Nos. 18-15144, 18-15166, and 18-15255

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

STATE OF CALIFORNIA, et al.,

Plaintiffs-Appellees

v.

ALEX M. AZAR II, et al.,

Defendants-Appellants

On Appeal from the United States District Court for the
Northern District of California
Case No. 4:17-cv-5783-HSG

The Hon. Haywood S. Gilliam, Jr. Presiding

BRIEF OF *AMICI CURIAE* THE NATIONAL WOMEN'S LAW CENTER, THE NATIONAL LATINA INSTITUTE FOR REPRODUCTIVE HEALTH, SISTERLOVE, INC., AND THE NATIONAL ASIAN PACIFIC AMERICAN WOMEN'S FORUM IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

Fatima Goss Graves
Gretchen Borchelt
Sunu Chandy
Michelle Banker
NATIONAL WOMEN'S
LAW CENTER
11 Dupont Circle NW, Suite 800
Washington, DC 20036

Jeffrey Blumenfeld
LOWENSTEIN SANDLER LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
Telephone: (202) 753-3810
Fax: (212) 262-7402
jblumenfeld@lowenstein.com

Sawyeh Esmaili
NATIONAL LATINA INSTITUTE
FOR REPRODUCTIVE HEALTH
1411 K St. NW, Suite 602,
Washington, DC 20005

Sequoia Ayala
Carolyn Calhoun
SISTERLOVE, INC.
P.O. Box 10558
Atlanta, GA 30310-1731

Jane Liu
NATIONAL ASIAN PACIFIC
AMERICAN WOMEN'S FORUM
1730 Rhode Island Ave, NW
Suite 210
Washington, DC 20036

Of Counsel for Amici Curiae

Naomi D. Barrowclough
LOWENSTEIN SANDLER LLP
One Lowenstein Drive
Roseland, NJ 07068
Telephone: (973) 597-2500
Fax: (973) 597-2400
nbarrowclough@lowenstein.com

Attorneys for Amici Curiae the National Women's Law Center, the National Latina Institute for Reproductive Health, SisterLove, Inc., and the National Asian Pacific American Women's Forum in Support of Plaintiffs-Appellees

CORPORATE DISCLOSURE STATEMENT

(Rule 26.1)

Pursuant to Federal Rules of Appellate Procedure 26.1(a) and 29(a)(4)(A), Amici Curiae make the following corporate disclosure statement:

The National Women's Law Center, the National Latina Institute for Reproductive Health, SisterLove, Inc., and the National Asian Pacific American Women's Forum are non-profit public interest organizations, none of which has corporate parents or stockholders.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

REGULATIONS

OTHER AUTHORITIES

INTEREST AND IDENTITY OF AMICI CURIAE

Amici the National Women's Law Center, the National Latina Institute for Reproductive Health, SisterLove, Inc., the National Asian Pacific American Women's Forum, and the 40 additional organizations listed in the Appendix are national and regional organizations committed to obtaining economic security, gender equity, and reproductive justice for all, which includes ensuring that individuals who may become pregnant have access to full and equal health coverage, including contraceptive coverage without cost-sharing, as guaranteed by the Affordable Care Act ("ACA"). We submit this brief to demonstrate the irreparable harm to individuals, particularly to those who face multiple and intersecting forms of discrimination, that will result if the Administration's two interim final rules (the "IFRs") regarding the ACA's contraceptive coverage requirement are implemented.[1]

[1] No counsel for a party authored this brief in whole or in part, and no person other than Amici Curiae and their counsel made a monetary contribution to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

At stake in this litigation are the health and livelihoods of individuals across the U.S. who will suffer irreparable harm if the nationwide preliminary injunction is lifted—particularly Black, Latinx,[2] Asian American and Pacific Islander ("AAPI") individuals and other people of color, young people, people with limited resources, transgender men and gender non-conforming people, immigrants, people with limited English proficiency, survivors of sexual and interpersonal violence, and others who face multiple and intersecting forms of discrimination.

The ACA's contraceptive coverage requirement, obligating employers to provide insurance coverage without cost-sharing for all FDA-approved methods of contraception for women, and related education, counseling, and services, was intended to—and did—advance the health, equality, and liberty of women by removing cost barriers to critical preventive health care and ensuring that women do not pay more than men.[3, 4]

---

[2] The term "Latinx" challenges the gender binary in the Spanish language and embraces gender diversity.

[3] This brief uses the term "women" because the IFRs target women and the ACA was intended to end discrimination against women but as we will detail further, the denial of reproductive health care and related insurance coverage also affects some gender non-conforming people and some transgender men.

[4] *See* 42 U.S.C. § 300gg-13(a)(4); Health Res. & Servs. Admin., *Women's Preventive Services Guidelines*, https://www.hrsa.gov/womens-guidelines-2016/index.html (last visited May 21, 2018).

Since the ACA's contraceptive coverage requirement was implemented, out-of-pocket costs for contraception and related services have decreased dramatically, and use of contraception—especially highly-effective long-acting reversible contraceptives ("LARCs") such as intrauterine devices ("IUDs") and contraceptive implants—has increased.[5] Today, under the ACA, an estimated 62.4 million women are eligible for coverage for the contraceptive method that works best for them, irrespective of cost.[6]

The IFRs will reverse these gains by establishing a sweeping exemption that would allow virtually any employer or university to deny insurance coverage for contraception and related services to employees, students, and their dependents. As the District Court correctly observed, "for a substantial number of women, the 2017 IFRs transform contraceptive coverage from a legal entitlement to an essentially gratuitous benefit wholly subject to their employer's discretion." *California v. Health & Human Servs.*, 281 F. Supp. 3d 806, 830 (N.D. Cal. 2017).

This brief first establishes that the Departments of Health and Human

[5] *See, e.g.*, Ashley H. Snyder et al., *The Impact of the Affordable Care Act on Contraceptive Use and Costs among Privately Insured Women*, 28 Women's Health Issues 219, 222 (2018).

[6] Nat'l Women's Law Ctr., *New Data Estimates 62.4 Million Women Have Coverage of Birth Control Without Out-of-Pocket Costs* (2017), https://www.nwlc.org/resources/new-data-estimate-62-4-million-women-have-coverage-of-birth-control-without-out-of-pocket-costs/.

Services, Treasury, and Labor (the "Departments") dramatically understate harm the IFRs will cause if allowed to take effect, both in terms of impact on people with limited means and the sheer number affected. It then discusses the multiple ways the IFRs will irreparably harm people who can become pregnant, particularly those already facing systemic barriers to health care, education, and professional advancement. By reinstituting cost barriers to contraception, the IFRs will make contraception cost-prohibitive for many and impose financial, administrative, logistical, and informational barriers on those who lose coverage, further impeding their access to contraception. This will: harm individuals' health by increasing unintended pregnancies and attendant health risks, and by aggravating medical conditions currently managed by contraception; undermine individuals' autonomy and control over their lives; and threaten gender equality and individuals' economic security.

Because Plaintiffs-Appellees have demonstrated a likelihood of irreparable harm absent preliminary relief, Amici urge the Court to affirm the decision below.

STANDARD OF REVIEW

"A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest." *Farris v. Seabrook*, 677 F.3d 858, 864 (9th

Cir. 2012) (citing *Winter v. Nat'l Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008)). In reviewing a preliminary injunction, "an appellate court must determine whether the district court applied the proper legal standard in issuing the injunction and whether it abused its discretion in applying that standard." *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 673 (9th Cir. 1988).

The District Court properly considered the likelihood of irreparable harm to the residents of Plaintiff-Appellee states and correctly understood that the irreparable harm to Plaintiffs-Appellees must be considered in relation to "what is at stake: the health of Plaintiffs' citizens," as well as "Plaintiffs' fiscal interests." *California*, 281 F. Supp. 3d at 830. Accordingly, the District Court did not abuse its discretion in concluding that irreparable harm to women will result absent preliminary injunctive relief.

ARGUMENT

I. THE DEPARTMENTS UNDERSTATE THE HARM THE IFRS WILL CAUSE.

The IFRs assert that the exemptions "do not burden third parties to a degree that counsels against providing the exemptions." Religious Exemptions and Accommodations for Coverage of Certain Preventative Services Under the Affordable Care Act, 82 Fed. Reg. 47,792, 47,807 (Oct. 13, 2017) [hereinafter "Religious Exemptions"]; Moral Exemptions and Accommodations for Coverage of Certain Preventative Services Under the Affordable Care Act, 82 Fed. Reg.

47,838, 47,849 (Oct. 13, 2017) [hereinafter "Moral Exemptions"]. However, relying on faulty assumptions and misleading data, the Departments fail to adequately weigh this burden.

A. The Departments Fail to Account for the Impact of the Rules on Those With Limited Resources.

The Departments understate the likely impact of the IFRs on people with limited resources, who are disproportionately women of color and young people, and who, along with students, have the fewest resources to pay out-of-pocket for medical expenses, and are among those most likely to be irreparably harmed.

