

No. A170267

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

ADAMMA ISON, DENISE GRIFFIN, ELINOR DEKOVEN,
JACOB AMAYA, KENNETH W. HARRISON, CARLA JACKSON,
SIDNEY SCHOLL, CHRISTINE MUSTHALER, JAMIE PETTIT,
MELANIE BARBER, AND ANNA L. DILLINGHAM,

PETITIONERS AND APPELLANTS,

V.

COMMISSIONER OF THE CALIFORNIA
DEPARTMENT OF INSURANCE,

RESPONDENT,

FARMERS INSURANCE EXCHANGE, AND MID-CENTURY
INSURANCE COMPANY,

INTERVENORS.

On Appeal from an Order of the Trial Court of the State of
California, County of Alameda, Case No. 22CV008022
The Honorable Evelio Grillo

**APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE*
BRIEF AND [PROPOSED] *AMICUS CURIAE* BRIEF OF
THE CONSUMER FEDERATION OF AMERICA ON
MARITAL STATUS IN CALIFORNIA AUTO INSURANCE
PRICING AND UNDERWRITING IN SUPPORT OF
PETITIONERS-APPELLANTS**

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**APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE*
BRIEF IN SUPPORT OF PETITIONERS-APPELLANTS**

TO THE PRESIDING JUSTICE:

Pursuant to California Rule of Court, Appellate Rule 8.200(c), the Consumer Federation of America respectfully requests leave to file the accompanying brief as *amicus curiae* in this proceeding on the topic of marital status in California auto insurance pricing and underwriting in support of Petitioners-Appellants Adamma Ison, Denise Griffin, Elinor Dekoven, Jacob Amaya, Kenneth W. Harrison, Carla Jackson, Sidney Scholl, Christine Musthaler, Jamie Pettit, Melanie Barber, and Anna L. Dillingham. A copy of the proposed *amicus* brief accompanies this application.

The proposed *amici* is an association of approximately 200 national, state, and local nonprofit consumer organizations who work to advance the consumer interest through research, advocacy, and education. Their work includes public policy, regulatory, and market accountability strategies for making insurance affordable and accessible for all consumers, combatting unfair discrimination, and ensuring that coverage meets the expectations and needs of consumers in the insurance market.

The proposed *amici* submit the proposed brief in order to provide the Court further background and context for the public interest in prohibiting the use of marital status as an auto insurance rating factor in California. The brief begins with important background information describing the use of marital status in auto insurance pricing. It then demonstrates how

single, divorced, or widowed drivers may often pay significantly higher premiums compared to married drivers in California under the current regulations that authorize its use. Finally, the brief shows how this practice and its resulting economic impacts are unfairly discriminatory and why this Court should reverse the order of the trial court in this matter.

No party or counsel for a party in the pending case authored the proposed *amicus* brief in whole or in part or made any monetary contribution intended to fund its preparation or submission. *See* Cal. Ct. R. 8.200(c)(3).

STATEMENTS OF INTEREST OF THE PROPOSED *AMICI*

The Consumer Federation of America is an association of approximately 200 national, state, and local nonprofit consumer organizations. Founded in 1968, CFA works to advance the consumer interest through research, advocacy, and education. CFA advocates on behalf of consumers throughout the country, with a particular focus on low-income consumers. While we research and advocate beyond personal lines insurance, our work centers on the insurance products that American consumers are required to purchase by law, as with auto insurance, or by lenders, as with homeowners insurance. For decades CFA worked on insurance policy under the direction of J. Robert Hunter, a former Federal Insurance Administrator and former Texas Insurance Commissioner. Our insurance work focuses on public policy, regulatory, and market accountability strategies for making insurance affordable and accessible for all consumers,

combatting unfair discrimination, and ensuring that coverage meets the expectations and needs of consumers in the insurance market.

