No. 19-10754

United States Court of Appeals for the Fifth Circuit

RICHARD W. DEOTTE, et al.,

Plaintiffs-Appellees

v.

ALEX M. AZAR, II, et al.,

Defendants-Appellants,

STATE OF NEVADA,

Movant-Appellant.

On Appeal from the United States District Court for the
Northern District of Texas

Case No. 4:18-cv-00825-O

BRIEF OF *AMICI CURIAE* THE NATIONAL WOMEN'S LAW CENTER, THE NATIONAL ASIAN PACIFIC AMERICAN WOMEN'S FORUM, THE NATIONAL LATINA INSTITUTE FOR REPRODUCTIVE HEALTH, SISTERLOVE, INC., AND 34 OTHER ORGANIZATIONS IN SUPPORT OF MOVANT-APPELLANT STATE OF NEVADA AND REVERSAL

Jeffrey Blumenfeld, Esq.
LOWENSTEIN SANDLER LLP
2200 Pennsylvania Avenue NW
Washington, DC 20037
Telephone: (202) 753-3800
Fax: (212) 262-7402

Catherine Weiss, Esq.
Counsel of Record
Naomi D. Barrowclough, Esq.
Justin Corbalis, Esq.
LOWENSTEIN SANDLER LLP
One Lowenstein Drive
Roseland, NJ 07068
Telephone: (973) 597-2438
Fax: (973) 597-2439
cweiss@lowenstein.com
Counsel for Amici Curiae

CERTIFICATE OF INTERESTED PERSONS AND RULE 26.1 DISCLOSURE

Pursuant to Fifth Circuit Rules 28.2.1 and 29.2, the undersigned counsel of record certifies that the following persons and entities, in addition to those already listed in the parties' briefs, have an interest in the outcome of this case. These representations are made so that the court may evaluate possible disqualification or recusal.

1. ***Amici Curiae* on this brief:**
   National Women's Law Center
   National Asian Pacific American Women's Forum
   National Latina Institute for Reproductive Health
   SisterLove, Inc.
   Advocates for Youth
   California Black Women's Health Project
   Center on Reproductive Rights and Justice
   Colorado Organization for Latina Opportunity and Reproductive Rights
   Desiree Alliance
   Equal Rights Advocates
   EverThrive Illinois
   Gender Justice
   Healthy Teen Network
   In Our Own Voice: National Black Women's Reproductive Justice Agenda
   Jobs With Justice Education Fund
   Legal Voice
   Lift Louisiana
   NARAL Pro-Choice America
   National Advocates for Pregnant Women
   National Center for Law and Economic Justice
   National Center for Transgender Equality
   National Institute for Reproductive Health
   National Network to End Domestic Violence
   National Organization for Women Foundation
   National Partnership for Women & Families

National Women's Health Network
Oklahoma Call for Reproductive Justice
Raising Women's Voices for the Health Care We Need
Religious Coalition for Reproductive Choice
Reproductive Health Access Project
SIECUS: Sex Ed for Social Change
SisterReach
SisterSong: National Women of Color Reproductive Justice Collective
SPARK Reproductive Justice NOW
The Womxn Project
UltraViolet
Women's Institute for Freedom of the Press
Women with a Vision, Inc.

2. **Counsel for *Amici Curiae* on this brief:**
LOWENSTEIN SANDLER LLP: Catherine Weiss, *Counsel of Record*, Jeffrey Blumenfeld, Naomi D. Barrowclough, and Justin Corbalis

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Fifth Circuit Rules, counsel for *Amici Curiae* also certifies as follows:

The National Women's Law Center, the National Asian Pacific American Women's Forum, the National Latina Institute for Reproductive Health, SisterLove, Inc., and the 34 other Amici listed are non-profit public interest organizations and projects, none of which has corporate parents or stockholders.

s/ Catherine Weiss

Catherine Weiss, Esq.
LOWENSTEIN SANDLER LLP
One Lowenstein Drive
Roseland, NJ 07068
Telephone: (973) 597-2438
Fax: (973) 597-2439
cweiss@lowenstein.com

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INTEREST OF AMICI CURIAE

The National Women's Law Center, the National Asian Pacific American Women's Forum, the National Latina Institute for Reproductive Health, SisterLove, Inc., and the 34 additional organizations listed in the Appendix are committed to racial justice, economic security, gender equity, civil rights, and reproductive justice for all, which includes ensuring that individuals who may become pregnant have seamless contraceptive coverage without cost-sharing, as guaranteed by the Affordable Care Act ("ACA"). Amici submit this brief to demonstrate the substantial harm that will result, particularly to those who face multiple and intersecting forms of discrimination, if the judgment below is allowed to stand.[1]

[1] No counsel for a party authored this brief in whole or in part, and no person other than Amici and their counsel made a monetary contribution to fund the preparation or submission of this brief. Plaintiffs-Appellees and Nevada consent to this filing.

INTRODUCTION

Nevada sought to intervene in this case to defend itself, its residents, and millions of individuals nationwide from this attack on the ACA contraceptive coverage requirement. Unless this Court permits Nevada to appeal and reverses the nationwide class injunction issued below, the health and livelihoods of millions of people are at risk—particularly Black, Latinx,[2] Asian American and Pacific Islander ("AAPI") women 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 intimate-partner violence, and others who face multiple and intersecting forms of discrimination. Without Nevada's intervention, there is no adversity between the parties and thus no party to defend the contraceptive coverage requirement.

The ACA's contraceptive coverage requirement directs health plans to cover, without cost-sharing, all FDA-approved methods of contraception for women, and

[2] "Latinx" is a gender-neutral alternative to Latino and Latina and encompasses the identities of transgender and gender non-conforming individuals of Latin American descent.

related education, counseling, and services.[3,4] Congress intended the Women's Health Amendment ("WHA") of the ACA to reduce gender discrimination in health insurance by ensuring that women's major health needs are covered and that women no longer pay more than men for health care.[5] The Departments of Health and Human Services, Treasury, and Labor (the "Departments") have acknowledged this intent, explaining that Congress added the WHA 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."[6]

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[3] This brief uses the term "women" because the ACA was intended to end discrimination against women. As we discuss, the denial of reproductive health care and related insurance coverage also affects some gender non-conforming people and transgender men, and the ACA's preventive services benefit applies regardless of gender identity.

[4] 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 December 19, 2019).

