

Kim Clark on CPCs and Data

[00:00:00] **Katie Breen, Femtastic:**

[00:00:07] **Katie Breen, Femtastic:** Hello, this is Katie Breen, the host of the Femtastic podcast. So on the last episode of Femtastic, we talked about crisis pregnancy centers, and that was sort of a crisis pregnancy center 1 0 1 episode or CPC episode. And of course the point was to explain to everyone on what crisis pregnancy centers are why they are misleading, how they are funded and some of the terrible things about crisis pregnancy centers. On this episode, you can think of it as more of a 2 0 1 level where we are gonna dive deeper into another aspect of crisis pregnancy centers that is quite disturbing and really needed its own episode. So today on the podcast, we are going to talk about the ways in which crisis pregnancy [00:01:00] centers use data and also violations of privacy of its clients in order to accomplish its goals.

[00:01:10] **Katie Breen, Femtastic:** Whether that goal is to prevent someone from having an abortion, to shame someone into not having an abortion, to help build their anti-abortion movement further or to help criminalize abortion. So we are going to talk about that. And on the podcast today to talk about that is Kim Clark, who is a senior attorney at Legal Voice, focusing on reproductive rights, health, and justice.

[00:01:36] **Katie Breen, Femtastic:** And Kim is an expert on all of these wily ways of crisis pregnancy centers and the ways that they use data. So we are gonna talk about the ways that they have views their position and give out confidential patient information, use data that they collect from patients for a variety of seedy things.

[00:01:57] **Katie Breen, Femtastic:** And how, and most shockingly [00:02:00] to me at least was, if you listen to this podcast, you've probably heard us talk about Texas's S B 8 bill, which is an extreme abortion band and also deputizes normal people to sue anyone who helps someone get an abortion. And one of the most terrifying things that I learned today from Kim is that crisis pregnancy centers actually, because of the way that they share information about patients is they're empowered to share information about patients that could help with these sorts of lawsuits. So basically if someone went and got an abortion after going to a crisis pregnancy center, the crisis pregnancy center in the lawsuit against whoever helped them get the abortion could testify and, and give all of this information that the patient gave to them.

[00:02:49] **Katie Breen, Femtastic:** The crisis pregnancy center, also, even in cases where this citizen deputizing isn't necessarily an issue there are a lot [00:03:00] of laws and policing of pregnancy outcomes that's already happening. So if someone has a miscarriage sometimes they could be prosecuted because someone is accusing them of a self administered abortion and an illegal self administered abortion.

[00:03:15] **Katie Breen, Femtastic:** And so we get into very tricky territory here as well because in states with laws like that, which honestly will probably become more common because the Supreme court might over overrule a Roe in June 20 22 it could become more common and, and crisis pregnancy centers could basically testify against people who came to them for their services and use whatever the person said or did against them to try to criminalize them and show that, you know, they intended to end their pregnancy illegally on their own or whatever. So she'll explain all that much more eloquently and accurately than I just did, but that's the gist of it and it's very scary. And I've [00:04:00] known for a long time that crisis pregnancy centers are a big problem, but until talking to Kim, I didn't realize the implications for basically how all of the new laws and restrictions and potential overturning of Roe in the U.S., how crisis pregnancy centers are a part of that strategy and can really help further the anti-abortion strategies that those laws are meant to further.

[00:04:23] **Katie Breen, Femtastic:** So it's very scary. Okay. So a few quick asks before we get started. Number one, this is my new one lately. If you listen to this podcast, please shoot me a DM on the socials. And just let me know that you listen to it. I just love to hear from people who listen to it. Thank you to Repro and Coffee for sending me my first DM about this. I loved it. So I appreciate it. And then my more normal asks are number one, please subscribe to the podcast. If you don't already number two, please leave a rating and review, especially on apple podcasts so that [00:05:00] more people can find the podcast. And number three, please follow on social media. That will be Facebook, Twitter, and Instagram.

[00:05:06] **Katie Breen, Femtastic:** And if you're, you know, right after this, if you pull up your little phone and follow me on social, that would be a great time to DM me. And let me know that you heard this and that you're listening to this episode. So that's all, I hope you enjoy this episode with Kim Clark of legal voice and that you like me are infuriated and disturbed by what crisis pregnancy centers are doing with in, in relation to their clients' privacy and data.

[00:05:35] **Katie Breen, Femtastic:** Thanks. Good morning, Kim.

[00:05:39] **Kim Clark, Legal Voice:** Good morning. Thank you for having me. I'm so excited

[00:05:42] **Katie Breen, Femtastic:** to have you You know, when you initially reached out, I was like, oh, I, I wanted to talk about crisis pregnancy centers for such a long time. But you know, with a particular topic we're gonna talk about today. I, I thought I knew like, Most of the things that there was to know about crisis pregnancy centers [00:06:00] because of the work I did in grad school, on them.

[00:06:02] **Katie Breen, Femtastic:** But I had no idea about this topic around data and privacy that we're gonna talk about today and also the huge implications. It may have given legal changes lately. So I'm excited to talk to you about this.

[00:06:20] **Kim Clark, Legal Voice:** Great.

[00:06:21] **Katie Breen, Femtastic:** Let's start off by having you introduce yourself.

[00:06:24] **Kim Clark, Legal Voice:** Sure. My name is Kim Clark and I'm senior attorney for reproductive rights, health and justice at an organization called legal voice, which is a legal advocacy organization that advances the rights of women and the LGBTQ community throughout the Pacific Northwest.

[00:06:40] **Kim Clark, Legal Voice:** Basically we use high impact policy advocacy and legal rights education to do that.

[00:06:47] **Katie Breen, Femtastic:** Cool. Well for. Long time listeners of this podcast. They know I love lawyers and especially repro lawyers are like my heroes. So

[00:06:56] **Kim Clark, Legal Voice:** thank goodness someone does.

[00:06:58] **Katie Breen, Femtastic:** for someone who's not a [00:07:00] lawyer, I'm like a real fan girl about repro lawyers like specifically, obviously I'm not like, oh, wow. You're a tax attorney. I Revere you, not that there's anything wrong with being a tax attorney, but you know, like I have my niche

[00:07:12] **Kim Clark, Legal Voice:** ah, well, I appreciate it. Yeah. I appreciate the work and back at you. .

