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15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 THE STATE OF CALIFORNIA; THE STATE
18 OF DELAWARE; THE STATE OF
MARYLAND; THE STATE OF NEW YORK;
19 THE COMMONWEALTH OF VIRGINIA,

20 Plaintiffs,

21 v.

22 ERIC D. HARGAN, IN HIS OFFICIAL
CAPACITY AS ACTING SECRETARY OF
23 THE U.S. DEPARTMENT OF HEALTH &
HUMAN SERVICES, et al.,

24 Defendants.

Case No. 4:17-CV-05783-HSG

**BRIEF OF AMICI CURIAE
AMERICAN ASSOCIATION OF
UNIVERSITY WOMEN;
SERVICE EMPLOYEES
INTERNATIONAL UNION; AND
14 ADDITIONAL
PROFESSIONAL, LABOR, AND
STUDENT ASSOCIATIONS, IN
SUPPORT OF PLAINTIFFS'
MOTION FOR A PRELIMINARY
INJUNCTION**

Hon. Haywood S. Gilliam, Jr.

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1 **INTEREST OF AMICI CURIAE¹**

2 The *amici curiae* (“Amici”) are organizations that work on behalf of female employees
 3 and students throughout the United States.² These associations represent professional women,
 4 women in organized labor,³ women employed in various industries, social workers, teachers,
 5 lawyers, students, and more. Amici represent well over a million members in hundreds of
 6 occupations in nearly every state. Amici have a particular interest in the outcome of this litigation
 7 because they know that no-cost coverage of safe and reliable contraception is critical for women’s
 8 professional and educational success, as well as for women’s health and well-being. These
 9 organizations have an interest in this litigation because no-cost contraceptive coverage increases
 10 women’s ability to participate and succeed in the workplace⁴ and helps women reach their
 11 aspirations in higher education.⁵

12 **ARGUMENT**

13 **I. SUMMARY OF ARGUMENT**

14 Amici support Plaintiffs’ motion for a nationwide preliminary injunction to protect
 15 women and their families from the irreparable harm that will occur if the rules issued by
 16 Defendants on October 6, 2017 (the “Exemption Rules”)⁶ are not enjoined prior to a trial on the
 17 merits.

18 Consistent and uninterrupted coverage of safe, reliable, no-cost contraception allows

19 ¹ No party’s counsel authored this brief in whole or in part. No party, party’s counsel, or other person contributed
 20 any money to fund the preparation or submission of this brief other than Amici and its counsel.

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

22 ³ Workers represented by labor unions who are covered by collective bargaining agreements that require the
 23 employer to provide no-cost contraceptive coverage should not be at risk of losing this bargained-for benefit
 24 immediately. However, they will be at increased risk of losing it in the future if their employers decide to bargain to
 25 change their health benefits in reaction to the Exemption Rules. *Amicus curiae* Service Employees International
 26 Union (“SEIU”) represents workers who are at risk of losing contraceptive coverage immediately, including those
 27 whose collective bargaining agreements do not include no-cost contraceptive coverage and members who are
 28 working to form their union and are not yet covered by collective bargaining agreements.

⁴ See Appendix, including Statement of Interest for *amicus curiae* SEIU.

⁵ See Appendix, including Statement of Interest for *amicus curiae* the American Association of University Women
 (“AAUW”).

⁶ See Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable
 Care Act, 82 Fed. Reg. 47,838 (Oct. 13, 2017); Religious Exemptions and Accommodations for Coverage of Certain
 Preventive Services Under the Affordable Care Act, 82 Fed. Reg. 47,792 (Oct. 13, 2017).

1 women to strive for professional and educational equality. It also allows them to better care for
2 themselves and their families by facilitating their educations and careers. For these reasons, the
3 Patient Protection and Affordable Care Act (the “ACA”)⁷ requires employer-sponsored health
4 insurance plans to cover all FDA-approved methods of contraception without burdening insured
5 women with out-of-pocket costs (the “Contraceptive Coverage Benefit”).

6 Because of the breadth of the Exemption Rules, it is foreseeable that hundreds of
7 thousands—if not millions—of women will face a loss of contraceptive coverage, with all the
8 resulting harms that flow from that loss, if the Exemption Rules are not blocked. Surveying the
9 industries, individual employers, and universities that have already expressed strong opposition to
10 providing contraceptive coverage to employees, students, and their dependents reveals that the
11 estimates of how many women will lose coverage put forth in the Exemption Rules are drastically
12 under-inclusive.⁸ Approximately one half million women across the country work for religiously-
13 affiliated hospitals; approximately 600,000 women attend religiously-affiliated colleges and
14 universities; and more than 17,000 women work for privately held, for-profit companies that have
15 already opposed the Contraceptive Coverage Benefit. These figures provide only a baseline
16 estimate of the number of women—including members of Amici and additional women across
17 the nation—expected to be immediately affected by the Exemption Rules. These estimates do
18 not, however, include the many thousands of dependents of male and female employees and
19 students; nor do they include the other types of non-profits and privately owned for-profit entities
20 that may now opt to be exempted rather than use the accommodation process, or the insurers and
21 large, publicly held corporations that can now drop coverage under the Exemption Rules.

22 Before the Exemption Rules were issued, the Contraceptive Coverage Benefit regulations
23 exempted houses of worship with religious objections and their related auxiliary, conventions,
24

25 ⁷ 42 U.S.C. § 18001, *et seq.* (2010).

26 ⁸ HHS concludes that the Exemption Rules “will not affect over 99.9 percent of the 165 million women in the U.S.”
27 U.S. Dept. of Health & Human Servs., *FACT SHEET: Religious and Moral Exemptions and Accommodations for*
28 *Coverage of Certain Preventive Services Under the Affordable Care Act*, <https://www.hhs.gov/sites/default/files/fact-sheet-religious-exemptions-and-accommodations-for-coverage.pdf> (last visited Nov. 30, 2017).

1 and church associations from offering contraceptive coverage.⁹ For religiously-affiliated
 2 employers and universities with objections to providing contraceptive coverage, the federal
 3 government created an accommodation, allowing the entity to opt out of providing coverage
 4 while requiring that a health insurance provider or another third party provide employees and
 5 students seamless contraceptive coverage instead.¹⁰ After *Burwell v. Hobby Lobby Stores, Inc.*,¹¹
 6 closely-held corporations owned or controlled by persons with sincerely-held religious beliefs
 7 could also seek the accommodation.¹²

8 The Exemption Rules significantly expand the prior exemption from the Contraceptive
 9 Coverage Benefit. First, the Exemption Rules exponentially increase the number of employers
 10 and universities that can deny coverage. The Religious Exemption Rule—no longer limited to
 11 houses of worship and their auxiliaries—now allows virtually *all* employers and universities,
 12 including large, publicly traded, for-profit companies, to claim the exemption and deny no-cost
 13 contraceptive coverage to their employees and students.¹³ The Moral Exemption Rule, which
 14 adds an entirely new basis for denying coverage, applies to non-profit organizations and for-
 15 profit, privately held entities with “sincerely held moral convictions.”¹⁴ Second, the Exemption
 16 Rules allow employers and universities to claim exemptions under either Rule without any
 17 meaningful oversight, as entities are no longer required to certify their objection or notify the
 18 federal government before dropping coverage.¹⁵ Finally, because the Exemption Rules are
 19 exemptions, rather than accommodations, women who receive their insurance coverage through
 20 an objecting entity are no longer guaranteed that their plans will provide seamless contraceptive
 21

22 ⁹ See Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient
 23 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 Pl.’s Mot. Prelim. Inj. at 6.

24 ¹⁰ Accommodations in Connection with Coverage of Certain Preventive Health Services, 45 C.F.R. § 147.131 (b) &
 (c)(2); see also Pl.’s Mot. Prelim. Inj. at 6-7.

25 ¹¹ 134 S. Ct. 2751 (2014).

26 ¹² Pl.’s Mot. Prelim. Inj. at 7-8.

27 ¹³ *Id.* at 9, 27.

¹⁴ *Id.* at 14, 27.

