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11  
12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
14

15 CITY AND COUNTY OF SAN FRANCISCO,  
16 Plaintiff,

17 vs.

18 ALEX M. AZAR II, et al.,  
19 Defendants.

20 STATE OF CALIFORNIA, by and through  
21 ATTORNEY GENERAL XAVIER BECERRA,  
22 Plaintiff,

23 vs.

24 ALEX M. AZAR, et al.,  
25 Defendants.

26 COUNTY OF SANTA CLARA et al,  
27 Plaintiffs,

28 vs.

U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, et al.,  
Defendants.

No. C 19-02405 WHA  
*Related to*  
No. C 19-02769 WHA  
No. C 19-02916 WHA

**DECLARATION OF ELIZABETH  
BARNES IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT AND IN  
SUPPORT OF THEIR OPPOSITION  
TO DEFENDANTS' MOTION TO  
DISMISS OR, IN THE  
ALTERNATIVE, FOR SUMMARY  
JUDGMENT**

Date: October 30, 2019  
Time: 8:00 AM  
Dept: 12  
Judge: Hon. William H. Alsup  
Trial Date: None Set  
Action Filed: 5/2/2019

1 I, Elizabeth Barnes, declare:

2 1. I am the President of The Women’s Centers, a group of reproductive healthcare  
3 clinics in the Northeast of the United States that provides abortion care and contraception, among  
4 other services.

5 2. The Hartford Gyn Center in Hartford, Connecticut is one such clinic. It opened in  
6 1978, and is the only independent, state-licensed family-planning clinic in the State of  
7 Connecticut. The clinic also operates a medical residency rotation program.

8 3. I submit this Declaration in support of Plaintiffs’ challenge to the final rule  
9 promulgated by the Department of Health and Human Services (“HHS”) relating to “Conscience  
10 Rights in Health Care” (the “Rule”) and the Rule’s enforcement by the HHS Office of Civil  
11 Rights (“OCR”).

12 4. Hartford Gyn’s mission is to provide women with compassionate abortion care.  
13 We provide abortion through 21 weeks of pregnancy as well as other reproductive health services.  
14 In carrying out this mission, the autonomy of each patient is paramount. The clinic’s practices are  
15 designed to support patients in making their own healthcare decisions free from external  
16 judgment. The clinic also advocates for the reproductive rights of all patients and seeks to effect  
17 corresponding social change.

18 5. Hartford Gyn is a subrecipient of federal Medicaid funding through the state of  
19 Connecticut. I understand that, as a result, Hartford Gyn will be considered a “subrecipient” under  
20 the Rule.

21 6. Connecticut is one of the states that permits the use of state Medicaid funding for  
22 elective abortions, with this funding separated from federal dollars also flowing through the state  
23 program, which can be used to reimburse non-abortion services.

24 7. In 2017, Medicaid funding accounted for 70 % of Hartford Gyn’s income. Private  
25 insurance covered only 17 %, and cash payment and donations from abortion funds made up the  
26 remaining 13 %. While the clinic has not yet finalized these figures for 2018, they will remain at  
27 approximately these levels.

28 8. Abortion services accounted for 66 % of Hartford Gyn’s services in 2017. The

1 remaining 34 % included contraception and a small amount of gynecological care. Although  
2 federal Medicaid dollars do not cover our abortion services, approximately half of the  
3 reimbursement we receive for our contraception and gynecological services originates with HHS.

4 9. Hartford Gyn's survival depends on the receipt of Medicaid funding, in part,  
5 because it receives so few patients who pay for their services privately or are covered by private  
6 insurance. Given the number of hospital facilities and individual physicians who provide  
7 gynecologic services in Connecticut for privately-paying patients, and the fact that the state  
8 Medicaid program reimburses providers for abortions and other services, it is impossible that  
9 Hartford Gyn would ever be able to rely on privately-paying patients to make up for the loss of  
10 federal Medicaid dollars. Reimbursement for gynecological services, a small percentage of our  
11 services, would also be insufficient to make up for the loss of federal Medicaid funding. At  
12 present, the clinic is barely sustained by the income generated by its current patient population.  
13 We exist, not for economic gain, but to pursue our mission of serving women in need of  
14 reproductive healthcare, including abortion and contraception.

