Vermonters who are concerned about the impact of these regulations can get more information and submit comments through a website set up by the Attorney General's Office: http://ago.vermont.gov/act_now_for_reproductive_health/

More information about the changes to Title X can be found at the independent Guttmacher Institute: https://www.guttmacher.org/article/2018/06/domestic-gag-rule-and-more-administrations-proposed-changes-title-x

# # #

From: Wemple, Doug
To: Clark, Charity
Subject: RE: Press release quote
Date: Wednesday, July 18, 2018 10:07:45 AM
Attachments: Title X Press Release 7.18.2018.pdf

Here is the final PDF - let me know once it can be sent out

Doug Wemple
Executive Assistant
Vermont Attorney General's Office
109 State Street - Montpelier, VT
Office: (802)828-5515

From: Clark, Charity
Sent: Wednesday, July 18, 2018 10:03 AM
To: Wemple, Doug <Doug.Wemple@partner.vermont.gov>
Cc: Sullivan, Eileen <Eileen.Sullivan@ppnne.org>
Subject: Re: Press release quote

Great. Thanks, Doug!

Sent from my iPhone

On Jul 18, 2018, at 9:59 AM, Wemple, Doug <Doug.Wemple@partner.vermont.gov> wrote:

> Thank you! I will add now
>
> **Doug Wemple**
> Executive Assistant
> Vermont Attorney General's Office
> 109 State Street - Montpelier, VT
> Office: (802)828-5515
>
> ---
>
> **From:** Sullivan, Eileen [mailto:Eileen.Sullivan@ppnne.org]
> **Sent:** Wednesday, July 18, 2018 9:59 AM
> **To:** Clark, Charity <Charity.Clark@vermont.gov>
> **Cc:** Wemple, Doug <Doug.Wemple@partner.vermont.gov>
> **Subject:** RE: Press release quote
>
> We cover all bases by saying, "Planned Parenthood of Northern New England is the only Title X provider in Vermont."
>
> Thank you for the media update, and we'll see you soon!

Eileen

Eileen Sullivan (She/Her/Hers)
Communications Director, Vermont
Planned Parenthood of Northern New England
784 Hercules Drive, Suite 110
Colchester, Vermont 05446
O: 802-448-9714 | C: 646-467-0674
www.ppnne.org | Eileen.Sullivan@ppnne.org

From: Clark, Charity [mailto:Charity.Clark@vermont.gov]
Sent: Wednesday, July 18, 2018 9:48 AM
To: Sullivan, Eileen
Cc: Wemple, Doug
Subject: Re: Press release quote

Doug, after the quote, please add the sentence: Planned Parenthood is the only recipient of Title X funds in Vermont. (Eileen, is that an appropriate characterization, or is the "recipient" technically the Vermont Department of Health, and we should use a different term to describe PP, like "beneficiary"? I prefer "recipient" so I hope that's good.)

Eileen, we have made follow-up calls to all TV stations and reporters who have written in this topic in the past. We know some are coming.

See you soon!
Charity

Sent from my iPhone

On Jul 17, 2018, at 4:52 PM, Sullivan, Eileen <Eileen.Sullivan@ppnne.org> wrote:

> Will do! Many thanks to both of you!
>
> Charity – I look forward to meeting you tomorrow! My cell is 646-467-0674.
>
> Eileen
>
> **Eileen Sullivan (She/Her/Hers)**
> Communications Director, Vermont
> Planned Parenthood of Northern New England
> 784 Hercules Drive, Suite 110
> Colchester, Vermont 05446
> O: 802-448-9714 | C: 646-467-0674
> www.ppnne.org | Eileen.Sullivan@ppnne.org

From: Clark, Charity [mailto:Charity.Clark@vermont.gov]
Sent: Tuesday, July 17, 2018 4:16 PM
To: Sullivan, Eileen
Cc: Wemple, Doug
Subject: Press release quote

Hi, Eileen,

Once you have the approved quote for the press release, please email it to my assistant, Doug Wemple, and me. Doug will be making the final edits to our press release and can include the quote once it's ready.

See you tomorrow!
Charity
P.S. My cell phone if you need it tomorrow: 802-917-1993.

Charity R. Clark
Chief of Staff
Office of the Attorney General
109 State St.
Montpelier, Vermont 05609
802-828-3737

From:	Wemple, Doug
To:	Clark, Charity; Bailey, Jay
Subject:	RE: what"s the timing for the Title X news
Date:	Wednesday, July 18, 2018 11:43:30 AM
Attachments:	Title X Press Release FINAL.docx

Word version attached – I will let you know once I have the go ahead to post.

Thanks Jay!

Doug Wemple
Executive Assistant
Vermont Attorney General's Office
109 State Street - Montpelier, VT
Office: (802)828-5515

From: Clark, Charity
Sent: Wednesday, July 18, 2018 10:05 AM
To: Bailey, Jay <Jay.Bailey@vermont.gov>
Cc: Wemple, Doug <Doug.Wemple@partner.vermont.gov>
Subject: Re: what's the timing for the Title X news

Hi Jay,
The press conference starts at 11. My guess is the press conference won't last longer than 20-30 minutes. Doug will be in Montpelier today so he'll be helping, too.

Charity

Sent from my iPhone

On Jul 18, 2018, at 9:31 AM, Bailey, Jay <Jay.Bailey@vermont.gov> wrote:

> Charity,
>
> I want to make sure I'm around when you announce the Title X news; roughly what time is happening?
>
> Thanks
>
> Jay
>
> IT Manager
> Vermont Attorney General
> 109 State Street, Montpelier, VT 05609-1001

P (802) 828-2718

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT 05609-1001

FOR IMMEDIATE RELEASE:
July 18, 2018

CONTACT: Eleanor Spottswood
Assistant Attorney General
802-828-3178

AG DONOVAN REQUESTS PUBLIC FEEDBACK ON RULE CHANGE AFFECTING WOMEN'S AND REPRODUCTIVE HEALTHCARE

Reproductive Health Clinics Jeopardized By Proposed Federal Regulations

MONTPELIER – Attorney General T.J. Donovan today announced the launch of a website to allow Vermonters to provide feedback on a proposed rule affecting clinics that receive Title X funds. The U.S. Department of Health and Human Services (HHS) is writing new rules for recipients of Title X funding. Title X is the only nationwide program for affordable birth control and reproductive health care. The proposed rules would implement a "gag rule" on abortion referrals and redirect funding priorities from the CDC's birth control recommendations to "natural family planning methods." HHS is accepting public comments on the new rules until July 31. The AG's website where the public can provide feedback is located at: http://ago.vermont.gov/act_now_for_reproductive_health/.

"Title X clinics provide essential health care to low-income Vermonters," Attorney General Donovan said. "It's critical that they continue. That's why I've created a website for Vermonters to tell HHS that these rules are bad for Vermont."

Vermont has relied on funding from Title X for decades. Title X funds basic health care services, including wellness exams, cervical and breast cancer screenings, birth control, contraception education, and testing for sexually transmitted diseases and HIV. As a result of the new regulations, however, Title X providers will be forced to give incomplete and misleading information to patients—a "gag rule" on providing services or information related to abortion,

even to patients who affirmatively say that they want one. But the rules don't stop there. The gag rule would also apply to any "referral partners" of Title X clinics. And, the new rules stretch Title X funding to try to cover gap in health care created by employers who opt out of providing insurance to cover contraception. The new rules also redefine "family planning" itself to promote "natural family planning methods" over more effective forms of birth control. The new rules never mention the CDC's evidence-based best practices guidelines, "Providing Quality Family Planning Services," which was the gold standard for health care under the old Title X regulations. In addition, the new rules require Title X clinic to be physically located in a separate facility from any abortion provider. Title X funding is not, and never has been, used for abortions.

Vermont has ten clinics supported by Title X funds, located in Barre, Bennington, Brattleboro, Hyde Park, Rutland, Middlebury, Newport, St. Albans, St. Johnsbury, and White River Junction. All provide crucial basic health care to underserved populations. Funding for each of these clinics is jeopardized by the new rules.

"It's important that the federal government hear from people whose lives will be affected by these rule changes. And, it's important that the federal government hear from people who support evidence-based health care," Donovan said.

"For decades, people in Vermont have benefited from affordable reproductive health care through Title X, and new rule changes from the Trump administration threaten to take that away," said Meagan Gallagher, CEO and President of Planned Parenthood of Northern New England. "We are incredibly grateful to Attorney General Donovan for his ongoing support for access to high-quality health care for all Vermonters, and for creating a new avenue for people to tell the administration they won't stand for attacks on access to reproductive health care." Planned Parenthood of Northern New England is the only Title X provider in Vermont.

Vermonters who are concerned about the impact of these regulations can get more information and submit comments through a website set up by the Attorney General's Office: http://ago.vermont.gov/act_now_for_reproductive_health/

More information about the changes to Title X can be found at the independent Guttmacher Institute: https://www.guttmacher.org/article/2018/06/domestic-gag-rule-and-more-administrations-proposed-changes-title-x

# # #

From: Wemple, Doug
To: [redacted]
Subject: Press Release - AG Donovan Requests Public Feedback on Rule Change Affecting Women"s and Reproductive Healthcare
Date: Wednesday, July 18, 2018 12:00:15 PM
Attachments: Title X Press Release 7.18.2018.pdf

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT 05609-1001

FOR IMMEDIATE RELEASE
July 18, 2018

CONTACT:
Eleanor Spottswood
Assistant Attorney General
802-828-3718

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"Title X clinics provide essential health care to low-income Vermonters," Attorney General Donovan said. "It's critical that they continue. That's why I've created a website for Vermonters to tell HHS that these rules are bad for Vermont."

Vermont has relied on funding from Title X for decades. Title X funds basic health care services, including wellness exams, cervical and breast cancer screenings, birth control, contraception education, and testing for sexually transmitted diseases and HIV. As a result of the new regulations, however, Title X providers will be forced to give incomplete and misleading information to patients—a "gag rule" on providing services or information related to abortion, even to patients who affirmatively say that they want one. But the rules don't stop there. The gag rule would also apply to any "referral partners" of Title X clinics. And, the new rules stretch Title X funding to try to cover gap in health care created by employers who opt out of providing insurance to cover contraception. The new rules also redefine "family planning" itself to promote "natural family planning methods" over more effective forms of birth control. The new rules never mention the CDC's evidence-based best practices guidelines, "Providing Quality Family Planning Services," which was the gold standard for health care under the old Title X regulations. In addition, the new rules require Title X clinic

to be physically located in a separate facility from any abortion provider. Title X funding is not, and never has been, used for abortions.

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Vermonters who are concerned about the impact of these regulations can get more information and submit comments through a website set up by the Attorney General's Office: http://ago.vermont.gov/act_now_for_reproductive_health/

More information about the changes to Title X can be found at the independent Guttmacher Institute: https://www.guttmacher.org/article/2018/06/domestic-gag-rule-and-more-administrations-proposed-changes-title-x

###

Doug Wemple
Executive Assistant
Vermont Attorney General's Office
109 State Street - Montpelier, VT
Office: (802)828-5515

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT 05609-1001

FOR IMMEDIATE RELEASE:
July 18, 2018

CONTACT: Eleanor Spottswood
Assistant Attorney General
802-828-3178

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# # #

From: Wemple, Doug
To: Baldwin, Crystal; Clark, Charity
Subject: FB Post for Today
Date: Wednesday, July 18, 2018 2:01:23 PM

Let me know your thoughts on font or color schemes

ACTION ALERT: The Trump Administration has changed the rules around Title X funding which will have a devastating effect on reproductive healthcare for low-income Vermonters. Today, I joined Planned Parenthood of New England to encourage Vermonters to speak up to the Department of Health and Human Services to share their thoughts. Planned Parenthood of Northern New England is the only recipient of Title X funds in Vermont. The changes to these rules will have devastating effects on Vermont and are a pretext to defund Planned Parenthood, and the first step to interfering with a woman's constitutional right to an abortion. I encourage all Vermonters to speak out and have their voices heard. Click below by July 31st to speak out!

http://ago.vermont.gov/act_now_for_reproductive_health/

Doug Wemple
Executive Assistant
Vermont Attorney General's Office
109 State Street - Montpelier, VT
Office: (802)828-5515

From: Wemple, Doug
To: Baldwin, Crystal; Clark, Charity
Subject: RE: FB Post for Today
Date: Wednesday, July 18, 2018 3:10:54 PM

On second thought – the graphic looks almost "cartoonish" to me. Crystal, any suggestions with Canva?

