

**Case Nos. 21-2913 & 21-2922**  
**IN THE UNITED STATES COURT OF APPEALS**  
**FOR THE EIGHTH CIRCUIT**

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PLANNED PARENTHOOD MINNESOTA, NORTH DAKOTA, SOUTH  
DAKOTA And CAROLE E. BALL, M.D.,  
*Plaintiffs-Appellees,*

v.

KRISTI NOEM, Governor; JASON RAVNSBORG, Attorney General; KIM  
MALSAM-RYSDON, Secretary of Health; and JEFFERY M. MURRAY, M.D.,  
President of the Board of Medical and Osteopathic Examiners, In Their Official  
Capacities,  
*Defendants-Appellants,*

ALPHA CENTER and BLACK HILLS CRISIS PREGNANCY CENTER,  
*Intervenors-Appellants.*

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On Appeal from the United States District Court for  
the Southern District of South Dakota

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**BRIEF *AMICUS CURIAE* OF HEARTBEAT INTERNATIONAL, INC. IN  
SUPPORT OF INTERVENOR-DEFENDANTS-APPELLANTS AND  
REVERSAL**

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E. SCOTT LLOYD  
LAW OFFICE OF E. SCOTT LLOYD, PLLC  
20 E. 8th Street, Suite 3  
Front Royal, VA 22630  
(540) 631-4081  
edwardscottlloyd@protonmail.com

STEVEN H. ADEN  
*Counsel of Record*  
AMERICANS UNITED FOR LIFE  
1150 Connecticut Ave, NW  
Washington, DC 20036  
(703) 638-9731  
steven.aden@aul.org

DANIELLE M. WHITE  
MATTHEW D. DOANE  
HEARTBEAT INTERNATIONAL, INC.  
5000 Arlington Centre Boulevard, Suite  
2277  
Columbus, OH 43220  
(614) 885-7577  
dwhite@heartbeatinternational.org  
mdoane@heartbeatinternational.org

*Counsel for Amicus Curiae*

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## IDENTITY AND INTEREST OF *AMICUS CURIAE*<sup>1</sup>

Heartbeat International, Inc. (“Heartbeat”) is uniquely positioned to provide relevant factual background and legal argument in this case. Founded in 1971, Heartbeat is an IRC § 501(c)(3) non-profit organization whose mission is to support pregnant mothers and their interests in maintaining a relationship with their children through an effective network of affiliated pregnancy help centers. Heartbeat serves more than 2,500 pro-life pregnancy resource centers and maternity homes in approximately 70 countries—making Heartbeat the world’s largest such affiliate network. Heartbeat’s network of affiliates includes approximately 195 locations in the Eighth Circuit, and seven in South Dakota specifically, two of which are the Intervenors in this case. Heartbeat supports its pregnancy center affiliates, in part, by offering access to free or discounted educational and training materials, maintaining an online directory, conducting conferences and specialized training programs, and by providing referrals from Option Line.

Option Line is a 24/7 toll-free telephone and web-based help line run by Heartbeat since 2003. Individuals facing unintended pregnancies can contact Option Line for information and referrals to nearby pregnancy help centers. Each day, more

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<sup>1</sup> This brief is filed with all parties’ consent, under Federal Rule of Appellate Procedure 29(a). No party or party’s counsel authored this brief in whole or in part or financially supported this brief, and no one other than *amici curiae* or their counsel contributed money intended to fund preparing or submitting this brief. Fed. R. App. P. 29(c)(5).

than 1,000 people contact Option Line via phone, chat, email, and text seeking pregnancy help. Since its inception, Option Line has connected with more than four million people, and, in 2020 alone, Option Line connected more than 350,000 people to pregnancy help centers around the world.

Heartbeat also operates the Abortion Pill Rescue Network (the “APRN”), which connects women who regret taking the first dose of the two-dose abortion pill regimen to a network of medical professionals trained to administer the abortion pill reversal protocol which gives women a chance to stop the abortion they ultimately do not want and continue their pregnancy. Started in 2012, Heartbeat began operating the APRN in 2018. The APRN now includes over 1,000 rescue providers and centers. Each month, approximately 150 women call the APRN seeking abortion pill reversal services, and that number is on a strong growth trajectory. Indeed, the APRN experienced a 91% increase in women receiving reversal services from 2019 to 2020.

