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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 THE STATE OF CALIFORNIA; THE STATE
OF CONNECTICUT; THE STATE OF
12 DELAWARE; THE DISTRICT OF
COLUMBIA; THE STATE OF HAWAII; THE
13 STATE OF ILLINOIS; THE STATE OF
MARYLAND; THE STATE OF
14 MINNESOTA, BY AND THROUGH ITS
DEPARTMENT OF HUMAN SERVICES;
15 THE STATE OF NEW YORK; THE STATE
OF NORTH CAROLINA; THE STATE OF
16 RHODE ISLAND; THE STATE OF
VERMONT; THE COMMONWEALTH OF
17 VIRGINIA; THE STATE OF WASHINGTON,

18 Plaintiffs,

19 v.

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

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

**BRIEF OF AMICI CURIAE
AMERICAN ASSOCIATION OF
UNIVERSITY WOMEN; SERVICE
EMPLOYEES INTERNATIONAL
UNION; AND 11 ADDITIONAL
PROFESSIONAL, LABOR, AND
STUDENT ASSOCIATIONS, IN
SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

Hon. Haywood S. Gilliam, Jr.

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INTEREST OF AMICI CURIAE¹

1
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 students, and more. Amici have a strong interest in protecting no-cost contraceptive coverage so
6 that women can strive for equal opportunities in education and in the American workforce.

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

16
17
18
19 ¹ No party’s counsel authored this brief in whole or in part. No party, party’s counsel, or other
20 person contributed any money to fund the preparation or submission of this brief other than Amici
and their counsel. All parties have consented to the filing of this *amicus* brief. *See* Joint
Statement, Dkt. No. 273; Scheduling Order, Dkt. No. 275.

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

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

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

ARGUMENT

I. SUMMARY OF ARGUMENT

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

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

Because of the breadth of the Final Exemption Rules, it is foreseeable that hundreds of thousands—if not millions—of women throughout the country will face a loss of contraceptive coverage, with all the resulting harms that flow therefrom, if the Final Exemption Rules are not invalidated.⁹ As demonstrated below, approximately half a million women across the country work for religiously-affiliated hospitals; approximately 600,000 women attend religiously-affiliated colleges and universities; and more than 36,000 women work for privately held, for-

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

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

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

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

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

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

17 The Final Exemption Rules significantly expand the previous exemptions, which were
18 crafted to balance women’s right to essential healthcare with the exercise of religious liberty.
19 *First*, they exponentially increase the number of employers and universities that could deny
20 coverage. The Religious Exemption Rule would allow virtually *all* private employers and
21 universities, including large, for-profit companies, to deny no-cost contraceptive coverage to their
22

23 ¹⁰ See Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive
24 Services Under the Patient Protection and Affordable Care Act, 76 Fed. Reg. 46,621 (Aug. 3,
25 2011); Coverage of Certain Preventive Services Under the Affordable Care Act, 78 Fed. Reg.
8,456, 8,458 (Feb. 6, 2013). See also States’ Motion for Summary Judgment, ECF No. 311,
 (“Pls.’ Mot.”) at 9.

26 ¹¹ Accommodations in Connection with Coverage of Certain Preventive Health Services, 45 C.F.R.
§ 147.131(c)(2); see also Pls.’ Mot. at 9-10.

27 ¹² 573 U.S. 682 (2014).

28 ¹³ Pls.’ Mot. at 10.

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

17 By providing virtually any private employer or university in the country the ability to drop
18 the Contraceptive Coverage Benefit based on an undisclosed, “sincerely held” belief or an
19 undefined objection to arranging for coverage, the Final Exemption Rules will thwart the
20 Contraceptive Coverage Benefit’s purpose. The Final Exemption Rules threaten significant
21 negative repercussions for the hundreds of thousands of women and families across the United
22 States—including those represented by Amici—whose employers and universities object to
23 providing contraceptive coverage.

24 ¹⁴ *Id.* at 11-14.

25 ¹⁵ *Id.*

26 ¹⁶ *Id.* at 12-14

27 ¹⁷ *Id.*

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

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

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

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

15 Several categories of employers and universities could immediately take advantage of the
 16 Final Exemption Rules if they are not invalidated. *First*, religiously-affiliated non-profits, such as
 17 hospitals and universities, would be able to claim full exemptions, rather than accommodations,
 18 no longer guaranteeing seamless access to no-cost contraceptive coverage for female employees
 19 and students through their regular insurance plans.²² It is reasonable to conclude that hundreds of
 20 these hospitals and universities, many of which had previously accepted the accommodation
 21 because they were not eligible for an exemption, would take advantage of the Final Exemption
 22 Rules.²³ *Second*, a potentially boundless range of secular for-profit corporations would be able to

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

24 ²¹ Haglage, *supra* note 20.

25 ²² See Final Exemption Rules.

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

1 claim religious or moral exemptions.²⁴ Hundreds of thousands of women and their dependents—
 2 many of whom are members of Amici—who are insured by these newly-exempted companies
 3 and universities would lose coverage under the Final Exemption Rules.