Doug Wemple
Executive Assistant
Vermont Attorney General's Office
109 State Street - Montpelier, VT
Office: (802)828-5515

From: Wemple, Doug
Sent: Wednesday, July 18, 2018 2:00 PM
To: Baldwin, Crystal <crystal.baldwin@vermont.gov>; Clark, Charity <Charity.Clark@vermont.gov>
Subject: FB Post for Today

Let me know your thoughts on font or color schemes

ACTION ALERT: The Trump Administration has changed the rules around Title X funding which will have a devastating effect on reproductive healthcare for low-income Vermonters. Today, I joined Planned Parenthood of New England to encourage Vermonters to speak up to the Department of Health and Human Services to share their thoughts. Planned Parenthood of Northern New England is the only recipient of Title X funds in Vermont. The changes to these rules will have devastating effects on Vermont and are a pretext to defund Planned Parenthood, and the first step to interfering with a woman's constitutional right to an abortion. I encourage all Vermonters to speak out and have their voices heard. Click below by July 31st to speak out!

http://ago.vermont.gov/act_now_for_reproductive_health/

Doug Wemple
Executive Assistant
Vermont Attorney General's Office
109 State Street - Montpelier, VT
Office: (802)828-5515

Proposed Title X
#titleten #womenshealth #vtpoli @plannedparenthood

Rendering women unequal.

The Trump Administration has changed rules around Title X funding which will have a devastating effect on reproductive healthcare for low-income Vermonters. Speak up by July 31 and tell HHS that you oppose these changes. Information about Title X and a link to make your voice heard here: http://ago.vermont.gov/act_now_for_reproductive_health/ #vtpoli

Some facts: Vermont has 10 Title X clinics serving low income Vermonters with healthcare like cancer screenings, HIV testing, and birth control. These rule changes would disproportionately impact teens, women, and poor people. Title 10 funds are never used for abortions. #vtpoli

The only recipient of Title 10 funds in Vermont is Planned Parenthood. Roe v Wade is the law of the land, but these changes to Title X rules are plainly a pretext to defund Planned Parenthood and a first step to interfering with a woman's constitutional right to an abortion. #vtpoli

This is a call to action for Vermonters to voice our opinions to protect low-income Vermonters' access to healthcare. Stand up for common sense. Stand up for access to healthcare. #vtpoli #titleten #womenshealth http://ago.vermont.gov/act_now_for_reproductive_health/

Any infringement to a Vermonter's right to an abortion I will oppose as long as I'm Attorney General.

From: Matthews, Deborah
To: Wemple, Doug; Clark, Charity
Subject: PHONE CALL
Date: Monday, July 23, 2018 9:48:23 AM
Importance: High

DATE: 7-23-18
TIME: 9:43am
FROM: Dan Barlow, Vermont Businesses for Social Responsibility
PHONE: 802-355-7461
MESSAGE: Calling about the action alert for Title X funding for Planned Parenthood – Interested in assisting in it and getting the message out to their members. Please call.

Deb Matthews
Administrative Secretary
Office of the Attorney General | GCAL
109 State Street, 3rd Floor
Montpelier, VT 05609
Phone | 802-828-3689
E-Mail | deborah.matthews@vermont.gov

From:	Spottswood, Eleanor
To:	Clark, Charity
Subject:	RE: Airtime Notification from LCATV
Date:	Tuesday, July 24, 2018 11:37:21 AM

Cool!

From: Clark, Charity
Sent: Tuesday, July 24, 2018 11:35 AM
To: Spottswood, Eleanor <Eleanor.Spottswood@vermont.gov>
Subject: Fwd: Airtime Notification from LCATV
FYI.

Sent from my iPhone

Begin forwarded message:

> **From:** "Rebecca Padula, LCATV" <rebecca@lcatv.org>
> **Date:** July 24, 2018 at 10:11:50 AM EDT
> **To:** Charity.Clark@vermont.gov
> **Subject: Airtime Notification from LCATV**
> **Reply-To:** rebecca@lcatv.org
>
> Your program *Planned Parenthood Press Conference 2018-07-18* is available for viewing online at https://lcatv.org/planned-parenthood-press-conference-2018-07-18 and will be cablecast at the following times on LCATV's Channel 17:
>
> Tue Jul 24 9:00 pm
> Wed Jul 25 1:30 pm
> Thu Jul 26 7:00 am
> Fri Jul 27 2:30 am
> Fri Jul 27 4:30 pm
> Fri Jul 27 11:30 pm
> Sun Jul 29 4:30 am
> Sun Jul 29 6:30 pm
> Sun Jul 29 9:15 pm
> Tue Jul 31 5:30 am
>
> LCATV is viewable on Comcast Cable channels 15, 16 and 17 in the towns of Colchester, Milton, Georgia, Fairfax, Westford, North Hero, South Hero and Grand Isle Vermont. Viewers outside this area or without cable can access most of our locally produced programs online from our website www.lcav.org. Thank you for your interest in LCATV and please pass this information and link on to your social networks, fans and anyone else who may be interested in watching this show.

Rebecca Padula, Channel Coordinator LCATV
Studio Phone 802-862-5724
Creek Farm Plaza, Colchester VT
www.lcatv.org
rebecca@lcatv.org

--

Contact LCATV: 802-862-5724 | Lake Champlain Access Television, 63 Creek Farm Plaza, Suite 3, Colchester, VT 05446 | info@lcatv.org

Clark, Charity

From: Duquette-Hoffman, Jason
Sent: Tuesday, July 24, 2018 3:57 PM
To: Clark, Charity
Cc: Spottswood, Eleanor
Subject: RE: Non-square photos

This is the one Ella sent earlier, cropped:

-----Original Message-----
From: Clark, Charity
Sent: Tuesday, July 24, 2018 3:52 PM
To: Duquette-Hoffman, Jason <jason.duquette-hoffman@vermont.gov>
Cc: Spottswood, Eleanor <Eleanor.Spottswood@vermont.gov>
Subject: RE: Non-square photos

Hmmm. It's not the most flattering photo of some of the people featured, but I definitely like the subject matter. I also think it's meaningful to show the Planned Parenthood sign, since it is the sole recipient of our Title X funds in Vermont.

Which picture do you think is better?

Charity

-----Original Message-----
From: Duquette-Hoffman, Jason
Sent: Tuesday, July 24, 2018 3:05 PM
To: Clark, Charity <Charity.Clark@vermont.gov>
Cc: Spottswood, Eleanor <Eleanor.Spottswood@vermont.gov>
Subject: RE: Non-square photos

Go to the AGO home page and let me know if that works.

JDH

-----Original Message-----
From: Clark, Charity
Sent: Tuesday, July 24, 2018 1:57 PM
To: Duquette-Hoffman, Jason <jason.duquette-hoffman@vermont.gov>
Cc: Spottswood, Eleanor <Eleanor.Spottswood@vermont.gov>
Subject: Non-square photos

Here are the photos that aren't square — but they're vertical. I don't think these will work either but thought I'd send them.

Natalie may have horizontal pics. Am I right that's it's the orientation that's the trouble?

Charity

From:	Clark, Charity
To:	Diamond, Joshua; Spottswood, Eleanor; Donovan, Thomas
Subject:	FW: Title X comments from the public to date?
Date:	Wednesday, July 25, 2018 12:24:00 PM

FYI.

-----Original Message-----
From: Sullivan, Eileen [mailto:Eileen.Sullivan@ppnne.org]
Sent: Wednesday, July 25, 2018 12:16 PM
To: Wemple, Doug <Doug.Wemple@partner.vermont.gov>
Cc: Clark, Charity <Charity.Clark@vermont.gov>
Subject: Re: Title X comments from the public to date?

Hi Doug! 860 clicks is amazing! Thank you, thank you!!
Eileen

Sent from my iPhone

On Jul 25, 2018, at 11:55 AM, Wemple, Doug
<Doug.Wemple@partner.vermont.gov<mailto:Doug.Wemple@partner.vermont.gov>> wrote:

Hi Eileen,

Per our IT department, 860 clicks have been made to the page on our website!

I just looked on the comment page and almost 100,000 comments have been submitted.

Thanks!

Doug

Doug Wemple
Executive Assistant
Vermont Attorney General's Office
109 State Street - Montpelier, VT
Office: (802)828-5515

From: Sullivan, Eileen [mailto:Eileen.Sullivan@ppnne.org]
Sent: Wednesday, July 25, 2018 11:13 AM
To: Clark, Charity <Charity.Clark@vermont.gov<mailto:Charity.Clark@vermont.gov>>; Wemple, Doug
<Doug.Wemple@partner.vermont.gov<mailto:Doug.Wemple@partner.vermont.gov>>
Subject: Title X comments from the public to date?

Hello Charity and Doug!

I hope you're both doing well! I'm checking in to see if you know how many people have visited the AG's site to submit their comments about Title X?

This is NOT for publication, just for me to get a sense of how many people in Vermont have commented to date. On our end, it's just over 1,200 people.

Many thanks!

Eileen

Eileen Sullivan (She/Her/Hers)
Communications Director, Vermont
Planned Parenthood of Northern New England
784 Hercules Drive, Suite 110
Colchester, Vermont 05446
O: 802-448-9714 | C: 646-467-0674
www.ppnne.org<http://www.ppnne.org/> | Eileen.Sullivan@ppnne.org<mailto:Eileen.Sullivan@ppnne.org>

Clark, Charity

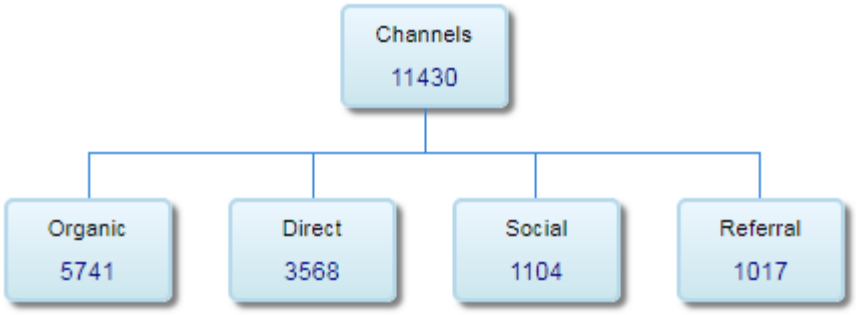
From: Bailey, Jay
Sent: Wednesday, July 25, 2018 11:49 AM
To: Wemple, Doug
Cc: Clark, Charity
Subject: RE: Title X comments from the public to date?

Doug,

Here's the last two weeks of page hits and then for users; different kinds of metrics show differently.

