Md. 2011); *Misconception*, *supra* note 13.

nancy tests, sonograms, and even baby clothes.<sup>108</sup> These centers pursue practices that further their Christian mission, and stand for the propositions that every embryo is “made in the image of God” and that “every human life begins at conception and is worthy of protection.”<sup>109</sup> CPCs have the mindset that they are spreading the Gospel of Jesus Christ by dissuading women from terminating a pregnancy.<sup>110</sup> They believe that in the name of Jesus, a woman’s body is meant to keep “[a] baby, not to have someone put an instrument in and rip it out.”<sup>111</sup>

Although CPCs claim that their goals are to help women and provide them with positive and realistic reproductive options, their practices often fall short of being positive or realistic.<sup>112</sup> Confusion is the primary factor driving women through CPC doors, and once inside, the centers subject women to shame, lies, and misinformation relating to abortion.<sup>113</sup> This presents serious health risks to women, particularly to those women whom CPCs target, including young, poor, Hispanic, and African American groups.<sup>114</sup> Ultimately, pursuant to *Roe v. Wade*, women have the right to choose to terminate a pregnancy, but CPCs stand directly in the way of that right.<sup>115</sup> They discriminate against young and low-income women and women of color, and prey upon vulnerable communities to deprive women of their reproductive choices.<sup>116</sup>

### A. Crisis Pregnancy Centers’ Deceptive Advertising Practices

CPCs engage in many deceptive ploys to lure women into their facilities.<sup>117</sup> CPC advertisements portray the centers as comprehensive health clinics that offer reproductive health services like contraception and abortion, when, in fact, they do not.<sup>118</sup> These centers strategically market themselves in phone books and online under headings and search engine results for ““abor-

<sup>108</sup> *Misconception*, *supra* note 13; *Winter*, *supra* note 107.

<sup>109</sup> *About Care Net*, *supra* note 13; *Mission and Vision*, NIFLA, <http://www.nifla.org/about-us-what-we-do.asp> [<http://perma.cc/QF32-NZ7X>]; see *Misconception*, *supra* note 13.

<sup>110</sup> Sofia Resnick, *Taxpayer-Funded Crisis Pregnancy Centers Use Federal Dollars to Proselytize and Spread Medical Lies*, REWIRE (Apr. 24, 2012), <https://rewire.news/article/2012/04/24/jobs-christians/> [<https://perma.cc/DRB7-HCLA>].

<sup>111</sup> *Misconception*, *supra* note 13.

<sup>112</sup> MCINTIRE, *supra* note 29, at 15; *Misconception*, *supra* note 13; *About Care Net*, *supra* note 13.

<sup>113</sup> MCINTIRE, *supra* note 29, at 1, 2, 7.

<sup>114</sup> *Id.* at 12, 16.

<sup>115</sup> See *Roe v. Wade*, 410 U.S. 113, 153 (1973); MCINTIRE, *supra* note 29, at 1.

<sup>116</sup> LYMAN, *supra* note 50, at 1.

<sup>117</sup> MCINTIRE, *supra* note 29, at 2.

<sup>118</sup> NARAL CPC Report, *supra* note 28, at 1, 2; NAF CPC Report, *supra* note 13, at 3. Abby Johnson, a pro-life activist and CPC supporter, told participants at one CPC training that, “The best client you ever get is one that thinks they’re walking into an abortion clinic.” *Misconception*, *supra* note 13.

tion,' 'abortion alternatives,' [and] 'abortion services' . . . to appear as though they offer abortion care or counseling."<sup>119</sup> CPC networks such as Heartbeat International and Care Net pay thousands of dollars per month to appear at the top of search engine results for specific keywords, like "'abortion,' 'morning-after pill,' and 'women's health clinics.'"<sup>120</sup> Offline, CPCs also market themselves on buses and billboards, with advertisements containing neutral-sounding messages like, "'Free Pregnancy Test,' or 'Pregnant? Scared? We Can Help! Call 1-800 #.'"<sup>121</sup> Additionally, most CPCs do not identify as anti-abortion in their advertisements or on their websites, but rather advertise as "unbiased" facilities that will help women explore all of their reproductive options.<sup>122</sup>

CPCs' misleading strategies also apply to the appearance of the facilities themselves.<sup>123</sup> CPCs aim to appear "professional," "business-like" and "medical"; many of these centers look just like a doctor's office with a receptionist, a waiting room, staff members dressed in white lab coats, and medical equipment.<sup>124</sup> In an effort to confuse women into making appointments, CPCs choose names similar to nearby abortion clinics and often locate "either near comprehensive health clinics or in medical buildings that give the impression that medically accurate services are available."<sup>125</sup> For example, Routh Street Women's Clinic, one of the few legitimate abortion clinics in Dallas, Texas, shares a fence with White Rose Women's Center, a CPC.<sup>126</sup> Within Massachusetts alone, a CPC is located near more than half of the abortion clinics throughout the state.<sup>127</sup>

Many women who are misled by these marketing strategies call CPCs to get more information, and are then subject to further luring tactics.<sup>128</sup> CPC

<sup>119</sup> NARAL CPC Report, *supra* note 28, at 2.

<sup>120</sup> MCINTIRE, *supra* note 29, at 4. Although NARAL Pro-Choice America has made successful efforts to remove CPCs' deceptive advertising from search engines, some of these advertisements still remain. *Id.* at 5.

<sup>121</sup> NAF CPC Report, *supra* note 13, at 3 (number omitted in the original).

<sup>122</sup> MCINTIRE, *supra* note 29, at 15.

<sup>123</sup> NAF CPC Report, *supra* note 13, at 4.

<sup>124</sup> MCINTIRE, *supra* note 29, at 7, 15; NAF CPC Report, *supra* note 13, at 4; *Misconception*, *supra* note 13.

<sup>125</sup> MCINTIRE, *supra* note 29, at 5; NARAL CPC Report, *supra* note 28, at 4. This practice is not new. See *Planned Parenthood Fed'n of Am., Inc. v. Problem Pregnancy of Worcester, Inc.*, 498 N.E.2d 1044, 1045 (Mass. 1986). In the early 1980s, one month after a Planned Parenthood opened in a building in Worcester, Massachusetts a CPC opened on the same floor and used the same acronym, "PP," for its own facility. *Id.* A court held the use of the acronym violated trademark law and confused the public and prospective Planned Parenthood clients. *Id.* at 1049. Although the Planned Parenthood eventually moved out of the building, so did the CPC, relocating across the street. MCINTIRE, *supra* note 29, at 5.

<sup>126</sup> *Misconception*, *supra* note 13.

<sup>127</sup> MCINTIRE, *supra* note 29, at 6.

<sup>128</sup> *Id.* at 2.



volunteers are taught to avoid answering questions and to do whatever they can to get women in the door.<sup>129</sup> For example, if a woman calls one of these facilities inquiring about abortion pricing, the CPC will likely respond that it does not discuss pricing over the phone, and will instead pressure the woman to schedule an appointment to “discuss in person”; the CPC will entirely neglect to mention that the clinic does not provide abortion services at all.<sup>130</sup> All of these practices make it incredibly easy for a woman to inadvertently visit a CPC instead of a legitimate abortion clinic.<sup>131</sup>

### *B. Inside Crisis Pregnancy Centers: Lies and Misinformation*

Once inside a CPC, women are subject to a brigade of scare tactics to dissuade them from exercising their right to choose to terminate a pregnancy.<sup>132</sup> Frequently, women are forced to view graphic pamphlets, photographs, and films of disfigured babies, abortion procedures, and aborted fetuses.<sup>133</sup> Most notably, CPCs mischaracterize and misinform women about the effects and health risks of abortion.<sup>134</sup> CPCs disseminate pamphlets describing “heavy bleeding, sepsis, perforation of the uterus, [and] scarring . . . without indicating their relative likelihood, which is low.”<sup>135</sup> They tell women that abortion is a painful procedure that can lead to death, while in reality, most abortions are actually very safe procedures.<sup>136</sup>

CPCs also inform women that abortion causes mental health problems, such as conditions including “‘post-abortion syndrome’ or ‘post-abortion stress.’”<sup>137</sup> The medical field, however, does not recognize these conditions as actual mental health illnesses.<sup>138</sup> Most critically, CPCs claim that abortion motivates suicidal thoughts.<sup>139</sup> Research does not back these claims, either; in fact, research has indicated that abortion does not increase the likelihood of

<sup>129</sup> NARAL CPC Report, *supra* note 28, at 3.