The Departments assume that low-income women do not rely on employer- or university-sponsored insurance for health coverage, Religious Exemptions, 82 Fed. Reg. at 47,806, 47,809, and therefore that removing coverage by employer-based plans will have little, if any, effect on them. In fact, many low-wage workers and their dependents do rely on employer-sponsored health insurance.[7]

For example, over half of nursing assistants—making a median hourly wage

[7] Alanna Williamson et al., Kaiser Family Found., *ACA Coverage Expansions and Low-Income Workers* 4 (2016), http://files.kff.org/attachment/ACA-Coverage-Expansions-and-Low-Income-Workers (just under one-third of low-income workers had employer-sponsored coverage in 2014).

of $14.84[8]—and their dependents rely on employer-sponsored coverage; the majority are women of color.[9] California's 98,500 full-time nursing assistants' median wage, about $2,572 monthly, is less than the amount needed to cover basic monthly expenses including housing, food, transportation, and health care.[10] Faced with out-of-pocket costs for contraception under the IFRs, they likely will have to forgo contraception for other necessities.

Many students and young people—with limited resources, large educational debt, and little ability to absorb extra costs—also depend on employer- or university-sponsored health coverage. The ACA allows young adults to remain on their parent or guardian's health plan until age 26. From 2010-2013, 2.3 million dependent young adults gained or maintained such coverage,[11] and stand to lose

[8] U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Employment Statistics, May 2017 State Occupational Employment and Wage Estimates: California*, https://www.bls.gov/oes/current/oes_ca.htm#31-0000 (last updated Mar. 30, 2018); U.S. Dep't of Labor, Bureau of Labor Statistics, *Standard Occupational Classification Manual* 114 (2018).

[9] Paraprofessional Healthcare Inst., *U.S. Nursing Assistants Employed in Nursing Homes: Key Facts*, https://phinational.org/wp-content/uploads/legacy/phi-nursing-assistants-key-facts.pdf (last visited May 21, 2018).

[10] Economic Policy Institute, *Family Budget Calculator, Monthly Costs*, https://www.epi.org/resources/budget/ (last visited May 21, 2018).

[11] Erin Hemlin, *Young Invincibles, What's Happened to Millennials Since the ACA? Unprecedented Coverage & Improved Access to Benefits* 1, 3 (2017), http://www.younginvincibles.org/wp-content/uploads/2017/05/YI-Health-Care-Brief-2017.pdf.

this coverage due to the expanded moral and religious exemptions under the IFRs.

The Departments also incorrectly assume that women living on low wages and fixed incomes who lose contraceptive coverage under the IFRs will be able to access contraception through existing government-sponsored programs, such as Title X and Medicaid. Religious Exemptions, 82 Fed. Reg. at 47,803. While the IFRs will certainly force many more women to seek contraceptive care from these already-strained programs, many who lose ACA coverage will not be eligible. For example, free or subsidized care at a Title X clinic is restricted to people with incomes of less than 250% of the federal poverty level ($51,950 for a family of three in 2018).[12] Medicaid eligibility is also very limited. In most states that have not expanded Medicaid under the ACA, childless, non-pregnant adults remain ineligible, and the 2017 median income limit for parents was just 44% of the

[12] 42 U.S.C. § 300a-4(c)(2); 42 C.F.R. §§ 59.2, 59.5(7), (8); Office of Ass't Sec'y for Planning & Eval., U.S. Dep't of Health & Human Servs., *U.S Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs*, https://aspe.hhs.gov/poverty-guidelines (last visited May 21, 2018). A recently proposed rule would redefine "low-income family" for Title X eligibility to include women who lose contraceptive coverage because of an employer's objection. *See* Compliance with Statutory Program Integrity Requirements, HHS-OS-2018-0008, at 113 (proposed May 22, 2018) (to be codified at 42 C.F.R. Part 59) [hereinafter "Proposed Regulation"]. This redefinition illegally defies the plain meaning and purpose of Title X, and in any event the proposed rule does nothing to ensure Title X providers actually have the capacity to meet the needs of these additional women.

federal poverty level ($8,985 for a family of three in 2017).[13] Even in most states that have expanded Medicaid, eligibility for adults is limited to those with incomes at or below 138% of the federal poverty level ($28,676 for a family of three in 2018).[14] Moreover, due to anti-immigrant provisions in Medicaid, most lawful permanent residents—many of whom are Latinx and AAPI individuals—are ineligible for five years. 8 U.S.C. § 1613(a).

For eligible women, Medicaid and Title X do not have the capacity to meet the needs of current enrollees, much less the additional thousands of women who will lose coverage under the IFRs.[15] Instead, as demonstrated by Plaintiffs-Appellees, the net increase in enrollment in these programs (and state-run family-planning programs) will force the States to expend additional funds, causing them

[13] Rachel Garfield & Anthony Damico, Kaiser Family Found., *The Coverage Gap: Uninsured Poor Adults in States that Do Not Expand Medicaid*, 1 (2017), http://files.kff.org/attachment/Issue-Brief-The-Coverage-Gap-Uninsured-Poor-Adults-in-States-that-Do-Not-Expand-Medicaid.

[14] 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII); Kaiser Family Found., *Where Are States Today? Medicaid and CHIP Eligibility Levels for Children, Pregnant Women, and Adults* 2 (2018), http://files.kff.org/attachment/Fact-Sheet-Where-are-States-Today-Medicaid-and-CHIP-Eligibility-Levels-for-Children-Pregnant-Women-and-Adults (District of Columbia and Alaska are the only expansion states with higher eligibility levels as of January 2018).

[15] Jennifer J. Frost et al., Guttmacher Inst., *Contraceptive Needs and Services, 2014 Update* 12, 30 (2016), https://www.guttmacher.org/sites/default/files/report_pdf/contraceptive-needs-and-services-2014_1.pdf (publicly-funded providers met only 39% of need for publicly-supported contraceptive services in 2014).

fiscal harm, and the Administration's ongoing attempts to restructure Title X and Medicaid will further burden these already-scarce resources.[16]

Finally, millions of women, including women in San Benito, Tehama, and Yuba Counties in California, live in so-called "contraceptive deserts," geographic regions without reasonable access (one clinic per 1,000 women in need) to a publicly-funded clinic offering the full range of FDA-approved contraceptive methods,[17] and therefore will not be able to rely on publicly-funded clinics if they lose private contraceptive coverage.

B. The Departments Significantly Underestimate the Number of Women Who Will Be Harmed by the IFRs.

The Departments state that 31,700-120,000 women will be impacted by the IFRs. Religious Exemptions, 82 Fed. Reg. at 47,821, 47,823. But the number of individuals at risk of losing coverage is almost certainly much greater given the Departments' faulty assumptions.

---

[16] *See, e.g.*, Proposed Regulation, *supra* note 12; U.S. Dep't of Health & Human Servs., *Announcement of Anticipated Availability of Funds for Family Planning Services Grants, No. PA-FPH-18-001* (Feb. 23, 2018), https://www.hhs.gov/opa/sites/default/files/FY18%20Title%20X%20Services%20FOA_Final_Signed.pdf; Jessie Hellmann, *Trump Administration Rescinds Obama Guidance on Defunding Planned Parenthood*, The Hill (Jan. 19, 2018, 11:15 AM), http://thehill.com/policy/healthcare/369723-trump-administration-rescinds-guidance-protecting-planned-parenthoods.

[17] Power to Decide, *Publicly Funded Sites Offering All Birth Control Methods By County*, https://powertodecide.org/what-we-do/access/access-birth-control (last visited May 21, 2018).

First, the Departments wrongly assume that only those entities that filed litigation or requested an accommodation under the original religious exemption, and a trivial number of similar entities, will take advantage of the expanded exemptions. *See* Religious Exemptions, 82 Fed. Reg. at 47,816, 47,818, 47820-21; Moral Exemptions, 82 Fed. Reg. at 47,857. On the contrary, by extending the religious exemption to all universities and non-governmental employers, including publicly-traded companies, the IFRs greatly expand the number of eligible entities. The Departments also ignore that some of the original litigating entities represent multiple employers: the Catholic Benefits Association alone represents more than 1,000 employers.[18]

Second, the Departments offer no realistic assessment of the likely impact of the "moral" exemption, under which any university or non-publicly-traded private entity may claim an exemption for virtually any reason; the rules do not define what constitutes a "moral objection" and do not even require filing a statement of the objection.

Third, the Departments' assumption that all employees of objecting entities share those objections, and thus do not use contraception, *see* Moral Exemptions, 82 Fed. Reg. at 47,849, is contrary to the facts. Many women of faith, including

[18] Catholic Benefits Ass'n, https://catholicbenefitsassociation.org/ (last visited May 21, 2018).

their dependents, who rely on objecting entities for health insurance will be impacted by loss of contraceptive coverage. More than 99% of sexually experienced women aged 15-44 have used at least one method of contraception at some point regardless of religious affiliation.[19] 98% of sexually experienced Catholic women have used a method of contraception other than natural family planning; that number is 95% for married Catholic Latinas.[20] Over 70% of Protestant (Evangelical and Mainline) women use a "highly effective contraceptive method" (including sterilization, IUDs, the pill, and other hormonal methods).[21]

II. THE IFRS WILL IRREPARABLY HARM THE HEALTH, AUTONOMY, EQUALITY, AND ECONOMIC SECURITY OF WOMEN, AND PARTICULARLY THOSE FACING MULTIPLE AND INTERSECTING FORMS OF DISCRIMINATION.

The ACA dramatically reduced out-of-pocket expenditures on contraception,

[19] Kimberly Daniels et al., Ctrs. For Disease Control & Prevention, *62 Nat'l Health Stats. Reps.: Contraceptive Methods Women Have Ever Used: United States, 1982–2010* 8 (2013), https://www.cdc.gov/nchs/data/nhsr/nhsr062.pdf.

