Exhibit 29

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, CITY OF NEW YORK, STATE OF COLORADO, STATE OF CONNECTICUT, STATE OF DELAWARE, DISTRICT OF COLUMBIA, STATE OF HAWAI'I, STATE OF ILLINOIS, STATE OF MARYLAND, COMMONWEALTH OF MASSACHUSETTS, STATE OF MICHIGAN, STATE OF MINNESOTA, STATE OF NEVADA, STATE OF NEW JERSEY, STATE OF NEW MEXICO, STATE OF OREGON, COMMONWEALTH OF PENNSYLVANIA, STATE OF RHODE ISLAND, STATE OF VERMONT, COMMONWEALTH OF VIRGINIA, STATE OF WISCONSIN, CITY OF CHICAGO, and COOK COUNTY, ILLINOIS, Plaintiffs, v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, *in his official capacity as Secretary of the United States Department of Health and Human Services*; and UNITED STATES OF AMERICA, Defendants.	CIVIL ACTION NO. 1:19-cv-04676-PAE

DECLARATION OF MICHAEL LUCCHESI, M.D.

1. I, Michael Lucchesi, M.D., pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

2. I am the Interim Dean of the College of Medicine and Chairman of Emergency Medicine at the Downstate Medical Center of the State University of New York ("SUNY Downstate" or "Downstate") located in Brooklyn, New York. I submit this Declaration in support of the State of New York's litigation against the United States Department of Health and Human Services ("HHS") regarding the recently issued rule entitled Protecting Statutory Conscience Rights in Health Care; Delegations of Authority ("Final Rule"). I have compiled the information in the statements set forth below either through personal knowledge, through Downstate personnel who have assisted me in gathering this information from our institution, or on the basis of documents I have reviewed. I have also familiarized myself with the Final Rule in order to understand its immediate impact upon SUNY Downstate.

3. I was named Officer-in-Charge of SUNY Downstate Medical Center on July 15, 2016, after nearly three decades of service at SUNY Downstate. I was appointed Chair of the Department of Emergency Medicine in 1998, after previously serving as Acting Chair, and am also the Chief Medical Officer of Downstate's University Hospital of Brooklyn. I graduated *magna cum laude* from Boston College with a B.S. in 1979 and earned my medical degree in 1983 from the Universidad del Noreste (Northeastern University) in Tampico, Mexico, and my Fifth Pathway certificate from New York Medical College. I pursued my internship and residency in Internal Medicine at SUNY Downstate and its affiliated Kings County Hospital Center from 1985 to 1988, after which I completed a second residency in Emergency Medicine at Lincoln Hospital in the Bronx. I worked for several years as an attending physician in the Emergency Department of Robert Wood

Johnson University Hospital in New Jersey and then returned to Kings County as an attending physician in 1994. I served as the first Residency Program Director in the Department of Emergency Medicine at SUNY Downstate until I was appointed Chair of the Department in 1997. I am board certified in both Internal Medicine and Emergency Medicine and a fellow of the American College of Emergency Physicians.

4. SUNY is the largest comprehensive university system in the United States, comprised of 64 institutions, including research universities and academic medical centers. SUNY educates approximately 550,000 students in more than 7,500 credit bearing programs and another 850,000 through continuing education and community outreach programs. SUNY employs more than 90,000 faculty and staff and has over 3 million alumni worldwide. Each year SUNY students and faculty across the state make significant contributions to research in the field of medicine, among others.

5. SUNY Downstate, which is part of the SUNY system, is comprised of a University Hospital, College of Medicine, a School of Graduate Studies, a College of Health -Related Professions, a College of Nursing and a School of Public Health. The University Hospital and College of Medicine have a staff of over 800 physicians, representing 53 specialties and subspecialties. The full-service hospital consists of numerous departments, including emergency medicine, surgery, infectious diseases, nephrology, radiology, ophthalmology, pediatrics, and organ transplants. Among the many medical treatments provided to the public, the hospital offers vaccinations, induced abortions, and end-of-life care in the hospital's intensive care unit, including at times, the removal of life support to terminally ill patients. For calendar year 2018, the hospital served our patient communities by providing nearly 12,000 inpatient visits and over 240,000 outpatient visits in addition to over 62,000 patient visits to Downstate's emergency room.

6. The Downstate Medical College, founded 150 years ago, was the first medical school in the country located within a hospital. Today Downstate's medical college is a critical source of doctors for New York State and the New York metropolitan area. Indeed, more physicians practicing in New York City graduate from Downstate than from any other medical school in America.

7. Each year, Downstate receives approximately $100 million in Medicare funds and $50 million in research funds from multiple sources, including approximately $26 million from HHS. The research funds support salaries and equipment for researchers engaged in various research projects in a wide range of medical areas and topics, such as alcoholism, HIV/AIDS, health disparities, genomics, diabetes, and cancer.

Existing Downstate policy to address religious objections

8. The SUNY Downstate community reflects a very diverse population. Its patients, staff, employees and students are comprised of individuals of many racial and ethnic backgrounds who come from a wide range of national origins; they represent all genders, from gender conforming men and women to the full spectrum of the Lesbian, Gay, Bisexual, Transgender and Queer ("LGBTQ") community, and, as individuals, they hold diverse religious, moral, and ethical beliefs. SUNY Downstate is committed to providing outstanding patient care and medical education, while recognizing and accommodating the religious, moral, and ethical beliefs of those who work and train at our institution.

9. Downstate maintains a policy expressly stating that employees have the right not to participate in the treatment of a patient where that treatment presents a conflict with sincerely held cultural values or ethical or religious beliefs. In order to achieve an appropriate balance between the provision of patient care and the beliefs of those who provide such care, Downstate's policy requires an employee to notify Downstate in writing of such objection, in advance of the actual needed

provision of such patient care. Pursuant to the policy, it is an employee's responsibility to notify the institution of any conflict between the specific job duties/assignment and his/her cultural values, ethical, or religious beliefs. If an employee determines that aspects of his/her job responsibilities "conflict with cultural values, ethical holdings or religious beliefs, the employee must submit those concerns in writing to the immediate supervisor." This written notification must include the "specific aspect of care at issue, the basis for the cultural, ethical or religious concern, and the date and time of the original conflict."

10. Downstate's requirement of advance notice of an employee's objection exists for several reasons. First, it assists management at Downstate in having reasoned discussions with an employee concerning the nature and scope of his/her religious objection, in order to properly accommodate the individual before a patient in need of care becomes involved. For example, advance notice allows management personnel to consider whether an employee with an objection to assisting in the performance of abortions should be staffed in the hospital's Obstetrics and Gynecology department, as opposed to another department where the employee is less likely to be confronted with procedures (s)he finds objectionable. Similarly, advance discussion of an employee's religious objection permits Downstate to understand the complete range of procedures that an employee finds objectionable. For example, while the prevailing medical understanding is that medical treatment to address an ectopic pregnancy does not constitute an "abortion" – and is necessary to protect the health or save the life of a woman – some individuals disagree with this prevailing understanding and believe such treatment amounts to the termination of a pregnancy. The scope of an individual's religious objection, fully developed through advance notice and subsequent discussion with Downstate personnel, allows our institution meaningfully to accommodate an employee's religious beliefs.

11. Second, advance notice of an employee's religious objection allows Downstate to make appropriate staffing decisions that take into account such accommodation and the manner in which it could affect patient care. This is particularly important in settings, like emergency room overnight shifts, where the hospital's staffing relies on a team effort, under exigent circumstances, in which patient care could be compromised by the unexpected unavailability of a single employee. In such settings, Downstate has a duty to the communities we serve to ensure that there is no sudden disruption to the provision of medical care that could endanger the lives or safety of patients who come through our doors. Avoiding disruptions in patient care is also a fundamental duty of our institution as a matter of medical ethics.

12. Third, Downstate's policy requiring advance notice of a religious objection is consistent, and seeks to comply, with existing New York State law. For example, New York Civil Rights Law 79-I prohibits discrimination against a person who refuses to perform or assist in performing an abortion, where such person has filed a prior written refusal setting forth the reasons for the refusal. Downstate's policy also seeks to comply with New York State Education Law § 6530(30), which defines professional misconduct to include "abandoning a professional employment by a . . . hospital . . . without reasonable notice and under circumstances which seriously impair the delivery of professional care to patients or clients."

Immediate impact of the Final Rule upon SUNY Downstate and New York

13. The Final Rule has an immediate and damaging impact upon Downstate and the health of the communities it serves in Brooklyn. The management of Downstate – including veteran doctors, ethicists, and hospital lawyers – has struggled to interpret a Final Rule that appears vague and conflicting in parts. Nevertheless, because Downstate is required to comply with the Final Rule, our management has grappled with and reached an understanding that the Final Rule

limits the type of advance notice an employer can seek concerning the religious or moral objections of employees.

14. Specifically, it is Downstate's understanding that it may not inquire, prior to hiring an applicant, if a religious or moral objection would prevent the applicant from performing core duties or responsibilities of the position sought. Once an employee is hired, it is Downstate's understanding that the Final Rule permits an employer to inquire about employees' religious objections no more frequently than once per calendar year—despite the possibility that an employee's religious or moral views could change within a year and affect their willingness to perform certain procedures.

15. It is our management's further understanding that, consistent with the Final Rule, an employee is now free to refuse to provide care to a patient based on a religious or moral objection—even if the employee provides no advance notice of objection and instead objects at the moment care is being sought by a patient, possibly in distress. In such a situation, it is Downstate's understanding that the Final Rule does not permit our hospital to discipline, terminate, or take any adverse action against that employee.

16. It is also Downstate's understanding that any steps we take to use alternate staff to provide any objected-to medical services are impermissible if those steps exclude the objecting employee from a "field of practice" or require "any" additional action by that person. It is our further understanding that any accommodation offered to an objecting employee must be voluntarily accepted by the employee. And in the event an objecting employee rejects an offered accommodation, it is Downstate's understanding that the Final Rule does not permit the hospital to move the employee or replace him/her with another qualified employee no matter how reasonable the offered accommodation. These provisions of the Final Rule wreak havoc upon

Downstate's ability to plan and staff to provide patient care – which in turn harms the public health of communities we serve – in several scenarios.

17. ***Emergency care.*** As a result of the Final Rule, and the risk that any employee may now refuse to provide patient care without advance notice to the hospital, Downstate must create contingency staffing plans to ensure that more than one of each necessary professional is available at all times in its emergency room. The scenario set forth below, a common occurrence in Downstate's emergency room, illustrates the costs and difficulty of ensuring uninterrupted emergency care for patients when any employee can refuse to participate in care without notice.

18. SUNY Downstate is located in an underserved community in which many of our patients use our emergency room in lieu of a primary care physician. Downstate's patient population presents with such a high rate of obstetrical emergencies, including ectopic pregnancies, that a second Obstetrics/Gynecology attending physician is assigned for overnight shifts. Staff in our emergency room regularly encounter women complaining of lower abdominal pain and vaginal bleeding, who are then diagnosed with an ectopic pregnancy. Downstate's emergency room has a high incidence of such ectopic pregnancies – a significantly higher incidence, in my experience, than hospitals serving other communities – and it is a common occurrence for an attending physician to conduct surgery on a woman who enters our emergency room with an ectopic pregnancy.

19. Given budgetary constraints, Downstate does not have extra staff to perform essential functions required for emergency patient care in the event of an ectopic pregnancy. On a given day or night, there is typically one of each type of staff member needed to provide patient care in our emergency room. A woman who arrives at our emergency room with an ectopic pregnancy will encounter between twelve to sixteen staff members in her course of treatment.

20. These staffers include: (i) a triage nurse to make initial patient inquiries and take vital signs; (ii) a clerk to check ID, insurance, and existing hospital records for the patient; (iii) a physician's assistant, nurse practitioner, or medical resident; (iv) an attending physician for the emergency room, who simultaneously covers the pediatric emergency room; (v) a nurse's aide or transport aide who transports the patient; (vi) a circulating nurse who inserts IVs (intravenous therapy access lines), administers medication, and takes blood and urine samples for pregnancy and other tests; (vii) an ultrasound technician to conduct an ultrasound, if a pregnancy test is positive; (viii) a radiologist to interpret the results of an ultrasound; (ix) a lab technician to interpret results of blood tests; and, in the event surgery is required, an operating room team consisting of the attending physician, circulating nurse, and (x) an anesthesiologist; (xi) a scrub nurse in sterilized gear; (xii) operating room supervisor; and (xiii) an operating room technician. Following surgery a patient receives care from a (xiv) recovery room nurse, (xv) mid-level providers and a physician in the recovery room, and (xvi) clerks and other ancillary recovery room staff (*e.g.*, housekeeping/food services staff). Furthermore, in the extremis situation of a ruptured ectopic pregnancy, at least seven different Downstate medical staff members will be providing care to a patient simultaneously.

21. Each of the staffers listed above plays a critical role in an emergency situation, and as we understand the Final Rule's definitions, would have "assisted in the performance" of the emergency medical treatment necessary to address the ectopic pregnancy. Following issuance of the Final Rule, Downstate must prepare for the possibility that any one of these critical staffers could object on religious or moral grounds – without advance notice to Downstate – to assisting in the provision of care to a woman with an ectopic pregnancy. It is the understanding of Downstate's management that, despite whatever notice provisions we seek to impose upon

religious objections by our employees consistent with the Final Rule, our employees still retain the right under the Final Rule to make objection in real time, without sanction or subsequent discipline from Downstate.

22. Given the literally life-or-death nature of providing emergency care, Downstate is actively in discussions about how to staff the emergency room (*e.g.*, double-staffing each essential function) to avoid any staffer abruptly objecting, refusing to provide care, and risking patient care at Downstate. These discussions must now also address the scenario, discussed above, of an emergency room staffer who does provide advance notice of an objection but refuses to accept a reasonable accommodation to be moved from our emergency room, because the functional result is the same: the hospital has one less essential employee to perform a core function required daily in our ER. Such additional staffing is costly, and it is not clear Downstate can feasibly achieve this goal and realistically avoid harm to patient care without jeopardizing or compromising other areas of its operations. In the absence of additional funds from HHS or other sources, Downstate must now evaluate what other essential functions at the hospital could be cut in order to fund additional emergency room staffing.

23. ***End of life care.*** Downstate must also prepare for the possibility that hospital staff may voice religious or moral objections to providing care – without notice – in end of life care settings. Religious or moral objections already occur within Downstate's intensive care unit and emergency room concerning the removal of life-sustaining treatments, such as extubating a terminally ill patient. For example, prior to the Final Rule's issuance, and under the notice regime Downstate has had in place for years, some attending physicians within the hospital's intensive care unit and emergency room provided advance notice to the hospital that they objected to the removal of life-sustaining treatment for religious reasons. Downstate has successfully planned

and staffed its intensive care unit and emergency room to accommodate these doctors and their religious beliefs, while ensuring patient care and avoiding collateral harms to the patient's representatives and loved ones who are present for the removal of life support.

24. Following issuance of the Final Rule, it is the understanding of Downstate's management that, despite whatever notice provisions we seek to impose upon religious objections by our employees consistent with the Final Rule, our employees still retain the right under the Final Rule to make objection in real time, without sanction or subsequent discipline from Downstate. Again, Downstate faces an untenable choice. The hospital must either incur the expense of double-staffing functions within its intensive care unit and emergency room to avoid interruptions to end of life care, or else risk harm to a patient or his/her loved ones if an employee objects to assisting in the removal of life support close to or at the time the procedure is set to occur. An attending physician, nurse, or resident who objects to the removal of life support – when Downstate lacks notice and has not staffed for a replacement – risks extending the life of a patient whose representatives have made the arduous decision to remove life-sustaining treatment. Such an objection also risks inflicting irreparable emotional and dignitary harms upon loved ones who may be present for a scheduled end of life procedure and forced to witness a hospital employee objecting to and, either explicitly or implicitly, sharing his/her views on a monumental and deeply personal decision.

25. The end of life care scenario also demonstrates the harm the Final Rule causes to the medical training Downstate provides through its medical, nursing and health relate professional colleges. If an attending physician or nurse objects to the removal of life support, without advance notice, responsibility for that procedure may fall to another member of the care team in order to avoid delay or needlessly extend the life of the patient beyond the wishes of the patient and his/her

family. Inasmuch as the hospital teams do not have redundancy or duplication of roles, any health team member who suddenly withdraws from participation due to unknown religious or ethical reasons may disrupt medical care for a patient. Essentially, such a person would be following the Final Rule but not the ethical and legal requirement of placing the needs of the patient first. This would be the type of behavior that medical, nursing, and other health professional students would observe. Downstate's medical and nursing education programs are only as good as the professionals our students and residents are present to watch and learn from; in the absence of notice of possible religious objections from medical staff, the quality of Downstate's medical education may not reflect the high standards of patient care which it wishes to exemplify.

