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## The jot and tittle of New York City Council's attack on pregnancy resource centers

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Unable to completely still the voice of pregnancy resource centers (PRCs), the New York City Council recently passed legislation seeking to control the volume, location, and manner in which the pregnancy centers communicate the pro-life message. New York City's legislative act, along with others throughout the country, pending and planned, seek to regulate the "jot and tittle" of a pregnancy resource center's communication. The jot is the smallest part of a letter of the Hebrew alphabet. The tittle is a mark shaped like a small horn over some of the words. Together they signify the smallest details of words and meanings. Likewise, the NYC legislation addresses the written and oral communications of centers to their

**Compare to two milleniums of  
Christian law**

"To prevent birth is anticipated murder; it makes little difference whether one destroys a life already born or does away with it in its nascent stage. The one who will be a man is already one."  
Tertullian (150 - 240 AD)

clients, but not in terms of substantive information. Instead, it addresses what shall be communicated, where information shall be communicated, the languages in which the message is communicated, and the font size of any written signage.

New York City's recently enacted ordinance NYC I-371A regulates pregnancy resource centers, vis a vis mandated communication, both oral and written. Similar legislation (less draconian than New York City's ordinance) has already been found to be unconstitutional in the recent case of *Archbishop O'Brien, et al. v. Mayor and City of Baltimore, et al.*, Case No. 1:10-cv-00760-MJG (Filed 01/28/11). However, instead of that

federal case law serving to guide legislators, many legislators around the country, at both city and state levels, including New York City's Council, are attempting to pass similar legislation in disregard of the constitutional obstacles to overcome. Perhaps in an attempt to demonstrate forethought of the possible constitutional challenges, the NYC Council gives an obligatory nod to the "right" of pregnancy resource centers to "express their views about reproductive health services." This nod, unfortunately for the Council, will not help them dodge a constitutional attack on viewpoint discrimination in violation of the First Amendment.

The *substance* of the legislation appears to be innocuous: it requires verbal and written disclaimers for essentially any communication with clients or potential clients that the PRC does not provide or refer for abortions (abortion defined as specifically including chemical abortifacents). However, make no mistake; the *intention* of this legislation is to bring centers under very intense scrutiny and to provide pro-abortion forces with a weapon. The *desired effect* of the abortion industry through this type of regulation is to slow down, if not altogether stop, the work of PRCs nationwide.



## THE OVERVIEW

The proposed legislation has three components: the purpose of the legislation, the requirements of the legislation, and the penalties for failure to comply with the ordinance’s requirements.

## THE PURPOSE

Stated reasons for the legislation are fairly typical of the findings by other legislatures attempting to pass such legislation: alleged deceptive practices by the centers in their advertising and communications with clients, misleading clients about services provided or not provided, and misleading clients about services for which the center will not refer. Further, with the advent of limited medical clinics, there are allegations of lack of qualified medical supervisors in those PRCs.

The legislature further found that such deceptive practices endanger the public and even “may eliminate a woman’s ability to obtain these services altogether, severely limiting her reproductive health options.”

Moreover, the council found that existing laws were inadequate to address the alleged fraud and deceptive practices. Finally, the Council determined that clients required protection from indiscriminate dissemination of personal and health information.

## THE PROPOSED REMEDIAL REQUIREMENTS

The new requirements imposed by the Council are the means by which the supposed wrongs suffered by clients of pregnancy resource centers can be remedied. The requirements are targeted toward communication, confidentiality, and consent. All three of these “C’s” are important and should be given high priority by any PRC, regardless of existing or proposed regulations.

### True and Open “Communication”

The regulations mandate both oral and written communications, before, during, and after a client walks into a PRC. The regulations also require PRCs to take into consideration predominant ethnicities served by the PRC. Without going into the specifics of the ordinance, the dominant thrust of the mandated communication is that a PRC must disclose that the PRC does not provide or refer for abortions. This communication must be done on any advertising (including presumably websites), any signage in the PRC, and on any paperwork given to the client. It must be done in at least Spanish and English, but may also require other languages depending on the populace served by the PRC.

### Compare to Mosaic Law Exodus 21:22–24

**כב וְכִי-יִנָּצוּ אֲנָשִׁים, וְנָגְפוּ אִשָּׁה הָרָה וַיֵּצְאוּ יְלֶדֶיהָ, וְלֹא יִהְיֶה, אֶסּוֹן--עָנּוֹשׁ יַעֲנֹשׁ, כַּאֲשֶׁר יִשְׁתִּית עָלָיו בְּעַל הָאִשָּׁה, וְנָתַן, בְּפָלְלִים.** **22** And if men strive together, and hurt a woman with child, so that her fruit depart [Hebrew: "so that her is born prematurely"], and yet no harm follow, he shall be surely fined, according as the woman's husband shall lay upon him; and he shall pay as the judges determine.

