

United States Senate

WASHINGTON, DC 20510

October 21, 2022

Jor-El Godsey
President
Heartbeat International
8405 Pulsar Place
Columbus, OH 43240

Dear Mr. Godsey:

We write to follow up on an inquiry dated September 19, 2022 related to concerns about the sensitive health information that Heartbeat International and its more than 2,000 affiliated crisis pregnancy centers (CPCs) collect from pregnant people.¹

In the wake of the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, public concern is rising that "the CPC industry is now functioning as surveillance infrastructure for the anti-abortion movement, amassing data that could be used in pregnancy- and abortion-related prosecutions post-*Roe*."² For this reason, Congress is actively exploring legislative efforts that would prevent CPCs from engaging in false advertising or misusing the health data of pregnant people who incorrectly believe that such data is required to be kept confidential. For example, the *Stop Anti-Abortion Disinformation Act* would require the FTC to issue rules prohibiting deceptive or misleading advertising related to the provision of abortion services, while the *Health and Location Data Protection Act* would ban data brokers from selling Americans' health and location data.³

As noted in the original inquiry, Heartbeat International collects and maintains significant personal and health information from individuals who contact or visit Heartbeat or its affiliates - but may not be under any legal obligation to maintain the confidentiality of this information, or to keep it out of the hands of abortion bounty hunters.⁴ This is particularly concerning in light of an extensive public record indicating that CPCs advertise and market themselves as comprehensive reproductive care providers when in fact most CPCs in the United States do not employ licensed medical personnel, and do not provide referrals for birth control or abortion care.⁵ Further, the public record suggests that many CPCs regularly make false claims about

¹ Letter from Sens. Elizabeth Warren, Mazie Hirono, Cory A. Booker, Bernard Sanders, Ron Wyden, Edward J. Markey, and Richard Blumenthal, to Jor-El Godsey, President, Heartbeat International, Sept. 19, 2022, <https://www.warren.senate.gov/imo/media/doc/2022.09.19%20Letter%20to%20Heartbeat%20International%20re%20Privacy%20Concerns.pdf>.

² The Alliance, "The CPC Industry as a Surveillance Tool of the Post-*Roe* State," February 2022, https://alliancestateadvocates.org/wp-content/uploads/sites/107/Alliance_CPC_Report_Feb2022_UrgentBrief2-10-22.pdf.

³ S. 4469. See also H.R. 8210 (117th Congress.; S. 4408. (117th Congress).

⁴ Time, "Anti-Abortion Pregnancy Centers Are Collecting Troves of Data That Could Be Weaponized Against Women," Abigail Abrams and Vera Bergengruen, June 22, 2022, <https://time.com/6189528/anti-abortion-pregnancy-centers-collect-data-investigation/>; CDC, "Health Information & Privacy: FERPA and HIPAA," <https://www.cdc.gov/phlp/publications/topic/healthinformationprivacy.html>.

reproductive health care and disseminate inaccurate, misleading, and stigmatizing information about abortion and contraception.⁶

For this reason, additional information was sought from Heartbeat International regarding precisely what categories of information Heartbeat International collects, whether that information is subject to any medical privacy laws, and what your guidelines and practices are for handling, storing, and disseminating this data.⁷ It is disappointing that your response declined to respond materially to this inquiry, and instead merely cited already-public assertions about your organization’s approach to client confidentiality which provides little insight into how Heartbeat and its affiliates actually handle the personal data of pregnant people.⁸

We respect that your organization seeks explicitly “to make abortion unwanted today and unthinkable for future generations”⁹ and as a consequence you may disagree with these legislative efforts. Similarly, while as you know, congressional documents are not subject to the disclosure requirements of the *Freedom of Information Act*,¹⁰ the public record is clear that we are strong supporters of abortion rights. But this effort is not about those views, and it is certainly not about encouraging violence, which we consistently condemn in any context and in the strongest of terms, and which has been a persistent threat to those seeking reproductive care for decades. Contrary to your assertions, the purpose of this inquiry is to gather additional data to better inform ongoing legislative efforts to grant pregnant people basic legal protections that tens of millions of Americans erroneously believe they are already afforded by federal law.

For more than a hundred years, the FTC has been authorized to rein in deceptive marketplace practices, and as we have previously emphasized explicitly and publicly, under our legislative proposals, “any crisis pregnancy center that operates fairly, disseminates factual information, and

⁵ Planned Parenthood, “What are Crisis Pregnancy Centers?,” Kendall, Nov. 4, 2021, <https://www.plannedparenthood.org/blog/what-are-crisis-pregnancy-centers>.

