

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA and
STATE OF NEW JERSEY,

Plaintiffs,

v.

DONALD J. TRUMP, *et al.*,

Defendants.

Case No. 2:17-CV-04540-WB

Hon. Wendy Beetlestone

**BRIEF OF AMICI CURIAE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN;
SERVICE EMPLOYEES INTERNATIONAL UNION; AND 13 ADDITIONAL
PROFESSIONAL, LABOR, AND STUDENT ASSOCIATIONS, IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

INTEREST OF AMICI CURIAE.....1

ARGUMENT.....2

I. SUMMARY OF ARGUMENT.....2

II. INVALIDATION OF THE FINAL EXEMPTION RULES IS NECESSARY TO PREVENT HARM TO WOMEN IN EVERY STATE ACROSS THE COUNTRY.....5

 A. Nearly Half a Million Women Working for Hospitals Could Lose Coverage.....7

 B. Tens of Thousands of Female Students at Religiously-Affiliated Colleges and Universities Could Lose Coverage.....8

 C. Thousands of Women Working for Other Religiously-Affiliated Non-Profits Could Lose Coverage.....10

 D. Hundreds of Thousands of Women Working for Private, Non-Religiously-Affiliated Employers Could Lose Coverage.....11

 E. Women Nationwide Depend on the Contraceptive Coverage Benefit.....16

III. SEAMLESS NO-COST CONTRACEPTIVE COVERAGE IS ESSENTIAL TO WOMEN’S EQUALITY AND ADVANCEMENT.....16

 A. The Benefits of No-Cost Contraceptive Coverage Are Substantial.....16

 B. There Are No Comparable Alternatives to the Contraceptive Coverage Benefit.....18

 1. State Laws Will Not Fill the Gap Left by the Final Exemption Rules.....18

 2. Other Programs Are No Substitute for Seamless No-Cost Contraceptive Coverage.....19

 C. The Potential Harms From Losing Contraceptive Coverage, Even Temporarily, Are Significant and Irreversible for Women.....20

IV. CONCLUSION.....22

APPENDIX.....25

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Autocam Corp. v. Sebelius</i> , 730 F.3d 618 (6th Cir. 2013)	12
<i>Burwell v. Hobby Lobby Stores, Inc.</i> , 573 U.S. 682 (2014).....	3
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<i>Geneva Coll. v. Sebelius</i> , 988 F. Supp. 2d 511 (W.D. Pa. 2013).....	9
<i>Gilardi v. U.S. Dep’t of Health & Human Servs.</i> , 733 F.3d 1208 (D.C. Cir. 2013).....	12
<i>Grote v. Sebelius</i> , 708 F.3d 850 (7th Cir. 2013)	12
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INTEREST OF AMICI CURIAE¹

The Amici Curiae (“Amici”) are organizations that work on behalf of female employees and students throughout the United States.² These associations represent professional women, women in organized labor,³ women employed in various industries, social workers, teachers, students, and more. Amici have a strong interest in protecting no-cost contraceptive coverage so that women can strive for equal opportunities in education and in the American workforce.

Amici have a particular interest in the outcome of this litigation because they know that no-cost coverage of safe and reliable contraception is critical for women’s educational and professional success, as well as for women’s health and well-being. Amici include higher education associations for women that have an interest in this litigation because no-cost contraceptive coverage helps women reach their aspirations in higher education.⁴ Amici also include labor and professional organizations representing well over a million members in hundreds of occupations—from health workers to teachers to lawyers—in nearly every state. These organizations have an interest in this litigation because no-cost contraceptive coverage increases women’s ability to participate and succeed in the workplace.⁵

¹ No party’s counsel authored this brief in whole or in part. No party, party’s counsel, or other person contributed any money to fund the preparation or submission of this brief other than Amici and their counsel. All parties have consented to the filing of this *amicus* brief.

² For a full list of Amici and their statements of interest, *see* Appendix.

³ Workers represented by labor unions who are covered by collective bargaining agreements that require the employer to provide no-cost contraceptive coverage should not be at risk of losing this bargained-for benefit. However, they will be at increased risk of losing it in the future if their employers decide to bargain to change their health benefits in reaction to the Final Exemption Rules. Amici labor unions represent some workers who are at risk of losing contraceptive coverage immediately, including those whose collective bargaining agreements do not include no-cost contraceptive coverage and members who are working to form their union and are not yet covered by collective bargaining agreements.

⁴ *See* Appendix, including Statement of Interest for Amicus Curiae the American Association of University Women.

⁵ *See* Appendix, including Statements of Interest for Amici Curiae the American Federation of State, County and Municipal Employees and Service Employees International Union.

ARGUMENT

I. SUMMARY OF ARGUMENT

Amici support Plaintiffs' motion for summary judgment seeking to vacate the final contraceptive rules issued by Defendants on November 7, 2018 (the "Final Exemption Rules").⁶ Amici believe that Plaintiffs' motion must be granted to prevent significant harm that will occur if Defendants are permitted to enforce the Final Exemption Rules. The Final Exemption Rules are the final versions of the interim final rules issued by Defendants in 2017 (the "IFRs").⁷

Uninterrupted coverage of reliable, no-cost contraception allows women to strive for professional and educational equality. By facilitating their educations and careers, no-cost contraception coverage allows women to better care for themselves and their families. For these reasons, the Patient Protection and Affordable Care Act (the "ACA")⁸ requires employer-sponsored health insurance plans to cover all FDA-approved methods of contraception without burdening insured women with out-of-pocket costs (the "Contraceptive Coverage Benefit").

Because of the breadth of the Final Exemption Rules, it is foreseeable that hundreds of thousands—if not millions—of women throughout the country will face a loss of contraceptive coverage, with all the resulting harms that flow therefrom, if the Final Exemption Rules are not invalidated.⁹ As demonstrated below, approximately half a million women across the country work for religiously-affiliated hospitals; approximately 600,000 women attend religiously-

⁶ Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act, 83 Fed. Reg. 57,536 (Nov. 15, 2018) (the "Religious Exemption Rule"); Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act, 83 Fed. Reg. 57,592 (Nov. 15, 2018) (the "Moral Exemption Rule").

⁷ Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act, 82 Fed. Reg. 47,792 (Oct. 13, 2017) (the "Religious Exemption IFR"); Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act, 82 Fed. Reg. 47,838 (Oct. 13, 2017) (the "Moral Exemption IFR").

⁸ 42 U.S.C. § 18001, *et seq.* (2010).

⁹ HHS has increased its estimate of women potentially affected by the Final Exemption Rules from 31,700 to between 70,515 and 126,400 women. *See* Religious Exemption Rule at 57,578. Despite this increase, for the reasons set forth herein, Amici believe this estimate remains drastically underinclusive.

affiliated colleges and universities; and more than 36,000 women work for privately held, for-profit companies that have already opposed the Contraceptive Coverage Benefit. These figures provide *only a baseline estimate* of the number of women—including members of Amici—expected to be affected by the Final Exemption Rules. These estimates do not include the thousands of dependents of male and female employees and students, nor do they include employees of other types of non-profits and privately owned, for-profit entities that may opt to be exempted rather than use the accommodation process, nor those women whose insurance companies or corporate employers could drop coverage altogether under the Final Exemption Rules.

Before the Final Exemption Rules were issued, the Contraceptive Coverage Benefit exempted houses of worship with religious objections and their related auxiliaries, conventions, and church associations from offering contraceptive coverage.¹⁰ For religiously-affiliated employers and universities, the federal government created an accommodation, allowing the entity to opt out of providing contraceptive coverage while requiring that a health insurance provider or other third party provide employees and students seamless no-cost contraceptive coverage instead.¹¹ After *Burwell v. Hobby Lobby Stores, Inc.*,¹² closely-held corporations owned or controlled by persons with sincerely-held religious beliefs could also seek accommodations.¹³

The Final Exemption Rules significantly expand the previous exemptions, which were crafted to balance women's right to essential healthcare with the exercise of religious liberty. *First*, they exponentially increase the number of employers and universities that could deny

¹⁰ See Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 76 Fed. Reg. 46,621 (Aug. 3, 2011); Coverage of Certain Preventive Services Under the Affordable Care Act, 78 Fed. Reg. 8,456, 8,458 (Feb. 6, 2013). See also Plaintiffs' Motion for Summary Judgment, ECF No. 170, ("Pls.' Mot.") at 4-5.

¹¹ Accommodations in Connection with Coverage of Certain Preventive Health Services, 45 C.F.R. § 147.131(c)(2); see also Pls.' Mot. at 5.

