

**No. 11-1111**

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

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

v.

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

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MARYLAND

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**BRIEF OF AMICI CURIAE HUMAN RIGHTS EXPERTS HUMAN  
RIGHTS WATCH AND PROFESSOR SUSAN DELLER ROSS,  
DIRECTOR, INTERNATIONAL WOMEN'S HUMAN RIGHTS CLINIC  
OF GEORGETOWN UNIVERSITY LAW CENTER**

**IN SUPPORT OF APPELLANTS**

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## **INTEREST OF THE AMICI CURIAE**

Human Rights Watch (“HRW”), the largest U.S.-based international human rights organization, was established in 1978 and investigates and reports on violations of human rights in the US and over 80 countries worldwide. HRW’s Women’s Rights Division and program in Health and Human Rights conduct research, analysis and advocacy on women’s exercise of their rights, including freedom of expression and right to information as well as sexual and reproductive health rights. HRW has documented the link between access to information and equality in both the exercise of rights to privacy and in access to health care. Specifically, HRW has revealed an association between the ability to seek and obtain information and the ability to obtain comprehensive family planning services, insist on the use of condoms (both as a form of birth control and HIV prevention), and access safe and legal abortion.

Susan Deller Ross is a Professor of Law, Director of the International Women’s Human Rights Clinic (“IWHRC”) at Georgetown University Law Center, and an expert in international human rights, comparative law, family law, and gender and the law. Under her direction, the IWHRC promotes women’s human rights throughout the world through its scholarship and advocacy, including litigation about women’s health rights.

Because both HRW and IWHRC work to document the importance of upholding international human rights standards on information and expression in the context of reproductive health globally, and believe that the values of international human rights law and those of the United States Constitution are congruent in their common purpose of ensuring equality and freedom, Amici have a substantial interest in the proper resolution of this case.<sup>1</sup>

## **I. BACKGROUND**

Indicators for maternal and child health in the City of Baltimore (“Baltimore”), Maryland are very poor. Maryland is ranked among the worst states in the country for low birth weight (43<sup>rd</sup>), infant mortality (39<sup>th</sup>) and preterm births (34<sup>th</sup>), despite having the highest median household income in the nation in 2008.<sup>2</sup> In 1999, 22.9% of the population was living below the poverty level in Baltimore,

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<sup>1</sup> Pursuant to Federal Rules of Appellate Procedure 27(a) and 29, Amici have requested leave to file this brief because Appellees have declined to consent to its filing. Amici also state that no party’s counsel authored this brief in whole or in part; no party or party’s counsel contributed money to fund the brief’s preparation or submission; and no person other than Amici and their counsel contributed money intended to fund the brief’s preparation or submission.

<sup>2</sup> THE MARYLAND TITLE V PROGRAM, 2010 MCH NEEDS ASSESSMENT 4 (2010), *available at*: <https://perfdata.hrsa.gov/MCHB/TVISReports/Documents/NeedsAssessments/2011/MD-NeedsAssessment.pdf>.

almost twice the national average of 12.4%.<sup>3</sup> Baltimore is the poorest jurisdiction in Maryland, with 20.9% of women living in poverty, compared with the state average of 9.4%.<sup>4</sup> Baltimore also has the highest rate of low birth weight newborns in the state, and was one of the three worst jurisdictions in the number of women receiving late or no prenatal care in 2008.<sup>5</sup> Maryland's average maternal mortality rate between 2001 and 2005 was 18.9 per 100,000 births, compared to a national average of 11.8.<sup>6</sup> These indicators are inconsistent with commitments made by the U.S. to reduce infant and maternal mortality rates, low birth weight and preterm births, and barriers to the accessibility of prenatal care.<sup>7</sup>

The U.S. has also committed to the elimination of racial and ethnic disparities in reproductive health outcomes, which are particularly stark for African Americans.<sup>8</sup> In 2000 64.3% of Baltimore's residents were African American,<sup>9</sup> as

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<sup>3</sup> U.S. CENSUS BUREAU, POVERTY: 1999, *available at*:  
<http://www.census.gov/prod/2003pubs/c2kbr-19.pdf>.

