

11-2735-cv

& 11-2929-cv

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE EVERGREEN ASSOCIATION, INC., DBA Expectant Mother Care Pregnancy Centers EMC Frontline Pregnancy Center; LIFE CENTER OF NEW YORK, INC., DBA AAA Pregnancy Problems Center; PREGNANCY CARE CENTER OF NEW YORK, incorporated as Crisis Pregnancy Center of New York, a New York not-for-profit corporation; BORO PREGNANCY COUNSELING CENTER, a New York not-for-profit corporation, GOOD COUNSEL, INC., a New Jersey not-for-profit corporation,
Plaintiffs-Appellees,

v.

CITY OF NEW YORK, a municipal corporation; MICHAEL BLOOMBERG, Mayor of New York City, in his official capacity; JONATHAN MINTZ, the Commissioner of the New York City Department of Consumer Affairs, in his official capacity,
Defendants-Appellants.

On Appeal from the United States District Court for the Southern District of New York

**AMICUS CURIAE BRIEF OF PREGNANCY CARE ORGANIZATIONS
CARE NET, HEARTBEAT INTERNATIONAL, INC., AND
NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES
IN SUPPORT OF PLAINTIFFS-APPELLEES AND
AFFIRMANCE OF THE LOWER COURT**

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CORPORATE DISCLOSURE STATEMENT

Amici Care Net, Heartbeat International, Inc., and National Institute of Family and Life Advocates are non-profit corporations. They have no parent corporation, and there is no publicly held corporation that owns 10 percent or more of their stock.

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STATEMENT OF INTEREST OF *AMICI CURIAE*¹

Amici curiae are pregnancy care organizations that are impacted by Local Law 17 (“Ordinance”). Specifically, *Amici* Care Net, Heartbeat International, and the National Institute of Family and Life Advocates (“NIFLA”) are national organizations that network individual pregnancy care centers (“PCCs”) across the nation. *Amici* require that their affiliate PCCs (“affiliates”) meet high professional standards in order to maintain affiliation. In return, affiliates benefit from the training and resources available through *Amici*. Currently, Care Net has over 1,100 affiliates; Heartbeat International has over 1,100 affiliates; and NIFLA has over 1,200 affiliates.²

Amici are disheartened by the untruthful allegations leveled against their affiliates by Defendants and their *amici*. *Amici* present to this Court a truthful account of the valuable work PCCs do for their communities and urge the Court to affirm the lower court.

¹ *Amici* have authority to file this brief under Fed. R. App. P. 29 because all parties have consented to its filing. A party’s counsel has not authored the brief in whole or in part. Neither a party nor a party’s counsel has contributed money that was intended to fund the preparation or submission of the brief. No person outside of *Amici* or their Counsel has contributed money intended to fund preparation of the brief.

² PCCs can be affiliated with more than one national organization.

ARGUMENT

Thousands of PCCs operate across the country, with more than 2,300 PCCs affiliated with national organizations such as *Amici* Care Net, Heartbeat International, and NIFLA. PCCs receive an extraordinarily high approval rating from the clients they serve. In a 2009 survey by Care Net, 97 percent of client exit surveys were positive about the client’s experience at the center. Less than one (0.5) percent of clients registered a complaint with the center, while 96 percent indicated that they would recommend the center to a friend.³

Despite the well-known compassion and professionalism of PCCs, the Defendants enacted Local Law 17 (“Ordinance”) to halt pro-life speech. Because Defendants and their *amici* make several false representations of PCCs, *Amici* present to this court factual information about the services and standards of PCCs, along with evidence of client and nonpartisan governmental support for PCCs. Taken together, it is clear that Defendants had no legitimate reason—let alone a compelling one—to restrict the free speech of PCCs in New York City.

I. PCCs MEET PUBLIC NEED WITH COMPASSION AND PROFESSIONALISM

A. PCCs provide a wide range of free services

PCCs aim to support their clients emotionally and materially and offer a wide range of services, which generally include the following: free pregnancy

³ Care Net, *2009 Client Satisfaction Survey Results* (2009).

tests; one-on-one, nonjudgmental peer counseling; material assistance; medical referrals; childbirth and parenting classes; education and employment counseling; risk avoidance education for youth; information on and/or testing for sexually transmitted diseases (STDs); post-abortion counseling; 24-hour hotlines; and referrals to adoption agencies and other support services. All PCCs make referrals to prenatal care providers for their patients who are pregnant. These vital public services are provided to clients at no cost and are offered in an environment of understanding, confidentiality, and compassion.

For example, PCCs meet public need by regularly providing information on STDs to at-risk clients. In an effort to ensure that clients receive the best medical care, affiliates are instructed that all symptomatic clients be referred to the health department or to the client's provider of choice for evaluation.⁴ Any STD testing is provided by medical professionals.⁵ The Center for Disease Detection (CDD)—the laboratory chosen to perform STD testing for the Department of Labor—partners with Care Net and Heartbeat International to allow their affiliates access to accurate disease testing.⁶

⁴ See, e.g., Care Net & Heartbeat International, Inc., *MEDICAL PERSPECTIVES: A MANUAL FOR PREGNANCY CENTERS* 108 (2006).

⁵ *Id.* at 109.

⁶ *Id.* at 111.

PCCs routinely partner with community agencies.⁷ For example, in order to achieve positive maternal and child health effects, PCCs partner with women’s shelters, the American Red Cross, Women Infants and Children (WIC), local health departments, Medicaid, State Children’s Health Insurance Program (SCHIP), and the YWCA—just to name a few.⁸ In 2009, 92 percent of Care Net PCCs had clients referred to them from state health departments.⁹ These referrals demonstrate widespread support and trust in PCCs.

