

Case No. 19-10754

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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RICHARD W. DEOTTE, on behalf of himself and others similarly situated;  
YVETTE DEOTTE; JOHN KELLEY; ALISON KELLEY; HOTZE HEALTH &  
WELLNESS CENTER; BRAIDWOOD MANAGEMENT, INCORPORATED, on  
behalf of itself and others similarly situated,

*Plaintiffs-Appellees,*

v.

STATE OF NEVADA,

*Movant-Appellant.*

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On Appeal from the United States District Court  
for the Northern District of Texas,  
The Honorable Reed O'Connor, Judge Presiding  
(Case No. 18-CV-00825-O)

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**BRIEF OF *AMICI CURIAE* AMERICAN FEDERATION OF STATE,  
COUNTY, AND MUNICIPAL EMPLOYEES; SERVICE EMPLOYEES  
INTERNATIONAL UNION; AND 9 ADDITIONAL PROFESSIONAL,  
LABOR, AND STUDENT ASSOCIATIONS IN SUPPORT OF REVERSAL**

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MORRISON & FOERSTER LLP  
Jamie A. Levitt  
JLevitt@mof.com  
New York, NY 10019  
Telephone: 212.468.8000

*Attorney for Amici Curiae*

## SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES

Pursuant to Fifth Circuit Rule 28.2, the undersigned counsel of record certifies that the following listed entities have jointed this *amicus curiae* brief and have an interest in the outcome of this case, albeit not a financial interest. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal. American Federation of State, County, and Municipal Employees; Service Employees International Union; Girls Inc.; National Association of Social Workers; If/When/How: Lawyering for Reproductive Justice; California Women Lawyers; Women’s Bar Association of the District of Columbia; Women Lawyers’ Association of Los Angeles; Women’s Bar Association of the State of New York; Women Lawyers On Guard Inc.; and Georgia Association for Women Lawyers.

Further, pursuant to [Federal Rule of Appellate Procedure 26.1](#), the above-listed entities state that they have no parent corporations and no publicly held company owns 10% or more of their stock.

/s/ Jamie A. Levitt  
Jamie A. Levitt

*Attorney for Amici Curiae*

**TABLE OF CONTENTS**

SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES..... ii

INTEREST OF AMICI CURIAE .....1

ARGUMENT .....2

I. SUMMARY OF ARGUMENT .....2

II. THE COVERAGE EXEMPTION WILL HARM WOMEN IN EVERY STATE ACROSS THE COUNTRY .....5

    A. Nearly Half a Million Women Working for Hospitals Could Lose Coverage. ....8

    B. Thousands of Women Working for Other Religiously-Affiliated Non-Profits Could Lose Coverage. ....9

    C. Hundreds of Thousands of Women Working for Private, Non-Religiously-Affiliated Employers Could Lose Coverage. ....11

    D. Women Nationwide Depend on the Contraceptive Coverage Benefit. ....16

III. SEAMLESS NO-COST CONTRACEPTIVE COVERAGE IS ESSENTIAL TO WOMEN’S EQUALITY AND ADVANCEMENT .....17

    A. The Benefits of No-Cost Contraceptive Coverage Are Substantial. ....17

    B. There Are No Comparable Alternatives to the Contraceptive Coverage Benefit. ....19

        1. State Laws Will Not Fill the Gap Left by the Coverage Exemption. ....19

        2. Other Programs Are No Substitute for Seamless No-Cost Contraceptive Coverage. ....20

    C. The Potential Harms From Losing Contraceptive Coverage, Even Temporarily, Are Significant and Irreversible for Women. ....21

IV. CONCLUSION.....24

APPENDIX .....26

**TABLE OF AUTHORITIES**

|  | <b>Page(s)</b> |
|--|----------------|
| <b>Cases</b>   |                |
| <i>Autocam Corp. v. Sebelius</i> ,<br><u>730 F.3d 618, 620</u> (6th Cir. 2013),<br><i>cert. granted, judgment vacated</i> , <u>573 U.S. 956</u> (2014) .....   | 12             |
| <i>Burwell v. Hobby Lobby Stores, Inc.</i> ,<br><u>573 U.S. 682</u> (2014).....  | 4              |
| <i>Burwell v. Hobby Lobby Stores, Inc.</i> ,<br><u>573 U.S. 682</u> (2014).....  | 4              |
| <i>Conestoga Wood Specialties Corp. v. Sec’y of the<br/>U.S. Dep’t of Health &amp; Human Servs.</i> ,<br><u>724 F.3d 377, 381</u> (3d Cir.), <i>cert. granted</i> , <u>571 U.S. 1067</u> (2013),<br><i>rev’d and remanded, sub nom, Burwell v. Hobby Lobby Stores,<br/>Inc.</i> ,<br><u>573 U.S. 682</u> (2014)..... | 12             |
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## INTEREST OF AMICI CURIAE<sup>1</sup>

The *amici curiae* (“Amici”) are organizations that work on behalf of female employees and students throughout the United States.<sup>2</sup> These associations represent professional women, women in organized labor,<sup>3</sup> women employed in various industries, social workers, teachers, students, and more. Amici have a strong interest in protecting no-cost contraceptive coverage so that women can strive for equal opportunities in education and in the American workforce.

Amici have a particular interest in the outcome of this litigation because they know that no-cost coverage of safe and reliable contraception is critical for women’s educational and professional success, as well as for women’s health and well-being. Amici include higher education associations for women that have an interest in this litigation because no-cost contraceptive coverage helps women reach their aspirations in higher education.<sup>4</sup> Amici also include labor and professional organizations representing well over a million members in hundreds of occupations—from health workers to teachers to lawyers—in every state. These organizations have an interest in this litigation because no-cost contraceptive

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<sup>1</sup> No party’s counsel authored this brief in whole or in part. No party, party’s counsel, or other person contributed any money to fund the preparation or submission of this brief other than Amici and their counsel.

<sup>2</sup> For a full list of Amici and their statements of interest, *see* Appendix.

<sup>3</sup> 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. 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 relief Plaintiff seeks. Amici labor unions represent some workers who are at risk of losing contraceptive coverage immediately, including those whose collective bargaining agreements do not include no-cost contraceptive coverage and members who are working to form their union and are not yet covered by collective bargaining agreements.

<sup>4</sup> *See* Appendix.

coverage increases women’s ability to participate and succeed in the workplace.<sup>5</sup>

## ARGUMENT

### I. SUMMARY OF ARGUMENT

Amici support Nevada’s motion for intervention and its appeal of the district court’s order granting Plaintiffs’ motion for summary judgment in this case.

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”)<sup>6</sup> 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”).

