IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(NORTHERN DIVISION)

ARCHBISHOP EDWIN F. O'BRIEN, ARCHBISHOP OF BALTIMORE AND HIS SUCCESSORS IN OFFICE, A CORPORATION SOLE, *et al.*	*	
Plaintiffs,	*	**No. 1:10-cv-00760 MJG**
v.	*	
MAYOR AND CITY COUNCIL OF BALTIMORE, *et al.*	*	
Defendants.	*	

* * * * * * * * * * * * *

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Suzanne Sangree, Chief Solicitor
Federal Bar No. 26130
City of Baltimore Law Department
City Hall, Room 109
100 North Holliday Street
Baltimore, Maryland 21202
Telephone: (410) 396-3249
Fax: (410) 659-4077
Email: suzanne.sangree@baltimorecity.gov

Stephanie Toti*
Special Assistant City Solicitor
New York Bar No. 4270807
Center for Reproductive Rights
120 Wall Street, 14th Floor
New York, New York 10005
Telephone: (917) 637-3684
Fax: (917) 637-3666
Email: stoti@reprorights.org

**Motion for Admission Pro Hac Vice Pending*

ATTORNEYS FOR DEFENDANTS

TABLE OF CONTENTS

Defendants Mayor and City Council of Baltimore, Stephanie Rawlings-Blake, Olivia Farrow, Esq., and Baltimore City Health Department (collectively, "Defendants") respectfully submit this memorandum of law in support of their motion to dismiss Plaintiffs' Complaint for Injunctive and Declaratory Relief (the "Complaint"). Plaintiffs seek to invalidate Baltimore City Ordinance 09-252 (the "Ordinance"),[1] a consumer protection law that requires limited-service pregnancy centers to post signs in their waiting areas indicating that they do not provide or make referral for abortion or comprehensive birth control services. Their claims lack merit and should be dismissed for three reasons: First, the Complaint fails to state a claim with respect to any of the four counts set forth therein; therefore, it should be dismissed in its entirety under Federal Rule of Civil Procedure 12(b)(6). Second, Plaintiffs Archbishop Edwin F. O'Brien ("O'Brien") and St. Brigid's Roman Catholic Congregation, Inc. ("St. Brigid's") lack standing to challenge the Ordinance. Thus, if the Complaint withstands dismissal under Rule 12(b)(6), the claims asserted by Plaintiffs O'Brien and St. Brigid's should be dismissed for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). Third, Defendant Baltimore City Health Department lacks the capacity to be sued. Accordingly, all claims asserted against the agency should be dismissed under Federal Rule of Civil Procedure 17(b).

FACTS

In December 2009, the City of Baltimore ("City") enacted the Ordinance, which took effect on January 4, 2009. The Ordinance is a consumer protection regulation that applies to limited-service pregnancy centers, defined 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

[1] The Ordinance is codified at BALT. CITY HEALTH CODE §§ 3-501 to 3-506 (2010), *available at* http://www.baltimorecity.gov/Portals/0/Charter%20and%20Codes/Code/Art%2000%20-%20Health.pdf, and BALT. CITY CODE ART. I, §§ 40-14, 41-14 (2010), *available at* http://www.baltimorecity.gov/Portals/0/Charter%20and%20Codes/Code/Art%2001%20-%20MayorCouncil.pdf.

information about pregnancy-related services; but (II) does not provide or refer for: (A) abortions; or (B) nondirective and comprehensive birth-control services." BALT. CITY HEALTH CODE § 3-501. The Ordinance provides that "[a] 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." BALT. CITY HEALTH CODE § 3-502(A). The disclaimer required by the Ordinance must be given through one or more signs that are: "(1) written in English and Spanish; (2) easily readable; and (3) conspicuously posted in the center's waiting room or other area where individuals await service." BALT. CITY HEALTH CODE § 3-502(B). The Ordinance authorizes the Health Commissioner to issue a violation notice to a limited-service pregnancy center that is violating the Ordinance, directing the center to correct the violation. BALT. CITY HEALTH CODE § 3-503. Failure to comply with a violation notice is punishable by the issuance of an environmental citation or a civil citation, each of which carries a civil penalty of $150. BALT. CITY HEALTH CODE § 3-506; BALT. CITY CODE ART. I, §§ 40-14, 41-14.

The City enacted the Ordinance in response to evidence presented to the City Council documenting a pattern of deceptive practices by limited-service pregnancy centers. A 2006 report released by U.S. Representative Henry A. Waxman found that limited-service pregnancy centers often engage in deceptive advertising to attract women seeking abortion and comprehensive birth-control services to their facilities. *See* 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 at 1-2 (2006) (hereinafter "Waxman Report"). The centers then use delay tactics to stall women from accessing those services, while subjecting them to anti-abortion and

anti-contraception propaganda. *Id*. at 7-14. Cloaked in the white coat of a medical provider, the centers provide false factual information to these vulnerable women concerning contraception and the mechanics of the abortion procedure, as well as its physical risks and psychological sequelae. *Id.* The findings of the Waxman Report were confirmed by a 2008 report that documented similar deceptive practices used by limited-service pregnancy centers in the State of Maryland. *See* Melissa Kleder, M.A. and S. Malia Richmond-Crum, M.P.H., THE TRUTH REVEALED: MARYLAND CRISIS PREGNANCY CENTER INVESTIGATIONS at 3-4 (2008) (hereinafter "Maryland Report").

The City Council also heard testimony from numerous women complaining about deceptive practices used by limited-service pregnancy centers. One woman recounted her own experience as a teenager of being lured to a limited-service pregnancy center because it advertised itself in the phone book under "Abortion Counseling." Testimony of Tori McReynolds (Oct. 27, 2009). She was subjected to a great deal of traumatizing and false propaganda before she realized that the center did not perform abortions or provide referrals for abortion services. *Id.* Another woman who serves as a college professor recalled countless stories from female students about being deceived by limited-service pregnancy centers. Testimony of Jodi Kelber-Kaye, Ph.D (Oct. 27, 2009).