28 ¹⁵ Moral Exemption 48-49; Religious Exemption 61. See also Pl.’s Mot. Prelim. Inj. at 9.

1 coverage.¹⁶ Employees and students of entities claiming an exemption—including many of the
2 members of Amici—and their dependents are at grave risk of losing this critical coverage
3 altogether.

4 By providing virtually any employer and university in the country the ability to drop the
5 Contraceptive Coverage Benefit based upon an undisclosed, “sincerely held” belief, the
6 Exemption Rules will thwart the Contraceptive Coverage Benefit and its purposes. The
7 Exemption Rules threaten significant and immediate negative repercussions for the hundreds of
8 thousands of women and families across the United States, including those represented by Amici,
9 who are employed by or attend employers and universities that object to providing contraceptive
10 coverage.

11 **II. IMPLEMENTATION OF THE EXEMPTION RULES THREATENS**
12 **IMMEDIATE AND IRREPARABLE HARM TO WOMEN IN EVERY**
13 **STATE ACROSS THE COUNTRY**

14 The potential impact of the Exemption Rules is vast and far-reaching. Before issuance of
15 the Exemption Rules, several for-profit companies filed lawsuits challenging the Contraceptive
16 Coverage Benefit and seeking exemptions from providing the Benefit.¹⁷ Several non-profits that
17 were eligible for the accommodation, including colleges and universities, challenged the
18 accommodation’s notice requirement.¹⁸ These reactions to the Contraceptive Coverage Benefit
19 and the initial accommodation process suggest that many for-profit and non-profit entities across
20 the country stand ready to take advantage of the Exemption Rules. Employers and universities
21 that have already voiced their opposition to the Contraceptive Coverage Benefit and its
22 corresponding accommodation process are, however, just the tip of the iceberg. The vagueness
23 and breadth of the Exemption Rules and the uncertainty of what it means for an organization to
24 have “religious beliefs” or “moral beliefs” mean that any employer, including one with no

25 ¹⁶ Pl.’s Mot. Prelim. Inj. at 9-10, 27.

26 ¹⁷ See, e.g., Samantha Cooney, *46 Secular Companies That Don’t Want to Cover Employees’ Birth Control*, TIME
27 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,
28 <https://www.thedailybeast.com/after-hobby-lobby-these-82-corporations-could-drop-birth-control-coverage>.

¹⁸ Haglage, *supra* note 17.

1 religious mission whatsoever, could decide to claim the exemption for virtually any reason.

2 Several categories of employers and universities are now free to immediately take
 3 advantage of the Exemption Rules. *First*, religiously-affiliated non-profits, such as hospitals and
 4 universities, will now be able to claim full exemptions, rather than accommodations, and female
 5 employees and students will no longer be guaranteed seamless access to contraceptive coverage
 6 through their regular insurance plans.¹⁹ It is reasonable to conclude that hundreds of hospitals
 7 and universities, many of which accepted the accommodation because they were not eligible for
 8 an exemption, will take advantage of the Exemption Rules.²⁰ *Second*, a wide and potentially
 9 boundless range of secular for-profit corporations—both privately and publicly held—will be able
 10 to claim religious or moral exemptions.²¹ Hundreds of thousands of women, many of whom are
 11 members of Amici, who are insured by these newly-exempted companies and universities, as well
 12 as their dependents, will lose coverage under the Exemption Rules.

13 Although religious denominations that oppose some or all forms of contraception have
 14 been vocal opponents of the Contraceptive Coverage Benefit,²² women who work for or attend
 15 employers and universities affiliated with these religions, regardless of their religious beliefs,
 16 continue to need and use various forms of contraception. More than 99% of all sexually-active
 17 women of reproductive age across the United States have, at some point, used contraception to
 18

19 _____
 20 ¹⁹ See Exemption Rules.

21 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>.

22 ²¹ 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,
 23 however, argue that this could open the door to hundreds of employers dropping coverage.”). See also Robert Pear,
 Rebecca R. Ruiz & Laurie Goodstein, *Trump Administration Rolls Back Birth Control Mandate*, N.Y. TIMES, Oct. 6,
 24 2017, <https://www.nytimes.com/2017/10/06/us/politics/trump-contraception-birth-control.html> (“Under the new
 rules, exemptions to the contraceptive coverage mandate would be available to many kinds of employers, including
 25 publicly traded companies that said they had religious objections to covering some or all types of contraception.”).

26 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.* (Jan. 11, 2016). See also *Zubik Amici*. Notre Dame’s recent
 27 announcement that employees and students will continue to receive contraceptive coverage is dependent on the
 position taken by its current insurance carrier. Claire Hansen, *Notre Dame Reverses Birth Control Coverage*
 28 *Decision*, U.S. NEWS & WORLD REPORT, Nov. 7, 2017, <https://www.usnews.com/news/national-news/articles/2017-11-07/notre-dame-reverses-birth-control-coverage-decision>.

1 prevent pregnancy.²³ Ninety-eight percent of sexually-active Catholic women have used a
 2 method of contraception other than natural family planning,²⁴ and 87% of Catholic women
 3 currently at risk of unintended pregnancy use a method other than natural family planning.²⁵
 4 Among Evangelical women currently at risk of unintended pregnancy, 74% use a “highly
 5 effective contraceptive method” (including male or female sterilization, an IUD, the pill, and
 6 other hormonal methods).²⁶ The Exemption Rules will have devastating effects on women who
 7 work for religiously-affiliated employers and attend religiously-affiliated universities, as their
 8 employers or universities will no longer be required to comply with the accommodation process
 9 that would ensure seamless coverage through their insurers.²⁷ The resulting loss of no-cost
 10 coverage will cause irreparable harm to these women, including members of Amici.

11
 12 **A. Nearly One Half Million Women Working for Hospitals Could Lose Coverage.**

13 Members of Amici and many other women work for hospitals that are now free to take
 14 advantage of the Exemption Rules. At least 649 hospitals in the United States are associated with
 15 religious denominations whose theological doctrines prohibit many or all forms of
 16 contraception.²⁸ These hospitals are major employers throughout the country, with at least
 17 523,040 full-time and 216,487 part-time employees,²⁹ more than 76% of whom are women.³⁰

18 ²³ ADAM SONFIELD ET AL., *THE SOCIAL AND ECONOMIC BENEFITS OF WOMEN’S ABILITY TO DETERMINE WHETHER*
 19 *AND WHEN TO HAVE CHILDREN 3* (Haley Ball ed., 2013),
https://www.guttmacher.org/sites/default/files/report_pdf/social-economic-benefits.pdf.

20 ²⁴ 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*
 21 *Women Have Ever Used: United States, 1982–2010*, 62 NAT’L HEALTH STATISTICS REP. 8 (2013),
<http://www.cdc.gov/nchs/data/nhsr/nhsr062.pdf>.

22 ²⁵ Guttmacher Institute, *supra* note 24.

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

25 ²⁷ Pl.’s Mot. Prelim. Inj. at 9-10, 23.

26 ²⁸ See Catholic Health Assoc. of the U.S., *Catholic Health Care in the U.S.*, Jan. 2017, at 1,
https://www.chausa.org/docs/default-source/default-document-library/cha_2017_miniprofile.pdf?sfvrsn=0.

27 ²⁹ *Id.*

28 ³⁰ U.S. Dep’t of Labor, *Labor Force Statistics from the Current Population Survey*, Feb. 8, 2017,
<https://www.bls.gov/cps/cpsaat18.htm>.

1 These hospitals comprise 14.5% of all acute-care hospitals in the U.S.³¹ Forty-six of these
 2 religiously-affiliated hospitals are the sole community providers of short-term acute hospital care
 3 in their regions, meaning that medical professionals and health workers who lose coverage will
 4 have few opportunities for alternative employment where coverage may be provided.³² The
 5 number of religiously-affiliated hospitals in the U.S. has increased by 22% since 2001.³³ If this
 6 trend continues, even more women would be affected by these hospitals' opposition to
 7 contraceptive coverage and ability to take advantage of the Exemption Rules.

