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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 DELAWARE; THE STATE OF**
 14 **MARYLAND; THE STATE OF NEW**
 15 **YORK; THE COMMONWEALTH OF**
 16 **VIRGINIA,**

17 Plaintiffs,

18 v.

19 **ALEX M. AZAR, II, IN HIS OFFICIAL**
 20 **CAPACITY AS SECRETARY OF THE U.S.**
 21 **DEPARTMENT OF HEALTH & HUMAN**
 22 **SERVICES; U.S. DEPARTMENT OF**
 23 **HEALTH AND HUMAN SERVICES; R.**
 24 **ALEXANDER ACOSTA, IN HIS OFFICIAL**
 25 **CAPACITY AS SECRETARY OF THE U.S.**
 26 **DEPARTMENT OF LABOR; U.S.**
 27 **DEPARTMENT OF LABOR; STEVEN**
 28 **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 DR. CARYN DUTTON

1 I, Caryn Dutton, M.D. M.S., declare:

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3 1. I am an obstetrician-gynecologist based at the Brigham & Women’s Hospital in
4 Boston, Massachusetts (the “Brigham”). I have been a practicing physician for more than 21
5 years.

6 2. I earned my medical degree from the University of Connecticut School of
7 Medicine. I earned my Masters in Science in Applied Biostatistics and Epidemiology from the
8 University of Southern California. My bachelor’s degree in Chemistry is from Amherst College.

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10 3. I currently serve as the Medical Director of the Gynecology Practice at the
11 Brigham (the “Brigham GYN Clinic”). I have held that role for almost 8 years. In that capacity,
12 my responsibilities include leadership for the physician preceptors, supervision of resident clinic
13 sessions, and both development and training relevant to clinical guidelines for the practice of
14 inpatient and ambulatory Gynecology.

15 4. I am also an Instructor at the Harvard Medical School, a role I have held for almost
16 eight years. I serve as the Associate Fellowship Director for the Fellowship in Family Planning at
17 the Brigham/Harvard Medical School.

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19 5. Prior to this work, I was an Assistant Professor in Obstetrics and Gynecology at
20 University of Wisconsin School of Medicine and Public Health in Madison, Wisconsin. I also
21 served as Associate Medical Director at Planned Parenthood of Wisconsin. I completed a
22 fellowship in Family Planning Clinical Care and Research at Los Angeles County/University of
23 Southern California Medical Center, and was a Rabkin Fellow in Medical Education at Beth
24 Israel Deaconess Medical Center.

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26 6. I have been certified by the American Board of Obstetrics and Gynecology since
27 2003.

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1 7. During my career, I have provided care to a diverse population of women and
2 families, both insured and uninsured, in a variety of settings including Planned Parenthood
3 Clinics, academic health centers, regional hospitals, and publicly-funded urban medical centers.

4 8. The Brigham GYN Clinic currently provides over 5,500 patient visits annually,
5 and includes a staff of nine faculty physicians and 44 resident physicians. Approximately one-
6 third of these visits involve contraceptive counseling or prescription.

7 9. Some of Brigham GYN Clinic's patients are students or dependents who are
8 covered on someone else's employer-sponsored health plan. Some of these insured patients
9 receive coverage either from employers located in other states or through insured family members
10 who reside and/or work in other states.

11 10. Some of the patients to whom the Brigham GYN Clinic provides medical services
12 do not have health insurance, do not have coverage for the care they are seeking, or need
13 confidential care and cannot utilize their health insurance for their visit.

14 11. As part of our practice at the Brigham GYN Clinic, we refer patients who cannot
15 utilize their insurance or do not have coverage for the care they are seeking to facilities that can
16 cover patient visits through federal and state funding, including the Massachusetts Department of
17 Public Health's ("DPH") Sexual and Reproductive Health Program ("SRHP").

18 12. As part of our practice at the Brigham GYN Clinic, we assist patients who cannot
19 utilize their insurance or do not have coverage for the care they are seeking in determining
20 whether they are eligible for coverage under the state Medicaid program, MassHealth. If these
21 patients are eligible for MassHealth, as either a primary or secondary insurer, we assist the
22 patients in enrolling in MassHealth.
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1 13. Our practice at the Brigham GYN Clinic includes caring for patients who have
2 medical conditions that require them to take medications that could place a fetus at risk. For these
3 patients, in particular, access to contraception and continuity of care are critical.

