

XAVIER BECERRA, State Bar No. 118517
Attorney General of California
KATHLEEN BOERGERS, State Bar No. 213530
Supervising Deputy Attorney General
NELI N. PALMA, State Bar No. 203374
KARLI EISENBERG, State Bar No. 281923
Deputy Attorneys General
1300 I Street, Suite 125
Sacramento, CA 94244-2550
Telephone: (916) 210-7913
Fax: (916) 324-5567
E-mail: Karli.Eisenberg@doj.ca.gov
Attorneys for Plaintiff the State of California

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 RUTH LYTLE-BARNABY

1 I, Ruth Lytle-Barnaby, MSW, declare and state as follows:

2 1. I am the President and CEO for Planned Parenthood of Delaware (PPDE) and the
3 President and CEO for Planned Parenthood Advocacy Fund of Delaware (PPAFD). I represent the
4 three health centers and mobile care we provide in Delaware. I have been the President and CEO
5 of PPDE and PPAFD since 2012. Before that I spent almost twenty-five years working healthcare
6 in management and executive roles.

7 2. This declaration is based on my personal knowledge, my review of PPDE's and
8 PPAFD's business records, and the knowledge I have acquired in the course of my five years of
9 service and duties at Planned Parenthood. If called and sworn as a witness, I could and would testify
10 competently to the information in this declaration.

11 3. The mission of PPDE and PPAFD is to actively promote reproductive health and
12 responsible sexual behavior through the provision of comprehensive high quality education,
13 counseling and medical services. Delaware operates three health centers, provides care at mobile
14 sites and will serve more than 8,000 unique patients each year.

15 4. As discussed more fully below, the two final rules that the U.S. Health and Human
16 Services Department, in conjunction with the U.S. Department of Labor and U.S. Department of
17 Treasury, issued on November 15, 2018 (Final Rules) would have devastating consequences for
18 the women in Delaware who rely on Planned Parenthood for a variety of reproductive health and
19 family planning care. The Final Rules would also have a devastating impact on the State of
20 Delaware, which reimburses Planned Parenthood affiliates for those patients' care through a
21 combination of state and federal funding. Planned Parenthood provides more than 12,000 patient
22 visits annually, more than 30% of the Delaware women of reproductive age who are in need of
23 publicly funded family planning services. 6,085 (51%) of those visits receive care through
24 programs reimbursed by the State.

25 **I. EMPLOYMENT AND EDUCATION BACKGROUND**

26 5. I received my Bachelors in Social Work (BSW) from East Carolina University in 1982.
27 I then earned my Masters in Social Work (MSW) from the Washington University in St. Louis in
28

1 1984. In 1998, I completed a fellowship with The Health Forum on Creating Healthier
2 Communities.

3 6. My career includes working as a psychotherapist for children and adolescents, creating
4 community partnerships to address senior issues, healthy kids, obesity prevention, prenatal, family
5 education and motor vehicle safety. I have also run a Foundation and Research Department before
6 coming to Planned Parenthood. Much of my work has utilized the social determinants of health.

7 7. PPDE is the Planned Parenthood affiliate for the State of Delaware. It provides services
8 to approximately 8,000 unique patients annually through three clinics and mobile care located at
9 Wesley College and Delaware State University. The care for 28% of our patients is reimbursed
10 through the State's Medicaid program and 16% is reimbursed by Title X.

11 **II. ORGANIZATION AND AFFILIATION**

12 8. PPAFD is a 501(c)(4) organization that leads the state-wide public policy and advocacy
13 work on behalf of Planned Parenthood of Delaware (PPDE).

14 9. PPDE is a Delaware non-profit 501(c)(3) organization that works to provide
15 reproductive health care services in settings that preserve and protect the essential privacy and
16 rights of each individual.

17 10. PPDE has its own Board of Directors, budget, management and staff. It is responsible
18 for delivering health care services in a distinct geographic region. This affiliate provides sexual
19 education and reproductive health care across Delaware through three health centers. In fiscal year
20 2017, these affiliates served more than 8,000 unique patients; 73% were at or below 200% of the
21 federal poverty line. PPDE affiliates provided contraception to nearly 5,600 patients, conducted
22 3,000 pregnancy tests, and provided over 20,000 tests and treatments of sexually transmitted
23 infections. PPDE also provided sexual health education programs to 3,344 youth in Delaware in
24 2016.