26. ***Vaccination programs.*** In numerous contexts of care, Downstate employees provide vaccinations, including pediatric vaccinations, to members of the public. Such vaccinations play a crucial public health role in New York City—a fact made clear with the recent outbreak of measles in our city. The responsibility of Downstate staff to vaccinate is so routine that I estimate some of our nursing staff vaccinate dozens of individuals a day during certain times of the year. In light of the frequency of vaccinations needed by our patient population, and the central role this duty plays in the employment of the hospital's nursing staff, accommodating a job applicant's refusal to provide pediatric vaccinations would, in almost every case, pose an undue hardship on Downstate. However, it is Downstate's understanding of the Final Rule that the refusal to hire a prospective employee who stated such an objection – regardless of the centrality of the task to the job – could expose Downstate to devastating consequences. Indeed, it is our management's understanding of the Final Rule that Downstate cannot even inquire, pre-hire, if a religious or moral objection would prevent the applicant from performing core duties or responsibilities of the position sought. These consequences, as I understand them, include the loss

of federal health-related funds, including the approximately $100 million in Medicare funds and $26 million in research funds Downstate receives annually from HHS.

27. ***Downstate's community reputation.*** Having served at Downstate for nearly three decades, I am keenly aware of the need for health institutions to build trust with the communities they serve. Trust and cultural competency are essential to delivering care to populations, particularly underserved and marginalized populations like some of the ones that Downstate serves. The harms described previously, to emergency or end of life care, are catastrophic ones: it would take only one death in our emergency room, or one employee objecting in front of family in the end of life context, to permanently damage a patient and his/her family, injure the mental health of other participating Downstate staff, and strike a serious blow to the trust our hospital has worked for decades to build among the Brooklyn communities we serve. Once such trust is damaged, it is very difficult to rebuild.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 7 day of June, 2019

Michael Lucchesi, M.D.

Interim Dean of the College of Medicine
& Chairman of Emergency Medicine
Downstate Medical Center of the
State University of New York

Exhibit 30

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, CITY OF NEW YORK, STATE OF COLORADO, STATE OF CONNECTICUT, STATE OF DELAWARE, DISTRICT OF COLUMBIA, STATE OF HAWAI'I, STATE OF ILLINOIS, STATE OF MARYLAND, COMMONWEALTH OF MASSACHUSETTS, STATE OF MICHIGAN, STATE OF MINNESOTA, STATE OF NEVADA, STATE OF NEW JERSEY, STATE OF NEW MEXICO, STATE OF OREGON, COMMONWEALTH OF PENNSYLVANIA, STATE OF RHODE ISLAND, STATE OF VERMONT, COMMONWEALTH OF VIRGINIA, STATE OF WISCONSIN, CITY OF CHICAGO, and COOK COUNTY, ILLINOIS, Plaintiffs, v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, *in his official capacity as Secretary of the United States Department of Health and Human Services*; and UNITED STATES OF AMERICA, Defendants.	CIVIL ACTION NO. 1:19-cv-04676-PAE

DECLARATION OF KATHRYN MACOMBER

I, Kathryn Macomber, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

1. I submit this Declaration in support of the State of Michigan's litigation against the United States Department of Health and Human Services ("HHS"), Alex M. Azar II, in his official capacity as Secretary of the United States Department of Health and Human Services, and United States of America regarding the recently issued rule entitled Protecting Statutory Conscience Rights in Health Care; Delegations of Authority ("Final Rule"). I have compiled the information in the statements set forth below either through personal knowledge, through Michigan Department of Health and Human Services personnel who have assisted me in gathering this information from our institution, or on the basis of documents that I have reviewed. I have also familiarized myself with the Final Rule in order to understand its immediate impact upon the Michigan Department of Health and Human Services.

2. I have worked for the Population Health Administration (PHA) for 17 years, mostly in HIV, STD, and Viral Hepatitis Epidemiology and Programs. I currently serve in an acting Administrative Deputy role with cross-cutting functions across PHA. I have a bachelor's degree in microbiology and a master's degree in Hospital and Molecular Epidemiology.

3. The MDHHS Population Health Administration has serious concerns related to the United States Department of Health and Human Services' rule entitled "Protecting Statutory Conscience Rights in Health Care; Delegations of Authority" (the "Final Rule"). The Final Rule would significantly expand the ability of health care providers to withhold treatment, counseling, or medical information based on their religious or moral beliefs.

4. Many Population Health Administration Programs receive funding either directly from HHS or indirectly from HHS via the Centers for Disease Control and Prevention. MDHHS is a Title X funded program, and the Final Rule could jeopardize the MDHHS Family Planning Program's ability to meet the requirements of the Title X program, including providing services

without discrimination, assuring access to a broad range of contraceptive methods, and providing services to minors. MDHHS is also a Ryan White funded program. The Final Rule could also jeopardize the program's ability to meet the requirements of the program by assuring a range of HIV care including contraceptive counselling, providing services to minors, and HIV treatment.

5. HHS funding is routed to local health departments, medical providers, universities, and local clinics, among others. MDHHS has over 100 contracts to provide clinical services across HIV, STD, Family Planning, and immunizations with subcontracting service providers that would be affected by the Final Rule. These contracts fund a diverse type of clinical staff including physicians, nurse practitioners, medical assistants and RNs. Services provided include HIV care and treatment, HIV testing, STD testing, pregnancy testing and contraceptive counseling, immunizations, immunization counseling, STD treatment, and provision of HIV pre and post-exposure prophylaxis.

6. MDHHS's public health code requires essential public health services, of which HIV/STD services and vaccination is also a requirement.

7. The Final Rule would allow providers to withhold information about FDA-approved contraceptive methods, counseling and referrals to abortion services, emergency contraception information, and vaccinations such as HPV and sterilization services.

8. The Final Rule could also allow providers to deny services to entire Michigan populations, such as minors, unmarried clients, clients living with HIV/AIDS, and LGBTQ people.

9. Clients who are low-income, uninsured or under-insured, or who live in rural communities could be disproportionately affected as alternative health care providers are not readily accessible.

10. The Final Rule does not consider the needs of Michigan clients and could create confusion about the rights and responsibilities of health care providers, entities, and clients and jeopardize the trusted client-provider relationship.

11. Withholding information from clients could also impact their ability to give informed consent for some health care services.

12. The Final Rule will also have impacts for Michiganders and MDHHS in other areas, such as end-of-life care, blood transfusions, vaccinations, substance use disorders, civil rights laws related to employers, and likely many more.

13. Given that health care institutions owned and operated by Michigan will have limited notice, or possibly no notice, if one of their staff objects to the provision of a particular service or activity, those institutions will have to dramatically increase the staff available to serve patients in order to ensure that care is delivered.

14. In order to comply with the Final Rule, undue burden would be put upon the PHA. The PHA would be required to educate our subcontracting service providers concerning compliance with the Final Rule. The PHA would also be required to create written materials explaining the Final Rule to clients who may experience a denial of service in health care, as a result of the Final Rule, and also create a referral network to ensure such clients are still able to receive services from a different provider. In many parts of Michigan there is a single service provider for free, confidential health department services like HIV testing, STD testing and treatment, HIV care, and immunizations. Creating additional access points for Michiganders in need of health services would put undue burden on the State of Michigan.

15. The cost of this parallel staff will be unduly burdensome to the State institutions and to Michigan itself.

16. This is especially true in areas in which there are few other health care providers, such as rural areas, and in areas in which other providers are more likely to be religious and have objections of their own to the provision of certain types of care.

Executed on this 11 day of June, 2019

Kathryn Macomber, MPH

Exhibit 31

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, CITY OF NEW YORK, STATE OF COLORADO, STATE OF CONNECTICUT, STATE OF DELAWARE, DISTRICT OF COLUMBIA, STATE OF HAWAI'I, STATE OF ILLINOIS, STATE OF MARYLAND, COMMONWEALTH OF MASSACHUSETTS, STATE OF MICHIGAN, STATE OF MINNESOTA, STATE OF NEVADA, STATE OF NEW JERSEY, STATE OF NEW MEXICO, STATE OF OREGON, COMMONWEALTH OF PENNSYLVANIA, STATE OF RHODE ISLAND, STATE OF VERMONT, COMMONWEALTH OF VIRGINIA, STATE OF WISCONSIN, CITY OF CHICAGO, and COOK COUNTY, ILLINOIS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, *in his official capacity as Secretary of the United States Department of Health and Human Services*; and UNITED STATES OF AMERICA,

Defendants.

Case No. 1:19-cv-04676

DECLARATION OF DR. JAMES MADARA, MD IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, James L. Madara, M.D., hereby submit the following declaration in support of the Plaintiffs' Motion for a Preliminary Injunction in the above-captioned matter:

I. Introduction

1. I am a Medical Doctor as well as the Chief Executive Officer and Executive Vice President of the American Medical Association (the "AMA"), an Illinois not-for-profit corporation. I am also an adjunct professor of pathology at Northwestern University in Chicago, Illinois.

2. This declaration is submitted on behalf of the AMA and the Litigation Center of the AMA and State Medical Societies ("Litigation Center"). It also represents my personal beliefs.

3. On March 27, 2018, on behalf of the AMA, I submitted a letter to Alex M. Azar II, Secretary of the Department of Health and Human Services describing the AMA's position regarding the Notice of Proposed Rulemaking (Proposed Rule) on "Protecting Statutory Conscience Rights in Health Care; Delegations of Authority," issued by the Office of Civil Rights (OCR) published in the Federal Register on January 26, 2018. That letter is available at https://www.regulations.gov/document?D=HHS-OCR-2018-0002-70564.

4. The Final Rule, which is the subject of this lawsuit, to be codified at 45 C.F.R. § 88.7, would undermine patients' access to medical care and information, impose barriers to physicians' and health care institutions' ability to provide treatment, and create confusion and uncertainty among physicians, other health care professionals, and health care institutions about their legal and ethical obligations to treat patients.

II. About the AMA and the Litigation Center

5. The AMA is an Illinois not-for-profit corporation headquartered in Chicago. It is the largest professional association of physicians, residents, and medical students in the United States. The AMA represents virtually all United States physicians, residents, and medical students through its policymaking process.

6. The objectives of the AMA are to promote the science and art of medicine and the betterment of public health. Since its founding in 1847, the AMA has played a crucial role in the development of medicine in the United States.

7. AMA members practice and reside in all States, including New York. Further, AMA members practice in all areas of medical specialization.

8. The AMA has published its *Code of Medical Ethics* since 1847. This was the first modern national medical ethics code in the world and continues to be the most comprehensive and well-

respected code for physicians, world-wide. The federal judiciary, including the United States Supreme Court, has repeatedly cited to the *AMA Code of Medical Ethics.* [1]

9. The Litigation Center is a coalition among the AMA and the medical societies of each state, plus the District of Columbia, whose purpose is to represent the viewpoint of organized medicine in the courts.

III. Physician Exercise of Conscience is not Unlimited

10. Physicians are members of a profession "dedicated to the wellbeing of their patients," AMA Code of Medical Ethics Opinion 1.1.2 *Prospective Patients*, yet "they are moral agents in their own right." AMA Code of Medical Ethics Opinion 1.1.7. *Physician Exercise of Conscience.* "Physicians should have considerable latitude to practice in accord with well-considered, deeply held beliefs that are central to their self-identities." *Id.* But the exercise of a physician's own beliefs must be balanced against the fundamental obligations of the medical profession and physicians' paramount responsibility and commitment to serving the needs of their patients. AMA Code of Medical Ethics Opinion 1.1.1. *Patient-Physician Relationships.*

11. AMA Code of Medical Ethics Opinion 1.1.7. *Physician Exercise of Conscience* offers guidance on how physicians must weigh their responsibility to deliver competent medical care that could conflict with the physician's own deeply held beliefs.

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[1] *See, e.g., Lilly v. Commissioner*, 343 U.S. 90, 97 n.9 (1952); *Roe v. Wade*, 410 U.S. 113, 144 n.39 (1973); *Bates v. State Bar of Ariz.*, 433 U.S. 350, 369 n.20 (1977); *Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261, 288 & 308 (1990) (O'Connor, J., concurring & Brennan, J., dissenting); *Rust v. Sullivan*, 500 U.S. 173, 214 (1991) (J. Blackmun dissenting); *Washington v. Glucksberg*, 521 U.S. 702, 731 (1997); *Vacco v. Quill*, 521 U.S. 793, 800 n.6 & 801 (1997); *Ferguson v. City of Charleston*, 532 U.S. 67, 81 (2001); *Baze v. Rees*, 553 U.S. 35, 64 & 112 (2008) (Alito, J., concurring); *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 592-93 (2012) (Ginsburg, J., dissenting).

12. The *AMA Code of Medical Ethics* instructs physicians who anticipate a conflict of their personal beliefs with the duties to their patients to:

> "(a) Thoughtfully consider whether and how significantly an action (or declining to act) will undermine the physician's personal integrity, create emotional or moral distress for the physician, or compromise the physician's ability to provide care for the individual and other patients.
>
> (b) Before entering into a patient-physician relationship, make clear any specific interventions or services the physician cannot in good conscience provide because they are contrary to the physician's deeply held personal beliefs, focusing on interventions or services a patient might otherwise reasonably expect the practice to offer.
>
> (c) Take care that their actions do not discriminate against or unduly burden individual patients or populations of patients and do not adversely affect patient or public trust.
>
> (d) Be mindful of the burden their actions may place on fellow professionals.
>
> (e) Uphold standards of informed consent and inform the patient about all relevant options for treatment, including options to which the physician morally objects.
>
> (f) In general, physicians should refer a patient to another physician or institution to provide treatment the physician declines to offer. When a deeply held, well-considered personal belief leads a physician also to decline to refer, the physician should offer impartial guidance to patients about how to inform themselves regarding access to desired services.
>
> (g) Continue to provide other ongoing care for the patient or formally terminate the patient-physician relationship in keeping with ethics guidance."

AMA Code of Medical Ethics Opinion 1.1.7. *Physician Exercise of Conscience.*

13. The Final Rule, through overly broad definitions, which rest on a piecemeal foundation of statutory provisions, frustrates these carefully considered ethical principles and allows physicians and other health care personnel an unconsidered, one-size-fits-all right to decline to *any* part of a health service or program if that guidance conflicts with a moral or religious belief. This represents a reckless indifference to how medicine is practiced and is contrary to the basic precept of the medical profession of beneficence to the patient. AMA Code of Medical Ethics Opinion 1.1.1. *Patient-Physician Relationships.* ("The practice of medicine, and its embodiment in the clinical encounter between a patient and a physician, is fundamentally a moral activity that arises from the imperative to care for patients and to alleviate suffering."); *see also* AMA Code of Medical Ethics Opinion 1.1.7. *Physician Exercise of Conscience* ("Physicians' freedom to act according to conscience is not unlimited, however. Physicians are expected to provide care in emergencies, honor patients' informed decisions to refuse life-sustaining treatment, and respect basic civil liberties and not discriminate against individuals in deciding whether to enter into a professional relationship with a new patient.").

14. For example, the Final Rule's expansive definition of "referral", 84 Fed. Reg. at 23,266-67 (to be codified at 45 C.F.R. § 88.3(h)), which would allow a physician to decline to provide any information whatsoever about an objected-to service, is inconsistent with the term as it is understood in medical practice (*i.e.* to provide the patient with the name of another provider). Refusing to provide any information about an objected-to service goes against the *AMA Code of Ethics*, particularly the physician's duty to uphold the standards of informed consent.

15. Under the ethical mandate of informed consent, "[p]atients have the right to receive information and ask questions about recommended treatments so that they can make well-considered decisions about care." AMA Code of Medical Ethics Opinion 2.1.1 *Informed Consent.* And "withholding information without the patient's knowledge or consent is ethically unacceptable."

AMA Code of Medical Ethics Opinion 2.1.3 *Withholding Information from Patients.* Any rule that interferes with this obligation not only would jeopardize patient safety and trust in the medical profession, it also could expose providers to legal discipline.

IV. Physicians Have an Obligation to Ensure Patient Safety

16. Physicians, "as professionals dedicated to promoting the well-being of patients…individually and collectively share the obligation to ensure that the care patients receive is safe, effective, patient centered, timely, efficient, and equitable." AMA Code of Medical Ethics Opinion 1.1.6. *Quality.*

17. And "[a]s professionals uniquely positioned to have a comprehensive view of the care patients receive, physicians must strive to ensure patient safety and should play a central role in identifying, reducing, and preventing medical errors." AMA Code of Medical Ethics Opinion 8.6. *Promoting Patient Safety.*

18. According to the Final Rule, "assist in the performance" means "to take an action that has a specific, reasonable, and articulable connection to furthering a procedure," which "may include counseling, referral, . . . or otherwise making arrangements for the procedure . . . depending on whether aid is provided by such actions." 84 Fed. Reg. at 23,263 (to be codified at 45 C.F.R. § 88.2).

19. The Final Rule's blanket waiver for health care professionals to decline to "assist in the performance" of *any* procedure that might conflict with a personal belief would create unsafe gaps in the delivery of care, contrary to physicians' ethical and legal responsibilities to their patients.

