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ARTICLE

Crisis Pregnancy Centers: An Inherently Unjust Limitation to Reproductive Rights

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Introduction

Abortion, though afforded certain legal protections, can be challenging to access in many areas of the United States, a problem exacerbated by the presence of Crisis Pregnancy Centers (CPCs). CPCs present themselves as clinics that provide a full spectrum of free pregnancy consultation services, but in fact are pro-life, anti-abortion organizations.[1] From the outside, CPCs appear to be neutral health and welfare establishments, leading women *to believe they will receive unbiased guidance based on their best interests. In reality, CPCs recruit unsuspecting women into their facilities to deter them from accessing abortions, promoting only two options: parenthood or adoption.[2] Women are lured into CPCs with the promise of free services which range from medical care to clothing and other items. At its most basic level, these deceptive practices violate the autonomy of women seeking reproductive care, perpetuating unjust limitation of access to quality medical care.

Crisis Pregnancy Centers employ a range of recruiting techniques to attract women to seek their services. Women who enter CPCs seeking medical guidance on their reproductive options are instead offered advice that is driven by a pro-life ideology, coupled with promises of financial and emotional support if she continues with her pregnancy. Women regularly report believing a CPC is an actual abortion clinic, when, in fact, abortion is deterred and condemned by staff.[3]

There are an estimated 2,500 CPCs in the United States, compared to only 800 abortion clinics.[4] In some states, CPCs outnumber abortion providers by a ratio as high as 15 to 1.[5] As the number of CPCs continue to increase, accessible clinics that provide abortion information and access to procedures are simultaneously diminishing. As a result, it is progressively more difficult to access health care practitioners who provide the full range of reproductive health care options.

Crisis pregnancy centers undermine reproductive justice and individual rights both in their deceptive recruitment practices and provision of specious information. Given that CPCs disseminate inaccurate information about a time-sensitive medical procedure, they are a health hazards, disrupting access to a service that heavily impacts health outcomes. Misinformation is fundamentally unethical in the case of CPCs and abortion because it infringes upon women's decision-making capacity and their ability to seek and obtain safe care.

[1]Sonya Borrero et al., *Crisis Pregnancy Centers: Faith Centers Operating in Bad Faith*, 34 J. of Gen. Internal Med. 144, 144-45 (2019).

[2]Amy G. Bryant & Jonas J. Swartz, *Why Crisis Pregnancy Centers are Legal But Unethical*, 20 Am. Med. Ass'n J. Ethics 269, 269 (2018).

[3]*Id.* at 270.

[4]*See* Lisa McIntire, Nat'l Abortion Rts. Action League, Crisis Pregnancy Centers Lie: The Insidious Threat to Reproductive Freedom 1, 6 (Aug. 8, 2018), https://www.prochoiceamerica.org/wp-content/uploads/2017/04/cpc-report-2015.pdf [https://perma.cc/327Y-GVR7].

[5]*Id.* at 6.

This paper's purpose is two-fold. First, it presents an ethical analysis that details why the current practices of CPCs are unethical and violate women's reproductive freedom. Second, it proposes policy solutions to mitigate inequities and disinformation caused by the practices of CPCs, in an attempt to protect the women who fall prey to their services.

Background

Crisis Pregnancy Centers can be found in every state and are also present internationally. Most of these centers are managed by Evangelical Christian groups and are staffed by one or two paid employees as well as non-medically trained volunteers.[6] CPCs have all the trappings of unbiased medical establishments; the centers look strikingly similar to non-CPC women's health clinics and often make efforts to emulate them.[7] This illusion of neutrality is so convincing that patients are often unable to discern CPCs' political and religious biases in the information offered by the centers. Over half of survey respondents who had sought services in a CPC were not aware that CPCs oppose abortion (58.5%) nor did they recognize CPCs' religious affiliations (53.1%).[8]

Crisis Pregnancy Centers make concerted efforts to advertise their free services, often utilizing racially and socioeconomically motivated recruiting strategies. Care Net, one of the largest CPC networks, has explicitly stated that they have launched initiatives "[i]n response to the research that shows there is a disproportionately high rate of abortion among African-American women."[9] They use statistics on the rate of abortion among Black women, claiming that they want "to reach underserved and over-aborted people."[10] These advertisements are misleading because they do not give background information about the structural reasons why Black and other ethnic and racial minorities seek abortions at a higher rate than their White counterparts, causing those viewing the ads to believe that abortion providers are disproportionately targeting women of color. These tactics leverage the distrust for abortion clinics that already exists in communities of color rooted in the history of family planning in the United States.[11]

Studies provide evidence that CPCs disproportionately recruit women in lower socioeconomic brackets and women of color. People living below the federal poverty line visit CPCs at a rate five times higher than women in the highest income bracket.[12] In a study that examined CPCs in Ohio, attendance was higher among women of color, specifically Black women.[13]

The allocation of federal funding in reproductive care compounds fiscal equity issues between clinics that provide abortion and CPCs. Although abortion clinics cannot receive federal funding to support abortion care, CPCs receive federal and state funding through a variety of channels.[14] In the United States, funding abortion care on the federal level is illegal, but federal funding for abortion deterrence is not.

