
Appeal No. 18-1514

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

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff-Appellee,

v.

DEP'T OF HEALTH & HUMAN SERVS., ET AL.,
Defendants-Appellants.

On Appeal from the United States District Court
for the District of Massachusetts,
The Honorable Nathaniel M. Gorton, Judge Presiding
(Case No. 17-cv-11930)

**BRIEF OF *AMICI CURIAE* AMERICAN ASSOCIATION OF
UNIVERSITY WOMEN; SERVICE EMPLOYEES INTERNATIONAL
UNION; AND 12 ADDITIONAL PROFESSIONAL, LABOR, AND
STUDENT ASSOCIATIONS, IN SUPPORT OF APPELLEES**

MORRISON & FOERSTER LLP
Jamie A. Levitt
JLevitt@mofo.com
Rhiannon N. Batchelder
RBatchelder@mofo.com
New York, NY 10019
Telephone: 212.468.8000

Attorneys for Amici Curiae
AMERICAN ASSOCIATION OF UNIVERSITY WOMEN; SERVICE
EMPLOYEES INTERNATIONAL UNION; AND 12 ADDITIONAL
PROFESSIONAL, LABOR, AND STUDENT ASSOCIATIONS

CORPORATE DISCLOSURE STATEMENT

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

/s/ [DRAFT]
Jamie A. Levitt

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INTEREST OF AMICI CURIAE¹

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

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

² For a full list of Amici and their Statements of Interest, *see* Appendix.

³ Workers represented by labor unions who are covered by collective bargaining agreements that require the employer to provide no-cost contraceptive coverage should not be at risk of losing this bargained-for benefit immediately. However, they will be at increased risk of losing it in the future if their employers decide to bargain to change their health benefits in reaction to the Exemption Rules.

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

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

ARGUMENT

I. SUMMARY OF ARGUMENT

Amici support overturning the District Court’s denial of the Commonwealth of Massachusetts’ (the “Commonwealth”) motion for summary judgment (the “Motion”) on standing grounds and remanding for litigation on the merits.

Overturning the District Court’s decision will allow the Commonwealth to seek to protect Massachusetts women and their families from the harm that will occur if Defendants are permitted to enforce the rules issued on October 6, 2017 (the “Exemption Rules”).⁶

Uninterrupted coverage of reliable, no-cost contraception allows women to strive for professional and educational equality, enabling them to better care for themselves and their families. For these reasons, the Patient Protection and Affordable Care Act (the “ACA”)⁷ requires employer-sponsored health insurance plans to cover all FDA-approved methods of contraception without burdening insured women with out-of-pocket costs (the “Contraceptive Coverage Benefit”).

There are no comparable alternatives to the Contraceptive Coverage Benefit. In Massachusetts, the state law regulating insurers’ coverage of contraceptives

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).

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

does not affect plans written in other states or plans from employers that self-insure their employees. Because approximately 68% of employees in the Northeast are insured through such “self-insured” employer plans, a significant number of women in Massachusetts will be without guaranteed coverage if the Exemption Rules are enforced.⁸

II. BACKGROUND

Before the Exemption Rules were issued, the Contraceptive Coverage Benefit exempted houses of worship with religious objections and their related auxiliaries, conventions, and church associations from offering contraceptive coverage.⁹ For religiously-affiliated employers and universities, the federal government created an accommodation, allowing the entity to opt out of providing contraceptive coverage while requiring that a health insurance provider or other third party provide employees and students seamless contraceptive coverage instead.¹⁰ After *Burwell v. Hobby Lobby Stores, Inc.*,¹¹ closely-held corporations

⁸ See Section II, *supra*.

⁹ See Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 76 Fed. Reg. 46,621 (Aug. 3, 2011); Coverage of Certain Preventive Services Under the Affordable Care Act, 78 Fed. Reg. 8456, 8458 (Feb. 6, 2013). See also Commonwealth’s Motion at [].

¹⁰ Accommodations in Connection with Coverage of Certain Preventive Health Services, 45 C.F.R. § 147.131 (b) & (c)(2); see also Commonwealth’s Motion at [].

owned or controlled by persons with sincerely-held religious beliefs could also seek accommodations.¹²

HHS states that the Exemption Rules “will not affect over 99.9 percent of the 165 million women in the U.S.”¹³ And the District Court found that the Commonwealth had “not demonstrated that the health and well-being of its citizens will be adversely affected by the IFRs.” Order, Mar. 12, 2018 (Dkt. 89). For the reasons set forth herein, Amici believe that HHS’ estimate is drastically underinclusive and the District Court’s finding is incorrect.

Because of the breadth of the Exemption Rules, it is foreseeable that hundreds of thousands—if not millions—of women, including those in Massachusetts, will face a loss of contraceptive coverage, with all the resulting harms that flow therefrom, if the Exemption Rules are enforced. Approximately half a million women across the country work for religiously-affiliated hospitals; approximately 600,000 women attend religiously-affiliated colleges and universities; and more than 17,000 women work for privately held, for-profit companies that have already opposed the Contraceptive Coverage Benefit. These

¹¹ 134 S. Ct. 2751 (2014).

¹² Commonwealth’s Motion at [].

¹³ U.S. Dept. of Health & Human Servs., *FACT SHEET: Religious and Moral Exemptions and Accommodations for 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),

figures provide only a baseline estimate of the number of women—including women in Massachusetts—expected to be immediately affected by the Exemption Rules. These estimates do not include the thousands of dependents of male and female employees and students, nor do they include employees of other types of non-profits and privately owned, for-profit entities that may opt to be exempted rather than use the accommodation process, nor those women whose insurance companies or corporate employers could drop coverage altogether under the Exemption Rules.

The Exemption Rules significantly expand the prior exemptions. *First*, they exponentially increase the number of employers and universities that could deny coverage. The Religious Exemption Rule would allow virtually *all* employers and universities, including large, for-profit companies, to deny no-cost contraceptive coverage to their employees and students.¹⁴ The Moral Exemption Rule, which would add an entirely new basis for denying coverage, applies to non-profit organizations and for-profit, privately held entities with “sincerely held moral convictions.”¹⁵ *Second*, the Exemption Rules would allow employers and universities to claim exemptions without meaningful oversight, as entities could skip certifying their objections or notifying the federal government before

¹⁴ *Id.* at [].