[00:07:17] **Katie Breen, Femtastic:** Thank you. So let's dive right in, in you. In your role have worked a lot on and talked a lot about this phenomenon of crisis pregnancy centers really being invasive in terms of what they do with client data and how they handle client privacy. And can. Wield that against people. So I don't know where to start, but let's just dive in and you can start wherever you think makes sense.

[00:07:47] **Katie Breen, Femtastic:** Cuz this topic is terrifying and fascinating.

[00:07:50] **Kim Clark, Legal Voice:** Okay. That sounds great. Well like you, so legal voice has been looking at the deceptive practices of crisis pregnancy centers for a long time and think about [00:08:00] ways to counteract the types of. Deception that crisis pregnancy centers are engaged in on a daily basis in terms of the misrepresentations that they make to patients, you know, the incomplete information they provide to patients.

[00:08:12] **Kim Clark, Legal Voice:** And, and the risks that they pose in, in that sense in recent years, though, we become even more concerned as you point out about the use of Patient quote unquote, patient data by crisis pregnancy centers and the role of, of crisis crisis pregnancy centers, more broadly in the anti-abortion movement.

[00:08:31] **Kim Clark, Legal Voice:** As sort of an engine for movement building, which they do through both collecting huge amounts of data for movement building purposes. And then also money. And also the role they serve in terms of kind of radicalizing volunteers, folks who are. Who may, who may oppose abortion, but would not necessarily be the, the, the type to go out and, and protest outside of an abortion clinic.

[00:08:53] **Kim Clark, Legal Voice:** But once they're exposed to volunteering at a crisis pregnancy center or the information that crisis [00:09:00] pregnancy centers you know, are, are. Perpetuating, you know, they, they suddenly become much more radicalized. But with respect to patient data crisis pregnancy centers, for the most part I think the most alarming thing is that crisis pregnancy centers, for the most part, don't provide any medical services whatsoever.

[00:09:16] **Kim Clark, Legal Voice:** Which means that they're not billing for insurance. Which means that they're not subject to the protections of HIPAA, which is the main law in the United States that protects against the disclosure of private patient health information. And what that, so what that means is that you have huge numbers of patients going to, of pregnant people going to crisis pregnancy centers, sharing.

[00:09:40] **Kim Clark, Legal Voice:** Pretty intimate details about their themselves and their medical histories. And there's no, there's no law in the United States that would require crisis pregnancy centers to keep that confidential mm-hmm . And in fact, if a number of crisis of the, the sort of larger organizations that provide resources, [00:10:00] And support to crisis pregnancy centers even advertise.

[00:10:03] **Kim Clark, Legal Voice:** One, one of the things that they provide to these, these organizations provide to crisis pregnancy centers are data management services and in advertising their data management services, they will often say, imagine what we can do with the collective PA with the, you know, with. Imagine the, the power of all the collective data that we're collecting and what we can do with that for movement, not only for movement building purposes, but also to sort of create profiles of who is likely to become pregnant in, in the future.

[00:10:33] **Kim Clark, Legal Voice:** Mm. So it's, it's a really scary proposition.

[00:10:38] **Katie Breen, Femtastic:** I think what it's, I mean, you know, I think it's very. Clear and obvious to people that it's problematic, that crisis pregnancy centers sort of advertise as if they're health centers like, you know, they'll advertise free ultrasounds or free pregnancy tests. And with the, the sort of [00:11:00] HIPAA aspect it's like, you know, not even something I thought about where I. People, you know, because these CPCs are already marketing themselves as if they are providing medical services, someone is gonna go there and think they provide medical services. And part of that assumption is the fact that they would operate like any other, you know, medical entity and be subject to HIPAA.

[00:11:24] **Katie Breen, Femtastic:** And even people don't even really know what HIPAA is or what it means. I think people have a general understanding that like, Oh, and I go to a doctor, like that's confidential information, even if they don't know like the mechanisms that make it confidential. So if you think you're going to a doctor, you're definitely, you know, you're probably going, going to assume that it's gonna work like any other doctor, but it's not a doctor.

[00:11:44] **Katie Breen, Femtastic:** So I, I mean, I don't even, I know that there have been legal challenges to the fact that crisis pregnancy centers you know, Basically sort of misleadingly advertised that they are medical providers, but that [00:12:00] HIPAA and data aspect just adds a whole nother layer to it that I never even thought about and seems particularly problematic.

[00:12:08] **Katie Breen, Femtastic:** And I'm surprised that it has stood up to legal challenge is but I guess I'm not really surprised by anything anymore in this. Field in the United States.

[00:12:19] **Kim Clark, Legal Voice:** Well,

[00:12:20] **Kim Clark, Legal Voice:** and, and it's interesting because it really hasn't been subject to legal challenge because there's really there's really no challenge to bring.

[00:12:27] **Kim Clark, Legal Voice:** And I, I think you're exactly right. If, if I'm a, you know, a, a pregnant person walking into a crisis pregnancy center and it, you know, the, the, the waiting room is set up like a medical office and the, the you know, the Person from whom I receive quote care, whether that's a non diagnostic, you know, sort of keepsake ultrasound and a drugstore pregnancy test is wearing a, you know, a, a, a white lab coat.

[00:12:52] **Kim Clark, Legal Voice:** And, and everything else looks the same as my medical providers off office. I, I would assume that my information is being kept [00:13:00] confidential. And yet even when you many of, many of these Crisis pregnancy centers are actually pretty clear on their, on their website about the fact that they do share patient information for all kinds of, or that, you know, they reserve the right anyway to share, to share person personal information for all kinds of purposes in, you know, including.

[00:13:19] **Kim Clark, Legal Voice:** You know, you know, for the sake of their, their business for to cooperate with legal challenges, mm-hmm for, you know, just for a wide range of purposes and there's absolutely, again, nothing in, in. Federal law to and, and, and really at the, at the state law either state level, either in most cases to protect against the, the disclosure of, of all this information that crisis pregnancy centers are collecting.

[00:13:45] **Kim Clark, Legal Voice:** So there's a danger at the PA at the patient level, because this is one strategy of the anti-abortion movement, of course, is absolutely the intimidation of, of patient. Patients and, and providers, whether it be through, you know, collecting [00:14:00] information about pregnant people at crisis pregnancy centers and then harassing them thereafter, or, you know, again, harassing abortion providers outside of abortion you know, outside of reproductive health clinics, this is definitely one of the strategies and the information that the, you know that crisis pregnancy centers.

