EXHIBIT A

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 A PRELIMINARY INJUNCTION

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INTEREST OF AMICI CURIAE[1]

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

[1] No party's counsel authored this brief in whole or in part. No party, counsel, or other person contributed any money to fund the preparation or submission of this brief other than Amici and its counsel. All parties have consented to the filing of this 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 immediately. 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 ("AAUW").

increases women's ability to participate and succeed in the workplace.[5]

ARGUMENT

I. SUMMARY OF ARGUMENT

Amici support the Commonwealth of Pennsylvania and the State of New Jersey's ("Plaintiffs") motion for a nationwide preliminary injunction protecting women and their families from the irreparable harm that will occur if Defendants are permitted to enforce the final contraceptive rules issued by Defendants on November 7, 2018 (the "Final Exemption Rules").[6] These 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

[5] *See* Appendix, including Statements of Interest for Amici Curiae the American Federation of State, County and Municipal Employees ("AFSCME") and Service Employees International Union ("SEIU").

[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).

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 become enforceable.[9] As demonstrated below, approximately half a million women across the country work for religiously-affiliated hospitals; approximately 600,000 women attend religiously-affiliated colleges and universities; and more than 17,000 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 immediately 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

[9] HHS has increased its estimate of women potentially affected by the Final Exemption Rules from 31,700 to 70,500. *See* 83 Fed. Reg. 57,536, 57,578. Despite this increase, for the reasons set forth herein, Amici believe this estimate remains drastically underinclusive.

[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* Pls.' Mot. Prelim. Inj. at 5.

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 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 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

[11] Accomodations in Connection with Coverage of Certain Preventive Health Services, 45 C.F.R. § 147.131(c)(2); *see also* Pls.' Mot. Prelim. Inj. at 5-6.

[12] 134 S. Ct. 2751 (2014).

[13] Pls.' Mot. Prelim. Inj. at 6-7.

[14] *Id.* at 9.

[15] *Id.*

[16] *Id*.

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 and immediate 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. IMPLEMENTATION OF THE FINAL EXEMPTION RULES THREATENS IMMEDIATE AND IRREPARABLE 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

[17] *Id*.

[18] 83 Fed. Reg. at 57,560, 57,563–64.

[19] 83 Fed. Reg. at 57,537; *id*. at 57,593; Pls.' Mot. Prelim. Inj. at 9.

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 enjoined. *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 accepted the accommodation because they were not eligible for an exemption, would take advantage of the Final Exemption

[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.

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% percent of Catholic women currently at risk of unintended pregnancy use a method other

[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*, 136 S.Ct. 1557 (2016) (Nos. 14-1418, et al.). *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.

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 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 irreparably 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 on January 14, 2019. 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

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[28] *Id*.

[29] Rachel K. Jones & Jeorg 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. Prelim. Inj. at 7-9.

[31] *See* Catholic Health Assoc. of the U.S., *Catholic Health Care in the U.S.*, 2018, at 1, https://www.chausa.org/docs/default-source/default-document-library/cha_2018_miniprofile7aa087f4dff26ff58685ff00005b1bf3.pdf?sfvrsn=2

[32] Lois Uttley & Christine Khaikin, *Growth of Catholic Hospitals and Health Systems: 2016 Update of the Miscarriage of Medicine Report*, MERGERWATCH, 2016, at 1,

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, 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.

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http://static1.1.sqspcdn.com/static/f/816571/27061007/1465224862580/MW_Update-2016-MiscarrOfMedicine-report.pdf?token=UxHKcNPcSKjkw0MAq8v8aEdM83w%3D.

[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,* NEW YORK TIMES, (Aug. 8, 2018), https://www.nytimes.com/2018/08/10/health/catholic-hospitals-procedures.html

[35] *Id.*

[36] Lois Uttley & Christine Khaikin, Growth of Catholic Hospitals and Health Systems: 2016 Update of the Miscarriage of Medicine Report (2016) at 1, http://static1.1.sqspcdn.com/static/f/816571/27061007/1465224862580/MW_Update-2016-MiscarrOfMedicine-report.pdf?token=cHO2jBYG017RabAXAdQXC4c9rps%3D

[37] *Id.*

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 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 students[40] 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]

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[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 Jan. 4, 2019). Additionally, numerous state and regional Catholic healthcare umbrella organizations have strongly opposed the Benefit. *See, e.g.*, Carlson, *supra* note 23.

[39] *See* Jeanine Santucci, *Students at Religious Universities Are Worried About Access to Birth Control. Here's Why.*, USA TODAY COLLEGE (Jul. 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

[41] *Id.*

[42] *Id.*

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

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[43] *See generally* Brief of *Amicus Curiae* the Council for Christian Colleges and Universities in Support of Petitioners, *Zubik v. Burwell*, 136 S.Ct. 1557 (2016), (Nos. 14-1418 et al.), at 2-3.