Another core service is parenting education, with topics including child development, nutritional counseling, and life skills.¹⁰ PCC classes receive community referrals from schools, social service entities, and legal entities.¹¹ Care Net instructs that these classes be taught by an individual with a master’s degree or other related certification.¹²

In addition to helping women prepare for motherhood through parenting classes, PCCs generally offer material assistance, such as diapers and baby clothes, during pregnancy and afterward. Often, learning and material assistance go hand in

⁷ Family Research Council, *A Passion to Serve, A Vision for Life* 28-30 (2009) (“FRC”).

⁸ *Id.* at 28-29.

⁹ Care Net, *2009 Care Net National Pregnancy Center Statistics* (2009).

¹⁰ FRC, *supra*, at 35.

¹¹ *Id.* at 36.

¹² Care Net, *POLICIES AND PROCEDURES MANUAL III-39* (1999).

hand, with women earning more goods, such as cribs, as they complete classes on parenting or job skills.¹³

PCCs also offer options counseling for women considering abortion, including information about adoption as well as medically documented information about abortion procedures and risks. Contrary to Defendants' claims, this information is based upon solid medical data and reviewed by medical professionals.¹⁴ *See* Part I.B. and I.C., *infra*. Many peer counselors are women who have themselves had unplanned pregnancies or abortions.¹⁵ Often, PCCs counsel women and men seeking help after abortion.

Some PCCs provide medical services. Medical PCCs operate under the licensure of a physician-medical director. The services are provided by certified and licensed professionals skilled in a wide range of health areas, including obstetrical care and nursing, ultrasonography, labor coaching, and lactation consultation.¹⁶ *Amicus* NIFLA provides comprehensive training for PCCs to convert into medical clinic status; to date, there are 750 such clinics nationwide.

Amicus Heartbeat International has 453 similar affiliates with medical directors.

¹³ *Id.* at III-45.

¹⁴ *See, e.g.*, Care Net, *Pregnancy Center Standards of Affiliation* (document issue date Jan. 2011); Care Net, *Legal Issues for Center Publications: Part 1*, LEGAL CARE (June/July 2008); Care Net, *Legal Issues for Center Publications: Part 2*, LEGAL CARE (Aug. 2008); Care Net, *Running an Internet Blog: Best Practices and Legal Issues*, LEGAL CARE (May 2008).

¹⁵ *See, e.g.*, FRC, *supra*, at 39 (*Alicia's Story*).

¹⁶ *Id.* at 24.

B. PCCs maintain professional standards

Amici require compliance with comprehensive standards of care. Affiliates must abide by these stringent guidelines in order to maintain affiliation.

For example, as a condition of affiliation with *Amici* and 10 other national organizations, affiliates are required to abide by the “Commitment of Care and Competence.”¹⁷ This detailed ethical code of practice—which is strictly followed by affiliates in New York and across the nation—invalidates Defendants’ claims about PCCs¹⁸ and includes the following:

- Clients are treated with kindness, compassion, and in a caring manner.
- Clients always receive honest and open answers.
- Client information is held in strict and absolute confidence.
- Clients receive accurate information about pregnancy, fetal development, lifestyle issues, and related concerns.
- All advertising and communication are truthful and honest and accurately describe the services offered.
- Medical services are provided in accordance with all applicable laws, and in accordance with pertinent medical standards, under the supervision and direction of a licensed physician.

Furthermore, *Amici* maintain medical advisory boards, and affiliates are provided with conference and training opportunities, legal updates and manuals,

¹⁷ Care Net et al., *Commitment of Care and Competence* (developed 1995, version date June 2009).

¹⁸ These claims will be further rebutted in Part I.C.

policy and procedure manuals, medical service manuals, and other materials reviewed and approved by legal and medical professionals.

For example, the manual *Medical Perspectives* by Care Net and Heartbeat International provides guidance on the provision of medical care, use of ultrasound, and general medical personnel policies. It instructs that medical services be offered only for medical reasons, and that only medical professionals offer medical advice.¹⁹ Medical staff members are to be licensed and/or certified in their particular field, and copies of licenses and certificates are to be kept on file.²⁰ All educational materials are to be reviewed for accuracy, professionalism, and suitability for patients and approved by medical professionals.²¹

Care Net also publishes *Legal Care*, a monthly newsletter which educates PCCs on legal issues ranging from running an internet blog to advertising, as well as *Medical Insights*, a medical education publication written by a physician and other qualified contributors.²² NIFLA's monthly publications, *Legal Tips* and *Clinic Tips*, provide vital legal information to PCCs regarding legal and medical issues affecting their operations.

¹⁹ MEDICAL PERSPECTIVES, *supra*, at 88, 89.

²⁰ *Id.* at 158.

²¹ *Id.* at 92; *see also Pregnancy Center Standards of Affiliation, supra.*

²² *See, e.g., Running an Internet Blog: Best Practices and Legal Issues, supra;* Care Net, *Yellow Pages Advertising: Addressing New Advertising Restrictions*, LEGAL CARE (Nov. 2007).

Amici also provide hundreds of detailed forms for affiliates’ daily interactions with clients, staff, and volunteers, including the following: client appointment forms (reminding volunteers to explain that the first appointment lasts approximately 45 minutes); client “request for services” forms (alerting clients to the services provided, that volunteers provide peer counseling but not professional counseling, and that the PCC does not perform nor refer for abortion); client intake sheets (asking clients whether they may be contacted by the PCC); and client comment surveys.²³

Amici provide legal reviews for their affiliates as well. PCCs are asked comprehensive questions about their daily operations, including questions about whether materials have been reviewed by an OB/GYN and are accurate and current; whether written consent is obtained before a client views a video; whether the PCC clearly discloses that it does not offer abortion services or referrals; how the center evaluates employees; and how the center advertises. Based on the PCC’s responses, *Amici* make recommendations to ensure the PCC is abiding by all applicable standards and regulations—including the Clinical Laboratory Improvement Act (CLIA), the Occupational Safety and Health Administration (OSHA) regulations, the Americans with Disabilities Act (ADA), and the Health

²³ Care Net, *Clients Forms*, in FORMS MANUAL, AT A-2, A-3, A-4, A-10.