¹⁵ *Id.* at [].

dropping coverage.¹⁶ *Finally*, because the Exemption Rules provide for exemptions, not accommodations, women who receive insurance coverage through objecting entities would no longer be guaranteed seamless contraceptive coverage.¹⁷ Employees and students of entities claiming exemptions—including many members of Amici—and their dependents are at risk of losing this critical coverage altogether.

By providing virtually any employer or university the ability to drop the Contraceptive Coverage Benefit based on an undisclosed, “sincerely held” belief, the Exemption Rules will thwart the Contraceptive Coverage Benefit’s purpose. The Exemption Rules threaten significant negative repercussions for the hundreds of thousands of women and families, including those represented by Amici and those in Massachusetts, whose employers and universities may object to providing contraceptive coverage.

III. THERE ARE NO COMPARABLE ALTERNATIVES TO THE CONTRACEPTIVE COVERAGE BENEFIT

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

Like many state laws mandating some form of contraceptive coverage, Massachusetts’ law would not protect women from losing no-cost coverage if the

¹⁶ Moral Exemption 48-49; Religious Exemption 61. *See also* Commonwealth’s Motion at [].

¹⁷ Commonwealth’s Motion at [].

Exemption Rules become enforceable. Massachusetts is one of twenty-nine states currently requiring private insurers to cover contraceptives if they offer coverage for other prescription drugs.¹⁸ However, these coverage requirements cannot fill the gap that would be left by the Exemption Rules.¹⁹

Importantly, Massachusetts' contraception law cannot mandate coverage for women with out-of-state insurance plans or from employers that self-insure their employees.²⁰ Around 60% of all employees in America—68% in the Northeast—are insured by self-funded insurance plans.²¹ Nationwide, 79% of employees at companies with 200 or more workers received insurance through self-funded

¹⁸Guttmacher Institute, *Insurance Coverage of Contraceptives, State Laws and Policies as of July 1, 2018*, <https://www.guttmacher.org/state-policy/explore/insurance-coverage-contraceptives>.

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

²⁰ Sonfield, *supra* note 91.

²¹ Laurie Sobel, Alina Salganicoff & Caroline Rosenzweig, *New Regulations Broadening Employer Exemptions to Contraceptive Coverage: Impact on Women*, THE HENRY J. KAISER FAMILY FOUND. (Oct. 6, 2017), <http://files.kff.org/attachment/Issue-Brief-New-Regulations-Broadening-Employer-Exemptions-to-Contraceptive-Coverage-Impact-on-Women>; Magnusson et al., *supra* note 91, at 565; *2017 Employer Health Benefits Survey*, THE HENRY J. KAISER FAMILY FOUND. (Sept. 19, 2017), <https://www.kff.org/report-section/ehbs-2017-section-10-plan-funding/>.

plans.²² Self-insured employers' plans are overseen by the U.S. Department of Labor and are only subject to federally established regulations.²³ Therefore, state laws like Massachusetts' that require contraceptive coverage will not help many women who would be affected by the Exemption Rules. And contrary to the District Court's finding that "Massachusetts women are less likely to be affected,"²⁴ Massachusetts women are on the whole less likely to be protected by state laws. As large companies are likely to offer self-funded insurance plans and smaller companies begin to do so at higher rates,²⁵ this reality is a major impediment to women who need no-cost contraceptive coverage.²⁶ State laws simply cannot cure the negative impact the Exemption Rules will have on access to no-cost contraceptive coverage in Massachusetts and across the country.

²² *2017 Employer Health Benefits Survey*, THE HENRY J. KAISER FAMILY FOUND. (Sept. 19, 2017), <https://www.kff.org/report-section/ehbs-2017-section-10-plan-funding/>.

²³ Employer Retirement Income Security Act of 1974, Pub.L. 93-406, 88 Stat. 829 (1974). *See also* Sobel et al., *supra* note 95; Magnusson et al., *supra* note 91, at 565.

²⁴ Order at 31, Mar. 12, 2018 (Dkt. 89).

²⁵ *2017 Employer Health Benefits Survey*, THE HENRY J. KAISER FAMILY FOUND. (Sept. 19, 2017), <https://www.kff.org/report-section/ehbs-2017-section-10-plan-funding/>.

²⁶ *See* Emily Bazar, *For Millions of Insured Americans, State Health Laws Don't Apply*, Washington Post (Nov. 16, 2017), https://www.washingtonpost.com/national/health-science/for-millions-of-insured-americans-state-health-laws-dont-apply/2017/11/16/138f4476-cab7-11e7-b506-8a10ed11ecf5_story.html?utm_term=.36269457816f; *see also* *2017 Employer Health Benefits Survey*, THE HENRY J. KAISER FAMILY FOUND. (Sept. 19, 2017), <https://www.kff.org/report-section/ehbs-2017-section-10-plan-funding/>.

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

Alternative arrangements—such as safety net health programs and providers—are either not feasible or less accessible than employer-provided coverage. It is impractical for these women to obtain coverage through Medicaid or Title X providers, and doing so will not be seamless. Some women will not qualify for these programs at all.²⁷ Notably, safety net family planning providers are under considerable political attack, threatening their ability to serve their current populations, let alone women who currently rely on employer coverage.²⁸

IV. THE EXEMPTION RULES THREATEN HARM TO WOMEN IN MASSACHUSETTS AND EVERY STATE ACROSS THE COUNTRY

The potential impact of the Exemption Rules, including on women in Massachusetts, is vast. Before issuance of the Exemption Rules, many for-profit

²⁷ Title X is a federally-funded program that provides individuals with reproductive health services. Public Law 91-572. Title X-funded clinics serve millions of young and low-income women in the U.S. Mia R. Zolna, Megan L. Kavanaugh, & Kinsey Hasstedt, *Insurance-Related Practices at Title X-Funded Family Planning Centers under the Affordable Care Act: Survey and Interview Findings*, Women's Health Issues 1 (2017). However, these clinics already have limited capacity, and their funding is currently under political attack. Kiersten Gillette-Pierce & Jamila Taylor, *Why It Matters and What's at Stake for Women*, Ctr. for American Progress (Feb. 9, 2017), <https://www.americanprogress.org/issues/women/reports/2017/02/09/414773/the-threat-to-title-x-family-planning/>.