The district court granted Plaintiffs-Appellees an injunction against the enforcement of the Contraceptive Coverage Benefit with respect to objectors who have sincerely-held religious beliefs (the “Coverage Exemption”). The Coverage Exemption created by the district court is in line with the final contraceptive rules issued by Defendants-Appellants on November 7, 2018 (the “Final Exemption Rules”)<sup>7</sup> that have since been nationally enjoined.<sup>8</sup> The Final Exemption Rules are the final versions of the interim final rules issued by Defendants in 2017 (the

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<sup>5</sup> Pursuant to F.R.A.P. 29(a), counsel for Amici conferred with counsel for Movant-Appellant and Plaintiffs-Appellees on December 20, 2019 regarding the filing of this brief. All parties consent to the filing of this *amicus* brief.

<sup>6</sup> [42 U.S.C. § 18001](#), *et seq.* (2010).

<sup>7</sup> 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”).

<sup>8</sup> *See Pennsylvania v. President United States*, [930 F.3d 543, 556](#) (3d Cir. 2019), *as amended* (July 18, 2019).

“IFRs”).<sup>9</sup> Amici believe that Nevada’s motion to intervene must be granted and the district court’s order granting Plaintiffs-Appellees’ motion for summary judgment must be reversed to prevent significant harm that will occur if the Coverage Exemption created below is upheld.

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 district court’s order is not overturned. 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-profit companies that have already opposed the Contraceptive Coverage Benefit. These figures provide *only a baseline estimate* of the number of women—including members of Amici—expected to be affected by the Coverage Exemption. These estimates do not include the thousands of dependents of male and female employees, 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 previously required accommodation process, nor those women whose insurance companies or corporate employers could drop coverage altogether under the Coverage Exemption.

Before the Final Exemption Rules were issued by Defendants-Appellants, the Contraceptive Coverage Benefit exempted houses of worship with religious objections and their related auxiliaries, conventions, and church associations from

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<sup>9</sup> 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”).



offering contraceptive coverage.<sup>10</sup> 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 no-cost contraceptive coverage instead.<sup>11</sup> After *Burwell v. Hobby Lobby Stores, Inc.*,<sup>12</sup> closely-held corporations owned or controlled by persons with sincerely-held religious beliefs could also seek accommodations.<sup>13</sup>

The Coverage Exemption created by the district court would significantly expand the exemptions previously offered under the Contraceptive Coverage Benefit, which were crafted to balance women’s right to essential healthcare with the exercise of religious liberty. *First*, it would exponentially increase the number of employers that could deny coverage.<sup>14</sup> *Second*, the Coverage Exemption would allow private employers to claim exemptions without meaningful oversight, as entities could skip certifying their objections or notifying the federal government before dropping coverage.<sup>15</sup> *Finally*, because the Coverage Exemption provides exemptions—not accommodations—women who receive insurance coverage

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<sup>10</sup> See Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 76 Fed. Reg. 46,621 (Aug. 3, 2011); Coverage of Certain Preventive Services Under the Affordable Care Act, 78 Fed. Reg. 8,456, 8,458 (Feb. 6, 2013).

<sup>11</sup> Accommodations in Connection with Coverage of Certain Preventive Health Services, 45 C.F.R. § 147.131(c)(2).

<sup>12</sup> [573 U.S. 682](#) (2014).

<sup>13</sup> *Burwell v. Hobby Lobby Stores, Inc.*, [573 U.S. 682](#) (2014).

<sup>14</sup> See Appellant State of Nevada’s Opening Brief, Document No. 00515244766, at 14-17.

<sup>15</sup> See Brief of *Amici Curiae* Massachusetts, California, Colorado, Connecticut, Delaware, The District Of Columbia, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington, Document No. 00515245760, at 11-12.

through objecting entities would no longer be guaranteed seamless, no-cost contraceptive coverage.<sup>16</sup> Employees of entities that qualify for the Coverage Exemption created by the district court—including many members of Amici—and their dependents are at risk of losing this critical coverage altogether under the district court’s order.

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

## II. THE COVERAGE EXEMPTION WILL HARM WOMEN IN EVERY STATE ACROSS THE COUNTRY

The potential impact of the Coverage Exemption is vast. Before issuance of the Final Exemption Rules, many for-profit companies filed lawsuits challenging the Contraceptive Coverage Benefit and sought exemptions from it.<sup>17</sup> Several non-profits that were eligible for accommodations challenged the accompanying notice requirement.<sup>18</sup> These reactions to the Contraceptive Coverage Benefit and the accommodation process suggest that many for-profit and non-profit entities

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<sup>16</sup> *Id.*

<sup>17</sup> 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, 6:05 pm (ET)), <https://www.thedailybeast.com/after-hobby-lobby-these-82-corporations-could-drop-birth-control-coverage>.

<sup>18</sup> Haglage, *supra* note 17.

across the country will drop coverage due to the Coverage Exemption created by the district court. But employers that have already opposed the Contraceptive Coverage Benefit are, however, just the tip of the iceberg. The breadth of the Coverage Exemption, the uncertainty of what it means for an organization to have a “religious” belief, and the complete lack of oversight proposed means that any employer could be exempted.

Several categories of employers could immediately take advantage of the Coverage Exemption created by the district court. *First*, religiously-affiliated non-profits, such as hospitals and universities, would be able to claim full exemptions, rather than accommodations, no longer guaranteeing seamless access to no-cost contraceptive coverage for female employees through their regular insurance plans.<sup>19</sup> 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 Coverage Exemption.<sup>20</sup> *Second*, a potentially boundless range of secular for-profit corporations would be able to claim religious exemptions.<sup>21</sup> Hundreds of thousands of women and their dependents—many of whom are members of Amici—who are insured by these newly-exempted organizations would lose coverage under the Coverage Exemption.

Although religious denominations that oppose some or all forms of

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<sup>19</sup> See Final Exemption Rules.

<sup>20</sup> See, e.g., Joe Carlson, *N.Y. Catholic Health System Wins Ruling Against Contraception Mandate*, MODERN HEALTHCARE (Dec. 16, 2013, 12:00 am), <http://www.modernhealthcare.com/article/20131216/NEWS/312169935>.

<sup>21</sup> See Michael Nedelman, *et al.*, *Trump Administration Deals Major Blow to Obamacare Birth Control Mandate*, CNN (Oct. 6, 2017, 4:08 pm (ET)), <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.”).

contraception have vocally opposed the Contraceptive Coverage Benefit,<sup>22</sup> women who work for organizations affiliated with these religions continue to need and use contraception. More than 99% of all sexually active women of reproductive age across the United States have, at some point, used contraception to prevent pregnancy.<sup>23</sup> Ninety-eight percent of sexually active Catholic women have used a contraception method other than natural family planning,<sup>24</sup> and 87% of Catholic women currently at risk of unintended pregnancy use a method other than natural family planning.<sup>25</sup> 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).<sup>26</sup> The Coverage Exemption will harm and disadvantage women who work for religiously-affiliated organizations, as these entities will no longer be required to comply with the accommodation process that ensures seamless, no-cost coverage through third parties. The resulting loss of no-cost coverage will significantly harm these women, including members of Amici.