CFA's Director of Insurance Douglas Heller serves as a member of the United States Department of the Treasury's Federal Advisory Committee on Insurance and as a Public Member of the California Automobile Assigned Risk Plan Advisory Board. He also serves on the Executive Committee of the nonprofit Coalition Against Insurance Fraud. CFA's Research and Advocacy Associate Michael DeLong is a member of the Nevada Division of Insurance's Property and Casualty Advisory Committee and a funded Consumer Representative with the National Association of Insurance Commissioners (NAIC). CFA collects, examines, and analyzes data from a variety of sources, including public records, vendors of insurance industry data, and the insurance companies themselves. In recent years CFA has issued numerous reports on the use of socioeconomic rating factors in auto insurance, auto insurance affordability, and unfair discrimination in insurance markets.¹ In 2020, CFA purchased and analyzed a data set from Quadrant Information Services, LLC containing auto insurance premium data charged by the largest insurers in the United States. This premium data set

¹ See <https://consumerfed.org/cfa-studies-on-the-plight-of-low-and-moderate-income-good-drivers-in-affording-state-required-auto-insurance/> for a list of CFA reports.

became the foundation for CFA's report on credit information in auto insurance and its harmful effects on consumers.²

As a result of CFA's extensive expertise, research, and analysis, CFA advocates in legislative and regulatory proceedings for consumer protection-oriented reforms and rules, including those banning marital status in insurance pricing. CFA has also submitted numerous *amicus* briefs before state and federal courts on insurance and other topics. As we describe herein, so long as the marital status factor remains in use, consumers remain subject to discrimination proscribed by California law. CFA, therefore, has a direct interest in this case, which impacts the consumers whose interests we represent and will impact the organization's work protecting consumers in the insurance market. CFA's extensive experience, outlined above, will assist the Court in analyzing the relevant issues and resolving the matter at hand.

The Consumer Federation of America respectfully requests permission to file the accompanying brief as *amici curiae*.

² Douglas Heller & Michael DeLong, The One Hundred Percent Penalty: How Auto Insurers' Use of Credit Information Increases Premiums for Safe Drivers and Perpetuates Racial Inequality, The Consumer Federation of America <https://consumerfed.org/reports/the-one-hundred-percent-penalty-how-auto-insurers-use-of-credit-information-increases-premiums-for-safe-drivers-and-perpetuates-racial-inequality/>.

Respectfully submitted,

Dated: August 15, 2025

By: /s/Elliot Conn

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BRIEF OF THE *AMICI CURIAE*

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INTRODUCTION

The Consumer Federation of America (“CFA”) submits this brief to assist the Court in resolving the lawsuit filed against the California Department of Insurance (“CDI”) regarding insurers’ use of marital status in auto insurance pricing and underwriting.

Stated plainly, the use of marital status in the pricing of auto insurance results in unfair and inflated premiums for unmarried, divorced, and widowed consumers. In addition, because consumers who are people of color are less likely to be married than white consumers, insurance underwriting and pricing based on marital status also has an additional discriminatory, disproportionate impact on communities of color. At bottom, there is simply no fundamental imperative that insurers discriminate among California consumers based upon marital status, and no legitimate business interest³ that overcomes the State’s guarantees against such discrimination in the Unruh Civil Rights Act and the Rosenthal Auto Insurance Nondiscrimination Law. *See* Cal. Civ. Code § 51(b); Cal. Ins. Code § 11628.

As such, this Court should reverse the order of the trial court in this matter, and issue the relief sought by the Petitioners-Appellants.

³ In any event, as noted by the Petitioners-Appellants, a “legitimate business interest” defense is irrelevant where, as here, the regulation at issue targets an enumerated prohibited characteristic. *See* Petitioners-Appellants’ Reply Br. at 54-58.

ARGUMENT

A. The Current Regulatory Basis for the Use of Marital Status in Auto Insurance Pricing in California.

The Insurance Rate Reduction and Reform Act, better known as Proposition 103, was approved by California voters on November 8, 1988. The law governs most lines of property and casualty insurance in California, including private passenger auto insurance, and creates a regulatory system whereby the Insurance Commissioner must approve rate and rule applications, including class plans, which present insurers' premium setting methodology, before insurance companies can implement rates and rating methodologies. *See* Cal. Ins. Code § 1861.05. Commonly known as the “prior approval” system, this regulatory regime, along with other aspects of the reforms instituted by Proposition 103, have saved Californians billions of dollars in premiums and enhanced fairness in the market over the last three decades.⁴

California, along with every other state except New Hampshire, requires drivers to purchase and maintain private passenger auto insurance. *See* Cal. Veh. Code § 16020. In addition, California, through Proposition 103, also regulates the manner in which insurers set prices for insurance. Section 1861.05 of Proposition 103 establishes that “No rate shall be approved or remain in effect which is excessive, inadequate, or