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[6]Katrina Kimport, *Pregnant Women's Reasons for and Experiences of Visiting Antiabortion Pregnancy Resource Centers,* 52 Persp. Sexual & Reprod. Health 49, 49 (Mar. 2020).

[7]Bryant & Swartz, *supra* note 2, at 270.

[8]Andrea Swartzendruber et al., *5 Misconceptions About Crisis Pregnancy Centers (CPCs) Among a Sample of Emerging Adults Who Sought Services at CPCs in Georgia: A Mixed Methods Study*, 68 J. Adolescent Health S3, S3 (2021).

[9]Lillie Epps, *Time for Abortion in the Black Community to be History, Care Net Says*, Care Net (Feb. 1, 2006), https://www.care-net.org/press-release-020106 [https://perma.cc/9YAA-Q393].

[10]*Id.*

[11]*See generally* Bruce D. Baum & Duchess Harris,

[12]Joanne D. Rosen, *The Public Health Risks of Crisis Pregnancy Centers*, 44 Persp. Sexual & Reprod. Health 201, 201 (Sept. 2012), https://www.guttmacher.org/journals/psrh/2012/09/public-health-risks-crisis-pregnancy-centers [https://perma.cc/J28C-2S6H].

[13]Robin Rice et al., *Who Attends a Crisis Pregnancy Center in Ohio?,*104 Contraception 383, 385 (2021).

**This paper does not analyze the question of whether or not abortion itself is ethical. This paper only evaluates the actions of CPCs that are intended to prevent women from accessing the full range of reproductive options, particularly those that involve lies and obfuscation.

[14]Sarah McCammon, *How Crisis Pregnancy Center Clients Rely on Medicaid*, NPR (July 24, 2017, 2:48 PM), https://www.npr.org/sections/health-shots/2017/07/24/538556088/crisis-pregnancy-centers-help-pregnant-women-enroll-in-medicaid [https://perma.cc/9Q55-MF92].

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Crisis Pregnancy Centers refuse to provide referrals to abortion clinics and employ falsehoods to obstruct access to abortion care elsewhere. Abortions are often time-sensitive, both for medical reasons and because of legal limitations placed by many states on abortion. In attempting to persuade women against abortion, these centers have also been known to tell women that abortions cause breast cancer and that the termination procedure is very dangerous, causing "many women [to] bleed to death on the table."[15] These claims are false and misleading, particularly within the first trimester of pregnancy. There is no known link between breast cancer and abortion is a relatively safe procedure.[16]

Tactics that deter and stall women from having an abortion are public health threats. Abortions are least complicated and most accessible within the first trimester, both from a legal and medical perspective. The risk of complications increases progressively as a pregnancy advances. Second-trimester abortions involve far more complex procedures, which are also more expensive. The average abortion patient pays around $470 for a first-trimester procedure, while the average cost for an abortion at 20 weeks is $1,500.[17] Women who cannot afford these costs may be forced to carry a pregnancy to term, or may resort to unregulated, underground abortion providers that carry serious risks of harm.

Targeted advertising tactics, federal funding asymmetries, and the underlying unjust structures that push women to seek care at centers that advertise free services are all factors that allow CPCs to succeed. Although some women report being satisfied with their experience at CPCs, services from CPCs cannot be relied upon to fill in the gaps present in reproductive healthcare. Regulation of CPC advertising and their biased medical services must occur.

Ethical Analysis: Justice, Veracity & Autonomy**

Crisis Pregnancy Centers create, sustain, and exacerbate ethical issues related to accessing reproductive care in the United States. Their agenda, along with the methodologies employed to achieve their objectives, render CPCs fundamentally unethical. This analysis focuses on the three concepts of bioethics most blatantly violated by CPCs, justice, veracity and autonomy. Though individual analysis is provided for each of these principles, the three arguments are intertwined and build off each other. As a result, if an action violates any individual principle, it will necessarily violate all three. The ethical analysis begins with the broad concept of justice, progresses to the focused analysis of veracity and culminates with the individual level analysis of autonomy. The analysis begins with the broadest concept of justice, looking at the larger landscape of healthcare in its entirety. The next stage of the analysis focuses on veracity, analyzing the professional standards of communication between healthcare provider and patient. Lastly, the analysis addresses autonomy, the individual patient's right to exercise their reproductive freedom.

Justice

Crisis pregnancy centers violate the concept of justice in a multitude of ways including their target client base, recruitment practices, dissemination of misinformation, and methods of funding. Justice, at its most basic definition, is the concept of fairness, the idea in healthcare that those with equivalent ailments should be treated equitably. The methods employed by CPCs exacerbate unequal access to abortion care; it is unjust if two patients receive different medical care based on any factor other than medical determination. While ethicists conceptualize the notion of justice in different ways, the value of justice in bioethics is typically thought about in terms of the allocation of resources, both on an institutional and societal level. For example, John Rawls, in his *Theory of Justice,* describes the fair

[15] McIntire, *supra* note 4, at 8.

[16] *Induced Abortion in the United States*, Guttmacher Inst. (Sept. 2019), https://www.guttmacher.org/fact-sheet/induced-abortion-united-states [https://perma.cc/WX9P-RXW3] (last visited May 7, 2022).

[17] *Second-Trimester Abortions Concentrated Among Certain Groups of Women*, Guttmacher Inst. (Dec. 16, 2011), https://www.guttmacher.org/news-release/2011/second-trimester-abortions-concentrated-among-certain-groups-women [https://perma.cc/QTV4-LLUQ].