While Heartbeat offers its services to pregnant mothers free of charge, Heartbeat is funded almost entirely by private contributions; it receives no government funding. Similarly, the overwhelming majority of pregnancy help centers offer their services to pregnant mothers free of charge and do not receive federal government funding.

Heartbeat believes, along with its thousands of affiliates, in the pregnant mother's fundamental right to maintain her relationship with her children. Consequently, the factors a woman considers relevant in her decision of whether to continue her relationship with her children or terminate her relationship through either adoption or abortion are at the very heart of Heartbeat's execution of its mission. Through its fifty years of experience serving expectant mothers, its extensive network of pregnancy centers, and its operation of Option Line, Heartbeat is keenly aware of the devastating consequences when a pregnant mother undergoes an abortion procedure that either is not fully informed or is obtained under coercion or duress, a harm that South Dakota's Anti-Coercion Statute is aimed at preventing.

### **SUMMARY OF THE ARGUMENT**

Every pregnant mother has a fundamental liberty interest in maintaining a relationship with her child. Because an abortion irrevocably terminates that interest, it is of paramount importance that a pregnant woman's consent to abortion is both informed and voluntary. To protect "one of the greatest rights [the pregnant mother] has in all of life," S.D. CODIFIED LAWS § 34-23A-85 (2021), South Dakota enacted its Anti-Coercion Statute, S.D. CODIFIED LAWS §§ 34-23A-53 to -62; *id.* §§ 74 to -88 (2021) (the "Anti-Coercion Statute") to ensure that a woman's consent to an abortion in South Dakota is always informed and voluntary. The legislature determined that women could not give informed and voluntary consent unless two

distinct components of counseling occurred—a non-medical component designed to facilitate the pregnant mother’s autonomous decision-making regarding whether she wants to terminate her relationship with her child (the “Non-Medical Component”); and a medical component, to ensure that the woman understands the nature and risks of the medical procedure (the “Medical Component”). Based on the well-documented history of abortion clinic malfeasance surrounding informed consent and the legitimate concern of women being forced into having an unwanted abortion, the South Dakota legislature assigned the Non-Medical Component to highly regulated Registered Pregnancy Help Centers (RPHCs)—an area that is precisely within the scope of RPHC’s expertise. Abortion clinics remain responsible for the Medical Component.

This brief will address the following: background information on the positive work of pregnancy centers around the nation and why pregnancy help centers are best positioned to provide the Non-Medical Component to informed and voluntary consent; South Dakota’s legitimate and substantial interest in ensuring informed and voluntary consent; why Non-Medical Component is critical to ensure a woman’s voluntary and informed consent; and why it is necessary, based on the record, to receive the Non-Medical Component from a party that is not an abortion provider.



## ARGUMENT

### **I. Pregnancy help centers provide the counseling, support, and practical resources that abortion clinics do not and cannot supply.**

Pregnancy help centers exist to ensure that no woman ever feels forced to choose abortion because of coercion, lack of support, or practical alternatives. Heartbeat is a federation of independently governed, locally funded pregnancy help organizations (Heartbeat’s “affiliates”), including, but not limited to, pregnancy resource centers and pregnancy medical centers, and maternity homes. *See* Heartbeat International, *A Generation Making a World of Difference* 11–12 (2012), [https://www.heartbeatinternational.org/images/pdf/HeartbeatHistory Brochure.pdf](https://www.heartbeatinternational.org/images/pdf/HeartbeatHistory%20Brochure.pdf).

There are more than 1,700 Heartbeat affiliate locations in the United States that educate, equip, and empower women to thrive during and after pregnancy. *See* Heartbeat International, *Life Trends2020 Report* 2–3 (2020), [https://www.heartbeatinternational.org/images/pdf/HeartbeatLifeTrends\\_2020\\_DIGITAL.pdf](https://www.heartbeatinternational.org/images/pdf/HeartbeatLifeTrends_2020_DIGITAL.pdf). These include 195 locations in the Eighth Circuit, and seven in South Dakota specifically. Not all of the seven South Dakota Heartbeat affiliates are Registered Pregnancy Help Centers (RPHCs) under the Anti-Coercion Statute.