15 10. Hartford Gyn would close quickly if it could not receive even a small percentage  
16 of its current income and would certainly close if we lost the sizable reimbursement we receive  
17 for contraception services. The clinic has no reserve funding, and clawback of any amount would  
18 bankrupt the business.

19 11. To the extent that the Rule prevents the clinic from expecting that staff members  
20 interact with all patients without judgment, would permit staff to unilaterally deny patients care  
21 and information, or force us to forego our emergency services and staffing practices, it is contrary  
22 to our mission and unworkable.

23 12. If it takes effect, the Rule will impose immediate administrative costs. Under the  
24 Rule, the clinic must maintain records of its compliance, although the Rule does not specify the  
25 exact form of these records.

26 13. The clinic will also be subject to investigation or inspection, measures which can  
27 be initiated unilaterally by HHS based on a complaint or even in the absence of a complaint. The  
28 Rule is silent as to whether HHS must inform the clinic of an investigation or follow any

1 particular procedure with respect to these investigations or inspections. The Clinic must cooperate  
2 with these measures; although the Rule is also silent as to the specific requirements of such  
3 cooperation. Further, the Rule states that HHS “shall” inspect any clinic based on any complaint  
4 or other information indicating an actual, possible, or threatened violation of the Rule. The Rule  
5 specifies that patient privacy is not grounds for denying access to records, even, apparently,  
6 patients’ unredacted medical records.

7 14. If OCR finds a violation of the Rule, with or without a complaint, OCR is  
8 empowered to withdraw or even clawback our Medicaid funding. I understand that under the  
9 Rule, Connecticut’s Medicaid program as the direct recipient also bears primary responsibility for  
10 our compliance with the Rule, incentivizing the state to fund less reproductive healthcare out of  
11 fear that the state might lose its federal funding. I further understand that under the Rule, the  
12 conduct or activity of contractors is “attributable” to the state for the purposes of enforcement or  
13 liability under the Weldon Amendment, further disincentivizing continued funding to the clinic.  
14 Loss of funding would shutter the clinic.

15 15. Hartford Gyn is unique even among clinics in progressive states for a number of  
16 reasons that would make its closure extremely burdensome for patients and providers.

17 16. First, Hartford Gyn has a broad depth of physician experience and provides  
18 advanced care, including abortion through 21 weeks of pregnancy, not provided by other facilities  
19 in the area. The clinic also employs a certified nurse-anesthetist, a specialized nurse that is rare  
20 and expensive. Hartford Gyn is the only independent abortion provider in Connecticut and the  
21 only non-hospital provider offering abortion care services past 19 weeks of pregnancy. Although  
22 hospital services may be available at some facilities, high cost and limited appointment  
23 availability can push this care out of reach for many people.

24 17. Second, Hartford Gyn sees patients from all walks of life, including low-income  
25 patients who cannot easily access care elsewhere, if at all. Hartford Gyn serves a large number of  
26 low-income patients, many of whom rely on Medicaid insurance, funding support, and/or  
27 discounted services at the clinic to access care. Further, many of Hartford Gyn’s patients often  
28 face difficulties taking time from work, coordinating affordable transportation, and accessing

1 childcare—additional barriers to healthcare access. If Hartford Gyn were forced to close, patients  
2 who rely on the clinic for care will be forced to travel further the access care, compounding the  
3 logistical and financial challenges they face in accessing care, and preventing some from  
4 accessing care altogether, with disproportionate impacts on low-income patients.

5 18. Third, Hartford Gyn is one of the only facilities in the region that trains physicians  
6 in abortion care, especially in the second trimester. Although it does not receive significant  
7 outside funding for this training, it provides this service based on its deep commitment to  
8 supporting the next generation of providers. Currently, residents at Saint Francis Hospital and  
9 Medical Center can receive training from our medical director on Saturdays.

10 19. Fourth, Hartford Gyn has taken a public stance defending reproductive rights,  
11 including in media coverage of the clinic after a “crisis pregnancy center” opened just 30 feet  
12 from our office, in the same complex, and our clinic painted a “yellow brick road” for patients to  
13 follow when entering the clinic. The clinic is a symbol of the determined provision of  
14 constitutionally-protected care in the face of adversity for the reproductive rights movement, and,  
15 correspondingly, a known target of anti-abortion activists.