²⁸ 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>.

companies filed lawsuits challenging the Contraceptive Coverage Benefit and seeking exemptions from it.²⁹ Several non-profits eligible for accommodations, including colleges and universities, challenged the accompanying notice requirement.³⁰ These reactions to the Contraceptive Coverage Benefit and the accommodation process suggest that many entities across the country will seek to utilize the Exemption Rules.

Employers and universities that have already opposed the Contraceptive Coverage Benefit are, however, just the tip of the iceberg. The breadth of the Exemption Rules, and the uncertainty of what it means for an organization to have a “religious” or “moral” belief, means that any employer, including one with *no* religious mission, could be exempted.

Several categories of employers and universities could take advantage of the Exemption Rules if they were to become enforceable. *First*, religiously-affiliated non-profits, such as hospitals and universities, would be able to claim full exemptions, rather than accommodations, no longer guaranteeing seamless access

²⁹ 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>.

³⁰ Haglage, *supra* note 17.

to contraceptive coverage for female employees and students through their regular insurance plans.³¹ It is reasonable to conclude that hundreds of these hospitals and universities, many of which had previously accepted the accommodation because they were not eligible for an exemption, would take advantage of the Exemption Rules.³² *Second*, a potentially boundless range of secular for-profit corporations would be able to claim religious or moral exemptions.³³ Hundreds of thousands of women and their dependents who are insured by these newly-exempted companies and universities would lose coverage under the Exemption Rules.

Although religious denominations that oppose some or all forms of contraception have vocally opposed the Contraceptive Coverage Benefit,³⁴ women who work for employers or attend universities affiliated with these religions continue to need and use contraception. More than 99% of all sexually active

³¹ See Exemption Rules.

³² 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>.

³³ 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.”).

³⁴ 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*.

women of reproductive age across the United States have, at some point, used contraception to prevent pregnancy.³⁵ Ninety-eight percent of sexually active Catholic women have used a contraception method other than natural family planning,³⁶ and 87% percent of Catholic women currently at risk of unintended pregnancy use a method other than natural family planning.³⁷ Among Evangelical women currently at risk of unintended pregnancy, 74% use a “highly effective contraceptive method” (including sterilization, an IUD, the pill, and other hormonal methods).³⁸ The Exemption Rules will irreparably harm and disadvantage women who work for or attend religiously-affiliated employers and universities, as these entities will no longer be required to comply with the accommodation process that ensures seamless, no-cost coverage through third

³⁵ ADAM SONFIELD ET AL., THE SOCIAL AND ECONOMIC BENEFITS OF WOMEN’S ABILITY TO DETERMINE WHETHER AND WHEN TO HAVE CHILDREN 3 (Haley Ball ed., 2013), https://www.guttmacher.org/sites/default/files/report_pdf/social-economic-benefits.pdf.

³⁶ 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>.

³⁷ *Id.*

³⁸ Rachel K. Jones & Jeorg Dreweke, *Countering Conventional Wisdom: New Evidence on Religion and Contraceptive Use*, GUTTMACHER INST., Apr. 2011, at 5, https://www.guttmacher.org/sites/default/files/report_pdf/religion-and-contraceptive-use.pdf.

parties.³⁹

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

Members of Amici and many other women work for hospitals that could take advantage of the Exemption Rules. At least 649 hospitals in America—nearly 15% of all acute care hospitals in the country—are associated with religious denominations prohibiting many or all forms of contraception.⁴⁰ Forty-six of these hospitals are the sole community providers of short-term acute hospital care in their regions, meaning that health workers who lose coverage will have few opportunities for alternative employment where contraceptive coverage may be provided.⁴¹ Massachusetts has a similarly high concentration of health care providers affiliated with these religious denominations—for example, there are at least nine major health care service providers, two hospice centers, and thirteen extended care facilities that are affiliated with the Roman Catholic Archdiocese of

³⁹ Commonwealth’s Motion at [].

⁴⁰ 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; Lois Uttley & Christine Khaikin, *Growth of Catholic Hospitals and Health Systems: 2016 Update of the Miscarriage of Medicine Report*, MERGERWATCH, 2016, at 1, http://static1.1.sqspcdn.com/static/f/816571/27061007/1465224862580/MW_Update-2016-MiscarrOfMedicine-report.pdf?token=UxHKcNPcSKjkw0MAq8v8aEdM83w%3D.

⁴¹ *Id.*

Boston alone.⁴² The number of religiously-affiliated hospitals in the U.S. has increased by 22% since 2001.⁴³ If this trend continues, even more women would be affected by these hospitals' ability to take advantage of the Exemption Rules.

Religious hospitals are major employers throughout the country, with at least 523,040 full-time and 216,487 part-time employees nationwide,⁴⁴ approximately 76% of whom are women.⁴⁵ The large market share of hospitals and other healthcare entities that follow religious directives prohibiting some or all forms of contraception has far-reaching implications for the majority-women employees who work in these facilities, as well as female dependents. Many healthcare providers could eliminate contraceptive coverage for their employees and dependents under the Exemption Rules,⁴⁶ obstructing contraception access for

⁴² Archdiocese of Boston, *Offices & Services*, <http://www.bostoncatholic.org/Offices-And-Services/Office-Detail.aspx?id=12604> (last accessed August 23, 2018).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ U.S. Dep't of Labor, *Labor Force Statistics from the Current Population Survey* (Jan. 19, 2018), <https://www.bls.gov/cps/cpsaat18.htm>.

⁴⁶ For example, the Catholic Health Association has steadfastly opposed any requirement by which its member hospitals would have to directly pay for birth control coverage. *See* Catholic Health Assoc. of the U.S., *Women's Preventive Health Services Final Rule*, <https://www.chausa.org/newsroom/women%27s-preventive-health-services-final-rule> (last visited 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*

hundreds of thousands of women throughout the nation, including those represented by Amici.