[20] Rachel K. Jones & Joerg Dreweke, Guttmacher Inst., *Countering Conventional Wisdom: New Evidence on Religion and Contraceptive Use* 4 (2011), https://www.guttmacher.org/sites/default/files/report_pdf/religion-and-contraceptive-use.pdf; Catholics for Choice, *The Facts Tell the Story 2014-2015* 5 (2014), http://www.catholicsforchoice.org/wp-content/uploads/2014/12/FactsTelltheStory2014.pdf.

[21] Jones & Dreweke, *supra* note 19, at 5.

resulting in its increased use.[22] The IFRs threaten to reverse these gains. Without coverage, individuals will face additional barriers, making it more difficult to access the contraceptive method that best meets their needs. Even small costs can force people to use less effective contraceptive methods, use contraception inconsistently, or forgo it completely,[23] particularly impacting women of color, young people, transgender people, and others living at the intersection of multiple forms of oppression, already facing stark health disparities due to systemic, historical, and other barriers to contraceptive and reproductive health care.

A. The IFRs Will Reinstate Pre-ACA Barriers to Contraception that Will Impede Use.

1. *The IFRs Will Make Contraception Cost-Prohibitive for Many People.*

The Departments claim that contraception is "relatively low cost," Religious Exemptions, 82 Fed. Reg. at 47,816, but this disregards its actual cost and the reality of people's lives.

Without insurance coverage, contraception is not low cost. Prior to the ACA, women spent between 30% and 44% of their total out-of-pocket health costs

[22] *See*, *e.g.*, Snyder, *supra* note 5, at 222.

[23] *See* Guttmacher Inst., *A Real-Time Look at the Impact of the Recession on Women's Family Planning and Pregnancy Decisions* 5 (2009), https://www.guttmacher.org/sites/default/files/report_pdf/recessionfp_1.pdf.

just on contraception.[24] A 2009 study found oral contraception (the pill) costs, on average, $2,630 over five years, and other very effective methods such as injectables, transdermal patches, and the vaginal ring, cost women between $2,300 and $2,800 over a five-year period.[25] Today, women can be expected to spend $850 annually on oral contraception and attendant care.[26] LARCs—among the most effective contraceptives—carry the highest up-front costs: IUDs can cost up to $1300 up front,[27] in addition to costs of ongoing care.

[24] Nora V. Becker & Daniel Polsky, *Women Saw Large Decrease in Out-Of-Pocket Spending for Contraceptives After ACA Mandate Removed Cost Sharing*, 34 Health Affairs 1204, 1208 (2015).

[25] James Trussell et al., *Erratum to "Cost Effectiveness of Contraceptives in the United States" [Contraception 79 (2009) 5-14]*, 80 Contraception 229 (2009).

[26] Jamila Taylor & Nikita Mhatre, *Contraceptive Coverage Under the Affordable Care Act*, Ctr. for Am. Progress (Oct. 6, 2017, 5:09 PM), https://www.americanprogress.org/issues/women/news/2017/10/06/440492/contraceptive-coverage-affordable-care-act/.

[27] Erin Armstrong et al., *Intrauterine Devices and Implants: A Guide to Reimbursement* 5 (Regents of U.C. et al. 2d ed. 2015), https://www.nationalfamilyplanning.org/file/documents----reports/LARC_Report_2014_R5_forWeb.pdf; *IUD*, Planned Parenthood https://www.plannedparenthood.org/learn/birth-control/iud (last visited May 21, 2018).

Cost is a major determinant of whether people across the income spectrum obtain needed health care, particularly for individuals with lower incomes.[28] Studies confirm that "[e]ven small increments in cost sharing have been shown to reduce the use of preventive services, such as mammograms."[29] One study noted that when finances are strained, women cease using contraception, skip pills, delay filling prescriptions, or purchase fewer packs at once.[30] Cost is also a major determinant of contraceptive use by young people—before the ACA, 55% of young women reported experiencing a time when they could not afford contraception consistently.[31]

[28] Adam Sonfield, *The Case for Insurance Coverage of Contraceptive Services and Supplies Without Cost-Sharing*, 14 Guttmacher Pol'y Rev. 7, 10 (2011), https://www.guttmacher.org/sites/default/files/article_files/gpr140107.pdf.

[29] *See* Inst. of Medicine, *Clinical Preventive Services for Women: Closing the Gaps* 109 (2011) [hereinafter "IOM Rep."].

[30] Guttmacher Inst., *supra* note 23, at 5.

[31] Zenen Jaimes et al., Generation Progress & Advocates for Youth, *Protecting Birth Control Coverage for Young People* 1 (2015), http://www.advocatesforyouth.org/storage/advfy/documents/Factsheets/protecting%20birth%20control%20coverage%20factsheet-2-18-15.pdf.

Cost also impacts the choice of contraceptive method. People often use methods that are medically inappropriate or less effective because they cannot afford methods with higher out-of-pocket costs.[32]

The ACA contraceptive coverage requirement has yielded enormous cost-savings.[33] The mean total out-of-pocket expenses for FDA-approved contraceptives decreased approximately 70% following the ACA,[34] saving women $1.4 billion in 2013 on oral contraception alone.[35] Today, an estimated 62.4 million women[36]—three-fourths of insured reproductive-age women using

[32] Debbie Postlethwaite et al., *A Comparison of Contraceptive Procurement Pre- and Post-Benefit Change*, 76 Contraception 360, 360, 363 (2007) (finding decrease in out-of-pocket costs of contraception increased use of more effective methods); *Insurance Coverage of Contraception*, Guttmacher Inst. (Dec. 2016), https://www.guttmacher.org/evidence-you-can-use/insurance-coverage-contraception.

[33] *See* Snyder, *supra* note 5, at 222; *see also* Bearek et al., *Changes in Out-Of-Pocket Costs for Hormonal IUDs after Implementation of the Affordable Care Act: An Analysis of Insurance Benefit Inquiries*, 93 Contraception 139, 141 (2016) (cost of hormonal IUDs fell to $0 for most insured women following ACA).

[34] A. Law et al., *Are Women Benefiting from the Affordable Care Act? A Real-World Evaluation of the Impact of the Affordable Care Act on Out-of-Pocket Costs for Contraceptives*, 93 Contraception 392, 397 (2016).

[35] Becker & Polsky, *supra* note 24, at 1208.

[36] *See* Nat'l Women's Law Ctr., *supra* note 6.

contraception—have coverage for the full range of FDA-approved contraceptive methods with zero out-of-pocket costs.[37]

The increased access to contraception under the ACA corresponded with an increase in use,[38] particularly of the most effective forms of contraception. The ACA's coverage requirement was followed by an increase in the rate of new LARC insertions, suggesting "that the removal of the cost barrier to IUDs and implants has increased their rate of adoption after the ACA."[39] Women in plans with the greatest reduction in out-of-pocket cost for IUDs after the ACA also experienced the greatest increase in use.[40] The IFRs will reverse these gains by

---

[37] Snyder, *supra* note 5, at 221; *see also* Caroline Rosenzweig et al., Kaiser Family Found., *Women's Sexual and Reproductive Health Services: Key Findings from the 2017 Kaiser Women's Health Survey* 3 (2018), http://files.kff.org/attachment/Issue-Brief-Womens-Sexual-and-Reproductive-Health-Services-Key-Findings-from-the-2017-Kaiser-Womens-Health-Survey.

[38] Express Scripts, *2015 Drug Trends Report* 118 (2016), http://lab.express-scripts.com/lab/drug-trend-report/~/media/e2c9d19240e94fcf893b706e13068750.ashx (reporting that contraceptive use increased 17.2% from 2014-15); Express Scripts, *2016 Drug Trends Report* 24 (2017), http://lab.express-scripts.com/lab/drug-trend-report/~/media/29f13dee4e7842d6881b7e034fc0916a.ashx (reporting 3.0% overall increase in contraceptive use from 2015-16, and 137.6% increase in specialty contraceptives, including LARCs).

[39] *See* Snyder, *supra* note 5, at 222.

[40] Erica Heisel et al., *Intrauterine Device Insertion Before and After Mandated Health Care Coverage: The Importance of Baseline Costs*, 131 Obstetrics & Gynecology 843, 843 (2018).

allowing employers and universities to withdraw contraceptive coverage or impose cost-sharing.

2. *The IFRs Will Create Logistical, Administrative, and Informational Barriers to Contraception.*

In addition to increasing out-of-pocket costs, the IFRs will impose other barriers to contraception, including logistical, informational, and administrative burdens in navigating the health care system without employer- or university-sponsored contraceptive coverage.

Navigating the health care system is complicated, requiring many resources—free time, regular and unlimited phone and internet access, privacy, transportation, language comprehension, and ability to read and respond to complex paperwork. This is particularly difficult for individuals with limited English proficiency, including some Black, Latinx and AAPI individuals, and is also difficult for people in low-wage jobs—disproportionately women of color—who often work long, unpredictable hours without scheduling flexibility and who lack reliable access to transportation.[41]

Many who lose coverage will be forced to navigate switching from providers they trust and who know their medical histories. This interrupts continuity of care

and poses particular challenges for women of color, women with limited English proficiency, and LGBTQ individuals, who already face multiple barriers to obtaining reproductive health services, including language barriers, a lack of cultural competency, providers' limited geographic availability, and implicit bias and discrimination.[42] Having to switch from a trusted provider is particularly consequential for transgender and gender non-conforming people, who report pervasive provider discrimination and refusals to provide care, cultural insensitivity, and ignorance of transgender-related care.[43]

Further, due to both economic and geographic barriers, many people will not have the option of changing providers to obtain the contraceptive method that suits their needs. As noted, many women live in "contraceptive deserts" with limited

---

[41] Nat'l Women's Law Ctr., *Collateral Damage: Scheduling Challenges for Workers in Low-Wage Jobs and Their Consequences* 1-3 (2017), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/04/Collateral-Damage.pdf.

