
Appeal Nos. 17-03752, 18-01253, 19-1129, 19-1189

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

COMMONWEALTH OF PENNSYLVANIA,
Plaintiff-Appellee,

v.

PRESIDENT OF THE UNITED STATES OF AMERICA, ET AL.,
Defendants-Appellants,
and

LITTLE SISTERS OF THE POOR, SAINTS PETER AND PAUL HOME,
Intervenor-Defendant-Appellant.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania,
The Honorable Wendy Beetlestone, Judge Presiding
(Case No. 2:17-cv-04540-WB)

**BRIEF OF *AMICI CURIAE* AMERICAN ASSOCIATION OF
UNIVERSITY WOMEN; SERVICE EMPLOYEES INTERNATIONAL
UNION; AND 13 ADDITIONAL PROFESSIONAL, LABOR, AND
STUDENT ASSOCIATIONS, IN SUPPORT OF APPELLEES**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the American Association of University Women; Service Employees International Union; The American Federation of State, County, and Municipal Employees; American Federation of Teachers; Girls Inc.; National Association of Social Workers; If/When/How: Lawyering for Reproductive Justice; California Women Lawyers; Women's Bar Association of the State of New York; Colorado Women's Bar Association; Women Lawyers' Association of Los Angeles; Women Lawyers On Guard Inc.; Women's Bar Association of the District of Columbia; Lawyers Club of San Diego; and Hispanic Lawyers' Association of Illinois state that they have no parent corporations. They have no stock, and therefore no publicly held company owns 10% or more of their stock.

/s/ *Jamie A. Levitt*
Jamie A. Levitt

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<i>Burwell v. Hobby Lobby Stores, Inc.</i> , 573 U.S. 682 (2014).....	4
<i>Conestoga Wood Specialties Corp. v. Sec’y of the U.S. Dep’t of Health & Human Servs.</i> , 724 F.3d 377 (3d Cir. 2013)	16
<i>Eden Foods, Inc. v. Sebelius</i> , 733 F.3d 626 (6th Cir. 2013)	18
<i>Eternal Word Television Network, Inc. v. Sec’y of U.S. Dep’t of Health & Human Servs.</i> , 756 F.3d 1339 (11th Cir. 2014)	17
<i>Geneva Coll. v. Sebelius</i> , 988 F. Supp. 2d 511 (W.D. Pa. 2013).....	12
<i>Gilardi v. U.S. Dep’t of Health & Human Servs.</i> , 733 F.3d 1208 (D.C. Cir. 2013).....	16
<i>Grote v. Sebelius</i> , 708 F.3d 850 (7th Cir. 2013)	16
<i>Holland v. Sebelius</i> , No. 2:13-cv-15487 (S.D.W. Va. 2013).....	18
<i>M&N Plastics, Inc. v. Sebelius</i> , 997 F. Supp. 2d 19 (D.D.C. 2013).....	18
<i>Zubik v. Burwell</i> , No. 14-1418 (2016).....	14

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Statutes

Accommodations in Connection with Coverage of Certain Preventive Health Services, 45 C.F.R. § 147.131 (b) & (c)(2).....4

Employer Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829 (1974).....25

Patient Protection and Affordable Care Act, 42 U.S.C. § 18001, *et seq.* (2010).....2

Regulations

Coverage of Certain Preventive Services Under the Affordable Care Act, 78 Fed. Reg. 8456 (Feb. 6, 2013)3

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)3

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 (Feb. 15, 2012)22

Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act, 83 Fed. Reg. 57,536 (Nov. 15, 2018).....2

Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act, 83 Fed. Reg. 57,592 (Nov. 15, 2018).....2

TABLE OF AUTHORITIES
(continued)

Page

Other Authorities

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>6, 12, 15, 16

About Dordt: Fast Facts, Dordt College, <https://www.dordt.edu/about-dordt/fast-facts> (last visited Mar. 22, 2019) 13

About Republic Airline, Republic Airlines Inc., <http://rjet.com/about-republic-airline/> (last visited Mar. 24, 2019).....20

Adam Sonfield, *et al.*, *Impact of the Federal Contraceptive Coverage Guarantee on Out-of-Pocket Payments for Contraceptives: 2014 Update*, 91 CONTRACEPTION 44 (2015)22, 25

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), https://www.guttmacher.org/sites/default/files/report_pdf/social-economic-benefits.pdf.....8, 13

Adam Sonfield, *What Is at Stake with the Federal Contraceptive Coverage Guarantee?*, 20 GUTTMACHER POLICY REVIEW 8 (2017), https://www.guttmacher.org/sites/default/files/article_files/gpr2000816_0.pdf27

Aflac, FORBES, <https://www.forbes.com/companies/aflac/> (last visited Mar. 24, 2019).....20

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>.....28

TABLE OF AUTHORITIES
(continued)

	Page
Albert L. Siu & U.S. Preventive Services Task Force, <i>Screening for Depression in Adults: U.S. Preventive Services Task Force Recommendation Statement</i> , 315 JAMA 380 (2016), http://tinyurl.com/hhbnqe9	30
<i>Forever 21</i> , FORBES, https://www.forbes.com/companies/forever-21/ (last visited Mar. 24, 2019).....	19
Andrea Chang & Peter Jamison, <i>EHarmony is Moving from Santa Monica to Westwood</i> , L.A. TIMES (Feb. 4, 2015), http://www.latimes.com/business/la-fi-0205-eharmony-santa-monica-20150205-story.html	20
Ann Schrader, <i>Republic Air CEO Puts His Faith to Work</i> , DENVER POST (last updated May 6, 2016), http://www.denverpost.com/2009/11/13/republic-air-ceo-puts-his-faith-to-work/ ; Republic Airlines Inc., <i>Our Values: Vision, Mission & Culture</i> , http://rjet.com/about-republic-airline/our-values/ (last visited Mar. 24, 2019).....	19
<i>A Real-Time Look at the Impact of the Recession on Women’s Family Planning and Pregnancy Decisions</i> , Guttmacher Inst. (Sept. 2009), https://www.guttmacher.org/sites/default/files/report_pdf/recession_fp_1.pdf	29
<i>At a Glance</i> , East Texas Baptist University, https://www.etbu.edu/about/glance/ (last visited Mar. 22, 2019)	13
Brianna M. Magnusson, <i>et al.</i> , <i>Contraceptive Insurance Mandates and Consistent Contraceptive Use Among Privately Insured Women</i> , 50 MED. CARE 562 (2012)	24, 25, 29
Bureau of Labor Statistics, <i>Nonprofits account for 11.4 million jobs, 10.3 percent of all private sector employment on the Internet</i> , U.S. DEP’T. OF LABOR (Oct. 21, 2014), https://www.bls.gov/opub/ted/2014/ted_20141021.htm	20

