EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PLANNED PARENTHOOD FEDERATION OF AMERICA, INC., and PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND, INC., Plaintiffs, v. ALEX M. AZAR II, Secretary of the United States Department of Health and Human Services, in his official capacity, *et al.*, Defendants.	Civil Action No. 1:19–cv–05433 Hon. Paul A. Engelmayer

DECLARATION OF KIMBERLY CUSTER
IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I, Kimberly Custer, declare and state as follows:

1. I am the Executive Vice President of the Health Care Division for Planned Parenthood Federation of America, Inc. ("PPFA").

2. This declaration is based on the knowledge and experience I have acquired in two decades of employment with PPFA and several PPFA member-affiliates, a review of PPFA business records, and information obtained through the course of my duties at PPFA. If called and sworn as a witness, I could and would testify competently thereto.

3. I submit this declaration in support of Plaintiffs' Motion for a Preliminary Injunction, which seeks to prevent the enforcement of the rule entitled "Protecting Statutory Conscience Rights in Health Care," 84 Fed. Reg. 23,170 (May 21, 2019) (to be codified at 45 C.F.R. pt. 88) (the "Refusal of Care Rule" or the "Rule"). I am familiar with the Refusal of Care Rule.

4. As I understand it, the Refusal of Care Rule could force PPFA and its member-affiliates to accommodate a broad group of individuals, including employees, interns, volunteers, trainees, and contractors, who—contrary to our mission—refuse to provide or assist with core reproductive services, such as abortion, sterilization, and potentially other health services, regardless of the burden that it would impose on our health centers and their patients. I also understand that the Rule broadly defines "assisting in the performance" of a procedure or service to include, among other activities, "counseling, referral, training, or otherwise making arrangements" for the procedure or service. The accommodation required by the Rule would threaten Planned Parenthood patients' access to comprehensive reproductive health care, and run counter to our medical standards requiring that patients be provided with information and health care in an objective and nonjudgmental manner. In many cases absolute accommodation would also be costly and time-consuming, and result in a disruption in services. In certain circumstances, it would be impossible.

5. The accommodation required by the Rule would also pose security and privacy risks to Planned Parenthood and our patients. It is already the case that anti-abortion individuals seek positions with our affiliates in order to obtain information about Planned Parenthood and our patients. The Rule will severely hamper the ability of our affiliates to screen for such individuals.

6. In addition, Planned Parenthood will have to spend significant staff time revising employment materials, conducting trainings with human resources personnel and supervisors, and retaining and paying outside legal counsel to advise on employment matters.

7. The Refusal of Care Rule puts Planned Parenthood affiliates at risk of losing hundreds of millions of dollars of federal funds. Many of PPFA's member-affiliates would be

forced to reduce their hours, cut their staff, and/or even close health centers if they lost all of their federal funding. This outcome would be devastating to Planned Parenthood and individuals who rely on us—especially people with low incomes, rural residents, and people of color who frequently have no other affordable option for high-quality and often life-saving reproductive care.

I. MY BACKGROUND

8. After receiving a B.A. from the University of Oregon, I held a series of management positions in the private sector. In 1997, I joined a Planned Parenthood affiliate as a Vice President for Community Affairs.

9. In 2004, I became the President and CEO for Planned Parenthood of North East Pennsylvania. For the next decade, I served as the chief executive of several Planned Parenthood affiliates.

10. In 2015, I accepted my current position as the Executive Vice President of the Health Care Division of PPFA. In this role, I oversee all health care programs for PPFA—including medical services, health education, health care operations, business analytics, accreditation, and evaluation for PPFA's affiliates—as well as affiliate governance and leadership. I also help develop short- and long-term strategies for affiliates to achieve their core mission of delivering high-quality reproductive health services.

II. PLANNED PARENTHOOD'S MISSION AND STRUCTURE

11. PPFA strives to ensure access to comprehensive reproductive health care services; advocates for public policies that support access to health care, especially for people who have low incomes or who are from underserved communities; and provides educational programs relating to reproductive and sexual health. PPFA also advocates for the right to access safe and legal abortion.

12. While PPFA is dedicated to ensuring access to comprehensive reproductive health care services, PPFA itself does not provide medical services. Medical services are provided by 53 Planned Parenthood affiliates in 48 States and the District of Columbia. These affiliates operate nearly 600 health centers across the nation, and they provide services to millions of patients from all 50 States and the District of Columbia each year.

