11-2735-cv

& 11-2929-cv

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE EVERGREEN ASSOCIATION, INC., DBA EXPECTANT MOTHER CARE PREGNANCY CENTERS-EMC FRONTLINE PREGNANCY CENTERS, and LIFE CENTER OF NEW YORK, INC., DBA AAA PREGNANCY PROBLEMS CENTER,

Plaintiffs-Appellees,

v.

THE CITY OF NEW YORK, a municipal corporation,

Defendant-Appellant.

PREGNANCY CARE CENTER OF NEW YORK (Incorporated as Crisis Pregnancy Center of New York), and GOOD COUNSEL, INC.,

Plaintiff-Appellees,

v.

THE CITY OF NEW YORK, MICHAEL BLOOMBERG, Mayor of New York City, in his official capacity, and JOHNATHAN MINTZ, the Commissioner of the New York City Department of Consumer Affairs, in his official capacity,

Defendants-Appellants.

On Appeal from the United States District Court
for the Southern District of New York

BRIEF OF *AMICUS CURIAE* NEW YORK CIVIL LIBERTIES UNION IN SUPPORT OF DEFENDANTS-APPELLANTS

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Amicus Curiae New York Civil Liberties Union is a non-profit corporation. It has no parent corporation, and there is not publicly held corporation that owns 10% or more of its stock.

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*[1]

Local Law 17 (LL17) applies to entities that provide certain health care services such as sonograms to potentially pregnant women and appear to be, but are not actually, licensed medical facilities employing licensed professionals. Under LL17, such entities must make disclosures about their unlicensed status and about whether they provide three time-sensitive services many pregnant or potentially pregnant women need. On July 13, 2011, the district court granted Plaintiffs-Appellees' motions for a preliminary injunction, finding that LL17 compelled speech in violation of the First Amendment.

The New York Civil Liberties Union (NYCLU), as *amicus curiae*, submits this brief to explain how the district court erred in subjecting two of LL17's disclosure requirements to strict, rather than intermediate "exacting," scrutiny and in concluding these compelled disclosures were unconstitutional. The NYCLU, an affiliate of the American Civil Liberties Union, is a non-profit, non-partisan, membership organization whose mission is to defend constitutional rights. It is committed to the protection of First Amendment rights and women's fundamental reproductive freedoms; the NYCLU has a long history of vigorously defending and

[1] Pursuant to Fed. R. App. Proc. 29(c)(4), *amicus curiae* states that all parties have consented to the filing of this brief. Pursuant to Fed. R. App. Proc. 29(c)(5) and L.R. 29.1, *amicus* states that no counsel for a party authored this brief in whole or in part; no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief; and no person other than *amicus*, its members, or its counsel made a monetary contribution to its preparation or submission.

balancing these constitutional concerns. Thus, we have an interest in ensuring that compelled disclosure laws like LL17 appropriately respect both a pregnancy services center's (PSC) free speech 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, the NYCLU would vigorously oppose—and argue for the strictest judicial scrutiny of—a law that forced a PSC to express approval of abortion, or to speak or endorse any ideological or government-preferred message about abortion. It would oppose and argue for the strictest scrutiny of a law that seriously restricted or burdened a PSC's ability to persuade women not to have an abortion, or to express disapproval of abortion. The same would be true of a law that imposed speech restrictions or disclosure requirements only on entities opposed to abortion, or because of what the entity says or believes rather than what it does. The NYCLU would also, of course, oppose a law that improperly restricted public debate about this controversial subject.

But LL17 does none of these things. LL17 compels the disclosure of a narrow category of factual information about a PSC's lack of licensed health-care professionals (the "status" disclosure) and the services that PSCs provide (the "services" disclosure). These disclosure requirements do not compel PSCs to express an ideological or government-preferred message; do not target, regulate, or

compel speech based on viewpoint; do not implicate any other constitutional right PSCs may possess; and do not compel nor seriously burden political speech. Thus, these disclosure requirements are akin to the narrow category of compelled disclosures courts subject to intermediate exacting, rather than strict, scrutiny.

The status and services disclosure requirements pass constitutional muster. The disclosures serve the City's compelling and substantial interest in preventing deception of health care consumers and the health harms that flow to women if they delay or forego obtaining necessary, time-sensitive medical care. The disclosures are narrowly crafted to ensure that a woman entering a PSC will never mistakenly believe that she is walking into a real medical office where she will obtain a full range of health care services from a real doctor. The disclosure requirements are directed at deceptive and potentially deceptive practices, not at PSC's counseling or advocacy. PSCs remain free to persuade women not to have abortions. LL17 does not restrict, limit, interfere with, or seriously burden 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. LL17's mandated disclosures simply require PSCs to tell women whether they can obtain certain services at the PSC, and that any information or services women will obtain there are not provided by licensed health-care professionals.

