

1 DENTONS US LLP
2 JOEL D. SIEGEL (Bar No. 155581)
3 joel.siegel@dentons.com
4 601 South Figueroa Street, Suite 2500
5 Los Angeles, California 90017-5704
6 Telephone: (213) 623-9300; Facsimile: (213) 623-9924

7 LEAH R. BRUNO (pro hac vice pending)
8 leah.bruno@dentons.com
9 233 South Wacker Drive, Suite 5900
10 Chicago, Illinois 60606-6361
11 Telephone: (312) 876-8000; Facsimile: (312) 267-4198

12 Attorneys for *Amici Curiae*
13 U.S. Women's Chamber of Commerce and
14 National Association for Female Executives

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 **THE STATE OF CALIFORNIA, et al.,**

18 **Plaintiffs,**

19 **v.**

20 **ALEX M. AZAR, II, et al.**

21 **Defendants.**

22 Case No. 4:17-cv-05783-HSG

23 **U.S. WOMEN'S CHAMBER OF
24 COMMERCE AND NATIONAL
25 ASSOCIATION FOR FEMALE
26 EXECUTIVES' MOTION FOR LEAVE
27 TO APPEAR AS *AMICI CURIAE* AND
28 TO FILE AN *AMICUS BRIEF* IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION
AND MEMORANDUM IN SUPPORT
THEREOF**

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that the U.S. Women's Chamber of Commerce and National
3 Association for Female Executives (collectively, "Amici") request the Court's leave to file, as
4 *amicus curiae*, a brief in support of the Motion for Preliminary Injunction filed by Plaintiffs on
5 December 19, 2018. *Amici's amicus* brief is attached to this Motion as Exhibit A.

6 This Motion is based on this Motion, the accompanying Memorandum in support thereof,
7 Exhibit A thereto, the Proposed Order Granting Motion for Leave to Appear as *Amici Curiae* and
8 to File an *Amicus* Brief, the pleadings and other papers on file herein, and such other written and
9 oral argument as may be presented to the Court.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 **I. STANDARD**

2 The Court has broad discretion to permit a non-party to participate in an action as *amicus*
 3 *curiae*. *See, e.g. Gerritson v. de la Madrid Hurtado*, 819 F.2d 1511, 1514 n.3 (9th Cir. 1987); *see also Io Grp., Inc. v. Veoh Networks, Inc.*, No. C06-03926 HRL, 2007 WL 2433385, at *1 (N.D.
 4 Cal. Aug. 22, 2007) (“The district court has broad discretion to appoint amici curiae.”). *Amici*
 5 submit that their brief offers “useful” and “desirable” information meriting “[t]he privilege of
 6 being heard amicus.” *In Re Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991) (citing
 7 *United States v. Louisiana*, 751 F. Supp. 608, 620 (E.D. La. 1990)). The proposed *amicus* brief is
 8 not duplicative of Plaintiffs’ moving briefs and offers the Court a unique perspective on “legal
 9 issues that have potential ramifications beyond the parties directly involved[.]” *Sonoma Falls*
 10 *Dev., LLC v. Nev. Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003) (quoting
 11 *Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003)). “District courts frequently welcome
 12 amicus briefs” in these circumstances. *Id.*

14 **II. IDENTITY AND INTEREST OF AMICI CURIAE**

15 *Amici curiae* comprise national organizations focused on the advancement of women in
 16 business and are committed to the well-being of women and families. *Amicus* U.S. Women’s
 17 Chamber of Commerce (“USWCC”) is a national organization with more than 500,000 members
 18 that seeks to increase economic growth opportunities for women. *Amicus* National Association
 19 for Female Executives (“NAFE”) is a national organization with more than 60,000 members that
 20 works to empower women to achieve career and personal success and to recognize corporations
 21 and organizations that expand opportunities for women in business. *Amici* have a strong interest
 22 in this case as the regulations at issue operate to defeat the goals of these organizations.

23 The final regulations in this case would allow nearly any private employer, university, or
 24 health insurer to invoke religion or morality as a basis for stopping contraceptive coverage under
 25 the Affordable Care Act (“ACA”). *Amici* are committed to gender equality, which includes
 26 supporting women’s healthcare that allows women to make choices about how to plan and care
 27 for their families. *Amici* offer this brief to assist the Court in understanding the importance to the
 28 national economy and business community of providing contraceptive coverage to all women.

1 **III. CONCLUSION**

2 For the reasons set forth above, *Amici* respectfully request this Court's leave to file the
3 accompanying amicus brief in support of Plaintiffs' Motion for Preliminary Injunction.

4

5 Dated: January 7, 2019

DENTONS US LLP

6

7 By: /s/ Joel D. Siegel

8 Joel D. Siegel

9

10 Joel D. Siegel
11 DENTONS US LLP
12 601 South Figueroa Street, Suite 2500
13 Los Angeles, California 90017-5704
14 Telephone: (213) 623-9300

15

16 Leah R. Bruno
17 DENTONS US LLP
18 233 South Wacker Drive, Suite 5900
19 Chicago, Illinois 60606-6361
20 Telephone: (312) 876-8000

21

22 Attorneys for *Amici Curiae*
23 U.S. Women's Chamber of Commerce and
24 National Association for Female Executives

25

26

27

28

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the date indicated below, I electronically filed the foregoing document with the Clerk of the Court, using the CM/ECF system, which will automatically send notification and a copy of the brief to the counsel of record for the parties. I further certify that all parties to this case are represented by counsel of record who are CM/ECF participants.

Dated: January 7, 2019

/s/ Joel. D. Siegel

Joel D. Siegel

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 DENTONS US LLP
2 JOEL D. SIEGEL (Bar No. 155581)
3 joel.siegel@dentons.com
4 601 South Figueroa Street, Suite 2500
5 Los Angeles, California 90017-5704
6 Telephone: (213) 623-9300; Facsimile: (213) 623-9924

7 LEAH R. BRUNO (pro hac vice pending)
8 leah.bruno@dentons.com
9 233 South Wacker Drive, Suite 5900
10 Chicago, Illinois 60606-6361
11 Telephone: (312) 876-8000; Facsimile: (312) 267-4198

12 Attorneys for *Amici Curiae*
13 U.S. Women's Chamber of Commerce and
14 National Association for Female Executives

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 **THE STATE OF CALIFORNIA, et al.,**

18 **Plaintiffs,**

19 **v.**

20 **ALEX M. AZAR, II, et al.**

21 **Defendants.**

22 Case No. 4:17-cv-05783-HSG

23 **BRIEF OF AMICI CURIAE U.S.
24 WOMEN'S CHAMBER OF
25 COMMERCE AND NATIONAL
26 ASSOCIATION FOR FEMALE
27 EXECUTIVES IN SUPPORT OF
28 PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

	Page
Table of Contents	ii
Table of Authorities	iii
Statement of Interest of <i>Amici Curiae</i>	1
Summary of Argument.....	2
Argument	4
I. The Contraception Guarantee Provides an Essential Health Benefit that Allows Women Control over Their Lives, Their Education, and Their Careers.....	5
A. Contraception Enhances Women's Education and Workforce Participation and the Well-Being of Women and Families.	5
B. The Contraception Guarantee Enhances the Proven Benefits of Access to Contraceptives.	10
II. The Contraception Guarantee Facilitates Business Growth By Allowing Women to Play a Critical Role in The National Economy.	12
A. When Women are Empowered to Control Their Own Reproductive Lives, Businesses and the National Economy Benefit Too.	12
B. Decreased Access to Contraception Negatively Impacts Women's Well-Being, Businesses, and the Economy.....	15
Conclusion	18

TABLE OF AUTHORITIES

2	Page(s)
3	Cases
4	<i>Eisenstadt v. Baird</i> , 405 U.S. 438 (1972) 4
5	<i>Griswold v. Connecticut</i> , 410 U.S. 113 (1965) 4
6	<i>Planned Parenthood of Se. Pa. v. Casey</i> , 505 U.S. 833 (1992) 2, 17
7	<i>Weinberger v. Wiesenfeld</i> , 420 U.S. 636 (1975) 8
8	Other Authorities
9	Adam Sonfield, <i>Beyond Preventing Unplanned Pregnancy: The Broader Benefits of Publicly Funded Family Planning Services</i> , 17 Policy Review 2 (2014), available at https://www.guttmacher.org/sites/default/files/article_files/gpr170402.pdf 15
10	Adam Sonfield et al., Guttmacher Inst., <i>The Social and Economic Benefits of Women's Ability to Determine Whether and When to Have Children</i> (Mar. 2013), available at https://www.guttmacher.org/pubs/social-economic-benefits.pdf <i>passim</i>
11	Adam Sonfield et al., <i>Impact of the Federal Contraceptive Coverage Guarantee on Out-of-Pocket Payments for Contraceptives: 2014 Update</i> , 91 Contraception 44 (2015), available at https://www.contraceptionjournal.org/article/S0010-7824(14)00687-8/pdf 11
12	Amalia R. Miller, <i>The Effects of Motherhood Timing on Career Path</i> , 24 J. Population Econ. 1071 (2011) 9
13	Amy Richman et al., Corporate Voices for Working Families, <i>Business Impacts of Flexibility: An Imperative for Expansion</i> 13 (Feb. 2011), available at https://www.wfd.com/PDFS/BusinessImpactsofFlexibility_March2011.pdf 16
14	Carly Sitrin, <i>Teen Birth Rates Just Hit An All-Time Low</i> , Vox (June 30, 2017), available at https://www.vox.com/science-and-health/2017/6/30/15894750/teen-birth-rates-hit-all-time-low 10