13. PPFA is a not-for-profit corporation organized under the laws of New York and has its principal place of business in New York City (Manhattan). Our affiliates are members of PPFA, but each is a separately incorporated not-for-profit organization, with its own Chief Executive Officer and Board of Directors. Each affiliate provides medical and educational services in its community or communities.

14. In order to be certified as an affiliate and carry the Planned Parenthood name, each organization must satisfy the Standards of Affiliation laid out in PPFA's bylaws. Among other things, the Standards of Affiliation require that an affiliate publicly support the purposes and policies of PPFA and provide medical services that meet PPFA's Medical Standards and Guidelines ("MS&Gs"). For example, PPFA's MS&Gs and accreditation standards require that information that a patient needs to make an informed decision, including for abortion and sterilization, must be presented in an objective and nonjudgmental manner. Compliance with the MS&Gs is required to maintain affiliation with PPFA. Each affiliate is evaluated through PPFA's accreditation process at least every four years.

15. The member-affiliates set the long-range goals and priorities of PPFA and elect the PPFA Board of Directors. Through their participation and voting, PPFA's member-affiliates control the mission and direction of PPFA. Under PPFA's bylaws, PPFA's member-affiliates are also required to contribute financially to PPFA.

16. Affiliation with PPFA is important to the success of an affiliate. PPFA affiliates pay membership dues for the support, leadership, and guidance that PPFA provides, as well as the right to use the Planned Parenthood name and mark. The Planned Parenthood name signals that an affiliate stands for certain values and provides nonjudgmental, high-quality health care and educational services.

III. HEALTH CARE SERVICES PROVIDED BY PLANNED PARENTHOOD AFFILIATES

17. Each Planned Parenthood affiliate offers a wide range of family planning services and reproductive health care. These services may include contraception, including highly effective long-acting reversible contraceptives ("LARCs"); contraceptive counseling; physical exams; clinical breast exams; screening for cervical cancer; testing and treatment for sexually transmitted infections ("STIs"); pregnancy testing and counseling; colposcopies (a type of cervical cancer test); gender affirming care, including hormone therapy for transgender patients; some sterilization services, including vasectomies; abortion; and health education services. Availability of some of these services, including contraception, contraceptive counseling, and abortion, is a core part of Planned Parenthood's beliefs as an organization. Accordingly, the MS&Gs by which Planned Parenthood affiliates must abide require provision of these services.

18. In 2018, Planned Parenthood affiliates provided more than 9,800,000 services to approximately 2,400,000 patients during the course of approximately 4,000,000 visits. They provided reversible contraceptives to more than 1,800,000 patients and administered more than 560,000 cancer screenings and preventive services, such as breast exams and cervical screens (Pap tests). An estimated one out of every three women nationally has received care from a PPFA affiliate at least once in her life.

19. In the past several years, the occurrence of gonorrhea, chlamydia, and syphilis has dramatically spiked in communities nationwide, particularly in the communities that Planned Parenthood serves. Accordingly, STI testing and treatment has become a larger portion of Planned Parenthood's service mix. In 2018, our affiliates administered more than 4,900,000 STI tests, as compared to approximately 4,700,000 STI tests in 2017 and approximately 4,400,000 STI tests in 2016.

20. In my experience, there are many reasons why patients choose to receive care from PPFA affiliates rather than other providers of reproductive health care (when such alternative providers are available at all). Some patients choose Planned Parenthood because our expertise and specialization in reproductive health care make us the top choice for high-quality medical care.

21. Others choose Planned Parenthood because of our reputation for providing nonjudgmental and culturally sensitive care; Planned Parenthood staff are trained to acknowledge and respect patients' customs regarding reproductive health. Indeed, many of our patients receive their other health care from other providers, but because of privacy concerns and fear of judgment, they retain Planned Parenthood as a separate provider for their reproductive health care.

22. Our patients also turn to us for nonjudgmental and high-quality abortion care. Planned Parenthood affiliates are often the only abortion providers available; very few practicing OB-GYNs perform abortions, particularly OB-GYNs in private practice and those located in the Midwest and South. Moreover, of the relatively small number of OB-GYNs who do provide abortions, such services are not generally available but are instead reserved for existing patients. Today, 95% of abortions in the United States are performed in freestanding clinics, like the

health centers of Planned Parenthood affiliates. For this reason, abortion is a critical component of Planned Parenthood's mission.

