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 11 **IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 THE STATE OF CALIFORNIA; THE  
 13 STATE OF DELAWARE; THE STATE OF  
 MARYLAND; THE STATE OF NEW  
 14 YORK; THE COMMONWEALTH OF  
 VIRGINIA; THE STATE OF  
 15 WASHINGTON,

16 Plaintiffs,

17  
 18 v.

19 ALEX M. AZAR, II, in his Official Capacity  
 as Secretary of the U.S. Department of Health  
 20 & Human Services; U.S. DEPARTMENT OF  
 HEALTH AND HUMAN SERVICES; R.  
 21 ALEXANDER ACOSTA, in his Official  
 Capacity as Secretary of the U.S. Department  
 22 of Labor; U.S. DEPARTMENT OF LABOR;  
 23 STEVEN MNUCHIN, in his Official Capacity  
 as Secretary of the U.S. Department of the  
 24 Treasury; U.S. DEPARTMENT OF THE  
 TREASURY; DOES 1-100,

25 Defendants,  
 26

NO. 4:17-cv-05783-HSG

DECLARATION OF MYRON  
 BRADFORD "MIKE" KREIDLER

1 and,

2  
3 THE LITTLE SISTERS OF THE POOR,  
4 JEANNE JUGAN RESIDENCE; MARCH  
5 FOR LIFE EDUCATION AND DEFENSE  
6 FUND,

Defendant-Intervenors.

7 I, Myron Bradford "Mike" Kreidler, declare as follows:

8 1. I am over the age of eighteen years old, have personal knowledge of all facts and  
9 matters herein, and am competent to testify to the matters below.

10 2. I am the elected Insurance Commissioner for the State of Washington. I was first  
11 elected to this position in 2000. I was reelected to my fifth four-year term in 2016.

12 3. As Insurance Commissioner, I am charged with the regulation of the insurance  
13 market in Washington State through the enforcement of the Insurance Code, Title 48, Revised Code  
14 of Washington, and enforcement of applicable federal statutes that affect insurance. Wash. Rev.  
15 Code § 48.02.060.

16 4. Based on my knowledge and experience as the State's Insurance Commissioner, I  
17 believe that the Final Rules issued on November 15, 2018 will result in women in Washington  
18 losing access to contraceptives and an increase in unintended pregnancies, abortions, and increased  
19 social and economic costs.

20 5. The Office of the Insurance Commissioner (OIC) regulates individual, small group  
21 and large group fully insured health plans in Washington.

22 6. Since 1991, our state has recognized that each individual possesses a fundamental  
23 right to privacy in personal reproductive decisions, including the right to refuse or accept  
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1 | contraceptives. See Wash Rev. Code § 9.02.100. In 2001, my office clarified by rule that plans  
2 | providing comprehensive prescription coverage are also required to cover contraceptives.

3 |         7.         In addition to enforcing Washington State’s Insurance Code, my responsibilities as  
4 | Insurance Commissioner also include implementing and enforcing the federal Patient Protection  
5 | and Affordable Care Act (ACA) and related state laws and regulations in Washington’s health  
6 | insurance market.  
7 |

8 |         8.         I have directed my staff to ensure that health plans filed with my office comply with  
9 | 42 U.S.C. 300 gg-13(a)(4), which requires all health plans (individual, small group, large group,  
10 | and even self-insured health plans) to cover women’s preventive health care services, including  
11 | contraceptive coverage, with no cost-sharing. These federal requirements were recently codified  
12 | into state law in Wash Rev. Code § 48.43.072.  
13 |

14 |         9.         I have directed my staff to enforce state laws and rules addressing contraceptive  
15 | coverage. Washington Administrative Code 284-43-5642, provides that a health benefit plan must  
16 | cover certain essential health benefits, such as “[p]rovider contraceptive services and supplies  
17 | including, but not limited to, vasectomy, tubal ligation and insertion or extraction of FDA-approved  
18 | contraceptive devices” and “[a]ll FDA-approved contraceptive methods, and prescription-based  
19 | sterilization procedures for women with reproductive capacity.” Wash. Admin. Code  
20 | §§ 284-43-5642(1)(a)(vii), (6)(a)(iii).  
21 |

