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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 DAVE JONES, INSURANCE COMMISSIONER OF CALIFORNIA**

I, Dave Jones, declare:

1. I am over the age of eighteen. I have first-hand knowledge of the matters declared to herein, and am competent to testify as to those facts, except as to the matters declared to on the basis of information and belief and, as to the latter matters, have a reasonable basis to believe them to be true.

2. I am the elected Insurance Commissioner of the State of California. I was first elected in November of 2010, and was re-elected in November of 2014. As Insurance Commissioner, I oversee the California Department of Insurance ("CDI"). Insurers collect $289 billion a year in premiums in California, making it the nation's largest insurance market. California is the also largest health insurance market in the country. CDI has regulatory jurisdiction over health insurers and health insurance coverage in California.

3. Based on my knowledge and experience as the state's insurance regulator, 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.

4. CDI licenses companies that provide Administrative Services Only ("ASO") plans to self-insured employers. Based on information submitted to and available to CDI, there are approximately 5.7 million covered lives in employer self-funded health plans in California.

5. Californians have a constitutionally guaranteed right to privacy. The Final Rules threaten the ability of women to exercise their right to privacy.

6. The California State Legislature, in which I served for six years, found and declared that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions and that California has a long history of expanding timely access to birth control to prevent unintended pregnancy.

7. CDI receives consumer calls, requests for information and complaints about health insurance coverage issues, and provides consumer protection services and information to health insurance policyholders and consumers with self-insured group coverage.

1 8. As Insurance Commissioner, my responsibilities include implementing and enforcing
2 the Patient Protection and Affordable Care Act ("ACA") and related state laws in California's
3 health insurance market, which I have done since I was sworn into office.

4 9. As Insurance Commissioner, I have directed CDI staff to ensure compliance with 42
5 U.S.C. 300gg-13(a)(4), incorporated into state law at section 10112.2 of the Insurance Code,
6 which requires self-insured employer plans and group and individual health insurance policies to
7 cover women's preventive health care services, including contraceptive coverage, with no cost-
8 sharing.

9 10. As Insurance Commissioner, I have directed CDI staff to enforce state laws, including
10 California Insurance Code section 10123.196(b), which states in part that "[a] group or individual
11 policy of disability insurance, except for a specialized insurance policy, that is issued, amended,
12 renewed, or delivered on or after January 1, 2016, shall provide coverage for all of the following
13 services and contraceptive methods for women: ... all FDA-approved, contraceptive drugs,
14 devices, and other products for women ... , [v]oluntary sterilization procedures ... , [p]atient
15 education and counseling on contraception ... , [f]ollowup services related to the drugs, devices,
16 products, and procedures covered under this subdivision, including, but not limited to,
17 management of side effects, counseling for continued adherence, and device insertion and
18 removal." State law requires all non-grandfathered health insurance policies to provide this
19 coverage with no cost-sharing, while grandfathered policies must provide the same coverage but
20 can impose cost sharing. Cal. Ins. Code § 10123.196(b)(2)(A).

21 11. Subdivision (e) of section 10123.196 includes a narrow religious employer exemption
22 that applies only to nonprofit churches, their integrated auxiliaries, conventions or associations of
23 churches; and the exclusively religious activities of any religious order. The constitutionality of
24 the state contraceptive mandate as applied to religious employers that do not satisfy the
25 exemption was upheld by the California Supreme Court in *Catholic Charities of Sacramento, Inc.*
26 *v. Superior Court* (2004) 32 Cal.4th 527.

27 12. California Insurance Code section 10123.196 ensures that the vast majority of
28 Californians covered by fully-insured, non-grandfathered group or individual health insurance

policies will continue to have access to the full range of contraceptive products and services without cost-sharing, regardless of any changes to federal law. State law enacted prior to the passage of the ACA also required individual and group health insurance policies that covered prescription drugs to cover a variety of contraceptive methods. However, section 10123.196 does not protect the approximately 5.7 million Californians who are covered by a self-insured employer's health plan.

13. In addition to female employees of self-insured employers being at risk of losing access to contraceptives under the IFRs, the female dependents of employees also stand to lose access to contraceptives.

14. Of the sexually active women of reproductive age in the United States, 99% of these women report having used at least one method of contraception.[1]

15. After the requirement in the ACA for self-insured employer plans and non-grandfathered health insurance to cover preventive health care services without cost-sharing went into effect, CDI staff and I heard from women who said that prior to contraceptives being available without co-pays or deductibles, there were months when they had been unable to afford to fill their prescriptions for contraceptives. If the Final Rules are not declared invalid, some women covered by self-insured employer plans will quickly lose access to contraceptives, which will result in unintended pregnancies.[2]

16. As Senate Bill 999[3] was being considered by the Legislature in 2016, women came forward to tell their personal stories about how skipping just a few pills because they were not able to fill their prescriptions on time resulted in unintended pregnancies and abortions.

17. The near-universal use of contraception among U.S. women includes women who identify as religious. Among all Catholic women who have had sex, 98% have used some form of

[1] Kimberly Daniels, et al., *Contraceptive Methods Women Have Ever Used: United States, 1982-2010*, National Health Statistics Reports No. 62, 1 (Feb. 14, 2013), http://www.cdc.gov/nchs/data.nhsr/nhsr062.pdf.

