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Supreme Court of Kentucky
NO. 2022-SC-0329

**DANIEL CAMERON IN HIS OFFICIAL CAPACITY
AS ATTORNEY GENERAL OF THE COMMONWEALTH OF KENTUCKY**

APPELLANT

v. Court of Appeal, No. 2022-CA-0906;
Jefferson Circuit Court,
No. 22-CI-03225

**EMW WOMEN'S SURGICAL CENTER, P.S.C.,
ON BEHALF OF ITSELF, ITS STAFF, AND ITS PATIENTS, et al.**

APPELLEES

**BRIEF OF HEARTBEAT INTERNATIONAL, INC.
AS AMICUS CURIAE IN SUPPORT OF APPELLANT**

MATTHEW D. DOANE
Staff Attorney
Heartbeat International, Inc.
8405 Pulsar Place
Columbus, Ohio 43240
(614-885-7577)
Counsel for Amici

CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2022, I served this brief via U.S. mail on: Matthew F. Kuhn, Office of the Attorney General, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601; Michele Henry, Craig Henry PLC, 401 West Main Street, Suite 1900, Louisville, Kentucky 40202; Brigitte Amiri, Chelsea Tejada, Faren Tang, 125 Broad Street, 18th Floor, New York, New York 10004; Heather L. Gatnarek, ACLU of Kentucky, 325 Main Street, Suite 2100, Louisville, Kentucky 40202; Wesley W. Duke, Office of Secretary, Cabinet for Health and Family Services, 275 East Main Street 5W-A, Frankfort, Kentucky 40621; Carrie Flaxman, Planned Parenthood Federation of America, 1100 Vermont Avenue, NW, Suite 500, Washington, D.C. 20005; Hana Bajramovic, Planned Parenthood Federation of America, 123 William Street, Floor 9, New York, New York 10038; Leah Godesky, Kendall Turner, O'Melveny & Myers LLP, 1999 Avenue of the Stars, Los Angeles, California 90067; Leanne Diakov, Kentucky Board of Medical Licensure, 310 Whittington Parkway, Suite 1B, Louisville, Kentucky 40222; Thomas B. Wine, Jason B. Moore, Office of the Commonwealth's Attorney, 30th Judicial Circuit, 514 West Liberty Street, Louisville, Kentucky 40202; Clerk, Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky 40601; Clerk, Jefferson Circuit Court, 600 West Jefferson Street, Louisville, Kentucky 40202.

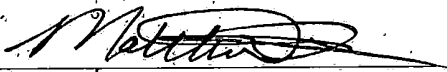

Matthew D. Doane

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STATEMENT OF *AMICUS CURIAE* INTEREST

Heartbeat International, Inc. (“Heartbeat”) is uniquely positioned to provide relevant factual background and legal argument in this case. Founded in 1971, Heartbeat is an IRC § 501(c)(3) non-profit, interdenominational Christian organization whose mission is to serve women and children through an effective network of life-affirming pregnancy help centers. Heartbeat serves over 3,000 pregnancy help centers, maternity homes, and non-profit adoption agencies (collectively, “pregnancy help organizations”) in over 79 countries, including approximately 1,857 in the United States—making Heartbeat the world’s largest such affiliate network. Heartbeat’s network of affiliates includes 41 locations in the Commonwealth of Kentucky, and there are 77 total pregnancy help organizations in the state.

As part of its ministry, Heartbeat operates a 24/7 toll-free telephone and web-based help line called Option Line, which individuals facing unintended pregnancies can contact for information and referrals to nearby pregnancy help organizations. Since its inception in 2003, Heartbeat’s Option Line has connected with more than five million people and handles more than 1,100 contacts – including phone calls, e-mails, instant messages, and online chats in English and Spanish – every day.

Heartbeat also operates the Abortion Pill Rescue Network (the “APRN”). The APRN connects women who regret taking the first dose of the two-dose abortion pill regimen to a network of medical professionals trained to administer the abortion pill reversal protocol. The APRN gives women a chance to stop the abortion they ultimately do not want and continue carrying their pregnancy to term. Started in 2012, Heartbeat began operating the APRN in 2018. The APRN now includes over 1,000 rescue providers

and centers. Each month, approximately 150 women call the APRN seeking abortion pill reversal services, and that number is on a strong growth trajectory with the rise in chemical abortions.

