

Nos. 11-1111 and 11-1185

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

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GREATER BALTIMORE CENTER FOR PREGNANCY CONCERNS, INC.,  
*Appellee/Plaintiff,*

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,  
*Appellants/Defendants.*

*and*

ST. BRIGID'S ROMAN CATHOLIC CONGREGATION, INC., AND ARCHBISHOP  
EDWIN F. O'BRIEN, ARCHBISHOP OF BALTIMORE AND HIS SUCCESSORS IN OFFICE,  
A CORPORATION SOLE,  
*Cross-Appellants/Plaintiffs,*

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,  
*Cross-Appellees/Defendants.*

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On Appeal from the United States District Court for the District of Maryland  
Case No. 10-760-MJG, Before the Honorable

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**BRIEF FOR NARAL PRO-CHOICE MARYLAND, NARAL PRO-CHOICE  
AMERICA, CATHOLICS FOR CHOICE, DC ABORTION FUND,  
MARYLAND NOW, NATIONAL ABORTION FEDERATION, NATIONAL  
ADVOCATES FOR PREGNANT WOMEN, NATIONAL ASIAN PACIFIC  
AMERICAN WOMEN'S FORUM, PLANNED PARENTHOOD OF  
MARYLAND, RELIGIOUS COALITION FOR REPRODUCTIVE  
CHOICE, WHOLE WOMAN'S HEALTH OF BALTIMORE, WOMEN'S  
LAW CENTER OF MARYLAND, THE HONORABLE ELIJAH  
CUMMINGS, THE HONORABLE DONNA EDWARDS, THE  
HONORABLE MIKE QUIGLEY, THE HONORABLE LOUISE  
SLAUGHTER AND THE HONORABLE JACKIE SPEIER IN SUPPORT  
OF APPELLANTS/DEFENDANTS**

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## STATEMENT OF INTEREST

*Amici curiae* are organizations and members of Congress that share a deep commitment to promoting women's health and reproductive freedom. *Amici* believe that it is essential that all facilities providing pregnancy-related care and information be completely truthful and forthcoming about the scope of services they provide to women. No party's counsel, nor any person other than the *amici curiae*, authored or funded this brief and accompanying motion.

*Amici* are as follows:

**NARAL Pro-Choice Maryland** (“**NARAL Maryland**”) is a state advocacy organization that works to educate the public and officeholders about reproductive rights and health issues in the state of Maryland. As the political leader of the pro-choice movement in Maryland, NARAL Maryland works to develop and sustain a constituency that endeavors to guarantee every woman the right to make personal decisions regarding the full range of reproductive choices, including preventing unintended pregnancy, bearing healthy children, and choosing safe, legal abortion. NARAL Maryland is one of twenty state affiliates of *amici* NARAL Pro-Choice America, a national organization whose principal purpose is to advocate for and provide comprehensive information on reproductive rights in the United States.

As its national counterpart, **NARAL Pro-Choice America** shares NARAL Maryland's mission to support and protect, as a fundamental right and value, a woman's freedom to make personal decisions regarding the full range of reproductive choices through education, training, organizing, legal action, and public policy.

In 2002 and again in 2007, NARAL Maryland conducted investigations into Crisis Pregnancy Centers, also known as Limited-Services Pregnancy Centers ("LSPC"), in Maryland. The results of the investigations were published in two reports by the NARAL Pro-Choice Maryland Fund: *Crisis Pregnancy Center Investigation Summary* (2002) and *The Truth Revealed: Maryland Crisis Pregnancy Center Investigations* (2007). The Baltimore City Council relied on the 2007 Report when it debated and considered Baltimore City Health Code § 3-502.

**Catholics for Choice** shapes and advances sexual and reproductive ethics that are based on justice, reflect a commitment to women's well-being and respect and affirm the moral capacity of women and men to make decisions about their lives.