TABLE OF AUTHORITIES
(continued)

	Page
<i>Catholic Higher Education FAQs</i> , ACCU, http://www.accunet.org/Catholic-Higher-Ed-FAQs (last visited Mar. 22, 2019).....	11
<i>CCU Facts and Stats</i> , Colorado Christian University, http://www.ccu.edu/about/factsandstats/ (last visited Mar. 22, 2019)	13
<i>Chik-Fil-A Inc.</i> , Encyclopedia.com, http://www.encyclopedia.com/social-sciences-and-law/economics- business-and-labor/businesses-and-occupations/chick-fil-inc (last visited Mar. 24, 2019).....	19
Colleen Walsh, <i>God and Walmart</i> , HARVARD GAZETTE (Nov. 19, 2009), https://news.harvard.edu/gazette/story/2009/11/god-and- walmart/	19
<i>College of the Ozarks: Overview</i> , U.S. News & World Report, https://www.usnews.com/best-colleges/college-ozarks-2500	13
<i>Contraceptive Use in the United States</i> , Guttmacher Inst. (Sept. 2016), https://www.guttmacher.org/fact-sheet/contraceptive-use-united- states#2a	27, 29
David S. Loughran & Julie M. Zissimopoulos, <i>Why Wait? The Effect of Marriage and Childbearing on the Wages of Men and Women</i> , 44 J. HUM. RES. 326 (2009)	22, 23
Emma Green, <i>Chick-Fil-A: Selling Chicken with a Side of God</i> , THEATLANTIC.COM (Sept. 8, 2014), https://www.theatlantic.com/business/archive/2014/09/chick-fil-a- selling-chicken-with-a-side-of-god/379776/ ;	18
<i>Fast Facts: Geneva College</i> , Geneva College, http://www.geneva.edu/about-geneva/fast-facts (last visited Mar. 22, 2019)	13

TABLE OF AUTHORITIES
(continued)

	Page
<i>Guttmacher Statistic on Catholic Women’s Contraceptive Use</i> (Feb. 15, 2012), Guttmacher Inst., http://www.guttmacher.org/media/inthenews/2012/02/15/ ;	8
Hal C. Lawrence, III, Vice President for Practice Activities, Am. Congress of Obstetricians and Gynecologists, <i>Testimony Before the Institute of Medicine Committee on Preventive Services for Women</i> (Jan. 12, 2011), http://tinyurl.com/ztyclx4	30
Heinrich Hock, <i>The Pill and the College Attainment of American Women and Men</i> 19 (Fla. State Univ., Working Paper, Oct. 9, 2007)	22, 23
<i>Hobby Lobby Stores</i> , FORBES, https://www.forbes.com/companies/hobby-lobby-stores/#4daa9db16cee (last visited Mar. 25, 2019)	16
Holly Lebowitz Rossi, <i>7 CEOs with Notably Devout Religious Beliefs</i> (Nov. 11, 2014), http://fortune.com/2014/11/11/7-ceos-with-notably-devout-religious-beliefs/	19
<i>Insurance Coverage of Contraceptives, State Laws and Policies as of July 1, 2018</i> , Guttmacher Inst., https://www.guttmacher.org/state-policy/explore/insurance-coverage-contraceptives	24, 25
<i>In-N-Out Burger</i> , FORBES, https://www.forbes.com/companies/in-n-out-burger/ (last visited Mar. 24, 2019)	19
Jeanine Santucci, <i>Students at Religious Universities Are Worried About Access to Birth Control. Here’s Why.</i> , USA TODAY (July 17, 2017), http://college.usatoday.com/2017/07/17/students-at-religious-universities-are-worried-about-access-to-birth-control-heres-why/	11

TABLE OF AUTHORITIES
(continued)

	Page
Jennifer J. Frost & Laura Duberstein Lindberg, <i>Reasons for Using Contraception: Perspectives of US Women Seeking Care at Specialized Family Planning Clinics</i> , 87 <i>CONTRACEPTION JOURNAL</i> 465 (2013).....	21
Jodi Jacobson, <i>Eighteen For-Profit Companies Fighting to Eliminate the Birth Control Benefit</i> , <i>REWIRE</i> (Mar. 7, 2013), https://rewire.news/article/2013/03/07/the-18-for-profit-companies-fighting-to-eliminate-the-birth-control-benefit/	16, 17, 18
Joe Carlson, <i>N.Y. Catholic Health System Wins Ruling Against Contraception Mandate</i> , <i>MODERN HEALTHCARE</i> (Dec. 16, 2013), http://www.modernhealthcare.com/article/20131216/NEWS/312169935	7, 10
Joe Holland Chevrolet, <i>Why Choose Joe Holland Chevrolet: Our Staff</i> , http://www.joehollandchevrolet.com/MeetOurDepartments (last visited Nov. 21, 2017).....	18
Juell B. Homco, <i>et al.</i> , <i>Reasons for Ineffective Pre-pregnancy Contraception Use in Patients Seeking Abortion Services</i> , 80 <i>CONTRACEPTION</i> 569 (2009), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3152747/pdf/nihms299833.pdf	29
Kevin Porter, <i>In-N-Out Burger Owner Lynsi Snyder on Searching for a Father Figure and Finding God in “I am Second,”</i> <i>CHRISTIAN POST, INC.</i> (Jan. 16, 2017), https://www.christianpost.com/news/in-n-out-burger-owner-lynsi-snyder-talks-faith-journey-in-i-am-second-video-172909/	19
Kiersten Gillette-Pierce & Jamila Taylor, <i>Why It Matters and What’s at Stake for Women</i> , <i>Ctr. for American Progress</i> (Feb. 9, 2017), https://www.americanprogress.org/issues/women/reports/2017/02/09/414773/the-threat-to-title-x-family-planning/	26