Heartbeat is well positioned to address the issues in this case because its work, and the work of the organizations it supports, strongly refute the erroneous finding of the Jefferson Circuit Court that, without the availability of an abortion, a woman's educational and career prospects are ruined if she becomes unexpectedly pregnant. As shown below, this finding is demonstrably incorrect in 2022 given changes in society—including the growth and expansion of the pregnancy help network, advances in technology and legal protections for women in the workplace, and evolving social mores alleviating the stigma of unexpected pregnancies and unwed mothers.

Every day across the Nation and the Commonwealth of Kentucky, pregnancy help organizations serve women facing unintended pregnancies so that abortion is not their only option and giving birth and entering motherhood does not mean sacrificing their educations or careers. The proliferation and effectiveness of pregnancy help organizations, together with the societal changes in recent decades, moot the Circuit Court's concerns and demonstrate that the court abused its discretion in finding that denial of an abortion option will have a detrimental impact on the public interest.

ARGUMENT

The public interest is best served when women are empowered to lead productive and fulfilling lives while the lives of unborn humans are simultaneously protected for the future of the nation and the Commonwealth of Kentucky. The Jefferson Circuit Court's conclusion that the denial of the right to an abortion would have a detrimental impact on

the public interest because of supposed strains on a women's financial, educational, and professional outcomes is demonstrably false and contrary to the very public interest that it was required to weigh and consider. The Circuit Court's conclusion is reminiscent to the Supreme Court of the United States' reliance argument in the now overturned *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) overruled by *Dobbs v. Jackson Women's Health Org.*, 142 S.Ct. 2228 (2022). The plurality Court wrote:

“[F]or two decades of economic and social developments, people have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail. The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.”

Casey, 505 U.S. at 856. This was and still is a dubious assumption. As Chief Justice Rehnquist observed in his opinion concurring in the judgment in part and dissenting in part:

The joint opinion [invokes] what can only be described as an unconventional—and unconvincing—notion of reliance, a view based on the surmise that the availability of abortion since *Roe* has led to “two decades of economic and social developments” that would be undercut if the error of *Roe* were recognized. The joint opinion's assertion of this fact is undeveloped and totally conclusory. In fact, one cannot be sure to what economic and social developments the opinion is referring. Surely it is dubious to suggest that women have reached their “places in society” in reliance upon *Roe*, rather than as a result of their determination to obtain higher education and compete with men in the job market, and of society's increasing recognition of their ability to fill positions that were previously thought to be reserved only for men.

Id. at 956-57 (Rehnquist, C.J., concurring in the judgment in part and dissenting in part) (citations omitted). The Circuit Court likewise reached its conclusion based on “dubious” findings that are demonstrably incorrect today. As shown below, no longer is it true, if it ever was, that abortion is necessary to allow women/mothers to participate equally in society.

One of the four factors that a Kentucky court must consider in granting or denying an injunction under CR 65 is to weigh the various equities involved. In this analysis, a court “should consider such things as possible detriment to the public interest, harm to the defendant, and whether the injunction will merely preserve the status quo.” *Cameron v. Beshear*, 628 S.W.3d 61, 71 (Ky. 2021) (citing *Maupin v. Stansbury*, 575 S.W.2d 695, 699 (Ky. Ct. App. 1978)). In its findings, a Court should not “substitute its view of the public interest for that expressed by the General Assembly.” *Id.* In the case at hand, the Jefferson Circuit Court’s reliance on the idea that pregnancy inhibits women from meaningfully participating in society is antiquated and unsupported in today’s world due to the resources available to women through pregnancy help organizations, technological and societal advances, and changing social mores concerning children born out of wedlock and their mothers.

Heartbeat has been at the vanguard of such empowerment for decades, using ever-evolving technology and ever-expanding on-the-ground support to serve women facing unexpected pregnancies. Through, in part, the efforts of Heartbeat and similar organizations along with thousands of volunteers, life today for women experiencing unexpected pregnancies is very different than what it has been in previous decades. Women today routinely obtain the highest reaches of socioeconomic status, while also having children and raising families. Numerous laws prohibit sex and pregnancy discrimination, guarantee employment leave for pregnancy and childbirth, and help enable child-care support for working mothers. College and advanced degrees can be obtained online from the comfort of one’s living room. If women do not desire to be mothers, adoption and “safe

haven” laws allow women to relinquish their infants to the care of adoptive families without further responsibility.