[5] 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) (WHA 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) (WHA intended to incorporate "affordable family planning services" to "enable women and families to make informed decisions about when and how they become parents").

[6] 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"].

Accordingly, the ACA contraceptive coverage requirement eliminates out-of-pocket costs for contraception and ensures coverage of the full range of FDA-approved contraceptives and related services for women. Today, roughly 61.4 million women are eligible for coverage of the contraceptive method that works best for them, irrespective of cost.[7] Consequently, use of contraception—especially highly effective, long-acting reversible contraceptives ("LARCs") such as intrauterine devices ("IUDs") and contraceptive implants—has increased.[8]

The nationwide class injunction threatens to reverse these gains by allowing employers unilaterally to opt out of the ACA contraceptive coverage requirement and deny coverage for contraception and related services to employees and their dependents. This will undermine gender equality by reintroducing the very inequities that Congress meant to remedy. Nonetheless, the Administration is now refusing to defend the contraceptive coverage requirement. *See* Fed. Defs.' Mot. for Voluntary Dismissal, No. 19-10754 (Dec. 6, 2019); Brief of Fed. Def., Dkt. # 38, at 3, No. 4:18-cv-00825-O (N.D. Tex. Apr. 15, 2019). Consequently, unless Nevada

[7] Nat'l Women's Law Ctr. ("NWLC") calculations based on U.S. Census Bureau, 2019 Current Population Survey, Annual Social and Economic Supplement and Centers for Medicare & Medicaid Services, 2019 Marketplace Open Enrollment Period Public Use Files.

[8] *See* 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).

is permitted to intervene, no party will defend the interests of the millions of individuals whose coverage is at stake.

This brief establishes that Nevada has standing to appeal, as well as a legally protectable interest supporting intervention. It also establishes that the injunction will substantially harm individuals in Nevada and nationwide, a factor the district court ignored, that was not adequately presented given the lack of adversity between parties, and that when properly considered tips the balance of equities and public interest against the permanent injunction. To illustrate these harms, this brief explains that the injunction will (i) cause many individuals in Nevada and nationwide to lose contraceptive coverage, particularly those already facing multiple and intersecting barriers to care; (ii) make contraception cost-prohibitive and create other non-financial barriers to contraception for many who lose coverage; and (iii) harm the health, autonomy, and economic security of those who lose contraceptive coverage, especially people of color and others already facing systemic discrimination.

ARGUMENT

Nevada has both standing and an interest in this litigation sufficient to support intervention as of right. To establish standing, Nevada must demonstrate an injury-in-fact that is "concrete, particularized, and actual or imminent." *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2565 (2019). Allegations of future injury

"may suffice if . . . there is a substantial risk that the harm will occur." *Id*. States have standing when "the predictable effect of Government action on the decisions of third parties" is harm to the state fisc. *Id*. at 2566; *Texas v. U.S.*, No. 19-10011, slip op. at 32–33 & n.30 (5th Cir. Dec. 18, 2019). States also have standing when quasi-sovereign interests are at stake, such as "the health and well-being—both physical and economic—of its residents in general." *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 607 (1982). In analogous cases challenging regulations that would have a similar effect as the injunction here, the First, Third and Ninth Circuits held that states have standing to sue to prevent imminent fiscal injury that will result when residents lose contraceptive coverage and seek state-funded services. *See Massachusetts v. U.S. Dep't of Health & Human Servs*., 923 F.3d 209, 223–26 (1st Cir. 2019); *California v. Azar*, 911 F.3d 558, 571 (9th Cir. 2018); *Pennsylvania v. President*, 930 F.3d 543, 562–64 (3d Cir. 2019), *as amended* (July 18, 2019); *see also U.S. House of Representatives v. Price*, No. 16-5202, 2017 WL 3271445, at *1-2 (D.C. Cir. Aug. 1, 2017) (holding intervenor-states had standing where relief sought by plaintiff would "increase the number of uninsured individuals for whom the States will have to provide health care").

To intervene as of right pursuant to Fed. R. Civ. P. 24(a)(2), Nevada must demonstrate "an interest that is concrete, personalized, and legally protectable." *Texas v. U.S.*, 805 F.3d 653, 658 (5th Cir. 2015). This Court has therefore

"suggested that a movant who shows standing is deemed to have a sufficiently substantial interest to intervene." *Wal–Mart Stores, Inc. v. Texas Alcoholic Beverage Comm'n*, 834 F.3d 562, 566 n.3 (5th Cir. 2016) (quotations omitted). This Court has also repeatedly held that intended beneficiaries of a regulatory scheme and their representatives—like Nevada—have a "legally protectable interest" in litigation challenging the regulatory scheme. *Texas*, 805 F.3d at 660; *Wal–Mart*, 834 F.3d at 566. In any event, "Rule 24 is to be liberally construed," and "[f]ederal courts should allow intervention when no one would be hurt and the greater justice could be attained." *Id.* at 565 (quotations omitted).

To obtain a permanent injunction, a plaintiff must establish, *inter alia*, that "considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted" and "that the public interest would not be disserved by a permanent injunction." *ITT Educ. Servs., Inc. v. Arce*, 533 F.3d 342, 347 (5th Cir. 2008) (citation omitted). Here, Nevada, its residents, and individuals nationwide will suffer harm if the injunction stands—interests the district court failed to consider or even mention.

I. MANY INDIVIDUALS IN NEVADA AND NATIONWIDE, INCLUDING THOSE FACING MULTIPLE AND INTERSECTING FORMS OF DISCRIMINATION, ARE LIKELY TO LOSE COVERAGE IF THE INJUNCTION STANDS.

Many individuals in Nevada and nationwide would lose contraceptive coverage as a result of the injunction. By extending the previously narrow religious exemption to include "every current and future employer in the United States," Order Granting Motion to Certify Class, Dkt. # 33, at 7, No. 4:18-cv-00825-O (N.D. Tex. Mar. 30, 2019), including publicly traded companies, the injunction would greatly expand the number of entities that can unilaterally deny employees contraceptive coverage in Nevada and nationwide.

Although Nevada law requires coverage of contraception without cost-sharing in state-regulated insurance plans, this does not apply to self-insured plans.[9] In 2017, over 30% of private-sector employers in Nevada that offered health insurance—more than 9,000 employers—self-insured at least one plan.[10] Employers that self-insure tend to be larger employers,[11] and in fact, approximately 271,000 private-

[9] Nev. Rev. Stat. Ann. § 689B.0378.