4 14. Our practice at the Brigham GYN Clinic includes caring for patients who have
5 medical conditions that put the mother at risk if she were to have an unplanned or unintended
6 pregnancy. For these patients, in particular, access to contraception and continuity of care are
7 critical.

8 15. As a physician and clinical educator, I have long been concerned about the cost of
9 reproductive health care, including contraception, and the impact that cost has on patient access to
10 appropriate care as well as economic and professional opportunity for women.

11 16. Access to contraception is critical for women's health. Planning pregnancies can
12 help women optimize their health prior to pregnancy and minimize pregnancy complications.

13 17. Pregnancy planning is particularly important for the growing population of young
14 women with chronic conditions such as diabetes, hypertension and obesity. Data demonstrate that
15 as the population of pregnant and reproductive-age women with chronic conditions grows, severe
16 pregnancy-related morbidity is rising, and U.S. rates of maternal deaths remain among the highest
17 in the industrialized world. Contraception is one critical tool in addressing this trend.

18 18. Unintended pregnancies also put babies at risk. Effective contraception is essential
19 for the 11.7 million American women annually who need to take medications that would be
20 harmful for a fetus.

21 19. In an unintended pregnancy, a mother is more likely to experience symptoms of
22 postpartum depression. Unplanned pregnancies also create a higher risk of preterm birth and
23 delivery of a low-birth weight infant.

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1 20. Contraception is also crucial for women’s well-being and contributions to society
2 and the economy. Unintended pregnancy is a serious economic burden, while broad access to
3 contraception has a profound impact on women’s attainment of higher education, greater
4 employment and earning power, a narrowing of the gender pay gap.

5
6 21. Historically, cost has been a significant barrier to access to effective contraceptive
7 use in the United States. Some commonly used contraceptives, such as the oral contraceptive pill,
8 are relatively inexpensive but must be purchased on a regular basis, and have a higher failure rate.

9 22. The most effective reversible contraceptive methods are long-acting reversible
10 contraceptive (LARC) methods, such as intrauterine devices (IUDs) and the contraceptive
11 implant. These methods require a one-time purchase and offer months or years of contraceptive
12 coverage. A high upfront cost has been shown to prevent patients from choosing LARC methods.

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14 23. Studies have shown that when contraceptive costs are covered, patients are better
15 able to choose the best form of contraception for them, and that they often prefer LARCs over
16 other contraceptive methods. As a result, rates of LARC utilization have increased and
17 unintended pregnancies have declined.

18 24. The Patient Protection and Affordable Care Act (ACA) had had some promising
19 effects on increasing contraceptive access by requiring insurance coverage without copays or
20 deductibles.

21
22 25. I am familiar with the Final Rules issued by the Defendants in this case, regarding
23 expansion of the exemptions to the contraceptive mandate under the ACA.

24 26. It is my understanding that approximately 60% of Massachusetts’ insured are
25 covered through an employer-sponsored health plan, either directly or as a dependent. Many of
26 these individuals have their coverage through self-funded plans, and therefore are not protected
27 by Massachusetts state laws mandating contraceptive coverage.

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1 27. If the Final Rules are permitted to go into effect, I anticipate that some women in
2 Massachusetts will lose coverage for contraceptive services as a result of their employer's
3 exercise of one of the exemptions.

4 28. When any of those women visit the Brigham GYN Clinic for contraceptive
5 services, we will help them find alternative means to cover the cost of their care, including by: (i)
6 determining if they are eligible for MassHealth coverage (as a secondary payer) so they can
7 continue their care with us; or (ii) determining if they may qualify for coverage through DPH's
8 SRHP funding and can see a provider at a facility that receives such funding.

9 29. The women and families impacted by the Final Rules will come from a wide range
10 of social and economic backgrounds.

11 30. The Final Rules will also impact health outcomes for women, including for those
12 women who are eligible for alternative forms of coverage, such as MassHealth and DPH's SRHP.
13 Even minor obstacles to contraceptive care, including additional doctor's visits, finding a new
14 provider, and cost can deter utilization of contraception, which can in turn increase the risk of
15 unintended pregnancies.
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20 I declare under penalty of perjury that the foregoing is true and correct and of my own
21 personal knowledge.

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23 EXECUTED ON December 17, 2018 in Boston, Massachusetts.

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27 _____
28 Dr. Caryn Dutton