

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PREGNANCY CARE CENTER
OF NEW YORK, et al.

Plaintiffs,

v.

CITY OF NEW YORK, et al.,

Defendants.

No. 11-cv-2342 (WHP)

THE EVERGREEN ASSOCIATION, INC.
et al.

Plaintiffs,

v.

CITY OF NEW YORK,

Defendant.

No. 11-cv-2055 (WHP)

BRIEF OF AMICUS CURIAE NEW YORK CIVIL LIBERTIES UNION

MELISSA GOODMAN
ALEXIS KARTERON
ARTHUR N. EISENBERG
KATHARINE ES BODDE*
NEW YORK CIVIL LIBERTIES
UNION FOUNDATION
125 Broad Street, 19th Floor
New York, NY 10004
Phone: (212) 607-3300
Fax: (212) 607-3318
*Not admitted to the Southern District of New York

Attorneys for Amicus Curiae New York Civil Liberties Union

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TABLE OF CONTENTS

INTRODUCTION AND INTEREST OF *AMICUS CURIAE* 1

PREGNANCY SERVICES CENTERS AND LL17 2

ARGUMENT 5

 I. DISCLOSURE LAWS MUST COMPORT WITH THE FIRST AMENDMENT 5

 II. LL17 COMPELS STATEMENTS OF FACT, NOT IDEOLOGY 8

 III. WHETHER ANALYZED AS A COMMERCIAL OR NON-COMMERCIAL
 DISCLOSURE LAW, LL17 PASSES CONSTITUTIONAL MUSTER 10

 A. There is a Strong Argument for Analyzing LL17 as a Commercial
 Disclosure Law 10

 B. LL17 Satisfies Exacting Scrutiny 16

CONCLUSION 21

APPENDIX A-1

TABLE OF AUTHORITIES

Cases

<i>Abramson v. Gonzalez</i> , 949 F.2d 1567 (11th Cir. 1992).....	15
<i>Alexander v. Cahill</i> , 598 F.3d 79 (2d Cir. 2010).....	11
<i>Bd. of Trs. of State Univ. of N.Y. v. Fox</i> , 492 U.S. 469 (1989)	12
<i>Beverley v. Choices Women’s Med. Ctr., Inc.</i> , 78 N.Y.2d 745 (1991)	12
<i>Black v. Arthur</i> , 201 F.3d 1120 (9th Cir. 2000)	16
<i>Bolger v. Youngs Drug Products Corp.</i> , 463 U.S. 60 (1983).....	passim
<i>Brown v. Socialist Workers ’74 Campaign Comm.</i> , 459 U.S. 87 (1982)	6
<i>Buckley v. Am. Constitutional Law Found., Inc.</i> , 525 U.S. 182 (1999).....	7
<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976)	7, 16
<i>Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm.</i> , 447 U.S. 557 (1980)	12
<i>Christian Legal Soc’y v. Martinez</i> , 130 S.Ct. 2971 (2010)	20
<i>Citizens United v. F.E.C.</i> , 130 S. Ct. 876 (2010)	6, 7, 16, 19
<i>Consol. Edison Co. of N.Y. v. Pub. Serv. Comm’n</i> , 447 U.S. 530 (1980).....	20
<i>Davis v. F.E.C.</i> , 128 S.Ct. 2759 (2008).....	7
<i>Edenfield v. Fane</i> , 507 U.S. 761 (1993).....	14, 17
<i>Fargo Women’s Health Org., Inc. v. Larson</i> , 381 N.W.2d 176 (N.D. 1986)	11, 12, 13
<i>Friedman v. Rogers</i> , 440 U.S. 1 (1979)	17
<i>Hill v. Colorado</i> , 530 U.S. 703 (2000).....	17
<i>Hunt v. Wash. State Apple Adver. Comm’n</i> , 432 U.S. 333 (1977).....	17
<i>John Doe No. 1 v. Reed</i> , 130 S. Ct. 2811 (2010)	7
<i>Madsen v. Women’s Health Ctr.</i> , 512 U.S. 753 (1994).....	17
<i>McIntyre v. Ohio Elections Comm’n</i> , 514 U.S. 334 (1995)	6, 7

<i>Milavetz, P.A. v. United States</i> , 130 S. Ct. 1324 (2010)	7
<i>Mother & Unborn Baby Care of North Texas, Inc. v. State</i> , 749 S.W.2d 533 (Tx. 1988).....	12
<i>N.Y. State Rest. Ass’n v. N.Y. City Bd. of Health</i> , 556 F.3d 114 (2d Cir. 2009)	8, 11, 13, 15
<i>NAACP v. Alabama</i> , 357 U.S. 449 (1958)	6
<i>Nat’l Elec. Mfr. Ass’n v. Sorrell</i> , 272 F.3d 104 (2d Cir. 2001).....	7, 8, 11, 15
<i>Nat’l Fed. of Blind of Texas v. Abbott</i> , 682 F.Supp.2d 700 (N.D. Tex. 2010).....	11
<i>Nat’l Servs. Grp. v. Painting & Decorating Contractors</i> , 2006 WL 2035465 (C.D. Cal, Jul. 18, 2006)	11
<i>Planned Parenthood of Minn. v. Rounds</i> , 530 F.3d 724 (8th Cir. 2008)	9, 10
<i>Planned Parenthood of Southeastern Pa. v. Casey</i> , 505 U.S. 833 (1992).....	7, 9
<i>Riley v. Nat’l Fed’n of the Blind</i> , 487 U.S. 781 (1988).....	6, 14, 15
<i>Rumsfeld v. FAIR</i> , 547 U.S. 47 (2006).....	8
<i>S.F. Arts & Athletics, Inc. v. U.S. Olympic Comm.</i> , 483 U.S. 522 (1987)	12
<i>Spitzer v. Oper. Rescue Nat’l</i> , 273 F.3d 184 (2d Cir. 2001)	17
<i>Talley v. California</i> , 362 U.S. 60 (1960).....	6
<i>Thompson v. West. States Med. Ctr.</i> , 535 U.S. 357 (2002).....	19
<i>Transp. Alts., Inc. v. City of N.Y.</i> , 218 F.Supp.2d 423 (S.D.N.Y. 2002).....	11
<i>Turner Broad. Sys., Inc. v. FCC</i> , 520 U.S. 180 (1997).....	18
<i>United States v. Scott</i> , 187 F.3d 282 (2d Cir. 1999).....	16
<i>United States v. United Foods, Inc.</i> , 533 U.S. 405 (2001).....	10
<i>Va. State Bd. of Pharm. v. Va. Citizens Consumer Council Inc.</i> , 425 U.S. 748 (1976).....	14
<i>Vill. of Schaumburg v. Citizens for a Better Env’t</i> , 444 U.S. 620 (1980)	10, 15
<i>West Va. State Bd. of Educ. v. Barnette</i> , 319 U.S. 624 (1943).....	6
<i>Wooley v. Maynard</i> , 430 U.S. 705 (1977).....	5, 6, 8

Zauderer v. Off. of Disc. Counsel, 471 U.S. 626 (1985).....6, 7, 15, 19

Statutes

N.Y.C. Admin. Code § 20-815.....2, 20

N.Y.C. Admin. Code § 20-816.....5

INTRODUCTION AND INTEREST OF *AMICUS CURIAE*

The New York Civil Liberties Union (NYCLU), an affiliate of the American Civil Liberties Union, is a non-profit, non-partisan organization with approximately 50,000 members. The NYCLU is committed to the protection of First Amendment rights and to the protection of women's fundamental reproductive freedoms; it has a long history of vigorously defending and balancing these constitutional concerns. Thus, we have an interest in ensuring that disclosure laws like Local Law 17 (LL17) appropriately protect both a pregnancy services center's (PSC) First Amendment rights and a prospective PSC client's right and ability to make informed, time-sensitive decisions about her body, health, and future free from deception, confusion, and coercion.

To be clear, we would oppose a law that improperly forced a person to express approval of abortion or contraceptives. We would similarly oppose a law that improperly restricted one's ability to persuade women not to have an abortion or use contraceptives, or to express their disapproval of abortion or contraceptives. We would also oppose a law that improperly imposed speech restrictions on an entity simply because it was opposed to abortion or contraceptives. And we would oppose a law that improperly restricted public debate about these controversial subjects.