¹² 573 U.S. 682 (2014).

¹³ Pls.' Mot. at 7-8.

coverage. The Religious Exemption Rule would allow virtually *all* private employers and universities, including large, for-profit companies, to deny no-cost contraceptive coverage to their employees and students.¹⁴ The Moral Exemption Rule, which would add an entirely new basis for denying coverage, applies to non-profit organizations and for-profit, privately held entities with “sincerely held moral convictions.”¹⁵ *Second*, the Final Exemption Rules would allow private employers and universities to claim exemptions without meaningful oversight, as entities could skip certifying their objections or notifying the federal government before dropping coverage.¹⁶ *Finally*, because the Final Exemption Rules provide exemptions—not accommodations—women who receive insurance coverage through objecting entities would no longer be guaranteed seamless, no-cost contraceptive coverage.¹⁷ And the Final Exemption Rules go even further than the interim rules enjoined by this Court last year; the Religious Exemption Rule now allows any private employer to disregard the Contraceptive Coverage Benefit by adopting a group health plan “established or maintained” by another objecting organization,¹⁸ and both Final Exemption Rules may be utilized by entities that object to “arranging for . . . [a] plan, issuer, or third party administrator that provides or arranges such coverage of payments.”¹⁹ Employees and students of entities claiming exemptions—including many members of Amici—and their dependents are at risk of losing this critical coverage altogether, and the Final Exemption Rules simply increase the risks threatened by the IFRs.

By providing virtually any private employer or university in the country the ability to drop the Contraceptive Coverage Benefit based on an undisclosed, “sincerely held” belief or an undefined objection to arranging for coverage, the Final Exemption Rules will thwart the Contraceptive Coverage Benefit’s purpose. The Final Exemption Rules threaten significant

¹⁴ *Id.* at 9-10.

¹⁵ *Id.* at 10.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Religious Exemption Rule at 57,560, 57,563–64.

¹⁹ Religious Exemption Rule at 57,537; *id.* at 57,593.

negative repercussions for the hundreds of thousands of women and families across the United States—including those represented by Amici—whose employers and universities object to providing contraceptive coverage.

II. INVALIDATION OF THE FINAL EXEMPTION RULES IS NECESSARY TO PREVENT HARM TO WOMEN IN EVERY STATE ACROSS THE COUNTRY

The potential impact of the Final Exemption Rules is vast. Before issuance of the Final Exemption Rules, many for-profit companies filed lawsuits challenging the Contraceptive Coverage Benefit and sought exemptions from it.²⁰ Several non-profits that were eligible for accommodations, including colleges and universities, challenged the accompanying notice requirement.²¹ These reactions to the Contraceptive Coverage Benefit and the accommodation process suggest that many for-profit and non-profit entities across the country will seek to utilize the Final Exemption Rules. But employers and universities that have already opposed the Contraceptive Coverage Benefit are, however, just the tip of the iceberg. The breadth of the Final Exemption Rules, and the uncertainty of what it means for an organization to have a “religious” or “moral” belief, means that any employer, including one with *no* religious mission, could be exempted.

Several categories of employers and universities could immediately take advantage of the Final Exemption Rules if they are not invalidated. *First*, religiously-affiliated non-profits, such as hospitals and universities, would be able to claim full exemptions, rather than accommodations, no longer guaranteeing seamless access to no-cost contraceptive coverage for female employees and students through their regular insurance plans.²² It is reasonable to conclude that hundreds of these hospitals and universities, many of which had previously

²⁰ See, e.g., Samantha Cooney, *46 Secular Companies That Don't Want to Cover Employees' Birth Control*, TIME INC., May 31, 2017, <http://motto.time.com/4797792/donald-trump-birth-control-companies/>; Abby Haglage, *After Hobby Lobby, These 82 Corporations Could Drop Birth Control Coverage*, THE DAILY BEAST (June 30, 2014), <https://www.thedailybeast.com/after-hobby-lobby-these-82-corporations-could-drop-birth-control-coverage>.

²¹ Haglage, *supra* note 20.

²² See Final Exemption Rules.

accepted the accommodation because they were not eligible for an exemption, would take advantage of the Final Exemption Rules.²³ *Second*, a potentially boundless range of secular for-profit corporations would be able to claim religious or moral exemptions.²⁴ Hundreds of thousands of women and their dependents—many of whom are members of Amici—who are insured by these newly-exempted companies and universities would lose coverage under the Final Exemption Rules.

Although religious denominations that oppose some or all forms of contraception have vocally opposed the Contraceptive Coverage Benefit,²⁵ women who work for employers or attend universities affiliated with these religions continue to need and use contraception. More than 99% of all sexually active women of reproductive age across the United States have, at some point, used contraception to prevent pregnancy.²⁶ Ninety-eight percent of sexually active Catholic women have used a contraception method other than natural family planning,²⁷ and 87% of Catholic women currently at risk of unintended pregnancy use a method other than natural family planning.²⁸ Among Evangelical women currently at risk of unintended pregnancy, 74% use a “highly effective contraceptive method” (including sterilization, an IUD, the pill, and

²³ See, e.g., Joe Carlson, *N.Y. Catholic Health System Wins Ruling Against Contraception Mandate*, MODERN HEALTHCARE, Dec. 16, 2013, <http://www.modernhealthcare.com/article/20131216/NEWS/312169935>.

²⁴ See Michael Nedelman, *et al.*, *Trump Administration Deals Major Blow to Obamacare Birth Control Mandate*, CNN (Oct. 6, 2017), <http://www.cnn.com/2017/10/06/health/trump-birth-control-mandate/index.html> (“Policy experts...argue that this could open the door to hundreds of employers dropping coverage.”).

²⁵ See, e.g., *id.*; Brief of the Catholic Benefits Assoc. and The Catholic Ins. Co. as *Amici Curiae* in Support of Petitioners, *Zubik v. Burwell*, Nos. 14-1418, *et al.*, 2016 WL 155627 (U.S. Jan. 11, 2016). See also *Zubik Amici*.

²⁶ Adam Sonfield, *et al.*, *The Social and Economic Benefits of Women’s Ability to Determine Whether and When to Have Children*, GUTTMACHER INST. (Mar. 2013), at 3, https://www.guttmacher.org/sites/default/files/report_pdf/social-economic-benefits.pdf.

²⁷ Guttmacher Institute, *Guttmacher Statistic on Catholic Women’s Contraceptive Use* (Feb. 15, 2012), <http://www.guttmacher.org/media/inthenews/2012/02/15/>; see also Kimberly Daniels, *et al.*, *Contraceptive Methods Women Have Ever Used: United States, 1982–2010*, 62 NAT’L HEALTH STATISTICS REP. 1, 8 (2013), <http://www.cdc.gov/nchs/data/nhsr/nhsr062.pdf>.

²⁸ *Id.*

other hormonal methods).²⁹ The Final Exemption Rules will harm and disadvantage women who work for or attend religiously-affiliated employers and universities, as these entities will no longer be required to comply with the accommodation process that ensures seamless, no-cost coverage through third parties.³⁰ The resulting loss of no-cost coverage will significantly harm these women, including members of Amici.

A. Nearly Half a Million Women Working for Hospitals Could Lose Coverage.

Members of Amici and many other women work for hospitals that could take advantage of the Final Exemption Rules as soon as they become effective. A large number of hospitals throughout the country are associated with religious denominations prohibiting many or all forms of contraception, and hospital employees are 76% female. For example, there are 654 hospitals associated with the Catholic Health Association of the United States alone, which collectively employ 530,599 full time and 225,433 part-time employees.³¹ These hospitals comprise 14.5% of all acute care hospitals in the U.S.³² and their employees are approximately 76% women.³³ Forty-nine of these hospitals are the sole community providers of short-term acute hospital care in their regions, meaning that health workers who lose coverage will have few opportunities for alternative employment where contraceptive coverage may be provided.³⁴ And in some states,

²⁹ Rachel K. Jones & Joerg Dreweke, *Countering Conventional Wisdom: New Evidence on Religion and Contraceptive Use*, GUTTMACHER INST. (Apr. 2011), at 8, https://www.guttmacher.org/sites/default/files/report_pdf/religion-and-contraceptive-use.pdf.

³⁰ Pls.' Mot. at 10.

³¹ See Catholic Health Assoc. of the U.S., *U.S. Catholic Health Care*, 2018, at 1, https://www.chausa.org/docs/default-source/default-document-library/cha_2018_miniprofile7aa087f4dff26ff58685ff00005b1bf3.pdf?sfvrsn=2 (last visited June 4, 2019).