In addition to deceiving consumers, the delay tactics employed by limited-service pregnancy centers also pose a threat to public health. Overall, abortion is a very safe procedure when performed by a properly-trained medical professional, but the risks of abortion, as well as the costs, increase as a woman advances through her pregnancy. *See* Maryland Report at 4-5. As a result, the longer a woman must wait to have an abortion, the riskier and costlier the procedure becomes. Similarly, delays in access to the birth control method of a woman's choice

can leave the woman vulnerable to unintended pregnancy and sexually transmitted diseases. *See generally* Centers for Disease Control, *Women's Reproductive Health: Home*, http://www.cdc.gov/reproductivehealth/WomensRH/index.htm (last visited June 7, 2010).

On March 29, 2010, Plaintiffs O'Brien, St. Brigid's, and the Greater Baltimore Center for Pregnancy Concerns, Inc. ("Pregnancy Center") filed a lawsuit challenging the Ordinance. Defendants now move the Court to dismiss the lawsuit pursuant to Federal Rule of Civil Procedure 12(b)(6) because Plaintiffs have failed to state a claim on which relief can be granted. In the alternative, Defendants move the Court to dismiss the claims asserted by Plaintiffs O'Brien and St. Brigid's and against Defendant Baltimore City Health Department. Plaintiffs O'Brien and St. Brigid's lack standing to challenge the Ordinance because neither owns or operates a limited-service pregnancy center. Therefore, the claims asserted by those Plaintiffs must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1). Defendant Baltimore City Health Department lacks the capacity to sue or be sued. Therefore, the claims against that Defendant must be dismissed pursuant to Federal Rule of Civil Procedure 17(b).

ARGUMENT

I. The Complaint Should Be Dismissed in its Entirety under Rule 12(b)(6).

The Complaint should be dismissed in its entirety under Federal Rule of Civil Procedure 12(b)(6) because Plaintiffs have failed to show "enough facts to state a claim to relief that is plausible on its face" with respect to any of the four counts set forth in the Complaint. *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570 (2007); *see* Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain a "'showing,' rather than a blanket assertion, of entitlement to relief." *Id.* at 555 n.3 (quoting Fed. R. Civ. P. 8(a)(2)). "That showing must consist of more than 'a formulaic recitation of the elements of a cause of action"

or "naked assertion[s] devoid of further factual enhancement.'" *Shield Our Constitutional Rights and Justice v. Tippett*, 2009 WL 2961428, at *3 (D. Md. Sept. 11, 2009) (quoting *Ashcroft v. Iqbal*, ___ U.S. ___, 129 S. Ct. 1937, 1949 (2009)) (internal citations omitted). Although the Court must take all well-pleaded allegations as true in weighing a motion to dismiss under Rule 12(b)(6), "the Court need not . . . accept unsupported legal allegations" or "legal conclusions couched as factual allegations." *Sylla v. First Franklin Financial Corp.*, 2010 WL 1710948, at *2 (D. Md. April 26, 2010). Thus, "[d]etermining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Tippett*, 2009 WL 2961428, at *3 (quoting *Iqbal*, 129 S. Ct. at 1950). "In sum, 'factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).'" *Sylla*, 2010 WL 1710948, at *2 (quoting *Twombly*, 550 U.S. at 555). The Complaint fails to meet that standard for any of the four counts asserted. Therefore, the Court should dismiss the Complaint in its entirety under Rule 12(b)(6) for failure to state a claim.

A. Count I of Plaintiffs' Complaint Fails to State a Claim for Violation of the Rights of Freedom of Speech and Freedom of Assembly.

1. Plaintiffs Fail to State a Claim that the Ordinance Violates the Right to Freedom of Speech.

Under well-settled principles of constitutional law, the standard to which the Ordinance is subject depends on whether it compels commercial speech or noncommercial speech. Laws that compel commercial speech are permissible if their "disclosure requirements are reasonably related to the State's interest in preventing deception of consumers." *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 651 (1985). Laws that compel noncommercial speech are permissible if there is a "substantial relation" between the

laws' disclosure requirements and a "sufficiently important governmental interest." *Citizens United v. Federal Election Commission*, ___ U.S. ___, 130 S. Ct. 876, 914 (2010) (internal quotation marks omitted). The Ordinance is best understood as compelling commercial speech because its required disclaimer communicates the types of services offered by a business enterprise; such speech is inherently commercial in nature. Ultimately, though, the Ordinance withstands scrutiny under either standard.

a. The Ordinance Compels Speech that is Commercial in Nature.

The disclaimer required by the Ordinance constitutes commercial speech because it solely concerns the types of services offered to consumers by a limited-service pregnancy center. Speech that relates to advertising of services and solicitation of clients, including speech that communicates the types of services offered by an enterprise, is inherently commercial in nature. *See Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 66-68 (1983).

The disclaimer required by the Ordinance is purely commercial speech aimed at ensuring that consumers of pregnancy related services are not misled. The disclaimer is not intertwined with any other speech of a non-commercial nature. *See* BALT. CITY HEALTH CODE § 3-502. No one who works for a limited-service pregnancy center is required to utter the disclaimer during a conversation with a client. *See id*. The disclaimer merely needs to be written on a sign that is posted in a conspicuous area of the center's waiting room. *See id*. Therefore, in determining whether the Ordinance regulates commercial speech, the Court need only consider the nature of the disclaimer required by the Ordinance and not any speech that may be uttered by a limited-service pregnancy center staff member.[2] *See Riley v. National Federation of the Blind of North*

[2] In that respect, the Ordinance is distinguishable from the statute at issue in *Riley*, which required professional fundraisers to disclose to potential donors, before an appeal for funds, the percentage of charitable contributions collected during the previous year that were actually turned over to charity. *Riley v. National Federation of the Blind of North Carolina*, 487 U.S. 781, 795 (1988). The Supreme Court held that the speech at issue contained both

Carolina, 487 U.S. 781, 795 (1988).

Plaintiffs allege in the Complaint that the speech regulated by the Ordinance (as-applied to Plaintiffs)[3] is not commercial speech because Plaintiffs are "charitable non-profit entities, do not charge pregnant women for their services and do not have a profit motive or economic interest in the services provided." Complaint ¶ 62. Plaintiffs' allegation is both irrelevant as a legal matter and untrue as a factual matter.