Pregnancy help centers offer services and resources designed to empower women to maintain their relationships with their children. Such services include, but are certainly not limited to, pregnancy options information; referrals to maternity homes, job centers, housing agencies, drug rehabilitation centers, and other social

services organizations; parenting and childbirth classes; fatherhood programs; and material assistance. In 2019 alone, pregnancy help centers in the United States provided more than 2 million baby clothing outfits, more than 1.2 million packs of diapers, more than 19,000 strollers, and more than 30,000 new car seats. *See* Charlotte Lozier Institute, *Pregnancy Centers Stand the Test of Time*, 16, 24, 61–62 (2020), [https://lozierinstitute.org/wp-content/uploads/2020/10/Pregnancy-Center-Report-2020\\_FINAL.pdf](https://lozierinstitute.org/wp-content/uploads/2020/10/Pregnancy-Center-Report-2020_FINAL.pdf) (statistics cited herein from the Charlotte Lozier Report are as of 2019); Family Research Council, *A Passion To Serve*, 6–11, 20–21 (2d ed. 2010) [hereinafter *Passion to Serve*], <https://downloads.frc.org/EF/EF12A47.pdf>. One of the most commonly offered services at pregnancy centers is post-abortion programs (“abortion recovery”), which helps women overcome the emotional trauma and other issues experienced after an abortion they later came to regret. *See* Life Trends Report *supra*, at 3.

In addition to the array of non-medical services and resources described above, pregnancy help centers with licensed medical personnel provide various medical services such as medical-grade pregnancy testing, ultrasounds to confirm a viable pregnancy and to rule out a dangerous ectopic pregnancy, sexually transmitted disease testing, and/or prenatal care. *See* *Passion to Serve*, 6–11. Ultrasounds are among the mostly commonly offered services at pregnancy centers. Heartbeat estimates that its affiliate locations provided more than 480,000 ultrasounds in 2019.

See Life Trends Report, *supra*, at 2. Centers report that a stunning 80% of women considering an abortion decide to carry their pregnancies to term after viewing their ultrasound. *Id.* at 3.

Pregnancy help centers are non-profits and provide all or a vast majority of their services free of charge. Their staff and volunteers are overwhelmingly women, many of whom experienced an unintended pregnancy themselves. They exist, on the one hand, to support women in the often “difficult and painful” *Gonzales v. Carhart*, 550 U.S. 124, 159 (2007) (citing *Planned Parenthood v. Casey*, 505 U.S. 833, 852–53 (1992) (plurality)) decision-making process of whether to have an abortion, a decision that is “fraught with emotional consequence.” *Id.* On the other hand, pregnancy help centers exist to offer post-abortion recovery programs for the thousands of women who “elect an abortion, only to discover later, with devastating psychological consequences, that [their] decision was not fully informed.” *Casey*, 505 U.S. at 882.

Heartbeat requires affiliated pregnancy centers to adhere to a national standard of ethical practice, the Commitment of Care and Competence (the “Commitment”),<sup>2</sup> which includes, *inter alia*, commitments: (i) to provide “accurate information about pregnancy, fetal development, lifestyle issues, and related

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<sup>2</sup> It is worth noting that *all affiliates* of the three largest pregnancy help networks (Heartbeat, NIFLA, and CareNet) must adhere to this same Commitment of Care and Competence.

concerns”; and (ii) to ensure that all “communication [is] truthful and honest.” *Our Commitment of Care and Competence*, Heartbeat Int’l, (July 9, 2019), <https://www.heartbeatinternational.org/about-us/commitment-of-care>. These commitments self-evidently require all affiliates to provide scientifically accurate information about fetal development and the nature of the abortion procedure.

Any South Dakota affiliate of Heartbeat, NIFLA, or CareNet therefore adheres to the Commitment, and any South Dakota RPHC also to adheres to the Anti-Coercion Statute’s requirements for RPHCs in South Dakota.

## **II. South Dakota has wide discretion under the Supreme Court of the United States’ decision in *Planned Parenthood v. Casey* and its progeny to enact laws intended to ensure informed consent.**

As recently as 2020, the Supreme Court has emphasized the wide discretion that courts should afford state and federal legislatures when making scientific and medical determinations. *June Med. Servs. L.L.C. v. Russo*, 140 S. Ct. 2103, 2136 (2020) (Roberts, C.J., concurring).

The South Dakota legislature found that the informed consent practices of the abortion industry in the state routinely failed to “ensur[e] a decision that is mature and informed.” *Casey*, 505 U.S. 883. S.D. CODIFIED LAWS §§ 34-23A-54 and -74 to -87. In light of this, the legislature determined that it was in the interest of the pregnant mothers in South Dakota to receive the Non-Medical Component from

third party counseling provided by registered pregnancy help centers. S.D. CODIFIED LAWS § 34-23A-88.