20. Furthermore, the lack of clarity in the Final Rule regarding the types of procedures that constitute "assistance" or "referrals" would prevent physician and hospital employers from knowing how to appropriately staff treatment and how to institute effective accommodations for employees.

21. In order for medical procedures to run smoothly, and for patient safety to be optimized, physicians must be able to trust the other members of their healthcare team to provide essential

information and services. The Final Rule, which prohibits employers from posing questions to applicants about their willingness to perform particular services prior to hire, and allows providers to opt-out of providing emergency care, impedes the ability to assemble a reliable team. *See* 84 Fed. Reg. at 23,263 (to be codified at 45 C.F.R. § 88.2).

22. Physicians who practice in small medical clinics, offices, and labs may be particularly vulnerable. In order to deliver effective care with limited resources, physicians rely on staff to perform many functions, including scheduling follow up appointments, and, under appropriate supervision, providing counseling and referrals. Small practices may not have the resources to hire redundant personnel for the sole purpose of making sure at least one member of staff is available to provide necessary care to a patient.

V. The Final Rule Undermines the Patient-Physician Relationship

23. The patient-physician relationship is built upon trust, "which gives rise to physicians' ethical responsibility to place patients' welfare above the physician's own self-interest or obligations to others, to use sound medical judgment on patients' behalf, and to advocate for their patients' welfare." AMA Code of Medical Ethics Opinion 1.1.1 *Patient-Physician Relationships.*

24. Not only does the Final Rule throw this relationship out of balance by placing the health care professional's interest above all else, but it permits health care professionals to do so based on personal characteristics that are outside of their patients' control. The Final Rule would allow medical personnel to discriminate at will and refuse service once they find out that a person may be interested in a particular procedure or is part of a particular protected class.

25. This is ethically unacceptable. Physicians are "ethically …called on to provide the same quality of care to all patients without regard to medically irrelevant personal characteristics." AMA Code of Medical Ethics Opinion 8.5 *Disparities in Health Care.* Furthermore, physicians must act to

decrease disparities in health care caused by bias, stereotypes, and other circumstances beyond the patient's control. AMA Code of Medical Ethics Opinion 8.5 *Disparities in Health Care* ("[P]hysicians should [p]rovide care that meets patient needs and respects patient preferences…[a]void stereotyping patients…[and e]xamine their own practices to ensure that inappropriate considerations about race, gender identify, sexual orientation, sociodemographic factors, or other nonclinical factors, do not affect clinical judgment.").

* * *

I declare under penalty of perjury under the laws of the State of Illinois that the foregoing is true and correct.

Executed on June 13th, 2019, in Chicago, Illinois.

James L. Madara, M.D.

Exhibit 32

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, CITY OF NEW YORK, STATE OF COLORADO, STATE OF CONNECTICUT, STATE OF DELAWARE, DISTRICT OF COLUMBIA, STATE OF HAWAI'I, STATE OF ILLINOIS, STATE OF MARYLAND, COMMONWEALTH OF MASSACHUSETTS, STATE OF MICHIGAN, STATE OF MINNESOTA, STATE OF NEVADA, STATE OF NEW JERSEY, STATE OF NEW MEXICO, STATE OF OREGON, COMMONWEALTH OF PENNSYLVANIA, STATE OF RHODE ISLAND, STATE OF VERMONT, COMMONWEALTH OF VIRGINIA, STATE OF WISCONSIN, CITY OF CHICAGO, and COOK COUNTY, ILLINOIS, Plaintiffs, v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, *in his official capacity as Secretary of the United States Department of Health and Human Services*; and UNITED STATES OF AMERICA, Defendants.	CIVIL ACTION NO. 1:19-cv-04676-PAE

DECLARATION OF DR. SANDRA MARTELL

1. I, Dr. Sandra Martell, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

2. I submit this Declaration in support of the State of Illinois's litigation against the United States Department of Health and Human Services ("HHS"), Alex M. Azar II, in his official capacity as Secretary of the United States Department of Health and Human Services, and United States of America regarding the recently issued rule entitled Protecting Statutory Conscience Rights in Health Care; Delegations of Authority ("Final Rule"). I have compiled the information in the statements set forth below either through personal knowledge, through Winnebago County Health Department ("WCHD") personnel who have assisted me in gathering this information from our institution, or on the basis of documents I have reviewed.

3. I am the Public Health Administrator at WCHD located in Rockford, Illinois. I have a Doctor of Nursing Practice and a Master of Science Degree in Public Health Nursing/Family Nurse Practitioner from the University of Illinois at Chicago, as well as a Bachelor of Science degree in Nursing from Loyola University of Chicago. I have been the Public Health Administrator at WCHD since August 2014. Prior to taking that position, I worked in various roles for the Cook County Department of Public Health for 27 years.

4. WCHD provides services designed to protect, promote, and maintain the health of Winnebago County residents. Services address three primary goals: improving the length of useful life, reducing health disparities, and assuring access to preventive health services for every person in Winnebago County.

5. WCHD receives the following HHS funding in subgrants through the Illinois Department of Public Health:

a. $640,015 since July 1, 2017 for diagnosis and treatment of breast and cervical cancer;

b. $161,581 since July 1, 2018 as part of the Title X Family Planning Program to provide voluntary comprehensive family planning services to low-income individuals of reproductive age;

c. $167,588 since July 1, 2018 for Public Health Emergency Preparedness to prevent, mitigate, and recover from the top hazards to the public health;

d. $45,000 since July 1, 2018 for the Dental Sealant Grant Program to provide preventive oral health care, oral health education, and case management to dental homes;

e. $4,035,588 since April 1, 2017 for the Ryan White program to provide lead agency coordination of medical and support services to individuals in Illinois living with HIV/AIDS; and

f. $24,000 since July 1, 2018 to evaluate local Vaccines For Children enrolled-providers to ensure compliance with program requirements.

6. WCHD receives the following HHS funding in subgrants through the Illinois Department of Human Services:

a. $243,585 since July 1, 2018 to address the increasing level of opioid use-related problems among residents of Winnebago County;

b. $150,000 since July 1, 2018 for youth substance abuse prevention programs;

c. $222,300 since July 1, 2018 for refugee health services, including health screenings, health education, promotion, outreach, case management, and interpretation services;

d. $107,544 since July 1, 2018 for the Maternal, Infant and Early Childhood Home Visiting Grant Program to provide intensive home visitation services to new and expectant families;

e. $214,880 since July 1, 2018 for the Maternal & Child Health Program to provide intensive prenatal case management and care coordination services for high-risk pregnant women; and

f. $201,700 since July 1, 2018 to provide case management and care coordination services to high risk infants and children ages 0 – 2 with the goal of reducing infant mortality and morbidity rates.

7. HHS funds are essential to support many of the fundamental services provided by WCHD to the community and to maintaining public health across the state of Illinois.

8. I have been made aware of the Final Rule and believe it may cause significant, immediate impact upon WCHD.

II. HHS Investigation

9. On January 16, 2018, Noel Sterett of Mauck & Baker, LLC filed a complaint of religious discrimination against WCHD on behalf of Sandra Rojas ("Complaint"). Attachment A. The Complaint alleged that WCHD, as a recipient of federal funding, discriminated against Rojas in violation of the Church Amendments, Public Health Service Act, and/or the Weldon Amendment. *Id.* at 1. The Complaint attached a complaint that Rojas filed in Illinois state court against WCHD alleging WCHD discriminated against Rojas for her refusal to participate in abortion or contraception as a nurse at WCHD. *Id.* at Ex. 1.

10. On January 18, 2018, the Winnebago County State's Attorney responded to the Complaint on behalf of WCHD ("Response"). Attachment B. Our Response clarified that WCHD does not provide abortion services and did not terminate Rojas from employment, but rather, she resigned. *Id.* at 1.

11. On March 19, 2019, Luis E. Perez, the Deputy Director of the Conscience and Religious Freedom Division in the HHS Office for Civil Rights, sent an Initial Discovery Request to WCHD about the Complaint. Attachment C. The Initial Discovery Request stated that it was a "notice of an investigation" into allegations that "Ms. Rojas was subjected to unlawful discrimination by [WCHD] for refusing to participate in the provision of abortion-related services in accordance with her religious beliefs." *Id.* at 1. The Initial Discovery Request further stated that HHS's investigation was proceeding under authority granted by the Weldon Amendment, Coats-Snowe Amendment, and Church Amendments. *Id.*

12. The HHS investigation described in the Initial Discovery Request relies on the same federal statutes wielded in the Final Rule. . *See* 84 Fed. Reg. at 23,170, *passim* (to be codified at 45 C.F.R. § 88.2). Thus, HHS could revoke any or all of WCHD's HHS funding under the Final Rule if it goes into effect for any alleged violation found in HHS's investigation described in the Initial Discovery Request.

13. The Initial Discovery Request contains 37 requests for documents and information. Generally, the Initial Discovery Request asks WCHD to provide the following information:

a. Documents related to and the identities of individuals with knowledge of the allegations in the ongoing discrimination lawsuit filed by Rojas against WCHD;

b. How WCHD would respond to various hypothetical scenarios involving Rojas's employment with WCHD had she not resigned;

c. Documents related to any other allegations of religious discrimination made against WCHD at any point in time;

d. WCHD's "understanding of what [HHS] required in 2015 of the [WCHD] as a condition of participating in programs authorized under Title X of the Public Health Service Act." Attachment C at 3;

e. Information related to WCHD's understanding that certain laws mandate "counseling to pregnant women, for which termination of pregnancy is provided as an option, abortion referrals, or contraception." *Id.*;

f. "[T]he legal relationship[s] between the State of Illinois and Winnebago County" and "the State of Illinois and [WCHD]." *Id.* at 6;

g. "[A]ny Federal financial assistance you…have been a recipient or sub-recipient of from HHS in the last four calendar years" *Id.*;

h. "[A]n approximate total of any reimbursements you received from Medicare[,]…Medicaid[,] and the Children's Health Insurance Program[.]" *Id.*;

i. Descriptions of HHS funding that WCHD has received through the Preventive Health and Health Services Block Grant and the Maternal & Child Health Services Block Grant.

14. WCHD received an extension in responding to the Initial Discovery Request. WCHD's response is due to HHS on June 18, 2019.

15. I believe that if the Final Rule goes into effect, HHS will swiftly move to strip WCHD of HHS funding provided through various state agencies in light of the Initial Discovery Request and HHS's ongoing investigation into alleged religious discrimination by WCHD. Thus, WCHD faces a real and imminent threat of loss of over $6 million in HHS funding should the Final Rule go into effect.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 7th day of June, 2019

Dr. Sandra Martell

Public Health Administrator for the Winnebago County Health Department

Exhibit 32
Attachment A

MAUCK & BAKER, LLC

RICHARD C. BAKER
WHITMAN H. BRISKY
JOHN W. MAUCK
NOEL W. STERETT

SORIN A. LEAHU

MICHAEL P. MOSHER,
OF COUNSEL

ONE NORTH LASALLE STREET, SUITE 600
CHICAGO, ILLINOIS 60602

WWW.MAUCKBAKER.COM
TEL: 312.726.1243 FAX: 866.619.8661

January 16, 2018

Via E-Mail and U.S. Mail: OCRComplaint@hhs.gov

Centralized Case Management Operations
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Room 509F HHH Bldg.
Washington, DC 20201

Re: Complaint of Discrimination in Violation of Federal Statutes

Dear Sir or Madam:

Mauck & Baker, LLC, represents Sandra Rojas (also known as Sandra Mendoza), a licensed practical nurse ("LPN") who was subjected to unlawful discrimination by the Winnebago County Health Department, a state agency subject to the Church Amendments (42 U.S.C. § 300a-7), the Public Health Service (PHS) Act (§ 245 (42 U.S.C. § 238n)), and/or the Weldon Amendment (Continuing Appropriations Resolution, Pub. L. No. 113-164, Sec. 101(a) (Sept. 19, 2015)) by virtue of its status as a recipient of federal funding.

Sandra is a pediatric nurse with forty years of experience. She serves as a nurse in furtherance of and in conformance with her religious convictions to care for children. Her religious convictions also prohibit her from performing, assisting in, referring for, or participating in any way with abortion or abortion-causing drugs. Her right to serve as a pediatric nurse without violating her conscience or compromising her religious convictions relating to abortion or abortion-causing drugs are protected by the First Amendment to the United States Constitution, the Constitution of the State of Illinois, the Illinois Religious Freedom Restoration Act, 775 ILCS 35/15, and the Illinois Healthcare Right of Conscience Act, 745 ILCS 70/1 *et seq*, in addition to the federal conscience clauses named above.

For nearly eighteen years, Sandra served as a pediatric nurse at the Winnebago County Health Department and until 2015 was never forced to participate in abortion related services. However, in the summer of 2015, the county's new Public Health Administrator, Dr. Martell, informed Sandra that she could no longer work in the health department clinics if she was unwilling to participate in the provision of abortion related

services. Her termination had nothing to do with her performance as Sandra had recently received the "Employee of the Week" and "Employee of the Quarter" awards.

The attached First Amended Complaint, *Sandra Rojas v. Dr. Martell, et al.*, Case No. 2016 L 160, (attached as Exhibit 1), contains the factual and legal descriptions of specific violations of our clients' rights. The letter from Dr. Martell to Sandra dated June 30, 2015 (Ex. B to the First Amend. Compl.) shows that Dr. Martell informed Sandra that she was basing her decision to terminate Sandra from the clinic environment on account of Sandra's religious convictions and conscientious objections and also on account of the terms of the federal grants the health department receives. The Defendants' "Third Affirmative Defense" (attached as Exhibit 2) shows how the Health Department has tried to justify its unlawful discrimination against Sandra by referring to the terms of Title X and the federal funds it receives. But as the aforementioned federal conscience clauses make plain, Title X and the terms of the federal grants actually *prohibited* Sandra's termination on account of her religious and conscientious objections.

Sandra's state court case is pending before the Circuit Court of Winnebago County in Rockford, Illinois. On February 15, 2018, the court will hold a status hearing at which the judge may rule on the parties' cross-motions for summary judgment.

Please promptly inform us of the actions your office plans to take regarding this violation. Thank you for your attention to this matter.

Sincerely yours,

/s/ Noel W. Sterett
Noel W. Sterett, Esq.

cc: Client
Charlotte LeClercq, Assistant Deputy States Attorney for Winnebago County

EXHIBIT 1

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS

SANDRA ROJAS, LPN, formerly and also known as SANDRA MENDOZA, Plaintiff, v. DR. SANDRA MARTELL, Public Health Administrator of the Winnebago County Health Department, in her official capacity, JAMES POWERS, Chair of the Winnebago County Board of Health, in his official capacity and WINNEBAGO COUNTY, ILLINOIS, Defendants.	Case No. 2016-L-160 TRIAL BY JURY DEMANDED

AMENDED VERIFIED COMPLAINT FOR DAMAGES AND DECLARATORY RELIEF

NOW COMES Plaintiff, SANDRA ROJAS, LPN, formerly and also known as Sandra Mendoza (hereinafter "Ms. Mendoza"), by and through her undersigned attorneys, for her Amended Verified Complaint for Damages and Declaratory Relief against the Defendants Dr. Sandra Martell, the Acting Public Health Administrator of the Winnebago County Health Department, in her official capacity, JAMES POWERS, Chair of the WinnebagoCounty Board of Health, in his official capacity, and WINNEBAGO COUNTY, Illinois alleges as follows:

INTRODUCTION

1. This case is about how the Winnebago County Health Department unlawfully discriminated against Ms. Mendoza, a Licensed Practical Nurse ("LPN") with eighteen years of service in pediatrics with the Health Department, because of Ms. Mendoza's conscientious refusal to participate in any way in abortions or the provision of abortifacient or contraceptive drugs.

2. Damages and declaratory relief are sought under the Illinois Healthcare Right of Conscience Act, 745 ILCS 70/1 *et seq.*; the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1 *et seq.*; and the Illinois Human Rights Act, 775 ILCS 1/1-101 et seq.

PARTIES

3. Plaintiff Sandra Rojas, formerly and also known as Sandra Mendoza, is a resident of Winnebago County, Illinois.

4. The Defendants are Dr. Sandra Martell, RN, DNP, acting Public Health Administrator for the Winnebago County Health Department headquartered at 401 Division St., Rockford, IL 61110, sued in her official capacity; James Powers, acting chair of the Winnebago County Board of Health, in his official capacity; and WINNEBAGO COUNTY, ILLINOIS, the municipal government of which the Winnebago County Health Department is a part.

5. Venue is proper in the Circuit Court of the Seventeenth Judicial Circuit, Winnebago County, Illinois under the pertinent statutes.

MS. MENDOZA'S HEALTHCARE BACKGROUND

6. Ms. Mendoza has been a licensed practical nurse since July 20, 1990.

7. Ms. Mendoza began working for the Winnebago County Health Department on June 6, 1996, and until July 31, 2015, provided nursing services as a nurse in the Pediatric Immunization Clinic including, *inter alia,* immunizations, screenings for blood lead levels, access to medical records, and assessments for the risk of tuberculosis.