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<sup>22</sup> See, e.g., *id.*; *Zubik v. Burwell*, Nos. 14-1418, [2016 WL 155627](#) (U.S. Jan. 11, 2016). See also *Zubik Amici*.

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

<sup>24</sup> 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 (Feb. 14, 2013), <http://www.cdc.gov/nchs/data/nhsr/nhsr062.pdf>.

<sup>25</sup> *Id.*

<sup>26</sup> Rachel K. Jones & Joerg Dreweke, *Countering Conventional Wisdom: New Evidence on Religion and Contraceptive Use*, GUTTMACHER INST., at 8 (Apr. 2011), [https://www.guttmacher.org/sites/default/files/report\\_pdf/religion-and-contraceptive-use.pdf](https://www.guttmacher.org/sites/default/files/report_pdf/religion-and-contraceptive-use.pdf).

**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 Coverage Exemption. A large number of hospitals throughout the country are associated with religious denominations prohibiting many or all forms of contraception, and hospital employees are 76% female. For example, there are 654 hospitals associated with the Catholic Health Association of the United States alone, which collectively employ 530,599 full time and 225,433 part-time employees.<sup>27</sup> These hospitals comprise 14.5% of all acute care hospitals in the U.S.<sup>28</sup> and their employees are approximately 76% women.<sup>29</sup> Forty-nine of these hospitals are the sole community providers of short-term acute hospital care in their regions, meaning that health workers who lose coverage will have few opportunities for alternative employment where contraceptive coverage may be provided.<sup>30</sup> And in some states, like in Wisconsin and South Dakota, Catholic hospitals constitute at least 50% of sole community providers.<sup>31</sup> As of 2016, over 40% of acute care hospital beds in Alaska, Iowa, and Washington were in hospitals

<sup>27</sup> See Catholic Health Assoc. of the U.S., *U.S. Catholic Health Care*, at 1 (2018), [https://www.chausa.org/docs/default-source/default-document-library/cha\\_2018\\_miniprofile7aa087f4dff26ff58685ff00005b1bf3.pdf?sfvrsn=2](https://www.chausa.org/docs/default-source/default-document-library/cha_2018_miniprofile7aa087f4dff26ff58685ff00005b1bf3.pdf?sfvrsn=2) (last visited May 22, 2019).

<sup>28</sup> Lois Uttley & Christine Khaikin, *Growth of Catholic Hospitals and Health Systems: 2016 Update of the Miscarriage of Medicine Report*, MERGERWATCH, at p. 1 (2016), [http://static1.1.sqspcdn.com/static/f/816571/27061007/1465224862580/MW\\_Update-2016-MiscarrOfMedicine-report.pdf?token=UxHKcNPcSKjkw0MAq8v8aEdM83w%3D](http://static1.1.sqspcdn.com/static/f/816571/27061007/1465224862580/MW_Update-2016-MiscarrOfMedicine-report.pdf?token=UxHKcNPcSKjkw0MAq8v8aEdM83w%3D) (last visited May 22, 2019).

<sup>29</sup> U.S. Dep't of Labor, *Labor Force Statistics from the Current Population Survey* (Jan. 19, 2018), <https://www.bls.gov/cps/cpsaat18.htm>.

<sup>30</sup> 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>

<sup>31</sup> *Id.*

operating under Catholic health restrictions and the same was true for between 30-39% of beds in Nebraska, Colorado, Missouri, Oregon, and Kentucky.<sup>32</sup> Further, the number of religiously-affiliated hospitals in the U.S. has increased by 22% between 2001 and 2016.<sup>33</sup> As this trend continues, even more women nationwide could be affected by these hospitals' ability to take advantage of the Coverage Exemption.

The large market share of hospitals and other healthcare entities that follow religious directives prohibiting some or all forms of contraception has far-reaching implications for the majority-women employees who work in these facilities, as well as their female dependents. Many healthcare providers could eliminate contraceptive coverage for their employees and dependents under the Coverage Exemption,<sup>34</sup> obstructing contraception access for hundreds of thousands of women throughout the nation, including those represented by Amici.

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

In addition to hospitals and colleges, thousands of non-profit organizations throughout the United States are affiliated with religious denominations actively opposing some or all forms of contraception. As of 2015, approximately 3% of the 1.4 million non-profits in the U.S. and 10% of the largest non-profits already had

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<sup>32</sup> Uttley & Khaikin, *supra* note 28 at p. 1.

<sup>33</sup> *Id.*

<sup>34</sup> Although the Catholic Health Association itself was not opposed to the Obama-era accommodation process, it has steadfastly opposed any requirement by which its member hospitals would have to directly pay for birth control coverage. *See* Catholic Health Assoc. of the U.S., *Women's Preventive Health Services Final Rule*, <https://www.chausa.org/newsroom/women%27s-preventive-health-services-final-rule> (last visited May 22, 2019). Additionally, numerous state and regional Catholic healthcare umbrella organizations have strongly opposed the Benefit. *See, e.g.,* Carlson, *supra* note 20.

accommodations under the Contraceptive Coverage Benefit.<sup>35</sup> Of the 45 entities that requested an accommodation between 2014 and 2016, 27% were religiously-affiliated non-profits.<sup>36</sup> Further, there are more than 260 members of the Association of Catholic Colleges and Universities (the “ACCU”) in the United States, collectively enrolling more than 891,000 students<sup>37</sup> and employing large numbers of faculty and staff.<sup>38</sup> And Geneva College in Pennsylvania, with approximately 350 employees, has actively opposed the Contraceptive Coverage Benefit.<sup>39</sup> These employers, and many more like them, could drop contraceptive coverage under the Coverage Exemption without guaranteeing alternate coverage for their employees.

Further, more than 83 *amicus curiae* briefs supporting religious exemptions from the Contraceptive Coverage Benefit were filed in *Zubik v. Burwell*,<sup>40</sup> representing dozens of religiously-affiliated advocacy groups, professional

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<sup>35</sup> Laurie Sobel, Matthew Rae & Alina Salganicoff, *Data Note: Are Nonprofits Requesting an Accommodation for Contraceptive Coverage?*, THE HENRY J. KAISER FAMILY FOUNDATION, at p. 2 (Dec. 2015), <http://files.kff.org/attachment/data-note-data-note-are-nonprofits-requesting-an-accommodation-for-contraceptive-coverage>. The “largest” non-profits include those with 1,000-4,999 employees as well as those with more than 5,000 employees. *Id.*

<sup>36</sup> Laura E. Durso, *et al.*, *Who Seeks Religious Accommodations to Providing Contraceptive Coverage?*, CENTER FOR AMERICAN PROGRESS (Aug. 11, 2017, 11:23 am), <https://www.americanprogress.org/issues/lgbt/news/2017/08/11/437265/seeks-religious-accommodations-providingcontraceptive-coverage/>.

