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## What's at Stake for Women of Color in *Zubik v. Burwell*

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**Fact Sheet:**  
**What's At Stake for Women of Color in *Zubik v. Burwell***

If the plaintiffs in *Zubik v Burwell*<sup>1</sup> win, thousands of women of color who work at religious non-profits could be stripped of their right to no-cost insurance coverage for contraception.<sup>2</sup> That's what at stake in the latest Supreme Court case challenging the Affordable Care Act's contraceptive mandate, which is the requirement that certain employer-sponsored health insurance plans cover contraception with no additional co-pay. The plaintiffs in *Zubik* are non-profit organizations, including universities, hospitals, and social service organizations, which do not want to take advantage of the accommodation that the government already provides for entities that have religious objections to providing such coverage. That accommodation allows the entities to opt-out while maintaining insurance coverage for the employees. The organizations suing in *Zubik*, however, want to prevent their employees from receiving coverage at all, even if they don't have to pay to provide it.

While those organizations employ women of all backgrounds, the case should be particularly concerning to women of color. Lack of access to quality reproductive health care plays a large role in the overall health disparities faced by communities of color today. Women of color have the highest rates of unintended pregnancy, abortion, and maternal mortality, all of which have taken a toll on the psychological, economic and social vitality of these communities. If the plaintiffs in *Zubik* are successful, it could open up the door for many other non-profit entities *and* for-profit businesses to opt out of providing contraceptive insurance coverage on which women of color depend. This fact sheet outlines a brief history of the disparities in health care for women of color and explains why the outcome in *Zubik* is so important in this context.

**Women of Color Have Been Denied Reproductive Liberty Throughout History**

From the forced breeding of slave women, to a campaign in recent decades to sterilize incarcerated women who are disproportionately women of color - the institutional denial of women of color's reproductive freedom has been marked throughout history. Slave women were egregiously deprived of any reproductive rights in the 18th and 19th century when their white owners routinely bred them in efforts to increase the slave population. Not too long after that birth control advocates popularized the appeal of birth control by highlighting how it could reduce the birthrate of the most undesirable including the mentally ill and Blacks in the 1920s.<sup>3</sup> A few decades later, the Nixon administration pushed sterilizations on low-income women, most of whom were women of color who were not

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<sup>1</sup> *Zubik v. Burwell*, No. 14-1418, (3d. Cir. Feb. 2, 2015) available at <http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/14-1418.htm>

<sup>2</sup> Lauren Kokum, *A Win For Zubik Would Undermine the Religious Liberty Of Employees*, Center for American Progress (March 14, 2016) <https://www.americanprogress.org/issues/religion/news/2016/03/14/133163/a-win-for-zubik-would-undermine-the-religious-liberty-of-employees/>.

<sup>3</sup> DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* 58-72 (1997).

asked to give consent.<sup>4</sup> During this same time, Native American women were asked to undergo sterilizations by Indian Health Services.<sup>5</sup> And less than two decades ago, prison officials were authorized to sterilize incarcerated women, the majority of them women of color.<sup>6</sup> These are just a few examples of the ways women of color have been deprived of their reproductive liberty in the United States - leaving many women of color mistrustful of medical institutions and the government's attempts to interfere with their reproductive health. Such mistrust has led to poor health and political disengagement amongst communities of color.

### **The Egregious Reproductive Health Disparities Faced By Women of Color Are Rooted in Discrimination and Biases**

The legacies of this history can be seen in the egregious reproductive health disparities that we see in communities of color today, including high rates of unintended pregnancy, abortion, and maternal mortality. In 2003 the Institute of Medicine, the same experts who recommended to the Obama administration that contraceptive care be offered with no additional co-pay under the Affordable Care Act, produced a study about the root causes of racial health disparities in America. The report found that many of the health disparities faced by communities of color are rooted in historic and current racial inequalities.<sup>7</sup> These disparities are the result of socio-economic conditions, as well as of implicit biases held within the medical community about communities of color that leads to subpar treatment for routine medical procedures - treatment unequal to the treatment received by white patients.<sup>8</sup>

### **Women of Color Face Higher Rates Of Unintended Pregnancies, Abortion and Maternal Mortality**

Women of color have higher unintended pregnancy and abortion rates than their white counterparts. More than half (55%) of all abortions in the U.S. are performed on women of color.<sup>9</sup> These women are facing increased ramifications as abortion clinics across the country are closing due to the conservative attack on abortion rights. Such closings are making it harder for many low-income women and women of color to have an abortion since many cannot afford to travel the long distances needed to reach an abortion clinic. A recent New York Times article found that the closings of these clinics appear to be closely linked to the rising interest in self-induced abortion, which is illegal in the United States.<sup>10</sup>

