



ATTORNEY GENERAL WILLIAM TONG  
STATE OF CONNECTICUT

**Senate Bill 835: *An Act Concerning Deceptive Advertising Practices of Limited Services Pregnancy Centers***

Chairman Steinberg, Ranking Member Petit, Chairwoman Daugherty Abrams, Ranking Member Somers, Ranking Member Hwang and distinguished members of the Public Health Committee, thank you for the opportunity to submit testimony in support of Senate Bill 835, *An Act Concerning Deceptive Advertising Practices of Limited Services Pregnancy Centers*. As many of you will recall, I have testified in favor of this bill before and am once again submitting testimony in its favor and to clarify possible misconceptions about what this bill does and does not do.

First: This bill not only protects women, but also serves public health and public policy writ large. Second: SB 835 does not threaten anyone's constitutional rights. Third: SB 835 is necessary because of the possibility of gaps in our existing ability to protect pregnant women against deceptive advertising.

**SB 835 Serves Compelling Government Purposes**

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

Unfortunately, however, there is also the reality of deceptive advertising by other LSCPs. Some LPSCs have misled pregnant women into the false belief that they offer abortion services, emergency contraception, and unbiased counseling.

When a pregnant woman is misled about the reproductive health services she can receive, she loses critical time. Time 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.

While the health and safety of Connecticut's women is reason enough to support passage of SB 835, I must also note that there is a real financial cost when deceptive advertising hurts women's health. The State of Connecticut provides funding for healthcare services for many women. If women who choose to terminate a pregnancy are delayed by deceptive advertising, the cost of providing more invasive, more dangerous, and more expensive options may fall upon the State.



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## The Language in SB 835 Has Been Upheld as Constitutional

Both in its intent and language, SB 835 protects the public – and, in particular, pregnant women – from deceptive advertising. It does not speak to anti-abortion advocacy. It only bars LPSCs from using false, misleading or deceptive language about the services they provide, or using language offering services that the LPSC has no intention of providing. The Constitution does not protect this kind of false or misleading commercial speech.<sup>1</sup>

Federal court precedent directly on point supports the conclusion that the bill is constitutional. SB 835 closely tracks a San Francisco city ordinance<sup>2</sup> that was upheld by the federal Court of Appeal for the Ninth Circuit.<sup>3</sup> In its decision, the Ninth Circuit found that the language used in SB 835 did not violate the First Amendment – or, for that matter, any other constitutional right. The United States Supreme Court denied *certiorari*, declining to reverse the Ninth Circuit.

## SB 835 Fills a Possible Enforcement Gap

SB 835 responds to a concern about a possible gap in Connecticut's enforcement powers. The primary way that Connecticut regulates unfair and deceptive advertising is through the Connecticut Unfair Trade Practices Act ("CUTPA"),<sup>4</sup> which prohibits "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."<sup>5</sup> The Attorney General's Office, in conjunction with the Department of Consumer Protection, frequently uses CUTPA to protect Connecticut's consumers from deceptive advertising.

Notably, deceptive advertising by LPSCs could fall outside of CUTPA's ambit. Depending on an LPSC's corporate structure, or whether or not it offers services or items for sale, the LPSC may not be considered in the stream of "trade or commerce," and may fall outside of CUTPA regulation. 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 an LPSC.<sup>6</sup> Thus, absent legislative action, on the specific issue of deceptive advertising, LPSCs could evade regulation and responsibility. The health of the women of our state is too important an issue to leave open any possible gaps in enforcement.

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<sup>1</sup> 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).

<sup>2</sup> San Francisco Administrative Code Chapter 93, §§ 93.1-93.5.

<sup>3</sup> *First Resort, Inc., v. Herrera*, 860 F.3d 1263 (9<sup>th</sup> Cir. 2017), *cert. denied* 138 S.Ct. 2709 (2018).

<sup>4</sup> C.G.S. §§ 42-110a *et seq.*

<sup>5</sup> C.G.S. § 42-110b(a).

<sup>6</sup> *Planned Parenthood Federation of America, Inc. v. Problem Pregnancy of Worcester, Inc.*, 398 Mass. 480, 494 (1986).



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I urge you to report SB 835 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 submit testimony on this important bill, and please do not hesitate to contact me with any questions or concerns.