No. 16-1140

In the Supreme Court of the United States

NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES, D/B/A NIFLA, ET AL., *PETITIONERS*,
v.
XAVIER BECERRA, ATTORNEY GENERAL, ET AL., *RESPONDENTS*,

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR HUMAN COALITION AS AMICUS CURIAE FOR PETITIONERS

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QUESTION PRESENTED

Whether the disclosures required by the California Reproductive FACT Act violate the protections set forth in the Free Speech Clause of the First Amendment, applicable to the States through the Fourteenth Amendment?

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INTEREST OF *AMICUS*[1]

Amicus is Human Coalition ("HuCo"), a Texas nonprofit 501(c)(3) corporation formed in 2009 that is committed to rescuing children, serving families, and ending abortion by reaching abortion-determined women with a specially-crafted, objectively-measured, life-affirming message and tangible, individualized services. In addition to providing life-affirming marketing approaches for several dozen affiliated nonprofit pregnancy centers in 14 states across the country and running a contact center for women considering abortion, HuCo also operates its own specialized women's care clinics in four major cities (Atlanta, Georgia; Raleigh, North Carolina; Pittsburgh, Pennsylvania; and Dallas, Texas), with plans to expand beyond those locations to many of the largest U.S. cities (including locations in California). Through its contact center, care clinics, church and marketing outreach, and continuum of care program, HuCo continually tests and optimizes its practices and messaging so that HuCo listens to and serves the abortion-determined community with greater effectiveness. *Amicus* submits this brief in support

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[1] The parties consented to the filing of this *amicus curiae* brief pursuant to S. Ct. R. 37.3(a), the Petitioners through a blanket consent form filed with the Clerk and the Respondents through separate writings. Pursuant to Rule 37.6 of the Rules of this Court, *amicus* states that no counsel for any party authored this brief in whole or part, and no person or entity, other than *amicus* and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

of Petitioners, National Institute of Family and Life Advocates d/b/a NIFLA, *et al*.

HuCo is interested in this case because vital free speech principles are at stake in this Court's review of the California Reproductive FACT Act (hereinafter, the "Act"). The Act impermissibly commandeers the unique message of private organizations who disagree with the government on a contentious public issue. In addition to diluting the disfavored speech of disfavored speakers, California compels those pro-life speakers to become a mouthpiece for a message contrary to their origins and purposes. This far-reaching law, versions of which have been adopted in other jurisdictions and locales across the country, sets a dangerous precedent and must be struck down under the Free Speech Clause of the First Amendment.

A. HuCo's specially-crafted and objectively-measured life-affirming message to, and care clinics for, abortion-determined women.

HuCo's abortion-ending strategy and messaging fuses strategic technology, data analysis, best practices, medically-accurate information, and short-term and long-term tangible help to reach, communicate with, and compassionately serve women who are inclined to terminate their pregnancies. In its work, HuCo has learned tone and content—even the most minute details—matter.

In America, the abortion-determined population, approximately 1.2 million women

annually, is an unreached and underserved group, with many of them facing unplanned pregnancies and suffering from systemic social and economic challenges. For such women, a pregnancy often induces fear and panic leading many to conclude an abortion, while often not desired, is the only solution.[2] When they contact HuCo, clients are often in a state of high anxiety, fear, and distress. In such situations, details—from word choice to vocal intonation to the topic and content of messaging—make a material difference in a woman's decision-making process.

To better serve its clients, HuCo meticulously measures and tests numerous variables to vigilantly track both its impact and its success in its efforts to connect with and serve abortion-determined women—testing everything from the number of persons clicking on an online marketing outreach to the number of women who chose life after coming into contact with HuCo.

Through qualitative research, HuCo observed that women who felt calm during their appointment were more likely to choose to continue their pregnancy, whereas women who felt anxiety during their appointment were more likely to obtain an abortion. In other words, methods,

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[2] However, most of this group (about 97%) will never come in contact with a pro-life organization and will instead head straight to an abortion clinic—a void HuCo seeks to close, and is closing. In fact, more than 86% of the women who come in contact with HuCo qualify as abortion-determined women, and, on average, its care clinics connect with substantially more abortion-determined women (about 78 times as many) than the average pro-life pregnancy center.

processes, and procedures that give a client security and support are more successful, whereas strategies that induce fear and uncertainty are counterproductive. This learning has driven testing and optimization at every stage of HuCo's operations.

For instance, in its contact center (which receives between 1,800 and 2,100 communications each month), HuCo has engaged in enterprising and statistically significant testing on various scripts used by its agents responding to texts, calls, and messages from prospective clients. This testing has demonstrated that what is said, when it is said, and how it is said affect whether callers schedule and keep appointments at one of HuCo's care clinics or affiliated pregnancy centers. By constantly assessing and reassessing how best to communicate, in the past five years, the rate at which abortion-determined women who connected with HuCo's contact center and went to a pregnancy center has more than doubled.

Moreover, in its life-affirming care clinics (which provide free pregnancy testing, ultrasounds, consultations, counseling, case management, and material assistance), HuCo has similarly engaged in quantitative and qualitative testing regarding atmospherics. The goal was to examine how physical and environmental conditions inside these locations affect clients' responses to counseling and, ultimately, the decisions they make. Based upon research showing that physical environment—from light temperature to wall color to furniture arrangement—can affect perceptions and thus actions, HuCo redecorated one of two

counseling rooms in its Dallas clinic and measured the results of counseling in that room compared to counseling in the originally-decorated room. Women counseled in the re-designed room were 37.5% more likely to choose to continue their pregnancy. HuCo repeated the test in its Pittsburgh clinic, where women counseled in the re-designed room were nearly 17% more likely to choose to continue their pregnancy. In short, the decisions HuCo makes about the appearance of the rooms at its care clinics are guided by the impact those rooms have on the experience of abortion-determined women. This is how HuCo chooses what to display on the walls or in the entrance and waiting areas of its clinics.