[10] NWLC calculations from Agency for Healthcare Research and Quality, Medical Expenditure Panel Survey (MEPS), Nevada Tables II.A.1, II.A.2, and II.A.2.a (2017), https://meps.ahrq.gov/data_stats/state_tables.jsp?regionid=87&year=2017 (last visited Dec. 19, 2019).

[11] Kaiser Family Found., 2018 Employer Health Benefits Survey, Section 10: Plan Funding, https://www.kff.org/report-section/2018-employer-health-benefits-survey-section-10-plan-funding/ (Oct. 3, 2018) ("Self-funding is common among

sector employees were enrolled in self-insured plans in Nevada in 2017—a number that does not include covered dependents.[12] At least one self-insured employer with tens of thousands of employees nationwide, Hobby Lobby,[13] has employees in Nevada and will likely take advantage of the injunction once all appeals have been exhausted, given that it has vehemently litigated against the contraceptive coverage requirement. There is thus a "substantial risk" that many Nevada residents (including employees and their dependents) will lose contraceptive coverage if the injunction stands. *Massachusetts*, 923 F.3d at 224-25 (concluding that Massachusetts' identification of employers likely to drop coverage, including Hobby Lobby, supported standing); *California*, 911 F.3d at 572–73 (same); *Pennsylvania*, 930 F.3d at 562 (similar); *see also Texas*, No. 19-10011 slip op. at 32 & n.30.

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larger firms because they can spread the risk of costly claims over a large number of workers and dependents.")

[12] NWLC calculations from Agency for Healthcare Research and Quality, Medical Expenditure Panel Survey, Nevada Tables II.B.1, II.B.2, II.B.2.b, and II.B.2.b(1) (2017), https://meps.ahrq.gov/data_stats/state_tables.jsp?regionid=87&year=2017 (last visited May 19, 2019).

[13] Hobby Lobby self-insures and has five Nevada locations. *See* Hobby Lobby Store Finder, https://www.hobbylobby.com/store-finder (last visited Dec. 19, 2019); Hobby Lobby Stores, Inc. Medical and Dental Plan Document, Group No.: 14628, Meritain Health (originally effective May 1, 1988); *see also* Religious Interim Final Rule, 82 Fed. Reg. 47,792–01, 47,817 n.67 (citing 13,240 Hobby Lobby employees nationwide).

Many employees and their dependents who rely on objecting employers for health insurance will be impacted by loss of contraceptive coverage. Virtually all (99%) sexually experienced women aged 15-44 have used at least one method of contraception at some point—and those numbers hold true for women of color, including Hispanic (97.2%), Black (99%), and Asian (98.6%) women.[14] In Nevada, 28.5% of the population is Latinx,[15] and of Latina and Latino voters, 86% consider contraception to be preventive health care and 82% do not view contraception through a religious lens.[16] Women of faith also overwhelmingly use contraception. Among sexually experienced Catholic women, 98% have used a method of contraception other than natural family planning.[17] Additionally, over 70% of Protestant women use a "highly effective contraceptive method" (including

[14] William D. Mosher & Jo Jones, Ctrs. for Disease Control & Prevention, Use of Contraception in the United States: 1982–2008 at 18-19 (2010), https://www.cdc.gov/nchs/data/series/sr_23/sr23_029.pdf.

[15] U.S. Census Bureau, *QuickFacts Nevada*, https://www.census.gov/quickfacts/nv (last visited Dec. 19, 2019).

[16] Nat'l Latina Inst. for Reproductive Health, *Latina/o Voters' Views and Experiences Around Reproductive Health* 2 (2018), http://latinainstitute.org/sites/default/files/NLIRH%20Survey%20Report_F_0.pdf.

[17] 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.

sterilization, IUDs, the pill, and other hormonal methods).[18] The injunction therefore threatens a vital health benefit for many individuals. *New York*, 139 S. Ct. at 2565–66.

Moreover, many individuals in Nevada and nationwide at risk of losing coverage are those who can least afford it. Many low-wage workers—who are disproportionately women of color[19]—and their dependents rely on employer-sponsored health insurance and stand to lose contraceptive coverage.[20] Among the more than 9,000 private-sector employers in Nevada that offer self-insured health benefits, over 30% (nearly 2,800 employers) have a predominantly low-wage workforce, and 55% (nearly 5,000 employers) are in the retail and non-professional services industries.[21] Retail workers tend to earn lower wages: in Nevada, they earn a median annual income of $33,671 compared to $41,036 for workers in all

[18] *Id.* at 5.

[19] Jasmine Tucker & Kayla Patrick, NWLC, *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.

[20] 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).

[21] *See* NWLC calculations from MEPS Nevada Tables V.A.1., V.A.2, VII.A.1, VII.A.2 (2017), https://meps.ahrq.gov/data_stats/state_tables.jsp?regionid=24&year=20172017 (last visited Dec. 19, 2019).

industries.[22]

Young people—who often have limited resources, large educational debt, and little ability to absorb extra costs—are also at risk of losing contraceptive coverage. Because the ACA allows young adults to remain on their parent's or guardian's health plan until age 26, many young people are dependents in employer-sponsored plans.[23] From 2010-2013, 2.3 million dependent young adults—including 19,000 in Nevada—gained or maintained coverage under this provision and stand to lose contraceptive coverage under the injunction if their parents' employers object to it.[24]

Moreover, not all who lose coverage as a result of the injunction will be able to access contraception through other existing government-sponsored programs, such as Title X, Medicaid, and state-run programs. While the injunction will force thousands more women to seek contraception from these already-strained programs, causing Nevada fiscal harm, many will be unable to access such care due to eligibility restrictions and capacity constraints. In addition to income- and category-

[22] NWLC calculations based on American Community Survey (ACS) 2013-2017 5-Year Estimates, using Steven Ruggles et al., Integrated Public Use Microdata Series, available at https://sda.usa.ipums.org. Figures are for full-time, year round workers in the retail industry and in all industries in the state.

[23] 45 C.F.R. § 147.120.

