

No. 16-2325

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

GREATER BALTIMORE CENTER FOR PREGNANCY CONCERNS, INC.,
Plaintiff-Appellee,

v.

MAYOR AND CITY COUNCIL OF BALTIMORE; STEPHANIE RAWLINGS-
BLAKE, in her official capacity as Mayor of Baltimore; and OXIRIS BARBOT,
M.D., in her official capacity as Baltimore City Health Commissioner,
Defendants-Appellants.

and

ST. BRIGID'S ROMAN CATHOLIC CONGREGATION, INC.; and
ARCHBISHOP WILLIAM E. LORI, as successor to Archbishop Edwin F.
O'Brien, Archbishop of Baltimore, and successors in office, a corporation sole,
Plaintiffs-Cross-Appellants,

v.

MAYOR AND CITY COUNCIL OF BALTIMORE; STEPHANIE RAWLINGS-
BLAKE, in her official capacity as Mayor of Baltimore; and OXIRIS BARBOT,
M.D., in her official capacity as Baltimore City Health Commissioner,
Defendants-Cross-Appellees.

On Appeal from the United States District Court for the District of Maryland

***AMICUS CURIAE* BRIEF OF
NATIONAL AND LOCAL PREGNANCY CARE ORGANIZATIONS
IN SUPPORT OF PLAINTIFF-APPELLEE AND
AFFIRMANCE OF THE LOWER COURT**

Anna F. Paprocki
Counsel of Record for Amici Curiae

Deanna M. Wallace

Americans United for Life
2101 Wilson Blvd., Suite 525
Arlington, VA 22201
Telephone: 202-289-1478

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26 and L.R. 26.1, the Pregnancy Care Organization Care Net, along with local pregnancy care centers Rock-A-My-Baby Pregnancy Crisis Center, Bowie Crofton Pregnancy Clinic, Inc., Care Net Pregnancy Center of Frederick, Care Net Pregnancy Center of Southern Maryland, (“*Amici*”), make the following disclosures:

- 1) *Amici* are not publicly held corporations or other publicly held entities.
- 2) *Amici* have no parent corporations.
- 3) No publicly owned corporation or other publicly held entity owns ten (10) percent or more of the stock of *Amici*.
- 4) *Amici* are not trade associations.
- 5) No publicly held corporation or publicly held entity has a financial interest in the outcome of this litigation (L.R. 26.1(b)).
- 6) This case does not arise out of a bankruptcy proceeding.

s/Anna F. Paprocki
Anna F. Paprocki
Counsel of Record for Amici Curiae
Americans United for Life
2101 Wilson Blvd. Suite 525
Arlington, VA 22201
Telephone: 202-289-1478

Dated April 3, 2017

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STATEMENT OF INTEREST OF *AMICI CURIAE*¹

Amici curiae are national and local pregnancy care organizations that are impacted by Baltimore City Ordinance 09-252 (“Ordinance”). Specifically, *Amici* Care Net is a national organization that networks individual pregnancy care centers (“PCCs”) across the nation. This organization requires 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 the national organization.

Amici Rock-A-My-Baby Pregnancy Crisis Center (Baltimore), Bowie Crofton Pregnancy Clinic, Inc. (Annapolis, Bowie Crofton, and Severna Park), Care Net Pregnancy Center of Frederick (Frederick), and Care Net Pregnancy Center of Southern Maryland (Lexington Park) (“*Amici* PCCs”) are local PCCs that provide compassionate care to their clients—both women and men who seek information about pregnancy, abortion, parenting, adoption, and sexually transmitted infections.

Amici are disheartened by the untruthful allegations leveled against them by

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, nor 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.

Defendants. *Amici* present to this Court a truthful account of the important work PCCs do in their communities and urge this Court to affirm the lower court.

ARGUMENT

Thousands of PCCs operate across the country, with more than 1,100 PCCs affiliated with national organizations such as *Amici* Care Net.² PCCs receive an extraordinarily high approval rating from the clients they serve. In a 2015 survey by Care Net, 98 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 Baltimore City Ordinance 09-252 (“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

² Family Research Council, *A Passion to Serve, A Vision for Life* 14 (2009), available at <http://downloads.frc.org/EF/EF09I51.pdf> (last visited March 28, 2017) (“FRC”).

