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**Planned Parenthood Action Fund**

TO: Chair Patterson and members of the Senate Health Care Committee  
FROM: Bethany Sousa, Director of State Policy, Planned Parenthood  
Federation of America  
DATE: February 27, 2023  
RE: Senate Bill 491

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Oregon Senate Bill 491 requires health insurance coverage for fertility services and treatments and aims to ensure equal access to this care. This coverage requirement is vital to ensuring that this essential health care is meaningfully accessible to families and individuals seeking necessary fertility services and treatments – and not just limited to those who can afford to privately pay for this costly care.

In order to ensure equal access to this care, this bill should be passed without carve outs or exemptions for certain employers or insurers that seek to deny this coverage to their employees or enrollees. It is not uncommon for a state to require such coverage without religious exemptions. In fact, twenty states require insurers to provide coverage for at least some fertility treatments, and only four states include religious exemptions for insurers.<sup>1</sup> No state has ever had such a coverage requirement challenged in court, with or without a religious exemption.

As drafted, S.B. 481 is a neutral and generally applicable law and there is nothing in state or federal law that requires an exemption for certain employers or insurers in this law. Under the First Amendment, if a law is neutral and generally applicable, it is constitutionally valid and demands compliance even if it incidentally burdens the practice of religion.<sup>2</sup> The Supreme Court has been asked to reverse this precedent many times, including recently, and it has declined.<sup>3</sup> There is plentiful evidence that this law is general and neutral, given that it applies to all insurers, and that any burdens on religious practices are incidental. Additionally, the Federal Religious Freedom Restoration Act (RFRA) is not applicable to the states, and Oregon has not enacted its own analogous act.

There is also no evidence that this requirement would violate the Oregon Constitution. The state Constitution has been interpreted not to require exemptions from “common financial exactions.”<sup>4</sup> For example, the Oregon Supreme Court has held that a free exercise challenge to an insurance mandate is unpersuasive if the burdens claimed are

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<sup>1</sup> *Insurance Coverage by State*, Resolve (June 2022), <https://resolve.org/learn/financial-resources-for-family-building/insurance-coverage/insurance-coverage-by-state/>.

<sup>2</sup> *Employment v. Smith*, 494 U.S. 872, (1990).

<sup>3</sup> *Fulton v. City of Philadelphia*, 593 U.S. \_\_\_, 141 S. Ct. 1868, 1877 (2021).

<sup>4</sup> *Salem Coll. & Acad., Inc. v. Emp. Div.*, 695 P.2d 25, 35 (Or. 1985).

financial.<sup>5</sup> Additionally, in 2017, a federal district court in Oregon noted that Oregon has never granted an individual claim to an exemption on religious grounds in the context of generally applicable and neutral laws.<sup>6</sup> The court stated that while the Oregon constitution “may sometimes require an individual exemption to generally applicable law, it cannot be that such an exemption is required any time an individual or entity objects to a state law based on sincerely held religious belief.” After all, doing so would allow the exception to “swallow the rule and religious employers would be broadly immunized” from generally applicable laws.<sup>7</sup>

Everyone, regardless of income, should be able to obtain the health care they need, including fertility services that could enable them to start or grow a family. There is no reason to allow some employees and enrollees of certain insurance plans to be carved out based on the personal or religious beliefs of others. We hope that the committee considers this policy carefully and passes the most comprehensive bill possible.

Sincerely,

Bethany Sousa  
Director of State Policy  
Planned Parenthood Federal of America

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<sup>5</sup> *Id.* at 37.

<sup>6</sup> *Richardson v. Nw. Christian Univ.*, 242 F. Supp. 3d 1132, 1153 (D. Or. 2017).

<sup>7</sup> *Id.* (“Defendant has cited no case in which an Oregon court granted such an exemption, and this Court is aware of none.”)