

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

RICHARD W. DEOTTE, <i>et al.</i> ,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	<b>Civil Action No. 4:18-CV-825-O</b>
	§	
ALEX M. AZAR II, <i>et al.</i> ,	§	
	§	
Defendants.	§	

**OPPOSED (IN PART) MOTION FOR LEAVE TO FILE  
Brief of Amici Curiae the National Women's Law Center,  
the National Latina Institute for Reproductive Health, SisterLove, Inc.,  
the National Asian Pacific American Women's Forum, and 25 Others  
in Support of the Motion to Intervene by Nevada, and  
in Opposition to Plaintiffs' Motion for Summary Judgment**

Pursuant to Local Rule 7.2.(b), the National Women's Law Center, the National Latina Institute for Reproductive Health, SisterLove, Inc., the National Asian Pacific American Women's Forum, and 25 additional amici listed in the Appendix to the brief move the Court for leave to file the attached Brief Amici Curiae in support of the Motion to Intervene by Nevada, et al., ECF No. 62, and in Opposition to Plaintiffs' Motion for Summary Judgment, ECF No. 34.

**Interests of Amici**

*Amici* are national and statewide nonprofit and advocacy organizations committed to obtaining racial justice, economic security, gender equity, civil rights, and reproductive justice for all, which includes ensuring that women have access to full and equal health coverage, including contraceptive coverage without cost-sharing, as guaranteed by the ACA. They submit this brief to offer a research-backed assessment of the specific harms that will fall disproportionately on

women of color and others facing multiple and intersecting forms of discrimination if the State of Nevada is denied the right to intervene in this lawsuit to defend the ACA’s contraceptive coverage requirement and if Plaintiffs’ motion for summary judgment is granted.

The National Women’s Law Center (“NWLC”) is a non-profit legal advocacy organization dedicated to the advancement and protection of women’s legal rights and opportunities since its founding in 1972. The Center focuses on issues of key importance to women and their families, including economic security, employment, education, health, and reproductive rights, with special attention to the needs of low-income women. 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 National Latina Institute for Reproductive Health (“NLIRH”) is the only national reproductive justice organization<sup>1</sup> dedicated to building Latina power 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. Reproductive justice will only be achieved when all people have the economic, social, and political power to make decisions about their bodies, sexuality, and reproduction with dignity and autonomy. NLIRH works to ensure that all Latinas of all racial identities have affordable access to all their options for safe, effective, and acceptable forms of contraception and

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<sup>1</sup> The term, “reproductive justice,” encompasses (1) the right to have a child, including control over birthing conditions; (2) the right not to have a child; and (3) the right to parent the children. Loretta Ross, *What Is Reproductive Justice?*, Reproductive Justice Briefing Book: A Primer on Reproductive Justice and Social Change, Berkley Law, 4 <https://www.law.berkeley.edu/php-programs/courses/fileDL.php?fID=4051>. Reproductive rights, by contrast, addresses the individual’s right to the full range of reproductive services.

family planning. NLIRH supports affordable, accessible, and quality health care for all persons, regardless of their immigration status, employment, age, gender identity, sexual orientation, or otherwise.

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. NAPAWF’s 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.

Founded in July 1989, SisterLove, Inc. (“SisterLove”) is an HIV/AIDS and reproductive justice nonprofit service organization focusing on women, particularly women of African descent, and has the distinction of being the oldest nonprofit of its kind in the State of Georgia. 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 disproportionately impact them.

The Appendix to the *amicus curiae* brief that *Amici* seek leave to file lists 25 additional *Amici*.

### **ARGUMENT**

*Amici* hereby request permission to file the attached *amicus curiae* brief in support of Nevada's Motion to Intervene and in opposition to Plaintiffs' Motion for Summary Judgment. Counsel for *Amici* has reviewed the complaint in this action and believes it can assist the Court in resolving a key issue in dispute: whether enforcement of the Affordable Care Act's ("ACA") contraceptive coverage requirement will cause irreparable harm to individuals nationwide, especially those facing multiple and intersecting forms of discrimination.

*Amici* have a strong interest in the disposition of this case, which will affect individuals' access to contraceptive coverage without cost-sharing, particularly for those whose interests *Amici* serve, and who already face multiple and intersecting forms of discrimination in accessing healthcare. As organizations that specialize in addressing issues of reproductive justice and reproductive rights, *Amici* are uniquely situated to provide the Court with information helpful for the resolution of this case beyond the specific perspectives provided by counsel for the parties.