<sup>37</sup> ACCU, *Catholic Higher Education FAQs*, <https://www.accunet.org/Catholic-Higher-Ed-FAQs> (last visited May 22, 2019).

<sup>38</sup> *Id.*

<sup>39</sup> *Geneva Coll. v. Sebelius*, 988 F. Supp. 2d 511 (W.D. Pa. 2013), *rev'd, sub nom, Geneva Coll. v. Secretary U.S. Dep't of Health and Human Servs.*, 778 F.3d 422 (3d Cir. 2015).

<sup>40</sup> *Zubik v. Burwell*, 136 S. Ct. 1557 (2016).

organizations, think tanks, and umbrella organizations.<sup>41</sup> These *amici curiae* and the organizations they represent could also drop coverage under the Coverage Exemption.

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

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

Indeed, just a few reports have identified over 80 private, for-profit businesses that have explicitly indicated their desire to drop contraceptive coverage.<sup>42</sup> This list includes several companies that collectively employ well over 36,000 women in at least 47 states:

- Hobby Lobby, an Oklahoma-based national craft supply chain with over 32,000 employees;<sup>43</sup>
- Grote Industries, LLC, an Indiana vehicle safety systems manufacturer

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<sup>41</sup> See generally Briefs of *Amici Curiae* Supporting the Petitioner, *Zubik v. Burwell*, 136 S. Ct. 1557 (2016).

<sup>42</sup> Cooney, *supra* note 17; Haglage, *supra* note 17.

<sup>43</sup> *Id.*



with 1,148 full-time U.S. employees;<sup>44</sup>

- Conestoga Wood Specialties Corporation, a Pennsylvania-based wood cabinet and specialty products manufacturer with 950 employees;<sup>45</sup>
- Autocam Corporation and Autocam Medical, LLC, a Michigan transportation and medical equipment parts company with at least 661 U.S. employees;<sup>46</sup>
- Freshway Foods and Freshway Logistics, an Ohio-based produce processing and packaging company with 400 employees;<sup>47</sup>
- Sioux Chief Manufacturing, a Missouri plumbing products company with 370 employees;<sup>48</sup>
- Eternal Word Television Network, a religious television station with 350 full-time employees;<sup>49</sup>
- Hercules Industries, Inc., a Colorado heating, ventilation, and air conditioning products manufacturer with 303 employees;<sup>50</sup>

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<sup>44</sup> *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, 5:35 pm), <https://rewire.news/article/2013/03/07/the-18-for-profit-companies-fighting-to-eliminate-the-birth-control-benefit/>.

<sup>45</sup> *Conestoga Wood Specialties Corp. v. Sec’y of the U.S. Dep’t of Health & Human Servs.*, 724 F.3d 377, 381 (3d Cir.), cert. granted, 571 U.S. 1067 (2013), rev’d and remanded, sub nom, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014).

<sup>46</sup> *Autocam Corp. v. Sebelius*, 730 F.3d 618, 620 (6th Cir. 2013), cert. granted, judgment vacated, 573 U.S. 956 (2014); Jacobson, *supra* note 44.

<sup>47</sup> *Gilardi v. U.S. Dep’t of Health & Human Servs.*, 733 F.3d 1208 (D.C. Cir. 2013), cert. granted, judgment vacated, 573 U.S. 956 (2014).

<sup>48</sup> Jacobson, *supra* note 44.

<sup>49</sup> *Eternal Word Television Network, Inc. v. Sec’y of U.S. Dep’t of Health & Human Servs.*, 756 F.3d 1339, 1341 (11th Cir. 2014).

<sup>50</sup> Jacobson, *supra* note 44.

- Tyndale House, an Illinois publishing company with 260 employees;<sup>51</sup>
- Weingartz Supply Company, a Michigan outdoor power equipment company with 170 employees;<sup>52</sup>
- Sharpe Holdings, Inc., a Missouri farming, dairy, creamery, and cheese-making corporation with over 100 employees;<sup>53</sup>
- Triune Health Group, an Illinois corporation that facilitates the re-entry of injured workers in the workforce, with 95 employees;<sup>54</sup>
- O'Brien Industrial Holdings, a Missouri ceramic materials processing company with 87 employees;<sup>55</sup> and
- Many more.<sup>56</sup>

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*.<sup>57</sup> 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 Coverage Exemption.

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

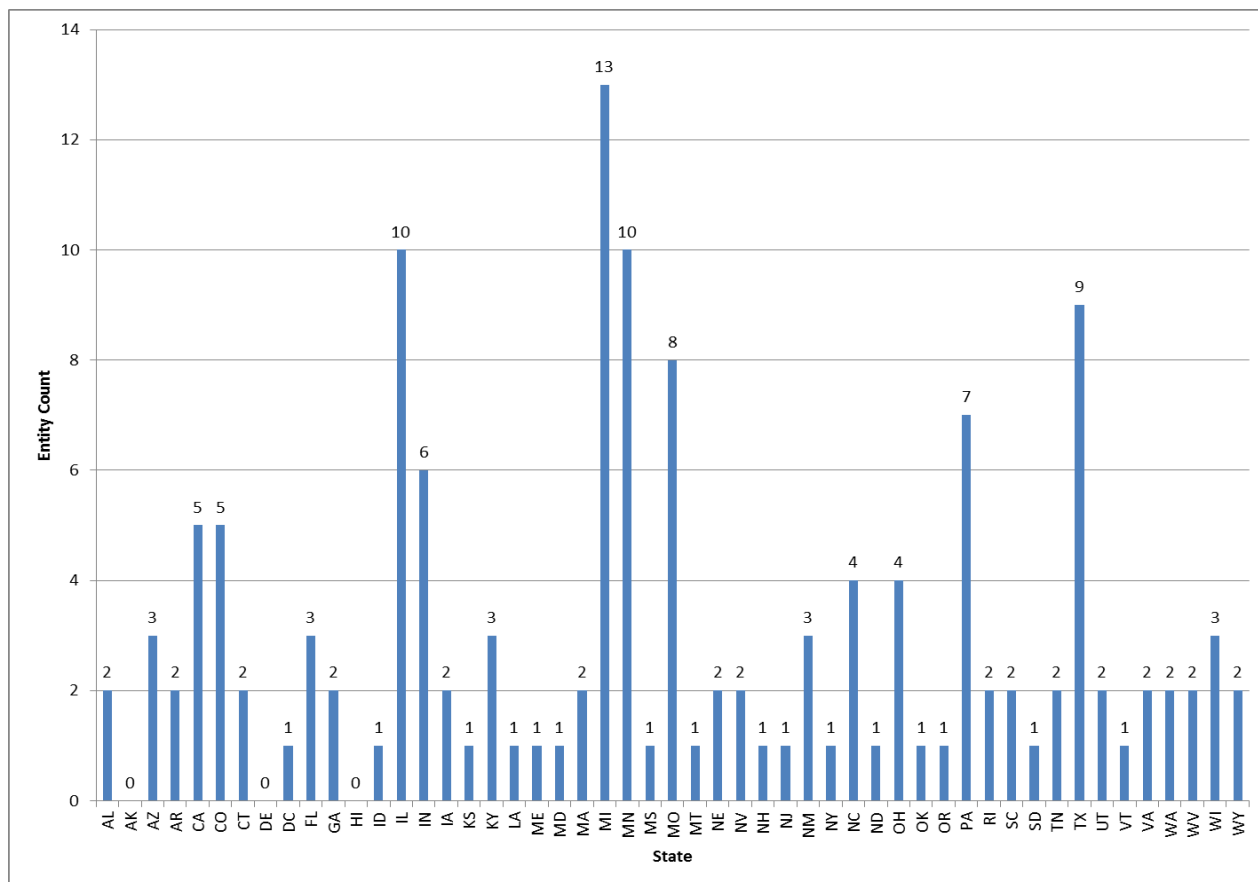
<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *See id.*; *Holland v. Sebelius*, No. 2:13-cv-15487 (S.D.W.Va. 2013); Joe Holland Chevrolet, *Chevy Career in South Charleston, WV: Employment Opportunities* <https://www.joehollandchevrolet.com/Employment-Opportunities-at-Joe-Holland> (last visited May 22, 2019); *M & N Plastics, Inc. v. Sebelius*, 997 F. Supp. 2d 19 (D.D.C. 2013).