23. Planned Parenthood health centers also tend to be much more convenient for their patients than other reproductive healthcare providers. Planned Parenthood affiliates can often see patients quickly—in many cases on a walk-in basis—whereas other providers frequently have long wait times for appointments.

24. Most Planned Parenthood health centers offer extended hours, which are especially important to patients with low incomes, many of whom have inflexible schedules due to work or childcare responsibilities. More than 80% of Planned Parenthood health centers offer appointments after 5 p.m. at least one day per week, nearly 60% offer appointments past 6 p.m. at least one day per week, and 45% offer weekend appointments.

25. In recent years, many Planned Parenthood affiliates have served a critically important role providing care, including hormone therapy, to transgender individuals. Planned Parenthood health centers are often the only place that these patients can access care without judgment or discrimination. In 2018, twenty-nine affiliates reported at least one health center providing gender affirming care.

26. Planned Parenthood affiliates also play a particularly important role in providing reproductive and other health care to individuals with low incomes. Most of PPFA affiliates' patients are poor and/or uninsured; approximately 73% have incomes at or below 150% of the federal poverty level. Fifty-six percent of affiliate health centers are in Health Professional Shortage Areas ("HPSAs") and/or in rural or other Medically Underserved Areas ("MUAs"), as designated by the Health Resources and Services Administration, a subagency of the U.S. Department of Health and Human Services ("HHS").

27. Planned Parenthood health centers also play a critical role in serving communities of color and in many cases are the only health centers providing reproductive health care in such communities. Approximately 26% of Planned Parenthood's patients are Latinx, 18% are Black, and 11% are Native American, Asian, or Multiracial. Over the past five years, Planned Parenthood has served an increasing number of patients in these groups.

IV. FEDERAL FUNDING RECEIVED BY PLANNED PARENTHOOD AFFILIATES

28. Almost all of Planned Parenthood's 53 member-affiliates receive federal funding. While the amount of federal funds varies by affiliate, many affiliates receive a significant portion of their budget from federal funds, and collectively, our affiliates have hundreds of millions of dollars at stake under the Refusal of Care Rule.

29. More specifically, almost all PPFA affiliates participate in Title XIX of the Social Security Act, more commonly known as the Medicaid program. The Medicaid program is a cooperative federal-state program that provides medical assistance to individuals with low incomes. These affiliates provide Medicaid-funded health care services to patients with low incomes at health centers all across the country. In 2017, Planned Parenthood affiliates received more than $418 million in Medicaid funds for reimbursement of services provided to Medicaid patients.

30. Further, Planned Parenthood provided family planning care in 2017 to an estimated 1.6 million patients in the Title X program. Title X, the federal program that subsidizes the provision of family planning services to people with low incomes, enables Planned Parenthood affiliates to offer these services on a sliding-fee scale, depending on the patient's ability to pay. Under Title X, the Secretary of HHS "is authorized to make grants and enter into contracts with public or nonprofit private entities to assist in the establishment and operation of

voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services." 42 U.S.C. § 300(a). These grantees may provide the program services themselves or contract with delegate agencies (or "subgrantees") to provide the services. Planned Parenthood affiliates serve as both direct grantees and subgrantees.

31. In 2017, Planned Parenthood affiliates received more than $67 million in Title X grants to support, for example, Pap tests, breast exams, and STI tests. Title X money is also used to support other critical needs that are not reimbursable under Medicaid or commercial insurance, like individual patient education, community-level outreach, and public education about family planning and related sexual health issues. Although Planned Parenthood affiliates only operate 13% of health centers in the Title X program, they serve 40% of the patients in the program.

32. PPFA affiliates also receive other HHS funds, including under the Social Services Block Grant ("Title XX" or "SSBG") program, which allocates funds to states to support social services for vulnerable children, adults, and families; the Maternal and Child Health Block Grant ("Title V") program, which supports the health of women, children, and their families; the Teen Pregnancy Prevention Intervention Grant ("TPPI") program, which funds organizations working to prevent teen pregnancy across the United States; the Ryan White AIDS program; and the National Breast and Cervical Cancer Early Detection Program ("NBCCEDP"). In 2017, Planned Parenthood affiliates received more than $3 million from SSBG, almost $2 million from Title V, more than $4 million from TPPI, more than $100,000 from the Ryan White AIDS program, and more than $350,000 from NBCCEDP.