*See Neonatology Assocs., P.A. v. Comm'r*, 293 F.3d 128, 132 (3d Cir. 2002); *cf. O'Brien v. U.S. Dep't of Health and Human Servs.*, No. 12-3357 (8th Cir. Jan. 14, 2013) (granting the National Women's Law Center's motion for leave to appear as amicus curiae and filing its proposed brief).

Amici bring to bear years of experience with the ACA's contraceptive coverage requirement, including serving as amicus curiae in other cases concerning challenges to the ACA contraceptive coverage requirement and the interim version of the final rules. *See, e.g., Burwell v. Hobby Lobby Stores, Inc.*, No. 13-354 (U.S.); *Zubik et al. v. Burwell et al.*, Nos. 14-1418, 14-1453, 14-1505, 15-35, 15-105, 15-119, and 15-191 (U.S.); *California v. Azar II, et al.*, Nos. 18-15144, 18-15166, and 18-15255 (9th Cir.).

The attached brief will assist the Court in resolving the issues presented by this case, and the pending Motion to Intervene, by explaining that many individuals will lose contraceptive coverage if the classwide relief sought by Plaintiffs is granted. Moreover, the brief will explain why women of color, low-income individuals, young people, and others who already face systemic discrimination and barriers to health care will be particularly harmed by the permanent injunction. Drawing from *Amici*'s expertise in issues relating to access to contraception and reproductive health care, and *Amici*'s intimate understanding of the communities they represent, the brief offers a research-backed assessment of the potential harm to individuals nationwide. *Amici* respectfully submit that their perspectives and experiences in addressing reproductive health and justice issues may assist the Court in resolving this case. Accordingly, *Amici* respectfully request leave to file the attached *amicus curiae* brief in support of Nevada's Motion to Intervene and in opposition to Plaintiffs' Motion for Summary Judgment.

**Compliance with Motion-Conference Rule**

In accordance with Local Rule 7.1(b), attorney for proposed *amicus curiae*, Naomi D. Barrowclough, consulted with attorney for plaintiffs, Jonathan Mitchell, on May 22, 2019 and May 24, 2019 and with attorney for defendants, Michelle Bennett, on May 22, 2019. Defendants indicated they do not oppose this motion. Plaintiffs indicated that they do not oppose this motion

to the extent it opposes Plaintiffs' motion for summary judgment, but that they do oppose this motion to the extent it supports Nevada's motion to intervene.

**Authority in Support of Opposed Motion**

The extent (if any) to which an *amicus curiae* is permitted to participate in a pending action is solely within the broad discretion of the district court. *Sierra Club v. Federal Emergency Management Agency*, 2007 WL 3472851 at \*1 (S.D. Tex. Nov. 14, 2007). When determining whether to grant leave to file an *amicus* brief, a district court should consider whether the information offered through the amicus is "timely and useful" or otherwise necessary. *Sierra Club*, 2007 WL 3472851 at \*2. "[A]n *amicus* brief should normally be allowed when a party is not represented competently or is not represented at all, when the *amicus* has an interest in some other case that may be affected by the decision in the present case (though not enough affected to entitle the *amicus* to intervene and become a party in the present case) or when the *amicus* has a unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide." *In re Halo Wireless, Inc.*, 684 F.3d 581, 596 (5th Cir. 2012), quoting *Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997). If these conditions are met, then leave to file an *amicus curiae* brief should be granted. *Ryan*, 125 F.3d at 1063.

*Amici* submit that they satisfy these conditions, in urging Nevada's intervention (the only portion of the motion that is opposed) that will not be adequately brought to the Court's attention.

For the foregoing reasons, proposed *Amici* move the Court to grant leave to file the attached brief and, pursuant to ECF Administrative Procedure III.C, instruct the Clerk to file the brief as of the date of the Court's Order.

Respectfully submitted,

s/ Kenneth D. Upton, Jr.

Kenneth D. Upton, Jr.\*

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Supervised by Richard B. Katskee, a member of  
the D.C. Bar.

### **CERTIFICATE OF SERVICE**

I hereby certify that on May 24, 2019, I electronically filed

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with the Clerk of the Court for the United States District Court for the Northern District of Texas 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.

s/ Kenneth D. Upton, Jr.

Kenneth D. Upton, Jr.