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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 TRINIDAD
NAVARRO, INSURANCE
COMMISSIONER OF DELAWARE**

1 I, Trinidad Navarro, declare and say as follows:

2 1. I am the elected Insurance Commissioner for the State of Delaware. I have served in
3 this capacity since January 3, 2017. The facts stated herein are of my own personal knowledge or
4 are based on information and belief. If called, I could and would competently testify to them.

5 2. As the elected Insurance Commissioner for the State of Delaware, I oversee the
6 Delaware Department of Insurance (the “DDOI”). The DDOI has regulatory authority and
7 jurisdiction over health insurers and health insurance coverage in Delaware. The DDOI does not,
8 however, have jurisdiction over health plans issued by self-insured employers, which are governed
9 by the Employee Retirement Income Security Act (“ERISA”) and regulated by the U.S. Department
10 of Labor, Employee Benefits Security Administration.

11 3. Nearly one-third of all Delawareans, over 300,000 individuals, however, are covered
12 under self-insured plans.

13 4. I am familiar with the new Final Rules that affect contraceptive coverage (the “Final
14 Rules”), which are the basis for the Second Amended Complaint. As drafted, the Final Rules would
15 allow any employer or insurer that asserts a religious or moral objection to providing contraceptive
16 coverage to claim a coverage exemption. The Final Rules further remove the mandatory
17 accommodation for continued coverage for women who cannot obtain birth control through their
18 employer. These expanded exemptions together effectively make contraceptive coverage optional.

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

21 6. As Delaware Insurance Commissioner, I am responsible for enforcing state insurance
22 laws, which have incorporated the Patient Protection and Affordable Care Act’s (“ACA”) mandate
23 that all health insurance coverage include coverage for essential health benefits, including
24 contraceptive coverage with no cost-sharing. 18 Del. C. §§ 3571M and 3610.

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1 7. Since the implementation of the ACA mandates, over 171,575 Delaware women have
 2 benefited from preventative services coverage with no cost-sharing, including FDA-approved
 3 contraceptives, in non-grandfathered plans.¹

4 8. In addition to the ACA mandates requiring access to contraceptive coverage with no
 5 cost sharing, the Delaware General Assembly, consistent with the ACA's coverage mandate, passed
 6 in 2018 legislation requiring all individual, group and blanket health insurance policies delivered
 7 or issued for delivery in the State to provide coverage for all FDA approved prescription
 8 contraceptive drugs and devices and other outpatient services related to the use of such drugs and
 9 services. *See 18 Del. C. §§ 3342A and 3559* (the "2018 Delaware Contraceptive Equity Act").
 10 This legislation also applies to the State employee health plan and public assistance plans. *See 29*
 11 *Del. C. § 5203A; 31 Del. C. § 526.*

12 9. While non-grandfathered plans and individual insurance policies are required to
 13 provide contraceptive coverage at no cost to the insureds, grandfathered plans and policies,
 14 including those for which the 2018 Delaware Contraceptive Equity Act apply, may impose cost
 15 sharing in certain circumstances, "as long as at least 1 drug, device, or other product for that
 16 [contraceptive] method is available without cost-sharing." *See 18 Del. C. §§ 3342A(b)(1)b. and*
 17 *3559(b)(1)b.*

18 10. For group plans, 18 Del. C. § 3559(f) includes a religious employer exemption as
 19 follows: "[a] religious employer may request and an entity subject to this section shall grant an
 20 exclusion from coverage under the policy, plan, or contract for the coverage required under this
 21 section for the insertion and removal and medically necessary examination associated with the use
 22 of FDA-approved drugs or devices if the required coverage conflicts with the religious
 23 organization's bona fide religious beliefs and practices. A religious employer that obtains an
 24 exclusion under this subsection shall provide its employees reasonable and timely notice of the
 25 exclusion."

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 27 ¹<https://aspe.hhs.gov/system/files/pdf/139221/The%20Affordable%20Care%20Act%20is%20Imp%20roving%20Access%20to%20Preventive%20Services%20for%20Millions%20of%20Americans.pdf>
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1 11. The 2018 Delaware Contraceptive Equity Act will provide some protection to
 2 Delawareans in maintaining their contraceptive coverage in the event of changes to federal law.
 3 However, because the State does not have regulatory authority over self-insured plans, other than
 4 its own State employee health plan, the Act does not protect the Delawareans covered under these
 5 self-insured plans. Many people whose health coverage is through employers that self-insure may
 6 not realize that because their coverage is self-funded, the coverage is not subject to state law
 7 protections, including the contraceptive mandate.

8 12. Those at risk of losing access to contraceptives under the Final Rules include not only
 9 female employees of self-insured employers, but also the female dependents of employees covered
 10 by such plans.

11 13. In 2010, Delaware had the highest unintended pregnancy rate in the country, at a rate
 12 of 62 of such pregnancies per 1,000 women aged 15-44.² If the Final Rules are not declared invalid,
 13 some women covered by self-insured employer plans may quickly lose access to contraceptives
 14 and women covered by other employer plans may lose free access to contraceptives, which could
 15 result in an increase in unintended pregnancies.

16 14. Some women who lose access to coverage for contraceptives due to the Final Rules
 17 will likely seek contraceptive services from the family planning programs offered by the Delaware
 18 Division of Public Health. However, in some instances these services come at a cost to the women
 19 seeking these services and eligibility is limited to low-income Delawareans with incomes less than
 20 250% of the federal poverty level. Women with incomes above 250% of the federal poverty level
 21 who do not seek services from the Division of Public Health will be faced with the burden of
 22 bearing the full cost of contraceptive services and products if the Final Rules are not stricken.

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² <https://www.guttmacher.org/fact-sheet/state-facts-publicly-funded-family-planning-services-delaware>

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

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5 Executed on December 5th, 2018 in Kent County, Delaware.

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Trinidad Navarro

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Trinidad Navarro

Delaware Insurance Commissioner

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