16 20. Anti-choice protestors target our clinic regularly. They have intimidated and  
17 threatened providers and patients at Hartford Gyn, and have misinformed and shamed our patients  
18 right outside of our clinic. Staff routinely enter the facility briskly out of fear the anti-choice  
19 protestors on the sidewalk or in our courtyard will photograph them, track their vehicle, or cause  
20 violence, and some staff have even been targeted at their homes. Further, according to data  
21 collected by the Feminist Majority Foundation, clinics located near a crisis pregnancy center were  
22 more likely to experience high levels of violence, threats, and harassment. Anti-choice extremists  
23 have bombed clinics, killed providers and staff, threatened and exposed the personal information  
24 of providers and staff, and shamed and humiliated patients. Those who provide this care live  
25 under constant threat.

26 21. For these reasons, the careful screening of potential staff members before hiring is  
27 an essential security precaution at Hartford Gyn. Like that of most private companies, the goal of  
28 an effective background check is to provide an accurate assessment of the applicant’s

1 qualifications. As an abortion provider, however, we also assess additional material related to an  
2 applicant's reputation, reliability, truthfulness, and objectivity based on the very real concern that  
3 an anti-abortion extremist could harm the clinic. We also work to ensure that the patient will be  
4 provided care by someone who supports their right to make decisions about their own healthcare  
5 and will treat patients in a nonjudgmental and supportive manner. This robust process contributes  
6 to the substantial administrative and staff resources expended by facilities providing abortion care  
7 services. The Rule creates an opening for anti-abortion extremists to infiltrate and incapacitate  
8 our clinic by undermining this process and creating threats to security as well as to the basic right  
9 of the patient to non-judgmental supportive care in a safe environment that protects their quality  
10 of care, confidential medical information, and dignity.

11 22. Because our clinic's mission is to provide access to reproductive healthcare  
12 services, for all staff and virtually all others working at the clinic, such as contracted cleaning  
13 staff, working at Hartford Gyn necessarily involves some kind of connection to abortion care or  
14 contraception, and the clinic procedures and practices are designed to ensure our patients receive  
15 the highest quality, non-judgmental care. The clinic must operate efficiently due to its already  
16 limited income, but in order to do so, all staff must perform functions that touch on the provision  
17 of abortion and/or contraception. For example, receptionists' job duties include scheduling  
18 patients for abortion and contraception appointments. Similarly, our bookkeeper's job duties  
19 include preparing billing for all of the services we provide. There is no alternative human  
20 resources structure that could sustain the clinic. To the extent that the Rule would force us to  
21 change our structure, we would be forced to close.

22 23. Similarly, if individual staff could delay or deny care or give incomplete  
23 information about medical options based on their own beliefs, our clinic could not function  
24 properly, particularly in emergency situations. Such actions would disrupt our mission by failing  
25 to honor the beliefs and choices of our patients and by breaking down the trust central to our  
26 model of care and to the sustainability of our business.

27 24. In addition to the staffing and policy issues discussed above, the Rule will create  
28 tremendous uncertainty. Because the Rule is written so broadly, we are unable to determine what

1 our rights and our obligations are under the Rule on the day it goes into effect. Given the Rule's  
2 breadth and lack of clarity, we cannot accurately predict what we must do to comply, particularly  
3 in an emergency, while maintaining our mission and the quality of our patient care. The Rule  
4 puts the clinic in an untenable and unacceptable position.

5 25. If we cannot seek to ensure that our patients receive compassionate, non-  
6 judgmental care from every person they encounter in the clinic, we will no longer serve our  
7 central purpose.

8 26. That purpose is to provide essential reproductive healthcare services, including  
9 abortion and contraception, in a time when such care is stigmatized and threatened in the United  
10 States. The many barriers to care now inherent in healthcare systems—legal restrictions, funding  
11 limitations, stigma, among others—can be insurmountable. For many of our patients, Hartford  
12 Gyn is the provider of last resort.