BACKGROUND

Pregnancy services centers advertise and provide services such as ultrasounds, sonograms, and pregnancy tests to women who are or may be pregnant. *See* JA-954-80. Many PSCs resemble—and appear to the reasonable consumer to be—full-service doctors' offices, but they are not licensed or regulated health care facilities. JA-956-57. 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, provide health information to pregnant women, and dress in scrubs, but they are not licensed or regulated health care professionals. JA-755-78, 956, 963. PSCs help women decide how to deal with their pregnancy but most do not provide or refer for time-sensitive pregnancy-related services such as prenatal care, emergency contraceptives, or abortion. JA-956. According to testimony provided to the City Council, many provide medically inaccurate information about abortion and contraceptives. JA-753-74. Some engage in tactics designed deliberately to delay a woman's ability to obtain an abortion or to utilize emergency contraceptives. JA-957-59; Amicus Attachment A (testimony of Traci Perry).[2] Many do not voluntarily disclose that they are not medical

[2] Available at http://legistar.council.nyc.gov/View.ashx?M=F&ID=1349372&GUID=71CFC2D2-3159-453E-

professionals unless asked directly. JA-957. Some advertise in the Yellow Pages under categories entitled "abortion" or "medical." JA-961.

In testimony before the City Council, a person who visited one of plaintiff'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. JA-602-03. She observed "a woman in scrubs was seeing patients in an exam room that looked like every OBGYN office [she'd] ever been in." JA-602. 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]." JA-603. 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.* Had she not known better, she would have assumed she'd "had a full checkup." *Id.*

The City Council found, based on reports and hours of testimony, that PSCs engage in deceptive practices or have deceptive appearances that not only confuse

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950B-70616BD8F15A. *Amicus* supplied this testimony, provided to the Committee on March 1, 2011, to the district court but it is not in the Joint Appendix.

consumers but delay women's access to and receipt of real, necessary, and time-sensitive pregnancy-related health care. JA-239-41, 954. 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 Amicus* Attachment A; JA-941-42 (Dr. Anne Davis); JA-948-49 (Dr. Lynette Leighton); JA-950 (Dr. Linda Prine); JA-951 (Dr. Vanita Kumar); JA-600 (Dr. Melanie Canon); JA-604 (Rev. Dr. Earl Kooperkamp); JA-649-50 (Kristan Toth); JA-313-16, 337-39 (Balin Anderson); JA-442-44, 450 (Dr. Marjana Banzil); JA-469-73 (Rev. Matthew Westfox). The City Department of Health (DOH) also testified about the health risks of delaying, and the health benefits of receiving promptly, pregnancy-related medical care, including prenatal care, emergency contraceptives, and abortion care. JA-264-306.

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. JA-239-41. 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 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 care. *Id.* at § 20-816(f)(2).

On April 27, 2011, organizations that provide services to pregnant women challenged LL17 in two consolidated cases. In both cases, plaintiffs sought a preliminary injunction on the grounds that, among other things, LL17 compelled speech in violation of the First Amendment.

On July 13, 2011, the district court granted plaintiffs' motions. Concluding that plaintiffs were likely to succeed on the merits of their First Amendment claim, the court held that strict scrutiny was the appropriate standard of review, SPA-15, and that the law failed to meet it because it was not narrowly tailored to the City's compelling goals, as less restrictive means were available, SPA-16-19.[3]

[3] The court also found one aspect of the definition of "pregnancy services center" unconstitutionally vague. SPA-19-22. This brief does not address that issue but *amicus* notes that, should this Court agree, it could interpret the list of factors to be exclusive to avoid any constitutional problem. *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988) ("[W]here an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress."); *John Doe, Inc. v. Mukasey*, 549 F.3d 861, 872 (2d Cir. 2008) ("courts should resolve ambiguities in statutes in a manner that avoids substantial constitutional issues").

ARGUMENT

I. THE DISTRICT COURT ERRED IN EVALUATING ALL OF THE DISCLOSURE REQUIREMENTS UNDER STRICT, RATHER THAN INTERMEDIATE EXACTING, SCRUTINY.

A. NOT ALL LAWS THAT COMPEL DISCLOSURE OF NON-COMMERICAL INFORMATION ARE SUBJECT TO STRICT SCRUTINY.

The district court was of course correct that all laws that compel speech, including compelled disclosure laws like LL17 which require speakers to make factual statements they might not otherwise make, implicate the First Amendment and must be evaluated for compliance with it. SPA-8. 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).

