

**No. 23-35560**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

CEDAR PARK ASSEMBLY OF GOD OF KIRKLAND, WASHINGTON,

*Plaintiff-Appellant,*

v.

MYRON KREIDLER, in his official capacity as Insurance Commissioner  
for the State of Washington, AKA MIKE KREIDLER; JAY INSLEE, in his  
official capacity as Governor of the State of Washington,

*Defendants-Appellees.*

On Appeal from the United States District Court  
for the Western District of Washington  
No. 3:19-cv-05181  
Honorable Benjamin H. Settle

---

**BRIEF OF *AMICI CURIAE* PLANNED PARENTHOOD GREAT  
NORTHWEST, HAWAI'I, ALASKA, INDIANA, KENTUCKY JOINED BY  
CEDAR RIVER CLINICS AND LEGAL VOICE SUPPORTING  
DEFENDANTS-APPELLEES**

---

Aida Babahmetovic  
Brennen Johnson  
JOHNSON, GRAFFE, KEAY, MONIZ  
& WICK LLP  
925 4th Ave, Ste. 2300  
Seattle, WA 98104  
(206) 223-4770  
aidab@jgkmw.com  
*Counsel for Amici Curiae*

Christine L. Stanley  
PLANNED PARENTHOOD GREAT  
NORTHWEST, HAWAI'I, ALASKA,  
INDIANA, KENTUCKY  
2001 E. Madison Street  
Seattle, WA 98122  
(917) 697-9165  
Christine.Stanley@ppgnaik.org  
*Counsel for Planned Parenthood*

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and 29(a)(4)(A), *Amici Curiae* state that they have no parent corporation and that there is no publicly held corporation that owns 10 percent or more of their stock.

*s/ Aida Babahmetovic*

\_\_\_\_\_

Aida Babahmetovic

*Counsel for Amici Curiae*

## TABLE OF CONTENTS

	<u>Page(s)</u>
CORPORATE DISCLOSURE STATEMENT.....	i
TABLE OF AUTHORITIES.....	iii
STATEMENT OF THE AMICI IDENTITY AND INTEREST .....	1
SUMMARY OF THE ARGUMENT.....	3
ARGUMENT .....	5
I.    SB 6219 DOES NOT VIOLATE THE FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT.....	5
A.  SB 6219 IS A VALID AND NEUTRAL LAW OF GENERAL APPLICABILITY.....	6
B.  ACCESS TO REPRODUCTIVE HEALTH CARE IS A LEGITIMATE STATE INTEREST.....	10
II.   SB 6219 SURVIVES THE APPLICATION OF STRICT SCRUTINY.....	15
A.  ACCESS TO REPRODUCTIVE HEALTH CARE AND GENDER EQUITY IS A COMPELLING STATE INTEREST.....	15
B.  SB 6219 IS A NARROWLY TAILORED LAW THAT ADVANCES ACCESS TO HEALTH CARE.....	17
III.  SB 6219 DOES NOT INFRINGE UPON CEDAR PARK’S ECCLEASTICAL RIGHTS AND EXPRESSLY PROVIDES PROTECTIONS FOR RELIGIOUS AUTONOMY.....	17
CONCLUSION.....	20
CERTIFICATE OF COMPLIANCE.....	21
CERTIFICATE OF SERVICE.....	22