The **DC Abortion Fund ("DCAF")** is an all-volunteer, non-profit organization that makes grants to District of Columbia, Maryland, and Virginia area women and girls who cannot afford the full cost of an abortion. DCAF



believes that a woman's right to health care should not depend on her financial position and its grants help to alleviate the financial barriers to abortion.

The **National Abortion Federation** (“NAF”), a non-profit organization founded in 1977, is the professional association of abortion providers in North America. The mission of NAF is to ensure safe, legal, and accessible abortion care, which promotes health and justice for women. NAF's members include over 400 private clinics, women's health centers, hospitals, and private physicians' offices. NAF members care for over half the women who choose abortion each year in the United States, and NAF represents many members throughout Maryland.

The **Maryland chapter of the National Organization for Women** (“**Maryland NOW**”) is an organization whose mission is to take action to achieve equality for all women in the state of Maryland. Maryland NOW is affiliated with the National Organization for Women, the largest grassroots feminist organization in the United States. Maryland NOW has eight local chapters and thousands of activists all around the state, including hundreds of members in Baltimore. Since its inception, Maryland NOW's goals have included ensuring that all women have access to high-quality, affordable reproductive health care, including abortion, contraception, and other reproductive health services.

**National Advocates for Pregnant Women (“NAPW”)** is a non-profit organization dedicated to securing the human and civil rights, health, and welfare of pregnant and parenting women, and furthering the interests of their families. NAPW opposes all barriers to women receiving full and accurate information regarding their pregnancies.

The **National Asian Pacific American Women’s Forum (“NAPAWF”)** is the only national, multi-issue Asian and Pacific Islander (“API”) women’s organization in the country. NAPAWF’s mission is to build a movement to advance social justice and human rights for API women and girls.

**Planned Parenthood of Maryland’s** mission is to enable all Marylanders to have access to a wide range of high quality, affordable reproductive health care services. By providing medical services, education, training and advocacy, Planned Parenthood of Maryland seeks to help individuals make informed decisions about their reproductive health, family planning options, and sexuality.

The **Religious Coalition for Reproductive Choice (“RCRC”)** brings the moral power of religious communities to ensure reproductive choice through education and advocacy. RCRC seeks to give clear voice to the reproductive issues of people of color, those living in poverty, and other underserved populations.

**Whole Woman's Health** is a privately-owned feminist organization, committed to providing holistic care to women. Whole Woman's Health operates a group of women's clinics in Maryland and Texas providing comprehensive gynecology services, including abortion care. Whole Woman's Health clinics are run by Board Certified and licensed physicians, counselors, medical assistants, and patient advocates and provide medical care and generate political activism at the grass-roots level.

The **Women's Law Center of Maryland, Inc.** is a non-profit, membership organization established in 1971 with a mission of improving and protecting the legal rights of women, particularly regarding gender discrimination, employment law, family law and reproductive rights. Through its direct services and advocacy, the Women's Law Center seeks to protect women's legal rights and ensure equal access to resources and remedies under the law.

The **Honorable Elijah Cummings**, United States House of Representatives.<sup>1</sup>

The **Honorable Donna Edwards**, United States House of Representatives.

The **Honorable Mike Quigley**, United States House of Representatives.

The **Honorable Louise Slaughter**, United States House of Representatives.

The **Honorable Jackie Speier**, United States House of Representatives.

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<sup>1</sup> Appellees consented to adding Congressman Cummings to this *en banc* filing.

## SUMMARY OF ARGUMENT

Baltimore City Health Code § 3-502 serves a compelling interest in protecting women in Baltimore from the deceptive practices of limited-service pregnancy centers (“LSPCs”). LSPCs deceptively advertise to women who seek abortion and other reproductive services and cause women to delay their personal health decisions, posing potential dangers to their health. LSPCs do these things purposefully and with the knowledge of how their actions deceive women. These actions are contrary to Baltimore’s compelling interest in protecting its citizens from deceptive and misleading advertising.