But LL17 does none of these things. It simply requires that PSCs – which by definition provide health care services to women and appear to be, but are not actually, licensed health care facilities or licensed professionals – make certain factual disclosures that are narrowly-crafted to ensure that no woman interested in a PSC's services will mistakenly believe that she will obtain a full range of health care services from a real doctor in a real medical office. The purpose of LL17's required disclosures is to prevent consumer deception and the health harms that flow to women if they delay or forego obtaining real, necessary, and time-sensitive medical care. The law does not restrict what PSCs can say to their clients about their reproductive health options. Nor does the law dictate that PSCs express any message or view about abortion or contraceptives. The law merely

requires PSCs to be up-front with potentially pregnant health care consumers about who they are and the range of health care services they do or do not provide. PSCs remain free to persuade women not to have abortions or use contraceptives. What LL17 does not allow them to do is provide women with health services and health information under the guise of medical authority, if a licensed medical provider does not supervise all such activities at the facility.

For the reasons discussed below, the NYCLU believes this law passes constitutional muster. As an initial matter, because LL17 compels disclosure of factual information regarding the provision of medical services, there is a sound basis for analyzing it under the rational basis scrutiny typically applied to commercial disclosure laws. The Court need not reach this arguably more novel and complex question, however, because LL17 meets the requirements of the “exacting” scrutiny that is applied to laws that compel disclosure of non-commercial, factual information and do not significantly burden individual rights or core political speech. LL17 need not meet the requirements of “strict” scrutiny because it does not compel PSCs to express an ideological message; it does not significantly burden PSCs’ constitutional rights; it neither compels nor severely burdens political speech; and it does not target, regulate, or compel speech based on viewpoint.

PREGNANCY SERVICES CENTERS AND LL17

Pregnancy services centers advertise and provide services such as ultrasounds, sonograms, and pregnancy tests to women who are or may be pregnant. *See* N.Y.C. Admin. Code § 20-815(g) (defining PSCs). As such, they provide services that licensed medical professionals provide in the commercial marketplace. Indeed, many PSCs resemble – and appear to the reasonable consumer to be – real, full service doctors’ offices but they are not licensed or regulated health care facilities. Ex. I (N. Y. C. Council, Comm. on Women’s Issues, Rep. of the Hum. Servs. Div., Int. No. 371-A

(Mar. 2, 2011)).¹ Many PSC volunteers and staff collect detailed and private health information from clients, show clients to private rooms that contain medical supplies and equipment, perform ultrasounds or sonograms, provide pregnancy tests, and provide health information to women who learn they are pregnant. *Id.* at 2, 9.² They perform these activities, sometimes dressed in scrubs, even though they are not licensed or regulated health care professionals. *Id.* at 3. PSCs help women decide how to deal with their pregnancy. Most do not, however, provide or refer for time-sensitive pregnancy services such as prenatal care, emergency contraceptives, or abortion. *Id.* at 2. According to testimony provided to the City Council, many provide medically-inaccurate information about abortion and contraceptives. *See e.g.*, Ex. H (*Hearing on Int. No. 371 Before the N. Y. C. Council, Comm. on Women’s Issues* (Nov. 16, 2010) (testimony of Kelli Conlin, appending NARAL Rep.)). Some engage in tactics designed deliberately to delay a woman’s ability to obtain an abortion or to utilize emergency contraceptives. Ex. I at 3-5; *see also Hearing on Int. No. 371-A Before the N. Y. C. Council, Comm. on Women’s Issues* (Mar. 1, 2011) (testimony of Traci Perry, Planned Parenthood of N.Y.C.: Crisis Pregnancy Center Surveying Summary and Stories (hereinafter “PPNYC: Surveying Summary and Stories”)).³ Many do not voluntarily disclose to their clients that they are not medical professionals unless asked directly. Ex. I at 3. Some advertise in the Yellow Pages under categories entitled “abortion” or “medical,” *id.* at 7, and on public transportation, *see* Ex. G at 121-22 (*Hearing on Int. No. 371 Before the N. Y. C. Council, Comm. on Women’s Issues* (Nov. 16, 2010) (testimony of Expectant Mother Care (EMC) Director Chris Slattery discussing EMC’s subway ads)).

¹ All citations to exhibits contained herein refer to the exhibits attached to the Declaration of Nicholas Ciappetta in Support of Defendants’ Opposition to Plaintiffs’ Motion for a Preliminary Injunction, dated May 18, 2011.

² *See also* Ex. H (NARAL Pro-Choice N.Y. Found. & Nat’l Inst. for Reproductive Health, *She Said Abortion Could Cause Breast Cancer: A Report on the Lies, Manipulations, and Privacy Violations of Crisis Pregnancy Centers* (2010) (hereinafter “NARAL Rep.”)).

³ Available at <http://legistar.council.nyc.gov/View.ashx?M=F&ID=1349372&GUID=71CFC2D2-3159-453E-950B-70616BD8F15A>. A courtesy copy of this report is attached in an appendix to this brief.

In the testimony presented to the City Council, a person who visited one of plaintiff EMC's facilities when she was 23 weeks pregnant provided an informative illustration of how some PSCs operate. When this person visited a PSC, which "looked and felt like a doctor's office," she filled out paperwork that asked for her full medical and relationship history. Ex. G at 150-52 (testimony of Jennifer Carnig). She observed "a woman in scrubs was seeing patients in an exam room that looked like every OBGYN office [she'd] ever been in." *Id.* at 151. She was brought to a bathroom, handed an over-the-counter pregnancy test, and told to take the test. *Id.* She was then told that her test was "inconclusive" and that "[t]he only way to know for sure was a sonogram." *Id.* She was then "taken into the examination room where the woman in scrubs pulled a wand over [her] belly and played the sound of the heartbeat for [her]." *Id.* After "a few more quick swipes," the woman in scrubs said that she had given the baby a "full examination," and pronounced the baby "healthy and perfect." *Id.* The entire procedure "took less than five minutes." *Id.* If she didn't know better, she would have assumed she'd "had a full checkup." *Id.*

The City Council found, based on multiple reports and hours of testimony, that some PSCs engage in deceptive practices that not only confuse consumers but delay women's access to and receipt of real, necessary, and time-sensitive pregnancy-related health care. Ex. I at 10; LL17 (legislative findings and intent). Health care providers and clergy testified about women who had been confused or deceived into thinking that the PSC they visited was a full service medical clinic, and experienced delays in seeking real medical care for their pregnancies as a result. *See* PPNYC: Surveying Summary and Stories; Ex. H (testimony of Dr. Anne Davis); *id.* (testimony of Dr. Lynette Leighton); *id.* (testimony of Dr. Linda Prine); *id.* (testimony of Dr. Vanita Kumar); *id.* (testimony of Dr. Melanie Canon); *id.* (testimony of Rev. Dr. Earl Kooperkamp); *id.* (testimony of Kristan Toth); Ex. G at 64-67, 88-90 (testimony of Balin Anderson); *id.* at 193-95, 201 (testimony of Dr. Marjana Banzil); *id.* at 221-24 (testimony of Rev. Matthew Westfox). The City Department

of Health and Mental Hygiene (“DOH”) also testified about the health risks of delaying certain pregnancy-related medical care, and the health benefits of receiving prompt prenatal care, emergency contraceptives, and abortion services as early in a pregnancy as possible. Ex. G at 15-57 (testimony of Dr. Susan Blank).

The City enacted LL17 to ensure that pregnant women receive necessary medical care in a timely fashion, and that women who utilize PSCs’ services do not delay or forego obtaining that care because they mistakenly believe they have received it already. LL17 (legislative findings and intent). To these ends LL17 requires PSCs to post signs in their offices and state in their advertisements: (1) whether the PSC has a licensed medical provider on staff who supervises the provision of all services; and (2) whether the PSC does or does not provide or provide referrals for prenatal care, emergency contraceptives, and abortion. N.Y.C. Admin. Code § 20-816(b)-(e), (f)(1). The law also requires PSCs to convey the fact that DOH encourages women who are or may be pregnant to consult a licensed medical provider. *Id.* at § 20-816(a). PSCs must also make these disclosures orally, but only when a client specifically requests prenatal care, emergency contraceptives, or abortion services. *Id.* at § 20-816(f)(2).