8 The large market share of hospitals and other healthcare entities that follow religious
 9 directives prohibiting some or all forms of contraception has far-reaching implications for the
 10 majority-women employees who work in these facilities, as well as their female dependents,
 11 many of whom rely on employer-provided health insurance. It is entirely possible that many of
 12 these healthcare providers will seek to eliminate contraceptive coverage for their employees and
 13 dependents under the Exemption Rules,³⁴ which will have a devastating impact on hundreds of
 14 thousands of women throughout the nation, including those represented by Amici.

15
 16 **B. Tens of Thousands of Female Students at Religiously-Affiliated
 Colleges and Universities Could Lose Coverage.**

17 Amici students are also at risk of losing contraceptive coverage because of the Exemption
 18 Rules. Hundreds of religiously-affiliated colleges and universities throughout the United States
 19 are affiliated with denominations that actively oppose some or all forms of contraception. Amici
 20

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

25 ³² *Id.*

26 ³³ *Id.*

27 ³⁴ Although the Catholic Health Association itself was not opposed to the Obama-era accommodation process, it has
 28 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 Nov. 21, 2017).
 Additionally, numerous state- and regional-Catholic healthcare umbrella organizations have strongly opposed the
 Benefit. 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>.

1 who receive insurance through these colleges or universities are at great risk of losing coverage.³⁵

2 For example, there are more than 260 members of the Association of Catholic Colleges
3 and Universities (the “ACCU”) in the United States that, in total, boast more than 875,000
4 enrolled students,³⁶ many of whom are members of *amicus curiae* AAUW, and employ large
5 numbers of faculty and staff.³⁷ The biggest of these is DePaul University in Illinois, which has
6 nearly 28,000 students³⁸ and approximately 1,500 faculty members, as well as a large staff
7 roster.³⁹ Other large Catholic universities, as reported by ACCU, include: St. Leo University in
8 Florida (more than 27,000 students);⁴⁰ St. John’s University in New York (more than 23,000
9 students);⁴¹ and Georgetown University in Washington D.C. (more than 21,000 students⁴² and
10 more than 2,500 full-time and part-time faculty).⁴³ During the 2015-16 academic year, *nearly*
11 *two-thirds* of the students enrolled in Catholic colleges and universities were female.⁴⁴

12 Many Protestant or nondenominational Christian colleges and universities that are free to
13 drop contraceptive coverage altogether under the Exemption Rules have also challenged the
14 Contraceptive Coverage Benefit through lawsuits and public comments.⁴⁵ For example, the
15 Council for Christian Colleges and Universities (the “CCCU”), which represents 118 regionally-

17 ³⁵ Jeanine Santucci, *Students at Religious Universities Are Worried About Access to Birth Control. Here’s Why.*,
18 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/>.

19 ³⁶ ACCU, *Catholic Higher Education FAQs*, <http://www.accunet.org/About-Catholic-Higher-Education/Catholic-Higher-Education-FAQs> (last visited Nov. 21, 2017).

20 ³⁷ *Id.*

21 ³⁸ *Id.*

22 ³⁹ DePaul Univ., *Key Facts & Rankings*, <https://www.depaul.edu/about/Pages/rankings.aspx> (last visited Nov. 21, 2017).

23 ⁴⁰ ACCU, *supra* note 36.

24 ⁴¹ *Id.*; see also U.S. NEWS & WORLD REPORT, *St. John’s University: Overview*, <https://www.usnews.com/best-colleges/st-johns-university-new-york-2823> (last visited Nov. 21, 2017).

25 ⁴² ACCU, *supra* note 36.

26 ⁴³ Georgetown University, *Georgetown Key Facts*, <https://www.georgetown.edu/about/key-facts> (last visited Nov. 21, 2017).

27 ⁴⁴ ACCU, *supra* note 36.

28 ⁴⁵ See generally, Brief of *Amicus Curiae* the Council for Christian Colleges and Universities in Support of Petitioners, *Zubik v. Burwell*, No. 14-1418, at 2-3 (U.S. Jan. 11, 2016).

1 accredited colleges and universities and 61 affiliate member institutions with Christian missions,
2 spanning 33 states and more than 400,000 members, has vigorously opposed the Contraceptive
3 Coverage Benefit.⁴⁶ Many Christian colleges and universities—some of which are CCCU
4 members—have independently challenged and sought exemptions from the Contraceptive
5 Coverage Benefit. For example, Geneva College, a Protestant Christian college in Pennsylvania
6 with 350 employees, has actively opposed the Contraceptive Coverage Benefit.⁴⁷ Wheaton
7 College in Illinois, College of the Ozarks in Missouri, Colorado Christian University in Colorado,
8 East Texas Baptist University in Texas, Union University in Tennessee, Dordt College in Iowa,
9 and Heartland Christian College in Missouri are among the other non-Catholic religious colleges
10 that have opposed providing their students and employees contraceptive insurance coverage from
11 their regular insurance plan by challenging the Contraceptive Coverage Benefit and the
12 accommodation process or by seeking exemptions through lawsuits and *amicus* briefs.⁴⁸ These
13 colleges alone boast a total enrollment of more than 20,000 students.⁴⁹

14 The immediate and irreparable impact of the Exemption Rules on female students
15 nationwide will be severe if the Exemption Rules are not enjoined pending trial. In addition to
16 health risks, young women pursuing higher education and career advancement will face increased
17 rates of unintended pregnancies. Women who have children in their teens or early 20s are
18 significantly less likely to obtain any formal education after high school than are women who are
19 able to wait to have children until their late 20s or 30s.⁵⁰ The Exemption Rules undermine the

20 ⁴⁶ Brief of *Amicus Curiae* the Council for Christian Colleges and Universities in Support of Petitioners, *Zubik v.*
21 *Burwell*, No. 14-1418, at 1 (U.S. Jan. 11, 2016).

22 ⁴⁷ *Geneva College v. Sebelius*, 988 F. Supp. 2d 511 (W.D. Pa. 2013).

23 ⁴⁸ Cooney, *supra* note 17 ; Haglage, *supra* note 17.

24 ⁴⁹ Geneva College, *Fast Facts: Geneva College*, <http://www.geneva.edu/about-geneva/fast-facts> (last visited Nov. 21,
25 2017); Wheaton College, *Wheaton by the Numbers*, [https://www.wheaton.edu/about-wheaton/why-wheaton/college-
26 profile/wheaton-by-the-numbers/](https://www.wheaton.edu/about-wheaton/why-wheaton/college-profile/wheaton-by-the-numbers/) (last visited Nov. 21, 2017); U.S. News & World Report, *College of the Ozarks:
27 Overview*, <https://www.usnews.com/best-colleges/college-ozarks-2500> (last visited Nov. 21, 2017); Colorado
28 Christian University, *CCU Facts and Stats*, <http://www.ccu.edu/about/factsandstats/> (last visited Nov. 21, 2017); East
Texas Baptist University, *At a Glance*, <https://www.etbu.edu/about/glance/> (last visited Nov. 21, 2017); U.S. News &
World Report, *Union University: Overview*, <https://www.usnews.com/best-colleges/union-university-3528> (last
visited Nov. 21, 2017); Dordt College, *About Dordt: Fast-Facts*, <https://www.dordt.edu/about-dordt/fast-facts> (last
visited Nov. 21, 2017).

⁵⁰ SONFIELD ET AL., *supra* note 23, at 9.

1 effectiveness of the Contraceptive Coverage Benefit in eliminating barriers to women's
2 educational and professional advancement.

3
4 **C. Thousands of Women Working for Other Religiously-Affiliated Non-Profits Could Lose Coverage.**

5 In addition to hospitals and colleges, thousands of the 1.4 million non-profit organizations
6 throughout the United States are affiliated with denominations that actively oppose some or all
7 forms of contraception. As of 2015, approximately 3% of all non-profits and 10% of the largest
8 non-profits in the U.S. had already been using accommodations under the Contraceptive
9 Coverage Benefit.⁵¹ Of the 45 entities that requested an accommodation from the Contraceptive
10 Coverage Benefit between 2014 and 2016, 27% were religiously-affiliated non-profits.⁵² These
11 employers, and many more like them, will be able to drop contraceptive coverage under the
12 Exemption Rules and their employees will not be guaranteed alternate coverage.