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

Amici students are also at risk of losing contraceptive coverage if the Exemption Rules become enforceable. Hundreds of colleges and universities throughout America are affiliated with religious denominations that actively oppose some or all forms of contraception, including several in Massachusetts.⁴⁷ Amici who receive insurance through these colleges or universities are at great risk of losing coverage.⁴⁸

For example, there are more than 260 members of the Association of Catholic Colleges and Universities (“ACCU”) in the United States—ten of which are located in Massachusetts—collectively enrolling more than 875,000 students⁴⁹

Wins Ruling Against Contraception Mandate, MODERN HEALTHCARE (Dec. 16, 2013), <http://www.modernhealthcare.com/article/20131216/NEWS/312169935>.

⁴⁷ ACCU, *Catholic Higher Education FAQs*, <http://www.accunet.org/Catholic-Higher-Education-FAQs> (last visited August 15, 2018).

⁴⁸ See Jeanine Santucci, *Students at Religious Universities Are Worried About Access to Birth Control. Here’s Why.*, USA TODAY COLLEGE (Jul. 17, 2017), <http://college.usatoday.com/2017/07/17/students-at-religious-universities-are-worried-about-access-to-birth-control-heres-why/>.

⁴⁹ ACCU, *Catholic Higher Education FAQs*, <http://www.accunet.org/Catholic-Higher-Education-FAQs> (last visited May 24, 2018).

and employing large numbers of faculty and staff.⁵⁰ During the 2015-16 academic year, *nearly two-thirds* of students enrolled in Catholic colleges and universities were female.⁵¹

Many Protestant or nondenominational Christian colleges and universities—free to drop contraceptive coverage altogether under the Exemption Rules—have also challenged the Contraceptive Coverage Benefit through lawsuits and public comments.⁵² For example, the Council for Christian Colleges and Universities (the “CCCU”), representing 118 colleges and universities—including three in Massachusetts—61 affiliate member institutions, and 400,000 members in 33 states, has vigorously opposed the Contraceptive Coverage Benefit.⁵³ Many Christian colleges and universities, a conservative sampling of which collectively enroll over 20,000 students and employ thousands of employees, have formally challenged or sought exemptions from the Contraceptive Coverage Benefit, or have filed *amicus* briefs in opposition to the Contraceptive Coverage Benefit.⁵⁴

⁵⁰ *Id.*

⁵¹ ACCU, *supra* note 36.

⁵² See generally Brief of Amicus Curiae the CCCU in Support of Petitioners, *Zubik v. Burwell*, Nos. 14-1418 *et al.*, at 2-3 (U.S. Jan. 11, 2016).

⁵³ Brief of Amicus Curiae the CCCU in Support of Petitioners, *Zubik v. Burwell*, Nos. 14-1418 *et al.*, at 1 (Jan. 11, 2016).

⁵⁴ *Geneva Coll. v. Sebelius*, 988 F. Supp. 2d 511 (W.D. Pa. 2013); Cooney, *supra* note 17; Haglage, *supra* note 17; Nicole Fisher, *Battle Between HHS and Christian*

The harmful impact of the Exemption Rules on female students nationwide will be severe if they become enforceable. Young women will face increased rates of unintended pregnancies, hindering their pursuit of higher education and career advancement.⁵⁵ The Exemption Rules undermine the effectiveness of the Contraceptive Coverage Benefit in eliminating barriers to women's educational and professional advancement.

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

In addition to hospitals and colleges, thousands of non-profit organizations throughout America are affiliated with denominations actively opposing some or all forms of contraception. As of 2015, approximately 3% of the 1.4 million non-

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>; Geneva College, *Fast Facts: Geneva College*, <http://www.geneva.edu/about-geneva/fast-facts> (last visited Nov. 21, 2017); Wheaton College, *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: Overview*, <https://www.usnews.com/best-colleges/college-ozarks-2500> (last visited Nov. 21, 2017); Colorado 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).

⁵⁵ SONFIELD ET AL., *supra* note 23, at 9 (women who have children in their teens or early 20s are significantly less likely to obtain formal education after high school than women who are able to wait to have children until their late 20s or 30s).

profits in the U.S. and 10% of the largest non-profits already had accommodations under the Contraceptive Coverage Benefit.⁵⁶ Of the 45 entities that requested an accommodation between 2014 and 2016, 27% were religiously-affiliated non-profits.⁵⁷ These employers, and many more like them, could drop contraceptive coverage under the Exemption Rules without guaranteeing alternate coverage for their employees.

Additionally, more than 83 *amicus curiae* briefs supporting religious exemptions from the Contraceptive Coverage Benefit were filed in *Zubik v. Burwell*,⁵⁸ representing dozens of religiously-affiliated advocacy groups, professional organizations, think tanks, and umbrella organizations.⁵⁹ These *amici curiae* and the organizations they represent could drop coverage under the Exemption Rules.

⁵⁶ Laurie Sobel, Matthew Rae, & Alina Salganicoff, *Data Note: Are Nonprofits Requesting an Accommodation for Contraceptive Coverage?*, THE HENRY J. KAISER FAMILY FOUND. (Dec. 2015), <http://files.kff.org/attachment/data-note-data-note-are-nonprofits-requesting-an-accommodation-for-contraceptive-coverage>. The “largest” non-profits include those with 1,000-4,999 employees as well as those with more than 5,000 employees.

⁵⁷ Laura E. Dorso et al., *Who Seeks Religious Accommodations to Providing Contraceptive Coverage?*, CTR. FOR AM. PROGRESS (Aug. 11, 2017), <https://www.americanprogress.org/issues/lgbt/news/2017/08/11/437265/seeks-religious-accommodations-providingcontraceptive-coverage/>.

⁵⁸ *Zubik v. Burwell*, No. 14-1418 (2016).

⁵⁹ See Briefs of *Amici Curiae* Supporting the Petitioner, *Zubik v. Burwell*, Nos. 14-1418 *et al.* (2016).