TABLE OF AUTHORITIES
(continued)

	Page
Kimberly Daniels, <i>Contraceptive Methods Women Have Ever Used: United States, 1982–2010</i> , 62 NAT’L HEALTH STATISTICS REP. 1 (2013), http://www.cdc.gov/nchs/data/nhsr/nhsr062.pdf	8
<i>Labor Force Statistics from the Current Population Survey</i> , U.S. Dep’t of Labor, https://www.bls.gov/cps/cpsaat18.htm (last updated Jan. 18, 2019)	9
Laura E. Dorsoa, <i>et al.</i> , <i>Who Seeks Religious Accommodations to Providing Contraceptive Coverage?</i> , CTR. FOR AM. PROGRESS (Aug. 11, 2017), https://www.americanprogress.org/issues/lgbt/news/2017/08/11/437265/seeks-religious-accommodations-providingcontraceptive-coverage/	14
Laura Leonard, <i>Faith, Fashion, and Forever 21</i> , CHRISTIANITY TODAY (Mar. 27, 2009), http://www.christianitytoday.com/women/2009/march/faith-fashion-and-forever-21.html	18
Laurie Sobel, Alina Salganicoff & Caroline Rosenzweig, <i>New Regulations Broadening Employer Exemptions to Contraceptive Coverage: Impact on Women</i> , 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	25
Laurie Sobel, Matthew Rae & Alina Salganicoff, <i>Data Note: Are Nonprofits Requesting an Accommodation for Contraceptive Coverage?</i> , THE HENRY J. KAISER FAMILY FOUND. (Dec. 2015), http://files.kff.org/attachment/data-note-data-note-are-nonprofits-requesting-an-accommodation-for-contraceptive-coverage	14

TABLE OF AUTHORITIES
(continued)

	Page
Lois Uttley & Christine Khaikin, <i>Growth of Catholic Hospitals and Health Systems: 2016 Update of the Miscarriage of Medicine Report</i> , MERGERWATCH (2016), http://static1.1.sqspcdn.com/static/f/816571/27061007/1465224862580/MW_Update-2016-MiscarrOfMedicine-report.pdf?token=UxHKcNPcSKjkw0MAq8v8aEdM83w%3D	9, 10
Lydia E. Pace, Stacie B. Dusetzina & Nancy L. Keating, <i>Early Impact of the Affordable Care Act on Oral Contraceptive Cost Sharing, Discontinuation, and Nonadherence</i> , 35 HEALTH AFFAIRS 1616 (2016).....	27, 28, 29
Marriott Form 10-K (2016), https://marriott.gcs-web.com/sec-filings/sec-filing/10-k/0001628280-16-011346 (last visited March 25, 2019)	20
Martha J. Bailey, Brad Hershbein & Amalia R. Miller, <i>The Opt-In Revolution? Contraception and the Gender Gap in Wages</i> (Nat’l Bureau of Econ. Research, Working Paper No. 17922, Mar. 2012), http://www.nber.org/papers/w17922.pdf ;.....	21, 23
Michael S. Rosenwald, <i>Marriot’s Family Guy</i> , WASH. POST (Mar. 16, 2009), http://www.washingtonpost.com/wp-dyn/content/article/2009/03/15/AR2009031501715.html	19
Natalie E. Birgisson, <i>et al.</i> , <i>Preventing Unintended Pregnancy: The Contraceptive CHOICE Project in Review</i> , 24 JOURNAL OF WOMEN’S HEALTH 349 (2015).....	28
<i>New Data Estimates 62.4 Million Women Have Coverage of Birth Control Without Out-of-Pocket Costs</i> , NWLC, https://nwlc.org/resources/new-data-estimate-62-4-million-women-have-coverage-of-birth-control-without-out-of-pocket-costs/ (last visited Mar. 24, 2019).....	21

TABLE OF AUTHORITIES
(continued)

	Page
Nicole Fisher, <i>Battle Between HHS and Christian College Comes To Dramatic End</i> , FORBES (Mar. 5, 2018), https://www.forbes.com/sites/nicolefisher/2018/03/05/battle-between-hhs-christian-college-comes-to-dramatic-end/#72d789044641	12
Maggie Lake, <i>eHarmony CEO Meets Controversial Success</i> , CNN (July 11, 2008), http://www.cnn.com/2008/BUSINESS/07/11/eharmony.maggie/?iid=EL	19
Megan L. Kavanaugh & Ragnar Anderson, <i>Contraception and Beyond: The Health Benefits of Services Provided at Family Planning Centers</i> , GUTTMACHER INST. (July 2013), https://www.guttmacher.org/pubs/health-benefits.pdf	29
Mia R. Zolna, Megan L. Kavanaugh, & Kinsey Hasstedt, <i>Insurance-Related Practices at Title X-Funded Family Planning Centers under the Affordable Care Act: Survey and Interview Findings</i> , Women’s Health Issues (2017).....	26
Michael Nedelman, <i>et al.</i> , <i>Trump Administration Deals Major Blow to Obamacare Birth Control Mandate</i> , CNN (Oct. 6, 2017), http://www.cnn.com/2017/10/06/health/trump-birth-control-mandate/index.html	7
Nora V. Becker & Daniel Polsky, <i>Women Saw Large Decrease in Out-Of-Pocket Spending for Contraceptives After ACA Mandate Removed Cost Sharing</i> , 34 HEALTH AFFAIRS 1204 (2015)	23, 27, 28
<i>Our Locations</i> , Walmart Stores, Inc., https://corporate.walmart.com/our-story/locations/united-states (last visited Mar. 24, 2019).....	20
<i>Our Story</i> , Tyson Foods, http://www.tysonfoods.com/our-story (last visited Mar. 24, 2019).....	19, 20

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(continued)