4 Although religious denominations that oppose some or all forms of contraception have
 5 vocally opposed the Contraceptive Coverage Benefit,²⁵ women who work for employers or attend
 6 universities affiliated with these religions continue to need and use contraception. More than
 7 99% of all sexually active women of reproductive age across the United States have, at some
 8 point, used contraception to prevent pregnancy.²⁶ Ninety-eight percent of sexually active
 9 Catholic women have used a contraception method other than natural family planning,²⁷ and 87%
 10 of Catholic women currently at risk of unintended pregnancy use a method other than natural
 11 family planning.²⁸ Among Evangelical women currently at risk of unintended pregnancy, 74%
 12 use a “highly effective contraceptive method” (including sterilization, an IUD, the pill, and other
 13 hormonal methods).²⁹ The Final Exemption Rules will harm and disadvantage women who work
 14 for or attend religiously-affiliated employers and universities, as these entities will no longer be
 15 required to comply with the accommodation process that ensures seamless, no-cost coverage
 16 through third parties.³⁰ The resulting loss of no-cost coverage will significantly harm these

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

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

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

23
 24 ²⁷ Guttmacher Institute, *Guttmacher Statistic on Catholic Women’s Contraceptive Use* (Feb. 15, 2012), <http://www.guttmacher.org/media/inthenews/2012/02/15/>; see also Kimberly Daniels, *et al.*, *Contraceptive Methods Women Have Ever Used: United States, 1982–2010*, 62 NAT’L HEALTH STATISTICS REP. 1, 8 (2013), <http://www.cdc.gov/nchs/data/nhsr/nhsr062.pdf>.

25
 26 ²⁸ *Id.*

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

³⁰ Pls.’ Mot. at 11-14.

1 women, including members of Amici.

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

4 Members of Amici and many other women work for hospitals that could take advantage
 5 of the Final Exemption Rules as soon as they become effective. A large number of hospitals
 6 throughout the country are associated with religious denominations prohibiting many or all forms
 7 of contraception, and hospital employees are 76% female. For example, there are 654 hospitals
 8 associated with the Catholic Health Association of the United States alone, which collectively
 9 employ 530,599 full time and 225,433 part-time employees.³¹ These hospitals comprise 14.5% of
 10 all acute care hospitals in the U.S.³² and their employees are approximately 76% women.³³ Forty-
 11 nine of these hospitals are the sole community providers of short-term acute hospital care in their
 12 regions, meaning that health workers who lose coverage will have few opportunities for
 13 alternative employment where contraceptive coverage may be provided.³⁴ And in some states,
 14 like in Wisconsin and South Dakota, Catholic hospitals constitute at least 50% of sole community
 15 providers.³⁵ As of 2016, over 40% of acute care hospital beds in Alaska, Iowa, and Washington
 16 were in hospitals operating under Catholic health restrictions and the same was true for between
 17 30-39% of beds in Nebraska, Colorado, Missouri, Oregon, and Kentucky.³⁶ Further, the number
 18 of religiously-affiliated hospitals in the U.S. has increased by 22% between 2001 and 2016.³⁷ As

19 ³¹ See Catholic Health Assoc. of the U.S., *U.S. Catholic Health Care*, 2018, at 1,
 20 https://www.chausa.org/docs/default-source/default-document-library/cha_2018_miniprofile7aa087f4dff26ff58685ff00005b1bf3.pdf?sfvrsn=2 (last visited May
 21 2, 2019).

22 ³² Lois Uttley & Christine Khaikin, *Growth of Catholic Hospitals and Health Systems: 2016*
 23 *Update of the Miscarriage of Medicine Report*, MERGERWATCH, 2016, at 1,
 24 [http://static1.1.sqspcdn.com/static/f/816571/27061007/1465224862580/MW_Update-2016-](http://static1.1.sqspcdn.com/static/f/816571/27061007/1465224862580/MW_Update-2016-MiscarrOfMedicine-report.pdf?token=UxHKcNPcSKjkw0MAq8v8aEdM83w%3D)
 25 *MiscarrOfMedicine-report.pdf?token=UxHKcNPcSKjkw0MAq8v8aEdM83w%3D* (last visited
 26 May 2, 2019).

27 ³³ U.S. Dep't of Labor, *Labor Force Statistics from the Current Population Survey* (Jan. 19,
 28 2018), <https://www.bls.gov/cps/cpsaat18.htm>.

³⁴ Katie Hafner, *As Catholic Hospitals Expand, So Do Limits on Some Procedures*, N.Y. TIMES,
 Aug. 8, 2018, <https://www.nytimes.com/2018/08/10/health/catholic-hospitals-procedures.html>

³⁵ *Id.*

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

³⁷ *Id.*

1 this trend continues, even more women—nationwide—could be affected by these hospitals’
2 ability to take advantage of the Final Exemption Rules.

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

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

11 Amici students are also at risk of losing contraceptive coverage if the Final Exemption
12 Rules become enforceable. Hundreds of colleges and universities throughout America are
13 affiliated with religious denominations that actively oppose some or all forms of contraception.
14 Amici who receive insurance through these colleges or universities are at great risk of losing
15 coverage.³⁹ For example, there are more than 260 members of the Association of Catholic
16 Colleges and Universities (the “ACCU”) in the United States, collectively enrolling more than
17 891,000 students⁴⁰ and employing large numbers of faculty and staff.⁴¹ And during the 2016-17
18 academic year, *nearly two-thirds* of students enrolled in Catholic colleges and universities were
19 female.⁴²

20 ³⁸ Although the Catholic Health Association itself was not opposed to the Obama-era
21 accommodation process, it has steadfastly opposed any requirement by which its member
22 hospitals would have to directly pay for birth control coverage. *See* Catholic Health Assoc. of the
23 U.S., *Women’s Preventive Health Services Final Rule*,
<https://www.chausa.org/newsroom/women%27s-preventive-health-services-final-rule> (last visited
24 May 2, 2019). Additionally, numerous state and regional Catholic healthcare umbrella
25 organizations have strongly opposed the Benefit. *See, e.g.,* Carlson, *supra* note 23.

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

⁴⁰ ACCU, *Catholic Higher Education FAQs*, <https://www.accunet.org/Catholic-Higher-Ed-FAQs>
(last visited May 2, 2019).