## TABLE OF AUTHORITIES

	<u>Page(s)</u>
<b>Cases</b>	
<i>Blackmon et. al v. Missouri</i> , No. C19-5181 BHS (Mo. Cir. March 14, 2023).....	8
<i>Dobbs v. Jackson Women’s Health Org.</i> , 597 U.S. 215 (2022).....	16
<i>Emp. Div., Dep’t of Hum. Res. of Or. v. Smith</i> , 494 U.S. 872 (1990).....	5, 6, 7, 14
<i>Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.</i> , 82 F.4th 664 (9th Cir. 2023).....	8, 14
<i>Fulton v. City of Philadelphia, Pennsylvania</i> , 141 S. Ct. 1868 (2021).....	7, 8, 9
<i>Gadda v. State Bar of Cal.</i> , 511 F.3d 933 (9th Cir. 2007).....	10
<i>Gonzales v. Carhart</i> , 550 U.S. 124 (2007).....	16
<i>Heller v. Doe by Doe</i> , 509 U.S. 312 (1993).....	13
<i>Jones v. Wolf</i> , 443 U.S. 595 (1979).....	18
<i>Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.</i> , 344 U.S. 94 (1952).....	18
<i>Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n</i> , 584 U.S. 617 (2018).....	14
<i>Our Lady of Guadalupe Sch. v. Morrissey-Berru</i> , 591 U.S. —, 140 S. Ct. 2049 (2020).....	18

<i>Raidoo v. Moylan</i> , 75 F.4th 1115 (9th Cir. 2023) .....	16
<i>Stormans, Inc. v. Selecky</i> , 586 F.3d 1109 (9th Cir. 2009) .....	8
<i>Stormans, Inc. v. Wiesman</i> , 794 F.3d 1064 (9th Cir. 2015) .....	6
<i>Tandon v. Newsom</i> , 593 U.S. 61 (2021) .....	14
<i>Tucson Woman’s Clinic v. Eden</i> , 379 F.3d 531 (9th Cir. 2004) .....	16

## Statutes

Substitute S.B. 6219, 65th Leg., Reg. Sess. (Wash. 2018) .....	17
Wash. Rev. Code § 48.42.072 .....	1
Wash. Rev. Code § 48.43.073 .....	1, 7
Wash. Rev. Code § 48.43.001 .....	3, 7
Wash. Rev. Code § 48.43.065 .....	<i>passim</i>
Washington Senate Bill 6219 .....	<i>passim</i>

## Other Authorities

Foster Green, et al., “ <i>Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States</i> ,” 108 Am. J. Pub. Health 407, 409-12 (2018), available at <a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5803812/">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5803812/</a> (last accessed Jan. 27, 2024) .....	12
Hoffman, et al., “ <i>State Abortion Bans Will Harm Women and Families’ Economic Security Across the U.S.</i> ,” (Aug. 2022), available at <a href="https://www.americanprogress.org/article/state-abortion-bans-will-harm-women-and-families-economic-security-across-the-us/#:~:text=The%20study%20determined%20that%20women,such%20as%20bankruptcies%20and%20evictions">https://www.americanprogress.org/article/state-abortion-bans-will-harm-women-and-families-economic-security-across-the-us/#:~:text=The%20study%20determined%20that%20women,such%20as%20bankruptcies%20and%20evictions</a> (last accessed Jan. 27, 2024) .....	13

Jones, Kelly, “*The impact of abortion access on future economic outcomes*,” 2021-02, American University, Dept. of Economics, (2021), available at [https://aura.american.edu/articles/online\\_resource/At\\_a\\_Crossroads/23857644](https://aura.american.edu/articles/online_resource/At_a_Crossroads/23857644) (last accessed Jan. 27, 2024).....12

Upadhyay, et. al., “*The Effect of Abortion on Having and Achieving Aspirational One-Year Plans*,” BMC Women’s Health, Vol. 15: 102, (2015), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4642756/> (last accessed Jan. 27, 2024). .....12

**Regulations**

Wash. Admin. Code § 284-43-7220.....16

**Constitutional Provisions**

U.S. amend. XIX.....6

U.S. Const. amend. I .....6

**Rules**

Fed. R. App. P. 26..... i

Fed. R. App. P. 29.....2, 21

Fed. R. App. P. 32.....21

## STATEMENT OF THE AMICI IDENTITY AND INTEREST

Planned Parenthood Great Northwest, Hawai'i, Alaska, Indiana, Kentucky (hereinafter "Planned Parenthood") is a Seattle-based, nonprofit organization dedicated to providing comprehensive reproductive health care services and education relating to reproductive and sexual health. Planned Parenthood advocates for public policies to ensure access to health services for all. Planned Parenthood currently operates 35 health centers across Alaska, Hawai'i, Idaho, Indiana, Kentucky, and Washington. Planned Parenthood and its affiliates have a strong interest in ensuring access to comprehensive reproductive health services, including abortion, throughout the state of Washington.