[00:14:17] **Kim Clark, Legal Voice:** Collect puts them, you know, absolutely enables that kind of harassment and intimidation. And then it's sort of at, at a meta level, again, the movement itself has been pretty clear that part of the point of collecting all of this data and, you know is to, is to kind of use for, to inform their movement building.

[00:14:40] **Kim Clark, Legal Voice:** So it's Yeah. It's it's, it's, it's really scary. And, and in particularly in light now of. Laws like Texas SBA eight which basically deputizes any random person to bring a, a cause of action against a medical provider for providing abortion care. After embryonic cardiac activity can be detected, which is basically five to six weeks of pregnancy.

[00:15:05] **Kim Clark, Legal Voice:** That law and others, like it really create an incentive to, for the pro you know, to really incentivize the pro profiling of pregnant people and crisis pregnancy centers are in the perfect position to, you know, provide that kind of support to, to, to support and enable those kinds of lawsuits because of the kind of information that they're collecting.

[00:15:26] **Katie Breen, Femtastic:** Yeah. So I wanna go deeper into each of the areas you mentioned that they. Can and do use this data for, so I think the first one you mentioned is sort of like harassment and surveillance of both patients and like real abortion providers, the second one movement building. And then the last one sort of this legal challenge aspect with laws like SV eight.

[00:15:51] **Katie Breen, Femtastic:** So let's start with, with, tell us a little bit more about. In terms of like them using data to sort of follow [00:16:00] or harass patients or providers, like what is, what is going on there? What exactly do they do?

[00:16:06] **Kim Clark, Legal Voice:** So anecdotally, there are reports around the country of patient pregnant people. You know, who visit crisis pregnancy centers, whether it's to obtain the free pregnancy test or again, this keepsake ultrasound that, that they offer.

[00:16:20] **Kim Clark, Legal Voice:** And then thereafter receiving all kinds of follow up texts and. Harassing messages long after they no longer require or, you know, the services of the crisis pregnancy center or wish to be in touch with the crisis pregnancy center. It is, you know, almost as though they're being surveilled to ensure that they don't go on to access abortion care or, you know, now or in the future.

[00:16:46] **Katie Breen, Femtastic:** Right.

[00:16:46] **Kim Clark, Legal Voice:** So yeah, it's a and, and of course, you know, those kinds of practices also disincentivize. You know, others from, from seeking care. So you know, if you, if you think you're the, the information is gonna be used, [00:17:00] you know, to, you know, harass you or intimidate you, you know, you might just not seek, you might, you might not seek care from any provider for, you know, out of concern about how your information's going to be used or, you know.

[00:17:11] **Katie Breen, Femtastic:** Yeah. Well, and if

[00:17:12] **Katie Breen, Femtastic:** they're not subject to HIPAA, they could like. Tell your employer or like tell your husband or whatever, right?

[00:17:20] **Kim Clark, Legal Voice:** Oh, that's exactly right. And we were talking before the show about how the, the state of Idaho has just passed a Texas SB8 lookalike law that would allow That would allow abusers to bring cause of action.

[00:17:31] **Kim Clark, Legal Voice:** There's no exception for, for perpetrators of intimate partner violence. So it would allow a perpetrator of intimate partner violence to bring a cause of action against their against the health. Any healthcare provider who offers abortion care, provides abortion care to the survivor. As long as it's after the point at which.

[00:17:46] **Kim Clark, Legal Voice:** Embryonic cardiac activity can be detected. So yeah the that's a great example. A crisis pregnancy center could notify an abuser that that a, a survivor of intimate partner violence is seeking access to care [00:18:00] or, you know, a survivor of, of sexual assault or, or rape in the, the Idaho statute.

[00:18:05] **Kim Clark, Legal Voice:** For example, also doesn't exempt those. Perpetrators, unless there has been, you know, a criminal complaint made mm-hmm so it, yes, it's, it's really it's really disturbing what they can do with this information. And, and, and again, the real problem as you pointed out earlier is that. It, you know, it'd be one thing if people knew what they were walking into when they went into these centers and then you could, you would know to protect your own personal information, but because of the way they hold themselves out as legitimate reproductive healthcare providers, they use the same you know, the same sort of you know, slogan and, you know, lots of this like similar imagery and, you know, they're wearing white coats and.

[00:18:45] **Kim Clark, Legal Voice:** They've set up their offices like doctor's offices rather than, you know, like you know, counseling offices or, or churches, which I think they're much closer to that in reality. But because of the way they're set up, folks do not realize that the information that they're [00:19:00] providing. Very well, you know, that, that there's really nothing to pre protect against the disclosure of their personal information.

[00:19:07] **Katie Breen, Femtastic:** Right. And even if it's like stated on their website, you know, who actually knows what any of that means when you're like, oh, you know, if it's like legalese, it's like, well share with blah, blah, blah. And it's not specific. That's like, we're gonna share with, you know, Exactly who they're gonna share with, like, I don't know.

[00:19:25] **Katie Breen, Femtastic:** It's like, as a general consumer, I don't know what that means. And I probably don't care. Like, I'm probably not concerned about it cuz you see sort of causes like that all the time and it's like, okay, sure. What, whatever. Like I assume that you know what you're doing and are, you know, above board, but

[00:19:44] **Kim Clark, Legal Voice:** that's exactly right.

[00:19:45] **Kim Clark, Legal Voice:** I, and, and you know, even as a lawyer you know, it, it. Sort of studying the, the privacy policies that are on most crisis pregnancy websites. It's not, it wasn't even immediately, first of all, someone would have to look at at that information.[00:20:00]

[00:20:00] **Katie Breen, Femtastic:** It's probably the bottom in tiny print, right? Like the fact that they keep like archdiocese of Denver, very small at the bottom.

[00:20:07] **Kim Clark, Legal Voice:** exactly. I mean, more than likely you're on your own assessment, that this is a medical facility. So my information must be getting kept confidential. When you go to a. Place like this, but even if you do look at their private P privacy policies and as an ex an experienced attorney it took me some time to realize what they're really saying, which is understand that this Infor we can use this information, however we want.