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

The Exemption Rules apply far beyond religiously-affiliated hospitals, colleges, universities, and non-profits. If effective, any employer could take advantage of the exemptions based on loosely defined religious or moral reasons.⁶⁰ Consequently, employees of *any* for-profit company and their dependents could be adversely affected by the Exemption Rules. The Religious Exemption would allow innumerable large corporations to deny contraceptive care to their employees and dependents, perhaps because of a religious CEO, a religious board of directors, or any number of influences. Many thousands of women across the country, including members of Amici, could lose contraceptive coverage if the Exemption Rules become enforceable.

Indeed, reports have identified over 80 private, for-profit businesses that have explicitly indicated their desire to drop contraceptive coverage.⁶¹ This list includes several companies that collectively employ well over 17,000 women in at least 47 states:

- Hobby Lobby, a national craft supply chain (more than 13,000

⁶⁰ See Exemption Rules.

⁶¹ Cooney, *supra* note 17; Haglage, *supra* note 17.

employees);⁶²

- Grote Industries, LLC, an Indiana vehicle safety systems manufacturer (1,147 full-time employees);⁶³
- Conestoga Wood Specialties Corporation, a Pennsylvania-based cabinet manufacturer (950 employees);⁶⁴
- Autocam Corporation and Autocam Medical, LLC, a Michigan transportation and medical equipment parts company (at least 661 employees);⁶⁵
- Freshway Foods and Freshway Logistics, an Ohio-based produce processing company (400 employees);⁶⁶
- Sioux Chief Manufacturing, a Missouri plumbing products company (370 employees);⁶⁷

⁶² *Id.*

⁶³ *Grote v. Sebelius*, 708 F.3d 850 (7th Cir. 2013).

⁶⁴ *Conestoga Wood Specialties Corp. v. Sec’y of the U.S. Dep’t of Health & Human Servs.*, 724 F.3d 377 (3d Cir. 2013).

⁶⁵ *Autocam Corp. v. Sebelius*, 730 F.3d 618 (6th Cir. 2013); Jodi Jacobson, *Eighteen For-Profit Companies Fighting to Eliminate the Birth Control Benefit*, REWIRE, Mar. 7, 2013, <https://rewire.news/article/2013/03/07/the-18-for-profit-companies-fighting-to-eliminate-the-birth-control-benefit/>.

⁶⁶ *Gilardi v. U.S. Dep’t of Health & Human Servs.*, 733 F.3d 1208 (D.C. Cir. 2013).

⁶⁷ Jacobson, *supra* note 54.

- Eternal Word Television Network, an Alabama religious television station (350 full-time employees);⁶⁸
- Hercules Industries, Inc., a Colorado products manufacturer (303 employees);⁶⁹
- and many more.⁷⁰

Given the Exemption Rules' breadth and lack of oversight, many businesses with no religious mission—including large, multi-state corporations—could refuse to provide contraceptive coverage under the Exemption Rules.⁷¹ Major employers in nearly every industry could claim exemptions, including retail fashion,⁷² fast

⁶⁸ *Eternal Word Television Network, Inc. v. Sec'y of U.S. Dep't of Health & Human Servs.*, 756 F.3d 1339 (11th Cir. 2014).

⁶⁹ Jacobson, *supra* note 54.

⁷⁰ *Id.*; *Holland v. Sebelius*, No. 2:13-cv-11111 (S.D.W.Va. 2013); Joe Holland Chevrolet, *Why Choose Joe Holland Chevrolet: Our Staff*, <http://www.joehollandchevrolet.com/MeetOurDepartments> (last visited Nov. 21, 2017); *M & N Plastics, Inc. v. Sebelius*, 997 F. Supp. 2d 19 (D.D.C. 2013); *Eden Foods, Inc. v. Sebelius*, 733 F.3d 626 (6th Cir. 2013).

⁷¹ *See, e.g.*, Legatus: Ambassadors for Christ in the Marketplace, *Why Legatus: What We Offer*, <http://legatus.org/legatus/> (last visited May 24, 2018) (More than 5,000 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).

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

food,⁷³ commercial agriculture,⁷⁴ insurance,⁷⁵ hospitality,⁷⁶ airline travel,⁷⁷ online dating,⁷⁸ and general retail merchandise⁷⁹—to name only a few. These major

⁷³ Emma Green, *Chick-Fil-A: Selling Chicken with a Side of God*, THEATLANTIC.COM (Sept. 8, 2014), <https://www.theatlantic.com/business/archive/2014/09/chick-fil-a-selling-chicken-with-a-side-of-god/379776/>; Rob Wile, *This 35-Year-Old Woman Just Inherited In-N-Out Burger. She's Now a Billionaire*, TIME INC. (May 8, 2017), <http://time.com/money/4770527/in-n-out-lynsi-snyder-fortune-ownership/>; Kevin Porter, *In-N-Out Burger Owner Lynsi Snyder on Searching for a Father Figure and Finding God in "I am Second,"* CHRISTIAN POST, INC. (Jan. 16, 2017), <https://www.christianpost.com/news/in-n-out-burger-owner-lynsi-snyder-talks-faith-journey-in-i-am-second-video-172909/>.

⁷⁴ Holly Lebowitz Rossi, *7 CEOs with Notably Devout Religious Beliefs*, FORTUNE.COM (Nov. 11, 2014), <http://fortune.com/2014/11/11/7-ceos-with-notably-devout-religious-beliefs/>; Steve Kay, *Of Faith and Food*, SOSLAND PUBLISHING CO. (Aug. 11, 2015), <http://www.meatpoultry.com/Writers/Other-Contributors/Of-faith-and-food.aspx?cck=1>.

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

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

⁷⁷ Ann Schrader, *Republic Air CEO Puts His Faith to Work*, DENVER POST (May 6, 2016), <http://www.denverpost.com/2009/11/13/republic-air-ceo-puts-his-faith-to-work/>; Republic Airlines Inc., *Our Values: Vision, Mission & Culture*, <http://rjet.com/about-republic-airline/our-values/> (last visited May 24, 2018).