Organizations that provide services to pregnant women have challenged LL17 in two cases before this Court. In both cases, plaintiffs have sought a preliminary injunction enjoining enforcement of the law on the grounds that it compels speech in violation of the First Amendment. For the reasons that follow, *amicus* urges that preliminary injunctive relief be denied.

ARGUMENT

I. DISCLOSURE LAWS MUST COMPORT WITH THE FIRST AMENDMENT.

The disclosures LL17 requires undoubtedly implicate PSCs’ First Amendment rights. The First Amendment protects not only the right to speak but the right to refrain from speaking. *Wooley v. Maynard*, 430 U.S. 705 (1977). Although LL17 does not restrict what PSCs may say to their

clients on any subject, the law does require them to make factual statements they might not otherwise make. Thus, the law must comply with the First Amendment.

The level of scrutiny that applies to compelled speech laws depends on the nature of the speech that is compelled. Laws that compel a speaker to express an ideology or opinion with which they disagree are strongly disfavored and are evaluated under strict judicial scrutiny. *See id.* at 714-16 (striking down compelled motto on license plate); *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 633-35 (1943) (striking down compelled pledge and flag salute).

Laws that compel disclosure of factual information are often evaluated differently. This is because such disclosure requirements are traditionally viewed as less offensive to First Amendment values than compelled ideological statements or direct restraints on speech. *Citizens United v. F.E.C.*, 130 S. Ct. 876, 914 (2010) (“[D]isclosure requirements may burden the ability to speak, but they impose no ceiling on [expression] and do not prevent anyone from speaking” (internal citations omitted)); *Zauderer v. Off. of Disc. Counsel*, 471 U.S. 626, 650-51 (1985) (there are “material differences between [purely factual and uncontroversial] disclosure requirements and outright prohibitions on speech”).

Nonetheless, laws that compel factual disclosures can sometimes have serious adverse consequences as a result of disclosure. Such serious consequences arise where the identification of individual names may subject such individuals to retaliatory conduct and serious harm, *see, e.g., NAACP v. Alabama*, 357 U.S. 449, 460-61 (1958); *Brown v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87, 91-92 (1982), or where the identification of individuals may “chill” speech because of fear of retaliation or embarrassment, *see, e.g., Talley v. California*, 362 U.S. 60, 64-65 (1960); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 341-43 (1995). There are also factual disclosure requirements that are so inextricably bound with substantive, ideological expression that the disclosure requirement will necessarily curtail speech. *See Riley v. Nat'l Fed'n of the Blind*, 487

U.S. 781, 796 (1988). In all of these circumstances, courts have evaluated such disclosure provisions under either “strict” scrutiny or a form of “exacting” scrutiny that approaches strict scrutiny. *See, e.g., McIntyre*, 514 U.S. at 358 (equating “exacting” scrutiny with the “strictest standard of review”).

Where, however, laws that compel factual disclosures do not expose individuals to retaliation or serious harm, and do not significantly burden or limit speech, courts have evaluated such laws under “exacting” scrutiny that is akin to “intermediate,” not “strict,” scrutiny. The Supreme Court’s treatment of campaign disclosure requirements is illustrative. The Court recently summarized this body of law in *John Doe No. 1 v. Reed*, 130 S. Ct. 2811, 2818 (2010). Citing *Buckley v. Valeo*, 424 U.S. 1, 64 (1976), *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 204 (1999), *Davis v. F.E.C.*, 128 S.Ct. 2759, 2775 (2008), and *Citizens United*, 130 S.Ct. at 914, the Court observed that campaign disclosure laws are reviewed under “exacting scrutiny,” which requires courts to assess whether there is “a substantial relation between the disclosure requirement and a sufficiently important governmental interest.” *Id.* The disclosures in these cases involved core political speech and yet because of the modest burdens the disclosure requirements at issue imposed, the Court applied a less rigorous form of “exacting,” not “strict,” scrutiny.⁴

The level of judicial scrutiny is further diminished where disclosure requirements relate to the provision of goods and services. Indeed, laws that mandate disclosure of “purely factual and uncontroversial” information about commercial services receive the lowest level of constitutional scrutiny. *Zauderer*, 471 U.S. at 650. A commercial disclosure law is constitutional so long as the disclosures “are reasonably related” to a state’s interest in “preventing deception of consumers,” *Milavetz, P.A. v. United States*, 130 S. Ct. 1324, 1339-40 (2010); alerting consumers to health risks,

⁴ Indeed, in some cases, the Court has evaluated factual disclosure requirements under even more minimal standards. *See, e.g., Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 882 (1992) (seemingly applying rational basis scrutiny to law requiring factual disclosures by doctors).

Nat'l Elec. Mfr. Ass'n v. Sorrell, 272 F.3d 104, 114-16 (2d Cir. 2001); or helping citizens make informed, healthier choices, *N.Y. State Rest. Ass'n v. N. Y. City Bd. of Health*, 556 F.3d 114, 134-35, 137 (2d Cir. 2009). Commercial disclosure laws receive only minimal scrutiny because “mandated disclosure of accurate, factual, commercial information does not offend . . . core First Amendment values”; to the contrary, they “further . . . the First Amendment goal of the discovery of truth and contribute[] to the efficiency of the marketplace of ideas.” *Sorrell*, 272 F.3d at 113-14.

II. LL17 COMPELS STATEMENTS OF FACT, NOT IDEOLOGY.

PSCs must disclose whether they have a licensed medical provider on staff; whether they provide three time-sensitive health services; and that the City encourages women who are or may be pregnant to see a licensed medical provider. These are factual statements that do not force PSCs to adopt a message or express an opinion – let alone one with which they disagree. In this sense, these disclosures are far different from the ideological messages that citizens were compelled to convey in *Wooley* and *Barnette*. Compare *Wooley*, 430 U.S. at 715 (“Here, as in *Barnette*, [the state] forces an individual . . . to be an instrument for fostering public adherence to an ideological point of view he finds unacceptable.”) with *Rumsfeld v. FAIR*, 547 U.S. 47, 62 (2006) (compelled factual statements about logistics of campus military recruitment was “not the same as” a “mandated pledge or motto” and it “trivializes the freedom protected in *Barnette* and *Wooley* to suggest that it is”). Thus, the strict scrutiny required when laws compel ideological speech is not applicable here.⁵

⁵ We acknowledge that the disclosure that DOH encourages women to see licensed providers presents a closer question. Although this is arguably less opinion-based and ideological than statements *doctors* can be compelled to make to pregnant patients, *see infra* at 9, this disclosure does require PSCs to convey the City’s policy statement. However, even if the Court were subject this disclosure to strict scrutiny, it would meet that standard. As discussed below, the City’s interest in protecting women’s health and ensuring they obtain time-sensitive medical care is compelling. *See infra* at 17. The disclosure furthers this interest in a narrowly-tailored way without burdening more speech than necessary because it requires only unlicensed service providers to alert women considering their services of the importance of seeing licensed professionals. This disclosure is necessary to accomplish the City’s goals because, without it, women who come to PSCs may learn that they are not seeing licensed professionals but will remain unaware that it is important that they do. Thus, without this disclosure, women may still forego necessary, time-sensitive care.

The disclosures here are no less factual than the information the Supreme Court has held that *doctors* can be required to disclose to ensure pregnant women make informed health decisions. In *Casey*, the Court upheld a law that compelled doctors, before performing an abortion, to disclose “the nature of the procedure,” “the health risks,” the “probable gestational age of the unborn child,” and the “availability of printed materials published by the State describing the fetus and providing information about medical assistance for childbirth [and] child support from the father, and a list of agencies which provide . . . services as alternatives to abortion.” 505 U.S. at 881. Applying only minimal scrutiny, the Court held that these disclosures did not violate the First Amendment because they compelled only “truthful, non-misleading” statements. *Id.* at 882. If laws can, consistent with the First Amendment, force *doctors* to make certain factual statements to ensure that women make informed pregnancy-related decisions, by what logic can the government not be permitted to require truthful, factual disclosures from people who provide similar pregnancy-related services but who are not licensed professionals, are not supervised by licensed professionals, and, in some instances, may only deceptively appear to be licensed professionals? If anything, the state’s interest in requiring such entities to be up-front with women is even more compelling than with respect to doctors who are subject to modes of professional discipline and regulation.