8. On May 11, 2014, Ms. Mendoza also began serving in Health Protection and Promotion by providing adult immunization, hearing and vision testing for children, and TB testing for employees.

9. Ms. Mendoza has also worked part-time as a nurse at the Walter Lawson Children's home since 1978 and for Addus Home Health since 2011.

MS. MENDOZA'S RELIGIOUS AND CONSCIENCE-BASED OBJECTIONS TO ABORTION AND CONTRACEPTION

10. Ms. Mendoza is a lifelong, practicing Catholic who seeks to adhere to the commands and Word of God as revealed in the Holy Scriptures and to the teachings of the Catholic Church.

11. The Scriptures and the Church teach that human life is created in the image of God (Genesis 1:27, *Imagio Dei*), begins at conception (Psalms 139:13-16, Didache, 2:2), and should not, therefore, be destroyed (Exodus 20:1, 13, 21:22-25). Catholic doctrine (Humanae Vitae 14) also teaches against contraception by declaring it sinful to participate in "direct sterilization, whether perpetual or temporary, whether of the man or of the woman. Similarly excluded is every action which, either in anticipation of the conjugal act, or in its accomplishment, or in the development of its natural consequences, proposes, whether as an end or as a means, to render procreation impossible."

12. Current and standard human-embryology texts also confirm that the union of a sperm and ovum creates a new and distinct organism—a whole, though developmentally immature, member of the human species. See, e.g. Moore and Persaud's "The Developing Human," Larsen's "Human Embryology," Carlson's "Human Embryology & Developmental Biology," and O'Rahilly and Mueller's "Human Embryology & Teratology."

13. An abortion is the "induced termination of pregnancy, involving destruction of the embryo or fetus." The American Heritage Science Dictionary. Boston: Houghton Mifflin. 2005.

14. Both the U.S. Food and Drug Administration ("FDA") and the manufacturer of "Plan B" acknowledge that it can prevent an already-fertilized egg from implanting in the womb.

15. Ms. Mendoza has religious beliefs, as well as moral and ethical objections, which are in accord with the Word of God, the teachings of the Catholic Church and current science, which prevent her as a matter of conscience from participating in any way in abortions or the provision of abortifacient and contraceptive drugs—including but not limited to the provision of the "Plan B" pill (also known as the "morning after pill"), referrals to abortion providers, and birth control.

16. In 2001, while working for the Health Department Ms. Mendoza, after consultation with her pastor and priest Fr. William Collins of St. Patrick Parrish, informed the Health Department that she could not as a matter of religious practice and conscience participate in any way in the provision of Plan B, contraception, or abortion referrals.

17. Thereafter, Ms. Mendoza continued to work for the Health Department as a nurse in the Health Department's Pediatric Immunization Clinic and did not participate, in any way, in the provision of Plan B, contraception, or abortion referrals.

DEFENDANT'S UNLAWFUL DISCRIMINATION

18. In late 2014, Dr. Sandra Martell was employed by Winnebago County, Illinois, under the supervision of the Winnebago County Board of Health.

19. In or about March 2015, Dr. Martell began to integrate certain clinical services, including integrating the pediatric services with the women's health services.

20. In or about May 2015, Ms. Mendoza informed human resources and Dr. Martell that she could not participate in the provision of birth control, referrals to abortion clinics, or Plan B.

21. On or about July 14, 2015, Dr. Martell sent an e-mail asking Ms. Mendoza for her "...decision regarding the accommodation that is being offered in response to your request outlined in the letter to [Ms. Mendoza] dated June 30, 2015 so that we can implement it as soon

as possible with minimal impact to clients and colleagues...." July 14, 2015 E-mail attached as Exh. A.

22. Since Ms. Mendoza had not received the letter referenced in the e-mail, Ms. Mendoza contacted Ms. Martell on or about July 14, 2015 to inquire about the letter and the e-mail.

23. Ms. Mendoza was then provided a copy of the June 30, 2015 letter (attached as Exhibit B) which had been sent to the wrong address.

24. The letter acknowledges that Ms. Mendoza "conveyed that [her] religious beliefs would not permit [her] to perform a number of the required duties at the combined clinics" but that the Health Department could not "accommodate [Ms. Mendoza] within the clinic environment at the Health Department."

25. The defendant's letter than offered Ms. Mendoza "alternatives outside of the clinics" which consisted of demotion/transfer to a position as a County temporary/part time food inspector or employee at River Bluff nursing home.

26. Ms. Mendoza declined the demotions to temporary, part time food inspector and employee at River Bluff and was therefore forced to resign.

27. Ms. Mendoza could not work at the River Bluff nursing home because, as she informed Dr. Martell, her son Daniel Ortega was employed there as a Registered Nurse and the nursing home had a rule prohibiting working with family members.

28. As a direct and proximate result of defendants' actions as described herein, Ms. Mendoza has suffered damages including loss of income and benefits, pain and suffering, mental anguish, inconvenience, loss of enjoyment of life and other economic and noneconomic losses.

COUNT I

Violation of the Illinois Health Care Right of Conscience Act, 745 ILCS 70/1 *et seq.*

29. Plaintiff incorporates by reference herein all preceding paragraphs.

30. The Health Care Right of Conscience Act states the following:

> It is the public policy of the State of Illinois to respect and protect the right of conscience of all persons who refuse to obtain, receive, or accept, *or who are engaged in, the delivery of, arrangement for, or payment of health care services and medical care whether acting individually, corporately, or in association with other persons*; and to *prohibit all forms of discrimination, disqualification, coercion, disability or imposition of liability upon such persons or entities* by reason of their refusing to act contrary to their conscience or conscientious convictions *in refusing to obtain, receive, accept, deliver, pay for, or arrange for the payment of health care services and medical care.*

745 ILCS 70/2 (emphasis added).

31. Under the Act, "health care" is defined as "any phase of patient care, including but not limited to, … instructions; family planning, counseling, referrals, or any other advice in connection with the use or procurement of contraceptives and sterilization or abortion procedures; [or] medication…." 745 ILCS 70/3.

32. In addition, "health care professional" is defined as "any nurse, nurse's aide, medical school student, professional, paraprofessional or any other person who furnishes, or assists in the furnishing of, health care services." *Id.*

33. "Conscience" is defined as "a sincerely held set of moral convictions arising from belief in and relation to God, or which, though not so derived, arises from a place in the life of its possessor parallel to that filled by God among adherents to religious faiths." *Id.*

34. Section 5 of the Act states the following:

> It shall be unlawful for any person, public or private institution, or public official to discriminate against any person in any manner, including but not limited to, licensing, hiring, promotion, transfer, staff appointment, hospital, managed care entity, or any other privileges, because of such person's conscientious refusal to receive, obtain,

> accept, perform, assist, counsel, suggest, recommend, refer or participate in any way in any particular form of health care services contrary to his or her conscience.

745 ILCS 70/5.

35. Section 7 of the Act states that it is unlawful for any public or private employer, entity, or agency to "... orally question about, to impose any burdens in terms or conditions of employment on, or otherwise discriminate against any applicant, in terms of employment" or to "discriminate in relation thereto, in any other manner" on account of the applicant's refusal to "perform, counsel, suggest, recommend, refer, assist, or participate in any way in any forms of health care services contrary to his or her conscience." 745 ILCS 70/7.

36. Section 9 of the Act states the following:

> No person, association, or corporation, which owns, operates, supervises, or manages a health care facility shall be civilly or criminally liable to any person, estate, or public or private entity by reason of refusal of the health care facility to permit or provide any particular form of health care service which violates the facility's conscience as documented in its ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, regulations, or other governing documents.

745 ILCS 70/9.

37. Section 10 of the Act states the following:

> It shall be unlawful for any person, public or private institution or public official to discriminate against any person, association or corporation attempting to establish a new health care facility or operating an existing health care facility, in any manner, including but not limited to, denial, deprivation or disqualification in licensing, granting of authorizations, aids, assistance, benefits, medical staff or any other privileges, and granting authorization to expand, improve, or create any health care facility, by reason of the refusal of such person, association or corporation planning, proposing or operating a health care facility, to permit or perform any particular form of health care service which violates the health care facility's conscience as documented in its existing or proposed ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, regulations, or other governing documents.

745 ILCS 70/10.

38. Section 12 of the Act provides that "[a]ny person ... injured by any public or private person, association, agency, entity, or corporation by reason of any action prohibited by this Act may commence a suit therefore...." 745 ILCS 70/12.

39. Section 14 of the Act states, "This Act shall supersede all other Acts or parts of Acts to the extent that any Acts or parts of Acts are inconsistent with the terms or operation of this Act." 745 ILCS 70/14.

40. The actions of the defendants, as described herein, violated the rights of Ms. Mendoza under the Illinois Healthcare Right of Conscience Act which also provides that any person injured by reason of an action prohibited by the Act may commence suit and recover treble damages, attorney's fees, and costs.

WHEREFORE, the Plaintiff respectfully requests that:

A) This Court render a Declaratory Judgment, adjudging and declaring that Defendants violated the Illinois Health Care Right of Conscience Act, 745 ILCS 70/1 *et seq.*;

B) This Court and a jury award Plaintiff treble damages, attorney fees, and costs against the Defendants pursuant to, at least, Section 12 of the Health Care Right of Conscience Act; and

C) This Court award such other and further relief as it deems equitable and just.

COUNT II

Violation of the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1 *et seq.*

41. Plaintiff incorporates by reference herein all preceding paragraphs.

42. Section 15 of the Illinois Religious Freedom Restoration Act of 1998, 775 ILCS 35/15 provides that:

> Free exercise of religion protected. Governments may not substantially burden a person's free exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person (i) is in furtherance of a

compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest.

43. As set forth above, the Defendants substantially burdened Ms. Mendoza's free exercise of religion and will be unable to bear the burden of proving that the substantial burden is justified by a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

WHEREFORE, the Plaintiff respectfully requests that:

A) This Court render a Declaratory Judgment, adjudging and declaring that Defendants violated the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1 *et seq.*;

B) This Court and a jury award Plaintiff damages, attorney fees, and costs against the Defendants pursuant to Section 20 of the Illinois Religious Freedom Restoration Act.

C) This Court award such other and further relief as it deems equitable and just.

Respectfully submitted this 13th day of July, 2016.

Noel W. Sterett, Ill. Bar No. 6292008
Mauck & Baker, LLC

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Counsel for Plaintiffs

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that she is authorized to make this verification by certification, that the statements set forth in the Amended Verified Complaint for Damages and Declaratory Relief are true and correct, except as to matters therein stated to be on information and belief, and that as to such matters the undersigned certifies as foresaid that she verily believes the same to be true.

As to paragraphs 1, 3, 6 to 10, 15 to 28 in this Amended Verified Complaint for Damages and Declaratory Relief, Plaintiff verifies these statements to be true.

Sandra Rojas

Plaintiff Sandra Rojas, LPN formerly and also known as Sandra Mendoza

July 13, 2016

EXHIBIT A

Sandra Mendoza

From:	Sandra Martell
Sent:	Tuesday, July 14, 2015 8:07 AM
To:	Sandra Mendoza
Cc:	Kimberly Ponder; Charlotte LeClercq
Subject:	Accommodation Decision

Sandra,

Please inform me of your decision regarding the accommodation that is being offered in response to your request as outlined in the letter to you dated June 30, 2015 so that we can implement it as soon as possible with minimal impact to clients and colleagues. I also left you a voice mail message as well.

Best,

Sandra Martell, RN, DNP
Public Health Administrator
Winnebago County Health Department
P.O. Box 4009
401 Division Street
Rockford, IL 61110-0509
PH: 815.720.4200 FAX: 815.720.4002

EXHIBIT B

WCHD Winnebago County Health Department

Promoting a Safer and Healthier Community Since 1854

Sandra Martell, RN, DNP
Public Health Administrator

June 30, 2015

Sandra Mendoza, LPN
1721 South Main Street
Rockford, IL 61102

Dear Ms. Mendoza:

On June 24, 2015, you approached management at the Health Department requesting a religious accommodation due to the consolidation of duties at the various Health Department clinics which is to occur on July 1, 2015. You are currently working in the Pediatric Immunization Clinic and indicated a preference to stay with pediatrics. You conveyed that your religious beliefs would not permit you to perform a number of the required duties at the combined clinics. Unfortunately, business necessity has compelled the consolidation of the clinics, including the Pediatric Immunization Clinic, requiring cross-training of all employees.

We have diligently considered your request for an accommodation and have determined that we cannot accommodate you within the clinic environment at the Health Department. The terms of the grants that we work under require the nursing staff in the clinics to utilize a non-directed approach with our clients. Frequently this will involve job duties that you have indicated are objectionable to you. We have determined that we cannot segregate you, as the only full-time Licensed Practical Nurse (LPN), from these job duties without creating an undue hardship for the other employees in the clinics and the Health Department as a whole.

While we cannot accommodate you in the Health Department clinics, we can offer some alternatives outside of the clinics. The first position would be as a temporary part-time food inspector for the Health Department. The second would be as an LPN at River Bluff Nursing Home, which is owned by the County of Winnebago. Should you have any questions or be interested in either of these positions, please let me know and we can assist you or direct you to the appropriate personnel to assist you.

I realize that you have a lot to consider. We will continue to make a temporary accommodation for you for the next fourteen (14) days to give you time to decide what you would like to do. I look forward to your response within that time frame.

Sincerely,

Sandra Martell, RN, DNP
Public Health Administrator

Cc: Lisa Gonzalez – Center Director, Family Health Services
Kim Ponder - Winnebago County, Director of Human Resources
Charlotte LeClercq – State's Attorney

EXHIBIT 2

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS

SANDRA ROJAS, LPN, formerly and also known as SANDRA MENDOZA, Plaintiff, v. DR. SANDRA MARTELL, Public Health Administrator of the Winnebago County Health Department, in her official capacity, JAMES POWERS, Chair of the Winnebago County Board of Health, in his official capacity, and WINNEBAGO COUNTY, ILLINOIS, Defendants.	)	2016 L 160

Thomas A. Klein
ELECTRONICALLY FILED
DOC ID: 11975939
CASE NO: 2016-L-0000160
DATE: 07/22/2016
BY: JB DEPUTY

DEFENDANTS' VERIFIED ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S AMENDED VERIFIED COMPLAINT FOR DAMAGES AND DECLARATORY RELIEF

NOW COME the Defendants, DR. SANDRA MARTELL, Public Health Administrator of the Winnebago County Health Department, in her official capacity, JAMES POWERS, Chair of the Winnebago County Board of Health, in his official capacity, and WINNEBAGO COUNTY, ILLINOIS, by and through their attorney, Assistant Deputy State's Attorney Charlotte A. LeClercq, and for their Answer to Plaintiff's Amended Complaint, respectfully state as follows:

1. This case is about how the Winnebago County Health Department unlawfully discriminated against Ms. Sandra Mendoza, a Licensed Practical Nurse ("LPN") with eighteen years of service in pediatrics with the Health Department, because of Ms. Mendoza's

conscientious refusal to participate in any way in abortions or the provision of abortifacient or contraceptive drugs.

ANSWER: Defendants admit that Plaintiff was employed by the Winnebago County Health Department for eighteen years as a Licensed Practical Nurse. Defendants deny the remaining allegations contained in Paragraph 1 of Plaintiff's Complaint.

2. Damages and declaratory relief are sought under the Illinois Healthcare Right of Conscience Act, 745 ILCS 70/1 *et seq.*; the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1 *et seq.*; and the Illinois Human Rights Act, 775 ILCS 1/1-101 et seq.

ANSWER: Defendants admit that Plaintiff's Complaint seeks damages and declaratory relief under the Illinois Health Care Right of Conscience Act and the Illinois Religious Freedom Restoration Act. Defendants deny that Plaintiff's Complaint seeks damages and declaratory relief under the Illinois Human Rights Act. Defendants deny they in any way violated Plaintiff's rights under any of these acts.

3. Plaintiff Sandra Rojas, formerly and also known as Sandra Mendoza, is a resident of Winnebago County, Illinois.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 3 of Plaintiff's Complaint, and therefore deny the same.

4. The Defendants are Dr. Sandra Martell, RN, DNP, acting Public Health Administrator for the Winnebago County Health Department headquartered at 401 Division St., Rockford, IL 61110, sued in her official capacity; James Powers, acting chair of the Winnebago County Board of Health, in his official capacity; and WINNEBAGO COUNTY, ILLINOIS, the municipal government of which the Winnebago County Health Department is a part.

ANSWER: Defendants admit that Dr. Sandra Martell, RN, DNP, is the current Public Health Administrator for the Winnebago County Health Department located at 401 Division Street, Rockford, Illinois. Defendants admit that James Powers was the President of the Winnebago County Board of Health until May of 2016, but deny that he is the current President. Defendants deny that Winnebago County, Illinois, is a municipal government, but admit that it is a county government of which the Winnebago County Health Department is a part.

5. Venue is proper in the Circuit Court of the Seventeenth Judicial Circuit, Winnebago County, Illinois under the pertinent statutes.