Legal Voice is a non-profit, non-partisan public interest legal organization with a mission to advance gender justice in the Pacific Northwest. In pursuit of its mission, Legal Voice uses a combination of litigation, policy advocacy, and community education to advance economic justice, eradicate gender discrimination, ensure access to health care, protect reproductive freedom, and end gender-based violence. Legal Voice has participated as counsel and as *amicus curiae* in cases throughout the Northwest and the country.

Cedar River Clinics provides compassionate reproductive health care including abortions, birth control, STI testing and treatment, cancer screenings, and LGTBQ wellness services including transgender/non-binary care throughout

Washington. Cedar River Clinics’ mission is to ensure access to reproductive and sexual health care through direct services, advocacy, and community education to defend bodily autonomy and advance social justice.

For these stated interests, *Amici Curiae* file this brief in support of the Defendants-Appellees, Myron Kriedler and Jay Inslee, and in support of the District Court’s decision to uphold the constitutionality of Washington Senate Bill 6219, codified as RCW 48.42.072 and RCW 48.43.073 (hereinafter “SB 6219”).

*Amici Curiae* file this brief with the consent of all parties pursuant to Fed. R. App. P. 29 (a)(2).

Pursuant to Fed. R. App. P. 29 (a)(4)(E), no counsel for any party has authored this brief in whole or in part; no party or party’s counsel has contributed money that was intended to fund preparing or submitting this brief; no person—other than *Amici*, their members, or their counsel—contributed money that was intended to fund preparing or submitting the brief.

## SUMMARY OF THE ARGUMENT

Washington State has a long history of promoting and protecting reproductive rights and access to reproductive health care. The intent of SB 6219 is “to ensure that all enrollees in managed care settings have access to adequate information regarding health care services covered by health carriers’ health plans and provided by health care providers and health care facilities.”<sup>1</sup> RCW 48.43.001. SB 6219 requires health plans providing coverage for maternity care or services, issued on or after January 1, 2019, to also provide coverage for abortion care services. It does not govern the conduct or decision-making of religious organizations but rather allows religious organizations to select and purchase health plans that they deem fit. SB 6219 makes no reference to religion, except to exempt religious organizations such as Cedar Park from participating.

The District Court correctly applied the rational basis standard of review in its decision to uphold the constitutionality of SB 6219, because it is a generally applicable, neutrally applied law. Cedar Park is misguided in its arguments because: (1) it fails to demonstrate an infringement of its Free Exercise rights, and (2) it mistakes purchasing a health plan for its employees as an ecclesiastical decision,

---

<sup>1</sup> SB 6219 is a bill passed as Washington State law that legislates health insurance, now codified under Revised Code of Washington (RCW) Title 48, Chapter 43-Insurance Reform. For consistency throughout the record and with other briefing, this brief continues to refer to the law as SB 6219.

claiming that SB 6219 infringes on its ecclesiastical right to manage itself without governmental interference.

*Amici* emphasizes the potential widespread, detrimental impact of reversing the District Court's holding and denying Washington residents the right to access critical reproductive health services. Failure to uphold the constitutionality of SB 6219 would potentially eliminate health coverage for millions of individuals who otherwise would have no access to critical reproductive health services. Reversal would also violate the state's well-established interest in promoting and protecting reproductive rights and access to reproductive health care.

For these reasons, *Amici* urges this Court to affirm the constitutionality of SB 6219 and the District Court's Order holding that SB 6219 does not violate the Free Exercise Clause of the First Amendment because: (1) SB 6219 is a facially neutral and generally applied law; (2) health equity and access to reproductive healthcare are legitimate and compelling state interests that must be preserved; and, (3) participating in the purchase of health plans is a properly state-regulated business transaction rather than an ecclesiastical decision.