As a legal matter, it is well-settled that a speaker's profit-motive is not relevant to the status of speech as commercial or non-commercial. *See, e.g., Board of Trustees of State University of New York v. Fox*, 492 U.S. 469, 482 (1989). As the U.S. Supreme Court explained when deciding whether a disputed advertisement was commercial speech, "That the *Times* was paid for publishing the advertisement is as immaterial in this connection as is the fact that newspapers and books are sold." *New York Times v. Sullivan*, 376 U.S. 254, 266 (1964). Consistent with this principle, courts have not distinguished between private law firms and public interest law firms in determining the level of scrutiny applicable to restrictions on attorney advertising. *See, e.g., Alexander v. Cahill*, ___ F.3d ___, 2010 WL 842711 (2d Cir. Mar. 12, 2010). Thus, Plaintiffs' assertion that they are charitable non-profit entities without a profit motive in the services that pregnancy centers provide is irrelevant.

In any event, as a factual matter, while Plaintiffs may not, strictly speaking, have a profit motive, they certainly have an economic interest in the services provided. Plaintiff Greater Baltimore Center for Pregnancy Concerns, Inc. ("Pregnancy Center") receives payments from

---

commercial and non-commercial elements that were inextricably intertwined; as a result, it applied the standard for noncommercial speech. *Id.* ("[W]here, as here, the component parts of a single speech are inextricably intertwined, we cannot parcel out the speech, apply one test to one phrase and another test to another phrase. Such an endeavor would be both artificial and impractical. Therefore we apply our test for fully protected expression."). Here, the disclaimer required by the Ordinance stands completely on its own and contains only commercial elements.

[3] The Ordinance, on its face, applies both to enterprises that charge their clients a fee in exchange for providing services and to those who provide services without charging a fee. *See* BALT. CITY HEALTH CODE § 3-501(2)(1).

third-party funders in exchange for providing services to clients. It then uses those payments to provide wages and other economic benefits to its staff.

For all of these reasons, the required disclaimer constitutes purely commercial speech, which serves to protect consumers from deception in the pursuit of pregnancy related services.

b. The Ordinance is a Permissible Regulation of Commercial Speech Because its Disclosure Requirements are Reasonably Related to the City's Interests in Preventing Deception of Consumers.

Laws that compel commercial speech are permissible if their "disclosure requirements are reasonably related to the State's interest in preventing deception of consumers." *Zauderer*, 471 U.S. at 651; *accord Milavetz, Gallop & Milavetz, P.A. v. United States*, ___ U.S. ___, 130 S. Ct. 1324, 1339-40 (2010). The U.S. Supreme Court first announced this mandatory disclosure standard in *Zauderer*, a case examining the validity of a rule of professional conduct that required attorneys who advertised contingency-fee services to disclose in their advertisements that a losing client might still be responsible for certain litigation fees and costs. *Zauderer*, 471 U.S. at 630. Upholding the rule, the Court explained that, "[b]ecause disclosure requirements trench much more narrowly on an advertiser's interests than do flat prohibitions on speech, warnings or disclaimers might be appropriately required in order to dissipate the possibility of consumer confusion or deception." *Id.* at 651. It ultimately concluded that "an advertiser's rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers." *Id.*

The Supreme Court applied the *Zauderer* standard most recently in *Milavetz*. *See Milavetz, Gallop & Milavetz,* 130 S. Ct. at 1339-41. There, the Court addressed a First Amendment challenge to certain provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, including a provision that requires debt relief agencies to include certain

disclosures in their advertisements. The Court held that: "Because [the Act's] requirements that Milavetz identify itself as a debt relief agency and include certain information about its bankruptcy-assistance and related services are 'reasonably related to the [Government's] interest in preventing deception of consumers,' we uphold those provisions as applied to Milavetz." *Id.* at 1341 (quoting *Zauderer*, 471 U.S. at 651) (citations omitted). In the course of its opinion, the Court rejected the plaintiff's argument that the Government had failed to adduce evidence that the plaintiff's advertisements are misleading. It stated: "Evidence in the congressional record demonstrating a pattern of advertisements that hold out the promise of debt relief without alerting consumers to its potential cost is adequate to establish that the likelihood of deception in this case is hardly a speculative one." *Id.* at 1340 (citations and internal quotation marks omitted).

Here, it is plain that the Ordinance satisfies the *Zauderer* standard. The requirement that a limited-service pregnancy center post a sign with a disclaimer substantially to the effect that the center does not provide or make referral for abortion or birth-control services is analogous to the requirements in *Zauderer* and *Milavetz.* The former required an attorney who advertises contingency-fee services disclose in his or her advertisements that a losing client might still be responsible for certain litigation fees and costs; the latter required an entity that provides bankruptcy-assistance services to identify the nature of its services. The disclaimer required by the Ordinance, like those in *Zauderer* and *Milavetz*, is reasonably related to the government's interest in shielding consumers from confusion or deception.

Moreover, the evidence in the legislative record concerning the Ordinance, just like the evidence in the legislative record concerning the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, is sufficient to establish a likelihood of deception. The City Council had

the benefit of two recent reports, one prepared for a member of the U.S. House of Representatives, documenting a pattern of deceptive practices by limited-service pregnancy centers. *See* Waxman Report at 1-2; Maryland Report at 3-4. In addition, during the legislative hearings on the Ordinance, the City Council heard testimony from numerous women complaining about the deceptive practices used by limited-service pregnancy centers. One woman recounted her own experience as a teenager of being lured to a limited-service pregnancy center because it advertised itself in the phone book under "Abortion Counseling." Testimony of Tori McReynolds (Oct. 27, 2009). She was subjected to a great deal of traumatizing propaganda before she realized that the center did not perform abortions or provide referrals for abortion services. *Id.* Another woman who serves as a college professor recalled countless stories from female students about being deceived by limited-service pregnancy centers. Testimony of Jodi Kelber-Kaye, Ph.D (Oct. 27, 2009).