The delivery of the Non-Medical Component is highly regulated. The statute sets forth: (1) that the Non-Medical Component takes place only at a RPHC, S.D. CODIFIED LAWS § 34-23-A-56(3); (2) that only licensed professionals perform the Non-Medical Component, S.D. CODIFIED LAWS § 34-23-A-59.1; and (3) the content of the Non-Medical Component, S.D. CODIFIED LAWS § 34-23-A-59.

South Dakota can hardly be said to have exceeded its wide discretion when it delegated the Non-Medical Component of the informed consent process to highly regulated organizations best equipped to comply with the Anti-Coercion Statute.

**III. The Non-Medical Component of South Dakota's informed consent statutes is critical to ensure that a woman's choice to obtain an abortion is voluntary.**

The overwhelming majority of women who seek services from a pregnancy help center report some degree of ambivalence about whether to seek an abortion. It is near-universal that women who receive pre-abortion counseling at a pregnancy help center are under a great deal of emotional and mental stress, often stemming from external pressures and their other life circumstances and compounded by an unexpected pregnancy. Decision-making can be especially difficult when the woman is under tremendous stress and lacks critical information and support. The gravity and finality of the abortion decision, coupled with the anguish a woman frequently

feels, and the reality that so many of them are experiencing force, intimidation, coercion, duress, and challenging life circumstances, makes it especially critical to ensure that an abortion decision is the voluntary choice of the woman.

**A. Pregnant mothers routinely experience force, intimidation, or coercion to obtain an abortion against their will.**

Pursuant to S.D. CODIFIED LAWS § 34-23A-59(1)(a) and (b), during the Non-Medical Component, a RPHC may “[i]nterview the pregnant mother to determine whether the pregnant mother has been subject to any coercion to have an abortion, or is being pressured into having an abortion; [and] [p]rovide counseling in connection with any coercion or pressure.” No consent to an abortion could be considered truly voluntary without this aspect of the Non-Medical Component.

In Heartbeat’s experience, forced abortions are a rampant problem across the nation. Pregnancy help centers routinely encounter women who want to keep their children but are subject to intense pressure, often from their own parents or the father of the baby, to obtain an abortion. This problem is so commonplace that Heartbeat routinely provides training to pregnancy help center personnel on topics such as how to assist a woman whose parents or others are attempting to force them to obtain an abortion against their will. *See also Brief for Intervenor-Defendants-Appellants* at 20–32.

Pregnancy help centers use resources from the Center Against Forced Abortions, an organization which was formed to provide free legal services to

pregnant mothers precisely because of the overwhelming number of women who are being forced into abortions. Heartbeat's housing affiliates also provide shelter to pregnant mothers, many of whom were rendered homeless because they refused a parent or partner's demands to have an abortion. A significant percentage of women who call Heartbeat's Option Line confide that they are experiencing pressure to terminate their relationship with their unborn child. That these pregnant mothers are seeking assistance is itself evidence that they desire to maintain the relationship with their children.

The APRN is often contacted by women who relented to the coercion of others, began a medication abortion by ingesting the first dose of an abortion pill regimen, almost immediately regretted that coerced decision, and are seeking to stop the effects of the medication abortion so that they can carry their child(ren) to term. The APRN is a true testament to the fact that coercion can absolutely drive women to abort children they desire to keep.

In abortion recovery programs, women frequently share stories of the pressure they received from family members, partners, friends, and often the abortion clinic itself. As plaintiffs admitted in this case, if a woman wants to keep her child, and is then coerced or is unsure about her decision, abortion increases the risk of depression, suicide ideation, and suicide in the pregnant mother. *See Brief for*

*Intervenor-Defendants-Appellants* at 23. The lived experience of Heartbeat’s affiliates through its abortion recovery programs confirms this fact.

**B. The distress of difficult life circumstances frequently drives pregnant mothers to terminate their relationship with a child they deeply desire to keep, believing that they cannot care for that child.**

Pursuant to S.D. CODIFIED LAWS § 34-23A-59(1)(c), during the Non-Medical Component, a RPHC may “[i]nform the pregnant mother . . . of the counseling, education, and assistance available to the pregnant mother to assist her in maintaining her relationship with her unborn child and in caring for the child through the pregnancy help center or any other organization, faith-based program, or governmental program.”

