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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

THE STATE OF CALIFORNIA; THE STATE OF DELAWARE; THE STATE OF MARYLAND; THE STATE OF NEW YORK; THE COMMONWEALTH OF VIRGINIA,

Plaintiffs,

v.

ALEX M. AZAR, II, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; R. ALEXANDER ACOSTA, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE U.S. DEPARTMENT OF LABOR; U.S. DEPARTMENT OF LABOR; STEVEN MNUCHIN, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE U.S. DEPARTMENT OF THE TREASURY; U.S. DEPARTMENT OF THE TREASURY; DOES 1-100,

Defendants,

and,

THE LITTLE SISTERS OF THE POOR, JEANNE JUGAN RESIDENCE; MARCH FOR LIFE EDUCATION AND DEFENSE FUND,

Defendant-Intervenors.

4:17-cv-05783-HSG

DECLARATION OF KIMBERLY CUSTER

I, Kimberly Custer, declare:

1. I am the Executive Vice President of the Health Care Division for Planned Parenthood Federation of America, Inc. ("PPFA").

2. This declaration is based on my personal knowledge, a review of PPFA's business records, and the knowledge I have acquired in the course of my two decades of service and duties with PPFA and several Planned Parenthood affiliates. If called and sworn as a witness, I could and would testify competently thereto.

3. As discussed more fully below, the final rules on exemptions to contraceptive access issued by the U.S. Department of Health and Human Services, U.S. Department of Labor and U.S. Department of Treasury on November 7, 2018 and published in the Federal Register on November 15, 2018 (Exemption Rules) would have devastating consequences for women across the United States who rely on Planned Parenthood. That is because the Exemption Rules would cause women across the country to lose access to contraceptive services without cost-sharing, as required under the Affordable Care Act (ACA). Women would then be forced to pay out-of-pocket for those services, or if they qualify, to seek out other low-cost (although in most cases likely not no-cost) ways to access preventive health care. This will take resources away from programs designed for people without private insurance and will mean that many women will end up with less access to care.

I. Employment and education background

4. I received a B.A. from the University of Oregon. After holding a series of management positions in the private sector, I began my work at Planned Parenthood in 1997 as a Vice President for Community Affairs of a Planned Parenthood affiliate. In 2004, I accepted a position as the President and CEO for Planned Parenthood of North East Pennsylvania and I served as a CEO of a Planned Parenthood affiliate for more than a decade.

5. In 2015, I joined PPFA as the Executive Vice President of the Health Care Division of PPFA. My responsibilities include overseeing all health care programs for PPFA, including medical services, health education, health care operations, business analytics, accreditation, and evaluation for PPFA's affiliates.

II. Planned Parenthood and the Delivery of Health Care

6. PPFA is a membership organization, with 55 affiliate organizations. PPFA's mission is to provide comprehensive reproductive health care services, to provide educational programs relating to reproductive and sexual health, and to advocate for public policies to ensure access to health services. PPFA itself does not provide healthcare, but it provides support, leadership, and guidance to its affiliates, which provide health care and educational services directly to the public. PPFA also works to promote research and the advancement of technology in reproductive health care.

7. For more than a century, millions of women and men have turned to Planned Parenthood for vital health care services, sex education, and sexual health information. Our skilled health care professionals are dedicated to offering all people high-quality, affordable medical care.

8. Planned Parenthood affiliates are separately incorporated and independent non-profit corporations, each with its own governance structure, including a board of directors. Each Planned Parenthood affiliate provides health care and educational services directly to the public in a distinct geographic area. Some affiliates have health centers in multiple states; others have health centers in two or more states. Moreover, each health center, depending on where it is located, may serve patients from several states. For example, Planned Parenthood affiliates operate health centers in cities like Chicago, Cincinnati, Kansas City, Memphis, Minneapolis, Pittsburgh, Spokane, St. Louis, Tallahassee, and others which are close to the state border.

9. Planned Parenthood affiliates operate more than 600 health centers located in 48 states and the District of Columbia which provide services to patients in all 50 states and the District of Columbia, serving millions of women and men each year. An estimated one out of every five women nationally has received care from Planned Parenthood at least once in her life. Planned Parenthood affiliates play a particularly important role in providing reproductive and other health care to women and men with low-incomes.