Plaintiffs allege in their Complaint that the disclaimer required by the Ordinance is itself deceptive. In particular, they claim that, because the Center provides "information and education on natural family planning and abstinence," the Ordinance's requirement that the Center post a sign that contains a disclaimer substantially to the effect that the center does not provide or make referral for abortion or birth-control services is false and misleading. Complaint ¶ 41. That argument is unavailing. The Ordinance does not require the Center to use a specific set of words in its disclaimer. *See* BALT. CITY HEALTH CODE § 3-502. The Center can satisfy the requirements of the Ordinance by posting a sign that says: "We do not provide or make referral for abortion or birth control services other than natural family planning and abstinence." *See id.* There is nothing false or misleading about that statement; indeed, Plaintiffs allege a substantially

similar statement in their Complaint. *See* Complaint ¶ 26.[4]

The Supreme Court rejected a similar argument by the plaintiff in *Milavetz*, noting that the statute at issue "gives Milavetz flexibility to tailor the disclosures to its individual circumstances, as long as the resulting statements are 'substantially similar' to the statutory examples." *Milavetz*, 130 S. Ct. at 1341; *see also Hersh v. United States ex rel. Mukasey*, 553 F.3d 743, 767 (5th Cir. 2008) ("[C]ontrary to Hersh's arguments, [the statute] does not require Hersh or other debt relief agencies to make false and misleading statements. Most of the statements that Hersh cites as examples of false and misleading material are simply generalizations that she is free to expand upon and clarify for her clients.").[5]

In sum, the Ordinance is a permissible regulation of commercial speech because its disclosure requirements are reasonably related to the City's interests in preventing deception of consumers. Accordingly, Plaintiffs' fail to state a claim that the Ordinance violates the right of freedom of speech.

c. In the Alternative, the Ordinance is a Permissible Regulation of Noncommercial Speech Because There is a Substantial Relation between its Disclosure Requirements and a Sufficiently Important Governmental Interest.

Even if the Court were to find that the Ordinance compels noncommercial speech, it should conclude, nevertheless, that the Ordinance is constitutionally sound. That is because laws that compel noncommercial speech are permissible if there is a "substantial relation" between the laws' disclosure requirements and a "sufficiently important governmental interest." *Citizens*

[4] Indeed, a proposed Health Department Regulation confirms that such a disclaimer would be sufficient. *See* Regulation on Limited-Service Pregnancy Center Disclaimers in Balt. City (proposed Apr. 15, 2010), *available at* http://www.baltimorehealth.org/info/proposed-limited-pregnancy-regulation46mnh%20_3_.pdf.

[5] In *Hersh*, the Fifth Circuit considered a provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 not addressed by the Supreme Court in *Milavetz*, Section 527(b). *See Hersh*, 553 F.3d at 764. That provision requires debt relief agencies to provide their clients with written notice of certain basic information regarding bankruptcy proceedings. *Id.* Although the court concluded that Section 527(b) was subject to the standard for noncommercial speech, it nevertheless upheld the disclosure requirement. *Id.* at 766-67.

United, 130 S. Ct. at 914 (internal quotation marks omitted).

In *Citizens United*, the Supreme Court upheld the disclaimer provisions of the Bipartisan Campaign Reform Act of 2002 ("BCRA") against a First Amendment challenge. *Id.* Under BCRA § 311, televised electioneering communications funded by anyone other than a candidate must include a disclaimer that "[-----] is responsible for the content of this advertising." 2 U.S.C. § 441d(d)(2); *see Citizens United*, 130 S. Ct. at 913-14. The required statement must be made in a "clearly spoken manner," and displayed on the screen in a "clearly readable manner" for at least four seconds. 2 U.S.C. § 441d(d)(2); *see Citizens United*, 130 S. Ct. at 914. In addition, it must state that the communication "is not authorized by any candidate or candidate's committee," and it must also display the name and address (or website address) of the person or group that funded the advertisement. 2 U.S.C. § 441d(a)(3); *see Citizens United*, 130 S. Ct. at 914. The plaintiffs in *Citizens United* challenged the application of the disclosure requirements to both a documentary film about Hillary Clinton and three advertisements to promote the film. *See Citizens United*, 130 S. Ct. at 913. The Court held that both the film and the advertisements constituted fully-protected political speech. *Id.* at 898, 914. Nevertheless, it rejected the plaintiffs' claim that application of the disclaimer requirement to the film and the advertisements violated the First Amendment. The Court identified the proper standard of review as "exacting scrutiny," which it described as requiring "a substantial relation" between the disclosure requirement and a "sufficiently important" governmental interest." *Id.* at 914 (quoting *Buckley v. Valeo*, 424 U.S. 1, 64-66 (1976)). The Court did not engage in a formal "least restrictive means" analysis, but it did note that "disclosure is a less restrictive alternative to more comprehensive regulations of speech." *Id.* at 915.

Here, the Ordinance serves at least two governmental interests that are sufficiently

important to warrant the *de minimis* burden of the disclaimer requirement on limited-service pregnancy centers. First, the City has a compelling interest in ensuring that women who seek abortion or birth control services have prompt access to those services. Overall, abortion is a very safe procedure when performed by a properly-trained medical professional, but the risks of abortion, as well as the costs, increase as the woman advances through her pregnancy. *See* Maryland Report at 4-5. As a result, the longer a woman must wait to have an abortion, the riskier and costlier the procedure becomes. Similarly, delays in access to the birth control method of a woman's choice can leave the woman vulnerable to unintended pregnancy and sexually transmitted diseases. *See generally* Centers for Disease Control, *Women's Reproductive Health: Home*, http://www.cdc.gov/reproductivehealth/WomensRH/index.htm (last visited June 7, 2010).

Second, the City has a compelling interest in protecting consumers from deceptive advertising and other deceptive business practices. As discussed above, limited-service pregnancy centers often engage in deceptive advertising to attract women seeking abortions to their facilities. *See* Waxman Report at 1-2; *supra* at 2-3, 10. Once they have succeeded in doing so, limited-service pregnancy centers are known to use delay tactics to string women along, stalling them for hours, days, or even weeks from accessing abortion and birth control services, while subjecting them to anti-abortion and anti-contraception propaganda. *See* Maryland Report at 3-4.

There is a substantial relationship between the disclaimer required by the Ordinance and the City's dual interests in ensuring that women who seek abortion or birth control services have prompt access to those services and protecting consumers from deceptive advertising and other deceptive business practices, each of which is sufficiently important to justify the minimally

burdensome disclaimer requirement. *Cf. Citizens United*, 130 S. Ct. at 914. The disclaimer required by the Ordinance will inform women seeking abortion and comprehensive birth control services immediately upon their arrival at a limited-service pregnancy center that those services are not available there. The disclaimer thus prevents women from being unduly delayed in accessing those services. The disclaimer will also discourage limited-service pregnancy centers from using deceptive advertising and delay tactics, as well as inform women who have been lured to limited-service pregnancy centers under false pretenses of the truth about what kinds of services are offered there.