## ARGUMENT

### I. **SB 6219 Does Not Violate the Free Exercise Clause of the First Amendment.**

SB 6219 is a neutral and generally applicable law that governs health plans, not religious institutions such as Cedar Park. For this reason, it is subject to rational basis review only. *See Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 879 (1990). SB 6219 is rationally related to the pivotal governmental interest of promoting public health and ensuring access to reproductive health care services by mandating that health plans that provide coverage for maternity care or services also provide coverage for abortion service. Washington law expressly protects the fundamental right to exercise religious beliefs by exempting religious organizations morally opposed to abortion and any “specific service” on the basis of their religious beliefs and conscience. RCW 48.43.065(3)(a). Further, SB 6219 does not require any religious organization, including Cedar Park, opposed to abortion, to purchase health plans that include abortion coverage. Thus, no Washington law, and certainly not SB 6219, requires religious organizations such as Cedar Park to purchase, support, or interact with health plans that violates its moral tenets, nor does it impose any identifiable or foreseeable burden on religion.

Because Cedar Park and various *amici* interested in religious protection nevertheless challenge the constitutionality of SB 6219, *Amici* urges this Court to affirm the District Court’s holding that SB 6219 does not violate the Free Exercise

Clause of the First Amendment and is constitutional. There is great debate among the parties and the *amici* regarding which standard of review applies to SB 6219: rational basis or strict scrutiny review in determining SB 6219's compliance with the Free Exercise Clause. Regardless of which analysis applies, SB 6219 survives both tests.

**A. SB 6219 Is A Valid and Facially Neutral Law of General Applicability.**

The Free Exercise Clause of the First Amendment, as incorporated by the Fourteenth Amendment, forbids state governments from making any laws prohibiting the free exercise of religion. U.S. Const. amend. I (Free Exercise Clause); U.S. amend. XIX (Due Process Clause).

The Free Exercise Clause “does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).” *Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 879 (1990) (internal quotation omitted). Thus, when a law is neutral and generally applicable, it need only survive rational basis review, “even when the law has the incidental effect of burdening a particular religious practice.” *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1075–76 (9th Cir. 2015) (quoting *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993)). The District Court correctly concluded that SB 6219 is a facially neutral and generally applied law, subject to rational basis review.

SB 6219 is a facially neutral and generally applied law that governs “health plans,” not plan purchasers, including religious institutions. RCW 48.43.073(1)(a). The intent of the chapter is to, “ensure that all enrollees in managed care settings have access to adequate information about the services offered under their health benefit plan” while simultaneously respecting “the right of conscientious objection to participating in specific health services.”” RCW 48.43.001; RCW, 48.43.065(1).<sup>2</sup> There are no special carve-outs within the law that burden or prohibit religious activity. Indeed, as an organization with a religious tenet opposed to abortion care, Cedar Park has the option to purchase any health plan for its employees that does not cover abortion and abortion-related services. RCW 48.43.065(3)(a).

The *Fulton* and *Smith* cases and longstanding Free Exercise Clause precedent establish that a law containing objective, categorical exemptions, akin to SB 6219, is generally applicable. *Fulton v. City of Philadelphia, Pennsylvania*, 141 S. Ct. 1868, 1876 (2021). Under *Smith*, the mere existence of an exemption within a law does not mean that the law is not generally applicable. *See Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 890 (1990). This rule was reaffirmed in *Fulton*, which found that a law is not generally applicable, and

---

<sup>2</sup> To be even clearer, RCW 48.43.065(1) explicitly states in relevant part, “The legislature recognizes that every individual possesses a fundamental right to exercise their religious beliefs and conscience. The legislature further recognizes that in developing public policy, conflicting religious and moral beliefs must be respected.” *Id.*

therefore subject to strict scrutiny, if “it invites the government to consider the particular reasons for a person’s conduct by creating a mechanism for individualized exemptions.” *Fulton*, 141 S. Ct. at 1877.