Technological advances have also allowed pregnancy help organizations to offer far more extensive services and maternal care over the years. In the past, an unexpected pregnancy might have necessitated dropping out of school or leaving the workforce, or as stated by the Circuit Court, “derail[ed] a woman’s career or educational trajectory.” Opinion & Order Granting Temp. Inj. Jul. 22, 2022, at 9. Today, however, students can earn undergraduate and graduate degrees almost without leaving their living rooms, simplifying the lives of countless single mothers. Similarly, remote work opportunities, especially in our post-Covid world, are increasingly available, and many companies compete to attract qualified female candidates by offering generous family leave or childcare benefits. In today’s world, women are empowered to embrace motherhood without the alleged consequences relied upon by the Circuit Court and states in the testimony of Appellee’s expert witness, Professor Jason Lindo. As shown below, the Court’s concerns in balancing the equities of the situation in granting injunctive relief are misplaced. As such, these concerns do not warrant granting injunctive relief. This Court should dissolve the Circuit Court’s temporary injunction and allow Kentucky’s Human Life Protection Act and Kentucky’s Heartbeat Law, as codified in Kentucky Revised Statutes 311.772 and 311.7706 respectively, to remain the law of the Commonwealth.

I. The Services And Resources Provided By Pregnancy Help Organizations Help Address The Circuit Court’s Concerns Regarding the Impact on Women and the Public Interest.

One critical societal development that has empowered women to embrace motherhood is the proliferation of pregnancy help organizations. In 2021, there were more than 3,000 pregnancy centers in the United States, as well as maternity homes, adoption

agencies, and other organizations that educate, equip, and empower women to thrive during and after pregnancy. See Charlotte Lozier Institute, *Fact Sheet: Pregnancy Centers – Serving Women and Saving Lives (2020 Study)*, at 1 (2021)¹. Heartbeat affiliates with 41 pregnancy help organizations in the Commonwealth of Kentucky, and there are 77 total pregnancy help organizations across the state.

Pregnancy help centers offer a broad range of services and resources aimed at helping women find success not just as mother, but in all other areas of their lives. Such services include, but are certainly not limited to, pregnancy options information; referrals to maternity homes, job centers, housing agencies, drug rehabilitation centers, and other social services organizations; parenting and childbirth classes; fatherhood programs; and material assistance. In 2019 alone, pregnancy help centers in the United States provided mothers with more than two million baby clothing outfits, more than 1.2 million packs of diapers, more than 19,000 strollers, and more than 30,000 new car seats. See Charlotte Lozier Institute, *Pregnancy Centers Stand the Test of Time*, at 16, 24, 61-62 (2020) [*hereinafter Charlotte Lozier Report*].² Additionally, one of the most commonly offered services at pregnancy centers is post-abortion programs, or “abortion recovery”, which help women overcome the emotional trauma and other issues experienced after an abortion they later come to regret. See Heartbeat International, *Life Trends 2022 Report 3* (2022) [*hereinafter Life Trends Report*]³.

¹ Available at https://s27589.pcdn.co/wp-content/uploads/2021/07/2020-Pregnancy-Centers-Fact-Sheet_FINAL-7.23.21.pdf. (last visited Sept. 29, 2022).

² Available at https://lozierinstitute.org/wp-content/uploads/2020/10/Pregnancy-Center-Report-2020_FINAL.pdf. (last visited Sept. 29, 2022). Statistics cited herein from the Charlotte Lozier Report are as of 2019.

³ Available at https://www.heartbeatinternational.org/images/pdf/IB_LifeTrends_2022_web.pdf. (last visited Sept. 29, 2022).