10. All Planned Parenthood affiliates offer a wide range of family planning services and reproductive health care, although the specific services that Planned Parenthood affiliates offer

vary depending on the needs of the communities in which they operate and the resources available. All Planned Parenthood affiliates provide contraceptive counseling and contraception (including long-acting reversible contraceptives ("LARCs")); other services generally include physical exams, clinical breast exams, screening for cervical cancer, testing and treatment for sexually transmitted infections ("STIs"), pregnancy testing and counseling, vasectomies, colposcopies, abortion, and health education services.

11. Between October 1, 2015 and September 30, 2016, Planned Parenthood affiliates provided approximately 9,500,000 clinical services to approximately 2,400,000 patients. Those patients visited Planned Parenthood health centers 4,000,000 times for care. Planned Parenthood provided contraceptives to more than 1,800,000 patients, and it is estimated that these services averted nearly 400,000 unintended pregnancies.

12. Our affiliates also administered more than 660,000 cancer screenings and prevention procedures, including 335,000 breast exams and 280,000 Pap tests (cervical screens). They performed nearly 4,400,000 STI tests, including HIV screenings, and diagnosed nearly 225,000 STIs.

13. PPFA affiliates have a special mission to provide high-quality, life-saving health care and medical treatment to historically underserved patients and communities. In many communities, a Planned Parenthood health center is the only place that a patient can turn to for high-quality, compassionate, and low-cost (or free) reproductive health care. Fifty-four percent of Planned Parenthood health centers are in Health Professional Shortage Areas (or HPSAs)—as designated by the Health Resources and Services Administration, an agency of the U.S. Department of Health and Human Services—and/or in rural or other Medically Underserved Areas (or MUAs).[1]

[1] Health Professional Shortage Areas are designated as having shortages of primary medical care, dental, or mental health providers. Medically Underserved Areas have a shortage of primary care health services for residents within a geographic area. Another designation, Medically Underserved Populations (or MUPs), concerns specific sub-groups of people living in a designated geographic area with a shortage of primary care health services; these groups may face economic, cultural, or linguistic barriers to health care.

14. Seventy-three percent of Planned Parenthood patients who reported their incomes have incomes at or below 150 percent of the federal poverty level.

15. As a recent study shows, in 57 percent of the counties with a Planned Parenthood health center in 2015, Planned Parenthood served at least half of all safety-net family planning patients (*i.e.*, patients who rely on free or reduced-fee services to obtain their reproductive health care).[2]

16. Planned Parenthood health centers play a critical role in serving communities of color and in many cases are the only health centers providing reproductive health care in such communities. Approximately 27 percent of Planned Parenthood's patients are Latino/a, 17 percent are Black, and 11 percent are Native American, Asian, or Multiracial. In recent years, Planned Parenthood has served an increasing number of patients in these groups, demonstrating Planned Parenthood's increasingly important role in serving communities of color.

17. Planned Parenthood patients rely on a variety of sources of funding in accessing our services, including Medicaid, the Title X program, state family planning programs, private insurance, or paying out-of-pocket.

III. The Effect of the Exemption Rules

18. It is my understanding that the ACA requires that most private insurance plans cover certain preventive health care services without patient cost-sharing and that the women's preventive services requirement, as it should, includes contraception and contraceptive counseling.[3] Contraceptive care is an essential preventive health care service. It helps to avoid unintended pregnancies and to promote healthy birth spacing, resulting in improved maternal,

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[2] Kinsey Hasstedt, *Understanding Planned Parenthood's Critical Role in the Nation's Family Planning Safety Net*, 20 Guttmacher Pol'y Rev. 12, 14 (2017), *available at* https://www.guttmacher.org/sites/default/files/article_files/gpr2001216.pdf.

[3] *See* 42 U.S.C. § 300gg-13(a)(4) (specifying that insurance providers "shall not impose any cost sharing requirements . . . with respect to women, [for] such additional preventive care and screenings . . . as provided for in comprehensive guidelines supported by the Health Resources and Services Administration . . . ."); *Women's Preventive Services Guidelines*, Health Res. & Servs. Admin., https://www.hrsa.gov/womens-guidelines/index.html (last updated Oct., 2017).