[00:20:32] **Kim Clark, Legal Voice:** And, and the reason many of these websites are confusing is that these entities, which are in no way, subject to HIPAA will have a HIPAA policy on their website. And they will say, you know, we will protect. Personal health information, which is a term that's of art. That's defined by HIPAA. We, we will keep that information confidential, but in

fact, because they're not subject to HIPAA, they're not providing medical services, they're not billing for their services.

[00:20:59] **Kim Clark, Legal Voice:** They're really not [00:21:00] collecting personal health information as defined by HIPAA. And, and then they'll have a separate policy on their website that says, and to the extent that we're, you know, collecting other types of information, the information that you provide to us we'll use that information essentially, however we want.

[00:21:17] **Kim Clark, Legal Voice:** And they, you know, list a whole variety of categories that essentially boil down to however we want. And so it's. It is misleading. It may be, you know, technically accurate, but very, very misleading.

[00:21:28] **Katie Breen, Femtastic:** People don't read the terms and conditions anyway.

[00:21:30] **Kim Clark, Legal Voice:** That's exactly right.

[00:21:32] **Katie Breen, Femtastic:** Like with GDPR on every website you go to, you have to accept cookies and there's terms and conditions. Have I literally ever read that? No, like no one reads that, right?

[00:21:40] **Katie Breen, Femtastic:** And, and

[00:21:41] **Kim Clark, Legal Voice:** to that point, in fact privacy international has actually looked into the privacy practices of crisis pregnancy centers under the GDPR. And even under the GDPR, they had a hard time sussing out whether or not, you know, the extent to which crisis pregnancy centers, the, the crisis pregnancy centers they looked at [00:22:00] are compliant with the GDPR.

[00:22:01] **Kim Clark, Legal Voice:** So, so even there where you have a statute that provides a lot more protection even. You know, even privacy international identified crisis pregnancy centers, you know, as as problematic. Hmm. So it is. It is it's very scary. You know, and I think the other two crisis pregnancy, as I said earlier, I think crisis pregnancy centers.

[00:22:23] **Kim Clark, Legal Voice:** One thing that I, that I have begun to appreciate in the last couple of years is just the degree to which crisis pregnancy centers really are the, and the engine behind the or a significant engine behind the anti-abortion movement because they're able, because of the resources that

they're able to collect in terms of, again, the three most important things you know, volunteers to, to work for and advance the movement they, they serve as sort of a breeding ground to radicalize volume in tears.

[00:22:53] **Kim Clark, Legal Voice:** Collecting enormous amounts of data and then enormous amounts of money. The other, you know, if you look at the form nine 90 [00:23:00] S of crisis pregnancy centers across the country, they range in size from, you know, a few thousand, a budget of a few thousand dollars to millions of dollars. And it's not at all.

[00:23:09] **Kim Clark, Legal Voice:** Especially

[00:23:09] **Katie Breen, Femtastic:** because some of them are tax funded.

[00:23:12] **Kim Clark, Legal Voice:** And some of them . Receive federal funds and it's not at all state clear and, or I'm sorry. Right. State

[00:23:17] **Kim Clark, Legal Voice:** funds.

[00:23:18] **Katie Breen, Femtastic:** I think they receive, they receive federal funds too, because of Title X

[00:23:21] **Kim Clark, Legal Voice:** some, some might. But but, in any event, it's not at all clear given the level of service that they they provide the number of patients that they actually see or pregnant people. They provide services to where that. Enormous amount of money is, is going. It's, it's really a bit of a black box and, and the same is true for the data, how they're using, how they're using data. So it's, it's something that, you know, pregnant people need to be aware of when they access services from these otherwise seemingly caring, you know you know, providers mm-hmm[00:24:00]

[00:24:00] **Katie Breen, Femtastic:** Yeah. So what, what is like for movement building, like you mentioned, the profiles, which I, I think are part of, sort of this movement building thing, what is, what exactly does that mean? Especially for people who might not be familiar with like the like internet data that can be cool elected and what you can do with. Data from cookies that people collect on the internet?

[00:24:27] **Kim Clark, Legal Voice:** Well I think in terms of, of movement building understanding who is most in need of, and who, who seeks services at crisis pregnancy centers can. You know, inform future messaging. It can, you

know, it can inform, you know, to whom you target your, your messaging, what that should, what that should say.

[00:24:48] **Kim Clark, Legal Voice:** Mm-hmm so I think it's, it's, it's probably valuable in, in that sense. The way that. Some crisis pregnancy centers, or again, these larger entities that provide [00:25:00] services to crisis pregnancy centers. Describe the value of this data is that it enables them sort of to an even scarier point. It enables them to develop profiles of who might be likely to need abortion care in the future.

[00:25:15] **Kim Clark, Legal Voice:** Right. And we know that crisis pregnancy centers you know, really. You know, target vulnerable, you know, target the most marginalized communities as it is. And they particularly right now seem to be targeting communities of color and black women in particular. And I think in part that is in response to the reproductive justice movement, which has done a real, really good job of sort of calling out the connection between the anti-abortion movement and whites, white supremacy over the, you know, over the course of history. And so it's a way to sort of counter that narrative. But but as I said, the way they themselves describe the point of collecting this data is to, is to sort of create profiles of who has abortion and, and who will need them.

[00:25:58] **Kim Clark, Legal Voice:** And that's obviously, [00:26:00] and who will need them in the future, which is obviously very harmful mm-hmm . So that, that is. Obviously a central concern of ours as well. Hmm.

[00:26:10] **Katie Breen, Fentastic:** Okay. And then the last one about like the new laws, like SB8 and then Idaho just copied Texas's SB8, that one seems particularly scary given that it looks like the courts are going to let laws like that move forward. And we may see Roe overturned in June, 2022. So let's talk about that one, cuz I think that is also not like, even though I'm in very much in this field, did not think about that at all or how CPCs could be complicit in those types of lawsuits and whatnot. So let's talk about that cause it's terrifying.

[00:26:52] **Kim Clark, Legal Voice:** Yeah, that's exactly right. I feel Whatever happens, whatever the Supreme court decides in Dobbs versus Jackson women's health organization. There is pretty [00:27:00] much widespread agreement among legal scholars that whether on both sides of the aisle, whether you know, the Supreme court overturns Roe altogether, or simply upholds this 15 week abortion ban the central tenants of Roe and the protections of Roe and planned parenthood versus Casey will pretty much be.

