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8  
 9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11  
 12 **THE STATE OF CALIFORNIA; THE**  
 13 **STATE OF CONNECTICUT; THE STATE**  
 14 **OF DELAWARE; THE STATE OF**  
 15 **HAWAII; THE STATE OF ILLINOIS;**  
 16 **THE STATE OF MARYLAND; THE**  
 17 **STATE OF MINNESOTA; THE STATE OF**  
 18 **NEW YORK; THE STATE OF NORTH**  
 19 **CAROLINA; THE STATE OF RHODE**  
 20 **ISLAND; THE STATE OF VERMONT;**  
 21 **THE COMMONWEALTH OF VIRGINIA;**  
 22 **THE STATE OF WASHINGTON; THE**  
 23 **DISTRICT OF COLUMBIA,**

4:17-cv-05783-HSG

**DECLARATION OF RANDIE C. CHANCE, Ph.D**

Plaintiffs,

v.

24 **ALEX M. AZAR, II, IN HIS OFFICIAL**  
 25 **CAPACITY AS SECRETARY OF THE U.S.**  
 26 **DEPARTMENT OF HEALTH & HUMAN**  
 27 **SERVICES; U.S. DEPARTMENT OF**  
 28 **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.

I, Randie C. Chance, Ph.D., 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 Director of the new Department of Justice Research Center (the Research Center) within the California Justice Information Services Division of the California Department of Justice (CA DOJ).

3. The Research Center provides several functions to improve the work of the CA DOJ. Among other things, the Research Center supports divisions with their mandated reports by providing guidance and expertise on the content and the display of data in these reports; provides empirical research to improve social science research cited in the CA DOJ's litigation, in the development of legislative and policy proposals and in review of our law enforcement practices; and provides research and reports on public policy issues confronting California that affect the work of the CA DOJ.

4. I have worked for the CA DOJ since 2014. Prior to my current appointment, I served as the CA DOJ's lead researcher on a wide variety of research topics such as police practices, racial profiling and stop data, and issues related to immigration. I have also been leading a research team working to release criminal justice data for public access, and process data requests in support of the research community. Previously, I was a Senior Associate with a consulting firm examining social issues through services such as program evaluation, statistical consulting, and survey design and research.

5. I completed my doctorate in Psychology with a focus on Applied Social Psychology and Diversity Issues at Southern Illinois University Carbondale. I received a master's degree in Experimental Psychology and bachelor's degree in Psychology from the California State

1 University at San Marcos. I have been conducting research on social justice topics for nearly 15  
2 years.

3 6. I have reviewed the final moral and religious exemption rules and the moral and  
4 religious interim final rules (IFRs), issued by the U.S. Department of Health and Human Services,  
5 the U.S. Department of the Treasury, and the U.S. Department of Labor (the Departments).  
6 Because the final moral rule claims that only 15 women may be affected by its provisions, I focus  
7 on the final religious rule in which the Departments give detailed estimates of the numbers of  
8 women who may be affected.

9 7. In the final religious exemption rule, the Departments use two methods to calculate the  
10 number of women who may be affected by the unavailability of contraception. I discuss the  
11 calculation methods in greater detail in the next few paragraphs. Yet in any case, in the rule the  
12 Departments admit that women will be harmed by losing cost-free access to contraception.

13 8. The first calculation method is based on the numbers of entities that have sued  
14 combined with entities that may switch from the accommodation to the exemption. This method  
15 yields an estimate of 70,500 women nationwide who would lose access to cost-free contraception.  
16 The second method, based on demographic calculations of the insured workforce, yields an  
17 estimate of 126,400 women.

18 The Final Religious Exemption Rule's First Estimate: 70,500 women

19 9. This calculation in the final rule relies on the numbers of litigating entities and  
20 estimates of the numbers of accommodated entities that would switch to the exemption, and gives  
21 a total of 70,500 women. In the calculation of both components of this estimate, the rule makes  
22 use of data from the 2010 census indicating women aged 15-44 comprise 20.2 percent of the U.S.  
23 population. (This calculation is problematic, as I discuss in paragraphs 16-17.)