<sup>57</sup> The data in this chart is drawn from the following two articles: Cooney, *supra* note 17; and Haglage, *supra* note 17.



Given the district-court created Coverage Exemption’s breadth, many businesses with no religious mission—including large, multi-state corporations—could refuse to provide contraceptive coverage under the district court’s order.<sup>58</sup> In fact, over half of the companies that received exemptions from the Contraceptive Coverage Benefit between January 2014 and March 2016 are secular, for-profit companies.<sup>59</sup> Major employers in nearly every industry could claim exemptions,

<sup>58</sup> See, e.g., Legatus: Ambassadors for Christ in the Marketplace, *Why Legatus: What We Offer*, <http://legatus.org/legatus/> (last visited May 2, 2019) (More than 5,000 Catholic business leaders and spouses are members of this organization).

<sup>59</sup> Sarah Kliff, *Most companies getting Obamacare birth control waivers aren’t religious groups*, VOX (Aug. 11, 2018, 11:00 am), <https://www.vox.com/policy-and-politics/2017/8/11/16127560/obamacare-birth-control-mandate>; Durso, *et al. supra* note 36.

including retail fashion,<sup>60</sup> fast food,<sup>61</sup> commercial agriculture,<sup>62</sup> insurance,<sup>63</sup> hospitality,<sup>64</sup> airline travel,<sup>65</sup> online dating,<sup>66</sup> and general retail merchandise<sup>67</sup>—to name only a few. These major companies collectively employ nearly two million employees,<sup>68</sup> and, if they deny their employees contraceptive coverage, a

<sup>60</sup> 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>.

<sup>61</sup> Emma Green, *Chick-Fil-A: Selling Chicken with a Side of God*, THE ATLANTIC, Sept. 8, 2014, <https://www.theatlantic.com/business/archive/2014/09/chick-fil-a-selling-chicken-with-a-side-of-god/379776/>; Rob Wile, *This 35-Year-Old Woman Just Inherited In-N-Out Burger. She's Now a Billionaire*, TIME INC. (May 8, 2017), <http://time.com/money/4770527/in-n-out-lynsi-snyder-fortune-ownership/>; Kevin Porter, *In-N-Out Burger Owner Lynsi Snyder on Searching for a Father Figure and Finding God in "I Am Second,"* CHRISTIAN POST, INC., Jan. 16, 2017, <https://www.christianpost.com/news/in-n-out-burger-owner-lynsi-snyder-talks-faith-journey-in-i-am-second-video-172909/>.

<sup>62</sup> Holly Lebowitz Rossi, *7 CEOs with Notably Devout Religious Beliefs*, FORTUNE (Nov. 11, 2014), <http://fortune.com/2014/11/11/7-ceos-with-notably-devout-religious-beliefs/>.

<sup>63</sup> 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>.

<sup>64</sup> 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>.

<sup>65</sup> Ann Schrader, *Republic Air CEO Puts His Faith to Work*, DENVER POST (May 6, 2016, 7:23 pm), <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 22, 2019).

<sup>66</sup> Maggie Lake, *eHarmony CEO Meets Controversial Success*, CNN (July 11, 2008, 7:07 am (EDT)), <http://www.cnn.com/2008/BUSINESS/07/11/eharmony.maggie/?iid=EL>.

<sup>67</sup> Colleen Walsh, *God and Walmart*, HARVARD GAZETTE (Nov. 19, 2009), <https://news.harvard.edu/gazette/story/2009/11/god-and-walmart/>.

<sup>68</sup> Forbes, *America's Largest Private Companies: #123 Forever 21*, <https://www.forbes.com/companies/forever-21/> (last visited May 22, 2019); 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 May 22, 2019); Forbes, *America's Best Employers: #28 In-N-Out Burger*, <https://www.forbes.com/companies/in-n-out-burger/> (last visited May 22, 2019); Tyson Foods, *Our Story*, <http://www.tysonfoods.com/who-we-are/our-story> (last visited May 22, 2019); Forbes, *The World's Biggest Public Companies:*

staggering number of women nationwide will be affected. Non-religious employers could also take advantage of the district court's Coverage Exemption, citing religious concerns, because they believe—falsely—that this will save money or serve political purposes. Under the district court's holding, virtually any large, privately held corporate employer could take advantage of the Coverage Exemption. For-profit companies account for nearly 90% of private-sector employment across America.<sup>69</sup> If even a fraction of these for-profit employers were to take advantage of the Coverage Exemption, it is reasonable to expect that millions of women—including members of Amici—could immediately lose contraceptive coverage, with all of the significant health, educational, and employment effects that follow.<sup>70</sup>

**D. Women Nationwide Depend on the Contraceptive Coverage Benefit.**

As shown above, women across the country will be affected by the Coverage Exemption if it is upheld. Between the private hospitals, schools, non-profits, and for-profit companies that may take advantage of the Coverage Exemption, women in every state are at risk of losing their contraceptive coverage. This is why it is critical for this Court to allow Nevada to intervene in this action and to reverse the

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#223 *Aflac*, <https://www.forbes.com/companies/aflac/> (last visited May 22, 2019); Marriott International, Inc. Annual Report (Form 10-K) (Feb. 18, 2016), <https://www.sec.gov/Archives/edgar/data/1048286/000162828016011346/mar-q42015x10k.htm>; Republic Airlines Inc., *About Republic Airline*, <http://rjet.com/about-republic-airline/> (last visited May 22, 2019); Andrea Chang & Peter Jamison, *EHarmony is Moving from Santa Monica to Westwood*, L.A. TIMES (Feb. 4, 2015, 5:26 pm), <http://www.latimes.com/business/la-fi-0205-eharmony-santa-monica-20150205-story.html>; Walmart, Inc., *Location Facts*, <https://corporate.walmart.com/our-story/locations/united-states> (last visited May 22, 2019).