[42] *See* Am. Coll. of Obstetricians & Gynecologists, *Committee Opinion No. 649: Racial & Ethnic Disparities in Obstetrics & Gynecology* 3 (2015), https://www.acog.org/-/media/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/co649.pdf?dmc=1&ts=20180521T1849308146; Sandy E. James et al., Nat'l Ctr. for Transgender Equality, *The Report of the 2015 U.S. Transgender Survey* 96-99 (2015), https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF.

[43] *See* James, *supra* note 42, at 96-99.

access to publicly-funded clinics.[44] Students who rely on their university's campus health services also may not have access to off-campus providers, or may face cost-prohibitive cost-sharing for off-campus care.

B. The IFRs Will Harm the Health of Individuals and Families.

By reinstating cost and other barriers to contraception, the IFRs will harm the health of individuals and families, particularly those already suffering disproportionately negative health outcomes for which access to contraception without cost-sharing is critical. Contraception is a vital component of preventive health care—it prevents unintended pregnancy and its attendant health consequences, avoids exacerbating medical conditions for which pregnancy is contraindicated, and offers standalone health benefits unrelated to pregnancy.

Notwithstanding the significant overall decrease in out-of-pocket expenditures on contraception under the ACA, racial and ethnic disparities in access to contraception persist, including access to the most effective methods. Black, Latina, and AAPI women are less likely to use prescription contraception than their white peers due to structural barriers, such as geographically inaccessible providers and inflexible work schedules, which limit access to reliable and

[44] *See supra* note 15 and accompanying text.

affordable methods of family planning.[45] Insurance coverage for contraception is an important factor in reducing disparities in contraceptive use.[46] The IFRs will exacerbate existing disparities by inhibiting access to such coverage.

1. *The IFRs Place More People, Particularly Women of Color and Young People, at Risk for Unintended Pregnancy and Associated Health Risks.*

By inhibiting access to contraception, the IFRs will increase the risk of unintended pregnancy, which, due to systemic barriers, is already higher for women of color and young people (including LGBTQ youth).[47] Unintended pregnancy can have serious health consequences for individuals and their families. People with unplanned pregnancies are more likely to delay prenatal care, leaving

---

[45] Stacey McMorrow, Urban Inst., *Racial and Ethnic Disparities in Use of Prescription Contraception: The Role of Insurance Coverage* (forthcoming), https://academyhealth.confex.com/academyhealth/2017arm/meetingapp.cgi/Paper/17939; Jo Jones et al., Ctrs. For Disease Control & Prevention, *Nat'l Health Statistics Reps.: Current Contraceptive Use in the United States 2006-2010, and Changes in Patterns of Use Since 1995* 5, 8 (2012), https://www.cdc.gov/nchs/data/nhsr/nhsr060.pdf; Christine Dehlendorf et al., *Disparities in Family Planning*, 202 Am. J. Obstet. Gynecol. 214, 216 (2010).

[46] McMorrow, *supra* note 45; Dehlendorf, *supra* note 45, at 216.

[47] IOM Rep., *supra* note 29, at 103-04; Lawrence B. Finer & Mia R. Zolna, *Shifts in Intended and Unintended Pregnancies in the United States, 2001–2008*, 104 Am. J. Pub. Health S43, S47 (2014); Kashif Syed, Advocates for Youth, *Ensuring Young People's Access to Preventive Services in the Affordable Care Act* 2 (2014), http://www.advocatesforyouth.org/storage/advfy/documents/Preventive%20Services%20in%20the%20ACA-11-24-14.pdf; Lisa L. Lindley & Katrina M. Walsemann, *Sexual Orientation and Risk of Pregnancy Among New York City High-School Students*, 105 Am. J. Pub. Health 1379, 1383 (2015).

potential health complications unaddressed and increasing the risk of infant mortality, birth defects, low birth weight, and preterm birth.[48] Women with unintended pregnancies are also at higher risk for maternal morbidity and mortality, maternal depression, and physical violence during pregnancy.[49] The U.S. has a higher maternal mortality rate than any other high-income country, especially for Black women.[50] By creating additional barriers to contraception and preconception care, the IFRs threaten to increase rates of unintended pregnancy and related health risks.

---

[48] IOM Rep., *supra* note 29, at 103; *see also* Cassandra Logan et al., Nat'l Campaign to Prevent Teen & Unplanned Pregnancy, Child Trends, Inc., *The Consequences of Unintended Childbearing: A White Paper* 3-5 (2007), https://pdfs.semanticscholar.org/b353/b02ae6cad716a7f64ca48b3edae63544c03e.pdf.

[49] IOM Rep., *supra* note 29, at 103; Amy O. Tsui et al., *Family Planning and the Burden of Unintended Pregnancies*, 32 Epidemiologic Rev. 152, 165 (2010); Office of Disease Prevention & Health Promotion, *HealthyPeople 2020: Family Planning*, HealthyPeople.gov, https://www.healthypeople.gov/2020/topics-objectives/topic/family-planning (last visited May 21, 2018).

[50] Black Mamas Matter Alliance, *Black Mamas Matter Toolkit Advancing the Right to Safe and Respectful Maternal Health Care* 21 (2018), https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/USPA_BMMA_Toolkit_Booklet-Final-Update_Web-Pages.pdf; Renee Montagne & Nina Martin, *Focus On Infants During Childbirth Leaves U.S. Moms In Danger*, Nat'l Pub. Radio (May 12, 2017, 5:00 AM), https://www.npr.org/2017/05/12/527806002/focus-on-infants-during-childbirth-leaves-u-s-moms-in-danger; Guttmacher Inst., *Publicly Funded Family Planning Services in the United States* 1 (2016), https://www.guttmacher.org/sites/default/files/factsheet/fb_contraceptive_serv_0.pdf.

The Departments claim that availability of contraceptive coverage without cost-sharing does not decrease the incidence of unintended pregnancy. Religious Exemptions, 82 Fed. Reg. at 47,804-05. To the contrary, as the post-ACA research corroborates, lowering the cost of contraception leads to increased use,[51] resulting in fewer unintended pregnancies.[52] By impairing consistent and correct use of contraception, the IFRs will increase risk of unintended pregnancy: 41% of unintended pregnancies in the U.S. are caused by inconsistent or incorrect contraceptive use and 54% are due to non-use.[53] Indeed, a post-ACA study found that denying contraceptive coverage resulted in 33 more pregnancies per 1000 women, and that "insurance coverage was significantly associated with women's choice of contraceptive method."[54]

The Departments also are incorrect in asserting that harm to women will be mitigated because some employers and universities with objections may

[51] *See supra* notes 33-40 and accompanying text.

[52] Jeffrey F. Peipert et al., *Preventing Unintended Pregnancies by Providing No-Cost Contraception*, 120 Obstetrics & Gynecology 1291, 1291 (2012).

[53] Adam Sonfield et al., Guttmacher Inst., *Moving Forward: Family Planning in the Era of Health Reform* 8 (2014); *see also* James Trussell et al., *Burden of Unintended Pregnancy in the United States: Potential Savings with Increased Use of Long-Acting Reversible Contraception*, 87 Contraception 154, 157 (2013).

[54] W. Canestaro et al., *Implications of Employer Coverage of Contraception: Cost-Effectiveness Analysis of Contraception Coverage Under an Employer Mandate*, 95 Contraception 77, 83, 85 (2017).

voluntarily choose to cover some methods. *See* Religious Exemptions, 82 Fed. Reg. at 47,801, 47,817, 47,823. People are more likely to use contraception consistently and correctly when they are able to choose the method that suits their needs.[55] Not all individuals respond the same way to all contraceptives, not all methods provide the same benefits for all people, and not all people tolerate all methods. Allowing employers or universities to pick and choose covered methods undermines people's ability to consistently use the contraceptive that is most appropriate for them, increasing the risk of unintended pregnancy.

2. *The IFRs Will Undermine Health Benefits from Contraception.*

Contraception allows women to delay pregnancy when it is contraindicated and offers several standalone benefits unrelated to pregnancy. Although the majority of women aged 18-44 who use contraception do so to prevent pregnancy (59%), 13% use it solely to manage a medical condition, and 22% use it both to prevent pregnancy and to manage a medical condition.[56]

Contraception is necessary to control medical conditions that are complicated by pregnancy, including diabetes, obesity, pulmonary hypertension,

---

[55] Jennifer J. Frost & Jacqueline E. Darroch, *Factors Associated with Contraceptive Choice and Inconsistent Method Use, United States, 2004*, 40 Persps. on Sexual & Reprod. Health 94, 99, 101-03 (2008).

[56] Rosenzweig, *supra* note 37, at 3.

and cyanotic heart disease.[57] In addition, contraception treats menstrual disorders, reduces menstrual pain, reduces the risks of certain cancers, such as endometrial and ovarian cancer, and helps protect against pelvic inflammatory disease.[58]

By reinstating cost barriers to some or all contraceptive methods, the IFRs will aggravate medical conditions and undermine necessary health benefits.