Here, there is no exercise of discretion by government officials in forming individualized exemptions to SB 6219. *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 688 (9th Cir. 2023). SB 6219 is generally applicable to health plans that provide coverage for maternity services in the state of Washington, with exceptions for: (1) specific types of plans that only incidentally include health care services; (2) health plans that are not designed to be comprehensive; or (3) federally-funded health plans over which Washington does not have jurisdiction. SB 6219 applies to all covered employee health plans providing maternity services equally, whether the employer is a religious entity or not. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1131 (9th Cir. 2009) (“That the rules may affect pharmacists who object to Plan B for religious reasons does not undermine the neutrality of the rules.”).

Cedar Park wrongly claims that SB 6219 is not facially neutral because it favors secular conduct and proscribes more religious conduct than necessary to achieve its stated ends. The conduct that Cedar Park deems “secular”—accessing abortion care—aligns with many faith traditions, if not the traditions of Cedar Park. *See, e.g., Blackmon et. al v. Missouri*, No. C19-5181 BHS (Mo. Cir. March 14, 2023)

(Amend. Compl. at ¶¶ 11, 20, 27, 32, 38, 48, 56, 64, 72, 77, 85, 92, 99, 106, 111) (detailing theological support for abortion care across several denominations, including Christianity). In other words, access to abortion services is not a *de facto* “secular” activity or hostile to religion based simply on the fact that Cedar Park objects to it. At a minimum, Cedar Park has failed to demonstrate how providing access to abortion services through employer-sponsored health plans is unequivocally categorized as a secular activity under the *Fulton* precedent. *See Fulton*, 141 S. Ct. 1868.

Even accepting Cedar Park’s premise of secular favoritism, its claim is not supported by the language of SB 6219. In fact, the only language that references religion within SB 6219 is the provision that describes how health care practitioners, carriers, and facilities *can refuse* to participate in the provision or payment of services if they object “for reason of conscience or religion.” RCW 48.43.065(3)(a). Contrary to Cedar Park’s claims, it would appear that its particular “religious conduct” is given considerable deference under the law.

Cedar Park’s argument that secular entities enjoy more rights than it does under SB 6219, similarly falls flat. Again, it relies on the false premise that all religions demand objecting to abortion—contrary to the religious beliefs of thousands of Americans. Further, the plain reading of SB 6219 demonstrates that religious entities with objections to certain covered services have the same, if not

more, rights than secular ones—as the conscience objection clause is clearly written to protect practicing a religious or moral objection.

The District Court correctly applied the rational basis standard of review because SB 6219 is a generally applicable, neutrally applied law. There is no reference to religion other than the conscience exemption provision which aims to protect religious organizations, not to burden them, and involves no exercise of discretion by a government authority as to its applicability. Even assuming *in arguendo* that SB 6219 indirectly imposed some administrative or financial burden on Cedar Park, that burden is incidental and does not restrict or infringe upon Cedar Park’s religious freedom.

**B. SB 6219 Is Rationally Related to the State’s Legitimate Interest in Ensuring Access to Reproductive Health Care.**

To pass rational basis review, the law must be rationally related to a legitimate state interest. *Gadda v. State Bar of Cal.*, 511 F.3d 933, 938 (9th Cir. 2007). Ensuring that Washingtonians have access to safe reproductive healthcare, regardless of their employer, is a legitimate state interest. There is no question that SB 6219 is rationally related to multiple legitimate state interests, such as access to higher education, economic stability, and bodily autonomy.

The ability to control one’s reproductive health has profound positive impacts on people. A primary reason people may want an abortion is because having a child

at that moment would interfere with future career or educational opportunities.<sup>3</sup> Access to abortion care enables people to “complete high school and higher levels of education.”<sup>4</sup> People working in professional or managerial roles are able to earn more money.<sup>5</sup> Thus, there is a correlation between access to abortions and better financial outcomes in the workforce. Further, wanted abortions are linked to increased educational and career improvements for Black people, a population that has historically faced significant socio-economic barriers.<sup>6</sup>

Inversely, the inability to control one’s reproductive health creates significant burdens not only for the person, but also for the government. Pregnant people who are denied abortion access are at an increased risk of poverty, raising the child or children alone, and “greater reliance on public assistance.”<sup>7</sup> People who are unable

---

<sup>3</sup> Upadhyay, et. al., “*The Effect of Abortion on Having and Achieving Aspirational One-Year Plans*,” *BMC Women’s Health*, Vol. 15: 102, (2015), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4642756/> (last accessed Jan. 27, 2024).