## FACTUAL BACKGROUND

LSPCs have a documented history of deceptive practices both in Maryland and nationwide. In response to complaints about deception by LSPCs, in 2007, NARAL Maryland investigated eleven LSPCs in Baltimore, Harford, Prince George’s, and Montgomery Counties, as well as in Baltimore City. *See* Kleder & Richmond Crum, NARAL Pro-Choice Maryland Fund, *The Truth Revealed, Maryland Crisis Pregnancy Center Investigations* (“Maryland Report”) 3 (Jan. 14, 2008), *available at* <http://www.prochoicemaryland.org/assets/files/cpreportfinal.pdf>.

The 2007 NARAL Maryland LSPC investigation consisted of two phases. First, NARAL Maryland staff analyzed LSPC websites and pamphlets. *See*

Maryland Report 3. Second, NARAL Maryland investigators visited eleven LSPCs and spoke with LSPC staff or volunteers about the services that the LSPC offered. *Id.* At the conclusion of each site visit, the investigators documented their observations in writing and met with NARAL Maryland staff to discuss their visit. *Id.* The results of the investigation were published in the Maryland Report. The Maryland Report contains analysis of (1) LSPC websites and pamphlets; (2) the LSPC investigators' written documentation of their visits; and (3) the NARAL Maryland staff interviews with the LSPC investigators. NARAL Maryland found that the investigated LSPCs engaged in deceptive practices.

The 2007 investigation was not the first of its kind to document deceptive practices at LSPCs in Maryland. As a result of years of work by other individuals and organizations, the deceptive practices of LSPCs have been well-documented.

In 2002, NARAL Maryland conducted an investigation into LSPCs with similar findings to the 2007 report: staff and volunteers intentionally misled women with inaccurate information. *See* Lineman, NARAL Pro-Choice Maryland Educational Fund, *Crisis Pregnancy Center Investigation Summary* (NARAL 2002 Report), *available at* <http://www.prochoicemaryland.org/assets/files/cpcreport.pdf>.

*Amici* National Abortion Federation (“NAF”) published a report on LSPCs in 2006 that extensively documented LSPC strategies of deception. *See* Nat’l Abortion Fed’n, *Crisis Pregnancy Centers: An Affront to Choice* (“NAF Report”)

5 (2006), *available at* [http://www.prochoice.org/pubs\\_research/publications/downloads/public\\_policy/cpc\\_report.pdf](http://www.prochoice.org/pubs_research/publications/downloads/public_policy/cpc_report.pdf). Partly based on information received from women who were misled by LSPCs, the NAF Report described the misleading advertising practices and intentionally confusing physical appearances of LSPCs. *Id.* at 1.

Congressman Henry Waxman also investigated the deceptive practices of LSPCs. *See* United States House of Representatives Committee on Government Reform—Minority Staff, *False and Misleading Health Information Provided by Federally Funded Pregnancy Resource Centers* 6 (prepared for Rep. Henry A. Waxman, July 2006) (“Waxman Report”) *available at* <http://www.chsourcebook.com/articles/waxman2.pdf>. At the Congressman’s request, the Special Investigations Division evaluated twenty-three LSPCs through anonymous telephone interviews. *Id.* The Special Investigations Division also researched and reviewed LSPC website tactics and advertising methods. *Id.* Congressman Waxman’s findings were memorialized in a report issued in 2006. *Id.*

On October 27, 2009, the Baltimore City Council (“City Council”) heard testimony on a proposed ordinance regarding LSPCs. *See* J.A. 210-211. The LSPC ordinance was introduced by then-Council President (now Mayor) Stephanie Rawlings-Blake and ten members of the City Council. *See* Baltimore City Council

Bill 09-0406, *Limited-Service Pregnancy Centers—Disclaimers* (“the Ordinance”).