The district court erred, however, in concluding that all laws that compel non-commercial speech are automatically subject to the strictest First Amendment scrutiny. SPA-15. The compelled speech doctrine is more nuanced than this, particularly as regards compelled disclosure requirements. Just as the level of scrutiny applied to laws that *restrain* speech varies, so does the level of scrutiny applied to laws that *compel* speech.

To be sure, compelled speech laws are typically—indeed, presumptively—subject to strict scrutiny. The Supreme Court has made clear that forcing an individual "to be an instrument for fostering public adherence to an ideological

point of view he finds unacceptable," or to "become[ ] a courier" for disseminating or advancing the state's ideology or ideological goals, strikes at the very core of what the First Amendment prohibits. *Wooley*, 430 U.S. at 715, 717.

Thus, courts have applied strict scrutiny to a wide range of laws that compel speech. For example, courts unwaveringly apply the strictest scrutiny to laws that compel a speaker to express the government's message or to endorse a government-preferred ideological message, opinion, or viewpoint. *Id.* at 714-17 (applying strict scrutiny to law that compelled the expression of the state motto on a license plate); *W. Va. State Bd. of Educ. v. Barnette,* 319 U.S. 624, 633-35, 639 (1943) (applying strict scrutiny to compelled pledge and flag salute); *Alliance for Open Soc'y Int'l, Inc. v. U.S. Agency for Int'l Dev.*, 651 F.3d 218, 234 (2d Cir. 2011) (applying strict scrutiny to requirement that federal funding recipients express an anti-prostitution message); *Stuart v. Huff*, --- F.Supp.2d ----, 2011 WL 5042110, at *5 (M.D.N.C., Oct. 25, 2011) (applying strict scrutiny to a law that compelled doctors to "physically speak and show the state's non-medical message to patients unwilling to hear or see" them). Similarly courts apply strict scrutiny to laws that force a speaker to "host or accommodate another speaker's message," or to provide a medium for the expression of ideas with which they disagree. *Rumsfeld v. Forum Academic & Institutional Rights, Inc*, 547 U.S. 47, 63 (2006); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557 (1995);

Pac. Gas & Elec. Co. v Pub. Util. Comm'n of Cal., 475 U.S. 1 (1986) (plurality); *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241 (1974).

Compelled *disclosure* requirements, however, are sometimes evaluated differently than laws that compel ideological speech. Courts subject most compelled disclosure requirements to "strict" scrutiny or a form of "exacting" scrutiny that approaches strict scrutiny. For example, courts have applied strict exacting scrutiny to disclosure requirements that implicate or burden other constitutional rights such as associational privacy, *NAACP v. Alabama,* 357 U.S. 449, 460-61 (1958); anonymous speech, *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 348 (1995); charitable solicitation, *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 796 (1988); personal privacy, *Planned Parenthood Minn., N. Dakota, S. Dakota v. Daugaard*, --- F.Supp.2d ----, 2011 WL 2582731, at *4 (D.S.D., Jun. 30, 2011). Courts also apply strict exacting scrutiny to disclosure requirements that significantly interfere with one's substantive political advocacy, *see, e.g., Riley*, 487 U.S. at 796, or are likely to subject individuals to reprisals or "chill" their speech, association, or political activity for fear of retaliation or embarrassment, *see NAACP,* 357 U.S. at 462-63; *Brown v. Socialist Workers '74 Campaign Comm'n.,* 459 U.S. 87, 93-94 (1982); *McIntyre*, 514 U.S. at 355.

But the Court has carved out narrow categories of compelled disclosure requirements to which strict scrutiny is not applied. For example, courts

consistently apply "exacting" scrutiny akin to "intermediate" scrutiny to laws that, in order to serve some important public information function, require disclosure of truthful, factual information about oneself or one's activity and do not implicate or burden other constitutional rights. *Doe v. Reed*, 130 S. Ct. 2811, 2818 (2010) (applying intermediate exacting scrutiny and upholding disclosure of referendum petition signatory information under state open records law); *Citizens United v. FEC*, 130 S. Ct. 876 (2010) (applying intermediate exacting scrutiny to federal law requiring disclosures of electioneering communication expenditures and disclaimers on advertisements); *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 202 (1999) (applying intermediate exacting scrutiny to law requiring disclosure of names and data about petition circulators and those who pay them); *Buckley v. Valeo,* 424 U.S. 1, 64 (1976) (applying intermediate exacting scrutiny to federal campaign finance disclosure requirements).[4]