³ Care Net, *2015 Client Satisfaction Survey Results* (2015).

Baltimore.

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 tests; one-on-one, nonjudgmental peer counseling; material assistance; medical referrals; childbirth and parenting classes; education and employment coaching; 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. 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 are meeting 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

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

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, Department of Defense, and the Department of State—partners with Care Net to allow their affiliates access to accurate disease testing.⁶

PCCs routinely partner with community agencies.⁷ For example, in order to promote 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 2015, 81 percent of Care Net PCCs reported having clients referred to them from state health departments.⁹ These referrals demonstrate widespread support and trust in PCCs.

Another core service is pregnancy and parenting education. Nearly 70 percent of PCCs offer specialized education, with a variety of important topics including child development, nutrition education, safety and injury prevention, positive discipline strategies, and life skills.¹⁰ PCC classes receive community

⁵ *Id.* at 109.

⁶ *Id.* at 111.

⁷ FRC, *supra*, at 28-30.

⁸ *Id.* at 28-29.

⁹ Care Net, *2015 Care Net National Pregnancy Center Statistics* (2015).

¹⁰ FRC, *supra*, at 35.

referrals from schools, social service entities, and legal entities.¹¹ Care Net instructs that these classes be taught by qualified professionals.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 hand, with women earning more goods, such as cribs, as they complete classes on parenting or job skills.¹³

PCCs also offer options education 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 PCCs also offer ultrasound services to confirm the presence of an intrauterine pregnancy.

Often, PCCs counsel women and men seeking help after abortion. In 2015 alone, Care Net affiliates met with 10,407 such clients. Many peer counselors are

¹¹ *Id.* at 36.

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

¹³ *Id.* at III-45.

¹⁴ *See, e.g.*, Care Net, *Pregnancy Center Standards of Affiliation* (document issue date Jan. 2017); 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).

women who have themselves had unplanned pregnancies or abortions.¹⁵

The majority of *Amici* affiliate 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

B. PCCs maintain professional standards

Care Net requires 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 PCCs in Maryland (including *Amici* PCCs) and across the nation—invalidates Defendants’ claims¹⁸ and includes the following:

- Clients are treated with kindness, compassion, and in a caring manner.
- Clients always receive honest and open answers.

¹⁵ *See, e.g., id.* at 39 (*Alicia’s Story*).

¹⁶ *Id.* at 24.

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.

- 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.
- A safe environment is provided through screening all volunteers and staff who interact with clients.
- 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, Care Net maintains a medical advisory board, and affiliates are provided with conference and training opportunities, legal updates and manuals, 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 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 are to be licensed and/or certified in their particular field, and copies of licenses

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

and certificates are to be kept on file.²⁰ In some cases, the affiliation standards exceed those required by individual states where the PCC is located. All educational materials are to be reviewed for accuracy, professionalism, and suitability for patients and approved by medical professionals.²¹ Care Net also publishes *Medical Insights*, a medical education publication written by a physician and other qualified contributors.²²

Care Net also provide hundreds of detailed forms and policies for use by affiliates, which clearly show that transparency and quality service is the standard of care in PCCs, earning their high client approval ratings. These include that:

- Clients are informed of the approximate length of their appointment at the time that it is made.
- Initial forms signed by clients prior to receiving services inform the service recipient of the center's limitations of services (including which, if any, services are provided by licensed professionals and that the center does not provide or refer for abortion), confidentiality and privacy policies,

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).

permission to contact / follow-up, and more.²³

Furthermore, the national organization ensures 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.²⁴

C. Defendants' claims are not true and unfairly discredit PCCs

Defendants and their *amici* make several claims about PCCs that unfairly discredit their hard work and professionalism. They cite to just three sources: a report for Representative Henry Waxman (“Waxman Report”),²⁵ a report by the National Abortion Federation (“NAF Report”),²⁶ and a report by NARAL Pro-Choice Maryland Fund (“NARAL Report”).²⁷ Drafted by persons or organizations with pro-abortion biases, these reports present nothing but conclusory allegations.

