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## **Wolf in Sheep's Clothing: The Legal Standing of Fake Abortion Clinics**

**Leela de Paula**\*

### **Abstract**

Across the United States, fake abortion clinics calling themselves “crisis pregnancy centers” (CPCs) are being set up in record numbers by pro-life organizations. These centers operate to compromise the reproductive autonomy of women by dissuading them from getting abortions, disproportionately targeting women from minority communities through deceitful advertisement, scientific misinformation, and false promises of after-birth care. Despite their highly questionable practices, CPCs have little to no regulation as compared to real abortion clinics, relying on legal technicalities and conservative political support in state legislatures for their ongoing operation. An analysis of their legality shows a history of court cases and legislation challenging their existence, often overturned in their favor by conservative forces, and the potential of a few ongoing cases to grant them further influence in communities by limiting abortion access. However, there are promising options to undermine their current legal standing using both medical and consumer laws. As abortion rights stand to be overturned in the Supreme Court, it is important to recognize the CPCs’ crucial role in the anti-abortion movement and to curb their growing influence by limiting their scope of operation through the law and other forms of legal action.

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### **Comment**

All over the United States, “crisis pregnancy centers” (CPCs) set up by pro-life organizations have been appearing in record numbers, far outnumbering clinics providing abortions. Fueled by pseudoscience and the conservative political agenda, crisis pregnancy centers operate to target vulnerable women - disproportionately women of color, immigrant women, and low-income women. CPCs target these women who often feel unsure about their reproductive situation to convince them to not get abortions by spreading false medical information, pretending to provide medical assistance, and promising after-birth care that never arrives. In this paper, I will examine why such centers exist and how they are able to operate under the law, drawing on both significant past and ongoing legal cases that influence their operation.

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Leela de Paula is an undergraduate at Smith College with a double major in the Study of Women & Gender and Government. She can be reached at [ldepaula@smith.edu](mailto:ldepaula@smith.edu).

Through an analysis of the legal standing of CPCs and the state of abortion rights today, I point to the urgent need to curb their influence in the United States before the prohibition of abortion empowers them further, and identify potential legal actions that would undermine their current legal standing. At a time like now where reproductive rights are being undermined by state legislatures and on the precipice of being overturned in the Supreme Court, it is imperative to recognize CPCs as the foot soldiers of the anti-abortion movement positioned to inflict direct harm on women's reproductive rights, especially if abortion is successfully criminalized.

According to the Guttmacher Institute, the first crisis pregnancy center in the United States was established in Hawaii in 1967, in response to the state legalizing abortion (Rosen, 2012). Fifty years later in 2017, it was estimated that between 2,500 and 4,000 centers across the country were in operation (Kimport et al, 2018). Crisis pregnancy centers, also known as "pregnancy resource" centers, are a type of non-profit organization that serve as "storefronts that use false and misleading advertising and offer of free services to lure women into their offices," with the goal of deterring pregnant women from getting abortions by engaging in fearmongering tactics (NARAL, 2016). The services they may offer range from free pregnancy tests and ultrasounds to promises of post-birth assistance, such as providing diapers or baby clothes. Although they are not licensed to provide medical services and do not generally have medical personnel as part of their staff, they present themselves online and in person as legitimate providers of healthcare. Even more concerning, NARAL Pro-Choice reports that some CPCs have "developed in sophistication to such a degree that they now offer certain limited medical services... [some] centers operate as medical clinics or [are] in the process of acquiring ultrasound equipment" (NARAL, 2016). Such developments abet their carefully constructed misadvertisement as unbiased health-care facilities, obscuring

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their underlying political agenda. However, they continue to be exempt from the regulation, licensing requirements, and general oversight that apply to legitimate health care facilities, enabling them to violate the rights of the women who fall prey to their deceptive practices.

Once women are through the doors of a CPC, they are subjected to “counselling” that construes abortion as a dangerous option for ending a pregnancy, despite overwhelming evidence that says otherwise. According to a comprehensive study in 2012, abortion is markedly safer than childbirth itself, with the “risk of death associated with childbirth... approximately 14 times higher than that with abortion” (Raymond & Grimes, 2012). However, many CPCs insist that abortion poses a number of significant risks to women. In a report released by the Committee on Government Reform of the House of Representatives, it was found that centers were telling women who sought counselling from them that induced abortion increased the risk of breast cancer, reduced fertility in the future, and had damaging mental effects such as “post-abortion stress” (likened to Post Traumatic Stress Disorder) and increased suicidal ideation (United States House of Representatives, 2006). These are all baseless claims with no scientific evidence to support them. “Alternative facts” like these are utilized to scare women into keeping their pregnancy, undermining their right to reproductive self-determination.