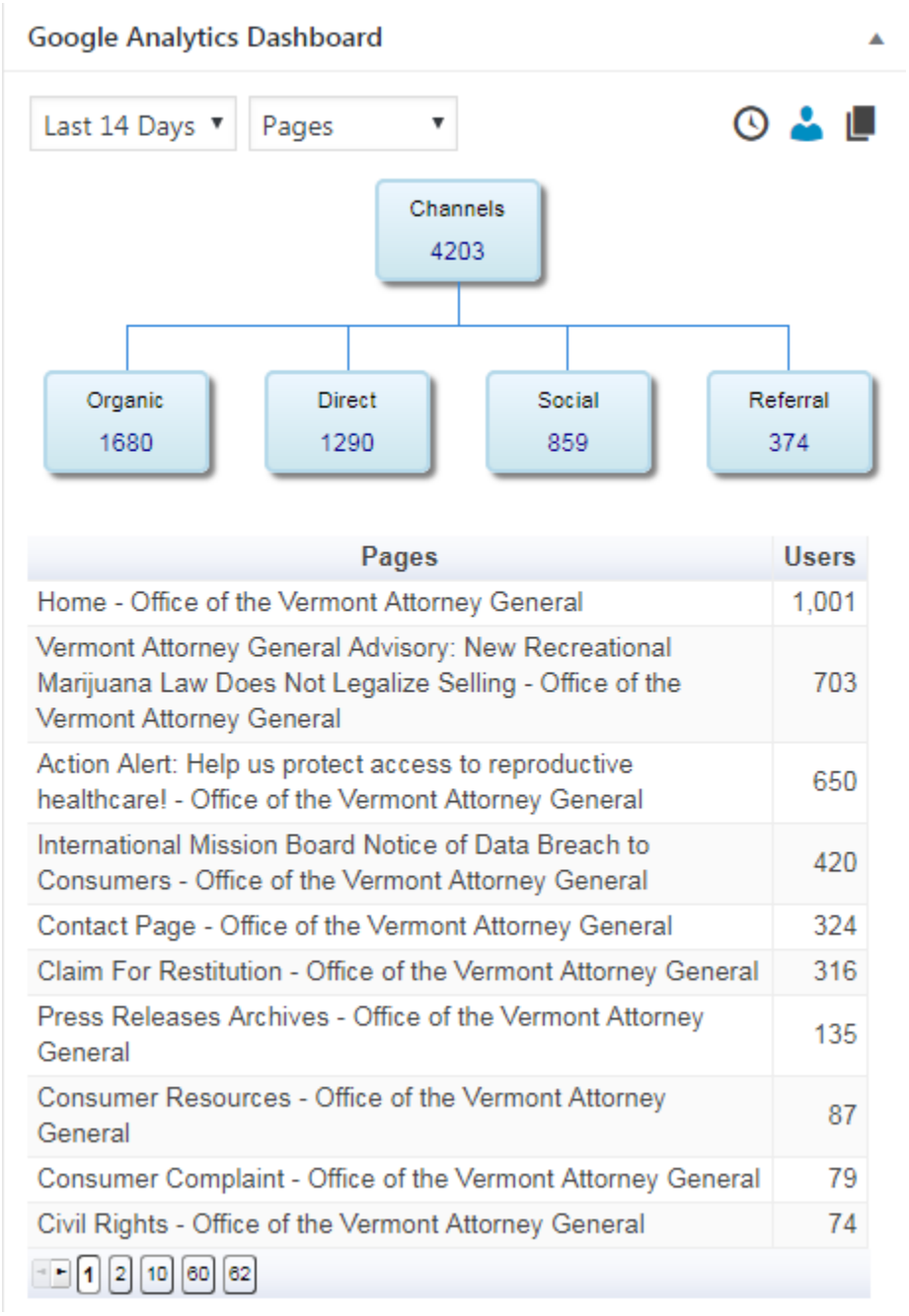
Google Analytics Dashboard

Last 14 Days | Pages



Pages	Pageviews
Home - Office of the Vermont Attorney General	2,179
Action Alert: Help us protect access to reproductive healthcare! - Office of the Vermont Attorney General	860
Vermont Attorney General Advisory: New Recreational Marijuana Law Does Not Legalize Selling - Office of the Vermont Attorney General	795
Claim For Restitution - Office of the Vermont Attorney General	653
International Mission Board Notice of Data Breach to Consumers - Office of the Vermont Attorney General	517
Contact Page - Office of the Vermont Attorney General	466
Press Releases Archives - Office of the Vermont Attorney General	246
Opioids Project - Office of the Vermont Attorney General	200
Security Breaches Archives - Office of the Vermont Attorney General	141
Disclosures by Manufacturers of Prescription Drugs, Biological Products and Medical Devices - Office of the Vermont Attorney General	126

1 2 10 60 62



Pages	Users
Home - Office of the Vermont Attorney General	1,001
Vermont Attorney General Advisory: New Recreational Marijuana Law Does Not Legalize Selling - Office of the Vermont Attorney General	703
Action Alert: Help us protect access to reproductive healthcare! - Office of the Vermont Attorney General	650
International Mission Board Notice of Data Breach to Consumers - Office of the Vermont Attorney General	420
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Claim For Restitution - Office of the Vermont Attorney General	316
Press Releases Archives - Office of the Vermont Attorney General	135
Consumer Resources - Office of the Vermont Attorney General	87
Consumer Complaint - Office of the Vermont Attorney General	79
Civil Rights - Office of the Vermont Attorney General	74

1 2 10 60 62

Thanks

Jay

IT Manager
Vermont Attorney General
109 State Street, Montpelier, VT 05609-1001
P (802) 828-2718

From: Wemple, Doug
Sent: Wednesday, July 25, 2018 11:27 AM
To: Bailey, Jay <Jay.Bailey@vermont.gov>

Cc: Clark, Charity <Charity.Clark@vermont.gov>
Subject: FW: Title X comments from the public to date?

Hi Jay – is there a way to look at the metrics for this? Thanks!

Doug Wemple
Executive Assistant
Vermont Attorney General's Office
109 State Street - Montpelier, VT
Office: (802)828-5515

From: Sullivan, Eileen [mailto:Eileen.Sullivan@ppnne.org]
Sent: Wednesday, July 25, 2018 11:13 AM
To: Clark, Charity <Charity.Clark@vermont.gov>; Wemple, Doug <Doug.Wemple@partner.vermont.gov>
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Hello Charity and Doug!

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Many thanks!

Eileen

Eileen Sullivan (She/Her/Hers)
Communications Director, Vermont
Planned Parenthood of Northern New England
784 Hercules Drive, Suite 110
Colchester, Vermont 05446
O: 802-448-9714 | C: 646-467-0674
www.ppnne.org | Eileen.Sullivan@ppnne.org

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See you soon!
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Charity – I look forward to meeting you tomorrow! My cell is 646-467-0674.

Eileen

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See you tomorrow!
Charity
P.S. My cell phone if you need it tomorrow: 802-917-1993.

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Chief of Staff
Office of the Attorney General
109 State St.
Montpelier, Vermont 05609
802-828-3737

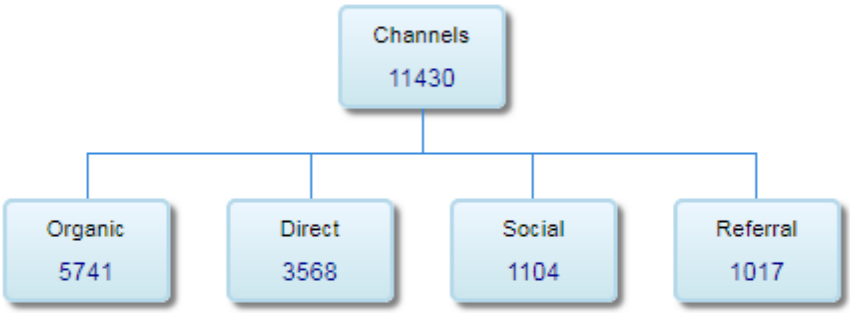
From: Bailey, Jay
To: Wemple, Doug
Cc: Clark, Charity
Subject: RE: Title X comments from the public to date?
Date: Wednesday, July 25, 2018 11:49:26 AM
Attachments: image001.png
image002.png

Doug,

Here's the last two weeks of page hits and then for users; different kinds of metrics show differently.

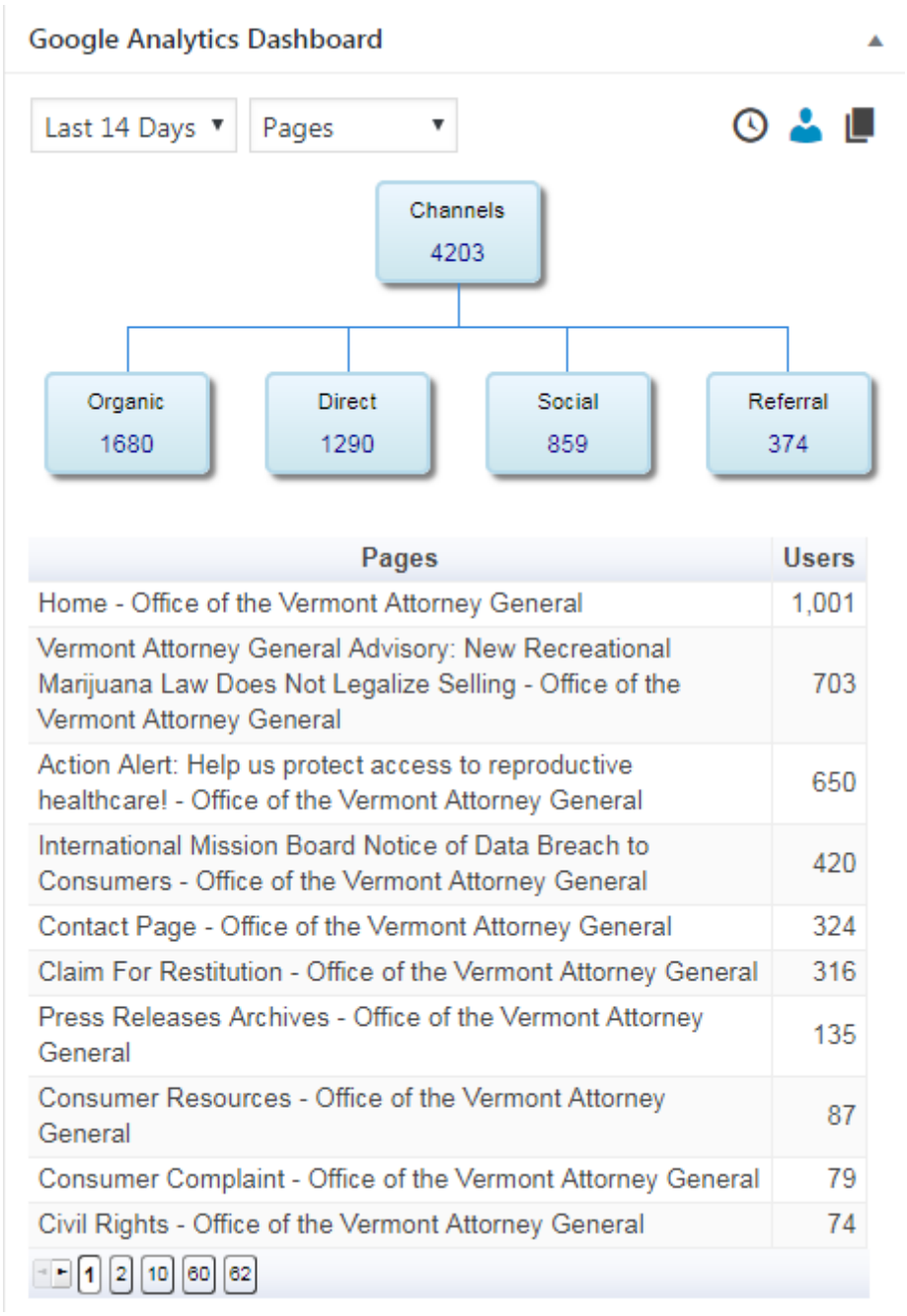
Google Analytics Dashboard

Last 14 Days ▾ | Pages ▾



Pages	Pageviews
Home - Office of the Vermont Attorney General	2,179
Action Alert: Help us protect access to reproductive healthcare! - Office of the Vermont Attorney General	860
Vermont Attorney General Advisory: New Recreational Marijuana Law Does Not Legalize Selling - Office of the Vermont Attorney General	795
Claim For Restitution - Office of the Vermont Attorney General	653
International Mission Board Notice of Data Breach to Consumers - Office of the Vermont Attorney General	517
Contact Page - Office of the Vermont Attorney General	466
Press Releases Archives - Office of the Vermont Attorney General	246
Opioids Project - Office of the Vermont Attorney General	200
Security Breaches Archives - Office of the Vermont Attorney General	141
Disclosures by Manufacturers of Prescription Drugs, Biological Products and Medical Devices - Office of the Vermont Attorney General	126

1 2 10 60 62



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Many thanks!

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802-828-3737

From: Sullivan, Eileen
To: Wemple, Doug
Cc: Clark, Charity
Subject: Re: Title X comments from the public to date?
Date: Wednesday, July 25, 2018 12:16:12 PM

Hi Doug! 860 clicks is amazing! Thank you, thank you!!
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Sent from my iPhone

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802-828-3737

From: Spottswood, Eleanor
To: Clark, Charity
Subject: RE: Title X comments from the public to date?
Date: Wednesday, July 25, 2018 12:41:35 PM

Cool! Happy to talk more about this any time.

-----Original Message-----
From: Clark, Charity
Sent: Wednesday, July 25, 2018 12:24 PM
To: Diamond, Joshua <Joshua.Diamond@vermont.gov>; Spottswood, Eleanor <Eleanor.Spottswood@vermont.gov>; Donovan, Thomas <Thomas.Donovan@vermont.gov>
Subject: FW: Title X comments from the public to date?

FYI.

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From: Sullivan, Eileen [mailto:Eileen.Sullivan@ppnne.org]
Sent: Wednesday, July 25, 2018 12:16 PM
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www.ppnne.org<http://www.ppnne.org/> | Eileen.Sullivan@ppnne.org<mailto:Eileen.Sullivan@ppnne.org>

From:	Aho, Brionna (ATG)
To:	Gotsis, Chloe (AGO); kristina.edmunson@doj.state.or.us; Clark, Charity; Diamond, Joshua
Subject:	RE: Title X letter
Date:	Tuesday, July 31, 2018 2:06:29 PM
Attachments:	Final_Title_X_Comment_Letter_7.31.18 WAMAORVT.PDF

In case you don't have the final from your teams:

From: Aho, Brionna (ATG)
Sent: Tuesday, July 31, 2018 10:24 AM
To: 'Gotsis, Chloe (AGO)' <chloe.gotsis@state.ma.us>; 'kristina.edmunson@doj.state.or.us' <kristina.edmunson@doj.state.or.us>; 'Charity.Clark@vermont.gov' <Charity.Clark@vermont.gov>; 'Joshua.Diamond@vermont.gov' <Joshua.Diamond@vermont.gov>
Subject: Title X letter

Hi all,

Just wanted to update you, our plan is to send the letter at 11 a.m. Pacific/2 p.m. Eastern. Let me know if you have any questions.