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equality of opportunity principle wherein two people, no matter their social standing, race, gender, socio-economic status, should be able to access opportunities at equal rates.[18] CPCs impede fair equality of opportunity, making it difficult for women to equally access the full range of reproductive care. Rawls' conception of justice illustrates the unethical nature of CPCs as pregnancy acutely impacts the opportunity in one's life.

Crisis pregnancy centers impede women's ability to access reliable reproductive healthcare, disproportionately affecting women of color and women of low socioeconomic status. Locating CPCs near these demographics is significant when considering that women of color are five times more likely to terminate a pregnancy compared to their Caucasian counterparts.[19] The intent in their geographic placement is to lure members of a vulnerable population and deter them from obtaining an abortion. The American College of Obstetrics and Gynecology defines justice, "in the context of the physician-patient relationship, the physician should be the patient's advocate when institutional decisions about allocation of resources must be made."[20] In the case of CPCs, staff are not advocating for the best interest of their patients nor for the desires and goals of their patients but rather to advance their pro-life agenda. Whether credentialed as healthcare practitioners or impersonating healthcare providers, the universal goal of CPC staff is to prevent women from obtaining an abortion irrespective of the patient's best interest. The advancement of their religious agenda is the sole purpose of the guidance they provide with the ultimate goal of preventing pregnancy termination. Compounding this misdirection is the fact that the information provided to dissuade women from choosing abortion is often false information.[21] Targeting specific vulnerable populations with this misleading information prevents women from accessing a legal and safe medical procedure and is therefore unjust.

Access to federal funding, and in some cases, state funding, for the operation of a CPC is particularly problematic, specifically when compared to the lack of government funding for abortion clinics. This funding asymmetry highlights inequities that are pervasive throughout healthcare, allocating more resources to some than to others, disproportionately affecting low socioeconomic populations. The Hyde Amendment, passed in 1976 by Congress, lists the comprehensive health care services that Medicaid must provide to low-income people and excludes abortion. Congress has since carved out special exceptions in the case of rape, incest or threat to the woman's life or health.[22] In contrast, CPCs receive state and federal funding for their practices of abortion deterrence. Federal funding is available from both the Title V funding for Maternal and Child Health and the Community Based Advocacy Education Fund.[23] State funding is available from "choose life" license plates and other state-based initiatives.[24, 25] Government funding is restricted for abortions but readily available for the religiously based CPCs that function to prevent women from obtaining their legally permitted abortion. This contradiction in government funding between CPCs and abortion clinics violates the concept of justice by curtailing low-income women who are reliant on Medicaid from access to abortion care that their more privileged socio-economic counterparts can access.

[18]John Rawls, A Theory of Justice 43 (Otfried Höffe ed., Joost den Haan trans., 2013) (1971).

[19]Susan A. Cohen, *Abortion and Women of Color: The Bigger Picture*, Guttmacher Inst. (Aug. 6, 2008), https://www.guttmacher.org/gpr/2008/08/abortion-and-women-color-bigger-picture [https://perma.cc/L3J5-56HE].

[20]*Ethical Decision Making in Obstetrics and Gynecology*, 110 Obstetrics & Gynecology 1479, 1483 (2007).

[21]U.S. House of Representatives, False and Misleading Health Information Provided by Federally Funded Pregnancy Resource Centers (July 2006).

[22]*Public Funding for Abortion*, ACLU (2022), https://www.aclu.org/other/public-funding-abortion [https://perma.cc/6R2Q-937M].

[23]Aziza Ahmed, *Informed Decision Making and Abortion: Crisis Pregnancy Centers, Informed Consent, and the First Amendment*, 43 J.L. MED. & Ethics 51, 51 (2015).

[24]*The United Plates of America*, Choose Life America, Inc., http://www.choose-life.org [https://perma.cc/JD7R-DSSD]; *see also "Choose Life" License Plates*, Guttmacher Inst. (May 1, 2022), https://www.guttmacher.org/state-policy/explore/choose-life-license-plates [https://perma.cc/WPP6-3CL6].

[25]https://www.guttmacher.org/state-policy/explore/choose-life-license-plates.

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Veracity

Veracity between a healthcare provider and the patient is paramount. Veracity can be defined as truth-telling, the parameters of which can be outlined by an examination of its opposite, deceit. Actions encompassed in deceit include everything from evasiveness and distortion to outright denial of fact and fabrication.[26] Historically, paternalism was the model of an ideal relationship between patient and provider. In this relationship the provider made decisions on behalf of the patient based on what the provider believed to be in the patient's best interest. These decisions were made based upon the social structure in which the physician self-identified as superior.[27] In this model, patients did not participate in informed consent nor subsequent autonomous decision making; instead they followed the guidance of the practitioner, often without understanding. To this end, codes of medical ethics did not traditionally address the issue of veracity. The expectations of patients and the culture of the patient-provider relationship has shifted over the last 50 years to a state in which patients have the expectation of truthfulness from their provider.[28]

Veracity is highly valued by many moral philosophers. In Duty Ethics, Immanuel Kant strongly defends truthfulness as a, "strict legal duty because it is the necessary condition for the juridical state."[29] Nancy Berlinger, in her interpretation of Dietrich Bonhoeffer's essay, "What Does It Mean to Tell the Truth?" argues that medical professionals are both professionally and morally obligated to tell the truth. Furthermore, Berlinger discusses two ways in which providers might violate truth telling obligations,[30] explaining the difference between merely not lying versus overt truth telling. CPCs employ both of these deceptive techniques by withholding information about abortion care and lying about the consequences of abortion procedures, violating patient-provider veracity. Therefore, the fundamental operation of CPCs does not uphold the standard of veracity.