1	Caroline S. Carlin et al., <i>Affordable Care Act's Mandate Eliminating Contraceptive Cost Sharing Influenced Choices of Women with Employer Coverage</i> , 35 Health Affairs 1608 (2016).....	11
3	Center for Disease Control & Prevention, <i>Pregnancy-Related Deaths</i> , https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pregnancy-relatedmortality.htm	10
5	Center for Women's Business Research, <i>The Economic Impact of Women-Owned Businesses In the United States</i> (Oct. 2009), available at https://s3.amazonaws.com/nwbc-prod.sba.fun/wp-content/uploads/2018/02/27193655/The-Economic-Impact-of-Women-Owned-Businesses-in-the-United-States.pdf	4, 13
9	Cheyenne Buckingham et al., <i>America's Most and Least Educated States</i> , MSN (Sept. 24, 2018), available at https://www.msn.com/en-us/money/personal-finance/america%20%99s-most-and-least-educated-states/ar-BBNIBSS	15
11	Chris Bart, <i>Why Women Make Better Directors</i> , 8 International Journal of Business Governance and Ethics 93 (2013), available at https://pdfs.semanticscholar.org/a7db/04f990334daf8f0c47e587f61055b16518d0.pdf	14
14	Claudia Goldin & Lawrence F. Katz, <i>The Power of the Pill: Oral Contraceptives and Women's Career and Marriage Decisions</i> , 110(4) J. Pol. Econ. 730 (2002).....	7
15	David Lee, <i>Managing Employee Stress and Safety: A Guide to Minimizing Stress- Related Cost While Maximizing Employee Productivity</i> (2000).....	16
17	Debbie Postlethwaite et al., <i>A Comparison of Contraceptive Procurement Pre- and Post-Benefit Change</i> , 76 Contraception 360 (2007)	111
19	Diane Whitmore Schanzenbach & Ryan Nunn, The Hamilton Project, <i>The 51%: Driving Growth Through Women's Economic Participation</i> (Oct. 2017), available at https://www.brookings.edu/wp-content/uploads/2017/10/es_121917_the51percent_ebook.pdf	12
22	Eileen Appelbaum et al., Center for American Progress and the Center for Economic and Policy Research, <i>The Economic Importance of Women's Rising Hours of Work: Time to Update Employment Standards</i> (Apr. 2014), available at https://cdn.americanprogress.org/wp-content/uploads/2014/04/WomensRisingWorkv2.pdf	4
25		
26		
27		
28		

1	Elizabeth Oltmans Ananat & Daniel M. Hungerman, <i>The Power of the Pill for the</i> <i>Next Generation: Oral Contraception's Effects on Fertility, Abortion, and</i> <i>Material and Child Characteristics</i> , 94 <i>The Review of Economics and</i> <i>Statistics</i> 37 (Feb. 2012), <i>available at</i> https://www.mitpressjournals.org/doi/abs/10.1162/REST_a_00230?journalCode=rest	6
5	Executive Office of the President, Council of Economic Advisers, <i>The Annual</i> <i>Report</i> 157 (2015), <i>available at</i> https://obamawhitehouse.archives.gov/sites/default/files/docs/cea_2015_erp_complete.pdf	13
8	Executive Office of the President, Council of Economic Advisers, <i>Women's</i> <i>Participation in Education and the Workforce</i> 9 (Oct. 14, 2014), <i>available at</i> https://obamawhitehouse.archives.gov/sites/default/files/docs/womens_slides_final.pdf	8, 12
11	Federal Glass Ceiling Commission, <i>Good for Business: Making Full Use of the</i> <i>Nation's Human Capital</i> 14 (1995), <i>available at</i> https://www.dol.gov/oasam/programs/history/reich/reports/ceiling.pdf	3
13	Guttmacher Institute, <i>Fact Sheet: Unintended Pregnancy in the United States</i> (Sept. 2016), <i>available at</i> https://www.guttmacher.org/sites/default/files/factsheet/fb-unintended-pregnancy-us_0.pdf	6
16	Heather Boushey & Sarah Jane Glynn, Center for American Progress, <i>There Are</i> <i>Significant Business Costs to Replacing Employees</i> (Nov. 16, 2012), <i>available</i> <i>at</i> https://cdn.americanprogress.org/wp-content/uploads/2012/11/16084443/CostofTurnover0815.pdf	16, 17
18	Heinrich Hock, <i>The Pill and the College Attainment of American Women and Men</i> , Dep't of Economics, Florida State University Working Papers (2007), <i>available at</i> http://paa2006.princeton.edu/papers/61745	5, 7
21	Institute for Women's Policy Research, <i>Women's Labor Force Participation</i> , <i>available at</i> https://statusofwomendata.org/earnings-and-the-gender-wage-gap/womens-labor-force-participation/	12
23	Institute of Medicine of the National Academies, <i>Clinical Prevention Services for</i> <i>Women: Closing the Gaps</i> (2011)	6, 10, 12
25	Jennifer J. Frost & Laura Duberstein Lindberg, <i>Reasons for Using Contraception:</i> <i>Perspectives of US Women Seeking Care at Specialized Family Planning</i> <i>Clinics</i> , 87 <i>Contraception</i> 465 (2013)	6

1 Joanna Barsh & Lareina Yee, McKinsey & Company, *Unlocking the Full*
 2 *Potential of Women in the US Economy* (Apr. 2011), available at
 3 <https://www.mckinsey.com/business-functions/organization/our-insights/unlocking-the-full-potential-of-women>.....13, 14

4 Jonathan M. Bearak et al., *Changes in Out-of-Pocket Costs for Hormonal IUDs*
 5 *After Implementation of the Affordable Care Act: An Analysis of Insurance*
 6 *Benefit Inquiries*, 93 Contraception 139 (2016), available at
 7 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4780678/pdf/nihms-756929.pdf>11, 12

8 Joshua D. Angrist & William N. Evans, *Schooling and Labor Market*
 9 *Consequences of the 1970 State Abortion Reforms*, National Bureau of
 10 Economic Research Working Paper Series, Working Paper 5406 (1996)7

11 Justin Wolfers, The New York Times, *Fewer Women Run Big Companies Than*
 12 *Men Named John* (Mar. 2, 2015), available at
 13 <https://www.nytimes.com/2015/03/03/upshot/fewer-women-run-big-companies-than-men-named-john.html>4

14 Kelleen Kaye et al., The National Campaign to Prevent Teen and Unplanned
 15 Pregnancy, *The Benefits of Birth Control in America: Getting the Facts*
 16 *Straight* (2014), available at
 17 <https://powertodecide.org/sites/default/files/resources/primary-download/benefits-of-birth-control-in-america.pdf>5, 7, 15

18 Lindsay E. Sears et al., *Overall Well-Being as a Predictor of Health Care, Productivity and Retention Outcomes in a Large Employer*, 16(6) Population
 19 Health Management 397 (2013)16

20 Lydia E. Pace et al., *Early Impact of the Affordable Care Act on Oral Contraceptive Cost Sharing, Discontinuation, and Nonadherence*, 35(9) Health
 21 Affairs 1616 (2016)11

22 Marianne Bertrand et al., *Dynamics of the Gender Gap for Young Professionals in the Financial and Corporate Sectors*, 2 Am. Econ. J.: Applied Econ. 228 (July
 23 2010)17

24 Martha J. Bailey et al., *The Opt-In Revolution? Contraception and the Gender Gap in Wages*, 4(3) American Economic Journal of Applied Economics 225 (Jul. 2012), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3684076/>6, 8

25 Martha J. Bailey, *Fifty Years of Family Planning: New Evidence on the Long-Run Effects of Increasing Access to Contraception*, Brookings Pap Econ Act. 341 (2013)9