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<i>Paul S. Amos: This is Not Who We Are</i> , Faith & Leadership (Nov. 21, 2011), https://www.faithandleadership.com/paul-s-amos-not-who-we-are	19
Rachel Benson Gold & Kinsey Hasstedt, <i>Publicly Funded Family Planning Under Unprecedented Attack</i> , 107 AJPB Editorial 1895 (Dec. 2017), http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2017.304124	26
Rachel K. Jones & Joerg Dreweke, <i>Countering Conventional Wisdom: New Evidence on Religion and Contraceptive Use</i> , GUTTMACHER INST. (Apr. 2011), https://www.guttmacher.org/sites/default/files/report_pdf/religion-and-contraceptive-use.pdf	8
Republic Airlines Inc., <i>Our Values: Vision, Mission & Culture</i> , http://rjet.com/about-republic-airline/our-values/ (last visited Mar. 24, 2019)	19
Rob Wile, <i>This 35-Year-Old Woman Just Inherited In-N-Out Burger. She’s Now a Billionaire</i> , TIME INC. (May 8, 2017), http://time.com/money/4770527/in-n-out-lynsi-snyder-fortune-ownership/	18
Samantha Cooney, <i>46 Secular Companies That Don’t Want to Cover Employees’ Birth Control</i> , TIME INC. (May 31, 2017).....	6, 12, 15, 16
Steve Kay, <i>Of Faith and Food</i> , SOSLAND PUBLISHING CO. (Aug. 11, 2015)	19
Susan A. Cohen, <i>The Broad Benefits of Investing in Sexual and Reproductive Health</i> , 7 GUTTMACHER REPORT ON PUB. POLICY 5 (Mar. 2004), https://www.guttmacher.org/sites/default/files/article_files/gr070105.pdf	23

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(continued)

	Page
<i>Union University: Overview</i> , U.S. News & World Report, https://www.usnews.com/best-colleges/union-university-3528	13
<i>U.S. Catholic Health Care in the U.S.</i> (2018), Catholic Health Assoc. of the U.S., https://www.chausa.org/docs/default-source/default-document-library/cha_2018_miniprofile.pdf?sfvrsn=0 (last visited Mar. 24, 2019).....	9
<i>Why Legatus: What We Offer</i> , Legatus: Ambassadors for Christ in the Marketplace, http://legatus.org/legatus/ (last visited Mar. 24, 2019).....	18
<i>Wheaton by the Numbers</i> , Wheaton College, https://www.wheaton.edu/about-wheaton/why-wheaton/college-profile/wheaton-by-the-numbers/ (last visited Mar. 22, 2019)	13
<i>Women’s Preventive Health Services Final Rule</i> , Catholic Health Assoc. of the U.S., https://www.chausa.org/newsroom/women%27s-preventive-health-services-final-rule (last visited Mar. 22, 2019)	10

INTEREST OF AMICI CURIAE¹

Amici curiae (“Amici”) are organizations working on behalf of female employees and students throughout the United States.² Amici represent well over a million members in hundreds of occupations in nearly every state, including women in organized labor,³ women employed in various industries, social workers, teachers, lawyers, students, and more. Amici have an interest in the outcome of this litigation because no-cost contraceptive coverage is critical for women to participate and succeed in the workplace⁴ and in higher education.⁵

ARGUMENT

I. SUMMARY OF ARGUMENT

Amici support upholding the preliminary injunction protecting women and

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 their 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.

⁴ *See* Appendix, including Statement of Interest for *amicus curiae* Service Employees International Union.

⁵ *See* Appendix, including Statement of Interest for *amicus curiae* the American Association of University Women.

their families from the irreparable harm that will occur if Defendants are permitted to enforce the rules issued on November 7, 2018 (the “Final Exemption Rules”).⁶

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”)⁷ 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 will face a loss of contraceptive coverage, with all the resulting harms that flow therefrom, if the preliminary injunction is overturned.⁸ Approximately half a million women across

⁶ See 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 42 U.S.C. § 18001, *et seq.* (2010).

⁸ HHS has increased its estimate of women potentially affected by the Final Exemption Rules to between 70,515 and 126,400. See 83 Fed. Reg. 57,536, 57,578. Despite this increase, for the reasons set forth herein, Amici believe this estimate remains drastically underinclusive. See also Response Brief of Appellees, No. 19-1189 (3d Cir. Mar. 18, 2019) (“Appellee’s Brief”) at 30.

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.⁹ For religiously-affiliated employers and universities, the federal government created an accommodation, allowing the entity to opt out of providing

⁹ *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. 8456, 8458 (Feb. 6, 2013). *See also* Appellee’s Brief at 15-16.

contraceptive coverage while requiring that a health insurance provider or other third party provide employees and students seamless contraceptive coverage instead.¹⁰ After *Burwell v. Hobby Lobby Stores, Inc.*,¹¹ closely-held corporations owned or controlled by persons with sincerely-held religious beliefs could also seek accommodations.¹²

The Final Exemption Rules significantly expand the prior exemptions and are even more expansive than the interim Exemption Rules. *First*, they exponentially increase the number of employers and universities that could deny coverage. The Religious Exemption Rule would allow virtually *all* employers and universities, including large, for-profit companies, to deny no-cost contraceptive coverage to their employees and students.¹³ 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.”¹⁴ *Second*, the Final Exemption Rules would allow employers and universities to claim exemptions without meaningful oversight, as entities could

¹⁰ Accommodations in Connection with Coverage of Certain Preventive Health Services, 45 C.F.R. § 147.131 (b) & (c)(2); *see also* Appellee’s Brief at 16-19.

¹¹ 573 U.S. 682 (2014).

¹² Appellee’s Brief at 20-22.

¹³ *Id.* at 26, 29-30.

¹⁴ *Id.* at 26-27, 29-30.

skip certifying their objections or notifying the federal government before dropping coverage.¹⁵ *Finally*, because the Final Exemption Rules provide exemptions—not accommodations—women who receive insurance coverage through objecting entities would no longer be guaranteed seamless contraceptive coverage.¹⁶ Employees and students of entities claiming exemptions—including many members of Amici—and their dependents are at risk of losing this critical coverage altogether.

By providing virtually any employer or university in the country the ability to drop the Contraceptive Coverage Benefit based on an undisclosed, “sincerely held” belief, 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

¹⁵ Appellee’s Brief at 27-30.