The recruiting practices of CPCs violate veracity, inviting women to utilize their services without transparency of their pro-life agenda and the resulting limitations in reproductive care.[31] Many CPCs are established in the same buildings or in close proximity to abortion providers, using similar logos and design on their signage.[32] As a result, women seeking abortion services often mistakenly enter the CPC and become ensnared in a web of deceit and falsehoods intended to deter the woman from termination. In other circumstances CPCs are established in geographic locations intended to target women of color and women of low socio-economic status. For example, CPCs are frequently located in targeted urban areas or near college campuses with higher populations of minority women. The intention is to supply false information in a free setting as a means of deterring these women from seeking the full range of reproductive health options available.

Crisis Pregnancy Centers often use false advertising, asserting on websites and billboards that they provide abortion services, in order to lure unsuspecting women into their clinics. The goal of this misleading advertising is to dissuade women from receiving an abortion.[33] This practice leads to many women entering the CPC under the false belief that they are entering an abortion clinic. Once these

[26]John J Palmieri & Theodore A. Stern, *Lies in the Doctor-Patient Relationship*, 11 Primary Care Companion J. Clinical Psychiatry 163, 166 (2009).

[27]Brian McKinstry, *Paternalism and the Doctor-Patient Relationship in General Practice*, 42 Brit. J. Gen. Prac. 340, 340 (1992).

[28]Robert J. Sullivan, Lawrence W. Menapace & Royce M. White, *Truth-Telling and Patient Diagnoses*, 27 J. Med. Ethics 192, 193 (2001).

[29]Thomas Mertens, *On Kant's Duty to Speak the Truth*, 21 Kantian Rev. 27, 27 (2016).

[30]Nancy Berlinger, *What is Meant by Telling the Truth: Bonhoeffer on the Ethics of Disclosure*, 16 Stud. in Christian Ethics 80, 81 (2003).

[31]Amy G. Bryant et al., *Crisis Pregnancy Center Websites: Information, Misinformation and Disinformation*, 90 Contraception 601, 603 (2014).

[32]Alice X. Chen, *Crisis Pregnancy Centers: Impeding the Right to Informed Decision Making*, 19 Cardozo J.L. & Gender 933, 934 (2013).

[33]B. Jessie Hill, Casey *Meets the Crisis Pregnancy Centers*, 43 J.L., Med. & Ethics 59, 59 (2015).

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women have entered, they are fed false information about abortions as a deterrent.[34,35] These deceptive practices violate the ethic of veracity by luring women into a CPC under false pretenses.

Crisis Pregnancy Center staff often wear uniforms associated with medical experts, such as scrubs and white coats, in an attempt to imply credentials they do not possess. Some CPCs are staffed by healthcare providers including doctors, nurses and ultrasonographers, though most are not. Many CPCs are staffed by untrained people who represent themselves as healthcare providers or others with minimal healthcare training.[36] By misrepresenting their credentials and affiliation, these individuals violate provider-patient veracity standards, creating a situation in which a woman seeking an abortion is denied this reproductive choice. This is a return to the paternalistic era of medicine in which the patient's voice was not heard and decisions were made by the provider in the context of the provider's moral values.

Autonomy

Historically, the medical profession functioned in a paternalistic format wherein the patient's autonomy was considered less important compared to the physician's expertise.[37] However, the ethos of medicine has shifted to prioritize patient autonomy and individual decision-making. CPCs, disguised as medical establishments, are antithetical to patient autonomy. An individual's ability to have autonomous control over decisions relies on having access to complete and truthful information presented in a fashion compatible with the patient's ability to understand.

While inside a CPC, women are often purposefully told false information about reproductive health, resulting in the perception that they have fewer choices than are actually available to them.[38] CPCs discourage abortion and do not provide referrals to other clinics. Given the time-sensitive nature of abortions, this denial of referral may lead to eliminating the option of abortion in jurisdictions with restrictions that apply after the first trimester. CPCs have reportedly told women that abortions are legal throughout all stages of pregnancy, falsely asserting that they can delay their decision and take their time.[39] Other reports indicate that women are advised they may be at a risk for a miscarriage, so an abortion is not needed, postponing their decision long enough that abortion is no longer available to them. These medical lies directly interfere with patient decision-making by deceiving women and effectively eliminating the option of abortion, undermining their autonomous right to self-determination.