C. The IFRs Will Undermine Individuals' Autonomy and Control Over Their Reproductive and Personal Lives.

The Supreme Court has recognized that "[t]he 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." *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 856 (1992); *see also Griswold v. Connecticut*, 381 U.S. 479, 485-86 (1965). Women also report that the ability to plan their lives is a main reason for their use of contraception.[59]

Contraception and the freedom it affords are particularly important for communities with histories of subjection to the control of others in their sexual and reproductive lives. During slavery, when Black women were the legal chattel of

[57] IOM Rep., *supra* note 29, at 103-04.

[58] *Id.* at 107.

[59] Jennifer J. Frost & Laura Duberstein Lindberg, *Reasons for Using Contraception: Perspectives of US Women Seeking Care at Specialized Family Planning Clinics*, 87 Contraception 465, 467, 470 (2013).

their masters, they had no ability to resist unwanted sex or childbearing.[60] Slavery gave way to twentieth century policies and practices that encouraged and coerced women of color, individuals with disabilities, and so-called "sexual deviants," to refrain from reproduction; these policies culminated in forced sterilizations without informed consent.[61] Affordable access to the full range of contraceptive options empowers individuals to exercise control over their reproductive futures.

Contraception is also critical to the autonomy of transgender men and gender non-conforming individuals. Contraception permits these individuals to align their gender identity with their physiology by enabling them to prevent pregnancy and control menstruation.[62] Transgender men already have higher incidence of

[60] Deborah Gray White, *Ar'n't I a Woman?: Female Slaves in the Plantation South* 68 (W.W. Norton & Co. ed., 1999).

[61] Carole Joffe & Willie J. Parker, *Race, Reproductive Politics and Reproductive Health Care in the Contemporary United States*, 86 Contraception 1, 1 (2012); *see also Proud Heritage: People, Issues, and Documents of the LGBT Experience, Vol. 2* 205 (Chuck Stewart, ed. 2015); Elena R. Gutiérrez, *Fertile Matters: the Politics of Mexican-Origin Women's Reproduction* 35-54 (2008); *Buck v. Bell*, 274 U.S. 200, 205 (1927) (upholding law permitting coerced sterilization of "mentally defective" people).

[62] Juno Obedin-Maliver & Harvey J. Makadon, *Transgender Men and Pregnancy*, 9 Obstetric Med. 4, 6 (2015).

depression, anxiety, and suicide,[63] and for some, pregnancy and menstruation can increase experiences of gender dysphoria—the distress resulting from one's physical body not aligning with one's sense of self.[64]

Finally, contraception, particularly the shot, LARCs, and emergency contraception, is vital for survivors of rape and interpersonal violence.[65] Access to emergency contraception without cost-sharing empowers sexual assault survivors to prevent unwanted pregnancy after the trauma of rape, and is particularly critical for students given the high rate of sexual assault on college campuses.[66] The shot and LARCs enable women to prevent pregnancy with reduced risk of detection by

---

[63] SL Budge et al., *Anxiety and Depression in Transgender Individuals: The Roles of Transition Status, Loss, Social Support, and Coping*, 81 J. Consult Clin. Psych. 545 (2013); Fatima Saleem & Syed W. Rizvi, *Transgender Associations and Possible Etiology: A Literature Review*, 9 Cureus 1, 2 (2017) ("Forty-one % of [transgender individuals in the U.S.] reported attempting suicide as compared to 1.6% of the general population.").

[64] Obedin-Maliver & Makadon, *supra* note 62, at 6; Saleem & Rizvi, *supra* note 63, at 1.

[65] Am. Coll. of Obstetricians & Gynecologists, *Committee Opinion No. 554, Reproductive and Sexual Coercion* 2-3 (2013), https://www.acog.org/-/media/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/co554.pdf?dmc=1&ts=20180521T2206346190 [hereinafter "ACOG No. 554"].

[66] Nat'l Women's Law Ctr., *Sexual Harassment & Assault in Schools*, https://nwlc.org/issue/sexual-harassment-assault-in-schools/ (last visited May 21, 2018).

or interference from partners.[67] Without these options, pregnancy can entrench a woman in an abusive relationship, endangering the woman, her pregnancy, and her children. Abusive partners often engage in "reproductive coercion," behaviors to promote pregnancy undesired by the woman, including interfering with contraception or abortion.[68] By impeding their access to necessary contraceptive methods, the IFRs harm women's ability to resist such coercion.[69]

D. The IFRs Undermine Gender Equality and the Economic Security of Women and Families.

The IFRs will thwart women's ability to plan, delay, space, and limit pregnancies as is best for them, thereby undermining women's ability to participate equally in society and further their educational and career goals, and re-establishing the gender discrimination in health insurance that the ACA was meant to abolish.

1. *The ACA Was Intended to Eliminate Gender Discrimination in Health Care.*

Congress intended the ACA to reduce gender discrimination in health insurance by ensuring that it covers women's major health needs and that women

[67] ACOG No. 554, *supra* note 64, at 2-3.

[68] *Id.* at 1-2; Elizabeth Miller et al., *Reproductive Coercion: Connecting the Dots Between Partner Violence and Unintended Pregnancy*, 81 Contraception 457, 457–58 (2010).

[69] ACOG No. 554, *supra* note 64, at 2-3.

no longer pay more for health care than men, including by decreasing the cost of contraception.[70]

The Departments cannot deny this Congressional intent: they previously explained that Congress added the ACA Women's Health Amendment because "women have unique health care needs and burdens . . . includ[ing] contraceptive services," and the "Departments aim to reduce these disparities by providing women broad access to preventive services, including contraceptive services."[71]

The contraceptive coverage requirement has enabled great strides towards achieving these aims by drastically reducing the out-of-pocket cost of contraception and ensuring coverage of the full range of FDA-approved contraceptives and related services. The IFRs' expansive exemptions—countenanced by neither the text nor the legislative history of the ACA—will undermine gender equality by reintroducing the very inequities that Congress

[70] 42 U.S.C. § 300gg-13(a)(4); *see also* 155 Cong. Rec. S12,021, S12,026 (daily ed. Dec. 1, 2009) (statement of Sen. Mikulski) (Women's Health Amendment intended to alleviate "punitive practices of insurance companies that charge women more and give [them] less in a benefit"); 155 Cong. Rec. S12,033, S12,052 (daily ed. Dec. 1, 2009) (statement of Sen. Franken) (Women's Health Amendment intended to incorporate "affordable family planning services" to "enable women and families to make informed decisions about when and how they become parents.").

[71] Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 77 Fed. Reg. 8,727, 8,728 (Feb. 15, 2012) [hereinafter "ACA Coverage"].

meant to remedy.

2. *Access to Contraception Provides Life-Long Economic Benefits to Women, Families, and Society.*

Empirical research confirms that access to contraception has life-long economic benefits for women and society: it enables women to complete high school and attain higher levels of education, improves women's earnings and labor force participation, and secures women's economic independence.[72] The availability of the oral contraceptive pill alone is associated with roughly one-third of the total wage gains for women born from the mid-1940s to early 1950s.[73] Access to oral contraceptives has improved women's educational attainment,[74] which in turn has caused large increases in women's participation in law, medicine, and other professions.[75] While wage disparities persist, contraception

[72] Adam Sonfield et al., Guttmacher Inst., *The Social and Economic Benefits of Women's Ability to Determine Whether and When to Have Children* 7-8 (2013), https://www.guttmacher.org/sites/default/files/report_pdf/social-economic-benefits.pdf.

[73] Martha J. Bailey et al., *The Opt-in Revolution? Contraception and the Gender Gap in* Wages, 4 Am. Econ. J. Appl. Econ. 225, 241 (2012), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3684076/.

[74] Heinrich H. Hock, *The Pill and the College Attainment of American Women and Men* 19 (Fla. St. Univ., Working Paper 2007).

[75] Claudia Goldin & Lawrence F. Katz, *The Power of the Pill: Oral Contraceptives and Women's Career and Marriage Decisions*, 110 J. Pol. Econ. 730, 749 (2002).

has helped advance gender equality by reducing the gap.[76] Contraception also has yielded broader societal benefits, including "increases in household savings and assets, increases in children's schooling, increases in GDP growth and reductions in poverty."[77]

The Departments are well aware of these significant benefits. In previously-issued rules, they explained that before the ACA, disparities in health coverage "place[d] women in the workforce at a disadvantage compared to their male co-workers," that "[r]esearchers have shown that access to contraception improves the social and economic status of women," and that the contraceptive coverage requirement "furthers the goal of eliminating this disparity by allowing women to achieve equal status as healthy and productive members of the job force."[78]

Women, too, understand these benefits, reporting that they use contraception to "take better care of myself or my family," to "support myself financially," "to

[76] Sonfield, *supra* note 72, at 14.

[77] Susheela Singh et al., Guttmacher Inst., *Adding It Up: The Costs and Benefits of Investing in Sexual and Reproductive Health* 5 (2014), https://www.guttmacher.org/sites/default/files/report_pdf/addingitup2014.pdf.

[78] ACA Coverage, 77 Fed. Reg. at 8,725, 8,728.

stay in school or finish my education," and "get or keep my job or have a career."[79] By inhibiting access to contraception, the IFRs will threaten the economic security and advancement of individuals, families, and society.