[44] *Id. at 1.*

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

[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 Jan. 4, 2019); Wheaton College, *Wheaton by the Numbers*, https://www.wheaton.edu/about-wheaton/why-wheaton/college-profile/wheaton-by-the-numbers/ (last visited Jan. 4, 2019); U.S. News & World Report, *College of the Ozarks: Overview*, https://www.usnews.com/best-colleges/college-ozarks-2500 (last visited Jan. 4, 2019); Colorado Christian University, *CCU Facts and Stats*, http://www.ccu.edu/about/factsandstats/ (last visited

The immediate and irreparable 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% were religiously-affiliated non-profits.[50] These employers, and many more like them, could drop

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Jan. 4, 2019); East Texas Baptist University, *At a Glance*, https://www.etbu.edu/about/glance/ (last visited Jan. 4, 2019); U.S. News & World Report, *Union University: Overview*, https://www.usnews.com/best-colleges/union-university-3528 (last visited Jan. 4, 2019); Dordt College, *About Dordt: Fast Facts*, https://www.dordt.edu/about-dordt/fast-facts (last visited Jan. 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), 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.

[50] Laura E. Dorso et al., *Who Seeks Religious Accommodations to Providing Contraceptive Coverage?*, CTR. FOR AM. PROGRESS (Aug. 11, 2017),

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 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, reports have identified over 80 private, for-profit businesses that have explicitly

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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* Briefs of *Amici Curiae* Supporting the Petitioner, *Zubik v. Burwell*, 136 S.Ct. 1557 (2016), (Nos. 14-1418 et al.).

[53] *See* Final Exemption Rules.

indicated their desire to drop contraceptive coverage.[54] This list includes several companies that collectively employ well over 17,000 women in at least 47 states:

- Hobby Lobby, an Oklahoma-based national craft supply chain with over 13,000 employees; [55]
- Grote Industries, LLC, an Indiana vehicle safety systems manufacturer with 1,147 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]

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

[55] *Id.*

[56] *Grote v. Sebelius*, 708 F.3d 850 (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 United States Dep't of Health & Human Servs.*, 724 F.3d 377 (3d Cir. 2013).

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

[59] *Gilardi v. United States 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 who 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.

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[63] *Id.*

[64] *Id*.

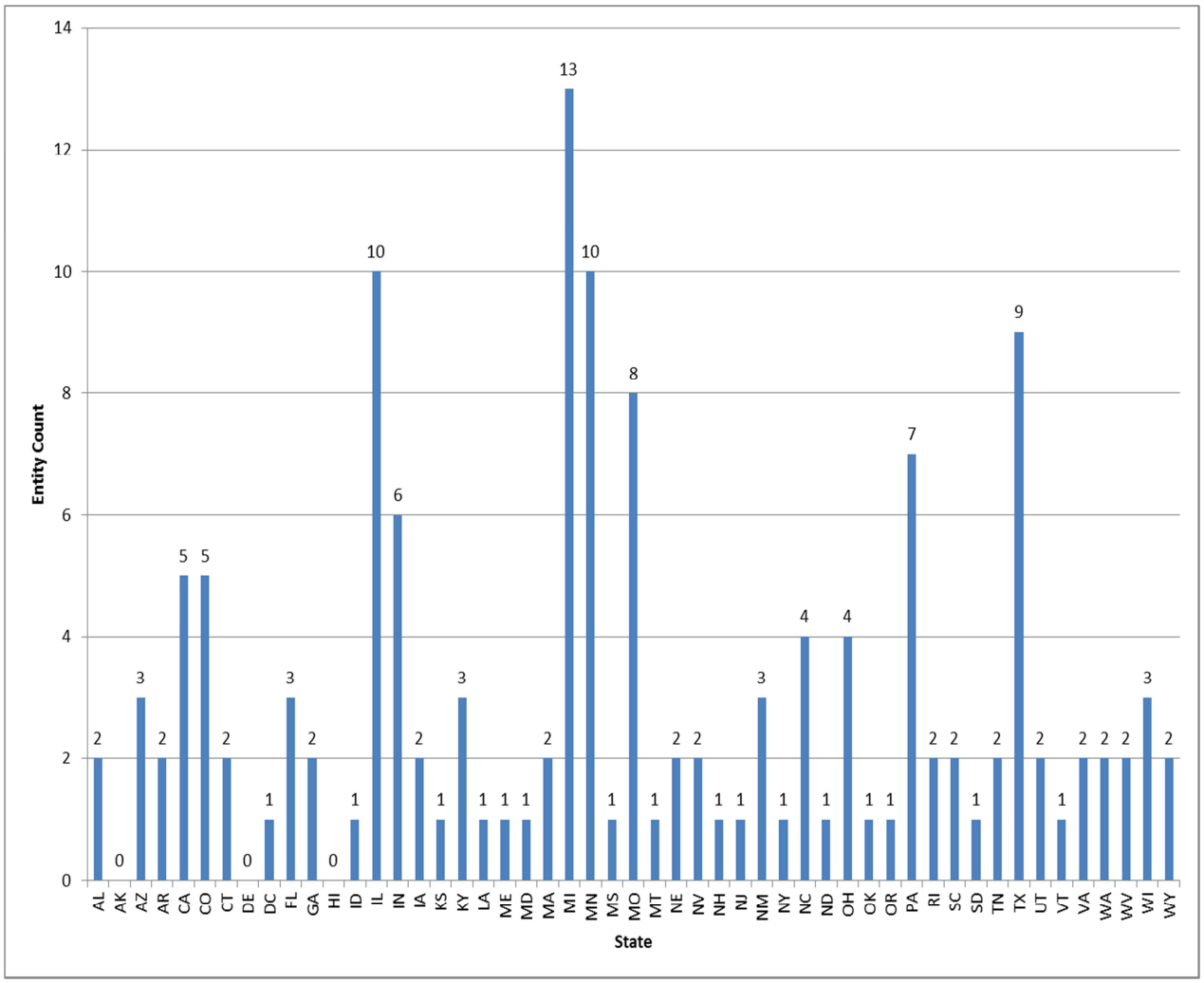
[65] *Id*.