⁶ Bloomberg, “New England Cities Fight Abortion Misinformation With Truth-in-Ads Laws,” Sarah Holder, Aug. 18, 2022, <https://www.bloomberg.com/news/articles/2022-08-18/somerville-massachusetts-leads-cities-in-targeting-crisis-pregnancy-centers>; NBC News, “In Texas, state-funded crisis pregnancy centers gave medical misinformation to NBC News producers seeking counseling,” Cynthia McFadden, Maite Amorebieta, and Didi Martinez, June 29, 2022, <https://www.nbcnews.com/politics/supreme-court/texas-state-funded-crisis-pregnancy-centers-gave-medical-misinformation-rcna34883>; Contraception, “Crisis pregnancy center websites: Information, misinformation, and disinformation,” Amy G. Bryant, Subasri Narasimhan, Katelyn Bryant-Comstock, and Erika E. Levi, July 12, 2014, [https://www.contraceptionjournal.org/article/S0010-7824\(14\)00565-4/fulltext](https://www.contraceptionjournal.org/article/S0010-7824(14)00565-4/fulltext).

⁷ Letter from Sens. Elizabeth Warren, Mazie Hirono, Cory A. Booker, Bernard Sanders, Ron Wyden, Edward J. Markey, and Richard Blumenthal, to Jor-El Godsey, President, Heartbeat International, Sept. 19, 2022, <https://www.warren.senate.gov/imo/media/doc/2022.09.19%20Letter%20to%20Heartbeat%20International%20re%20Privacy%20Concerns.pdf>.

⁸ Letter from Jeremy Dys, Senior Counsel, First Liberty Institute, on behalf of Heartbeat International, to Sen. Elizabeth Warren, October 3, 2022, [On file with the Office of Senator Elizabeth Warren].

⁹ Heartbeat International, “Heartbeat International,” <https://www.heartbeatinternational.org/>.

¹⁰ The Freedom of Information Act (“FOIA”) requires federal “agencies” to make agency records available to the public upon reasonable request. 5 U.S.C. § 552. “Because Congress is not an agency, congressional documents are not subject to FOIA’s disclosure requirement.” *United We Stand America, Inc. v. I.R.S.*, 359 F.3d 595, 597 (D.C. Cir. 2004) (citing *id.* §§ 551(1), 552(f)). Courts have uniformly recognized Congress’s unambiguous exemption from FOIA. *See, e.g., FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 524, 525 n.6 (2009) (plurality) (statutory definition of “agency . . . specifically excludes ‘the Congress’”); *Drake v. Obama*, 664 F.3d 774, 785-86 (9th Cir. 2011) (same, collecting cases).

is clear about what services it does and does not provide would be free to continue its work.”¹¹ Moreover, for over two decades, since the enactment of *the Health Insurance Portability and Accountability Act of 1996*, the American public has held an expectation of privacy for the disclosure of sensitive patient health information. Individuals who provide sensitive patient information to non-health care providers under the erroneous assumption that such data must remain private are no less deserving of such protections.

We posed our inquiry to Heartbeat International in the hope that the information requested regarding your data practices could guide our legislative work. We hope you will reconsider your decision not to respond materially to the inquiry for additional information regarding your data practices. Many Americans have strongly held views on abortion issues, as is their right. But CPCs are not above responsible scrutiny and do not, by virtue of their strongly held views, deserve special treatment or to be placed above the law. We will continue our ongoing legislative efforts to ensure that the personal reproductive health care decisions of pregnant people, whatever those decisions may be, remain between those individuals and their medical providers, and can be made with the full protection of law.

Sincerely,



Elizabeth Warren
United States Senator



Mazie K. Hirono
United States Senator

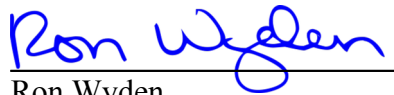


Cory A. Booker
United States Senator

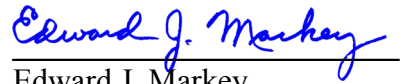


Bernard Sanders
United States Senator

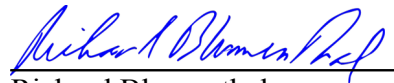
¹¹ Senator Elizabeth Warren, “ICYMI: On Senate Floor, Warren Calls for Crackdown on Deceptive and Misleading Practices Used by Many Crisis Pregnancy Centers,” press release. August 5, 2022, <https://www.warren.senate.gov/newsroom/press-releases/icymi-on-senate-floor-warren-calls-for-crackdown-on-deceptive-and-misleading-practices-used-by-many-crisis-pregnancy-centers>.



Ron Wyden
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