Even when force or pressure from other individuals is absent, it is impossible to overstate the stress women experience when they believe that a lack of financial or material resources prevents them from maintaining a relationship with their children. While unexpectedly pregnant women visiting pregnancy help centers may perceive their unintended pregnancies as a crisis, it is more often the case that a crisis already existed, and the pregnancy is the impetus to address it. Indeed, many women struggling with addiction, abuse, and economic disadvantages feel compelled to choose abortion because of those conditions. Yet, abortion does nothing to address their underlying needs.



Pregnancy help centers, however, are experienced and equipped to address those very needs. Pregnancy help centers not only provide emotional, material, and practical support themselves, but they also serve as the point of connection to other available assistance. Active in their communities, pregnancy help centers compile the local resources available to women so that they may refer women to trusted maternity homes, job centers, housing agencies, drug rehabilitation centers, and other social services organizations; parenting and childbirth classes; fatherhood programs; abortion recovery programs; and material assistance. Women often report being surprised by how much help is available to them to continue their pregnancies and care for their children.

Sometimes the women who visit a pregnancy help center or contact Heartbeat's Option Line have already scheduled appointments with an abortion clinic. Indeed, simply because a woman has scheduled an appointment with an abortion clinic does not mean that she has made her decision, let alone that she is certain of that decision. In Heartbeat's experience, upon learning about the resources available and receiving the information described below, a significant number of women report that they resolved to keep their child, sometimes even after initially reporting a high degree of decisional certainty about their intended abortion.

Further, the very existence and success of the APRN shows that women who have just begun the medication abortion process are sometimes unsure that they want

to complete it. The APRN serves approximately 1,800 women per year who attempt to reverse the effects of a medication abortion using progesterone, the hormone necessary to sustain pregnancy and blocked by mifepristone, the first drug in the two-step medication abortion process. This number is just a subset of the women who initially contact the APRN who are still expressing ambivalence about their in-progress abortions.<sup>3</sup>

Finally, women in abortion recovery programs commonly report that once their true crises (addiction, abuse, economic disadvantages) were addressed, they often realized to their great agony that their abortions were not what they truly wanted—they were a reaction to a temporary problem that permanently and irrevocably deprived them of a relationship with their child, and they mourn the loss of that child.

The experience of Heartbeat and its affiliates demonstrates that women are frequently ambivalent about an abortion decision. Learning about the myriad of resources available to them commonly helps resolve that ambivalence.

**IV. The Non-Medical Component of South Dakota’s informed consent statutes is critical to ensure that a woman’s choice to obtain an abortion is informed.**

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<sup>3</sup>The initial injunction entered by the District Court was entered before the APRN came to existence, so the compelling evidence of women changing their minds in the midst of an abortion decision is novel since the injunction.

Under S.D. CODIFIED LAWS § 34-23A-59(1), the Non-Medical Component involves statements orally and in writing to the pregnant mother and explaining them in layman's terms:

- (1) That “an abortion will terminate the life of a whole, separate, unique, living human being,” which is defined as “an individual living member of the species of Homo sapiens, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation.”
- (2) “That the pregnant woman has an existing relationship with that unborn human being and that the relationship enjoys protection under the United States Constitution and under the laws of South Dakota;” S.D. CODIFIED LAWS § 34-23A-10.1(1)(c)
- (3) That by having an abortion, her existing relationship and her existing constitutional rights with regards to that relationship will be terminated. S.D. CODIFIED LAWS § 34-23A-10.1(1)(d);

Heartbeat and its affiliates have decades of experience in listening to and supporting millions of pregnant mothers in challenging circumstances. This experience has given Heartbeat firsthand insight into the factors that pregnant mothers consider important in making the decision of whether to maintain their relationships with their unborn children. *See Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724 (8th Cir. 2008) (en banc); *Planned Parenthood Minn. v. Rounds*, 650 F. Supp. 2d 972 (D.S.D. 2009); *Planned Parenthood Minn., N.D., S.D. v. Rounds* 653 F3d 662 (8th Cir. 2011) (upholding the constitutionality of the disclosure that an abortion terminates the life of a “whole, separate, unique, living human being”); *Planned Parenthood Minn. v. Rounds*, 653 F.3d 662 (8th Cir. 2011) (upholding the constitutionality of the two relationship disclosures).