13 Additionally, more than 83 *amicus curiae* briefs supporting religious exemptions from the
14 Contraceptive Coverage Benefit were filed in *Zubik v. Burwell*,⁵³ representing dozens of
15 religiously-affiliated advocacy groups, professional organizations, think tanks, and umbrella
16 organizations.⁵⁴ These *amici curiae* and the organizations they represent are now free to drop
17 coverage under the Exemption Rules.

18
19 **D. Hundreds of Thousands of Additional Women Working for Private, Non-Religiously-Affiliated Employers Could Lose Coverage.**

20 The Exemption Rules apply far beyond religiously-affiliated hospitals, colleges,
21 universities, and non-profits. Now any employer can take advantage of the exemptions based on

22 ⁵¹ Laurie Sobel, Matthew Rae & Alina Salganicoff, *Data Note: Are Nonprofits Requesting an Accommodation for*
23 *Contraceptive Coverage?*, THE HENRY J. KAISER FAMILY FOUNDATION, Dec. 2015,
24 [http://files.kff.org/attachment/data-note-data-note-are-nonprofits-requesting-an-accommodation-for-contraceptive-](http://files.kff.org/attachment/data-note-data-note-are-nonprofits-requesting-an-accommodation-for-contraceptive-coverage)
25 [coverage](http://files.kff.org/attachment/data-note-data-note-are-nonprofits-requesting-an-accommodation-for-contraceptive-coverage). The authors of the Kaiser study were unable to estimate how many non-profits or enrollees that included.
26 However, the “largest” non-profits include those with 1,000-4,999 employees as well as those with more than 5,000
27 employees.

28 ⁵² Laura E. Dorso et al., *Who Seeks Religious Accommodations to Providing Contraceptive Coverage?*, CENTER FOR
AMERICAN PROGRESS, Aug. 11, 2017, <https://www.americanprogress.org/issues/lgbt/news/2017/08/11/437265/seek-religious-accommodations-providing-contraceptive-coverage/>.

⁵³ *Zubik v. Burwell*, No. 14-1418 (U.S. 2016).

⁵⁴ See Briefs of *Amici Curiae* Supporting the Petitioner, *Zubik v. Burwell*, No. 14-1418 (U.S. 2016).

1 loosely defined religious or moral reasons.⁵⁵ Consequently, employees of *any* for-profit
 2 companies and their dependents could be adversely affected by the Exemption Rules. The
 3 expansion of the Religious Exemption alone would allow innumerable large corporations to deny
 4 contraceptive care to their employees and dependents, whether because of a religious CEO, a
 5 religious board of directors, or any number of other influences. It is thus reasonable to conclude
 6 that many thousands of women across the country, including members of Amici, will face a total
 7 loss of contraceptive coverage if the Exemption Rules are not blocked.

8 Indeed, reports have identified more than 80 private, for-profit businesses that have
 9 explicitly indicated their desire to drop contraceptive coverage.⁵⁶ This list includes several
 10 companies that alone employ well over 17,000 women in at least 47 states:

- 11 • Hobby Lobby, an Oklahoma-based national craft supply chain with more than
 12 13,000 employees;⁵⁷
- 13 • Grote Industries, LLC, an Indiana vehicle safety systems manufacturer with 1,147
 14 full-time U.S. employees;⁵⁸
- 15 • Conestoga Wood Specialties Corporation, a Pennsylvania-based wood cabinet and
 16 specialty products manufacturer with 950 employees;⁵⁹
- 17 • Autocam Corporation and Autocam Medical, LLC, a Michigan transportation and
 18 medical equipment parts company with at least 661 U.S. employees;⁶⁰
- 19 • Freshway Foods and Freshway Logistics, an Ohio-based produce processing and
 20 packaging company with 400 employees;⁶¹

21
 22 ⁵⁵ See Exemption Rules.

23 ⁵⁶ Cooney, *supra* note 17; Haglage, *supra* note 17.

24 ⁵⁷ *Id.*

25 ⁵⁸ *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/>.

26 ⁵⁹ *Conestoga Wood Specialties Corp. v. Sec’y of the U.S. Dep’t of Health & Human Servs.*, 724 F.3d 377 (3d Cir. 2013).

27 ⁶⁰ *Autocam Corp. v. Sebelius*, 730 F.3d 618 (6th Cir. 2013); Jacobson, *supra* note 58.

28 ⁶¹ *Gilardi v. U.S. Dep’t of Health & Human Servs.*, No. 13-5069, 2013 WL 5854246 (D.C. Cir. Nov. 1, 2013).

- 1 • Sioux Chief Manufacturing, a Missouri plumbing products company with 370
2 employees;⁶²
- 3 • Eternal Word Television Network, an Alabama religious television station with
4 350 full-time employees;⁶³
- 5 • Hercules Industries, Inc., a Colorado heating, ventilation, and air conditioning
6 products manufacturer with 303 employees;⁶⁴
- 7 • Tyndale House, an Illinois publishing company with 260 employees;⁶⁵
- 8 • Weingartz Supply Company, a Michigan outdoor power equipment company with
9 170 employees;⁶⁶
- 10 • American Pulverizer Company, a Missouri wholesale scrap metal recycling
11 company with 150 employees;⁶⁷
- 12 • Eden Foods, a Michigan natural foods company that employed 128 individuals in
13 2013, more than 50 of whom worked full time;⁶⁸
- 14 • Sharpe Holdings, Inc., a Missouri farming, dairy, creamery, and cheese-making
15 corporation with more than 100 employees;⁶⁹
- 16 • Triune Health Group, an Illinois corporation that facilitates the re-entry of injured
17 workers in the workforce, with 95 employees;⁷⁰
- 18 • Korte & Luitjohan Contractors, Inc., an Illinois construction firm with
19 approximately 90 full-time employees, 20 of whom are on its health plan;⁷¹

20
21 ⁶² Jacobson, *supra* note 58.

22 ⁶³ *Eternal Word Television Network, Inc. v. Sec'y of U.S. Dep't of Health & Human Servs.*, 756 F.3d 1339 (11th Cir. 2014).

23 ⁶⁴ Jacobson, *supra* note 58.

24 ⁶⁵ *Id.*

25 ⁶⁶ *Id.*

26 ⁶⁷ *Id.*

27 ⁶⁸ *Eden Foods, Inc. v. Sebelius*, 733 F.3d 626 (6th Cir. 2013).

28 ⁶⁹ Jacobson, *supra* note 58.

⁷⁰ *Id.*

⁷¹ *Korte v. Sebelius*, 735 F.3d 654 (7th Cir. 2013); Jacobson, *supra* note 58.

- 1 • O'Brien Industrial Holdings, a Missouri ceramic materials processing company
- 2 with 87 employees;⁷²
- 3 • And many more.⁷³

4 Given the breadth and lack of oversight built into the Exemption Rules, it is conceivable
5 that many—or even all—businesses that have no religious mission but are run by religious
6 individuals—including large, multi-state corporations—could refuse to provide contraceptive
7 coverage under the Exemption Rules. For example, two of the largest Catholic business
8 leadership organizations in the United States represent more than 4,000 and 400 member
9 companies, respectively.⁷⁴ Additionally, major employers in nearly every industry could claim
10 exemptions, including retail fashion,⁷⁵ fast food,⁷⁶ commercial agriculture,⁷⁷ insurance,⁷⁸
11 hospitality,⁷⁹ airline travel,⁸⁰ online dating,⁸¹ and general retail merchandise⁸²—to name only a

12 ⁷² Jacobson, *supra* note 58.

13 ⁷³ See Jacobson, *supra* note 58; *Holland v. Sebelius*, No. 2:13-cv-11111 (S.D.W.Va. 2013); Joe Holland Chevrolet,
14 *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).

15 ⁷⁴ Legatus: Ambassadors for Christ in the Marketplace, *What We Offer*, <http://legatus.org/legatus/> (last visited Nov.
16 21, 2017) (More than 4,000 Catholic business leaders and spouses are members of this organization); Catholic
Business Journal, *Catholic Business Directory*, <https://catholicbusinessjournal.biz/business-directory?page=8> (last
visited Nov. 21, 2017) (449 Catholic businesses listed).