24 10. I apportioned the harm from the first estimate –70,500 women total –to the plaintiff  
25 states using the proportion of women aged 15-44 in each plaintiff state, per the 2010 census.  
26 Table A1 gives the state-by-state data, and Table A2 apportions the overall harm to 70,500  
27 women to the plaintiff states (rounded to nearest hundred).

28 //

Table A1: State-by-state percentages of women aged 15-44 per the 2010 census

		F 15-44 2010 census
All U.S.	Number	62,374,964
California	Number	7,876,871
	Percentage of U.S.	12.63%
Connecticut	Number	691,265
	Percentage of U.S.	1.11%
Delaware	Number	179,232
	Percentage of U.S.	0.29%
Hawaii	Number	262,107
	Percentage of U.S.	0.42%
Illinois	Number	2,631,753
	Percentage of U.S.	4.22%
Maryland	Number	1,193,402
	Percentage of U.S.	1.91%
Minnesota	Number	1,045,681
	Percentage of U.S.	1.68%
New York	Number	4,047,947
	Percentage of U.S.	6.49%
North Carolina	Number	1,949,350
	Percentage of U.S.	3.13%
Rhode Island	Number	214,647
	Percentage of U.S.	0.34%
Vermont	Number	118,297
	Percentage of U.S.	0.19%
Virginia	Number	1,652,698
	Percentage of U.S.	2.65%
Washington	Number	1,355,704
	Percentage of U.S.	2.17%
District of Columbia	Number	162,314
	Percentage of U.S.	0.26%
Plaintiff Total	Number	23,381,268
	Percentage of U.S.	37.49%

Table A2: Harm apportioned according to the percentages in Table A1

California	8,900
Connecticut	800
Delaware	200
Hawaii	300
Illinois	3,000
Maryland	1,300
Minnesota	1,200
New York	4,600
North Carolina	2,200
Rhode Island	200
Vermont	100

Virginia	1,900
Washington	1,500
District of Columbia	200
<b>Plaintiff Total</b>	<b>26,400</b>

The Final Religious Exemption Rule's Second Estimate: 126,400 women

11. The second estimate of 126,400 affected women relies on two independent sets of federal statistics that can each be broken down by state. State-by-state data for each data set are presented in Tables B1 and B2, and Table B3 shows the apportionment of the 126,400 women by the various methods discussed (rounded to the nearest hundred).

12. First, the calculation in the rule uses the numbers of women under age 65 and between ages 15 and 44 from the 2017 American Community Survey (ACS): 137,021,411 women under 65 and 64,030,796 women aged 15-44.<sup>1</sup> If we compare these numbers with the state-by-state figures from the 2017 ACS, we can estimate the percentage of the 126,400 women who would reside in each plaintiff state. Since the age distributions of each state differ, I get slightly different results if I base the apportionment on a state's share of women under age 65 versus on a state's share of women aged 15-44.

**Table B1: State-by-state percentages of women per the 2017 ACS**

		F under 65 2017 ACS	F 15-44 2017 ACS
<i>All U.S.</i>	<i>Number</i>	<i>137,021,411</i>	<i>64,030,796</i>
California	Number	16,825,212	8,103,747
	Percentage of U.S.	12.28%	12.66%
Connecticut	Number	1,497,628	673,900
	Percentage of U.S.	1.09%	1.05%
Delaware	Number	400,226	181,538
	Percentage of U.S.	0.29%	0.28%
Hawaii	Number	571,570	265,283
	Percentage of U.S.	0.42%	0.41%
Illinois	Number	5,407,686	2,532,430
	Percentage of U.S.	3.95%	3.96%
Maryland	Number	2,603,572	1,193,507
	Percentage of U.S.	1.90%	1.86%
Minnesota	Number	2,325,564	1,065,835
	Percentage of U.S.	1.70%	1.66%
New York	Number	8,403,814	3,996,449

<sup>1</sup> U.S. Census Bureau, ACS 1-Year Estimates, Age and Sex (2017), available at [https://data.census.gov/cedsci/results/tables?q=S0101:%20AGE%20AND%20SEX&ps=table\\*currentPage@1](https://data.census.gov/cedsci/results/tables?q=S0101:%20AGE%20AND%20SEX&ps=table*currentPage@1).