¹⁶ *Id.* at 27, 29-30.

challenging the Contraceptive Coverage Benefit and sought exemptions from it.¹⁷ Several non-profits that were eligible for accommodations, including colleges and universities, challenged the accompanying notice requirement.¹⁸ 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. 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 the preliminary injunction is overturned. *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 contraceptive coverage for female employees and students

¹⁷ 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>.

¹⁸ Haglage, *supra* note 17.

through their regular insurance plans.¹⁹ 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 Rules.²⁰ *Second*, a potentially boundless range of secular for-profit corporations would be able to claim religious or moral exemptions.²¹ 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,²² 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

¹⁹ See Final Exemption Rules.

²⁰ 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>.

²¹ 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.”).

²² 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.* (U.S. Jan. 11, 2016). See also *Zubik Amici*.

women of reproductive age across the United States have, at some point, used contraception to prevent pregnancy.²³ Ninety-eight percent of sexually active Catholic women have used a contraception method other than natural family planning,²⁴ and 87% percent of Catholic women currently at risk of unintended pregnancy use a method other than natural family planning.²⁵ 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).²⁶ 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

²³ Adam Sonfield, *et al.*, *The Social and Economic Benefits of Women’s Ability to Determine Whether and When to Have Children*, GUTTMACHER INST. at 3 (Mar. 2013), https://www.guttmacher.org/sites/default/files/report_pdf/social-economic-benefits.pdf.

²⁴ Guttmacher Inst., *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>.

²⁵ Guttmacher Inst., *supra* note 24.

²⁶ Rachel K. Jones & Joerg Dreweke, *Countering Conventional Wisdom: New Evidence on Religion and Contraceptive Use*, GUTTMACHER INST. at 5 (Apr. 2011), https://www.guttmacher.org/sites/default/files/report_pdf/religion-and-contraceptive-use.pdf.

process that ensures seamless coverage through third parties.²⁷ 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. At least 654 hospitals in the United States are associated with religious denominations prohibiting many or all forms of contraception.²⁸ These hospitals are major employers throughout the country, with at least 530,599 full-time and 225,433 part-time employees,²⁹ approximately 76% of whom are women.³⁰ These hospitals comprise 14.5% of all acute care hospitals in the United States.³¹ Forty-six of these hospitals are the sole community

²⁷ Appellee's Brief at 16-19, 27.

²⁸ See *U.S. Catholic Health Care in the U.S.* (2018) at 1, Catholic Health Assoc. of the U.S., https://www.chausa.org/docs/default-source/default-document-library/cha_2018_miniprofile.pdf?sfvrsn=0 (last visited Mar. 24, 2019).

²⁹ *Id.*

³⁰ *Labor Force Statistics from the Current Population Survey*, U.S. Dep't of Labor, <https://www.bls.gov/cps/cpsaat18.htm> (last updated Jan. 18, 2019).

³¹ Lois Uttley & Christine Khaikin, *Growth of Catholic Hospitals and Health Systems: 2016 Update of the Miscarriage of Medicine Report* at 1, MERGERWATCH, (2016), http://static1.1.sqspcdn.com/static/f/816571/27061007/1465224862580/MW_Update-2016-MiscarrOfMedicine-report.pdf?token=UxHKcNPcSKjkw0MAq8v8aEdM83w%3D.

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.³² The number of religiously-affiliated hospitals in the United States has increased by 22% between 2001 and 2016.³³ If this trend continues, even more women would 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,³⁴ obstructing contraception access for hundreds of thousands of women throughout the nation, including those represented by Amici.

³² *Id.*

³³ *Id.*

³⁴ 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 Women's Preventive Health Services Final Rule*, Catholic Health Assoc. of the U.S., <https://www.chausa.org/newsroom/women%27s-preventive-health-services-final-rule> (last visited Mar. 22, 2019). Additionally, numerous state and regional Catholic healthcare umbrella organizations have strongly opposed the Benefit. *See, e.g.*, Joe Carlson, *supra* note 20.

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.³⁵

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 students³⁶ and employing large numbers of faculty and staff.³⁷ During the 2016-17 academic year, *nearly two-thirds* of students enrolled in Catholic colleges and universities were female.³⁸

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

³⁵ See Jeanine Santucci, *Students at Religious Universities Are Worried About Access to Birth Control. Here’s Why.*, USA TODAY (July 17, 2017), <http://college.usatoday.com/2017/07/17/students-at-religious-universities-are-worried-about-access-to-birth-control-heres-why/>.

³⁶ *Catholic Higher Education FAQs*, ACCU, <http://www.accunet.org/Catholic-Higher-Ed-FAQs> (last visited Mar. 22, 2019).

³⁷ *Id.*

³⁸ *Id.*

public comments.³⁹ 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.⁴⁰ 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.⁴¹ 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.⁴² These colleges collectively boast an enrollment of over

³⁹ See generally Brief of *Amicus Curiae* the Council for Christian Colleges and Universities in Support of Petitioners, *Zubik v. Burwell*, Nos. 14-1418, *et al.*, at 2-3 (U.S. Jan. 11, 2016).

⁴⁰ *Id.* at 1.

⁴¹ *Geneva Coll. v. Sebelius*, 988 F. Supp. 2d 511 (W.D. Pa. 2013).

⁴² Cooney, *supra* note 17; Haglage, *supra* note 17; 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>.

20,000 students.⁴³

The immediate and irreparable impact of the Final Exemption Rules on female students nationwide will be severe if the preliminary injunction is overturned. Young women will face increased rates of unintended pregnancies, hindering their pursuit of higher education and career advancement.⁴⁴ 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

⁴³ *Fast Facts: Geneva College*, Geneva College, <http://www.geneva.edu/about-geneva/fast-facts> (last visited Mar. 22, 2019); *Wheaton by the Numbers*, Wheaton College, <https://www.wheaton.edu/about-wheaton/why-wheaton/college-profile/wheaton-by-the-numbers/> (last visited Mar. 22, 2019); *College of the Ozarks: Overview*, U.S. News & World Report, <https://www.usnews.com/best-colleges/college-ozarks-2500> (last visited Mar. 22, 2019); *CCU Facts and Stats*, Colorado Christian University, <http://www.ccu.edu/about/factsandstats/> (last visited Mar. 22, 2019); *At a Glance*, East Texas Baptist University, <https://www.etbu.edu/about/glance/> (last visited Mar. 22, 2019); *Union University: Overview*, U.S. News & World Report, <https://www.usnews.com/best-colleges/union-university-3528> (last visited Mar. 22, 2019); *About Dordt: Fast Facts*, Dordt College, <https://www.dordt.edu/about-dordt/fast-facts> (last visited Mar. 22, 2019).