HuCo's observations about clients' decision-making has also affected how it serves clients. HuCo developed an adaptive, proprietary decision guide that allows counselors to work with clients to identify and address the unique obstacles each client perceives to her pregnancy. The decision guide fosters a collaborative, rather than adversarial, counseling experience. In addition, HuCo has developed proprietary counseling material, such as descriptive videos, that are designed to describe abortion procedures accurately without engaging in fear-mongering or graphic descriptions of the procedure. These processes are all designed to serve the client while avoiding unintentionally triggering a client's anxiety over her pregnancy.

All of the testing is designed to, and demonstrates, the effectiveness of messaging and tailored approaches, with the goal of improving

HuCo's effectiveness with its target population—*i.e.*, increasing the appointments scheduled, women served, and decisions for life numbers among abortion-determined population in major U.S. cities. The results of this precision measurement and testing demonstrate that in clinics where HuCo has applied its techniques and approaches, the number of abortion-determined women who decided to keep their babies increased by between 1,960% and 5,420%. Since its inception, HuCo is responsible for saving nearly 8,000 babies whose mothers were abortion-determined women. And since its inception, HuCo continues to adjust its messaging and approaches to improve its engagements with abortion-determined women, increase the number of babies saved, and to eventually make abortion unthinkable.

B. The Act would curtail and undermine HuCo's life-affirming care clinics if located in California.

In light of the above marked and decided impact, HuCo seeks to expand its life-affirming message throughout the country and bring its care clinics to many of the U.S. cities with the highest population (including locations in California).[3]

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[3] Eight of the top-50 largest cities by population, including three in the top-10, are located within California: Los Angeles, San Diego, San Jose, San Francisco, Fresno, Sacramento, Long Beach, and Oakland. U.S. Census Bureau, Population Div., "Annual Estimates of the Resident Population for Incorporated Places of 50,000 or More, Ranked by July 1, 2016 Population: April 1, 2010 to July 1, 2016" (Release Date May 2017), *available at* https://factfinder.census.gov/faces/tableservices/jsf/pages/prod

That distinct message, however, is stymied and seriously burdened by this Act, which forces both licensed and unlicensed pro-life facilities whose "primary purpose" involves providing "pregnancy-related services" to refer clients for abortions or discredit their life-affirming message. The legislative committee report accompanying the Act described that pro-life message as "unfortunate[]" because it "aim[s] to discourage and prevent women from seeking abortions." JA84-85.[4]

The Act forces licensed pro-life facilities to conspicuously state on-site that "California has public programs that provide immediate free or low-cost access to comprehensive family planning services (including all FDA-approved methods of contraception), prenatal care, and abortion for eligible women. To determine whether you qualify, contact the county social services office at [insert the telephone number]." CAL. HEALTH & SAFETY CODE § 123472(a)(1)-(2). This public notice is to be printed in "no less than 22-point type" and is to be

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uctview.xhtml?pid=PEP_2016_PEPANNRSIP.US12A&prodType=table (last accessed Jan. 15, 2018).

[4] The Act exempts from its coverage any clinics operated by the United States, as well as any "licensed primary care clinic that is enrolled as a Medi-Cal provider and a provider in the Family Planning, Access, Care, and Treatment Program," the latter of which (Family PACT) is California's program for family planning and "reproductive health care" in which participating clinics provide the "full scope" of "family planning services," including contraceptives and abortifacients. *See* CAL. HEALTH & SAFETY CODE § 123471(c)(1)-(2); *see also* CAL. HEALTH & SAFETY CODE §§ 14132, 24005(c), 24007(a)(2).

disseminated in as many as thirteen different languages. *Id.*[5]

The Act also forces unlicensed pro-life facilities to conspicuously state on-site in multiple locations (including the entrance and at least one waiting area) and in all advertising materials (including websites) that "This facility is not licensed as a medical facility by the State of California and has no licensed medical provider who provides or directly supervises the provision of services." CAL. HEALTH & SAFETY CODE § 123472(b)(1)-(2). The on-site public notice is to printed in "no less than 48-point type," while the advertising notice must be distinguished from its surrounding text by "larger point type" or otherwise contrasted with, or set off from, the rest of the advertising to "call attention" to the compelled disclaimer; whether on-site or in advertising material, the notice must be

[5] This compelled disclosure applies to facilities licensed under California law "whose primary purpose is providing family planning or pregnancy-related services" and which satisfy two of the following: "(1) The facility offers obstetric ultrasounds, obstetric sonograms, or prenatal care to pregnant women. (2) The facility provides, or offers counseling about, contraception or contraceptive methods. (3) The facility offers pregnancy testing or pregnancy diagnosis. (4) The facility advertises or solicits patrons with offers to provide prenatal sonography, pregnancy tests, or pregnancy options counseling. (5) The facility offers abortion services. (6) The facility has staff or volunteers who collect health information from clients." CAL. HEALTH & SAFETY CODE § 123471(a).

disseminated in as many as thirteen different languages. *Id.*[6]

The penalty for noncompliance with the Act is a $500 civil fine for a first offense and a $1,000 fine for each subsequent offense. CAL. HEALTH & SAFETY CODE § 123473(a). The Act, which is enforceable by the Attorney General of California, city attorney, or county counsel, provides a 30-day window to "correct the violation" after a covered facility is provided "reasonable notice of noncompliance." *Id.*

Irrespective of whether one of HuCo's care clinics would qualify as licensed or unlicensed under the Act, its care clinics—through their free pregnancy testing, ultrasounds, consultations, counseling, and case management services—provide the kind of "pregnancy-related services" encompassed by the Act. HuCo also speaks the kind of life-affirming message that is specifically targeted by the Act's compelled disclosures, and its life-affirming existence and purpose prevent it from qualifying for the Act's exemptions. As a

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[6] This compelled disclosure applies to unlicensed facilities in California which do "not have a licensed medical provider on staff or under contract who provides or directly supervises the provision of all of the services, whose primary purpose is providing pregnancy-related services" and that also satisfies two of the following: "(1) The facility offers obstetric ultrasounds, obstetric sonograms, or prenatal care to pregnant women. (2) The facility offers pregnancy testing or pregnancy diagnosis. (3) The facility advertises or solicits patrons with offers to provide prenatal sonography, pregnancy tests, or pregnancy options counseling. (4) The facility has staff or volunteers who collect health information from clients." CAL. HEALTH & SAFETY CODE § 123471(b).

result, HuCo cannot further extend its specifically-crafted and objectively-measured life-affirming message and care clinics to abortion-determined women in California, without being bound in some way by the Act's forced speech code that violates the First Amendment.