[2] Joerg Dreweke, *New Clarity for the U.S. Abortion Debate: A Steep Drop in Unintended Pregnancy Is Driving Recent Abortion Declines*, Guttmacher Policy Review Vol.19 (2016), https://www.guttmacher.org/sites/default/files/article_files/gpr1901916.pdf.

[3] Senate Bill 999 added subdivision (f) to Insurance Code section 10123.196 in 2016.

modern contraception at some point in their lives. Among women of all denominations, more than two-thirds of sexually active women use highly effective methods of contraception such as sterilization, hormonal birth control pills, or an intra-uterine device ("IUD").[4]

18. Unplanned or unintended pregnancy can lead to many adverse medical outcomes for both the woman and the baby.[5,6,7]

19. Some women who lose access to insurance coverage for contraceptives due to the Final Rules will seek contraceptive services from a Family PACT[8] provider. However, these services are not without cost to the woman, and they are limited only to low-income women, with incomes at or below 200% of the Federal Poverty Level ("FPL"). Women with incomes above 200% of FPL will bear the full cost of contraceptive services and products.

20. The average monthly cash price of hormonal birth control pills is between $15 and $80. IUDs carry upfront costs of $500 to $1,000 for the device itself, which does not include the cost of the office visit, insertion, follow-up visits, or removal. IUDs are effective for up to five years. Other long-acting methods such as contraceptive implants cost between $400 and $800, and must be re-inserted every three years.[9]

21. A claims study published in 2015 estimated that due to the ACA's preventive services contraceptive mandate, average out-of-pocket savings per contraceptive user was $248 for insertion of an IUD (a 68% reduction) and $255 annually for the oral contraceptive pill (a 38% reduction). Declines in out-of-pocket spending for other methods of contraception are also

[4] Rachel K. Jones & Joerg Dreweke, Guttmacher Institute, *Countering Conventional Wisdom: New Evidence on Religion and Contraceptive Use* (2011), https://www.guttmacher.org/sites/default/files/report_pdf/religion-and-contraceptive-use.pdf.

[5] Institute of Medicine, *Clinical Preventive Services for Women: Closing the Gaps* ("IOM Report") (2011).

[6] Claudia Goldin & Lawrence F. Katz, *The Power of the Pill: Oral Contraceptives and Women's Career and Marriage Decisions*, 110 J. of Pol. Econ. (2002), http://nrs.harvard.edu/urn-3:HUL.InstRepos:2624453.

[7] Heinrich H. Hock, *The Pill and the College Attainment of American Women and Men*, (Fla. State Univ., Working Paper 2007).

[8] Family PACT is a state program that provides comprehensive family planning services to low-income women and men. See http://www.familypact.org/Home/home-page.

[9] Laurie Sobel, et al., Kaiser Family Foundation, Coverage of Contraceptive Services: A Review of Health Insurance Plans in Five States (April 16, 2015), http://files.kff.org/attachment/report-coverage-of-contraceptive-services-a-review-of-health-insurance-plans-in-five-states.

significant: 93% for emergency contraceptives, 84% for barrier methods, 72% for the implant, and 68% for the injection.[10]

22. An estimated 6.88 million privately insured women used oral contraceptives in 2013, which based on the 2015 claims study translated into approximately $1.4 billion in savings on out-of-pocket expenses for oral contraceptives alone. By June 2013, a majority of women on private health plans were paying nothing out-of-pocket for their contraception due to the ACA's preventive services contraceptive mandate.[11] These statistics demonstrate that women with private insurance, including those covered by self-funded employer plans, have benefited from decreased out-of-pocket costs for contraceptives due to the ACA's contraceptive mandate.

23. Starting in December of 2016 or January of 2017, CDI received calls from women who were concerned that changes at the federal level could impact their access to contraceptive coverage. Women asked questions about whether it would be advisable to fill their prescriptions for contraceptives for a 12-month supply at one time. Women also asked whether to switch methods of birth control from the method they had previously chosen with their physicians in order to have a longer lasting form of contraception in case federal action threatened their access to birth control coverage.

24. Since the announcement of the interim final rules that preceded the Final Rules, the Department has received calls asking which health insurance policies will be impacted and when women will lose their coverage for contraception.

25. Many people whose health coverage is through employers that self-insure do not realize that their coverage is self-funded and consequently that it is not subject to many of the protections in state law, including the contraceptive mandate.

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[10] Becker et al. *Women Saw Large Decrease In Out-Of-Pocket Spending For Contraceptives After ACA Mandate Removed Cost Sharing*, Health Affairs 2015 Jul; 34(7):1204-11. Summary available online at https://www.ahcmedia.com/articles/136218-affordable-care-actmakes-impact-on-costs-of-many-forms-of-birth-control.

[11] Rebecka Rosenquist, University of Pennsylvania Leonard Davis Institute of Health Economics, *The ACA and Contraceptive Coverage*, July 7, 2015. Available online at https://ldi.upenn.edu/aca-and-contraceptive-coverage.

26. Women's access to contraceptives and the potential of unintended pregnancy can impact most every aspect of a woman's life including her education, employment, and economic security. The Final Rules permit self-insured employers in California to drop coverage for contraceptives without cost-sharing, which will negatively affect women's health, well-being, economic security, and productivity.

I declare under penalty of perjury that the foregoing is true and if called as a witness, I would competently testify thereto.

Executed on December 7, 2018 in Sacramento, California.

Dave Jones
Insurance Commissioner of California