⁴ J. Robert Hunter & Douglas Heller, Auto Insurance Regulation: What Works 2019, The Consumer Federation of America, <https://consumerfed.org/wp-content/uploads/2019/02/auto-insurance-regulation-what-works-2019.pdf>.

unfairly discriminatory or otherwise in violation of this chapter.”
Cal. Ins. Code § 1861.05(a). Complementing that protection are §
1861.02 and § 1861.03. Section 1861.02 of Proposition 103 sets
out the factors for use in setting auto insurance premiums. Cal.
Ins. Code § 1861.02(a). Section 1861.02(a)(1)-(3) addresses certain
“mandatory” rating factors that must be used:

Rates and premiums for an automobile insurance
policy, as described in subdivision (a) of Section 660,
shall be determined by application of the following
factors in decreasing order of importance:

- (1) the insured’s driving safety record.
- (2) The number of miles he or she drives
annually.
- (3) The number of years of driving experience
the insured has.

Id. In addition, § 1861.02(a)(4) provides for certain other
“optional” rating factors:

(4) Those other factors that the Commissioner may
adopt by regulation and that have a substantial
relationship to the risk of loss. The regulations shall
set forth the respective weight to be given each factor
in determining automobile rates and premiums.
Notwithstanding any other provision of law, the use
of any criterion without approval shall constitute
unfair discrimination.

Id. Section 1861.03(a) subjects insurance pricing to the Unruh
Civil Rights Act, requiring, in relevant part:

The business of insurance shall be subject to the laws
of California applicable to any other business,
including, but not limited to, civil rights
laws (Sections 51 to 53, inclusive, of the Civil Code)...

Cal. Ins. Code § 1861.03. In sum, Proposition 103 prohibits
insurers from using any factors other than those described in

1861.02 (a)(1)-(3) to adjust an individual consumer’s premium unless, as provided in section 1861.02(a)(4), that factor has demonstrable and substantial relationship to the risk of loss, has been adopted by regulation, *and* as long as its use is not in violation of California’s civil rights laws.

While California’s regulations implementing § 1861.02(a)(4) do not authorize the use of several industry-preferred rating factors that do not relate to driving or the risk associated with the make and safety of vehicles – namely, non-driving factors such as sex or gender or credit history⁵ – the current regulations do purport to authorize insurers to rate auto insurance based on the “Marital status of the rated driver.” *See* Cal. Code Regs. tit. 10, § 2632.5.

B. How Marital Status Impacts Auto Insurance Premiums in California.

The negative impact of using marital status to price auto insurance in California is not merely theoretical. For many years, the Consumer Federation of America has tested the impact of various driving-related, socio-economic, and personal

⁵ Commissioner Issues Regulations Prohibiting Gender Discrimination in Auto Insurance Rates, California Department of Insurance, <https://www.insurance.ca.gov/0400-news/0100-press-releases/2019/release003-19.cfm>; Douglas Heller & Michael DeLong, The One Hundred Percent Penalty: How Auto Insurers’ Use of Credit Information Increases Premiums for Safe Drivers and Perpetuates Racial Inequality, The Consumer Federation of America, <https://consumerfed.org/reports/the-one-hundred-percent-penalty-how-auto-insurers-use-of-credit-information-increases-premiums-for-safe-drivers-and-perpetuates-racial-inequality/>.

characteristics on the premiums charged to drivers in California and across the nation. This includes the use of marital status. For example, in 2015 CFA conducted an analysis of pricing by six of the nation's largest auto insurers in ten cities across the country, including Oakland, California.⁶ Using a technique akin to a “secret shopper” test, in which we develop a prospective customer profile and use insurance websites to solicit a premium quote for that customer, varying only one driver characteristic in order to test the pricing effects of that characteristic, we found that in the California tests, four out of six companies charged higher premiums to single, separated, and divorced drivers than they charged for married drivers. Two of the six companies tested also imposed a surcharge on widowed drivers – a “widow penalty” as we described it when we discovered it.

We conducted a similar secret shopper test for this brief. Additionally, later in this brief, we provide evidence of the surcharge on unmarried drivers imposed by two of the tested companies in those insurers' publicly-filed rating and/or rule manuals, which are submitted with the state-required “Auto Class Plans” that are meant to disclose precisely the insurers' rating methodologies.