<sup>130</sup> MCINTIRE, *supra* note 29, at 2; *Misconception*, *supra* note 13.

<sup>131</sup> *Misconception*, *supra* note 13. According to Bethany Herrera of a Texas-based legitimate abortion clinic, if CPCs “were upfront . . . about what their purpose was and what they did, no one would go.” *Id.*

<sup>132</sup> MCINTIRE, *supra* note 29, at 2.

<sup>133</sup> *Id.* at 13; NARAL CPC Report, *supra* note 28, at 4.

<sup>134</sup> MCINTIRE, *supra* note 29, at 10. CPCs also disseminate false information about other forms of contraception. *Id.* at 11. For example, a CPC volunteer in Maryland told a woman requesting a referral for birth control that “birth control is ‘next to aborting your baby,’” even though birth control has never been considered a form of abortion. *Id.*

<sup>135</sup> *Id.* at 7.

<sup>136</sup> NAF CPC Report, *supra* note 13, at 10; *see supra* note 44 and accompanying text. Less than one percent of abortion procedures involve major complications. NAF CPC Report, *supra* note 13, at 10. A CPC staff member in Maryland, however, told her client that during an abortion, “many women bleed to death on the table.” MCINTIRE, *supra* note 29, at 8.

<sup>137</sup> MCINTIRE, *supra* note 29, at 9.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 8.

psychological damage or depression.<sup>140</sup> A 2013 University of California study that surveyed 843 women one week after having an abortion found that ninety-five percent of women felt it was the right decision.<sup>141</sup> CPCs even posit that having an abortion increases a woman's risk for breast cancer and can render a woman infertile, despite the countless studies that have concluded the opposite.<sup>142</sup> A 2006 report that studied 267,361 women globally concluded that there is no "adverse effect of induced abortion on breast cancer risk."<sup>143</sup> Furthermore, many CPCs falsely claim that abortions can lead to infertility or future miscarriages, although first-trimester abortions pose little risk of infertility or other fertility problems.<sup>144</sup>

Some CPCs will also judge, intimidate, and shame women in an attempt to influence their decision-making.<sup>145</sup> Many CPCs show women stock rooms full of baby clothes, diapers, formula, and other necessities to appear as though they have the resources and support to help care for a child.<sup>146</sup> CPCs have been reported to guilt pregnant women into keeping their baby by referring to abortion as "murder" and repeating the words "baby" and "mom" in reference to the fetus and patient, respectively.<sup>147</sup> Moreover, CPCs typically and intentionally make women wait longer than is necessary for their pregnancy results, and present the women with "gruesome and graphic images of bloody and dismembered fetuses that have allegedly been aborted" as they wait.<sup>148</sup> The centers also use developmentally incorrect plastic fetal models

<sup>140</sup> *Id.*

<sup>141</sup> Corinne H. Rocca et al., *Women's Emotions One Week After Receiving or Being Denied an Abortion in the United States*, 45 PERSP. ON SEXUAL & REPROD. HEALTH 122, 122, 127 (2013).

<sup>142</sup> MCINTIRE, *supra* note 29, at 10; Amy Marturana, *Does Having An Abortion Affect Your Future Fertility?*, SELF (Aug. 31, 2016), <http://www.self.com/story/does-having-an-abortion-affect-your-future-fertility> [<https://perma.cc/3527-SLG7>]; *see, e.g.*, Gillian K. Reeves et al., *Breast Cancer Risk in Relation to Abortion: Results from the EPIC Study*, 119 INT'L J. CANCER 1741, 1741 (2006).

<sup>143</sup> Reeves et al., *supra* note 142, at 1741.

<sup>144</sup> MCINTIRE, *supra* note 29, at 10; Waxman Report, *supra* note 74, at 9.

<sup>145</sup> MCINTIRE, *supra* note 29, at 13. Localities that have attempted to adopt disclosure ordinances have done so in response to the damaging practices that CPCs are promoting nationwide. Principal Brief of Appellants/Defendants at 8, Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor of Balt. (*Greater Baltimore III*), 721 F.3d 264 (4th Cir. 2013) (Nos. 11-1111, 11-1185). Although these municipalities recognize and argue that CPCs engage in deceptive techniques, delay tactics, and even "harassment, coercion and intimidation," courts have typically held for CPCs, ruling that these disclosure ordinances are too broad or that there are alternatives that would address CPC practices without restricting their speech. *Id.*; *see, e.g.*, Evergreen Ass'n v. City of New York, 740 F.3d 233, 250 (2d Cir. 2014); Centro Tepeyac v. Montgomery County (*Centro Tepeyac II*), 722 F.3d 184, 190 (4th Cir. 2013); Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor of Balt. (*Greater Baltimore II*), 683 F.3d 539, 558 (4th Cir. 2012), *aff'd in part, vacated in part*, 721 F.3d 264 (4th Cir. 2013).

<sup>146</sup> *Misconception*, *supra* note 13.

<sup>147</sup> MCINTIRE, *supra* note 29, at 13.

<sup>148</sup> NAF CPC Report, *supra* note 13, at 7.

for women to visualize during consultations, which they are often encouraged to take home.<sup>149</sup> CPCs use strategic methods and calculated language to speak to a “woman’s ‘scared’ state of mind and need for help” in order to dissuade her from undergoing an abortion.<sup>150</sup>

### *C. Jeopardizing a Woman’s Health and Safety*

Not only are CPCs deceptive, but they can also seriously harm a woman’s health.<sup>151</sup> CPCs are primarily unlicensed facilities that operate with little oversight; thus, it is difficult to ensure that patients are receiving accurate information.<sup>152</sup> Women facing unwanted pregnancies deserve to “receive comprehensive, unbiased, medically and factually accurate reproductive information.”<sup>153</sup> When a woman is informed about her reproductive choices, she is “better able to make the best decision” for herself and her own reproductive health.<sup>154</sup> By misinforming, manipulating, and lying to women about the risks and effects of abortion, CPCs are barricading women from being fully informed about their reproductive options, and are scaring women away from accessing safe abortion.<sup>155</sup>

Coupled with CPCs’ deceitful practices concerning the health effects of abortion, CPCs also employ practices to delay women from accessing legitimate reproductive health care services to make abortion “more difficult, more costly, or even impossible.”<sup>156</sup> A CPC will misinform a woman about her time frame to receive an abortion, or make her go through unnecessary repeat testing, causing her to delay the abortion until the point when the procedure is prohibited by law.<sup>157</sup> These centers also falsely inform women that a miscarriage is essentially an alternative to abortion, and that twenty-five to thirty percent of women miscarry; the centers stress that there is no “rush[] to get an abortion” because of the probability that a woman will miscarry.<sup>158</sup> In reality,

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<sup>149</sup> MCINTIRE, *supra* note 29, at 13; *Misconception*, *supra* note 13.