For example, the Waxman Report concludes that PCCs “*may* be effective”

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

²⁴ *Id.* at 65-66.

²⁵ *False and Misleading Health Information Provided by Federally Funded Pregnancy Resource Centers*, prepared for Rep. Henry Waxman (July 2006).

²⁶ National Abortion Federation, *Crisis Pregnancy Centers: An Affront to Choice* (2006).

²⁷ NARAL Pro-Choice Maryland Fund, *The Truth Revealed: Maryland Crisis Pregnancy Center Investigations* (Jan. 14, 2008).

in “frightening” teens.²⁸ Defendant’s *amicus* Human Rights Watch claims that PCCs “*may* deprive women” of an ability to make decisions.²⁹ Not only are these assumptions untrue, but apparently Defendants and their *amici* are unsure of the effect of PCCs. In fact, the NARAL Report actually admitted the opposite of Defendants’ claims: “most of the [PCCs] used a friendly approach.”³⁰

While PCCs can present former clients voicing support for PCCs (*see* Part II, *infra*), Defendants’ briefs and reports never present one real woman “harmed” by PCCs. Instead, their claims are based upon speculation and the desire to halt pro-life speech.

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—physical and psychological—of abortion. All information distributed by the national organizations is reviewed by medical professionals and utilizes medically accurate and recently published sources,

²⁸ Waxman Report, *supra*, at 14 (emphasis added).

²⁹ Brief of Amici Curiae Human Rights Experts Human Rights Watch et al. [Docket No. 47], at 27 (emphasis added; filed in 2011).

³⁰ NARAL Report, *supra*, at 6.

including medical journals and textbooks.³¹ 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.

In the NARAL Report, NARAL claims that PCCs make “egregious” and “wildly inaccurate” statements about the dangers and side effects of abortion.³² One of its examples is a counselor’s statement that if an abortion provider does “not take out all the ‘body parts’ an infection can occur.”³³ Yet this is an accurate description of an incomplete abortion and subsequent infection—undisputed short-term risks of abortion. Indeed, abortion providers such as Planned Parenthood acknowledge incomplete abortion and infection—as well as blood clots and injury to the cervix—as risks of abortion.³⁴

In fact, Defendants’ *amicus* Public Health Advocates acknowledges in its brief that “[a]bortion-related complications from medical abortions... include

³¹ 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).

³² NARAL Report, *supra*, at 3-4, 7.

³³ *Id.* at 4.

³⁴ See, e.g., Planned Parenthood, *How safe is an in-clinic abortion?* (2017), available at <https://www.plannedparenthood.org/learn/abortion/in-clinic-abortion-procedures/how-safe-is-an-in-clinic-abortion> (last visited January 31, 2017).

hemorrhage, incomplete abortion, and infection.”³⁵ Defendants and their *amici* cannot, in good faith, argue that PCCs provide inaccurate information, when it is the same information that is confirmed 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.³⁶ In 2009 alone, three different systematic studies demonstrated a substantial risk of pre-term birth following abortion.³⁷

³⁵ *Amici Curiae* Brief of Public Health Advocates [Docket No. 129], at 13.

³⁶ 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://aaplog.org/dr-iams/> (last visited March 28, 2012).

³⁷ 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*

Significantly, Defendants' *amicus* Human Rights Watch states that Maryland is ranked among the worst states in the country for pre-term birth³⁸—all the more reason to inform women of the risk of subsequent pre-term birth following abortion.

Likewise, numerous peer-reviewed studies confirm that abortion poses drastic psychological risks, especially for younger women. These risks include depression, anxiety, and even suicide. One of the leading studies (led by a pro-choice researcher) found that 42 percent of young women experience major depression after abortion.³⁹ Minors who aborted had an astonishing 78.6 percent chance of experiencing major depression.⁴⁰ In teens, the chance of experiencing anxiety after abortion was 64.3 percent, and the chance of suicidal ideation was 50 percent.⁴¹ This is just one example in a large body of medical literature demonstrating increased psychological risks following abortion.⁴²

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).

³⁸ Brief of Amici Curiae Human Rights Experts Human Rights Watch et al. [Docket No. 47], at 2 (filed in 2011 on the original appeal).