⁶ New Research Shows That Most Major Auto Insurers Vary Prices Considerably Based on Marital Status, Consumer Federation of America, https://consumerfed.org/press_release/new-research-shows-that-most-major-auto-insurers-vary-prices-considerably-depending-on-marital-status/.

1. Premium Testing Reveals Pricing Differences Among Drivers with Different Marital Statuses.

The marital status penalties for single, divorced, and widowed drivers persist in California today, as we will illustrate below. In April 2025, CFA conducted tests of five large auto insurers to determine if pricing differed among drivers with different marital statuses, even when all other characteristics – including driving history – were held constant. To test the impact of marital status on premiums, CFA completed the premium quote questionnaires that these insurers – Allstate, GEICO, Mercury, Progressive, and State Farm – provide on their websites. For each test, we sought a quote for a driver with a clean driving record and all characteristics held constant, except for marital status, which we tested for drivers who are single, married, divorced, and widowed.

As Figure 1 illustrates, carriers explicitly ask customers to provide their marital status. Other than varying this response to calculate the difference in premium based on marital status, every test we conducted incorporated consistent responses to every other question asked by the company.

Figure 1: Screenshot of GEICO Website Marital Status Question for Online Premium Quote

Figure 2 presents the six-month premium quoted for minimum limits auto insurance from the six companies for each of the four marital statuses tested.⁷

Figure 2: Six Month Premiums Charged by California Auto Insurers Based on Marital Status (Surcharged Policies are Highlighted)

Insurance Company	Six Month Premium for	Six Month Premium for	Six Month Premium for	Six Month Premium for
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⁷ The premium quotes in these tests are for California’s minimum required liability coverage. The driver profile for this information is a 50-year-old woman with a perfect driving record. The driver has a high school diploma, works as a retail cashier, rents her home, and drives a 2016 Honda Civic that they own. Her one-way commute is 10 miles per day, 5 days per week, for a total of 13,000 miles per year. The tests were conducted on April 15, 2025.

	Married Driver	Single Driver	Divorced Driver	Widowed Driver
Allstate	\$792.00	\$820.00	\$820.00	\$792.00
GEICO	\$250.40	\$331.40	\$331.40	\$264.10
Mercury*	\$940.88	\$1,048.88	\$1,048.88	\$1,048.88
Progressive	\$414.00	\$421.00	\$421.00	\$421.00
State Farm	\$720.65	\$720.65	\$720.65	\$720.65

*Because, pursuant to its filed rating rules, Mercury does not apply the widow penalty if a driver has been licensed for 34 years, for testing Mercury's premium, our test subject is a driver who was first licensed at age 17, rather than 16, and has thus been licensed for only 33 years, for which the widow penalty still applies. Single and divorced drivers continue to be penalized relative to married drivers regardless of their driving tenure.

In each of the tests reported in Table 1, the customer has maintained a perfect driving record – no at-fault crashes, no moving violations, and no claims whatsoever – for more than 30 years. Despite that pristine record, four of the five insurers impose a surcharge for being unmarried, with three of the companies charging more to the driver who is not married solely due to the death of their spouse.

At bottom, the quotes set forth above illustrate that there is no inherent need to use marital status in order to fairly capture risk. Indeed, the marital status rating factor is (apparently) so inessential that State Farm, the nation's largest auto insurer, does not use this factor at all when providing a quote to this prospective driver. And Allstate, for its part, does not surcharge widows. Nor is there any apparent consistency among the size of marital status surcharges. Indeed, the range of surcharges for

unmarried drivers ranges from fairly small to quite significant. All of these carriers have large books of business such that the risk associated with a classification with only a few categories (as opposed to a factor such as vehicle type with thousands of possible categories) should not generate such different interpretations of riskiness associated with each category of the class.

This differing treatment highlights insurers' ability to capture, measure risk, and charge for risk without the discriminatory use of marital status. Put another way, if the business case for using marital status as a rating factor use is so overwhelming that Californians should expect to set aside civil rights, we would expect that all companies would feel compelled to use the factor and give it significant weight, and we would not expect the risk assessment of a 50-year-old unmarried driver to range from so risky as to generate a significant penalty (GEICO), to only so risky as to demand a surcharge of less than two percent (Progressive), to not risky enough to alter rates at all based on marital status (State Farm).⁸

2. Class Plan Filings with the State Also Reveal Surcharges.

The use of marital status by California auto insurers is also confirmed in regulatory filings, as we would expect. In accordance with the requirements of Proposition 103, insurers file the "class plans" in which they present their rating methodology, which the

⁸ State Farm does impose a marital status surcharge on unmarried drivers with 11 or fewer years of driving experience.