[24] U.S. Dep't of Health and Human Servs., Asst. Sec'y for Planning and Education, Compilation of State Data on the Affordable Care Act, https://aspe.hhs.gov/compilation-state-data-affordable-care-act (last visited May 19, 2019).

based eligibility criteria for these programs,[25] anti-immigrant provisions in Medicaid restrict eligibility for five years for most *lawful* permanent residents—many of whom are Latinx and AAPI.[26] Even for eligible women, Medicaid and Title X lack capacity to meet current needs, much less the demand from those who lose coverage if the injunction stands.[27] Already, there are regions in Nevada 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.[28] The Administration's

[25] *See, e.g.*, 42 U.S.C. § 300a-4(c)(2); 42 C.F.R. §§ 59.2, 59.5(7), (8) (free care at Title X clinics limited to families at 100% federal poverty level [FPL]; subsidized care restricted to 250% FPL); *see also* 42 U.S.C. § 1396a(a)(10)(A)(i)(VIII) (limiting Medicaid eligibility for childless, non-pregnant adults to 133% FPL); Nevada Div. of Welfare and Supportive Servs., Medicaid Assistance Manual, MAGI Medical Categories at B-125, https://dwss.nv.gov/Medical-Manual/ (last visited Dec. 19, 2019).

[26] 8 U.S.C. § 1613(a); Nevada Div. of Welfare and Supportive Servs., Medicaid Assistance Manual, General Eligibility Requirements at C-420, https://dwss.nv.gov/Medical-Manual/ (last visited Dec. 19, 2019).

[27] 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).

[28] 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 19, 2019).

ongoing attempts to restructure Title X and Medicaid will further burden already scarce resources.[29]

II. THE INJUNCTION WILL HARM INDIVIDUALS IN NEVADA AND NATIONWIDE BY REINSTATING PRE-ACA COST AND OTHER BARRIERS TO CONTRACEPTION.

The ACA dramatically reduced out-of-pocket expenditures on contraception, resulting in increased use.[30] Without coverage, women will again face financial, logistical, informational, and administrative barriers that obstruct access to the contraceptive method they need. These changes will particularly affect women of color, women with low incomes, transgender and gender non-conforming people, and others facing stark health disparities due to systemic barriers to contraceptive

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[29] *See, e.g.*, Leah H. Keller & Adam Sonfield, Guttmacher Inst., *The Evidence and the Courts Agree: Work Requirements Threaten Medicaid Enrollees' Health and Well-Being* (Aug. 2019), https://www.guttmacher.org/article/2019/08/evidence-and-courts-agree-work-requirements-threaten-medicaid-enrollees-health-and;
Henry J. Kaiser Family Foundation, *The Status of Participation in the Title X Federal Family Planning Program* (Oct. 2019), https://www.kff.org/interactive/the-status-of-participation-in-the-title-x-federal-family-planning-program (more than 1,000 clinics have withdrawn from Title X due to the Adminitration's new rules). In particular, the Title X rule redefines an eligible "low-income family" to include women who lose contraceptive coverage because of an employer's objection. Compliance with Statutory Program Integrity Requirements, 84 Fed. Reg. 7714 (Mar. 4, 2019) (codified at 42 C.F.R. Part 59). This redefinition does nothing to ensure Title X providers actually have capacity to meet the expanded client population, nor does it prioritize access for low-income women, contravening the plain meaning and purpose of Title X.

[30] *See* Snyder, *supra* note 8, at 222.

and other reproductive health care.

A. The Injunction Will Make Contraception Cost-Prohibitive for Many People.

Without insurance coverage, contraception is expensive. Before the ACA, women spent between 30% and 44% of their out-of-pocket health costs just on contraception.[31] A 2009 study found that oral contraception (the pill) cost women $2,630 over five years, and other very effective methods such as injectables, transdermal patches, and the vaginal ring, cost between $2,300 and $2,800 over five years.[32] Today, women without insurance can be expected to spend $850 annually—or $4,250 over five years assuming static costs—on oral contraception and attendant care.[33] LARCs—among the most effective contraceptives—carry the highest up-front costs: IUDs can cost up to $1,300 up front,[34] in addition to costs of ongoing care such as replacement or removal.

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[31] 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), available at https://www.healthaffairs.org/doi/10.1377/hlthaff.2015.0127.

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

[33] 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/.

[34] Erin Armstrong et al., *Intrauterine Devices and Implants: A Guide to Reimbursement* 5 (Regents of U.C. et al. 2d ed. 2015),

Cost determines access to health care, particularly for individuals with lower incomes.[35] Studies confirm that "[e]ven small increments in cost sharing have been shown to reduce the use of preventive services."[36] When finances are strained, women cease using contraception, skip pills, delay filling prescriptions, or purchase fewer packs at once.[37] Before the ACA, 55% of young women reported experiencing a time when they could not afford contraception consistently.[38] Higher out-of-pocket costs also result in women using methods that are medically inappropriate or

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https://www.nationalfamilyplanning.org/file/documents----reports/LARC_Report_2014_R5_forWeb.pdf; Planned Parenthood, IUD, https://www.plannedparenthood.org/learn/birth-control/iud (last visited May 22, 2019).

[35] Adam Sonfield, *The Case for Insurance Coverage of Contraceptive Services and Supplies Without Cost-Sharing*, 14 Guttmacher Pol'y Rev. 7, 10 (2011).

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

[37] 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.

[38] 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.

less effective.[39]

To illustrate how cost affects a person's ability to use contraception, consider a female retail salesperson in Nevada with a median hourly wage of $14.16.[40] Black female retail salespersons make significantly less, $11.93.[41] These earnings equate to a median monthly income of $2,455 for all female and $2,068 for Black female retail salespersons.[42] This is less than the approximately $2,800-$3,000 needed for a single person with no children to cover basic monthly expenses such as housing, food, transportation, health care, taxes, and other necessities in Nevada.[43] Faced with out-of-pocket expenses for contraception, many female retail workers, particularly women of color, will be forced to forgo contraception or other necessities due to cost.

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[39] 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); Guttmacher Inst., *Insurance Coverage of Contraception*, (Dec. 2016), https://www.guttmacher.org/evidence-you-can-use/insurance-coverage-contraception.

[40] *See* ACS, *supra* note 22. Median hourly wages calculated by dividing median annual income for female retail salespersons by 2,080.

[41] *Id.* Median hourly wages calculated by dividing median annual income for Black female retail salespersons by 2,080.

[42] *Id*. Median monthly income calculated by dividing median annual income by 12.

[43] Economic Policy Institute, *Family Budget Calculator, Monthly Costs*, https://www.epi.org/resources/budget/ (last visited Dec. 19, 2019) (range based on Pershing and Douglas County, respectively).