3. *The IFRs Will Exacerbate Economic and Social Disparities by Impeding Access to Contraception.*

The IFRs will most jeopardize the economic security of those already facing systemic barriers to economic advancement, forcing women who struggle to make ends meet but do not qualify for Medicaid or other public programs into a *Catch-22*: they will have less ability to absorb the cost of an unintended pregnancy, but will be most at risk for it due to greater difficulty affording contraception. Unplanned pregnancy can entrench economic hardship; unplanned births reduce labor force participation by as much as 25%.[80]

The ability to avoid unplanned pregnancy is especially important for women working in low-wage jobs, who are less likely to have parental leave or predictable

[79] Frost & Lindberg, *supra* note 59, at 467; *see also* Adam Sonfield, *What Women Already Know: Documenting the Social and Economic Benefits of Family Planning*, 16 Guttmacher Pol'y Rev. 8, 8 (2013), https://www.guttmacher.org/sites/default/files/article_files/gpr160108.pdf.

[80] Ana Nuevo Chiquero, *The Labor Force Effects of Unplanned Childbearing*, (Boston Univ., Job Market Paper Nov. 2010), http://www.unavarra.es/digitalAssets/141/141311_100000Paper_Ana_Nuevo_Chiquero.pdf.

and flexible work schedules.[81] Moreover, many women in low-wage jobs who become pregnant are denied pregnancy accommodations and face workplace discrimination; some are forced to quit, fired, or pushed into unpaid leave.[82] Nearly 70% of those holding jobs that pay less than $10 per hour are women, and a disproportionate number of women in low-wage jobs are women of color.[83] Women of color also experience greater wage disparities than white women: among full-time workers, Latina women make only 54¢ for every dollar paid to white men; that number is 57¢ for Native American women, 63¢ for Black women, and NAPAWF calculations based on census data show that number is as low as 38¢ and 44¢ for AAPI women in some ethnic subgroups.[84]

---

[81] Nat'l Women's Law Ctr., *supra* note 41, at 1, 4.

[82] Nat'l Women's Law Ctr., *It Shouldn't Be a Heavy Lift: Fair Treatment for Pregnant Workers* 1 (2016), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2015/08/pregnant_workers.pdf.

[83] Jasmine Tucker & Kayla Patrick, Nat'l Women's Law Ctr., *Women in Low-Wage Jobs May Not Be Who You Expect* 1 (2017), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/08/Women-in-Low-Wage-Jobs-May-Not-Be-Who-You-Expect.pdf.

[84] Nat'l Women's Law Ctr., *FAQs About the Wage Gap* (2017), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/09/FAQ-About-the-Wage-Gap-2017.pdf; U.S. Census Bureau, *2015 American Community Survey 1-Year Estimates: Table S0201, Selected Population Profile in the United States*, https://factfinder.census.gov/bkmk/table/1.0/en/ACS/15_1YR/S0201//popgroup~001 (last visited May 21, 2018).

The economic, social, and emotional repercussions of unintended pregnancy are also pronounced for young people. Pregnant and parenting youth face multiple barriers to education, including discriminatory school practices that fail to accommodate pregnant and parenting students, the challenge of juggling educational and parenting responsibilities, and limited access to child care.[85]

CONCLUSION

Reversing the grant of the preliminary injunction will harm individuals nationwide and in particular individuals facing multiple barriers as outlined herein. Given the likelihood of substantial, nationwide irreparable harm from the IFRs, the District Court did not abuse its discretion in issuing a preliminary injunction and that ruling should be affirmed.

[85] Nat'l Latina Inst. for Reproductive Health, *The Young Parents' Dignity Agenda* 4-5 (2015), http://www.latinainstitute.org/sites/default/files/YoungParentsDignityAgenda.pdf.

Fatima Goss Graves
Gretchen Borchelt
Sunu Chandy
Michelle Banker
NATIONAL WOMEN'S
LAW CENTER
11 Dupont Circle NW, Suite 800
Washington, DC 20036

Sawyeh Esmaili
NATIONAL LATINA INSTITUTE
FOR REPRODUCTIVE HEALTH
1411 K St. NW, Suite 602,
Washington, DC 20005

Sequoia Ayala
Carolyn Calhoun
SISTERLOVE, INC.
P.O. Box 10558
Atlanta, GA 30310-1731

Jane Liu
NATIONAL ASIAN PACIFIC
AMERICAN WOMEN'S FORUM
1730 Rhode Island Ave, NW
Suite 210
Washington, DC 20036

Of Counsel for Amici Curiae

Jeffrey Blumenfeld
LOWENSTEIN SANDLER LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
Telephone: (202) 753-3810
Fax: (212) 262-7402
jblumenfeld@lowenstein.com

Naomi D. Barrowclough
LOWENSTEIN SANDLER LLP
One Lowenstein Drive
Roseland, NJ 07068
Telephone: (973) 597-2500
Fax: (973) 597-2400
nbarrowclough@lowenstein.com

Attorneys for Amici Curiae the National Women's Law Center, the National Latina Institute for Reproductive Health, SisterLove, Inc., and the National Asian Pacific American Women's Forum in Support of Plaintiffs-Appellees

CERTIFICATE OF COMPLIANCE

I, Jeffrey Blumenfeld, certify that pursuant to Federal Rules of Appellate Procedure 29(a)(4)(G), 29(a)(5), 32(a)(7)(C), and 32(g)(1), and Ninth Circuit Rule 32-1, the forgoing Brief of *Amici Curiae* in Support of Plaintiffs-Appellees and in Support of Affirmance is 6,967 words, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6) in that it is proportionately spaced and has a typeface of 14 points.

Date: May 25, 2018 By: s/ Jeffrey Blumenfeld

APPENDIX A:

STATEMENTS OF INTEREST OF *AMICI CURIAE*

Advocates for Youth partners with youth leaders, adult allies, and youth-serving organizations to advocate for policies and champion programs that recognize young people's rights to honest sexual health services; and the resources and opportunities necessary to create sexual health equity for all youth. Young people have the right to lead healthy lives, which includes access to the resources and tools necessary to make healthy decisions about their lives. The Affordable Care Act increased access to contraception for young people and Advocates for Youth seeks to ensure that young people continue to have access to the wide range of reproductive and sexual health care services they need.

The Afiya Center is a non-profit organization dedicated to serving Black women of color. We believe that Black women should have access to everything they need to respond appropriately to their reproductive health choices. As a Reproductive Justice organization, we believe all women should have the right to have a child, not have a child, and raise the children they have in safe environments free from state sanctioned violence. The IFRs are state sanctioned violence that would force women to endure hardships that do not support the right to the families of their choice. We must say no to this kind of interference.

The **Asian & Pacific Islander American Health Forum (APIAHF)** influences policy, mobilizes communities, and strengthens programs and organizations to improve the health of over 20 million Asian Americans, Native Hawaiians, and Pacific Islanders (AAs and NHPIs). APIAHF has supported and defended the Affordable Care Act's access provisions in two amicus briefs before the U.S. Supreme Court. Access to contraception is critical to the health and economic security of AA and NHPI women who experience a number of barriers to good health, including inability to afford health care and quality coverage, language and immigration barriers.

Black Mamas Matter Alliance (BMMA) is a Black women-led cross-sectoral alliance. BMMA centers Black mamas to advocate, drive research, build power, and shift culture for Black maternal health, rights, and justice. BMMA envisions a world where Black mamas have the rights, respect, and resources to thrive before, during, and after pregnancy. As an alliance, BMMA aims to (1) change policy by introducing and advancing policy grounded in the human rights framework that addresses Black maternal health inequity and improves Black maternal health outcomes; (2) cultivate research by leveraging the talent and knowledge that exists in Black communities and cultivate innovative research methods to inform the policy agenda to improve Black maternal health; (3) advance care for Black mamas: explore, introduce, and enhance holistic and

comprehensive approaches to Black mamas' care; and (4) shift culture by redirecting and reframing the conversation on Black maternal health and amplify the voices of Black mamas. To advance health equity and economic security, BMMA believes women should have affordable access to the full range of contraceptive options and the autonomy to choose which method is best.

Black Women Birthing Justice is a collective of African-American, African, Caribbean and multiracial women who are committed to transforming birthing experiences for Black women and transfolks. Our vision is that that every pregnant person should have an empowering birthing experience, free of unnecessary medical interventions. We aim to enhance Black women's faith in their strength and resilience, and empower them to make healthy choices and to stand up for the pregnancy and birth experience they envision. We believe that access to contraception is vital to reproductive justice. Part of our mission is to advocate for the right of low-income women and women on welfare to make healthy and non-coerced decisions about when and whether to get pregnant. We are signing on to this amicus brief because we believe that all women deserve accessible, no cost contraceptive coverage as outlined in the Affordable Care Act.

The **Black Women's Health Imperative (BWHI)** is a national organization dedicated solely to improving the health and wellness of our nation's 21 million Black women and girls - physically, emotionally and financially. For 35 years,

BWHI has advanced and promoted Black women's health through evidence-based programs and initiatives, policy and advocacy, and research translation. Our policy and advocacy team evaluates and develops national and state policies to address issues most critical to Black women's health, especially regarding breast and cervical cancers, diabetes, HIV/AIDS, intimate partner violence, sexual assault, maternal health and reproductive justice. BWHI works to ensure that Black women have access to quality, affordable health care, which includes access to all forms of contraceptives. Access to the full range of contraceptive methods, some of which alleviate gynecological conditions, is critical to the health and well-being of Black women, and BWHI participates as amicus in cases that may impact Black women's reproductive health.