<sup>150</sup> *New Report Calls Crisis Pregnancy Centers ‘Aggressively Deceptive,’* YAHOO! (Mar. 17, 2015), <https://www.yahoo.com/health/crisis-pregnancy-centers-called-aggressively-113882570797.html> [<https://perma.cc/7R4X-HUHA>].

<sup>151</sup> NARAL CPC Report, *supra* note 28, at 7.

<sup>152</sup> MCINTIRE, *supra* note 29, at 15.

<sup>153</sup> NARAL CPC Report, *supra* note 28, at 1.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> MCINTIRE, *supra* note 29, at 12.

<sup>157</sup> *Id.*; *see, e.g.,* Evergreen Ass’n v. City of New York, 740 F.3d 233, 240 (2d Cir. 2014). CPCs in Maryland and New York have told clients that a woman can receive an abortion at any point during the nine-month pregnancy. MCINTIRE, *supra* note 29, at 12. This is entirely false; a woman cannot terminate a pregnancy past the point of viability in Maryland and past twenty-four weeks in New York, unless the procedure is necessary to preserve the woman’s life. M.D. CODE ANN., HEALTH–GEN. § 20-209(b) (West 2005); N.Y. PENAL LAW § 125.05(3) (McKinney 1970).

<sup>158</sup> MCINTIRE, *supra* note 29, at 12; *see* NARAL CPC Report, *supra* note 28, at 6.

only about fifteen percent of pregnancies miscarry.<sup>159</sup> Offering such unreasonable advice “downplays an otherwise urgent situation” and suggests that a woman can simply ignore her pregnancy and hope it terminates naturally, which poses serious prenatal health concerns.<sup>160</sup> By taking advantage of vulnerable, anxious women facing unwanted pregnancies, CPCs threaten women’s reproductive health and reproductive freedom daily.<sup>161</sup>

#### D. Targeting Marginalized and Vulnerable Communities

Beyond prioritizing an ideology over women’s health and legal freedom to choose, CPCs strategically target specific, vulnerable groups of women to further their goal of preventing abortion.<sup>162</sup> To accomplish that goal by restricting women’s reproductive freedom, these centers have undeniably concentrated their efforts toward young women, low-income women, and women of color.<sup>163</sup> Although some CPCs claim that these initiatives aim to serve women in underserved communities in positive ways, the goal for CPCs in these areas, which all have “higher rates of unintended pregnancy and abortion,” is simple: to reduce the amount of abortions.<sup>164</sup> African American and Hispanic women have the highest rates of unintended pregnancy among racial groups, and women in the lowest income bracket have the highest rate of unintended pregnancy, at sixty-two percent, compared to women in the upper- and middle-income brackets.<sup>165</sup> As for young women, in the African American community alone, fifty-one percent of female teenagers become pregnant before the age of twenty.<sup>166</sup> CPCs target these specific communities with the belief that these women are the most “abortion minded.”<sup>167</sup>

What CPCs do not realize is that their proliferation into these vulnerable communities does not actually help the women within them.<sup>168</sup> To attract young women, CPCs advertise on billboards and in school newspapers, and

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<sup>159</sup> MCINTIRE, *supra* note 29, at 12.

<sup>160</sup> NARAL CPC Report, *supra* note 28, at 6. “Delay in prenatal care decreases ‘the likelihood of a healthy pregnancy, delivery, healthy newborn and mother.’” *Evergreen*, 740 F.3d at 239 (quoting Dr. Susan Blank, Assistant Commissioner at the New York City Department of Health and Mental Hygiene). CPCs are preventing and postponing women from accessing prenatal care even though it is standard obstetric practice for women to begin prenatal care in the first trimester. *See id.* at 239–40.

<sup>161</sup> *See* NARAL CPC Report, *supra* note 28, at 6.

<sup>162</sup> LYMAN, *supra* note 50, at 1.

<sup>163</sup> *See id.*

<sup>164</sup> *Id.*; *see Crisis Pregnancy Centers Are Targeting Women of Color, Endangering Their Health*, *supra* note 30.

<sup>165</sup> LYMAN, *supra* note 50, at 1.

<sup>166</sup> NARAL CPC Report, *supra* note 28, at 9.

<sup>167</sup> MCINTIRE, *supra* note 29, at 4.

<sup>168</sup> *Crisis Pregnancy Centers Are Targeting Women of Color, Endangering Their Health*, *supra* note 30.

establish near high school and college campuses.<sup>169</sup> Young women are often uneducated about abortion, and need accurate, reproductive health information when facing unintended pregnancies.<sup>170</sup> It can be easy for a desperate, pregnant young woman to turn to what appears to be a legitimate reproductive health clinic in this situation.<sup>171</sup> Yet, when a CPC misinforms a vulnerable young woman—someone who is more likely to be susceptible to the control of authority figures, like nurses—it is preventing her from making an informed, healthy decision about her reproductive health.<sup>172</sup>

Low-income women and women of color are also vulnerable to CPC practices because they typically have limited or no access to comprehensive contraceptive and reproductive health services due to situational or economic circumstances.<sup>173</sup> This is the primary reason why the rate of unintended pregnancy is so high in these areas, particularly in urban communities.<sup>174</sup> CPCs market themselves inside bus shelters in hopes of reaching these communities, in particular poor or homeless women.<sup>175</sup> It is likely that an indigent woman would go to a CPC seeking the *free* reproductive health services advertised, especially considering that a nearby drug store like Walmart sells its cheapest pregnancy test for nearly \$10.<sup>176</sup> When an impoverished individual earns only up to \$11,770 in the United States, that ten-dollar cost can present a serious financial difficulty.<sup>177</sup> Additionally, many low-income women lack the funds or transportation necessary to get to more distant, legitimate health clinics; thus, these women inherently have difficulty obtaining an abortion, so, making an additional trip to a health care provider can be quite burdensome.<sup>178</sup>

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<sup>169</sup> MCINTIRE, *supra* note 29, at 4; NAF CPC Report, *supra* note 13, at 5.

<sup>170</sup> Dooetje Braeken, *Young People Deserve Better Education About Abortion*, THE GUARDIAN (Mar. 13, 2013), <http://www.theguardian.com/society/2013/mar/13/young-people-better-education-abortion> [https://perma.cc/98QU-VU3X].

<sup>171</sup> See MCINTIRE, *supra* note 29, at 1, 4.

<sup>172</sup> See NARAL CPC Report, *supra* note 28, at 1; Braeken, *supra* note 170.

<sup>173</sup> *Crisis Pregnancy Centers Are Targeting Women of Color, Endangering Their Health*, *supra* note 30. Nationwide, reproductive health clinics “that offer full options counseling and abortion care” are scarce. NAF CPC Report, *supra* note 13, at 5.

<sup>174</sup> *Crisis Pregnancy Centers Are Targeting Women of Color, Endangering Their Health*, *supra* note 30.

<sup>175</sup> MCINTIRE, *supra* note 29, at 16.

<sup>176</sup> Winter, *supra* note 1.

<sup>177</sup> Annual Update of the HHS Poverty Guidelines, 80 Fed. Reg. 3236, 3237 (Jan. 22, 2015).