As set forth above, pre-abortion counseling at a pregnancy help center includes information which ensures a woman's understanding that "an abortion will terminate the life of a whole, separate, unique, living human being." S.D. CODIFIED LAWS § 34-23A-59(1)(d). In Heartbeat's experience working with millions of women over fifty years, this is information that pregnant mothers consider relevant to their decision. *See Casey*, 505 U.S. at 882 ("[M]ost women considering an abortion would deem the impact on the fetus relevant, if not dispositive, to the decision."). It is not uncommon for women receiving pre-abortion counseling to ask if their baby is "already there." This disclosure ensures the woman's understanding that abortion does not prevent a human life from coming into existence but instead terminates a living human being. *See Gonzales*, 550 U.S. at 157 ("The government may use its voice and its regulatory authority to show its profound respect for the life within the woman.").

Women commonly receive ultrasounds at pregnancy help centers, which provide a connection between the scientific information about human life more generally and the status, development, and characteristics of her own unborn human child. In Heartbeat's experience, viewing an ultrasound is commonly "dispositive to the [abortion] decision." *Casey*, 505 U.S. at 882. Indeed, 80% of women considering an abortion decide to carry their pregnancies to term after viewing their ultrasound. *See Life Trends Report, supra*, at 3.

In abortion recovery programs, women often share the many ways abortion clinics misled them about their unborn child. These women routinely report that they did not know that a human being—their child—was already in existence. They relate confusing phrases used by the abortion clinics to describe the human being in utero, such as a “clump of cells,” “mass of tissue” or “products of conception.” Not only that, women report that the abortion clinic did not offer them any information about fetal development. When women ask about fetal development, the clinics use terms unfamiliar to laymen, such as “cranium” rather than head, or “appendages” rather than arms or legs. Sometimes clinics tell women that the embryo has “heart tones,” or “cardiac activity,” or “cardiac motion,” rather than a heartbeat. Other women report that, when asked whether the baby had a heartbeat, the clinic flatly said “no,” even at gestations where this was untrue. Many of these women suffer immensely when they later come to realize that their abortion ended the life of their child, a living human being.

Women cannot be fully informed about an abortion unless they know and understand the scientific truth about the human being in utero and the legal realities about the protections afforded to the pregnant mother and her relationship with her unborn child.

**V. Abortion clinics are neither able nor willing to provide pregnant mothers with the Non-Medical Component of South Dakota’s informed consent statutes.**

The task of obtaining informed consent does not amount to mere procurement of a signature on a piece of paper. The physician must confirm not merely the *receipt* of materials but also the *comprehension* of the materials. Informed consent is a process of explaining the relevant information to the woman, confirming that she understands the information, and ensuring that her consent is voluntary.

Through its fifty-year history, its operation of Option Line and the APRN, and its affiliates' pre-abortion counseling and abortion recovery programs, Heartbeat is all too aware of the common practices of abortion clinics which has led to the conclusion that abortion clinics are unable and unwilling to ensure that women's consent to an abortion is voluntary and informed. Heartbeat and Heartbeat affiliates' clients commonly report that abortion clinics ignored their statements or questions indicating uncertainty. Clients report that abortion clinic personnel disregarded obvious physical manifestations of ambivalence, such as crying, shaking, or hesitation to reach for abortion pills. Instead, the abortion clinic doctors and staff incorrectly assumed that they had already made the decision to have an abortion.

Clients also recount that they have no recollection whatsoever of the forms they were asked to sign in the clinic, and that no one engaged in a dialogue with them about the nature of an abortion, the characteristics of the unborn child, or the woman's rights to maintain a relationship with her unborn child. Clients report that abortion clinics either fail to volunteer any information whatsoever about fetal

development, or they provide confusing or inaccurate information. Clients further report that they did not know the name of their abortion provider or that they did not meet the abortion provider until they were in the operating room or moments before receiving medication abortion pills.

Heartbeat's experience suggests that abortion clinics are uninterested in ensuring an informed and voluntary decision, the extensive record in this case illustrates their reluctance, and abortion clinics' long history of routinely challenging laws requiring them to obtain voluntary and informed consent is telling. Abortion providers have objected to informing women about: (1) the status of her own pregnancy, *City of Akron v. Akron Ctr. for Reprod. Health*, 462 U.S. 416, 103 S. Ct. 2481 (1983); (2) the development of her fetus, *id.*; (3) the date of possible viability, *id.*; (4) the physical and emotional complications that may result from an abortion, *id.*; (5) the availability of agencies to provide the woman with assistance, *id.*; (6) the nature of the abortion procedure, *Casey*, 505 U.S. 833; (7) the health risks of abortion and childbirth, *id.*; (8) the probable gestational age of her unborn child, *id.*; (9) information about child support from the father, *id.*; (10) the scientific fact that abortion terminates the life of a "whole, separate, unique, living human being," *See Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724 (8th Cir. 2008) (en banc); *Planned Parenthood Minn. v. Rounds*, 650 F. Supp. 2d 972 (D.S.D. 2009); *Planned Parenthood Minn., N.D., S.D. v. Rounds* 653 F3d 662 (8th Cir. 2011); and

