



March 20, 2018

Sen. Terry Gerratana, Co-Chair
Sen. Heather Somers, Co-Chair
Rep. Jonathan Steinberg, Co-Chair
Members of the Joint Committee on Public Health
February Session, 2018, of the General Assembly of Connecticut

**Re: Testimony of Deanna Wallace, Esq., Staff Counsel, Americans United for Life,
On HB 5416 Regarding the Free Speech Rights of Pregnancy Centers**

Dear Chairs Gerratana, Somers, Steinburg, and Honorable Members:

My name is Deanna Wallace and I am Director of Legal Communications and Staff Counsel at Americans United for Life. In my practice as an attorney, I have assisted in representing Pregnancy Centers and pro-life medical professionals in litigation on legislation regarding the free speech rights of such Centers at the 4th Circuit Court of Appeals, in federal court in Illinois, and at the Supreme Court in *NIFLA v. Becerra*. I am here today representing Americans United for Life, as an attorney specializing in constitutional law.

On page 5 of NARAL Connecticut's so-called "study" on Pregnancy Centers lies the most important piece of information the Committee should consider regarding this bill- that's where they inform you that legislative attempts to regulate the free speech of Pregnancy Centers have been struck down as unconstitutional by the courts. This fact is unsurprising when one considers that the right to free speech is one the foundational rights in our Constitution. It comes not from supposed "penumbras or emanations" but is spelled out in plain English in the First Amendment.¹

One of the courts that has struck down these attempts is the Second Circuit Court of Appeals, whose jurisdiction covers the state of Connecticut. In *Evergreen Association v. the City of New York*, the Second Circuit struck down two separate attempts to regulate the free speech of Pregnancy Centers, noting that "the context is a public debate over the morality and efficacy of contraception, for which many of the facilities regulated by [New York City law] provide alternatives. [E]xpression on public issues has always rested on the highest rung of the hierarchy of First Amendment values."

The Supreme Court made their views on this issue clear in *Ashcroft v. ACLU*, saying: "[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." As a result, Court held that the Constitution

¹ 740 F.3d233, 249 (2012).

“demands that content-based restrictions on speech be presumed invalid . . . and that the Government bear the burden of showing their constitutionality.”²

This bill is undeniably content-based, viewpoint discrimination on its face- both in its actual effect, and its stated purpose. In Section 1(7), the definition of "limited services pregnancy center" limits the effect of this legislation to only centers that 'do not provide referrals to clients for abortion...' In other words, this only applies to pro-life clinics. By limiting the application of this bill to only pro-life centers, the effect is to single out a particular viewpoint on abortion.

This alone would likely be enough to trigger the Supreme Court's strict scrutiny test, but the stated legislative purpose practically ensures that strict scrutiny will apply in any court challenge. When this concept was raised prior to introduction, the Connecticut Democratic Caucus openly declared that they were targeting what they called "anti-choice" pregnancy centers. Those who speak in favor of this bill also clearly admit that this legislation is meant to target only one viewpoint: the pro-life viewpoint. Any court viewing the legislative record of this bill would find ample evidence of an explicit intent to discriminate against only pro-life speech.

It is also not the government's right to decide what counseling or advertising is classified as "false or misleading" in the context of a highly controversial, political subject such as abortion. Americans United for Life has represented leading pro-life medical organization who each consist of thousands of medical professionals from around the nation, all of whom point to the medical and scientific fact that abortion hurts women. In the packet that I have presented you with, is a detailed explanation of that claim, backed up with citations from leading peer-reviewed medical and science journals. Reasonable people can disagree on matters of scientific and medical importance, but it would be wholly unreasonable and unconstitutional for government to punish Pregnancy Centers for providing this information simply because you do not agree with it.

Right now in Washington D.C., the Supreme Court is hearing arguments in *NIFLA v. Becerra* regarding whether or not the government can interfere with the free speech rights of Pregnancy Centers. Given the Court's recent strong defenses of the right to free speech, such as their unanimous rulings in *McCullen v. Coakley* (upholding the free speech rights of pro-life sidewalk counselors), and *Matal v. Tam* (rejecting that the government can deny trademarks deemed "disparaging"), it would be logical to expect them to uphold the free speech rights of Pregnancy Centers.

Not only would passing legislation unconstitutionally targeting the free speech rights of Pregnancy Centers, result in needless and expensive litigation for Connecticut, but the true cost would be borne by the women of Connecticut who cannot afford to lose the support, care, and options that Pregnancy Centers represent. For these reasons, I urge the legislature to reject HB 5416. The women of Connecticut, and their unborn children, deserve better.

Respectfully,

Deanna Wallace, Esq.

² 542 U.S. 656, 660 (2004).