[00:27:19] **Kim Clark, Legal Voice:** Gutted beyond repair and we'll be back to having a patchwork of different. You know, your, your rights will depend very much on where you live. So different states will have different regulations and more than half of states have you know, will, are, are expected to ban abortion altogether, or have trigger bans that go into effect you know, to, to vary at, you know, different stages of at different gestational ages.

[00:27:44] **Kim Clark, Legal Voice:** And we'll have differing degrees of regulation, but If, if that is if, if that's the case, then we also expect to see a huge uptake in potentially the criminalization of pregnant, pregnant people for both self-managed abortion and negative pregnancy outcomes. So there [00:28:00] will be lots of litigation both pursuant to.

[00:28:04] **Kim Clark, Legal Voice:** You know, those various different types of, of bands, those and restrictions. And then also, I guess in, I would say in the context of self-manage abortion and you know, criminalization for pregnancy outcomes and again, having these you know Having these crisis pregnancy centers, masquerading as legitimate reproductive health centers and collecting all kinds of private information about people, the fact of their pregnancy, gestational age their medical histories, you know, the, the, all of that information can be used to advance those types of right.

[00:28:36] **Katie Breen, Femtastic:** Or like if the person. Like what the person said. Like, if mm-hmm , if they were like, you know, if they spoke to the person at the crisis pregnancy center about being like, unsure about their choices, like if they wanted to continue the pregnancy or not, or even if they said stuff like, you know, even if they never say anything about like wanting to end the pregnancy, but say.[00:29:00]

[00:29:00] **Katie Breen, Femtastic:** That could be construed as like regret or, you know, like if you're like, oh, I really didn't under, I really didn't expect this. I'm really overwhelmed. Like there's so much that could be used as, you know,

[00:29:11] **Katie Breen, Femtastic:** evidence

[00:29:11] **Kim Clark, Legal Voice:** that's right. And evidence as that's so scary who helped them, you know, obtain care or yes.

[00:29:17] **Kim Clark, Legal Voice:** So, you know, You know, at a minimum crisis, pregnancy centers are collecting information about who's there, you know, where they are in their, that they're pregnant, where they are in their pregnancy. So even if they, even if you know, a pregnant person says nothing

and leaves, if there's, you know, no pregnancy that results from, you know, their after right.

[00:29:40] **Kim Clark, Legal Voice:** That itself could be really there's there's So much potential harm that could come from, you know, all of this inform the disclosure of all, all this, these different types of information that people would be sharing with crisis pregnancy centers.

[00:29:56] **Katie Breen, Femtastic:** That is so

[00:29:57] **Katie Breen, Femtastic:** horrifying.

[00:29:57] **Kim Clark, Legal Voice:** Definitely frightening.

[00:29:59] **Katie Breen, Femtastic:** So [00:30:00] what, what can we do about this? like, what options are there? What, what is happening in the legal world?

[00:30:10] **Kim Clark, Legal Voice:** So I do think that states are becoming That that are, are becoming more aware of the danger that this represents. And I, for the first time starting to hear proposals to, you know, require that, you know, limited service pregnancy centers are crisis pregnancy centers.

[00:30:28] **Kim Clark, Legal Voice:** They're sort of referred to by, you know, both terms are used to describe crisis pregnancy centers that, that there, there are efforts You know, there, there finally is discussion of regulating the, the, you know, the privacy practices of crisis pregnancy centers. You know, I don't think yet that, that, that I still think this.

[00:30:45] **Kim Clark, Legal Voice:** Information is not widely known. And one, it's one of the reasons I really appreciate your you're doing this podcast today. Cause I think it's something that people really need to, to understand and definitely not widely known right. And, but I, I, you know, I, I think that as it [00:31:00] becomes more widely known, there will be greater interest in, in looking at their, the, the privacy policies and practices of, of these types of entities.

[00:31:09] **Kim Clark, Legal Voice:** And when, as I said, I'm starting to see that in. In various places,

[00:31:15] **Katie Breen, Femtastic:** I would at least hope like, you know, I think, I, I think I may have mentioned this in the, the sort of like CPCs 1 0 1 interview I recorded, but I know like a lot of state attorneys general do a lot of

like consumer protection work and especially for like, Democratic attorneys general.

[00:31:36] **Katie Breen, Femtastic:** This seems like something that would be a ripe thing to tackle, especially because a lot of those AGS are already involved in like repro legal battles. This seems like a perfect extension of both like their so sort of policy priorities around. Protecting reproductive rights, but also protecting consumer [00:32:00] rights.

[00:32:00] **Katie Breen, Femtastic:** Like it overlaps a couple different areas that AGS usually cover.

[00:32:05] **Kim Clark, Legal Voice:** Yes. Yeah, I think, and I think the consumer protection laws is where these types of restrictions or regulations, you know, would, would fit in you know, there,

[00:32:15] **Katie Breen, Femtastic:** because it really has nothing to do with abortion. Like, there'll obviously always be people who will be swayed because they know that like at an underlying level it is about abortion, but I think it's at least more cut and dry where it's like, yeah, this is like objectively misleading.

[00:32:34] **Kim Clark, Legal Voice:** right. And I think to the extent that these practice or like the policies themselves are so internally and consistent that they're objectively misleading, or certainly to the extent that you could show that they're intentionally misleading. There, there might existing consumer protection regulate or laws might, might apply. There are some challenges with applying existing consumer protection laws to crisis pregnant C [00:33:00] centers.

[00:33:01] **Kim Clark, Legal Voice:** Generally one, because you usually have to show that the you know, services is being offered is in the stream of commerce. And we're an entity is not charging for its services that, oh, that can be a challenge. It's not, it doesn't it doesn't. Necessarily preclude the application of state consumer protection laws.

[00:33:19] **Kim Clark, Legal Voice:** And it really it's, my understanding really varies by, by state.

[00:33:23] **Katie Breen, Femtastic:** Okay. But like, because they're free services, it might not count.

[00:33:27] **Katie Breen, Femtastic:** Oh, right.

[00:33:28] **Kim Clark, Legal Voice:** The, the bigger challenge is, is you know, what do you do where the policy is act? The small print is actually very clear, right? You know, crisis pregnancy centers are, you know, are transparent that they will use, you know, the information they're collecting as they see fit.