⁴¹ *Id.*

⁴² *Id.*

1 Many Protestant or nondenominational Christian colleges and universities—free to drop
 2 contraceptive coverage altogether under the Final Exemption Rules—have also challenged the
 3 Contraceptive Coverage Benefit through lawsuits and public comments.⁴³ For example, the
 4 Council for Christian Colleges and Universities (the “CCCU”), representing 118 colleges and
 5 universities, 61 affiliate member institutions, and 400,000 members in 33 states, has vigorously
 6 opposed the Contraceptive Coverage Benefit.⁴⁴ Many Christian colleges and universities have
 7 independently challenged and sought exemptions from the Contraceptive Coverage Benefit. For
 8 example, Geneva College in Pennsylvania, with approximately 350 employees, has actively
 9 opposed the Contraceptive Coverage Benefit.⁴⁵ Wheaton College in Illinois, College of the
 10 Ozarks in Missouri, Colorado Christian University in Colorado, East Texas Baptist University in
 11 Texas, Union University in Tennessee, Dordt College in Iowa, and Heartland Christian College in
 12 Missouri are among the other non-Catholic colleges that have challenged the accommodation
 13 process or sought exemptions through lawsuits and *amicus curiae* briefs.⁴⁶ These colleges
 14 collectively boast an enrollment of over 20,000 students.⁴⁷

15 The impact of the Final Exemption Rules on female students nationwide will be severe if
 16 the Final Exemption Rules become enforceable. Young women will face increased rates of

17 ⁴³ See generally Brief of *Amicus Curiae* the Council for Christian Colleges and Universities in
 18 Support of Petitioners at 2-3, *Zubik v. Burwell*, Nos. 14-1418, *et al.*, 2016 WL 183798 (U.S. Jan.
 19 11, 2016).

19 ⁴⁴ *Id.* at 1.

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

21 ⁴⁶ Cooney, *supra* note 20; Haglage, *supra* note 20; Nicole Fisher, *Battle Between HHS and*
 22 *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>.

23 ⁴⁷ Geneva College, *Fast Facts: Geneva College*, <http://www.geneva.edu/about-geneva/fast-facts>
 24 (last visited May 2, 2019); Wheaton College, *Wheaton by the Numbers*,
<https://www.wheaton.edu/about-wheaton/why-wheaton/college-profile/wheaton-by-the-numbers/>
 25 (last visited May 2, 2019); U.S. News & World Report, *College of the Ozarks: Overview*,
<https://www.usnews.com/best-colleges/college-ozarks-2500> (last visited May 2, 2019); Colorado
 26 Christian University, *CCU Facts and Stats*, <http://www.ccu.edu/about/factsandstats/> (last visited
 27 May 2, 2019); East Texas Baptist University, *At a Glance*, <https://www.etbu.edu/about/glance/>
 28 (last visited May 2, 2019); U.S. News & World Report, *Union University: Overview*,
<https://www.usnews.com/best-colleges/union-university-3528> (last visited May 2, 2019); Dordt
 College, *About Dordt: Fast Facts*, <https://www.dordt.edu/about-dordt/fast-facts> (last visited May
 2, 2019).

1 unintended pregnancies, hindering their pursuit of higher education and career advancement.⁴⁸

2 The Final Exemption Rules undermine the effectiveness of the Contraceptive Coverage Benefit in
3 eliminating barriers to women's educational and professional advancement.

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

6 In addition to hospitals and colleges, thousands of non-profit organizations throughout the
7 United States are affiliated with religious denominations actively opposing some or all forms of
8 contraception. As of 2015, approximately 3% of the 1.4 million non-profits in the U.S. and 10%
9 of the largest non-profits already had accommodations under the Contraceptive Coverage
10 Benefit.⁴⁹ Of the 45 entities that requested an accommodation between 2014 and 2016, 27% were
11 religiously-affiliated non-profits.⁵⁰ These employers, and many more like them, could drop
12 contraceptive coverage under the Final Exemption Rules without guaranteeing alternate coverage
13 for their employees.

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

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

22 ⁴⁹ Laurie Sobel, Matthew Rae & Alina Salganicoff, *Data Note: Are Nonprofits Requesting an*
23 *Accommodation for Contraceptive Coverage?*, THE HENRY J. KAISER FAMILY FOUNDATION (Dec.
2015), at 2, [http://files.kff.org/attachment/data-note-data-note-are-nonprofits-requesting-an-](http://files.kff.org/attachment/data-note-data-note-are-nonprofits-requesting-an-accommodation-for-contraceptive-coverage)
24 [accommodation-for-contraceptive-coverage](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.*

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

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

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

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

2

3 The Final Exemption Rules apply far beyond religiously-affiliated hospitals, colleges,

4 universities, and non-profits. If effective, any private employer could take advantage of the

5 exemptions based on loosely defined religious or moral reasons.⁵³ Consequently, employees of

6 *any* non-governmental for-profit company and their dependents could be adversely affected by

7 the Final Exemption Rules. The expansion of the Religious Exemption would allow innumerable

8 large corporations to deny contraceptive care to their employees and dependents, perhaps because

9 of a religious CEO, a religious board of directors, or any number of influences. Many thousands

10 of women across the country, including members of Amici, could completely lose contraceptive

11 coverage if the Final Exemption Rules become enforceable.

12 Indeed, just a few reports have identified over 80 private, for-profit businesses that have

13 explicitly indicated their desire to drop contraceptive coverage.⁵⁴ This list includes several

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

- 15 • Hobby Lobby, an Oklahoma-based national craft supply chain with over 32,000
- 16 employees;⁵⁵
- 17 • Grote Industries, LLC, an Indiana vehicle safety systems manufacturer with 1,148
- 18 full-time U.S. employees;⁵⁶
- 19 • Conestoga Wood Specialties Corporation, a Pennsylvania-based wood cabinet and
- 20 specialty products manufacturer with 950 employees;⁵⁷
- 21 • Autocam Corporation and Autocam Medical, LLC, a Michigan transportation and

22

23 ⁵³ See Final Exemption Rules.