Insurance Portability and Accountability Act (HIPPA)—as well as with state licensing requirements.²⁴

Furthermore, *Amici* ensure that ultrasound services are provided under guidelines issued by the American Institute in Ultrasound Medicine, the American College of Obstetricians and Gynecologists, and the American College of Radiology. Ultrasound must be performed under the supervision of a qualified physician and by properly trained personnel, in accordance with accepted standards of medical care.²⁵ *Amicus* NIFLA holds nine ultrasound training events each year and has trained more than 2,000 medical professionals.

C. Defendants’ claims are not true and unfairly attempt to discredit PCCs

Defendants rely solely on testimony presented before the New York City Council.²⁶ Defendants’ *amici* merely parrot this alleged testimony.

Yet every “witness” presented in Defendants’ brief had clear ties to entities with pro-abortion biases.²⁷ Significantly, many witnesses had a financial interest in ensuring that women choose abortion over childbirth.

²⁴ See, e.g., MEDICAL PERSPECTIVES, *supra*, at 56-63.

²⁵ *Id.* at 65-66.

²⁶ Appellants Brief, at 16-28.

²⁷ For example, Defendants cite the “President and CEO of Planned Parenthood,” “a social worker at Planned Parenthood,” a “Director of Communications for the New York Civil Liberties Union,” the “Executive Director at Dr. Emily’s Women’s Health Center,” an “abortion counselor,” “President of NARAL Pro-choice New York,” and the “President of the Center for Reproductive Choice.” *Id.* at 16, 18, 19, 20, 21, 27.

Moreover, their testimony is filled with hearsay. One social worker at Planned Parenthood (an entity that profits from abortion) provided testimony “as related to her by patients.”²⁸ Pro-abortion ministers provided “testimony” on unnamed women they had counseled.²⁹ An abortion counselor (again, with a financial interest in abortion) claimed that clients have felt misled by PCCs.³⁰ NARAL Pro-Choice New York provided a report filed by its “investigators”—none of whom were named, pregnant, or harmed by PCCs.³¹ This “testimony” amounts to nothing but self-serving, conclusory allegations.

The only woman testifying on her own behalf was the Director of Communications for the New York Civil Liberties Union, an unabashedly pro-abortion organization—and she did not claim to be “harmed” in any way by her visit to a PCC. In fact, her testimony reveals that *she knew* that the PCC was not providing a full exam.³² If anything, her testimony supports the fact that women understand when being served by a non-medical PCC that they are not receiving prenatal care.

²⁸ *Id.* at 16.

²⁹ *Id.* at 20.

³⁰ *Id.* at 20-21.

³¹ *Id.* at 21.

³² *Id.* at 19.

Defendants claim that the legislative record contains “first-hand accounts.”³³ This is stated in bad faith. Defendants’ own brief includes only *one* “first-hand account.” Further, Defendants know that the testimony presented amounts to nothing but hearsay. Defendants attempt to soften this deficiency in their case by claiming that “[t]estimony containing second-hand anecdotal stories cannot be dismissed outright as unreliable and biased simply because it comes from abortion counselors and social workers.”³⁴ Yet the lack of first-hand evidence decries the fact that Defendants and their *amici* are completely unable to come up with one person unaffiliated with a pro-abortion organization that can provide an actual account of any “harm” from visiting a PCC.

While PCCs can present former clients voicing support for PCCs (*see* Part II, *infra*), Defendants and their *amici* never present one real woman “harmed” by PCCs. Instead, their claims are based upon speculation and the desire to halt pro-life speech. The “testimony” is laced with words like “may,” “could” and “might.”³⁵ Not one instance of actual harm is ever presented.

³³ *Id.* at 72.

³⁴ *Id.*

³⁵ For example, Council Member Julissa Ferreras claimed that women seeking “reproductive health care *may* be confused and/or [misled] by unclear advertising or *may* unnecessarily delay prenatal care or abortion.” *Id.* at 14. Dr. Susan Blank claimed that the services provided by PCCs “*could* delay access to prenatal care” and “*may* convince women to disclose” information. *Id.* at 22, 25. She stated, “I *think* people *may* disclose information that they *may not* otherwise,” and claimed that women “*might*” give information in a PCC setting. *Id.* at 25-26. The City’s

As demonstrated above, PCC affiliates are held to stringent standards. But to further rebut Defendants' claims, *Amici* present the following information about PCCs:

1. *PCCs provide only accurate information to clients*

PCCs distribute medically accurate information regarding fetal development, pregnancy, and the risks of abortion. All information distributed by *Amici* is reviewed by medical professionals and utilizes medically accurate and recently published sources, including medical journals and textbooks.³⁶ If there is a medical debate regarding whether or not abortion carries particular risks, that conflict is brought to the attention of the woman and is not withheld from her.

An example from Defendants' *amici* Planned Parenthood et al. provides insight into the absurdity of Defendants' and their *amici's* claims. Planned Parenthood criticizes PCCs for claiming that abortion can cause infections and damage to the cervix.³⁷ Yet these are undisputed short-term risks of abortion. Indeed, Planned Parenthood Federation of America acknowledges infection and

Committee on Women's Issues claimed that PCCs "***may*** cause women to experience a delay." *Id.* at 30-31(emphasis added in all).

³⁶ See, e.g., *Pregnancy Center Standards of Affiliation, supra*; POLICIES AND PROCEDURES MANUAL, *supra*, at III-14; MEDICAL PERSPECTIVES, *supra*, at 92; Care Net, *Before You Decide* (2011) (citing peer-reviewed journals, textbooks, American Congress of Obstetricians and Gynecologists, Mayo Clinic, U.S. Food and Drug Administration, and drug labels).

