

Overview

- How Contraceptive Coverage Works
 - Exemptions and Accommodations
- Round 1: *Hobby Lobby v. Burwell*
- Round 2: *Zubik v. Burwell*
 - Who are the plaintiffs?
 - What are the arguments on both sides?
 - Why does the type of employer health plan matter?
- How have the lower courts ruled?
- What is at stake for contraceptive coverage?

How Does Where You Work Affect Your Contraception Coverage?

START
HERE

Does your employer have religious objections to contraceptive coverage?

YES

Is your employer a house of worship?

YES

EXEMPTION

Your employer is not required to include contraceptives in plan.

Women workers and dependents may have limited or no coverage of FDA-approved contraceptives.

NO

Is your employer a religiously affiliated nonprofit or a closely held corporation?

YES

Your employer may elect an accommodation.

ACCOMMODATION

- Your employer must notify their insurer, plan administrator, or HHS of their objection.
- Employer released from paying for contraceptive coverage.
- Insurer or administrator pays for contraceptive coverage.

NO

Your employer must cover the full range of FDA-approved contraceptives for women.

MANDATORY

Women workers and dependents have coverage of the full range of FDA approved contraceptives.

ROUND 1: *Hobby Lobby v. Burwell* (For-profit)

- **Case:** For-profit companies with religious objections to contraception challenged the requirement on the basis that it violated their religious rights under the Religious Freedom Restoration Act.
- **Decision:** Certain *closely held* for-profit firms with sincerely held religious beliefs cannot be compelled to pay for contraceptive coverage in employer health plan.
- **Outcome:** Obama Administration issued new regulations that offer the accommodation to both religiously affiliated nonprofits and closely held for-profit corporations.

ROUND 2: Zubik v. Burwell (Nonprofit Employers)

- **Case:** Religiously-affiliated nonprofits with religious objections to contraception claiming that the *accommodation* offered by HHS still results in a violation of their religious rights under the Religious Freedom Restoration Act
- **Petitioners:** represent 37 different entities and individuals including:
 - Universities
 - Nonprofit advocacy organizations
 - Nursing homes
 - “Exempt” Diocese (sponsoring health insurance for non exempt nonprofits)
 - Two Bishops
 - Employee church plans and third party administrators for a church plan
- Employers have selected different types of health insurance plans – fully-funded, self-funded, secular plans and church plans – and have claimed different types of burdens depending on the plan.

What is the disagreement about the *accommodation*?

Religious nonprofits contend:

- Their religious rights are being violated
- Notice will “facilitate” or “trigger” the provision of insurance coverage for contraception.
- Health plans used as a vehicle to bring about a “morally objectionable wrong.”
- When the insurer separately contracts with an employer’s workers to cover contraception at no cost, it remains part of the employer’s plan and is financed by the employer.