13 27. We strive to empower patients to make their own, autonomous choices. We  
14 believe that respecting women's autonomy builds stronger communities and positive social  
15 change. This belief inspires our patient-centric approach to care. In order to empower patients to  
16 make decisions that support their health and are best-suited for them, we must provide  
17 comprehensive, medically-accurate information about our patients' medical options. To that end,  
18 we train and expect our staff to support patients with the resources, tools, and medical services  
19 they need to realize their choices.

20 28. When patients arrive at Hartford Gyn, they often comment on the kindness and  
21 compassion of the staff and the holistic care we provide. This response is often in some part the  
22 result of previous ill-treatment at crisis pregnancy centers or other healthcare facilities.

23 29. For example, last year, a 21-year-old patient scheduled an appointment with  
24 Hartford Gyn. On her way to her appointment, the patient and her mother were instructed to enter  
25 Hartford Women's Center, the crisis pregnancy center that opened next to our clinic. An  
26 employee of the crisis pregnancy center told the patient and her mother to "come in here" and  
27 then proceeded to tell her that if she had an abortion, she would be "sinning" and that she "might  
28 not make it out alive." After wasting significant time, being misinformed about numerous aspects

1 of abortion care, and treated with hostility and condemnation, they were ultimately told that  
2 “[t]here is no abortion center here.” Unlike countless other patients faced with the same  
3 misinformation, the patient was able to find her way to her appointment. Once at Hartford Gyn,  
4 the patient reported feeling shame and fear. Our staff spent time with the patient to explain that  
5 she had spoken with someone who was not a medical professional and who had given her false  
6 information. This patient expected and was entitled to unbiased, non-coercive pregnancy  
7 counseling and abortion care from medical professionals.

8 30. Many patients face similar barriers to reproductive healthcare even at legitimate  
9 healthcare institutions, including Catholic hospitals. For an increasing number of communities,  
10 the closest or only hospital is a Catholic hospital operating under the guidance of the *Ethical and*  
11 *Religious Directives for Catholic Health Care Services* which govern certain practices at Catholic  
12 hospitals. Our patients frequently report that after presenting to their closest emergency room for  
13 evaluation, a positive pregnancy test was met with “congratulations!” and a refusal to provide  
14 requested resources or referrals to a center that would offer abortion care services. This refusal to  
15 provide comprehensive options and referrals causes delays in accessing time-sensitive abortion  
16 care, instills shame and fear in patients, and threatens severe health consequences.

17 31. Even at secular hospitals, there are often limits on the scope of care that is  
18 provided, either because of the refusal of an official in power or due to a lack of commitment to  
19 providing comprehensive reproductive healthcare, which is often accompanied by an assumption  
20 that care will remain available at independent providers like Hartford Gyn.

21 32. Women seeking abortion and contraception, and the providers of such care, have  
22 been vilified in many places in the U.S. Anti-abortion activists have caused immeasurable harm,  
23 including killing abortion providers, threatening patients, infiltrating clinics, and spreading false  
24 information about patients, providers, and reproductive healthcare options, among other security  
25 concerns.

26 33. Hartford Gyn serves a special role in the provision of abortion care locally and  
27 nationally, and it is particularly vulnerable to closure if it loses its Medicaid funding. The  
28 community and the broader public consider Hartford Gyn to be a responsible and trustworthy

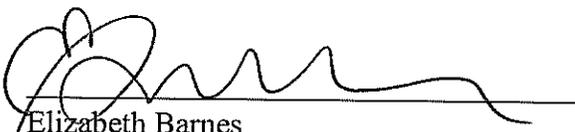
1 medical provider because we have provided nonjudgmental, objective, and compassionate care to  
2 women for four decades.

3 34. We will not continue to operate if we cannot follow our best practices to avoid  
4 further harm to and further stigmatization of patients seeking reproductive healthcare. To the  
5 extent that the Rule is inconsistent with the practices that protect our patients' health, ensure  
6 nondiscrimination, and make it financially and logistically feasible to operate, we will be forced  
7 to risk the loss of all funding and closure.

8 I declare under penalty of perjury under the laws of the United States and the State of  
9 California that the foregoing is true and correct to the best of my knowledge.

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Executed on 8/29/19 in Hartford, Connecticut,

  
Elizabeth Barnes  
President, The Women's Centers