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

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

companies alone employ nearly two million employees,⁸⁰ and if they deny their employees contraceptive coverage, a staggering number of women nationwide will be affected. Non-religious employers could also take advantage of the Exemption Rules, citing “moral concerns,” because they believe—falsely—that this will save money or serve political purposes. With no government oversight, virtually any large, privately held corporate employer could take advantage of the Moral Exemption. For-profit companies account for nearly 90% of private-sector employment across America.⁸¹ If even a fraction of these for-profit employers

⁸⁰ Forbes, *America’s Largest Private Companies: #103 Forever 21*, <https://www.forbes.com/companies/forever-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, *America’s Best Employers: #54 In-N-Out Burger*, <https://www.forbes.com/companies/in-n-out-burger/> (last visited 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, 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., *About Republic Airline*, <http://rjet.com/about-republic-airline/> (last visited May 24, 2018); Andrea Chang & Peter Jamison, *EHarmony is Moving from Santa Monica to Westwood*, L.A. TIMES (Feb. 4, 2015), <http://www.latimes.com/business/la-fi-0205-eharmony-santa-monica-20150205-story.html>; Walmart Stores, Inc., *Our Locations*, <https://corporate.walmart.com/our-story/locations/united-states> (last visited Nov. 21, 2017).

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 (showing

were to take advantage of the Exemption Rules, it is reasonable to expect that millions of women—including members of Amici and citizens of Massachusetts—could immediately be denied contraceptive coverage, with all of the health, educational, and employment effects that follow.⁸²

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

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

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

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

⁸² See Section III, *infra*.

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

⁸⁴ *Id.*

educational advancement.⁸⁵

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

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

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

⁸⁶ Heinrich Hock, *The Pill and the College Attainment of American Women and Men* 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).

⁸⁷ Hock, *supra* note 81.

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

disadvantage compared to their male co-workers.”⁸⁹

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

⁸⁹ Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 77 Fed. Reg. 8725, 8728 (Feb. 15, 2012).

⁹⁰ Bailey et al., *supra* note 80.

⁹¹ Hock, *supra* note 81; Loughran & Zissimopoulos, *supra* note 81, at 346.

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

⁹³ Loughran & Zissimopoulos, *supra* note 81, at 346.

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

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

Loss of no-cost contraceptive coverage will cause many women to use contraceptives less consistently, use less effective methods, or forego contraception altogether, as cost is a significant factor in many women's selection and use of contraception.⁹⁵ Amici support the Commonwealth's Motion because losing consistent no-cost coverage—even for as little as one month—will result in irreparable harm for many women nationwide.

Contraceptives are one of the most widely used medications in the country.⁹⁶ Today, the oral contraceptive pill is the most common form of contraception among women in the United States.⁹⁷

The Contraceptive Coverage Benefit has boosted the consistent and proper use of contraceptives and enabled more women to choose long-term

Sharing, 34 HEALTH AFFAIRS 1204 (2015). The negative economic impact of the Exemption Rules on American women will therefore be extreme.

⁹⁵ 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.

⁹⁶ Becker & Polsky, *supra* note 89.

⁹⁷ Lydia E. Pace, Stacie B. Dusetzina & Nancy L. Keating, *Early Impact of the Affordable Care Act on Oral Contraceptive Cost Sharing, Discontinuation, and Nonadherence*, 35 HEALTH AFFAIRS 1616 (2016); Guttmacher Inst., *Contraceptive Use in the United States* (Sept. 2016), <https://www.guttmacher.org/fact-sheet/contraceptive-use-united-states#2a>.

contraceptives.⁹⁸ The Contraceptive Coverage Benefit has decreased rates of discontinuation and increased effective use with respect to generic oral contraceptives.⁹⁹ In addition, because of the Contraceptive Coverage Benefit, more women have no-cost coverage of longer-term and more effective contraceptives.¹⁰⁰ For example, privately-insured women were significantly more likely to choose an IUD when a lower out-of-pocket price for the device and insertion procedure was offered.¹⁰¹ Women who choose long-term contraceptives and receive them at no cost—or low shared costs—continue using birth control at higher rates and with greater success in preventing unintended pregnancies.¹⁰² Further, long-term contraceptive methods, such as the IUD, are the most effective at preventing unintended pregnancies, with only a 1% failure rate.¹⁰³

By contrast, an estimated 41% of unintended pregnancies in America are

⁹⁸ Pace et al., *supra* note 106; Becker & Polsky, *supra* note 89.

⁹⁹ Pace et al., *supra* note 106.

¹⁰⁰ Becker & Polsky, *supra* note 89; Aileen M. Garipey et al., *The Impact of Out-of-Pocket Expense on IUD Utilization Among Women with Private Insurance*, 84 CONTRACEPTION 39 (2011), <http://escholarship.org/uc/item/1dz6d3cx>.

¹⁰¹ Becker & Polsky, *supra* note 89; Garipey et al., *supra* note 109.

¹⁰² Garipey et al., *supra* note 109; Natalie E. Birgisson et al., *Preventing Unintended Pregnancy: The Contraceptive CHOICE Project in Review*, 24 JOURNAL OF WOMEN'S HEALTH 349 (2015).

¹⁰³ Garipey et al., *supra* note 109.

caused by the inconsistent use of contraceptives.¹⁰⁴ Additionally, lack of no-cost birth control is cited as a factor in approximately one-quarter of abortions.¹⁰⁵ As of 2016, approximately 43 million women in the United States were in their childbearing years, did not want to become pregnant, and were at risk of an unintended pregnancy if they lost access to reliable contraceptive methods.¹⁰⁶ This means that, across America, at least 43 million women currently need consistent coverage of reliable contraceptives to effectively prevent unintended pregnancies. If employers and insurers drop contraceptive coverage, women will be less likely to have access to long-term and effective contraceptives and less likely to regularly continue contraceptive use, and will thus be at risk for unintended pregnancies, threatening women's health and economic security.¹⁰⁷ Women should not be

¹⁰⁴ Pace et al., *supra* note 106. Gaps in contraception use are more common for women who are minorities and those with lower incomes and lower education levels. Magnusson et al., *supra* note 91, at 565.