SUMMARY OF ARGUMENT

For decades the issue of abortion has been in the foreground of the public's political, electoral, legal, medical, social, cultural, moral, and spiritual attention. During that time, the issue has also been at the center, or lurking in the shadows, of many of this Court's most controversial decisions. It is, undeniably, a public issue fraught with controversy, and laced with deeply-held convictions and competing views among citizens.

The Act, which requires either compelled abortion referrals or discrediting disclaimers by pro-life organizations, is only the latest battle in that undeclared war. But for First Amendment advocates of any persuasion, it is one California must lose. Fortunately, to resolve this clash, this Court need not actually pick a side between abortion advocates and abortion foes. Instead, non-controversial, unifying, and bedrock First Amendment principles mandate the outcome. Otherwise, this Court will set in motion across the country a bevy of private speech regulations on hotly contested public issues by those who control the levers of governmental power and deem the most efficient means of distributing their own message to be compelling speech from their adversaries. Thus, the nationwide First

Amendment implications of the Act are at once startling and dangerous—and not merely for those who subscribe to pro-life views.

California wants to transmit a message to abortion-determined women (the same population targeted by HuCo): the state offers free or low-cost abortions. On its face and in its design and application, the content of the law is ideological in both purpose and kind on the disputed public issue of abortion. California is entitled to its own view; but so is everyone else, and especially those (like HuCo) who disagree with the government's view on abortion and offer alternatives. Incredibly, however, the carriers California has chosen for its message fundamentally disagree with abortion and would not exist but for that disagreement.

With pro-life organizations in its crosshairs, the Act intentionally dilutes, distorts and damages the message of private organizations both inside and outside their pro-life facilities. The compelled disclosures are neither subtle nor innocuous. As detailed above, HuCo has evaluated how seemingly benign matters affect the decisions made by abortion-determined women regarding their pregnancies. Such changes have measurable effects, which explains why HuCo has honed and refined its life-affirming message with exacting precision. Compelled alterations to that message—such as those required by the Act—can have a detrimental effect on that message, meaning fewer decisions for life are ultimately made.

By commandeering private speakers to be the mouthpiece for the state's preferred messages and

views on the contentious public issue of abortion, California has eviscerated vital free speech principles. Among said principles, the Free Speech Clause protects private speakers' decisions to say and not say what they want. Private speakers also have a right not to spread a state-sponsored message with which they fundamentally disagree, and their speech cannot be conditioned on proclaiming the government's view. Nor may government use private speech restrictions to dilute and disadvantage disfavored views at the behest of promoting its own. The Act therefore demands but cannot survive this Court's most exacting scrutiny. In fact, sanctioning the Act under such First Amendment scrutiny would gravely undermine and undercut a bedrock constitutional principle: "that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). The Act is thus antithetical to our constitutional jurisprudence, and must be struck down as violating the Free Speech Clause.

ARGUMENT

I. Government cannot commandeer private speakers on public issues to carry the state's preferred messages and views.

The First Amendment "does not countenance governmental control over the content of messages expressed by private individuals." *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 641 (1994). The

freedom of speech "prohibits the government from telling people what they must say." *Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l*, 133 S. Ct. 2321, 2327 (2013). In a remarkable step nowhere permitted in this Court's constitutional jurisprudence, the Act attempts to tell private organizations what to say on one of the most contentious public issues of our day: abortion. *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) ("[S]peech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.") (citation omitted).[7]

A. The Free Speech Clause protects private speakers' decisions to say and not say what they want.

"The First Amendment mandates that we presume that speakers, not the government, know best both what they want to say and how to say it." *Riley v. Nat'l Fed. of the Blind of North Carolina, Inc.*, 487 U.S. 781, 790-91 (1988). Moreover, this guarantee of the freedom of speech necessarily includes "the decision of both what to say and what *not* to say." *Id.* at 796-97 (emphasis in original); *see also Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557, 573 (1995) ("Since *all* speech inherently involves choices of what to say and what to leave unsaid, one

[7] Nonprofit organizations, like individuals, possess First Amendment rights. *Citizens United v. F.E.C.*, 558 U.S. 310, 342-43 (2010) (free speech rights); *cf. Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2768-69 (2014) (collecting cases entertaining nonprofits' free exercise rights).

important manifestation of the principle of free speech is that one who chooses to speak may also decide what not to say.") (internal citations and quotations omitted; emphasis in original).

This Court has long held that such speech protection—the "right to speak and the right to refrain from speaking" are "complementary components of the broader concept of 'individual freedom of mind.'" *Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (citation omitted). To secure citizens' rights "to proselytize religious, political, and ideological causes" they must also be guaranteed the "concomitant right to decline to foster such concepts." *Id.* Thus, "[a]t the heart of the First Amendment lies the principle that each person should decide for himself or herself the ideas and beliefs deserving of expression, consideration, and adherence. Our political system and cultural life rest upon this ideal." *Turner*, 512 U.S. at 641.

Exercising these fundamental rights, HuCo expends significant time, energy, and resources in crafting, developing, and testing (and re-testing) its messages through quantitative studies and qualitative metrics. It has designed and tailored what it says and how it says what it says to its audience of abortion-determined women. These are delicate conversations where mothers' futures and unborn babies' lives hang in the balance. One

change in HuCo's message can have significant, life-altering consequences.[8]

In short, HuCo requires freedom and flexibility to deliver its life-affirming message to rescue families and to increase the number of appointments scheduled, women served, and decisions for life among abortion-determined women in the communities HuCo serves. It must have this freedom under the Free Speech Clause to pick-and-choose what it says without adherence to California's opinion on the topic of abortion.