If the centers are unable to fully convince women to not go through with an abortion, they engage in a delaying tactic whereby staff advise them to take their time with their decision to have an abortion even though no state in the country allows access to abortion throughout the entirety of the pregnancy (NARAL, 2015). This form of misinformation weaponizes the law against pregnant women, intentionally keeping them oblivious about the time constraints of their reproductive decisions in their respective states and preventing them from being able to access legal abortion.

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A particularly concerning result of CPCs escaping legal regulation is their ability to collect and share sensitive information that women provide under the impression that the centers are subject to the same privacy standards as traditional medical clinics. According to Privacy International, anti-abortion organizations are accumulating data on the women who enter the thousands of CPCs across the country, which could aid them in not only improving their ability to profile and target vulnerable women online but also to track medical histories that they may share, including but not limited to abortions that women had or were planning to have (Privacy International, 2019). This, in the light of abortion bans sweeping the country through state legislatures, paves the way for CPCs to have access to incriminating information, increasing the risk of women to be criminally prosecuted for ending pregnancies. Additionally, having access to such information could be valuable in strengthening the political influence of the anti-abortion movement over future legislation (Privacy International, 2019). The collection of personal data, and exploitation of such data, by the CPCs is in direct violation of the privacy rights of women and undermines their human right to health.

Despite their blatant pseudoscience and violations of women's constitutional rights, the centers continue to receive upwards of \$60 million per year in state and federal funding through direct funding, special equipment, or even through federal abstinence-only program funding (NARAL, 2015). The centers also receive support from anti-choice lawmakers in Congress who push for their legitimation to encourage the notion that such centers are just like other health care facilities. Their legality revolves mainly around the lack of regulatory oversight and the fact that "their practices are considered to fall under the classification of free speech, which is protected by the First Amendment... [this] provides them with a loophole to avoid [legal] scrutiny" (Bryant & Swartz, 2018). Support by those in positions of

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power exacerbate the harm to women and encourages CPCs to continue to weaponize the First Amendment against reproductive rights.

An example of the usage of “free speech” in regards to CPCs can be seen in one of the most significant challenges to their operation, the Reproductive FACT Act in California, which required that the centers inform their customers about all their options for reproductive health services in the state, including legal abortion. This led to the infamous *National Institute of Family and Life Advocates v. Becerra* case in 2018, where the anti-abortion organization National Institute of Family and Life Advocates (NIFLA) representing more than 1,400 CPCs filed a lawsuit against the Act, claiming that it was a violation of their First Amendment rights to be compelled to share such information (*NIFLA v. Becerra*, 585 U.S. \_\_\_, 138 S. Ct. 2361 (2018)). The Supreme Court, in a 5-4 ruling, struck down the Act, weakening the pro-choice legal defense and enabling the anti-abortion movement to weaponize the First Amendment against vulnerable women and their reproductive rights. Indeed, the political power behind this decision was evident in then Vice President Mike Pence’s tweet applauding the outcome of the case: “protecting the sanctity of life is a priority of this Administration and we commend SCOTUS’ decision on this case” (Pence, 2019). It is thus clear that conservative elites undermine women’s reproductive rights by codifying pseudoscientific narratives into the law and enabling loopholes for the operation of CPCs.

In stark contrast to the leeway granted to CPCs when it comes to their legality, abortion clinics are under attack more than ever. Firstly, their access to federal and state funding is severely limited. Under the Trump administration, regulations were set in place that disqualified clinics that offered abortion services from receiving Title X funds, a federal grant program dedicated to providing comprehensive family planning, as well as preventing the provision of abortion referrals under the program to clients who wanted them