³² Lois Uttley & Christine Khaikin, *Growth of Catholic Hospitals and Health Systems: 2016 Update of the Miscarriage of Medicine Report*, MERGERWATCH, 2016, at 1, http://static1.1.sqspcdn.com/static/f/816571/27061007/1465224862580/MW_Update-2016-MiscarrOfMedicine-report.pdf?token=UxHKcNPcSKjkw0MAq8v8aEdM83w%3D (last visited June 4, 2019).

³³ U.S. Dep't of Labor, *Labor Force Statistics from the Current Population Survey* (Jan. 19, 2018), <https://www.bls.gov/cps/cpsaat18.htm>.

³⁴ Katie Hafner, *As Catholic Hospitals Expand, So Do Limits on Some Procedures*, N.Y. TIMES, Aug. 10, 2018, <https://www.nytimes.com/2018/08/10/health/catholic-hospitals-procedures.html>

like in Wisconsin and South Dakota, Catholic hospitals constitute at least 50% of sole community providers.³⁵ As of 2016, over 40% of acute care hospital beds in Alaska, Iowa, and Washington were in hospitals operating under Catholic health restrictions and the same was true for between 30-39% of beds in Nebraska, Colorado, Missouri, Oregon, and Kentucky.³⁶ Further, the number of religiously-affiliated hospitals in the U.S. has increased by 22% between 2001 and 2016.³⁷ As this trend continues, even more women—nationwide—could be affected by these hospitals' ability to take advantage of the Final Exemption Rules.

The large market share of hospitals and other healthcare entities that follow religious directives prohibiting some or all forms of contraception has far-reaching implications for the majority-women employees who work in these facilities, as well as their female dependents. Many healthcare providers could eliminate contraceptive coverage for their employees and dependents under the Final Exemption Rules,³⁸ obstructing contraception access for hundreds of thousands of women throughout the nation, including those represented by Amici.

B. Tens of Thousands of Female Students at Religiously-Affiliated Colleges and Universities Could Lose Coverage.

Amici students are also at risk of losing contraceptive coverage if the Final Exemption Rules become enforceable. Hundreds of colleges and universities throughout America are affiliated with religious denominations that actively oppose some or all forms of contraception. Amici who receive insurance through these colleges or universities are at great risk of losing

³⁵ *Id.*

³⁶ Uttley & Khaikin, *supra* note 32 at 1.

³⁷ *Id.*

³⁸ Although the Catholic Health Association itself was not opposed to the Obama-era accommodation process, it has steadfastly opposed any requirement by which its member hospitals would have to directly pay for birth control coverage. *See* Catholic Health Assoc. of the U.S., *Women's Preventive Health Services Final Rule*, <https://www.chausa.org/newsroom/women%27s-preventive-health-services-final-rule> (last visited June 4, 2019). Additionally, numerous state and regional Catholic healthcare umbrella organizations have strongly opposed the Benefit. *See, e.g.,* Carlson, *supra* note 23.

coverage.³⁹ For example, there are more than 260 members of the Association of Catholic Colleges and Universities (the “ACCU”) in the United States, collectively enrolling more than 891,000 students⁴⁰ and employing large numbers of faculty and staff.⁴¹ And during the 2016-17 academic year, *nearly two-thirds* of students enrolled in Catholic colleges and universities were female.⁴²

Many Protestant or nondenominational Christian colleges and universities—free to drop contraceptive coverage altogether under the Final Exemption Rules—have also challenged the Contraceptive Coverage Benefit through lawsuits and public comments.⁴³ For example, the Council for Christian Colleges and Universities (the “CCCU”), representing 118 colleges and universities, 61 affiliate member institutions, and 400,000 members in 33 states, has vigorously opposed the Contraceptive Coverage Benefit.⁴⁴ Many Christian colleges and universities have independently challenged and sought exemptions from the Contraceptive Coverage Benefit. For example, Geneva College in Pennsylvania, with approximately 350 employees, has actively opposed the Contraceptive Coverage Benefit.⁴⁵ Wheaton College in Illinois, College of the Ozarks in Missouri, Colorado Christian University in Colorado, East Texas Baptist University in Texas, Union University in Tennessee, Dordt College in Iowa, and Heartland Christian College in Missouri are among the other non-Catholic colleges that have challenged the accommodation

³⁹ See Jeanine Santucci, *Students at Religious Universities Are Worried About Access to Birth Control. Here’s Why.*, USA TODAY COLLEGE, July 17, 2017, <http://college.usatoday.com/2017/07/17/students-at-religious-universities-are-worried-about-access-to-birth-control-heres-why/>.

⁴⁰ ACCU, *Catholic Higher Education FAQs*, <https://www.accunet.org/Catholic-Higher-Ed-FAQs> (last visited June 4, 2019).

⁴¹ *Id.*

⁴² *Id.*

⁴³ See generally Brief of *Amicus Curiae* the Council for Christian Colleges and Universities in Support of Petitioners at 2-3, *Zubik v. Burwell*, Nos. 14-1418, *et al.*, 2016 WL 183798 (U.S. Jan. 11, 2016).

⁴⁴ *Id.* at 1.

⁴⁵ *Geneva Coll. v. Sebelius*, 988 F. Supp. 2d 511 (W.D. Pa. 2013).

process or sought exemptions through lawsuits and *amicus curiae* briefs.⁴⁶ These colleges collectively boast an enrollment of over 20,000 students.⁴⁷

The impact of the Final Exemption Rules on female students nationwide will be severe if the Final Exemption Rules become enforceable. Young women will face increased rates of unintended pregnancies, hindering their pursuit of higher education and career advancement.⁴⁸ The Final Exemption Rules undermine the effectiveness of the Contraceptive Coverage Benefit in eliminating barriers to women's educational and professional advancement.

C. Thousands of Women Working for Other Religiously-Affiliated Non-Profits Could Lose Coverage.

In addition to hospitals and colleges, thousands of non-profit organizations throughout the United States are affiliated with religious denominations actively opposing some or all forms of contraception. As of 2015, approximately 3% of the 1.4 million non-profits in the U.S. and 10% of the largest non-profits already had accommodations under the Contraceptive Coverage Benefit.⁴⁹ Of the 45 entities that requested an accommodation between 2014 and 2016, 27%

⁴⁶ Cooney, *supra* note 20; Haglage, *supra* note 20; Nicole Fisher, *Battle Between HHS and Christian College Comes To Dramatic End*, FORBES, Mar. 5, 2018, <https://www.forbes.com/sites/nicolefisher/2018/03/05/battle-between-hhs-christian-college-comes-to-dramatic-end/#72d789044641>.

⁴⁷ Geneva College, *Fast Facts: Geneva College*, <http://www.geneva.edu/about-geneva/fast-facts> (last visited June 4, 2019); Wheaton College, *Wheaton by the Numbers*, <https://www.wheaton.edu/about-wheaton/why-wheaton/college-profile/wheaton-by-the-numbers/> (last visited June 4, 2019); U.S. News & World Report, *College of the Ozarks: Overview*, <https://www.usnews.com/best-colleges/college-ozarks-2500> (last visited June 4, 2019); Colorado Christian University, *CCU Facts and Stats*, <http://www.ccu.edu/about/factsandstats/> (last visited June 4, 2019); East Texas Baptist University, *At a Glance*, <https://www.etbu.edu/about/glance/> (last visited June 4, 2019); U.S. News & World Report, *Union University: Overview*, <https://www.usnews.com/best-colleges/union-university-3528> (last visited June 4, 2019); Dordt College, *About Dordt: Fast Facts*, <https://www.dordt.edu/about-dordt/fast-facts> (last visited June 4, 2019).

⁴⁸ Sonfield, *et al.*, *supra* note 26, at 9 (women who have children in their teens or early 20s are significantly less likely to obtain formal education after high school compared to women who are able to wait to have children until their late 20s or 30s).

⁴⁹ Laurie Sobel, Matthew Rae & Alina Salganicoff, *Data Note: Are Nonprofits Requesting an Accommodation for Contraceptive Coverage?*, THE HENRY J. KAISER FAMILY FOUNDATION (Dec. 2015), at 2, <http://files.kff.org/attachment/data-note-data-note-are-nonprofits-requesting-an-accommodation-for-contraceptive-coverage>. The "largest" non-profits include those with 1,000-4,999 employees as well as those with more than 5,000 employees. *Id.*

were religiously-affiliated non-profits.⁵⁰ These employers, and many more like them, could drop contraceptive coverage under the Final Exemption Rules without guaranteeing alternate coverage for their employees.