In addition to the array of non-medical services and resources described above, pregnancy help centers with licensed medical personnel provide various medical services such as medical-grade pregnancy testing, ultrasounds to confirm a viable pregnancy and to rule out a dangerous ectopic pregnancy, sexually transmitted disease testing, and/or other prenatal care services. *See* Family Research Council, *A Passion to Service*, 6-11 (2d ed. 2010).⁴ Ultrasounds are among the most commonly offered services at pregnancy centers. Heartbeat estimates that its affiliate locations provided more than 480,000 ultrasounds in 2019. *See* Life Trends Report, *supra*, at 3. Centers report that a stunning 80% of women considering an abortion decided to carry their pregnancies to term after viewing their ultrasound, demonstrating that the ultrasound represents a critical component of a woman’s decision-making process. *Id.*

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

⁴ Available at <https://downloads.frc.org/EF/EF12A47.pdf> (last visited Sept. 29, 2022).

Heartbeat requires affiliated pregnancy centers to adhere to a national standard of ethical practice, the Commitment of Care and Competence (the “Commitment”), which includes, inter alia, commitments: (i) to provide “accurate information about pregnancy, fetal development, lifestyle issues, and related concerns”; and (ii) to ensure that all “communication [is] truthful and honest.”⁵ These commitments self-evidently require all affiliates to provide scientifically accurate information about fetal development and the nature of the abortion procedure.

Every day, pregnancy help organizations in every State, including the Commonwealth of Kentucky, empower pregnant mothers to have richly satisfying, productive, and prosperous lives. This is counter to the bleak picture that the Jefferson Circuit Court painted of a woman who finds herself facing an unexpected pregnancy without the option of an abortion in the Commonwealth. In fact, for many women struggling with addiction, abuse, and economic disadvantages, abortion does nothing to address their underlying needs. By contrast, pregnancy help organizations take a far more holistic approach of caring for, educating, and supporting the whole person by addressing a broad array of needs. Pregnancy help organizations provide women with viable alternatives to abortion while working to not only save the life of an unborn human being, but to empower women to flourish as mothers, students, professionals, and citizens. This certainly serves the public interest and tips the scales in favor of dissolving the Jefferson Circuit Court’s injunction.

⁵ Our Commitment of Care and Competence, Heartbeat International, <https://www.heartbeatinternational.org/about-us/commitment-of-care> (last visited Sept. 29, 2022).

II. Student Parents/Mothers have access to resources and support services necessary to attain educational achievement.

The Circuit Court assumes that when a student finds herself unexpectedly pregnant, her only means of completing her education is through abortion because a pregnancy could derail her educational trajectory. Opinion & Order Granting Temp. Inj. Jul. 22, 2022, at 9. This is simply not true in today's world. In fact, in 2016, the most recent year for which data is available, one in five undergraduate college students were parents. *See* Institute for Women's Policy Research, *Parents in College: By the Numbers* at 1.⁶ Further, of the 3.8 million student parents in the U.S., roughly 70% were mothers and two in five were single mothers. *Id.*

With the help of groups like pregnancy help organizations, women today have access to the resources and support necessary to finish school. Indeed, as the Covid-19 pandemic has shown, it is increasingly feasible for women to use new technologies to facilitate their educations, even when childbirth may temporarily prevent in-person learning for a short time. Countless colleges and universities, including all public Kentucky colleges and universities, now offer fully online courses, and many institutions and professors accommodate medical absences of any kind by simply using webcams and free software such as Zoom® or Skype® to live-stream lectures. The past several decades have also seen an explosion in other new technologies which have made education easier for expectant mothers.

One of the oft-cited burdens in this area is the availability of childcare. Mothers who visit pregnancy centers are also presented with suggested resources for childcare while

⁶ Available at https://iwpr.org/wp-content/uploads/2020/08/C481_Parents-in-College-By-the-Numbers-Aspen-Ascend-and-IWPR.pdf. (last visited Sept. 29, 2022).

in school, and may be encouraged to learn that “[r]oughly half of the colleges in the U.S. offer some type of child care,” and there are low-cost off-campus options as well. Accredited Schools Online, *Kids on Campus: Colleges Offering Child Care* (last updated August 26, 2022)⁷; see also Katy Hopkins, *Child-Friendly College Programs for Parents*, U.S. News & World Report (Mar. 23, 2011) (“With the help of school programs across the country, from residential support systems to campus lactation rooms, there are options available to women and their children.”)⁸. The U.S. Department of Education also provides the Child Care Access Means Parents in School Program (“CCAMPIS”) grant funding to higher education institutions to use to support or establish campus-based childcare programs primarily serving the needs of low-income students, before- and after-school service, etc. See U.S. Department of Education, *Child Care Access Means Parents in School Program* (last visited Sept. 29, 2022)⁹. In 2021, five Kentucky institutions were awarded \$771,482.00 in CCAMPIS funding for childcare for student parents. See U.S. Department of Education, *FY 2021 Awards, Child Care Access Means Parents in School Program* (last visited Sept. 29, 2022).¹⁰ In short, with the help of pregnancy centers, other support organizations, government funding, and technological advances, women can now successfully complete their education, even as new parents.