Best regards,

Brionna

Brionna Aho
Communications Director | Office of State Attorney General Bob Ferguson
Office: 360-753-2727 | Cell: 360-338-2743 | Email: brionna.aho@atg.wa.gov
1125 Washington Street SE, Mailstop 40100 | Olympia| WA | 98504

Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
Administration Division
PO Box 40100 ● Olympia, WA 98504-0100 ● (360) 753-6200

July 31, 2018

VIA FEDERAL eRULEMAKING PORTAL

Secretary Alex M. Azar II
Assistant Secretary ADM Brett P. Giroir, M.D.
Deputy Assistant Secretary Diane Foley, M.D., FAAP
Attention: Family Planning
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 716G
200 Independence Avenue SW
Washington, DC 20201

RE: HHS–OS–2018–0008, Comments on Proposed Rule: *Compliance With Statutory Program Integrity Requirements*, Docket No.: HHS-OS-2018-0008

Dear Secretary Azar, Assistant Secretary Giroir, and Deputy Assistant Secretary Foley:

The undersigned, Attorneys General for the States of Washington, Oregon, and Vermont and the Commonwealth of Massachusetts, respectfully urge the Department of Health and Human Services (the Department) to withdraw its Proposed Rule: *Compliance with Statutory Program Integrity Requirements*, 83 Fed. Reg. 25,502 (June 1, 2018). We have grave concerns with the legality of the proposed rule, and do not believe it would survive judicial review in its current form.

The Title X family planning program was created to provide access to high-quality family planning and related preventive health care for low-income and underserved individuals. The proposed rule has a host of legal flaws. In some states, if implemented, it will eliminate from the Title X program many Title X providers and leave thousands of residents without reasonable options for critical family planning services. In other states, it will frustrate the ability of providers to deliver high-quality and complete care to their patients and will undermine the efficacy of the network as a whole. The proposed rule thus frustrates rather than promotes the purposes of Title X. The proposed rule shifts the burden and costs to the states, including myriad reproductive health services related to unintended pregnancies, treatment of sexually transmitted infections (STIs), cervical and breast cancer screening and treatment, and other public health

services that the Title X program currently covers. The public health impact will fall the heaviest on our States' most vulnerable populations – including low-income and rural women and families, immigrants and people of color that the program is intended to help.

Further, the proposed rule requires directive counseling, which is in violation of a federal statute governing Title X.[1] It illegally injects the government into the Title X medical examination room, and it violates the constitutional rights of providers and patients under the First and Fifth Amendments. The proposed rule also violates the Department's current statutory interpretation of "acceptable and effective family planning methods and services" without mentioning the current interpretation or the evidence justifying it. Various parts of the rule are unsupported by any evidence and are thus arbitrary and capricious. Finally, the proposed rule violates Executive Orders 12866 and 13562.

A. Relevant Background of Title X to the Public Health Service Act, 42 U.S.C. §§ 300-300a-6

The Family Planning and Services Population Research Act of 1970, which added Title X to the Public Health Service Act, authorizes the Secretary of Health and Human Services:

> to make grants to 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).

Title X projects serve an estimated four million women annually.[2] In 2015, 64 percent of U.S. counties had at least one safety-net family planning center supported by Title X, and 90 percent of women in need of publicly funded family planning care lived in those counties.[3] Title X clients are among the nation's most vulnerable populations: two-thirds have incomes at or below the Federal Poverty Level (FPL)($20,090 for a family of three in 2015), nearly half are uninsured—even after implementation of the Affordable Care Act's (ACA) major insurance

---

[1] Public Law No. 115-141, § 118, https://www.congress.gov/bill/115th-congress/house-bill/1625/text.

[2] Fowler CI et al., Family Planning Annual Report: 2015 National Summary, Research Triangle Park, NC: RTI International, 2016, http://www.hhs.gov/opa/sites/default/files/title-x-fpar-2015.pdf (last accessed 7/17/18).

[3] Frost JJ and Zolna MR, Response to inquiry concerning the availability of publicly funded contraceptive care to U.S. women, memo to U.S. Senator Patty Murray, Senate Health, Education, Labor and Pensions Committee, New York: Guttmacher Institute, May 3, 2017, https://www.guttmacher.org/article/2017/05/guttmacher-murray-memo-2017 (last accessed 7/17/18).

expansions—and another 35 percent have coverage through Medicaid and other public programs.[4]

In 2015, the contraceptive care delivered by Title X–funded providers helped women avoid 822,000 unintended pregnancies, which would have resulted in 387,000 unplanned births and 278,000 abortions.[5] Without the contraceptive care provided by these health centers, the U.S. rates of unintended pregnancy and abortion would have been 31 percent higher, and the teen unintended pregnancy rate would have been 44 percent higher.[6] Title X is a vital program, especially for low-income women and teens as:

> access to and consistent use of the most effective contraceptive methods are not enjoyed equally by all U.S. women. Disparities in contraceptive use are a major reason why half of U.S. pregnancies—3.2 million each year—are unplanned. . . . [U]nplanned and teen pregnancies occur disproportionately to poor women (those with incomes below the federal poverty level), whose unplanned pregnancy rate is five times that of higher income women.[7]

Concern for low-income women led President Nixon to push for national family planning assistance in the 1960s, stating that "unwanted or untimely childbearing is one of the several forces which are driving many families into poverty or keeping them in that condition."[8] That remains a driving concern today. Studies have shown that access to family planning assistance makes it more likely that a teen will graduate high school, that a woman will achieve her educational and career goals, and that a woman will earn more money (positively impacting not only her life, but the lives of her family).[9] Access to family planning also leads to healthier

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[4] Fowler CI et al., Family Planning Annual Report: 2015 National Summary, Research Triangle Park, NC: RTI International, 2016, http://www.hhs.gov/opa/sites/default/files/title-x-fpar-2015.pdf (last accessed 7/17/18).

[5] Frost JJ, et al., Publicly Funded Contraceptive Services at U.S. Clinics, 2015, New York: Guttmacher Institute, 2017, https://www.guttmacher.org/report/publicly-funded-contraceptive-services-us-clinics-2015 (last accessed 7/17/18).

[6] Hasstedt K, Why We Cannot Afford to Undercut the Title X National Family Planning Program, Guttmacher Institute, Jan. 30, 2017, https://www.guttmacher.org/gpr/2017/01/why-we-cannot-afford-undercut-title-x-national-family-planning-program (last accessed 7/17/18).

[7] Adam Sonfield, *What Women Already Know: Documenting the Social and Economic Benefits of Family Planning*, Guttmacher Institute (Mar. 2013), *available at* https://www.guttmacher.org/gpr/2013/03/what-women-already-know-documenting-social-and-economic-benefits-family-planning.

[8] Special Message to the Congress on Problems of Population Growth (Jul. 18, 1969), *available at* http://www.presidency.ucsb.edu/ws/?pid=2132.

[9] Adam Sonfield et al., *The Social and Economic Benefits of Women's Ability To Determine Whether and When to Have Children*, Guttmacher Institute, *available at* https://www.guttmacher.org/report/social-and-economic-benefits-womens-ability-determine-whether-and-when-have-children, and *Staff of J. Economic Comm., 114th Cong. The Economic Benefits of Access to Family Planning, available at*

relationships, better health outcomes, and better parenting.[10] Title X is critical in assuring that teens and low-income women can achieve these same positive outcomes.

For many women, a visit to a family planning provider is about far more than birth control. During a visit for contraceptive services at a Title X site, women commonly receive other preventive sexual and reproductive health services, including preconception health care and counseling, STI testing and treatment, human papillomavirus (HPV) vaccinations, cancer screening, Pap tests for early detection of cervical cancer, and referrals for mammograms. Title X providers also screen for a host of other potential health issues, such as high blood pressure, diabetes, and depression, connecting clients to further care when needed.[11] For four in 10 women who obtain their contraceptive care from a safety-net family planning center that focuses on reproductive health, that provider is their only source of care.

Title X improves the health of our States' residents beyond helping them plan for their pregnancies. In 2010, the services provided within the Title X network prevented 87,000 preterm or low-weight births, 63,000 STIs and 2,000 cases of cervical cancer.[12]

B. Title X Is a Critical Program That Provides High-Quality Care To Thousands of Residents of Washington, Massachusetts, Oregon, and Vermont Every Year.

1. *Washington*

The Washington State Department of Health (DOH) is the sole grantee of Title X funds in Washington State and runs the program. Washington's current grant project period is one year and six months and ends August 31, 2018.

Washington's Title X expenditure for 2017 was approximately $13 million. The state-funded amount was approximately $9 million, and the federally funded amount was approximately $4 million.

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https://www.jec.senate.gov/public/_cache/files/d0a67745-74ff-439c-a75a-aacc47e0abc1/jec-fact-sheet---economic-benefits-of-access-to-family-planning.pdf.

[10] *Id.*

[11] Frost JJ, Gold RB and Bucek A, Specialized family planning clinics in the United States: why women choose them and their role in meeting women's health care needs, Women's Health Issues, 2012, 22(6):e519–e525, http://www.whijournal.com/article/S1049-3867(12)00073-4/pdf (last accessed 7/17/18).

[12] Sonfield A, Beyond preventing unplanned pregnancy: the broader benefits of publicly funded family planning services, *Guttmacher Policy Review*, 2014, 17(4):2–6, http://www.guttmacher.org/gpr/2014/12/beyond-preventing-unplanned-pregnancy-broader-benefits-publicly-funded-family-planning (last accessed 7/17/18). 2010 is the most recent year for which these data are available.

Washington served 91,284 patients through Title X in 2017, with 128,296 patient visits. In 2017, 57 percent of Washington's Title X-funded patients were at or below the FPL, and 81 percent had incomes below 200 percent of the FPL. Sixteen percent of Title X clients were women of color. Nine percent of patients were under the age of 18. The DOH projects that Title X services prevented 16,233 unintended pregnancies in 2017; the resulting cost savings for Title X services (including STI, HIV, HPV, and Pap tests) was $113,434,910.

DOH distributes Washington's Title X funds by an approved allocation process. DOH broadly distributes information about an upcoming competition for Title X funds toward the end of the project period. It conducts a formal Request for Proposals process to select providers. After the due date for proposals is past, they are reviewed by objective reviewers and scored on criteria that includes choosing the entities that can best utilize the available funding to carry out Title X requirements.

In addition to Title X funds, Washington separately funds contracted Title X health care providers for Title X-allowable services. Further, some Medicaid providers in Washington offer Title X-allowable services but are not Title X projects. The funding from Title X and Medicaid is separate and distinct. However, if an entity receives Title X funding, all clients that have received services according to Title X guidelines are counted as Title X clients in the data system regardless of their funding source.

There are 12 Title X sub-grantee agencies with 70 clinic sites across Washington State. Five of the 12 agencies that receive Title X funds in Washington perform abortions outside of the Title X project. There are several counties in Washington that only have one Title X provider, including Clallam, Grays Harbor, Pacific, Kitsap, Wahkiakum, Lewis, Thurston, Mason, Jefferson, Whatcom, Skagit, Clark, Skamania, Kittitas, Chelan, Ferry, Pend Oreille, Whitman, and Walla Walla. All sites have physicians on staff as medical directors, but nurse practitioners primarily provide care to patients. All sites have nurse practitioners accessible during all business hours.

Washington subjects Title X providers to numerous contractual requirements. These include: (1) they must be non-profit agencies; (2) they must be able to meet reporting requirements (including the ability to extract data from their Electronic Medical Records system to report to the contracted data vendor); (3) they must follow all regulations; (4) they must be able to separate abortion activities from Title X funding; and (5) they must have qualified personnel and licensed providers.

2. *Massachusetts*

Approximately $6,155,000 in Title X funding flows into Massachusetts annually. These funds support, either directly or indirectly, 90 family planning providers. In 2016 alone, Title X

providers in Massachusetts served 66,072 people.[13] Data from fiscal year 2017 shows that 88 percent of all Title X visits were made by female patients, 50 percent of all patients were between 18 and 29 years old, and 88 percent of all patients were at or below 200 percent of the FPL.

Title X providers in Massachusetts offer a wide range of services and care, including pregnancy testing and options counseling; contraceptive services and supplies; pelvic exams; screenings for cervical and breast cancer; screenings for high blood pressure, anemia, and diabetes; screenings and treatment for STIs; infertility services; health education; and referrals for other health and social services. These services not only have a profound and positive impact on patients' lives, but also save Massachusetts and the federal government money. In fact, according to one estimate, Title X services save Massachusetts and the federal government approximately $140 million per year in Massachusetts alone.[14] Beyond the significant fiscal impact, the services provided have a real and profound impact on the lives of Massachusetts women and their families. In 2014, Title X-funded centers met 15 percent of all contraceptive needs in Massachusetts[15] and helped avert 13,600 unintended pregnancies.[16]

Title X funds are crucial and must be spent wisely. Programs that currently receive these funds do so in a culturally competent and welcoming manner. They offer an array of services. They understand the health needs of their patients. The proposed rule does not advance Title X's purpose and undermines the ability of its recipients to do the important work that they do every day on behalf of some of Massachusetts' most vulnerable patients.