33. It is my understanding that because of their receipt of these federal funds, PPFA affiliates will be required to sign a new certification that they are in compliance with the Refusal

of Care Rule and that failure to comply with the Refusal of Care Rule could lead to termination of all federal funding—which, as demonstrated above, amounts to hundreds of millions of dollars across the country.

V. BURDENS IMPOSED BY THE REFUSAL OF CARE RULE

34. Prior to the Refusal of Care Rule, whether Planned Parenthood affiliates were obligated to hire or accommodate individuals who expressed objections to performing job duties based on religious belief was governed by the standard for religious discrimination under Title VII of the Civil Rights Act, as well as by any obligations imposed by applicable state law. Under the Title VII standard, affiliates have no obligation to accommodate a religious objection if doing so would pose an undue hardship.

35. I understand that the Refusal of Care Rule, however, prohibits health care providers that receive certain federal funding, as our affiliates do, from "discriminating" against individuals who refuse to perform or assist in the performance of abortion, sterilization, and potentially other services, but makes clear that the Rule differs from Title VII by not incorporating the additional concept of an "undue hardship" exception for accommodations. I also understand that the Refusal of Care Rule prohibits Planned Parenthood affiliates from (1) asking *prospective* employees, interns, volunteers, and trainees whether they are willing to perform the essential functions of their job; (2) asking *existing* employees, interns, volunteers, and trainees if they object to the performance of any of their job functions more than once per calendar year absent an undefined "persuasive justification"—even in the event of an emergency; and (3) taking steps to protect patient access to the objected-to health services unless the objecting employee "voluntarily accepts" an undefined "effective accommodation" that does not amount to an "adverse action" or otherwise "exclude" the employee from a "field of practice." It

is my understanding that the Rule expressly declines to say whether a health care provider could disqualify a person with religious or moral objections to covered practices if such covered practices made up the primary or substantial majority of the duties of the person's position.

36. The Refusal of Care Rule's requirement that our affiliates accommodate the beliefs of employees, interns, trainees, and contractors at all costs, regardless of hardship to the affiliate, would mark a dramatic departure from our current practice. Planned Parenthood affiliates could be forced to hire and accommodate an unlimited number of individuals who refuse to provide or assist with abortion, sterilization, and potentially other core services we provide. This change in practice would jeopardize the ability of our patients to receive the nonjudgmental care and information they need, and in certain circumstances these accommodations would be impossible.

37. Accommodation would also impose significant security risks on Planned Parenthood affiliates, which may be forced to hire or accommodate individuals who are opposed to Planned Parenthood's mission and seek to sabotage our affiliates.

38. Finally, the Refusal of Care Rule grossly underestimates the costs Planned Parenthood affiliates would have to expend in order to revise employment practices and policies.

A. Burden on Staffing Practices and Effects on Service Offerings

39. Planned Parenthood affiliates employ thousands of individuals, and have a significant number of job vacancies at any given time. In 2018, PPFA affiliates had 8,857 full-time and 1,347 part-time employees, in addition to 31,544 volunteers.

40. Based on the number of employees replaced during the past several years, I estimate that Planned Parenthood affiliates make hiring decisions for approximately 2,000 employee vacancies per year.

41. Many of our affiliates have dealt with instances in which an employee, trainee, intern, volunteer, or applicant for a job has objected to providing or assisting with abortion care. Some have incurred costs—such as staffing changes or increased personnel—in accommodating these personal objections. Some affiliates have also experienced having an employee or applicant for a job object to providing gender affirming care to transgender individuals.

42. Accommodation issues like these often arise when an affiliate or health center expands or adds new services. For example, sometimes a health center that did not previously provide abortion services or gender affirming care adds these services, or an affiliate or health center expands its abortion services to later gestational ages. An individual sometimes indicates that he or she does not want to participate in the new services, including abortion and gender affirming care, and the affiliate must determine whether and how it is able to accommodate that individual.