25 **III. PLANNED PARENTHOOD'S ROLE IN PROMOTING PUBLIC HEALTH 26 IN DELAWARE**

1 11. Planned Parenthood operates three health centers in Delaware. These health centers are
2 located in Wilmington, Newark and Dover, Delaware. Mobile care is also provided in Kent County,
3 at Wesley College and Delaware State University.

4 12. Planned Parenthood provides reproductive health care services as a “one stop shop”.
5 This means that a patient is able to get an office visit, most relevant lab tests and any needed drugs
6 or supplies at one location without having to travel to a pharmacy or lab testing facility. This service
7 is particularly important for the low income patients we serve who usually do not have the time,
8 money or resources to take additional time off from work or school or the ability to arrange for
9 childcare. It also increases the likelihood that patients will get their tests completed and take the
10 drugs they are prescribed.

11 13. PPDE offers education and counseling on reproductive health for both men and
12 women; the provision of birth control, including emergency contraception; testing of HIV,
13 gonorrhea, chlamydia and the HPV virus; STI treatment; pregnancy testing and services; breast and
14 cervical cancer screenings; colposcopy, LEEP, and safe and legal abortion. In addition, all sites
15 offer PEP and PreP for HIV prevention. Two centers recently started offering prenatal care. This
16 is an overview of the primary services we offer in Delaware: STI tests (58%); contraception (19%);
17 pregnancy tests (9%); abortion (6%); breast exams (3%); Pap tests (2%); HIV tests (2%);
18 emergency contraception (1%).

19 14. 10/1/16 – 9/30/17, Planned Parenthood saw over 8,000 unique patients in almost
20 12,000 appointments. In fiscal year 2017 we served Delaware with:

- 21 a. Contraception to nearly 5,600 patients
- 22 b. More than 300 emergency contraception tests
- 23 c. 3,000 pregnancy tests
- 24 d. Almost 700 cervical cancer screenings
- 25 e. More than 1,000 breast cancer exams
- 26 f. Over 20,000 tests and treatments for sexually transmitted infections

g. Sexual health education programs reaching 3,344 youth.

15. Planned Parenthood primarily serves low income patients in Delaware who have limited access to health care services.

a. Approximately 86% of our patients are women, almost all of those are in the prime reproductive age range of 18 to 39;

b. 73% are below 200% of the federal poverty level (\$24,120 for one person). Of those, 62% are below 138% of the federal poverty level (\$16,643 for one person);

c. The demographics of our patients roughly mirror the demographics of Delaware: 44% are white, 10% are Hispanic, 37% are Black; 3% are multi-racial and 6% other or unknown.

d. Some of our patients are immigrants, and are undocumented. Many speak languages other than English. All health centers have telephone access to translators in 250 languages.

e. We also serve a number of special-needs populations, including people with physical, mental or other social challenges; migrant workers; homeless people; people who experience trauma or domestic violence; people with physical disabilities; patients with limited English skills; and lesbian, gay, bisexual, and transgender people. We have implemented a variety of programs to extend access to these populations and to assure delivery of care that is culturally sensitive and appropriate.

16. Planned Parenthood operates its health centers in medically underserved areas as designated by HRSA. For example, Planned Parenthood operates a health center in Dover (Kent County), with a 12.9% poverty rate.

17. Planned Parenthood clinics are staffed with experienced practitioners at multiple levels. We employ physicians, advanced practice clinicians (physicians' assistants, nurse practitioners, certified nurse midwives, registered nurses) and medical assistants. Each operates

1 within their particular, authorized scope of practice so that health care services are delivered as
 2 efficiently and cost-effectively as possible.

3 18. Patients come to Planned Parenthood for the accurate, nonjudgmental, compassionate
 4 and confidential care and information they need and deserve. Providers are trained to be culturally
 5 competent, which is essential in a State with such a diverse patient base.

6 19. Planned Parenthood of Delaware also engages in advocacy and public education
 7 activities. In 2016, our sexual health education programs reached more than 3,300 youth.

8 **IV. MEDICAID/TITLE X**

9 20. Planned Parenthood of Delaware is engaged in a unique public/private venture with
 10 Upstream USA to decrease the number of unplanned pregnancies by increasing overall access to
 11 all forms of contraception for all Delawareans.