[66] *Id*.

[67] *Id*.

[68] *See id.*; *Holland v. Sebelius*, No. 2:13-cv-11111 (S.D.W.Va. 2013); Joe Holland Chevrolet, *Why Choose Joe Holland Chevrolet: Our Staff*, http://www.joehollandchevrolet.com/MeetOurDepartments (last visited Jan. 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: 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.



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 Benefit between January 2014 and March 2016 are secular, for profit companies.[71] Major employers in nearly every industry could claim

[70] *See, e.g.*, Legatus: Ambassadors for Christ in the Marketplace, *Why Legatus: What We Offer*, http://legatus.org/legatus/ (last visited Jan. 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; Lauren Durso, *Who Seeks*

exemptions, including retail fashion,[72] fast food,[73] commercial agriculture,[74] insurance,[75] hospitality,[76] airline travel,[77] online dating,[78] and general retail merchandise[79]—to name only a few. These major companies collectively employ nearly two million employees,[80] and, if they

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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-providing-contraceptive-coverage/

[72] Laura Leonard, *Faith, Fashion, and Forever 21*, CHRISTIANITY TODAY (Mar. 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 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 Jan. 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] Forbes, *America's Largest Private Companies: #103 Forever 21*, https://www.forbes.com/companies/forever-21/ (last visited Jan. 4, 2019); Encyclopedia.com, *Chik-Fil-A Inc.*, http://www.encyclopedia.com/social-sciences-and-law/economics-business-and-

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 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 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 absent a nationwide injunction. 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

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labor/businesses-and-occupations/chick-fil-inc (last visited Jan. 4, 2019); Forbes, *America's Best Employers: #54 In-N-Out Burger*, https://www.forbes.com/companies/in-n-out-burger/ (last visited Jan. 4, 2019); Tyson Foods, *Our Story*, http://www.tysonfoods.com/our-story (last visited Jan. 4, 2019); Forbes, *The World's Biggest Public Companies: #199 Aflac*, https://www.forbes.com/companies/aflac/ (last visited Jan. 4, 2019); Marriott International, Inc. Annual Report (Form 10-K) (Feb. 5, 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 Jan. 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 Jan. 4, 2019).

[81] Bureau of Labor Statistics, *Nonprofits account for 11.4 million jobs, 10.3 percent of all private sector employment on the Internet*, U.S. DEP'T. OF LABOR (Oct. 21, 2014), https://www.bls.gov/opub/ted/2014/ted_20141021.htm?view_full.

[82] *See* Section III, *infra.*

why it is critical for this Court to issue a nationwide injunction enjoining the Final Exemption Rules.

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]

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

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[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.*

[85] Martha J. Bailey, Brad Hershbein & Amalia R. Miller, *The Opt-In Revolution? Contraception and the Gender Gap in Wages* 6-7 (Nat'l Bureau of Econ. Research, Working Paper No. 17922, 2012), http://www.nber.org/papers/w17922.pdf; NWLC, *New Data Estimates 62.4 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/ (estimating that 62.4 million women gained access to no-cost contraceptives).

[86] Heinrich Hock, *The Pill and the College Attainment of American Women and Men,* 1-28, 19 (Fla. State Univ., Dep't of Economics Working Paper, 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).

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 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

[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. 8725, 8728 (Feb. 15, 2012).

[90] Bailey et al., *supra* note 85.

