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 through Attorney General Xavier Becerra*

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

15 **STATE OF CALIFORNIA, BY AND THROUGH**
 16 **ATTORNEY GENERAL XAVIER BECERRA,**

17 Plaintiff,

18 v.

20 **ALEX AZAR, IN HIS OFFICIAL CAPACITY AS**
 21 **SECRETARY OF THE U.S. DEPARTMENT OF**
 22 **HEALTH & HUMAN SERVICES; U.S.**
DEPARTMENT OF HEALTH AND
HUMAN SERVICES; DOES 1-100,

24 Defendants.

**DECLARATION OF BARBARA
 FERRER IN SUPPORT OF A MOTION
 FOR A PRELIMINARY INJUNCTION**

Date: April 18, 2019
 Time: 12:30 p.m.
 Dept: Courtroom 5, 17th Floor
 Judge: The Honorable Edward M.
 Chen
 Trial Date: Not set
 Action Filed: March 4, 2019

1 I, Barbara Ferrer, declare and state as follows:

2 1. I lead the Los Angeles (“LA”) County Department of Public Health, which
3 protects and promotes health and prevents disease among LA County’s more than 10 million
4 residents across 4,000 square miles. I oversee a budget of \$1 billion and direct a workforce of
5 4,100 public health practitioners. I declare that I have personal knowledge of the facts stated
6 herein and, if called as a witness, I would testify competently thereto.

7 2. The ability of women to control family size and desired birth spacing has been one
8 of the most significant public health achievements of the 20th century. Family planning allows
9 women to prevent pregnancy-related health risks, reduces infant mortality, slows unsustainable
10 population growth, enhances education and economic stability, and empowers people.¹
11 Contraception helps women avoid unintended pregnancy, which is associated with prenatal and
12 perinatal consequences, including delayed initiation of prenatal care, use of medications that
13 disturb development during pregnancy, prematurity, low birthweight, and lack of breastfeeding.²
14 The overall rate of abortion in the United States and in California is in decline. Research suggests
15 that these declines partially reflect improved contraceptive use, leading to a decline in the
16 unintended pregnancy rate.³

17 3. Women with unintended pregnancies are more likely to use illicit drugs, smoke, be
18 exposed to environmental smoke, and not take multivitamins or folic acid.⁴ Unintended
19 pregnancies create health and social risks for the children born from them as well as for the
20 parents.⁵ Furthermore, unintended pregnancy both reflects and exacerbates social inequality.

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22 ¹ World Health Organization, “Family Planning/Contraception: Key Facts,”
<https://www.who.int/news-room/fact-sheets/detail/family-planning-contraception>, (accessed
23 March 15, 2019).

24 ² Logan C, Holcombe E, Manlove J, Ryan S. “The consequences of unintended
25 childbearing: A white paper.” THE NATIONAL CAMPAIGN TO PREVENT TEEN PREGNANCY AND
CHILD TRENDS, 2007. [https://www.childtrends.org/publications/the-consequences-of-unintended-
26 childbearing-a-white-paper/](https://www.childtrends.org/publications/the-consequences-of-unintended-childbearing-a-white-paper/); Cleary BJ, Butt H, Strawbridge JD, Gallagher PJ, Fahey T, Murphy
DJ, “Medication use in early pregnancy-prevalence and determinants of use in a prospective
27 cohort of women,” *Pharmacoepidemiol Drug Saf* 2010;19:408–17.

28 ³ Lawrence B. Finer, Ph.D., & Mia R. Zolna, M.P.H. “Declines in Unintended Pregnancy
in the United States, 2008-2011,” *THE NEW ENGLAND JOURNAL OF MEDICINE*, (March 3, 2016)
<https://www.nejm.org/doi/full/10.1056/NEJMsa1506575>.

⁴ World Health Organization, *supra* note 1.