Indeed, LL17’s disclosures are more factual – and far less troubling as a First Amendment matter – than the opinion-based and ideological statements that lower courts have found doctors can be required to convey to pregnant women deciding whether to terminate their pregnancies. For example, in *Planned Parenthood of Minn. v. Rounds*, 530 F.3d 724 (8th Cir. 2008), the court evaluated a law requiring doctors to disclose that “the abortion will terminate the life of a whole, separate, unique, living being”; the woman “has an existing relationship with that unborn human being”; and contact information for a nearby anti-abortion “pregnancy help center.” *Id.* at 726-27. Concluding the state may “require a physician to provide truthful, non-misleading information

relevant to a patient’s decision to have an abortion,” the court found that plaintiffs were unlikely to succeed in their First Amendment challenge. *Id.* at 734-35. Unlike the doctors in this case, PSCs are not required to say anything non-factual nor ideological to their pregnant clients.

III. WHETHER ANALYZED AS A COMMERCIAL OR NON-COMMERCIAL DISCLOSURE LAW, LL17 PASSES CONSTITUTIONAL MUSTER.

A. There is a Strong Argument for Analyzing LL17 as a Commercial Disclosure Law.

The Supreme Court has not demarcated a clear line between commercial and non-commercial speech. At times, the Court has described commercial speech as “speech that does no more than propose a commercial transaction.” *United States v. United Foods, Inc.*, 533 U.S. 405, 409 (2001). But it has also described commercial speech more expansively. For example, in *Bolger v. Youngs Drug Products Corp.*, the Court found that a contraceptive distributor’s informational pamphlets about the “desirability and availability” of contraceptives was commercial speech even though they “c[ould] not be characterized merely as proposals to engage in commercial transactions.” 463 U.S. 60, 62, 66 (1983). In reaching this conclusion, the Court identified three factors that inform whether speech is commercial: whether the speech constitutes an advertisement, *id.* at 66; whether it references a particular product or service, *id.* at 66 n.14; and whether the speaker has an economic motivation, *id.* at 67. The Court held that the pamphlets were commercial speech because each of these factors was met. *Id.* In doing so, however, it did not insist that all three factors were necessary to the conclusion that the speech at issue was “commercial” and it emphasized that none of the factors was necessary or dispositive. *Id.* at 67 & n.14.

In *Vill. of Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620 (1980), the Court similarly suggested that commercial speech is not limited only to speech that proposes a commercial transaction. In finding that charitable solicitation was not commercial speech, the Court distinguished charitable advocacy from expression that “inform[ed] private economic

decisions” or was “primarily concerned with providing information about the characteristics and costs of goods and services.” *Id.* at 632. Under the *Schaumburg* analysis, speech can be deemed commercial when it relates to the description of the nature or characteristics of a service or product.

Similarly, in disclaimer cases, courts have treated, as commercial, laws that compel disclosures about the health risks of, or that describe, a product or service. *See Sorrell*, 272 F.3d at 114-16 (upholding product warning labels); *N.Y. State Rest. Ass’n*, 556 F.3d at 131-34 (upholding menu calorie disclosures). These kinds of compelled disclosures do not directly promote a commercial transaction but do supply consumers with accurate product and service information.

Nor is commercial speech limited solely to speech motivated by profit. *See Bolger*, 463 U.S. at 67 & n.14 (economic motivation not a required or dispositive factor in commercial speech determination). Courts have found that “the mere fact that a speaker is a nonprofit organization does not preclude its speech from being commercial.” *Nat’l Servs. Grp. v. Painting & Decorating Contractors*, 2006 WL 2035465, at *4 (C.D. Cal. Jul. 18, 2006); *see also Alexander v. Cahill*, 598 F.3d 79 (2d Cir. 2010) (not distinguishing between private and non-profit lawyers when assessing advertising restrictions as commercial speech regulations); *Transp. Alts., Inc. v. City of N.Y.*, 218 F.Supp.2d 423 (S.D.N.Y. 2002) (applying *Bolger* factors and finding non-profit’s advertising that included corporate sponsors’ names and logos can constitute commercial speech), *aff’d on other grounds in* 340 F.3d 72 (2d Cir. 2003). It is the “character of” the speech at issue, not the “organization’s status” as a for- or non-profit entity that determines whether speech is commercial. *Nat’l Fed. of Blind of Texas v. Abbott*, 682 F. Supp. 2d 700, 710 (N.D. Tex. 2010).

For this reason, courts have found that a speaker can engage in commercial speech when they are advertising and distributing free services or products in a commercial marketplace. In *Fargo Women’s Health Org., Inc. v. Larson*, 381 N.W.2d 176 (N.D. 1986), the North Dakota Supreme Court concluded that an anti-choice clinic that provided free pregnancy tests and

counseling engaged in commercial speech when it “advertise[d] services in a commercial context.”

Id. at 181. The court reasoned that:

Irrespective of the degree, if any, that monies are received by the [clinic] from its clients we do not believe that factor is dispositive of our determination that the communication involved is commercial speech. More importantly, the [clinic’s] advertisements are placed in a commercial context and are directed at the providing of services rather than toward an exchange of ideas. The [clinic] advertisements offer medical and advisory services in addition to financial assistance. In effect, the [clinic’s] advertisements constitute promotional advertising of services through which patronage of the clinic is solicited, and in that respect constitute classic examples of commercial speech.

Id. at 180-81. Similarly, in *Mother & Unborn Baby Care of North Texas, Inc. v. State*, the Texas Court of Appeals found that an anti-choice clinic that provided free pregnancy tests, free pregnancy-related services, and advertised in the Yellow Pages under “Abortion Information & Services,” and “Clinics—Medical” was sufficiently engaged in “commerce” to be subject to state deceptive trade practices law because it advertised and “distributed services” in a consumer marketplace. 749 S.W.2d 533 (Tx. 1988); *see also Beverley v. Choices Women’s Med. Ctr., Inc.*, 78 N.Y.2d 745, 749-50 (1991) (N.Y. Court of Appeals holding that calendar celebrating women’s rights movement distributed by medical center for free was subject to commercial privacy statute).

Moreover, an entity can engage in commercial speech even if its provision of services is ideologically-motivated or relates to an important public debate. *Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 473-75 (1989) (speech at Tupperware parties was commercial even though non-commercial matters taught and discussed); *Bolger*, 463 U.S. at 67-68 (pamphlets “constitute[d] commercial speech” even though “they contain[ed] discussions of important public issues such as venereal disease and family planning”); *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm.*, 447 U.S. 557, 563 n.5 (1980) (advertising “that links a product to a current public debate” is still commercial); *S.F. Arts & Athletics, Inc. v. U.S. Olympic Comm.*, 483 U.S. 522 (1987) (use of trademarked term in “Gay Olympics” was commercial speech even though event was political).

Again, *Fargo* is instructive. In deciding whether the center’s ads were commercial speech, what mattered was not the clinic’s ideological mission but rather its engagement in the marketplace and its solicitation of pregnant consumers. Noting that the clinic advertised services “without substantial reference to or comment upon matters of public issue,” the court found it “unnecessary to extend the full panoply of First Amendment protections to the clinic’s commercial solicitation of clientele,” because the clinic could “advocat[e] . . . outside the commercial context and receive full First Amendment protection.” *Fargo*, 381 N.W.2d at 181; *see also Bolger*, 463 U.S. at 68.