³⁷ Brief for Amici Curiae Planned Parenthood et al., at 7.

injury to the cervix as risks of abortion.³⁸ Defendants and their *amici* cannot, in good faith, argue that PCCs provide inaccurate information, when it is the same information that is acknowledged by abortion providers. In reality, what Defendants dislike is that PCCs use the information to better inform women of the risks of abortion. Defendants dislike PCCs' pro-life speech—but they cannot claim that the speech is inaccurate.

Other objections include PCCs' references to the effect of abortion on future fertility or pregnancies, the psychological effects of abortion, and the potential link between abortion and breast cancer. But in each of these instances, PCCs point to medically documented information. For example, there are currently 114 studies showing a statistically significant association between induced abortion and subsequent pre-term birth.³⁹ In 2009 alone, three different systematic studies demonstrated a substantial risk of pre-term birth following abortion.⁴⁰

³⁸ See, e.g., Planned Parenthood, *In-Clinic Abortion Procedures* (2012), available at <http://www.plannedparenthood.org/health-topics/abortion/abortion-procedures-4359.htm> (last visited Jan. 24, 2012).

³⁹ See, e.g., J.M. Thorp et al., *Long-Term Physical and Psychological Health Consequences of Induced Abortion: Review of the Evidence*, *OBSTET. & GYNECOL. SURVEY* 58(1):67 (2003); B. Rooney & C. Calhoun, *Induced Abortion and Risk of Later Premature Births*, *J. AM. PHYSICIANS & SURGEONS* 8(2):46 (2003); American Association of Pro-Life Obstetricians & Gynecologists, *Dr. Iams* (2010), available at <http://www.aaplog.org/get-involved/letters-to-members/dr-iams/> (last visited Jan. 24, 2012).

⁴⁰ See P. Shah et al., *Induced termination of pregnancy and low birth weight and preterm birth: a systematic review and meta-analysis*, *B.J.O.G.* 116(11):1425 (2009); R.H. van Oppenraaij et al., *Predicting adverse obstetric outcome after*

Likewise, numerous peer-reviewed studies confirm that abortion poses drastic psychological risks, especially for younger women. These risks include depression, anxiety, and even suicide. A 2011 meta-analysis of studies examining the mental health of women following induced abortions, examining and combining results of 22 studies published between 1995 and 2009, affirms that these women face an 81 percent increased risk of mental health problems.⁴¹ One of the leading studies (led by a pro-abortion researcher) found that 42 percent of young women experience major depression after abortion.⁴² Minors who aborted had an astonishing 78.6 percent chance of experiencing major depression; the chance of experiencing anxiety after abortion was 64.3 percent, and the chance of suicidal ideation was 50 percent.⁴³ This is just one example in a large body of medical literature demonstrating increased psychological risks following abortion.⁴⁴

early pregnancy events and complications: a review, HUMAN REPROD. UPDATE ADVANCE ACCESS 1:1 (Mar. 7, 2009); H.M. Swingle et al., *Abortion and the Risk of Subsequent Preterm Birth: A Systematic Review and Meta-Analysis*, J. REPROD. MED. 54:95 (2009).

⁴¹ P.K. Coleman, *Abortion and Mental Health: Quantitative Synthesis and Analysis of Research Published 1995-2009*, BRIT. J. OF PSYCHIATRY 199:180-86 (2011).

⁴² D.M. Fergusson et al., *Abortion in Young Women and Subsequent Mental Health*, J. CHILD PSYCHOL. & PSYCHIAT. 41(1):16 (2006).

⁴³ *Id.* at 19.

⁴⁴ *See, e.g.*, W.B. Miller et al., *Testing a model of the psychological consequences of abortion*, in L.J. Beckman & S.M. Harvey, THE NEW CIVIL WAR: THE PSYCHOLOGY, CULTURE, AND POLITICS OF ABORTION (Am. Psychological Ass'n

Further, PCCs do not present the potential link between abortion and breast cancer as an established medical fact; but they do provide women with information on the conflicting studies, and allow women to make their own conclusions. For example, in Care Net’s publication entitled *Before You Decide*, Care Net explains to clients that “[m]edical experts continue to debate the association between abortion and breast cancer,” but that research—in journals including the Journal of the National Cancer Institute—demonstrates that carrying a pregnancy to full term gives a measure of protection against breast cancer and that a number of reliable studies have concluded that there is an association between abortion and later development of breast cancer.⁴⁵

1998); G. Congleton & L. Calhoun, *Post-abortion perceptions: A comparison of self-identified distressed and non-distressed populations*, INT’L J. SOC. PSYCHIATRY 39:255 (1993); P.K. Coleman & E.S. Nelson, *The quality of abortion decisions and college students’ reports of post-abortion emotional sequelae and abortion attitudes*, J. SOC. & CLINICAL PSYCHOLOGY 17:425 (1998); L.M. Pope et al., *Post-abortion psychological adjustment: Are minors at increased risk?*, J. ADOLESCENT HEALTH 29:2 (2001); W. Pedersen, *Abortion and depression: A population-based longitudinal study of young women*, SCANDINAVIAN J. PUB. HEALTH 36(4):424 (2008); D.I. Rees & J.J. Sabia, *The relationship between abortion and depression: New evidence from the Fragile Families and Child Wellbeing Study*, MED. SCI. MONITOR 13(10):430 (2007); F.O. Fayote et al., *Emotional distress and its correlates*, J. OBSTET. & GYNECOL. 5:504 (2004).

⁴⁵ *Before You Decide*, *supra*. For example, a study commissioned by the United States National Cancer Institute found an overall 50 percent increased risk of breast cancer for women who had an induced abortion; among women with a family history of breast cancer, the increased risk was 80 percent. If the woman had an abortion before age 18, the increase in risk was more than 100 percent. If the woman had both risk factors (family history and abortion before 18), the risk was incalculable—every such woman in the study developed breast cancer by age

Finally, staff and volunteers of affiliate PCCs are appropriately trained for the services they provide. PCCs that offer ultrasound and/or other medical services hire medically trained staff and comply with state and federal regulations regarding licensing and certification. Affiliates who are not acting in a medical capacity present the information as public education, not as medical advice.⁴⁶

Thus, Defendants and their *amici* may not like the results of the peer-reviewed studies used by PCCs; but they cannot in good faith claim that PCCs use false or misleading information.