⁵ *Id.*

1 Women with means can plan their reproductive lives in the context of secure income, assured
2 housing, and access to food and other necessities including comprehensive reproductive health
3 care. Poor women, especially those in marginalized communities, live with day-to-day
4 uncertainties that put them at greater risk of unplanned pregnancy and, once pregnant, face
5 challenges in completing their education, pursuing professional opportunities, and ensuring
6 family financial stability.

7 4. Despite its importance, access to comprehensive sexual and reproductive health
8 care is elusive for many women in the United States, especially low-income women. Myriad
9 barriers affect access to contraceptives, health education, and related medical services, including
10 abortion. For women of color, LGBTQ people, and immigrant women who face systemic barriers
11 to accessing health care, the barriers can be life-threatening. Current data indicate a unique (in the
12 developed world) and concerning increase in the rate of maternal mortality in the United States,
13 and a wide gap in rates for black versus other women in this country. These data highlight the
14 critical importance of allowing women to control the timing of childbirth based on planful
15 attention to maternal health prior to and through pregnancy and maternal ability to avert or
16 terminate pregnancy when it places a woman at risk.

17 5. The current Title X program supports high-quality, culturally sensitive family
18 planning, cervical cancer screening, and STD testing and treatment for low-income, under-
19 insured and uninsured individuals who may otherwise lack access to health care. The current Title
20 X network is demonstrably effective in minimizing gaps in service and supporting sites where
21 publicly funded contraceptive care is needed most. Title X funding helps ensure that American
22 have access to basic, preventive reproductive health care regardless of where they live, how much
23 money they make, their background, or whether or not they have health insurance. The program
24 has been a resounding success; without the contraceptive care provided by Title X funded health
25 centers, the U.S. rates of unintended pregnancy and abortion would be 31% higher, and the teen
26 unintended pregnancy rate would have been 44% higher.⁶

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28 ⁶ Kinsey Hasstedt, “Why We Cannot Afford to Undercut the Title X National Family
Planning Program,” GUTTMACHER INSTITUTE, (January 30, 2017)

1 6. Title X services in LA County are delivered by 23 diverse health agencies
2 operating 117 clinic sites. Title X enables essential outreach and education, quality improvement
3 programs, health education, training, and salary and benefits for family planning clinicians and
4 staff serving about 260,000 people in LA County. Health Centers in LA County receive over \$5
5 million per year in Title X funding.

6 7. The New Rules promulgated by the Department of Health and Human Services
7 will further entrench existing health inequities. Many who rely on Title X–funded providers and
8 services are already marginalized and face other obstacles to obtaining care. Nationally, about
9 21% of Title X patients identify as black or African American and 32% identify as Hispanic or
10 Latino.⁷ Any threat to Title X funding, and the resulting decrease in funds for federally funded
11 health centers that provide reproductive health care, would result in a dearth of medical care for a
12 vulnerable set of women.

13 8. The New Rules de-emphasize the provision of modern family planning methods
14 and encourage the promotion of abstinence and ineffective “natural” family planning methods.
15 Currently, 93% of Title X sites already offer natural family planning methods.

16 9. The vast majority of women who seek family planning care at Title X sites use and
17 seek contraceptive services. Women seeking contraceptives could find themselves at a federally
18 funded faith-based provider that only offers natural family planning education and does not
19 provide them with a referral or option for securing effective, medically approved contraceptive
20 methods including IUDs, implants, or oral contraceptives. This change denies low income women
21 who need contraception the opportunity to choose the method that is best for their own health and
22 life circumstances, preventing them from benefitting from the broad range of safe, moderately
23 and highly effective contraceptive options now available. Women who seek a means to prevent
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26 <https://www.guttmacher.org/gpr/2017/01/why-we-cannot-afford-undercut-title-x-national-family-planning-program>.

27 ⁷“Title X: The Nation’s Program for Affordable Birth Control and Reproductive Health
28 Care,” Planned Parenthood Action Fund, <https://www.plannedparenthoodaction.org/issues/health-care-equity/title-x>, (last accessed March 20, 2019).