Moreover, the Ordinance is the least restrictive means of serving the City's interests. As the Supreme Court stated in *Citizens United*, disclosure requirements in general are less restrictive than other kinds of regulations of speech. *Id.*; *accord Zauderer*, 471 U.S. at 651 ("[D]isclosure requirements trench much more narrowly on an advertiser's interests than do flat prohibitions on speech."). Further, the signage requirement of the Ordinance is less restrictive than a requirement that a limited-service pregnancy center staff member communicate the disclaimer verbally to a client or potential client.

Thus, the Ordinance is a permissible regulation of noncommercial speech because there is a substantial relation between its disclosure requirements and a sufficiently important governmental interest. Accordingly, even if the Court were to find that the Ordinance compels noncommercial speech, Plaintiffs fail to state a claim that the Ordinance violates the right to freedom of speech.

d. Contrary to Plaintiffs' Allegations, the Ordinance Does not Discriminate Based on a Speaker's Viewpoint.

Plaintiffs' contention that the Ordinance discriminates based on a speaker's viewpoint about abortion, *see* Complaint ¶ 58, is completely unfounded. The Ordinance does not apply to

persons based on their viewpoint about abortion; rather, it applies to persons based on the scope of services they provide to the public. Its purpose is to ensure that women who seek abortion or birth control services have prompt access to those services, as well as to protect consumers from deceptive advertising and other deceptive business practices. It does not disadvantage anyone based on his or her viewpoint about abortion; it only disadvantages those who seek to deceive the public.

e. Contrary to Plaintiffs' Allegations, the Ordinance is not a Prior Restraint on Speech.

Contrary to the assertions of Plaintiffs, *see* Complaint ¶ 59, the Ordinance is not a prior restraint on speech. First Amendment jurisprudence recognizes a clear distinction between disclosure requirements and bans on speech. *See, e.g., Citizens United*, 130 S. Ct. at 914 ("Disclaimer and disclosure requirements may burden the ability to speak, but they do not prevent anyone from speaking."); *Zauderer*, 471 U.S. at 650 (There are "material differences between disclosure requirements and outright prohibitions on speech."). The Ordinance is a disclosure requirement. It does not prevent limited-service pregnancy centers from speaking; it merely requires them to post signs that contain a disclaimer. *See* BALT. CITY HEALTH CODE § 3-502. Plaintiffs assert that "the Center must cease speaking with pregnant women unless and until the Center complies with the Ordinance." Complaint ¶ 59. Plaintiffs can say the same thing about compliance with the fire code, but surely the fire code is not a prior restraint on speech. Plaintiffs' contention that the Ordinance is a prior restraint on speech is utterly meritless.

2. Plaintiffs Fail to State a Claim that the Ordinance Violates the Right of Freedom of Assembly.

Plaintiffs' freedom of assembly claim is likewise meritless. The Ordinance imposes no

limitation whatsoever on Plaintiffs' ability to assemble or to meet with others. The Ordinance merely requires limited-service pregnancy centers to post a sign containing a disclaimer in the center's waiting area. *See* BALT. CITY HEALTH CODE § 3-502. In *San Jose Christian College*, the court held that a religiously affiliated college failed to assert a colorable claim that a city's denial of its rezoning application violated the college's right of freedom of assembly because the city's action did not "impose[] a serious burden upon, affect[] in any significant way, or substantially restrain[]" the college's efforts to gather its members together for education and worship. *San Jose Christian College v. City of Morgan Hill*, 360 F.3d 1024, 1033 (9th Cir. 2004). The same is true of the Ordinance; it does not impose a serious burden upon, affect in any significant way, or substantially restrain Plaintiffs' ability to assemble or to meet with others. Accordingly, Plaintiffs' fail to state a claim that the Ordinance violates the right of freedom of assembly.

* * * * *

In sum, Plaintiffs have failed to state a claim for violation of their rights to free speech and freedom of assembly. Therefore, Count I of Plaintiffs' Complaint should be dismissed in its entirety.

B. Count II of Plaintiffs' Complaint Fails to State a Claim for Violation of the Right of Free Exercise of Religion.

The Ordinance does not impose any burden on Plaintiffs' right of free exercise of religion. It does not require Plaintiffs to provide abortion or comprehensive birth control services to anyone; it does not require Plaintiffs to make referrals for abortion or comprehensive birth control services; and it does not prohibit Plaintiffs from telling anyone about their beliefs that abortion and certain methods of birth control are immoral. *See* BALT. CITY HEALTH CODE § 3-502. The Ordinance merely requires limited-service pregnancy centers to disclose via a posted

sign the fact that they do not provide or make referrals for such services. *See id.*

It is well settled law that "the right of free exercise does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 879 (1990) (internal quotation marks omitted). The Supreme Court elaborated that standard in *Smith*, in which the plaintiffs claimed that Oregon's criminal prohibition on use of the hallucinogenic drug peyote violated the Free Exercise Clause of the First Amendment because they ingested the drug for sacramental purposes during religious ceremonies at their church. *See Id.* at 874. In that case, unlike here, the plaintiffs were forced to choose between foregoing a religious practice and violating the law. *See id.* Nevertheless, the Supreme Court rejected the plaintiffs' free exercise claim, holding that the right of free exercise did not relieve the plaintiffs of the obligation to comply with a valid and neutral law of general applicability on the ground that the law prohibited conduct essential to a religious practice of the plaintiffs. *Id.* at 882. *A fortiorari*, then, the right of free exercise does not relieve a limited-service pregnancy center of its obligation to comply with the Ordinance on the ground that the Ordinance requires the center to disclose the fact that it refuses to provide or make referral for certain services, notwithstanding that its refusal is religiously motivated. *See id.* at 879 ("The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities.") (quoting *Minersville School District Board of Education v. Gobitis*, 310 U.S. 586, 594-95 (1940)).