<sup>69</sup> Bureau of Labor Statistics, *Nonprofits account for 11.4 million jobs, 10.3 percent of all private sector employment*, U.S. DEP'T. OF LABOR (Oct. 21, 2014), [https://www.bls.gov/opub/ted/2014/ted\\_20141021.htm?view\\_full](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).

<sup>70</sup> See Section III, *infra*.

district court's order granting Plaintiffs-Appellees' motion for summary judgment.

### III. SEAMLESS NO-COST CONTRACEPTIVE COVERAGE IS ESSENTIAL TO WOMEN'S EQUALITY AND ADVANCEMENT

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

Contraceptives have had a profound impact on the lives of women in the United States.<sup>71</sup> 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.”<sup>72</sup> Accordingly, no-cost contraceptive coverage can transform a woman's personal and professional life and education. Throughout America, at least 62.8 million women—including Amici's members—rely on no-cost contraceptive coverage to achieve personal, professional, and educational advancement.<sup>73</sup>

Contraceptive access has enabled women to achieve higher education at greater rates than ever before.<sup>74</sup> The oral contraceptive pill has tremendously increased the rates at which women enroll in college, while decreasing the rates at

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<sup>71</sup> 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).

<sup>72</sup> *Id.* at 469.

<sup>73</sup> Martha J. Bailey, Brad Hershbein & Amalia R. Miller, *The Opt-In Revolution? Contraception and the Gender Gap in Wages*, at pp. 6-7 (Nat'l Bureau of Econ. Research, Working Paper No. 17922, Mar. 2012), <http://www.nber.org/papers/w17922.pdf>; NWLC, *New Data Estimates 62.8 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/> (last visited May 22, 2019) (estimating that 62.8 million women gained access to no-cost contraceptives).

<sup>74</sup> Heinrich Hock, *The Pill and the College Attainment of American Women and Men*, at p. 19 (Fla. State Univ., Dep't of Economics Working Paper, Oct. 9, 2007), [ftp://econpapers.fsu.edu/RePEc/fsu/wpaper/wp2007\\_10\\_01.pdf](ftp://econpapers.fsu.edu/RePEc/fsu/wpaper/wp2007_10_01.pdf); David S. Loughran & Julie M. Zissimopoulos, *Why Wait? The Effect of Marriage and Childbearing on the Wages of Men and Women*, 44 *J. HUM. RES.* 326, 346 (2009).

which they drop out of college.<sup>75</sup> Two-thirds of women using oral contraceptives gained no-cost coverage through the Contraceptive Coverage Benefit.<sup>76</sup>

No-cost contraceptive coverage also allows women to participate in the workforce with equal opportunity to men. In crafting the Contraceptive Coverage Benefit, various government agencies acknowledged that the disparity in health coverage offered to men and women “places women in the workforce at a disadvantage compared to their male co-workers.”<sup>77</sup>

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.<sup>78</sup> 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.<sup>79</sup> 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,”<sup>80</sup> ultimately advancing further in the workplace and earning more money over their lifetimes.<sup>81</sup> Accordingly, without the ability to control and time their pregnancies, women will face tremendous and adverse

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<sup>75</sup> Hock, *supra* note 74.

<sup>76</sup> 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).

<sup>77</sup> 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).

<sup>78</sup> Bailey, *et al.*, *supra* note 73.

<sup>79</sup> Hock, *supra* note 74; Loughran & Zissimopoulos, *supra* note 74, at 346.

<sup>80</sup> Susan A. Cohen, *The Broad Benefits of Investing in Sexual and Reproductive Health*, 7 *GUTTMACHER REPORT ON PUB. POLICY* 5, at p. 6 (Mar. 2004), [https://www.guttmacher.org/sites/default/files/article\\_files/gr070105.pdf](https://www.guttmacher.org/sites/default/files/article_files/gr070105.pdf).

<sup>81</sup> Loughran & Zissimopoulos, *supra* note 74, at 346.

personal, professional, social, and economic effects.<sup>82</sup>

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

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

Twenty-nine states currently require private insurers to cover contraceptives if they offer coverage for other prescription drugs.<sup>83</sup> These coverage requirements have been effective for women enrolled in private insurance plans that are covered by the state coverage requirements.<sup>84</sup> However, there are four deficiencies that leave this patchwork of state laws unable to fill the gap that would be left by the Coverage Exemption.

*First*, while 29 states have some form of requirement that private employers cover contraceptives, 21 have no such requirement at all.<sup>85</sup>

*Second*, only fourteen states require contraceptives to be provided with *no* cost to the insured.<sup>86</sup> Increases in cost-sharing can decrease access to and effective use of contraceptives, but 36 states have yet to explicitly ensure no-cost contraceptive coverage.

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

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<sup>82</sup> American women have collectively saved nearly \$1.4 billion annually in out-of-pocket costs for oral contraceptives alone due to the Contraceptive Coverage Benefit. See Nora V. Becker & Daniel Polsky, *Women Saw Large Decrease in Out-Of-Pocket Spending for Contraceptives After ACA Mandate Removed Cost Sharing*, 34 HEALTH AFFAIRS 1204 (2015). The negative economic impact of the Coverage Exemption on American women will thus be extreme.

<sup>83</sup> Guttmacher Institute, *Insurance Coverage of Contraceptives, State Laws and Policies as of May 1, 2019*, <https://www.guttmacher.org/state-policy/explore/insurance-coverage-contraceptives> (last visited May 22, 2019).

<sup>84</sup> Brianna M. Magnusson, *et al.*, *Contraceptive Insurance Mandates and Consistent Contraceptive Use Among Privately Insured Women*, 50 MED. CARE 562, 565 (2012).

<sup>85</sup> Guttmacher Institute, *supra* note 83.

<sup>86</sup> *Id.*



states or plans from employers that self-insure their employees.<sup>87</sup> Around 60% of all employees are insured by self-funded insurance plans and are therefore not covered by state coverage requirements.<sup>88</sup> When an employer self-insures, these plans are overseen by the U.S. Department of Labor and are only subject to federally established regulations.<sup>89</sup> Therefore, state laws requiring contraceptive coverage will not help many women who would be affected by the Coverage Exemption.

*Finally*, 21 of the 29 states that require some form of contraceptive coverage allow certain employers and insurers to opt out of coverage requirements.<sup>90</sup> Even in these states, a significant portion of employers can escape such coverage requirements.<sup>91</sup> State laws simply cannot cure the negative impact the district court's order will have on access to no-cost contraceptive coverage across the country.