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

25 ⁵⁵ *Id.*

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

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

28

1 medical equipment parts company with at least 661 U.S. employees;⁵⁸

- 2 • Freshway Foods and Freshway Logistics, an Ohio-based produce processing and
3 packaging company with 400 employees;⁵⁹
- 4 • Sioux Chief Manufacturing, a Missouri plumbing products company with 370
5 employees;⁶⁰
- 6 • Eternal Word Television Network, a religious television station with 350 full-time
7 employees;⁶¹
- 8 • Hercules Industries, Inc., a Colorado heating, ventilation, and air conditioning
9 products manufacturer with 303 employees;⁶²
- 10 • Tyndale House, an Illinois publishing company with 260 employees;⁶³
- 11 • Weingartz Supply Company, a Michigan outdoor power equipment company with
12 170 employees;⁶⁴
- 13 • Sharpe Holdings, Inc., a Missouri farming, dairy, creamery, and cheese-making
14 corporation with over 100 employees;⁶⁵
- 15 • Triune Health Group, an Illinois corporation that facilitates the re-entry of injured
16 workers in the workforce, with 95 employees;⁶⁶
- 17 • O'Brien Industrial Holdings, a Missouri ceramic materials processing company
18 with 87 employees;⁶⁷ and

19
20 ⁵⁸ *Autocam Corp. v. Sebelius*, 730 F.3d 618 (6th Cir. 2013); Jacobson, *supra* note 56.

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

22 ⁶⁰ Jacobson, *supra* note 56.

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

24 ⁶² Jacobson, *supra* note 56.

25 ⁶³ *Id.*

26 ⁶⁴ *Id.*

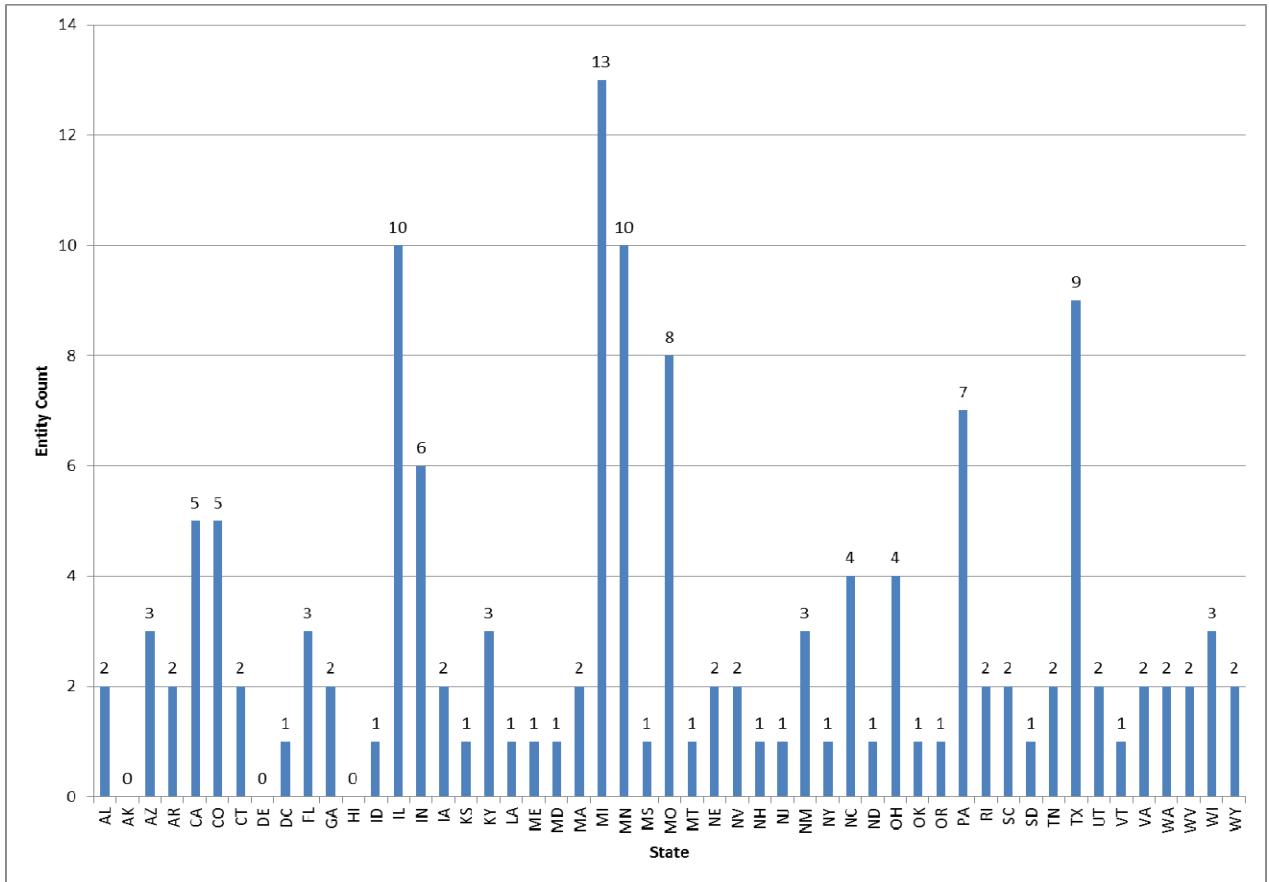
27 ⁶⁵ *Id.*

28 ⁶⁶ *Id.*

⁶⁷ *Id.*

- Many more.⁶⁸

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



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

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

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

1 contraceptive coverage under the Final Exemption Rules.⁷⁰ In fact, over half of the companies
 2 that received exemptions from the Contraceptive Coverage Benefit between January 2014 and
 3 March 2016 are secular, for profit companies.⁷¹ Major employers in nearly every industry could
 4 claim exemptions, including retail fashion,⁷² fast food,⁷³ commercial agriculture,⁷⁴ insurance,⁷⁵
 5 hospitality,⁷⁶ airline travel,⁷⁷ online dating,⁷⁸ and general retail merchandise⁷⁹—to name only a
 6 few. These major companies collectively employ nearly two million employees,⁸⁰ and, if they

