



NYCLU

NEW YORK CIVIL LIBERTIES UNION

125 Broad Street
New York, NY 10004
212.607.3300
212.607.3318
www.nyclu.org

Testimony of the New York Civil Liberties Union

before

The New York City Council

Committee on Women's Issues

regarding

Limited Service Pregnancy Center Act (Int. No. 371)

November 16, 2010

My name is Donna Lieberman and I am the Executive Director of the New York Civil Liberties Union ("NYCLU"). I would like to thank the Committee on Women's Issues for inviting the NYCLU to provide testimony today relating to the proposed Limited Service Pregnancy Center Act ("LSPC Bill").

The NYCLU, the state affiliate of the American Civil Liberties Union, is a not-for-profit, nonpartisan organization with eight offices across the state, and nearly 50,000 members. The NYCLU's mission is to defend and promote the fundamental principles, rights and constitutional values embodied in the Bill of Rights of the U.S. Constitution and the Constitution of the State of New York. This includes the rights to privacy, personal autonomy, and equality that are the foundation of reproductive freedom, and the rights to free speech, assembly, and religious liberty embodied in the First Amendment. In light of our long history of vigorously defending and

balancing these sometimes competing constitutional concerns, the NYCLU is uniquely positioned to provide testimony on this bill.

The NYCLU believes that the right to decide whether to continue or terminate a pregnancy is fundamental to women's equality, dignity and personal autonomy. However, we also recognize that issues associated with reproductive health care are controversial. We value and encourage dialogue around those issues, and would contest any unlawful attempt to censor that dialogue. For that reason, the NYCLU has carefully considered the impact of the proposed legislation on the right to free speech. What this legislation attempts to do is to address the city's interest in preventing medical fraud and protecting a woman's ability to make decisions about her body, health and future free of coercion, deception and the resultant delay of medical care. If restrictions on speech are closely tailored to these aims, the NYCLU believes it can both protect the right to free speech and promote women's ability to make informed choices about their reproductive health care. To this end, we suggest changes today that we believe would ensure that the law strikes the appropriate balance between free speech and the right to access reproductive health care.

The city has a substantial interest in promoting public health and protecting individuals from medical fraud. Reports from across the country, including a local report concerning New York City released by NARAL Pro-Choice New York in October 2010, indicate that the advertising and business practices of Limited Service Pregnancy Centers ("LSPCs") give the impression that they are operating as medical facilities. The New York City NARAL Report identifies sixteen LSPCs in New York City and documents a pattern of practices that lead consumers to confuse LSPCs with licensed medical facilities. For example, reports have documented that LSPCs offer medical services such as pregnancy testing and ultrasounds; LSPC

facilities resemble medical offices, with reception areas and separate rooms where examinations and tests take place; LSPC staff ask consumers to provide detailed personal and health information; LSPCs provide written and verbal information about the risks and benefits of medical procedures; and LSPC staff often wear medical attire such as scrubs. Because we at the NYCLU wanted to understand better what is happening at LSPCs in the City, the NYCLU's Communications Director, Jennifer Carnig, visited an LSPC herself and will be testifying today about her experience.

Because LSPCs appear to the average person to be licensed medical facilities, the information they provide has the force of medical authority to the listener. As a result, many women rely on the advice they receive at LSPCs when making critical decisions related to their reproductive health. However, it is well-documented that LSPCs provide false and misleading medical information. And because the LSPCs themselves are not licensed by the state, and staff members are frequently not doctors, nurses, physician assistants or other licensed medical providers, LSPCs and their staffs are not held to the same standards as facilities and medical providers that are licensed to practice medicine and regulated by the state. This means that there is no way to ensure that the medical information women receive at LSPCs is accurate, and no recourse for women who are harmed by their reliance on such information when making decisions about their care. The New York City NARAL Report documents that LSPCs, both in written materials and through their staffs, routinely warn women of health risks associated with abortion that are simply medically inaccurate, such as future infertility, higher risk of breast cancer, and "post-abortion syndrome." The risks of other complications, such as sexual dysfunction, infection, cervical scarring, and even death are also wildly overstated. Further, there is also evidence that LSPCs engage in delay tactics to prevent women from pursuing care,

such as providing false information about the legal timeframe in which a woman may obtain an abortion, and telling women approaching the legal cut-off for abortion that they have plenty of time to decide whether to have an abortion. For example, an internet blog entry written by LSPC volunteers and posted on the website of a New York City LSPC, described a 15 year old girl who was pregnant, came to a LSPC, and received counseling from the volunteers who told her that she was “too far along” to terminate her pregnancy although she was within the legally permissible time frame to seek an abortion. A copy of this blog posting is attached to our testimony.