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

For women who depend on employer coverage for contraception, alternative arrangements—such as safety net health programs and providers—are either not feasible or not as accessible as employer-provided coverage. It is impractical for these women to obtain coverage through Medicaid or Title X providers, and doing

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<sup>87</sup> Sonfield, *supra* note 76.

<sup>88</sup> Laurie Sobel, *et al.*, *New Regulations Broadening Employer Exemptions to Contraceptive Coverage: Impact on Women*, THE HENRY J. KAISER FAMILY FOUNDATION (2018), <http://files.kff.org/attachment/Issue-Brief-New-Regulations-Broadening-Employer-Exemptions-to-Contraceptive-Coverage-Impact-on-Women>; Magnusson, *et al.*, *supra* note 84, at 565.

<sup>89</sup> Employer Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (1974). *See also* Sobel, *et al.*, *supra* note 88; Magnusson, *et al.*, *supra* note 84, at 565.

<sup>90</sup> Guttmacher Institute, *supra* note 83.

<sup>91</sup> *Id.*

so will not be seamless. Some women will not qualify for these programs at all.<sup>92</sup> Notably, safety net family planning providers are already under considerable political attack, threatening their ability to serve their current populations, let alone women who currently rely on employer coverage.<sup>93</sup>

**C. The Potential Harms From Losing Contraceptive Coverage, Even Temporarily, Are Significant and 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.<sup>94</sup> Amici support Nevada's appeal because losing consistent no-cost coverage—even for as little as one month—will result in significant harm for many women nationwide.

Contraceptives are one of the most widely used medications in the country,<sup>95</sup> and today, the oral contraceptive pill is the most common form of contraception

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<sup>92</sup> Title X is a federally funded program focused solely on providing individuals with reproductive health services. Family Planning Services and Population Research Act of 1970, Pub. L. No. 91-572, 84 Stat. 1504 (1970). Title X-funded clinics serve millions of young and low-income women in the United States. Mia R. Zolna, Megan L. Kavanaugh, & Kinsey Hasstedt, *Insurance-Related Practices at Title X-Funded Family Planning Centers under the Affordable Care Act: Survey and Interview Findings*, Women's Health Issues 28-1 (Sept. 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, 1:38 pm), <https://www.americanprogress.org/issues/women/reports/2017/02/09/414773/the-threat-to-title-x-family-planning/>.

<sup>93</sup> 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>.

<sup>94</sup> 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](https://www.guttmacher.org/sites/default/files/article_files/gpr2000816_0.pdf).

<sup>95</sup> Becker & Polsky, *supra* note 82.

among women in the United States.<sup>96</sup> The no-cost Contraceptive Coverage Benefit has boosted the consistent and proper use of contraceptives and enabled more women to choose long-term contraceptives.<sup>97</sup> The Contraceptive Coverage Benefit has decreased rates of discontinuation and increased effective use with respect to generic oral contraceptives.<sup>98</sup> In addition, because of the Contraceptive Coverage Benefit, more women have no-cost coverage of longer-term and more effective contraceptives.<sup>99</sup> 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.<sup>100</sup> 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.<sup>101</sup> Further, long-term contraceptive methods, such as the IUD, are the most effective at preventing unintended pregnancies, with only a 1% failure rate.<sup>102</sup> By contrast, an estimated 41% of unintended pregnancies in America are caused by the

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<sup>96</sup> 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* (July 2018), <https://www.guttmacher.org/factsheet/contraceptive-use-united-states#2a>.

<sup>97</sup> Pace, *et al.*, *supra* note 96; Becker & Polsky, *supra* note 82.

<sup>98</sup> Pace, *et al.*, *supra* note 96.

<sup>99</sup> Becker & Polsky, *supra* note 82; Aileen M. Gariepy, *et al.*, *The Impact of Out-of-Pocket Expense on IUD Utilization Among Women with Private Insurance*, 84 CONTRACEPTION 39 (2011), <http://escholarship.org/uc/item/1dz6d3cx>.

<sup>100</sup> Becker & Polsky, *supra* note 82; Gariepy, *et al.*, *supra* note 99.

<sup>101</sup> Gariepy, *et al.*, *supra* note 99; Natalie E. Birgisson, *et al.*, *Preventing Unintended Pregnancy: The Contraceptive CHOICE Project in Review*, 24 JOURNAL OF WOMEN'S HEALTH 349 (2015).

<sup>102</sup> Gariepy, *et al.*, *supra* note 99.

inconsistent use of contraceptives.<sup>103</sup> Additionally, lack of no-cost birth control is cited as a factor in approximately one-quarter of abortions.<sup>104</sup>

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.<sup>105</sup> This means that, across America, at least 43 million women currently need consistent coverage of reliable contraceptives to effectively prevent unintended pregnancies. If employers and insurers drop contraceptive coverage, women will be less likely to have access to long-term and effective contraceptives, and less likely to regularly continue contraceptive use, and thus will be at risk for unintended pregnancies, threatening women's health and economic security.<sup>106</sup> Women

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<sup>103</sup> Pace, *et al.*, *supra* note 96. 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 84, at 565.

<sup>104</sup> 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](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>.

<sup>105</sup> Guttmacher Institute, *supra* note 96.

<sup>106</sup> Contraceptives are used as essential medicine for women. See Guttmacher Institute, *supra* note 83 (finding that 1.5 million women in the U.S. relied on the oral contraceptive pill between 2006 and 2008 for medical reasons other than preventing pregnancy). Contraceptive use decreases pregnancy-related illness and mortality and prevents potential negative health consequences that stem from unintended pregnancies. See Megan L. Kavanaugh & Ragnar Anderson, *Contraception and Beyond: The Health Benefits of Services Provided at Family Planning Centers*, GUTTMACHER INST. (July 2013), <https://www.guttmacher.org/pubs/health-benefits.pdf>; Hal C. 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*

should not be denied this care.

#### IV. CONCLUSION

If the district court's order is upheld, at least hundreds of thousands of women, and likely millions—including those represented by Amici—across the United States are at risk of being significantly harmed. The approximately half a million female employees of religiously-affiliated hospitals, nearly 600,000 female students of religiously-affiliated colleges and universities, and more than 36,000 female employees of for-profit companies that have already stated their intent to deny contraceptive coverage comprise a conservative estimation of the number of women that would be affected by the Coverage Exemption created by the district court. The estimates do not take into account dependents of these entities' employees and students, nor do they take into account the employees and dependents of other companies that may drop coverage if the Coverage Exemption is upheld.

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 are directly impacted by consistent, uninterrupted coverage for prescription contraceptives. Loss of no-cost contraceptive coverage—even for only a few months—will have significant, irreparable consequences for American women's professional and educational advancement as well as their and their families' well-being. Accordingly, on behalf of female employees and students throughout the country, Amici support Nevada's appeal and urge this Court to reverse the district court's order granting Plaintiffs-Appellees' motion for summary judgment.