<sup>4</sup> THE MARYLAND TITLE V PROGRAM, *supra* note 2, at 23.

<sup>5</sup> *Id.* app. C, at 40, 56.

<sup>6</sup> *Id.* at 23.

<sup>7</sup> U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, HEALTHY PEOPLE 2020, MATERNAL, INFANT, AND CHILD HEALTH OBJECTIVES, *available at*:  
<http://www.healthypeople.gov/2020/topicsobjectives2020/objectiveslist.aspx?topicid=26>.

<sup>8</sup> *Id.*

compared with 12.9% in the United States as a whole.<sup>10</sup> As more fully described in Section III B. 4 below, the distribution of preventable morbidity and mortality is inequitably skewed across race, in particular as between white and African American women, a distribution that renders the role of centers offering free health services in a poor, 64% African American jurisdiction even more crucial—and potentially more damaging if those in need of them do not have full and accurate information on the range and limitations of available services.

Against this background, in 2006 U.S. Representative Henry A. Waxman commissioned a report investigating deceptive practices of some crisis pregnancy or pregnancy resource centers (“the Waxman Report”).<sup>11</sup> The Waxman Report found that the centers often advertise themselves as offering abortion services when in fact they are opposed to legal abortion and will not provide any information about or referral to legal services, and present limited choices to

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<sup>9</sup> U.S. CENSUS BUREAU, BALTIMORE CITY QUICK FACTS, *available at*: <http://quickfacts.census.gov/qfd/states/24/2404000.html>.

<sup>10</sup> U.S. CENSUS BUREAU, THE BLACK POPULATION: 2000, *available at*: <http://www.census.gov/prod/2001pubs/c2kbr01-5.pdf>.

<sup>11</sup> Minority Staff, Special Investigations Division, Committee on Government Reform, U.S. House of Representatives, FALSE AND MISLEADING HEALTH INFORMATION PROVIDED BY FEDERALLY FUNDED PREGNANCY RESOURCE CENTERS i (2006), *available at*: <http://www.chsourcebook.com/articles/waxman2.pdf>.

pregnant teenagers under the guise of complete information.<sup>12</sup> The Waxman Report found that these centers deliberately hide their pro-life mission in order to attract “abortion vulnerable clients.”<sup>13</sup> The Waxman Report found that 87% of the centers contacted “provided false or misleading information about the health effects of abortion,”<sup>14</sup> including statements that “abortion could increase the risk of breast cancer, result in sterility, and lead to suicide and ‘post-abortion stress disorder.’”<sup>15</sup> The Waxman Report’s findings were confirmed by a 2008 report on the situation in Maryland (“Maryland Report”), which documented similar deceptive practices used by pregnancy centers in Maryland, including in the City of Baltimore.<sup>16</sup> The Maryland Report concluded that the deceptive practices utilized by pregnancy centers endanger the public health by causing confusion leading to significant delays in accessing the services sought.<sup>17</sup> The Maryland Report found that potential clients who respond to deceptive pregnancy center advertising are

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<sup>12</sup> *Id.* at 2, 14.

<sup>13</sup> *Id.* at 1.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.* at i.

<sup>16</sup> NARAL PRO-CHOICE MARYLAND, MARYLAND CRISIS PREGNANCY CENTERS: THE TRUTH REVEALED (2008), *available at*: <http://www.prochoicemaryland.org/assets/files/cpreportfinal.pdf>. J.A. at 326-37.