It is critical that women have accurate information when they make important decisions about their health. Relying on false and misleading information or delaying medical care can have particularly detrimental effects for pregnant women. Both are more likely when a woman does not seek out a licensed medical provider because she believes she is already receiving care from medical professionals. If the woman chooses to carry her pregnancy to term, prenatal care is vital to ensure both the health of the prospective mother and the fetus. If a woman chooses to have an abortion, doing so within the first trimester is far safer and less expensive. Further, if a woman delays making a decision about obtaining an abortion, she can be effectively prevented from obtaining the health care to which she is entitled under the law. Thus, tactics that delay or mislead women about the care they are receiving or discourage them from seeking care from licensed medical providers pose serious health risks.

Councilmember Lappin, Speaker Quinn, and the other sponsors of this legislation are attempting to address these harms with a bill that would impose an affirmative duty to speak. The right to speak and the right to refrain from speaking are of equal importance to the individual liberties embodied within the First Amendment. There is no question that LSPCs and

their staff have free speech rights. These rights are critical to the robust public debate about a range of topics, including abortion, and our society's commitment to democratic self-government. It is vital that these rights are preserved and guarded. Those who oppose the constitutional rights that allow women to choose abortion are free to use the power of their words—even if false or misleading—in order to fully engage in civic debate around this issue. However, they should not be able to do so under the guise of medical authority.

Disclosure requirements, like those included in the proposed legislation, compel individuals or entities to speak and are met with heightened constitutional scrutiny. However, courts regularly uphold disclosure requirements when they are closely tailored to meet the government's asserted interest. We believe that the circumstances at hand present such a narrow situation.

Here, the City has a strong interest in preventing delays in the receipt of health care and protecting consumers from deception. The proposed legislation abrogates this harm in several key ways. First, it requires LSPCs to place individuals entering their facilities on notice that they are not receiving information or services from a licensed medical provider. Second, it requires that LSPCs inform individuals of the services they will not receive at the LSPC, and thus, reduces a delay in medical care that the individual is seeking. Third, it requires that the LSPC keep confidential the personal and medical information it collects.

To ensure that the proposed legislation concerning LSPCs is crafted to serve the government's interest and adequately safeguard speech, the NYCLU offers the following suggested changes to the current bill for the Council to consider. Our suggestions are aimed at ensuring that the bill comports with the First Amendment.

First, we propose alterations to the definition of a LSPC to ensure that it does not target entities based upon their unwillingness to provide or refer for abortion services. The definition we propose would no longer apply exclusively to facilities that do not provide abortion or contraception. This change ensures that the definition only sweeps in entities that provide pregnancy counseling, are not already regulated by another state entity, and may be confused with bona fide medical providers — regardless of the entities’ ideology or willingness to perform abortion or provide contraception. Thus, the definition is ideologically neutral and does not target a viewpoint concerning abortion, and instead focuses on the harm the government is trying to prevent, medical fraud.

Second, the NYCLU recognizes that a disclosure requirement is an appropriate remedy in this case because it adequately addresses the harm without prohibiting any speech. By mandating a limited set of disclosures without restricting what LSPCs and their staff say, the government imposes less of a burden on First Amendment rights. However, the NYCLU proposes changes to the content of the required disclosures in the current LSPC Bill to ensure that the substance of the disclosure does not overreach beyond the government’s interest.

The legislation as currently drafted requires LSPCs to disclose that they do not provide or refer for abortion or FDA-approved contraceptive drugs and devices. The NYCLU instead proposes that a limited service pregnancy center that does not provide referrals for prenatal care or abortion services, disclose that it does not provide such referrals. By including both prenatal care and abortion, this disclosure seeks to prevent delays in medical care regardless of whether a woman seeks to continue or terminate her pregnancy. The NYCLU further recommends that LSPCs be required to state that the New York City Department of Health and Mental Hygiene encourages women who are or who may be pregnant to consult with a licensed medical provider.

Together, these disclosures place women on notice that they are not receiving information or services from medical providers and encourage them to seek the care they need. Both are closely tied to the City's interest in preventing reliance on medical information and services that fail to comply with professional standards and in preventing delayed care for pregnant women.

In conclusion, it is the opinion and testimony of the NYCLU that the proposed legislation concerning LSPCs can improve the City's ability to safeguard women's access to reproductive health care services and to prevent delays in medical care. The NYCLU believes the legislation can adequately balance this important goal with the rights of individuals to express their views. It is thus a welcome step forward in fulfilling the City's mission to protect consumers in need of health care services, while respecting the diversity of views of all of the people of the City of New York. In the hope that this legislation successfully creates a solution that is narrowly tailored to remedy the problems that exist, we respectfully submit our proposed changes to the Committee.