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*Task Force Recommendation Statement*, 315 JAMA 380, 382 (Jan. 26, 2016), <http://tinyurl.com/hhbnqe9>.

Dated: December 26, 2019

Respectfully submitted,

By: /s/ Jamie A. Levitt  
Jamie A. Levitt

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  
Federation of State, County, and Municipal  
Employees; Service Employees  
International Union; and 9 Additional  
Professional, Labor, and Student  
Associations*

## APPENDIX

### Interests and Descriptions of *Amici Curiae*

- **The American Federation of State, County, and Municipal Employees (“AFSCME”)** is a labor organization with 1.4 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, and reproductive rights.
- **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.
- **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 110,000 members in 55 chapters. The NASW National Committee on Women’s Issues develops, reviews and monitors programs of the Association that significantly affect women. NASW develops policy statements on issues of importance to the social work profession. Consistent with those statements, NASW advocates that every individual, within the context of her or his value system, must have access to family planning, abortion, and other reproductive health services.
- **If/When/How: Lawyering for Reproductive Justice (“If/When/How”)** envisions a transformation of the legal systems and institutions that perpetuate oppression into structures that realize justice, and a future when all people can self-determine their reproductive lives free from discrimination, coercion, or violence. We transform the law and policy landscape through advocacy, support, and organizing so all people have the power to determine if, when, and how to define, create, and sustain families



with dignity and to actualize sexual and reproductive wellbeing on their own terms. If/When/How currently has approximately 90 active chapters at law schools across the country: 9% in the Mid-Atlantic; 26% in the Midwest; 18% in the Northeast; 27% in the South; and 20% in the West.

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. 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 District of Columbia (“WBA”):** Founded in 1917, the Women’s Bar Association of the District of Columbia is one of the oldest and largest voluntary bar associations in metropolitan Washington, DC. Today, as in 1917, we continue to pursue our mission of maintaining the honor and integrity of the profession; promoting the administration of justice; advancing and protecting the interests of women lawyers; promoting their mutual improvement; and encouraging a spirit of friendship among our members. The WBA believes that when women have the means to plan whether and how to have a family, they can better invest in their own careers and their country.
- **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 in the legal profession of women lawyers and judges from diverse perspectives and racial and ethnic backgrounds, maintaining the integrity of our legal system by advocating principles of fairness and equality, and improving the status of women by supporting their exercise of equal rights, equal representation, and reproductive choice. WLALA has participated as an *amicus curiae* in cases involving discrimination before many federal district courts, Courts of Appeals, and the Supreme Court. WLALA believes that bar associations have a special obligation to protect the core guarantees of our Constitution to secure equal opportunity for women and girls through the full enforcement of laws prohibiting discrimination.

- **Women Lawyers On Guard Inc. (“WLG”)** is a national, non-partisan, non-profit organization harnessing the power of lawyers and the law in coordination with other organizations to preserve, protect, and defend the democratic values of equality, justice, and opportunity for all.
- **Georgia Association for Women Lawyers (“GAWL”)** is a statewide bar association with more than 740 members. Founded in 1928, GAWL has proudly served the diverse interests of women lawyers in Georgia for over 90 years. This matter affects the 98% of GAWL members who are women. GAWL joins this brief in service of its mission “to enhance the welfare and development of women lawyers and to support their interests.”
- **The Women’s Bar Association of the State of New York (“WBASNY”)** is the second largest statewide bar association in New York and one of the largest women’s bar associations in the United States. Its more 4,200

members in its twenty chapters<sup>107</sup> 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 in many cases before state and federal courts as a vanguard for the rights of women, minorities, LGBT persons, and others. WBASNY is deeply concerned about women's health and reproductive rights, and for decades it has been an advocate for the improvement of women's healthcare, as well as efforts to address discriminatory practices, affordability, access, and coverage for essential health services, including contraception. WBASNY has a depth of knowledge about the ACA's provisions in connection with healthcare and contraception, and it supported and provided legislative opinions in connection with New York's Comprehensive Contraception Coverage Act.

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<sup>107</sup> WBASNY's affiliated organizations consist of twenty regional chapters, some of which are separately incorporated, plus nine IRC 501(c)(3) charitable corporations that are foundations and/or legal clinics. The affiliates are: Chapters – Adirondack Women's Bar Association; The Bronx Women's Bar Association, Inc.; Brooklyn Women's Bar Association, Inc.; Capital District Women's Bar Association; Central New York Women's Bar Association; Del-Chen-O Women's Bar Association, Finger Lakes Women's Bar Association; Greater Rochester Association for Women Attorneys; Mid-Hudson Women's Bar Association; Mid-York Women's Bar Association; Nassau County Women's Bar Association; New York Women's Bar Association; Queens County Women's Bar Association; Rockland County Women's Bar Association; Staten Island Women's Bar Association; The Suffolk County Women's Bar Association; Thousand Islands Women's Bar Association; Westchester Women's Bar Association; Western New York Women's Bar Association; and Women's Bar Association of Orange and Sullivan Counties. Charitable Foundations & Legal Clinic – Women's Bar Association of the State of New York Foundation, Inc.; Brooklyn Women's Bar Foundation, Inc.; Capital District Women's Bar Association Legal Project Inc.; Nassau County Women's Bar Association Foundation, Inc.; New York Women's Bar Association Foundation, Inc.; Queens County Women's Bar Foundation; Westchester Women's Bar Association Foundation, Inc.; and The Women's Bar Association of Orange and Sullivan Counties Foundation, Inc. (No members of WBASNY or its affiliates who are judges or court personnel participated in WBASNY's amicus vote in this matter.)

## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Brief of Attorneys for Amici Curiae, American Federation of State, County, and Municipal Employees; Service Employees International Union; and 9 Additional Professional, Labor, and Student Associations in Support of Movant-Appellant State of Nevada with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system on January 7, 2020.

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.

January 7, 2020

*/s/ Jamie A. Levitt*  
\_\_\_\_\_  
Jamie A. Levitt

MORRISON & FOERSTER LLP  
250 West 55th Street  
New York, New York 10019-9601  
Telephone: 212.468.8000

*Attorney for Amici Curiae, American Federation  
of State, County, and Municipal Employees;  
Service Employees International Union; and 9  
Additional Professional, Labor, and Student  
Associations*

## 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 6,459 words, excluding the parts of the brief exempted by Federal Rule Appellate Procedure 32(f).
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December 26, 2019

/s/ Jamie A. Levitt  
Jamie A. Levitt

MORRISON & FOERSTER LLP  
250 West 55th Street  
New York, New York 10019-9601  
Telephone: 212.468.8000

*Attorney for Amici Curiae, Attorneys for Amici Curiae, American Federation of State, County, and Municipal Employees; Service Employees International Union; and 9 Additional Professional, Labor, and Student Associations*