The Ordinance requires LSPCs to “provide its clients and potential clients with a disclaimer substantially to the effect that the [LSPC] does not provide or make referral for abortion or birth-control services.” *Id.* The Ordinance defines an LSPC as “any person: (1) whose primary purpose is to provide pregnancy related services; and (2) who (I) for a fee or as a free service, provides information about pregnancy related services; but (II) does not provide or refer for (A) abortions; or (B) nondirective and comprehensive birth-control services.” *Id.*

Individuals who testified before the City Council included representatives from LSPC organizations, NARAL Maryland staff members, members of the Maryland reproductive choice community, and individuals from interested religious and civic organizations, including staff members from *amici* Planned Parenthood of Maryland and the Women’s Law Center of Maryland. After considering the testimony, the Maryland Report, and the Waxman Report, the City Council adopted the Ordinance on November 16, 2009.

## **ARGUMENT**

### **I. LSPCs Deceptively Advertise To Vulnerable Women**

#### **A. LSPCs Deceptively Advertise To Vulnerable Women Who Are Seeking Pregnancy-Related Counseling**

LSPCs deceptively advertise to women seeking reproductive health services and hide the fact that they do not provide certain medical procedures and services.

LSPCs deceptively advertise in several ways. First, the NARAL Maryland investigators found that LSPCs target emotionally vulnerable high school teenagers who are less likely than older women to be aware of their pregnancy options or how to access medical treatment. *See* Kleder & Richmond Crum, NARAL Pro-Choice Maryland Fund, *The Truth Revealed, Maryland Crisis Pregnancy Center Investigations 2* (Jan. 14, 2008) (“Maryland Report”), available at <http://www.prochoicemaryland.org/assets/files/cpreportfinal.pdf>. LSPCs also target low-income women who have limited health care options. *See* NAF Report 5. The City filed a declaration of an expert, Robert W. Blum, M.D., M.P.H., Ph.D., who is the Director of the Johns Hopkins University Urban Health Institute and the William H. Gates, Sr. Professor and Chair of the Department of Population, Family & Reproductive Health at the Johns Hopkins University Bloomberg School of Public Health. His declaration – which was uncontroverted in the district court – notes that “[c]ertain people are particularly vulnerable to being deceived by limited-service pregnancy centers that fail to disclose the scope of services that they provide. Those people include adolescents and those who are poor or otherwise marginalized in society.” J.A. 49 (“Blum Declaration”).

Second, LSPCs advertise in yellow pages under categories that relate to generic pregnancy and medical services, thus increasing the likelihood that a consumer seeking such services will be confused. For example, as the 2002



NARAL Maryland Report found, LSPCs place ads under headings such as “pregnancy counseling” and “clinics.” NARAL Maryland Report, *Crisis Pregnancy Center Investigation Summary: Maryland NARAL Education Fund and the NARAL Foundation* (“NARAL 2002 Report”) 14 (2002), available at <http://www.prochoicemaryland.org/assets/files/cpcreport.pdf>; see also NAF Report 3; Waxman Report 1-2. Advertising under such headings ensures that LSPC ads will be seen by women who are seeking information about all of their pregnancy options and related medical services. The term “clinic” in particular implies that the organizations listed are facilities that are staffed by medical professionals, perform medical procedures, and provide comprehensive and medically-accurate information, because clinic is a common name given to facilities that provide non-directive counseling and reproductive health-focused medical and surgical procedures. See NAF Report 3-4.

Third, LSPCs pay internet search engines to have their advertisements appear on the computer screen whenever someone searches terms such as “abortion,” “signs of pregnancy,” “teen pregnancy,” “family planning,” and “morning after pill.” See Entsminger, Care Net, *Building a Successful Internet Advertising Campaign for Your Pregnancy Center* 13-14 (2006). Accordingly, women who search for abortion or comprehensive family planning services on the internet or in printed materials will see advertisements for LSPCs despite the fact

that these organizations (1) often do not provide comprehensive medical services and (2) try to prevent women from obtaining abortions or comprehensive family planning or from seeking other types of medical care. LSPCs acknowledge that their target audience is “abortion vulnerable” women: women who are considering abortion. *Id.* LSPCs shape their advertising strategy accordingly. *Id.* As the Waxman Report notes, LSPC “advertisements represent that the center will provide pregnant teenagers and women with an understanding of all of their options . . . but does not reveal that . . . only non-abortion options will be counseled.” Waxman Report 2.

