

CENTER FOR HEALTH LAW
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Harvard Law School Center for Health Law and Policy Innovation Files Supreme Court Amicus Brief Defending Employees' Access to No Cost Preventive Health Care Services

Brief Warns Against Potential for Employers to Block Access to a Multitude of Preventive Services

Cambridge, MA --- (February 15, 2016) To support access to free preventive care, including contraceptive services, the Harvard Law School Center for Health Law and Policy Innovation (CHLPI) spearheaded the filing of an amicus brief to the U.S. Supreme Court in *Zubik v. Burwell*, the next major challenge to the Affordable Care Act (ACA). The brief requests that the Court affirm multiple Courts of Appeals' decisions upholding the federal Government's choice to maintain access to no cost contraceptive services in health plans sponsored by employers, including religious non-profit employers. CHLPI and the other signatories submitted this brief to advocate for employees' right to make their own medical decisions, without interference from their employers, and to protect our health care system's ability to effectively respond to public health crises.

The 26 non-profit organizations signing onto the brief include many health care access and HIV advocacy organizations. The brief highlights the voices of those uniquely informed about the importance of the standardized package of preventive services the ACA requires employer-sponsored health insurance plans to offer at no cost. The health care access and HIV communities want to ensure that the Supreme Court considers the fact that more than just access to contraceptives is at issue. By creating a precedent that allows for a contraceptive services exception, the Court could either intentionally or inadvertently create a scenario that motivates other religious employers to try to block no cost access to a broad range of preventive care services, including screening for HIV, HCV, and depression; substance abuse counseling; and vaccinations, such as flu shots. It would also prevent women from being able to control their fertility in the face of public health emergencies, such as the Zika virus epidemic.

“Preventing religious employers from making health care access decisions for their employees is critical to ensuring that the ACA will carry out its intended goals and that the health of employees

remains our top concern,” said Robert Greenwald, Clinical Professor of Law and Faculty Director of CHLPI. “This is particularly important as we work to create a health system that focuses on prevention and early intervention health care that both improves public health and health outcomes and reduces costs.”

The brief analyzes the importance of preventive care in improving public health. CHLPI addresses the low levels of preventive care prior to the ACA and explains how the financial barriers to these services result in Americans not getting the care they needed. The brief then explains the importance of mandating no cost access to a standardized package of preventive services in employer-sponsored health plans. The majority of non-elderly Americans receive their health care through employer-sponsored health plans.

Currently, the Government allows for employers to “opt-out” of financing access to no cost contraceptive services, provided they furnish notice to the Government so that alternate financing can be arranged for their employees. The Petitioners in this case seek to foreclose even this alternative access for their employees, forcing employees to pay completely out of pocket for their contraceptive care.

CHLPI notes that religious employers may similarly object to other conditions offered in the mandatory package of no cost preventive care. HCV, similar to HIV, is identified with stigmatized behavior, including intravenous drug use and sexual activity that is disapproved by a variety of religious organizations. Depression is often treated with anti-depressants and other psychiatric drugs. Certain religions such as Scientology, however, consider these treatments anathema. Jehovah’s Witnesses, Christian Scientists, and some churches that believe in faith healing have sincere religious objections to vaccinations, including flu vaccinations.

The brief warns, “Religious employers will continue to ‘edit’ the mandated package of preventive services, and chip away at other coverage of these conditions.” CHLPI notes that it has already received reports of employers using religious objections to avoid covering HIV medications on the health plans they offer employees.

Carmel Shachar, a CHLPI Clinical Instructor notes, “If the Supreme Court finds for the employers bringing this case, Americans’ ability to access no cost preventive services and make the health choices that are right for them could be seriously impaired. We would also lose a valuable tool for improving overall public health and being able to respond to serious public health crises, such as Zika virus or swine flu.”

The amicus brief was prepared by staff and students at the Harvard Law School Center for Health Law and Policy Innovation.

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The Center for Health Law and Policy Innovation of Harvard Law School (CHLPI) advocates for legal, regulatory, and policy reforms to improve the health of underserved populations, with a focus on the needs of low-income people living with chronic illnesses and disabilities. CHLPI works with consumers, advocates, community-based organizations, health and social services professionals, food providers and producers, government officials, and others to expand access to high-quality healthcare and nutritious, affordable food; to reduce health disparities; to develop community advocacy capacity; and to promote more equitable and effective healthcare and food systems. CHLPI is a clinical teaching program of Harvard Law School and mentors students to become skilled, innovative, and thoughtful practitioners as well as leaders in health, public health, and food law and policy. To learn more, visit www.chlpi.org