Department of Insurance reviews for, among other things, compliance with Insurance Code § 1861.02. In these class plans, any rating factors used must be disclosed along with the impact of the use of those factors on a customer’s premium depending upon the characteristic of the customer. Cal. Code Regs. tit. 10, § 2632.5.

For example, in its filing #MERY-134004812, Mercury Insurance reveals that to determine the premium for a married driver, the bodily injury coverage (BI) base rate is multiplied by 0.87 and thereby reduced, while for an unmarried driver the base rate is increased by a factor of 1.02. *See* Figure 3, which are screenshots taken of page 5 of “MIC Rate Manual Proposed Clean Ed08-22-2024_1.” Also in the same filing, Mercury explains that it surcharges widows unless they have 34 or more years of driving experience. In the filed document “MIC Auto Rule Manual Current Ed07-03-2024.pdf,” the company explains “Widows and Widowers with 34 years of driving experience and over will be classified as married.”

Figure 3

Mercury Insurance Company		Rate Manual					
Parameter	Level	BI	PD	UMBI	MP	COMP	COLL
Marital Status	Married	0.870	0.850	0.990	0.930	0.870	0.913
Marital Status	Single	1.020	1.010	1.010	1.090	1.030	1.020

Similarly, GEICO, in its class plan filing #GECC-133926804 with the Department of Insurance, reveals the differentiated pricing attributable to marital status. In the excerpted segments from that filing, the company discloses that it increases the bodily injury liability factor (BIFctr) and, thereby

the premium for a married driver with 14 to 18 years of driving experience (ages 30-34 if first licensed at age 16) by 3.3 percent over the base rate (Figure 4) and increases the bodily injury liability premium by 24.3 percent over the base if that same driver is unmarried (Figure 5). The highlighted boxes identifying the bodily injury liability factors have been added for emphasis.

Figure 4

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GEICO GENERAL INSURANCE COMPANY
CALIFORNIA RATE PAGES EFFECTIVE: NEW BUSINESS 02/05/2019 RENEWALS 02/05/2019 RATE GEN 09
[CLASS FACTORS](#)
[Click here to go to Rating Worksheet](#)

**Gender: M=Male, F = Female, X= Non-Binary
**OperTypeCd: P = Primary, T = Occasional (Away at School)
**VehDrivenFor: B = Business Use, P = Other Use
**UM uses AllOtherCovgFctr
**Years = the operator's total years driving experience.
**Years: 18 = 14-18, 23 = 19-23, 28 = 24-28, etc.
**Excess Vehicles use Years = 999

MaritalStatus	Gender	OperTypeCd	Years	VehDrivenFor	BIFctr	PDFctr	MedFctr	UMPDFctr	AllOtherCovgFctr
M	F	P	18	P	1.033	1.069	1.066	0.997	1.005

Figure 5

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GEICO GENERAL INSURANCE COMPANY
CALIFORNIA RATE PAGES EFFECTIVE: NEW BUSINESS 02/05/2019 RENEWALS 02/05/2019 RATE GEN 09
[CLASS FACTORS](#)
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**VehDrivenFor: B = Business Use, P = Other Use
**UM uses AllOtherCovgFctr
**Years = the operator's total years driving experience.
**Years: 18 = 14-18, 23 = 19-23, 28 = 24-28, etc.
**Excess Vehicles use Years = 999

MaritalStatus	Gender	OperTypeCd	Years	VehDrivenFor	BIFctr	PDFctr	MedFctr	UMPDFctr	AllOtherCovgFctr
S	F	P	18	P	1.243	1.215	1.112	1.13	1.141

It is also notable that the company shows the rate relativities for Female, Male, and Non-binary drivers separately, but does not vary rates by gender. The company, and all auto insurers doing business in California, stopped varying rates

based on gender after the adoption of the Commissioner's 2019 amendment to the regulations (REG-2018-00020) governing rating factors (Cal. Code Regs. tit. 10, § 2632.5) prohibiting the use of sex or gender in pricing. In the Initial Statement of Reasons for that rule, which was affirmed in the final rulemaking decision approving the prohibition on the use of gender, the Commissioner concluded: "These numerous concerns weigh in favor of conforming the optional rating factors to the spirit of the Unruh Civil Rights Act by eliminating gender."⁹

It is our view that "conforming the optional rating factors to the spirit of the Unruh Civil Rights Act" by eliminating the use of marital status is also required.