Fourth, LSPCs deceive women with the substance of their ads. Not only do LSPCs deliberately place their advertisements where women considering abortion care are likely to look for information, but they also misstate their purpose and character in those advertisements. *See* NAF Report 3. By doing so, LSPCs solicit women who otherwise would not seek access to their center but for the false advertising. Enstminger, *supra*, at 9; Waxman Report 1-2.

LSPCS acknowledge that women who search for information using the search terms mentioned above are unlikely to be receptive to the kind of messages that such groups use when speaking to their own supporters. Enstminger, *supra*, at 9. Accordingly, LSPCs create unique websites—different than those they use to connect with their supporters—for women considering abortion and use internet

targeting techniques to ensure that these websites appear when the terms mentioned above are searched. *Id.* The LSPC websites that target these women purposefully do not provide either links to the LSPCs donor-based websites or the website content that is available to LSPC donors and supporters. *Id.* at 9-10. Instead, these targeted websites feature “ethnically diverse” groups of women and deceptive slogans and falsely advertise that they provide referrals for the full range of reproductive-health options. *Id.* at 10; *see also* Birthright International (Mar. 20, 2011), *at* <http://www.birthright.org>.

One LSPC website that targets women seeking comprehensive pregnancy counseling is the website for the Pregnancy Clinic of Bowie-Crofton and Severna Park, Maryland, which appears as an advertisement in response to a Google search for “abortion Baltimore.” *See* [http://www.google.com/search?q=abortion+baltimore&rls=com.microsoft:\\*&ie=UTF-8&oe=UTF-8&startIndex=&startPage=1](http://www.google.com/search?q=abortion+baltimore&rls=com.microsoft:*&ie=UTF-8&oe=UTF-8&startIndex=&startPage=1) (Apr. 28, 2011). The Pregnancy Clinic’s website is listed on Google below a header titled “Abortion.” *Id.* The listed website states that it is a “medical facility which provides professional and confidential help.” *See* Pregnancy Clinic of Bowie-Crofton and Severna Park, Maryland (Apr. 28, 2011), <http://www.pregnancyclinic.org>. The website also lists several categories below a heading titled “Resources.” *Id.* These categories include “Pregnancy Options,” “Morning After Pill” and “After Abortion.” *Id.* In reality, the Pregnancy Clinic offers only

anti-abortion messaging. *See* Chandler, *Antiabortion Centers Offer Sonograms to Further Cause*, Wash. Post, Sept. 9, 2006, available at <http://washingtonpost.com/wp-dyn/content/article/2006/09/08/AR2006090801967.htm>.

LSPCs also use signage outside of their facilities to mislead women who are looking for services that the LSPCs do not offer. For example, the Greater Baltimore Center for Pregnancy Concerns, an LSPC in Baltimore, has signs outside of its facility advertising that it provides “[a]ccurate information on all options” and that it offers “[m]edical and community referrals.” *See* Brown, *Baltimore To Be Center of Abortion Debate*, Balt. Sun, Nov. 23, 2009 (internal quotations marks omitted).

Such signs misrepresent the services that are available at the Center for Pregnancy Concerns. According to its parent organization, the Center for Pregnancy Concerns “do[es] not perform or refer for abortions.” *See* Center for Pregnancy Concerns (Apr. 12, 2011), at <http://www.cpcforhelp.org>. Women who visit the Center for Pregnancy Concerns, however, do not see this disclaimer. It is only available online. The deceptive messages that the Center for Pregnancy Concerns advertises outside of its facilities serves to mislead women about the services and information that the Center for Pregnancy Concerns in fact provides.