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

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

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

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-nine 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 nine 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 41 states have yet to explicitly ensure no-cost contraceptive coverage.

Third, state laws regulating insurers cannot affect plans written in other states or plans

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[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 July 1, 2018*, 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.*

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

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[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 FOUND. (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. 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.*

women will not qualify for these programs at all.[104] Notably, safety net family planning 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 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' request for a preliminary injunction because losing consistent no-cost coverage—even

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[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, Public Law 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 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, *Why It Matters and What's at Stake for Women*, CENTER FOR AMERICAN PROGRESS (Feb. 9, 2017), https://www.americanprogress.org/issues/women/reports/2017/02/09/414773/the-threat-to-title-x-family-planning/. A recently proposed revision to the Title X regulations would expand the definition of "low income" for purposes of Title X eligibility to include all women who lose contraceptive coverage due to their employers' taking advantage of the challenged exemptions. *See* Compliance with Statutory Program Integrity Requirements, 83 Fed. Reg. 25,502, 25,514 (June 1, 2018) (to be codified at 42 C.F.R. pt. 59). This proposed rule does not reflect the current definition of "low income," and is inconsistent with the purpose of Title X family planning funding. Further, HHS has not proposed additional funding to accommodate this proposed expansion of Title X-eligible women. Finally, as noted herein, Title X funding is already stretched thin and under further attack, and HHS has proffered no evidence to show how Title X clinics would be able to handle this influx in patients. Therefore, this proposed rule should have no bearing on this case.

[105] Rachel Benson Gold & Kinsey Hasstedt, *Publicly Funded Family Planning Under Unprecedented Attack*, 107 AJPH Editorial 1895 (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.

for as little as one month—will result in irreparable 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 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

[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.

[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.

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 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

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[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.

[118] As discussed in the Plaintiffs-Appellees' Motion for a Preliminary Injunction, contraceptives are used as essential medicine for women. *See* Pls.' Mot. Prelim. Inj. at 31-32; Guttmacher Institute, *supra* note 108 (finding that 1.5 million women in the U.S. relied on the oral

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 adversely and irreparably 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 17,000 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 all depend upon consistent, uninterrupted coverage for prescription contraceptives. Loss of no-cost contraceptive coverage—even for only a few months—will have immediate, irreparable consequences for American women's professional and educational advancement as

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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 M. 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.

well as their and their families' well-being. Accordingly, on behalf of female employees and students throughout the country, Amici support Plaintiffs' motion for a preliminary injunction enjoining implementation of the Final Exemption Rules nationwide.

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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 and equal employment opportunities. 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 Priorities, 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.

- **American Federation of Teachers ("AFT")**, an affiliate of the AFL-CIO, represents 1.7 million members in more than 3,000 local affiliates nationwide and overseas in K-12 and high education, public employment and healthcare. AFT has a strong interest in supporting the rights of women in the area of reproductive choice. AFT considers reproductive healthcare, including contraception, as basic healthcare for women. Therefore, AFT believes it must be covered as a preventive health service in order to provide quality healthcare for all women. Furthermore, the fair and equal treatment of a woman's right to make her own personal healthcare decisions regarding reproduction and other health issues is an important part of AFT's mission to advance the workplace rights of all its members. AFT has members in all 50 states, plus Guam, Puerto Rico and the Virgin Islands.
- **National Association of Women Lawyers ("NAWL")** provides leadership, a collective voice, and essential resources to advance women in the legal profession and advocate for the equality of women under the law. Since 1899, NAWL has been empowering women in the legal profession, cultivating a diverse membership dedicated to equality, mutual support, and collective success. As part of its mission, NAWL promotes the interests of women and families by participation as amicus curiae in cases impacting their rights. NAWL recognizes that when women have secure control over planning whether and how to have a family, they are also able to invest in their own careers and take risks in the labor market that lead to better economic outcomes for women, their families, and the country.

- **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 more than 120,000 members in 55 chapters. 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")** trains, networks, and mobilizes law students and legal professionals to work within and beyond

the legal system to champion reproductive justice. If/When/How believes that reproductive justice will exist when all people have the ability to decide if, when, and how to create and sustain families with dignity, free from discrimination, coercion, or violence. Achieving reproductive justice requires a critical transformation of the legal system, from an institution that often perpetuates oppression to one that realizes justice. 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.
- **The Women's Bar Association of the District of Columbia**, founded in 1917, is one of the oldest and largest voluntary bar associations in metropolitan Washington, DC. Today, as in 1917, WBA continues to pursue its 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 its members. WBA believes that the

administration of justice includes women's access to healthcare services, with a particular interest in ensuring that women receive full access to contraceptive coverage. Lack of access can affect women's financial well-being, job security, educational attainment, and future opportunity.

- **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 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.
- **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.
- **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."