43. Accommodating someone who objects to participating in the provision of a health care service offered by an affiliate can be very time-consuming and costly, especially for those affiliates with small health centers and/or those in remote locations. Many affiliates have very few individuals working at any particular health center at a time, and if one of those individuals is not willing to participate in providing a particular service, no other person may be available to take over his or her role. The impracticality of these objections is compounded by the fact that our affiliates cannot always predict which services will be provided on a given day or shift. In particular, patients seeking pregnancy testing or visiting us for another service in which a pregnancy diagnosis is possible need to have access to counseling about all of their options, including abortion. Some health centers also accept walk-in patients.

44. For many of our affiliates, if they were required to hire or accommodate someone who refused to provide or assist with abortion care, it would be difficult or prohibitively expensive to continue providing abortion services at one or more of their health centers. For example, I am aware that one affiliate currently has an employee who objects to abortion in a center with a small staff in a community with limited other options for abortion care, and it presents an ongoing challenge. Many of the affected health centers are located in areas without many other abortion providers, which would also negatively impact access throughout the region.

45. Similarly, for many affiliates, hiring or accommodating someone who refused to provide gender affirming care would make it difficult or prohibitively expensive to continue providing that care at one or more health centers.

46. While PPFA does not track precise figures, I know from my experience working with a wide range of affiliates and health centers that it is common for a health center to be staffed with a single licensed clinician. It is also common for a smaller health center to be staffed with only a very small number of total staff members. Accommodating all objections by employees, interns, trainees, and contractors would affect morale in some health centers.

47. Under the Refusal of Care Rule, affiliates must accommodate—or even hire and then accommodate—individuals in these jobs who refuse to participate in providing health care services that are central to the affiliates' mission to provide comprehensive, nonjudgmental reproductive health services. Such accommodation would be very expensive, time-consuming, and in certain instances, impossible.

48. The Refusal of Care Rule also increases affiliates' legal exposure for employment decisions it makes, even though Planned Parenthood has just cause to make those choices. For

example, a Planned Parenthood affiliate might choose not to hire an applicant because the applicant is unqualified—but if the applicant also happens to be opposed to providing abortion care, the affiliate will open itself up to risk of a complaint to HHS's Office for Civil Rights ("OCR"), which could lead to a loss of federal funding. The Refusal of Care Rule will force Planned Parenthood to substantially increase documentation related to hiring and other human resources decisions, adding further administrative burdens to each affiliate's practices.

49. If the Refusal of Care Rule is not enjoined, affiliates will be forced to hire some individuals they would not otherwise have hired under existing law. It will be very difficult, if not impossible, to unwind those hiring decisions after the fact. For example, some of our affiliates have staff who are members of collective bargaining units and whose employment is subject to the terms of those agreements.

B. Reputational Harms and Damage to Patient and Community Trust

50. If the Rule takes effect, it will also be detrimental to Planned Parenthood's reputation as a provider of compassionate and nonjudgmental care by sending a message to patients and communities that we cannot be relied on to provide that care consistently.

51. In particular, in many communities, we are already the last or among the last providers of abortion care, and patients seeking an abortion face severe community disapproval of their choice to have an abortion. They expect—and deserve—to come into one of our health centers and receive counseling about all of their options and, if they decide to terminate their pregnancy, to obtain abortion care without judgment by their providers. By condoning unlimited staff objections to provision of abortion care, the Rule would permit additional stigmatization of our patients seeking abortions, in turn damaging our reputation among patients.

52. In addition, to the extent that the Rule requires forced accommodation of staff who oppose emergency contraception, it will also harm our patients looking for readily available care to prevent an unintended pregnancy. These patients have five days or less to obtain contraception, and they come to us expecting that we will meet their needs, whatever those may be. If they are turned away by our providers, or told that they will have to obtain that care from someone else, our patients will get a message of disapproval—a message that is directly contrary to Planned Parenthood's standard of care and our longstanding reputation in communities we serve. The impact of these refusals will fall particularly hard on patients seeking emergency contraception after a sexual assault. We do not want to contribute further to the trauma these individuals have already experienced.

53. The reputational injury that PPFA and its affiliates will experience will be compounded by the fact that affiliates might not know if a staff member has refused to provide care or counseling for individuals on the basis of an objection. This lack of information will limit our ability to mitigate—as best we can under the circumstances—the impact of a provider's refusal on patient care by ensuring, if possible, that another staff member is able to care for that patient.