LL17 compels disclosure of factual information about health services generally available in the commercial marketplace. Accordingly, applying the jurisprudence regarding entities that provide goods and services, there is a strong argument that LL17 is subject to the commercial speech doctrine. Like the speech in *Bolger*, *Sorrell*, and *N.Y. Rest. Ass’n*, the required disclosures concern the characteristics and nature of the services PSCs advertise and provide to consumers. The disclosures meet two of the *Bolger* factors in that the disclosures are mandated in advertisements and refer to a PSC’s particular services. LL17 is similarly consistent with *Schaumburg’s* view of commercial speech because the disclosures help inform consumers’ private economic decisions about where to seek health care, and primarily concern providing information about the characteristics of services. That the disclosures concern factual information about the provision of health services in a commercial marketplace is a relevant consideration. Courts have held that speech designed to help citizens make more informed, healthy choices is commercial. *See N.Y. State Rest. Ass’n*, 556 F.3d at 134-37 (disclosures promoting healthier eating choices); *Sorrell*, 272 F.3d at 115 (warning labels about the contents and health risks of product).

That PSCs’ services are often free does not immunize such services from the requirements of the commercial marketplace. Like the clinics in *Fargo* and *Texas*, PSCs are promoting and providing free but valuable health care services to pregnant consumers choosing among health care

providers in a commercial marketplace. They have entered that marketplace and, in doing so, can be required by LL17's disclosure obligations to make clear to consumers who they are and what they do. Thus, treating the disclosures here as commercial would be consistent with the core purpose of the commercial speech doctrine: to prevent consumer deception and safeguard "access to complete and accurate commercial information." *Edenfield v. Fane*, 507 U.S. 761, 766 (1993); *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council Inc.*, 425 U.S. 748, 771 n.24 (1976).

Although a PSC, in providing its services, may engage in some speech that is political and ideologically motivated, the mandated disclosures relate solely to the commercial aspects of their endeavor: the provision of health care services and their unlicensed nature. The disclosures do not compel, limit, or burden any political speech in which PSCs may wish to engage. *See Bolger*, 463 U.S. at 68. As in *Fargo*, PSCs not only remain free to engage in political advocacy without restriction *outside* of the commercial context but remain free to make any statement they wish – political or otherwise – when they see their clients. All they cannot do is advertise or provide those clients with health services and health information without disclosing their lack of medical authority and the fact that the City encourages pregnant women to seek medical care.

In this sense, this case is quite different than *Riley*, 487 U.S. 781, where the Court evaluated a law that required professional fundraisers soliciting charitable donations to disclose what percentage the fundraiser tended to retain as a fee. The Court applied strict scrutiny because the compelled commercial statement had to be uttered in "a single speech" that primarily involved ideological advocacy. *Id.* at 796. Because the commercial and political aspects of the solicitation pitch were "inextricably intertwined," the Court refused to apply different levels of scrutiny to different "components" of a single speech. *Id.* Here, by contrast, the speech compelled is not "inextricably intertwined" with PSCs' otherwise unregulated political speech. The required disclosures are not uttered in a "single speech" but rather independently at a posted sign at the clinic

door, in an advertisement, or only when a client requests specific health services. The disclosures need not be said during, do not interfere with, and do not even relate to a PSCs ideological or political speech with particular clients. Unlike charitable solicitation, which is inherently “intertwined with . . . speech seeking support for particular causes or for particular views,” *Vill. of Schaumburg*, 444 U.S. at 632, speech about the health *services* that PSCs provide is distinct and separable from any ideological speech designed to dissuade women from having abortions. *See Abramson v. Gonzalez*, 949 F.2d 1567, 1575 (11th Cir. 1992) (finding commercial and non-commercial speech not “intertwined” where compelled speech was “unrelated to the expression of differing viewpoints or alternative ideas”).⁶

If analyzed as a commercial disclosure law, LL17 easily meets the rational basis scrutiny to which such laws are subjected. *See supra* at 7. The law furthers the city’s legitimate interests in preventing consumer deception and protecting pregnant women’s health. *See Zauderer*, 471 U.S. at 651 (upholding disclosure law that furthered legitimate state interest in dissipating “consumer confusion or deception”); *Sorrell*, 272 F.3d at 115 (upholding disclosure law that furthered state’s “significant” interests in “protecting human health” and “better inform[ing] consumers”); *N.Y. Rest. Ass’n*, 556 F.3d at 135-36 (upholding disclosure law that furthered state’s legitimate interests in “help[ing] consumers make informed, healthier” choices). The required disclosures are rationally related to these interests. The licensing disclosure prevents consumer confusion and harm to women’s health by putting women on notice that going to a PSC is not the same as going to a doctor. All of the disclosures further the City’s interest in ensuring that pregnant women do not

⁶ Moreover, there is an informational imbalance between PSCs and their clients that was not present in *Riley*. The *Riley* Court rejected the law at issue in part because fundraisers were already required to disclose their professional status and, thus, potential donors were on notice that some of their donation might go to solicitation costs, and “free to inquire” how much. 487 U.S. at 799. Here, by contrast, without LL17, when walking into a PSC that provides certain health services and appears to be a medical facility, PSC clients are *not* put on notice of PSCs unlicensed status or any limitation in the services they provide and, assuming they are walking into a full-service medical clinic, may not know to inquire further.

delay or forego receipt of time-sensitive health services they need because prospective clients are immediately put on notice that PSCs may not provide certain time-sensitive health services, and that they may not be the licensed professionals from which it's important pregnant women seek care.

B. LL17 Satisfies Exacting Scrutiny.

Ultimately, the Court need not reach the more difficult question of whether LL17 is appropriately analyzed under the “commercial speech” doctrine. This is because the law satisfies an intermediate level of scrutiny which is, as noted above, sometimes described as “exacting” scrutiny. The less rigorous form of “exacting” scrutiny, not strict scrutiny, is appropriate here because LL17 neither compels nor prohibits any ideological statement by PSCs. *See supra* at 6 (discussing application of strict scrutiny to compelled ideological statements). Nor do the disclosure requirements of LL17 expose any individuals to potential retaliation or serious harm, or significantly burden, chill, or limit their ability to engage in advocacy or to convey a political message. *See supra* at 7-8 (discussing application of more rigorous form of “exacting” scrutiny).⁷ Exacting scrutiny requires a substantial relation between the disclosure requirement at issue and a substantial or important government interest; moreover, the government’s interest must outweigh the burdens on an individual’s rights created by the disclosure requirement. *See Citizens United*, 130 S. Ct. at 914; *Buckley*, 424 U.S. at 68.

LL17 unquestionably meets this standard, as it furthers two distinct and powerful government interests. First, the City has a compelling interest in protecting pregnant women’s

⁷ “Strict” scrutiny would be appropriate if LL17 compelled or regulated speech based on viewpoint. However, it does not. LL17 compels disclosures only for a center that has a primary purpose of providing services to pregnant women and either (i) offers obstetric ultrasounds, obstetric sonograms or prenatal care, or (ii) has the appearance of a medical facility. The required disclosures are not triggered by whether a PSC provides abortion, nor its views on abortion. That many PSCs may, in fact, be opposed to abortion does not transform this disclosure law into a viewpoint-based speech regulation. Legislation that is otherwise viewpoint-neutral but which incidentally covers people who may share a particular viewpoint or responds to a history of conduct by one ideologically-defined group does not suffice to render the legislation viewpoint-discriminatory. *See Madsen v. Women’s Health Ctr.*, 512 U.S. 753, 762-63 (1994); *Black v. Arthur*, 201 F.3d 1120, 1123 (9th Cir. 2000); *United States v. Scott*, 187 F.3d 282, 287 (2d Cir. 1999).

ability to access medical services. *See Hill v. Colorado*, 530 U.S. 703, 715 (2000) (discussing state’s power to “protect the health” of citizens); *Madsen*, 512 U.S. at 767-68 (discussing state’s “strong interest in protecting a woman’s freedom to seek lawful medical or counseling services in connection with her pregnancy”); *Spitzer v. Oper. Rescue Nat’l*, 273 F.3d 184, 202 (2d Cir. 2001) (discussing state’s interest in protecting “the well-being of patients seeking care” at health facilities). Second, the City has a substantial and important interest in protecting citizens from deceptive practices that cause consumer confusion. *Friedman v. Rogers*, 440 U.S. 1, 15 (1979) (state’s interest “in protecting the public from deceptive and misleading [commercial practices] is substantial and well demonstrated”); *Edenfield*, 507 U.S. at 769 (“[T]here is no question that [the State’s] interest in ensuring the accuracy of commercial information in the marketplace is substantial.”); *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 353 (1977) (state has substantial interest in protecting citizens from confusion and deception in the marketplace).