The ACA contraceptive coverage requirement has yielded enormous cost-savings, as was its purpose.[44] The mean total out-of-pocket expenditures for FDA-approved contraceptives decreased approximately 70% following the ACA,[45] and women saved $1.4 billion in 2013 on oral contraception alone.[46] This has corresponded with an increase in use, particularly of the most effective forms of contraception: one study found that "the removal of the cost barrier to IUDs and implants has increased their rate of adoption after the ACA."[47] The injunction will reverse these critical gains.

The injunction will also reinforce existing racial and ethnic disparities in access to contraception, 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

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[44] Snyder, *supra* note 8, 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).

[45] 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).

[46] Becker & Polsky, *supra* note 31, at 1208.

[47] Snyder, *supra* note 8, at 222; *see also* Megan L. Kavanaugh et al., *Health Insurance Coverage and Contraceptive Use at the State Level:Findings from the 2017 Behavioral Risk Factor Surveillance System*, 2 Contraception: X 1, 3-5 (forthcoming 2020) (finding insurance coverage significantly associated with use of most FDA-approved contraceptives, including IUDs, injectables, and pills).

and inflexible work schedules.[48] From 2016-2018, four in ten Latina/o voters under age 45 went without the contraceptive method of their choice because of access issues.[49] Insurance coverage for contraception is critical to reducing these disparities.[50] The injunction will exacerbate existing disparities by inhibiting access to such coverage.

B. The Injunction Will Create Logistical, Administrative, and Informational Barriers to Contraception.

The injunction will impose other barriers to contraception, including logistical, informational, and administrative burdens when people have to navigate the health care system without employer-sponsored contraceptive coverage.

Navigating this system is already complicated, requiring resources such as free time, regular and unlimited phone and internet access, privacy, transportation, language comprehension, and ability to read and respond to complex paperwork. It is, therefore, particularly difficult for individuals with limited English proficiency

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[48] 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).

[49] Nat'l Latina Inst. for Reproductive Health, *supra* note 16, at 2.

[50] McMorrow, *supra* note 48; Dehlendorf, *supra* note 48, at 216.

and for people in low-wage jobs—disproportionately women of color—who often work long, unpredictable hours with little or no scheduling flexibility or reliable access to transportation.[51]

Many who lose coverage will be forced by cost constraints to navigate away from providers they trust and who know their medical histories. This interruption in continuity of care poses particular challenges for people of color, people with limited English proficiency, and LGBTQ individuals, who already face multiple barriers to obtaining reproductive health services, including language barriers, providers' limited geographic availability, implicit bias and outright discrimination.[52] Switching from a trusted provider is particularly harmful for transgender and gender non-conforming people, who report pervasive provider discrimination and refusals to provide care, cultural insensitivity, and ignorance of transition-related care.[53]

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[51] NWLC, *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.

[52] *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.

[53] James, *supra* note 52, at 96-99.

III. THE INJUNCTION WILL HARM THE HEALTH, AUTONOMY, AND ECONOMIC SECURITY OF THOSE WHO LOSE CONTRACEPTIVE COVERAGE.

A. The Injunction Will Harm the Health of Individuals and Families.

Contraception is a vital component of preventive health care: it combats unintended pregnancy and its attendant health consequences, avoids exacerbating medical conditions for which pregnancy is contraindicated, and offers standalone health benefits unrelated to pregnancy. By reinstating barriers to contraception, the injunction will harm the health of individuals and families.

1. *The Injunction Places More People at Risk for Unintended Pregnancy and Associated Health Risks.*

By limiting access to contraception, the injunction threatens to increase the risk of unintended pregnancy, which, due to systemic barriers, is already higher for women of color and young people, including LGBTQ youth.[54] Increased access to contraception without cost-sharing has been found to result in fewer unintended

[54] IOM Rep., *supra* note 36, 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).

pregnancies,[55] whereas denying contraceptive coverage was found to have resulted in 33 more pregnancies per 1000 women.[56]

Women with unplanned pregnancies are more likely to delay prenatal care, leaving potential health complications unaddressed and increasing risks of infant mortality, birth defects, low birth weight, and preterm birth.[57] Women with unintended pregnancies are also at higher risk for maternal morbidity and mortality, maternal depression, and physical violence during pregnancy.[58] The U.S. has a higher maternal mortality rate than any other high-income country, especially for Black women.[59] By creating additional barriers to contraception, the injunction threatens to increase rates of unintended pregnancy and related health risks.

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

[56] 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).

[57] IOM Rep., *supra* note 36, 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.

[58] IOM Rep., *supra* note 36, 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 Dec. 28, 2018).

[59] Black Mamas Matter Alliance, *Black Mamas Matter Toolkit Advancing the Right to Safe and Respectful Maternal Health Care* 21 (2018),

Allowing employers to choose covered methods—and taking that decision away from the users themselves—undermines people's ability to use the contraceptive that is most appropriate for them, increasing the risk of unintended pregnancy. Inconsistent or incorrect contraceptive use accounts for 41% of unintended pregnancies in the U.S.; non-use accounts for 54%.[60] Women are more likely to use contraception consistently and correctly when they can choose the method that suits their needs.[61]

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

Contraception allows women to delay pregnancy when contraindicated and offers several standalone benefits unrelated to pregnancy. Although most women

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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.

[60] Adam Sonfield et al., Guttmacher Inst., *Moving Forward: Family Planning in the Era of Health Reform* 8 (2014).

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

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 for both purposes.[62]

Contraception is necessary to control medical conditions complicated by pregnancy, including diabetes, obesity, pulmonary hypertension, and cyanotic heart disease.[63] Contraception also treats menstrual disorders, reduces menstrual pain, reduces risk of certain cancers, such as endometrial and ovarian cancer, and helps protect against pelvic inflammatory disease.[64]

By reinstating barriers to contraception, the injunction will aggravate medical conditions and undermine necessary health benefits.

B. The Injunction 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 Se. Pa. v. Casey*, 505 U.S. 833, 856 (1992); *see also Griswold v. Connecticut*, 381 U.S. 479, 485-86

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[62] Caroline Rosenzweig et al., Kaiser Family Found., *Women's Sexual and Reproductive Health Services: Key Findings from the 2017 Kaiser Women's Health Survey* (2018) at 3, http://files.kff.org/attachment/Issue-Brief-Womens-Sexual-and-Reproductive-Health-Services-Key-Findingsfrom-the-2017-Kaiser-Womens-Health-Survey/.

[63] IOM Rep., *supra* note 36, at 103-04.