⁴⁴ Sonfield, *et al.*, *supra* note 23, at 9 (women who have children in their teens or early 20s are significantly less likely to obtain formal education after high school as compared to women who are able to wait to have children until their late 20s or 30s).

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 United States and 10% of the largest non-profits already had accommodations under the Contraceptive Coverage Benefit.⁴⁵ Of the 45 entities that requested an accommodation between 2014 and 2016, 27% were religiously-affiliated non-profits.⁴⁶ These employers, and many more like them, could drop contraceptive coverage under the Final Exemption Rules without guaranteeing alternate coverage for their employees.

Additionally, more than 83 *amicus curiae* briefs supporting religious exemptions from the Contraceptive Coverage Benefit were filed in *Zubik v. Burwell*,⁴⁷ representing dozens of religiously-affiliated advocacy groups, professional organizations, think tanks, and umbrella organizations.⁴⁸ These *amici*

⁴⁵ Laurie Sobel, Matthew Rae & Alina Salganicoff, *Data Note: Are Nonprofits Requesting an Accommodation for Contraceptive Coverage?* at 2, THE HENRY J. KAISER FAMILY FOUND. (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. *Id.*

⁴⁶ Laura E. Dorsoa, *et al.*, *Who Seeks Religious Accommodations to Providing Contraceptive Coverage?*, CTR. FOR AM. PROGRESS (Aug. 11, 2017), <https://www.americanprogress.org/issues/lgbt/news/2017/08/11/437265/seeks-religious-accommodations-providingcontraceptive-coverage/>.

⁴⁷ *Zubik v. Burwell*, No. 14-1418 (2016).

⁴⁸ See Briefs of *Amici Curiae* Supporting the Petitioner, *Zubik v. Burwell*, Nos. 14-1418, *et al.* (2016).

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 employer could take advantage of the exemptions based on loosely defined religious or moral reasons.⁴⁹ Consequently, employees of *any* 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 preliminary injunction is overturned.

Indeed, reports have identified over 80 private, for-profit businesses that have explicitly indicated their desire to drop contraceptive coverage.⁵⁰ This list includes several companies that collectively employ well over 17,000 women in at least 47 states:

⁴⁹ See Final Exemption Rules.

⁵⁰ Cooney, *supra* note 17; Haglage, *supra* note 17.

- Hobby Lobby, a national craft supply chain (over 13,000 employees);⁵¹
- Grote Industries, LLC, an Indiana vehicle safety systems manufacturer (1,148 full-time employees);⁵²
- Conestoga Wood Specialties Corporation, a Pennsylvania-based cabinet manufacturer (950 employees);⁵³
- Autocam Corporation and Autocam Medical, LLC, a Michigan transportation and medical equipment parts company (over 661 employees);⁵⁴
- Freshway Foods and Freshway Logistics, an Ohio-based produce processing company (400 employees);⁵⁵
- Sioux Chief Manufacturing, a Missouri plumbing products company

⁵¹ *Id*; *Hobby Lobby Stores*, FORBES, <https://www.forbes.com/companies/hobby-lobby-stores/#4daa9db16cee> (last visited Mar. 25, 2019).

⁵² *Grote v. Sebelius*, 708 F.3d 850, 852 (7th Cir. 2013).

⁵³ *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).

⁵⁴ *Autocam Corp. v. Sebelius*, 730 F.3d 618 (6th Cir. 2013); 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/>.

⁵⁵ *Gilardi v. U.S. Dep’t of Health & Human Servs.*, 733 F.3d 1208 (D.C. Cir. 2013).

(370 employees);⁵⁶

- Eternal Word Television Network, an Alabama religious television station (350 full-time employees);⁵⁷
- Hercules Industries, Inc., a Colorado products manufacturer (303 employees);⁵⁸
- Tyndale House, an Illinois publishing company (260 employees);⁵⁹
- Weingartz Supply Company, a Michigan power equipment company (170 employees);⁶⁰
- American Pulverizer Company, a Missouri metal recycling company (150 employees);⁶¹
- Sharpe Holdings, Inc., a Missouri dairy farming corporation (over 100 employees);⁶²
- Triune Health Group, an Illinois corporation that facilitates the re-

⁵⁶ Jacobson, *supra* note 54.

⁵⁷ *Eternal Word Television Network, Inc. v. Sec’y of U.S. Dep’t of Health & Human Servs.*, 756 F.3d 1339 (11th Cir. 2014).

⁵⁸ Jacobson, *supra* note 54.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

entry of injured workers in the workforce (95 employees);⁶³

- O'Brien Industrial Holdings, a Missouri ceramics processing company (87 employees);⁶⁴ and
- Many more.⁶⁵

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.⁶⁶ Major employers in nearly every industry could claim exemptions, including retail fashion,⁶⁷ fast food,⁶⁸ commercial agriculture,⁶⁹ insurance,⁷⁰ hospitality,⁷¹ airline

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *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 Nov. 21, 2017); *M&N Plastics, Inc. v. Sebelius*, 997 F. Supp. 2d 19 (D.D.C. 2013); *Eden Foods, Inc. v. Sebelius*, 733 F.3d 626 (6th Cir. 2013).

⁶⁶ See, e.g., *Why Legatus: What We Offer*, Legatus: Ambassadors for Christ in the Marketplace, <http://legatus.org/legatus/> (last visited Mar. 24, 2019) (More than 5,000 Catholic business leaders and spouses are members of this organization).

⁶⁷ 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>.

⁶⁸ Emma Green, *Chick-Fil-A: Selling Chicken with a Side of God*, THEATLANTIC.COM (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*

travel,⁷² online dating,⁷³ and general retail merchandise,⁷⁴ to name only a few.

These major companies collectively employ nearly two million employees,⁷⁵ and,

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/>.