Accordingly, Plaintiffs have failed to state a claim for violation of the right of free exercise of religion, and Count II of Plaintiffs' Complaint should be dismissed in its entirety.

C. Count III of Plaintiffs' Complaint Fails to State a Claim for Violation of the Right to Equal Protection of the Laws.

In Count III of the Complaint, Plaintiffs incorrectly allege that the Ordinance violates the Fourteenth Amendment guarantee of equal protection of the laws. Complaint ¶¶ 76-82. At its essence, the Equal Protection Clause requires that "all persons similarly situated . . . be treated alike." *Greenville Women's Clinic v. Bryant*, 222 F.3d 157, 172 (4th Cir. 2000) (quoting *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985); *Reed v. Reed*, 404 U.S. 71, 77 (1971)). But this directive does not deny the government "the power to treat different classes of persons in different ways." *Id.* (quoting *Reed*, 404 U.S. at 75). Most regulations define groups to which they apply or to which benefits are conferred and when such group is defined, of necessity, the regulation favors or disadvantages other groups. *Id.* (citing *Romer v. Evans*, 517 U.S. 620, 631 (1996)). For purposes of equal protection review, a law that neither disadvantages a suspect class nor burdens a fundamental right is subject to rational basis scrutiny. *See id.* A law withstands such scrutiny if the classification it draws is "reasonable, not arbitrary, and . . . rest[s] upon some ground of difference having a fair and substantial relation to the object of the legislation." *Id.* (quoting *Reed*, 404 U.S. at 76). Under rational review a legislature may address problems in phases, "addressing itself to the phase of the problem which seems most acute to the legislative mind." *Id.* at 174 (quoting *Williamson v. Lee Optical*, 348 U.S. 483, 489 (1955)). As a result, courts will allow laws that are both significantly underinclusive and overinclusive. *See*, *e.g., Vance v. Bradley,* 440 U.S. 95, 108 (1979); *New York Transit Authority v. Beazer*, 440 U.S. 568, 575 (1979).

Rational basis review applies here because the Ordinance does not burden any fundamental right, and it does not target any suspect class. The City's decision to require limited-service pregnancy centers to disclose to their customers through one or more posted signs that

they do not provide or make referrals for abortion or birth-control services easily withstands rational basis scrutiny. As set forth above, ample evidence demonstrates that limited-service pregnancy centers commonly engage in deceptive practices and fail to inform their patients of the limited scope of services they provide, and that such deception and failure to disclose harm the public. *See supra* at 2-4, 13. That evidence is sufficient, in and of itself, to provide a rational basis for the Ordinance's focus on limited-service pregnancy centers. *See Williamson*, 348 U.S. at 489.

Plaintiffs incorrectly allege that the Ordinance is irrationally underinclusive because it fails to regulate abortion providers and family planning clinics. *See* Complaint ¶¶ 79-80. As an initial matter, this allegation is unavailing because rational basis review permits a legislature to address problems in stages; thus, even if it were underinclusive, the Ordinance would survive review. *See Williamson v. Lee Optical*, 348 U.S. 483, 489 (1955). In any event, the Ordinance is not underinclusive. Both abortion providers and family planning clinics are already subject to extensive regulation by State and federal law. For example, under State law, abortions may only be performed by a licensed physician. MD. CODE ANN., HEALTH-GEN. § 20-208. Licensed physicians are regulated by the State Board of Physicians and are subject to disciplinary action for, *inter alia*, fraudulently or deceptively using a medical license, engaging in unprofessional conduct, and violating the Board's advertising rules. MD. CODE ANN., HEALTH OCC. § 14-404(a). The Board's advertising rules prohibit, *inter alia*, "statements likely to mislead or deceive because in context the statements make only a partial disclosure of relevant facts." MD. CODE REGS. 10.32.01.12(B)(3). Thus, prior to enactment of the Ordinance, laws were already in place to prohibit abortion providers from deceiving prospective patients about the scope of services they offer.

Likewise, under federal law, family planning clinics receiving federal funds must meet professional standards of care and counseling. *See* 42 C.F.R. § 59.5. For example, if a pregnant woman requests information and counseling concerning her options with respect to the pregnancy, such clinics must "provide neutral, factual information and nondirective counseling on each of the options, and referral upon request, except with respect to any option(s) about which the pregnant woman indicates she does not wish to receive such information and counseling." 42 C.F.R. § 59.5(a)(5)(ii). Thus, prior to enactment of the Ordinance, laws were already in place to prohibit family planning clinics from withholding information from patients under false pretenses. Under the circumstances, it was quite rational for the Ordinance to focus on limited-service pregnancy centers, which have been found to engage in deceptive practices and which are not subject to any State or federal regulation. *See Williamson*, 348 U.S. at 489.

In sum, Plaintiffs have failed to state a claim for violation of the right to equal protection of the laws. Therefore, Count III of Plaintiffs' Complaint should be dismissed in its entirety.

D. Count IV of Plaintiffs' Complaint Fails to State a Claim for Violation of § 20-214 of the Maryland Health Code.

In Count IV of the Complaint, Plaintiffs incorrectly claim that the Ordinance conflicts with Section 20-214 of the Maryland Health Code (the "Refusal Statute"). *See* Complaint ¶¶ 85-89. The Refusal Statute provides:

> (a)(1) A person may not be required to perform or participate in, or refer to any source for, any medical procedure that results in artificial insemination, sterilization, or termination of pregnancy.
>
> (2) The refusal of a person to perform or participate in, or refer to a source for, these medical procedures may not be a basis for:
>
> (i) Civil liability to another person; or
>
> (ii) Disciplinary or other recriminatory action against the person.

MD. CODE ANN., HEALTH GEN. § 20-214(a)(1)-(2). Thus, the Refusal Statute prohibits the act of compelling a person (whether by civil liability, disciplinary action, or other recriminatory action) to facilitate the provision of certain medical services to which the person may object.

The Ordinance in no way conflicts with the Refusal Statute or violates Plaintiffs' rights under the Refusal Statute. The Ordinance does not require any person to facilitate the provision of any medical service whatsoever. In particular, it does not require any person to facilitate the provision of abortion or comprehensive birth control services. It merely requires limited-service pregnancy centers to disclose via a posted sign the fact that they do not provide or make referrals for such services. *See* BALT. CITY HEALTH CODE § 3-502.