Further, more than 83 *amicus curiae* briefs supporting religious exemptions from the Contraceptive Coverage Benefit were filed in *Zubik v. Burwell*,⁵¹ representing dozens of religiously-affiliated advocacy groups, professional organizations, think tanks, and umbrella organizations.⁵² These *amici curiae* and the organizations they represent could also drop coverage under the Final Exemption Rules.

D. Hundreds of Thousands of Women Working for Private, Non-Religiously-Affiliated Employers Could Lose Coverage.

The Final Exemption Rules apply far beyond religiously-affiliated hospitals, colleges, universities, and non-profits. If effective, any private employer could take advantage of the exemptions based on loosely defined religious or moral reasons.⁵³ Consequently, employees of *any* non-governmental for-profit company and their dependents could be adversely affected by the Final Exemption Rules. The expansion of the Religious Exemption would allow innumerable large corporations to deny contraceptive care to their employees and dependents, perhaps because of a religious CEO, a religious board of directors, or any number of influences. Many thousands of women across the country, including members of Amici, could completely lose contraceptive coverage if the Final Exemption Rules become enforceable.

Indeed, just a few reports have identified over 80 private, for-profit businesses that have explicitly indicated their desire to drop contraceptive coverage.⁵⁴ This list includes several

⁵⁰ Laura E. Durso, *et al.*, *Who Seeks Religious Accommodations to Providing Contraceptive Coverage?*, CENTER FOR AMERICAN PROGRESS (Aug. 11, 2017), <https://www.americanprogress.org/issues/lgbt/news/2017/08/11/437265/seeks-religious-accommodations-providingcontraceptive-coverage/>.

⁵¹ *Zubik v. Burwell*, 136 S. Ct. 1557 (2016).

⁵² *See generally* Briefs of *Amici Curiae* Supporting the Petitioner, *Zubik v. Burwell*, 136 S. Ct. 1557 (2016).

⁵³ *See* Final Exemption Rules.

⁵⁴ Cooney, *supra* note 20; Haglage, *supra* note 20.

companies that collectively employ well over 36,000 women in at least 47 states:

- Hobby Lobby, an Oklahoma-based national craft supply chain with over 32,000 employees;⁵⁵
- Grote Industries, LLC, an Indiana vehicle safety systems manufacturer with 1,148 full-time U.S. employees;⁵⁶
- Conestoga Wood Specialties Corporation, a Pennsylvania-based wood cabinet and specialty products manufacturer with 950 employees;⁵⁷
- Autocam Corporation and Autocam Medical, LLC, a Michigan transportation and medical equipment parts company with at least 661 U.S. employees;⁵⁸
- Freshway Foods and Freshway Logistics, an Ohio-based produce processing and packaging company with 400 employees;⁵⁹
- Sioux Chief Manufacturing, a Missouri plumbing products company with 370 employees;⁶⁰
- Eternal Word Television Network, a religious television station with 350 full-time employees;⁶¹
- Hercules Industries, Inc., a Colorado heating, ventilation, and air conditioning products manufacturer with 303 employees;⁶²

⁵⁵ *Id.*

⁵⁶ *Grote v. Sebelius*, 708 F.3d 850, 852 (7th Cir. 2013); see also Jodi Jacobson, *Eighteen For-Profit Companies Fighting to Eliminate the Birth Control Benefit*, REWIRE (Mar. 7, 2013), <https://rewire.news/article/2013/03/07/the-18-for-profit-companies-fighting-to-eliminate-the-birth-control-benefit/>.

⁵⁷ *Conestoga Wood Specialties Corp. v. Sec'y of the U.S. Dep't of Health & Human Servs.*, 724 F.3d 377, 381 (3d Cir. 2013).

⁵⁸ *Autocam Corp. v. Sebelius*, 730 F.3d 618 (6th Cir. 2013); Jacobson, *supra* note 56.

⁵⁹ *Gilardi v. U.S. Dep't of Health & Human Servs.*, 733 F.3d 1208 (D.C. Cir. 2013).

⁶⁰ Jacobson, *supra* note 56.

⁶¹ *Eternal Word Television Network, Inc. v. Sec'y of U.S. Dep't of Health & Human Servs.*, 756 F.3d 1339 (11th Cir. 2014).

⁶² Jacobson, *supra* note 56.

- Tyndale House, an Illinois publishing company with 260 employees;⁶³
- Weingartz Supply Company, a Michigan outdoor power equipment company with 170 employees;⁶⁴
- Sharpe Holdings, Inc., a Missouri farming, dairy, creamery, and cheese-making corporation with over 100 employees;⁶⁵
- Triune Health Group, an Illinois corporation that facilitates the re-entry of injured workers in the workforce, with 95 employees;⁶⁶
- O'Brien Industrial Holdings, a Missouri ceramic materials processing company with 87 employees;⁶⁷ and
- Many more.⁶⁸

In fact, the following chart demonstrates that there are companies that have already voiced opposition to the Contraceptive Coverage Benefit in *almost every single state across the country*.⁶⁹ This chart does not include all companies currently opposed to the Contraceptive Coverage Benefit, nor does it include the many additional companies that may utilize the Final Exemption Rules.

⁶³ *Id.*

⁶⁴ *Id.*

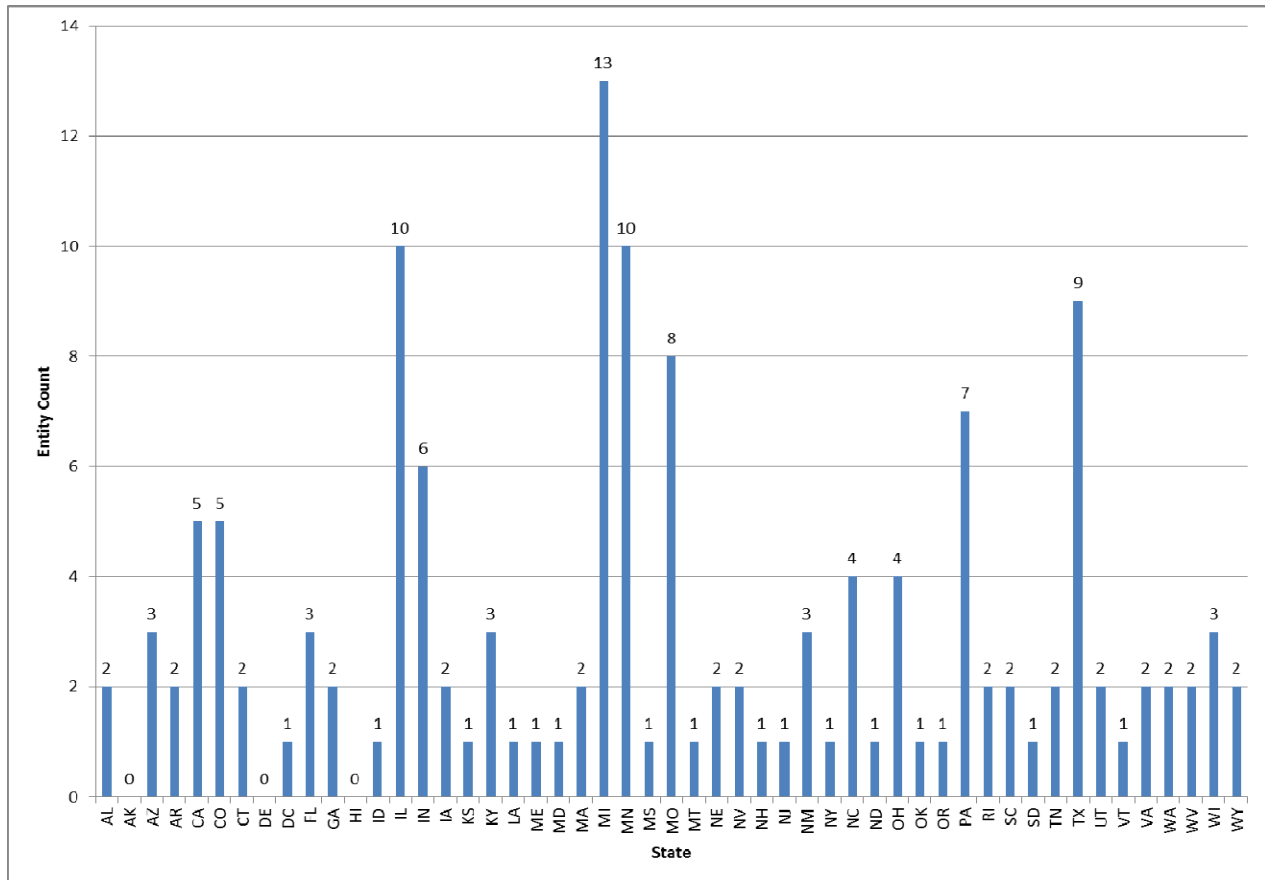
⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *See id.*; *Holland v. Sebelius*, No. 2:13-cv-15487 (S.D.W.Va. 2013); Joe Holland Chevrolet, *Why Choose Joe Holland Chevrolet: Our Staff*, <http://www.joehollandchevrolet.com/MeetOurDepartments> (last visited June 4, 2019); *M & N Plastics, Inc. v. Sebelius*, 997 F. Supp. 2d 19 (D.D.C. 2013).