1	Martha J. Bailey et al., <i>Recent Evidence on the Broad Benefits of Reproductive Health Policy</i> , <i>Journal of Policy Analysis and Management</i> 888 (July 2013)	5
3	Martha J. Bailey, <i>More Power to the Pill: The Impact of Contraceptive Freedom on Women's Life Cycle Labor Supply</i> , <i>Quarterly J. of Econ.</i> 289 (Feb. 2006).....	5
4	Martha J. Bailey et al., <i>Do Family Planning Programs Decrease Poverty? Evidence from Public Census Data</i> , 60 CESifo Economic Studies 312 (June 2014), <i>available at</i> https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4206087/pdf/nihms602597.pdf	9
8	Matthias Doepke et al., <i>National Bureau of Economic Research Working Paper 17672, The Economics and Politics of Women's Rights</i> 21 (Dec. 2011).....	9, 12
10	McKinsey & Company, <i>Women in the Workplace 2015</i> , <i>available at</i> http://womenintheworkplace.com/2015	14
11	Meghan L. Kavanaugh & Ragnar M. Anderson, Guttmacher Institute, <i>Contraception and Beyond</i> (2013), <i>available at</i> https://www.guttmacher.org/pubs/health-benefits.pdf	9, 15
13	National Women's Business Council, <i>Reasons to Invest in Women Entrepreneurs</i> , <i>available at</i> https://www.nawrb.com/reasons-to-invest-in-women-entrepreneurs/	13
15	National Women's Law Center, <i>Fact Sheet: Reproductive Health is Part of the Economic Health of Women and Their Families</i> (Feb. 2016), <i>available at</i> https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/02/Reproductive-Health-is-Part-of-the-Economic-Health-of-Women-2.19.166.pdf	5
19	Nicholas J. Kassebaum et al., <i>Global, Regional, and National Levels of Maternal Mortality, 1990-2015: A Systematic Analysis for the Global Burden of Disease Study 2015</i> , 388 <i>The Lancet</i> 1775 (2016), <i>available at</i> http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(16)31470-2.pdf	10
22	Nora V. Becker & Daniel Polsky, <i>Women Saw Large Decreases in Out-of-Pocket Spending for Contraceptives After ACA Mandate Removed Cost Sharing</i> , 34 <i>Health Affairs</i> (July 2015)	11
24	Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, <i>The Affordable Care Act is Improving Access to Preventive Services for Millions of Americans</i> (May 14, 2015)	4
26	Roy Adler, <i>Women in the Executive Suite Correlate to High Profits</i> , European Project on Equal Pay (1998)	14

1	Sarah Jane Glynn, Center for American Progress, <i>Breadwinning Mothers Are</i> <i>Increasingly the U.S. Norm</i> (Dec. 19, 2016), available https://cdn.americanprogress.org/content/uploads/2016/12/19065819/Breadwinners-report.pdf	8
4	Sarah Jane Glynn, Center for American Progress, <i>The New Breadwinners: 2010 Update - Rates of Women Supporting Their Families Economically Increased Since 2007</i> (Apr. 2012), available at https://cdn.americanprogress.org/wp-content/uploads/issues/2012/04/pdf/breadwinners.pdf	8
7	Sean Nicholson et al., <i>How to Present the Business Case for Healthcare Quality to Employers</i> 12 (Nov. 2005), available at http://knowledge.wharton.upenn.edu/wp-content/uploads/2013/09/1303.pdf	16
9	Sue Ricketts et al., <i>Game Change in Colorado: Widespread Use of Long-Acting Reversible Contraceptives and Rapid Decline in Births Among Young, Low-Income Women</i> , 46 Perspective on Sexual & Reproductive Health 125 (Sept. 2014), available at https://onlinelibrary.wiley.com/doi/epdf/10.1363/46e1714	11
12	U.S. Women's Chamber of Commerce, <i>Women's Economic Priorities: Fundamental budget and policy priorities that support women's economic opportunities, security and family well-being</i> (July 2014), available at https://www.swipe.to/0814q	4, 8, 10, 13
15	Vicki Kramer et al., <i>Critical Mass on Corporate Boards: Why Three or More Women Enhance Governance</i> , 37 Organizational Dynamics 145 (2008).....	14
16	The White House Council on Women and Girls, <i>Keeping America's Women Moving Forward: The Key to an Economy Built to Last</i> 47 (Apr. 2012), available at https://obamawhitehouse.archives.gov/sites/default/files/email-files/womens_report_final_for_print.pdf	8

19

20

21

22

23

24

25

26

27

28

STATEMENT OF INTEREST OF *AMICI CURIAE*¹

Amici curiae comprise national organizations focused on the advancement of women in business and are committed to the well-being of women and families. *Amicus* U.S. Women's Chamber of Commerce ("USWCC") is a national organization with more than 500,000 members that seeks to increase economic growth opportunities for women. *Amicus* National Association for Female Executives ("NAFE") is a national organization with more than 60,000 members that works to empower women to achieve career and personal success and to recognize corporations and organizations that expand opportunities for women in business. *Amici* have a strong interest in this case as the regulations at issue operate to defeat the goals of these organizations.

The final regulations in this case would allow nearly any private employer, university, or health insurer to invoke religion or morality as a basis for stopping contraceptive coverage under the Affordable Care Act (“ACA”). This Court previously found that “for a substantial number of women, [the regulations] transform contraceptive coverage from a legal entitlement to an essentially gratuitous benefit wholly subject to their employer’s discretion.” *Amici* are committed to gender equality, which includes supporting women’s healthcare that allows women to make choices about how to plan and care for their families. *Amici* offer this brief to assist the Court in understanding the importance to the national economy and business community of providing contraceptive coverage to all women.

¹ Counsel for *amici* represent that none of the parties or their counsel authored this brief in whole or in part and that none of the parties or their counsel, nor any other person or entity other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF ARGUMENT

“The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.” *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 856 (1992) (citation omitted).

As employees, managers, executives, and customers, women are essential to building thriving businesses and sustaining a modern economy. Supporting women in business includes supporting access to contraception – a crucial health benefit that provides women greater control over their education, their careers and their lives. By helping women avoid unintended pregnancy, contraception facilitates women’s participation and advancement in the workforce, which in turn supports business and economic growth.

The ACA's contraceptive coverage benefit provides women with meaningful access to a full array of contraceptive services. Since the contraception guarantee was instituted, women's health has improved, rates of unintended pregnancies have decreased, and women are more consistently obtaining the most effective and appropriate forms of contraception for their needs. The contraception guarantee is important throughout women's reproductive lives; contraception is used by young women, by mothers, and by women at various life and career stages. As set forth below, contraception has a positive impact not only on women, but also on their children and families. Yet contraception, and in particular the most effective forms of contraception, can be expensive. The ACA's contraception guarantee has allowed women to save billions of dollars in out-of-pocket costs for contraception, while helping them to more effectively avoid unintended pregnancy.

The final rules at issue in this case (the “Rules”) threaten these vital advancements and will harm American women, families, and the economy. The Rules represent a major step backward for the millions of women who rely upon contraceptive care while pursuing their educations and careers during their childbearing years and for businesses that value gender equality and diversity and the contributions of female employees, executives, and customers. By establishing roadblocks to meaningful access to contraception, the Rules will negatively affect

1 women's ability to balance their personal lives and their educational and professional
2 advancement.

3 While this nation has made tremendous strides toward gender equality, women remain
4 underrepresented in parts of the workforce and in leadership positions. Regulations that limit or
5 restrict access to contraception exacerbate this underrepresentation. Unintended pregnancy can
6 derail women's efforts to obtain education and advance professionally, and women unable to
7 afford effective contraception may be limited in their career choices. Loss of meaningful access
8 to contraception can increase levels of stress, distraction, absenteeism, and turnover, decrease
9 overall productivity, and stall career opportunities – all of which are detrimental to businesses and
10 the national economy. Businesses and the national economy benefit when working women know
11 they have meaningful access to preventative healthcare, including contraception. Then women
12 can decide how many children to have, and when, and make plans about their work and life
13 responsibilities. The ACA's contraception guarantee gives women the confidence of knowing
14 they will have coverage for contraception if they change jobs or insurance companies. The
15 ACA's contraception guarantee thus provides an essential health benefit that promotes three
16 important and connected goals: (1) it provides women control over their lives, (2) it contributes to
17 gender equality and inclusion, and (3) it facilitates economic growth. The Rules undermine each
18 of these goals.

19 The Rules' inevitable reduction in the number of women obtaining no-cost contraceptive
20 coverage will limit the ability of the affected women to advance professionally. This will directly
21 affect businesses nationwide by reducing the number of qualified women available to work at
22 their companies, and will have a negative impact on the national economy.

23 For these and the reasons set forth more fully below, *amici* urge this Court to grant
24 Plaintiffs' Motion for Preliminary Injunction filed December 19, 2018 and enjoin Defendants
25 from enforcing the Rules.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

ARGUMENT

Women's pursuit of educational and professional goals is intrinsically tied to their ability to determine whether and when to have children. Since the Supreme Court recognized in *Griswold v. Connecticut*, 410 U.S. 113 (1965), and *Eisenstadt v. Baird*, 405 U.S. 438 (1972), that the constitutionally protected right to privacy encompasses the right to access contraception, the number of working women in the U.S. has grown considerably and women have increasingly advanced into senior business roles.