Courts have also created a strict scrutiny exception for laws that compel disclosure of truthful facts about commercial entities, goods, or services. *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 651 (1985) (holding laws that mandate disclosure of "purely factual and uncontroversial" information about commercial services get rational basis review). The same is sometimes true

[4] This Circuit has also employed intermediate scrutiny to evaluate *privacy* challenges to myriad financial disclosure requirements. *See Statharos v. N.Y. City Taxi & Limousine Comm'n*, 198 F.3d 317, 323-24 (2d Cir. 1999).

of laws that compel the speech of those engaged in licensed professions. *See, e.g., Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 883, 884 (1992) (seemingly applying rational basis scrutiny to law requiring certain factual disclosures by doctors); *see also Alexander v. Cahill*, 598 F.3d 79, 88, 92 (2d Cir. 2010) (discussing levels of scrutiny applied to attorney advertisement speech restrictions, and observing distinction between speech restraints and disclaimer requirements).

The Supreme Court has subjected certain types of disclosure requirements to something short of strict scrutiny because it sees compelled disclosures as less burdensome and less offensive to First Amendment values than compelled ideological statements or restraints on speech. *John Doe,* 130 S. Ct. at 2813-14 (finding "that the P[ublic] R[ecords] A[ct] [was] not a prohibition on speech, but instead a disclosure requirement" was "pertinent to [the] analysis" of degree of scrutiny); *Citizens United*, 130 S. Ct. at 914 (applying intermediate exacting scrutiny to expenditure disclosure requirements despite applying strict scrutiny to expenditure limits because "disclosure 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*, 471 U.S. at 650-51 (there are "material differences between disclosure requirements and outright prohibitions on speech"); *see also Rumsfeld,* 547 U.S. at 62. Indeed, disclosure requirements often

further First Amendment values by enhancing the marketplace of ideas and ensuring an informed citizenry.

Thus, the district court's conclusion that all laws that compel non-commercial speech are automatically evaluated under strict scrutiny is incorrect. Virtually all of the cases the district court cites for this proposition concerned laws that compelled one to speak, endorse, or support a particular government-preferred ideological message or viewpoint, not disclosure requirements. *See Alliance for Open Soc'y Int'l*, 651 F.3d at 234 (applying strict scrutiny to "viewpoint-based" funding condition that required recipients to "affirmatively say" they opposed prostitution and to "espouse the government's position"); *Amidon v. Student Ass'n of State Univ. of N.Y. at Albany*, 508 F.3d 94, 99 (2d Cir. 2007) (applying strict scrutiny to student funding policy that resulted in "forc[ing] [students] to contribute to the support of an ideological cause [he or she] opposes"). These cases did not hold that *all* non-commercial compelled speech laws—let alone compelled *disclosure* laws—must meet strict scrutiny.

The district court also relied upon *Turner Broadcasting Systems, Inc. v. FCC*, 512 U.S. 622 (1994). But *Turner* employed *intermediate* scrutiny to assess a law that compelled cable companies to carry network broadcast speech. The Court reaffirmed that "[l]aws that compel speakers to utter or distribute speech bearing a particular message are subject to . . . rigorous scrutiny." *Id.* at 642. But it then

refused to apply strict scrutiny, distinguishing compelled speech cases like *Miami Herald*, *Pacific Gas,* and *Riley*, on the grounds that the law's requirements were "not activated by any particular message spoken by cable operators and thus exact[ed] no content-based penalty"; did not compel carrying speech in order to "counterbalance" or "respond to" another's message; and did not "alter" cable operators' own message. *Turner Broad. Sys.*, 512 U.S. at 655.[5]

Nor do *Riley* or *dicta* in *Hurley* support the district court's sweeping rule. In each case, the Court simply made clear that compelled speech laws implicate First Amendment rights just as much as speech restraints and are not immune from constitutional scrutiny. *Riley,* 487 U.S. at 796-97 (both "compelled speech" and "compelled silence" protected by First Amendment "freedom of speech" guarantee); *Hurley*, 515 U.S. at 573. In both cases the Court did employ strict scrutiny but it did not set a standard by which *all* compelled speech or compelled disclosure laws should be measured.

The district court's categorical rejection of any distinction between laws that compel factual, as opposed to ideological, statements for purposes of level of scrutiny, SPA-13, was similarly flawed. Again, the statement from *Hurley* the district court cited addressed the question whether factual disclosure requirements implicate the First Amendment at all, not the constitutional standard for evaluating

[5] The *Turner* court interpreted the disclosures in *Riley* to be a content-based regulation the disclosures were required only where speech involved the "solicitation of funds." *Id.*

laws that compelled factual disclosures. *Hurley*, 515 U.S. at 573 (stating "the right" to tailor one's speech "applies not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid"); *see also Riley*, 487 U.S. at 797-98 (finding compelled factual statements still "burden[] protected speech" and, thus, court would "not immunize" disclosure laws from scrutiny).