C. Increased Security Risks

54. I also have grave concerns that compliance with the Refusal of Care Rule could lead to security and privacy risks. Of course many individuals who might object to providing or assisting with our services pose no threat to our affiliates. However, it is critical that we be able to identify the subset of individuals who may seek positions with affiliates in order to infiltrate Planned Parenthood and use the information they gather or their access to our facilities to harm our staff, providers, and patients.

55. There is no limit to what people will do to infiltrate and sabotage Planned Parenthood. Individuals opposed to Planned Parenthood have filmed and harassed patients as they walked into health centers; recorded addresses of staff members and followed those staff members home; and contacted health centers under false pretenses—e.g., as a worker for a business providing services to an affiliate or as a staff member of a partner organization—in order to fish for information.

56. Many affiliates report that one or more individuals who they believed to be opposed to Planned Parenthood or the services Planned Parenthood provides have applied to work, intern, train, volunteer at, or contract with the affiliates. There have been instances in which abortion opponents filled out online applications for employment with us and in which an opposition member posted a job vacancy on her social media account and asked followers to apply.

57. Violence against abortion providers and abortion-providing facilities is not a new phenomenon.[1] However, it has spiked in recent years, following infiltration of Planned Parenthood in July 2015 by the anti-abortion Center for Medical Progress ("CMP"). CMP posed as a fake biomedical research company and filmed a series of undercover videos showing Planned Parenthood employees discussing fetal tissue donation. In July and August 2015, immediately following the release of the CMP videos, Planned Parenthood affiliates reported a sharp increase in threats, harassment, vandalism, and violence against them, their staff members, and their patients at health centers around the country—more than triple the number of incidents

[1] According to the National Abortion Federation, "there have been 11 murders, 26 attempted murders, 42 bombings, 185 arsons, and thousands of incidents of criminal activities directed at abortion providers" since 1977. National Abortion Federation, *2015 Violence and Disruption Statistics* 1 (2016), https://prochoice.org/wp-content/uploads/2015-NAF-Violence-Disruption-Stats.pdf [hereinafter "NAF Report"].

that affiliates reported in July and August of the previous year. Then, in November 2015, a man shot and killed three people and injured nine at a Planned Parenthood health center in Colorado Springs, Colorado, specifically noting that he was inspired by the anti-abortion rhetoric around fetal tissue donation.[2] The "2015 statistics reflect a dramatic increase in hate speech and internet harassment, death threats, attempted murder, and murder, which coincided with the release of heavily-edited, misleading, and inflammatory videos beginning in July."[3]

58. By preventing Planned Parenthood affiliates from identifying job applicants and other individuals seeking to work with us who oppose our mission, the Refusal of Care Rule would allow opponents to infiltrate our affiliates and obtain information or even film covert videos, which could lead to harassment, death threats, and murder, as it did in 2015.

59. The Refusal of Care Rule could further lead to harassment by allowing anti-abortion individuals to obtain employees' and patients' personal information. There are many websites where anti-abortion activists post photographs of staff members, along with photographs of their cars and homes, sometimes with addresses, license plate numbers, and private phone numbers. These posts expose our employees to harassment in their homes and neighborhoods. Anti-abortion activists often picket employees' homes, send graphic postcards to employees' home addresses, and even distribute pamphlets in employees' neighborhoods to "warn" neighbors that someone associated with abortion lives nearby. For this reason, many Planned Parenthood employees keep their affiliation with the organization private. Providing

[2] *See* Fred Barbash & Yanan Wang, *The Twisted 'Dream' of Accused Planned Parenthood Killer Robert Dear Jr.*, Wash. Post (Apr. 12, 2016), https://www.washingtonpost.com/news/morning-mix/wp/2016/04/12/the-twisted-remorselessness-of-accused-planned-parenthood-killer-robert-dear-jr/.

[3] *See* NAF Report at 1.

anti-abortion activists with additional access to Planned Parenthood affiliates and their staff would only exacerbate the harassment that our staff already face.

60. In addition, Planned Parenthood takes seriously its obligation to protect the privacy of patients who use its services, including services that may be stigmatized in the communities in which Planned Parenthood operates. By forcing Planned Parenthood to hire and accommodate individuals opposed to its mission, the Refusal of Care Rule could result in the release of private information—including names and addresses of patients—to individuals motivated to misuse it.