Patient autonomy necessitates that people have access to advice that is truthful and unbiased. CPCs not only disseminate misleading information about abortion, they also purposefully withhold available options. People should have access to reliable advice to affairs that bear on their lives in a substantial manner, including health information. Gürol Irzik and Faik Kurtulmus, drawing from the work of Miranda Fricker, explain that a necessary principle of fair distribution of epistemic goods is the *opportunity* for all to gain information that bear on life plans.[40] Such information increases the individual's ability to exercise autonomous control. No matter an individual's gender, race, income

[34]Jenny Kutner, *How Crisis Pregnancy Centers Are Using Taxpayer Dollars to Lie to Women,* Salon (July 14, 2015, 5:41 PM), https://www.salon.com/2015/07/14/how_crisis_pregnancy_centers_are_using_taxpayer_dollars_to_lie_to_women/ [https://perma.cc/BPB9-ZPLC].

[35]Jenny Kutner, *Crisis pregnancy center tells woman her IUD is "your baby," plus countless other lies*, Salon (March 18, 2015, 3:49 PM), https://www.salon.com/2015/03/18/crisis_pregnancy_center_tells_woman_her_iud_is_your_baby_plus_countless_other_lies/

[36]Joanne D. Rosen, *The Public Health Risks of Crisis Pregnancy Centers,* 44 Persp. on Sexual & Reprod. Health 201, 201 (Sept. 2012).

[37]*See generally* Historical and Philosophical Perspectives on Biomedical Ethics: From Paternalism to Autonomy? (Andreas-Holger Maehle & Johanna Geyer-Kordesch eds.) (2002).

[38]Bryant & Swartz, *supra* note 2, at 271.

[39]*Id.* at 270.

[40]Irzik & Kurtulmus, "What Is Epistemic Public Trust in Science?"

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status, immigration status, sexual orientation, people should be able to acquire existing information that is relevant to them at equal rates. To deny or impede such information from being accessible inhibits the autonomy of those that enter the CPCs.

There is no legal requirement for CPCs, as non-healthcare entities, to abide by medical practice standards. As a result, women who visit CPCs seeking guidance on their reproductive options are denied access to knowledge that is needed to make a meaningful healthcare decision. The choice to become or remain pregnant has enormous implications for one's future and life. It is important that these women are accurate information that covers their full range of reproductive options in order to not interfere with their autonomous decision-making processes. CPCs interfere and worsen one's ability to gain reliable information that helps support an individual's decision-making, impinging on autonomy and not allowing a full suite of choices to be presented in a neutral manner.

Since CPCs represent themselves as medical establishments, it is reasonable to expect these centers to uphold standards of medical practice in accordance with the principle of autonomy. By virtue of mimicking healthcare providers wherein such neutrality is expected, deviations from neutrality are misleading and therefore unethical. The deceitful nature of CPCs leads women to believe that the medical and legal advice that is presented is true; therefore, autonomy becomes restricted by eliminating other viable options that are worthy of consideration.

Although CPCs are legally entitled to exercise their religious agenda, their practices of disseminating falsehoods and obfuscation, intended to mislead an individual's medical decision, constitute a public health threat by restricting patient decision-making and impinging on patient autonomy. The right to religious freedom and free speech do not deem an action ethical. In the case of CPCs, the practice of religious freedom and free speech are undermining women's autonomy and thus violating their right to reproductive freedom.

Policy Analysis: Funding & Public health eduction

Though Crisis Pregnancy Centers are inherently unethical and serve to undermine the reproductive autonomy of women, policy designed to thwart their activities is challenging to create. CPCs are legal entities that have political support from the pro-life conservative establishment. As legal entities, CPCs are afforded all the protections codified within the United States including First Amendment freedom of speech and the protections of provider speech, so long as it is truthful and non-misleading in accordance with the Fifth Circuit's decision to uphold the Texas Women's Right to Know Act.[41] Because CPCs do not charge for their services, they are able to avoid the regulatory oversight imposed on medical clinics and the Federal Trade Commission regulations to which other commercial entities are subject.[42]

In addition to enjoying standard legal protections, CPCs operate in the context of larger systemic problems that are pervasive throughout the United States healthcare system. The success of CPCs is attributable to innumerable factors including: abortion bans, lack of parental leave, the absence of universal childcare, and health literacy gaps. Such critical absences lay the groundwork for CPCs and augment their deceptive recruitment practices. CPCs understand these gaps well, and leverage them to advance their pro-life agenda. By doing so, these centers further entrench already existing racial, socio-economic, and gender inequities.

Kendra Hutchins, a sociologist, explains, "[Crisis] pregnancy centers are not isolated aberrations in a well-functioning healthcare system but expected outcomes of critical absences in reproductive health-care and severe economic inequality."[43] In other words, the causes of CPCs go beyond mere funding

[41]Ahmed, *supra* note 24, at 55.

[42]Bryant & Swartz, *supra* note 2, at 271.

[43]Kendra Hutchins, *"Gummy Bears" and "Teddy Grahams": Ultrasounds as Religious Biopower in Crisis Pregnancy Centers,* 277 Soc. Sci. & Med. 113925, 113931 (2021).

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asymmetries between clinics that provide abortion and CPCs; but rather, are deeply rooted, unjust structures that encourage second-rate reproductive healthcare. Reproductive justice compels us to scrutinize the social conditions that restrict reproductive freedom, which, in turn, allow CPCs to be successful.