(continued...)

child, and family health.[4] Contraceptive care also results in other health benefits, including reduced menstrual bleeding and pain, and decreased risk of endometrial and ovarian cancer.[5]

19. As a result of the ACA, women are able to access contraception services seamlessly through their existing health plans at no cost—an important factor that has an impact on contraceptive method choice and use. Prior to the ACA, 1 in 7 women with private health insurance either postponed or went without needed health care services because they could not afford them.[6] Those who could purchase contraception were spending between 30 percent and 44 percent of their total annual out-of-pocket health care costs to that end,[7] and women were more likely to forego more effective long-acting reversible contraceptive (LARC) methods (such as intrauterine devices) due to upfront costs.[8]

20. As a result of the requirement, more than 62 million women now have access to contraceptive services without cost-sharing.[9] Out-of-pocket spending on contraception has decreased, and more women are choosing to use LARC methods.[10] In addition, the percentage of pregnancies that are unintended in the United States is at a 30-year low.[11]

21. The Exemption Rules threatens to undermine this progress because it would allow any employer or university to opt out of the existing accommodation process and leave their

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[4] Am. Coll. of Obstetricians & Gynecologists, Committee Opinion No. 615: Access to Contraception 2 (Jan. 2015, reaffirmed 2017), https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Access-to-Contraception.

[5] *Id.*

[6] Usha Ranji & Alina Salganicoff, Henry J. Kaiser Family Found., Women's Health Care Chartbook: Key Findings from the Kaiser Women's Health Survey 4, 30 (2011).

[7] Nora V. Becker & Daniel Polsky, *Women Saw Large Decrease in Out-Of-Pocket Spending for Contraceptives After ACA Mandate Removed Cost Sharing*, 34 Health Aff. 1204, 1208 (2015).

[8] *See* Ashley H. Snyder et al., *The Impact of the Affordable Care Act on Contraceptive Use and Costs Among Privately Insured Women*, 28 Women's Health Issues 219, 219 (2018).

[9] Nat'l Women's Law Ctr., New Data Estimates 62.4 Million Women Have Coverage of Birth Control Without Out-of-Pocket Costs 1 (2017), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/09/New-Preventive-Services-Estimates-3.pdf.

[10] Snyder, *supra* note 8, at 219.

[11] Lawrence B. Finer & Mia R. Zolna, *Declines in Unintended Pregnancy in the United States, 2008–2011*, 374 New Eng. J. Med. 843, 850 (2016).

employees or students with no mechanism for seamless contraceptive coverage through a third-party private insurer. Women who have private insurance that covers other preventive health care with no-cost sharing will be forced to pay out-of-pocket for that care, or go without. Women are not faced with this choice for any other preventive services required by the ACA. As a trusted provider of quality and affordable reproductive health care, many of those women will turn to Planned Parenthood for care.

22. The Exemption Rules will negatively impact Planned Parenthood patients nationwide in several ways. First, some of our patients with private insurance will no longer have that coverage. While we will work to continue to provide care to those patients, at least some of them will have to pay a portion or the full cost for services that the ACA guaranteed would be available without cost-sharing. Only 29 states have laws that require insurance coverage of all FDA-approved prescription contraceptive drugs and devices, and only 10 of these state laws prohibit cost-sharing for contraceptives. Additionally, these laws apply only to health insurance plans that are subject to state regulation and not to the millions of women with insurance coverage through self-insured plans, which are typically offered by large employers, that are subject only to federal regulation under the Employee Retirement Income Security Act (ERISA).[12] These women will, therefore, likely need to pay out of pocket for contraception and, therefore, more will likely choose less effective methods or otherwise ration their care.

23. Second, many of these women will not qualify for government-subsidized programs such as Title X or a state family planning program. These programs are intended to provide health care for individuals with low incomes and most women covered under the ACA's birth control benefit will not qualify for these programs. Even for those women who may qualify, safety net programs are not intended as a substitute for employer-sponsored coverage. The budgets for such safety net programs are under threat of being drastically cut, and having to provide women with private insurance with services through these programs undermines the purpose of these programs and threatens to take resources away from the individuals with low incomes these programs are

[12] Guttmacher Inst., Insurance Coverage of Contrace ption (December 1, 2018), *available at* https://www.guttmacher.org/state-policy/explore/insurance-coverage-contraceptives.

meant to serve. Moreover, states that are willing and able to make sure that women can access this care will have to divert resources away from other services they could be providing.

24. Third, the loss in access to no-cost contraceptive coverage will put these women at greater risk of unintended pregnancies and other health problems, the costs of which will be borne by these women and their families, safety-net providers like Planned Parenthood, and state and local government entities.

25. For all of these reasons, the Exemption Rules should not be allowed to take effect.

I declare under penalty of perjury that the foregoing is true and correct and of my own personal knowledge.

Executed on December 19, 2018, in New York, NY.

Kimberly Custer
Executive Vice President, Health Care
Planned Parenthood Federation of America