B. Private speakers have a right not to spread a state-sponsored message with which they fundamentally disagree.

Well-established constitutional principles also bar government from forcing or compelling private speakers to promote or facilitate a message with which they fundamentally disagree. Compelled speech forces "an individual, as part of his daily life indeed constantly" to "be an instrument for fostering public adherence to an ideological point of view he finds unacceptable." *Wooley*, 430 U.S. at 715. But the First Amendment protects the right of persons "to hold a point of view different from the majority" and "to refuse to foster" an idea "they find morally objectionable." *Id*. Indeed, "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion,

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[8] HuCo rescued 2,503 babies in 2017. A change that decreased HuCo's effectiveness by as little as 2% would have irrevocably affected the lives of 50 women and 50 babies.

or other matters of opinion, or force citizens to confess by word or act their faith therein." *Barnette*, 319 U.S. at 642.

Forcing compelled disclosures upon pro-life organizations penalizes them for their own expression. *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 257 (1974) ("[g]overnment-enforced right of access inescapably 'dampens the vigor and limits the variety of public debate.'") (citation omitted). Indeed, the Act forces pro-life organizations to affirm and validate "in one breath that which they deny in the next." *Pac. Gas & Elec. Co. v. Public Utilities Comm'n of Cal.*, 475 U.S. 1, 16 (1986) (plurality op.). Licensed pro-life facilities providing pregnancy-related services, for instance, must become forced advertisers and referral agencies for abortion providers. Such double-speak interferes with these life-affirming messages and undermines the purpose of these organizations.[9]

Not only that, the Act is an unconstitutional governmentally-induced condition on private organizations who wish to speak a life-affirming message to abortion-determined women. *Alliance for Open Soc'y*, 133 S. Ct. at 2327 (stating that government policy conditioning funding on agreement to express a message—if enacted as a

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[9] Under the Act, unlicensed pro-life facilities providing pregnancy-related services must issue a government disclaimer both on-site and in their advertising material, before uttering their life-affirming message. This is a costly and consequential burden on their message and effectiveness, and is one uniquely placed upon these pro-life pregnancy clinics opposed to abortion (as compared to other unlicensed facilities who also serve pregnant women).

direct speech regulation—would "plainly violate the First Amendment"). Government cannot, as a condition to speaking on the issue of abortion, mandate that pro-life organizations foster a concept and promote a practice with which they fundamentally disagree.

C. Government cannot use restrictions on private speech to promote its own favored view.

The government "may not burden the speech of others in order to tilt public debate in a preferred direction." *Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 578-79 (2011). There is "no more certain antithesis" to the Free Speech Clause than government's usage of private speech restrictions to produce "thoughts and statements" it deems "acceptable" to the public. *Hurley*, 515 U.S. at 579; *see also United States v. Alvarez*, 132 S. Ct. 2537, 2547 (2012) ("Our constitutional tradition stands against the idea that we need Oceania's Ministry of Truth."). A central purpose of the First Amendment is "to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion." *Thomas v. Collins*, 323 U.S. 516, 545 (1945) (Jackson, J., concurring), and prevent government from placing "restraints on the way in which the information [possessed by private speakers] might be used' or disseminated." *Sorrell*, 564 U.S. at 568 (citation omitted).

Yet that is precisely what California has sought to accomplish here. The Act is a confiscatory speech regime seizing upon private speakers' property,

resources, and messages to promote the government's view on abortion and funnel abortion-determined women to abortion providers. The effect of the compelled disclosures is for private organizations to "use their private property" as a fixed "billboard" for California's "ideological message or suffer a penalty"—in this case repeating civil fines for each month the compelled disclosures are not made. *Wooley*, 430 U.S. at 715. However, "[g]overnment action that stifles speech on account of its message, or that requires the utterance of a particular message favored by the Government, contravenes this essential right. Laws of this sort pose the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information or manipulate the public debate through coercion rather than persuasion. These restrictions 'rais[e] the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace.'" *Turner*, 512 U.S. at 641 (citation omitted); *see also Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995) ("In the realm of private speech or expression, government regulation may not favor one speaker over another.").[10]

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[10] The speech at issue does not trigger this Court's commercial speech doctrine. Nothing offered by the private organizations "propose[s] a commercial transaction." *United States v. United Foods, Inc.*, 533 U.S. 405, 409 (2001). Instead, they offer free information, counseling, and services with no economic motivation for their speech. Not only that, this Court has struck down, under heightened scrutiny, regulations of speech that evinces a commercial character (such as charitable solicitation) because that speech was

Here, the "specter" of concern accompanying prior speech regulations that this Court has considered in past First Amendment decisions is a fully-grown, fully-realized fact. California has unambiguously dictated what private organizations who oppose abortion must say and coerced them to either issue an introductory disclaimer or become abortion referral agencies. The goal is not merely to minimize their message; it is to discredit the messenger and drive their life-affirming message away from their intended audience and the public debate.[11]

HuCo's life-affirming message targets the same population sought to be reached by California through its enactment of the Act – abortion-determined women – but from an entirely different viewpoint. A burdensome and viewpoint-discriminatory message mandated by the state, such as these compelled disclosures, could cloud conversations with abortion-determined women and lead to fewer scheduled appointments, fewer women served, and ultimately fewer decisions for life. The kind of mandatory and conspicuous disclosure required by the Act "will be the last

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"inextricably intertwined with otherwise fully protected speech." *Riley*, 487 U.S. at 796.

[11] This Court has said that "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397, 414 (1989). The opposite is equally true, and foundational: government may not require the expression of an idea simply because society finds the idea itself acceptable and agreeable.

words spoken" as the abortion-determined woman leaves a care clinic "or hangs up the phone." *Riley*, 487 U.S. at 800. Thus, this forced speech code erects an obstacle that will have a noticeable and negative effect on life-affirming messages.