In order to permanently fix the issues associated with CPCs, there must be a commitment to solve the healthcare system's broader systemic flaws. Women without proper safety nets in healthcare will continue to seek care at facilities that advertise false promises and provide biased, unreliable medical advice. The solutions suggested in this paper are offered to mitigate effects of CPCs, but are only superficial and temporary fixes to embedded injustice that are baked into United States' healthcare. These policy recommendations are merely temporary fixes intended to treat the symptoms of the larger disease that flaws the entire healthcare system. Thus, policy that is intended to fight the CPC's agenda and actions must focus in two areas: 1. revocation of funding, both public and private, that supports CPCs, and 2. public health education for the CPC's target population.

Funding

Crisis pregnancy centers rely upon funding from outside sources for their operational budgets because they do not charge for the services they provide. Two forms of funding exist, governmental and private donation, both of which must be stopped in order to halt the operations of CPCs. Governmental funding comes in two formats, state and federal. Federal funds have been allocated in a variety of ways to support general anti-abortion activity including support for CPCs. Title X funding is money that is allocated to assure a wide range of family planning services intended to aid low-income and uninsured people, including family planning methods to prevent or delay pregnancy, pregnancy testing, basic infertility services, STI/HIV testing and screening for substance abuse disorders.[44] Section 1008 of Title X specifically states that, "(n)one of the funds appropriated under this title shall be used in programs where abortion is a method of family planning."[45]

In March of 2019 the Trump administration made changes to the Title X program[46] that further restricted the funds to clinics that offer abortion and eased the restrictions that allow money to flow to faith-based organizations that oppose abortions such as CPCs.[47] Most recently, during the COVID-19 pandemic, funds from the Paycheck Protection Program, that was part of the United States government's initial coronavirus bailout package, were allocated to support CPCs. The United States Small Business Administration estimated that CPCs received between four and ten million dollars from this federal funding source.[48]

Under the first Bush Administration, from 2001 until 2006, CPCs received approximately $60 million in federal funding designated for abstinence and marriage promotion.[49,50] In 2005, Florida Governor Jeb

[44]Health & Hum. Servs.: Off. Population Affs., About Title X Service Grants, https://opa.hhs.gov/grant-programs/title-x-service-grants/about-title-x-service-grants [https://perma.cc/3XR3-TPWN].

[45]Project Grants and Contracts for Family Planning Services, 42 U.S.C. 300 §1008.

[46]Health & Hum. Servs.: Off. Population Affs., HHS Awards Title X Family Planning Service Grants (Mar. 29, 2019), https://opa.hhs.gov/about/news/grant-award-announcements/hhs-awards-title-x-family-planning-service-grants [https://perma.cc/N3H4-GLEZ].

[47]Kenneth P. Vogel & Robert Pear, *Trump Administration Gives Family Planning Grant to Anti-Abortion Group*, N.Y. Times (Mar. 29, 2019), https://www.nytimes.com/2019/03/29/us/politics/trump-grant-abortion.html [https://perma.cc/F4SS-JC2G].

[48]Jessica Glenza, *Anti-abortion Centers Receive At Least $4M From US Coronavirus Bailout*, The Guardian (Aug. 3, 2020, 4:30 PM), https://www.theguardian.com/world/2020/aug/03/anti-abortion-centers-paycheck-protection-program?CMP=share_btn_link [https://perma.cc/P5VG-X7AW].

[49]Thomas B. Edsall, *Grants Flow to Bush Allies on Social Issues*, Wash. Post (Mar. 22, 2006), https://www.washingtonpost.com/wp-dyn/content/article/2006/03/21/AR2006032101723_pf.html [https://perma.cc/G4B2-684P]; Beth Holtzman, *Have Crisis Pregnancy Centers Finally Met Their Match: California's Reproductive FACT Act,* 12 Nw. J.L. & Soc. Pol'y 78, 82 (2017).

[50]Beth Holtzman, *Have Crisis Pregnancy Centers Finally Met Their Match: California's Reproductive FACT Act*, 12 Nw. J.L. & Social Pol'y 3 (2017) https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1155&context=njlsp.

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Bush initiated a program that designated $2 million per year to CPCs in his state that promoted "life affirming choices."[51]

Currently the Hyde Amendment restricts the use of federal funds for abortions except in cases of rape, incest or if the life of the mother is endangered by the pregnancy. Prior to the enactment of the Hyde Amendment in 1976, federal funds provided an estimated 300,000 abortions per year. The Amendment was presented in the House of Representatives to become permanent law, but failed in 2017 (see H.R.7). President Biden campaigned on repealing the Hyde Amendment. To eradicate the Hyde Amendment would help to place pro-life and pro-choice providers on equal funding foundation and thereby allow for equal access to services.

Funding varies by state, but many participate in a variety of methods to funnel federal funds into CPCs. According to ThinkProgress, seven states[52] use funds from the Temporary Assistance for Needy Families (TANF) block grants to support CPCs.[53,54] Federal block grants that are intended to assist families in need were instead used by ten states[55] to fund anti-abortion entities, including CPCs.[56] Thirty-three states in the United States sell "Choose Life"[57] license plates at their Departments or Registries of Motor Vehicles. Of these states, 18 use some portion of the proceeds to support CPCs or other anti-choice organizations.[58]

According to a NARAL study published in 2017, twenty-seven states have supporting measures for CPCs (fourteen states have enacted legislative measures supporting CPCs), fourteen states directly fund CPCs, fifteen states have "Choose Life" license-plates, twenty-one states refer women to CPCs and one state even forces women to go to a CPC prior to seeking an abortion.[59] Government funding and legislation that support the operation of CPCs must be curtailed.