17 ⁷⁵ Laura Leonard, *Faith, Fashion, and Forever 21*, CHRISTIANITY TODAY, March 2009,
<http://www.christianitytoday.com/women/2009/march/faith-fashion-and-forever-21.html>.

18 ⁷⁶ 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
19 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*
20 *Lynsi Snyder on Searching for a Father Figure and Finding God in "I am Second,"* THE CHRISTIAN POST, INC., Jan.
21 16, 2017, [https://www.christianpost.com/news/in-n-out-burger-owner-lynsi-snyder-talks-faith-journey-in-i-am-
second-video-172909/](https://www.christianpost.com/news/in-n-out-burger-owner-lynsi-snyder-talks-faith-journey-in-i-am-second-video-172909/).

22 ⁷⁷ 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*,
23 SOSLAND PUBLISHING COMPANY, Aug. 11, 2015, [http://www.meatpoultry.com/Writers/Other-Contributors/Of-faith-
and-food.aspx?cck=1](http://www.meatpoultry.com/Writers/Other-Contributors/Of-faith-and-food.aspx?cck=1).

24 ⁷⁸ 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>.

25 ⁷⁹ Michael S. Rosenwald, *Marriot's Family Guy*, THE WASHINGTON POST, Mar. 16, 2009,
26 <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/15/AR2009031501715.html>.

27 ⁸⁰ Ann Schrader, *Republic Air CEO Puts His Faith to Work*, THE DENVER POST, May 6, 2016,
<http://www.denverpost.com/2009/11/13/republic-air-ceo-puts-his-faith-to-work/>; Republic Airlines Inc., *Our Vision,*
28 *Mission, Culture Statement and Guiding Principles*, http://www.rjet.com/Who_We_Are/Mission_Vision.aspx (last
visited Nov. 21, 2017).

1 few. These major companies employ nearly two million employees, and if they deny their
2 employees contraceptive coverage, a staggering number of women nationwide will be affected.⁸³

3 Non-religious employers may also take advantage of the Exemption Rules, citing “moral
4 concerns,” because they believe—falsely—that this will save money or serve political purposes.
5 With no government oversight, virtually any large, privately held corporate employer could take
6 advantage of the Moral Exemption in this way. For-profit companies account for nearly 90% of
7 private-sector employment across America.⁸⁴ If even a fraction of for-profit employers
8 throughout the country—both privately and publicly held —were to take advantage of the
9 Exemption Rules, it is reasonable to expect that millions of women—including members of
10 Amici—could be immediately denied contraceptive coverage with all of the health, educational,
11 and employment effects that follow.⁸⁵

12 **III. SEAMLESS NO-COST CONTRACEPTIVE COVERAGE IS ESSENTIAL** 13 **TO WOMEN’S EQUALITY AND ADVANCEMENT**

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

15 The availability and use of contraceptives have had a profound impact on the lives of
16

17 ⁸¹ Maggie Lake, *eHarmony CEO Meets Controversial Success*, CNN, July 11, 2008,
18 <http://www.cnn.com/2008/BUSINESS/07/11/eharmony.maggie/?iid=EL>.

19 ⁸² Colleen Walsh, *God and Walmart*, HARVARD GAZETTE, Nov. 19, 2009,
<https://news.harvard.edu/gazette/story/2009/11/god-and-walmart/>.

20 ⁸³ Forbes, *America’s Largest Private Companies: #103 Forever 21*, <https://www.forbes.com/companies/forever-21/>
21 (last visited Nov. 21, 2017); Encyclopedia.com, *Chik-Fil-A Inc.*, <http://www.encyclopedia.com/social-sciences-and-law/economics-business-and-labor/businesses-and-occupations/chick-fil-inc> (last visited Nov. 21, 2017); Forbes,
22 *America’s Best Employers: #54 In-N-Out Burger*, <https://www.forbes.com/companies/in-n-out-burger/> (last visited
23 Nov. 21, 2017); Tyson Foods, *Our Story*, <http://www.tysonfoods.com/our-story> (last visited Nov. 21, 2017); Forbes,
The World’s Biggest Public Companies: #199 Aflac, <https://www.forbes.com/companies/aflac/> (last visited Nov. 21,
24 2017); Marriott Form 10-K 2016, <http://investor.shareholder.com/MAR/secfiling.cfm?filingID=1628280-17-1506&CIK=1048286> (last visited Nov. 21, 2017); Republic Airlines Inc., *Who We Are*,
http://www.rjet.com/Who_We_Are.aspx (last visited Nov. 17, 2017); Andrea Chang & Peter Jamison, *EHarmony is Moving from Santa Monica to Westwood*, LOS ANGELES TIMES, Feb. 4, 2015, <http://www.latimes.com/business/la-fi-0205-eharmony-santa-monica-20150205-story.html>; Walmart Stores, Inc., *Our Locations*,
25 <https://corporate.walmart.com/our-story/locations/united-states> (last visited Nov. 21, 2017).

26 ⁸⁴ 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
27 (showing that non-profits account for 10.3% of private-sector employment in the United States).

28 ⁸⁵ See Section III, *infra*.

1 women in the United States.⁸⁶ In one study, a majority of women reported that contraceptives
 2 allowed them “to better care for themselves and their families, either directly or indirectly through
 3 facilitating their education and career.”⁸⁷ Contraceptive coverage has the ability to transform a
 4 woman’s personal and professional life and education and to help her take control of her health
 5 and success. These are the very benefits that Amici’s members rely on to achieve their own
 6 personal, professional, and educational advancement throughout America.

7 No-cost contraceptive coverage allows women to participate in the workforce with equal
 8 opportunity to men. In crafting the Contraceptive Coverage Benefit through the ACA, various
 9 government agencies acknowledged that the disparity in health coverage offered to men and
 10 women “places women in the workforce at a disadvantage compared to their male co-workers.”⁸⁸
 11 Access to contraceptives has enabled women to attend institutes of higher education at greater
 12 rates than ever before.⁸⁹ The development of and greater access to the oral contraceptive pill in
 13 particular have tremendously increased the rates at which women enroll in college, while
 14 decreasing the rates at which they drop out of college.⁹⁰

15 The ability to control one’s reproduction is critical to women’s ultimate career and
 16 financial success, as women’s participation in the labor force often decreases significantly after
 17 childbirth.⁹¹ The temporary absences from work that necessarily occur when women give birth
 18 and, frequently, provide the bulk of care for young children delay women’s ability to gain crucial
 19 work experience and can result in fewer opportunities for professional development and
 20 promotions.⁹² By contrast, women who can control the timing of their pregnancies and undertake

21 _____
 22 ⁸⁶ 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).

23 ⁸⁷ *Id.*

24 ⁸⁸ 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).

25 ⁸⁹ Heinrich Hock, *The Pill and the College Attainment of American Women and Men* 19 (Fla. State Univ., Working Paper, 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).

26 ⁹⁰ Hock, *supra* note 89.

27 ⁹¹ Hock, *supra* note 89; Loughran & Zissimopoulos, *supra* note 89, at 346.

28 ⁹² Loughran & Zissimopoulos, *supra* note 89, at 346.

1 childbearing when they are personally and professionally ready “are more likely than others to
2 enter or stay in school and to have more opportunities for employment and for full social or
3 political participation in their community.”⁹³

4 Many women who attain a level of achievement and stability in their careers before
5 having children ultimately advance further in the workplace and earn more money over their
6 lifetimes.⁹⁴ Further, studies consistently find a negative relationship between childbearing and
7 female wages, due to child care responsibilities and discrimination, while men who become
8 fathers see a positive effect on their wages.⁹⁵ In fact, a woman’s first child is associated with a
9 two to three percent decline in wages,⁹⁶ and the average hourly wage of women with two or more
10 children is 28% less than the average hourly wage of women with no children.⁹⁷ Contraception
11 has allowed women to time their pregnancies so that they may invest in higher education and
12 their careers prior to starting or expanding their families.⁹⁸ Accordingly, without the ability to
13 control and time their pregnancies, women will face tremendous personal, professional, social,
14 and economic adverse effects.