ANSWER: Defendants admit the allegations contained in Paragraph 5 of Plaintiff's Complaint.

6. Ms. Mendoza has been a licensed practical nurse since July 20, 1990.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 6 of Plaintiff's Complaint, and therefore deny the same.

7. Ms. Mendoza began working for the Winnebago County Health Department on June 6, 1996, and until July 31, 2015, provided nursing services as a nurse in the Pediatric Immunization Clinic including, *inter alia*, immunizations, screenings for blood lead levels, access to medical records, and assessments for the risk of tuberculosis.

ANSWER: Defendants admit that Plaintiff worked for the Winnebago County Health Department from June 6, 1996 to July 31, 2015. Defendants further admit that the nursing services listed were provided by Plaintiff during her employment with the Health Department. Defendants lack knowledge or information sufficient to form as belief as to

whether these were the only services provided by Plaintiff during her employment, and therefore deny the same.

8. On May 11, 2014, Ms. Mendoza also began serving in Health Protection and Promotion by providing adult immunization, hearing and vision testing for children, and TB testing for employees.

ANSWER: Defendants deny that Plaintiff began serving in Health Protection and Promotion on May 11, 2014, but affirmatively state that Plaintiff began working in Health Protection and Promotion on August 11, 2014. Defendants admit that Plaintiff worked part-time for Health Protection and Promotion, providing adult immunizations and TB testing for employees from August 11, 2014 to July 31, 2015, and providing hearing and vision testing for children from August 11, 2014 to December 31, 2014. Defendants affirmatively state that Plaintiff stopped providing hearing and vision testing because she did not pass the required examination to do the testing.

9. Ms. Mendoza has also worked part-time at the Walter Lawson Children's home since 1978 and for Addus Home Health since 2011.

ANSWER: Defendants admit that documentation submitted by Plaintiff to the Winnebago County Health Department indicates that Plaintiff worked part-time at the Walter Lawson Children's home since 1978. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 9 of Plaintiff's Complaint, and therefore deny the same.

10. Ms. Mendoza is a lifelong, practicing Catholic who seeks to adhere to the commands and Word of God as revealed in the Holy Scriptures and to the teachings of the Catholic Church.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 10 of Plaintiff's Complaint, and therefore deny the same.

11. The Scriptures and the Church teach that human life is created in the image of God (Genesis 1:27, *Imagio Dei*), begins at conception (Psalms 139:13-16, Didache, 2:2), and should not, therefore, be destroyed (Exodus 20:1, 13, 21:22-25). Catholic doctrine (Humanae Vitae 14) also teaches against contraception by declaring it sinful to participate in "direct sterilization, whether perpetual or temporary, whether of the man or of the woman. Similarly excluded is every action which, either in anticipation of the conjugal act, or in its accomplishment, or in the development of its natural consequences, proposes, whether as an end or as a means, to render procreation impossible."

ANSWER: No answer to Paragraph 11 of Plaintiff's Complaint is necessary as the referenced documents speak for themselves.

12. Current and standard human-embryology texts also confirm that the union of a sperm and ovum creates a new and distinct organism – a whole, though developmentally immature, member of the human species. See, e.g. Moore and Persaud's "The Developing Human," Larsen's "Human Embryology," Carlson's "Human Embryology & Developmental Biology," and O'Rahilly and Mueller's "Human Embryology & Teratology."

ANSWER: No answer to Paragraph 12 of Plaintiff's Complaint is necessary as the referenced documents speak for themselves.

13. An abortion is the "induced termination of pregnancy, involving destruction of the embryo or fetus." The American Heritage Science Dictionary. Boston: Houghton Mifflin. 2005.

ANSWER: No answer to Paragraph 13 of Plaintiff's Complaint is necessary as the referenced dictionary speaks for itself.

14. Both the U.S. Food and Drug Administration ("FDA") and the manufacturer of "plan B" acknowledge that it can prevent an already-fertilized egg from implanting in the womb.

ANSWER: Defendants admit that the package insert for "plan B" indicates that it "may inhibit implantation." Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 14 of Plaintiff's Complaint, and therefore deny the same.

15. Ms. Mendoza has religious beliefs, as well as moral and ethical objections, which are in accord with the Word of God, the teachings of the Catholic Church and current science, which prevent her as a matter of conscience from participating in any way in abortions or the provision of abortifacient and contraceptive drugs – including but not limited to the provision of the "Plan B" pill (also known as the "morning after pill"), referrals to abortion providers, and birth control.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 15 of Plaintiff's Complaint, and therefore deny the same.

16. In 2001, while working for the Health Department Ms. Mendoza, after consultation with her pastor and priest Fr. William Collins of St. Patrick Parrish, informed the Health Department that she could not as a matter of religious practice and conscience participate in any way in the provision of Plan B, contraception, or abortion referrals.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 16 of Plaintiff's Complaint, and therefore deny the same.

17. Thereafter, Ms. Mendoza continued to work for the Health Department as a nurse in the Health Department's Pediatric Immunization Clinic and did not participate, in any way, in the provision of Plan B, contraception, or abortion referrals.

ANSWER: Defendants admit that Plaintiff worked as a nurse for the Health Department after 2001. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 17 of Plaintiff's Complaint, and therefore deny the same.

18. In late 2014, Dr. Sandra Martell was employed by Winnebago County, Illinois, under the supervision of the Winnebago County Board of Health.

ANSWER: Defendants admit that on or about September 8, 2014, Dr. Sandra Martell began her employment as Administrator of the Winnebago County Health Department. Defendants deny that Dr. Martell was employed by Winnebago County, Illinois, but affirmatively state that Dr. Martell was employed by the Winnebago County Board of Health.

19. In or about March 2015, Dr. Martell began to integrate certain clinical services, including integrating the pediatric services with the women's health services.

ANSWER: Defendants admit that in early 2015, Dr. Martell began working with the staff at the Health Department to prepare for integrating clinical services with a target date to open the fully integrated clinic at the end of June, 2015.

20. In or about May 2015, Ms. Mendoza informed human resources and Dr. Martell that she could not participate in the provision of birth control, referrals to abortion clinics, or Plan B.

ANSWER: Defendants deny Plaintiff informed human resources and Dr. Martell of her religious objections in May of 2015, but admit that Plaintiff advised human resources of her objections in June of 2015 and Dr. Martell of her objections on or about June 24, 2015. Defendants deny that the allegations contained in Paragraph 20 of Plaintiff's Complaint are the full extent of the conversations referenced.

21. On or about July 14, 2015, Dr. Martell sent an e-mail asking Ms. Mendoza for her "...decision regarding the accommodation that is being offered in response to your request outlined in the letter to [Ms. Mendoza] dated June 30, 2015 so that we can implement it as soon as possible with minimal impact to clients and colleagues...." July 14, 2015 E-mail attached as Exh. A.

ANSWER: Defendants admit that Dr. Martell sent the referenced email on or about July 14, 2015, and that the quoted language was contained in that email.

22. Since Ms. Mendoza had not received the letter referenced in the e-mail, Ms. Mendoza contacted Ms. Martell on or about July 14, 2015 to inquire about the letter and the e-mail.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegation contained in Paragraph 22 of Plaintiff's Complaint that Ms. Mendoza had not received the referenced letter, and therefore deny the same. Defendants admit that after receiving the follow up email from Dr. Martell, Plaintiff contacted Dr. Martell on or about July 14, 2015, to inquire about the letter.

23. Ms. Mendoza was then provided a copy of the June 30, 2015 letter (attached as Exhibit B) which had been sent to the wrong address.

ANSWER: Defendants admit that on or about July 14, 2015, Ms. Mendoza was provided with another copy of the June 30, 2015 letter. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that the letter was sent to the wrong address, and therefore deny the same. Defendants affirmatively state that the letter was sent to the address for Plaintiff that was on file with the Health Department Finance Office.

24. The letter acknowledges that Ms. Mendoza "conveyed that [her] religious beliefs would not permit [her] to perform a number of the required duties at the combined clinics" but that the Health Department could not "accommodate [Ms. Mendoza] within the clinic environment at the Health Department."

ANSWER: Defendants admit the quoted language is contained in the referenced letter. Defendants affirmatively state, however, that the allegation contained in Paragraph 24 of Plaintiff's Complaint is not a complete recitation of that letter. Defendants deny that this

allegation is a full and accurate recitation of the contents of that letter. Defendants affirmatively state that, with respect to the language in question, the letter provides:

> "We have diligently considered your request for an accommodation and have determined that we cannot accommodate you within the clinic environment at the Health Department. The terms of the grants that we work under require the nursing staff in the clinics to utilize a non-directed approach with our clients. Frequently this will involve job duties that you have indicated are objectionable to you. We have determined that we cannot segregate you, as the only full-time Licensed Practical Nurse (LPN), from these job duties without creating an undue hardship for the other employees in the clinics and the Health Department as a whole."

25. The defendant's letter than [*sic*] offered Ms. Mendoza "alternatives outside of the clinics" which consisted of demotion/transfer to a position as a County temporary/part time food inspector or employee at River Bluff nursing home.

ANSWER: Defendants admit the quoted language is contained in the referenced letter. Defendants deny that the letter indicated that either position would be a demotion. Defendants further deny that this allegation is a full and accurate recitation of the contents of that letter.

26. Ms. Mendoza declined the demotions to temporary, part time food inspector and employee at River Bluff and was therefore forced to resign.

ANSWER: Defendants admit that Plaintiff chose to resign from her position at the Health Department and that she did not accept the positions offered as either a temporary part-time food inspector or a licensed practical nurse at River Bluff Nursing Home. Defendants deny the allegations that they sought to demote Plaintiff and that Plaintiff was forced to resign. Defendants affirmatively state that the position offered as a licensed practical nurse at River Bluff Nursing Home, which is owned by Winnebago County, would not have been a demotion as that position would have utilized Plaintiff's skills as a

licensed practical nurse and would have paid Plaintiff at least as much as, if not more than, she was making as a licensed practical nurse at the Winnebago County Health Department.

27. Ms. Mendoza could not work at the River Bluff nursing home because, as she informed Dr. Martell, her son Daniel Ortega was employed there as a Registered Nurse and the nursing home had a rule prohibiting working with family members.

ANSWER: Defendants admit that Plaintiff's son, Daniel Ortega, is employed as a Registered Nurse at River Bluff Nursing Home. Defendants deny that Plaintiff could not work at River Bluff Nursing Home due to her son working at the nursing home. Defendants deny that River Bluff Nursing Home had a rule which prohibited family members from working at the nursing home. Defendants affirmatively state that the only employee-related "family member" rule at River Bluff Nursing Home was that one family member could not directly supervise another family member.

28. As a direct and proximate result of defendants' actions as described herein, Ms. Mendoza has suffered damages including loss of income and benefits, pain and suffering, mental anguish, inconvenience, loss of enjoyment of life and other economic and noneconomic losses.

ANSWER: Defendants deny the allegations contained in Paragraph 28 of Plaintiff's Complaint.

COUNT I

Violation of the Illinois Health Care Right of Conscience Act, 745 ILCS 70/1 *et seq.*

29. Plaintiff incorporates by reference herein all preceding paragraphs.

ANSWER: Defendants incorporate herein by reference their answers to Paragraphs 1 through 28 of Plaintiff's Complaint as though fully set forth herein.

30. The Health Care Right of Conscience Act states the following:

It is the public policy of the State of Illinois to respect and protect the right of conscience of all persons who refuse to obtain, receive, or accept, *or who are engaged in, the delivery of, arrangement for, or payment of health care services and medical care whether acting individually, corporately, or in association with other persons;* and to *prohibit all forms of discrimination, disqualification, coercion, disability or imposition of liability upon such persons or entities* by reason of their refusing to act contrary to their conscience or conscientious convictions *in refusing to obtain, receive, accept, deliver, pay for, or arrange for the payment of health care services and medical care.*

745 ILCS 70/2 (emphasis added).

ANSWER: Defendants admit that the quotation alleged in Paragraph 30 of Plaintiff's Complaint is an accurate recitation (other than the italicization) of a part of the cited statutory section. Defendant deny that the quotation is a full and complete recitation of Section 2 of the Health Care Right of Conscience Act.

31. Under the Act, "health care" is defined as "any phase of patient care, including but not limited to, ... instructions; family planning, counseling, referrals, or any other advice in connection with the use or procurement of contraceptives and sterilization or abortion procedures; [or] medication...." 745 ILCS 70/3.

ANSWER: Defendants admit that the quotation alleged in Paragraph 31 of Plaintiff's Complaint is an accurate recitation of a part of the cited statutory section. Defendants deny that the quotation is a full and complete recitation of Section 3(a) of the Health Care Right of Conscience Act.

32. In addition, "health care professional" is defined as "any nurse, nurse's aide, medical school student, professional, paraprofessional or any other person who furnishes, or assists in the furnishing of, health care services." *Id.*

ANSWER: Defendants deny that Section 3 of the Health Care Right of Conscience Act defines "health care professional." Defendants affirmatively state that the alleged definition is an accurate recitation of the definition of "health care personnel" contained in Section 3(c) of the Act.

33. "Conscience" is defined as "a sincerely held set of moral convictions arising from belief in and relation to God, or which, though not so derived, arises from a place in the life of its possessor parallel to that filled by God among adherents to religious faiths." *Id.*

ANSWER: Defendants admit that the quotation alleged in Paragraph 33 of Plaintiff's Complaint is an accurate recitation of the definition of "conscience" contained in Section 3(e) of the Health Care Right of Conscience Act.

34. Section 5 of the Act states the following:

> It shall be unlawful for any person, public or private institution, or public official to discriminate against any person in any manner, including but not limited to, licensing, hiring, promotion, transfer, staff appointment, hospital, managed care entity, or any other privileges, because of such person's conscientious refusal to receive, obtain, accept, perform, assist, counsel, suggest, recommend, refer or participate in any way in any particular form of health care services contrary to his or her conscience.

745 ILCS 70/5.

ANSWER: Defendants admit that the quotation alleged in Paragraph 34 of Plaintiff's Complaint is an accurate recitation of Section 5 of the Health Care Right of Conscience Act.

35. Section 7 of the Act states that it is unlawful for any public or private employer, entity, or agency to "...orally question about, to impose any burdens in terms of conditions of employment on, or otherwise discriminate against any applicant, in terms of employment" or to "discriminate in relation thereto, in any other manner" on account of the applicant's refusal to

"perform, counsel, suggest, recommend, refer, assist, or participate in any way in any forms of health care services contrary to his or her conscience." 745 ILCS 70/7.

ANSWER: Defendants admit that the quotation alleged in Paragraph 35 of Plaintiff's Complaint is an accurate recitation of a part of Section 7 of the Health Care Right of Conscience Act. Defendants deny that the quotation is a full and complete recitation of Section 7 of the Health Care Right of Conscience Act.

36. Section 9 of the Act states the following:

No person, association, or corporation, which owns, operates, supervises, or manages a health care facility shall be civilly or criminally liable to any person, estate, or public or private entity by reason of refusal of the health care facility to permit or provide any particular form of health care service which violates the facility's conscience as documented in its ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, regulations, or other governing documents.

ANSWER: Defendants admit that the quotation alleged in Paragraph 36 of Plaintiff's Complaint is an accurate recitation of a part of Section 9 of the Health Care Right of Conscience Act. Defendants deny that the quotation is a full and complete recitation of Section 9 of the Health Care Right of Conscience Act.

37. Section 10 of the Act states the following:

It shall be unlawful for any person, public or private institution or public official to discriminate against any person, association or corporation attempting to establish a new health care facility or operating an existing health care facility, in any manner, including but not limited to, denial, deprivation or disqualification in licensing, granting of authorizations, aids, assistance, benefits, medical staff or any other privileges, and granting authorization to expand, improve, or create any health care facility, by reason of the refusal of such person, association or corporation planning, proposing or operating a health care facility, to permit or perform any particular form of health care service which violates the health care facility's conscience as documented in its existing or proposed ethical guidelines, mission statement, constitution, bylaws, articles of incorporation, regulations, or other governing documents.

745 ILCS 70/10.

ANSWER: Defendants admit that the quotation alleged in Paragraph 37 of Plaintiff's Complaint is an accurate recitation of Section 10 of the Health Care Right of Conscience Act.

38. Section 12 of the Act provides that "[a]ny person ... injured by any public or private person, association, agency, entity, or corporation by reason of any action prohibited by this Act may commence a suit therefore....." 745 ILCS 70/12.

ANSWER: Defendants admit that the quotation alleged in Paragraph 38 of Plaintiff's Complaint is an accurate recitation of a part of Section 12 of the Health Care Right of Conscience Act. Defendants deny that the quotation is a full and complete recitation of Section 12 of the Health Care Right of Conscience Act.

39. Section 14 of the Act states, "This Act shall supersede all other Acts or parts of Acts to the extent that any Acts or parts of Acts are inconsistent with the terms or operation of this Act." 745 ILCS 70/14.

ANSWER: Defendants admit that the quotation alleged in Paragraph 39 of Plaintiff's Complaint is an accurate recitation of Section 14 of the Health Care Right of Conscience Act.