The City’s judgment that PSCs’ practices implicate these interests is well supported. There is ample evidence that PSC deception and resultant delay in women’s ability to access necessary, time-sensitive medical care from licensed professionals are demonstrable problems in New York. A story Dr. Anne Davis provided to the City Council is illustrative. Dr. Davis testified about a patient who came to see her 32 weeks pregnant seeking an abortion. Ex. H (testimony of Dr. Anne Davis). This patient had visited a PSC early in her second trimester, mistakenly believing she could obtain an abortion there. *Id.* PSC staff told this patient (erroneously) that she needed multiple ultrasounds over the course of many weeks before she could have an abortion and (erroneously) assured her that she could have an abortion in her third trimester. *Id.* After multiple delays, this patient came to Dr. Davis for an abortion but it was now no longer legally possible, and she had not obtained prenatal care during this time period. *Id.*; *see also id.* (Dr. Lynette Leighton testifying about a patient who mistook PSC for a medical clinic); *id.* (Dr. Linda Prine testifying to same); *id.*

(Dr. Vanita Kumar testifying about patients who received misinformation at PSCs); Ex G at 193-95 (Dr. Marjana Banzil testifying about a patient who had fetal anomalies that were not diagnosed by PSC staff who had performed an ultrasound); *id.* at 221-24 (Rev. Matthew Westfox testifying about a woman who mistakenly scheduled an appointment for abortion care at a PSC and then had to wait three weeks before she could get another day off to schedule an appointment elsewhere); *id.* at 64-67 (Balin Anderson testifying about a patient looking for the Planned Parenthood on the 6th floor and misdirected by a PSC staff member posing as a Planned Parenthood employee to the PSC on the 12th floor); *id.* at 64-67 (Balin Anderson testifying about a teenager that mistook a PSC for Planned Parenthood and who was given false information regarding contraception); PPNYC: Surveying Summary and Stories (documenting 18 incidences where women confused, deceived, or harmed during visits to PSCs). Thus, the harms the City aims to ameliorate through LL17 are real.⁸

LL17's required disclosures are carefully crafted to redress the two primary problems the City sought to cure: (1) confusion about whether PSCs are licensed health care providers; and (2) the delay in receipt of real medical care that results from that confusion. The required disclosures concerning a PSC's unlicensed status and whether it provides or refers for prenatal care, emergency contraceptives, and abortion put women reading PSC advertisements and walking into PSCs on notice that they are not walking into licensed and regulated medical facilities that provide a full range of pregnancy-related health care services. These disclosures are carefully crafted to inform women that, if they wish to see a doctor or obtain certain health care services, they must go elsewhere. These disclosures, combined with the disclosure concerning the City's official recommendation that pregnant women see doctors, alert women that it is important to obtain care

⁸ Further, it is worth noting that the City is entitled to rely on mere "predictive judgments" about the harms it seeks to remedy through LL17, as exacting scrutiny requires that the City need only make "reasonable inferences" based on the evidence before it to conclude that LL17 is necessary. *See Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 195 (1997). That said, the City's strong grounds for determining that PSCs pose harms to pregnant women allow it to reach firm conclusions, not only reasonable inferences.

from a licensed professional, and ensure that no woman foregoes obtaining real medical care because she mistakenly believes she has received it already. *See supra* at 8 n.5. In short, the disclosures allow women to make an informed choice as to whether to utilize a PSCs services in addition to or instead of a licensed professionals' services.

In achieving these goals, LL17 imposes only minimal burdens on PSCs' First Amendment rights. We reach this conclusion for several reasons. First, the law requires factual disclosures rather than restricting or prohibiting speech. Disclosures typically are considered a less restrictive way to solve a problem than direct restraints or burdens on speech. *See Citizens United*, 130 S. Ct. at 915 ("disclosure is a less restrictive alternative to more comprehensive regulations of speech"); *Thompson v. West. States Med. Ctr.*, 535 U.S. 357, 376 (2002) (disclosure requirement was a "far less restrictive alternative" to prohibition); *Zauderer*, 471 U.S. at 651 ("disclosure requirements trench much more narrowly on [a speaker's] interests than do flat prohibitions on speech").

Second, the law does not in any way regulate, restrict, or burden what PSCs may say to their clients, does not regulate or dictate how they counsel their clients, and does not in any way limit their ability to persuade women not to have abortions or use contraceptives. Indeed, the law does not require PSCs to say anything substantive at all about prenatal care, emergency contraceptives, or abortion; merely whether or not they provide or refer for them. Nor does the law require PSCs to actually provide or refer for those services.

Third, the law compels factual disclosures only at the most important moments of a prospective client's encounter with a PSC: when a client is seriously considering or already has decided to utilize the PSC's services (*i.e.*, when reading an advertisement, when they walk in the door, or when they request specific services). The required disclosures are largely limited to posted signs and advertisements. Oral disclosures are required only if and when a client specifically requests prenatal care, emergency contraception, or abortion services; disclosures are not required

every time a PSC staff member speaks with a client by phone or in person. Moreover, the law does not dictate or compel anything PSCs must, may, or may not say on their websites.

Furthermore, the law carefully targets the entities it regulates. “Pregnancy services center” is carefully defined to encompass only entities that provide certain health care services to pregnant women or have the appearance of medical facilities but are not actually licensed or have licensed professionals who supervise the provision of all health services. N.Y.C. Admin. Code § 20-815(g). Thus, the law sweeps into its ambit only those entities not already regulated by some other body and those doing things (such as providing sonograms or ultrasounds or having the trappings of a medical office) that are likely to deceive or confuse consumers – the very source of the problem the City identified. That the law does not require *licensed* pregnancy service to make these disclosures does not render the law insufficiently tailored. There is no similar need to require disclosures from licensed providers because they are already subject to state licensing and regulatory requirements, including informed consent requirements. Nor does the fact that the law may apply to some PSCs that do already disclose their unlicensed status or the limitations of their services render the law insufficiently tailored. The law strives to ensure uniform and consistent notice to all pregnant or potentially pregnant consumers considering or utilizing a PSC’s services. Thus, there is good reason not to leave the timing and content of these disclosures to the discretion of each PSC.

In sum, LL17’s disclosures are a carefully-crafted solution to a real, compelling problem that does not limit or interfere with PSCs’ ideological speech. The City’s interests substantially outweigh the minimal burdens placed on PSCs, and thus LL17 easily survives exacting scrutiny.⁹

⁹ Even if the Court were to apply strict scrutiny, LL17 meets this standard because the disclosures required by the law are narrowly tailored to compelling government interests. *Christian Legal Soc’y v. Martinez*, 130 S. Ct. 2971, 2984 n.11 (2010). The City’s interest in preventing harm to pregnant women due to delayed medical care is compelling, and the legislative record demonstrates that those interests are real and based on evidence, rather than based on speculation or conjecture. *See Consol. Edison Co. of N.Y. v. Pub. Serv. Comm’n*, 447 U.S. 530, 543 (1980). Further, the law is narrowly tailored to achieve the City’s interest. As a disclosure scheme, LL17 is the least restrictive solution available; a tight nexus exists between the

CONCLUSION

For these reasons, the Court should find that plaintiffs are not likely to succeed on the merits and thus deny plaintiffs' motions for a preliminary injunction.

Respectfully submitted,

/s/ Melissa Goodman

MELISSA GOODMAN

ALEXIS KARTERON

ARTHUR N. EISENBERG

KATHARINE ES BODDE*

New York Civil Liberties Union Foundation

125 Broad Street

New York, NY 10004

Phone: (212) 607-3300

Fax: (212) 607-3318

Attorneys for Amicus Curiae

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*Not admitted to the Southern District of New York

substance of the required disclosures and the government's interest; the law does not in any way regulate, restrict, or burden what PSCs may say to their clients; and the law covers only those entities that may be confused with a medical office.

