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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 ALFRED J. GOBEILLE, SECRETARY, VERMONT AGENCY OF HUMAN SERVICES

I, ALFRED J. GOBEILLE, declare:

1. I am the Secretary of the Vermont Agency of Human Services (AHS). I have served in this position since January 2017. I declare under penalty of perjury that the foregoing is true and correct, and of either my own personal knowledge or, with respect to those matters for which I do not have personal knowledge, I have reviewed information gathered from AHS records and other publicly available information.

2. AHS was created by the Vermont Legislature in 1969 to serve as the umbrella organization for all human services activities within state government. AHS is led by the Secretary, who is appointed by the Governor. The Secretary's Office is responsible for leading the agency and its departments: the Department for Children and Families; the Department of Corrections, the Department of Disabilities, Aging and Independent Living; the Department of Health (VDH); the Department of Mental Health; and the Department of Vermont Health Access (DVHA). Within the Agency, one of the Divisions operated under VDH is the Division of Maternal and Child Health, which encompasses Preventive Reproductive Health, Children with Special Health Needs, Maternal Infant and Child Nutrition (including WIC), the Child Development clinic, the Early Childhood system (including nurse home visiting), and the Help Me Grow system for optimal child development. Separate from public health programs, DVHA is the state department responsible for the management of Medicaid, the State Children's Health Insurance Program, and other publicly funded health insurance programs in Vermont. Most of Vermont's Medicaid program is funded by approximately 54% federal funding and 46% state funding. However, the "enhanced match" programs, like the Children's Health Insurance Program, are 90% federal funds and 10% state funds. Because DVHA manages Vermont's Medicaid programs, it is the largest insurer in Vermont in terms of dollars spent and the second largest insurer in terms of covered lives. DVHA is also responsible for administering Vermont Health Connect, which is the State's health insurance marketplace.

3. Vermont has a law that provides contraceptive coverage which matches the federal guarantee provided by the Affordable Care Act (Public Health Service Act 2713(c)), specifically requiring coverage for the full range of contraceptive methods, counseling and services used by

women; eliminating out-of-pocket costs for at least some methods of contraception; and limiting other health plan restrictions. 8 V.S.A. § 4099c. Some of Vermont's provisions go beyond the federal guarantee by ensuring that women may receive an extended supply of a method at one time (usually a one-year supply, rather than a typical one- or three-month supply), and by requiring coverage of male sterilization without out-of-pocket costs. The Vermont law does not affect women and covered dependents who have coverage through an employer that uses a self-insured plan, because these plans are exempt from State insurance laws by the federal Employee Retirement Security Act (ERISA). And, the Vermont law does not cover the uninsured.

4. The Agency of Human Services has a long-standing commitment to providing access to affordable reproductive health services and reducing the number of unintended pregnancies. Nationwide, nearly half (45%)[1] of all pregnancies are reported as being unintended with the estimated public cost of these births in 2010 reaching $21 billion.[2] Nationally, for every public dollar spent on contraceptive care and family planning an estimated $7.09 in public dollars was saved.[3] There is no reason to think the savings are not comparable in Vermont. The U.S. Department of Health and Human Services identified family planning and the prevention of unintended pregnancies as one of its primary initiatives in Healthy People 2020.[4] Similarly, the Centers for Disease Control and Prevention (CDC) also included the prevention of unintended pregnancies in its 6|18 Initiative, a program developed to improve health and control health care costs.[5] Vermont has taken steps to work in conjunction with both federal partners to implement the objectives of these programs.

5. In addition to contraception coverage available to Vermont Medicaid recipients and coverage provided through Title X funding, the State of Vermont provides coverage for

[1] Lawrence B. Finer, Ph.D., and Mia R. Zolna, M.P.H. Declines in Unintended Pregnancy in the United States, 2008–2011, N Engl J Med 2016; 374:843-852 March 3, 2016 DOI: 10.1056/NEJMsa1506575. Available at http://www.nejm.org/doi/full/10.1056/NEJMsa1506575

[2] Sonfield A and Kost K (2015). Public Costs from Unintended Pregnancies and the Role of Public Insurance Programs in Paying for Pregnancy and Infant Care: Estimates for 2010, the Guttmacher Institute. Available at https://www.guttmacher.org/report/public-costs-unintended-pregnancies-and-role-public-insurance-programs-paying-pregnancy

[3] Sonfield A, Hasstedt K and Gold RB, *Moving Forward: Family Planning in the Era of Health Reform*, New York: Guttmacher Institute, 2014.