15 **B. Women Have Greatly Benefited from Increased Access to**
16 **Contraception Since Implementation of the No-Cost Contraceptive**
17 **Coverage Benefit.**

18 The Contraceptive Coverage Benefit has afforded women significant economic and health
19 gains. It is estimated that at least 62.4 million women currently have no-cost contraceptive
20 insurance coverage.⁹⁹ Due to the Contraceptive Coverage Benefit, women across the country

21 ⁹³ Susan A. Cohen, *The Broad Benefits of Investing in Sexual and Reproductive Health*, 7 GUTTMACHER REPORT ON
22 PUB. POLICY 5, 6 (2004), https://www.guttmacher.org/sites/default/files/article_files/gr070105.pdf.

23 ⁹⁴ Loughran & Zissimopoulos, *supra* note 89, at 346.

24 ⁹⁵ *Id.*

25 ⁹⁶ *Id.*

26 ⁹⁷ *Id.*

27 ⁹⁸ Martha J. Bailey, Brad Hershbein & Amalia R. Miller, *The Opt-In Revolution? Contraception and the Gender Gap*
28 *in Wages 6-7* (Nat’l Bur. of Econ. Research, Working Paper 17922, 2012), <http://www.nber.org/papers/w17922.pdf>.

⁹⁹ See Office of the Assistant Sec’y for Planning and Evaluation, U.S. Dep’t of Health and Human Servs., *The Affordable Care Act Is Improving Access to Preventive Services for Millions of Americans*, May 14, 2015, <https://aspe.hhs.gov/system/files/pdf/139221/The%20Affordable%20Care%20Act%20is%20Improving%20Access%20to%20Preventive%20Services%20for%20Millions%20of%20Americans.pdf>; see also, Nat’l Women’s Law Ctr., *New Data Estimates 62.4 Million Women Have Coverage of Birth Control Without Out-of-Pocket Costs*,

1 have benefited from decreased costs for almost all reversible contraceptives on the market.¹⁰⁰
 2 Two-thirds of women using oral contraceptives have gained no-cost contraceptive coverage, and
 3 almost three-quarters of women using the contraceptive ring no longer pay copays for them.¹⁰¹
 4 American women have collectively saved nearly \$1.4 billion *annually* in out-of-pocket costs for
 5 oral contraceptives alone due to the Contraceptive Coverage Benefit.¹⁰² The impact of the
 6 Contraceptive Coverage Benefit has been enormous, and the negative impact of the Exemption
 7 Rules on American women will be correspondingly extreme.

8 **C. There Are No Comparable Alternatives to the Contraceptive Coverage**
 9 **Benefit.**

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

11 Twenty-six states currently require private insurers to cover contraceptives if the insurers
 12 offer coverage for other prescription drugs, and two more states require coverage based on
 13 nondiscrimination laws.¹⁰³ These coverage requirements have proven to be effective for women
 14 enrolled in private insurance plans that are covered by the state coverage requirements; one study
 15 found that women living in states with comprehensive coverage requirements had 70% increased
 16 odds of consistent contraceptive use.¹⁰⁴ However, there are four major deficiencies that leave this
 17 patchwork of state laws unable to fill the gap left by the Exemption Rules.

18
 19
 20

<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).

21 ¹⁰⁰ 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); 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).

22 ¹⁰¹ 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).

23 ¹⁰² Becker & Polsky, *supra* note 100.

24 ¹⁰³ Adam Sonfield, *States Must Act to Shore Up the Federal Contraceptive Coverage Guarantee*, GUTTMACHER INST., Feb. 16, 2017, <https://www.guttmacher.org/gpr/2017/02/states-must-act-shore-federal-contraceptive-coverage-guarantee>.

25 ¹⁰⁴ Brianna M. Magnusson et al., *Contraceptive Insurance Mandates and Consistent Contraceptive Use Among Privately Insured Women*, 50 MED. CARE 562, 565 (2012).

1 *First*, while 28 states have some form of requirement that private employers cover
2 contraceptives, 22 have no such requirement at all.¹⁰⁵

3 *Second*, only four states require that contraceptives must be provided with *no* cost to the
4 insured.¹⁰⁶ Although increases in cost-sharing can decrease access to and effective use of
5 contraceptives, 46 states have yet to explicitly ensure no-cost coverage for contraceptives.

6 *Third*, state laws regulating insurers cannot affect plans written in other states or plans
7 offered by employers that self-insure their employees.¹⁰⁷ Around 60% of all employees are
8 insured by self-funded insurance plans and are therefore not covered by state coverage
9 requirements.¹⁰⁸ When an employer self-insures, these plans are overseen by the United States
10 Department of Labor under the Employer Retirement Income Security Act of 1974 (ERISA) and
11 are only subject to federally established regulations.¹⁰⁹ Therefore, state laws requiring
12 contraceptive coverage will not reach many of the potentially affected women.

13 *Finally*, 20 of the 28 states that require some form of contraceptive coverage allow certain
14 employers and insurers to opt out of the coverage requirement.¹¹⁰ Even in the 28 states that do
15 require contraceptive coverage, a significant portion of employers will be able to escape such
16 coverage requirements.¹¹¹ State laws simply cannot cure the negative impact the Exemption
17 Rules will have on access to no-cost contraceptive coverage across the country.

18
19
20 _____
21 ¹⁰⁵ Guttmacher Institute, *State Laws and Policies as of October 1, 2017: Insurance Coverage of Contraceptives*, Oct.
22 1, 2017, <https://www.guttmacher.org/state-policy/explore/insurance-coverage-contraceptives>. *See also* Pl.’s Mot.
23 Prelim. Inj. at 31.

24 ¹⁰⁶ Guttmacher Institute, *supra* note 105.

25 ¹⁰⁷ Sonfield et al., *supra* note 101.

26 ¹⁰⁸ Laurie Sobel, Alina Salganicoff & Caroline Rosenzweig, *New Regulations Broadening Employer Exemptions to*
27 *Contraceptive Coverage: Impact on Women*, THE HENRY J. KAISER FAMILY FOUNDATION, Oct. 6, 2017,
28 [http://files.kff.org/attachment/Issue-Brief-New-Regulations-Broadening-Employer-Exemptions-to-Contraceptive-](http://files.kff.org/attachment/Issue-Brief-New-Regulations-Broadening-Employer-Exemptions-to-Contraceptive-Coverage-Impact-on-Women)
Coverage-Impact-on-Women; Magnusson et al., *supra* note 104 at 565.

¹⁰⁹ Employer Retirement Income Security Act of 1974, Pub.L. 93-406, 88 Stat. 829 (1974). *See also*,
Sobel, Salganicoff & Rosenzweig, *supra* note 108; Magnusson et al., *supra* note 104 at 565.

¹¹⁰ Guttmacher Institute, *supra* note 105.

¹¹¹ Guttmacher Institute, *supra* note 105.

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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 the Medicaid program or Title X providers, and doing so will not be seamless. It requires significant additional effort to enroll in and access these so-called alternatives, and some women will not qualify for them at all.¹¹² Notably, safety net family planning providers are already under considerable political attack, threatening their ability to serve the populations they were intended to, let alone women who currently rely on employer coverage.¹¹³

D. The Potential Harms from Losing Contraceptive Coverage, Even Temporarily, Are Irreversible for Women.

Contraceptives are one of the most widely used medications in the country.¹¹⁴ The no-cost Contraceptive Coverage Benefit has boosted the consistent and proper use of contraceptives and enabled more women to choose long-term contraceptives.¹¹⁵ Loss of no-cost contraceptive coverage will, by contrast, cause many women to use contraceptives less consistently, to use less effective methods, or to forego contraception altogether, as cost is a significant factor in many women’s selection and use of contraception.¹¹⁶ Amici support Plaintiffs’ motion for a

¹¹² Title X is a federally-funded program focused solely on providing individuals with reproductive health services. Public Law 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 and 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/>.

¹¹³ 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>.

¹¹⁴ Becker & Polsky, *supra* note 100.