7
 8 ⁷⁰ See, e.g., Legatus: Ambassadors for Christ in the Marketplace, *Why Legatus: What We Offer*,
 9 <http://legatus.org/legatus/> (last visited May 2, 2019) (More than 5,000 Catholic business leaders
 and spouses are members of this organization).

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

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

13 ⁷³ Emma Green, *Chick-Fil-A: Selling Chicken with a Side of God*, THE ATLANTIC, Sept. 8, 2014,
 14 <https://www.theatlantic.com/business/archive/2014/09/chick-fil-a-selling-chicken-with-a-side-of-god/379776/>;
 15 Rob Wile, *This 35-Year-Old Woman Just Inherited In-N-Out Burger. She's Now a Billionaire*, TIME INC.,
 16 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/>.

17 ⁷⁴ Holly Lebowitz Rossi, *7 CEOs with Notably Devout Religious Beliefs*, FORTUNE, Nov. 11,
 18 2014, <http://fortune.com/2014/11/11/7-ceos-with-notably-devout-religious-beliefs/>.

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

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

21 ⁷⁷ Ann Schrader, *Republic Air CEO Puts His Faith to Work*, DENVER POST, May 6, 2016,
 22 <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 May 2, 2019).

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

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

26 ⁸⁰ Forbes, *America's Largest Private Companies: #103 Forever 21*,
 27 <https://www.forbes.com/companies/forever-21/> (last visited May 2, 2019); Encyclopedia.com,
 28 *Chik-Fil-A Inc.*, <http://www.encyclopedia.com/social-sciences-and-law/economics-business-and-labor/businesses-and-occupations/chick-fil-inc> (last visited May 2, 2019); Forbes, *America's Best Employers: #54 In-N-Out Burger*, <https://www.forbes.com/companies/in-n-out-burger/> (last visited May 2, 2019); Tyson Foods, *Our Story*, <http://www.tysonfoods.com/our-story> (last visited

1 deny their employees contraceptive coverage, a staggering number of women nationwide will be
 2 affected. Non-religious employers could also take advantage of the Final Exemption Rules, citing
 3 “moral concerns,” because they believe—falsely—that this will save money or serve political
 4 purposes. With no government oversight, virtually any large, privately held corporate employer
 5 could take advantage of the Moral Exemption. For-profit companies account for nearly 90% of
 6 private-sector employment across America.⁸¹ If even a fraction of these for-profit employers
 7 were to take advantage of the Final Exemption Rules, it is reasonable to expect that millions of
 8 women—including members of Amici—could immediately be denied contraceptive coverage,
 9 with all of the significant health, educational, and employment effects that follow.⁸²

10 **E. Women Nationwide Depend on the Contraceptive Coverage Benefit.**

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

21 May 2, 2019); Forbes, *The World’s Biggest Public Companies: #199 Aflac*,
 22 <https://www.forbes.com/companies/aflac/> (last visited May 2, 2019); Marriott International, Inc.
 23 Annual Report (Form 10-K) (Feb. 18, 2016),
 24 <https://www.sec.gov/Archives/edgar/data/1048286/000162828016011346/mar-q42015x10k.htm>;
 25 Republic Airlines Inc., *About Republic Airline*, <http://rjet.com/about-republic-airline/> (last visited
 26 May 2, 2019); Andrea Chang & Peter Jamison, *EHarmony is Moving from Santa Monica to
 27 Westwood*, L.A. TIMES, Feb. 4, 2015, [http://www.latimes.com/business/la-fi-0205-eharmony-
 28 santa-monica-20150205-story.html](http://www.latimes.com/business/la-fi-0205-eharmony-santa-monica-20150205-story.html); Walmart Stores, Inc., *Our Locations*,
<https://corporate.walmart.com/our-story/locations/united-states> (last visited May 2, 2019).

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

⁸² See Section III, *infra*.

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

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

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

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

16 No-cost contraceptive coverage also allows women to participate in the workforce with

17
 18 ⁸³ Jennifer J. Frost & Laura Duberstein Lindberg, *Reasons for Using Contraception: Perspectives*
 19 *of US Women Seeking Care at Specialized Family Planning Clinics*, 87 CONTRACEPTION
 20 JOURNAL 465 (2013).

21 ⁸⁴ *Id.* at 469.

22 ⁸⁵ Martha J. Bailey, Brad Hershbein & Amalia R. Miller, *The Opt-In Revolution? Contraception*
 23 *and the Gender Gap in Wages* at 6-7 (Nat’l Bureau of Econ. Research, Working Paper No.
 24 17922, Mar. 2012), <http://www.nber.org/papers/w17922.pdf>; NWLC, *New Data Estimates 62.4*
 25 *Million Women Have Coverage of Birth Control Without Out-of-Pocket Costs*,
 26 [https://nwlc.org/resources/new-data-estimate-62-4-million-women-have-coverage-of-birth-](https://nwlc.org/resources/new-data-estimate-62-4-million-women-have-coverage-of-birth-control-without-out-of-pocket-costs/)
 27 [control-without-out-of-pocket-costs/](https://nwlc.org/resources/new-data-estimate-62-4-million-women-have-coverage-of-birth-control-without-out-of-pocket-costs/) (last visited May 2, 2019) (estimating that 62.4 million
 28 women gained access to no-cost contraceptives).