Accordingly, Plaintiffs have failed to state a claim for violation of the Refusal Statute, and Count IV of Plaintiffs' Complaint should be dismissed in its entirety.

II. Pursuant to Rule 12(b)(1), the Claims Asserted by Plaintiffs O'Brien and St. Brigid's Should be Dismissed.

Pursuant to Rule 12(b)(1), the claims asserted by Plaintiffs O'Brien and St. Brigid's should be dismissed for lack of subject matter jurisdiction because those plaintiffs lack standing. Standing is a "core element of federal subject matter jurisdiction" and, as such, is "subject to the same standard of review that applies to a motion to dismiss for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1)." *IFAST, Ltd. v. Alliance for Telecommunications Industry Solutions, Inc.*, 2007 WL 3224582, *4 (D. Md. Sept. 27, 2007); *see* Fed. R. Civ. P. 12(b)(1). To establish standing to bring a claim in federal court, a plaintiff bears the burden of demonstrating three elements: "(1) the existence of a "concrete and particularized" injury-in-fact; (2) a causal connection between the injury suffered and the conduct complained of; and (3) that a favorable adjudication would redress the alleged injury." *Equal Rights Center v. Equity Residential*, 483 F. Supp. 2d 482, 486 (D. Md. 2007) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560

(1992)).

In particular, to establish the first element, a plaintiff must demonstrate "that he will suffer an injury in fact which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Gillespie v. Dimensions Health Corp.*, 369 F. Supp. 2d 636, 640 (D. Md. 2005) (citing *Lujan,* 504 U.S. at 560-61). Here, Plaintiffs O'Brien and St. Brigid's have failed to demonstrate that they will suffer any injury-in-fact that is "concrete and particularized" and "actual or imminent" as a result of enforcement of the Ordinance. *Id.* Accordingly, Plaintiffs O'Brien and St. Brigid's do not have standing to challenge the Ordinance in this Court and, pursuant to Rule 12(b)(1), the claims asserted by those Plaintiffs should be dismissed.

A. Plaintiffs O'Brien and St. Brigid's Will Not Suffer Any Injury-in-Fact From Enforcement of the Ordinance.

Plaintiffs O'Brien and St. Brigid's are not in danger of sustaining an injury-in-fact from enforcement of the Ordinance because (1) the Ordinance cannot be enforced against Plaintiffs O'Brien and St. Brigid's, and (2) Plaintiffs O'Brien and St. Brigid's would not be financially liable for any fines imposed against the Pregnancy Center for violation of the Ordinance. *Gillespie*, 369 F. Supp. 2d at 640 (D. Md. 2005) (citing *Lujan*, 504 U.S. at 560-61).

Maryland State courts look to the plain language of a city ordinance and the legislative purpose of the ordinance to determine the scope of liability for a violation of the ordinance. *See, e.g., Allen v. Dackman*, 991 A.2d 1216, 1229 (Md. 2010) (finding that the Baltimore City Council had intended to hold property owners liable for housing code violations causing injury to property occupants); *Joseph v. Bozzuto Management Co.*, 918 A.2d 1230, 1245 (Md. App. 2007) (finding that neither the language of the Montgomery County Code nor common law principles indicated an intent to hold property owners liable for negligence in connection with injury to a tenant's invitees). Here, the Ordinance expressly and exclusively imposes requirements on the

conduct of "limited-service pregnancy center[s]," defined in the Ordinance as any person "whose primary purpose is to provide pregnancy-related services" and who actually "provides information about pregnancy-related services." BALT. CITY HEALTH CODE § 3-501. Thus, the term "limited-service pregnancy center" includes the Pregnancy Center, but not Plaintiffs O'Brien and St. Brigid's, because the provision of pregnancy-related services is not the "primary purpose" of Plaintiffs O'Brien and St. Brigid's.

Moreover, the plain language of the Ordinance provides for enforcement only against limited-service pregnancy centers, not against any other entities. Thus, the Ordinance may be enforced only against legal persons who actually operate a limited-service pregnancy center, such as the Pregnancy Center, and not against a third-party who holds an ownership interest in the property where a limited-service pregnancy center is located, such as Plaintiffs O'Brien and St. Brigid's.

In addition, Plaintiffs O'Brien and St. Brigid's could not be held financially liable for fines imposed for a violation of the Ordinance. Unlike other provisions of the Baltimore City Health Code, the Ordinance does not provide for joint responsibility or liability of third-parties for violation of its provisions.[6] The Ordinance is enforceable either through a civil citation or an environmental citation. The rules governing each form of citation describe the imposition of fines upon the "person"[7] who has actually committed the offense. For example, the rules for environmental citations describe the penalty as a "personal debt" that is owed to the City of Baltimore by the person who has committed the offense. BALT. CITY CODE ART. I, § 40-11.

[6] For example, the Baltimore City Health Code explicitly provides for joint liability in its regulations concerning nuisance control and mosquitoes. *See* BALT. CITY HEALTH CODE, §§ 5-201, 5-603.

[7] For purposes of civil citations and environmental citations, the definition of a "person" includes individuals, corporate entities, and "a receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind." BALT. CITY CODE ART. I, §§ 40-1(e), 41-1(d).

Similarly, the rules for civil citations state that such citations will be issued to "any adult who the [enforcement] officer . . . believes is committing or has committed an offense," and provide for liability for payment of fines (or for related penalties for defaulting on payment of a fine) only for the person charged with the citation, not for any third-parties. BALT. CITY CODE ART. I, §§ 41-4(a), 41-8, 41-10. Therefore, only the Pregnancy Center, and not Plaintiffs O'Brien and St. Brigid's, would be liable for the payment of any civil or environmental citations issued for violation of the Ordinance. Accordingly, Plaintiffs O'Brien and St. would not suffer any injury-in-fact from enforcement of the Ordinance.

B. Plaintiffs O'Brien and St. Brigid's Cannot Establish Standing to Challenge the Ordinance by Asserting the Interests of the Pregnancy Center.

