

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

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.

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

**BRIEF FOR NARAL PRO-CHOICE MARYLAND, NARAL PRO-CHOICE
AMERICA, CATHOLICS FOR CHOICE, DC ABORTION FUND, LAW
STUDENTS FOR REPRODUCTIVE JUSTICE, 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,
SISTERSONG, WHOLE WOMAN'S HEALTH OF BALTIMORE,
WOMEN'S LAW CENTER OF MARYLAND, THE HONORABLE DIANA
DEGETTE, THE HONORABLE DONNA EDWARDS, THE HONORABLE
CAROLYN MALONEY, THE HONORABLE MIKE QUIGLEY, THE
HONORABLE LOUISE SLAUGHTER AND THE HONORABLE JACKIE
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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.

Law Students for Reproductive Justice ("LSRJ") trains and mobilizes law students and new lawyers across the country to foster legal expertise and support for the realization of reproductive justice. Through peer education, campus activism, and coalition building, LSRJ's ninety law school chapters raise awareness of reproductive justice issues and their intersections with other areas of law, policy, and struggles for social justice.

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.

SisterSong Women of Color Reproductive Justice Collective (“SisterSong”) works to amplify and strengthen the collective voices of Indigenous women of color to ensure reproductive justice through securing human rights. SisterSong educates women of color on reproductive and sexual health and rights, and works towards the access of health services through the integration of the disciplines of community organizing, self-help, and human rights education.

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 Diana DeGette**, United States House of Representatives.

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

The **Honorable Carolyn Maloney**, 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.

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. 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/cpcreportfinal.pdf>. LSPCs also

target low-income women who have limited health care options. *See* NAF Report 5.

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. Entsminger, *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 (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 serves only to give women a false understanding of their timeline. This causes women who decide to choose abortion to (a) undergo more complicated (and