The **Black Women's Roundtable (BWR)** is an intergenerational civic engagement network of the National Coalition on Black Civic Participation. BWR comprises a diverse group of Black women civic leaders of international, national, regional and state-based organizations and institutions. Together, BWR's members represent the issues and concerns of millions of Americans and families who live across the United States and around the world. At the forefront of championing just and equitable public policy on behalf of Black women, BWR promotes their health and wellness, economic security, education and global empowerment as key elements for success. These issues are interconnected and BWR supports health

policies that deliver quality health care for all, strengthen the safety net for our most vulnerable communities, and address disparities in access to care. Our HealthCARE is a Human Right #NotAPrivilege Campaign seeks to protect and expand Medicaid, Medicare and the Affordable Care Act (ACA) along with ensuring access to contraceptives as set forth in the ACA.

The **Center on Reproductive Rights and Justice at UC Berkeley** seeks to realize reproductive rights and advance reproductive justice by bolstering law and policy advocacy efforts, furthering scholarship, and influencing academic and public discourse. Our work is guided by the belief that all people deserve the social, economic, political, and legal conditions necessary to make genuine decisions about reproduction.

The **Clearinghouse on Women's Issues (CWI)** is a non-profit organization established in 1974 for the purpose of disseminating information on national and international issues of interest to women. The mission of CWI is to address economic, health, educational, social, political and legal issues facing women and girls. We sign on to this amicus brief in support of continuing the injunction on the implementation of the proposed rules that provides exemptions to the provision of contraception required under the Affordable Care Act.

Latinas continue to face disparities in access to contraception and other critical reproductive healthcare. The **Colorado Organization for Latina**

Opportunity and Reproductive Rights (COLOR) believes that we need to do more to close the gaps and ensure that people have the services they need to manage their health and plan their families.

The **Desiree Alliance** positions ourselves in the belief that reproductive access and care must be made available to all those who seek such services. Denying options can no longer be accepted for women seeking ownership of their bodies.

Founded in 1974, **Equal Rights Advocates (ERA)** is a national non-profit legal advocacy organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls. In concert with our commitment to securing gender equity in the workplace and in schools, ERA seeks to preserve women's right to reproductive choice and protect women's access to health care, including safe, legal contraception and abortion. In addition to litigating cases on behalf of workers and students and providing free legal advice and counseling to hundreds of women each year, ERA has participated in numerous amicus briefs in this Court in cases affecting this right.

EverThrive Illinois (EverThrive IL) works to improve the health of women, children, and families over the lifespan by centering the values of health equity, diverse voices, and strong partnerships. EverThrive IL focuses on health issues of key importance to women, children, and their families including child and

adolescent health, immunizations, maternal and infant mortality, and health reform. Because access to safe and voluntary contraception is a human right as declared by the United Nations, can improve the quality of life for people and their families, and is central to alleviating gender-based violence, EverThrive IL is committed to upholding and advocating for the ACA contraceptive-coverage requirement.

Gender Justice is a nonprofit legal and policy advocacy organization based in the Midwest that is committed to the eradication of gender barriers through impact litigation, policy advocacy, and education. As part of its litigation program, Gender Justice represents individuals and provides legal advocacy as amicus curiae in cases involving issues of gender discrimination. Gender Justice has an interest in ensuring that the contraceptive coverage provisions of the Affordable Care Act are implemented to eliminate gender gaps in access to health care.

Ibis Reproductive Health is an international nonprofit organization with a mission to improve women's reproductive autonomy, choices, and health worldwide. Our core activity is clinical and social science research on issues receiving inadequate attention in other research settings and where gaps in the evidence exist. Our agenda is driven by women's priorities and focuses on increasing access to safe abortion, expanding contraceptive access and choices, and integrating HIV and comprehensive sexual and reproductive health services. We

partner with advocates and other stakeholders who use our research to improve policies and delivery of services in countries around the world.

In Our Own Voice: National Black Women's Reproductive Justice Agenda is a national/state partnership with eight Black women's Reproductive Justice organizations: Black Women for Wellness (CA), Black Women's Health Imperative (DC), New Voices for Reproductive Justice (PA, OH), SisterLove, Inc. (GA), SisterReach (TN), SPARK Reproductive Justice NOW (GA), The Afiya Center (TX), and Women With A Vision (LA). At In Our Own Voice, we believe every woman should have the right to make informed decisions about her fertility and to plan her family without coercion by either her doctor or her government. She should be able to choose her contraceptive method based on her own living conditions and circumstances. Women deserve the human right to make decisions about our bodies, our families, and our communities in all areas of our lives.

Jobs With Justice is dedicated to expanding the ability for men and women to come together to improve their workplaces, their communities and their lives. By leading strategic campaigns, changing the conversation, and mobilizing labor, community, student, and faith voices at the national and local levels with our network of coalitions, we create innovative solutions to the challenges faced by working people today. We sign on to this brief as the government should not further limit the economic and healthcare needs of women.

The **Maine Women's Lobby** advocates for the well-being of Maine women and girls, with a focus on freedom from violence, freedom from discrimination, access to health care, including reproductive health care, and economic security. The ability to control her reproduction is essential to a woman's well-being.

NARAL Pro-Choice America is a national advocacy organization, dedicated since 1969 to supporting and protecting, as a fundamental right and value, a woman's freedom to make personal decisions regarding the full range of reproductive choices through education, organizing, and influencing public policy. NARAL Pro-Choice America works to guarantee every woman the right to make personal decisions regarding the full range of reproductive choices. Ensuring that people can get affordable birth control and have the ability to decide whether, when, and with whom to start or expand their family is crucial to that mission.

The **National Advocates for Pregnant Women (NAPW)** is a non-profit organization working to defend and advance the constitutional and human rights of pregnant women and people with the capacity for pregnancy. NAPW provides legal representation and support in cases throughout the United States, and advocates for policies that protect the health and welfare of pregnant and parenting women and their families.

The **National Asian Pacific American Women's Forum (NAPAWF)** is the only national, multi-issue Asian American and Pacific Islander ("AAPI")

women's organization in the country. NAPAWF's mission is to build a movement to advance social justice and human rights for AAPI women, girls, and transgender and gender non-conforming people. NAPAWF approaches all of its work through a reproductive justice framework that seeks for all members of the AAPI community to have the economic, social, and political power to make their own decisions regarding their bodies, families, and communities. Its work includes advocating for the reproductive health care needs of AAPI women and ensuring AAPI women's access to reproductive health care services. Legal and institutional barriers to reproductive health care disproportionately impact women of color, low-income women, and other marginalized groups. Without legal protection to ensure meaningful, affordable access to basic reproductive health care, including contraception, many AAPI women are left without the crucial health and family planning services that they need to be able to make their own decisions regarding their bodies, families, and communities. Consequently, NAPAWF has a significant interest in ensuring that all people, regardless of their economic circumstances, immigration status, race, gender, sexual orientation, or other social factors, have affordable access to safe and effective contraception.

The **National Black Justice Coalition (NBJC)** is a civil rights organization dedicated to the empowerment of Black lesbian, gay, bisexual, transgender, queer and same gender loving people, including people living with HIV/AIDS. Because

access to contraception is of tremendous significance to all women's health, equality, and economic security, NBJC seeks to ensure that women receive the full benefits of seamless access to no-cost contraceptive coverage as intended by the Affordable Care Act, and has participated as amicus in numerous cases that affect this right.

The **National Center for Transgender Equality** is a national social justice organization working for life-saving change for the over 1.5 million transgender Americans and their families. NCTE has seen the harmful impact that discrimination in health care settings has on transgender people and their loved ones, including discrimination based on religious or moral disapproval of who transgender people are, how they live their lives, and their reproductive choices. Discrimination against transgender people in health care—whether it is being turned away from a doctor's office, being denied access to or coverage of basic care, or being mistreated and degraded simply because of one's transgender status—is widespread and creates significant barriers to care, including contraceptive care. NCTE works to ensure that transgender people and other vulnerable communities are protected from discrimination in health care and other settings and have autonomy over their bodies and health care needs.

Founded in 1899, the **National Consumers League (NCL)** is America's pioneering non-profit consumer advocacy organization. For nearly 120 years,

NCL has worked to ensure consumers' access to quality, affordable healthcare. As part of our mission, NCL advocated for passage of the Women's Preventive Services provisions of the Affordable Care Act, including coverage of contraception with no cost-sharing. NCL is committed to ensuring that access to no-cost contraceptive coverage – a necessary component of basic health care for women – is protected.

The National Institute for Reproductive Health (NIRH) is a non-profit advocacy organization working to build a society in which everyone has the freedom and ability to control their reproductive and sexual lives. NIRH promotes its mission by galvanizing public support for access to reproductive health care, including abortion and contraception, and supporting public policy that ensures that women have timely, affordable access to the full range of reproductive health care in their communities.

The National Latina Institute for Reproductive Health (NLIRH) is the only national reproductive justice organization dedicated to advance health, dignity, and justice for 28 million Latinas, their families, and communities in the United States. Through leadership development, community mobilization, policy advocacy, and strategic communications, NLIRH works to ensure that all Latinas are informed about the full range of options for safe and effective forms of contraception and family planning. NLIRH believes that affordable access to

quality contraception and family planning is essential to ensuring that all people, regardless of age or gender identity, can shape their lives and futures.