3. The Use of Marital Status Disproportionately Harms Black and Latino Consumers.

The use of marital status as an auto insurance rating factor has adverse consequences even beyond unfairly inflating the premiums of unmarried California consumers. Marital status also serves as a proxy for race, leading to pricing that disproportionately increases premiums for Black, Latino, and Native American drivers.

Figure 6 below shows, by race or ethnicity, the marital status of Californians as a percentage of each population. The data are from "Census Bureau data table S1201 - Marital Status"

⁹ Initial Statement of Reasons: Gender Non-Discrimination in Automobile Insurance Rating, California Department of Insurance, <https://consumerfed.org/wp-content/uploads/2019/01/california-department-of-insurance-research.pdf>.

from the U.S. Census Bureau, 2019-2023 American Community Survey 5-Year Estimates.

Figure 6: Percentage of Population By Marital Status, By Race

Race or Ethnicity	Now married (except separated)	Widowed	Divorced	Separated	Never married
Black or African American	29.4%	5.1%	11.8%	2.7%	51.0%
American Indian and Native Alaskan	40.2%	3.8%	9.0%	2.9%	44.1%
Asian	56.1%	5.1%	5.8%	1.2%	31.8%
Hispanic or Latino origin (of any race)	42.0	3.3%	7.0%	2.4%	45.2%
White alone, not Hispanic or Latino	50.5%	6.1%	11.8%	1.4%	30.2%

When insurers charge higher premiums to unmarried Californians, Black drivers face surcharges 70% of the time, while fewer than half of white drivers pay more because of their marital status. Native Americans pay the surcharge nearly 60% of the time, and Latino Californians are penalized due to marital status 58% of the time. To the extent that some companies provide relief from the unmarried penalty for widowed drivers,

that benefit accrues to white drivers more than any other race or ethnicity.

C. The Court Should Prohibit the Use of Marital Status as an Auto Insurance Rating Factor in California.

The Consumer Federation of America strongly agrees with the position of the Appellants-Petitioners that the use of marital status as a rating factor in California auto insurance constitutes unlawful discrimination in direct conflict with the Unruh Civil Rights Act and the Rosenthal Auto Insurance Nondiscrimination Law. *See* Cal. Civ. Code § 51(b); Cal. Ins. Code § 11628.

As we have shown, the use of marital status to price auto insurance results in significant, unfair rate surcharges for Californians who are single, divorced, or widowed. It also has the significant additional consequence of raising rates for Black, Native American, and Hispanic drivers. Contrary to the position of the Insurance Commissioner, there is simply no “legitimate business reason” for California auto insurers to discriminate on the basis of marital status, nor the presence of any “compelling social policy” for doing so.¹⁰ Notably, the use of marital status for pricing auto insurance is outright prohibited in some states, including Massachusetts and Michigan, and prohibited in certain cases in other states, including Maryland, Pennsylvania, and Rhode Island. *E.g.*, Mass. Gen. Laws Ann. ch. 175, § 22E; Mich. Comp. Laws Ann. § 500.2111. This even further demonstrates

¹⁰ In addition, as noted by the Petitioners-Appellants, a “legitimate business interest” defense is irrelevant where, as here, the regulation at issue targets an enumerated prohibited characteristic. *See* Petitioners-Appellants’ Reply Br. at 54-58.

that there is nothing essential about marital status that makes rating auto insurance without it infeasible, or unprofitable.

Unfortunately, this situation is not new. Indeed, there was a time when an actuarial case was made to justify differential pricing on the basis of race. As recounted in a recent factsheet entitled “Milestones in Racial Discrimination within the Insurance Sector,” the National Association of Insurance Commissioners (“NAIC”) in 1940 published a “Study of Mortality.”¹¹ “This study differentiated mortality rates by race. These rates would be used by insurers until race-based premiums were outlawed (and in some cases, longer than that).”¹² In justifying the use of race-based actuarial tables for pricing, the nation’s insurance commissioners reported (as published in 1940):

Industrial mortality on [Black] lives improved considerably during the thirteen year period, but it remained at approximately the same level as compared to white industrial mortality, for the latter improved also. [Black] mortality averaged 83% higher than white, but at the important insurance ages between 10 and 40 it was well over twice as high.¹³

¹¹ <https://naic.soutrnglobal.net/Portal/Public/en-US/RecordView/Index/12108>

¹² Eryn Campbell, et al., Milestones in Racial Discrimination within the Insurance Sector, National Association of Insurance Commissioners, <https://content.naic.org/sites/default/files/cipr-report-milestones-racial-discrimination.pdf>.