40. The actions of the defendants, as described herein, violated the rights of Ms. Mendoza under the Illinois Healthcare Right of Conscience Act which also provides that any person injured by reason of an action prohibited by the Act may commence suit and recover treble damages, attorney's fees, and costs.

ANSWER: Defendants deny that their actions, as described in Plaintiff's Complaint, violated Plaintiff's rights under the Illinois Health Care Right of Conscience Act.

Defendants admit that Section 12 of the Health Care Right of Conscience Act allows recovery of "threefold the actual damages," reasonable attorney's fees and costs.

WHEREFORE, the Defendants, DR. SANDRA MARTELL, Public Health Administrator of the Winnebago County Health Department, in her official capacity, JAMES POWERS, Chair of the Winnebago County Board of Health, in his official capacity, and WINNEBAGO COUNTY, ILLINOIS, pray this Court to enter judgment as to Count I of Plaintiff's Amended Complaint in their favor, and against Plaintiff, with costs being assessed against Plaintiff, and grant such other and further relief as this Court deems reasonable and just.

COUNT II

Violation of the Illinois Religious Freedom Restoration Act, 775 ILCS 35/1 *et seq.*

41. Plaintiff incorporates by reference herein all preceding paragraphs.

ANSWER: Defendants incorporate herein by reference their answers to Paragraphs 1 through 40 of Plaintiff's Complaint as though fully set forth herein.

42. Section 15 of the Illinois Religious Freedom Restoration Act of 1998, 775 ILCS 35/15 provides that:

Free exercise of religion protected. Governments may not substantially burden a person's free exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest.

ANSWER: Defendants deny that the quotation alleged in Paragraph 42 of Plaintiff's Complaint is a completely accurate recitation of Section 15 of the Illinois Religious Freedom Restoration Act as the term "free" is not used in the statute.

43. As set forth above, the Defendants substantially burdened Ms. Mendoza's free exercise of religion and will be unable to bear the burden of proving that the substantial burden is

justified by a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest.

ANSWER: Defendants deny the allegations contained in Paragraph 43 of Plaintiff's Complaint.

WHEREFORE, the Defendants, DR. SANDRA MARTELL, Public Health Administrator of the Winnebago County Health Department, in her official capacity, JAMES POWERS, Chair of the Winnebago County Board of Health, in his official capacity, and WINNEBAGO COUNTY, ILLINOIS, pray this Court to enter judgment as to Count II of Plaintiff's Amended Complaint in their favor, and against Plaintiff, with costs being assessed against Plaintiff, and grant such other and further relief as this Court deems reasonable and just.

AFFIRMATIVE DEFENSES

Defendants, DR. SANDRA MARTELL, Public Health Administrator of the Winnebago County Health Department, in her official capacity, JAMES POWERS, Chair of the Winnebago County Board of Health, in his official capacity, and WINNEBAGO COUNTY, ILLINOIS, as affirmative defenses to Count I and Count II of Plaintiff's Amended Complaint, state as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiff is not entitled to recover under Counts I or II of Plaintiff's Complaint as Defendants attempted to accommodate Plaintiff's religious objections by offering her a full-time position within Winnebago County as a licensed practical nurse at River Bluff Nursing Home, which would have allowed Plaintiff to utilize her nursing skills and maintain the same benefits and a comparable or higher salary. Plaintiff chose to voluntarily resign rather than accept the licensed practical nurse position at River Bluff Nursing Home that was offered to her.

SECOND AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate any damages she allegedly sustained in this matter as she was offered immediate transition to a full-time position within Winnebago County as a licensed practical nurse at River Bluff Nursing Home, which would have allowed Plaintiff to utilize her nursing skills and maintain the same benefits and a comparable or higher salary. Plaintiff chose to voluntarily resign rather than accept the licensed practical nurse position at River Bluff Nursing Home that was offered to her. As such, Plaintiff's damages under Count I and Count II, if any, should be reduced proportionately based upon her failure to mitigate her alleged damages.

THIRD AFFIRMATIVE DEFENSE

Plaintiff is not entitled to recover under Count I of Plaintiff's Complaint as her claims are precluded by Section 13 of the Illinois Health Care Right of Conscience Act, which provides: "Nothing in this Act shall be construed as excusing any person, public or private institution, or public official from liability for refusal to permit or provide a particular form of health care service if: …(b) the person, public or private institution or public official has accepted federal or state funds for the sole purpose of, and specifically conditioned upon, permitting or providing that particular form of health care service."

The Winnebago County Health Department is mandated, as a condition of receiving Title X federal funding, to provide certain services, including pregnancy testing, contraceptive methods and education, emergency contraceptives, and family planning options counseling. In early 2015, as a result of financial necessity given lack of funding from the State of Illinois and in conformance with the Strategic Plan adopted by the Winnebago County Board of Health in January of 2014, Dr. Martell moved forward with consolidating the various clinics at the Health Department into one clinic. The staff – including Plaintiff – was expected to be able to provide

all services in the combined clinic. Failure by any staff member to provide any of the services required under Title X could have resulted in potential liability to the Health Department and loss of funding. Therefore, Plaintiff's claims are precluded under Section 13 of the Act.

FOURTH AFFIRMATIVE DEFENSE

At all times relevant to the allegations contained in Plaintiff's Complaint, Defendant was a local public entity as defined by the Local Governmental and Governmental Employee Tort Immunity Act (745 ILCS 10/1-101 *et seq.*). Section 2-201 of the Tort Immunity Act, 745 ILCS 10/2-201, provides that "a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused." Section 2-109 of the Act, 745 ILCS 10/2-109, provides that "[a] local public entity is not liable for an injury resulting from an act or omission of its employee where the employee is not liable." Dr. Martell, in her position as Public Health Administrator, serves in a position involving the determination of policy and the exercise of discretion. In taking the actions alleged in Count I and Count II of Plaintiff's Complaint, Dr. Martell was engaged in policy determinations for the Winnebago County Health Department. As such, Sections 2-201 and 2-109 immunize Defendants from liability for the damages asserted by Plaintiff in Count I and Count II of her Complaint.

WHEREFORE, the Defendants, DR. SANDRA MARTELL, Public Health Administrator of the Winnebago County Health Department, in her official capacity, JAMES POWERS, Chair of the Winnebago County Board of Health, in his official capacity, and WINNEBAGO COUNTY, ILLINOIS, pray this Court to enter judgment as to Count I and Count II of Plaintiff's

Amended Complaint in their favor, and against Plaintiff, with costs being assessed against Plaintiff, and grant such other and further relief as this Court deems reasonable and just.

Defendants, DR. SANDRA MARTELL, Public Health Administrator of the Winnebago County Health Department, in her official capacity, JAMES POWERS, Chair of the Winnebago County Board of Health, in his official capacity, and WINNEBAGO COUNTY, ILLINOIS,

Charlotte A. LeClercq

By: Charlotte A. LeClercq
Assistant Deputy State's Attorney

CHARLOTTE A. LeCLERCQ, #6283345
Assistant Deputy State's Attorney
Winnebago County State's Attorney's Office, Civil Bureau
400 West State Street, #804
Rockford, Illinois 61101
(815) 319-4799
ATTORNEY FOR DEFENDANTS

VERIFICATION

STATE OF ILLINOIS)
)
COUNTY OF WINNEBAGO)

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certify that they have read the foregoing Verified Answer and Affirmative Defenses to Plaintiff's Complaint and that the statements set forth therein are true and correct to the best of their knowledge, information and belief. To the extent that the foregoing Verified Answer and Affirmative Defenses contain certain statements of insufficient knowledge on which to base a belief as to the truth or falsity of the allegations contained in the complaint, those allegations of insufficient knowledge are true and correct.

Dated: 7/19/2016

Dr. Sandra Martell

Dated: _____

James Powers

Dated: _____

Steven M. Chapman
County Administrator

VERIFICATION

STATE OF ILLINOIS)
)
COUNTY OF WINNEBAGO)

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certify that they have read the foregoing Verified Answer and Affirmative Defenses to Plaintiff's Complaint and that the statements set forth therein are true and correct to the best of their knowledge, information and belief. To the extent that the foregoing Verified Answer and Affirmative Defenses contain certain statements of insufficient knowledge on which to base a belief as to the truth or falsity of the allegations contained in the complaint, those allegations of insufficient knowledge are true and correct.

Dated: _____

Dr. Sandra Martell

Dated: 7-11-2016

James Powers

Dated: _____

Steven M. Chapman
County Administrator

MAR 0 6 2019

VERIFICATION

STATE OF ILLINOIS)
)
COUNTY OF WINNEBAGO)

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certify that they have read the foregoing Verified Answer and Affirmative Defenses to Plaintiff's Complaint and that the statements set forth therein are true and correct to the best of their knowledge, information and belief. To the extent that the foregoing Verified Answer and Affirmative Defenses contain certain statements of insufficient knowledge on which to base a belief as to the truth or falsity of the allegations contained in the complaint, those allegations of insufficient knowledge are true and correct.

Dated: _____

Dr. Sandra Martell

Dated: _____

James Powers

Dated: 7-19-16

Steven M. Chapman
County Administrator

Exhibit 32
Attachment B

JOSEPH P. BRUSCATO
WINNEBAGO COUNTY STATE'S ATTORNEY

MARILYN HITE ROSS
DEPUTY STATE'S ATTORNEY
CRIMINAL BUREAU

DAVID J. KURLINKUS
DEPUTY STATE'S ATTORNEY
CIVIL BUREAU

January 18, 2018

Centralized Case Management Operations
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Room 509F HHH Bldg.
Washington, D.C. 20201

Re: Response to Complaint of Discrimination

Dear Sir or Madam,

You recently received a complaint of discrimination dated January 16, 2018, from Mauck & Baker, LLC concerning their client, Sandra Rojas, directed against the Winnebago County Health Department in Winnebago County, Illinois. The Winnebago County State's Attorney's Office represents the Health Department in a pending lawsuit filed by Ms. Rojas under the Illinois Right of Conscience Act and the Illinois Religious Freedom Restoration Act.

On behalf of the Health Department I would like to address some misperceptions which may be created by Mauck & Baker's complaint. First, the Health Department does not provide abortion services. As a recipient of funding under Title X (42 U.S.C. §300 *et seq.*), the Health Department is prohibited from providing abortion services as a method of family planning. The Health Department does dispense birth control and provides options counseling to pregnant women, which under Title X guidelines must include termination as an option.

Second, Ms. Rojas was not terminated from her employment with the Health Department. When Ms. Rojas expressed her objections to performing work that would be required of her as part of a clinic consolidation at the Health Department, she was offered, as an accommodation, a position as a licensed practical nurse at River Bluff Nursing Home, which is owned by the County of Winnebago. This position would not have entailed any loss of pay or benefits. Ms. Rojas elected not to pursue that position, but instead submitted a letter of resignation, a copy of which is attached.

Thank you for your consideration. Please let me know if you would like any additional information.

Sincerely,

Charlotte A. LeClercq

Charlotte A. LeClercq
Assistant Deputy State's Attorney – Civil Bureau

cc: Attorney Noel Sterett
Mauck & Baker, LLC
One North LaSalle Street
Suite 600
Chicago, IL 60602

Dr. Sandra Martell
Winnebago County Health Department
555 N. Court Street
Rockford, IL 61110

Untitled

7-17-15

Mary,
Please accept this letter as my formal notice of resignation from Winn. Co. Health Dept effective on 7-31-15. I have enjoyed my employment here and appreciate all i have learned

Sincerely

Sandra Mendoza

Exhibit 32
Attachment C

DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF THE SECRETARY

Voice - (800) 368-1019 TDD - (800) 537-7697 Fax - (202) 619-3818
http://www.hhs.gov/ocr/

Office for Civil Rights
200 Independence Ave., SW
Washington, DC 20201

March 4, 2019

SENT VIA CERTIFIED MAIL

Charlotte A. LeClercq
Office of the State's Attorney
Winnebago County, Civil Division
400 W. State Street, Ste. 804
Rockford, IL 61101

Re: OCR Transaction Number 18-293234

Dear Ms. LeClercq:

The U.S. Department of Health and Human Services ("HHS") Office for Civil Rights ("OCR") received the attached complaint from Mauck & Baker, filed on behalf of Sandra Rojas (also known as Sandra Mendoza, hereinafter "Ms. Rojas"), on January 16, 2018. The complaint alleges Ms. Rojas was subjected to unlawful discrimination by the Winnebago County Health Department for refusing to participate in the provision of abortion-related services in accordance with her religious beliefs. If you do not represent the Winnebago County Health Department and Winnebago County in this matter, please notify OCR at your earliest convenience.

Federal regulations designate OCR to receive and handle complaints based on the Federal laws that protect conscience and prevent coercion, including the Weldon Amendment,[1] the Coats-Snowe Amendment,[2] and the Church Amendments.[3] OCR has reviewed the complaint and has determined that it has sufficient authority and cause to investigate the allegations under one or more of these laws.

Accordingly, OCR requests that you respond to the attached Initial Discovery Request, in accordance with the instructions, **within 30 days of the date of this letter,** by mail or e-mail sent to Mandi Ancalle, 200 Independence Avenue, S.W., Washington, D.C. 20201, Mandi.Ancalle@hhs.gov. You should not destroy, modify, remove, transfer, or make inaccessible documents that are potentially responsive to the discovery request, or that appear to be related to this complaint. OCR requests that you take all necessary steps to ensure that individuals who file

[1] *E.g.*, Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019, Pub. L. No. 115-245, Div. B, Tit. V, § 507(d), 132 Stat 2981, 3118 (September 28, 2018).
[2] 42 U.S.C. § 238n.
[3] *Id.* § 300a-7.

complaints or participate in the investigation of complaints are free from harassment, intimidation, and retaliation, in accordance with Federal law.

This letter is notice of an investigation and does not constitute a finding of violation. We look forward to your cooperation with the investigation and are providing you with a full opportunity to respond to the allegations in the complaint on the merits and to proffer any relevant information and documents for OCR to consider in determining your compliance status. Section 1001 of title 18 of the U.S. Code makes it a crime for any person to knowingly and willfully make any materially false, fictitious, or fraudulent statements or representations to a department or agency of the United States as to any matter within its jurisdiction.

If you have any questions, please do not hesitate to contact Mandi Ancalle, Civil Rights Analyst, by phone at 202-205-9244, or by e-mail at Mandi.Ancalle@hhs.gov.

Sincerely,

Luis E. Perez
Deputy Director
Conscience and Religious Freedom Division

INITIAL DISCOVERY REQUESTS AND INSTRUCTIONS
OCR Transaction No: 18-293234

INITIAL DISCOVERY REQUESTS

1. Please provide a substantive response to the allegations contained in the complaint (attached), and please identify any persons with personal knowledge and information that supports the Winnebago County Health Department's responses to these allegations.

2. Please identify persons who are or have been employed by the Winnebago County Health Department who are likely to have information related to Ms. Rojas having expressed her objections to counseling to pregnant women, for which termination of pregnancy is provided as an option, abortion referrals, or contraception; the Winnebago County Health Department's response to Ms. Rojas expressing her objection; or Ms. Rojas's departure from the Winnebago County Health Department, along with the subject matter of the information.

3. Please identify persons who are or have been employed by the Winnebago County Health Department who may have personal knowledge of the circumstances that provide the basis of Ms. Rojas's allegations or who provide information that you use in responding to the allegations or these discovery requests, along with the subject matter of the information.

4. In Charlotte LeClercq's letter to the U.S. Department of Health and Human Services, dated January 18, 2018, she alleges the Winnebago County Health Department "does dispense contraception and provides options counseling to pregnant women, which under Title X guidelines must include termination as an option." Please explain your understanding of what the U.S. Department of Health and Human Services required in 2015 of the Winnebago County Health Department as a condition of participating in programs authorized under Title X of the Public Health Service Act. In your response, please explain your understanding of the degree of discretion, if any, the Winnebago County Health Department had in 2015 in implementing these conditions. Please produce all related documents that support or memorialize your understanding.

5. Other than Title X of the Public Health Service Act, please identify any Federal, state, or local law, regulation, or sub-regulatory guidance in effect in 2015 that you understood to mandate the Winnebago County Health Department's provision of counseling to pregnant women, for which termination of pregnancy is provided as an option, abortion referrals, or contraception. Please produce all related documents that support or memorialize your understanding.

6. Please produce any training materials, policies, procedures, written scripts, talking points, instructions or similar guidance that the Winnebago County Health Department had available for staff in 2015 regarding the provision of abortion referrals, contraception, or counseling to pregnant women, for which termination of pregnancy is provided as an option. For documents produced in response to this question, please identify which documents were made available to staff to demonstrate compliance with any Federal, state or local law, regulation, or sub-regulatory guidance. Please be sure to provide an

explanation linking the materials, policies, procedures, written scripts, talking points, instructions or similar guidance with the associated Federal, state or local law, regulation, or sub-regulatory guidance.

7. Please produce Ms. Rojas's applicant and employment record. If not otherwise notated in her record, please explain why she received "employee of the week," "employee of the quarter," and other awards she received.