12 21. Approximately 24% of Planned Parenthood's patients receive their health care
 13 through DMMA. Twenty-two percent (22%) are enrolled in the Managed Care Program, described
 14 in greater detail below. Two percent (2%) receive their care through fee-for-service. Delaware
 15 reimburses Planned Parenthood for the care it provides patients through these programs. Pursuant
 16 to Delaware's State Medicaid Plan, the federal government is responsible for covering a portion of
 17 the care, and the State of Delaware covers the remainder. For the majority of the care Planned
 18 Parenthood of Delaware provides through Medicaid, the federal government contributes .90 cents,
 19 while the state contributes .10 cents, for every dollar spent. Except in very rare circumstances, the
 20 State of Delaware does not cover the cost of abortions.

21 22. Planned Parenthood of Delaware participates in the Title X program. Title X provides
 22 comprehensive reproductive health care (minus abortion services) for persons without insurance
 23 based upon a sliding scale. This program is administered through the Delaware Department of
 24 Health and Social Services. Sixty-four percent (64%) of PPDE's patients participate in this
 25 program.

26

27

28

1 23. Family planning, and the consistent use of contraception, is the most cost effective
 2 way to reduce unintended pregnancies.¹ For every 1000 unintended pregnancies, 42% will result in
 3 live births, 13% in miscarriages, and 45% in abortion². Thus, reducing unintended pregnancies
 4 reduces expenses due to fewer delivery, miscarriage or abortion costs.

5 24. In Delaware, 71% of unplanned births are paid for by the State.

6 25. Ninety-nine percent (99%) of sexually active American women 15-44 have used a
 7 contraceptive method other than natural family planning. Delaware statistics: In 2014, publically
 8 funded family planning helped avert 3,600 unintended pregnancies which would have resulted in
 9 1,700 unplanned births and 1,300 abortions. In 2010, 57% of all pregnancies in Delaware were
 10 unintended. In 2014, 50,100 women aged 13-44 were in need of publically funded family planning
 11 services. In 2014, family planning centers served 14,900 clients. This met 30% of the need. In 2010,
 12 public expenditures for family planning client services in Delaware totaled \$7.2 million; this
 13 includes \$5.6 million through Medicaid and \$908,000 through Title X. In 2010, Delaware
 14 contributed \$693,000.³

15 V. NEW FINAL RULES

16 26. I have reviewed and am familiar with the new contraceptive coverage Final Rules.
 17 Under them, any employer that claims a religious or moral objection to providing contraceptive
 18 coverage would be exempt. In addition, the Final Rules remove the mandatory accommodation that
 19 women who were no longer able to obtain birth control through their employer could take
 20 advantage of to ensure continued contraceptive coverage. These expanded exemptions, together,
 21 would effectively make contraceptive coverage optional.

22
 23
 24
 25 ¹ Bixby Center for Global Reproductive Health, UCSF, *Cost-Benefit Analysis of the California Family PACT Program for Calendar Year 2007*, at 6-7, 20 (April 2010).

26 ² CHBRP Contraceptive Report, at 30, citing Kost K., *Unintended Pregnancy Rates at the State Level: Estimates for 2010 and Trends since 2002* (New York 2015).

27 ³ Guttmacher Institute
 28

1 27. If their parent's insurance no longer covers contraceptive care, there is a high
2 likelihood young people insured by their parents will come to Planned Parenthood and qualify for
3 Title X. This will increase costs for the State and federal governments.

4 28. I also believe that Delaware will see an increase in unintended pregnancies as a result
5 of the Final Rules. Those women who do not qualify for Title X may not get contraception.
6 Research suggests that the rate of unintended pregnancy in Delaware among those who are not
7 using contraception is 57%.⁴ Because 71% of births in Delaware are paid for by the State, the State
8 will have increased costs shouldering the costs of delivery. Finally, women who do not qualify for
9 Title X may opt against the most effective forms of birth control, which are more expensive. As a
10 result, they will be at a higher risk of unintended pregnancy.

11 29. Finally, I anticipate that Planned Parenthood of Delaware will have to increase
12 charitable contributions to our assistance funds to help insured patients with high co-pays or
13 deductibles, or who have lost coverage for contraception, afford birth control.

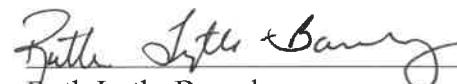
14

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

17

18 Executed on December 5, 2018 in New Castle County, DE.

19



20

Ruth Lytle-Barnaby
President and CEO
Planned Parenthood of Delaware and Planned
Parenthood Advocacy Fund of Delaware

21

22

23

24

25

26

27

28

⁴ Guttmacher Institute