[64] *Id.* at 107.

(1965). Women report that the ability to plan their lives is a main reason they use contraception.[65]

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, Black women were treated as property, with no ability to resist unwanted sex or childbearing.[66] Slavery gave way to twentieth century policies that encouraged and coerced women of color, individuals with disabilities, and so-called "sexual deviants" to refrain from reproduction, culminating in forced sterilizations without informed consent.[67] In line with this dangerous history, the injunction again robs particular groups of individuals of control over their reproductive futures, placing that control instead in the hands of their employers.

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[65] 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).

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

[67] 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).

Contraception is also critical to the autonomy of transgender men and gender non-conforming people. It permits individuals to align their gender identity further with their physiology by enabling them to prevent pregnancy and control menstruation.[68] Social exclusion and bias in health care already contribute to a higher incidence of depression, anxiety, and suicide among transgender men.[69] For some, pregnancy and menstruation can cause greater gender dysphoria—the distress resulting from misalignment between one's physical body and sense of self.[70]

Finally, contraception is vital for survivors of rape and intimate-partner violence.[71] Access to emergency contraception without cost-sharing empowers sexual assault survivors to prevent resulting pregnancy, and is critical for students

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

[69] 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.").

[70] Obedin-Maliver & Makadon, *supra* note 68, at 6; Saleem & Rizvi, *supra* note 69, at 1.

[71] 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"].

given the high rate of sexual assault on college campuses.[72] Particular forms of contraception, including the shot and LARCs, enable women to prevent pregnancy with reduced risk of detection by or interference from potentially abusive partners.[73] 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" to promote unwanted pregnancies, including interfering with contraception or abortion.[74] By impeding access to contraceptive methods less susceptible to interference, the injunction will harm women's ability to resist such coercion.[75]

C. The Injunction Will Undermine Individuals' Economic Security.

The classwide injunction will thwart people's ability to plan, delay, space, and limit pregnancies, thereby undermining their financial stability, educational advancement, and career goals.

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[72] NWLC, *Sexual Harassment & Assault in Schools*, https://nwlc.org/issue/sexual-harassment-assault-in-schools/ (last visited Dec. 19, 2019).

[73] ACOG No. 554, *supra* note 71, at 2-3.

[74] *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).

[75] ACOG No. 554, *supra* note 71, at 2-3.

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

Access to contraception has life-long economic benefits: it enables women to complete high school and higher levels of education, improves their earnings and labor force participation, and secures their economic independence.[76] 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.[77] Access to oral contraceptives has improved women's educational attainment,[78] which in turn has increased women's participation in law, medicine, and other professions.[79] While significant wage disparities persist, especially for women of color, contraception has helped advance gender equality by reducing these pay gaps.[80]

The Federal Government is well-aware of these significant benefits. The relevant Departments previously explained that before the ACA, disparities in health

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[76] 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.

[77] 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/.

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

[79] 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).

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

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."[81]

By inhibiting access to contraception, the injunction will threaten the economic security and advancement of women, families, and society.

2. *The Injunction Will Exacerbate Economic and Social Disparities.*

The injunction will most jeopardize the economic security of those facing systemic barriers to economic advancement. Women with limited means will both have less ability to absorb the cost of an unintended pregnancy, and be more 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%.[82] Avoiding unplanned pregnancy is especially important for women in low-wage jobs, who are less likely

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

[82] 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

to have parental leave or predictable and flexible work schedules.[83] 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.[84] Nearly 70% of those making less than $10 per hour are women, and a disproportionate number of women in low-wage jobs are women of color.[85] In Nevada, women make only 86¢ for every dollar paid to men.[86] Women of color experience even greater wage disparities: in Nevada, Latina women make only 55¢ for every dollar paid to white men; that number is 57¢ for Native American, 64¢ for Black, and 69¢ for AAPI women.[87] These numbers reflect national trends,[88]

[83] NWLC, *supra* note 51, at 1, 4.

[84] NWLC, *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.

[85] Tucker & Patrick, *supra* note 19, at 1.

[86] NWLC, *Nevada*, https://nwlc.org/state/nevada/.

[87] *Id.*; NWLC, *Equal Pay for Asian American and Pacific Islander Women* (Mar. 2019), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/03/Asian-Women-Equal-Pay-3.7.19-v2.pdf; NWLC, *The Wage Gap for NHOPI Women State Rankings*: 2017 (Dec. 2018), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/01/NHOPI-State-by-State-Dec-2018.pdf.

[88] NWLC, *The Wage Gap: The Who, How, Why, And What To Do* (Sept. 2019), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/10/The-Wage-Gap-Who-How-Why-and-What-to-Do-2019.pdf.

illustrating the harm the injunction will have on women's livelihoods in Nevada and nationwide.

CONCLUSION

The injunction will cause substantial harm to individuals in Nevada and nationwide, and particularly to those facing multiple and intersecting forms of discrimination. Accordingly, the Court should permit Nevada to intervene and reverse the injunction.

Respectfully Submitted,

Date: December 20, 2019

Naomi D. Barrowclough, Esq.
Justin Corbalis, Esq.
LOWENSTEIN SANDLER LLP
One Lowenstein Drive
Roseland, New Jersey 07068
Tel: (973) 422-6446
Fax: (973) 422-6447

Jeffrey Blumenfeld, Esq.
LOWENSTEIN SANDLER LLP
2200 Pennsylvania Avenue NW
Washington, DC 20037
Telephone: (202) 753-3800
Fax: (212) 262-7402

s/ Catherine Weiss
Catherine Weiss, Esq.
Counsel of Record
LOWENSTEIN SANDLER LLP
One Lowenstein Drive
Roseland, New Jersey 07068
Tel: (973) 597-2438
Fax: (973) 597-2439
cweiss@lowenstein.com

Counsel for Amici Curiae

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

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

Jane Liu
NATIONAL ASIAN PACIFIC AMERICAN WOMEN'S FORUM
1225 New York Avenue
Suite 800
Washington, DC 20005

Of Counsel for Amici Curiae

(*Amici appreciate the assistance of Nina Serrianne at the National Latina Institute for Reproductive Health for her role in the preparation of this brief*)

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Federal Rule of Appellate Procedure 29(a)(5) because it contains 6,499 words, according to the count of Microsoft Word. I further certify that this brief complies with typeface and style requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) because it has been prepared in Microsoft Word using 14-point Times New Roman font.