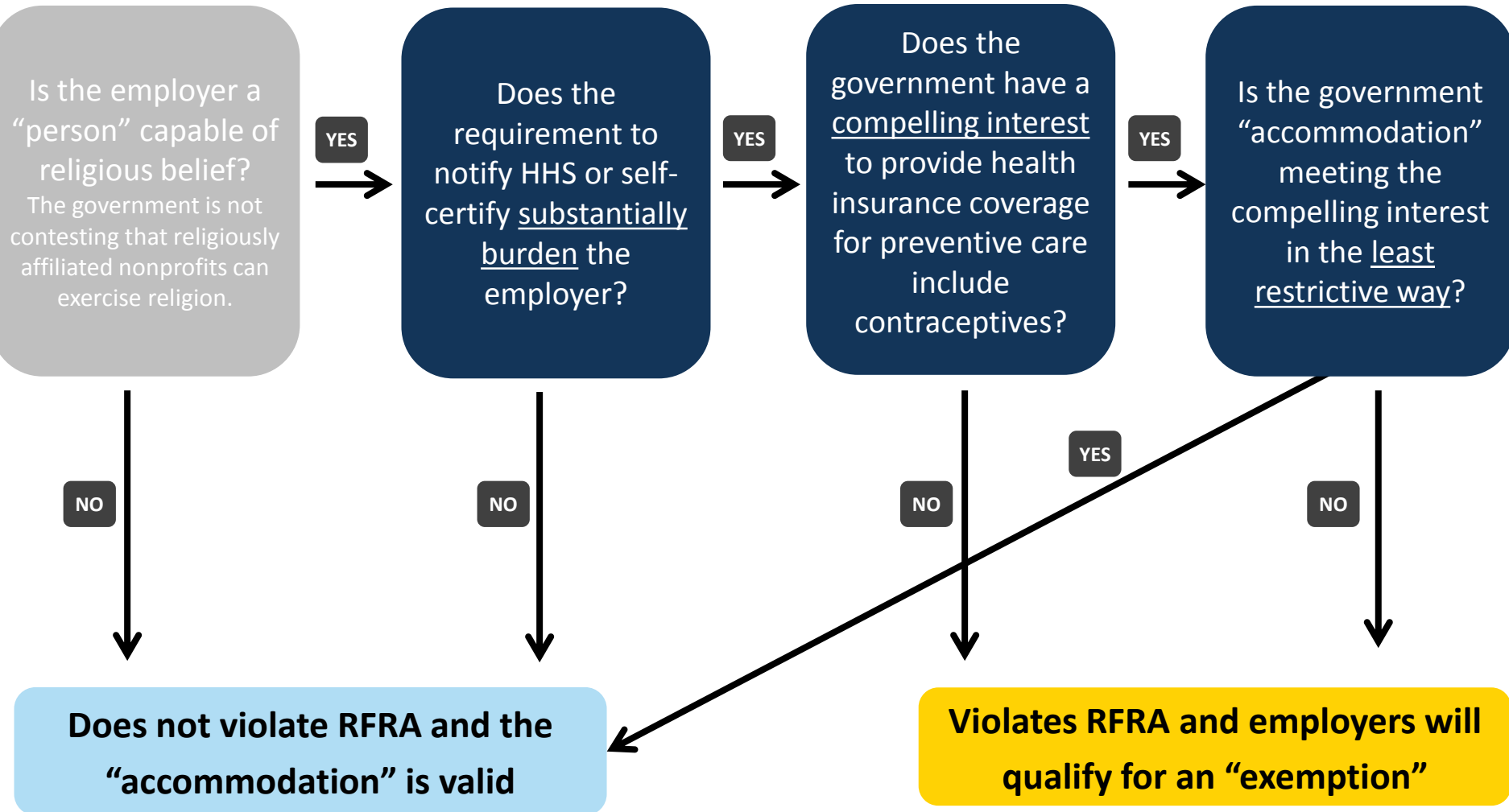
Government contends:

- It is not the *notification* that triggers the coverage.
- It is federal law that requires the insurance issuer or the third party administrator to provide this coverage.

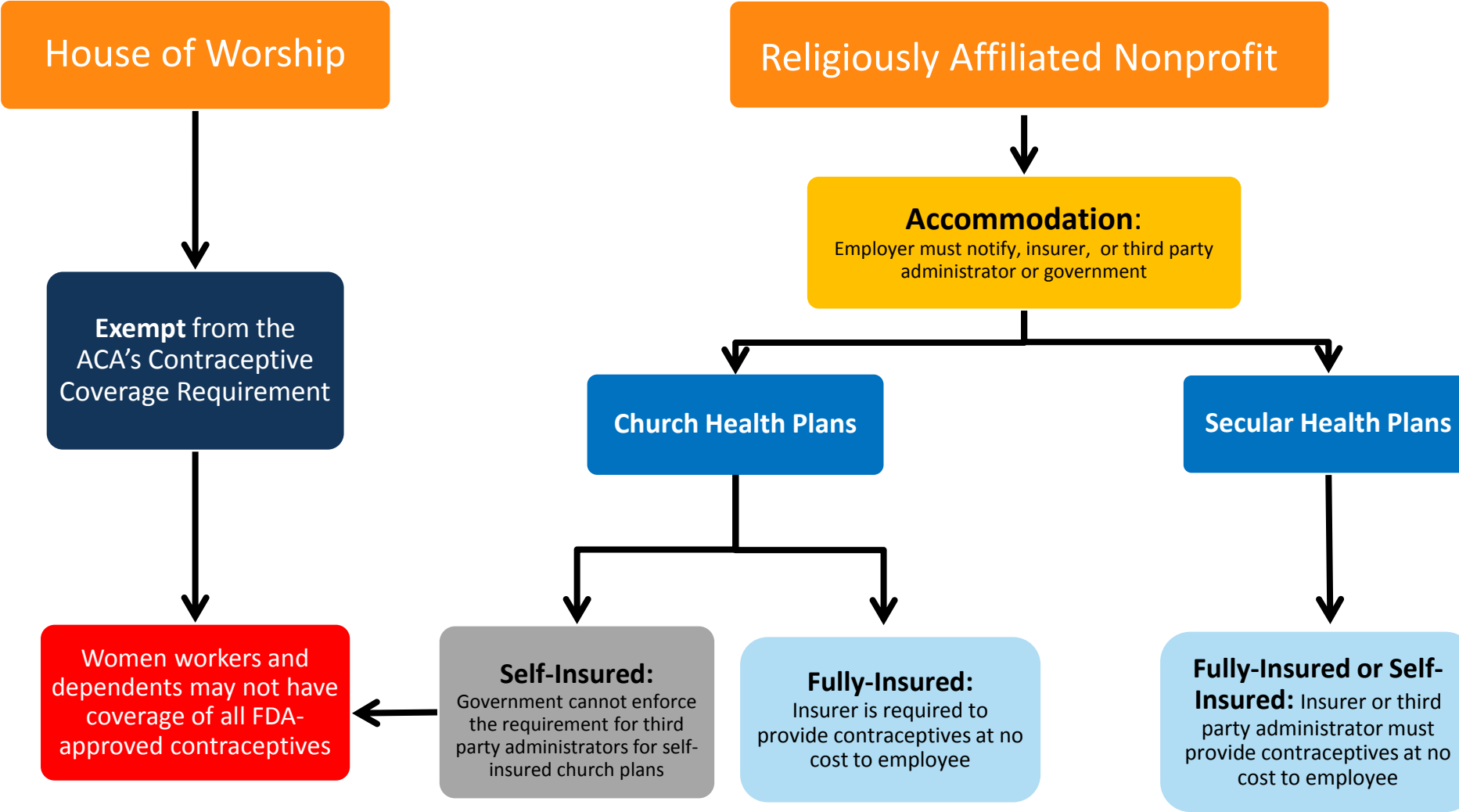
Religious Freedom Restoration Act of 1993