[00:33:42] **Kim Clark, Legal Voice:** It's just that who, again, as, as we we've been discussing, who looks at the small print rather than just assumes that right medical office, they're standing in. The quote, unquote medical office they're standing in will keep their information confidential.

[00:33:56] **Katie Breen, Femtastic:** Well, and even like outside of their [00:34:00] disclosures about information sharing, like I'm sure a lot of them somewhere in small print. In fact, I think because of the California case that happened a few years ago, think this is true, but like a lot of them will say somewhere that they don't actually provide medical care. But like everything, as we said, everything other than like the small print that says that, you would be led to believe that they do provide medical care. So.

[00:34:29] **Kim Clark, Legal Voice:** That's right. That that's absolutely right. Naturally the California case that you were referencing NIFLA versus Becerra went the other way. And the Supreme court concluded that it would actually be a violation of crisis pregnancy center's first amendment rights. Those that don't provide medical services to require them to include a disclosure that says they don't provide.

[00:34:50] **Kim Clark, Legal Voice:** That they're not licensed healthcare providers. Nevertheless, you're right. A lot, a lot will say that they're not providing medical care, but again you know, it's, you know, do [00:35:00] pregnant people really understand that and do they really understand the implications of that? Which is that right?

[00:35:07] **Katie Breen, Femtastic:** It just, so, I mean, I, you got people like, regardless of, if you read that if even if someone is like, not in scrubs, if someone gives you an ultrasound, you're going to think you're getting medical care. Like

[00:35:24] **Kim Clark, Legal Voice:** exactly.

[00:35:25] **Katie Breen, Femtastic:** That is just the, what it, I just, the NIFLA decision really blew my mind.

[00:35:33] **Kim Clark, Legal Voice:** That's right. And actually what you just brought up about ultrasounds is I think another point that that is not widely understood.

[00:35:39] **Kim Clark, Legal Voice:** I think most folks understand if you're performing an ultrasound, that's a medical service and it's something that would subject you to medical privacy laws and other regulations that would qualify you as sort of a medical provider. Yeah. But you

[00:35:50] **Kim Clark, Legal Voice:** actually,

[00:35:51] **Katie Breen, Femtastic:** And certainly at a regular doctor's office will bill your insurance for that.

[00:35:54] **Katie Breen, Femtastic:** So that is definitely

[00:35:55] **Katie Breen, Femtastic:** a medical service.

[00:35:56] **Kim Clark, Legal Voice:** At a regular me at a medical doctor's office, they'll actually have the [00:36:00] skills to be able to interpret the results of your ultrasound. Yeah. What crisis pregnancy centers are providing is something really anyone can offer. And it's essentially, as I said, it's like a souvenir ultrasound.

[00:36:10] **Kim Clark, Legal Voice:** It's a keepsake ultrasound. So they're off these ultrasounds are often being provided by. You know, I won't even use the word technic, but folks who, you know, have not been trained to provide ultrasounds, certainly haven't been trained to interpret the results, although they are known to, to interpret the results and actually date pregnancies.

[00:36:29] **Kim Clark, Legal Voice:** Yep. May not be trained to identify pregnancy complications that could be life threatening, like, right. Like an ectopic pregnancy, for example. But when they, what they're really providing is a like souvenir keepsake. Ultrasound. So it's, it's not a medical service and it's least in the state of Washington, wouldn't be sufficient to you know, to qualify a crisis pregnancy center as a healthcare provider for the purposes of, you know, for regulatory purposes.

[00:36:55] **Katie Breen, Femtastic:** Yeah. I just feel like they, I mean, are obviously very good at like [00:37:00] skirting the regulations because like, There is what you know is in writing and sort of the terms and conditions they state, but then there's what any like reasonable person would think. And like a

reasonable person would think, okay, I'm getting medical care. This is an ultrasound, like that's right. You don't get a casual ultrasound in any other like area of life. You don't go to like a music festival and get a casual ultrasound as a keepsake.

[00:37:26] **Kim Clark, Legal Voice:** That's that's exactly right. Yeah, I mean, I should point out in, in fairness, there are, there is a small percentage of crisis pregnancy centers that actually do provide legitimate medical services.

[00:37:36] **Kim Clark, Legal Voice:** And, you know, at least some subset of those maybe billing for their services and therefore subject to HIPAA. But we're talking about, you know, sort of the vast majority of crisis pregnancy centers that don't provide, right. Anything more than than, you know, the drugstore pregnancy test. And this keepsake ultrasound that we've been talking about.

[00:37:57] **Katie Breen, Femtastic:** Yeah. Well, and. [00:38:00] We, we did go into this a little bit on the, the sort of like CBC's 101 episode, but just to reiterate again about the fact that the ultrasound, the people doing the ultrasounds, I'm not gonna call 'em ultrasound technicians.

[00:38:12] **Kim Clark, Legal Voice:** know. Right.

[00:38:12] **Katie Breen, Femtastic:** They're not trained. And so they'll just say stuff like, I know there's like a big investigation in California where a bunch of people went in and went into a crisis pregnancy center like pretending to be seeking services. And they like told one person that an IUD was her baby, like her, the I U D that she had was her baby.

[00:38:33] **Katie Breen, Femtastic:** They definitely like dated pregnancies wrong. They told people who weren't pregnant, that they're pregnant. Like. It's gross.

[00:38:40] **Kim Clark, Legal Voice:** Yes. And to, and, and add, to add another layer to that not only are they providing potentially misleading information to pregnant people who then rely on that information. Right. But those pregnant people then go on to other healthcare providers and say, I've got an ultrasound that showed X, Y, and Z, and then it. [00:39:00] It's incumbent upon the legitimate healthcare provider to identify that that ultrasound was given at a crisis pregnancy center. They have to suss that out in order to decide whether or not it's reliable and

[00:39:12] **Katie Breen, Femtastic:** which, like, we all know that continuity of care in the us health system doesn't really happen. So like, What are the chances that, that are gonna actually figure out where you got this ultrasound?

[00:39:22] **Kim Clark, Legal Voice:** That's that's exactly right. I worked with one provider who worked with pregnant people, struggling with substance use disorder, and she mentioned that she would see patients come in with ultrasounds F.

[00:39:35] **Kim Clark, Legal Voice:** From crisis pregnancy centers and it's, it's relevant in that context because the particular program that, that she worked for only went up to a certain gestational age. They would only provide services for insurance reasons up to a certain gestational age. And and these, you know, these ultrasounds that the that on a number of occasions, these pregnant people, pregnant people were given inaccurate information about this.