<sup>178</sup> See Lawrence B. Finer et al., *Timing of Steps and Reasons for Delays in Obtaining Abortions in the United States*, 74 CONTRACEPTION 334, 343 (2006); *Crisis Pregnancy Centers Are Targeting Women of Color, Endangering Their Health*, *supra* note 30. One New York woman who worked at a grocery store had to coordinate with her co-worker, boss, and husband to schedule a time for her abortion. *Evergreen Ass’n v. City of New York*, 740 F.3d 233, 240 (2d Cir. 2014). By the time she realized she ended up at a CPC that was not going to provide her this service, she forfeited the income she would have earned that day. *Id.* It would take another three weeks for her to schedule an abortion procedure at a legitimate reproductive health clinic. *Id.*

Among racial groups, evidence of CPCs' direct targeting of African American and Hispanic communities in particular is the most obvious.<sup>179</sup> For instance, Care Net, a massive conglomerate of CPCs, has been strategically preying on African American and Hispanic women by establishing locations in urban areas since 2003 with its "underserved outreach" initiative that specifically aims to serve these communities.<sup>180</sup> Similarly, Heartbeat International initiated a campaign with the Christian community in Miami, Florida to aggressively target women of color by infiltrating African American and Hispanic churches and establishing a network of CPCs in neighborhoods with high abortion rates.<sup>181</sup> CPCs strategically locate and offer free services like counseling, pregnancy tests, and ultrasounds to attract these racial groups, which have the highest rates of abortion and unintended pregnancy.<sup>182</sup> In turn, African American and Hispanic women are more likely to be persuaded by these tactics because high-quality reproductive health care is not readily available to them.<sup>183</sup> A CPC might be their seemingly best or only option.<sup>184</sup>

This reality is only magnified by recent and continuing attempts to defund Planned Parenthood, a nonprofit comprehensive reproductive health care provider and the nation's largest provider of abortion services.<sup>185</sup> In addition to providing abortions, Planned Parenthood also provides reproductive health care services, including family-planning services, cancer screenings, contraceptive services, treatment for sexually transmitted diseases, and preventative care, to 2.5 million people annually, particularly low-income and minority

<sup>179</sup> MCINTIRE, *supra* note 29, at 16.

<sup>180</sup> *Id.* CPCs such as Care Net even target African American women through advertisements on Black Entertainment Television and on subways. *Id.* at 16; NARAL CPC Report, *supra* note 28, at 8.

<sup>181</sup> NARAL CPC Report, *supra* note 28, at 8.

<sup>182</sup> MCINTIRE, *supra* note 29, at 7; NARAL CPC Report, *supra* note 28, at 8; LYMAN, *supra* note 50, at 1.

<sup>183</sup> *Crisis Pregnancy Centers Are Targeting Women of Color, Endangering Their Health*, *supra* note 30.

<sup>184</sup> *Id.*

<sup>185</sup> Kate Gibson, *Could Planned Parenthood Survive Without Federal Funds?*, CBS MONEY WATCH (Feb. 6, 2017), <http://www.cbsnews.com/news/can-planned-parenthood-survive-without-federal-funds/> [https://perma.cc/TMZ8-WSV9]; M.S.R., *The New Battle to Defund Planned Parenthood*, THE ECONOMIST (Apr. 5, 2017), <http://www.economist.com/blogs/democracyinamerica/2017/04/x-marks-spot-0> [https://perma.cc/XF33-AXAA]. Planned Parenthood operates more than six hundred health facilities nationwide. Gibson, *supra*. The new Trump administration and a Republican-dominated Congress most recently attempted to defund Planned Parenthood by repealing the Patient Protection and Affordable Care Act and replacing it with a legislative health care overhaul, but were ultimately unsuccessful. Bob Bryan, *The House GOP Plan to Repeal and Replace Obamacare Would Effectively Defund Planned Parenthood*, BUS. INSIDER (Mar. 7, 2017), <http://www.businessinsider.com/house-gop-obamacare-repeal-replace-plan-defund-planned-parenthood-2017-3> [https://perma.cc/4SNR-24QH]; Stephen Collinson et al., *House Republicans Pull Health Care Bill*, CNN (Mar. 25, 2017), <http://www.cnn.com/2017/03/24/politics/house-health-care-vote/>; Gibson, *supra*.

women.<sup>186</sup> Planned Parenthood receives approximately \$500 million in federal funding each year, not through a line item in the federal budget, but in the form of reimbursements for preventative care.<sup>187</sup> As such, the organization can only use federal funds to reimburse costs related to preventative care, which does not include abortion.<sup>188</sup> Although abortion opponents have been largely unsuccessful in stripping Planned Parenthood of its federal funding, they remain vigilant.<sup>189</sup> If Planned Parenthood facilities, which provide women with immense support and high-quality services, are forced to close in the future, this will have devastating consequences for women across the nation,

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<sup>186</sup> Gibson, *supra* note 185; Jaeah Lee, *Charts: This Is What Happens When You Defund Planned Parenthood*, MOTHER JONES (Mar. 14, 2013), <http://www.motherjones.com/politics/2013/03/what-happens-when-you-defund-planned-parenthood> [https://perma.cc/84QE-K5TG].

<sup>187</sup> Gibson, *supra* note 185; *How Federal Funding Works at Planned Parenthood*, I STAND WITH PLANNED PARENTHOOD, <https://www.istandwithpp.org/defund-defined/how-federal-funding-works-planned-parenthood> [https://perma.cc/8YTX-UQH7]. Planned Parenthood is reimbursed largely through Medicaid or the Title X Family Planning Program, the only federal grant program that is “focused solely on providing family planning” and “ensure[s] access to a broad range of family planning and preventative health services.” Emily Green, *Mike Pence Brings Congress One Step Closer to Defunding Planned Parenthood*, THE ATLANTIC (Mar. 30, 2017), <https://www.theatlantic.com/politics/archive/2017/03/pence-congress-planned-parenthood/521349/> [https://perma.cc/FT6M-HSUH]; *How Federal Funding Works at Planned Parenthood, supra*; *Title X Family Planning*, U.S. DEP’T HEALTH & HUM. SERVS., <https://www.hhs.gov/opa/title-x-family-planning/index.html> [https://perma.cc/3Z3D-9A4U]. Federal funding represents a significant portion—forty percent—of Planned Parenthood’s budget, and the organization “relies on private donations to make up the difference between the actual costs and the reimbursement rates.” Gibson, *supra* note 185.

<sup>188</sup> Sarah Kliff, *The Hyde Amendment at 35: A New Abortion Divide*, WASH. POST (Oct. 2, 2011), [https://www.washingtonpost.com/blogs/ezra-klein/post/the-hyde-amendment-at-35-a-new-abortion-divide/2011/10/02/gIQApQ6cFL\\_blog.html?utm\\_term=.043b5c29a52f](https://www.washingtonpost.com/blogs/ezra-klein/post/the-hyde-amendment-at-35-a-new-abortion-divide/2011/10/02/gIQApQ6cFL_blog.html?utm_term=.043b5c29a52f) [https://perma.cc/C9Q8-QHE5]. Since 1976, the Hyde Amendment has banned the use of federal Medicaid funds for abortion services. *Harris v. McRae*, 448 U.S. 297, 302, 326–27 (1980) (upholding Hyde Amendment). This has “place[d] an undue burden on women who rely on government programs like Medicaid for health care” for more than forty years. Kliff, *supra*.