The increased number of women in the workforce has added trillions of dollars to the nation's annual gross domestic product.² In 2009, women-owned small businesses contributed \$2.8 trillion to the American economy each year, accounting for over 15% of gross domestic product.³ American women contribute to economic innovation, productivity, and growth. These outcomes would not be possible without women's ability to control their own reproductive health, including access to contraception. That access was meaningfully expanded through the ACA and its implementing regulations, which eliminated cost-sharing obligations for an array of essential preventative medicine and health services, including contraceptive services. At least 55 million women gained access to no-cost contraceptive coverage under the ACA.⁴ The Rules will reverse this progress by decreasing access to contraception and thus making it harder for women to balance life choices with educational and professional goals.

² Eileen Appelbaum et al., Ctr. for Am. Progress & Ctr. for Econ. & Policy Research, *The Economic Importance of Women's Rising Hours of Work: Time to Update Employment Standards* 1 (Apr. 2014), available at <https://cdn.americanprogress.org/wp-content/uploads/2014/04/WomensRisingWorkv2.pdf> (explaining that if women's employment patterns had remained as they were before the Supreme Court recognized a constitutional right to access contraception, the gross domestic product of the United States would have been roughly \$1.7 trillion lower in 2012); see also U.S. Women's Chamber of Commerce, *Women's Economic Priorities: Fundamental budget and policy priorities that support women's economic opportunities, security and family well-being* 16 (July 2014), available at <https://www.swipe.to/0814q> ("USWCC, *Women's Economic Priorities*") ("If no additional women had joined the paid economy since 1970, U.S. Gross Domestic Product (GDP) would be 75% of its current size.").

³ Ctr. for Women’s Bus. Research, *The Economic Impact of Women-Owned Businesses In the United States* 1, 10 (Oct. 2009), available at <https://s3.amazonaws.com/nwbcprod.sba.fun/wpcontent/uploads/2018/02/27193655/The-Economic-Impact-of-Women-Owned-Businesses-in-the-United-States.pdf> (“CWBR, *Economic Impact*”) (“[W]omen-owned firms are not a small, niche market but are a major contributor and player in the overall economy.”).

⁴ See Office of the Assistant Sec'y for Planning & Evaluation, U.S. Dep't of Health & Human Servs., *The Affordable Care Act is Improving Access to Preventive Services for Millions of Americans* (May 14, 2015).

1 **I. The Contraception Guarantee Provides an Essential Health Benefit that Allows**
 2 **Women Control over Their Lives, Their Education, and Their Careers.**

3 Contraception allows women to make significant decisions in their personal, educational,
 4 and professional lives without fear of unintended pregnancy.⁵ Women's ability to effectuate
 5 these decisions has had a profound effect on their own economic well-being as well as that of
 6 their families.⁶ Indeed, “[f]ive decades after the pill was introduced, it is clear that consistent
 7 access to effective and affordable contraception has served as a catalyst of opportunity” and
 8 revolutionized expectations about women's “educational and career prospects and their roles in
 9 the home and workplace.”⁷ The “weight of the evidence across numerous studies shows
 10 significant employment and educational gains have followed directly from women's ability to
 11 better time their entry into parenthood[.]”⁸

12 **A. Contraception Enhances Women's Education and Workforce Participation**
 13 **and the Well-Being of Women and Families.**

14 Meaningful access to contraception ensures that women can exercise autonomy and
 15 control over their reproductive health, including decisions about when and whether to have
 16 children.⁹ Unintended pregnancy is a nationwide issue.¹⁰ In a 2011 survey, women reported that

17 ⁵ Adam Sonfield et al., Guttmacher Inst., *The Social and Economic Benefits of Women's Ability to Determine*
 18 *Whether and When to Have Children* (Mar. 2013), available at <https://www.guttmacher.org/pubs/social-economic-benefits.pdf> (“Sonfield, Social and Economic Benefits”) (summarizing studies on the social and economic benefits of women's ability to plan whether and when to have children through the use of contraception); Nat'l Women's Law Ctr., *Fact Sheet: Reproductive Health is Part of the Economic Health of Women and Their Families* (Feb. 2016), available at <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/02/Reproductive-Health-is-Part-of-the-Economic-Health-of-Women-2.19.166.pdf>.

19 ⁶ Sonfield, *Social and Economic Benefits*, *supra* note 5, at 29 (“Planning, delaying and spacing one's children
 20 generally appear to help women achieve their career goals”); Martha J. Bailey et al., *Recent Evidence on the Broad*
 21 *Benefits of Reproductive Health Policy*, J. Policy Analysis & Mgmt. 888, 894 (July 2013) (“[I]ncreasing access to
 22 contraception and legal abortion has had large and enduring effects on the material resources of families and children
 23 and has promoted the economic equality of women.”).

24 ⁷ Sonfield, *Social and Economic Benefits*, *supra* note 5, at 4.

25 ⁸ Kelleen Kaye et al., The Nat'l Campaign to Prevent Teen and Unplanned Pregnancy, *The Benefits of Birth Control*
 26 *in America: Getting the Facts Straight* 29 (2014), available at
 27 <https://powertodecide.org/sites/default/files/resources/primary-download/benefits-of-birth-control-in-america.pdf>
 28 (“Kaye”); see also Martha J. Bailey, *More Power to the Pill: The Impact of Contraceptive Freedom on Women's Life*
 29 *Cycle Labor Supply*, Quarterly J. of Econ. 289, 318 (Feb. 2006) (discussing how “greater fertility control contributed
 30 to the boom in young women's market work from 1970 to 1990”).

31 ⁹ Heinrich Hock, *The Pill and the College Attainment of American Women and Men*, Dep't of Econ., Florida State
 32 University Working Papers 1 (2007), available at <http://paa2006.princeton.edu/papers/61745> (“Hock”) (noting that

1 using birth control allows them to pursue personal goals, better control their lives and future, and
 2 “better care for themselves and their families, either directly or indirectly through facilitating their
 3 education and career.”¹¹

4 When women lack meaningful access to contraception, their ability to prevent unintended
 5 pregnancies and births decreases substantially.¹² A 2015 study found that among women at risk
 6 for an unintended pregnancy in the United States, the 14% who did not use contraceptives
 7 account for 54% of all unintended pregnancies. By contrast, the 68% of women at risk for an
 8 unintended pregnancy who use contraceptives consistently and correctly account for only 5% of
 9 all unintended pregnancies.¹³

10 Access to contraception enhances women’s ability to pursue education and increases
 11 women’s participation and advancement in the workforce by providing women with the ability to
 12 control their reproductive lives and thus direct their future. As several economic studies have
 13 confirmed, access to contraception has “altered [women’s] expectations about childbearing during
 14 a period critical to career investment, and reduced the cost of increasing their early career
 15 investments.”¹⁴

16 what made oral contraception “so remarkable, and what drove its rapid diffusion, was the degree of autonomy and
 17 control it offered women over their reproductive lives, especially with respect to the timing of their fertility”).

18 ¹⁰ Guttmacher Inst., *Fact Sheet: Unintended Pregnancy in the United States* 1 (Sept. 2016), available at
 19 https://www.guttmacher.org/sites/default/files/factsheet/fb-unintended-pregnancy-us_0.pdf (“Guttmacher,
 20 *Unintended Pregnancy*”) (“In 2010, at least 36% of pregnancies in every U.S. state were unintended. In 28 states and
 21 the District of Columbia, more than half of pregnancies were unintended.”).

22 ¹¹ Jennifer J. Frost & Laura Duberstein Lindberg, *Reasons for Using Contraception: Perspectives of US Women*
 23 *Seeking Care at Specialized Family Planning Clinics*, 87 Contraception 465, 469, 471 (2013) (noting the importance
 24 of contraception “for women and couples who are motivated to consciously and carefully plan for their and their
 25 families’ futures”).

26 ¹² Guttmacher, *Unintended Pregnancy*, *supra* note 10, at 2 (noting an 18% decline in unintended pregnancies
 27 between 2008 and 2011 likely due “to an overall increase in contraceptive use and the use of highly effective
 28 methods”); Inst. of Med. of the Nat’l Academies, *Clinical Preventive Services for Women: Closing the Gaps* 104-05,
 29 109 (2011) (“IOM, *Closing the Gaps*”) (citing reports finding that progress in reducing unintended pregnancies
 30 would be possible by “making contraceptives more available, accessible, and acceptable through improved
 31 services”).

32 ¹³ Guttmacher, *Unintended Pregnancy*, *supra* note 10, at 3.