⁶⁹ The data in this chart is drawn from the following two articles: Cooney, *supra* note 20; and Haglage, *supra* note 20.



Given the Final Exemption Rules’ breadth and lack of oversight, many businesses with no religious mission—including large, multi-state corporations—could refuse to provide contraceptive coverage under the Final Exemption Rules.⁷⁰ In fact, over half of the companies that received exemptions from the Contraceptive Coverage Benefit between January 2014 and March 2016 are secular, for profit companies.⁷¹ Major employers in nearly every industry could claim exemptions, including retail fashion,⁷² fast food,⁷³ commercial agriculture,⁷⁴ insurance,⁷⁵

⁷⁰ See, e.g., Legatus: Ambassadors for Christ in the Marketplace, *Why Legatus? What We Offer*, <http://legatus.org/legatus/> (last visited June 4, 2019) (More than 5,000 Catholic business leaders and spouses are members of this organization).

⁷¹ Sarah Kliff, *Most companies getting Obamacare birth control waivers aren’t religious groups*, VOX (Aug. 11, 2018), <https://www.vox.com/policy-and-politics/2017/8/11/16127560/obamacare-birth-control-mandate>; Durso, *et al. supra* note 50.

⁷² Laura Leonard, *Faith, Fashion, and Forever 21*, CHRISTIANITY TODAY, Mar. 27, 2009, <http://www.christianitytoday.com/women/2009/march/faith-fashion-and-forever-21.html>.

⁷³ Emma Green, *Chick-Fil-A: Selling Chicken with a Side of God*, THE ATLANTIC, Sept. 8, 2014, <https://www.theatlantic.com/business/archive/2014/09/chick-fil-a-selling-chicken-with-a-side-of-god/379776/>; Rob Wile, *This 35-Year-Old Woman Just Inherited In-N-Out Burger. She’s Now a*

hospitality,⁷⁶ airline travel,⁷⁷ online dating,⁷⁸ and general retail merchandise⁷⁹—to name only a few. These major companies collectively employ nearly two million employees,⁸⁰ and, if they deny their employees contraceptive coverage, a staggering number of women nationwide will be affected. Non-religious employers could also take advantage of the Final Exemption Rules, citing “moral concerns,” because they believe—falsely—that this will save money or serve political purposes. With no government oversight, virtually any large, privately held corporate employer could take advantage of the Moral Exemption. For-profit companies account for

Billionaire, TIME INC., May 8, 2017, <http://time.com/money/4770527/in-n-out-lynsi-snyder-fortune-ownership/>; Kevin Porter, *In-N-Out Burger Owner Lynsi Snyder on Searching for a Father Figure and Finding God in “I Am Second,”* CHRISTIAN POST, INC., Jan. 16, 2017, <https://www.christianpost.com/news/in-n-out-burger-owner-lynsi-snyder-talks-faith-journey-in-i-am-second-video-172909/>.

⁷⁴ Holly Lebowitz Rossi, *7 CEOs with Notably Devout Religious Beliefs*, FORTUNE, Nov. 11, 2014, <http://fortune.com/2014/11/11/7-ceos-with-notably-devout-religious-beliefs/>.

⁷⁵ Faith & Leadership, *Paul S. Amos: This is Not Who We Are* (Nov. 21, 2011), <https://www.faithandleadership.com/paul-s-amos-not-who-we-are>.

⁷⁶ Michael S. Rosenwald, *Marriot’s Family Guy*, WASHINGTON POST, Mar. 16, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/15/AR2009031501715.html>.

⁷⁷ Ann Schrader, *Republic Air CEO Puts His Faith to Work*, DENVER POST, May 6, 2016, <http://www.denverpost.com/2009/11/13/republic-air-ceo-puts-his-faith-to-work/>; Republic Airlines Inc., *Our Values: Vision, Mission & Culture*, <http://rjet.com/about-republic-airline/our-values/> (last visited June 4, 2019).

⁷⁸ Maggie Lake, *eHarmony CEO Meets Controversial Success*, CNN (July 11, 2008), <http://www.cnn.com/2008/BUSINESS/07/11/eharmony.maggie/?iid=EL>.

⁷⁹ Colleen Walsh, *God and Walmart*, HARVARD GAZETTE, Nov. 19, 2009, <https://news.harvard.edu/gazette/story/2009/11/god-and-walmart/>.

⁸⁰ Encyclopedia.com, *Chik-Fil-A Inc.*, <http://www.encyclopedia.com/social-sciences-and-law/economics-business-and-labor/businesses-and-occupations/chick-fil-inc> (last visited June 4, 2019); Forbes, *America’s Best Employers: #28 In-N-Out Burger*, <https://www.forbes.com/companies/in-n-out-burger/> (last visited June 4, 2019); Tyson Foods, *Our Story*, <https://www.tysonfoods.com/who-we-are/our-story> (last visited June 4, 2019); Forbes, *The World’s Biggest Public Companies: #223 Aflac*, <https://www.forbes.com/companies/aflac/> (last visited June 4, 2019); Marriott International, Inc. Annual Report (Form 10-K) (Feb. 18, 2016), <https://www.sec.gov/Archives/edgar/data/1048286/000162828016011346/mar-q42015x10k.htm>; Republic Airlines Inc., *About Republic Airline*, <http://rjet.com/about-republic-airline/> (last visited June 4, 2019); Andrea Chang & Peter Jamison, *EHarmony is Moving from Santa Monica to Westwood*, L.A. TIMES, Feb. 4, 2015, <http://www.latimes.com/business/la-fi-0205-eharmony-santa-monica-20150205-story.html>; Walmart Stores, Inc., *Our Locations*, <https://corporate.walmart.com/our-story/locations/united-states> (last visited June 4, 2019).

nearly 90% of private-sector employment across America.⁸¹ If even a fraction of these for-profit employers were to take advantage of the Final Exemption Rules, it is reasonable to expect that millions of women—including members of Amici—could immediately be denied contraceptive coverage, with all of the significant health, educational, and employment effects that follow.⁸²

E. Women Nationwide Depend on the Contraceptive Coverage Benefit.

As shown above, women across the country—and not just in the Plaintiff states—will be affected by the Final Exemption Rules if they become enforceable. Between the private hospitals, schools, non-profits, and for-profit companies that may take advantage of the Final Exemption Rules, women in every state are at risk of losing their contraceptive coverage. This is why it is critical for this Court to grant Plaintiffs’ motion for summary judgment.

III. SEAMLESS NO-COST CONTRACEPTIVE COVERAGE IS ESSENTIAL TO WOMEN’S EQUALITY AND ADVANCEMENT

A. The Benefits of No-Cost Contraceptive Coverage Are Substantial.

Contraceptives have had a profound impact on the lives of women in the United States.⁸³ In one study, a majority of women reported that contraceptives allowed them “to better care for themselves and their families, either directly or indirectly through facilitating their education and career.”⁸⁴ Accordingly, no-cost contraceptive coverage can transform a woman’s personal and professional life and education. Throughout America, at least 62.4 million women—including Amici’s members—rely on no-cost contraceptive coverage to achieve personal, professional, and educational advancement.⁸⁵

⁸¹ Bureau of Labor Statistics, *Nonprofits account for 11.4 million jobs, 10.3 percent of all private sector employment*, U.S. DEP’T. OF LABOR (Oct. 21, 2014), https://www.bls.gov/opub/ted/2014/ted_20141021.htm?view_full (showing that non-profits account for 10.3% of private-sector employment in the United States).

⁸² See Section III, *infra*.

⁸³ Jennifer J. Frost & Laura Duberstein Lindberg, *Reasons for Using Contraception: Perspectives of US Women Seeking Care at Specialized Family Planning Clinics*, 87 *CONTRACEPTION JOURNAL* 465 (2013).