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

34 ⁸⁷ Hock, *supra* note 86.

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

1 equal opportunity to men. In crafting the Contraceptive Coverage Benefit, various government
 2 agencies acknowledged that the disparity in health coverage offered to men and women “places
 3 women in the workforce at a disadvantage compared to their male co-workers.”⁸⁹

4 Contraception has allowed women to time their pregnancies so that they can invest in
 5 higher education and careers prior to starting or expanding their families.⁹⁰ The ability to control
 6 one’s reproduction is critical to women’s career success, as women’s participation in the labor
 7 force often decreases significantly after childbirth.⁹¹ Women who can control the timing of their
 8 pregnancies tend to have “more opportunities for employment and for full social or political
 9 participation in their community,”⁹² ultimately advancing further in the workplace and earning
 10 more money over their lifetimes.⁹³ Accordingly, without the ability to control and time their
 11 pregnancies, women will face tremendous and adverse personal, professional, social, and
 12 economic effects.⁹⁴

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

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

17 Twenty-eight states currently require private insurers to cover contraceptives if they offer
 18 coverage for other prescription drugs.⁹⁵ These coverage requirements have been effective for

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

20 ⁹⁰ Bailey, *et al.*, *supra* note 85.

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

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

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

25 ⁹⁴ American women have collectively saved nearly \$1.4 billion annually in out-of-pocket costs
 for oral contraceptives alone due to the Contraceptive Coverage Benefit. See Nora V. Becker &
 Daniel Polsky, *Women Saw Large Decrease in Out-Of-Pocket Spending for Contraceptives After*
 26 *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.

27 ⁹⁵ Guttmacher Institute, *Insurance Coverage of Contraceptives, State Laws and Policies as of*
 28 *April 1, 2019*, [https://www.guttmacher.org/state-policy/explore/insurance-coverage-](https://www.guttmacher.org/state-policy/explore/insurance-coverage-contraceptives)
 contraceptives.

1 women enrolled in private insurance plans that are covered by the state coverage requirements.⁹⁶
 2 However, there are four deficiencies that leave this patchwork of state laws unable to fill the gap
 3 that would be left by the Final Exemption Rules.

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

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

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

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

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

21 ⁹⁷ Guttmacher Institute, *supra* note 95.

22 ⁹⁸ *Id.*

23 ⁹⁹ Sonfield, *supra* note 88.

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

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

27 ¹⁰² Guttmacher Institute, *supra* note 95.

28 ¹⁰³ *Id.*

1 coverage across the country.

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

4 For women who depend on employer coverage for contraception, alternative
 5 arrangements—such as safety net health programs and providers—are either not feasible or not as
 6 accessible as employer-provided coverage. It is impractical for these women to obtain coverage
 7 through Medicaid or Title X providers, and doing so will not be seamless. Some women will not
 8 qualify for these programs at all.¹⁰⁴ Notably, safety net family planning providers are already
 9 under considerable political attack, threatening their ability to serve their current populations, let
 10 alone women who currently rely on employer coverage.¹⁰⁵

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

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

19 _____
 20 ¹⁰⁴ Title X is a federally funded program focused solely on providing individuals with
 21 reproductive health services. Family Planning Services and Population Research Act of 1970,
 22 Pub. L. No. 91-572, 84 Stat. 1504 (1970). Title X-funded clinics serve millions of young and
 23 low-income women in the United States. Mia R. Zolna, Megan L. Kavanaugh, & Kinsey
 24 Hasstedt, *Insurance-Related Practices at Title X-Funded Family Planning Centers under the*
 25 *Affordable Care Act: Survey and Interview Findings*, Women's Health Issues 1 (2017).
 26 However, these clinics already have limited capacity, and their funding is currently under political
 27 attack. Kiersten Gillette-Pierce & Jamila Taylor, *Why It Matters and What's at Stake for Women*,
 28 CTR. FOR AMERICAN PROGRESS (Feb. 9, 2017),
<https://www.americanprogress.org/issues/women/reports/2017/02/09/414773/the-threat-to-title-x-family-planning/>.

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

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

1 Contraceptives are one of the most widely used medications in the country,¹⁰⁷ and today,
 2 the oral contraceptive pill is the most common form of contraception among women in the United
 3 States.¹⁰⁸ The no-cost Contraceptive Coverage Benefit has boosted the consistent and proper use
 4 of contraceptives and enabled more women to choose long-term contraceptives.¹⁰⁹ The
 5 Contraceptive Coverage Benefit has decreased rates of discontinuation and increased effective
 6 use with respect to generic oral contraceptives.¹¹⁰ In addition, because of the Contraceptive
 7 Coverage Benefit, more women have no-cost coverage of longer-term and more effective
 8 contraceptives.¹¹¹ For example, privately-insured women were significantly more likely to
 9 choose an IUD when a lower out-of-pocket price for the device and insertion procedure was
 10 offered.¹¹² Women who choose long-term contraceptives and receive them at no cost—or low
 11 shared costs—continue using birth control at higher rates and with greater success in preventing
 12 unintended pregnancies.¹¹³ Further, long-term contraceptive methods, such as the IUD, are the
 13 most effective at preventing unintended pregnancies, with only a 1% failure rate.¹¹⁴ By contrast,
 14 an estimated 41% of unintended pregnancies in America are caused by the inconsistent use of
 15 contraceptives.¹¹⁵ Additionally, lack of no-cost birth control is cited as a factor in approximately
 16
 17

18 ¹⁰⁷ Becker & Polsky, *supra* note 94.