<sup>189</sup> See M.S.R., *supra* note 185 (“pro-lifers may try to insert an attack on Planned Parenthood in a tax bill expected later in [2017]”). In March 2017, Vice President Mike Pence cast a tie-breaking vote in the Senate to lift restrictions on how states can treat clinics, like Planned Parenthood, that also provide abortion services. Green, *supra* note 187 (explaining the House had already voted on, and passed, the measure); Katherine Don, *Why Restricting Title X Funding Could Cripple Planned Parenthood*, ROMPER (Apr. 3, 2017), <https://www.romper.com/p/why-restricting-title-x-funding-could-cripple-planned-parenthood-48811> [https://perma.cc/HT5K-XB7E]. President Trump is expected to sign the repeal bill, which would permit states to deny Title X funds to these types of clinics. Ellen Powell, *Senate Title X Funding Vote: What Does It Mean for Planning Parenthood?*, CHRISTIAN SCI. MONITOR (Apr. 3, 2017), <https://www.csmonitor.com/USA/2017/0403/Senate-Title-X-funding-vote-What-does-it-mean-for-Planned-Parenthood-video> [https://perma.cc/64GT-5LUR]. Although many abortion activists and Planned Parenthood supporters have argued that this bill to repeal Title X guidance is illegal because courts have consistently ruled that states cannot bar individuals from access to health care at Planned Parenthood through Title X, this funding vote represents a serious threat to Planned Parenthood. Don, *supra*; Powell, *supra*. Because Planned Parenthood is continually on the verge of losing its federal funding, this further threatens women’s reproductive and preventative health care options. See Gibson, *supra* note 185.

particularly low-income and minority women who will have even less access to reproductive and preventative health care.<sup>190</sup>

By pursuing their anti-choice agenda, CPCs are disregarding the fact that these women do not have equal access to legitimate health care providers and services.<sup>191</sup> Instead, CPCs focus solely on reducing abortion rates, and do not provide the comprehensive reproductive health care services—such as those offered by Planned Parenthood—that these communities desperately need and are at risk of losing.<sup>192</sup> In luring these vulnerable groups of women, CPCs are diverting them from accessing legitimate health services.<sup>193</sup> CPCs’ infiltration into these communities “may delay their access to care or prevent them from seeking it altogether.”<sup>194</sup> This can cause a woman to miss vital prenatal care and render her unable to undergo a legal abortion past a certain point in her pregnancy.<sup>195</sup> This is especially dangerous for young, low-income, and African American women, who already take longer to confirm pregnancies.<sup>196</sup> Low-income women are in a position to face the most harm from CPC delay tactics because, due to financial difficulties, they are nearly twice as likely to delay in obtaining an abortion in the first place.<sup>197</sup> The strategic and systemic reasoning behind CPCs’ focus on these particular communities in turn puts these vulnerable women “in harm’s way.”<sup>198</sup>

### III. REINING IN CRISIS PREGNANCY CENTERS: HOW TO BETTER APPROACH REGULATING THESE HARMFUL FACILITIES

The deceptive advertising tactics in which crisis pregnancy centers (CPCs) engage, the lies and misinformation they disseminate, and their emphasis on marginalized communities all represent a grave threat to the health of women across the United States.<sup>199</sup> Attempts to curb CPC practices through disclosure ordinances have largely been defeated on First Amendment grounds, which is not unsurprising given how narrow such laws must be

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<sup>190</sup> Gibson, *supra* note 185 (“390,000 women would lose access and up to 650,000 would face reduced preventive care within a year if Congress blocked Medicaid patients from Planned Parenthood”).

<sup>191</sup> *Crisis Pregnancy Centers Are Targeting Women of Color, Endangering Their Health*, *supra* note 30; see Gibson, *supra* note 185.

<sup>192</sup> *Crisis Pregnancy Centers Are Targeting Women of Color, Endangering Their Health*, *supra* note 30.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Evergreen Ass’n v. City of New York*, 740 F.3d 233, 239–40 (2d Cir. 2014); MCINTIRE, *supra* note 29, at 12.

<sup>196</sup> *Finer*, *supra* note 178, at 338, 343.

<sup>197</sup> *Id.* at 334, 338, 339, 343.

<sup>198</sup> *Crisis Pregnancy Centers are Targeting Women of Color, Endangering Their Health*, *supra* note 30.

<sup>199</sup> See MCINTIRE, *supra* note 29, at 1, 12, 16.



to pass constitutional muster.<sup>200</sup> Even if these laws were upheld, a piece of paper containing some government-compelled information stuffed into a dark corner of a CPC waiting room—which is often all that these ordinances require—would not do enough to help women susceptible to CPC harms.<sup>201</sup> The unfortunate truths and falsities of CPCs, coupled with unsuccessful legal efforts to regulate CPCs through weak disclosure ordinances, contribute to a desperate and urgent need for reform.<sup>202</sup>

There are a number of possible solutions that may help stop, or at least limit, CPCs from misinforming and deceiving women throughout the nation.<sup>203</sup> To implement the most effective reform, federal and state governments must cut funding to CPCs to weaken their overall operations.<sup>204</sup> States can also restrict CPC conduct by utilizing statutes that limit deceptive and unfair practices toward consumers.<sup>205</sup> Finally, eligible state agencies and the women harmed by these facilities should consider filing claims against CPCs for either practicing unlicensed medicine or committing malpractice.<sup>206</sup>

#### A. Ensuring the Separation of Church and State

To best protect vulnerable women from harrowing CPC practices, the federal and state governments must cease funding to these centers, as such funding violates the Establishment Clause of the U.S. Constitution.<sup>207</sup> Seventy years ago, the Supreme Court of the United States held that “the clause against establishment of religion by law was intended to erect ‘a wall of separation between [c]hurch and [s]tate.’”<sup>208</sup> In 1971 in *Lemon v. Kurtzman*, the Court clarified the separation of church and state when it dictated the test for determining whether a law violates the Establishment Clause.<sup>209</sup> Under the *Lemon* test, a law passes constitutional muster if: i) it has a secular purpose,

<sup>200</sup> See *Roe v. Wade*, 410 U.S. 113, 155 (1973); Cohen, *supra* note 27.

<sup>201</sup> See *Centro Tepeyac v. Montgomery County (Centro Tepeyac II)*, 722 F.3d 184, 186 (4th Cir. 2013); *Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor of Balt. (Greater Baltimore II)*, 683 F.3d 539, 548–49 (4th Cir. 2012), *aff’d in part, vacated in part*, 721 F.3d 264 (4th Cir. 2013).

<sup>202</sup> See Cohen, *supra* note 27; Winter, *supra* note 25.

<sup>203</sup> See Winter, *supra* note 25.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*; see Bob Cohen, Annotation, *Right to Private Action Under State Consumer Protection Act—Preconditions to Action*, 117 A.L.R. 5th 155 (2004).

<sup>206</sup> Winter, *supra* note 25.

<sup>207</sup> See MCINTIRE, *supra* note 29, at 17; Winter, *supra* note 25.

<sup>208</sup> *Everson v. Bd. of Educ.*, 330 U.S. 1, 16 (1947) (citing *Reynolds v. United States*, 98 U.S. 145, 164 (1878)). In general, “the establishment clause prohibits both the national government, and, through the operation of the Fourteenth Amendment, the states, from compelling an individual to participate in promoting religion or a particular religious faith.” *Venters v. City of Delphi*, 123 F.3d 956, 969 (7th Cir. 1997).

<sup>209</sup> 403 U.S. 602, 612–13 (1971) (citing *Walz v. Tax Comm’n of N.Y.*, 397 U.S. 664, 674 (1970); *Bd. of Educ. v. Allen*, 392 U.S. 236, 243 (1968)).

ii) its primary effect does not inhibit or advance religion, and iii) it does not “foster ‘an excessive government entanglement with religion.’”<sup>210</sup>

Any law that awards government funding to CPCs will not pass the third prong of the *Lemon* test; state and federal government funding to CPCs involves an excessive entanglement of government with religion for several reasons.<sup>211</sup> CPCs that receive government funding are inherently religious-based facilities, controlled by a larger network of religious organizations that aim to encourage and further the Christian mission through deceptive practices.<sup>212</sup> It would be nearly impossible for CPC employees to remain unbiased while counseling women facing unintended pregnancies because CPC employees are “dedicated religious person[s],” who work in facilities associated with their faith and “operate[] to inculcate its tenets.”<sup>213</sup> For example, while performing a sonogram on a woman seeking an abortion, one CPC employee told the pregnant woman, “You really need God in your life,” and stressed her anti-abortion perspective throughout the entire, lengthy procedure.<sup>214</sup> Many volunteers pray for women during their consultations at CPCs, and CPC networks specifically direct these centers to “shepherd[] spiritually ‘broken’ women toward Christ.”<sup>215</sup>

CPC opponents should take to the courts to challenge current state and federal funding to CPCs; stripping CPCs of that funding would seriously weaken CPCs’ dominance in society and their ability to coerce women out of abortion.<sup>216</sup> The federal government alone distributes more than one hundred

<sup>210</sup> *Id.* (quoting *Walz*, 397 U.S. at 674) (citing *Allen*, 392 U.S. at 243).