3. *Oregon*

The state of Oregon has been the umbrella grantee for Title X services throughout Oregon since 1970. The Oregon Health Authority's Reproductive Health Program administers the state's Title X grant. In fiscal year 2018, Oregon's Title X award was $3,076,000. This funding provides direct support to a network of 35 agencies with 106 clinic sites and is comprised of local public

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[13] *Title X in Massachusetts: Improving Public Health and Saving Taxpayer Dollars*, National Family Planning & Reproductive Health Association, at 1 (Dec. 2017), available at https://www.nationalfamilyplanning.org/file/state-snapshots-2017/Massachusetts.pdf.

[14] *Contraception, Cost Savings at Title X-Funded Centers: From Contraceptive Services*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=MA&dataset=data&topics=96 (last visited July 30, 2018).

[15] *Contraception, Title X-Funded Centers: Percentage of Need Met By Title X-Funded Centers*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=MA&dataset=data&topics=257 (last visited July 30, 2018).

[16] *Contraception, Outcomes Averted By Title X-Funded Centers: From Contraceptive Services*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=MA&topics=120&dataset=data (last visited July 30, 2018).

health authorities, federally qualified health centers (FQHCs), Planned Parenthood clinics, rural health centers, and other community health centers. Almost every county has at least one Title X Program provider, often with multiple clinic sites per provider.

A total of 37,012 unduplicated clients were served by Title X sub-recipient clinics in 2017. Of these clients, 15,225 (41 percent) were uninsured, meaning they have limited options for accessing affordable reproductive health services.

Oregon's Title X clinics provide essential, high-quality preventive reproductive health services to underserved individuals. Data from 2017 show that of the 37,012 clients served by Oregon's Title X clinics:

- 93 percent were female;
- 47 percent were females between the ages of 18 and 29;
- 95 percent were at or below 250 percent of the FPL and 66 percent were at or below 100 percent of the FPL; and
- 60,647 clinic visits were provided, including:
  - 6,511 cervical cancer screenings
  - 49,366 STI screenings
  - 12,649 annual/well-woman exams

Further evidence of the high quality of care in Oregon's Title X clinics comes from clients themselves. According to Oregon's 2015 Reproductive Health Client Satisfaction Survey, 99 percent of clients reported the following: that medical staff respected their values, they trust the medical staff to help them make decisions, and they would recommend the clinic to friends or family.

In addition to offering high quality care, Oregon's Title X program is also cost effective. In 2017, over 6,000 unintended pregnancies were averted through the provision of effective contraceptive methods and high-quality counseling services in Oregon's Title X clinics. Using a conservative estimate of $16,000 for an average delivery and the first year of infant health care under Oregon's Medicaid program, even if less than half of these 6,000 unintended pregnancies resulted in births, the savings to the state were in excess of $40 million in taxpayer funds in Oregon alone in 2017.

4. *Vermont*

The Vermont Department of Health, the sole grantee for Vermont, has relied on Title X grant funding for decades. The Vermont Department of Health receives about $775,000 annually from Title X, of which the majority is passed on directly to the sole sub-grantee, Planned Parenthood of Northern New England (PPNNE). With these funds, PPNNE provides reproductive health

services at 10 different clinics located throughout Vermont. These clinics serve a largely rural population—none are located in Chittenden County, the most populous county of Vermont.

Through these clinics, Title X provided family planning services to 9,808 Vermonters in 2016. Of these, 44 percent reported income of less than 100 percent of the FPL, and 76 percent had income less than 250 percent of the FPL. Vermont's Title X patients were 11 percent male, and 20 percent were under age 20. And 22 percent had no health insurance.[17]

Services provided by Title X funds in Vermont include "a broad range of family planning and related preventive health services for Vermont women, men, and their partners."[18] As required in 42 C.F.R. Part 59, all pregnancy counseling at Title X clinics in Vermont is nondirective.[19] In addition, Title X funds provided "patient education and counseling; breast and pelvic examinations; breast and cervical cancer screening according to nationally recognized standards of care; STI and Human Immunodeficiency Virus (HIV) prevention education, counseling, testing and referral; and pregnancy diagnosis and counseling."[20]

Title X funding has been an essential part of the success that Vermont has seen in reproductive health outcomes over time. For example, while the current Title X rules and program have been in place, the number of teen pregnancies in Vermont has steadily declined.[21] And, the number of teen abortions occurring in Vermont has steadily declined.[22] This is consistent with the overall drop in abortion rates in Vermont and nationwide.[23] Title X-specific analyses show that these trends over time are at least partly attributable to Title X funding. One estimate shows that approximately 1900 unintended pregnancies were averted by Title X-funded clinics in Vermont

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[17] Office of Population Affairs, Title X Family Planning Annual Report: Vermont (April 2017) (on file with Vermont Attorney General's Office).

[18] Office of Population Affairs, Program Review: Title X Family Planning Project: Vermont Department of Health, 1, 33 (May 2017) (on file with Vermont Attorney General's Office).

[19] *Id.* at 34-35.

[20] *Id.* at 1.

[21] Kathryn Kost et al., *Pregnancies, Births and Abortions Among Adolescents and Young Women in the United States, 2013: National and State Trends by Age, Race and Ethnicity*, 36 (Guttmacher Inst. Aug. 2017) (data going back to 1988), *available at* https://www.guttmacher.org/sites/default/files/report_pdf/us-adolescent-pregnancy-trends-2013.pdf

[22] *Id.* at 40.

[23] Vt. Dept. of Health, "Fig. 11: Vermont and U.S. Abortion Ratios 1980 – 2016," *2016 Vital Statistics: 132nd Report Relating to the Registry and Return of Births, Deaths, Marriages, Divorces, and Dissolutions*, 129 (Agency of Human Servs. 2016) (data going back to 1980), *available at* http://www.healthvermont.gov/sites/default/files/documents/pdf/Vital%20Statistics%20Bulletin%202016.pdf

in 2014.[24] Of those, 400 would have been teen pregnancies.[25] In addition, Title X's successes have not been limited to pregnancy outcomes. Although Title X is not the only public health program addressing these issues, cervical cancer rates[26] and new HIV/AIDS diagnoses[27] in Vermont have been generally declining as well. In 2016, Title X clinics screened 1,344 clients for cervical cancer and 2,834 clients for HIV.[28]

The successes of the Title X program translate from public health to the public fisc. By one estimate, Title X services in Vermont saved the state and federal governments $7,868,000 in 2010.[29] Of that money, the majority ($7,520,000) was saved in annual maternity and birth-related costs as a result of contraceptive services.[30] An additional $215,000 was saved in annual miscarriage and ectopic pregnancy costs.[31] Tens of thousands of dollars in public health costs were saved from STI and cancer screening at Title X clinics.[32]

C. The Fatal Deficiencies in the Proposed Rule

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[24] *Number of Unintended Pregnancies Averted by Title X-Funded Centers*, Data Ctr., Guttmacher Inst., https://data.guttmacher.org/states/table?state=VT&topics=114 (last visited July 30, 2018).

[25] *Number of Unintended Pregnancies Averted to Clients Aged <20 by Title X-Funded Centers*, Data Ctr., Guttmacher Inst., https://data.guttmacher.org/states/table?state=VT&topics=114 (last visited July 30, 2018).

[26] Vermont Cancer Registry, *HPV Associated Cancers—Data Brief*, 1 (Vt. Dept. of Health May 2018) (data going back to 1994), *available at* http://www.healthvermont.gov/sites/default/files/documents/pdf/stat_cancer_HPV_Assoc_Ca_Data_Brief.pdf.

[27] Decrease seen since the height of the epidemic, and the introduction of the first effective treatments, in the early 1990s. Vt. Dept. of Health, "History of the HIV/AIDS epidemic, Vermont residents at diagnoses 1984 – 2014," *Vermont HIV/AIDS Annual Report*, 2 (May 2015), *available at* http://www.healthvermont.gov/sites/default/files/documents/pdf/ID_HIV_surveillance_Vt%20HIV%20Annual%20Rep%202014.pdf; *see also* Vt. Dept. of Health, *2016 Vermont HIV Annual Report*, 2-3 (May 2018), *available at* http://www.healthvermont.gov/sites/default/files/documents/pdf/ID_HIV_VermontHIVAnnualReport2016.pdf.

[28] Office of Population Affairs, Title X Family Planning Annual Report: Vermont, 10, 13 (April 2017) (on file with Vermont Attorney General's Office).

[29] *Total Annual Gross Savings from Services Provided During Family Planning Visits at Title X-Funded Centers*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=VT&topics=98 (last visited July 30, 2018).

[30] *Annual Maternity and Birth Related Costs (Through 60 Months) Saved from Contraceptive Services*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=VT&topics=96 (last visited July 30, 2018).

[31] *Annual Miscarriage and Ectopic Pregnancy Costs Saved from Contraceptive Services*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=VT&topics=96 (last visited July 30, 2018).

[32] *Annual Costs Saved From Chlamydia, Gonorrhea and HIV Testing at Title X-Funded Centers; Annual Costs Saved from Pap and HPV Testing at Title X-Funded Centers*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=VT&topics=97 (last visited July 30, 2018).

1. *The proposed rule requires directive counseling in violation of the Consolidated Appropriations Act, 2018.*

In numerous ways, the proposed rule imposes unethical requirements to provide directive, mandatory patient counseling. This is contrary to the Consolidated Appropriations Act, 2018, which states that, with respect to the amounts appropriated "for carrying out the program under title X of the PHS Act to provide for voluntary family planning projects, . . . all pregnancy counseling shall be nondirective."[33] While Congress is free to "make a value judgment favoring childbirth over abortion,"[34] once Congress makes a policy choice executive agencies are not at liberty to ignore it. Here Congress has required that counseling of patients using Title X funds may not be slanted, and HHS may not direct Title X providers to disregard Congress's directive.

The proposed rule requires Title X funds be used for directive counseling in several ways. First, the rule prohibits Title X providers from referring a patient who discovers she is pregnant to abortion providers, except in the narrow circumstances where the patient "clearly states" that she has "already decided" she will have an abortion.[35] Of course, such a "clear decision" for someone who learned minutes earlier that she was pregnant would be unlikely, meaning the vast majority of patients will be referred away from abortion providers. Second, providers are prohibited from even "present[ing]" the option of abortion. Third, providers must refer patients for "appropriate prenatal and/or social services (such as prenatal care and delivery, infant care, foster care, or adoption)" whether or not the patient desires such referrals.[36] Fourth, providers are required to assist in setting up these referral appointments—unless the patient wants an abortion.[37] In short, if a pregnant patient says that she wants advice on birth or adoption options the provider is unencumbered, but if she wants to discuss the option of abortion, the provider may not assist her. Only if the patient states she wants an abortion may the provider offer her a list that includes abortion providers, but that list must obfuscate which clinics offer what she seeks and which do not.[38]

These provisions are intended to, and do, slant Title X counseling against termination and in favor of childbirth, in violation of Congress's directive otherwise. Indeed, the text of the proposed rule says nothing about nondirective counseling, instead eliminating the former

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[33] Pub. L. No. 115-141, div. H, tit. II, 132 Stat. 348, 716 (2018), https://www.congress.gov/bill/115th-congress/house-bill/1625/text.

[34] *Rust v. Sullivan*, 500 U.S. 173, 192 (1991) (quoting *Maher v. Roe*, 432 U.S. 464, 474 (1977)).

[35] 83 Fed. Reg. 25,531 (proposed § 59.14(a), (c)).

[36] 83 Fed. Reg. 25,531 (proposed § 59.14(b)).

[37] *Id*.

[38] 83 Fed. Reg. 25,531 (proposed § 59.14(c)).

requirement to provide "neutral, factual information and nondirective counseling . . . ." 42 C.F.R. 59.5(a)(5)(ii). Through the repeal of the nondirective counseling requirement and the addition of severe restrictions on referrals, the proposed rule seeks to replace what has been a patient-guided, provider-informed approach to care with a system that jeopardizes both providers' ethical obligations and patients' health.