8. Please explain why the Winnebago County Health Department could not accommodate Ms. Rojas's religious beliefs by her remaining employed in her position at the Winnebago County Health Department. Please produce all related documents.

9. Had Ms. Rojas remained employed with you, please indicate who would have fulfilled the duties of Ms. Rojas when she was unavailable, out sick, on personal leave, or on vacation, the job title of that person, his or her duties, and whether he or she objected to abortion, counseling to pregnant women for which termination of pregnancy is provided as an option, abortion referrals, or the provision of contraception. Please produce all related documents.

10. Please explain the duties Ms. Rojas would have been required to fulfill had she remained employed by the Winnebago County Health Department, in her position, during and after the clinic consolidation. Please produce all related documents, which may include the job posting for the vacancy Ms. Rojas left that includes job duties.

11. If Ms. Rojas remained employed by the Winnebago County Health Department during and after the clinic consolidation, would she have been required to provide counseling to pregnant women, for which termination of pregnancy is provided as an option? Please produce all related documents, which may include the job posting for the vacancy Ms. Rojas left that includes job duties.

12. If Ms. Rojas remained employed by the Winnebago County Health Department during and after the clinic consolidation, would she have been required to provide prescriptions for contraception to patients? Please produce all related documents, which may include the job posting for the vacancy Ms. Rojas left that includes job duties.

13. If Ms. Rojas remained employed by the Winnebago County Health Department during and after the clinic consolidation, would she have been required to refer patients for abortion? Please produce all related documents, which may include the job posting for the vacancy Ms. Rojas left that includes job duties.

14. Please provide a list of the "required duties at the combined clinics," as referenced in Dr. Martell's June 30, 2015, letter to Ms. Rojas, which communicated an understanding that Ms. Rojas would not be able to perform the "required duties at the combined clinics" because of her religious beliefs.

15. Please explain your understanding of Ms. Rojas's religious beliefs, which you allege would have prevented her from completing the "required duties at the combined clinics."

16. Please indicate the extent to which you were made aware of Ms. Rojas's religious convictions regarding abortion, and when you were made aware of her religious objection to providing counseling to pregnant women, for which termination of pregnancy is provided as an option, abortion referrals, and contraception. Please produce all related documents.

17. Please produce the names and contact information of any individuals who filled the position Ms. Rojas left vacant when she resigned on July 17, 2015, and please indicate whether these individuals have prescribed contraception or participated in counseling pregnant women that termination of pregnancy is an option, or referrals for abortion in fulfilling their official duties, and if so, on what dates.

18. Please produce a list of pediatrics-related positions at the Winnebago County Health Department in 2015. Please include whether in 2015 the Health Department sought applicants for each of those positions. Please produce documents that support your response, such as position descriptions.

19. Please explain how you made the decision to offer Ms. Rojas a position as a licensed practical nurse at River Bluff Nursing Home. Please produce all related documents.

20. Please explain the differences, in terms of permanency, salary, and benefits, between Ms. Rojas's position at the Winnebago County Health Department as of June 1, 2015, and those of the River Bluff Nursing Home LPN position Ms. Rojas was offered as an accommodation in the June 30, 2015, letter from Dr. Martell. Please produce documents that support your response, such as position descriptions or vacancy announcements.

21. Please explain how you made the decision to offer Ms. Rojas a position as a temporary, part-time food inspector. Please produce all related documents.

22. Please explain the differences, in terms of permanency, salary, and benefits, between Ms. Rojas's position at the Winnebago County Health Department as of June 1, 2015, and those of the food inspector position Ms. Rojas was offered as an accommodation in the June 30, 2015, letter from Dr. Martell. Please produce documents that support your response, such as position descriptions or vacancy announcements.

23. Please produce your policies regarding family members working at the same facility or location.

24. Please produce all documents regarding claims of discrimination related to the views of an applicant, employee, trainee, volunteer, or other worker about abortion or sterilization, or refusal to perform or assist in the performance of abortion or sterilization. Claims include verbal and written internal complaints, lawsuits, complaints filed with Federal or State agencies, and other means by which you have been notified of allegations of discrimination based on religion or conscience. For any such claim, please note whether and how it was resolved, and please identify the names of staff involved in reviewing, investigating, or resolving the claims.

25. Please identify each accommodation request from staff members resulting from objections to providing or participating in the provision of contraception, including sterilization; counseling for pregnant women, for which termination of pregnancy is provided as an option; or abortion referrals from January 2015 through the present. Please identify the duration of time that each request was pending, the final disposition of each request, and other pertinent information relevant to OCR's inquiry.

26. Please provide a list of all open positions within the Winnebago County Health Department and its affiliates from June 1, 2015, to August 1, 2015, including the dates the positions became open and when the positions were ultimately filled.

27. Please produce all policies pertaining to terms of employment at the Winnebago County Health Department and policies pertaining to non-discrimination in hiring.

28. Please explain the legal relationship between the State of Illinois and the Winnebago County Health Department. Please produce related documents, such as organizational charts, charters, or statutes.

29. Please explain the legal relationship between the State of Illinois and Winnebago County. Please produce related documents, such as organizational charts, charters, or statutes.

30. Please describe the types of health services you provide.

31. Please provide your National Provider Identifier (NPI), issued by the Centers for Medicaid & Medicare Services.

32. Please describe any Federal financial assistance you, or your subdivision or affiliate, have been a recipient or sub-recipient of from HHS in the last four calendar years. Please describe the awarding HHS component (or non-Federal organization receiving Federal financial assistance from HHS), dates the financial assistance was received, and the dollar amount of the assistance.

33. Please provide an approximate total of any reimbursements you received from Medicare programs Part A, Part C, and Part D, respectively, and when the reimbursements first began, to the best of your knowledge.

34. Please provide an approximate total of any reimbursements you received from Medicaid and the Children's Health Insurance Program, respectively, and when the reimbursements first began, to the best of your knowledge.

35. For the following grant programs, if you receive Federal financial assistance, please provide the amount received, the date received and when it first began, to the best of your knowledge, and any associated grant, grantee, or provider numbers:

PROGRAM NAME	U.S.C.	CFDA #
Preventive Health and Health Services Block Grant	42 U.S.C. 300w-7	93.991
Maternal & Child Health Services Block Grant	42 U.S.C. 708	93.994

36. Please produce all documents relied upon or used in responding to the preceding requests.

37. Please provide any other information or documentation you believe is relevant to the allegations set forth in the attached complaint.

INSTRUCTIONS AND DEFINITIONS FOR RESPONDING TO OCR DISCOVERY REQUESTS

In responding to the discovery requests, please apply the following instructions and definitions:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.

2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to OCR.

3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.

4. Each document that is not electronic should be produced in a form that may be copied by standard copying machines.

5. When you produce documents, you should identify the paragraph(s) or clause(s) in OCR's request to which each document responds.

6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.

7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.

8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.

9. OCR requests electronic documents in addition to paper productions. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should immediately consult with OCR staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If any document responsive to this request was, but no longer is, in your possession, custody or control, state:
    a. how the document was disposed of;
    b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
    c. the date of disposition; and,
    d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

12. If any document responsive to this request cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.

13. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

14. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

15. All documents should be Bates stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. The documents should be delivered to Mandi Ancalle (contractor), 200 Independence Avenue, S.W., Washington, D.C. 20201.

17. In the event that a responsive document is withheld on any basis, including a claim of privilege, you should provide a privilege log containing the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.

18. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

19. For all responses, please provide any facts, contentions, narrative responses, or documents you believe are relevant to OCR's inquiry.

20. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to OCR since the date of receiving OCR's request or in anticipation of receiving OCR's request, and (3) all documents identified during the search that are responsive have been produced to OCR, identified in a privilege log provided to OCR, as described in (17) above, or identified as provided in (10), (11) or (12) above.

DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("email"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto.

2. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

3. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.

4. The term "communication" or "correspondence" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, email, instant message, discussion, release, personal delivery, or otherwise.

5. The terms "and" and "or" should be construed broadly and conjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa.

6. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

7. The terms "referring," "refers," "relating," "related," "regards," or "regarding," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

8. The terms "you" or "your" mean and refer to Winnebago County and the Winnebago County Health Department, and any of their agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on their behalf or under their control or direction.

Exhibit 33

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, CITY OF NEW YORK, STATE OF COLORADO, STATE OF CONNECTICUT, STATE OF DELAWARE, DISTRICT OF COLUMBIA, STATE OF HAWAI'I, STATE OF ILLINOIS, STATE OF MARYLAND, COMMONWEALTH OF MASSACHUSETTS, STATE OF MICHIGAN, STATE OF MINNESOTA, STATE OF NEVADA, STATE OF NEW JERSEY, STATE OF NEW MEXICO, STATE OF OREGON, COMMONWEALTH OF PENNSYLVANIA, STATE OF RHODE ISLAND, STATE OF VERMONT, COMMONWEALTH OF VIRGINIA, STATE OF WISCONSIN, CITY OF CHICAGO, and COOK COUNTY, ILLINOIS, Plaintiffs v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, *in his official capacity as Secretary of the United States Department of Health and Human Services*; and UNITED STATES OF AMERICA, Defendants	CIVIL ACTION NO. 1:19-cv-04676-PAE

DECLARATION OF THE PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Pursuant to 28 U.S.C. § 1746(2), I, Teresa D. Miller, declare that the following is true and correct:

1. I am the Secretary for the Pennsylvania Department of Human Services ("PADHS") and have held that position since August 21, 2017.

2. Before being appointed Secretary, I served as the Commissioner for the Pennsylvania Insurance Department for two and a half years.

3. Before coming to Pennsylvania, I worked at the Centers for Medicare & Medicaid Services ("CMS") in the United States Department of Health and Human Services. While at CMS, I served as the acting director of the State Exchanges Group, the Oversight Group, and the Insurance Programs Group in the Center for Consumer Information and Insurance Oversight.

4. At CMS, I helped develop and implement regulations and guidance related to the private market reforms of the Affordable Care Act and state-based exchanges.

5. I previously served as the administrator of the Oregon Insurance Division, where I implemented early stages of the Affordable Care Act at the state level and reformed Oregon's health insurance rate review process.

6. I submit this Declaration in support of the Commonwealth of Pennsylvania's litigation against the United States Department of Health and Human Services ("HHS"), Alex M. Azar II, in his official capacity as Secretary of HHS, and the United States of America regarding the recently issued rule, entitled Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23,170 (May 21, 2019) ("Final Rule"). I have compiled the information in the statements set forth below through personal knowledge or through information that PADHS personnel assisted me in collecting. I have also familiarized myself with the Final Rule in order to understand its immediate impact on PADHS.

The Pennsylvania Department of Human Services

7. PADHS is the state agency that, through seven program offices, administers services "that provide care and support to Pennsylvania's most vulnerable individuals and families." *About DHS*, Pennsylvania Dep't of Human Servs.[1] The mission of PADHS is to improve the quality of life for individuals and families and to promote opportunities for independence through services and supports while demonstrating accountability for taxpayer resources.

8. Among other work, as the state Medicaid agency, PADHS administers the Pennsylvania Medical Assistance Program for more than 2.3 million Pennsylvania residents through managed care and fee-for-services delivery systems as well as home- and community-based waiver programs.

9. PADHS also administers the Children's Health Insurance Program ("CHIP") through contracts with managed care organizations to 171,281 children who do not qualify for Medical Assistance but whose families cannot afford commercial insurance.

10. In addition to administering services for Medical Assistance and CHIP beneficiaries, PADHS is responsible for enrolling providers that deliver Medical Assistance services, establishing fee-for-service payment rates, processing provider claims, entering into agreements with and monitoring managed care organizations, and ensuring the integrity of all Medical Assistance programs.

11. Through its many programs, PADHS serves low-income individuals, including persons with physical disabilities and senior citizens; individuals with intellectual disabilities or

[1] http://www.dhs.pa.gov/learnaboutdhs/index.htm

autism; individuals with mental health or substance use disorders; and dependent and delinquent children.

12. PADHS also serves low-income Pennsylvanians through cash assistance programs such as Temporary Assistance to Needy Families ("TANF"); employment and training programs; the Supplemental Nutrition Assistance Program ("SNAP"), formerly known as food stamps; home heating assistance; subsidized child care; and assistance for refugees and individuals experiencing homelessness.

13. In addition to administering the multiple programs outlined above, among others, PADHS licenses and regulates thousands of facilities that care for the populations it serves as well as child care centers, assisted living residences, and personal care homes.

14. PADHS relies heavily on federal funding to administer virtually all of its programs and carry out its mission, which includes access to quality health care. In calendar year 2018, PADHS received $20,144,458,957 in federal funding for Medical Assistance Program and CHIP service and administration costs alone.

15. Of that amount, PADHS received $556,290,260 for administrative activities, which include ensuring compliance with existing state and federal laws that facilitate the accommodation of religious or moral objections, and that balance conscience protection rights with patients' right to access health care.

16. The federal funding that PADHS received in 2018 is consistent with the amounts it received in previous years. Specifically, PADHS received the following amounts in federal funding for the Medical Assistance Program and CHIP in the previous two calendar years:

(i) For calendar year 2017, $17,408,765,420

(ii) For calendar year 2016, $18,570,792,819

17. The Governor's proposed executive budget for fiscal year 2019-2020 relies on $19,607,306,000 in federal funding from HHS for the Medical Assistance Program and CHIP.

18. These billions of dollars in federal funds have improved the quality of, and access to, health care for individuals and families in Pennsylvania. Without these funds, many Pennsylvanians would go without health care.

Impact of the Final Rule on PADHS

19. The Final Rule expands the definitions of the terms "assist in the performance," "discrimination," "health care entity," and "referral or refer for," 84 Fed. Reg. at 23,263–64 (45 C.F.R. § 88.2), and is unclear about who or what falls under these terms. Nevertheless, PADHS and the providers, managed care organizations, and licensed facilities with which it conducts business must prepare to comply with them.

20. Because HHS has asserted the authority to terminate all federal funding from states that HHS finds to be noncompliant with the Final Rule, 84 Fed. Reg. at 23,272 (45 C.F.R. § 88.7(i)(3)), PADHS reasonably believes that a finding of noncompliance with the enforcement and compliance provisions of the Final Rule could jeopardize all or a significant portion of the federal funding PADHS receives from HHS.

21. Likewise, if any of the providers or managed care organizations with which PADHS conducts business fails to comply with the enforcement and compliance provisions of the Final Rule, PADHS reasonably believes that HHS could attempt to terminate all or a significant portion of the federal funding PADHS receives from HHS. 84 Fed. Reg. at 23,270 (45 C.F.R. § 88.6(a)).

22. The termination of billions of dollars in federal funds from PADHS would have a devastating impact on the Pennsylvanians whom PADHS serves with those funds, which includes the Commonwealth's most vulnerable populations.

23. Pennsylvanians who rely on PADHS's programs could lose their only access to health care and the many other supportive services they currently receive. Even if the populations PADHS serves would still receive health care under its programs, the Final Rule threatens to diminish the quality of, and access to, the health care and other services they receive. Patients will receive less comprehensive information about their health care options, in addition to delayed access if their current health care provider objects to treating them under the Final Rule.

Conclusion

24. The Final Rule may result in direct financial harm to PADHS, and thus direct financial harm to the Pennsylvanians it serves.

25. The Final Rule will allow for unprecedented discrimination and refusal of services and will increase mistreatment, which undermines the intent and integrity of health and human services programs, and even runs contrary to HHS's own mission. It will invite health and human services professionals to ignore existing law and medical standards, and it will go against person-centered approaches and evidence-based practices that have been at the core of social service and public health delivery for decades.

26. For these reasons, I believe that an injunction of the Final Rule is necessary to prevent immediate and irreparable harm in Pennsylvania and around the country.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Date: 6/13/19

Teresa D. Miller
Secretary
Pennsylvania Department of Human Services

Exhibit 34

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, CITY OF NEW YORK, STATE OF COLORADO, STATE OF CONNECTICUT, STATE OF DELAWARE, DISTRICT OF COLUMBIA, STATE OF HAWAI'I, STATE OF ILLINOIS, STATE OF MARYLAND, COMMONWEALTH OF MASSACHUSETTS, STATE OF MICHIGAN, STATE OF MINNESOTA, STATE OF NEVADA, STATE OF NEW JERSEY, STATE OF NEW MEXICO, STATE OF OREGON, COMMONWEALTH OF PENNSYLVANIA, STATE OF RHODE ISLAND, STATE OF VERMONT, COMMONWEALTH OF VIRGINIA, STATE OF WISCONSIN, CITY OF CHICAGO, and COOK COUNTY, ILLINOIS, Plaintiffs, v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, *in his official capacity as Secretary of the United States Department of Health and Human Services*; and UNITED STATES OF AMERICA, Defendants.	CIVIL ACTION NO. 1:19-cv-04676-PAE

DECLARATION OF ANDREW W. NICHOLS, M.D.