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

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

24 ¹¹⁰ Pace, *et al.*, *supra* note 108.

25 ¹¹¹ Becker & Polsky, *supra* note 94; Aileen M. Gariepy, *et al.*, *The Impact of Out-of-Pocket*
 26 *Expense on IUD Utilization Among Women with Private Insurance*, 84 CONTRACEPTION 39
 27 (2011), <http://escholarship.org/uc/item/1dz6d3cx>.

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

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

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

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

1 one-quarter of abortions.¹¹⁶

2 As of 2016, approximately 43 million women in the United States were in their
3 childbearing years, did not want to become pregnant, and were at risk of an unintended pregnancy
4 if they lost access to reliable contraceptive methods.¹¹⁷ This means that, across America, at least
5 43 million women currently need consistent coverage of reliable contraceptives to effectively
6 prevent unintended pregnancies. If employers and insurers drop contraceptive coverage, women
7 will be less likely to have access to long-term and effective contraceptives, and less likely to
8 regularly continue contraceptive use, and thus will be at risk for unintended pregnancies,
9 threatening women's health and economic security.¹¹⁸ Women should not be denied this care.

10 IV. CONCLUSION

11 If the Final Exemption Rules become enforceable, at least hundreds of thousands of
12 women, and likely millions—including those represented by Amici—across the United States are
13 at risk of being significantly harmed. The approximately half a million female employees of
14 religiously-affiliated hospitals, nearly 600,000 female students of religiously-affiliated colleges
15 and universities, and more than 36,000 female employees of for-profit companies that have

16
17 ¹¹⁶ See Guttmacher Institute, *A Real-Time Look at the Impact of the Recession on Women's*
18 *Family Planning and Pregnancy Decisions* (Sept. 2009),
19 https://www.guttmacher.org/sites/default/files/report_pdf/recessionfp_1.pdf (finding that in a
20 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>.

21 ¹¹⁷ Guttmacher Institute, *supra* note 108.

22 ¹¹⁸ As discussed in the Plaintiffs' Motion for Summary Judgment, contraceptives are used as
23 essential medicine for women. See Pls.' Mot. at 6; Guttmacher Institute, *supra* note 95 (finding
24 that 1.5 million women in the U.S. relied on the oral contraceptive pill between 2006 and 2008
25 for medical reasons other than preventing pregnancy). Contraceptive use decreases pregnancy-
26 related illness and mortality and prevents potential negative health consequences that stem from
27 unintended pregnancies. See Megan L. Kavanaugh & Ragnar Anderson, *Contraception and*
28 *Beyond: The Health Benefits of Services Provided at Family Planning Centers*, GUTTMACHER
INST. (July 2013), <https://www.guttmacher.org/pubs/health-benefits.pdf>; Hal C. Lawrence, III,
Vice President for Practice Activities, Am. Congress of Obstetricians and Gynecologists,
Testimony Before the Institute of Medicine Committee on Preventive Services for Women (Jan. 12,
2011), at 11, <http://tinyurl.com/ztyclx4>. Unintended pregnancies can also have significant
impacts on a woman's mental health and are a risk factor for depression. See Albert L. Siu &
U.S. Preventive Services Task Force, *Screening for Depression in Adults: US Preventive Services*
Task Force Recommendation Statement, 315 *JAMA* 380, 382 (2016), <http://tinyurl.com/hhbnqe9>.

1 already stated their intent to deny contraceptive coverage comprise a conservative estimation of
2 the number of women that would be affected by the Final Exemption Rules. The estimates do not
3 take into account dependents of these entities' employees and students, nor do they take into
4 account the employees and dependents of other companies that may drop coverage if the Final
5 Exemption Rules become enforceable.

6 The repercussions of losing coverage of safe, reliable, no-cost contraception are not just
7 monetary. Women's physical and emotional health, educational opportunities, and professional
8 advancement are directly impacted by consistent, uninterrupted coverage for prescription
9 contraceptives. Loss of no-cost contraceptive coverage—even for only a few months—will have
10 significant, irreparable consequences for American women's professional and educational
11 advancement as well as their and their families' well-being. Accordingly, on behalf of female
12 employees and students throughout the country, Amici support Plaintiffs' motion for summary
13 judgment permanently the Final Exemption Rules nationwide.

14 Dated: May 7, 2019

Respectfully submitted,

15
16 By: /s/ Jamie A. Levitt
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24 *International Union; and 11 Additional*
25 *Professional, Labor, and Student Associations*

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CERTIFICATE OF SERVICE

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

/s/ Jamie A. Levitt

APPENDIXInterests 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 ruling
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 • **The American Federation of State, County, and Municipal Employees (“AFSCME”)**
23 is a labor organization with 1.6 million members in hundreds of occupations who provide
24 vital public services in 46 states, the District of Columbia, and Puerto Rico. Over 100,000
25 of its members work in the private sector. With well over half its members being women,
26 AFSCME has a long history of advocating for gender equality.
- 27 • **Girls Inc.** is a non-profit, nonpartisan organization that inspires all girls to be strong,
28 smart, and bold through direct service and advocacy. More than 80 local Girls Inc.

1 affiliates provide primarily after-school and summer programming to approximately
2 150,000 girls, ages 5-18, in 31 U.S. states and in Canada. Girls Inc.'s comprehensive
3 approach to whole girl development equips girls to navigate gender, economic, and social
4 barriers and grow up healthy, educated, and independent. These positive outcomes are
5 achieved through three core elements: people-trained staff and volunteers who build
6 lasting, mentoring relationships; an environment that is girls-only and physically and
7 emotionally safe, and where there is a sisterhood of support, high expectations, and
8 mutual respect; and programming that is research-based, hands-on and minds-on, and age-
9 appropriate, meeting the needs of today's girls. Informed by girls and their families, Girls
10 Inc. also advocates for legislation, policies, and practices to advance the rights and
11 opportunities of girls and young women. Girls Inc. supports protecting and expanding
12 access to affordable reproductive health care, so all women can decide what is best for
13 their own health, education, and careers.