In addition to misleading and confusing external signs, LSPCs often purposefully locate their facilities near clinics that offer comprehensive medical

services. NAF Report 4 (citing Kaiser Daily Reproductive Health Report, *Crisis Pregnancy Centers Moving to Expand Services, Seeking Government Funding* (Feb. 19, 2002); Chandler, *supra*. LSPCs want to be near legitimate medical facilities so they can deceive women into entering their building rather than the nearby medical building to which the women have travelled. NAF Report 4 (describing an LSPC that “obtained an office on the same floor as a Planned Parenthood clinic and placed a sign outside their door that read ‘PP, Inc.,’” and noting that when challenged in court, the LSPC’s “use of the sign was enjoined as trademark and logo infringement” (internal citation omitted)).

Likewise, LSPCs that are located in former abortion-providing facilities capitalize on patrons who believe they are entering the former clinic, offering pregnancy tests and sonograms before the women can realize their mistake. NAF Report 4. These practices, combined with the practice of placing misleading signs on the outside of their facilities, make it even more difficult for women to know what services LSPCs provide.

Women reading an LSPC advertisement that (1) offers medical referrals, (2) appears in response to an internet search for “abortion” or “family planning” and (3) advertises information about “choices” or “options” would assume that the LSPC provides both referrals for medical services such as abortion and information about a range of family planning options. Signs outside the LSPC facility that

advertise “accurate information on all options” reinforce these assumptions. In fact, however, the LSPCs investigated by NARAL Maryland do not provide abortion services, abortion referrals, or scientifically-supported information about abortion and birth control. *See* Maryland Report 1. Instead, LSPCs use their deceptive advertisements to lure women into their facilities so that they can dissuade women from having an abortion or securing birth control—the exact medical services about which such women are seeking information. *Id.*; NAF Report 1. Accordingly, countless women who contact LSPCs based on advertisements promising comprehensive pregnancy counseling are instead presented with a narrow, incomplete, and inaccurate view of their options.

Additionally, because LSPCs hold themselves out as medical facilities, women reading LSPC advertisements would reasonably assume that the comprehensive information promised in the advertisement is provided in a manner that comports with the established medical community’s emphasis on scientifically-supported medical information and advice. *See* Maryland Report 4. The website for the Pregnancy Clinic of Bowie-Crofton, Severna Park is an example of this tactic. *See* <http://www.pregnancyclinic.org>, *supra*. In fact, LSPCs routinely give women information about abortion and birth control that is incorrect and fails to comport with the weight of abundant scientific evidence. *See* Maryland Report 1; Waxman Report 1-2; NAF Report 10.

**B. LSPCs Use False Pretenses To Delay Women From Seeking Time-Constrained Medical Services**

LSPCs also have been documented to use delay tactics to prevent women from having abortions early in their pregnancy, when abortion procedures are safest. For example, one LSPC told a NARAL Maryland investigator that she need not make a decision about abortion in a timely fashion because “[a]bortion is legal through all nine months of pregnancy.” Maryland Report 4; *see also* NAF Report 7-8 (describing “harmful tactics” used by LSPCs to delay women from having abortions). Such a statement is false: nowhere in the United States is abortion legal through all nine months of pregnancy. In Maryland, access to abortion before viability is legal and is safest, least expensive, and most widely available in the first trimester. There are specific and rare instances when abortion is available after the second trimester of pregnancy, but it is dishonest to imply that women can get abortions for any reason at any time. Statements such as the one cited above serve only to give women a false understanding of their timeline. This causes women who decide to choose abortion to (a) undergo more complicated (and therefore potentially more dangerous) and expensive procedures than they otherwise would have, (b) be unable to get an abortion that they want or need, having made their decision too late based on false information given to them by an LSPC counselor, or (c) delay access to prenatal care should they ultimately choose to continue their pregnancy.