It is of no consequence to the First Amendment analysis that the government argues that the compelled disclosures are factual statements. Compelled statements of "fact" and compelled statements of opinion equally burden protected speech. *Id.* at 797-98; *see also Hurley*, 515 U.S. at 573 (private speaker's right to tailor non-commercial speech involving "expressions of value, opinion, or endorsement" apply equally to "statements of fact the speaker would rather avoid"). HuCo's speech would nonetheless be altered by the Act's compelled disclosures. And its message would be no less undermined since the compelled disclosures would either stoke anxiety and distraction in its targeted population, or posit abortion as a viable alternative, which is contrary to its existence and purpose.

II. Government cannot target for dilution messages and views it disfavors.

It is well established under the Free Speech Clause that "[t]he government may not regulate … based on hostility—or favoritism—towards the underlying message expressed." *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 386 (1992). Content-based restrictions on private speech, particularly in the abortion context, allow government officials to "effectively drive certain ideas or viewpoints from the marketplace." *Simon & Schuster, Inc. v.*

Members of the N.Y. State Crime Victims Bd., 502 U.S. 105, 116 (1991). The Act's compelled disclosures plainly detract from private speakers' lawful messages in a blatant attempt to regulate the marketplace of ideas on abortion by controlling the words communicated to abortion-determined women. California has enacted a targeted speech regulation of a particular group—which, by operation, manifestly consists of those opposed to that state government's viewpoint on abortion. As such, the Act represents both content-based and viewpoint discrimination.

A. The Act is a content-based speech regulation.

"Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech." *Riley*, 487 U.S. at 795. "Lawmakers may no more silence unwanted speech by burdening its utterance than by censoring its content." *Sorrell*, 564 U.S. at 566. "Government's content-based burdens must satisfy the same rigorous scrutiny as its content-based bans." *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 812 (2000). The Act undeniably forces pro-life organizations to utter speech they would not otherwise make—indeed, speech that can and will detract from their mission and ultimately lead to fewer decisions for life.

Moreover, "[t]he government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." *Rosenberger*, 515 U.S. at 829. "Just as the

'inevitable effect of a statute on its face may render it unconstitutional,' a statute's stated purposes may also be considered." *Sorrell*, 564 U.S. at 565 (citing *United States v. O'Brien*, 391 U.S. 367, 384 (1968)). Here, the passage of the Act demonstrates that California has "adopted a regulation of speech because of disagreement with the message it conveys." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); *see also Rosenberger*, 515 U.S. at 828 ("Discrimination against speech because of its message is presumed to be unconstitutional.").

The Act "on its face burdens disfavored speech by disfavored speakers," making it a content-based speech regulation. *Sorrell*, 564 U.S. at 564; *see also Turner*, 512 U.S. at 643 ("As a general rule, laws that by their terms distinguish favored speech from disfavored speech on the basis of the ideas or views expressed are content based."). The Act compels licensed pregnancy-related clinics to intrusively advertise—in multiple languages—California's "public programs that provide immediate free or low-cost ... contraception ... and abortion for eligible women." CAL. HEALTH & SAFETY CODE § 123472(a)(1). The Act is also content-based because it applies only to clinics providing qualifying pregnancy-related services—which are uniformly provided by pro-life organizations opposed to abortion—but not all health-related facilities who may have contact with pregnant women.[12]

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[12] For instance, doctors in private practice, primary care clinics, and various other medical facilities (*e.g.*, student health centers) are excluded from the Act. *See* Pet.Br.32-33 (collecting additional examples).

Even though the Act's mandatory disclaimers for unlicensed facilities both on-site and in all advertising material may not have the word "abortion" in its state-mandated script, it does not mean the compelled disclosures are "not designed to favor or disadvantage speech of any particular content." *Turner*, 512 U.S. at 652. They are. These compelled disclosures must be printed in at least 48-point font within the facility and "in a font larger than the surrounding text" on all public advertisements outside the facility. CAL. HEALTH & SAFETY CODE § 123472(b)(2)-(3). The compelled disclosures are also limited to pro-life clinics, even though various other centers and facilities are similarly unlicensed but not subject to the Act's speech burdens.[13] This further evidences the obvious intent to regulate the speech of only certain centers and facilities that are opposed to abortion—which is conceded by the Act's legislative record deeming the pro-life message "unfortunate[]" because it "aim[s] to discourage and prevent women from seeking abortions." JA84-85.

B. *Reed v. Town of Gilbert* mandates that courts apply strict scrutiny when examining any content-based speech laws.

Content-based speech laws are subject to strict scrutiny review. *Reed v. Town of Gilbert*, 135 S. Ct.

[13] The Act allows any other unlicensed facility offering health-related services or collecting health-related information but not "providing pregnancy-related services" to refrain from notifying clients when they are using a facility that has not satisfied licensing standards set by the state. CAL. HEALTH & SAFETY CODE § 123471(b).

2218, 2228 (2015). In *Reed*, this Court determined that municipal regulations over the manner in which outdoor signs were displayed were content-based and, therefore, subject to strict scrutiny. 135 S. Ct. at 2227-31. Importantly, however, in reaching that unanimous decision, this Court squarely addressed arguments that the regulations should not be subject to strict scrutiny "because the Town 'did not adopt this regulation of speech based on disagreement with the message conveyed,' and its justification for regulating temporary directional signs were 'unrelated to the content of the sign.'" *Id.* at 2227 (citations omitted). This Court plainly rejected the government's argument in *Reed*. Instead, the Court emphasized:

> A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of "animus toward the ideas contained" in the regulated speech. We have thus made clear that "[i]llicit legislative intent is not the *sine qua non* of a violation of the First Amendment," and a party opposing the government "need adduce 'no evidence of an improper censorial motive.'" Although "a content-based purpose may be sufficient in certain circumstances to show that a regulation is content based, it is not necessary." In other words, an innocuous justification cannot transform a facially content-

> based law into one that is content neutral.