1. I, Andrew W. Nichols, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

2. I submit this Declaration in support of the State of Hawaii's litigation against the United States Department of Health and Human Services ("HHS"), Alex M. Azar II, in his official capacity as Secretary of the United States Department of Health and Human Services, and United States of America regarding the recently issued rule entitled Protecting Statutory Conscience Rights in Health Care; Delegations of Authority ("Final Rule"). I have compiled the information in the statements set forth below either through personal knowledge, through the University of Hawai'i at Mānoa personnel who have assisted me in gathering this information from our institution, or on the basis of documents that have been provided to and/or reviewed by me. I have also familiarized myself with the Final Rule in order to understand its immediate impact upon the University of Hawai'i Student Health Center at my campus.

3. I am the Director of University Health Services at the University of Hawai'i at Mānoa located in the State of Hawai'i. My educational background includes a B.S. in Biological Sciences from Stanford University, M.D. from Wake Forest University School of Medicine, and Family Medicine Residency and Sports Medicine Fellowship training at UCLA. I have been employed as an Associate Professor/Professor/Clinical Professor of Family Medicine and Community Health since 1994, and Specialist and Director since 2011.

4. The University of Hawai'i is the only state university in Hawai'i and has 10 campuses across the Hawaiian Islands, which include three universities and seven community colleges. The University of Hawai'i at Mānoa and the University of Hawai'i at Hilo both have student health centers which provides health related services to approximately 20,000 students; 16,806 for the University of Hawai'i at Mānoa and 3,204 for the University of Hawai'i at Hilo.

5. The Student Health Center at the University of Hawai'i at Mānoa provides health services including vaccinations, HIV/STD prevention and contraception, and abortion referrals.

6. The University of Hawai'i received $56,358,106.00 in contracts and grants from the HHS from July 1, 2017 to June 30, 2018.

7. If the University of Hawai'i is deemed to be in non-compliance with the Final Rule, this financial assistance from HHS is threatened and could be terminated.

8. In addition, the Student Health Center will need to expend time and effort in training staff on what behavior is now permissible from objectors and how to work around objections not planned for in advance.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 29th day of May, 2019.

Andrew W. Nichols, M.D.
Director, University Health Services
University of Hawai'i at Mānoa

Exhibit 35

PRIVILEGED & CONFIDENTIAL
COMMON INTEREST PROTECTED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, CITY OF NEW YORK, STATE OF COLORADO, STATE OF CONNECTICUT, STATE OF DELAWARE, DISTRICT OF COLUMBIA, STATE OF HAWAI'I, STATE OF ILLINOIS, STATE OF MARYLAND, COMMONWEALTH OF MASSACHUSETTS, STATE OF MICHIGAN, STATE OF MINNESOTA, STATE OF NEVADA, STATE OF NEW JERSEY, STATE OF NEW MEXICO, STATE OF OREGON, COMMONWEALTH OF PENNSYLVANIA, STATE OF RHODE ISLAND, STATE OF VERMONT, COMMONWEALTH OF VIRGINIA, STATE OF WISCONSIN, CITY OF CHICAGO, and COOK COUNTY, ILLINOIS, Plaintiffs, v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, *in his official capacity as Secretary of the United States Department of Health and Human Services*; and UNITED STATES OF AMERICA, Defendants.	CIVIL ACTION NO. 1:19-cv-04676-PAE

DECLARATION OF M. NORMAN OLIVER, MD

1. I, M. Norman Oliver, MD, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct.

2. I submit this Declaration in support of the Commonwealth of Virginia's litigation against the United States Department of Health and Human Services (HHS); Alex M. Azar II, in his official capacity as Secretary of the United States Department of Health and Human Services; and the United States of America regarding the recently issued rule entitled "Protecting Statutory Conscience Rights in Health Care; Delegations of Authority" (Final Rule). I have compiled the information in the statements set forth below either through personal knowledge, through Virginia Department of Health (VDH) personnel who have assisted me in gathering this information, or on the basis of documents that have been provided to and/or reviewed by me. I have also familiarized myself with the Final Rule in order to understand its immediate impact upon VDH.

3. I am the State Health Commissioner at VDH located at 109 Governor Street, Richmond, Virginia. My educational background includes Doctor of Medicine and Masters in Anthropology. I have been employed as the State Health Commissioner since May 2018. Prior to this appointment, I served as the Deputy Commissioner for Population Health for VDH. Before accepting the Deputy Commissioner position, I was the Walter M. Seward Professor and Chair of the Department of Family Medicine at the University of Virginia School of Medicine.

Background

4. The Virginia Department of Health (VDH) serves as the leader and coordinator of Virginia's public health system, with approximately 3,300 salaried employees and an annual budget of $730 million. Generally, VDH services are delivered to the public by local health departments (LHDs) or by VDH field offices. Each city & county in Virginia is required to establish and maintain a LHD. Pursuant to statutory authority, VDH has organized these 119 LHDs into 35 health districts.

Local health districts provide a variety of services, including Title X family planning services, screenings for sexually transmitted diseases, the provision of treatment as appropriate, primary care referrals, adult and childhood immunizations, HIV testing and tuberculosis testing and treatment. Some local health districts also provide physical exams and prenatal and post-partum care.

5. In 2018, 38,021 patients received Title X services through VDH, ultimately preventing 8,170 unintended pregnancies. Of these patients,

a. 34,805 (92%) were living at or below 200% of the federal poverty level;

b. 25,586 (67%) were uninsured;

c. 5,603 (15%) were teens;

d. 12,152 received cervical cancer screenings (pap tests);

e. 7,333 received breast cancer screenings (clinical breast exams); and

f. 12,904 were tested for chlamydia, the most commonly reported infectious disease in the United States.

6. Virginia received over $6.7 billion in federal health-care funding from the HHS in the 2018 federal fiscal year for entities identified as being at the state level in the TAGGS system, including $4.5 million in Title X Family Planning funds for the 2020 grant year (April 1, 2019 through March 31, 2020).

7. In the course of offering services/executing duties as regulator, VDH receives/passes through/grants to others the following funds from HHS, and for the following purposes: over $160 million (based on Fiscal Year 2018 data) to undertake efforts in all hazards preparedness and response; chronic disease prevention; clinical services/consumer care; environmental health; data analytics and disease surveillance; laboratory services; communicable disease prevention (including general communicable disease, HIV/STD and tuberculosis); immunization services; injury and

violence prevention; food safety;; opioid use prevention/harm reduction; newborn screening; home visiting; reproductive health planning; nutrition; and expanding insurance coverage access and assuring quality and access to health services such as rural health programs and primary care supportive functions. Of the $160 million; $33M was passed through to non-state entities such as health care providers, medical schools, charitable organizations, non-profits, as well as to counties and cities; $8M was transferred to state institutions of higher education; and $409k was received as pass through funding to the VDH from non-state entities.

8. These funds are essential to the functioning of VDH and the maintenance of public health within our jurisdiction.

Impact

9. The Final Rule's substantial expansion of the terms "assist in the performance," "discrimination," and "health care entity" has required VDH to re-evaluate existing staffing and may ultimately require VDH to hire additional staff to ensure consistent coverage for all patients at all times, particularly in emergency situations.

10. The Final Rule, if implemented, will also require VDH to modify hiring and training practices to accommodate the expanded range of religious, moral, ethical, or other objections to care permissible by the Final Rule.

11. In addition, under the Final Rule, VDH will be required to allocate personnel and resources to determine—with limited advance notice—the veracity of religious, moral, ethical, or other objections made by a much-expanded universe of potential objectors.

12. Under the Final Rule, VDH must also review contractual and other relationships with subcontractors used to deliver health services, for VDH will be responsible under the Final Rule for non-compliance by subcontractors who receive HHS funding through VDH.

13. The Final Rule will also have the effect of displacing existing state law in ways that affect VDH's existing operations, including but not limited to:

a. 18 Va. Admin. Code 85-20-28, which prohibits medical practitioners from "terminat[ing] the relationship or mak[ing] his [or her] services unavailable without documented notice to the patient that allows for a reasonable time to obtain the services of another practitioner."

b. Virginia Code Ann. § 38.2-3445, which requires all health carriers "providing individual or group health insurance coverage" who provide "any benefits with respect to services in an emergency department of a hospital" to provide such coverage "[w]ithout the need for any prior authorization determination, regardless of whether the emergency services are provided on an in-network or out-of-network basis."

c. Va. Code Ann. § 38.2-3407.5:1, which requires insurers who otherwise provide prescription drug coverage to offer coverage for "any prescribed drug or device approved by the United States Food and Drug Administration for use as a contraceptive."

d. Virginia Code Ann. § 54.1-2957.21, which allows genetic counselors to opt out of "counseling that conflicts with their deeply-held moral or religious beliefs" and protects such objectors from liability "provided [the counselor] informs the patient that he [or she] will not participate in such counseling and offers to direct the patient to the online directory of licensed generic counselors maintained by the Board."

14. If VDH fails to comply with the new requirements of the Final Rule, it risks losing HHS funding, which the agency relies on for ongoing operations.

15. For these reasons, the Final Rule, if implemented, will have a significant impact on VDH's funding and operations.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 6th day of June, 2019

M. Norman Oliver, MD, MA
State Health Commissioner

Exhibit 36

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, CITY OF NEW YORK, STATE OF COLORADO, STATE OF CONNECTICUT, STATE OF DELAWARE, DISTRICT OF COLUMBIA, STATE OF HAWAI'I, STATE OF ILLINOIS, STATE OF MARYLAND, COMMONWEALTH OF MASSACHUSETTS, STATE OF MICHIGAN, STATE OF MINNESOTA, STATE OF NEVADA, STATE OF NEW JERSEY, STATE OF NEW MEXICO, STATE OF OREGON, COMMONWEALTH OF PENNSYLVANIA, STATE OF RHODE ISLAND, STATE OF VERMONT, COMMONWEALTH OF VIRGINIA, STATE OF WISCONSIN, CITY OF CHICAGO, and COOK COUNTY, ILLINOIS, Plaintiffs, v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, *in his official capacity as Secretary of the United States Department of Health and Human Services*; and UNITED STATES OF AMERICA, Defendants.	CIVIL ACTION NO. 1:19-cv-04676-PAE

DECLARATION OF DR. DAVID PREZANT

1. I, David Prezant, MD, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true and correct:

2. I submit this Declaration in support of the City of New York's litigation against the United States Department of Health and Human Services ("HHS"), Alex M. Azar II, in his official capacity as Secretary of the United States Department of Health and Human Services, and the United States of America regarding the recently issued rule entitled Protecting Statutory Conscience Rights in Health Care; Delegations of Authority ("Final Rule"). I have compiled the information in the statements set forth below either through personal knowledge, the Fire Department of the City of New York (herein after "FDNY" or "Agency") personnel who have assisted me in gathering this information from our Agency, or on the basis of documents that have been provided to and/or reviewed by me. I have also familiarized myself with the Final Rule in order to understand its immediate impact upon FDNY.

3. I am the Chief Medical Officer at FDNY, located in New York City at 9 Metrotech Center, Brooklyn NY 11201. I am a graduate of Columbia College and Albert Einstein College of Medicine and completed a residency in internal medicine at the Harlem Hospital. I have been employed as the Chief Medical Officer since 2006 and have been working for the FDNY as a Medical Officer since 1986. I am also a Professor of Medicine at the Albert Einstein College of Medicine, Montefiore Medical Center, and Pulmonary Division.

The Fire Department of the City of New York;
Receipt and Use of HHS Funds

4. The FDNY is the largest Fire Department in the United States and is universally recognized as one of the world's busiest and most highly skilled emergency response agencies. As first responders to fires, primary medical emergencies, and public safety incidents including disasters and terrorist acts, the FDNY is responsible for providing critical public safety and emergency medical services to residents and visitors across New York City's five boroughs. We

are committed to making New York City the safest big city in the nation; to that end, FDNY members are sworn to serve and protect life and property.

5. With an annual budget of $2 billion and more than 16,000 members, FDNY is tasked with, among other things, using these resources to respond to more than one million emergencies every year. While a large part of FDNY's budget comes directly from the City of New York, many emergency transports are reimbursed through the Medicare and Medicaid program billed through NYC Health + Hospitals.

6. In accordance with existing medical protocols, the FDNY EMS ("emergency medical services") Command responds to 911 requests for emergency medical assistance by, depending upon the type of medical emergency, dispatching ambulances staffed with two emergency medical technicians ("EMTs") or two paramedics ("Medics").

7. Requests for emergency medical assistance are forwarded to FDNY through New York City's 911 System. Call-receiving operators obtain relevant information and, using established algorithms, determine the priority of the call and whether an EMT- or Medic-staffed ambulance shall be dispatched. Ambulance dispatchers, using a computer-aided dispatch system, then assign an ambulance to respond to the request for emergency medical assistance. Generally, the ambulance with the shortest anticipated response time is assigned to the call. FDNY dispatches both FDNY-staffed ambulances and private ambulances that operate in the New York City 911 System pursuant to agreements with hospitals in New York City, regardless of affiliation. The computer-aided dispatch system does not differentiate between the FDNY-staffed ambulances and the private ambulances. Ambulance personnel, regardless of their affiliation, are required to work under the protocols approved by the 911 System and transport patients to the closest, appropriate hospital emergency department.

8. Response time is critical for life-threatening emergencies, including pregnancy-related complications, cardiac arrest, ischemic heart disease, strokes, choking, asthma/COPD attacks, difficult breathing regardless of diagnosis, and major trauma. Reductions in response time (responding faster) for these illnesses/injuries are often the difference between life and death. For this reason, our computerized triage system sorts EMS calls into segments and call types so that response times and assets (EMT versus Medics) can be matched to the severity of the call. Segment 1 (choking and cardiac arrest) receives the fastest response times and Segment 7 (for example, an emotionally disturbed person in no obvious danger to themselves or others) receives the lowest priority. Any delay in initiating the appropriate care—including CPR, oxygen, compression to stop bleeding, for example—increases the potential for an untoward patient outcome, up to and including the death of the patient.

Policies Addressing Religious Objections

9. FDNY does not have policies in place to address religious or moral objections to providing EMS-related duties. This is because our EMTs and Medics are tasked with the singular mission of providing pre-hospital emergency medical care in response to all requests for such assistance to which they are assigned, regardless of race, religion, ethnicity, sex, sexual orientation, or any other factor, including their personal beliefs or those of the ill or injured persons to whom they are responding. EMTs and Medics are physician extenders and must by law and regulation operate according to written protocols matched to each call type. They cannot add or omit items or actions as dictated by the protocols because they operate as physician extenders without the ability to determine on their own the appropriate actions. Furthermore, I cannot imagine any protocol that includes any action that would possibly evoke a

religious objection since every protocol and every action has only one mission—to save the life of the patient being treated.

Immediate Impact of the Final Rule on FDNY

10. It is FDNY's understanding that the Final Rule expands definitions of certain terms in ways that may affect how we function, specifically: "assist in the performance," "discriminate or discrimination," "health care entity," and "referral or refer for."

11. There is a lack of clarity as to whom and what falls under these terms, particularly in the first-responders context. FDNY would be unable to prepare for compliance with the Final Rule in a meaningful way.

12. In a congested and densely-populated city with over 8.5 million residents and millions of visitors, it is financially and operationally impracticable for our Agency to procure additional ambulances and equipment, or to double-staff a sufficient number of first responders to be on standby in the event a member of our Agency or employee of a non-FDNY staffed ambulance, refuses to provide care at the scene of an emergency. Nor would it seem reasonable to have to screen our response staff and the staff of the privately operated ambulances within the 911 System and their possible actions under each protocol for any potential religious objection. We dispatch by call type and by nearest ambulance; we do not dispatch by which particular person is staffing an ambulance. It would be unreasonable for us to do so. The delay in care that would result should an objection be made to treating a patient could result in great harm or death to the patient.

13. As discussed, FDNY first responders operate under tight response times to emergencies due to the life-or-death nature of our work. For each ambulance dispatched, there is a host of challenges and uncertainties that our EMTs and Medics encounter, including the types

of services to be provided or persons to be stabilized. Accounting for a possible refusal of care for a particular dispatch while ensuring another EMS Team is available is impracticable.

14. Even if there were an appropriately staffed ambulance available to be dispatched following an objection to the provision of care, because rapid response time is critical to successful patient outcome, an alternate dispatch will likely lead a less successful or possibly catastrophic outcome, including the death of the patient.

15. Dispatching an alternate EMS Team to replace a private hospital's ambulance team is even more difficult given the additional time required to communicate the objection to the FDNY.

16. This is especially so when sufficient advanced notice of an objection is not required, either by our own personnel or those of hospital-affiliated personnel operating within the 911 System.

17. It has been a stated goal of the FDNY, City Hall, and City Council to respond faster to 911 calls involving the most life-threatening conditions (Segments 1–3), rather than to respond slower.

I declare under penalty of perjury that, to the best of my knowledge, the foregoing is true and correct.

Executed on this 6 day of June, 2019

David Prezant, MD
FDNY Chief Medical Officer

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/ Leif Overvold
Leif Overvold