Dated: December 20, 2019 *s/ Catherine Weiss*

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2019, I electronically filed the within Brief of Amici Curiae the National Women's Law Center, the National Asian Pacific American Women's Forum, the National Latina Institute for Reproductive Health, SisterLove, Inc., and 34 other Amici in support of Movant-Appellant State of Nevada and Reversal with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system.

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

Date: December 20, 2019 By: *s/ Catherine Weiss*

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.

California Black Women's Health Project stands firmly with other concerned women's focused organizations and individuals across the nation in support of Nevada's motion to defend ACA birth control benefits from any attempts by some employers to deny birth control coverage to employees on the basis of religious objection by the employer. The health and lives of millions of women are directly connected to their right to make choices regarding their reproductive health, including to access and the use of birth control. Women receiving health care coverage via the ACA should not have access limitations to essential birth control on the basis of their employers' beliefs.

The **Center on Reproductive Rights and Justice (CRRJ)** propels law and policy solutions by connecting people and ideas across the academic-advocate divide. We seek to realize reproductive rights and advance reproductive justice by influencing legal and social science discourse, furthering research and scholarship, and bolstering law and policy advocacy efforts. CRRJ knows that reproductive justice can only be realized when people have full autonomy to make informed reproductive choices; including receiving the full benefits of seamless access to no-cost contraceptive coverage as intended by the Affordable Care Act. CRRJ has participated as amicus in numerous cases that affect this right.

The **Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR)** is a community-rooted organization that works to enable Latinx individuals and their families to lead safe, healthy and self-determined lives. COLOR works to ensure that Latinx individuals and their families are accessing opportunities and resources for the health of mind, body, and spirit - that must include having access to contraception and other services and support to ensure that we are able to manage our health, plan our families and control our futures.

The **Desiree Alliance** is a sex worker rights organization that has held the long-standing belief that everyone should have access to reproductive rights/health/justice without government, religious, or moral interferences.

Founded in 1974, **Equal Rights Advocates** 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 too 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 cases affecting the rights of women and girls, such as this right, and the long-term economic impacts of limited and inequitable access to opportunity and care for intersectional populations.

EverThrive Illinois is committed to increasing access to contraceptive care and objects to the ongoing or employment status should be able to access the attempts to weaken access protections set forth by the Affordable Care Act. We believe that all people, regardless of their health care coverage plan contraceptive method of their choice.

Gender Justice is a nonprofit legal and policy advocacy organization based in the Midwest that is committed advancing gender equity through the law. 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 all individuals capable of getting pregnant have access to birth control through their employers' insurance plans. This is central to eliminating gender discrimination and ensuring the full participation of all individuals in society.

Healthy Teen Network envisions a world where all adolescents and young adults lead healthy and fulfilling lives. Founded in 1979, we promote better outcomes for adolescents and young adults by advancing social change, cultivating innovation, and strengthening youth-supporting professionals and organizations. Health care, including sexual and reproductive health care, is a right of all humans. Youth cannot exercise their right to health care when there are no sexual or reproductive health services available or when their access to them is impeded due to legal, financial, practice, geographic, and attitudinal barriers. Contraceptive coverage, as intended by the Affordable Care Act, can alleviate some of these impediments, and without this critical coverage, young people are not supported and empowered to lead healthy and fulfilling lives. Contraceptive coverage must be provided without discrimination or threats to access to ensure equity of care and universal rights to health care.

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, New Voices for Reproductive Justice (PA,OH), SisterLove, Inc.(GA), SisterReach (TN), SPARK Reproductive Justice NOW!, Inc. (GA), The Afiya Center (TX), and Women With A Vision (LA). Our goal is to lift up the voices of Black women leaders on local, state, and national policies that impact the lives of Black women and girls, including full contraceptive equity.

Jobs With Justice Education Fund is an independent nonprofit organization dedicated to advancing workers' rights and an economy that benefits all Americans. We bring together labor, community, faith and student voices at the national and local levels through a network of coalitions across the country. With research, analysis, organizing and public advocacy, Jobs With Justice creates innovative solutions to the problems working people face today. Jobs With Justice works to ensure that working people have the tools to build their collective power at work as well as in their communities. Jobs With Justice believes that in order for working people to build collective power, their basic rights must be respected by their government and their employer, including access to affordable health care, including contraceptive coverage as intended by the Affordable Care Act. Jobs With Justice also believes that working women, not the government and not the people who sign their paychecks, have the fundamental right to control their own bodies.

Legal Voice, founded in 1978 as the Northwest Women's Law Center, is a non-profit public interest organization in the Pacific Northwest dedicated to

protecting the rights of women, girls, and LGBTQ people through impact litigation, legislative advocacy, and the provision of legal information and education. Legal Voice's work includes decades of advocacy to protect and expand women's reproductive rights, and has participated as counsel and as amicus curiae in cases throughout the Northwest and the country to ensure equity in health care coverage, including accessing the full range of reproductive health care services as guaranteed by federal and state law. Legal Voice serves as a regional expert and advocate in the area of gender equity and reproductive health and rights.

Lift Louisiana works in diverse ways to advance the interests and well-being of pregnant and parenting women and their families and to protect their constitutional and human rights including advocating for solutions that advance maternal, fetal and child health. Lift Louisiana, members of its Advisory Board, volunteers, and donors, support the dignity and autonomy of people to make their own decision about family planning through laws and policies preventing discrimination and providing benefits meaningfully designed to meet the needs of people who are or can become pregnant. Lift Louisiana is concerned that allowing employers who claim a religious objection to unilaterally opt out of providing contraceptive coverage to employees will do real harm to people in Louisiana who rely on the birth control benefit and stand to lose coverage.

NARAL Pro-Choice America is a national advocacy organization, dedicated since 1969 to supporting and protecting, as a fundamental right and value, a person'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 person 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.

National Advocates for Pregnant Women is a non-profit legal advocacy organization that works to secure the human and civil rights, health and welfare of pregnant and parenting people. We work closely with pregnant and parenting women and their communities, along with medical, legal, public health, and mental health experts from across the country. Contraceptive coverage is essential to the health of all people with the capacity for pregnancy.

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 Center for Law and Economic Justice** advances the cause of economic justice for low-income families, individuals, and communities. We have worked with low income communities fighting the systemic causes of poverty for more than 50 years. In our work, we often combat injustice and fundamental unfairness in government programs, including those that provide access to health care.

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.