<sup>211</sup> *See id.* at 618–19. Lawmakers have attempted to regulate CPCs primarily through unsuccessful disclosure ordinances, not from a funding perspective; thus, CPCs have not yet had to face the *Lemon* test. *Id.* at 612–13; Cohen, *supra* note 27. This is likely because CPCs have received little documentation in public health literature and because CPCs receive a broad spectrum of funding, which some CPCs use to provide actual support to women facing pregnancy. NARAL CPC Report, *supra* note 28, at 1; NAF CPC Report, *supra* note 13, at 11, 12, 14; Rosen, *supra* note 36, at 201.

<sup>212</sup> Rosen, *supra* note 36, at 205; *About Care Net*, *supra* note 13; *Mission and Vision*, *supra* note 109.

<sup>213</sup> *See Lemon*, 403 U.S. at 618; NARAL PRO-CHOICE N.C. FOUND., THE TRUTH REVEALED: NORTH CAROLINA’S CRISIS PREGNANCY CENTERS 23 (Oct. 24, 2011), [http://www.prochoicenc.org/assets/bin/pdfs/2011NARAL\\_CPCReport\\_V05\\_web.pdf](http://www.prochoicenc.org/assets/bin/pdfs/2011NARAL_CPCReport_V05_web.pdf) [<https://perma.cc/YQ27-XX8G>]; *Misconception*, *supra* note 13.

<sup>214</sup> *Misconception*, *supra* note 13.

<sup>215</sup> Winter, *supra* note 1; *see* NARAL PRO-CHOICE N.C. FOUND., *supra* note 213, at 23.

<sup>216</sup> *See* MCINTIRE, *supra* note 29, at 17; NAF CPC Report, *supra* note 13, at 11–12, 13; Winter, *supra* note 25. To successfully challenge government funding to CPCs, “an individual must have an individualized interest that has actually been harmed under the law or by its application that can be redressed by the lawsuit.” CYNTHIA BROUGH, CONG. RESEARCH SERV., R40825, LEGAL STANDING UNDER THE FIRST AMENDMENT’S ESTABLISHMENT CLAUSE 1 (2015), <https://www.fas.org/sgp/crs/misc/R40825.pdf> [<https://perma.cc/2A6R-5BX4>]. Under the Establishment Clause, an individual “may assert that injury as a citizen dissatisfied with a governmental action,

million taxpayer dollars each year to abortion-alternatives programs.<sup>217</sup> In turn, CPCs receive a significant portion of that money.<sup>218</sup> For instance, between 2012 and 2017, Pennsylvania will distribute \$30 million to Real Alternatives, a nonprofit agency that provides alternatives to abortion within the state and reimburses CPCs for their anti-abortion services.<sup>219</sup> Cutting this funding would make it more difficult for CPCs to spend money on costly, deceptive advertisements, to distribute free pregnancy tests, and to purchase ultrasound equipment.<sup>220</sup> Restricting funding to CPCs would eliminate many of the reasons why women come to CPCs in the first place.<sup>221</sup> Without a broader monetary network to facilitate their practices, some CPCs might even have to shut their doors for good.<sup>222</sup>

Unfortunately, CPCs will never be left fully impaired because they are supported by another major economic actor: a broader conglomerate of wealthy religious institutions.<sup>223</sup> Although monetarily depriving CPCs from a government perspective is theoretically feasible and certainly advantageous to the vulnerable women CPCs are hurting, it will not wipe them out entirely.<sup>224</sup> That said, however, although it is unclear just how much private funding CPCs receive from these larger networks, CPCs have rapidly grown since they began seeking and receiving government funding.<sup>225</sup> It is apparent that this form of funding is one of their major sources of financial power, and depriving CPCs of government funding has the potential to seriously weaken their nationwide dominance and costly, deceptive practices.<sup>226</sup>

### *B. Enforcing Strict Consumer Protection Laws*

A secondary approach for states to effectively regulate CPCs is through consumer protection laws, which aim to protect consumers from “deceptive or unfair acts and practices in the marketplace.”<sup>227</sup> Every state has adopted some form of consumer protection laws, typically modeled after the Federal Trade Commission Act, the Uniform Sales Practices Act, or the Uniform De-

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as a taxpayer dissatisfied with a governmental expenditure, or as a citizen dissatisfied with treatment of other citizens.” *Id.*

<sup>217</sup> NAF CPC Report, *supra* note 13, at 11.

<sup>218</sup> *Id.*

<sup>219</sup> Winter, *supra* note 1.

<sup>220</sup> See MCINTIRE, *supra* note 29, at 7.

<sup>221</sup> See Winter, *supra* note 1.

<sup>222</sup> See MCINTIRE, *supra* note 29, at 17; NAF CPC Report, *supra* note 13, at 11–12, 13.

<sup>223</sup> See NAF CPC Report, *supra* note 13, at 14; Stacey, *supra* note 13.

<sup>224</sup> See NAF CPC Report, *supra* note 13, at 11.

<sup>225</sup> Stacey, *supra* note 13.

<sup>226</sup> See *id.*

<sup>227</sup> Bob Cohen, *supra* note 205.

ceptive Trade Practices Act.<sup>228</sup> Generally, these acts enable an individual plaintiff, a class, and/or the state's attorney general to bring an action against an individual or business that engages in an activity, including advertising, that is deceptive, false, or unfair.<sup>229</sup> Depending on the state, entities that are found to be engaging in a deceptive trade practice can face either criminal or civil penalties, including fines, imprisonment, and restraining orders, or injunctions forbidding the continued practice.<sup>230</sup> Furthermore, because deceptive and false advertising is not protected by the First Amendment, consumer protection laws would likely be a more successful channel through which to challenge CPC practices than disclosure ordinances.<sup>231</sup>

Although CPCs claim that state consumer protection laws do not apply to them since they do not engage in commercial transactions, courts should find otherwise.<sup>232</sup> It is true that some courts have held—for the purposes of striking down disclosure ordinances under First Amendment grounds—that CPCs do not engage in commercial transactions, yet other courts are open to the idea of designating CPC advertisements as commercial.<sup>233</sup> Many courts have held that nonprofits can engage in commerce or the promotion of services, and are therefore subject to consumer protection laws.<sup>234</sup> CPCs are

<sup>228</sup> 15 U.S.C. §§ 41–58 (2012); CAROLYN L. CARTER, CONSUMER PROTECTION IN THE STATES: A 50-STATE REPORT ON UNFAIR AND DECEPTIVE PRACTICES STATUTES 5 (2009), [https://www.nclc.org/images/pdf/car\\_sales/UDAP\\_Report\\_Feb09.pdf](https://www.nclc.org/images/pdf/car_sales/UDAP_Report_Feb09.pdf) [<https://perma.cc/U2LD-WLGB>]; Michelle L. Evans, Annotation, *Who Is a 'Consumer' Entitled to Protection of State Deceptive Trade Practice and Consumer Protection Acts*, 63 A.L.R. 5th 1 (1998). These Acts set strict guidelines that all persons engaged in commerce must follow in order to protect consumers from misleading and unethical acts in the marketplace. 15 U.S.C. §§ 41–58; CARTER, *supra*, at 5; Evans, *supra*.