22 |         10.         My staff also administers Washington Revised Code § 48.43.065, the Washington  
23 | State Conscience Clause, which allows individual health care providers, religiously-sponsored  
24 | health carriers, health care facilities, and employers that object to providing a particular service for  
25 | reasons of conscience or religion from being forced to do so. The exemption applies to any health  
26 |

1 care service, not just contraception. However, the Conscience Clause prohibits allowing one  
2 person's personal objection to be the basis for denial of timely access to critical services. Wash.  
3 Rev. Code §§ 48.43.065(1), (2)(b). To that end, health carriers are required to let enrollees know,  
4 in writing, which services the carrier or employer refuses to cover, and provide written  
5 information describing how the enrollee may directly access those services. Wash. Rev. Code  
6 § 48.43.065(2)(b)(i)(ii). In allowing individuals who are providing services to object, but still  
7 requiring access to the individuals seeking those services, the Conscience Clause strikes an  
8 appropriate balance between the individual objecting to a service, and the right of health plan  
9 enrollees to receive contraceptive coverage.  
10

11 11. To ensure this process works appropriately, my office has also issued rules  
12 implementing our Conscience Clause which require carriers who choose to sell plans to employers  
13 objecting to a critical service, such as contraceptive coverage, to demonstrate how enrollees will  
14 have access to critical services at the time the carrier submits their plan to my staff for review. Wash.  
15 Admin. Code § 284-43-5020.  
16

17 12. Washington's contraceptive parity rules and Conscience Clause requirements may  
18 ensure that contraceptive coverage remains in place for many women in Washington, even if the  
19 Final Rules are not overturned. However, there are many women in Washington who remain at risk  
20 of suffering some harm from the rule, even though state law will still require access to contraceptive  
21 coverage.  
22

23 13. For example, our contraceptive parity rules cannot be enforced against employer  
24 self-funded plans, which are governed by the Employee Retirement Income Security Act of 1974.  
25 If the Final Rules are not invalidated, women in Washington State who are enrolled in self-insured  
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1 employer health plans will be at great risk of losing insurance coverage for preventive contraceptive  
2 care.

3 14. Many people whose health coverage is through employers that self-insure do not  
4 realize that their coverage is self-funded and consequently that it is not subject to many of the  
5 protections in state law, including the Washington State contraceptive mandate.  
6

7 15. Some women who lose access to insurance coverage for contraceptives due to the  
8 Final Rules may seek contraceptive services from state programs that offer contraceptive service.  
9 However, these services are not without a cost to the state, and are often limited, based on income.  
10 Women with incomes above those program thresholds will have to bear the increased cost of  
11 contraceptive services, or forgo using contraception all together.  
12

13 16. My office has heard from numerous advocacy groups that imposing any  
14 cost-sharing requirements on contraceptives, even very low copays, can prevent many women from  
15 having meaningful access to contraceptive coverage.

16 17. Since the announcement of the Interim Final Rules, the OIC has already received  
17 calls asking which health insurance policies will be impacted and when women will lose their  
18 contraceptive coverage.

19 18. Women's access to contraceptives and the potential of unintended pregnancy can  
20 impact nearly every aspect of a woman's life including her education, employment and economic  
21 security. The Final Rules permit self-insured employers in Washington State to reject contraceptive  
22 coverage for their employees for any reason, without any mechanism to balance the needs of those  
23 employees and their dependents to receive meaningful access to federally mandated care. This will  
24 negatively affect women's health, well-being, economic security, and productivity. More  
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importantly, it flies in the face of the fundamental right that women in Washington State have to make their own choices concerning their reproductive health.

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED this 18<sup>th</sup> day of December, 2018, at December, Washington.

  
\_\_\_\_\_  
MYRON BRADFORD "MIKE" KREIDLER  
Insurance Commissioner