[4] *See* https://www.healthypeople.gov/2020/topics-objectives/topic/family-planning

[5] *See* https://www.cdc.gov/sixeighteen/docs/6-18-evidence-summary-pregnancy.pdf

contraceptive services through several different state and federally funded programs. Some of the VDH's programs with state funding sources include, but are not limited to:

- The Medicaid Family Planning Initiative, also known as the Vermont Access Plan, which provides contraceptive and family planning services to individuals at or below 200% of the Federal Poverty Level (FPL). Up to $2,000,000 is allocated annually, with 46.21% coming from state funds.
- The Global Commitment Grant which provides outreach to individuals seeking reproductive health services.
    - Approximately $300,000 annually is allocated for this program, 46.21% of which come from state funds.

6. Vermont estimates that a total of 116,123 Vermonters are self-insured through plans that are exempt from Vermont's contraceptive coverage requirements. Of that population, the number of women within reproductive age (between 15 and 45 years old) is estimated at 25,973. However, these are likely to be under-estimates, as self-insured plan reporting to the All Payer Claims Database is voluntary and therefore incomplete. According to the 2014 Vermont Household Insurance Survey, approximately 17% of Vermonters who hold private insurance plans (through an employer group plan, a direct purchase plan, or another type of private employer plan) were below the 200% FPL. If the population of individuals insured through plans exempt under ERISA were to mirror the same demographics as the populations of total private insurance holders, it would be expected that approximately 4,400 women could be both at risk of losing their contraceptive care coverage and immediately eligible for one of the publicly-funded programs listed above. As a result of these rules, women will either (a) utilize and seek coverage through State programs, resulting in increased enrollment, or (b) they will forgo coverage and experience an unintended pregnancy, which substantially increases the cost of care. In both scenarios, the State will suffer increased costs. Some women and their dependents may become eligible for Medicaid as a result of an unintended pregnancy, which further adds to the State's costs. Women with incomes that disqualify them from publicly-funded programs will bear the full cost of contraceptive services and products. Unintended pregnancies also create well-

documented, long-term social and economic impacts for women and children, and therefore for the State of Vermont, beyond the costs associated with birth.

7. Forgoing contraceptive services results in a higher unintended pregnancy rate. In 2010, the most recent year for which data is immediately available, 50.2% of all births were publicly funded in Vermont.[6] For all *unplanned* births in Vermont, 73.5% were publicly funded, resulting in total public costs of $31.4 million.[7] Of that figure, $21.8 million came from federal sources and $9.6 million came from state sources.[8] And those are only the public costs for unplanned pregnancies resulting in births. In 2014, 44% of unwanted pregnancies ended in abortions in Vermont.[9] The cost to the State of Vermont for publicly-funded abortions in 2010 was $402 per abortion.[10] No federal funding is available to offset the cost of abortions.

8. Based on my knowledge and experience as the Secretary of the Vermont Agency of Human Services, I believe that the final rules on religious and moral exemptions to the coverage of contraceptives ("Final Rules") will result in women losing access to contraceptives and an increase in unintended pregnancies, abortions, and increased social and economic costs. Through the programs outlined above, the Final Rules will result in increased costs to the State of Vermont.

Executed on December 19, 2018, in Waterbury, Vermont.

Alfred J. Gobeille
Secretary
Vermont Agency of Human Services

[6] Sonfield A and Kost K, Public Costs from Unintended Pregnancies and the Role of Public Insurance Programs in Paying for Pregnancy-Related Care: National and State Estimates for 2010, New York: Gutmacher Institute, 2015. Available at https://www.guttmacher.org/sites/default/files/report_pdf/public-costs-of-up-2010.pdf

[7] *Id.*

[8] *Id.*

[9] Kost K, Maddow-Zimet I and Kochhar S, Pregnancy Desires and Pregnancies at the State Level: Estimates for 2014, New York: Guttmacher Institute, 2018. Available at https://www.guttmacher.org/reports/ pregnancy-desires-and-pregnancies-state-level-estimates-2014

[10] Sonfield A and Gold RB, Public Funding for Family Planning, Sterilization and Abortion Services, FY 1980-2010, New York: Guttmacher Institute, 2012. Available at https://www.guttmacher.org/sites/default/files/report_pdf/public-funding-fp-2010.pdf