2. *The proposed rule illegally injects the government into the provider-patient relationship.*

We are deeply troubled by the Department's proposed government interference in the relationship between a medical provider and a patient, and not only because it violates a federal law. The proposed rule purports to tell providers paid with Title X funds what they can and cannot say when a patient discovers she is pregnant. The government should have no role telling a health care provider what to say to a patient. Here, the proposed rule prohibits nurses and nurse practitioners, who see the majority of Title X patients, from mentioning abortion, and doctors may do so only in the very limited circumstances permitted in proposed section 59.14(c) and (d).[39] Under the proposed rule, Title X providers could not simply take off their "Title X hats" and offer the same nondirective advice that they currently offer because the rule would require Title X providers to comply with Title X requirements, whether or not Title X funds a particular patient's service.

As America's women's health providers have jointly stated in opposing the proposed rule, "[p]oliticians have no role in picking and choosing among qualified providers."[40] This government script for providers when addressing their Title X patients violates the American Medical Association's Code of Ethics, which states that "withholding information without the patients' knowledge or consent is ethically unacceptable."[41] Similarly, the Code of Ethics for Nursing requires nurses to give complete – not slanted – information to patients.[42]

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[39] 83 Fed. Reg. 25,531.

[40] "America's Women's Health Providers Oppose Efforts to Exclude Qualified Providers from Federally-Funded Programs," Join Statement of the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, the American College of Nurse-Midwives, the American College of Physicians, the Association for Physician Assistants in Obstetrics and Gynecology, the National Association of Nurse Practitioners in Women's Health, Nurses for Sexual and Reproductive Health, and the Society for Adolescent Health and Medicine (May 23, 2018), https://www.acog.org/About-ACOG/News-Room/Statements/2018/Health-Providers-Oppose-Efforts-to-Exclude-Qualified-Providers-from-Federally-Funded-Programs (last accessed on July 17, 2018).

[41] American Medical Association, Code of Medicaid Ethics Opinion 2.1.3, Withholding Information from Patients, available at https://www.ama-assn.org/delivering-care/withholding-information-patients (last accessed on July 17, 2018).

[42] Code of Ethics for Nursing, Provision 1.4, www.bc.edu/content/dam/files/schools/son/pdf2/ANA code of ethics.pdf (last accessed on July 17, 2018) (patients must be given "accurate, complete, and understandable information in a manner that facilitates an informed decision").

Further, the proposed rule is arbitrary and capricious because it only permits "a medical doctor" to provide the very limited referral for abortion the proposed rule allows.[43] In our States, this severely restricts the nondirective counseling Title X patients would receive. In Oregon, for example, over 93 percent of visits to Title X clinics in 2017 were conducted by non-physician caregivers such as nurse practitioners and physician assistants. The preamble to the proposed rule itself recognizes that only 22 percent of clinical service FTEs delivered to Title X patients were provided by medical doctors.[44] As a result, the proposed rule would prevent 78 percent of the medical professionals who see patients at Title X providers from providing even the limited and intentionally obfuscated abortion referral it claims to authorize. The Department does not explain why prohibiting such a large percentage of Title X caregivers from providing any kind of counseling on the legally available option of abortion comports with the statutory requirement that Title X funds be used only for nondirective counseling, and we request such an explanation.

The proposed rule's roadblocks for a patient seeking complete and accurate health information also are arbitrary and capricious. First, the patient must already know that she wants an abortion. This precludes the patient from engaging in an important conversation with her health care provider about the pros and cons of abortion. The Department fails to address the fact that many women do not ask directly about abortions immediately upon learning they are pregnant, and instead consider it as one of many medical options. We ask that the Department explain how its proposed restrictions can be reconciled with this experience of clinicians. Second, only a doctor can give the patient the referral list. This appears designed to undermine the provision of healthcare. Moreover, it is not clear what, if any, counseling a physician is entitled to provide to a woman who has decided to have an abortion given that the proposed rules prohibit providers from "promot[ing]" and "support[ing]" abortion as a method of family planning. Limiting the medical information that physicians can offer their patients unreasonably intrudes upon the physician-patient relationship and undermines ethical standards of care.

The preamble to the proposed rule relies on "Federal conscience statutes" to justify its diverging from the requirement in the Consolidated Appropriations Act that Title X-funded counseling must be nondirective.[45] This reliance is misplaced. The proposed rule does not merely create an exception to nondirective counseling for conscience objectors. Instead, it allows conscience objectors to dictate what all Title X providers may say. Purportedly to uphold conscience protections, the proposed rule prohibits nearly 80 percent of the medical professionals who treat patients at Title X clinics from saying anything about abortion, regardless of their religious or moral beliefs. Likewise, it severely restricts the information medical doctors can impart, again regardless of their religious or moral convictions. In doing so, it makes no accommodation for providers who have religious or moral convictions contrary to the proposed rule, for instance

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[43] 83 Fed. Reg. 25,531 (§ 59.14(a); *see also*, § 59.14(c)).

[44] 83 Fed. Reg. 25,523.

[45] 83 Fed. Reg. 25,506-507.

those whose convictions align more closely with professional ethics rules. These prohibitions go substantially further than necessary to vindicate a select number of providers' conscience objections, and we ask the Department to better explain its reasoning.

3. *The proposed rule is contrary to, and ignores, the Department's authoritative recommendations for evidence-based "family planning methods and services" without reason or explanation.*

A federal agency cannot simply ignore its prior statutory interpretations. This is especially true where, as here, the prior interpretation is based on factual findings or cited evidence, and the new interpretation fails to consider that evidence. "[T]he consistency of an agency's position is a factor in assessing the weight that position is due." *Good Samaritan Hospital v. Shalala*, 508 U.S. 402, 417 (1993). "To be sure, the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it is changing position." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

In 2014, the Department's Centers for Disease Control and Prevention (CDC) issued a Recommendations and Report entitled "Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs."[46] The report provided the agency's view on what are "acceptable and effective family planning methods and services."[47] The CDC stated:

> This report provides recommendations developed collaboratively by CDC and the Office of Population Affairs (OPA) of the U.S. Department of Health and Human Services (HHS). The recommendations outline how to provide quality family planning services, which include contraceptive services, pregnancy testing and counseling, helping clients achieve pregnancy, basic infertility services, preconception health services, and sexually transmitted disease services. The primary audience for this report is all current or potential providers of family planning services, including those working in service sites that are dedicated to family planning service delivery as well as private and public providers of more comprehensive primary care.[48]

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[46] Gavin, L, Moskosky, S, Carter, M, Curtis, K, Glass, E, Godfrey, E, Marcell, A, Mautone-Smith, N, Pazol, K, Zapata, L, "Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs." Morbidity and Mortality Weekly Report, 63 Recommendations and Reports No. 4 (April 25, 2014), available at https://www.cdc.gov/mmwr/pdf/rr/rr6304.pdf (last accessed July 19, 2018) (hereinafter "CDC Report and Recommendations").

[47] 42 U.S.C. § 300(a).

[48] CDC Report and Recommendations at 1.

The report provided "recommendations for how to help prevent and achieve pregnancy, emphasize[d] offering a full range of contraceptive methods for persons seeking to prevent pregnancy, highlight[ed] the special needs of adolescent clients, and encourage[d] the use of the family planning visit to provide selected preventive health services for women, in accordance with the recommendations for women issued by the Institute of Medicine and adopted by HHS."[49] In other words, it was a careful, evidence-based description of the best practices for family planning in the United States.

Without explanation, the proposed rule contradicts this report in numerous ways, and it does so without mentioning the report. The CDC report's "recommendations support offering a full range of Food and Drug Administration (FDA)-approved contraceptive methods,"[50] while the proposed rule eliminates "medically approved" from the requirement that projects provide a broad range of family planning methods.[51] The CDC report advocates a "[c]lient-centered approach" where the patient is offered a "broad range of contraceptive methods so that clients can make a selection based on their individual needs and preferences,"[52] while the proposed rule offers Title X funds to a clinic that chooses to offer only a single method of family planning.[53] The CDC report states that a provider, after administering a pregnancy test, should present "options counseling" and "appropriate referrals,"[54] while the proposed rule mandates concealing the full range of options available to the patient, including abortion, and directs omitting abortion providers from referral lists.[55] These changes undermine long-held, evidence-based standards of care.

The Department fails to explain why it is rejecting its own recommendations expressly "based on scientific knowledge."[56] Indeed, it fails even to acknowledge the existence of those

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[49] *Id*.

[50] CDC Report and Recommendations at 2.

[51] 83 Fed. Reg. 25,530 (proposed § 59.5).

[52] CDC Report and Recommendations at 2.

[53] 83 Fed. Reg. 25,530 (proposed § 59.5). Without doubt, the proposed regulations' emphasis on fertility awareness-based methods of family planning over all other forms of contraception will result in increased numbers of unintended pregnancies, including teen pregnancies. Table 3-2, Contraceptive Technology, http://www.contraceptivetechnology.org/wp-content/uploads/2013/09/CTFailureTable.pdf (last visited July 30, 2018) (listing a 24% failure rate for typical use of fertility awareness-based methods, compared to a less than 10% failure rate for typical use of hormonal contraceptives and less than 1% failure rate for long-acting reversible contraceptives).

[54] CDC Report and Recommendations at 14.

[55] 83 Fed. Reg. 25,531 (proposed § 59.14).

[56] CDC Report and Recommendations at 4.

recommendations. The proposed rule lacks the "reasoned analysis" the Department concedes is required.[57]

4. *The financial separation requirement reverses a prior agency interpretation and is unsupported by any evidence.*

The proposed rule imposes a new requirement of physical separation between Title X projects and the abortion activities of the Title X grantee/sub-recipient.[58] This requirement reverses the Department's prior interpretation, is imposed without supporting evidence, and does not reflect agency consideration of substantial evidence contradicting the Department's conclusion.

The proposed rule reverses the Department's longstanding interpretation that, "[i]f a Title X grantee can demonstrate [separation] by its financial records, counseling and service protocols, administrative procedures, and other means. . . …, then it is hard to see what additional statutory protection is afforded by the imposition of a requirement for 'physical' separation."[59] The Department states that this reversal is necessary to avoid the risk of (i) intentional or unintentional use of Title X funds for impermissible purposes or the commingling of funds, and (ii) public confusion that Title X funds being used by a family planning organization may be supporting the program's abortion activities.[60]

Despite the need for *evidence* to justify an agency's reversal of course, the preamble to the proposed rule cites no evidence of commingled funds or public confusion. The preamble states that the Department's concerns are "acute" because, according to a Guttmacher Institute report, the percentage of "nonspecialized clinics" such as doctors' offices accounting for abortions performed in the United States inched up 6 percent from 2008 to 2014, which may increase the risk of confusion and misuse of Title X funds.[61] However, the Department has no evidence that any of these nonspecialized clinics receive Title X funds. The Guttmacher Institute itself noted that the data its report relied on included inaccuracies and out-of-date information.[62] This is the only evidence the Department cites of potential public confusion and commingling of funds, yet

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[57] 83 Fed. Reg. 25,505.

[58] 83 Fed. Reg. 25,532 (proposed § 59.15).

[59] Standards of Compliance for Abortion Related Services in Family Planning Services Projects, 65 Fed. Reg. 41,270, 41,276 (Jul. 3, 2000).

[60] 83 Fed. Reg. 25,507.

[61] *Id*.

[62] Jones, RK, Jerman, J, Abortion Incidence and Service Availability In the United States, 2014, Guttmacher Institute Perspectives on Sexual and Reproductive Health (March 2017) ("Limitations"), https://www.guttmacher.org/journals/psrh/2017/01/abortion-incidence-and-service-availability-united-states-2014 (last accessed July 18, 2018).

it evinces no actual *use* of Title X funds.[63] In fact, unlike the Title X regulations proposed in 1988—which relied in part on two reports, one from the Department's Office of Inspector General (OIG) and the other from The General Accounting Office—the Department currently points to no reports or relevant evidence as justification for the proposed rule.

The Department fails to cite its own safeguards it already has in place to ensure that Title X funds are kept separate from abortion-related services. "According to [the Office of Population Affairs], family planning projects that receive Title X funds are closely monitored to ensure that federal funds are used appropriately and that funds are not used for prohibited activities, such as abortion."[64] These "[s]afeguards to maintain this separation include (1) careful review of grant applications to ensure that the applicant understands the requirements and has the capacity to comply with all requirements; (2) independent financial audits to examine whether there is a system to account for program-funded activities and non-allowable program activities; (3) yearly comprehensive reviews of the grantees' financial status and budget report; and (4) periodic and comprehensive program reviews and site visits by OPA regional offices."[65] Despite this thorough monitoring, the Department fails to provide any evidence of actual threats to Title X funding and instead relies on reports from the 1980s, old Medicaid audits, and unsupported assertions.