[00:39:58] **Kim Clark, Legal Voice:** The, you know, their, [00:40:00] the gestational da, you know, In terms of gestational dating and would actually be too late to, to be able to, you know, access services through this program as a result. But this provider would have to first go and, you know, figure out and it would take her time to figure out just looking at crisis PR you know, the, the center's webpage mm-hmm is this real reproductive healthcare provider or is it a crisis pregnancy center?

[00:40:25] **Kim Clark, Legal Voice:** Mm-hmm can I rely on this information? And you know, and, and, and even for her, you know, a trained physician, it would take her some time looking at these websites.

[00:40:34] **Katie Breen, Femtastic:** Most physicians are not gonna do that. Like exactly. That's not what physicians spend their time doing. Right. And the, the reason she probably was even doing that is because she was already aware that she was getting patients from crisis pregnancy centers. But like most providers. Are not going to think about that. Or like, if you're not in an area where you already know it's super common, you don't just like, why would you think [00:41:00] why to like invest? I mean, I don't know. It's just like putting so much responsibility on a provider to do something that like most providers don't do.

[00:41:12] **Kim Clark, Legal Voice:** Right. That's exactly right. It's just the potential consequences of, of you know, accessing services at a crisis pregnancy center and relying on any of the information you're, you're provided.

[00:41:23] **Katie Breen, Femtastic:** Just, I hope that they get sued so hard,

[00:41:26] **Katie Breen, Femtastic:** especially like with your, to your point. I mean, I don't even think I thought about this before, but like With an ectopic pregnancy, for example, like if you are like, okay, I'm, let's say you're six or eight weeks pregnant. You go to a crisis pregnancy center. And not even someone who, you know, is considering their options, whether like they want to keep the pregnancy or not, but just, you go, cuz you're like, oh, free pregnancy test. Great. Ultrasound great. So you go and it's like, okay, I'm whatever weeks' pregnant, they say this looks fine. And then. You [00:42:00] might, you know, there might be some time between then and when you like get to an actual OB provider and if they told you it was fine, but you had an ectopic pregnancy, you're gonna rely on that and potentially die, like

[00:42:14] **Kim Clark, Legal Voice:** potentially. That, that that's exactly right.

[00:42:17] **Katie Breen, Femtastic:** I mean, I would never wish that on anyone, but if there is a test case that can, if this happens and there's a test case, oh my God. I want them to get sued so bad.

[00:42:27] **Kim Clark, Legal Voice:** Yeah. I mean, one of the challenges from an advocacy standpoint is that it's really hard to collect. Those types of, of stories. Once people have people have had those, we have those stories, but, but by and large, once someone's had that experience, they don't wanna relive it.

[00:42:40] **Kim Clark, Legal Voice:** They wanna move on.

[00:42:41] **Katie Breen, Femtastic:** Understandably so.

[00:42:44] **Kim Clark, Legal Voice:** So it can, it can be it can be challenging, but yeah, I mean, just that this is allowed, you know, You know, this this is allowed to go on and in crisis pregnancy centers, I'm sure you got into this in the other episode drastically, the number of crisis pregnancy centers, exponentially out outnumber.

[00:42:59] **Katie Breen, Femtastic:** Yeah, it's like [00:43:00] thousands.

[00:43:01] **Kim Clark, Legal Voice:** the number of legitimate reproductive health clinics. So you have this massive network of, of You know, facilities that are holding themselves out as healthcare facilities, when they're really not offering, you know, care to pregnant people that is misleading and inaccurate, collecting all kinds of private information and money and, you know, using it

for whatever purpose radicalizing volunteers to send off to legitimate reproductive health clinics, to harass and intimidate staff.

[00:43:31] **Kim Clark, Legal Voice:** Somehow that's entirely clear or that's entirely you know, permissible under our existing legal structure. Yeah.

[00:43:41] **Kim Clark, Legal Voice:** So I, as I was working on the, the other episode about CPCs, I realized that so like the work I did in grad school on this, I had never like put it on my website. Like I don't, I think I like tried to get oped, like get some [00:44:00] things published as an oped and then no one like took it and then I forgot about it.

[00:44:04] **Kim Clark, Legal Voice:** So I like just recently put it on my website and I'll link to it in the show notes and stuff. But what, one of the, to quote myself, one of the things I said that I feel like is relevant is like there's no other sector of healthcare or like realm of healthcare that we would let this happen in. If someone had cancer, we would not tolerate some fake clinic being like, oh, if you drink this wheat grass it'll cure your cancer.

[00:44:33] **Kim Clark, Legal Voice:** Like, it just wouldn't happen because, because that's not stigmatized. And. Lawmakers and people in positions of power, understand why that's like very clearly wrong, cuz there's no like value laden judgements around whether or not, you know, you have cancer. Whereas there are about like whether or not you're going to go forward with a pregnancy and it just infuriates me like that we would accept this, for [00:45:00] reproductive healthcare.

[00:45:03] **Kim Clark, Legal Voice:** I couldn't agree more. And, and the, the sort of distinction that the, the Supreme court made in that case that you referenced NIFLA v. Becerra essentially Supreme court, essentially justified it's holding that you couldn't require crisis pregnancy centers to disclose what they really are. On the sort of factual conclusion that crisis, that everyone really, everyone knows that these are not real healthcare providers. And and so it's really more like, I mean, what they, what they really are, which are, you know, you know, religiously affiliated non-profit small little nonprofits that are trying to provide. Quote, unquote pregnancy counseling to pregnant people. And I think if that's what they held themselves, if, if, if that were really true, I don't think you know, advocates you know, abortion advocates would have a problem with them. I mean, they

[00:45:51] **Katie Breen, Femtastic:** exactly, it's just not like, I just, it blows my mind that that's the conclusion they reached It reminds me I mean, sort of,

[00:46:00] of, I just heard that like, In some lawsuit that Fox news had, one of their arguments was that no reasonable person would take Tucker Carlson seriously. , which is hilarious for many reason, but also like lots of people take him very seriously. Yeah. And I don't know, it's not like a perfect. Comparison, but it just made me think of that. But like, of course, maybe these Yale law school educated Supreme court justices would be like, oh, I would, I'm a reasonable person and I wouldn't fall for this, but a, I think that's a lie. I think they would. And B they're not the average person. They're not a pregnant person freaked out that they have a pregnancy that they weren't expecting, or maybe they were expecting it, but like, they're not,

[00:46:45] **Kim Clark, Legal Voice:** that's exactly right. The

[00:46:47] **Katie Breen, Femtastic:** they're not the target audience that's so maybe for, them's not being the target audience, they would be like, oh, clearly this isn't blah, blah, blah.