III. Pregnancy And Motherhood Is Not A Bar To Women In the Workplace.

The Circuit Court also ostensibly found that abortion was necessary for women to have successful professional lives. Pregnancy help organizations around the Nation and the

⁷ <https://www.accreditedschoolsonline.org/resources/colleges-offering-child-care/>

⁸ <https://www.usnews.com/education/best-colleges/articles/2011/03/23/child-friendly-college-programs-for-parents>

⁹ <https://www2.ed.gov/programs/campisp/index.html>

¹⁰ <https://www2.ed.gov/programs/campisp/awards.html> (follow “MS Excel” hyperlink under “FY 2021”)

Commonwealth of Kentucky offer women assistance in finding work to provide for themselves and their children. Pregnancy centers provide crucial connections to the community, helping women locate local organizations or agencies best suited to fulfilling their career needs. Pregnancy centers also offer assistance in job searches, and support to women as they navigate the challenges of the workplace.

Working motherhood itself has become commonplace. In 2021, 71% of all women in the United States with children under the age of 18 participated in the workforce. See U.S. Dept. of Labor, Bureau of Labor Statistics, *Employment Characteristics of Families—2021* at 2 (Apr. 20, 2022)¹¹. Women also have legal protections in the workplace that prohibit pregnancy discrimination, guarantee employment leave for pregnancy and childbirth, and help enable child-care support for working mothers. See, e.g., 29 U.S.C. § 2612 (employment leave); 26 U.S.C. § 21 (tax credit); 42 U.S.C. § 2000e(k) (Pregnancy Discrimination Act enacted in 1978 in response to *General Electric Co. v. Gilbert*, 429 U.S. 125 (1976), which held that pregnancy discrimination was not a form of sex discrimination under Title VII).

In fact, the Court’s notion that a woman cannot have both a baby and a successful career is not only antiquated, but illegal. If an employer took that position with a female employee today, the employer could look forward to a swift lawsuit and substantial liability for pregnancy discrimination. See generally, *Young v. United Parcel Service, Inc.*, 575 U.S. 206 (2015); See generally also, *Prebilich-Holland v. Gaylord Entm't Co.*, 297 F.3d 438, 442 (6th Cir. 2002) (“Title VII prohibits an employer from discriminating against an employee ‘because of sex,’ which includes discrimination on the basis of pregnancy.”)

¹¹ Available at <https://www.bls.gov/news.release/pdf/famee.pdf>.

(internal quotation marks and citation omitted); *See generally, Ky. Com. on Human Rights v. Fraser*, 625 S.W.2d 852, 854 (Ky. 1981).

IV. Societal evolution has decreased stigmas and legal and financial resources have increased success of pregnant women.

Society has evolved beyond social stigma of unwed motherhood or embarrassment of illegitimacy. Evolving social mores have all but eradicated the stigmas associated with pregnancy outside of wedlock. Today, a full 40.5% percent of U.S. births occur outside of marriage. See Centers for Disease Control and Prevention, National Center for Health Statistics, *Unmarried Childbearing* (2020).¹² Childbirth out of wedlock simply no longer includes the same stigmas as it once did—further mooting the Jefferson Circuit Court’s erroneous conclusions.

Further, if women wish to avoid the obligations of motherhood, abortion is unnecessary for them to do so. Adoption and “safe haven” laws in all States, including the Commonwealth, allow women to relinquish their infants to the care of adoptive families. See “The Representative Thomas J. Burch Safe Infants Act”, Kentucky Revised Statutes §§ 211.951, 216B.190, 311.6526, 405.075, 620.350, and 620.355.