The Religious Freedom Restoration Act of 1993 (RFRA) provides that the government **“shall not substantially burden a person’s exercise of religion”** unless that burden is the **least restrictive means** to further a **compelling governmental interest**.

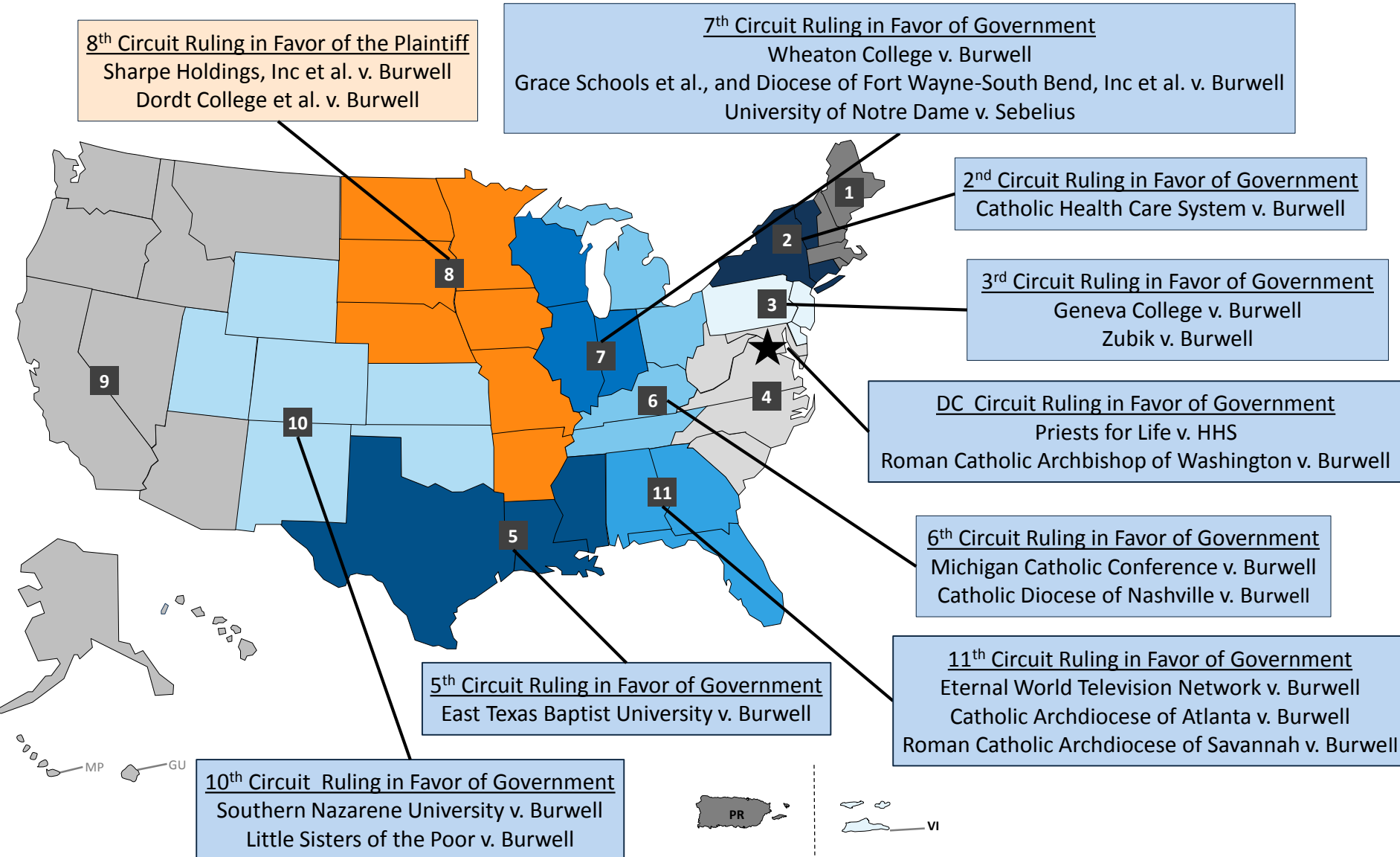
Legal Analysis of the Religious Freedom Restoration Act as It Applies to Religiously-Affiliated Nonprofits