33 ¹⁴ See, e.g., Martha J. Bailey et al., *The Opt-In Revolution? Contraception and the Gender Gap in Wages*, 4(3) Am.
 34 Econ. J. of Applied Econ. 225, 2 (Jul. 2012), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3684076/>
 35 (“Bailey, *The Opt-In Revolution*”); Elizabeth Oltmans Ananat & Daniel M. Hungerman, *The Power of the Pill for the*
 36 *Next Generation: Oral Contraception’s Effects on Fertility, Abortion, and Material and Child Characteristics*, 94

1 The ability to avoid unintended pregnancy assists women at all stages of their career
 2 paths, beginning with the bedrock of education. As access to contraception has increased, women
 3 have been able to achieve significant educational milestones. Women who avoid unintended
 4 pregnancy on average obtain more education.¹⁵ One study concluded that access to oral
 5 contraceptives accounted for more than 400,000 of the college degrees completed by women born
 6 between 1939 and 1959.¹⁶ Another study found that having a child as a teenager reduced
 7 women's high school graduation and college entrance rates 22% to 24% per child.¹⁷ From 1970
 8 through 2003, the share of first-time mothers with more than 12 years of education increased
 9 from 26% to 52%.¹⁸ When women are affected by unintended pregnancy, their educational goals
 10 may not only be delayed, which can have lasting impacts on their overall career advancement,
 11 they may be derailed altogether.¹⁹

12 Likewise, the availability of contraception has had a statistically significant impact on the
 13 number of women obtaining the education necessary to enter professional occupations.²⁰ "Access
 14 to the pill was linked to the increased numbers of college-educated women pursuing advanced
 15 professional degrees and making up increased proportions of such degree programs."²¹ Today,
 16

17 The Review of Economics and Statistics 37, 18 (Feb. 2012), *available at*
 18 https://www.mitpressjournals.org/doi/abs/10.1162/REST_a_00230?journalCode=rest (noting the effects of access to
 19 contraception "are compatible with a story in which 'upwardly mobile' young women are especially likely to use the
 20 pill to postpone births, and in the meantime pursue better marital and educational outcomes"); Claudia Goldin &
 Lawrence F. Katz, *The Power of the Pill: Oral Contraceptives and Women's Career and Marriage Decisions*, 110(4)
 J. Pol. Econ. 730, 762 (2002) ("Goldin & Katz").

15 Sonfield, *Social and Economic Benefits*, *supra* note 5, at 9 (finding that "women who experience teen births
 16 complete approximately two fewer years of formal schooling as compared with women who wait to have children
 until age 30 or older").

16 Hock, *supra* note 9, at 26.

17 Joshua D. Angrist & William N. Evans, *Schooling and Labor Market Consequences of the 1970 State Abortion
 Reforms*, Nat'l Bureau of Econ. Research Working Paper Series, Working Paper 5406, 25 (1996).

18 Kaye, *supra* note 8, at 30.

19 Sonfield, *Social and Economic Benefits*, *supra* note 5, at 7 (explaining that the ability of young, single women to
 20 "obtain highly effective contraception was a significant factor behind greater numbers of women investing in higher
 education").

20 Goldin & Katz, *supra* note 14, at 762.

21 Sonfield, *Social and Economic Benefits*, *supra* note 5, at 9.

1 women earn 57% of bachelor's degrees, 60% of master's degrees and just over half of all Ph.Ds.²²
 2 In the 1960s, women made up less than 10% of students in JD, MBA, and MD programs, while
 3 women now account for almost half the students in those programs.²³ Absent access to
 4 contraception, these numbers would be much lower.

5 Women who have more control over their reproductive lives are better able to enhance
 6 their earning potential, allowing them to provide for themselves and their families. "Many women
 7 are the principal wage earners for their families, and they participate in the Social Security system
 8 on exactly the same basis as men." *Weinberger v. Wiesenfeld*, 420 U.S. 636, 654 (1975) (Powell,
 9 J., concurring). Mothers are now the sole or primary income-earners in 40% of households with
 10 minor children.²⁴ This represents a major shift in the U.S. economy, with the number of
 11 households where the wife earns as much as her husband nearly doubling since 1975.²⁵ This
 12 trend is seen nationwide, with women serving as the primary breadwinner in at least 25% of
 13 households in every state.²⁶ This shift is due in part to women's increased control over the
 14 number and timing of children. A study has found that "the Pill-induced effects on wages amount
 15 to roughly one-third of the total wage gains for women in their forties born from the mid-1940s to
 16 early 1950s."²⁷ That study concluded that approximately 10% of the narrowing of the wage gap

17
 18 ²² The White House Council on Women and Girls, *Keeping America's Women Moving Forward: The Key to an*
 19 *Economy Built to Last 47* (Apr. 2012), available at https://obamawhitehouse.archives.gov/sites/default/files/emailfiles/womens_report_final_for_print.pdf.

20 ²³ Executive Office of the President, Council of Economic Advisers, *Women's Participation in Education and the*
 21 *Workforce* 9 (Oct. 14, 2014), available at https://obamawhitehouse.archives.gov/sites/default/files/docs/womens_slides_final.pdf ("EOP, *Women's*
 22 *Participation*") (showing that women make up 47.9% of the national workforce).

23 ²⁴ USWCC, *Women's Economic Priorities*, *supra* note 2, at 8, 18 ("Working mothers now account for 63.3% of U.S.
 24 household earnings").

25 ²⁵ Sarah Jane Glynn, Ctr. for Am. Progress, *The New Breadwinners: 2010 Update - Rates of Women Supporting*
 26 *Their Families Economically Increased Since 2007* 3 (Apr. 2012), available at <https://cdn.americanprogress.org/wp-content/uploads/2012/04/pdf/breadwinners.pdf>.

27 ²⁶ Sarah Jane Glynn, Ctr. for Am. Progress, *Breadwinning Mothers Are Increasingly the U.S. Norm* 10-11 (Dec. 19,
 28 2016), available at <https://cdn.americanprogress.org/content/uploads/2016/12/19065819/Breadwinners-report.pdf> (Utah has the lowest share of women serving as the primary breadwinners at 26.3%, while Mississippi has the highest share at 53.5%).

28 ²⁷ Bailey, *The Opt-In Revolution*, *supra* note 14, at 17.

1 between men and women during the 1980s and 31% during the 1990s can be attributed to
 2 women's ability to access oral contraceptives prior to age 21.²⁸

3 Simply put, women who have meaningful access to contraception can better control their
 4 reproductive health and the timing of pregnancy, improving their ability to shape and reap the
 5 rewards of their family lives and careers.

6 Beyond allowing women greater control over their education and careers, access to
 7 contraception has a positive impact on families, especially children. Access to contraception is
 8 associated with significant reductions in both child and adult poverty rates.²⁹ By enhancing
 9 parents' ability to invest time, energy, and resources in their children,³⁰ access to contraception
 10 also has been linked to improved outcomes for children's mental and behavioral development.
 11 Children of teenage mothers, whose pregnancies are often unintended, "have long been known to
 12 be at increased risk for poor developmental outcomes."³¹ Studies show that differences in a
 13 mother's access to birth control predict differences in the extent and intensity of her children's
 14 labor force participation, wage earnings, and household incomes.³² Contraception use also allows
 15 women and their families to avoid the many negative health consequences that are associated
 16 with having babies too close together.³³

17

18

19 ²⁸ *Id.*; see also Amalia R. Miller, *The Effects of Motherhood Timing on Career Path*, 24 J. Population Econ. 1071,
 20 1073 (2011) (explaining "deferred motherhood may be a means of reducing [the economic] inequality" between men
 and women).

21 ²⁹ Martha J. Bailey et al., *Do Family Planning Programs Decrease Poverty? Evidence from Public Census Data*, 60
 CESifo Econ. Studies 312, 6 (June 2014), available at
 22 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4206087/pdf/nihms602597.pdf> (noting "by increasing adults' pre-
 23 childbearing human capital . . . family planning programs [including access to contraception] may increase children's
 economic resources and decrease child poverty rates," such access also "increase[s] parental investment in children
 [and] may improve their lifetime opportunities and labor market outcomes as adults").

24 ³⁰ Sonfield, *Social and Economic Benefits*, *supra* note 5, at 24.

25 ³¹ *Id.*

26 ³² Martha J. Bailey, *Fifty Years of Family Planning: New Evidence on the Long-Run Effects of Increasing Access to
 Contraception*, Brookings Papers on Econ. Activities 341 (2013).

27 ³³ Meghan L. Kavanaugh & Ragnar M. Anderson, Guttmacher Inst., *Contraception and Beyond* 8 (2013), available
 at <https://www.guttmacher.org/pubs/health-benefits.pdf> ("Kavanaugh & Anderson").

28

1 Women's lack access to contraceptives, erodes other aspects of their lives.³⁴ Unintended
 2 pregnancies are linked to conflict and decreased satisfaction in relationships, decreased child
 3 well-being, and depression, anxiety, and overall lower levels of happiness.³⁵ Unintended
 4 pregnancies are also linked to increased pregnancy-related morbidity and mortality, which
 5 contribute to the United States having one of the highest maternal mortality rates in the developed
 6 world, with approximately 700 American women dying each year from pregnancy or childbirth-
 7 related causes.³⁶

8 **B. The Contraception Guarantee Enhances the Proven Benefits of Access to
 9 Contraceptives.**

10 Access to contraceptives has yielded significant gains. But for many women actual,
 11 meaningful access requires the elimination of cost-sharing burdens.³⁷ Studies have concluded
 12 that “[e]ven small increments in cost sharing have been shown to reduce the use of preventive
 13 services” such as contraception.³⁸ And recent studies confirm that the ACA’s Women’s Health
 14 Amendment, which requires insurers to provide coverage for the full range of contraceptive
 15 methods approved by the Food and Drug Administration without imposing cost-sharing
 16 obligations, significantly increased women’s ability to access essential contraceptive services.
 17 For example, the teen birth rate fell to its lowest ever in 2016, a sharp decline attributed in part to

18
 19
 20 ³⁴ Matthias Doepke et al., Nat'l Bureau of Econ. Research Working Paper 17672, *The Economics and Politics of
 21 Women's Rights* 21 (Dec. 2011) (“Doepke”) (discussing study of European women indicating that access to “oral
 22 contraceptives increased women’s self-reported life satisfaction”).