Plaintiffs contend that other less restrictive alternatives such as *post-hoc* Attorney General investigations and a City public education campaign would further the City's interest. PCCNY Mem. of Law at 13-14. But these alternatives would not actually further the specific goal that that the City set out to accomplish: ensuring that every woman is put on notice *at the very moment* she is seriously considering or actually utilizing a PSCs services that she is not she is not in a licensed, regulated, full service medical clinic. Neither post-hoc investigations nor a public education campaign – although perhaps independently useful – would ensure that vital and informative facts about PSC's unlicensed status and potentially limited services reach every woman at the moment she is making important health care choices about her pregnancy. *See* Ex. I at 9; LL17 (statements of findings and intent).

APPENDIX

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EXECUTIVE OFFICE

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Crisis Pregnancy Center (CPC) Surveying Summary

Summary of Process:

- Survey instrument disseminated internally to PPNYC staff (nurses, social workers, etc) June 2010. The last response was collected in January 2011.
- Recipients of the survey were given the option to complete an online version, paper version, or contact the Research Intern in charge of the survey to provide information over the phone or in person.
- All respondents were informed of the confidentiality of their responses.
- All surveys were read and collated by Public Affairs on August 4th, 2010, and again on February 4th, 2011.

Responses to date:

- 16 online and paper surveys (13 from social workers, 1 from a Clinic Director, 1 from an Entitlement Counselor, and 1 from a Health Care Associate)
- 1 hand-written summary directly from a client who visited a CPC
- 1 memo from a PPNYC nurse who accidentally visited a CPC on the day of her PPNYC interview

Summary of Key Findings:

- Nearly 60% reported visiting a CPC within a one block radius of a PPNYC clinic.
- Sixteen respondents indicated that they did not receive a full description of what would happen at the center.
- Almost 65% of clients reported that they were not treated with care and respect at the CPC they visited.
- 50% reported being asked for detailed medical and personal information, including medical histories, address, phone, and insurance information.
- Nearly 1/3 reported being concerned about their personal information being kept confidential.
- Almost 60% reported that the CPC did not make it clear that they would not provide abortions.
- At least two women reported being told that the CPC could perform an abortion, thereafter being made to wait for numerous weeks to find out that the CPC did not perform abortions.
- All but one reported that they received information from the CPC that made them fearful.

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- Nine women reported receiving a pregnancy test on site.
- At least three women received offers of financial assistance to carry the pregnancy to term.
- Four women reported receiving an ultrasound on site, and at least two reported believing they could not refuse.
- 100% of those asked reported not having the opportunity to meet with a physician or a licensed health care provider at the CPC.
- 3/4 of women reported feeling judged by CPC staff
- 88% of women reported being shown videos, images, or other materials that they found to be disturbing.
- At least 2 women were told to sign statements of confidentiality or long disclaimers
- Women were regularly told various incorrect statements about abortion, including that induced abortion increases the risk for breast cancer, induced abortion can result in "post abortion stress disorder," and induced abortion may result in infertility.
- Women also reported being told that induced abortion could lead to hearing voices, would be performed under unsanitary conditions or may cause STIs, that fetal material would be collected and sold, that abortion could result in accidental removal of internal organs, and that abortion may lead to death.
- Women also reported being told incorrect information unrelated to abortion, including being told that Depo-Provera, a contraceptive, causes HPV, that the HPV vaccine Gardasil was ineffective, and that they were farther along in their pregnancies than they actually were.
- Clients also reported being misled in other ways by CPCs. This included being approached on the street and misdirected to a CPC, the client's exit being physically blocked, and being told over the phone that the CPC provided abortions.
- One client was repeatedly insulted by CPC staff, including being told "you are retarded," "you are cubic zirconia," "you should keep your legs closed" and then was finally told to "get the hell out."

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Crisis Pregnancy Center (CPC) Survey Stories

Introduction

The below reports have been gathered from surveys administered to PPNYC staff, including nurses and social workers, between June 2010 and January 2011. A total of 16 responses were collected, and included both quantitative and qualitative questions and data. The below stories are reprinted below to include both elements of data from the surveying, while still protecting patient confidentiality. In addition to the 16 survey responses, the data also includes one story from a client and one from a PPNYC Nurse about her personal experiences at a CPC. For more information on the surveying procedures or findings, please see the document entitled Crisis Pregnancy Center (CPC) Surveying Summary.

Report #1

The client saw an ad for the CPC on a subway, and scheduled an appointment, believing they were an abortion provider or provided referrals. The client visited the CPC located at 344 E 149th St, which is across the street from PPNYC's Bronx location. The client received a pregnancy test and also gave a urine sample. The client indicated that CPC workers made her feel guilty and ashamed for seeking a termination of pregnancy, and did not explain the services they provided or allow her to ask questions. She was not told abortions were not provided on site, and was given inaccurate or unwanted information about abortion. This included being shown graphic images and videos of abortion, and being told that induced abortion increases the risk for breast cancer, can result in "post abortion stress disorder," may result in infertility, has a high risk of post-abortive infection, and a high possibility of death. The client was also offered financial incentives and housing to keep the pregnancy to term, and also asked to sign a statement of confidentiality. When the client attempted to leave, the CPC worker blocked her exit. The client expressed concern to a PPNYC worker that the CPC had her contact information and her urine specimen. (As reported in Survey Monkey Survey #1)

Report #2

The client called the number she saw on an ad on the subway. The initial person she spoke with asked her if she wanted to terminate. When she indicated yes, she was given another number to call. That counselor encouraged her to come in for an appointment. The client asked if a termination of pregnancy would be performed that day, along with other questions. The counselor informed her that she should just come in, and they would answer her questions at that time. When she went to the CPC, located at 1399 Bainbridge Ave in the Bronx, on 6/10/10, the counselor did a urine pregnancy test and then spoke with the client about her desire to terminate. The counselor called the client selfish, and used a variety of tactics to persuade the client to continue pregnancy, including that abortion providers were targeting "Spanish and Black People." She client was then offered an appointment to have a sonogram in two weeks. The counselor explained that the sonogram would help them to see the "baby's feet" and other body parts. The client declined and found PPNYC by going on the internet. She indicated that she was shown graphic images and videos of abortion, and was told that induced abortion increases the risk for breast cancer, can result in "post abortion stress disorder," that visiting an abortion provider might lead her to contract STIs, and that abortion providers might be in the process of being sued for malpractice. The client also received sheets with graphic images and

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misinformation about abortion, and reported being concerned about the confidentiality of her private information, including the name of the father of the pregnancy. (As reported in Survey Monkey Survey #2)

Report #3

The client indicated that she unintentionally visited a CPC. She indicated that she did not receive information on the services the CPC provided, and that she was asked for detailed medical and personal information. The client was not informed that the CPC did not perform or provide referrals for abortions. She received a pregnancy test and was shown an anti-abortion video that was not modernized. She reported it having people out of the 70s, where patients were awake during their abortion procedures. After their procedures, the video showed a discussion with the patients, and had them stating that they "wanted to die" because they had the abortion. The client was also told that induced abortion increases the risk for breast cancer, can result in "post abortion stress disorder," and may result in infertility. (As reported in Survey Monkey Survey #4)

Report #4

The client went to the CPC on 149th Street in the Bronx for a termination of pregnancy. She indicated that workers were trying to convince her not to terminate her pregnancy, and were very persistent. When she asked to leave, the CPC worker attempted to keep her there as long as possible. The client indicated that she received a sonogram at the CPC, and was told she was mid-trimester, when she was actually still in her first trimester. The client was told that induced abortion can result in "post abortion stress disorder," and may result in infertility. Additionally, the client reported being shown graphic images of aborted fetuses. (As reported in Survey Monkey Survey #5)

Report #5

The client was a minor who called PPNYC to make an appointment for emergency contraception. She mistakenly walked into the CPC across the street, and when she explained she wanted the morning after pill, the woman working there proceeded to berate her, saying things like "you are retarded," "you are cubic zirconia," "you should keep your legs closed" and then, finally "get the hell out." Prior to being told to leave, she was told that emergency contraception was not effective. She was also told that Depo-Provera, a hormonal contraceptive injected every three months, causes HPV. When she explained to worker that she already received the Gardasil vaccination for HPV, the worker told her that Gardasil is not effective. (As reported in Survey Monkey Survey #6)