1 pregnancy and visit such agencies will not receive the essential service they request and may have
2 no other access to contraception.

3 10. Directing Title X funds away from reproductive health-focused providers—74%
4 of which offer a full range of contraceptive methods onsite—and toward ideologically motivated
5 single-method providers would sharply diminish patients’ access to a broad range of options. The
6 New Rules will create a two-tiered system in which low-income individuals who rely on Title X
7 for contraception will no longer have access to all available methods of contraception, while those
8 who can afford private insurance will have the luxury of choice. But of course, contraceptive
9 choice should not be a luxury good.

10 11. The New Rule eliminates the requirement that women presenting with a positive
11 pregnancy test receive factual, non-directive counseling about their options. The Title X rules
12 prohibit Title X grantees and subrecipients from providing, promoting, referring for, supporting,
13 or presenting abortion services to patients. Factual, unbiased options counseling is designed to
14 enable health care professionals to help women determine what is best for them, according to the
15 patient’s circumstances, beliefs, and health, with the decision being the woman’s choice. Instead
16 of factual, unbiased counseling, under the New Rule, all women diagnosed with pregnancy in the
17 Title X program must be referred to prenatal care.

18 12. The New Rule arbitrarily limits the optional delivery of pregnancy counseling to
19 doctors and advanced practice providers, which does not reflect how counseling is often delivered
20 in the Title X program and will cause serious disruptions in many Title X settings. For example, a
21 registered nurse or a licensed clinical social worker who has been counseling pregnant patients
22 for a decade would be prohibited from providing any pregnancy counseling.

23 13. Collaboration is a key element of public health practice. The public health
24 infrastructure of a community is composed of a wide variety of agencies and professional
25 disciplines. To be effective, they must work together well. The new rules will impact the ability
26 of any Title X-funded entity to partner with agencies or programs that provide, promote, refer for,
27 or support abortion, creating greater fragmentation of health and public health service delivery.
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1 14. In October 2017, the President signed an executive order that encouraged the
2 spread of loosely regulated health insurance plans whose coverage may exclude contraception. In
3 November 2018, the administration finalized regulations that rolled back the Obama
4 administration's mandate that health plans cover contraception as a no-cost women's preventive
5 health care service, significantly broadening employers' ability to be exempt from the Affordable
6 Care Act's (ACA) contraceptive coverage requirement. The ACA regulations mean that female
7 employees, dependents, and students will no longer be entitled to coverage for the full range of
8 FDA-approved contraceptives at no cost. This change in coverage, combined with the New Rule
9 will result in an even larger group of women who do not have access to contraception.

10 15. The New Rules will have significant public health implications and affect
11 population health by decreasing contraceptive and reproductive choice. The rules destroy a
12 program that has advanced quality family planning services for millions of women, emphasizing
13 methods that are proven to be less effective, and denying women who rely on this program access
14 to modern, effective, FDA-approved methods of family planning.

15 16. The New Rule introduces government-directed coercion into women's health care,
16 prohibiting health care providers and staff from providing patients the facts about their
17 reproductive options and denying women referrals for abortion, even when referrals are
18 specifically requested by patients. The rules deepen inequities for low-income women, who
19 already face the highest rates of unintended and mistimed pregnancy, and for teens, who require
20 access to confidential and comprehensive reproductive health care in order to protect their well-
21 being and safety.

22 17. The New Rule will eliminate the robust reproductive health clinic network that has
23 emerged through Title X, preventing Planned Parenthood and other trusted comprehensive
24 reproductive health service providers from participating in the program. This will greatly decrease
25 the number of women served, especially within the teen population. Overall, the rules will
26 increase unintended pregnancies and undesired births, which are associated with poorer outcomes
27 for women, children, families, and communities. The New Rule degrades women, disrespects
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1 health care providers, ignores scientific progress and clinical evidence, and is an affront to public
2 health principles and practice.

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1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct and that this declaration was executed on March 20, 2019 in Los Angeles,
3 California.

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6 BARBARA FERRER

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