2. *PCC staff and volunteers conduct themselves with professionalism and compassion*

Amici are committed to serving clients with conduct that is exemplary and above reproach.

First, affiliates are required to enforce strict policies regarding treatment of clients.⁴⁷ While staff and volunteers are equipped to share their faith and beliefs, the extent of such discussions is to reflect respect for the client's wishes and belief system.⁴⁸ In addition, affiliates are instructed to perform background checks on staff and volunteers.⁴⁹ Volunteers are required to go through a training seminar and

45. J.R. Daling et al., *Risk of Breast Cancer Among Young Women: Relationship to Induced Abortion*, J. NAT'L CANCER INST. 86:1584 (1994).

⁴⁶ See, e.g., POLICIES AND PROCEDURES MANUAL, *supra*, at III-38.

⁴⁷ See, e.g., *id.* at III-7.

⁴⁸ See, e.g., *id.* at III-8; FRC, *supra*, at 33.

⁴⁹ See, e.g., POLICIES AND PROCEDURES MANUAL, *supra*, at II-3, II-31.

a period of on-the-job training.⁵⁰ Before counseling any clients, affiliates are instructed to have staff and volunteers sign a statement that they will give accurate information, emotional support, and spiritual guidance, and will keep all information in the strictest confidence.⁵¹ There are to be no emotional or physical barriers between a client and the exit.⁵²

Affiliates are instructed to provide clients with a confidential “Client Comments” sheet, asking questions such as “Was your counselor sensitive and respectful of your beliefs?” and “Did you feel comfortable talking to your counselor about personal issues?”⁵³ Staff and volunteers who do not maintain the counseling standards must be disciplined and, when necessary, removed from counseling.⁵⁴ Affiliates who do not comply with *Amici’s* expectations risk losing their affiliation.

Second, if clients have not requested certain information, affiliates are instructed to obtain consent before presenting that information.⁵⁵ Permission is asked in such a way that clients understand they have a choice.⁵⁶ If a woman appears sad or upset, affiliates are instructed that it may be best to offer educational

⁵⁰ *Id.* at II-35, III-25.

⁵¹ *See, e.g.,* Care Net, *Personnel Forms*, in FORMS MANUAL, at A-6, B-4.

⁵² POLICIES AND PROCEDURES MANUAL, *supra*, at III-10.

⁵³ *See, e.g.,* *Clients Forms*, *supra*, at A-10.

⁵⁴ *See, e.g.,* POLICIES AND PROCEDURES MANUAL, *supra*, at III-7.

⁵⁵ *See, e.g., id.* at III-14.

⁵⁶ *Id.*

brochures that the woman can simply take with her.⁵⁷ If an affiliate shows a video, the affiliate must obtain the following written consent: “I have been advised of the nature of such content. I have requested to view the film and understand that I may turn the film off at any point.”⁵⁸ Affiliates are discouraged from using graphic videos or pictures of abortion.⁵⁹

Third, affiliates are instructed to develop and rigorously enforce a confidentiality policy.⁶⁰ Client files are to be kept in locked, secured areas.⁶¹ Client intake and medical history forms specifically ask whether the client wants to be called at home or mailed information, and affiliates are instructed to include an appropriate disclaimer and waiver on their websites to assure that a client has consented to any communications a PCC may send.⁶² All client communication is encouraged to occur at the PCC.⁶³ Medical personnel are instructed never to disclose confidential patient information, even if the information is requested in a court-issued subpoena;⁶⁴ instead, any subpoena is to be reviewed by an attorney to

⁵⁷ *Id.*

⁵⁸ *Clients Forms, supra*, at C-6.

⁵⁹ *See, e.g.*, POLICIES AND PROCEDURES MANUAL, *supra*, at III-14.

⁶⁰ *Id.* at III-2.

⁶¹ *Id.* at III-2, IV-2.

⁶² *See, e.g.*, *Clients Forms, supra*, at A-4; Care Net, *Programs Forms*, in FORMS MANUAL, at A-2; POLICIES AND PROCEDURES MANUAL, *supra*, at IV-10.

⁶³ *See, e.g.*, POLICIES AND PROCEDURES MANUAL, *supra*, at III-15.

⁶⁴ MEDICAL PERSPECTIVES, *supra*, at 90-91.

determine if there is a reason to object, and the client is to be contacted and allowed an opportunity to object to the subpoena.⁶⁵

In summary, *Amici* require that their affiliates abide by strict standards. Unfortunately, it does not matter how professional a PCC is—the Ordinance applies to all PCCs simply because they hold a pro-life viewpoint.

3. *PCCs provide adequate disclaimers*

Defendants claim the Ordinance was a response to alleged deceptive practices of PCCs. Yet *Amici* and their affiliates do not hide their pro-life beliefs and, as already discussed, provide a disclaimer up front that they will not provide or refer for abortions.⁶⁶ The “Request for Services” form lists a PCC’s “Limitation of Services”—that volunteers are peer counselors, that peer counseling is not a substitute for professional counseling, and that the center does not perform or refer for abortions.⁶⁷ Peer counselors represent themselves as non-medical volunteers.⁶⁸

In addition, PCCs generally provide “Positive Pregnancy Test Verification” forms for women.⁶⁹ Care Net and Heartbeat International’s forms convey that the PCC “is not a medical facility” and that the client has been advised that “only a

⁶⁵ See, e.g., POLICIES AND PROCEDURES MANUAL, *supra*, at III-6.

⁶⁶ See, e.g., *Pregnancy Center Standards of Affiliation*, *supra*.