⁶⁹ Holly Lebowitz Rossi, *7 CEOs with Notably Devout Religious Beliefs*, FORTUNE.COM (Nov. 11, 2014), <http://fortune.com/2014/11/11/7-ceos-with-notably-devout-religious-beliefs/>; Steve Kay, *Of Faith and Food*, SOSLAND PUBLISHING CO. (Aug. 11, 2015).

⁷⁰ *Paul S. Amos: This is Not Who We Are*, Faith & Leadership (Nov. 21, 2011), <https://www.faithandleadership.com/paul-s-amos-not-who-we-are>.

⁷¹ Michael S. Rosenwald, *Marriot's Family Guy*, WASH. POST (Mar. 16, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/15/AR2009031501715.html>.

⁷² Ann Schrader, *Republic Air CEO Puts His Faith to Work*, DENVER POST (last updated 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 Mar. 24, 2019).

⁷³ Maggie Lake, *eHarmony CEO Meets Controversial Success*, CNN (July 11, 2008), <http://www.cnn.com/2008/BUSINESS/07/11/eharmony.maggie/?iid=EL>.

⁷⁴ Colleen Walsh, *God and Walmart*, HARVARD GAZETTE (Nov. 19, 2009), <https://news.harvard.edu/gazette/story/2009/11/god-and-walmart/>.

⁷⁵ *Forever 21*, FORBES, <https://www.forbes.com/companies/forever-21/> (last visited Mar. 24, 2019); *Chik-Fil-A Inc.*, Encyclopedia.com, <http://www.encyclopedia.com/social-sciences-and-law/economics-business-and-labor/businesses-and-occupations/chick-fil-inc> (last visited Mar. 24, 2019); *In-N-Out Burger*, FORBES, <https://www.forbes.com/companies/in-n-out-burger/> (last visited Mar. 24, 2019); *Our Story*, Tyson Foods, <http://www.tysonfoods.com/our->

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 nearly 90% of private-sector employment across America.⁷⁶ 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.⁷⁷

story (last visited Mar. 24, 2019); *Aflac*, FORBES, <https://www.forbes.com/companies/aflac/> (last visited Mar. 24, 2019); Marriott Form 10-K (2016), <https://marriott.gcs-web.com/sec-filings/sec-filing/10-k/0001628280-16-011346> (last visited March 25, 2019); *About Republic Airline*, Republic Airlines Inc., <http://rjet.com/about-republic-airline/> (last visited Mar. 24, 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>; *Our Locations*, Walmart Stores, Inc., <https://corporate.walmart.com/our-story/locations/united-states> (last visited Mar. 24, 2019).

⁷⁶ 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 (showing that non-profits account for 10.3% of private-sector employment in the United States).

⁷⁷ See Section III, *infra*.

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.⁷⁸ 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.”⁷⁹ 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.⁸⁰

Contraceptive access has enabled women to achieve higher education at

⁷⁸ 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).

⁷⁹ *Id.* at 470.

⁸⁰ 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. 17922, Mar. 2012), <http://www.nber.org/papers/w17922.pdf>; *New Data Estimates 62.4 Million Women Have Coverage of Birth Control Without Out-of-Pocket Costs*, NWLC, <https://nwlc.org/resources/new-data-estimate-62-4-million-women-have-coverage-of-birth-control-without-out-of-pocket-costs/> (last visited Mar. 24, 2019) (estimating that 62.4 million women gained access to no-cost contraceptives).

greater rates than ever before.⁸¹ 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.⁸² Two-thirds of women using oral contraceptives gained no-cost coverage through the Contraceptive Coverage Benefit.⁸³

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.”⁸⁴

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.⁸⁵ The ability to control one’s reproduction is critical to women’s career

⁸¹ Heinrich Hock, *The Pill and the College Attainment of American Women and Men* 19 (Fla. State Univ., Working Paper, Oct. 9, 2007); 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).

⁸² Hock, *supra* note 81.

⁸³ 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).

⁸⁴ 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).

⁸⁵ Bailey, *et al.*, *supra* note 80.

success, as women’s participation in the labor force often decreases significantly after childbirth.⁸⁶ 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,”⁸⁷ ultimately advancing further in the workplace and earning more money over their lifetimes.⁸⁸ Accordingly, without the ability to control and time their pregnancies, women will face tremendous and adverse personal, professional, social, and economic effects.⁸⁹

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 require private insurers to cover contraceptives if they

⁸⁶ Hock, *supra* note 81; Loughran & Zissimopoulos, *supra* note 81, at 346.

⁸⁷ 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.

⁸⁸ Loughran & Zissimopoulos, *supra* note 81, at 346.

⁸⁹ 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.

offer coverage for other prescription drugs.⁹⁰ These coverage requirements have been effective for women enrolled in private insurance plans that are covered by the state coverage requirements.⁹¹ 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.⁹²

Second, only nine states require contraceptives to be provided with *no* cost to the insured.⁹³ 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 from employers that self-insure their employees.⁹⁴ Around 60% of

⁹⁰ *Insurance Coverage of Contraceptives, State Laws and Policies as of July 1, 2018*, Guttmacher Inst., <https://www.guttmacher.org/state-policy/explore/insurance-coverage-contraceptives>.

⁹¹ Brianna M. Magnusson, *et al.*, *Contraceptive Insurance Mandates and Consistent Contraceptive Use Among Privately Insured Women*, 50 MED. CARE 562, 565 (2012).

⁹² Guttmacher Inst., *supra* note 90.

⁹³ Guttmacher Inst., *supra* note 90.

⁹⁴ Sonfield, *supra* note 83.

all employees are insured by self-funded insurance plans and are therefore not covered by state coverage requirements.⁹⁵ When an employer self-insures, these plans are overseen by the U.S. Department of Labor and are only subject to federally established regulations.⁹⁶ 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.⁹⁷ Even in these states, a significant portion of employers can escape such coverage requirements.⁹⁸ State laws simply cannot cure the negative impact the Final Exemption Rules will have on access to no-cost contraceptive coverage across the country.

⁹⁵ Laurie Sobel, Alina Salganicoff & Caroline Rosenzweig, *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 91, at 565.

⁹⁶ Employer Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829 (1974). *See also* Sobel, *et al.*, *supra* note 95; Magnusson, *et al.*, *supra* note 91, at 565.