¹¹⁵ Pace, Dusetzina, & Keating, *supra* note 100; Becker & Polsky, *supra* note 100.

¹¹⁶ 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.

1 preliminary injunction because they know that losing consistent no-cost coverage—even for as
2 little as one month—will result in irreparable harm for many women nationwide.

3 Today, the oral contraceptive pill is the most common contraceptive among women in the
4 United States.¹¹⁷ The Contraceptive Coverage Benefit has decreased rates of discontinuation and
5 increased effective use with respect to generic oral contraceptives.¹¹⁸ In addition, because of the
6 Contraceptive Coverage Benefit, more women have no-cost coverage of longer-term and more
7 effective contraceptives.¹¹⁹ For example, privately-insured women interested in an IUD were
8 significantly more likely to receive one when a lower out-of-pocket price for the device and
9 insertion procedure was offered.¹²⁰ Women who choose long-term contraceptives and receive
10 them at no cost—or low shared costs—continue using birth control at higher rates and with
11 greater success in preventing unintended pregnancies.¹²¹ Further, long-term contraceptive
12 methods, such as the IUD, are the most effective at preventing unintended pregnancies, with only
13 a 1% failure rate.¹²² By contrast, it is estimated that 41% of unintended pregnancies in America
14 are caused by the inconsistent use of contraceptives.¹²³ Additionally, lack of no-cost birth control
15 is cited as a factor in approximately one-quarter of abortions.¹²⁴

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17 ¹¹⁷ Pace, Dusetzina, & Keating, *supra* note 100; Guttmacher Institute, *Contraceptive Use in the United States*, Sept.
18 2016, <https://www.guttmacher.org/fact-sheet/contraceptive-use-united-states#2a>.

19 ¹¹⁸ Pace, Dusetzina, & Keating, *supra* note 100.

20 ¹¹⁹ Guttmacher Institute, *supra* note 117; Becker & Polsky, *supra* note 100; Aileen M. Garipey et al., *The Impact of*
21 *Out-of-Pocket Expense on IUD Utilization Among Women with Private Insurance*, 84 *CONTRACEPTION* e39
(2011), <http://escholarship.org/uc/item/1dz6d3cx>.

22 ¹²⁰ Becker & Polsky, *supra* note 100; Garipey et al., *supra* note 119.

23 ¹²¹ Garipey et al., *supra* note 119; Natalie E. Birgisson et al., *Preventing Unintended Pregnancy: The Contraceptive*
24 *CHOICE Project in Review*, 24 *J. WOMEN'S HEALTH* 349 (2015); Guttmacher Institute, *supra* note 117.

25 ¹²² Garipey et al., *supra* note 119.

26 ¹²³ Pace, Dusetzina & Keating, *supra* note 100; Guttmacher Institute, *supra* note 117. Gaps in contraception use are
27 more common for women who are minorities and those with lower incomes and lower education levels. Magnusson
28 et al., *supra* note 104, at 565.

¹²⁴ 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 report 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),
<http://pubmedcentralcanada.ca/pmcc/articles/PMC3152747/>.

1 As of 2016, approximately 43 million women in the United States were in their
2 childbearing years, did not want to become pregnant, and were at risk of an unintended pregnancy
3 if they did not have access to reliable contraceptive methods.¹²⁵ This means that, across America,
4 at least 43 million women currently need consistent coverage of reliable forms of contraception to
5 effectively prevent unintended pregnancies. If employers and insurers drop contraceptive
6 coverage, women will be less likely to have access to long-term and effective contraceptives, will
7 be less likely to regularly continue contraceptive use, and will thus be at risk for unintended
8 pregnancies, threatening women's health and economic security.¹²⁶ Women should not be denied
9 this care.

10 IV. CONCLUSION

11 If the Exemption Rules are allowed to remain in effect, a minimum of hundreds of
12 thousands of women—and very possibly millions, including those represented by Amici—across
13 the United States are at risk of being adversely and irreparably harmed. The approximately one
14 half million female employees of religiously-affiliated hospitals; nearly 600,000 female students
15 of religiously-affiliated colleges and universities; and more than 17,000 female employees of
16 privately held, for-profit companies that have already stated their intent to deny contraceptive
17 coverage comprise a conservative estimation of the number of women affected by the Exemption
18 Rules. The estimates do not take into account dependents of these entities' employees and
19 students, nor do they take into account the employees and dependents of large, publicly held
20 companies that may now choose to drop coverage.

21 _____
22 ¹²⁵ Guttmacher Institute, *supra* note 117.

23 ¹²⁶ *Id.* As discussed in the Plaintiffs' Motion for a Preliminary Injunction, contraceptives are used as essential
24 medicine for women. See Pl.'s Mot. Prelim. Inj. at 1,4; Guttmacher Institute, *supra* note 117 (finding that 1.5 million
25 women in the U.S. relied on the oral contraceptive pill between 2006 and 2008 for medical reasons other than
26 preventing pregnancy). Contraceptive use decreases pregnancy-related illness and mortality, and prevents potential
27 negative health consequences that stem from unintended pregnancies. See Megan L. Kavanaugh & Ragnar M.
28 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/hhbmqe9>.

1 The repercussions of losing coverage of safe, reliable, no-cost contraception are not just
2 monetary. Women’s physical and emotional health, educational opportunities, and professional
3 advancement all depend upon consistent, uninterrupted coverage for prescription contraceptives.
4 Loss of no-cost contraceptive coverage—even for only a few months—will have immediate,
5 irreparable consequences for women across the country. The disruptions in coverage caused by
6 the Exemption Rules will have far-reaching, grave, and irreparable consequences for American
7 women’s professional and education advancement as well as their and their families’ well-being.
8 Accordingly, on behalf of female employees and students throughout the country, Amici support
9 Plaintiffs’ motion for a preliminary injunction to enjoin implementation of these harmful
10 Exemption Rules nationwide pending a trial on the merits.

11 Dated: December 5, 2017

Respectfully submitted,

12
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*Attorneys for Amici Curiae, American Association
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International Union and 14 Additional
Professional, Labor, and Student Associations*

APPENDIX**Interests and Descriptions of *Amici Curiae***

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3 • **American Association of University Women (“AAUW”)** was founded in 1881 by like-
4 minded women who had challenged society’s conventions by earning college degrees.
5 Since then it has worked to increase women’s access to higher education through research,
6 advocacy, and philanthropy. Today, AAUW has more than 170,000 members and
7 supporters, 1,000 branches, and 800 college and university partners nationwide. AAUW
8 plays a major role in mobilizing advocates nationwide on AAUW’s priority issues to
9 advance gender equity. In adherence with its member-adopted Public Policy Program,
10 AAUW supports choice in the determination of one’s reproductive life and increased
11 access to health care and family planning services.
- 12 • **Service Employees International Union (“SEIU”)** is a union of two million women and
13 men who work in health care, property services, and public services throughout the United
14 States. More than half of SEIU’s members are women and more than half its members
15 work in health care. SEIU is deeply committed to ensuring that all working people, men
16 and women alike, have access to affordable health care, including contraceptive coverage
17 as intended by the Affordable Care Act. SEIU has a particular interest in this Rule
18 because its members know, both personally and in their capacity as health care workers,
19 how vital it is for women to have seamless contraceptive coverage in order to be able to
20 protect their health and their ability to work, which in turn are necessary for the economic
21 security of families across America.
- 22 • **American Federation of Teachers (“AFT”)**, an affiliate of the AFL-CIO, represents
23 1.7 million members in more than 3,000 local affiliates nationwide and overseas in K-12
24 and high education, public employment and healthcare. AFT has a strong interest in
25 supporting the rights of women in the area of reproductive choice. AFT considers
26 reproductive healthcare, including contraception, as basic healthcare for women.
27 Therefore, AFT believes it must be covered as a preventive health service in order to
28 provide quality healthcare for all women. Furthermore, the fair and equal treatment of a

1 woman's right to make her own personal healthcare decisions regarding reproduction and
2 other health issues is an important part of AFT's mission to advance the workplace rights
3 of all its members. AFT has members in all 50 states, plus Guam, Puerto Rico and the
4 Virgin Islands.