23 ³⁵ See generally Sonfield, *Social and Economic Benefits*, *supra* note 5; see also Kavanaugh & Anderson, *supra* note
 24 33, at 7-8.

25 ³⁶ See Nicholas J. Kassebaum et al., *Global, Regional, and National Levels of Maternal Mortality, 1990-2015: A
 26 Systematic Analysis for the Global Burden of Disease Study 2015*, 388 *The Lancet* 1775, 1784-93 (2016), available
 27 at [http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(16\)31470-2.pdf](http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(16)31470-2.pdf); Ctr. for Disease Ctrl. & Prev.,
 28 *Pregnancy-Related Deaths*, <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pregnancy-relatedmortality.htm>.

29 ³⁷ USWCC, *Women's Economic Priorities*, *supra* note 2, at 25 (“In 2013, 26% of women had to delay or forgo health
 30 care in the past year due to costs.”).

31 ³⁸ IOM, *Closing the Gaps*, *supra* note 12, at 109 (noting “cost-sharing requirements . . . can pose barriers to care and
 32 result in reduced use of preventive and primary care services” and “when out-of-pocket costs for contraceptives are
 33 eliminated or reduced, women were more likely to rely on more effective long-acting contraceptive methods”).

1 the contraception guarantee.³⁹ The effectiveness of the ACA’s Women’s Health Amendment in
 2 providing access to contraceptives is further evidenced by the substantial decrease in the number
 3 of women incurring out-of-pocket costs for contraception. Before the Women’s Health
 4 Amendment took effect, only 15% of privately insured women had coverage for contraception
 5 without out-of-pocket costs.⁴⁰ That number rose to 67% about a year after the Women’s Health
 6 Amendment took effect.⁴¹ The ACA’s contraception benefit saved women \$1.4 billion in out-of-
 7 pocket costs in 2013 alone.⁴² A study of more than 600,000 women nationwide concluded that
 8 women were more likely to use oral contraceptives consistently once the contraception guarantee
 9 removed cost-sharing obligations.⁴³

10 In addition to increasing overall access to contraceptives, the Women’s Health
 11 Amendment also eliminated cost as a reason for women to choose one method of contraception
 12 over another. As a result, more women have been able to choose more appropriate and more
 13 effective forms of contraception.⁴⁴ For example, intrauterine devices (“IUDs”) are one of the
 14

15 ³⁹ Carly Sitrin, *Teen Birth Rates Just Hit An All-Time Low*, Vox (June 30, 2017), available at
 16 <https://www.vox.com/science-and-health/2017/6/30/15894750/teen-birth-rates-hit-all-time-low> (citing Brady E.
 17 Hamilton et al., *Births: Provision Data for 2016*, U.S. Dep’t of Health & Human Servs., National Vital Statistics
 18 System (June 2017)).

19 ⁴⁰ Adam Sonfield et al., *Impact of the Federal Contraceptive Coverage Guarantee on Out-of-Pocket Payments for*
 20 *Contraceptives: 2014 Update*, 91 Contraception 44, 45 (2015), available at
[https://www.contraceptionjournal.org/article/S0010-7824\(14\)00687-8/pdf](https://www.contraceptionjournal.org/article/S0010-7824(14)00687-8/pdf).

21 ⁴¹ *Id.*

22 ⁴² Nora V. Becker & Daniel Polksy, *Women Saw Large Decreases in Out-of-Pocket Spending for Contraceptives*
 23 *After ACA Mandate Removed Cost Sharing*, 34 Health Affairs 104, 1208-09 (July 2015).

24 ⁴³ Lydia E. Pace et al., *Early Impact of the Affordable Care Act on Oral Contraceptive Cost Sharing,*
 25 *Discontinuation, and Nonadherence*, 35(9) Health Affairs 1616 (2016).

26 ⁴⁴ See, e.g., Debbie Postlethwaite et al., *A Comparison of Contraceptive Procurement Pre- and Post-Benefit Change*,
 27 76 Contraception 360, 363 (2007) (noting when health plan eliminated patient cost-sharing for IUDs, IUD use more
 than doubled); Sue Ricketts et al., *Game Change in Colorado: Widespread Use of Long-Acting Reversible*
 28 *Contraceptives and Rapid Decline in Births Among Young, Low-Income Women*, 46 Perspective on Sexual &
 Reproductive Health 125, 129-130 (Sept. 2014), available at
<https://onlinelibrary.wiley.com/doi/epdf/10.1363/46e1714> (reporting results of study finding that use of long-acting
 reversible contraceptives quadrupled when, among other efforts, out-of-pocket costs were eliminated); Caroline S.
 Carlin et al., *Affordable Care Act’s Mandate Eliminating Contraceptive Cost Sharing Influenced Choices of Women*
 with *Employer Coverage*, 35 Health Affairs 1608 (2016) (finding that “when cost sharing for contraceptives fell to
 zero for women . . . their rate of choosing prescription contraceptives rose much more” than women subject to cost-
 sharing and “compliance with the [ACA’s] mandate significantly increased the probability that a woman would chose
 a long-term contraceptive method[.]”).

1 most effective forms of reversible birth control, with fewer than 1% of women who use them
 2 becoming pregnant within a year (compared to 18% of women who use condoms to prevent
 3 pregnancy and 9% of women who use oral contraceptives).⁴⁵ IUDs, however, have high upfront
 4 costs, which can exceed \$1,000.⁴⁶ Prior to the contraception guarantee, these one-time, up-front
 5 costs often deterred women from using this highly effective form of contraception.⁴⁷ In January
 6 2012 (before implementation of the Women’s Health Amendment), 58% of women were paying
 7 out-of-pocket costs for an IUD, compared to 13% by March 2014.⁴⁸

8 The Women’s Health Amendment has ensured access to the most effective and
 9 appropriate contraceptives for more women than ever before. The Rules restrict that access and
 10 thereby jeopardize the substantial opportunities the contraception guarantee has provided to so
 11 many women.

12 **I. The Contraception Guarantee Facilitates Business Growth By Allowing Women to
 13 Play a Critical Role in The National Economy.**

14 Barriers to women’s participation in the workforce – such as hampering access to
 15 contraception – “do[] more than hold back [women’s] careers and aspirations for a better life,”
 16 they also “act as brakes on the national economy, stifling the economy’s ability to grow.”⁴⁹

17 **A. When Women are Empowered to Control Their Own Reproductive Lives,
 18 Businesses and the National Economy Benefit Too.**

19 For generations of women, access to contraception has allowed them to gain a stronger

21 ⁴⁵ Jonathan M. Bearak et al., *Changes in Out-of-Pocket Costs for Hormonal IUDs After Implementation of the
 22 Affordable Care Act: An Analysis of Insurance Benefit Inquiries*, 93 Contraception 139, 1-2 (2016), available at
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4780678/pdf/nihms-756929.pdf> (“Bearak”).

23 ⁴⁶ *Id.*

24 ⁴⁷ IOM, *Closing the Gaps*, *supra* note 12, at 108 (noting “greater use of long-acting, reversible contraceptive
 25 methods—including intrauterine devices . . . might help further reduce unintended pregnancy rates” and noting that
 “[c]ost barriers to use of the most effective contraceptive methods are important because long-acting, reversible
 contraceptive methods and sterilization have high up-front costs”).

26 ⁴⁸ Bearak, *supra* note 45, at 1.

27 ⁴⁹ Diane Whitmore Schanzenbach & Ryan Nunn, The Hamilton Project, *The 51%: Driving Growth Through
 28 Women’s Economic Participation* 1 (Oct. 2017), available at https://www.brookings.edu/wp-content/uploads/2017/10/es_121917_the51percent_ebook.pdf.