³⁹ D.M. Fergusson et al., *Abortion in Young Women and Subsequent Mental Health*, J. CHILD PSYCHOL. & PSYCHIAT. 41(1):16 (2006).

⁴⁰ *Id.* at 19.

⁴¹ *Id.*

⁴² *See, e.g.*, W.B. Miller et al., *Testing a model of the psychological consequences*

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 draw 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

of abortion, in L.J. Beckman & S.M. Harvey, *THE NEW CIVIL WAR: THE PSYCHOLOGY, CULTURE, AND POLITICS OF ABORTION* (Am. Psychological Ass’n 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); H. Soderberg et al., *Emotional distress following induced abortion: A study of its incidence and determinants among abortees in Malmo, Sweden*, *EUROPEAN J. OBSTET. & GYNECOL. & REPROD. BIOLOGY* 79:173 (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).

development of breast cancer.⁴³

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.⁴⁴

Thus, Defendants 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

⁴³ *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 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).

⁴⁴ *See, e.g.,* POLICIES AND PROCEDURES MANUAL, *supra*, at III-38.

clients.⁴⁵ 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.⁴⁶ In addition, affiliates are instructed to perform screening and background checks on staff and volunteers.⁴⁷ Volunteers are required to go through a training seminar and an on-the-job training period.⁴⁸ Before peer 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.⁴⁹ There are to be no emotional or physical barriers between a client and the exit.⁵⁰

Affiliates are instructed to provide clients with a confidential client feedback form, asking clients to rate whether staff "[m]a[d]e me feel comfortable," "Demonstrated respect for me," and "Provide[d] helpful services."⁵¹ Staff and volunteers who do not maintain these standards must be disciplined and, when necessary, removed from peer counseling.⁵² Affiliates who do not comply with the national organizations' expectations risk losing their affiliation.

⁴⁵ *See, e.g., id.* at III-7.

⁴⁶ *See, e.g., id.* at III-8; FRC, *supra*, at 33.

⁴⁷ *See, e.g.,* POLICIES AND PROCEDURES MANUAL, *supra*, at II-3, II-31.

⁴⁸ *Id.* at II-35, III-25.

⁴⁹ *See, e.g.,* Care Net, *Personnel Forms*, in FORMS MANUAL, at A-6, B-4.

⁵⁰ POLICIES AND PROCEDURES MANUAL, *supra*, at III-10.

⁵¹ *See, e.g.,* *Clients Forms*, *supra*, at A-10.

⁵² *See, e.g.,* POLICIES AND PROCEDURES MANUAL, *supra*, at III-7.

Second, if clients have not requested certain information, affiliates are instructed to obtain consent before presenting that information.⁵³ Permission is asked in such a way that clients understand they have a choice.⁵⁴ If a woman appears sad or upset, affiliates are instructed that it may be best to offer educational brochures that the woman can simply take with her.⁵⁵ If an affiliate shows any client 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.”⁵⁶ Affiliates are strongly discouraged from using graphic videos or pictures of abortion, even with the client’s consent.⁵⁷

Third, affiliates are instructed to develop and rigorously enforce a confidentiality policy.⁵⁸ Client files are to be secured appropriately, accessible only to those with an internal need for the information.⁵⁹ Client intake and medical history forms specifically ask whether and how the client wants to be contacted in the future, and affiliates are instructed to include an appropriate disclaimer and

⁵³ *See, e.g., id.* at III-14.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Clients Forms, supra*, at C-6.

⁵⁷ *See, e.g.,* POLICIES AND PROCEDURES MANUAL, *supra*, at III-14.

⁵⁸ *Id.* at III-2.

⁵⁹ *Id.* at III-2, IV-2.

waiver on their websites to assure that a client has consented to any communications a PCC may send.⁶⁰ All client communication is encouraged to occur at the PCC.⁶¹ Both Medical and non-medical personnel are instructed never to disclose confidential patient information, even if the information is requested in a court-issued subpoena;⁶² instead, any subpoena is to be first reviewed by an attorney to determine if there is a reason to object, and the client is to be contacted and allowed an opportunity to object to the subpoena.⁶³

In summary, *Amici* 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 that mislead “consumers.”⁶⁴ 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.⁶⁵ The “Request for Services” form

⁶⁰ 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.