¹⁰⁵ See Guttmacher Institute, *A Real-Time Look at the Impact of the Recession on Women's Family Planning and Pregnancy Decisions* (Sept. 2009), https://www.guttmacher.org/sites/default/files/report_pdf/recessionfp_1.pdf (finding that in a survey of women's contraceptive usage during the recession, many reported using birth control less consistently as a way to save money); Juell B. Homco et al., *Reasons for Ineffective Pre-pregnancy Contraception Use in Patients Seeking Abortion Services*, 80 CONTRACEPTION 569 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3152747/pdf/nihms299833.pdf>.

¹⁰⁶ Guttmacher Institute, *supra* note 104.

¹⁰⁷ *Id.* Contraceptives are a critical preventative medicine for women. See Commonwealth's Motion (Dkt. 26) at 3; Guttmacher Institute, *supra* note 104 (finding that 1.5 million women in the U.S. relied on the oral contraceptive pill

denied this care.

VI. CONCLUSION

The Exemption Rules put the rights and health of at least hundreds of thousands of women, and likely millions, across the United States—including those represented by Amici—at risk. The approximately half a million female employees of religiously-affiliated hospitals, nearly 600,000 female students of religiously-affiliated colleges and universities, and more than 17,000 female employees of for-profit companies nationwide that have already stated their intent to deny contraceptive coverage comprise a conservative estimation of the number of women that would be affected by the Exemption Rules. The estimates do not take into account dependents of these entities' employees and students, nor do they take into account employees and dependents of other companies that may drop coverage.

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

The repercussions of losing coverage of safe, reliable, no-cost contraception are not just monetary. Women’s physical and emotional health, educational opportunities, and professional advancement all depend upon consistent, uninterrupted coverage for prescription contraceptives. Loss of no-cost contraceptive coverage—even for only a few months—will have immediate, irreparable consequences for American women’s professional and educational advancement as well as their and their families’ well-being. Although two nationwide preliminary injunctions currently enjoin enforcement of the Exemption Rules, those are not final decisions and the Commonwealth must be allowed to present its own case on the merits. Accordingly, on behalf of employees and students in Massachusetts and throughout the country, Amici support the reversal of the District Court’s decision.

Dated: [DATE], 2018

Respectfully submitted,

By: /s/ [DRAFT]

Jamie A. Levitt

Jamie A. Levitt
Rhiannon N. Batchelder
MORRISON & FOERSTER LLP
250 West 55th Street
New York, New York 10019-9601
Telephone: (212) 468-8000

*Attorneys for Amici Curiae, American
Association of University Women; Service
Employees International Union; and
[12] Additional Professional, Labor, and
Student Associations*

APPENDIX
Interests and Descriptions of *Amici Curiae*

- **American Association of University Women (“AAUW”)** was founded in 1881 by like-minded women who had challenged society’s conventions by earning college degrees. Since then, it has worked to increase women’s access to higher education through research, advocacy, and philanthropy. Today, AAUW has more than 170,000 members and supporters, 1,000 branches, and 800 college and university partners nationwide. AAUW plays a major role in mobilizing advocates nationwide on AAUW’s priority issues to advance gender equity. In adherence with its member-adopted Public Policy Program, AAUW supports choice in the determination of one’s reproductive life and increased access to health care and family planning services.
- **Service Employees International Union (“SEIU”)** is a union of two million women and men who work in health care, property services, and public services throughout the United States. More than half of SEIU’s members are women and more than half its members work in health care. SEIU is deeply committed to ensuring that all working people, men and women alike, have access to affordable health care, including contraceptive coverage as intended by the Affordable Care Act. SEIU has a particular interest in this ruling because its members know, both personally and in their

capacity as health care workers, how vital it is for women to have seamless contraceptive coverage in order to be able to protect their health and their ability to work, which in turn are necessary for the economic security of families across America.

- **The American Federation of State, County, and Municipal Employees (AFL-CIO) (“AFSCME”)** is a labor organization with 1.6 million members in hundreds of occupations who provide vital public services in 46 states, the District of Columbia, and Puerto Rico. Over 100,000 of its members work in the private sector. With well over half its members being women, AFSCME has a long history of advocating for gender equality.
- **American Federation of Teachers (“AFT”)**, an affiliate of the AFL-CIO, represents 1.7 million members through more than 3,000 local affiliates nationwide and overseas in K-12 and higher education, public employment, and healthcare. AFT has a strong interest in supporting the rights of women in the area of reproductive choice. AFT considers reproductive healthcare, including contraception, as basic healthcare for women. Therefore, AFT believes contraceptives must be covered as a preventive health service in order to provide quality healthcare for all women. Furthermore, the fair and equal treatment of a woman’s right to make her own personal healthcare decisions regarding reproduction and other health issues is an important part

of AFT's mission to advance the workplace rights of all its members. AFT has members in all 50 states, plus Guam, Puerto Rico, and the Virgin Islands.

- **National Association of Women Lawyers (“NAWL”)** provides leadership, a collective voice, and essential resources to advance women in the legal profession and advocate for the equality of women under the law. Since 1899, NAWL has been empowering women in the legal profession, cultivating a diverse membership dedicated to equality, mutual support, and collective success. As part of its mission, NAWL promotes the interests of women and families by participation as *amicus curiae* in cases impacting their rights. NAWL recognizes that when women have secure control over planning whether and how to have a family, they are also able to invest in their own careers and take risks in the labor market that lead to better economic outcomes for women, their families, and the country.
- **Girls Inc.** is a non-profit, nonpartisan organization that inspires all girls to be strong, smart, and bold through direct service and advocacy. More than 80 local Girls Inc. affiliates provide primarily after-school and summer programming to approximately 150,000 girls, ages 5-18, in 31 U.S. states and in Canada. Girls Inc.'s comprehensive approach to whole girl development equips girls to navigate gender, economic, and social barriers

and grow up healthy, educated, and independent. These positive outcomes are achieved through three core elements: people-trained staff and volunteers who build lasting, mentoring relationships; an environment that is girls-only and physically and emotionally safe, and where there is a sisterhood of support, high expectations, and mutual respect; and programming that is research-based, hands-on and minds-on, and age-appropriate, meeting the needs of today's girls. Informed by girls and their families, Girls Inc. also advocates for legislation, policies, and practices to advance the rights and opportunities of girls and young women. Girls Inc. supports protecting and expanding access to affordable reproductive health care, so all women can decide what is best for their own health, education, and careers.