- 5 • **National Association of Women Lawyers ("NAWL")** provides leadership, a collective
6 voice, and essential resources to advance women in the legal profession and advocate for
7 the equality of women under the law. Since 1899, NAWL has been empowering women
8 in the legal profession, cultivating a diverse membership dedicated to equality, mutual
9 support, and collective success. As part of its mission, NAWL promotes the interests of
10 women and families by participation as *amicus curiae* in cases impacting their rights.
11 NAWL recognizes that when women have secure control over planning whether and how
12 to have a family, they are also able to invest in their own careers and take risks in the
13 labor market that lead to better economic outcomes for women, their families, and the
14 country.
- 15 • **Girls Inc.** is a nonprofit, nonpartisan organization that inspires all girls to be strong,
16 smart, and bold, through direct service and advocacy. More than 80 local Girls Inc.
17 affiliates provide primarily after-school and summer programming to approximately
18 150,000 girls ages 5-18 in 31 U.S. states and in Canada. Girls Inc.'s comprehensive
19 approach to whole girl development equips girls to navigate gender, economic, and social
20 barriers and grow up healthy, educated, and independent. These positive outcomes are
21 achieved through three core elements: people-trained staff and volunteers who build
22 lasting, mentoring relationships; an environment that is girls-only and physically and
23 emotionally safe, and where there is a sisterhood of support, high expectations, and
24 mutual respect; and programming that is research-based, hands-on and minds-on, and age-
25 appropriate, meeting the needs of today's girls. Informed by girls and their families, Girls
26 Inc. also advocates for legislation, policies, and practices to advance the rights and
27 opportunities of girls and young women. Girls Inc. supports protecting and expanding
28 access to affordable reproductive health care, so all women can decide what is best for

1 their own health, education, and careers.

- 2 • **National Association of Social Workers (“NASW”)** was founded in 1955, and is the
3 largest association of professional social workers in the United States with more than
4 120,000 members in 55 chapters. NASW develops policy statements on issues of
5 importance to the social work profession. Consistent with those statements, NASW
6 advocates that every individual, within the context of her or his value system, must have
7 access to family planning, abortion, and other reproductive health services.
- 8 • **If/When/How: Lawyering for Reproductive Justice (“If/When/How”)** trains,
9 networks, and mobilizes law students and legal professionals to work within and beyond
10 the legal system to champion reproductive justice. If/When/How believes that
11 reproductive justice will exist when all people have the ability to decide if, when, and how
12 to create and sustain families with dignity, free from discrimination, coercion, or violence.
13 Achieving reproductive justice requires a critical transformation of the legal system, from
14 an institution that often perpetuates oppression to one that realizes justice. If/When/How
15 currently has approximately 90 active chapters at law schools across the country: 9% in
16 Mid-Atlantic; 26% in Midwest; 18% in Northeast; 27% in South; and 20% in West.
17 If/When/How has approximately 1,500 student members overall, with 95% of its members
18 identifying as women.
- 19 • **California Women Lawyers (“CWL”)** is a non-profit organization chartered in 1974.
20 CWL is the only statewide bar association for women in California and maintains a
21 primary focus on advancing women in the legal profession. Since its founding, CWL has
22 worked to improve the administration of justice, to better the position of women in
23 society, to eliminate all inequities based on sex, and to provide an organization for
24 collective action and expression germane to the aforesaid purposes. CWL has also
25 participated as *amicus curiae* in a wide range of cases to secure the equal treatment of
26 women and other classes of persons under the law.
- 27 • **Women’s Bar Association of the State of New York (“WBASNY”)** is the second
28 largest statewide bar association in New York and one of the largest women’s bar

1 associations in the United States. Its more 4,200 members in its nineteen chapters¹²⁷
 2 include esteemed jurists, academics, and attorneys who practice in every area of the law,
 3 including constitutional and civil rights. WBASNY is dedicated to fair and equal
 4 administration of justice, and it has participated as an *amicus* in many cases as a vanguard
 5 for the rights of women, minorities, LGBT persons, and others.

- 6 • **Women’s Bar Association of Massachusetts (“WBA”)** is a professional association
 7 comprised of more than 1,500 members, including judges, attorneys, and policy makers
 8 dedicated to advancing and protecting the interests of women. In particular, the WBA
 9 advocates for public policy that improves the lives of women and their children. The
 10 WBA has filed and joined many *amicus* briefs in state and federal courts on legal issues
 11 that have a unique impact on women, including cases involving sexual discrimination,
 12 family law, domestic violence, and employment discrimination. The WBA is comprised
 13 of more than 1,500 members, 99% of which are female. The WBA operates solely in
 14 Massachusetts.
- 15 • **Lawyers Club of San Diego (“Lawyers Club”)** is a 1,300+ member legal association
 16 established in 1972 with the mission “to advance the status of women in the law and
 17 society.” In addition to presenting educational programs and engaging in advocacy,
 18 Lawyers Club participates in litigation as *amicus curiae* where the issues concern the
 19 advancement of status of women in the law and society. Lawyers Club is committed to

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 21 ¹²⁷ WBASNY’s affiliated organizations consist of nineteen regional chapters, some of which are separately
 22 incorporated, plus nine IRC 501(c)(3) charitable corporations that are foundations and/or legal clinics. The affiliates
 23 are: *Chapters* – Adirondack Women’s Bar Association; The Bronx Women’s Bar Association, Inc.; Brooklyn
 24 Women’s Bar Association, Inc.; Capital District Women’s Bar Association; Central New York Women’s Bar
 25 Association; Del-Chen-O Women’s Bar Association, Finger Lakes Women’s Bar Association; Greater Rochester
 26 Association for Women Attorneys; Mid-Hudson Women’s Bar Association; Mid-York Women’s Bar Association;
 27 Nassau County Women’s Bar Association; New York Women’s Bar Association; Queens County Women’s Bar
 28 Association; Rockland County Women’s Bar Association; Staten Island Women’s Bar Association; The Suffolk
 County 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* vote in this matter.)

1 gender equality and reproductive justice. Reproductive justice gives women the freedom
2 and flexibility to plan their families in ways that work best not only for each woman and
3 her professional advancement, but for society as a whole. Lawyers Club joins this amicus
4 brief because access to no-cost contraception directly impacts women's reproductive
5 justice and gender equality efforts.

- 6 • **Colorado Women's Bar Association ("CWBA")** is an organization of more than 1,200
7 Colorado attorneys, judges, legal professionals, and law students founded in 1978 and
8 dedicated to promoting women in the legal profession and the interests of women
9 generally. The CWBA has an interest in this case because its members, their clients, and
10 other women in Colorado are committed to protecting women's health.
- 11 • **Georgia Association for Women Lawyers ("GAWL")** is a statewide bar association
12 with more than 740 members. Founded in 1928, GAWL has proudly served the diverse
13 interests of women lawyers in Georgia for nearly 90 years. This matter affects the 98% of
14 GAWL members who are women. GAWL joins this brief in service of its mission "to
15 enhance the welfare and development of women lawyers and to support their interests."
- 16 • **Women Lawyers' Association of Los Angeles ("WLALA")** is a nonprofit organization
17 comprised primarily of lawyers and judges in Los Angeles County. Founded in 1919,
18 WLALA is dedicated to promoting the full participation of women lawyers and judges in
19 the legal profession, maintaining the integrity of our legal system by advocating principles
20 of fairness and equality, and improving the status of women in our society. WLALA has
21 participated as an *amicus* in cases involving discrimination before many federal district
22 courts and Courts of Appeals. WLALA believes that bar associations have a special
23 obligation to protect the core guarantees of our Constitution to secure equal opportunity
24 for women and girls through the full enforcement of laws prohibiting discrimination.
- 25 • **Hispanic Lawyers' Association of Illinois ("HLAI")** is a not for profit organization
26 founded in 1995. It is the largest statewide bar association for Latinos in Illinois and has a
27 robust and active Latina Lawyers Committee. HLAI is committed to addressing social,
28 economic and other issues that affect the Hispanic community. HLAI advocates for

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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.

- **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.