Id. at 2228 (internal citations omitted). In fact, this Court emphasized that it has "repeatedly considered whether a law is content neutral on its face *before* turning to the law's justification or purpose" because a facially content-based law is automatically subject to strict scrutiny regardless of whether the law is viewpoint neutral. *Id.* (emphasis in original; citations omitted).

Moreover, the government in *Reed* "seize[d]" on the idea that its regulations should pass constitutional muster "because its treatment of temporary directional signs does not raise any concerns that the government is endorsing or suppressing ideas or viewpoints, and the provisions for political signs and ideological signs are neutral as to particular ideas or viewpoints within those categories." *Id.* at 2229 (internal citations and quotations omitted). This Court quickly dispatched that notion, explaining that the "analysis conflates two distinct but related limitations that the First Amendment places on government regulation of speech." *Id.* at 2229-30. This Court explained:

> Government discrimination among viewpoints—or the regulation of speech based on "the specific motivating ideology or the opinion or perspective of the speaker"—is a "more blatant" and "egregious form of content discrimination." But it is well established that "[t]he First Amendment's hostility to content-

> based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic."
>
> Thus, a speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter.

Id. at 2230 (internal citations omitted); *see also Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 429 (1993) (this Court's precedents have repeatedly "rejected the argument that 'discriminatory … treatment is suspect under the First Amendment only when the legislature intends to suppress certain ideas.'").

In this matter, the Ninth Circuit correctly found that the Act was a content-based speech regulation. Pet.App.22a. That should have resolved which level of scrutiny to apply. But the court concluded that strict scrutiny was "inappropriate" because the Act "does not discriminate based on the particular opinion, point of view, or ideology of a certain speaker," and proceeded to apply intermediate scrutiny to the compelled disclosure requirements for licensed facilities. Pet.App.22a, 28a-36a.[14] In doing so, the Ninth Circuit declined to follow this Court's unambiguous holding in *Reed* that "a law that is content based on its face is subject to strict

[14] The Ninth Circuit concluded that the compelled disclosure requirements for unlicensed facilities satisfied even strict scrutiny (Pet.App.36a-38a)—an erroneous holding addressed in Section III, *infra.*

scrutiny," 135 S. Ct. at 2228, and instead relied upon a prior circuit court opinion that created an exception to this Court's speech precedents for purportedly viewpoint neutral laws. Pet.App.23a (citation omitted). However, *Reed* holds that government cannot sidestep satisfying strict scrutiny on content-based laws, even if it had "innocent" or "benign" motives and an "innocuous justification" for its actions (which California did not have), or the law is not "viewpoint" based (which the Act is not), or the law is not "speaker based" or "event based" (which the Act is not). 135 S. Ct. at 2228-30.

In ignoring this Court's precedents, the Ninth Circuit misapplied the unequivocal language in *Reed* that requires a court to apply strict scrutiny to any content-based speech law. *Reed* made clear that a viewpoint discriminatory law is a form of content-based regulation, and viewpoint neutrality does not bar application of strict scrutiny.[15] As such, the Act is subject to strict scrutiny under *Reed*.

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[15] Even assuming that an unwritten exception existed for viewpoint-neutral laws—which it does not—a law requiring pro-life organizations that would not exist but for their opposition to abortion to issue a disclaimer or advertise for "free or low cost" access to the same is far from viewpoint neutral. In addition to all of the health facilities excluded from the Act's coverage, the Act exempts from its coverage clinics providing pregnancy-related services who offer contraceptives, abortifacients and/or abortions under California's Family PACT program, and thus effectively only implicates the speech rights of pro-life organizations.

C. The Act discriminates based on viewpoint by compelling a select group of disfavored speakers to issue discrediting disclaimers or advertise for "free or low-cost" abortion services.

In operation, the Act "goes even beyond mere content discrimination, to actual viewpoint discrimination." *R.A.V.*, 505 U.S. at 391. While the Ninth Circuit characterizes the law's exceptions as "narrow," even a cursory examination of the law defeats the Ninth Circuit's justification for distinguishing *Sorrell*. The exemptions in the Act apply to any clinics operated by the United States and any "licensed primary care clinic that is enrolled as a Medi-Cal provider and a provider in the Family Planning, Access, Care, and Treatment Program." CAL. HEALTH & SAFETY CODE § 123471(c)(1)-(2). However, providers under the latter exception agree to provide services including all FDA approved contraceptive methods, drugs, devices, and supplies—an exemption which categorically excludes pro-life centers and organizations who are religiously and/or morally opposed to such contraceptives or abortifacients. CAL. WELF. & INST. CODE § 14132(aa)(8); *see also* Pet.Br.13 (discussing Family PACT program).

Consequently, the vast majority of organizations covered by the Act are those that would not exist but for the prevalence and acceptance of abortion. Indeed, their very existence is premised upon their opposition to abortion. By compelling primarily those pro-life speakers to issue discrediting disclaimers or promoting

abortion would not only undermine the efforts of these groups to curtail abortion, but would dismantle their First Amendment rights by burdening a "narrow class of disfavored speakers." *Sorrell*, 564 U.S. at 564.

III. The Act cannot survive strict scrutiny.

This Court's precedents "apply the most exacting scrutiny to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content." *Turner*, 512 U.S. at 642. As a general matter, "[l]aws that compel speakers to utter or distribute speech bearing a particular message are subject to … rigorous scrutiny." *Id.*; *see also Riley*, 487 U.S. at 789 (compelled speech laws are subject to "exacting First Amendment scrutiny"). The Act's compelled disclosures are subject to—and cannot survive—this (or any constitutional) review.

A. Strict scrutiny is a demanding standard.

Reed mandates that the Act's compelled disclosures "can stand only if they survive strict scrutiny, 'which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.'" 135 S. Ct. at 2231 (citations omitted). This Court has recognized that "it is all but dispositive to conclude that a law is content-based and, in practice viewpoint-discriminatory." *Sorrell*, 564 U.S. at 571 (citing *R.A.V.*, 505 U.S. at 382) ("Content-based regulations are presumptively invalid."). That is because "[t]he First Amendment requires heightened scrutiny whenever the

government creates 'a regulation of speech because of disagreement with the message it conveys.'" *Sorrell*, 564 U.S. at 566 (citing *Ward*, 491 U.S. at 791).