- **National Association of Social Workers (“NASW”)** was founded in 1955, and is the largest association of professional social workers in the United States, with more than 120,000 members in 55 chapters. NASW develops policy statements on issues of importance to the social work profession. Consistent with those statements, NASW advocates that every individual, within the context of her or his value system, must have access to family planning, abortion, and other reproductive health services.
- **If/When/How: Lawyering for Reproductive Justice (“If/When/How”)**

trains, networks, and mobilizes law students and legal professionals to work within and beyond the legal system to champion reproductive justice.

If/When/How believes that reproductive justice will exist when all people have the ability to decide if, when, and how to create and sustain families with dignity, free from discrimination, coercion, or violence. Achieving reproductive justice requires a critical transformation of the legal system, from an institution that often perpetuates oppression to one that realizes justice. If/When/How currently has approximately 90 active chapters at law schools across the country: 9% in the Mid-Atlantic; 26% in the Midwest; 18% in the Northeast; 27% in the South; and 20% in the West.

If/When/How has approximately 1,500 student members overall, with 95% of its members identifying as women.

- **California Women Lawyers (“CWL”)** is a non-profit organization chartered in 1974. CWL is the only statewide bar association for women in California and maintains a primary focus on advancing women in the legal profession. Since its founding, CWL has worked to improve the administration of justice, to better the position of women in society, to eliminate all inequities based on sex, and to provide an organization for collective action and expression germane to the aforesaid purposes. CWL has also participated as *amicus curiae* in a wide range of cases to secure the

equal treatment of women and other classes of persons under the law.

- **Women’s Bar Association of the State of New York (“WBASNY”)** is the second largest statewide bar association in New York and one of the largest women’s bar associations in the United States. Its more 4,200 members in its nineteen chapters¹⁰⁸ include esteemed jurists, academics, and attorneys who practice in every area of the law, including constitutional and civil rights. WBASNY is dedicated to fair and equal administration of justice, and it has participated as an *amicus curiae* in many cases as a vanguard for

¹⁰⁸ WBASNY’s affiliated organizations consist of nineteen regional chapters, some of which are separately incorporated, plus nine IRC 501(c)(3) charitable corporations that are foundations and/or legal clinics. The affiliates are: *Chapters* – Adirondack Women’s Bar Association; The Bronx Women’s Bar Association, Inc.; Brooklyn Women’s Bar Association, Inc.; Capital District Women’s Bar Association; Central New York Women’s Bar Association; Del-Chen-O Women’s Bar Association; Finger Lakes Women’s Bar Association; Greater Rochester Association for Women Attorneys; Mid-Hudson Women’s Bar Association; Mid-York Women’s Bar Association; Nassau County Women’s Bar Association; New York Women’s Bar Association; Queens County Women’s Bar Association; Rockland County Women’s Bar Association; Staten Island Women’s Bar Association; The Suffolk County Women’s Bar Association; 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 curiae* vote in this matter.)

the rights of women, minorities, LGBT persons, and others.

- **Women’s Bar Association of Massachusetts (“WBA”)** is a professional association comprised of more than 1,500 members, including judges, attorneys, and policy makers, dedicated to advancing and protecting the interests of women. In particular, the WBA advocates for public policy that improves the lives of women and their children. The WBA has filed and joined many *amicus curiae* briefs in state and federal courts on legal issues that have a unique impact on women, including cases involving sexual discrimination, family law, domestic violence, and employment discrimination. The WBA is comprised of more than 1,500 members, 99% of whom are female. The WBA operates solely in Massachusetts.
- **Colorado Women’s Bar Association (“CWBA”)** is an organization of more than 1,200 Colorado attorneys, judges, legal professionals, and law students founded in 1978 and dedicated to promoting women in the legal profession and the interests of women generally. The CWBA has an interest in this case because its members, their clients, and other women in Colorado are committed to protecting women’s health.
- **Women Lawyers’ Association of Los Angeles (“WLALA”)** is a nonprofit organization comprised primarily of lawyers and judges in Los Angeles County. Founded in 1919, WLALA is dedicated to promoting the full

participation of women lawyers and judges in the legal profession, maintaining the integrity of our legal system by advocating principles of fairness and equality, and improving the status of women in our society. WLALA has participated as an *amicus curiae* in cases involving discrimination before many federal district courts and Courts of Appeals. WLALA believes that bar associations have a special obligation to protect the core guarantees of our Constitution to secure equal opportunity for women and girls through the full enforcement of laws prohibiting discrimination.

- **Women Lawyers On Guard Inc. (“WLG”)** is a national non-partisan non-profit organization harnessing the power of lawyers and the law in coordination with other organizations to preserve, protect, and defend the democratic values of equality, justice, and opportunity for all.

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief complies with the type-volume limitation of Federal Rules Appellate Procedure 29(a)(5) and 32(a)(7)(B) because: This brief contains 6,482 words, excluding the parts of the brief exempted by Federal Rule Appellate Procedure 32(f).
2. This brief complies with the typeface requirements of Federal Rule Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule Appellate Procedure 32(a)(6) because: This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

[DATE], 2018

/s/ [DRAFT]

Jamie A. Levitt

MORRISON & FOERSTER LLP
250 West 55th Street
New York, New York 10019-9601
Telephone: (212) 468-8000

*Attorneys for Amici Curiae, American Association
of University Women; Service Employees
International Union; and 12 Additional
Professional, Labor, and Student Associations*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Brief of Amici Curiae American Association of University Women; Service Employees International Union; and 12 Additional Professional, Labor, and Student Associations, in Support of Appellees with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system on [DATE], 2018.

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

[DATE], 2018

/s/ [DRAFT]

Jamie A. Levitt

MORRISON & FOERSTER LLP
250 West 55th Street
New York, New York 10019-9601
Telephone: (212) 468-8000

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