More importantly, the district court failed even to acknowledge the cases where courts *have* evaluated non-commercial compelled disclosure laws under intermediate exacting, not strict, scrutiny. *See supra* at 11. Whether a law compels factual disclosures about oneself versus ideological statements is not *dispositive* of the level of scrutiny required, but it is a relevant factor. Indeed, the Supreme Court recently affirmed that there is a constitutionally relevant distinction between "compelled statements of opinion" and "compelled statements of fact"; found compelled statements about campus military recruitment logistics a "far cry from" a mandated pledge or motto; and cautioned that equating the two "trivialize[d] the freedom protected in *Barnette* and *Wooley*." *Rumsfeld*, 547 U.S. at 62; *see also Alliance for Open Soc'y Int'l*, 651 F.3d at 235 (observing *Rumsfeld's* distinction).

B. TWO OF THE DISCLOSURES SHOULD BE EVALUATED UNDER INTERMEDIATE EXACTING SCRUTINY.

PSCs must disclose whether they have a licensed medical provider on staff and whether they provide three time-sensitive health services. These disclosures are most appropriately evaluated under intermediate exacting, not strict, scrutiny.[6]

As an initial matter, these are compelled *disclosures*, not compelled ideological speech. Unlike the speech at issue in *Wooley*, *Barnette*, *Alliance for Open Society International*, and *Stuart*, the status and services disclosures do not force PSCs to express, adopt, endorse, or disseminate any particular message, opinion, or ideology—let alone a government-preferred one or one with which they disagree. Unlike the compelled expression at issue in *Hurley, Pacific Gas & Electric Co.*, or *Miami Herald*, these disclosures do not force PSCs to host or accommodate another speaker's message or provide a medium for expression with which they disagree.

The status and services disclosures are akin to and share important attributes with the type disclosure requirements courts have examined under intermediate exacting scrutiny. Like the campaign finance, petition, and financial disclosure cases, the status and services disclosure requirements compel PSCs to disclose truthful, factual information about their own activity and status. Like the campaign

[6] The third disclosure—that the City encourages pregnant women to see a licensed medical provider—should be evaluated under strict scrutiny because it requires PSCs to convey the City's own (and preferred) message.

finance, petition, and financial disclosure cases, and *unlike* cases like *Daugaard* and *Stuart*, the disclosures serve an important, non-ideological *public* information function; specifically, they supply health care consumers with important information necessary to protect their health.

In addition, the status and services disclosures fulfill their important, non-ideological public information function without implicating or burdening other constitutional rights—like the petition, campaign finance, and financial disclosure cases and *unlike* in *Riley*, *McIntyre, NAACP*, *Duagaard*, and *Stuart.* A PSC's lack of licensed professionals and whether it provides certain services is not the type of information (like one's name, the fact that one is seeking an abortion, or their political affiliation) that impacts other rights like personal privacy, bodily integrity, association, anonymous speech, or charitable solicitation. Nor is disclosure of this information likely to result in retaliation, reprisals, or chilling political speech or association.

Further, the disclosures perform their non-ideological public information function without interfering with or imposing any serious burden on a PSC's ability to engage in political speech or advocacy—like the petition, campaign finance, and financial disclosure cases, and *unlike* in *Riley*, *McIntyre*, *NAACP v. Alabama*, *Duagaard*, and *Stuart.* The status and services disclosures are distinct from and do not impact the expressive, political aspect of a PSC's endeavor.

These disclosures do not compel, limit, or burden any advocacy or political speech in which PSCs may engage. They are provided separately from and do not alter the substance of a PSC's political message or how PSCs wish to deliver that message.[7] PSCs remain free to make any statement they wish when they see their clients. All they must do is disclose that the health services and health information they provide is not imbued with medical authority.

Moreover, importantly, the disclosures requirements are not triggered by a PSC's expression of a particular viewpoint or by the content of their speech to clients. LL17 compels disclosures only for a center that has a primary purpose of providing services to pregnant women and either offers ultrasounds, sonograms, or prenatal care, or has the appearance of a medical facility. The required disclosures are not triggered by whether a PSC provides abortion services, nor its views on abortion.[8] Indeed, the disclosures are not triggered by expression or advocacy at all but rather non-expressive conduct. And the disclosures *relate* to PSCs'

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[7] In this sense, this case is quite different than *Riley*, where the Court was most concerned with the way the disclosure requirements, given the nature of charitable solicitation, were inherently "intertwined" in a "single speech" with and, thus, would significantly interfere with, one's substantive, ideological advocacy for support for a political cause. 487 U.S. at 796.