(Frederiksen et al, 2021). Additionally, their revenue is limited due to a 1977 legislative provision called the Hyde Amendment, which “forbids the use of federal funding for abortion except in cases of life endangerment, rape or incest” (Guttmacher Institute, 2021). With 15.6 million low-income women with Medicaid coverage - of whom 30% are Black and 24% are Hispanic - this severely impacts their ability to afford abortion, further undermining vulnerable women’s reproductive rights (Planned Parenthood, 2021). Secondly, many abortion clinics are subject to Targeted Regulation of Abortion Providers (TRAP) laws, additional regulations solely for abortion clinics. Past examples of such laws include holding abortion clinics to the same standard as ambulatory surgical centers, even though abortion clinics do not provide medical procedures as risky or invasive as surgical centers, as well as “requiring physicians who provide abortions to establish official relationships with local hospitals” (Guttmacher Institute, 2020). Both laws were struck down by the U.S. Supreme Court in 2016 but had long-lasting effects on both the clinics and the women prevented from accessing them. The over-regulation of abortion clinics and under-regulation of CPCs paint a clear image of the power imbalance in their respective legal standing, and demonstrate the significant role that these CPCs have in the current attack against women’s rights.

With *Dobbs v. Jackson Women’s Health Organization* - a case on the constitutionality of a pre-viability abortion ban in Mississippi - currently awaiting decision from the conservative-majority Supreme Court, many scholars and activists have raised the alarm around the precarity of reproductive rights in the United States (Center for Reproductive Rights, 2018). If *Roe v. Wade* is overturned, CPCs are in prime position to take over as the main legal providers of pregnancy counselling, placing them at the frontlines of the anti-abortion movement by directly interacting with women and monitoring their

pregnancy choices. Legal interventions are key to the dismantling of the anti-abortion power bloc, especially in regards to the operation of CPCs.

Due to California's Reproductive FACT Act being struck down by the Supreme Court, most regulations specifically aimed at CPCs became invalid (Vlach, 2020). However, there are a number of established avenues in other areas of law that can be used to undermine the existence of fake abortion clinics. Kate Vlach, an attorney general from Washington D.C. specializing in reproductive rights, proposed using Unfair, Abusive and Deceptive Practices Acts (UDAP laws) to investigate and prosecute the CPCs' practices. These Acts are consumer protection laws "designed to combat deceptive practices in the sale or offer of goods and services," which if used by states can apply to CPCs (Vlach, 2020). As states look for alternatives to disclosure laws, Vlach argues that Attorneys General can enforce an updated version of UDAP laws against CPCs while "avoiding the constraints imposed by the Supreme Court's most recent decision" (Vlach, 2020). There is power in these recommendations because Attorneys General will be able to assert their powers as checks and balances to establishments like CPCs that continue to violate women's rights.

Another potential legal method would be to extend the regulations applicable to medical centers to CPCs, leaning into their narrative of providing legitimate medical services. In 1972, the case of *Cobbs v. Grant* established that since patients are generally unknowledgeable in the medical realm and depend on their physician for accurate medical information, their consent to treatment must be an informed consent (*Cobbs v. Grant*, 8 Cal. 3d 229 (1972)). If the counselling services provided by CPCs were considered medical advice by legislation, they would have to take responsibility for any misinformation shared by their staff with their customers.

Regarding CPCs intentionally misrepresenting themselves online to target women, legislation could also be used to curb the spread of misinformation on popular platforms such as Facebook and Google. The Biden-Harris administration has advocated for the repeal of Section 230 of the Communications Decency Act which “has allowed social media sites to avoid being considered publishers and therefore not liable for the content found there” (Ehrlich, 2021). If there was strengthened government policy and oversight on the digital footprint of CPCs, their ability to deceive women would be dramatically curtailed.

At a time like now when reproductive rights are being undermined by state legislatures and on the precipice of being overturned in the Supreme Court, it is imperative to recognize CPCs as the footsoldiers of the anti-abortion movement positioned to inflict direct harm on women’s reproductive rights, especially if abortion is successfully criminalized. Given the legal standing of CPCs and the ongoing legal threats against reproductive rights in the Supreme Court, I argue that there is an urgent need to curb their political and social influence before the prohibition of abortion empowers them further,. With there being approximately three CPCs to every one abortion clinic, women in need of pregnancy counselling - especially those from a disadvantaged socioeconomic position - are at high risk of being medically deceived and fed lies about their reproductive options. As women’s reproductive rights continue to be debated in the highest court in the U.S., CPCs operate on the ground to directly subvert women’s human rights without any governmental regulation. They are positioned to dominate the field of pregnancy counselling and further the anti-abortion political agenda through pseudoscience if the constitutional basis of reproductive rights is overturned. Therefore, it is imperative that laws must be put in place to expose the CPCs for what they truly are - sham institutions manipulating women to further their

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conservative political agenda - before women's agency around their reproductive choices become a thing of the past.

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