The National Network to End Domestic Violence (NNEDV) is a not-for-profit organization incorporated in the District of Columbia in 1994 to end domestic violence. As a network of the 56 state and territorial domestic violence and dual domestic violence and sexual assault coalitions and their over 2,000 member programs, NNEDV serves as the national voice of millions of women, children and men victimized by domestic violence, and their advocates. NNEDV was instrumental in promoting Congressional enactment and implementation of the Violence Against Women Acts. NNEDV works with federal, state and local policy makers and domestic violence advocates throughout the nation to identify and promote policies and best practices to advance victim safety. NNEDV is deeply concerned about the connection between domestic violence and reproductive coercion, understanding that abusers will try to maintain power and control over their victim's reproductive health. Access to birth control can provide a victim autonomy and safety.

The **National Organization for Women Foundation (NOW Foundation)** is a 501(c)(3) organization devoted to furthering women's rights through education and litigation. Created in 1986, NOW Foundation is affiliated with the National Organization for Women, the largest feminist grassroots activist organization in the

United States, with hundreds of thousands of members and contributing supporters in hundreds of chapters in all 50 states and the District of Columbia. Since its inception, NOW Foundation's goals have included advocating for improved access to the full range of reproductive health care for all women, including free access to all types of contraception.

The National Partnership for Women & Families (National Partnership), formerly the Women's Legal Defense Fund, is a national advocacy organization that develops and promotes policies to help women achieve equal opportunity, quality health care, and economic security for themselves and their families. Since its founding in 1971, the National Partnership has worked to advance women's health, reproductive rights, and equal employment opportunities through several means, including by challenging discriminatory policies in the courts.

The **National Women's Law Center (the Center)** is a non-profit legal advocacy organization dedicated to the advancement and protection of women's legal rights and opportunities since its founding in 1972. The Center focuses on issues of key importance to women and their families, including economic security, employment, education, health, and reproductive rights, with special attention to the needs of low-income women and those who face multiple and intersecting forms of discrimination. Because access to contraception is of

tremendous significance to women's health, equality, and economic security, the Center seeks to ensure that women receive the full benefits of seamless access to no-cost contraceptive coverage as intended by the Affordable Care Act, and has participated as amicus in numerous cases that affect this right.

New Voices for Reproductive Justice is a Human Rights and Reproductive Justice advocacy organization with a mission to build a social change movement dedicated to the full health and well-being of Black women, femmes, and girls in Pennsylvania and Ohio. New Voices defines Reproductive Justice as the human right of all people to have full agency over their bodies, gender identity and expression, sexuality, work, reproduction and the ability to form families. Since 2004, the organization has served over 75,000 women of color and LGBTQIA+ people of color through community organizing, grassroots activism, civic engagement, youth mentorship, leadership development, culture change, public policy advocacy, and political education. In November of 2017, New Voices was instrumental in passing a Will of Council in the City of Pittsburgh calling on state and federal officials to ensure equitable access to a full range of reproductive health services, including contraception. This call to action exemplifies crucial recognition of the fact that unhindered access to comprehensive reproductive healthcare is fundamental to the health and well-being of our families and communities. New Voices stands in staunch opposition to discriminatory laws,

policies, rules, and actions that deny people access to contraception. These barriers disproportionately harm women of color, gender nonconforming people and low-income women. All people should have access to a full range of reproductive health care, including contraceptive coverage through health insurance, free from outside interference.

Nurses for Sexual and Reproductive Health provides students, nurses and midwives with education and resources to become skilled care providers and social change agents in sexual and reproductive health and justice. As providers, we know healthcare coverage is essential to our patients' ability to access safe and compassionate care. We also know that contraception is a part of sexual and reproductive care, which we assert is vital to the health and well-being of our patients.

The **Oklahoma Coalition for Reproductive Justice** is a coalition of organizations and individuals promoting reproductive justice in Oklahoma through education, empowerment, and advocacy. We believe that reproductive justice includes the right to have or not to have a child and respect for families in all their forms. It supports access to sexual education, contraception, abortion care and pregnancy care as well as to the resources needed to raise children in safe and healthy circumstances, with good schools and healthcare and other elements necessary for bright futures. It encompasses respect for women, their partners, and

families, for sexuality and for gender differences. It respects human rights and the separation of church and state.

Raising Women's Voices for the Health Care We Need (RWV) is a national initiative working to ensure that the health care needs of women and families are addressed as the Affordable Care Act is implemented. It has a diverse network of 30 grassroots health advocacy organizations in 29 states. RWV has a special mission of engaging women who are not often invited into health policy discussions: women of color, low-income women, immigrant women, young women, and members of the lesbian, gay, bisexual, transgender, and queer community.

The **Reproductive Health Access Project** is a national nonprofit organization dedicated to training and supporting clinicians to make reproductive health care accessible to everyone, everywhere in the United States. We focus on three key areas: abortion, contraception, and management of early pregnancy loss. Our work focuses on integrating full-spectrum reproductive health care in primary care settings and we are guided by the belief that everyone should be able to access basic health care, including contraceptive care, from their primary care clinician.

The Sexuality Information and Education Council of the United States (SIECUS), founded in 1964, is a non-profit policy and advocacy organization that envisions an equitable nation where all people receive comprehensive sexuality

education and quality sexual and reproductive health services affirming their identities, thereby ensuring their lifelong health and well-being. SIECUS advocates for the rights of all people to the full spectrum of sexual and reproductive health services as well as accurate information and comprehensive sexuality education. SIECUS maintains that as a fundamental component of reproductive health services, affordable access to contraception—as intended by the Affordable Care Act and regardless of age, race, size, gender, gender identity and expression, class, sexual orientation, and ability—is central to maintaining sexual and reproductive freedom for all people.

Founded in July 1989, **SisterLove, Inc.** is an HIV/AIDS and reproductive justice nonprofit service organization focusing on women, particularly women of African descent. SisterLove's mission is to eradicate the adverse impact of HIV/AIDS and other sexual and reproductive oppressions upon all women, their families, and their communities in the United States and worldwide through education, prevention, support, and human rights advocacy. To realize this mission, SisterLove engages in advocacy, reproductive health education, and prevention. SisterLove seeks to educate and empower youth and women of color to influence the laws and policies that disparately impact them.

SisterReach, founded October 2011, is a Memphis, TN based grassroots 501(c)(3) non-profit supporting the reproductive autonomy of women and teens of

color, poor and rural women, LGBT+ and gender non-conforming people and their families through the framework of Reproductive Justice. Our mission is to empower our base to lead healthy lives, raise healthy families and live in healthy communities. We provide comprehensive reproductive and sexual health education to marginalized women, teens and gender non-conforming people, and advocate on the local, state and national levels for public policies which support the reproductive health and rights of all women and youth.

Women of color do not need additional obstacles to obtaining the care we need to take care of ourselves and our families. We trust Black women to make our own decisions. **SisterSong: National Women of Color Reproductive Justice Collective** will speak out about any attempts to push important services out of reach.

SPARK Reproductive Justice Now! believes that access to birth control is essential to the economic security of all families and it is an important part of comprehensive reproductive healthcare.

UltraViolet is a powerful and rapidly growing community of people mobilized to fight sexism and create a more inclusive world that accurately represents all women, from politics and government to media and pop culture. We work on a range of issues—reproductive rights, healthcare, economic security, violence, and racial justice—and we center the voices of all women, especially

women of color, immigrants, and LGBTQ women. UltraViolet exists to create a cost for sexism and to achieve full equity for all women through culture and policy change. We fight attacks against women and work toward a proactive vision of what equality looks like for women. We demand accountability from individuals, the media, and institutions that perpetuate sexist narratives or seek to limit the rights, safety, and economic security of women.

URGE: Unite for Reproductive & Gender Equity (URGE) is a non-profit grassroots advocacy organization that works to mobilize young people through a reproductive justice framework. URGE builds infrastructure through campus chapters and city activist networks, where we invite individuals to discover their own power and transform it into action. URGE members educate their communities and advocate for local, state, and national policies around issues of reproductive justice and sexual health.

Women With A Vision, Inc. (WWAV) is a community-based non-profit, founded in 1989 by a grassroots collective of African-American women in response to the spread of HIV/AIDS in communities of color. Created by and for women of color, WWAV is a social justice non-profit that addresses issues faced by women within our community and region. Major areas of focus include Sex Worker Rights, Drug Policy Reform, HIV Positive Women's Advocacy, and Reproductive Justice outreach. We envision an environment in which there is no

war against women's bodies, in which women have spaces to come together and share their stories, in which women are empowered to make decisions concerning their own bodies and lives, and in which women have the necessary support to realize their hopes, dreams, and full potential. As such, we know that when women do not have bodily autonomy, including access to safe birth control methods, they face many barriers and obstacles to reaching their full potential. We believe that their bodies are their own and should be supported by policy, healthy communities, and social services that support bettering their lived experiences.

WV FREE is a non-profit health, rights, and justice organization dedicated to the elevation of all West Virginians through the promotion of dignity and autonomy of women and families since its founding in 1989. WV FREE focuses on issues of key importance to women and their families, including economic security, employment, education, health, and reproductive rights, with special attention to the needs of rural women, women of color, and low-income women. Because access to contraception is of tremendous significance to women's health, equality, and economic security, WV FREE seeks to ensure that women receive the full benefits of seamless access to no-cost contraceptive coverage as intended by the Affordable Care Act.

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2018, I electronically filed the within Brief of Amici Curiae The National Women's Law Center, The National Latina Institute For Reproductive Health, Sisterlove, Inc., and The National Asian Pacific American Women's Forum In Support Of Plaintiffs-Appellees and Affirmance with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Date: May 25, 2018 By: s/ Jeffrey Blumenfeld