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March 12, 2018

By e-mail

Hirsh D. Kravitz  
FOIA, Records, and E-Discovery Office  
Civil Division  
Department of Justice  
Room 8314  
1100 L Street, NW  
Washington, D.C. 20530-0001

Dear Mr. Kravitz:

This is a request for a production of documents pursuant to the Freedom of Information Act, 5 U.S.C. § 552, on behalf of the National Women's Law Center ("NWLC") and Americans United for Separation of Church and State ("Americans United").

NWLC and Americans United hereby request access to, or copies of, the following documents:

1. Any and all final, executed agreement(s) between the University of Notre Dame and Defendants to settle the claims at issue in the following litigation:

*University of Notre Dame v. Burwell et al.*, No. 15–812 (U.S.); No. 13–3853 (7th Cir.); 3:13-cv-01276-PPS (N.D. Ind.).

This litigation concerns the women's preventive services provision of the Patient Protection and Affordable Care Act (ACA), 42 U.S.C. § 300gg-13(a)(4) (Public Health Service Act § 2713) and its implementing regulations, which ensure individuals covered by group health plans or through health insurance issuers offering group or individual health insurance obtain coverage for the full range of FDA-approved contraceptives without cost sharing.

The Department of Justice, the Department of Health and Human Services, the Department of Labor, and the Department of the Treasury (collectively, "the

Departments”) and the University of Notre Dame repeatedly indicated through a series of status reports to the U.S. Court of Appeals for the Seventh Circuit that the parties were engaged in “extensive settlement discussions.” See Appellant University of Notre Dame and Appellees’ Joint Status Report, *Univ. of Notre Dame v. Price*, No. 13-3853, Dkt. No. 151 at 1 (7th Cir. Aug. 31, 2017); Appellant University of Notre Dame and Appellees’ Joint Status Report, *Univ. of Notre Dame v. Price*, No. 13-3853, Dkt. No. 148 at 1 (7th Cir. Aug. 1, 2017); Appellant University of Notre Dame and Appellees’ Joint Status Report, *Univ. of Notre Dame v. Price*, No. 13-3853, Dkt. No. 136 at 2 (7th Cir. June 1, 2017).

NWLC and Americans United represented intervenors in this litigation but were excluded from every one of these settlement discussions. See Status Report of Intervenors-Appellees, *Univ. of Notre Dame v. Price*, No. 13-3853, at 2 (7th Cir. Oct. 2, 2017).

On February 7, 2018, the University of Notre Dame issued a letter to students enrolled in its health plan stating that its lawsuit against the Departments “was settled favorably” in October 2017, and that this alleged settlement gives the University the option to terminate insurance coverage of certain forms of contraception notwithstanding the ACA and its implementing regulations. See Rev. John I. Jenkins Letter to Aetna Student Enrollees, University of Notre Dame Office of the President, at 1 (Feb. 7, 2018).

NWLC and Americans United therefore file this request to collect vital information about the terms of the final settlement agreement(s) reached in the above-referenced litigation. Disclosure of the information will inform the public--including the Notre Dame students, employees, and dependents whose rights are directly implicated--about whether the Departments carried out their duty, as directed by the U.S. Supreme Court, to “ensure that women covered by [Notre Dame’s] health plans obtain, without cost, the full range of FDA approved contraceptives.” See *Univ. of Notre Dame v. Burwell*, 136 S. Ct. 2007 (2016) (internal quotation marks omitted).

NWLC and Americans United request this information for non-commercial use in the public interest, and believe that it will contribute significantly to public understanding of the operations and activities of the government. Accordingly, NWLC and Americans United request a waiver of fees.

NWLC and Americans United are seeking documents and communications in these cases that are not protected by attorney-client privilege. Moreover, the request does not concern documents or communications that are considered deliberative process or protected by the work product doctrine, or that fall into any of the nine exemptions to FOIA’s general presumption of mandatory disclosure, 5 U.S.C. § 552(b)(1)-(9).

Thank you for your consideration of this request. We will expect a response within 20 working days as provided by law, 5 U.S.C. §552(a)(6)(A)(i). If this request is denied in whole or in part, we expect a detailed justification for withholding the records. We also request any segregable portions that are not exempt to be disclosed.

Thank you for your consideration of this request.

Sincerely,



Gretchen Borchelt, Vice President, Reproductive Rights & Health  
National Women's Law Center



Richard B. Katskee, Legal Director  
Americans United for Separation of Church and State