(11) that by having an abortion, her constitutional right to a relationship with her own unborn child will be terminated, *Planned Parenthood Minn. v. Rounds*, 653 F.3d 662 (8th Cir. 2011). Further, abortion providers have challenged laws requiring that pregnant women be shown their own sonogram, that the sonogram be explained to them, and that the heart auscultation of their own unborn child be made audible. *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570 (5th Cir. 2012); *EMW Women's Surgical Ctr., P.S.C. v. Beshear*, 920 F.3d 421 (6th Cir. 2019); *Stuart v. Camnitz*, 774 F.3d 238 (4th Cir. 2014).

Finally, a clear conflict of interest exists when counseling designed to *protect* a mother's right to a relationship with her unborn child is given by an entity that benefits financially only when it *irrevocably terminates* that very right. Abortion clinics do not have the experience or expertise necessary to conduct the Non-Medical Component of the informed consent process, they strenuously object to providing factual, scientific, non-misleading information relevant to the abortion decision, and they have nothing of value to offer women who wish to maintain their relationship with their unborn children. They are simply not the proper place for counseling relating to the Non-Medical Component of informed consent to occur. As such, it is proper for the South Dakota legislature to assign this duty to Registered Pregnancy Help Centers who are under no conflict of interest, are highly regulated, and are



equipped and trained to conduct counseling concerning the Non-Medical Component.

## **CONCLUSION**

South Dakota's Anti-Coercion Statute provides an indispensable layer of protection to ensure that a pregnant mother's decision to continue or terminate her relationship with her child is knowing and voluntary. The legislature reasonably and rightly concluded that counseling designed to protect a mother's right to a relationship with her unborn child could not be effective when given by an entity that benefits financially from terminating that very right. Instead, it delegated the Non-Medical Component of informed consent counseling to RPHCs, entities that do not benefit financially from any outcome and that have the experience and expertise to screen for coercion and to provide practical resources need by many pregnant mothers.

Given its extensive experience in serving millions of pregnant mothers through Option Line and in affiliate pregnancy help centers, Heartbeat is confident that the Anti-Coercion Statute provides the information and protections that pregnant women need—information which can serve to prevent the devastation Heartbeat routinely witnesses in abortion recovery clients. This Court should reverse the district court's denial of the Motion to Dissolve.

Respectfully submitted,

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By: /s/ Steven H. Aden

E. SCOTT LLOYD  
LAW OFFICE OF E. SCOTT LLOYD, PLLC  
20 E. 8<sup>th</sup> Street, Suite 3  
Front Royal, VA 22630  
(540) 631-4081  
edwardscottlloyd@protonmail.com

STEVEN H. ADEN  
*Counsel of Record*  
AMERICANS UNITED FOR LIFE  
1150 Connecticut Ave, NW  
Washington, DC 20036  
(703) 638-9731  
steven.aden@aul.org

DANIELLE M. WHITE  
MATTHEW D. DOANE  
HEARTBEAT INTERNATIONAL, INC.  
5000 Arlington Centre Boulevard, Suite  
2277  
Columbus, OH 43220  
(614) 885-7577  
dwhite@heartbeatinternational.org  
mdoane@heartbeatinternational.org

*Counsel for Amicus Curiae*

## CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2021, I electronically filed the foregoing Brief Amicus Curiae of Heartbeat International, Inc. with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system, which will accomplish service on counsel for all parties through the Court's electronic filing system.

/s/ Steven H. Aden

Steven H. Aden

Attorney for Amicus Curiae

## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of FED. R. APP. P. 29(a)(5) and FED. R. APP. P. 32(a)(7)(B) because this brief contains 5653 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(f).

2. This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 Times New Roman 14 point font.

Date: December 13, 2021

/s/ Steven H. Aden  
Steven H. Aden  
Attorney for Amicus Curiae