[8] That many PSCs may *be* opposed to abortion does not transform LL17 into a viewpoint-based regulation. Otherwise viewpoint-neutral legislation does not become viewpoint-discriminatory merely because it incidentally covers people who share a viewpoint or responds to a history of conduct by one ideologically defined group. *Madsen v. Women's Health Ctr.*, 512 U.S. 753, 762-63 (1994); *United States v. Scott*, 187 F.3d 282, 287 (2d Cir. 1999).

conduct, not their ideological mission or expression. *See Turner Broad. Sys.*, 512 U.S. at 655.

In sum, the status and services disclosures require PSC to make neutral, truthful, non-ideological factual statements about their own status and services, and supply women with valuable information to protect their health without imposing any burden on PSCs' political speech or interfering with or burdening other rights. As such, these disclosures fall into the narrow category of disclosure requirements tested under intermediate exacting, rather than strict, scrutiny. Indeed, it is worth noting that the disclosures here are less burdensome and less ideological than the disclosures that the Supreme Court has held—applying only minimal scrutiny—that *doctors* can be required to make to patients to ensure pregnant women make informed health decisions. In *Casey,* the Court, applying rational basis scrutiny, upheld a law that compelled doctors, before performing an abortion, to make "truthful, non-misleading" statements about "the nature of the procedure," "the health risks," the "probable gestational age of the unborn child," and to make available "printed materials published by the State describing the fetus and providing information about" childbirth assistance, the availability of child support, and a list of organizations that provided "services as alternatives to abortion." 505 U.S. at 881-82.

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, non-ideological disclosures from people who provide similar pregnancy-related services but who are not licensed professionals, are not supervised by licensed professionals, and 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 professional discipline and regulation. Applying intermediate exacting, rather than strict, scrutiny here is also an appropriate way to deal with this reality: although PSCs may not be licensed professionals for whom disclosure requirements are routinely applied with minimal constitutional scrutiny, these disclosure requirements are meant to stop women from *mistaking* PSCs for licensed medical facilities and their staff for licensed medical professionals, and prevent the health harms that flow from such mistakes.

II. THE STATUS AND SERVICES DISCLOSURE REQUIREMENTS SURVIVE CONSTITUTIONAL SCRUINTY.

Intermediate exacting scrutiny requires a substantial relation between the disclosure requirement and an important government interest; moreover, the government's interest must outweigh the burdens the disclosure requirement

imposes on one's First Amendment rights. *See Citizens United*, 130 S. Ct. at 914; *Buckley*, 424 U.S. at 68. The status and services disclosures meet this standard.

These disclosure requirements further two distinct and powerful government interests. First, the City has a compelling interest in protecting pregnant women's ability to access medical services. *See Hill v. Colorado*, 530 U.S. 703, 715 (2000) (state's power to "protect the health" of citizens); *Madsen*, 512 U.S. at 767 (state's "strong interest in protecting a woman's freedom to seek lawful medical or counseling services in connection with her pregnancy"); *New York ex rel. Spitzer v. Operation Rescue Nat'l*, 273 F.3d 184, 202 (2d Cir. 2001) (state's interest in protecting "the well-being of patients seeking care at facilities"). Second, the City has a substantial and important interest in protecting citizens from deceptive practices that cause consumer confusion. *See Edenfield v. Fane*, 507 U.S. 761, 769 (1993) (state's "interest in ensuring the accuracy of commercial information in the marketplace"); *Friedman v. Rogers*, 440 U.S. 1, 15 (1979) (state's interest "in protecting the public from deceptive and misleading" commercial practices). Indeed, the district court found the City's interest in "preventing deception related to reproductive health care" of "paramount importance." SPA-16.

The City's judgment that PSCs' practices implicate these interests is well supported. There is ample evidence that PSCs' deceptive actions and appearances, and the resultant delay in women's access to 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. JA-941-942. 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.* Ultimately, this patient came to Dr. Davis but an abortion was now no longer legally possible, and she had not obtained any prenatal care during her pregnancy. *Id.*; *see also* JA-948-49 (testimony about a patient who mistook PSC for a medical clinic); JA-950 (same); JA-951 (testimony about patients who received misinformation at PSCs); JA-441-44, 450 (testimony about a patient who had fetal anomalies that were not diagnosed by PSC staff who had performed an ultrasound); JA-469-73 (testimony 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); JA-315 (testimony 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); JA-315-16 (testimony about a teenager who mistook a PSC for Planned Parenthood and who was given false

information regarding contraception); *Amicus* Attachment A (documenting 18 incidents where women confused, deceived, or harmed during visits to PSCs). Thus, the harms the City aims to ameliorate here are real.[9]