⁶⁷ *Clients Forms*, *supra*, at A-3.

⁶⁸ MEDICAL PERSPECTIVES, *supra*, at 93.

⁶⁹ See, e.g., *Clients Forms*, *supra*, at B-1.

licensed physician can diagnose a pregnancy.”⁷⁰ On Care Net’s “Consent for Performance of Medical Services and Release of Liability,” a woman states that she understands that the PCC and “its physicians and staff are not undertaking any responsibility for [her] prenatal care or emergency needs.”⁷¹ On Care Net’s “Request and Permission for Urine/Blood STD Screening” form, the client acknowledges that he or she understands that “STD screening does not take the place of a regular physical exam.”⁷²

Thus, *Amici* and their affiliates go to great lengths to ensure clients are well-informed about the services they provide.

The Defendants actually demonstrate that PCCs are completely transparent about their purpose. When highlighting the websites of plaintiffs, Defendants acknowledge one plaintiff’s website offers “counseling by trained *volunteer* counselors.”⁷³ Another plaintiff’s website offers “*non-medical* pregnancy consultations.”⁷⁴ The plaintiff goes on to state, “BPCC [Boro Pregnancy Counseling Center] is NOT a medical clinic.”⁷⁵ Defendants’ *amicus* New York Civil Liberties Union relates the story of a Planned Parenthood employee who mistakenly entered a PCC instead of Planned Parenthood. She said, “Now I don’t

⁷⁰ *Id.*; MEDICAL PERSPECTIVES, *supra*, at A-67.

⁷¹ *Programs Forms, supra*, at A-3.

⁷² *Id.* at A-4.

⁷³ Appellants Brief, at 35 (emphasis added).

⁷⁴ *Id.* (emphasis added).

⁷⁵ *Id.* at 36 (emphasis in original).

know if I was just clueless or what but I did not see ANY [Planned Parenthood] logos or anything. *It was as plain as day.*”⁷⁶ Defendants also relate that one plaintiff refers to abortion facilities as “abortion mills.”⁷⁷ These are hardly the acts of a covert operation aimed at covering up a PCC’s pro-life perspective.

4. PCCs truthfully advertise

Amici expect their affiliates to be completely accurate in advertisements.⁷⁸ Affiliates are instructed that the appropriate Yellow Pages heading is “Abortion Alternatives” and are directed to avoid implying that abortion services or professional counseling is available.⁷⁹ In fact, Defendants demonstrate that PCCs are not misleading in their advertisements, relating to this court that one of the plaintiff PCCs has advertisements listing that it provides “free abortion alternatives.”⁸⁰ This is hardly a misleading statement.

Further, some contracts with Yellow Page publishers contain broad provisions that grant the Yellow Pages complete freedom to determine the placement and appearance of advertisements, and ads may not be subject to review before final printing.⁸¹ *Amici* also instruct their affiliates that keywords chosen for

⁷⁶ Brief of *Amicus Curiae* New York Civil Liberties Union, at Appendix Report #18 (emphasis added).

⁷⁷ Appellants Brief, at 65.

⁷⁸ POLICIES AND PROCEDURES MANUAL, *supra*, at IV-23.

⁷⁹ *Id.* at IV-24; MEDICAL PERSPECTIVES, *supra*, at 77.

⁸⁰ Appellants Brief, at 37.

⁸¹ *Yellow Pages Advertising, supra.*

internet advertising campaigns must contain content relevant to the corresponding advertisement.⁸²

Defendants and their *amici* claim that PCCs' advertisements are false or misleading, but they have not provided one example of a false or misleading advertisement that confused a single woman.

In all, Defendants present no evidence that PCCs ever do any harm to women or the general public. Defendants claim that women are deceived about the purpose of PCCs; but their brief and those of their *amici* reveal that PCCs' pro-life views are obvious. Defendants claim that PCCs misinform women of the harms of abortion; but Defendants' are ignoring the plethora of medical evidence relied upon by PCCs. Defendants simply have no reason to enforce such a draconian ordinance aimed at inhibiting the free speech of PCCs.

II. WOMEN SUPPORT PCCs

PCCs have a demonstrated record of client satisfaction. Again, 97 percent of client exit surveys are positive about the client's experience at the center; less than one (0.5) percent of clients register a complaint with the center, while 96 percent indicate that they would recommend the center to a friend.⁸³

⁸² See, e.g., Care Net, *Internet Advertising: Legal Issues to Consider*, LEGAL CARE (Apr. 2006).

⁸³ 2009 Client Satisfaction Survey Results, *supra*.

Real women report first hand that PCCs gave them information that enabled them to make fully informed decisions. Rather than experiencing pressure or coercion, women report that PCCs discussed all options and gave them the confidence and hope needed to carry their pregnancies to term. PCCs offered them support that they did not have before:

- “My peer counselor offered me hope and assurance....”⁸⁴
- “The support and love the center showed me gave me the validation I was searching for all along.... It was about empowerment, guidance and support.... For the first time, I felt like I had choices and that I could make a genuine, confident decision.”⁸⁵
- “They sat down with me and helped me go over all of my options, and they really listened to my needs. I didn’t feel judged; I just felt cared for.”⁸⁶
- “I was able to honestly express my fears and concerns. My peer counselor walked me through all of my options.... [The PCC] became a source of strength as well as information.”⁸⁷
- “At the center, they sat down with me, they listened to me, and they helped me think through all of my available options. I was so thankful for how much information they had to offer.”⁸⁸
- “I never imagined I would find so much encouragement and acceptance from the ladies at the Women’s Center. None of the women were biased or judgmental in any of the choices they explained to me. Instead, they showed me that women have options. I

⁸⁴ FRC, *supra*, at 32 (*Tia, Ma-chi and Ma-chiya’s Story*).

⁸⁵ *Id.* at 10 (*Megan and Ava’s Story*).

⁸⁶ *Id.* at 11 (*Tina and Isabella’s Story*).