<sup>229</sup> DECEPTIVE TRADE PRACTICES, 0015 SURVEYS 6 (West 2007).

<sup>230</sup> *Id.*

<sup>231</sup> See *Bates v. State Bar of Ariz.*, 433 U.S. 350, 383 (1977) (citing *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 770–72 (1976)); *Va. State Bd. of Pharm.*, 425 U.S. at 770–72; *Mother & Unborn Baby Care of N. Tex., Inc. v. State*, 749 S.W.2d 533, 542 (Tex. App. 1988) (citing *Better Bus. Bureau of Metro. Hous., Inc. v. Med. Directors, Inc.*, 681 F.2d 397, 404 (5th Cir. 1982)).

<sup>232</sup> See *O'Brien v. Mayor of Balt.*, 768 F. Supp. 2d 804, 817 (D. Md. 2011); Winter, *supra* note 25.

<sup>233</sup> Compare *Greater Balt. Ctr. for Pregnancy Concerns, Inc. v. Mayor & City Council of Balt. (Greater Baltimore II)*, 683 F.3d 539, 568 n. 8 (4th Cir. 2012) (King, J., dissenting) (“Inquiring into the Center’s potential profit motives may not be a futile endeavor. We know that nonprofit entities with religious or political motives can engage in commerce . . . [a]nd, although outwardly the Center appears to be driven by religious purposes only, certain operational intricacies may prove otherwise.”), *aff’d in part, vacated in part*, 721 F.3d 264 (4th Cir. 2013), with *Evergreen Ass’n v. City of New York*, 801 F. Supp. 2d 197, 205 (S.D.N.Y. 2011) (refusing to define CPCs’ conduct as engaging in a commercial transaction), *aff’d in part, vacated in part*, 740 F.3d 233 (2d Cir. 2014).

<sup>234</sup> *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 573 (1997) (“Even though petitioner’s camp does not make a profit, it is unquestionably engaged in commerce, not only as a purchaser but also as a provider of goods and services.”) (citations omitted); *Birthright v.*

nonprofit organizations providing services, and courts have held that laws governing deceptive acts apply any time an entity engages in a transaction involving goods or services, regardless of whether the exchange is for money.<sup>235</sup> Thus, because CPCs provide goods and services like pregnancy tests, ultrasounds, and counseling, they, too, should be subject to consumer protection laws.<sup>236</sup>

If more courts interpreted consumer protection laws to penalize CPCs for violating said laws, CPCs would effectively be stopped in their tracks as their main source of inducement would be crippled.<sup>237</sup> CPCs would need to remove themselves from listings under headings like “abortion,” “abortion services,” and possibly even “women’s health clinic,” and would no longer be able to claim that they help pregnant women explore all reproductive options.<sup>238</sup> Regulation of CPCs under consumer protection laws would prevent many women from mistakenly entering a CPC to seek abortion services.<sup>239</sup>

Although the consumer protection strategy for approaching CPCs is appealing, there are roadblocks to its ultimate success.<sup>240</sup> In reality, even if courts interpreted consumer protection laws to apply to CPCs, the women who could potentially file consumer protection violation claims are unlikely to do so.<sup>241</sup> The young and marginalized women typically lured into CPCs generally do not have the means to afford an attorney and enter litigation.<sup>242</sup> Moreover, because of inherent stigmas surrounding abortion, many women

Birthright, Inc., 827 F. Supp. 1114, 1138 (D. N.J. 1993) (holding nonprofit religious group’s fundraising letters constituted commercial advertising and promotion of services).

<sup>235</sup> See, e.g., *Mother & Unborn Baby Care of N. Tex., Inc.*, 749 S.W.2d at 538 (holding CPC was subject to the consumer protection statute because it provided goods through pamphlets and services through financial aid, pregnancy testing, and counseling, regardless of whether these were provided in exchange for money).

<sup>236</sup> See *id.* The applicability of consumer protection laws to CPCs is further evidenced by case law and the fact that San Francisco’s general disclosure ordinance prohibiting CPCs from engaging in deceptive practices is one of the only laws of its kind to have survived to regulate CPCs. *First Resort, Inc. v. Herrera*, 80 F. Supp. 3d 1043, 1057 (N.D. Cal. 2015); Cohen, *supra* note 27; see *Mother & Unborn Baby Care of N. Tex., Inc.*, 749 S.W.2d at 538. In *Mother & Unborn Baby Care of North Tex., Inc. v. State*, the court affirmed the lower court’s decision to penalize a CPC for deceptive trade practices after it advertised under “Abortion” in the Yellow Pages. 749 S.W.2d at 537, 540. The court held the CPC was subject to the relevant consumer protection statute because although it did not sell goods or services, it distributed goods in the form of pamphlets, and services in the form of pregnancy tests, financial assistance, counseling, and help in obtaining adoption and legal aid. *Id.* at 538, 540.

<sup>237</sup> See MCINTIRE, *supra* note 29, at 2, 15; Cohen, *supra* note 27; Winter, *supra* note 25.

<sup>238</sup> See MCINTIRE, *supra* note 29, at 4, 15; NARAL CPC Report, *supra* note 28, at 2; NAF CPC Report, *supra* note 13, at 4.

<sup>239</sup> See MCINTIRE, *supra* note 29, at 15.

<sup>240</sup> Winter, *supra* note 25.

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

may be unwilling to speak out against CPCs in such a public forum.<sup>243</sup> For instance, it would be unlikely for a teenage girl seeking to abort an unintended pregnancy, and afraid to tell her parents, to then go public about her experience at a CPC.<sup>244</sup>

Consumer protection claims cannot protect every woman who enters a CPC; to successfully meet the elements of a claim, many states require proof not that the CPC put a woman through an unexpectedly disrespectful and shameful experience, but that she actually suffered an injury or monetary loss as a result of the facility's practices.<sup>245</sup> Despite the challenges women might face in bringing consumer protection claims against CPCs, ensuring these centers truthfully advertise their services could help curb CPC practices for the long haul by sending a message to CPCs across the country that they are in fact subject to regulation.<sup>246</sup>

### C. Encouraging Medical Conduct Claims

In addition to filing consumer protection claims against CPCs, state agencies and women who have received services from CPCs, should also seek recourse by bringing claims against CPCs for practicing medicine without a license and medical malpractice.<sup>247</sup> Practicing medicine without a license is a criminal offense, and in some states, an individual who has been the recipient of services under the unauthorized practice of medicine can also recover civil damages.<sup>248</sup> Through statutes and regulations, each state defines what constitutes the practice of medicine, and many states require a medical license for any individual who advises anyone about a "condition" he or she may have.<sup>249</sup> Pregnancy, a "physical condition," could easily fall under such a broad definition.<sup>250</sup> Thus, because CPCs often have unlicensed persons read-

<sup>243</sup> *Id.*

<sup>244</sup> *See id.*

<sup>245</sup> Neil A. Helfman, *Proof of Statutory Unfair Business Practices*, 36 AM. JUR. *Proof of Facts* 3D 221 (2016); Winter, *supra* note 25.

<sup>246</sup> *See* CARTER, *supra* note 228, at 5; Winter, *supra* note 25.

<sup>247</sup> Winter, *supra* note 25.

<sup>248</sup> F. LEE BAILEY & KENNETH J. FISHMAN, *HANDLING MISDEMEANOR CASES* § 28:1 (2d ed. 2015); e.g., COLO. REV. STAT. § 12-36-129 (2012). A state's attorney general and board of medical examiners can bring an action against anyone who engages in the unauthorized practice of medicine seeking an injunction to mandate that person cease its conduct. M. ELAINE BUCCIARI ET AL., *ILLEGAL PRACTICE OF MEDICAL PROFESSIONS—PERSONS ENTITLED TO INJUNCTIVE RELIEF*, 43A C.J.S. *Injunctions* § 273 (2015).