The law's modest disclosure requirements are not only substantially related but narrowly crafted to address the problem the City sought to cure. First, the law carefully targets the entities it regulates: entities that provide certain health care services to pregnant women or that have the appearance of medical facilities but are not actually licensed or have licensed professionals on staff. N.Y.C. Admin. Code § 20-815(g). Contrary to the district court's suggestion, SPA-16, that the law may apply to PSCs that are not intentionally deceptive does not render the law over-inclusive. The disclosure requirements apply only to entities not already regulated by some other body that are doing things (like providing ultrasounds or presenting the trappings of a medical office) the City found inherently deceived and confused women, leading to negative health consequences. To the extent PSCs may choose to disclose voluntarily their unlicensed status or their service limitations, without LL17, there is no way to guarantee they will do so in an

[9] Under intermediate scrutiny, the City may make "predictive judgments" about the harm at issue, and need only show that it made "reasonable inferences" based on the evidence before it to conclude the law was necessary to address the harm. *Turner Broad. Sys., Inc. v. F.C.C.*, 520 U.S. at 195 (1997).

informative and consistent manner that women see and understand. LL17 ensures women get uniform, consistent notice at a point in time when such notice matters.[10]

Second, the disclosures themselves are substantially related and narrowly crafted to address the problem. The status disclosure puts women on notice that they are not going to a licensed, regulated medical facility and that if they wish to see a licensed professional they must go elsewhere. One court has suggested that a similar disclosure requirement would meet even strict scrutiny. *Centro Tepeyac v. Montgomery Cnty.*, 779 F. Supp. 2d 456, 471 (D. Md. 2011). Indeed, the *Riley* court would have upheld such a requirement. 487 U.S. at 799 & n.11 ("[N]othing in this opinion should be taken to suggest that the State may not require a fundraiser to disclose unambiguously his or her professional status. On the contrary, such a narrowly tailored requirement would withstand First Amendment scrutiny."). Similarly, the services disclosure puts women on notice that if they are not entering a full-service medical clinic and, if they wish to obtain certain time-sensitive pregnancy-related health services, they must go elsewhere. These

[10] LL17 is not unique among consumer protection laws in its application to all relevant entities regardless of whether they are intentionally or actually deceptive. For example, the City's law concerning "notarios," non-lawyers in Spanish-speaking communities who provide immigration advice, requires *every* non-lawyer who provides immigration assistance services for a fee to post signs and state in their advertisements that they are not lawyers. N.Y.C. Admin. Code § 20-774(a). *All* New York lawyers—even those who provide services *pro bono*—must post a client "bill of rights" in their waiting room. 22 N.Y. Comp. Code R. & Regs. § 1201.1. Similarly *everyone* who uses the term "doctor" in advertisements for goods or services must make certain disclosures about their professional pedigree. N.Y. Gen. Bus. L. § 350-b.

disclosures allow women to make informed choices as to whether to utilize PSCs' services in addition to or instead of licensed professionals' services.

Third, when and where the disclosures are required is substantially related and narrowly crafted to address the problem. The law compels 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, walking in the door, or requesting specific services).

Furthermore, through these modest disclosure requirements, the City furthers its compelling goals by imposing only minimal burdens on PSCs' First Amendment rights. By choosing disclosure requirements *in lieu* of prohibiting or restraining speech, the City chose the less burdensome and restrictive means to solve a problem. *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. Inc.*, 535 U.S. 357, 376 (2002) (disclosure a "far less restrictive alternative" to prohibition); *Zauderer*, 471 U.S. at 651 ("disclosure requirements trench much more narrowly . . . than do flat prohibitions on speech").

The nature of the information PSCs must disclose about themselves—truthful, factual information about their unlicensed status and their services—is far less burdensome (and much less offensive to First Amendment values) than

requiring PCSs to provide abortion, contraception, and pre-natal care services; than requiring PSCs to refer for these services; than requiring PSCs to tell women where they can get these services; than requiring PSCs to make a positive, or even neutral, statement about the value of these services; or than requiring PSCs to disclose their own ideological position on abortion. The disclosures are triggered by and limited to a PSC's status and conduct and do not reach further.[11] The required disclosures do not regulate, restrict, or burden what PSCs may say to their clients, do not regulate or dictate how they counsel their clients, and do not 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 they provide or refer for them. All PSCs must do is be honest about their status and the services they provide. To the extent the disclosures impose a burden on PSCs' First Amendment rights that burden is limited to the ability of PSC staff to masquerade as licensed medical professionals who provide real, time-sensitive health services.