Kathy Rogers, a board member of Maryland Religious Coalition for Reproductive Choice with over fifteen years of experience in clinical care, administration, patient advocacy, and policy development, testified before the Baltimore City Council about her experience with LSPCs. Echoing the findings of the Maryland Report and the NAF Report, Ms. Rogers testified that “women who visit [LSPCs] are often given misleading information about abortion. This misinformation can result in significant delays for women who are seeking care.” J.A. 274. During Ms. Rogers five years in the OB/GYN department at Johns Hopkins Bayview Medical Center and later as Executive Director of a private gynecology practice in North Baltimore, she counseled women who were given false and misleading information by LSPCs. J.A. 275. She testified that “[w]ithholding information and purposely misinforming women about abortion or other reproductive health options is misleading, fraudulent, deceptive, and dangerous to the welfare of women.” *Id.*

Indeed, many LSPC patrons are falsely led to believe that they are receiving counsel by a medical professional. *See* Maryland Report 4; NAF Report 4. Allowing women to erroneously believe that they are being treated by a medical professional encourages women to take the advice given as authoritative and discourages them from seeking a timely second opinion.



Another tactic that LSPCs use to delay women from seeking medical attention is encouraging telephone callers who request abortion services to come to the LSPC for an in-person meeting. *See* Maryland Report 5. By failing to disclose that they are not a facility that provides abortions or other comprehensive reproductive health services and instead encouraging women seeking abortion care to visit their center in-person, LSPCs make women think that they have procured an abortion option, thereby delaying additional research about legitimate and comprehensive medical caregivers.

LSPCs also regularly press women who visit their facilities to have sonograms at the LSPC, but not on the initial visit—rather only several weeks after they first contact the LSPC. *See* Maryland Report 5. Doing so (1) ensures that women will return to the LSPC for another visit, and (2) discourages women from seeking information about their full range of options because they believe they have further “medical care” scheduled. The effect is that women are deceived and their efforts to access comprehensive reproductive health services are further delayed.

Even though a district court issued a preliminary injunction against the enforcement of a similar law in New York City regulating LSPCs, that court still noted that the “[l]ack of transparency and delay in prenatal care can gravely impact a woman’s health.” *Evergreen Ass'n, Inc. v. City of New York*, 801 F. Supp. 2d

197, 207 (S.D.N.Y., July 13, 2011) (citation omitted). Further, the court observed that LSPCs “operating in pseudo-medical settings can spawn significant harms to pregnant, at-risk women who believe they are receiving medical care,” and “Plaintiff’s categorical denial of the existence of any such deception—and refusal to acknowledge the potential misleading nature of certain conduct—feigns ignorance of the obvious.” *Id.* at 208.

## **II. BALTIMORE HAS A COMPELLING INTEREST IN PROTECTING HEALTH CARE CONSUMERS FROM THE LSPCs’ DECEPTIVE PRACTICES AND THE ORDINANCE SERVES THAT INTEREST**

Baltimore has a compelling interest in protecting health-care consumers from fraudulent and deceptive advertising by LSPCs. *See National Fed’n of the Blind v. FTC*, 420 F.3d 331, 339 (4th Cir. 2005) (“prevention of fraud” is a “sufficiently strong, subordinating interest that the government is entitled to protect” through disclosure requirements (quoting *Secretary of State of Maryland v. Joseph H. Munson Co.*, 467 U.S. 947, 960-961 (1984))); *see also Madsen v. Women’s Health Ctr. Inc.*, 512 U.S. 753, 767-68 (1994) (agreeing that the state “has a strong interest in protecting a woman’s freedom to seek lawful medical or counseling services in connection with her pregnancy” (citing *Roe v. Wade*, 410 U.S. 113 (1973) and *In re T. W.*, 551 So. 2d 1186, 1193 (Fla. 1989))). Protecting health-care consumers from deceptive practices is compelling because these practices interfere with consumers’ ability to access health care information and

services, thus affecting their health and welfare. “It is apodictic that the city advances a compelling interest where it seeks to protect ‘the safety and welfare of its citizens.’” *Davenport v. City of Alexandria, Va.*, 683 F.2d 853, 855 (4th Cir. 1982) (quoting *Hickory Fire Fighters Ass’n v. City of Hickory, N.C.*, 656 F.2d 917, 923 (4th Cir. 1981)).