¹³ Report of the Committee to Study the Need for a New Mortality Table and Related Topics 105 (1939), <https://naic.soutrnglobal.net/Portal/Public/en-US/DownloadImageFile.ashx?objectId=4844&ownerType=0&ownerId=12108>.

Tellingly, this practice eventually ended *not* because the actuarial data fundamentally changed; it ended because public policy concerning the intersection of civil rights and business interests changed.

In fact, in 2021, the Journal of the American Medical Association published a “Comparison of All-Cause Mortality Rates and Inequities Between Black and White Populations Across the 30 Most Populous US Cities,” which found that “[t]he all-cause mortality rate among Black populations was 24% higher than among White populations nationally.”¹⁴ So while the mortality gap has narrowed since the 1940 NAIC publication, an actuary unconstrained by civil rights laws might still point to this data as *necessitating* pricing variation by race for life insurance policies in California and elsewhere in order to ensure *fair* pricing. Yet, based on our decades of work studying and engaging in insurance regulation, we do not believe *any* regulator, or court for that matter, would consider the difference in mortality rates a valid reason to overcome the safeguards against protected class discrimination. However, that line of reasoning – the actuarial data necessitates a rule that allows pricing variation by marital status – is at the heart of the state’s effort to defend the dismissal of statutory civil rights protections.

Whether or not there are actuarial data that an insurance company or regulator could point to in support of race-based

¹⁴ Maureen R. Benjamins, et al., *Comparison of All-Cause Mortality Rates and Inequities Between Black and White Populations Across the 30 Most Populous US Cities*, J. AMERICAN MED. ASSOC., <https://pmc.ncbi.nlm.nih.gov/articles/PMC9386890/>.

insurance pricing is not the point. Unruh protections prohibit it. Irrespective of correlations that might be found, insurers develop supportable insurance rates and premiums without using a customer's race or any data that measures risk as a function of race. In that same vein, the insurance industry has no fundamental need to violate other civil rights in order to develop supportable insurance rates and premiums.

The stated purpose of Proposition 103, is “to protect consumers from arbitrary insurance rates and practices, to encourage a competitive insurance marketplace, to provide for an accountable Insurance Commissioner, and to ensure that insurance is fair, available, and affordable for all Californians.”¹⁵ As we have explained, the use of marital status in auto insurance pricing is arbitrary and unfair, and makes insurance less affordable for most Californians.

CONCLUSION

For the reasons stated herein, The Consumer Federation of America urges this Court to require the California Department of Insurance to fully enforce the civil rights of Californians by prohibiting the use of marital status in auto insurance underwriting and rating.

¹⁵ Proposition 103: Insurance Rate Reduction and Reform Act, <https://consumerwatchdog.org/resources/prop103.pdf>.

Respectfully submitted,

Dated: August 15, 2025

By: /s/Elliot Conn

Elliot Conn (SBN 279920)

CONN LAW, PC

Counsel for the

Amici Curiae

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.204(c) of the California Rules of Court, I hereby certify that the text of this Application and Proposed Brief contains 4,363 words, including footnotes, and excluding those items in Rule 8.204(c)(3). In making this certification, I have relied upon the word count of Microsoft Word, used to prepare the brief.

Dated: August 15, 2025

By: /s/Elliot Conn
Elliot Conn

PROOF OF SERVICE

I, Elliot Conn, am over the age of 18 years and not a party to this action. My business address is 100 Bush Street, Suite 1580, San Francisco, CA 94104.

On August 15, 2025, I served the Application for Leave to File *Amicus Curiae* Brief and [Proposed] *Amicus Curiae* Brief of The Consumer Federation of America on Marital Status in California Auto Insurance Pricing and Underwriting in Support of Petitioners-Appellants on all counsel of record via the Court's electronic filing system, TrueFiling.

I declare that under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Executed on August 15, 2025, at San Francisco, California.

Dated: August 15, 2025

By: /s/Elliot Conn
Elliot Conn