Similarly, the Professor Lindo and ultimately the Jefferson Circuit Court assumed that economically disadvantaged women must abort because of the costs of childbirth and childrearing. But pregnancy help organizations offer myriad resources to address this issue. Upon visiting a pregnancy help center, women will learn that government programs can cover the cost of prenatal care and childbirth for low-income women. See, e.g., Kentucky Cabinet for Health and Family Services, *Pregnant Women* (explaining that Kentucky

¹² <https://www.cdc.gov/nchs/fastats/unmarried-childbearing.htm>. (last visited Sept. 29, 2022).

Medicaid covers prenatal “doctor’s visits, eligible prescription drugs, and the hospital for delivery....”);¹³ See also Kentucky Cabinet for Health and Family Services, *Presumptive Eligibility for Pregnant Women*, (stating that “[p]resumptive eligibility enables eligible pregnant women to receive prenatal care through Medicaid for up to 60 days while their eligibility for full Medicaid benefits is determined.”).¹⁴

While rare, pregnant women may also receive free prenatal care directly from some pregnancy centers. Mothers who are interested in exploring adoption are given facts and resources to that end. Mothers who choose to parent can be given free diapers, baby clothing, a stroller, a crib, a car seat, and even direct financial assistance to offset the costs of childrearing. In all events, women can receive referrals to job agencies or other organizations that they can use to help set themselves on paths to upward mobility, as well as assistance with financial planning such as budgeting.

Another unstated underpinning in the Jefferson Circuit Court’s order, as well as something that was touched on in the testimony of Dr. Bergin, is the notion that a woman in an abusive situation may feel the need to pursue an abortion because of abuse or intimate partner violence. Such a solution does nothing to address the root causes of abuse or to help these victims escape. Moreover, the psychological harm felt by many post-abortive women can reinforce systematic factors that trap them in abusive relationships. See, e.g., *MKB Mgmt. Corp. v. Stenehjem*, 795 F.3d 768, 775 (8th Cir. 2015) (citing evidence and briefing showing that “abortion is psychologically damaging to the mental and social health of significant numbers of women,” and can result in “depression, anxiety, panic attacks, low self esteem and suicidal ideation”) (internal quotation marks and citations omitted);

¹³ <https://chfs.ky.gov/agencies/dms/member/Pages/PregnantWomen.aspx>. (last visited Sept. 29, 2022).

¹⁴ <https://chfs.ky.gov/agencies/dms/dpo/epb/Pages/presumptive-eligibility.aspx> (last visited Sept. 29, 2022).

McCorvey v. Hill, 385 F.3d 846, 850-51 (5th Cir. 2004) (Jones, J., concurring) (“Studies by scientists, offered by McCorvey [the ‘Roe’ in Roe v. Wade], suggest that women may be affected emotionally and physically for years afterward and may be more prone to engage in high-risk, self-destructive conduct as a result of having had abortions.”). In fact, “a small but growing body of research suggests that intimate partner violence prevalence is higher among abortion patients than among women who continue their pregnancies.” Audrey F. Saftlas, Ph.D. et al., *Prevalence of Intimate Partner Violence Among an Abortion Clinic Population*, *Am. J. of Public Health* (Aug. 2010).¹⁵

By contrast, when victims of abuse visit a pregnancy center, they find compassion, a listening ear, and a wealth of resources to help with each unique situation—e.g., referrals to domestic abuse shelters, maternity homes, other community organizations, and if so desired by the mother, law enforcement. If the victim is a minor and is experiencing abuse from a parent, step-parent, or similar figure, she may be referred to legal aid agencies or other resources that can put her on an expedited path to legal emancipation. A victim of abuse will also receive emotional support to help her take the difficult and consequential step out of such a relationship, which she might otherwise be less inspired to take if she sees abortion as a path of less resistance.

CONCLUSION

Simply put, pregnant women seeking to complete their educations, enter or remain in the workforce, or escape poverty or abuse have available to them local, on-the-ground help in pregnancy help organizations around the Nation and in the Commonwealth of Kentucky. The Jefferson Circuit Court’s finding that abortion is necessary to allow women

¹⁵ <https://ajph.aphapublications.org/doi/10.2105/AJPH.2009.178947>

to live successful lives does not fit the world we live in in 2022 and the resources and help available to pregnant women. As such, this Court should reverse the opinion below and dissolve the injunction.

Respectfully submitted,



Matthew D. Doane
Counsel for Amici, Heartbeat International,
Inc.