[00:46:55] **Kim Clark, Legal Voice:** Yeah, that is exactly right. They, they do not have the lived experience to enable them to [00:47:00] discern whether or not the extent to which this is truly misleading.

[00:47:03] **Katie Breen, Femtastic:** Yeah.

[00:47:03] **Kim Clark, Legal Voice:** But, and, and I agree, I don't, I don't see how anyone can reach the conclusion that, that you know, the average person clearly, you know, understands what they're walking into when they walk into a crisis pregnancy center.

[00:47:13] **Katie Breen, Femtastic:** Like, have you, have you, do you have any. Idea of what the average American is like, are you kidding me? Like have the last five years not told us that the average American probably isn't as sharp as a tack as you think they are like.

[00:47:27] **Kim Clark, Legal Voice:** Well, I think, as I said, even as an experienced lawyer, looking at the,

[00:47:30] **Katie Breen, Femtastic:** exactly

[00:47:31] **Kim Clark, Legal Voice:** at these websites, I found, I found it difficult to oftentimes to discern what these privacy policies were really telling me.

[00:47:39] **Kim Clark, Legal Voice:** And I, you know, I, I just, I again, you know, I think if, if it were just, you know, a church providing, you know, a pastor providing counseling to a parishioner and. You know, I, I would certainly have no problem with that. And I, I feel like you counter speech that you don't like with counter speech, but I do think that [00:48:00] what's happening at crisis pregnancy centers across the country and across the world is absolutely misleading from the way that they set up their offices, the way that they market themselves in writing.

[00:48:12] **Kim Clark, Legal Voice:** The you know, the way that they conduct their exams, the type of services that they purport to provide, which are deliberately, deliberately seem to be medical, but are not right. And then the, and then the way they include HIPAA disclosures on their websites, even when they're not subject, you know, they're clearly not subject.

[00:48:30] **Katie Breen, Femtastic:** Yeah. Also. So who's even gonna the website to check out, like, you're even go to the website.

[00:48:36] **Kim Clark, Legal Voice:** Right.

[00:48:37] **Katie Breen, Femtastic:** I don't know. I mean, obviously we're in agreement, but I just feel like from a legal perspective, this to me is like, you can't say fire in a movie theater.

[00:48:46] **Kim Clark, Legal Voice:** Right.

[00:48:47] **Katie Breen, Femtastic:** Cause there's no fire and that's a, you know, like that is a first amendment thing.

[00:48:51] **Katie Breen, Femtastic:** This is a very similar to me.

[00:48:55] **Kim Clark, Legal Voice:** Yep. Absolutely..

[00:48:58] **Katie Breen, Femtastic:** Yikes. [00:49:00] Well...

[00:49:01] **Kim Clark, Legal Voice:** And I, and I think people have known this for some time. I think this, the, this is for me CPCs have taken on a heightened prominence and and, and there's a heightened cause for concern about CPCs, given this new given laws like Texas SB8, that. Actually in incentivize the surveillance of, of pregnant people and what we can expect to come. Once the Supreme court releases its decision in Dobbs versus Jackson women's health

organization, I just think CPCs are perfectly poised to advance efforts, to further criminalized, analyze pregnant people and their providers.

[00:49:41] **Katie Breen, Femtastic:** This just gave me a whole nother thing to worry about

[00:49:47] **Katie Breen, Femtastic:** is there anything that, you know, like if a layperson listening to this who is not a lawyer, who's not like a repro advocate, you know, is there anything that like a, an average person could do if this is something that [00:50:00] they care about and would like to of fight against.

[00:50:05] **Kim Clark, Legal Voice:** Well, I think one help us raise awareness with your, your friends and your networks about the, the issue.

[00:50:11] **Kim Clark, Legal Voice:** And, and actually our organization in conjunction with a number of other women's rights organizations across the country just released a, a report on, on all of this, that. Perhaps you could share and then,

[00:50:22] **Katie Breen, Femtastic:** oh, 100% it'll be in the show notes.

[00:50:23] **Kim Clark, Legal Voice:** And then, and then the other thing I would encourage folks to do is, is to contact their representatives, their elected representatives, and, and ask them to take steps, to protect against the disclosure of information that's shared by pregnant people with crisis pregnancy centers.

[00:50:39] **Katie Breen, Femtastic:** Yes. Most definitely. And like think creatively about what that means. Your attorney general is also elected. So go to your reps, you know, in the legislature, but also to your ag who would also like to be reelected .Also it's a midterm year.

[00:50:55] **Kim Clark, Legal Voice:** That's right.

[00:50:55] **Katie Breen, Femtastic:** And it's probably gonna be really rough, but It's a midterm year. So vote. I [00:51:00] know I talk about that a lot, but like vote in your local elections in your state elections, in the federal ones too, but vote because this is why voting matters. Yeah. I don't know. I won't explain that more cuz if you don't get it at this point, you've listened to this podcast for a while. I don't think you're gonna get why voting's important, but it's important.

[00:51:21] **Katie Breen, Femtastic:** Awesome. Well, thank you so much for being here to talk about this today, Kim, I am very glad we were able to do it. I

learned a lot again, gives me something else to like, be up at night about, but I think it's so important and I. Again, like I bow down to anyone in working in repro law. So I really, really appreciate all of the work that you do.

[00:51:44] **Kim Clark, Legal Voice:** Oh, thank you. You are too kind. And it was my pleasure. Thank you for your attention to this really important issue.

[00:51:52] **Katie Breen, Femtastic:** Of course.

[00:51:54] **Katie Breen, Femtastic:** Thanks for listening to another episode of Femtastic as always, there will be links in [00:52:00] the show notes, which you can find either in the podcast player that you're on. When you click into like the information and the description of the episode or on Femtastic podcast.com/episodes, that's all.

[00:52:12] **Katie Breen, Femtastic:** And you will hear from Femtastic soon. Bye.