



STATE OF CONNECTICUT
ATTORNEY GENERAL WILLIAM TONG

Good morning Senators Abrams and Somers, Representatives Steinberg and Petit, and distinguished member of the Public Health Committee. I appreciate the opportunity to offer testimony about House Bill 7070, *An Act Concerning Deceptive Advertising Practices of Limited Services Pregnancy Centers*.

I offer my strong support for this bill, which if passed, will protect women's health by prohibiting limited services pregnancy centers from engaging in false and misleading advertising.

I base my support on three critical points. First: This bill not only protects the women of this state, but is in the greater interest of public health and public policy. Second: HB 7070 does not threaten or impinge upon anyone's constitutional rights. Third: HB 7070 is necessary because of possible gaps in our ability to protect women against this type of false and harmful advertising.

HB 7070 Serves Compelling Government Purposes

To begin, it is important to note that some limited services pregnancy centers openly acknowledge in their advertising that they do not provide abortions or emergency contraception, and that they believe abortion is wrong. While I disagree strongly with that belief, I respect the First Amendment right of those centers to express it.

Unfortunately, though, some limited services pregnancy centers do not advertise truthfully. They seek to mislead pregnant women into the false belief that they offer comprehensive reproductive health services.

When a pregnant woman is misled about the reproductive health services she can receive, she loses critical time. This is particularly important when a woman is considering terminating her pregnancy. Delays may mean that safer, less-invasive options are no longer available, or even that she no longer has the option to terminate her pregnancy.

While the health and safety of Connecticut's women takes obvious precedence and is reason alone to support passage of HB 7070, I must also note that there is a real financial cost to the state when deceptive advertising hurts women's health.

The State of Connecticut funds, both in part and sometimes in whole, healthcare services for many women. If women who choose to terminate a pregnancy are misled and delayed by the false advertising of limited services pregnancy centers, the cost of providing more invasive, more dangerous and more expensive options may fall to the State.

The Language in HB 7070 Has Been Upheld as Constitutional

As the state's chief legal officer, I am confident that HB 7070 does not regulate, limit, or curtail the free speech rights of limited service pregnancy centers.

Both in its intent and language, HB 7070 protects the public – and, in particular, pregnant women – from deceptive advertising. It does not speak to anti-abortion advocacy. It only bars limited services pregnancy centers from using false, misleading or deceptive language about the services they provide, or using language offering services that the center has no intention of providing.

The Constitution affords no protection to this kind of false or misleading commercial speech.¹

I say this confidently because HB 7070 closely tracks a San Francisco city ordinance² that was upheld by the Ninth Circuit Court of Appeal in *First Resort, Inc., v. Herrera*.³ In that decision, the Ninth Circuit found that the exact same language used in HB 7070 did not violate the First Amendment – or, for that matter, due process or equal protection. Importantly, the United States Supreme Court denied *certiorari*, declining to reverse the Ninth Circuit.

In other words: The ruling that HB 7070's language is constitutional now stands as good law.

HB 7070 Fills a Possible Enforcement Gap

HB 7070 fills what could be a gap in Connecticut's enforcement powers. The primary way that the state regulates unfair and deceptive advertising is through the Connecticut Unfair Trade Practices Act,⁴ ("CUTPA"), which prohibits "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."⁵ The Attorney General's Office frequently uses CUTPA to protect Connecticut's consumers from false, misleading or deceptive advertising.

In this instance, however, deceptive advertising done by a limited services pregnancy center could fall outside the ambit of CUTPA. For example, depending on a center's corporate structure, or whether or not it offers services or items for sale, a center may not be in the stream of "trade or commerce." Notably, the Massachusetts Supreme Court – a source of guidance for Connecticut's courts on CUTPA issues – declined to enforce that state's unfair and deceptive practices act against a limited services pregnancy center.⁶

¹ See, e.g., *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 563 (1980) ("[T]here can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about lawful activity.") (internal citations omitted).

² San Francisco Administrative Code Chapter 93, §§ 93.1-93.5.

³ 860 F.3d 1263 (9th Cir. 2017), *cert. denied* 138 S.Ct. 2709 (2018).

⁴ C.G.S. §§ 42-110a *et seq.*

⁵ C.G.S. § 42-110b(a).

⁶ *Planned Parenthood Federation of America, Inc. v. Problem Pregnancy of Worcester, Inc.*, 398 Mass. 480, 494 (1986) (finding that the legislature did not intend to include a limited services pregnancy center within the ambit of Massachusetts' unfair and deceptive practices act).

Thus, absent legislative action, limited services pregnancy centers could evade regulation and responsibility if they engage in false, misleading, or deceptive advertising. The health and safety of the women of our state is frankly too important an issue for there to be any such potential enforcement gap.

I urge you to report HB 7070 favorably. It is carefully crafted legislation that protects the constitutional rights of both those engaging in the freedom of speech, and those exercising their right to choose how and where they receive reproductive health services. Thank you once again for the opportunity to offer testimony about this important matter. Please do not hesitate to contact me with any questions or concerns.