⁸⁷ Care Net, *Success Stories: Jeannette, Miguel, Steven Michael* (2011), available <https://www.care-net.org/ourwork/story.php?id=11> (last visited Jan. 24, 2012).

⁸⁸ Care Net, *Success Stories: Sarah’s Story* (2011), available at <https://www.care-net.org/ourwork/story.php?id=1> (last visited Jan, 24, 2012).

would recommend the Women’s Center to other women because of the generosity, faith, love, and support they offer.”⁸⁹

- “Our Lady’s Inn helped me to become more self-sufficient through humble acts of love, including their supportive services such as emotional support, spiritual support, stable housing and the longevity of accessing secure employment towards gaining permanent housing stability.”⁹⁰

In addition, women express that the affirming messages contained in PCCs’ advertising campaigns were a source of comfort. For example, one client recounts that after making an appointment for an abortion, “I saw a sign that read, ‘Considering Abortion? Pregnancy Care Centers: Caring, Confidential, Trusted.’ It gave me a sense of comfort I hadn’t felt in weeks.”⁹¹

Contrary to the negative opinion posited by agenda-driven “investigators” for abortion-advocacy organizations, exit surveys and testimonials of women who received care at PCCs document an overwhelmingly positive experience by these women.

⁸⁹ M. Powell, *I couldn’t have done it without them!*, available at <http://www.heartbeatinternational.org/miranda-powell> (last visited Feb. 2, 2012).

⁹⁰ J. Cooper, *I was accepted without judgments*, available at <http://www.heartbeatinternational.org/jada-cooper> (last visited Feb. 2, 2012).

⁹¹ FRC, *supra*, at 9 (*Megan and Ava’s Story*).

III. PCCS RECEIVE STATE AND FEDERAL SUPPORT

If Defendants' claims are true, one would expect a nationwide negative campaign against PCCs. But nothing could be further from the truth.⁹² Instead, states as well as the federal government continue to support the work of PCCs through funding and resolutions honoring the work of PCCs.

A. States fund PCCs

States fund PCCs through specialty license plate programs and direct taxpayer-funded subsidies. At least twenty-seven states have approved "Choose Life" specialty license plate programs where the proceeds benefit PCCs and other organizations providing abortion alternatives.⁹³

Furthermore, states continue to directly fund the work of PCCs. For example, in 2009, at least eleven states provided direct taxpayer funding to PCCs,

⁹² Defendants' *amicus* City and County of San Francisco claims that PCCs are a "growing problem," and in response "numerous local governments have enacted disclosure laws...." Brief of *Amicus Curiae* City and County of San Francisco, at 2. What that *amicus* fails to disclose, however, is that each of those local ordinances has been challenged—and the local governments are losing. As this court is aware, ordinances in Baltimore and Montgomery County, Maryland, have been challenged and are enjoined. An ordinance in Austin, Texas, was challenged, and the case was stayed while the city re-worked the ordinance (and the parties have amended their pleadings to challenge the new ordinance). The final ordinance—in San Francisco—has also been challenged.

⁹³ Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Hawaii, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, New Jersey, North Carolina (in litigation), North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia.

or approved such funding.⁹⁴ Many states legislatively renew their direct support on an annual basis.

B. State resolutions honor PCCs

Since 2011, at least ten state legislatures have passed resolutions explicitly commending the work of PCCs. These include Alabama, Arizona, Missouri, Oklahoma, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.⁹⁵ Among the services for which the state resolutions have honored PCCs are the following:

- Providing “comprehensive care to women and men facing unplanned pregnancies, including resources to meet their physical, psychological, emotional, and spiritual needs;”⁹⁶
- Offering “free, confidential, and compassionate services;”⁹⁷

⁹⁴ California, Florida, Louisiana, Minnesota, Missouri, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas, Wisconsin.

⁹⁵ Ala. 2011 Al. Pub. Act 71, H.J.R. 16, 2011 Reg. Sess. (2011); Ariz. S.C.R. 1017, 50th Leg., 1st Reg. Sess. (2011); Ariz. H.C.R. 2034, 50th Leg., 1st Reg. Sess. (2011); Mo. H.R. 1826, 96th Gen. Assemb., Reg. Sess. (2011); Okla. H.R. 1087, 52nd Leg., 2nd Reg. Sess. (2010); Okla. S.R. 82, 52nd Leg., 2nd Reg. Sess. (2010); S.D. S.J. 192, 86th Leg., Reg. Sess. (2011); S.D. H.J. 193, 86th Leg., Reg. Sess. (2011); Tenn. H.R. 110, 107th Leg., 1st Sess. (2011); Tex. H.C.R. 74, 82nd Leg., Reg. Sess. (2011); Tex. S.R. 827, 82nd Leg., Reg. Sess. (2011); Va. H.J.R 435, 2010 Reg. Sess. (2010); Va. S.J.R 265, 2010 Reg. Sess. (2010); W.Va S.R. 40, 80th Leg., 1st Sess. (2011); Wis. S.J.R. 28, 2011-2012 Reg. Sess. (2011).

⁹⁶ Alabama, Arizona, Missouri, Oklahoma, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin.

⁹⁷ Alabama, Arizona, Oklahoma, Tennessee, South Dakota, Virginia, West Virginia, Wisconsin.

- Encouraging “positive life choices by equipping [women] with complete and accurate information regarding their pregnancy options and the development of their unborn children;”⁹⁸
- Providing women with “compassionate and confidential peer counseling in a nonjudgmental manner regardless of their pregnancy outcomes;”⁹⁹
- Ensuring “that women are receiving prenatal information and services that lead to the birth of healthy infants;”¹⁰⁰
- Working “to prevent unplanned pregnancies by teaching effective abstinence education in public schools;”¹⁰¹ and
- Serving “with integrity and compassion.”¹⁰²

Through the resolutions, states have announced that they:

- “[S]trongly support pregnancy care centers in their unique, positive contributions to the individual lives of women, men, and babies, both born and unborn;”¹⁰³
- “[C]ommend the compassionate work of tens of thousands of volunteers and paid staff at pregnancy care centers...;”¹⁰⁴
- “[D]isapprove of the actions of any national, state, or local groups attempting to prevent pregnancy care centers from effectively serving women and men facing unplanned pregnancies;”¹⁰⁵ and

⁹⁸ Alabama, Arizona, Missouri, Oklahoma, Tennessee, South Dakota, Texas, Virginia, West Virginia, Wisconsin.