	Percentage of U.S.	6.13%	6.24%
North Carolina	Number	4,356,128	2,025,262
	Percentage of U.S.	3.18%	3.16%
Rhode Island	Number	445,925	211,995
	Percentage of U.S.	0.33%	0.33%
Vermont	Number	252,439	113,778
	Percentage of U.S.	0.18%	0.18%
Virginia	Number	3,599,947	1,692,571
	Percentage of U.S.	2.63%	2.64%
Washington	Number	3,088,021	1,464,469
	Percentage of U.S.	2.25%	2.29%
District of Columbia	Number	315,103	186,250
	Percentage of U.S.	0.23%	0.29%
<b>Plaintiff Total</b>	<b>Number</b>	<b>50,092,835</b>	<b>23,707,014</b>
	<b>Percentage of U.S.</b>	<b>36.56%</b>	<b>37.02%</b>

13. The second estimate also relies on statistics from the U.S. Department of Labor (DOL) on the number of individuals receiving health insurance from various sources, including employer-sponsored insurance (ESI) and Medicare.<sup>2</sup> Individuals with ESI are further broken down into those with insurance from the public sector and those with private sector-sponsored insurance. The rule relies on both the overall number of people with ESI as their primary insurance and the number who have private-sector ESI as their primary insurance. These numbers are not completely consistent with each other, since some states have a larger proportion of public-sector workers. Such states include Maryland and Virginia, likely due to a higher proportion of federal employees who live in these states.

**Table B2: State-by-state percentages of individuals with ESI, per DOL**

		With ESI	Private-sector ESI
<i>All U.S.</i>	<i>Number</i>	<i>168,700,000</i>	<i>131,600,000</i>
California	Number	19,600,000	15,400,000
	Percentage of U.S.	11.62%	11.70%
Connecticut	Number	2,000,000	1,500,000
	Percentage of U.S.	1.19%	1.14%
Delaware	Number	500,000	400,000
	Percentage of U.S.	0.30%	0.30%
Hawaii	Number	800,000	600,000
	Percentage of U.S.	0.47%	0.46%
Illinois	Number	7,400,000	6,200,000
	Percentage of U.S.	4.39%	4.71%

<sup>2</sup> U.S. Department of Labor, Health Insurance Coverage Bulletin (July 25, 2017), at Table 1C, available at <https://www.dol.gov/sites/default/files/ebsa/researchers/data/health-and-welfare/health-insurance-coverage-bulletin-2016.pdf>.

Maryland	Number	3,600,000	2,400,000
	Percentage of U.S.	2.13%	1.82%
Minnesota	Number	3,300,000	2,500,000
	Percentage of U.S.	1.96%	1.90%
New York	Number	10,600,000	8,100,000
	Percentage of U.S.	6.28%	6.16%
North Carolina	Number	5,200,000	4,200,000
	Percentage of U.S.	3.08%	3.19%
Rhode Island	Number	600,000	500,000
	Percentage of U.S.	0.36%	0.38%
Vermont	Number	300,000	300,000
	Percentage of U.S.	0.18%	0.23%
Virginia	Number	4,600,000	3,200,000
	Percentage of U.S.	2.73%	2.43%
Washington	Number	3,900,000	3,000,000
	Percentage of U.S.	2.31%	2.28%
District of Columbia	Number	400,000	300,000
	Percentage of U.S.	0.24%	0.23%
<b>Plaintiff Total</b>	<b>Number</b>	<b>62,800,000</b>	<b>48,600,000</b>
	<b>Percentage of U.S.</b>	<b>37.23%</b>	<b>36.93%</b>