⁸⁴ *Id.* at 469.

⁸⁵ Martha J. Bailey, Brad Hershbein & Amalia R. Miller, *The Opt-In Revolution? Contraception and the Gender Gap in Wages* at 6-7 (Nat’l Bureau of Econ. Research, Working Paper No.

Contraceptive access has enabled women to achieve higher education at greater rates than ever before.⁸⁶ The oral contraceptive pill has tremendously increased the rates at which women enroll in college, while decreasing the rates at which they drop out of college.⁸⁷ Two-thirds of women using oral contraceptives gained no-cost coverage through the Contraceptive Coverage Benefit.⁸⁸

No-cost contraceptive coverage also allows women to participate in the workforce with equal opportunity to men. In crafting the Contraceptive Coverage Benefit, various government agencies acknowledged that the disparity in health coverage offered to men and women “places women in the workforce at a disadvantage compared to their male co-workers.”⁸⁹

Contraception has allowed women to time their pregnancies so that they can invest in higher education and careers prior to starting or expanding their families.⁹⁰ The ability to control one’s reproduction is critical to women’s career success, as women’s participation in the labor force often decreases significantly after childbirth.⁹¹ Women who can control the timing of their pregnancies tend to have “more opportunities for employment and for full social or political

17922, Mar. 2012), <http://www.nber.org/papers/w17922.pdf>; NWLC, *New Data Estimates 62.8 Million Women Have Coverage of Birth Control Without Out-of-Pocket Costs*, <https://nwlc.org/resources/new-data-estimate-62-4-million-women-have-coverage-of-birth-control-without-out-of-pocket-costs/> (last visited June 4, 2019) (estimating that 62.8 million women gained access to no-cost contraceptives).

⁸⁶ Heinrich Hock, *The Pill and the College Attainment of American Women and Men* at 19 (Fla. State Univ., Dep’t of Economics Working Paper, Oct. 9, 2007), ftp://econpapers.fsu.edu/RePEc/fsu/wpaper/wp2007_10_01.pdf; David S. Loughran & Julie M. Zissimopoulos, *Why Wait? The Effect of Marriage and Childbearing on the Wages of Men and Women*, 44 J. HUM. RES. 326, 346 (2009).

⁸⁷ Hock, *supra* note 86.

⁸⁸ Adam Sonfield, *et al.*, *Impact of the Federal Contraceptive Coverage Guarantee on Out-of-Pocket Payments for Contraceptives: 2014 Update*, 91 CONTRACEPTION 44, 46 (2015).

⁸⁹ Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 77 Fed. Reg. 8,725, 8,728 (Feb. 15, 2012).

⁹⁰ Bailey, *et al.*, *supra* note 85.

⁹¹ Hock, *supra* note 86; Loughran & Zissimopoulos, *supra* note 86, at 346.

participation in their community,”⁹² ultimately advancing further in the workplace and earning more money over their lifetimes.⁹³ Accordingly, without the ability to control and time their pregnancies, women will face tremendous and adverse personal, professional, social, and economic effects.⁹⁴

B. There Are No Comparable Alternatives to the Contraceptive Coverage Benefit.

1. State Laws Will Not Fill the Gap Left by the Final Exemption Rules.

Twenty-eight states currently require private insurers to cover contraceptives if they offer coverage for other prescription drugs.⁹⁵ These coverage requirements have been effective for women enrolled in private insurance plans that are covered by the state coverage requirements.⁹⁶ However, there are four deficiencies that leave this patchwork of state laws unable to fill the gap that would be left by the Final Exemption Rules.

First, while 29 states have some form of requirement that private employers cover contraceptives, 21 have no such requirement at all.⁹⁷

Second, only fourteen states require contraceptives to be provided with *no* cost to the insured.⁹⁸ Increases in cost-sharing can decrease access to and effective use of contraceptives, but 36 states have yet to explicitly ensure no-cost contraceptive coverage.

⁹² Susan A. Cohen, *The Broad Benefits of Investing in Sexual and Reproductive Health*, 7 GUTTMACHER REPORT ON PUB. POLICY 5, 6 (Mar. 2004), https://www.guttmacher.org/sites/default/files/article_files/gr070105.pdf.

⁹³ Loughran & Zissimopoulos, *supra* note 86, at 346.

⁹⁴ American women have collectively saved nearly \$1.4 billion annually in out-of-pocket costs for oral contraceptives alone due to the Contraceptive Coverage Benefit. See Nora V. Becker & Daniel Polsky, *Women Saw Large Decrease in Out-Of-Pocket Spending for Contraceptives After ACA Mandate Removed Cost Sharing*, 34 HEALTH AFFAIRS 1204 (2015). The negative economic impact of the Final Exemption Rules on American women will thus be extreme.

⁹⁵ Guttmacher Institute, *Insurance Coverage of Contraceptives, State Laws and Policies as of June 1, 2019*, <https://www.guttmacher.org/state-policy/explore/insurance-coverage-contraceptives>.

⁹⁶ Brianna M. Magnusson, *et al.*, *Contraceptive Insurance Mandates and Consistent Contraceptive Use Among Privately Insured Women*, 50 MED. CARE 562, 565 (2012).

⁹⁷ Guttmacher Institute, *supra* note 95.

⁹⁸ *Id.*

Third, state laws regulating insurers cannot affect plans written in other states or plans from employers that self-insure their employees.⁹⁹ Around 60% of all employees are insured by self-funded insurance plans and are therefore not covered by state coverage requirements.¹⁰⁰ When an employer self-insures, these plans are overseen by the U.S. Department of Labor and are only subject to federally established regulations.¹⁰¹ Therefore, state laws requiring contraceptive coverage will not help many women who would be affected.

Finally, 21 of the 29 states that require some form of contraceptive coverage allow certain employers and insurers to opt out of coverage requirements.¹⁰² Even in these states, a significant portion of employers can escape such coverage requirements.¹⁰³ State laws simply cannot cure the negative impact the Final Exemption Rules will have on access to no-cost contraceptive coverage across the country.

2. Other Programs Are No Substitute for Seamless No-Cost Contraceptive Coverage.

For women who depend on employer coverage for contraception, alternative arrangements—such as safety net health programs and providers—are either not feasible or not as accessible as employer-provided coverage. It is impractical for these women to obtain coverage through Medicaid or Title X providers, and doing so will not be seamless. Some women will not qualify for these programs at all.¹⁰⁴ Notably, safety net family planning

⁹⁹ Sonfield, *supra* note 88.

¹⁰⁰ Laurie Sobel, *et al.*, *New Regulations Broadening Employer Exemptions to Contraceptive Coverage: Impact on Women*, THE HENRY J. KAISER FAMILY FOUNDATION (Oct. 6, 2017), <http://files.kff.org/attachment/Issue-Brief-New-Regulations-Broadening-Employer-Exemptions-to-Contraceptive-Coverage-Impact-on-Women>; Magnusson, *et al.*, *supra* note 96, at 565.

¹⁰¹ Employer Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (1974). *See also* Sobel, *et al.*, *supra* note 100; Magnusson, *et al.*, *supra* note 96, at 565.

¹⁰² Guttmacher Institute, *supra* note 95.

¹⁰³ *Id.*

¹⁰⁴ Title X is a federally funded program focused solely on providing individuals with reproductive health services. Family Planning Services and Population Research Act of 1970, Pub. L. No. 91-572, 84 Stat. 1504 (1970). Title X-funded clinics serve millions of young and low-income women in the United States. Mia R. Zolna, Megan L. Kavanaugh, & Kinsey Hasstedt, *Insurance-Related Practices at Title X-Funded Family Planning Centers under the*

providers are already under considerable political attack, threatening their ability to serve their current populations, let alone women who currently rely on employer coverage.¹⁰⁵

C. The Potential Harms From Losing Contraceptive Coverage, Even Temporarily, Are Significant and Irreversible for Women.

Loss of no-cost contraceptive coverage will cause many women to use contraceptives less consistently, use less effective methods, or forego contraception altogether, as cost is a significant factor in many women's selection and use of contraception.¹⁰⁶ Amici support the Plaintiffs' motion for summary judgment because losing consistent no-cost coverage—even for as little as one month—will result in significant harm for many women nationwide.