⁶¹ See, e.g., POLICIES AND PROCEDURES MANUAL, *supra*, at III-15.

⁶² MEDICAL PERSPECTIVES, *supra*, at 90-91.

⁶³ See, e.g., POLICIES AND PROCEDURES MANUAL, *supra*, at III-6.

⁶⁴ Principal Brief of Appellants/Cross-Appellees [Docket No. 123], at 5.

⁶⁵ See, e.g., *Pregnancy Center Standards of Affiliation*, *supra*.

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.⁶⁶ Peer counselors represent themselves as non-medical volunteers.⁶⁷

In addition, PCCs generally provide “Positive Pregnancy Test Verification” forms for women.⁶⁸ 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 licensed physician can diagnose a pregnancy.”⁶⁹ On Care Net’s “Consent for Performance of Medical Services and Release of Liability,” a woman states that she understands that the PCC, “its physicians and staff are not undertaking any responsibility for [her] prenatal care or emergency needs.”⁷⁰ 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.”⁷¹

Thus, *Amici* and their affiliates take all reasonable and proper steps to ensure clients are well-informed about the services they provide.

⁶⁶ *Clients Forms, supra*, at A-3.

⁶⁷ MEDICAL PERSPECTIVES, *supra*, at 93.

⁶⁸ *See, e.g., Clients Forms, supra*, at B-1.

⁶⁹ *Id.*; MEDICAL PERSPECTIVES, *supra*, at A-67.

⁷⁰ *Programs Forms, supra*, at A-3.

⁷¹ *Id.* at A-4.

The reports relied upon by Defendants’ and their *amici* actually demonstrate that PCCs are open about their purpose. The NARAL Report noted that one volunteer told an “investigator” that she needed to “come meet your baby before deciding what to do.”⁷² The NARAL Report conveys that PCCs offer congratulations for positive pregnancy tests, refer to the unborn child as a “baby,” and give out baby booties.⁷³ The NAF Report noted “name-filled banners reading ‘Babies Saved from Abortion’ and ‘Salvations’ which hung in the staff room of one [PCC].”⁷⁴ 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.⁷⁵ 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.⁷⁶ However, 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

⁷² NARAL Report, *supra*, at 5.

⁷³ *Id.* at 6.

⁷⁴ NAF Report, *supra*, at 6.

⁷⁵ POLICIES AND PROCEDURES MANUAL, *supra*, at IV-23.

⁷⁶ *Id.* at IV-24; MEDICAL PERSPECTIVES, *supra*, at 77.

subject to review before final printing.⁷⁷ *Amici* also instruct their affiliates that keywords chosen for internet advertising campaigns must contain content relevant to the corresponding advertisement.⁷⁸

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 *amici* reveal that PCCs' pro-life views are obvious. Defendants claim that PCCs misinform women of the harms of abortion; but one of their *amici* openly acknowledged to this Court that abortion involves potential risk of harm. 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, 98 percent of client exit surveys are positive about the client's experience at the center; less than

⁷⁷ *Yellow Pages Advertising, supra.*

⁷⁸ *See, e.g., Care Net, Internet Advertising: Legal Issues to Consider*, LEGAL CARE (Apr. 2006).

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.⁷⁹

Real women report 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....”⁸⁰
- “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.”⁸¹
- “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.”⁸²
- “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.”⁸³
- “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

⁷⁹ 2015 Client Satisfaction Survey Results, *supra*.

⁸⁰ FRC, *supra*, at 32 (*Tia, Ma-chi and Ma-chiya’s Story*).

⁸¹ *Id.* at 10 (*Megan and Ava’s Story*).

⁸² *Id.* at 11 (*Tina and Isabella’s Story*).

⁸³ Care Net, *Success Stories: Jeannette, Miguel, Steven Michael* (2011), available at <http://carenet-test.digiknow.com/ourwork/story.php?id=11> (last visited March 28, 2017).

for how much information they had to offer.”⁸⁴

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.”⁸⁵

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

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. 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 29 states, including Maryland, have approved

⁸⁴ Care Net, *Success Stories: Sarah’s Story* (2011), available at <http://carenet-test.digiknow.com/ourwork/story.php?id=1> (last visited March 28, 2017).