<sup>4</sup> Foster Green, et al., “*Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*,” *108 Am. J. Pub. Health* 407, 409-12 (2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5803812/> (last accessed Jan. 27, 2024).

<sup>5</sup> Jones, Kelly, “*The impact of abortion access on future economic outcomes*,” 2021-02, American University, Dept. of Economics, (2021), available at [https://aura.american.edu/articles/online\\_resource/At\\_a\\_Crossroads/23857644](https://aura.american.edu/articles/online_resource/At_a_Crossroads/23857644), (last accessed Jan. 24, 2024).

<sup>6</sup> *Id.*

<sup>7</sup> Hoffman, et al., “*State Abortion Bans Will Harm Women and Families’ Economic Security Across the U.S.*,” (Aug. 2022), available at <https://www.americanprogress.org/article/state-abortion-bans-will-harm-women->

to access abortion care can experience financial consequences such as “lower credit scores, increased debt, bankruptcies, and evictions.”<sup>8</sup> Forced birth impacts peoples’ economic security, and state and local economies can “suffer significant financial losses.”<sup>9</sup>

Choosing when one can become pregnant is critical for one’s own bodily autonomy. Pregnancy is a life-altering event that should only be controlled by the person deciding whether to become pregnant. The duration of pregnancy could mean significant health risks and complications for the parent. Additionally, pregnant people may experience lasting postpartum health problems such as chronic pain, incontinence, an exacerbation of underlying health issues, and a decline in mental health.<sup>10</sup> Some people who become pregnant face risks including death, as the United States has the highest rate of maternal death among developed nations.<sup>11</sup> For these

---

and-families-economic-security-across-the-us/#:~:text=The%20study%20determined%20that%20women,such%20as%20bankruptcies%20and%20evictions (last accessed Jan. 24, 2024).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Bavis, Laura, “*4<sup>th</sup> Trimester’ Problems Can Have Long-Term Effects On A Mom’s Mental Health,*” available at <https://www.npr.org/sections/health-shots/2019/01/24/686790727/fourth-trimester-problems-can-have-long-term-effects-on-a-moms-health>. <https://www.pbs.org/newshour/health/broken-tired-and-ashamed-how-health-care-fails-new-moms> (last accessed Jan. 27, 2024).

<sup>11</sup> Martin, et al., “*The Last Person You’d Expect to Die in Childbirth,*” available at <https://www.npr.org/2017/05/12/527806002/focus-on-infants-during-childbirth-leaves-u-s-moms-in-danger> (last accessed Jan. 27, 2024).

reasons, it is imperative that people have the ability to choose whether and when they want to become pregnant.

To survive rational basis review, the legislature need not provide the purpose or rationale supporting the classification, but rather “a classification must be upheld . . . if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.” *Heller v. Doe by Doe*, 509 U.S. 312, 320 (1993). The District Court in this case held that SB 6219 identifies multiple legitimate governmental purposes “including promoting gender equity, promoting the economic success of women, improving women’s health, and protecting privacy.” 1-ER-26. Therefore, SB 6219 is rationally related to these legitimate governmental purposes. *Amici* wholeheartedly agree with the District Court for reasons discussed and urges this Court to affirm its decision.

Cedar Park contends that SB 6219 is an example of impermissible religious gerrymandering because it improperly targets religious practices and disparately burdens religious practices. This argument is unpersuasive for several reasons.

First, Cedar Point’s contention that secular entities are not as burdened by the requirements of SB 6219 is plainly unsupported by the record. Cedar Park fails to identify a single impermissible burden to them that would arise to political gerrymandering. As discussed earlier in this brief, a burden that is incidental to a facially neutral and generally applied law is allowed under the Free Exercise Clause.