Contraceptives are one of the most widely used medications in the country,¹⁰⁷ and today, the oral contraceptive pill is the most common form of contraception among women in the United States.¹⁰⁸ The no-cost Contraceptive Coverage Benefit has boosted the consistent and proper use of contraceptives and enabled more women to choose long-term contraceptives.¹⁰⁹ The Contraceptive Coverage Benefit has decreased rates of discontinuation and increased effective use with respect to generic oral contraceptives.¹¹⁰ In addition, because of the Contraceptive Coverage Benefit, more women have no-cost coverage of longer-term and more

Affordable Care Act: Survey and Interview Findings, Women's Health Issues 1 (2017). However, these clinics already have limited capacity, and their funding is currently under political attack. Kiersten Gillette-Pierce & Jamila Taylor, *The Threat to Title X Family Planning: Why It Matters and What's at Stake for Women*, CTR. FOR AMERICAN PROGRESS (Feb. 9, 2017), <https://www.americanprogress.org/issues/women/reports/2017/02/09/414773/the-threat-to-title-x-family-planning/>.

¹⁰⁵ Rachel Benson Gold & Kinsey Hasstedt, *Publicly Funded Family Planning Under Unprecedented Attack*, 107 AJPB Editorial 1895 (Dec. 2017), <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2017.304124>.

¹⁰⁶ Adam Sonfield, *What Is at Stake with the Federal Contraceptive Coverage Guarantee?*, 20 GUTTMACHER POLICY REVIEW 8, 9 (2017), https://www.guttmacher.org/sites/default/files/article_files/gpr2000816_0.pdf.

¹⁰⁷ Becker & Polsky, *supra* note 94.

¹⁰⁸ Lydia E. Pace, Stacie B. Dusetzina & Nancy L. Keating, *Early Impact of the Affordable Care Act on Oral Contraceptive Cost Sharing, Discontinuation, and Nonadherence*, 35 HEALTH AFFAIRS 1616 (2016); Guttmacher Inst., *Contraceptive Use in the United States* (Sept. 2016), <https://www.guttmacher.org/fact-sheet/contraceptive-use-united-states#2a>.

¹⁰⁹ Pace, *et al.*, *supra* note 108; Becker & Polsky, *supra* note 94.

¹¹⁰ Pace, *et al.*, *supra* note 108.

effective contraceptives.¹¹¹ For example, privately-insured women were significantly more likely to choose an IUD when a lower out-of-pocket price for the device and insertion procedure was offered.¹¹² Women who choose long-term contraceptives and receive them at no cost—or low shared costs—continue using birth control at higher rates and with greater success in preventing unintended pregnancies.¹¹³ Further, long-term contraceptive methods, such as the IUD, are the most effective at preventing unintended pregnancies, with only a 1% failure rate.¹¹⁴ By contrast, an estimated 41% of unintended pregnancies in America are caused by the inconsistent use of contraceptives.¹¹⁵ Additionally, lack of no-cost birth control is cited as a factor in approximately one-quarter of abortions.¹¹⁶

As of 2016, approximately 43 million women in the United States were in their childbearing years, did not want to become pregnant, and were at risk of an unintended pregnancy if they lost access to reliable contraceptive methods.¹¹⁷ This means that, across America, at least 43 million women currently need consistent coverage of reliable contraceptives to effectively prevent unintended pregnancies. If employers and insurers drop contraceptive coverage, women will be less likely to have access to long-term and effective contraceptives, and

¹¹¹ Becker & Polsky, *supra* note 94; Aileen M. Gariepy, *et al.*, *The Impact of Out-of-Pocket Expense on IUD Utilization Among Women with Private Insurance*, 84 *CONTRACEPTION* 39 (2011), <http://escholarship.org/uc/item/1dz6d3cx>.

¹¹² Becker & Polsky, *supra* note 94; Gariepy, *et al.*, *supra* note 111.

¹¹³ Gariepy, *et al.*, *supra* note 111; Natalie E. Birgisson, *et al.*, *Preventing Unintended Pregnancy: The Contraceptive CHOICE Project in Review*, 24 *JOURNAL OF WOMEN'S HEALTH* 349 (2015).

¹¹⁴ Gariepy, *et al.*, *supra* note 111.

¹¹⁵ Pace, *et al.*, *supra* note 108. Gaps in contraception use are more common for women who are minorities and those with lower incomes and lower education levels. Magnusson, *et al.*, *supra* note 96, at 565.

¹¹⁶ See Guttmacher Institute, *A Real-Time Look at the Impact of the Recession on Women's Family Planning and Pregnancy Decisions* (Sept. 2009), https://www.guttmacher.org/sites/default/files/report_pdf/recessionfp_1.pdf (finding that in a survey of women's contraceptive usage during the recession, many reported using birth control less consistently as a way to save money); Juell B. Homco, *et al.*, *Reasons for Ineffective Pre-pregnancy Contraception Use in Patients Seeking Abortion Services*, 80 *CONTRACEPTION* 569 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3152747/pdf/nihms299833.pdf>.

¹¹⁷ Guttmacher Institute, *supra* note 108.

less likely to regularly continue contraceptive use, and thus will be at risk for unintended pregnancies, threatening women's health and economic security.¹¹⁸ Women should not be denied this care.

IV. CONCLUSION

If the Final Exemption Rules become enforceable, at least hundreds of thousands of women, and likely millions—including those represented by Amici—across the United States are at risk of being significantly harmed. The approximately half a million female employees of religiously-affiliated hospitals, nearly 600,000 female students of religiously-affiliated colleges and universities, and more than 36,000 female employees of for-profit companies that have already stated their intent to deny contraceptive coverage comprise a conservative estimation of the number of women that would be affected by the Final Exemption Rules. The estimates do not take into account dependents of these entities' employees and students, nor do they take into account the employees and dependents of other companies that may drop coverage if the Final Exemption Rules become enforceable.

The repercussions of losing coverage of safe, reliable, no-cost contraception are not just monetary. Women's physical and emotional health, educational opportunities, and professional advancement are directly impacted by consistent, uninterrupted coverage for prescription contraceptives. Loss of no-cost contraceptive coverage—even for only a few months—will have significant, irreparable consequences for American women's professional and educational

¹¹⁸ Contraceptives are used as essential medicine for women. See Guttmacher Institute, *supra* note 95 (finding that 1.5 million women in the U.S. relied on the oral contraceptive pill between 2006 and 2008 for medical reasons other than preventing pregnancy). Contraceptive use decreases pregnancy-related illness and mortality and prevents potential negative health consequences that stem from unintended pregnancies. See Megan L. Kavanaugh & Ragnar Anderson, *Contraception and Beyond: The Health Benefits of Services Provided at Family Planning Centers*, GUTTMACHER INST. (July 2013), <https://www.guttmacher.org/pubs/health-benefits.pdf>; Hal C. Lawrence, III, Vice President for Practice Activities, Am. Congress of Obstetricians and Gynecologists, *Testimony Before the Institute of Medicine Committee on Preventive Services for Women* (Jan. 12, 2011), at 11, <http://tinyurl.com/ztyclx4>. Unintended pregnancies can also have significant impacts on a woman's mental health and are a risk factor for depression. See Albert L. Siu & U.S. Preventive Services Task Force, *Screening for Depression in Adults: US Preventive Services Task Force Recommendation Statement*, 315 JAMA 380, 382 (2016), <http://tinyurl.com/hhbnqe9>.

advancement as well as their and their families' well-being. Accordingly, on behalf of female employees and students throughout the country, Amici support Plaintiffs' motion for summary judgment permanently the Final Exemption Rules nationwide.

Dated: June 7, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of June, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

/s/ Jamie A. Levitt

APPENDIX

Interests and Descriptions of *Amici Curiae*

- **American Association of University Women (“AAUW”)** was founded in 1881 by like-minded women who had challenged society’s conventions by earning college degrees. Since then it has worked to increase women’s access to higher education through research, advocacy, and philanthropy. Today, AAUW has more than 170,000 members and supporters, 1,000 branches, and 800 college and university partners nationwide. AAUW plays a major role in mobilizing advocates nationwide on AAUW’s priority issues to advance gender equity. In adherence with its member-adopted Public Policy Program, AAUW supports choice in the determination of one’s reproductive life and increased access to health care and family planning services.
- **Service Employees International Union (“SEIU”)** is a union of two million women and men who work in health care, property services, and public services throughout the United States. More than half of SEIU’s members are women, and more than half its members work in health care. SEIU is deeply committed to ensuring that all working people, men and women alike, have access to affordable health care, including contraceptive coverage as intended by the Affordable Care Act. SEIU has a particular interest in this ruling because its members know, both personally and in their capacity as health care workers, how vital it is for women to have seamless contraceptive coverage in order to be able to protect their health and their ability to work, which in turn are necessary for the economic security of families across America.
- **The American Federation of State, County, and Municipal Employees (“AFSCME”)** is a labor organization with 1.6 million members in hundreds of occupations who provide vital public services in 46 states, the District of Columbia, and Puerto Rico. Over 100,000 of its members work in the private sector. With well over half its members being women, AFSCME has a long history of advocating for gender equality.