⁸⁵ FRC, *supra*, at 9 (*Megan and Ava’s Story*).

“Choose Life” specialty license plate programs where the proceeds benefit PCCs and other organizations providing abortion alternatives.⁸⁶ These plates, which are self-selected by vehicle owners, have raised nearly \$16,000,000 for PCCs and abortion alternatives.⁸⁷

Furthermore, states continue to directly fund the work of PCCs. For example, in 2009, at least 11 states provided direct taxpayer funding to PCCs, or approved such funding.⁸⁸ As the NAF Report acknowledges, “Legislators frequently attempt to fund [PCCs] at the state level through state-sponsored programs, specific grants, or tax credits.”⁸⁹

B. State resolutions honor PCCs

Since 2010, at least 14 state legislatures have passed resolutions explicitly commending the work of PCCs. These include Alabama, Arizona, Florida, Missouri, New Hampshire, Oklahoma, South Carolina, South Dakota, Tennessee,

⁸⁶ Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Hawaii, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, Montana, New Jersey, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia.

⁸⁷ See Choose Life Inc., Newsletter (Apr. 6, 2011), available at <http://www.choose-life.org/newsletter.php> (last visited March 28, 2017).

⁸⁸ California, Florida, Louisiana, Minnesota, Missouri, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas, Wisconsin.

⁸⁹ NAF Report, *supra*, at 12.

Texas, Utah, Virginia, West Virginia, and Wisconsin.⁹⁰ Among the services the state resolutions have honored PCCs for are:

- Providing “comprehensive care to women and men facing unplanned pregnancies, including resources to meet their physical, psychological, emotional, and spiritual needs;”⁹¹
- Offering “free, confidential, and compassionate services;”⁹²
- Encouraging “positive life choices by equipping [women] with complete and accurate information regarding their pregnancy options and the development of their unborn children;”⁹³
- Providing women with “compassionate and confidential peer counseling in a nonjudgmental manner regardless of their pregnancy outcomes;”⁹⁴

⁹⁰ 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); Fla. S.B. 1326, 114th Reg. Sess. (2012); Mo. H.R. 1826, 96th Gen. Assemb., Reg. Sess. (2011); N.H. H.C.R. 31, 162nd Reg. Sess. (2011); Okla. H.R. 1087, 52nd Leg., 2nd Reg. Sess. (2010); Okla. S.R. 82, 52nd Leg., 2nd Reg. Sess. (2010); S.C. S.B. 1283, 119th Gen. Assemb., 2nd Reg. Sess. (2011); 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 Gen. Assemb. (2011); Tex. H.C.R. 74, 82nd Leg., Reg. Sess. (2011); Tex. S.R. 827, 82nd Leg., Reg. Sess. (2011); Utah S.J.R. 21, 60th Leg., (2012); 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).

⁹¹ *Id.* (Alabama, Arizona, Florida, Missouri, Oklahoma, New Hampshire, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin).

⁹² *Id.* (Alabama, Arizona, Florida, New Hampshire, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia, Wisconsin).

⁹³ *Id.* (Alabama, Arizona, Florida, Missouri, New Hampshire, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin).

⁹⁴ *Id.* (Alabama, Arizona, Florida, Missouri, New Hampshire, Oklahoma, South

- Ensuring “that women are receiving prenatal information and services that lead to the birth of healthy infants;”⁹⁵
- Working “to prevent unplanned pregnancies by teaching effective abstinence education in public schools;”⁹⁶ and
- Serving “with integrity and compassion.”⁹⁷

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;”⁹⁸
- “[C]ommend the compassionate work of tens of thousands of volunteers and paid staff at pregnancy care centers...;”⁹⁹
- “[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;”¹⁰⁰ and
- “[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

Carolina, South Dakota, Tennessee, Utah, Virginia, Wisconsin).

⁹⁵ *Id.* (Alabama, Arizona, Florida, Missouri, New Hampshire, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin).

⁹⁶ *Id.* (Alabama, Arizona, Florida, New Hampshire, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia).