To satisfy strict scrutiny, the Act must further a government interest of the "highest order." *See Reed*, 135 S. Ct. at 2232. It also requires the government to show that the purported compelling interest is furthered by the burden placed on particular claimants. *Brown v. Entm't Merchants Ass'n*, 564 U.S. 786, 799 (2011). "[A] law cannot be regarded as protecting an interest of the highest order … when it leaves appreciable damage to that supposedly vital interest unprohibited." *Reed*, 135 S. Ct. at 2232 (citation omitted).

Under strict scrutiny, the Act fails unless the government can "specifically identify an 'actual problem' in need of solving, and the curtailment of free speech must be actually necessary to the solution. That is a demanding standard." *Brown*, 564 U.S. at 799; *see also Alvarez*, 567 U.S. at 725 ("There must be a direct causal link between the restriction imposed and the injury to be prevented."). "If a less restrictive alternative would serve the Government's purpose, the legislature must that alternative." *Playboy*, 529 U.S. at 813. Further, "when [laws] affect First Amendment rights they must be pursued by means that are neither seriously underinclusive nor seriously overinclusive," *Brown*, 564 U.S. at 805, because underinclusiveness and overinclusiveness demonstrate that a speech regulation is not narrowly tailored to further a compelling government interest. *Reed*, 135 S. Ct. at 2232.

Because California has not (and cannot) make the requisite showing under this demanding standard, the Act is unconstitutional.

B. California fails to identify an interest of the highest order demanding a particular speech burden on all pro-life organizations.

This Court must reject California's purported interest in passing this law for "it is no answer . . . to say . . . that the purpose of these regulations was merely to ensure high professional standards and not to curtail free expression." *NAACP v. Button*, 371 U.S. 415, 438-39 (1963). While states "ha[ve] a strong interest in protecting a woman's freedom to seek a lawful medical or counseling services in connection with her pregnancy," *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 767 (1994), that is not the interest that California seeks to promote here. Instead, California seeks to balance the risk of some women receiving purportedly-deceiving information by an unknown number of pregnancy centers by forcing *all* pro-life pregnancy facilities to advertise for California's abortion-related services.[16] Moreover, if deception, fraud, false advertising, and practicing medicine without a license were truly ills to be cured,

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[16] Indeed, the compelled disclosures are not tied to any specific medical procedure or treatment for a patient by a licensed practitioner. That takes the Act outside of "informed consent" laws and this Court's decision in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 881-83 (1992), which reviewed a state law requiring physicians to disclose certain information to women before an abortion.

California could simply pursue and enforce its already-existing laws to curb such speech and conduct. *See* CAL. BUS. & PROF. CODE § 17500 (state law prohibiting false advertising); CAL. BUS. & PROF. CODE § 2052 (state law prohibiting the unlicensed practice of medicine); CAL. CIVIL CODE § 1711 (state law prohibiting commercial fraud).

In light of the already-existing laws, permitting California to mandate the Act's compelled disclosures would endorse an expansive view of governmental authority and power that "has no clear limiting principle." *Alvarez*, 132 S. Ct. at 2547. It would also invoke a broad commandeering power "unprecedented in this Court's cases or in our constitutional tradition" and the "mere potential for the exercise of that power casts a chill, a chill the First Amendment cannot permit if free speech, thought, and discourse are to remain a foundation of our freedom." *Id.* at 2548. It would also run afoul of the "First Amendment's command that government regulation of speech must be measured in minimums, not maximums." *Riley*, 487 U.S. at 790; *see also F.E.C. v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 468-69 (2007) ("First Amendment freedoms need breathing space to survive.") (quoting *Button*, 371 U.S. at 433).

Upholding this Act could also have far-reaching effects on individuals, as well as other private organizations that disagree with a particular government message. States would be equipped to flip the existence of these organizations—and the messages that they convey—on its head to conform

with the state's own agenda.[17] As such, in order to avoid granting states *carte blanche* to undermine the messages of private organizations, this Court should find that requiring private organizations that would not exist but for their opposition to abortion to disclaim what they do not profess to do or advertise for abortion-related services cannot be considered a compelling government interest.

C. The Act is not narrowly tailored to achieve a compelling government interest.

The Act also fails to survive strict scrutiny because the compelled disclosures are not narrowly tailored to providing all California women with information on reproductive health services. Instead, the Act is focused on silencing pregnancy centers that allegedly "employ 'intentionally deceptive advertising and counseling practices that often confuse, misinform, and even intimidate women from making fully-informed, time-sensitive decisions about critical health care.'" JA39, JA84-85. Incredibly, California's chosen method of promoting its abortion-related services is to compel

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[17] Nor is the speech of private organizations covered by the Act best understood as professional speech. While government may regulate speech in certain traditional professions, *Lowe v. S.E.C.*, 472 U.S. 181, 228 (1985) (White, J., concurring in the judgment), the organizations covered by the Act do not practice a "profession" in the usual sense. Moreover, even if certain speech is designated professional speech (due to licensing requirements or the like), because the counseling and services are free-of-charge, strict scrutiny is the proper standard of constitutional review for *pro bono* speech. *In re Primus*, 436 U.S. 412, 437-38 (1978); *Button*, 371 U.S. at 438-39.

licensed pro-life facilities to post advertisements for the very services that these centers exist to oppose. This requirement is simultaneously overbroad by compelling such speech from every licensed pro-life facility, and underinclusive by applying only to those clinics that stand in opposition to abortion.