**Table B3: Harm apportioned according to the percentages in Tables B1 and B2**

	By percent of F under 65 (ACS)	By percent of F 15-44 (ACS)	By percent with ESI as primary	By percent with private sector as primary
California	15,500	16,000	14,700	14,800
Connecticut	1,400	1,300	1,500	1,400
Delaware	400	400	400	400
Hawaii	500	500	600	600
Illinois	5,000	5,000	5,500	6,000
Maryland	2,400	2,400	2,700	2,300
Minnesota	2,100	2,100	2,500	2,400
New York	7,800	7,900	7,900	7,800
North Carolina	4,000	4,000	3,900	4,000
Rhode Island	400	400	500	500
Vermont	200	200	200	300
Virginia	3,300	3,300	3,500	3,100
Washington	2,800	2,900	2,900	2,900
District of Columbia	300	400	300	300
<b>Plaintiff Total</b>	<b>46,200</b>	<b>46,800</b>	<b>47,100</b>	<b>46,700</b>

#### Analysis of Calculations

14. In the previous religious IFR, the Departments also gave two estimates: first that 31,700 women and second that 120,000 women would be affected by the loss of cost-free contraceptive access. In the final rule, the Departments use the same method to calculate the first estimate, but a different method for the second. In the following paragraphs I offer a few

1 comments on problems with the calculations used in the rules and the reasons that the final rule  
2 gives different totals.

3 First Estimate:

4 15. The first component is the estimated number of contraceptive-using women of  
5 reproductive age (15-44) who will be affected by the use of the expanded exemption among  
6 litigating entities. This is calculated to be 8,700 in the IFR and 6,400 in the final rule. The  
7 difference between the two exists mainly because in the final rule, the Departments try to remove  
8 from consideration the women who work for entities that have received permanent injunctions. A  
9 key step in the calculation involves multiplying A) the total number of individuals covered by  
10 employer-based insurance at entities that will take the exemption by B) the percent of the overall  
11 population that is women aged 15-44. This step is problematic because it assumes that the  
12 demographics of people with employer-sponsored health insurance resemble the overall  
13 demographics of the country. Because most individuals over age 65 are insured through  
14 Medicare and many children receive insurance through CHIP, the proportion of women aged 15-  
15 44 who have employer-sponsored health insurance is likely much higher than the percentage used  
16 in the estimates (20.2%, based on the 2010 census).

17 16. The second component of the first estimate is an approximation of the number of  
18 women who might be affected by entities that switch from the accommodation to the exemption:  
19 23,000 in the IFR and 64,000 in the final rule. The difference here is due to a large increase in  
20 the number of persons covered by self-insured plans that received user fee reimbursements for  
21 contraceptives in 2017. In the IFR, the Departments relied on 2015 data that 576,000 participants  
22 were covered by such plans; in the final rule, they cite 1,823,000 participants. This  
23 approximately threefold increase in the number of plan participants explains the approximately  
24 threefold increase in this component of the first estimate. Like the first component, this  
25 component also makes use of a problematic calculation using the 20.2 percent of the overall  
26 population that is women aged 15-44. This component also uses the dubious assumption that  
27 large hospital plans will not shift to the exemption, estimating that only 25 percent of individuals  
28



1 covered by plans that received fee reimbursements will be affected by a shift from the  
2 accommodation to the exemption.

3 Second Estimate:

4 17. In the IFR, the second estimate uses as its starting point a 2015 data brief from the  
5 Assistant Secretary of Health and Human Services for Planning and Evaluation, which reports  
6 that 55.6 million women aged 15-64 have health insurance with cost-free preventive services  
7 under the ACA.<sup>3</sup> In the final rule, the second estimate starts from the total number of individuals  
8 under age 65 that receive employer-based health insurance.

9 18. Despite the different starting points, the estimates rely on some of the same  
10 assumptions. They both use a Kaiser Family Foundation (KFF) survey from 2010 to estimate that  
11 6 percent of plans may drop coverage for contraceptives, because 6 percent of plans did not cover  
12 contraceptives before the ACA.<sup>4</sup> This is a problematic assumption for at least two reasons. First,  
13 covering some contraception prior to the ACA is not equivalent to covering all FDA-approved  
14 contraceptive methods free of cost sharing, per the ACA's requirements. Second, though the  
15 results of the KFF survey suggested that 6 percent of firms overall did not cover contraceptives,  
16 the results also indicated that 11 percent for large firms (200 or more employees) did not cover  
17 contraceptives. According to the U.S. Small Business Administration, in 2014 approximately  
18 72.4 million workers (59.8%) were employed at firms with 200 or more employees, compared to  
19 48.6 million (40.2%) at firms with fewer than 200.<sup>5</sup> It would follow that more women were  
20 employed by the 11 percent of large firms that did not offer coverage of contraceptives through  
21 their health plans prior to the ACA.