Where and how the disclosures must be made is also minimally burdensome. This is particularly true of the posted sign requirement. Posting signs is easy and inexpensive. The information a sign conveys is independent of any other

[11] Again, in this sense, these disclosure requirements differ from those in *Riley*. *See Turner Broad. Sys.*, 512 U.S. at 655; *supra* at 18 n.7.

communication with clients and thus is not part of, let alone interferes with, political advocacy with clients. Thus, to the extent the district court expressed concerns that the disclosures would "alter the tenor of Plaintiffs' [political] speech by drowning their intended message," SPA-17, this concern is not implicated by the sign disclosures.[12] The oral disclosures are also minimally burdensome; they are not required every time a PSC employee interacts with a client but rather only when a client specifically requests pre-natal care, emergency contraceptives, or abortion care. Although this disclosure becomes part of a dialogue in a way the sign disclosure does not, it does not alter the nature or course of the dialogue because it is the *patient* who has raised the topic of *wanting* particular services. LL17 simply requires that, when asked, PSCs must be honest about whether those services are available. This does not significantly interfere with or burden PSCs' ability to then say whatever they wish to dissuade women from having an abortion, using contraceptives, or getting pre-natal care.

Finally, under intermediate exacting scrutiny "a regulation need not be the least speech-restrictive means of advancing the Government's interests." *Turner Broad. Sys.*, 512 U.S. at 662. The tailoring requirement is met so long as the

[12] This is another way in which this case is different than *Riley*, where the Court found that the fundraising fee disclosure "inextricably intertwined" and interfered with charitable solicitation because it had to be uttered in "a single speech" that primarily involved ideological advocacy. 487 U.S. at 796. Here by contrast, the posted disclosures are not uttered in a "single speech" but rather independently on a sign at the clinic door and in the waiting room. Here the status and services disclosures are distinct and separable from their ideological speech to dissuade women from having abortions.

regulation promotes a substantial government interest "that would be achieved less effectively absent the regulation" and "do not burden substantially more speech than is necessary to further the government's legitimate interests." *Id.* (internal quotation marks and citations omitted). Nonetheless, *amicus* points out that the alternatives the district court suggested, SPA-17-19, would not actually further the City's specific goal: ensuring that every woman is put on notice *at the moment* she is seriously considering or about to use a PSC's services that she is not in an actual medical clinic. The district court failed to account for this interest, and the solutions it pointed to—namely, a city public service announcement campaign, prosecutions, and lobbying the state legislature to require sonogram licensing—are inadequate, impractical and unrealistic. Public service announcements and prosecutions may regulate PSC behavior and may, in fact, be independently useful, but will *not* ensure that vital information about PSCs' unlicensed status and limited services reach every woman at the moment she is making important health care choices about her pregnancy. In-the-moment notice is particularly important because *time-sensitive* health services are at stake. The "in the moment" alternative the district court suggested—the City erecting signs on the sidewalk outside of PSCs offices—is impractical and not feasible because the City will not always own a visible area near a PSC's door. Some PSCs are located in large, multi-story office buildings with dozens of offices inside, where a sign outside the

building will do little good or the city sidewalk will be very far away from the actual entrance. In other locations with parking lots, many women enter PSCs without setting foot on City sidewalks. In those situations the only sign that would be effective would be in the waiting room. Finally, the suggestion of state legislation does not appear to be realistic.

The status and services disclosures are a carefully-crafted solution to a real, compelling problem that does not limit or interfere with PSCs' ideological advocacy. The City's interests outweigh the minimal burdens placed on PSCs, and thus, these disclosure requirements survive intermediate exacting scrutiny.[13]

[13] Even if the Court were to apply strict scrutiny, the status and services disclosures should be sustained because they 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, real, based on evidence, and not mere speculation or conjecture. The disclosures are narrowly tailored to achieve the City's interest: as a disclosure scheme, LL17 is the least restrictive *effective* solution available; a tight nexus exists between the substance of the disclosures and the government's interest; the law does not 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.

CONCLUSION

For these reasons, the Court should reverse and remand the district court's ruling as to plaintiffs' likelihood of success on the merits.

Respectfully submitted,

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November 7, 2011

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

I hereby certify that:

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 6,998 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

/s/ Melissa Goodman
Melissa Goodman
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Dated: November 7, 2011

APPENDIX

PLANNED PARENTHOOD OF NEW YORK CITY
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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.

- 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

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. The 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

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)

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,

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."