⁹⁷ Guttmacher Inst., *supra* note 90.

⁹⁸ Guttmacher Inst., *supra* note 90.

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.⁹⁹ 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.¹⁰⁰

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

⁹⁹ Title X is a federally funded program focused solely on providing individuals with reproductive health services. Pub. L. 91-572. 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*, 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/>.

¹⁰⁰ Rachel Benson Gold & Kinsey Hasstedt, *Publicly Funded Family Planning Under Unprecedented Attack*, 107 *AJPH* Editorial 1895 (Dec. 2017), <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2017.304124>.

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.¹⁰¹ Amici support the current preliminary injunction because losing consistent no-cost coverage—even 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,¹⁰² and today, the oral contraceptive pill is the most common form of contraception among women in the United States.¹⁰³

The no-cost Contraceptive Coverage Benefit has boosted the consistent and proper use of contraceptives and enabled more women to choose long-term contraceptives.¹⁰⁴ The Contraceptive Coverage Benefit has decreased rates of discontinuation and increased effective use with respect to generic oral

¹⁰¹ 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.

¹⁰² Becker & Polsky, *supra* note 89, at 1204.

¹⁰³ 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); *Contraceptive Use in the United States*, Guttmacher Inst. (Sept. 2016), <https://www.guttmacher.org/fact-sheet/contraceptive-use-united-states#2a>.

¹⁰⁴ Pace, *et al.*, *supra* note 103, at 1623; Becker & Polsky, *supra* note 89, at 1204.

contraceptives.¹⁰⁵ In addition, because of the Contraceptive Coverage Benefit, more women have no-cost coverage of longer-term and more effective contraceptives.¹⁰⁶ 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.¹⁰⁷ 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.¹⁰⁸ Further, long-term contraceptive methods, such as the IUD, are the most effective at preventing unintended pregnancies, with only a 1% failure rate.¹⁰⁹ By contrast, an estimated 41% of unintended pregnancies in America are caused by the inconsistent use of contraceptives.¹¹⁰ Additionally, lack of no-cost birth control is

¹⁰⁵ Pace, *et al.*, *supra* note 103.

¹⁰⁶ Becker & Polsky, *supra* note 89; 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>.

¹⁰⁷ Becker & Polsky, *supra* note 89; Gariepy, *et al.*, *supra* note 106.

¹⁰⁸ Gariepy, *et al.*, *supra* note 106; Natalie E. Birgisson, *et al.*, *Preventing Unintended Pregnancy: The Contraceptive CHOICE Project in Review*, 24 *JOURNAL OF WOMEN'S HEALTH* 349 (2015).

¹⁰⁹ Gariepy, *et al.*, *supra* note 106.

¹¹⁰ Pace, *et al.*, *supra* note 103. 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 91, at 565.

cited as a factor in approximately one-quarter of abortions.¹¹¹

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.¹¹² 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 continue regular contraceptive use, and thus will be at risk for unintended pregnancies, threatening women's health and economic security.¹¹³ Women should not be

¹¹¹ See *A Real-Time Look at the Impact of the Recession on Women's Family Planning and Pregnancy Decisions*, Guttmacher Inst. (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>.

¹¹² Guttmacher Inst., *supra* note 103.

¹¹³ As discussed in the Appellees' Brief, contraceptives are used as essential medicine for women. See Appellee's Brief at 9-13; Guttmacher Inst., *supra* note 103 (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.

denied this care.

IV. CONCLUSION

If the preliminary injunction is overturned, 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 preliminary injunction is overturned.

The repercussions of losing coverage of safe, reliable, no-cost contraception are not just monetary. Women's physical and emotional health, educational

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* at 11 (Jan. 12, 2011), <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: U.S. Preventive Services Task Force Recommendation Statement*, 315 JAMA 380, 382 (2016), <http://tinyurl.com/hhbnqe9>.

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 well as their and their families’ well-being. Accordingly, on behalf of female employees and students throughout the country, Amici support the current preliminary injunction enjoining implementation of the Final Exemption Rules in the Appellee states.

Dated: March 25, 2019

Respectfully submitted,

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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 through more than 3,000 local affiliates nationwide and overseas in K-12 and higher 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 contraceptives 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.

- **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.¹¹⁴

- **National Association of Social Workers (“NASW”)** was established in 1955 and is the largest association of professional social workers in the United States with over 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”)** 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.

¹¹⁴ NASW Policy Statements: Family Planning and Reproductive Choice in Social Works Speaks (2015) 114, 117 (10th ed. 2015).

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 4,200 members in its twenty chapters across New York State¹¹⁵ include esteemed jurists,

¹¹⁵ 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

academics, and attorneys who practice 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.

- **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.

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 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.)

- **Women Lawyers' Association of Los Angeles (“WLALA”)** is a nonprofit organization comprised primarily of lawyers and judges in Los Angeles County. Founded in 1919, WLALA is dedicated to promoting the full participation of women lawyers and judges in the legal profession, maintaining the integrity of our legal system by advocating principles of fairness and equality, and improving the status of women in our society. WLALA has participated as an *amicus curiae* in cases involving discrimination before many federal district courts, Courts of Appeals, and the Supreme Court. WLALA believes that bar associations have a special obligation to protect the core guarantees of our Constitution to secure equal opportunity for women and girls through the full enforcement of laws prohibiting discrimination.
- **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 WBA 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.

- **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.
- **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.

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Federal Rules Appellate Procedure 29(a)(5) and 32(a)(7)(B) because: This brief contains 6,360 words, excluding the parts of the brief exempted by Federal Rule Appellate Procedure 32(f).
2. This brief complies with the typeface requirements of Federal Rule Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule Appellate Procedure 32(a)(6) because: This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.
3. The electronic and hard copies of this *amicus* brief that have been provided to this Court are identical.
4. A virus check of this *amicus* brief has been performed by the following software and no issues were found: Symantec Endpoint Protection (Version 14).

Dated: March 25, 2019

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Brief of Amici Curiae American Association of University Women; Service Employees International Union; and 13 Additional Professional, Labor, and Student Associations, in Support of Appellees with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system on March 25, 2019.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: March 25, 2019

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