Additionally, deceptive practices by LSPCs reduce the amount of time available for women to procure the services they seek and thus may increase medical risk. Women who experience delays in accessing medical care because of deceptive advertising by LSPCs are deprived of the opportunity to have an earlier and thus safer abortion. As the Maryland Report notes, “[b]y delaying access to abortion services these centers make abortion more costly, dangerous, and difficult or impossible to obtain.” Maryland Report 5; *see also* Blum Declaration, J.A. 48 (“Public Health is advanced when individuals are provided with complete and accurate information about their health care options and the availability of health care services.”).

The Maryland Report and the Waxman Report, which both documented a pattern of deceptive practices by LSPCs, provided the City Council with ample evidence of the need for the Ordinance.<sup>2</sup> *See Anheuser-Busch, Inc. v. Schmoke*, 63

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<sup>2</sup> While the Waxman Report is not specifically about the practices of Maryland or Baltimore LSPCs, the Supreme Court “ha[s] permitted litigants to justify speech restrictions by reference to studies and anecdotes pertaining to

F.3d 1305, 1311 (4th Cir. 1995), *vacated on other grounds*, 517 U.S. 1206 (1996), *readopted*, 101 F.3d 325 (4th Cir. 1996) (“If it appears to the court that the legislative body could reasonably have believed, based on data, studies, history, or common sense, that the legislation would directly advance a substantial governmental interest, the government’s burden of justifying it is met.”). Pregnant women and women seeking information on comprehensive birth control services should know what to expect when they walk in the door of an LSPC. The LSPCs’ advertising deliberately obscures what a woman will experience when she enters such a facility and thus misleads the consumer about what services the LSPC provides. How-to guides on deceptive advertising teach LSPCs how to trick vulnerable women into coming into their establishments by hiding their true intention and failing to disclose that they do not provide the actual services that the women seek. *See, e.g., Entsminger, supra*, at 7-15; *12th & Delaware* (HBO Documentary Films, Summer Series 2010).

The Ordinance advances the City’s compelling interest because it is a deterrent to the false advertising that denies women vital health information. “By requiring limited-service pregnancy centers to disclose to the public that they do

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different locales altogether, or even, in a case applying strict scrutiny, to justify restrictions based solely on history, consensus, and simple common sense.” *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 628 (1995) (internal citations and quotation marks omitted).

not provide or make referral for abortion or comprehensive birth control services, [the] Ordinance . . . serves important public health goals. It provides women with key information they need to make decisions about where to go for reproductive health care.” Blum Declaration, J.A. 48. If, as required by the Ordinance, the true nature of the LSPC’s services must be disclosed prominently at the entrance to the facility, there is no benefit to be gained by LSPCs engaging in misleading advertising, as the consumer seeking services they do not provide will quickly learn the truth about the facility and will seek care elsewhere. “[D]isclosure requirements . . . ‘might be appropriately required . . . in order to dissipate the possibility of consumer confusion or deception.’” *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 651 (1985) (quoting *In re R.M.J.*, 455 U.S. 191, 201 (1982)). If staff and volunteers at LSPCs really believe that women deserve full information about their medical options, then they should have no objection to a law that simply requires a sign disclosing the limitations of the services they provide. “[S]ervice providers . . . possess more information [and] more power than consumers. As a result, full disclosure of what services a provider is offering, as well as what biases underlie the provision of those services, is needed to ensure that consumers are not deceived or taken advantage of; consumers are able to make fully informed, autonomous decisions about family planning or pregnancy-related care; and consumers have timely



## CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B).

1. Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(a)(7)(B), the brief contains 4,951.
2. The brief has been prepared in proportionally spaced typeface using Microsoft Word 2003 in 14 point Times New Roman font. As permitted by Fed. R. App. P. 32(a)(7)(C), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of September, 2012, the foregoing Brief for *Amici Curiae* was served via electronic filing under Local Rule 31(d) to the following counsel:

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