The Department's monitoring has been thorough. For example, the 2017 OPA Program Review Report for the Vermont Department of Health found the following:

> Financial documentation at service sites demonstrates that Title X funds are not being used for abortion services and adequate separation exists between Title X and non-Title X activities. (42 C.F.R. § 59.5(a)(5))
>
> REVIEW OF EVIDENCE
> The grantee does not provide abortion services. However, the sub-recipient does provide these services. The sub-recipient has established policies, procedures, and practices to ensure the adequate separation of Title X activities from non-Title X activities. Staff separates their time, after the fact, into clearly defined cost centers in the TimeForce system. This is done each day, is checked by the site supervisor,

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[63] In a separate part of the preamble addressing the purported need for monitoring of the use of Title X funds, the Department cites a Washington Medicaid Fraud Control Unit investigation. 83 Fed. Reg. 25,509. The Medicaid Fraud Control Unit is part of the Washington Attorney General's Office. Our investigation found that the individuals reporting the alleged violations relied only a newsletter sent out by American Life League and had no additional information or any firsthand knowledge, the state Medicaid agency auditor did not see any indication of fraudulent billing, and there was no pattern of intentional billing misconduct.

[64] Angela Napili, Cong. Research Serv., R45181, *Family Planning Program Under Title X of the Public Health Service Act* 16 (2018), *available at* https://fas.org/sgp/crs/misc/R45181.pdf.

[65] *Id*.

> and is further checked through an analysis of the number and type of services provided each day in the clinic setting by administrative staff.
>
> The sub-recipient demonstrated that no abortion-related activities were provided as part of the Title X project. This included policies and procedures and the actual practices in the clinic setting, counseling and service protocols, intake and referral procedures, and fiscal and other administrative procedures.
>
> This requirement [compliance with Section 1008] was MET.[66]

No evidence indicates that the Vermont Department of Health has ever had any issues complying with Section 1008.

In addition, the Department does not address the steps states like ours take to ensure sub-recipients' separation of Title X funds from any abortion-related activities. In Washington, the State Department of Health Family Planning Program ensures the separation of Title X funds from abortion services through contract language, desk reviews, and on-site monitoring. The goal of monitoring is to document the extent of sub-recipient agencies' compliance with state and federal laws and regulations. Monitoring helps the Family Planning Program assist local agencies with compliance with Federal Title X and state rules related to funding. This ensures accountability.

The Washington Department of Health (DOH) does three types of monitoring: Administrative, Clinical, and Fiscal. As federal grant funds flow through the Family Planning Program to a sub-recipient, the Family Planning Program maintains primary responsibility for ensuring enforcement of federal and state requirements. Those requirements pertain to sub-recipients as they receive state and federal funds. When a sub-recipient signs the Family Planning Program contract with the DOH, they agree to enforce those same certifications, assurances, cost principles, and administrative rules. All of these requirements are incorporated in contract language. Title X sub-recipient contract standard clauses include that the Contractor does "not provide abortion as a method of family planning within the Title X Project. (42 CFR 59.5(5))," and "[t]he Title X Project must not include sterilizations, abortions, or any flat rated service (for instance some STD or HIV testing) or income/revenue generated from them."

Furthermore, the DOH Fiscal Monitoring and Review Guide and On-site Monitoring Tool is used by site consultants and agency fiscal experts to perform on-site reviews every three years or more often if needed. They monitor for documentation that:

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[66] Office of Population Affairs, Program Review: Title X Family Planning Project: Vermont Department of Health, 21 (May 2017) (on file with Vermont Attorney General's Office).

i. The financial system provides for financial separation of Title X family planning service dollars and abortion service dollars;
ii. Agency personnel must be informed that they could be prosecuted, under Federal law, if they coerce, or try to coerce, anyone to undergo abortion or a sterilization procedure, and the agency has a policy in place to this end;
iii. The agency has written policies that clearly state that no Title X funds will be used in programs where abortion is a method of family planning;
iv. The agency is in compliance with Title X, specifically calling out Section 1008; and
v. Staff members have been trained about separating Title X family planning services and abortion services.

The site consultant verifies this onsite through the sub-recipients' policies and procedures, personnel records, and a review of the accounting system.

In addition, the Washington State Family Planning Manual[67] advises about separating Title X services from abortion, including that Contractors must be in full compliance with Section 1008 prohibiting the use of Title X funds for abortion as a method of family planning.

Oregon's Reproductive Health Program maintains a robust process for monitoring compliance among its Title X agencies. Ongoing and routine compliance reviews ensure that Title X agencies adhere to administrative, clinical, and fiscal requirements. The monitoring process includes:

i. Annual recertification of agencies;
ii. Onsite compliance reviews of consent forms, policies, procedures and protocols; chart audits; onsite clinical observation; and onsite observation of patient and physical environment; and
iii. Regular billing, client enrollment, and quality assurance reviews.

Like Washington's DOH, Oregon's Reproductive Health Program uses a comprehensive Program Certification Verification Tool to monitor its Title X agencies. Specific policies relating to abortion, including the requirement that no federal funds are used for abortion services and that abortion is not provided as a birth control method, are reviewed and verified.

In Massachusetts, the Department of Public Health's robust oversight of sub-recipients providing abortion services ensures compliance with current Title X requirements. The Department of Public Health requires that these sub-recipients establish and follow written policies that clearly indicate that Title X funds will not be used for abortion services, clearly segregate Title X funds to prevent allocation of Title X funding to abortion services; maintain separate inventory for

[67] *Family Planning Manual*, Washington State Department of Health, September 2016, available at https://www.doh.wa.gov/portals/1/Documents/Pubs/930-122-FPRHManualComplete.pdf (last visited July 30, 2018)

abortion and non-abortion services; and implement fiscal review and oversight procedures to assure that no Title X funds are used for abortion services. The Massachusetts Department of Public Health also engages in regular monitoring, and requires all providers to inform them of any changes in their practice.

In Vermont, in addition to the safeguards noted above, PPNNE undergoes an annual financial audit, which specifically examines its Title X expenditures. PPNNE passes its audit every year, including its accounting of Title X funds.[68]

The Department has not explained why these thorough guidance, monitoring, and auditing steps taken by our state agencies and by the Department itself are insufficient to prevent commingling of funds, and we ask the Department to provide this explanation.

5. *The proposed rule would violate the constitutional rights of Title X providers and their patients.*

The proposed rule imposes government restrictions on speech and denies women freedom from government interference in their most intimate and personal decisions that courts will find fatal under the First and Fifth Amendments. It should be withdrawn for these reasons.

In *Rust v. Sullivan*, the Supreme Court recognized that "funding by the government, even when coupled with the freedom of the fund recipients to speak outside of the scope of the Government-funded project," is not "invariably sufficient to justify Government control over the content of expression." 500 U.S. at 199. In some areas, particularly rural areas, the proposed rule is likely to drive all Title X providers from the program, leaving patients without reasonable access to any Title X services. And for those Title X providers remaining in the program, the Department's restriction on speech will extend beyond the Title X program to every patient encounter by every Title X provider, whether or not Title X funds are used. As a consequence, the proposed rule will force all Title X grantees to give up neutral abortion-related speech, whether or not they are wearing a "Title X hat." These facts are different from those presented in *Rust v. Sullivan*, which makes that decision distinguishable.

The massive contraction of the Title X program that would occur under the proposed rule, and is shown herein as to our States, results in a violation of the unconstitutional conditions doctrine and the vagueness and overbreadth doctrines of the First Amendment. The proposed rule interferes with a doctor's ability to provide, and a woman's right to receive, information concerning abortion and abortion-related services, both within and outside of the Title X program. This violates women's Fifth Amendment rights to be free of government interference

[68] Financial audits for 2015 – 2017 may be downloaded at the Federal Audit Clearinghouse, https://harvester.census.gov/facdissem/Main.aspx. Financial audits for 2013 and 2014 on file with the Vermont Attorney General's Office. Financial audits older than five years were not readily available.

in their decisions whether to continue pregnancies to term. It is also contrary to the First Amendment, especially given the Supreme Court's recent recognition that "[a]s with other kinds of speech, regulating the content of professionals' speech 'pose[s] the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information.'" *National Institute of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361, 2374 (2018) (quoting *Turner Broadcasting System v. FCC*, 512 U.S. 622, 641 (1994)). And it contravenes Supreme Court cases that reject "confin[ing] the attending physician in an undesired and uncomfortable straitjacket in the practice of his profession." *Planned Parenthood of Central Mo. v. Danforth*, 428 U.S. 52, 67 n.8 (1976). Finally, it interferes in the states' rights to design and implement health care programs in their states by causing the Title X regulations to be applicable outside the Title X program.

If the Department does not voluntarily withdraw the proposed rule, we ask it to explain, in light of these facts, how the proposed rule is consistent with the Constitution.

6. *The proposed rule includes many requirements that are unsupported by any evidence and, if not abandoned, will be found to be arbitrary and capricious.*

    a. *The primary care requirement is unsupported and arbitrary.*

The proposed rule requires that Title X providers "should offer either comprehensive primary health services onsite or have a robust referral linkage with primary health providers who are in close physical proximity to the Title X site."[69] This requirement is supposedly meant to "promote holistic health and provide seamless care."[70] This call for holistic and seamless care rings hollow considering that the Department is simultaneously proposing specific steps to limit the provision of complete health information and seamless care to patients through abortion counseling and referral restrictions. Instead, the primary care requirement appears intended to push out long-standing Title X providers who have specialized in family planning services and rural Title X providers who may not have "robust referral linkage[s] . . . in close physical proximity."[71]

This requirement alone could dramatically reduce the scope of the Title X program in our States depending upon how the Department defines "close physical proximity." This requirement is not stated in the statute. The Department must explain how it can be reconciled with the goals of the Title X program.

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[69] 83 Fed. Reg. 25,530.

[70] *Id.*

[71] *Id.*

b. *The provisions requiring reporting on minors are unsupported and irrational.*

Currently, Title X providers must attempt to encourage a minor to involve her or his family in the decision-making process when the minor seeks contraceptive services. Under the proposed rule, this "encouragement" would be replaced with undue pressure on both the provider and the minor. The proposed rule requires that a Title X provider document "in the minor's medical records the specific actions taken by the provider to encourage the minor to involve her/his family (including her/his parents or guardian) in her/his decision to seek family planning services."[72] The only exception to this requirement, which must be documented in the minor's medical record, is if the provider "suspects the minor to be the victim of child abuse or incest" and this has been reported in compliance with state or local law.

Today, if a minor explains to a Title X provider that she wishes not to involve her family, that wish is respected. Minors may choose not to involve their families in their health care decisions due to differences of religious belief, fear of violence, fear of abandonment, lack of a suitable adult to involve, or simply a desire for confidential care. By requiring that the providers' efforts to encourage family involvement be recorded in the medical record, the proposed rule could force providers to apply pressure on minor patients to involve their families even when doing so is not in the minor's best interests. The proposed rule could ultimately have a chilling effect on honest and open conversations between providers and minor patients. Further, the proposed rule imperils patient confidentiality to such a degree that minors could be discouraged from seeking care altogether.[73] This will serve neither the purposes of the Title X program nor patients.

c. *The other reporting requirements are unsupported, vague, and beyond the Department's legal authority.*

The proposed rule would bury Title X projects and sub-recipients in overly burdensome reporting requirements. For example, a Title X project would need to report for each sub-recipient and referral agency not only the exact services provided, but also a "[d]etailed description of the extent of the collaboration" even down to the individuals involved and inclusive of undefined "less formal partners within the community."[74]

Along with the inclusion of the "less formal partners," the proposed rule's definition of "referral agency" makes the reporting requirements overly broad. The proposed rule suggests that even if a referral agency does not receive Title X funds, it may still be "subject to the same reporting

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[72] *Id.*

[73] *See, e.g.*, *Planned Parenthood Fed'n of Am. v. Heckler*, 712 F.2d 650, 659-61 (D.C. Cir. 1983) (describing Congress's decision not to mandate family involvement in Title X care for minors).

[74] 83 Fed. Reg. 25,530.

requirements as a grantee or sub-recipient."[75] These requirements improperly overreach into relationships not otherwise governed by Title X regulations and burden projects, sub-recipients, and referral agencies. Rather than achieving the stated goal of creating a robust referral system, these requirements will cause projects and sub-recipients to limit their referral networks in order to control the amount of reporting.

These changes will have significant impacts. For example, the proposed regulations' applicability to "referral agencies"[76] of Title X clinics would impact a significant number of Vermont's health care providers. As a small and rural state, Vermont's pool of available health care referral partners is also small. PPNNE maintains a "comprehensive referral data base" of other local health care providers.[77] But the proposed regulations would be unnecessarily and prohibitively restrictive on those health care providers that do not receive Title X funds, interfering with those providers' and their patients' rights and their ability to provide ethical and professional care.