1 foothold in the workforce and national economy.⁵⁰ Women now comprise nearly 50% of the
 2 national workforce.⁵¹ In fact, one study estimates that the United States economy is \$2.0 trillion
 3 (or 13.5%) larger than it would be without women's increased participation in the labor force
 4 since 1970.⁵² And companies that have committed to hiring and promoting women have higher
 5 annualized returns on average than those that have not implemented such policies.⁵³

6 As of 2012, women also own approximately 9 million privately-held businesses.⁵⁴ Those
 7 businesses generate about \$1.4 trillion in sales, and employ about 7.8 million people with a
 8 payroll of approximately \$249 million.⁵⁵ Businesses owned or majority-owned by women also
 9 have a significant indirect economic impact by increasing jobs, spending, and manufacturing at
 10 other entities with whom they deal. On a combined direct and indirect basis, businesses owned
 11 and majority-owned by women are estimated to add \$2.8 trillion to the economy and generate 23
 12 million jobs.⁵⁶

13 Businesses also benefit from women serving on their boards of directors and in
 14 management roles. For instance, companies with at least three female board directors for at least
 15

16 ⁵⁰ See Doepke, *supra* note 34, at 21 (noting “[l]egal access to oral contraceptives gave women control over the timing
 17 of childbearing, and thus their labor market participation”).

18 ⁵¹ EOP, *Women's Participation*, *supra* note 23, at 9 (showing women make up 47.9% of the national workforce); *see also* Institute for Women's Policy Research, *Women's Labor Force Participation*, available at
 19 <https://statusofwomendata.org/earnings-and-the-gender-wage-gap/womens-labor-force-participation/> (in every state
 nearly half of women aged 16 or older work; West Virginia has the lowest female labor force participation at 49.3%,
 while Alaska has the highest at 68.3% percent).

20 ⁵² Executive Office of the President, Council of Economic Advisers, *The Annual Report* 158 (2015), available at
 21 https://obamawhitehouse.archives.gov/sites/default/files/docs/cea_2015_erp_complete.pdf; *see also* Joanna Barsh &
 22 Lareina Yee, McKinsey & Company, *Unlocking the Full Potential of Women in the US Economy* (Apr. 2011),
 available at <https://www.mckinsey.com/business-functions/organization/our-insights/unlocking-the-full-potential-of-women> (“Barsh & Yee”) (the expansion of women in the workforce since 1970 has accounted for 25% of current
 gross domestic product).

23 ⁵³ Fed. Glass Ceiling Comm'n, *Good for Business: Making Full Use of the Nation's Human Capital* 14 (1995),
 24 available at <https://www.dol.gov/oasam/programs/history/reich/reports/ceiling.pdf> (based on a study concluding that
 averaged annualized returns for businesses committed to advancement of women and minorities were 18.3%,
 compared to 7.9% for businesses where glass ceilings for female and minority advancement remained intact).

25 ⁵⁴ Nat'l Women's Bus. Council, *Reasons to Invest in Women Entrepreneurs* 1, available at
 26 <https://www.nawrb.com/reasons-to-invest-in-women-entrepreneurs/> (“NWBC, *Reasons to Invest*”).

27 ⁵⁵ *Id.*; USWCC, *Women's Economic Priorities*, *supra* note 2, at 19 (including businesses owned 50% by women, that
 28 number rises to 15.9 million people).

⁵⁶ CWBR, *Economic Impact*, *supra* note 3, at 1, 10.

1 five years “outperformed those with zero [women board directors] by 84% on return on sales
 2 (ROS), 60% on return on invested capital (ROIC) and 46% on return on equity (ROE).”⁵⁷
 3 Companies with a high number of women board directors “outperformed industry median firms
 4 in percent of revenues, assets and stockholder’s equity by 1.6 percent.”⁵⁸ One study found that
 5 having just one female director on a board cuts the risk of bankruptcy by 20%.⁵⁹ Other studies
 6 note numerous and diverse benefits for companies with women directors, including that boards
 7 adopt new governance practices more quickly, become more civil and sensitive to different
 8 perspectives, and ask more questions before making decisions.⁶⁰ Similarly, studies have
 9 concluded that Fortune 500 companies with a high number of women executives outperform peer
 10 companies in their industries on measures of profitability, including profits as a percent of
 11 revenue, assets, stockholders’ equity, and competitiveness, vis-à-vis industry median
 12 benchmarks.⁶¹

13 Even though businesses thrive with women’s active participation and leadership, women
 14 still face an uphill climb in the workforce and are underrepresented at many levels within
 15 corporate hierarchies.⁶² Adding barriers like the Rules that disproportionately affect women will
 16 only exacerbate the very real challenges women in business continue to face. If women are
 17 deprived of the tools they need to effectively support their reproductive decisions, many people,
 18
 19

20 ⁵⁷ NWBC, *Reasons to Invest*, supra note 54, at 2.

21 ⁵⁸ *Id.*

22 ⁵⁹ Chris Bart, *Why Women Make Better Directors*, 8 Int’l J. Bus. Governance & Ethics 93, 95 (2013), available at <https://pdfs.semanticscholar.org/a7db/04f990334daf8f0c47e587f61055b16518d0.pdf>.

23 ⁶⁰ *Id.*; Vicki Kramer et al., *Critical Mass on Corporate Boards: Why Three or More Women Enhance Governance*, 37 Organizational Dynamics 145, 145-64 (2008).

24 ⁶¹ Roy Adler, *Women in the Executive Suite Correlate to High Profits*, European Project on Equal Pay (1998).

25 ⁶² McKinsey & Company, *Women in the Workplace 2015* 5, 13, available at <https://womenintheworkplace.com/2015> (noting women “are almost three times more likely than men to say they have personally missed out on an assignment, promotion, or raise because of their gender”); *see also* Barsh & Yee, *supra* note 52 (explaining that “[d]espite the sincere efforts of major corporations, the proportion of women falls quickly as you look higher in the corporate hierarchy”); Justin Wolfers, *Fewer Women Run Big Companies Than Men Named John*, N.Y. Times (Mar. 2, 2015), available at <https://www.nytimes.com/2015/03/03/upshot/fewer-women-run-big-companies-than-men-named-john.html>.

1 including women themselves,⁶³ may decide it is too risky for women to undertake high-achieving
 2 career paths or start businesses. Businesses will lose if the Rules are allowed to undermine the
 3 ACA's contraceptive coverage guarantee to women in the workplace.

4 **B. Decreased Access to Contraception Negatively Impacts Women's Well-Being,
 5 Businesses, and the Economy.**

6 The Rules undermine women's ability to consistently access contraception throughout
 7 their careers and inject uncertainty into the availability of meaningful access to contraception. As
 8 a result, women may opt out of certain professions or industries due to an increased risk of
 9 decreased access to contraception. Women may also forgo opportunities for professional growth
 10 and development, making career choices based on access to contraception instead of what is best
 11 for their lives. All businesses suffer when women are forced to make such choices.⁶⁴

12 Research shows that lack of access to contraception contributes to negative health
 13 outcomes which can directly affect businesses that employ women. It is well documented that
 14 “[m]others are healthier when they are able to control when they become pregnant through the
 15 use of family planning, and their infants benefit as well.”⁶⁵ For example, postpartum depression
 16 is nearly twice as high among women whose pregnancies were unplanned.⁶⁶ Women whose
 17 pregnancies were unplanned are significantly more likely to be hospitalized during pregnancy.⁶⁷

18
 19 ⁶³ Barsh & Yee, *supra* note 52 (embedded institutional mindsets and embedded individual mindsets serve to hold
 20 women back in their careers); *see also* Marianne Bertrand et al., *Dynamics of the Gender Gap for Young
 Professionals in the Financial and Corporate Sectors*, 2 Am. Econ. J. Applied Econ. 228, 230 (July 2010) (finding
 21 “MBA mothers seem to actively choose jobs that are family friendly, and avoid jobs with long hours and greater
 22 career advancement possibilities”).

23
 24 ⁶⁴ The 32% of U.S. adults with at least a bachelor's degree are spread throughout every state. In 2017, Massachusetts
 25 had the highest percentage of adults with at least a bachelor's degree with 43.4%, while West Virginia had the lowest
 26 with 20.2%. Cheyenne Buckingham et al, *America's Most and Least Educated States*, MSN (Sept. 24, 2018),
 27 *available at* <https://www.msn.com/en-us/money/personalfinance/america%E2%80%99s-most-and-least-educated-states/ar-BBNIBSS>.

28
 29 ⁶⁵ Kaye, *supra* note 8, at 4-5 (2014) (noting “babies were two-thirds more likely to be of low birthweight if they
 30 followed an unwanted pregnancy, as compared to a planned pregnancy”); *see also* Adam Sonfield, *Beyond
 Preventing Unplanned Pregnancy: The Broader Benefits of Publicly Funded Family Planning Services*, 17 Policy
 31 Rev. 2 (2014), *available at* https://www.guttmacher.org/sites/default/files/article_files/gpr170402.pdf (noting
 32 “[p]regnancy planning . . . has well-documented health benefits for women and children”).

33
 34 ⁶⁶ Kaye, *supra* note 8, at 4-5.

35
 36 ⁶⁷ *Id.* at 18.

1 Further, unintended pregnancies may “present an unacceptably high health risk for women who
 2 have underlying medical conditions, some of which are exacerbated by pregnancy.”⁶⁸ Without
 3 access to contraceptives, women with underlying medical conditions such as diabetes, seizure
 4 disorders, and breast cancer face great risk due to unintended pregnancies, and lose the ability to
 5 plan ahead for how to manage their conditions during pregnancy.⁶⁹ Unintended pregnancies are
 6 thus more likely to lead to health issues for women, which in turn interferes with education and
 7 work goals.