22 19. Additionally, the estimates in both the IFR and the final rule make use of the same  
23 assumption that one-third of plans that do not offer coverage of contraceptives do so for religious

24 <sup>3</sup> ASPE Data Point (May 14, 2015), available at  
25 <https://aspe.hhs.gov/system/files/pdf/139221/The%20Affordable%20Care%20Act%20is%20Improving%20Access%20to%20Preventive%20Services%20for%20Millions%20of%20Americans.pdf>  
26 f.

27 <sup>4</sup> Kaiser Family Foundation, Employer Health Benefits 2010 Annual Survey (2010),  
available at <https://kaiserfamilyfoundation.files.wordpress.com/2013/04/8085.pdf>.

28 <sup>5</sup> U.S. Small Business Administration, Employer Firms, Establishments, Employment, and Annual Payroll Small Firm Classes, 1992-2014. Available via <https://www.sba.gov/advocacy/firm-size-data>.

1 reasons. This assumed proportion appears to be arbitrary, suggesting that actual number of  
2 affected women could be three times greater.

3 Employees of Entities That Have Expressed Objections to Contraceptive Coverage

4 20. To obtain an estimate of the number of employers that would be likely to choose an  
5 exemption from providing contraceptive coverage, I used the following protocol. This estimate is  
6 not intended to be exhaustive. For instance, it omits employees of for-profit corporations and  
7 students covered by university health plans, among other groups.

- 8 • I searched the amicus briefs that were supported in support of petitioners in *Zubik v.*  
9 *Burwell*, accessed via <http://www.scotusblog.com/case-files/cases/zubik-v-burwell/>.
- 10 • For each entity amicus listed on a brief, I performed internet searches to determine if  
11 the entity was a religious organization exempt from making filings to the Internal Revenue  
12 Service (IRS), a nonprofit organization required to file Form 990 with the IRS, or a for-  
13 profit company.
- 14 • For the nonprofit entities I found, I performed internet searches to determine where  
15 each entity is located or headquartered.
- 16 • For the two amicus entities that were associations—the Council for Christian  
17 Colleges & Universities and the Association of Catholic Colleges and Universities, I  
18 visited their websites to find the names and locations of their member schools.
- 19 • I sorted the nonprofit entities and member schools by state and then I looked at their  
20 Form 990 filings (accessed through [Guidestar.org](http://Guidestar.org)) to determine the number of individuals  
21 employed by the entity in the most recent filing year that was available. This information  
22 was not available for all employer entities.
- 23 • For each state, I tabulated the number of employer entities and the total number of  
24 employees as reported on Forms 990.

25 21. My results from this estimate are summarized in Table C.

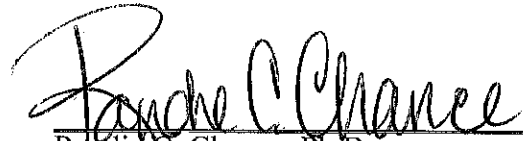
26 **Table C: Employers that have objected to contraceptive coverage and their employees**

State	Number of employer entities	Approximate number of employees
California	25	54,879
Connecticut	4	8,751
North Carolina	4	4,169

Hawaii	1	877
Illinois	21	41,582
Maryland	5	6,460
Minnesota	11	24,413
Rhode Island	2	4,534
Vermont	2	2,278
Virginia	10	3,853
Washington	7	17,239
District of Columbia	12	20,059

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, 18, 2018, in Sacramento, California.



Randie C. Chance, Ph.D.  
Director, Research, Analysis, and Data Center  
California Department of Justice