Thus, the Act fails to survive strict scrutiny because it is not narrowly tailored to prevent the alleged deception that it purports to combat, let alone an interest of the highest order. Strict scrutiny requires a law to "target[] and eliminate[] no more than the exact source of the 'evil' it seeks to remedy." *Frisby v. Schultz*, 487 U.S. 474, 485 (1988). The compelled disclosures, however, apply to all pregnancy centers without reference to whether any center has engaged in, or even been accused of, "deception." Rather, the Act compels all pro-life licensed facilities—which exist primarily to offer alternatives to abortion—to instead advertise affordable access to the same. Such an overly broad requirement places an unwarranted and unconstitutional burden on these centers' rights to free speech by undermining their life-affirming message. As this Court has explained, "[b]road prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *Riley*, 487 U.S. at 801 (internal quotations and citations omitted). Because the compelled disclosures lack such precision and instead seek to burden all licensed pro-life facilities, the Act is not narrowly tailored to achieve its stated purpose.

The Act's compelled disclosures must also be "disseminate[d] to clients on site and in any print and digital advertising materials including Internet Web sites." CAL. HEALTH & SAFETY CODE § 123472(b). Under strict scrutiny, requiring unlicensed facilities to include this disclosure in their advertisements "must be actually necessary" to solve an "actual problem" that the state is facing. *Brown*, 564 U.S. at 799. Here, however, this superfluous requirement has only the effect of making advertising for these unlicensed facilities cost prohibitive since the disclaimer must be "provided in English and in the primary threshold languages for Medi-Cal beneficiaries as determined by State Department of Health Care Services for the county in which the facility is located." In such counties, the included content of these additional languages will double, triple, or even quadruple the length of the entire advertisement. *See* Cal. Dep't of Health Care Services, "Medical Eligible with Threshold Languages by County," *available at* http://www.dhcs.ca.gov/dataandstats/statistics/Documents/Threshold_Language_Brief_Sept2016_ADA.pdf (last accessed Jan. 15, 2018). In Los Angeles County, this would require the compelled disclosure requirements of unlicensed facilities to be repeated in thirteen languages. *Id.* Thus, the alleged "one sentence long" disclaimer (Pet.App.38) is not so circumscribed and unobtrusive. California has other means by which to transmit this information than by requiring a conspicuous and eye-catching posting at the beginning of every pro-life clinic's encounter with a potential client and distribution of their life-affirming message.

Similarly, as discussed above, the two exemptions in the Act are so vast that the ultimate effect is to require only those clinics opposed to abortion to make and display compelled disclosures. On their face, the compelled disclosures are fatally underinclusive. Consequently, the speech requirement necessarily only applies to pro-life facilities that offer pro-life counseling, care, and services as alternatives to abortion. Such "[u]nderinclusiveness raises serious doubts about whether the government is in fact pursuing the interest it invokes rather than disfavoring a particular speaker or viewpoint." *Brown*, 564 U.S. at 802. California cannot claim that placing such burdens on all pro-life facilities is necessary to ensure that "all California women . . . have access to reproductive health services" while allowing licensed clinics that offer abortion-related services to forgo the same requirement. The overt underinclusiveness indicates an effort to silence or undermine a particular group of disfavored speakers by placing undue burdens upon their ability to advertise or communicate with potential clients. In light of such patently discriminatory effects, the Act fails to satisfy strict scrutiny. *Id.* ("The consequence is that its regulation is wildly underinclusive when judged against its asserted justification, which in our view is alone enough to defeat it.").

Even if the compelled disclosures were not unconstitutionally over- and underinclusive, the Act nevertheless fails to satisfy strict scrutiny because there are less restrictive means that the government could employ to spread its chosen

abortion message. While the Ninth Circuit found that dissemination of the compelled disclosures "directly" to persons entering a clinic "is an effective means of informing women about publicly-funded pregnancy services," that conclusion utterly fails to consider California's lack of pursuit of other, less restrictive, actions available to the state. *See Playboy*, 529 U.S. at 813 ("If a less restrictive alternative would serve the Government's purpose, the legislature must that alternative.").

Moreover, "the First Amendment does not permit the State to sacrifice speech for efficiency." *Riley*, 487 U.S. at 795. The Act's legislative record, which the Ninth Circuit favorably cited, shows a speech regulation chosen for the sake of efficiency. JA54, JA65, JA70 (claiming that compelled speech was the "most effective way to ensure that women quickly obtain the information and services they need to make and implement timely reproductive decisions"); *see also* Pet.App.7, 33. The First Amendment is not controlled by "an ad hoc balancing of relative social costs and benefits." *United States v. Stevens*, 559 U.S. 460, 470 (2010).

In this compelled speech case, California itself may "communicate the desired information to the public without burdening a speaker with unwanted speech." *Riley*, 487 U.S. at 800. California can pay for a public advertising campaign rather than commandeering the walls, advertisements, and budgets of private organizations who disagree with the government on that precise message. While the Ninth Circuit acknowledged that alternatives—such as an advertising campaign—exist, it avoided that inquiry by adopting the wrong level of

scrutiny and discarding the least-restrictive means test. Under the heightened strict scrutiny standard, however, that is not the case. *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 373 (2002) ("If the First Amendment means anything, it means that regulating speech must be a last-not first resort. Yet here it seems to have been the first strategy the Government thought to try."). Thus, the availability of state-funded medical services can be communicated through less restrictive means and, therefore, the Act is insufficiently tailored to satisfy strict scrutiny.[18]

CONCLUSION

This Court should reverse the Ninth Circuit's refusal to enjoin the Act.

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[18] Even under the lesser standard of intermediate scrutiny, the government "must show at least that the statute directly advances a substantial governmental interest and that the measure is drawn to achieve that interest." *Sorrell*, 564 U.S. at 572. "There must be a 'fit between the legislature's ends and the means chosen to accomplish those ends.'" *Id.* (citation omitted). Here, California may take it upon itself to advertise available medical services for women and funding for abortions, or provide lists of licensed health-related facilities, through countless forms of media, but chooses instead to burden only a select group of disfavored speakers who oppose abortion with mandatory disclosures. No part of the Act is fit to achieve any purpose other than one that is unconstitutional: to alter the manner and method of pro-life organizations' speech and correspondingly undermine their life-affirming message. Thus, the Act cannot even survive the lesser standard of intermediate scrutiny.

Respectfully submitted,

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