*Emp. Div., Dep't of Hum. Res. of Or. v. Smith*, 494 U.S. at 879. Further, this Court has made clear that “religious gerrymanders” involve prohibitions on conduct that burden “religious exercise while providing more favorable treatment to comparable secular activities.” *Fellowship of Christian Athletes*, 82 F.4th at 688 (discussing *Tandon v. Newsom*, 593 U.S. 61 (2021)). But in this case, the opposite is true. Washington law expressly includes a conscience objection clause, which gives preferential treatment to religion, not to secular activities. RCW 48.43.065. *See also* Wash. Admin. Code § 284-43-7220(3).

Finally, Cedar Park argues that a comment made in an unknown context by SB 6219’s sponsor, allegedly “proclaiming that churches could sue to challenge the law,” is evidence of religious gerrymandering. But a mere comment, in an unknown context and in an informal manner, does not indicate a hostile heart towards religion. Such a vague comment stands in sharp contrast to more pointed “disparagement” of a particular religious party’s beliefs in the context of formal proceedings required to support a theory of religious animus. *See Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 584 U.S. 617, 635 (2018) (“The commissioner even went so far as to compare Phillips’ invocation of his sincerely held religious beliefs to defenses of slavery and the Holocaust.”). A single comment made by one individual, one time, does not amount to hostility towards religion. For the foregoing reasons, The District Court correctly applied rational basis review and held that SB 6219 is a

facially neutral and generally applied law with a legitimate state interest in ensuring access to health care, including reproductive care, to its residents.

## **II. SB 6219 Survives the Application of Strict Scrutiny.**

Even though the District Court appropriately applied rational basis review to conclude that SB 6219 complied with the Free Exercise Clause, discussed *supra*, SB 6219 also survives the heightened strict scrutiny standard. To survive strict scrutiny, the legislature must (1) pass a law to further a “compelling governmental interest,” and (2) narrowly tailor the law to achieve that interest.

### **A. Access to Reproductive Health Care and Gender Equity is a Compelling State Interest.**

SB 6219 satisfies the first element of strict scrutiny review because it was passed to advance compelling government interests: the health, bodily autonomy, economic security, and well-being of Washington residents. More specifically, SB 6219 was enacted to promote gender equity, the economic success of women, improving women’s health, and protecting privacy. Substitute S.B. 6219, 65th Leg., Reg. Sess. (Wash. 2018). Regardless of gender, access to a full range of comprehensive reproductive health services is a compelling government interest. Washington’s legislation defined the term “‘reproductive health care’ as the care necessary to support the reproductive system, the capability to reproduce, and the freedom and services necessary to decide if, when, and how often to do so, which can include. . . abortion,” among other reproductive health services. *Id.* “Access to

the full range of health benefits and preventive services, as guaranteed under the laws of the state, provides all Washingtonians with the opportunity to lead healthier and more productive lives.” *Id.*

More broadly, public health and well-being have been recognized as compelling governmental interests in a variety of contexts—especially as it pertains to the regulation of medical care surrounding maternal-fetal medicine. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 301 (2022) (“These legitimate interests include respect for and preservation of prenatal life at all stages of development; *the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability.*”) (emphasis added); *Gonzales v. Carhart*, 550 U.S. 124, 157 (2007) (“There can be no doubt the government has an interest in protecting the integrity and ethics of the medical profession. Under our precedents it is clear the State has a significant role to play in regulating the medical profession.”); *Raidoo v. Moylan*, 75 F.4th 1115, 1122 (9th Cir. 2023) (recognizing legitimate government interests in “protection of maternal health, and . . . promotion of the integrity of the medical profession.”); *Tucson Woman’s Clinic v. Eden*, 379 F.3d 531, 539 (9th Cir. 2004), *abrogated on other grounds by Dobbs*, 597 U.S. 215 (recognizing “state interests in maternal health.”). Similarly, the objective of SB 6219 to provide

Washington residents with critical access to health plan coverage for abortion services is compelling.