In addition, many women who have unintended pregnancies are more likely to abuse substances while pregnant and less likely to seek prenatal care, which can negatively impact the health of the fetus. Moreover, some of these unintended pregnancies can cost women of color their lives. The United States is now one of only eight countries – including Afghanistan and South Sudan - where

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<sup>4</sup> Saudi Garcia, *8 Shocking Facts About Sterilization in U.S. History*, Policy.Mic (July 10, 2013) <http://mic.com/articles/53723/8-shocking-facts-about-sterilization-in-u-s-history#.ODrIki44a>.

<sup>5</sup> Id.

<sup>6</sup> Claudia Liss-Schultz, *Women Inmates Were Sterilized in California Prison*, Ms. Magazine blog (July 18, 2013) <http://msmagazine.com/blog/2013/07/18/women-inmates-were-sterilized-in-california-prisons>.

<sup>7</sup> BRIAN D. SMEDLEY & ADRIENNE Y. STITH & ALAN R. NELSON, COMMITTEE ON UNDERSTANDING AND ELIMINATING RACIAL AND ETHNIC DISPARITIES IN HEALTH CARE, NATIONAL ACADEMIES PRESS, 2003.

<sup>8</sup> Id. at 21- 30.

<sup>9</sup> Id. at 24-25.

<sup>10</sup> Seth Stephen-Davodowitz, *The Return of the D.I.Y. Abortion*, New York Times (March 5, 2016) [http://www.nytimes.com/2016/03/06/opinion/sunday/the-return-of-the-diy-abortion.html?\\_r=0](http://www.nytimes.com/2016/03/06/opinion/sunday/the-return-of-the-diy-abortion.html?_r=0).

the maternal mortality is increasing.<sup>11</sup> These numbers become even bleaker for women of color in the US where black women are four times more likely than white women to die in childbirth.<sup>12</sup>

### **The Affordable Care Act's Contraceptive Mandate Helps To Eliminate Some Of The Reproductive Health Disparities Seen In Communities Of Color**

Eliminating disparities in reproductive health care, including high rates of abortion and unintended pregnancies, involves increasing access to contraception and contraceptive counseling. Access to contraception allows women of color to plan when they will have a child, which provides them with greater financial stability and freedom. Many women of color, who on average earn significantly less than white women, cannot afford to pay for quality contraception. For example, the IUD is considered the most effective contraception available on the market today and costs between \$500 and \$1000 without insurance. Because of its high cost, only 6% of black women have used IUDs compared with 78% who have used birth control pills.<sup>13</sup> Providing women of color with access to no-cost contraceptive coverage will greatly reduce the reproductive health disparities that we see in communities of color. This is an important first step in ameliorating the overall health disparities between women of color and white women in the United States.

It should be no surprise that when the U.S. Department of Health and Human Services asked The Institute of Medicine to come up with a list of women health services that should qualify as preventive care and require no co-pay under the Affordable Care Act in 2007, the Institute included contraceptive care and counseling in their recommendations. Contraception and counseling can help right some of the wrongs done to women of color in the area of reproductive justice and liberty. The Affordable Care contraceptive mandate takes us one step closer to such justice. It would be a grave injustice for the Supreme Court to allow the plaintiffs in the *Zubik* case – and others who might follow in their wake – to take us one step back.

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<sup>11</sup> Kelly Wallace, *Why is the Maternal Mortality Rate Going up in the United States?* CNN (Dec. 11, 2015) <http://www.cnn.com/2015/12/01/health/maternal-mortality-rate-u-s-increasing-why>.

<sup>12</sup> CENTER FOR REPRODUCTIVE RIGHTS & NATIONAL LATINA INSTITUTE FOR REPRODUCTIVE HEALTH & SISTERSONG, *REPRODUCTIVE INJUSTICE: RACIAL AND GENDER DISCRIMINATION IN US HEALTH CARE* 6-7 (2014).

<sup>13</sup> Renee Bracey Sherman, *A Right to Contraception Without Access Is a Disaster for the Black Community*, RH Reality Check (July 1, 2014, 12:52 PM), <http://rhrealitycheck.org/article/2014/07/01/right-contraception-without-access-disaster-black-community>.