8 When employees’ well-being is compromised, businesses suffer concrete economic losses
 9 related to, among other things: (1) reduced productivity and presenteeism;⁷⁰ (2) absenteeism; and
 10 (3) high rates of employee turnover.⁷¹ Such factors can cost businesses up to \$300 billion
 11 annually.⁷² Calculated another way, a single employee who faces health issues can cause a
 12 business to incur “an estimated cost of 16 days of [incidental] sick leave and [loss of] \$8,000 . . .
 13 per year.”⁷³ In particular, health-related loss of productive time results in annual losses to
 14 businesses of approximately \$226 billion.⁷⁴

15 In addition to health-related losses of productivity, stress associated with lack of control
 16 over reproductive health also damages businesses. Stress is a leading cause of employee
 17 turnover, which costs employers between 12% and 40% of their companies’ net earnings each
 18

19 ⁶⁸ Kavanaugh & Anderson, *supra* note 33, at 7.

20 ⁶⁹ *Id.*

21 ⁷⁰ Presenteeism refers to employees who are physically present at work, but too stressed or ill to be effective. Amy
 22 Richman et al., Corporate Voices for Working Families, *Business Impacts of Flexibility: An Imperative for
 Expansion* 13 (Feb. 2011), available at https://www.wfd.com/PDFS/BusinessImpactsofFlexibility_March2011.pdf.

22 ⁷¹ *Id.* (finding that stress is responsible for 40% of turnover).

23 ⁷² *Id.* (estimating stress-related costs to be around \$300 billion per year); David Lee, *Managing Employee Stress and
 Safety: A Guide to Minimizing Stress-Related Cost While Maximizing Employee Productivity* 3 (2000) (estimating
 24 stress-related costs to be between \$50 billion and \$150 billion each year).

25 ⁷³ *Id.*

26 ⁷⁴ Sean Nicholson et al., *How to Present the Business Case for Healthcare Quality to Employers* 12 (Nov. 2005),
 27 available at <http://knowledge.wharton.upenn.edu/wp-content/uploads/2013/09/1303.pdf> (“Nicholson”) (“[C]osts of
 impaired on-the-job productivity are larger than the costs associated with absences.”); Lindsay E. Sears et al., *Overall
 Well-Being as a Predictor of Health Care, Productivity and Retention Outcomes in a Large Employer*, 16(6)
 Population Health Management 397, 397 (2013).

28

1 year.⁷⁵ To replace a departing worker, businesses expend 21% of the departing worker's salary.⁷⁶
 2 It is "costly to replace workers because of the productivity losses when someone leaves a job, the
 3 costs of hiring and training a new employee, and the slower productivity until the new employee
 4 gets up to speed in their new job."⁷⁷

5 Businesses recognize that reducing employee stress and increasing overall well-being can
 6 result in financial gains. For example, "79% of CFOs [Chief Financial Officers] believe that
 7 workforce productivity [caused by improved health] has a great or critical effect on their financial
 8 performance drivers." Simply, "CFOs recognize a strong link between health, productivity and
 9 corporate financial success."

10 To capitalize on the relationship between employees' well-being and businesses' financial
 11 interests, many companies have implemented various work-life initiatives. One example is the
 12 recent trend of providing on-site healthcare clinics to employees. By providing these services,
 13 companies benefit overall because their employees incur between 15 and 22 fewer incidental
 14 missed workdays than the employees of companies that lack on-site healthcare providers. These
 15 initiatives enhance the bottom line. The Rules however, do the opposite. When women suffer
 16 negative health consequences associated with unintended pregnancies or stress occasioned by
 17 lack of control over their reproductive health, they see their net earnings decline, and the
 18 economy sees overall growth and productivity decline, too.

19 Women have been able to contribute to the national economy in large part because access
 20 to contraception has empowered them to make life choices without fear of unintended pregnancy.
 21 Indeed, access to contraception implicates a woman's "basic control over her life." *Casey*, 505

22
 23
 24
 25
 26
 27
 28

⁷⁵ *Id.*

⁷⁶ Heather Boushey & Sarah Jane Glynn, Ctr. for Am. Progress, *There Are Significant Business Costs to Replacing Employees* 1 (Nov. 16, 2012), available at <https://cdn.americanprogress.org/wpcontent/uploads/2012/11/16084443/CostofTurnover0815.pdf> (calculating the cost of turnover for all positions except executives and physicians) ("Boushey & Glynn"); Nicholson, *supra* note 74, at 9 (finding that a "program that improves workers' health could lower the turnover rate by creating a stronger attachment between the employees and the company").

⁷⁷ Boushey & Glynn, *supra* note 76, at 1.

1 U.S. at 928 (Blackmun, J., concurring in part and dissenting in part). Recognizing that women's
 2 ability to participate "equally in the economic and social life of the Nation" is "facilitated by their
 3 ability to control their reproductive lives," this Court should not reverse course on the substantial
 4 economic progress women have made. *Casey*, 505 U.S. at 856 (citations omitted).

5 **CONCLUSION**

6 The nation's economy is best served when women can participate fully in education, the
 7 workforce, and the marketplace without the uncertainty of unintended pregnancy. The Rules
 8 threaten businesses and the national economy by decreasing women's ability to access
 9 contraception. This loss of control limits women's ability to shape and care for their families,
 10 their education, and their careers. The Rules will have adverse consequences for women's
 11 economic security, equality, opportunity, and well-being. They will harm American women,
 12 families, and the national economy. For these, and the foregoing reasons, *amici* respectfully urge
 13 this Court to grant Plaintiffs' Motion for Preliminary Injunction and enjoin the enforcement of the
 14 Rules.

15 Dated: January 7, 2019

16 DENTONS US LLP

17 By: /s/ Joel D. Siegel

18 Joel D. Siegel

19 Joel D. Siegel
 20 DENTONS US LLP
 21 601 South Figueroa Street, Suite 2500
 22 Los Angeles, California 90017-5704
 23 Telephone: (213) 623-9300

24 Leah R. Bruno
 25 DENTONS US LLP
 26 233 South Wacker Drive, Suite 5900
 27 Chicago, Illinois 60606-6361
 28 Telephone: (312) 876-8000

29 Attorneys for *Amici Curiae*
 30 U.S. Women's Chamber of Commerce and
 31 National Association for Female Executives

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the date indicated below, I electronically filed the foregoing document with the Clerk of the Court, using the CM/ECF system, which will automatically send notification and a copy of the brief to the counsel of record for the parties. I further certify that all parties to this case are represented by counsel of record who are CM/ECF participants.

Dated: January 7, 2019

s/ Joel D. Siegel

Joel D. Siegel

1 DENTONS US LLP
2 JOEL D. SIEGEL (Bar No. 155581)
3 joel.siegel@dentons.com
4 601 South Figueroa Street, Suite 2500
5 Los Angeles, California 90017-5704
6 Telephone: (213) 623-9300; Facsimile: (213) 623-9924

7 LEAH R. BRUNO (pro hac vice pending)
8 leah.bruno@dentons.com
9 233 South Wacker Drive, Suite 5900
10 Chicago, Illinois 60606-6361
11 Telephone: (312) 876-8000; Facsimile: (312) 267-4198

12 Attorneys for *Amici Curiae*
13 U.S. Women's Chamber of Commerce and
14 National Association for Female Executives

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

15

16

17

18

19

20

21

22

23

24

25

26

27

28

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 **THE STATE OF CALIFORNIA, et al.,** Case No. 4:17-cv-05783-HSG
14 **Plaintiffs,** [PROPOSED] ORDER GRANTING
15 **ALEX M. AZAR, II, et al.** U.S. WOMEN'S CHAMBER OF
16 **Defendants.** COMMERCE AND NATIONAL
17 ASSOCIATION FOR FEMALE
18 EXECUTIVES' MOTION FOR
19 LEAVE TO APPEAR AS *AMICI
20 CURIAE* AND TO FILE AN *AMICUS
21 BRIEF* IN SUPPORT OF
22 PLAINTIFFS' MOTION FOR
23 PRELIMINARY INJUNCTION
24
25
26
27
28

1 U.S. Women’s Chamber of Commerce and National Association for Female Executives’
2 (“Amici”) Motion for Leave to Appear as *Amici Curiae* and to File an *Amicus* Brief in Support of
3 Plaintiffs’ Motion for Preliminary Injunction is before this Court, Judge Haywood S. Gilliam, Jr.
4 presiding.

5 The Court has fully considered the motion, and all evidence submitted by both parties. For
6 good cause showing, the Court orders as follows:

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that *Amici*'s Motion for
8 Leave to Appear as *Amici Curiae* and to File an *Amicus* Brief is GRANTED.

18 Dated: _____

IT IS SO ORDERED.

HON. HAYWOOD S. GILLIAM, JR.
UNITED STATES DISTRICT JUDGE