The **National Institute for Reproductive Health** is a national non-profit organization based in New York that works across the country to ensure each person has the freedom to control their reproductive and sexual lives. Our organization partners with state and local advocacy organizations and health care providers to protect and expand affordable and accessible reproductive health services, including family planning services for everyone, especially low-income women and families.

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 Act. 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. Preserving access to contraception and other reproductive healthcare options is an important piece in promoting the autonomy and safety of domestic violence survivors.

The **National Organization for Women Foundation ("NOW Foundation")** is a 501(c)(3) entity affiliated with the National Organization for Women, the largest grassroots feminist activist organization in the United States with chapters in every state and the District of Columbia. NOW Foundation is committed to advancing equality for women, and to assuring women's access to the full range of reproductive health care services.

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 Health Network (NWHN)** was founded in Washington, DC, in 1975 to improve the health of all women by developing and promoting a critical analysis of women's health issues. We work to defend women's

sexual and reproductive health and autonomy against threats that seek to undermine access to contraception and abortion care. We also support access to the full range of safe and effective reproductive health technologies, services, and information, including abortion, without medically unnecessary restrictions or restrictions driven by ideology.

The **National Women's Law Center** is a nonprofit legal advocacy organization founded in 1972 and is dedicated to the advancement and protection of the legal rights and opportunities of women and all who suffer from sex discrimination. The Center focuses on issues of key importance to women and their families, including economic security, employment, education, health, and reproductive rights, with particular focus on 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 contraceptive coverage without cost-sharing as intended by the ACA, and has participated as amicus in numerous cases that affect this right.

The **Oklahoma Call for Reproductive Justice** founded as a 501(c)4 organization in 2010, is a statewide grassroots coalition of organizations and individuals focusing on the advancement of reproductive health, rights, and justice in Oklahoma. OCRJ accomplishes this through legislative advocacy, community

outreach and education, and litigation. We believe that every individual has the right to have or not have a child, access to sexual education, contraception, abortion, and pregnancy care for people to plan their families on their own terms. Everyone should have access to the full range of reproductive health care available without restriction. When access is impeded, individuals, families, and collective communities are harmed in the process. To this end, we stand in opposition to any attempts that stifle access to the full range of reproductive health care services.

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. 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 **Religious Coalition for Reproductive Choice (RCRC)** is a broad-based, national, interfaith movement that brings the moral force of religion to protect and advance reproductive health, choice, rights and justice through education, prophetic witness, pastoral presence and advocacy. We value and promote religious liberty, which upholds the human and constitutional rights of all people to exercise their conscience to make their own reproductive health decisions without shame and

stigma. We are committed to challenging systems of oppression and removing the multiple barriers that impede individuals, especially those in marginalized communities from accessing comprehensive reproductive health care with respect and dignity. One of those barriers is affordability, which makes coverage for contraception critical to closing the gaps and making sure we can all follow our own beliefs and plan our futures as we see fit.

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.

SIECUS: Sex Ed for Social Change was founded in 1964 to provide education and information about sexuality and sexual and reproductive health. SIECUS affirms that sexuality is a fundamental part of being human, one that is worthy of dignity and respect. SIECUS advocates for the right of all people to accurate information, comprehensive education about sexuality, and access to sexual health services, including contraception.

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 501c3 non-profit supporting the reproductive autonomy of women and teens of color, poor and rural women, LGBTQIA+ 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.

SisterSong: National Women of Color Reproductive Justice Collective is a Southern based, national membership organization. Our purpose is to build an effective network of individuals and organizations to improve institutional policies and systems that impact the reproductive lives of marginalized communties. We do this by amplifying the lived experiences of women of color and Indigenous women

and leveraging our collective power to push for cultural and policy change to end oppression and advance reproductive justice. We are proud to add our voices to defend doing all we can to eliminate barriers to the full range of reproductive healthcare, including affordable contraception. We should be able to make our own decisions about our bodies, our families and our futures. Ensuring that we can plan our families and become parents when we are ready is critical to realizing that vision.

Founded in 2007 by two queer women of color, **SPARK Reproductive Justice NOW** works to build and strengthen the power of our communities and a reproductive justice movement that centers Black Women, Women of Color, and Queer & Trans Young People of Color in Georgia and the South. Based in Atlanta, Georgia, we have fostered a dynamic, collaborative model of advocacy, leadership development, collective action, and discourse that creates change and impact for Black women and Queer people's struggles for reproductive justice. We are a unique organization that utilizes Reproductive Justice and Queer & Trans Liberation frameworks, and our approach to social change is two-fold. We believe it is necessary to work on the immediate issues that dangerously impact our communities while simultaneously doing the work of systemic cultural change.

The Womxn Project (TWP) is a statewide organization dedicated to building a strong movement that harnesses the power of art, activism and advocacy. We believe that together we can dismantle systems of oppression and uplift the voices

of people in our communities throughout Rhode Island in order to shift power and shape the policies that impact our lives and the lives of our neighbors. We believe it is imperative to get rid of the obstacles that push contraception and other reproductive health services out of reach in order to address ongoing health disparities and ensure that we can all live dignified, empowered lives.

On behalf of our over one million members, **UltraViolet** signs this brief as an organization that advocates for reproductive justice, racial justice, gender justice, economic justice, and a more equitable world for all. People deserve to decide when, if or how they will start their families. Equitable access to birth control, without cost sharing, as required by the ACA allows for millions to make the decisions best for themselves and their families. People of color, the LGBTQ community, survivors of gender-based violence, and millions more will be significantly harmed if the businesses or organizations are able to circumvent the ACA contraception requirement. We stand in solidarity with those fighting to ensure access to contraception as basic healthcare. We ask that the contraception requirement be protected.

The **Women's Institute for Freedom of the Press (WIFP)** is a non-profit media democracy organization dedicated to the advancement and protection of women's rights and voices since its founding in 1972. WIFP focuses on issues of importance to women and all those who do not have full rights. Without control over

their health and well-being, women cannot fully participate in democracy. Women need access to no-cost contraceptive coverage as intended by the affordable care act and therefore WIFP supports this amicus brief.

Women with a Vision, Inc. (WWAV)'s mission is to improve the lives of marginalized women, their families, and communities by addressing the social conditions that hinder their health and well-being. A community-based organization founded in 1989 by and for women of color, WWAV's major areas of focus include Sex Worker Rights, Drug Policy Reform, HIV Positive Women's Advocacy, and Reproductive Justice outreach.