In addition to government funds, CPCs receive private donations to help support their activities. Private donors are not and should not be restricted in their choice of what non-profit organizations to support. However, the same falsehoods that are used to recruit women into CPCs have reportedly been used to elicit donations in support of CPCs. Canadian pro-choice organizations have taken on the CPC funding issue. One approach has been for representatives from Alberta Pro-Choice Coalition and Abortion Rights Coalition of Canada to reach out to large CPC donors and educate the donors on

[51]Laura Bassett, *Jeb Bush to visit Crisis Pregnancy Center*, Huffington Post (July 21, 2015). https://www.huffpost.com/entry/jeb-bush-to-visit-crisis-pregnancy-center_n_55ae8335e4b0a9b94852a64c.

[52]Bryce Covert & Josh Israel, *The States That Siphon Welfare Money to Stop Abortion. Millions in TANF Dollars Are Flowing to Crisis Pregnancy Centers That Mislead Women*, ThinkProgress (Oct. 3, 2016, 12:01 PM), https://archive.thinkprogress.org/tanf-cpcs-ec002305dd18/ [https://perma.cc/7K6E-FE42]. The seven states listed in the ThinkProgress report are Indiana, Ohio, Pennsylvania, Michigan, North Dakota, Texas and Missouri. ThinkProgress is a division of American Progress-Action Fund.

[53]Bryce Covert & Josh Israel, *The States That Siphon Welfare Money to Stop Abortion. Millions in TANF Dollars Are Flowing to Crisis Pregnancy Centers That Mislead Women*, ThinkProgress (Oct. 3, 2016, 12:01 PM), https://archive.thinkprogress.org/tanf-cpcs-ec002305dd18/ [https://perma.cc/4RBH-ZEYS]; Emily Crocket, *States are Using Welfare Money to Fund Anti-Abortion Propaganda,* Vox (Oct. 3, 2016), https://www.vox.com/identities/2016/10/3/13147836/states-tanf-welfare-crisis-pregnancy-centers [https://perma.cc/4FNY-2GSJ].

[54]States are using welfare money to fund anti-abortion propaganda. Emily Crocket. October 3, 2016. https://www.vox.com/identities/2016/10/3/13147836/states-tanf-welfare-crisis-pregnancy-centers.

[55]Jessica Glenza, *The Ten States Listed are Indiana, Louisiana, Michigan, Missouri, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania and Texas*, The Guardian (June 4, 2021), https://www.theguardian.com/world/2021/jun/04/states-divert-federal-welfare-funding-anti-abortion-clinics [https://perma.cc/3MKB-QVYX].

[56]Rachel Wormer, *Mapping Deception: A Closer Look at How States' Anti-Abortion Center Programs Operate*, Equity Forward, https://equityfwd.org/research/mapping-deception-closer-look-how-states-anti-abortion-center-programs-operate [https://perma.cc/VB48-QSF5] (last visited May 7, 2022).

[57]*The United Plates of America*, *supra* note 25 (Choose Life America, Inc is a not-for-profit organization with a 501c3 designation that began in 1996. "Contributions and profits from the sale of promotional items are used to help Choose Life America, Inc. promote the sale of the real Choose Life License Plate which raises funds to support adoption efforts of Crisis Pregnancy Centers, Maternity Homes and not-for-profit adoption agencies").

[58]*"Choose Life" License Plates*, *supra* note 25.

[59]2017 Who Decides? The State of Women's Reproductive Rights in the United States, NARAL Pro-Choice Am, & NARAL Pro-Choice Am. Found. 8 (2017), https://www.prochoiceamerica.org/report/2017-decides-status-womens-reproductive-rights-united-states/ [https://perma.cc/9XSE-2Z34].

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CPC activities.[60] This model of education could be used to help stymie funding to American CPCs from sources that are unaware of the nefarious efforts made by CPCs to undermine their client's autonomy.

Public Health Education Option 1

Because abortions are expensive and time-sensitive, it is critical that people are aware of their accessible options. The delay in time that women experience by accidently entering a CPC and receiving misinformation rather than entering an abortion clinic may be detrimental to their reproductive care and their health more broadly. Counteracting the disinformation of CPCs requires a multi-faceted approach that includes both public health education campaigns and legislative measures.

Just as CPCs use marketing to draw women into their facilities, public health initiatives must market to educate women about the real function of CPCs. Under Governor Cuomo, New York initiated a public education campaign to counteract the misleading recruiting practices of false information provided by CPCs.[61] New York's initiative provides medically accurate information about contraception, pregnancy and abortion, including how to select a reproductive health facility in a variety of public formats such as advertisements on the subway system. The campaign was distributed in multiple languages and directed New Yorkers to a list of health care programs near them that provide comprehensive, confidential family planning and reproductive health care services to all women, men, and adolescents regardless of ability to pay or immigration status.[62] Educational programs like the one in New York, that guide women seeking abortions to proper abortion clinics early in their pregnancy, have a strong public health foundation.