Regardless of the strength of their shared opposition to abortion, Plaintiffs O'Brien and St. Brigid's cannot establish standing to challenge the Ordinance by asserting the rights or interests of the Pregnancy Center. "A mere interest in a problem, no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself" to establish standing. *Int'l Primate Protection League v. Institute for Behavioral Research*, 799 F.2d. 934, 938 (4th Cir. 1986) (finding that the plaintiffs' "asserted commitment to the humane treatment of animals" was insufficient to establish standing in federal court). Instead, as this Court has previously explained: "[Prudential] considerations require that a claim not be an abstract, generalized grievance shared by all or a large class of citizens; rather, the plaintiff must assert his own legal rights, not the rights or interests of third parties." *Trinity Outdoor*, 2004 WL 78054, at *2 n.2.

Aside from the fact that Plaintiffs O'Brien and St. Brigid's have an ownership interest in the property used to house one of the limited-service pregnancy centers operated by the Pregnancy Center, Complaint ¶¶ 16-18, the only fact presented in the Complaint which might be

construed as supporting the standing of Plaintiffs O'Brien and St. Brigid's to challenge the Ordinance is the Plaintiffs' shared "opposition to abortion." Complaint at ¶¶ 43-44. Regardless of the strength of their convictions or the basis for those convictions, sharing the Pregnancy Center's views about abortion is simply not sufficient to confer standing upon Plaintiffs O'Brien and St. Brigid's in this case, particularly because, as explained above, the Complaint does not establish that Plaintiffs O'Brien and St. Brigid's have independent standing to challenge the Ordinance. *Trinity Outdoor*, 2004 WL 78054, at *2 n.2 (explaining that a plaintiff may, in some cases, be permitted to assert the rights of third parties in First Amendment cases, but only if the plaintiff first "satisfies the three constitutional requirements for standing.").

Because Plaintiffs O'Brien and St. Brigid's do not stand to suffer an injury-in-fact that is "concrete and particularized" and "actual or imminent" from enforcement of the Ordinance and because Plaintiffs O'Brien and St. Brigid's cannot establish standing by asserting the rights and interests of the Pregnancy Center, the claims asserted by Plaintiffs O'Brien and St. Brigid's should be dismissed for lack of subject matter jurisdiction.

III. Pursuant to Rule 17(b), the Claims against Defendant Baltimore City Health Department Should be Dismissed.

The claims asserted against Defendant Baltimore City Health Department should be dismissed pursuant to Federal Rule of Civil Procedure 17(b) because the agency lacks the capacity to be sued. Fed. R. Civ. P. 17(b)(3); *see Darby v. Pasadena Police Dep't*, 939 F.2d 311, 313 (5th Cir. 1991). In *Darby*, the court held that a civil rights lawsuit could not proceed against the police department of the City of Pasadena, Texas, because the police department lacked the capacity to be sued under State law. *Id*. The court explained its reasoning as follows:

> A Texas home rule city is organized not unlike a corporation. Like a corporation, it is a legal entity independent of its officers. Also like a corporation, a Texas city is allowed to designate whether one of its own subdivisions can be sued as an

> independent entity. Absent this authorization, [the plaintiff's] suit no more can proceed against the police department alone than it could proceed against the accounting department of a corporation.

Id. (footnote omitted).

The City of Baltimore is organized in the same manner as a Texas home rule city. The City of Baltimore is a municipal corporation created by the Charter of Baltimore and designated as "the Mayor and City Council of Baltimore." BALT. CITY CHARTER art. I, § 1. The Charter grants the City the usual powers of a municipal corporation, including the capacity to sue and be sued, subject to certain immunity. *Id.* The Baltimore City Health Department, in contrast, is not a discrete entity; rather, it is a division of the municipal corporation and acts as an agent or instrumentality of the municipal corporation. The provisions of the City Charter that create the Baltimore City Health Department do not grant the agency the capacity to sue or be sued. *See* BALT. CITY CHARTER art. VII, §§ 54-56. Therefore, Plaintiffs' claims can no more proceed against the Baltimore City Health Department than they could against the accounting department of a corporation. *Cf. Darby*, 939 F.2d at 313.

Accordingly, Plaintiffs' claims against the Baltimore City Health Department should be dismissed.

CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Complaint be dismissed in its entirety pursuant to Rule 12(b)(6) or, in the alternative, that the claims asserted by Plaintiffs O'Brien and St. Brigid's be dismissed pursuant to Rule 12(b)(1) and the claims against Defendant Baltimore City Health Department be dismissed pursuant to Rule 17(b).

DATED: June 8, 2010

Respectfully submitted,

By: */S/ Suzanne Sangree*
Suzanne Sangree, Chief Solicitor
Federal Bar No. 26130
City of Baltimore Law Department
City Hall, Room 109
100 North Holliday Street
Baltimore, Maryland 21202
Telephone: (410) 396-3249
Fax: (410) 659-4077
Email: suzanne.sangree@baltimorecity.gov

Stephanie Toti*
Special Assistant City Solicitor
New York Bar No. 4270807
Center for Reproductive Rights
120 Wall Street, 14th Floor
New York, New York 10005
Telephone: (917) 637-3684
Fax: (917) 637-3666
Email: stoti@reprorights.org

**Motion for Admission Pro Hac Vice Pending*

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on June 8, 2010, a true and correct copy of the Defendants' Motion to Dismiss and supporting papers was electronically filed with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to the following individuals:

David William Kinkopf
Gallagher Evelius and Jones LLP
218 N Charles St Ste 400
Baltimore, MD 21201
14107277702
Fax: 14104682786
Email: dkinkopf@gejlaw.com

Peter Joseph Basile
Ferguson Schetelich and Ballew PA
100 S Charles St Ste 1401
Baltimore, MD 21201
14108372200
Fax: 14108371188
Email: pbasile@fsb-law.com

Steven G. Metzger
Gallagher Evelius and Jones LLP
218 N Charles Street
Suite 400
Baltimore, MD 21201
14107277702
Fax: 14104682786
Email: smetzger@gejlaw.com

Dated: June 8, 2010

/S/ Suzanne Sangree
Suzanne Sangree, Chief Solicitor
Federal Bar No. 26130
City of Baltimore Law Department
City Hall, Room 109
100 North Holliday Street
Baltimore, Maryland 21202
Telephone: (410) 396-3249
Fax: (410) 659-4077
Email: suzanne.sangree@baltimorecity.gov