**כג וְאִם-אֶסּוֹן, יִהְיֶה--וְנָתַתָּה נַפְשׁ, תַּחַת נַפְשׁ.** **23** But if any harm follow, then thou shalt give life for life,

**כד עֵין תַּחַת עֵין, שֵׁן תַּחַת שֵׁן, יָד תַּחַת יָד, רֶגֶל תַּחַת רֶגֶל.** **24** eye for eye, tooth for tooth, hand for hand, foot for foot,



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Also, this disclosure is supposed to be both oral and written. Thus, presumably, a volunteer answering a hotline or a helpline may be required to disclose in the phone interview that the center does not provide or refer for abortions. Mandating such a verbal disclaimer could significantly decrease the willingness of the client who is abortion-minded from entering a PRC.

Other mandated aspects of communication include that the NYC Department of Health and Mental Hygiene recommend a woman who is or may be pregnant to consult with a licensed medical provider. This mandate applies whether the PRC has a licensed medical provider on staff who provides directly supervises provision of services (meaning that an off site medical provider who signs for ultrasounds etc would be insufficient), whether it provides or refers for “emergency contraception” (prescription drugs such as RU486), and whether or not the PRC provides or refers for prenatal care. (§20-816)

### **Ensure “Confidentiality”**

The second major piece of this legislation addresses the effort to ensure confidentiality to the client. All health information provided by the client in the course of inquiring about services shall be treated as confidential unless disclosure is permitted by consent of the client or required by operation of law. (§20-817)

### **Obtain Informed Written “Consent”**

The basic requirements for a valid consent are that it be in writing, dated, signed by the client, identify the nature of information to be disclosed, identify the name of the person and/or institution to whom the information should be disclosed, identify the person making the disclosure, and contain an expiration date.

What is sticky about this legislation is that it requires that the client must “have a clear and complete understanding of the nature of such release and the content of such information.” What makes adherence to this provision difficult is the near impossibility of a PRC having certainty that a client has a clear and complete understanding. More on this later in this brief article. (§ 20-817)

## **THE PENALITES**

The penalties are stiff considering that the target of this legislation is the non-profit PRC with extremely limited budget, relying on private donations rather than the federal government for daily maintenance and service. A civil penalty of \$200.00-1000.00 is imposed for the first violation. Succeeding violations can cost anywhere from \$500.-2500.00 per violation.

If found to have violated the provisions three or more times within two years, a PRC can be shut down after notice and a hearing for up to five days for the commissioner to come in and remedy the violations

Most disturbing is that the legislation provides for a civil cause of action (a handy tool for the pro-abortionists) such that any individual person can claim to have been injured by a PRC’s failure to comply with the jot and tittle requirements outlined above. (§ 20-820) The individual could file a claim for any or



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all of the following remedies: compensatory and punitive damages; injunctive and declaratory relief; attorney's fees and costs; and anything else a court deems appropriate.

## **A PRC'S PROPOSED PROTECTIVE MEASURES**

So, how does a center protect itself against such jot and tittle legislation? How does New York City legislation potentially affect a center in Idaho? Nebraska? California? For now, be aware that such legislative attacks (seemingly innocuous...it's "only" regulation of signs and communication) are becoming more and more common. Even though such legislation has already been deemed to be unconstitutional, it is currently the weapon of choice for pro-abortionists.

One can probably break the protective measures into two sets: those the center can control and those outside the control of the center. Within the control of the center are the policies and procedures regarding confidentiality. Most centers already have these in place. A careful review of the New York City legislation or similar, would be a good guide for what would be required. Another area within the control of the center would be the signage requirements. Whether or not a center chooses to conform to the signage requirements (some will choose not to on constitutional grounds or on grounds that it will drive away the undecided potential client), the PRC need only look at the signage, language, and location requirements to see that the requirements are fairly straightforward. If the signage requirement mandates a particular font size, then the font size either conforms or doesn't. There is no second guessing that type of requirement.

Where it gets a bit stickier and beyond the control of the center is ensuring informed consent of the client. The NYC ordinance requires that the client have "a clear and complete understanding of the nature of such release and the content of such information." How can a center possibly measure a client's level of understanding? How can a center ensure that a client's understanding is clear and complete? Is having the client sign one consent enough? Should the client sign thirty consents...one for each visit? Is reading each sentence in two languages sufficient? Is it required?

Here is where the legislation leaves a door open for a "gotcha." Any potential client or a "plant" could claim that she expressed lack of understanding in spite of having a signed consent in the file. The best a center can do is to have the appropriate policies and procedures in place, consistent with the ordinances in effect, and enforce them. Then, continue to show the love and grace of God to every person who enters the doors, trusting that God is the God of even the jot and tittle.

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