Report #6

Two separate Spanish-speaking clients inadvertently went to the CPC across the street from the Bronx Planned Parenthood. They reported being first pressured and then denigrated by the staff of the CPC for their plans to terminate their pregnancies. They reported receiving information that made them fearful, as well as being shown graphic materials they found disturbing. In addition, they were given incorrect information about the efficacy and safety of abortion. (As reported in Survey Monkey Survey #7)

Report #7

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The client went to a CPC located near the 149th street PPNYC. She reported that the CPC did not make it clear that abortions were not performed on site, and was also offered financial incentives, including a job in Brooklyn, to carry her pregnancy to term. She reported being shown images that made her fearful, including a video of an abortion being performed. She was also told that abortion may cause "post abortion stress disorder," and that she "may start hearing voices after an abortion." (As reported in Survey Monkey Survey #13)

Report #12

The client and some of her friends unintentionally went to a CPC located near Borough Hall, and were not informed of what would happen in the center. She provided the CPC staff with personal and detailed medical information, and also received an ultrasound on site, unsure if she could refuse or not. The client specifically asked if abortions were provided at the CPC, but they refused to clarify. The client reported receiving information that made her fearful, and indicated that she was shown several abortion videos that day. In addition, she was informed that abortion could result in "post abortion stress disorder" and could result in infertility. The client also said that her friends who accompanied her were shown the same videos and also included in the counseling sessions to discourage future pregnancy and abortion. (As reported in Paper Survey #1)

Report #13

A client unintentionally visited a CPC, and was not told what would happen at the center. She received an ultrasound on site, without adequate consent. She reported receiving information that made her fearful, and was told that abortion may lead to death. This included being told to watch a graphic video about abortion that the client described as "scary" and "upsetting." She indicated that the original woman who spoke with her at the CPC was respectful, but that the counselor who met with her made her feel attacked, and told her that her decision to consider abortion went against moral and religious beliefs. The client also indicated that the CPC space was so small that her boyfriend could hear the counselor speaking loudly to her in the adjacent room. (As reported in Paper Survey #2)

Report #14

The client found the CPC in the phonebook, and was told over the phone that they performed abortions. She went to a CPC located near Borough Hall in Brooklyn, and was told she would receive a sonogram and pregnancy test. She was shown a video that included "body parts being pulled apart," and was told that abortion would make her infertile, and that "abortion centers tell you fetal parts are discarded, but really they are sold for money." The client left the CPC before getting a sonogram or a pregnancy test, after learning that abortions were not provided at the CPC. (As reported in Paper Survey #3)

Report #15

The client went to a CPC located near the 149th Street Hub in the Bronx. The client reported that they asked for her address, phone number and insurance information, and did not make it clear that they do not provide abortions. She received information about adoption and parenting, as well as a pregnancy test and a referral for a sonogram at another site. She also reported being shown a graphic video of an abortion procedure that stated she was likely to die if she had an abortion. She was also told she was earlier than her actual gestation. (As reported in Paper Survey #4)

MARGARET SANGER CENTER | 26 BLEECKER STREET | NEW YORK | NEW YORK 10012-2413
BRONX CENTER | 349 EAST 149TH STREET | BRONX | NEW YORK 10451-6603
BORO HALL CENTER | 44 COURT STREET | BROOKLYN | NEW YORK 11201-4405

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EXECUTIVE OFFICE

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Report #16:

The client indicated that she saw an ad on the subway and interpreted it to say the CPC provided abortion services. She was not given a full description of what would happen at the center, and was asked personal information, including home address, medical, and insurance information. She received an ultrasound on site. When she specifically asked if the CPC performed abortions, the client indicates that they avoided the question. The client was offered financial assistance to keep the pregnancy to term, as well as assistance with insurance enrollment and housing assistance. She was also told that abortions were performed under unsanitary conditions, were bad for health, and that fetal parts, such as organs, were collected and sold by abortion providers. In addition, she reported being shown graphic materials she found disturbing. (As reported in Paper Survey #5)

Report #17

The following is the content of a typed version of a note written by a client who mistakenly visited a CPC. "Today I had an appointment with a clinic. I had got confused [and thought] I went in [Planned] Parenthood and asked for a plan b pill thinking that this was the clinic that I had a appointment with. A lady had come and sat down and [talked] to me and [said] that plan b is a drug and they called me stupid and said I should keep my legs closed. And then told me to get out. I feel that someone should do something about them before someone else gets hurt."

Report #18:

The following is the content of an e-mailed summary of the experiences of a PPNYC Nurse at a CPC.

I am a Registered Nurse that has been employed at PPNYC for the past 10 years. I currently float between all three centers. I am writing this e-mail to share my experiences with you after visiting a CPC, thinking it was PPNYC, for my job interview 10 years ago.

After calling and facing my resume to PPNYC for a job as a LPN (at the time), I finally was called for a job interview. My interview was to be at the Brooklyn Office. I arrived 15 minutes before my interview time. At that time I was not sure what floor I needed to go to so I went over to the information board to see what floor PPNYC was on. A older white woman with long white hair walked over to me and asked if I needed help. I said yes, I'm looking for Planned Parenthood. She says, "oh come with me I'll take you there", so I got on the elevator with her. We get to the 12th floor and proceed through the doors. Now I don't know if I was just clueless or what but I did not see ANY PPNYC logos or anything. It was as plain as day. She brought me to a room and told me to make myself comfortable and she'll be right back, so I did. When she returned, she came back with a lab coat on, a pad, a pen and a video. Ok this must be an interview, or so I thought. She sits across for me and starts with the questions, and as I'm talking she's writing on her pad. What's your name?, What position are you applying for? Remind me again what "WE" said your job description will be? So I told her everything she asked of me. She then proceeded to take out this video and play it for me. It was a video of women having abortions, and it show in great detail what happens to women during and after an abortion procedure. It was horrible. After sitting there for 15 minutes I just started to think to myself if I really wanted to take this position. She told that if I took this position this is what I would be assisting the doctors in doing and how did I feel about that? When I told her that I still wanted the job she "turned into Satan" She became very angry, started asking me lots of questions like,

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How could you participate in the murder of a child, how could I live with myself? Told me God would not forgive me and that I would go to hell for such. What kind of interview is this???? I'm asking myself. Still, I didn't pay attention that I didn't see any PPNYC logo anywhere. So I started to think, maybe I'm in the wrong place. I got up the nerve to ask her was this PPNYC and she told me "NO" in such a angry tone. Now I'm mad that she wasted 30 minutes of my time but I was relieved that this was not PPNYC. She had me with her on the 12th floor for 30 minutes. I looked her then got up and proceeded for the door. She followed me to the elevator and continue to tell me that if I took this job that God would not forgive me, that I should consider taking this job, etc etc. Finally I got on the elevator went back down to the lobby and asked the guard for PPNYC and he directed me to the 6th floor. As soon as the door opened there was a huge sign that said, Welcome to Planned Parenthood. "Safe!, with a sigh of relief" I arrived for my interview 30 minutes late and was nervous that I had blown it all just for being late. I saw the center director and she was very understanding of why I was late. After such a horrible morning I made the interview and got the job. Unfortunately so many of our patients visit one of these centers or they are approached on the street by the protestors. They manipulate you, promise to help you and our pts change their minds. They. (our patients) put themselves in a awkward position because they are too young to have a child, or they wanted to finish school, or now they feel trapped because they decided to continue their pregnancy. And all the help they were promised is NOWHERE to be found. I had my child at 17 years of age. And although I had family support it was hard. Most of our young pts don't have this support so it is twice as hard for them and this is what CPC staff don't take into consideration. I am prochoice and I believe that I worship a forgiven God. It is not a easy decision to make but I stand behind each and every patient that I see. Sometimes after procedure I will say a short prayer with them or just give them a huge or some words of encouragement. I took a \$10,000,00 pay cut to join PPNYC and until today I don't regret it at all. I am in the position to talk to our patients about soooo many things. I am one of the nurses that really enjoys my job. I am so happy that I can be in a position to help someone else."

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