New York has followed its public education campaign with newly proposed legislation. Two bills are currently in the state's legislative system to help combat the misleading functions of CPCs. Assembly Bill A9122 would require CPCs to disclose to women at first contact that the facility is not a licensed medical provider and that they will not provide abortion or birth control, nor will they make a referral for abortion or birth control. Assembly Bill A5499 allocates funding for a study and report performed by the Commissioner of Health. This study will examine the needs of pregnant women in the state and how limited-service pregnancy centers such as CPCs influence these women's ability to access timely, non-coercive and comprehensive reproductive care.

In response to the rising numbers of CPCs in California, the state passed the Reproductive Freedom, Accountability, Comprehensive Care and Transparency Act (FACT Act) in 2015.[63] This law required CPCs without a medical license to disclose that "California has public programs that provide immediate free or low-cost access to comprehensive family planning services (including all FDA-approved methods of contraception), prenatal care, and abortion for eligible women." The law further stipulated that this information must be disclosed by a public notice posted in a "conspicuous" place, "a printed notice distributed to all clients," or "a digital notice distributed to all clients."[64]

Soon after being enacted, the FACT Act was challenged by CPCs within the state of California, claiming that the required notices were an infringement on their right to free speech. A lawsuit titled National Institute of Family and Life Advocates v. Becerra, was filed.[65] The Ninth Circuit held that the notice was Constitutional on the grounds that it regulated "professional speech."[66] In so doing, the Court differentiated professional from lay free speech. This classified speech within a CPC as professional speech and therefore can be regulated by the government. However, the case was later appealed to the

[60]Haiqi Li, *Crisis Pregnancy Centers in Canada and Reproductive Justice Organizations' Responses*, 11 Global J. Health Scis. 28, 37 (2019).

[61]Donna Russell, *NY Gov. Cuomo Launches Public Campaign to Undermine Pro-Life Pregnancy Centers*, CBN News (Aug. 13, 2018), https://www1.cbn.com/cbnnews/us/2018/august/ny-gov-cuomo-launches-public-campaign-to-undermine-pro-life-pregnancy-centers [https://perma.cc/JC2H-Y69F].

[62]*Id.*

[63]Assemb. B. 775, Legis. Counsel (Cal. 2015).

[64]*Id.*

[65]Inst. Fam. & Life Advocs. v. Becerra, 138 U.S. 2361, 2370 (2018).

[66]*Id.*

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Supreme Court which decided in a 5-4 majority that the FACT Act was an infringement of free speech on a non-professional entity, deeming the policy unconstitutional.[67] This decision also categorized CPCs as non-professional entities, indicating that they are not professional purveyors of healthcare. The Court's majority explained that previous precedents had allowed the regulation of commercial speech so long as the law pertained to "purely factual and uncontroversial information."[68] Justice Clarence Thomas asserted that abortion is "anything but an 'uncontroversial' topic," and consequently, does not fall under regulatable speech.[69] Furthermore, the majority asserted that, while informed consent is a requirement, the notice at CPCs does not facilitate informed consent because the disclosure is not tied to a medical procedure "at all."[70] The Court's additional acknowledgment that consent in a CPC is not tied to a medical procedure further establishes that CPCs are not healthcare facilities. The Court's determination that CPCs are not healthcare facilities directly contradicts how CPCs purport to function and advertise themselves to potential clients.

One approach to combating the false information disseminated by CPCs is legislative measures that are similar to the FACT Act; however, these new legislative measures should be narrowly tailored to focus on gaps in the Becerra decision. For example, the dissent in Becerra, written by Justice Breyer, highlights that California has state notice requirements about informing patients regarding alternatives to abortion, like adoption.[71] It would therefore follow that state notice requirements could be implemented for pro-life establishments as it has for the pro-choice. Specifically, proposing legislation that requires CPCs to share alternatives to their pro-life position such as abortion. Such legislation would be viable because it implements the same standards on both sides of the debate, i.e. requiring disclosure of information in opposition to the facility's intended services. Though these legislative measures will likely come under legal attack, those legal cases will serve multiple purposes. First, the lawsuits can help bring public attention to the practices of CPCs, a de facto form of public health education. Second, additional lawsuits will give the courts an opportunity to further define professional speech and shed light on the false speech of CPCs in the context of their function as quasi-professional agencies. Third, additional lawsuits could help to equilibrate the required notifications for both pro-life and pro-choice organizations, ensuring that women will receive information regarding the entire spectrum of reproductive options irrespective of what organization they seek assistance from.

Conclusion

Crisis Pregnancy Centers are more than mere expression of religious freedom and conservative ideology. They are establishments that utilize deceit to infringe upon women's ability to exercise their reproductive freedoms. CPCs propagate inequities already present in both society and the provision of healthcare in the United States. Their deceptive practices, both in their recruitment methods and hidden anti-abortion agenda, infringe on patient autonomy. This paper has demonstrated the core ethical violations present in the fundamental goals and functions of CPCs. The policy analysis and recommendations provided in this paper are a call to action. Crisis Pregnancy Centers must be defunded and must have their actions restricted to protect the reproductive freedom of women in the United States.

Acknowledgments. The authors acknowledge that trans men and non-binary people require access to safe and reliable reproductive healthcare. The gendered term "women" is used for this paper because of the intentional way in which CPCs target cisgender women in their advertising and outreach practices.

[67] *Id.* at 2378-79.
[68] *Id.* at 2372.
[69] *Id.*
[70] *Id.* at 2373.
[71] *Id.* at 2385-86.

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