**B. SB 6219 Is A Narrowly Tailored Law That Advances Access to Health Care.**

SB 6219 satisfies the second element of strict scrutiny review because it is narrowly tailored to address the government’s specific interest in advancing access to reproductive health services. SB 6219 is an equitable statute that provides “substantially equivalent” coverage for abortion services only for health care plans that provide coverage for maternity care or services. It is written specifically to fulfill its intended goal of protecting gender equity and access to critical reproductive health care services, including abortion. SB 6219 achieves this goal by specifically regulating coverage offered by health plans, rather than through broad, sweeping legislation restricting health care organizations, employers, and/or individuals. Therefore, SB 6219 survives strict scrutiny review because it furthers a compelling governmental interest to ensure access to reproductive health services and is narrowly tailored by regulating health care plan coverage to achieve that interest.

**III. SB 6219 Does Not Infringe Upon Cedar Park’s Ecclesiastical Rights and Expressly Provides Protections for Religious Autonomy.**

SB 6219 does not violate Cedar Park’s religious autonomy because (1) it does not direct, prohibit, or otherwise interfere with Cedar Park’s conduct, and (2) purchasing a health plans plan is not an ecclesiastical decision. Under the religious autonomy doctrine, religious organizations have the freedom “to decide for

themselves, free from state interference, matters of church government as well as those of faith and doctrine.” *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952). However, courts are permitted to weigh in on church functions when a church’s dispute involves a “neutral principle of law.” *Jones v. Wolf*, 443 U.S. 595 (1979). As discussed *supra*, SB 6219 is a facially neutral law.

Cedar Park asserts that SB 6219 imposes on its religious autonomy as it interferes with the church’s internal decision making. However, precedent is clear on this issue. While churches and religious institutions do enjoy independence to decide matters of church governance, churches and religious institutions do not “enjoy a general immunity from secular laws.” *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 591 U.S. —, 140 S. Ct. 2049, 2060 (2020).

As addressed in this brief *supra*, and held by the District Court, SB 6219 is a neutral statute with the intent to regulate health plans. No provision in SB 6219 restricts or threatens a religious organization’s freedom to govern its internal affairs or make ecclesiastical decisions. Washington requires plan carriers, not religious organizations such as Cedar Park, to ensure that objecting organizations do not pay for objectionable services, and to provide information to enrollees about how to access such services elsewhere. Nothing about selecting and purchasing health plans constitutes church-related activities involving matters of faith and doctrine.

The purchase of health plans is not an ecclesiastical decision; it is a business decision. Therefore, Cedar Park's religious autonomy is not infringed upon. The District Court correctly held that SB 6219 does not govern or control any aspect of ecclesiastical decision-making and summarily dismissed Cedar Park's religious autonomy argument.

## CONCLUSION

For the forgoing reasons, the Court should not depart from the District Court's decision affirming the constitutionality of SB 6219.

Dated: January 29, 2024

Respectfully submitted,

*s/ Aida Babahmetovic*

\_\_\_\_\_

Aida Babahmetovic

Brennen J. Johnson

Johnson, Graffe, Keay, Moniz & Wick LLP

925 4th Ave, Ste. 2300 Seattle, WA 98104

206-223-4770

aidab@jgkmw.com

brennenj@jgkmw.com

*Counsel for Amici Curiae*

## CERTIFICATE OF COMPLIANCE

I hereby certify that this *amicus* brief complies with Fed. R. App. P. 29 (a)(5) because it contains 4143 words, excluding the portions exempted by Fed. R. App. P. 32(f).

The brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6) because it was prepared in 14-point Times New Roman, a proportionally spaced typeface.

Dated: January 29, 2024

*s/ Aida Babahmetovic*

\_\_\_\_\_  
Aida Babahmetovic

*Counsel for Amici Curiae*

## CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. I further certify that service was accomplished on all parties in this case via the Court's CM/ECF system.

Dated: January 29, 2024

*s/ Aida Babahmetovic*

\_\_\_\_\_

Aida Babahmetovic

*Counsel for Amici Curiae*