<sup>249</sup> BAILEY & FISHMAN, *supra* note 248, § 28:1; Lori B. Andrews, *The Shadow Health Care System: Regulation of Alternative Health Care Providers*, 32 HOUS. L. REV. 1273, 1299 (1996); e.g., CAL. BUS. & PROF. CODE § 2052 (West 2011); FLA. STAT. § 458.305 (1997).

<sup>250</sup> Andrews, *supra* note 249, at 1299. In California, courts have interpreted pregnancy as a physical condition, and have held that midwives, who are not licensed physicians, engage in the unauthorized practice of medicine when they treat and assist women throughout pregnancy. *Bowland v. Mun. Court*, 556 P.2d 1081, 1087–88 (Cal. 1976).

ing tests, like sonogram results and pregnancy tests, and advising women to carry to term, a court could find that CPCs are engaging in the unauthorized practice of medicine.<sup>251</sup> Women entitled to civil damages may be able to recover monetary damages and attorney's fees, which could financially cripple CPCs and prevent them from practicing medicine and disguising their facilities as legitimate reproductive health clinics.<sup>252</sup>

Women should also seek damages by filing medical malpractice claims against CPCs who have harmed their reproductive health by misinforming women and restricting their ability to seek legitimate health services.<sup>253</sup> Under a medical malpractice claim, a plaintiff must prove that the physician deviated from the generally accepted standard of care in his or her practice, which caused injury to the patient.<sup>254</sup> According to the American Academy of Family Physicians, physicians who morally oppose a patient's decision, such as abortion, may withdraw from care of that patient.<sup>255</sup> However, if the physician chooses to engage in a conversation with a patient regarding her unintended pregnancy, the physician should: (i) be nonjudgmental and avoid coercing the patient, (ii) respect her decision and her rights, and (iii) present unbiased, accurate information regarding her options.<sup>256</sup> Harmed female patients should file medical malpractice claims against CPCs that do have licensed physicians on staff for failing to provide accurate reproductive health information.<sup>257</sup> Additionally, women should challenge licensed CPCs that have employed delay tactics to the point when the mother and baby's health are in jeopardy or an abortion procedure is no longer legally available.<sup>258</sup>

Although they could contribute to the discontinuation of CPC practices, unauthorized practice of medicine and medical malpractice claims face difficulties of their own.<sup>259</sup> Medical malpractice claims are subject to the same

<sup>251</sup> See Andrews, *supra* note 249, at 1299; McINTIRE, *supra* note 29, at 8; Winter, *supra* note 25.

<sup>252</sup> See COLO. REV. STAT. § 12-36-129; Judgment on Verdict at \*1, Lee v. He, No. 092178755 (Wash. Super. Ct. Dec. 7, 2012), 2012 WL 6651045; Complaint at \*1, Lee v. He, No. 092178755 (Wash. Super. Ct. Dec. 7, 2012), 2009 WL 8745354.

<sup>253</sup> Winter, *supra* note 25. In the United States, a successful medical malpractice claim generally requires: (i) a duty on the part of the physician to the patient; (ii) a breach of this duty; (iii) the physician's cause of the patient's harm; and (iv) damages. B. Sonny Bal, *An Introduction to Medical Malpractice in the United States*, 467 CLINICAL ORTHOPAEDICS & RELATED RES. 339, 342 (2009), [http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2628513/pdf/11999\\_2008\\_Article\\_636.pdf](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2628513/pdf/11999_2008_Article_636.pdf) [https://perma.cc/LDP2-X7DN].

<sup>254</sup> LEE S. KREINDLER ET AL., 15 N.Y. PRAC., N.Y. LAW OF TORTS § 13:12 (2015).

<sup>255</sup> David A. Moss et al., *Options for Women with Unintended Pregnancy*, 91 AM. FAM. PHYSICIAN 544, 546 (2015).

<sup>256</sup> *Id.* at 545.

<sup>257</sup> See McINTIRE, *supra* note 29, at 8–10, 15.

<sup>258</sup> See Evergreen Ass'n v. City of New York, 740 F.3d 233, 239–40 (2d Cir. 2014); McINTIRE, *supra* note 29, at 12.

<sup>259</sup> Winter, *supra* note 25.

limitations as consumer protection violation claims; women likely will not come forward to file lawsuits against CPCs for similar economic and privacy reasons.<sup>260</sup> This method of curbing CPC practice might not always be reliable because many women who have standing to file suit against a CPC simply want to move on from the experience.<sup>261</sup> Some attorneys even resist filing these types of claims for fear of interfering with the doctor-patient relationship.<sup>262</sup>

Additionally, because medical malpractice claims are only available to women who have suffered actual injuries from CPC conduct, they do not provide protections for women who have *only* been brutally shamed and morally condemned by CPC employees, but not harmed in the eyes of the law.<sup>263</sup> This standard is difficult to meet because it typically requires an ascertainable injury, evidenced by economic damages, like lost wages, medical bills, or lost earning capacity, and non-economic damages, like pain and suffering.<sup>264</sup> Despite these challenges, women who do bring successful medical malpractice claims against CPCs could deplete these centers' financial resources if the payouts to the women are substantial.<sup>265</sup> CPCs could be forced to obtain expensive medical malpractice insurance, which would considerably hinder CPCs' financial pools and ability to coax women with expensive advertisements and free services, or even maintain their network of four thousand deceptive facilities nationwide.<sup>266</sup>

## CONCLUSION

For nearly fifty years, anti-abortion activists have used crisis pregnancy centers (CPCs) to perpetuate their mission and dissuade women from terminating their pregnancies. Instead of providing the comprehensive reproductive health services they claim to offer—services these women desperately need—CPCs use whatever tactics they can to bully women, just like Nicole, out of abortion. Society should not tolerate these noxious facilities that mask their anti-abortion mission in an effort to lure vulnerable, disenfranchised, and marginalized women to their doorsteps. The need to stop CPCs from standing in the way of women's reproductive health and safety has never

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<sup>260</sup> *See id.*

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> Paul M. Coltoff, *Pain and Suffering*, 76 N.Y. JUR. 2D *Malpractice* § 408 (2016); R. Talmadge Hammock, *The Changing World of Medical Malpractice/Personal Injury Law*, 70 TEX. B.J. 51, 51 (2007).

<sup>265</sup> *See* Winter, *supra* note 25.

<sup>266</sup> *See* Evelyn YeaTyng Tang, *First, Do No Harm*, 2 J. HEALTH & BIOMEDICAL L. 143, 144 (2006) (reviewing IRA E. WILLIAMS, *THE CURE FOR MEDICAL MALPRACTICE* (2004)); Winter, *supra* note 25.



been more evident, and we must consider alternative solutions to standing up against their destructive practices.

Targeting CPCs' Achilles heel by urging the federal and state governments to relinquish CPCs as organizations they fund would most effectively weaken CPCs and diminish their detrimental impact on women's reproductive health and freedom. Already existing consumer protection statutes can also promote states to put an end to seductive CPC advertisements. Furthermore, medical malpractice and unauthorized use of medicine claims can help women who are subject to the medical lies and misinformation that CPCs dispense. Ultimately, employing these strategies will not eliminate all of the obstacles that CPCs pose to women across the nation today. However, taking these previously-unused initiatives will surely increase the likelihood of defeating CPCs and fosters the spirit of *Roe v. Wade*: that a woman, and no one else, is in charge of her reproductive decisions.