How Health Insurance Arrangement Used by Religious Nonprofits Affects Contraceptive Coverage for Workers



US Appeals Court Rulings on Lawsuits by Nonprofits Objecting to Contraception

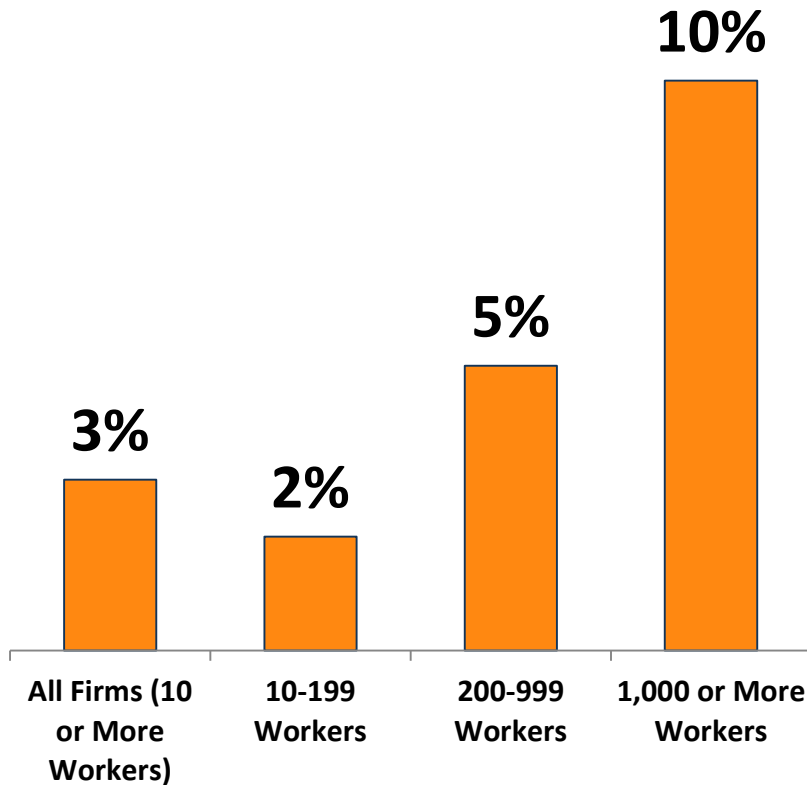


Note: As of February 18, 2016. No Nonprofit cases have been filed in the 1st, 4th, and 9th Circuit Courts of Appeals.



What is at stake for contraceptive coverage?

Share of Nonprofits Offering Health Insurance Notifying Insurer of Objection to Contraceptive Coverage, by Size, 2015



- Court's ruling could affect contraceptive coverage for women workers & dependents beyond those employed by nonprofit litigants.
- Difference between *exemption* and *accommodation* is the difference between **coverage** and **no coverage** for workers & dependents.
- Ruling may set the stage for a next round of litigation by **religious for-profit firms** and determine whether an *accommodation* is a valid option for them.

Note: 76% of all nonprofits and 98% of nonprofits with 199 or more workers offered health insurance.

SOURCE: [Data Note: Are Nonprofits Requesting an Accommodation for Contraceptive Coverage?](#) based on Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 2015.