<sup>17</sup> *Id.* at 6-7.



disproportionately poor women, young women, and women of low educational attainment, who tend to be less knowledgeable about their healthcare options and more vulnerable to deceptive practices.<sup>18</sup> The City Council also heard testimony of victims who had been deceived by pregnancy centers about how the deception negatively impacted their health.<sup>19</sup>

In response to these findings, in December 2009, the City of Baltimore enacted a consumer protection regulation (“Ordinance”), which requires that pregnancy centers disclose the limited extent of the services that they provide.<sup>20</sup>

The Ordinance states that each limited-service pregnancy center “must provide its clients and potential clients with a disclaimer substantially to the effect that the center does not provide or make referral for abortion or birth-control services” that is “posted in the center’s waiting room or other area where individuals await service.”<sup>21</sup> It was enacted to prevent deception in the provision of pregnancy and other sexual and reproductive health (family planning) services. It requires only the truthful disclosure of fact: centers must disclose the range of services that they do and do not provide, in their own words. In January 2011,

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<sup>18</sup> *Id.* at 2.

<sup>19</sup> *See, e.g.*, J.A. at 257-58, 261, 273-76.

<sup>20</sup> BALTIMORE, MD., HEALTH CODE §§ 3-501-3-506 & BALTIMORE, MD., CODE ART I, §§ 40-14, 41-14 (2010). J.A. at 25-28.

following a challenge by the Respondents, the District Court concluded that the Ordinance violated the Free Speech Clause of the First Amendment and enjoined its enforcement.

## I. SUMMARY OF ARGUMENT

Amici do not contend that international law is binding in this case but that when determining if governmental action is constitutional it is appropriate to have regard to the extent to which that action is in fulfillment of international human rights obligations.

Under international human rights treaties by which the U.S. has agreed to be bound, the City of Baltimore may require limited-service pregnancy centers to post a sign on their premises disclosing truthful information about the scope of their services (specifically, that they do not provide or make referrals for abortion or birth-control services). Not only is the Ordinance compatible with applicable international human rights treaties, but it also serves the compelling governmental interests arising out of U.S. obligations to respect and protect a number of rights under those treaties (such as the rights to privacy, life, and non-discrimination).

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<sup>21</sup> *Id.*

Amici argues that two treaties in particular ratified by the United States, the International Covenant on Civil and Political Rights (“ICCPR”)<sup>22</sup> and the International Convention on the Elimination of All forms of Racial Discrimination (“ICERD”),<sup>23</sup> contain provisions and protections for fundamental rights that are directly relevant to assessing the constitutionality of the government action in this case. The ICCPR and ICERD taken together address the circumstances under which speech can be regulated to promote important governmental interests in “public health” and “protecting the rights of others” in ways that can offer useful guidance to U.S. courts considering these issues under the First Amendment’s exacting protections for speech. An analysis of the applicable human rights obligations and standards demonstrates that the Ordinance is not only compatible with international human rights standards, but with the U.S. Constitution.

The Ordinance constitutes a very narrow and limited interference with free speech, and was enacted in pursuit of of the following compelling governmental interests:

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<sup>22</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. G.A.O.R. Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992 [hereinafter ICCPR].

<sup>23</sup> International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), Annex, 20 U.N. G.A.O.R. Supp. (No. 14) at 47, UN Doc A/6014 (1966), 660

a) to ensure that women and girls have timely access to accurate and truthful information about the scope of services a pregnancy resource center offers so that they can exercise their right to make fully informed decisions consistent with their rights to equality, privacy, dignity, liberty and life;

b) to address the extremely poor health indicators in Maryland, particularly amongst African-American women, and underscoring a pressing public health need to ensure that women and girls are fully and accurately informed about reproductive health services available to them so that they can make fully informed decisions consistent with their rights to equality, privacy, dignity, liberty and life; and

c) to meet its obligation under international law to protect individuals—particularly women and girls—seeking sexual and reproductive health services from deceptive practices that interfere with their rights to make fully informed decisions consistent with their rights to equality, privacy, dignity, liberty and life.

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U.N.T.S. 195, entered into force January 4, 1969, ratified by the United States on November 20, 1994.