- **Girls Inc.** is a non-profit, nonpartisan organization that inspires all girls to be strong, smart, and bold through direct service and advocacy. More than 80 local Girls Inc. affiliates provide primarily after-school and summer programming to approximately 150,000 girls, ages 5-18, in 31 U.S. states and in Canada. Girls Inc.’s comprehensive approach to whole girl development equips girls to navigate gender, economic, and social barriers and grow up healthy, educated, and independent. These positive outcomes are achieved through three core elements: people-trained staff and volunteers who build lasting, mentoring relationships; an environment that is girls-only and physically and emotionally safe, and where there is a sisterhood of support, high expectations, and mutual respect; and programming that is research-based, hands-on and minds-on, and age-appropriate, meeting the needs of today’s girls. Informed by girls and their families, Girls Inc. also advocates for legislation, policies, and practices to advance the rights and opportunities of girls and young women. Girls Inc. supports protecting and expanding access to affordable reproductive health care, so all women can decide what is best for their own health, education, and careers.
- **National Association of Social Workers (“NASW”)** was founded in 1955, and is the largest association of professional social workers in the United States with over 120,000 members in 55 chapters. The California Chapter has 10,000 members. NASW develops policy statements on issues of importance to the social work profession. Consistent with those statements, NASW advocates that every individual, within the context of her or his value system, must have access to family planning, abortion, and other reproductive health services.
- **If/When/How: Lawyering for Reproductive Justice (“If/When/How”)** envisions a transformation of the legal systems and institutions that perpetuate oppression into structures that realize justice, and a future when all people can self-determine their reproductive lives free from discrimination, coercion, or violence. We transform the law and policy landscape through advocacy, support, and organizing so all people have the

power to determine if, when, and how to define, create, and sustain families with dignity and to actualize sexual and reproductive wellbeing on their own terms. If/When/How currently has approximately 90 active chapters at law schools across the country: 9% in the Mid-Atlantic; 26% in the Midwest; 18% in the Northeast; 27% in the South; and 20% in the West. If/When/How has approximately 1,500 student members overall, with 95% of its members identifying as women.

- **California Women Lawyers (“CWL”)** is a non-profit organization chartered in 1974. CWL is the only statewide bar association for women in California and maintains a primary focus on advancing women in the legal profession. Since its founding, CWL has worked to improve the administration of justice, to better the position of women in society, to eliminate all inequities based on sex, and to provide an organization for collective action and expression germane to the aforesaid purposes. CWL has also participated as *amicus curiae* in a wide range of cases to secure the equal treatment of women and other classes of persons under the law.
- **Women’s Bar Association of the State of New York (“WBASNY”)** is the second largest statewide bar association in New York and one of the largest women’s bar associations in the United States. Its more than 4,200 members in its twenty chapters across New York State¹¹⁹ include esteemed jurists, academics, and attorneys who practice

¹¹⁹ WBASNY’s affiliated organizations consist of twenty regional chapters, some of which are separately incorporated, plus nine IRC 501(c)(3) charitable corporations that are foundations and/or legal clinics. The affiliates are: *Chapters* – Adirondack Women’s Bar Association; The Bronx Women’s Bar Association, Inc.; Brooklyn Women’s Bar Association, Inc.; Capital District Women’s Bar Association; Central New York Women’s Bar Association; Del-Chen-O Women’s Bar Association, Finger Lakes Women’s Bar Association; Greater Rochester Association for Women Attorneys; Mid-Hudson Women’s Bar Association; Mid-York Women’s Bar Association; Nassau County Women’s Bar Association; New York Women’s Bar Association; Queens County Women’s Bar Association; Rockland County Women’s Bar Association; Staten Island Women’s Bar Association; The Suffolk County Women’s Bar Association; Thousand Islands Women’s Bar Association; Westchester Women’s Bar Association; Western New York Women’s Bar Association; and Women’s Bar Association of Orange and Sullivan Counties. *Charitable Foundations & Legal Clinic* – Women’s Bar Association of the State of New York Foundation, Inc.; Brooklyn Women’s Bar Foundation, Inc.; Capital District Women’s Bar Association Legal Project Inc.; Nassau County Women’s Bar

in every area of the law, including employment, ERISA, health law, reproductive rights, commercial, criminal, appellate, constitutional, and civil rights. WBASNY is dedicated to fair and equal administration of justice, and it has participated as an *amicus curia* in many cases, including those involving reproductive rights, and as a vanguard for the rights of women, minorities, LGBT persons, and others.

- **Women Lawyers On Guard Inc. (“WLG”)** is a national, non-partisan, non-profit organization harnessing the power of lawyers and the law in coordination with other organizations to preserve, protect, and defend the democratic values of equality, justice, and opportunity for all.
- **Women’s Bar Association of the District of Columbia (“WBA”):** Founded in 1917, the Women’s Bar Association of the District of Columbia is one of the oldest and largest voluntary bar associations in metropolitan Washington, DC. Today, as in 1917, we continue to pursue our mission of maintaining the honor and integrity of the profession; promoting the administration of justice; advancing and protecting the interests of women lawyers; promoting their mutual improvement; and encouraging a spirit of friendship among our members. The WBA believes that when women have the means to plan whether and how to have a family, they can better invest in their own careers and their country.
- **Women’s Bar Association of Massachusetts (“WBA”)** is a professional association comprised of more than 1,500 members, including judges, attorneys, and policy makers, dedicated to advancing and protecting the interests of women. In particular, the WBA advocates for public policy that improves the lives of women and their children. The WBA has filed and joined many *amicus curiae* briefs in state and federal courts on legal

Association Foundation, Inc.; New York Women’s Bar Association Foundation, Inc.; Queens County Women’s Bar Foundation; Westchester Women’s Bar Association Foundation, Inc.; and The Women’s Bar Association of Orange and Sullivan Counties Foundation, Inc. (No members of WBASNY or its affiliates who are judges or court personnel participated in WBASNY’s *amicus curia* vote in this matter.)

issues that have a unique impact on women, including cases involving sexual discrimination, family law, domestic violence, and employment discrimination. The WBA is comprised of more than 1,500 members, 99% of whom are female. The WBA operates solely in Massachusetts.

- **Lawyers Club of San Diego (“Lawyers Club”)** is a 1,300+ member legal association established in 1972 with the mission “to advance the status of women in the law and society.” In addition to presenting educational programs and engaging in advocacy, Lawyers Club participates in litigation as *amicus curiae* where the issues concern the advancement of status of women in the law and society. Lawyers Club is committed to gender equality and reproductive justice. Reproductive justice gives women the freedom and flexibility to plan their families in ways that work best not only for each woman and her professional advancement, but for society as a whole. Lawyers Club joins this *amicus* brief because access to no-cost contraception directly impacts women’s reproductive justice and gender equality efforts.
- **Colorado Women’s Bar Association (“CWBA”)** is an organization of more than 1,200 Colorado attorneys, judges, legal professionals, and law students founded in 1978 and dedicated to promoting women in the legal profession and the interests of women generally. The CWBA has an interest in this case because its members, their clients, and other women in Colorado are committed to protecting women’s health.
- **Georgia Association for Women Lawyers (“GAWL”)** is a statewide bar association with more than 740 members. Founded in 1928, GAWL has proudly served the diverse interests of women lawyers in Georgia for nearly 90 years. This matter affects the 98% of GAWL members who are women. GAWL joins this brief in service of its mission “to enhance the welfare and development of women lawyers and to support their interests.”
- **Hispanic Lawyers’ Association of Illinois (“HLAI”)** is a not for profit organization founded in 1995. It is the largest statewide bar association for Latinos in Illinois and has a robust and active Latina Lawyers Committee. HLAI is committed to addressing social,

economic and other issues that affect the Hispanic community. HLAI advocates for public policy that eliminates inequities based on sex, and improves and empowers women's lives. HLAI has participated as amicus curiae on a variety of issues including cases involving securing the equal treatment of women and other classes of persons under the law. HLAI joins this amicus brief because access to contraception directly impacts women's reproductive justice and gender equality, which are important to all of HLAI's members.