61. The release of information about patients and staff to individuals with ill will toward our organization could also result in an increase in abortion stigma in communities in which we provide services. As a result of stigma, individuals who provide or obtain abortion are labeled as different, stereotyped or associated with negative attributes, conceived of as an "other," and then subjected to status loss and discrimination. For providers and patients at Planned Parenthood affiliates, abortion stigma can lead to isolation, burnout, self-judgment, and physical and mental health consequences.

D. Review and Other Compliance Costs

62. The Refusal of Care Rule will also impose significant compliance costs on Planned Parenthood affiliates. I understand that HHS has estimated that family planning centers will spend (1) two hours on average familiarizing themselves with the Rule and its requirements, which represents a "one-time opportunity cost of staff time (a lawyer) to review the rule"; and (2) "an average of 4 hours [per year for the first five years] reviewing the assurance and certification language and the Federal conscience protection and associated anti-discrimination laws and the rule," which is "a function of a lawyer spending 3 hours reviewing the assurance

and certification and an executive spending one hour to review and sign." 84 Fed. Reg. at 23,240–41. I strongly disagree with these estimates.

63. As an initial matter, the time to review the Rule and associated laws is grossly underestimated. The Rule covers more than one hundred pages in the Federal Register, and the associated laws include not only the "Church, Weldon, and Coats-Snowe Amendments" but also "22 additional statutory provisions." 84 Fed. Reg. at 23,240. Affiliates would need to seek legal counsel to ensure that their policies and practices are in compliance with the Refusal of Care Rule. For counsel to thoughtfully review each of these documents would take several days—not several hours—of work. In addition, in states where there are potentially conflicting state laws, affiliates may need legal counsel to decipher whether those state laws have been preempted, or how the Rule and State laws operate in conjunction with each other.

64. In addition, because HHS requires additional protections under the Refusal of Care Rule than those that prevent religious discrimination under Title VII, Planned Parenthood affiliates will have to expend a significant amount of time and, in turn, money to revise their employment practices and policies in order to ensure compliance with the Rule.

65. In particular, I believe that nearly all affiliates would have to train any staff member with supervisory responsibilities on how to deal with hiring and accommodation requests in light of the Rule. PPFA affiliates have 1770 managers at nearly 600 locations across the country, and they may also need to train non-managerial staff who are involved in hiring.

66. In addition, affiliates will also have to review and revise employee manuals and handbooks to ensure that they are in compliance with the Refusal of Care Rule.

67. Similarly, all job descriptions, applications, and other employment recruitment materials will have to be reviewed line-by-line, and edited, where necessary. Again, each

affiliate's Human Resources Manager or Director will likely perform this task. I estimate that this will take at least 30 minutes for each job description and application, given the need to be detail-oriented when completing the task. As noted above, Planned Parenthood affiliates must make hiring decisions for approximately 2,000 employee vacancies per year.

E. Cost of Noncompliance

68. As high as the cost of compliance would be, the cost of noncompliance would be astronomical. Many of PPFA's affiliates would have to consider reducing their hours, their staff, or even closing health centers if they lost all of their federal funding. This would leave the vulnerable populations we serve without access to reproductive health care. As noted above, 73% of Planned Parenthood patients have incomes at or below 150% of the federal poverty level. Fifty-six percent of Planned Parenthood health centers are in HPSAs and/or MUAs. Planned Parenthood health centers also play a critical role in serving communities of color and in many cases are the only health centers providing reproductive health care in such communities. If Planned Parenthood affiliates lost all of their federal funding, the outcome would be devastating to the individuals who rely on us for their reproductive health care—especially patients with low incomes, rural patients, and patients of color who often have no other affordable option for reproductive care.

69. These draconian impacts on affiliates could occur based on noncompliance that is only tangentially related to us. It is my understanding that Planned Parenthood affiliates as well as their delegate agencies must comply with the Refusal of Care Rule, and that affiliates could lose their HHS funding if their delegate agencies or subcontractors were found not to be in compliance. In addition, where an affiliate is a subgrantee of a state agency, it could also lose all

of its federal funding if another subgrantee were to violate the Refusal of Care Rule—leaving the affiliate without federal funds even though it was in compliance with the Rule.

* * *

70. In sum, it is my belief that the Refusal of Care Rule will have a very large impact on the staffing practices of Planned Parenthood affiliates nationwide, the security of our providers and patients, and the nonjudgmental, compassionate patient care we are known for providing.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct and that this declaration was executed on this 14th day of June 2019.

Kimberly Custer