⁹⁹ Alabama, Arizona, Missouri, Oklahoma, Tennessee, South Dakota, Virginia, Wisconsin.

¹⁰⁰ Alabama, Arizona, Missouri, Oklahoma, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin.

¹⁰¹ Alabama, Arizona, Oklahoma, South Dakota, Tennessee, Virginia, West Virginia.

¹⁰² Alabama, Arizona, Missouri, Oklahoma, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin.

¹⁰³ Alabama, Arizona, Oklahoma, South Dakota, Tennessee, Wisconsin.

¹⁰⁴ Alabama, Arizona, Oklahoma, South Dakota, Tennessee, Wisconsin.

- “[E]ncourage the Congress of the United States and other federal and state governmental agencies to grant pregnancy care center assistance for medical equipment and abstinence education in a manner that does not compromise the mission or religious integrity of these organizations.”¹⁰⁶

PCCs have also received specific state honors and awards. For example, in 2011, Georgia passed a resolution honoring the Life Matters Outreach Pregnancy Care Center. In June 2009, Arkansas PCCs received an honorable state “citation.” Issuing the honor, State Senator Gilbert Baker observed,

Those that serve within pregnancy centers are to be commended for their sacrifice of time, energy, and resources on behalf of thousands of families in our communities. Your network of support for women is a wonderful example of that great spirit of American volunteerism that is so critical, especially in today’s economy.¹⁰⁷

C. PCCs receive nonpartisan federal support

Though PCCs are largely funded by non-government sources, some PCCs have received federal funding primarily through the Community Based Abstinence Education (CBAE) program and abstinence funding provided to the states under section 510 of Title V. PCCs have also received federal funding under the “Compassion Capital Fund.”

¹⁰⁵ Alabama, Arizona, Oklahoma, South Dakota, Tennessee, Wisconsin.

¹⁰⁶ Alabama, Oklahoma, Tennessee, West Virginia.

¹⁰⁷ Care Net, Press Release, *Care Net Commends Arkansas Pregnancy Centers for Receiving Honorable State Citation* (June 10, 2009), available at https://www.care-net.org/newsroom/press_release.php?id=71 (last visited Jan. 24, 2012).

Both Democrats and Republicans commend the work of PCCs. For example, Representative Heath Shuler (D-N.C.) has acknowledged the important role that PCCs play in the holistic approach to valuing life and the impact they have on the lives of women who otherwise lack support for caring for and raising their children:

Being pro-life means caring for mothers and their children both during the pregnancy and afterward. Pregnancy Resource Centers give women a safe and supportive environment to ask questions and receive the medical care and information needed to ensure healthy pregnancies and births. Pregnancy Resource Centers then continue to stand alongside new mothers and help them become good parents....”¹⁰⁸

Representative Daniel Lipinski (D-Ill.) has likewise observed the successful role PCCs have played in improving the lives of women, communities, and the culture as a whole:

The success rates and national expansion of these pregnancy care centers are a testament to their invaluable work in the lives of communities and individuals over the years. These networks provide services that are often unavailable elsewhere to expectant mothers.¹⁰⁹

Representative John Boehner (R-Ohio), now Speaker of the House, has described the work of PCCs as “embody[ing] the spirit of volunteerism,”

¹⁰⁸ FRC, *supra*, at 68.

¹⁰⁹ *Id.* at 22.

and being “one of the most important grassroots movements in American history.”¹¹⁰

The Executive Branch has also recognized the important work of PCCs. On September 19, 2008, more than 150 volunteers and 56 pregnancy center organizations were honored at a White House event.¹¹¹ Former Assistant Secretary of Health, U.S. Department of Health and Human Services, Dr. Joxel Garcia, expressed the Administration’s gratitude for the important work PCCs have done for the betterment of women’s lives, particularly in underserved communities:

Women who are fortunate enough to find their way to your centers are welcomed and receive loving care, access to counseling and education programs, ultrasounds and medical assistance, and referrals to other resources for little or no cost. As an Ob-Gyn, I can tell you that your efforts to assist women in underserved communities help to bring healthier babies into the world....¹¹²

Likewise, Jim Towey, former Director of the White House Office of Faith-Based and Community Initiatives has also noted that PCCs are “a lifeline to those who ... don’t believe they can cope with a pregnancy.” Towey expressed that “our country needs [PCCs] now more than ever.”¹¹³

PCCs are overwhelmingly supported by the women they serve, their communities and states, and even the federal government. Defendants should not

¹¹⁰ *Id.* at 68.

¹¹¹ *Id.* at 64.

¹¹² *Id.* at 70.

¹¹³ *Id.* at 69.

be allowed to thwart PCCs' speech simply because Defendants disagree with the pro-life viewpoint.

CONCLUSION

The judgment of the Southern District of New York should be affirmed.

Respectfully submitted,

s/ Mailee R. Smith

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1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

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s/ Mailee R. Smith
Counsel of Record for *Amici Curiae*
Dated February 6, 2012

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2012, a true and correct copy of the foregoing Brief was electronically filed with the Clerk of Court through the CM/ECF system. An electronic copy will be served on all counsel of record through the CM/ECF system. I will also send six (6) copies of this brief to the Clerk's office via Federal Express, pursuant to Local Rule 31.1.

Dated: February 6, 2012

s/ Mailee R. Smith
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