- 14 • **National Association of Social Workers (“NASW”)** was founded in 1955, and is the
15 largest association of professional social workers in the United States with over 120,000
16 members in 55 chapters. The California Chapter has 10,000 members. NASW develops
17 policy statements on issues of importance to the social work profession. Consistent with
18 those statements, NASW advocates that every individual, within the context of her or his
19 value system, must have access to family planning, abortion, and other reproductive health
20 services.
- 21 • **If/When/How: Lawyering for Reproductive Justice (“If/When/How”)** envisions a
22 transformation of the legal systems and institutions that perpetuate oppression into
23 structures that realize justice, and a future when all people can self-determine their
24 reproductive lives free from discrimination, coercion, or violence. We transform the law
25 and policy landscape through advocacy, support, and organizing so all people have the
26 power to determine if, when, and how to define, create, and sustain families with dignity
27 and to actualize sexual and reproductive wellbeing on their own terms. If/When/How
28 currently has approximately 90 active chapters at law schools across the country: 9% in

1 the Mid-Atlantic; 26% in the Midwest; 18% in the Northeast; 27% in the South; and 20%
 2 in the West. If/When/How has approximately 1,500 student members overall, with 95%
 3 of its members identifying as women.

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

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 17 ¹¹⁹ WBASNY’s affiliated organizations consist of twenty regional chapters, some of which are
 18 separately incorporated, plus nine IRC 501(c)(3) charitable corporations that are foundations
 19 and/or legal clinics. The affiliates are: *Chapters* – Adirondack Women’s Bar Association; The
 20 Bronx Women’s Bar Association, Inc.; Brooklyn Women’s Bar Association, Inc.; Capital
 21 District Women’s Bar Association; Central New York Women’s Bar Association; Del-Chen-O
 22 Women’s Bar Association, Finger Lakes Women’s Bar Association; Greater Rochester
 23 Association for Women Attorneys; Mid-Hudson Women’s Bar Association; Mid-York Women’s
 24 Bar Association; Nassau County Women’s Bar Association; New York Women’s Bar
 25 Association; Queens County Women’s Bar Association; Rockland County Women’s Bar
 26 Association; Staten Island Women’s Bar Association; The Suffolk County Women’s Bar
 27 Association; Thousand Islands Women’s Bar Association; Westchester Women’s Bar
 28 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.)

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

- 6 • **Women Lawyers' Association of Los Angeles ("WLALA")** is a nonprofit organization
7 comprised primarily of lawyers and judges in Los Angeles County. Founded in 1919,
8 WLALA is dedicated to promoting the full participation in the legal profession of women
9 lawyers and judges from diverse perspectives and racial and ethnic backgrounds,
10 maintaining the integrity of our legal system by advocating principles of fairness and
11 equality, and improving the status of women by supporting their exercise of equal rights,
12 equal representation, and reproductive choice. WLALA has participated as an *amicus*
13 *curiae* in cases involving discrimination before many federal district courts, Courts of
14 Appeals, and the Supreme Court. WLALA believes that bar associations have a special
15 obligation to protect the core guarantees of our Constitution to secure equal opportunity
16 for women and girls through the full enforcement of laws prohibiting discrimination.
- 17 • **Women Lawyers On Guard Inc. ("WLG")** is a national, non-partisan, non-profit
18 organization harnessing the power of lawyers and the law in coordination with other
19 organizations to preserve, protect, and defend the democratic values of equality, justice,
20 and opportunity for all.
- 21 • **Women's Bar Association of the District of Columbia ("WBA"):** Founded in 1917,
22 the Women's Bar Association of the District of Columbia is one of the oldest and largest
23 voluntary bar associations in metropolitan Washington, DC. Today, as in 1917, we
24 continue to pursue our mission of maintaining the honor and integrity of the profession;
25 promoting the administration of justice; advancing and protecting the interests of women
26 lawyers; promoting their mutual improvement; and encouraging a spirit of friendship
27 among our members. The WBA believes that when women have the means to plan
28 whether and how to have a family, they can better invest in their own careers and their

1 country.

- 2 • **Women’s Bar Association of Massachusetts (“WBA”)** is a professional association
3 comprised of more than 1,500 members, including judges, attorneys, and policy makers,
4 dedicated to advancing and protecting the interests of women. In particular, the WBA
5 advocates for public policy that improves the lives of women and their children. The
6 WBA has filed and joined many *amicus curiae* briefs in state and federal courts on legal
7 issues that have a unique impact on women, including cases involving sexual
8 discrimination, family law, domestic violence, and employment discrimination. The
9 WBA is comprised of more than 1,500 members, 99% of whom are female. The WBA
10 operates solely in Massachusetts.
- 11 • **Lawyers Club of San Diego (“Lawyers Club”)** is a 1,300+ member legal association
12 established in 1972 with the mission “to advance the status of women in the law and
13 society.” In addition to presenting educational programs and engaging in advocacy,
14 Lawyers Club participates in litigation as *amicus curiae* where the issues concern the
15 advancement of status of women in the law and society. Lawyers Club is committed to
16 gender equality and reproductive justice. Reproductive justice gives women the freedom
17 and flexibility to plan their families in ways that work best not only for each woman and
18 her professional advancement, but for society as a whole. Lawyers Club joins this *amicus*
19 brief because access to no-cost contraception directly impacts women’s reproductive
20 justice and gender equality efforts.
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