Exhibit C

Declaration of Erin King, M.D.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GRAHAM T. CHELIUS, M.D., *et al.*,

Plaintiffs,

vs.

XAVIER BECERRA, J.D., *in his official capacity as* SECRETARY, U.S. D.H.H.S., *et al.*,

Defendants.

CIV. NO. 1:17-cv-00493-JAO-RT

[CIVIL RIGHTS ACTION]

DECLARATION OF ERIN KING, M.D., IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Judge: Hon. Jill A. Otake
Hearing Date: Vacated per Dkt. 107
Trial Date: Vacated per Dkt. 82

Erin King, M.D. declares and states as follows:

1. I make this declaration based on my own personal knowledge. If called to testify, I could and would do so competently as follows.

2. I am a board-certified Obstetrician Gynecologist ("Ob-Gyn") licensed to practice in Illinois and Missouri. I treat patients principally at a general Ob-Gyn practice in St. Louis, Missouri, and at the Hope Clinic for Women ("Hope Clinic") in Granite City, Illinois, where I also serve as the Executive Director. I provide patients with the full scope of obstetric and gynecological care, including abortion care.

3. I am a member of the American College of Obstetricians and Gynecologists, the National Abortion Federation, and the Society of Family Planning ("SFP"). I understand that SFP is a plaintiff in this litigation challenging the Risk Evaluation and Mitigation Strategy ("REMS") that the Food and Drug Administration ("FDA") imposes for mifepristone (brand name Mifeprex®). I write this declaration in support of Plaintiffs' Motion for Summary Judgment, on my own behalf, and not on behalf of Hope Clinic or any other institution.

4. I am a certified prescriber under FDA's mifepristone REMS. I prescribe mifepristone as part of a medication abortion regimen and for patients seeking medical management of miscarriage. I also provide training in medication abortion and other abortion and reproductive health care.

5. I am aware of clinicians who would prescribe mifepristone for medication abortion and miscarriage care for their patients if they could send in a prescription to a local or mail-order pharmacy as they do with nearly all other medication. However, the mifepristone REMS—which requires clinicians to register as certified prescribers and to stock and dispense mifepristone in their offices—has prevented them from using mifepristone in their patient care. Physicians I have trained have often told me that they are unable to find employment with practices that are willing to stock mifepristone and, as a result, were not able to provide medication abortion or miscarriage care using mifepristone to their patients, though they would have been able to provide this care if they could simply write a prescription.

6. The mifepristone REMS also imposes significant burdens on my patients. Because of the REMS, my patients whom I can evaluate and counsel via telemedicine have had to travel unnecessarily to my clinic for their medication. They have had to find and pay for transportation and child care and take time away from jobs that pay by the hour or day. This is particularly burdensome for my many patients who live with low incomes and have to travel long distances, from rural parts of southern Illinois, to get to my clinic. In addition, during the COVID-19 pandemic, the REMS has put them and their families at needless risk for contracting a deadly virus as they travel in person to pick up medication that they

could otherwise safely receive by mail at home.

7. Last year, a federal district court in Maryland issued an injunction suspending the mifepristone REMS in-person requirements for medication abortion for the duration of the COVID-19 federal Public Health Emergency ("PHE").[1] The injunction permitted me to contract with a mail-order pharmacy to ship mifepristone to my eligible patients. That meant that, for my medication abortion patients who did not require in-person assessment, I could provide all counseling and assessment in a telehealth visit and then have the medication delivered directly to them from the mail-order pharmacy.

8. On the day we began offering patients the option to receive their prescription through the mail-order pharmacy, I treated a patient who had had an appointment to come to the clinic for a medication abortion but had had to cancel because she could not get time away from work and could not find anyone to stay with her children. She told me that she would have had to forgo an abortion altogether if we had not been able to offer her a telemedicine visit and delivery of her medication, because she did not think she would ever be able to make the arrangements necessary to get to the clinic in person. But, because the REMS in-person requirements were enjoined, she was able to have a safe abortion from the

[1] *Am. Coll. of Obstetricians & Gynecologists v. FDA* [hereinafter "*ACOG v. FDA*"], 472 F.Supp.3d 183 (D.Md. 2020); *ACOG v. FDA*, Civ. No. TDA-20-1320, 2020 WL 8167535 (D.Md., Aug. 19, 2020).

safety and privacy of her own home.

9. Unfortunately, however, the U.S. Supreme Court entered a stay of the injunction, reinstating the in-person requirements.[2] As a result, for the past three months I have again been forced to require patients seeking medication abortion care to travel to the clinic to pick up their medication.

10. This requirement imposes substantial burdens on my patients. Since the Supreme Court reinstated the REMS in-person requirements, I have seen numerous patients who needed no in-person assessment but nevertheless had to travel multiple hours, each way, to come to my clinic to pick up their medication. These patients have had to bear the costs and burdens of arranging travel, time away from work, and child care, when they could just as safely have obtained their prescription by mail and avoided all of these burdens.

11. Needing to make these arrangements and raise funds for this travel has often delayed my patients' care—sometimes beyond the point when they can have a medication abortion. I recently saw a patient who wanted a medication abortion but was 13 weeks pregnant and therefore had to have an in-clinic procedure. She was very upset, explaining that she had rescheduled her appointment numerous times because she could not arrange for travel or find someone to take care of her children—and during the pandemic, she could not

[2] *ACOG v. FDA*, 141 S. Ct. 578 (2021).

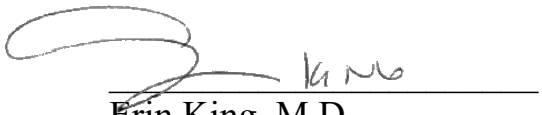
bring her children with her to our clinic, because we do not allow anyone other than the patient to enter in order to mitigate viral spread. But for the mifepristone REMS, I could have treated this patient in a telemedicine visit and had her medication delivered to her at home while she was still eligible for a medication abortion. This patient is not alone; I see patients every week with one variation or another of this story.

12. I am able to provide care entirely by telehealth for a wide array of other medical needs. For instance, I regularly use telehealth to diagnose, treat, and counsel patients regarding urinary tract infections, vaginitis, rashes, and contraception needs. In my practice, we also conduct prenatal and post-partum visits remotely. We can even examine a patient's sutures and evaluate how well the patient is healing after surgery in a telehealth visit. I can just as safely and effectively evaluate and comprehensively counsel eligible medication abortion patients in a telehealth visit. However, because of the REMS, my patients who require mifepristone have had to suffer needless burdens and risks that my patients who can obtain care entirely by telehealth are able to avoid.

13. Earlier this week, FDA announced that it would suspend enforcement of the REMS in-person requirements during the COVID-19 PHE. I am very pleased that my patients receiving care by telehealth can now have their medication delivered directly to them from a mail-order pharmacy without the

costs, risks, and burdens of a needless in-person trip. However, when the PHE ends and this non-enforcement policy expires, the REMS in-person requirements will again impose substantial burdens on my patients.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on April 14, 2021.



Erin King, M.D.