⁹⁷ *Id.* (Alabama, Arizona, Missouri, New Hampshire, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin).

⁹⁸ *Id.* (Alabama, Arizona, Florida, New Hampshire, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, Wisconsin).

⁹⁹ *Id.* (Alabama, Arizona, Florida, New Hampshire, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, Wisconsin).

¹⁰⁰ *Id.* (Alabama, Arizona, Florida, Oklahoma, South Dakota, Tennessee, Utah, Wisconsin).

organizations.”¹⁰¹

PCCs have also received specific state honors and awards. For example, 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.¹⁰²

C. PCCs receive nonpartisan federal support

Though PCCs are largely funded by non-government sources, some PCCs receive federal funding primarily through the Community Based Abstinence Education (CBAE) program and abstinence funding provided to the states under section 510 of Title V.¹⁰³ PCCs have also received federal funding under the “Compassion Capital Fund.”¹⁰⁴

Both Democrats and Republicans commend the work of PCCs. For example, Representative Heath Shuler (D-N.C.) has acknowledged the important role that

¹⁰¹ *Id.* (Alabama, Oklahoma, Tennessee, Utah, West Virginia).

¹⁰² 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 Sept. 18, 2012).

¹⁰³ Waxman Report, *supra*, at 3-4.

¹⁰⁴ *Id.* at 4.

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. Oftentimes these Centers are the only option available for women who lack family networks and community support systems. By creating a network of volunteers and caretakers, they bring communities and families together to help each other and celebrate life.”¹⁰⁵

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.¹⁰⁶

Representative John Boehner (R-Ohio), Former Speaker of the House, has described the work of PCCs as “embody[ing] the spirit of volunteerism,” and being “one of the most important grassroots movements in American

¹⁰⁵ FRC, *supra*, at 68.

¹⁰⁶ *Id.* at 22.

history.”¹⁰⁷

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.¹⁰⁸ 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. Because of the selfless work you are doing, a culture of life is being built in America.¹⁰⁹

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.”¹¹⁰

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

¹⁰⁷ *Id.* at 68.

¹⁰⁸ *Id.* at 64.

¹⁰⁹ *Id.* at 70.

¹¹⁰ *Id.* at 69.

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

CONCLUSION

The judgment of the District of Maryland should be affirmed.

Respectfully submitted,

s/Anna F. Paprocki

Anna F. Paprocki

Counsel of Record for Amici Curiae

Deanna M. Wallace

Americans United for Life

2101 Wilson Blvd., Suite 525

Arlington, VA 22201

Telephone: 202-289-1478

Facsimile: 202-289-1473

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1. This brief complies with the type-volume limitation of Fed. R. App. P. 28.1(e)(2) or 32(a)(7)(B) because:

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s/ Anna F. Paprocki
Counsel of Record for *Amici Curiae*
Dated April 3, 2017

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2017, 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, including the following individuals, through the CM/ECF system:

Suzanne Sangree, Chief Solicitor
City of Baltimore Law Department
City Hall, Room 109
100 North Holliday Street
Baltimore, MD 21202

Stephanie Toti
Special Assistant City Solicitor
Center for Reproductive Rights
199 Water Street, 22nd Floor
New York, NY 10038

Autumn Katz
Center for Reproductive Rights
199 Water Street, 22nd Floor
New York, NY 10038

Molly Duane
Center for Reproductive Rights
199 Water Street, 22nd Floor
New York, NY 10038

David William Kinkopf
Gallagher Evelius and Jones LLP
218 North Charles Street, Suite 400
Baltimore, MD 21201

Peter Joseph Basile
Ferguson Schetelich and Ballew PA
100 South Charles Street, Suite 1401
Baltimore, MD 21201

Steven G. Metzger
Gallagher Evelius and Jones LLP
218 North Charles Street, Suite 400
Baltimore, MD 21201

Mark L. Rienzi
The Catholic University of America
3600 John McCormack Rd., NE
Washington, D.C. 20064

Anatoly Smolkin
Gallagher Evelius and Jones LLP
218 North Charles Street, Suite 400
Baltimore, MD 21201

s/ Anna F. Paprocki
Counsel of Record for *Amici Curiae*