7. *The proposed rule does not comply with Executive Orders 12866 and 13562.*

Executive Orders 12866 and 13562 require agencies to "assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits." 83 Fed. Reg. 25521. Executive Order 12866 requires that a "significant regulatory action" comply with additional regulatory requirements. This proposed rule meets all the definitions of a "significant regulatory action" because it would (1) have an annual effect on the economy of $100 million or more and will "adversely and materially affect" the health sector of the economy, public health, and state and local governments; (2) create a serious inconsistency and interfere with an action taken or planned by another agency; (3) materially alter budgetary impacts of entitlement grants or the right and obligations of recipients thereof; and (4) raise novel legal or policy issues arising out of legal mandates.

The restrictive requirements of the proposed rule disqualify many current Title X grantees from the program across the country. Some Title X patients currently served by these providers will lose access altogether to family planning services, particularly among the uninsured and those residing in rural areas. In 2017, Title X services saved our four States alone many millions of dollars in costs for health care services. Extrapolating those cost savings across all states, the fiscal impact of the proposed rule on the economy will exceed $100 million and will adversely affect public health, the health care sector, and state treasuries. Additionally, the proposed rule materially changes the outflow of entitlement grants and the rights and obligations of grant

[75] 83 Fed. Reg. 25,514.

[76] 83 Fed. Reg. 25514.

[77] Office of Population Affairs, Program Review: Title X Family Planning Project: Vermont Department of Health, 11 (May 2017) (on file with Vermont Attorney General's Office).

applicants and recipients. It also raises novel legal and policy issues because of new restrictions on speech. The preamble wrongly concludes that the proposed rule is not economically significant and fails to address these considerations.

8. *The proposed rule is contrary to Congress's intent because it would exclude qualified and experienced Title X providers from the program and reduce access to essential preventive health services.*

The impact of the proposed rule is contrary to the Title X statute. The proposed rule appears to be designed to deny Title X funds to many of the current Title X providers in our States and nationwide, and it does not address the impact this rule will have on our States' residents and budgets. The proposed rule, if implemented, will leave many counties without a Title X provider. Because the proposed rule will undermine the quality of health care provided and impose burdensome and counterproductive separation and reporting requirements, many providers in our States will be unable or unwilling to comply. Further, the proposed rule falls particularly hard on uninsured patients and those in rural areas, who in some cases will have no other reasonable option for obtaining family planning services. As a result, thousands of people who rely on Title X providers for contraception and other family planning services will lose access to those services. The proposed rule thus frustrates, rather than promotes, the purpose of Title X.

It is no secret that the Department wants to expel Planned Parenthood from the network of Title X providers. As then-candidate Donald Trump stated, "We're not going to allow, and we're not going to fund, as long as you have the abortion going on at Planned Parenthood."[78] More recently, when introducing the proposed rule, President Trump stated: "For decades American taxpayers have been wrongfully forced to subsidize the abortion industry through Title X federal funding so today, we have kept another promise. My administration has proposed a new rule to prohibit Title X funding from going to any clinic that performs abortions."[79] The proposed rule would certainly achieve the President's goal, but as described herein, it would go much further than that.

For some Title X providers, creating a separate corporate entity with complete physical and financial separation will be prohibitively expensive. In Massachusetts, at least one Title X provider, if forced to create a separate corporate entity to continue providing abortion care, will have to stop participating in Title X at one of its locations, resulting in the loss of a geographically important Title X clinic. In Oregon, two major Title X agencies with 12 clinic sites would likely be unable to continue as Title X providers due to the onerous physical

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[78] Danielle Paquette, "Donald Trump's Incredibly Bizarre Relationship with Planned Parenthood," *Washington Post* (Mar. 2, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/03/02/donald-trumps-incredibly-bizarre-relationship-with-planned-parenthood/?utm_term=.db131f627e96 (last accessed 7/13/18).

[79] https://www.whitehouse.gov/briefings-statements/remarks-president-trump-susan-b-anthony-list-11th-annual-campaign-life-gala/ (last accessed 7/13/18).

separation requirements set forth in the rules. The same is true in Washington and Massachusetts. All of Vermont's Title X clinics would be ineligible to continue under the program. A wide range of Title X provider types will have no choice but to forgo Title X funds, thus reducing their capacity to provide much needed family planning services. For example, it is unclear whether a hospital that runs a Title X clinic (on or off site) that also provides abortion would be able to comply with the requirement to have "separate, accurate accounting records" or "separate personnel, electronic or paper-based health care records."[80] Would funds attributed to the clinic also be attributable to the hospital as a whole? In addition to the practical issues created by the proposed rule's separation requirement, it also creates serious risk to patient safety by requiring separate medical record systems and further stigmatizes legal medical procedures.

In 2017, in Washington, over 14,000 Title X-funded patients received their Title X services at Planned Parenthood or other clinics that provided abortions outside the Title X project. In fact, in 20 of Washington's 39 counties, the only Title X provider is one that performs abortions outside the Title X project.[81] If these Title X providers no longer could offer Title X-funded family planning services due to the separation and other requirements, these patients would need to either locate new Title X providers for their contraception and other family planning services, or forego the benefits of the Title X program. In all of eastern Washington, which is comprised of 20 counties, only four of those counties would have any Title X provider at all. In western Washington, the proposed rule would drive out the Title X providers in 10 additional counties. This includes six of the 10 most populous counties in Washington.

If the proposed regulations take effect, for the first time in the history of Title X, the Vermont Department of Health's Title X funding will be jeopardized. None of the current Title X clinics in Vermont will be eligible for Title X funds. Nor does Vermont have the health care infrastructure to make up for the anticipated loss in funding. Although Vermont has several FQHCs and rural health centers, they are not equipped to absorb all the family planning patients currently served by Title X clinics. Vermont FQHCs saw a total of 4,047 patients for contraceptive management in 2016.[82] By comparison, Vermont's Title X clinics served 9,808 family planning patients in 2016. The FQHCs would have to more than double their family planning patient services in rural areas to absorb the needs of all Title X patients. FQHCs in Vermont are not equipped to do this.

In the Department's zeal to punish providers that perform abortions *outside* of the Title X project, the Department is harming many recipients of Title X services in our States. The

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[80] 83 Fed. Reg. 25,519.

[81] *See* Attachment 1 (map of Washington counties without Title X services if organizations that also provide abortions are removed from Title X).

[82] 2016 Health Center Data: Vermont Data, Health Resources & Servs. Admin., https://bphc.hrsa.gov/uds/datacenter.aspx?q=tall&year=2016&state=VT (last visited July 30, 2018).

Department has not explained why issuing a rule to govern Title X that requires thousands of Title X-funded patients to search for a new Title X family planning provider—or go without one entirely—is consistent with Congress's intent in establishing the Title X program, and we ask the Department to provide this explanation.

The harmful consequences of the proposed rule uniquely impact rural and uninsured patients. In five Washington counties, for example, one quarter or more of Title X patients are uninsured, and the only Title X providers are ones that perform abortions outside the Title X project.[83] And in five other counties in rural Washington, Title X patients are served by small Title X clinics associated with providers that perform abortions outside the Title X project. These clinics are in Ellensburg (in Kittitas County), Walla Walla (in Walla Walla County), Wenatchee (in Chelan County), Pullman (in Whitman County), and Moses Lake (in Grant County). We are advised that, because they are so small and a significant amount of their work involves Title X-funded services, at least some of these clinics would not survive the loss of Title X funds. If these current Title X providers are driven from the Title X program, many of these patients will not be able to shift to another provider.[84] Even if some current Title X providers remain in the program, the distance these patients would have to travel to another Title X provider is impracticable. We ask that the Department explain how it reconciles the significant impact the proposed rule will have on rural and uninsured patients with the mission of the Title X program.

In Oregon, significant portions of the state, primarily the rural and frontier areas, are designated as Medically Underserved Areas because they have a shortage of primary health care providers and facilities coupled with high levels of need. The proposed rule will likely cause providers to decline Title X funds in order to maintain their quality of care, further straining access to reproductive health care for Oregonians in these areas. For the 40 percent of Oregon's Title X clients who are uninsured, this burden is heightened because the high quality of care at Title X clinics may not be available to them at other clinics. Title X clinics currently are required to provide the same high quality of care to all clients regardless of ability to pay, whereas other clinics may limit services for patients without coverage sources.

A remarkably broad coalition of Vermont health care providers has joined the nationwide medical community's condemnation of the proposed rule.[85] This Vermont coalition "strongly

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[83] These counties are Mason (24 percent of Title X patients were uninsured in 2017), San Juan (30 percent), Skagit (29 percent), Douglas (28 percent), and Whitman (27 percent). These counties do not have local health jurisdictions providing family planning services.

[84] In addition, under the proposed rule, eliminating Planned Parenthood and other abortion providers from Title X will cause the following colleges and universities in Washington to lose their Title X providers: Washington State University, Western Washington University, Central Washington University, Eastern Washington University, Big Bend Community College, Columbia Basin College, and Yakima Valley Community College.

[85] *Vermont Health Care Coalition Title X Statement*, Vt. Ass'n of Hosps. and Health Sys. (June 15, 2018), https://vahhs.org/title-x-statement.html (endorsing, among other things, a statement from the American Nurses Association stating, "The Code of Ethics for Nurses outlines that the nurse's primary commitment is to the patient,

opposes" the proposed regulations and warns that those regulations "will significantly restrict access to necessary care for both women and men particularly in rural, hard to serve areas of Vermont."[86] Vermont is a small state, and the Vermont coalition represents a significant majority of all health care providers in Vermont. It is therefore unlikely that the number of Vermont medical professionals who would consent to work in a clinic governed by the proposed regulations would be sufficient to replace the current robust number of Title X-funded providers statewide.

9. *The proposed rule would impose tens of millions of dollars of costs on the treasuries in Washington, Massachusetts, Oregon, and Vermont.*

The costs imposed on our States, along with all other states, by the proposed rule will be well over $100 million. Because the cost or burdens of compliance with the proposed rule will be prohibitively high for many providers, the network of Title X providers will shrink in our States and around the country. Further, some Title X patients will lose all access to family planning services as a result of the proposed rule. As mentioned, in Oregon 41 percent of Title X patients were uninsured in 2017, and in Washington there are counties where upwards of 30 percent of Title X patients are uninsured.

Yet the Department fails to analyze either the significant public health impact or the fiscal impact to states. The Department fails to grapple with the fact that, unless it is expecting the states to step in to plug the fiscal hole created by the loss of Title X funding, unplanned pregnancies and births will occur, cervical cancers will not be diagnosed in early stages, and complications will occur due to untreated STIs, among other things, all resulting in significant increased health care costs for states that Title X is meant to address.

The Department provides no analysis explaining why these impacts are consistent with the fundamental mission of the Title X program. In fact, they are not. Analyses show that significant cost savings are achieved by funding family planning services. Nationally, an estimated $7.09 is saved for every dollar spent.[87] In short, a significant portion of the cost savings created by

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whether an individual, family, group, community, or population. This proposed rule interferes with that relationship and violates the basic ethics of the profession."); *see also* Mike Faher, *Vermont health care coalition protests Title X change*, VTDigger.com (June 12, 2018), https://vtdigger.org/2018/06/12/vermont-health-care-coalition-protests-title-x-change/ (calling the Vermont Health Care Coalition opposing the proposed regulations "an unlikely group of allies in Vermont").

[86] *Vermont Health Care Coalition Title X Statement*, Vt. Ass'n of Hosps. and Health Sys. (June 15, 2018), https://vahhs.org/title-x-statement.html

[87] Jennifer J. Frost, *Return on Investment: A Fuller Assessment of the Benefits and Cost Savings of the US Publicly Funded Family Planning Program*, Milbank Quarterly, Vol. 92, No. 4, p. 668 (2014) (*available at* https://www.guttmacher.org/sites/default/files/pdfs/pubs/journals/MQ-Frost_1468-0009.12080.pdf).

funding family planning services is jeopardized by the proposed rule and would fall on our States, among others.

D. Conclusion

The proposed rule will drive many family planning providers from the Title X program. As a result, thousands of patients will lose reasonable access to family planning services and other critical reproductive health services. The Title X providers that remain will be prevented from delivering the high-quality and complete medical care that they have always provided. This frustrates rather than achieves the purposes of Title X, and the courts will strike down the proposed rule, if implemented, accordingly. The proposed rule would limit health care services to vulnerable populations that Congress intended to help. It also would shift the costs of reproductive health care, including services for unintended pregnancies, breast and cervical cancer diagnoses, spread of STIs, and other serious health conditions to our states. For these and the other reasons stated in our comments, we urge the Department to withdraw the proposed rule.

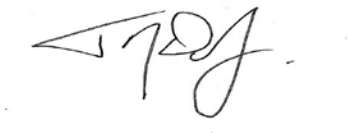
Thank you for considering our views.

Sincerely,

Bob Ferguson
Washington Attorney General

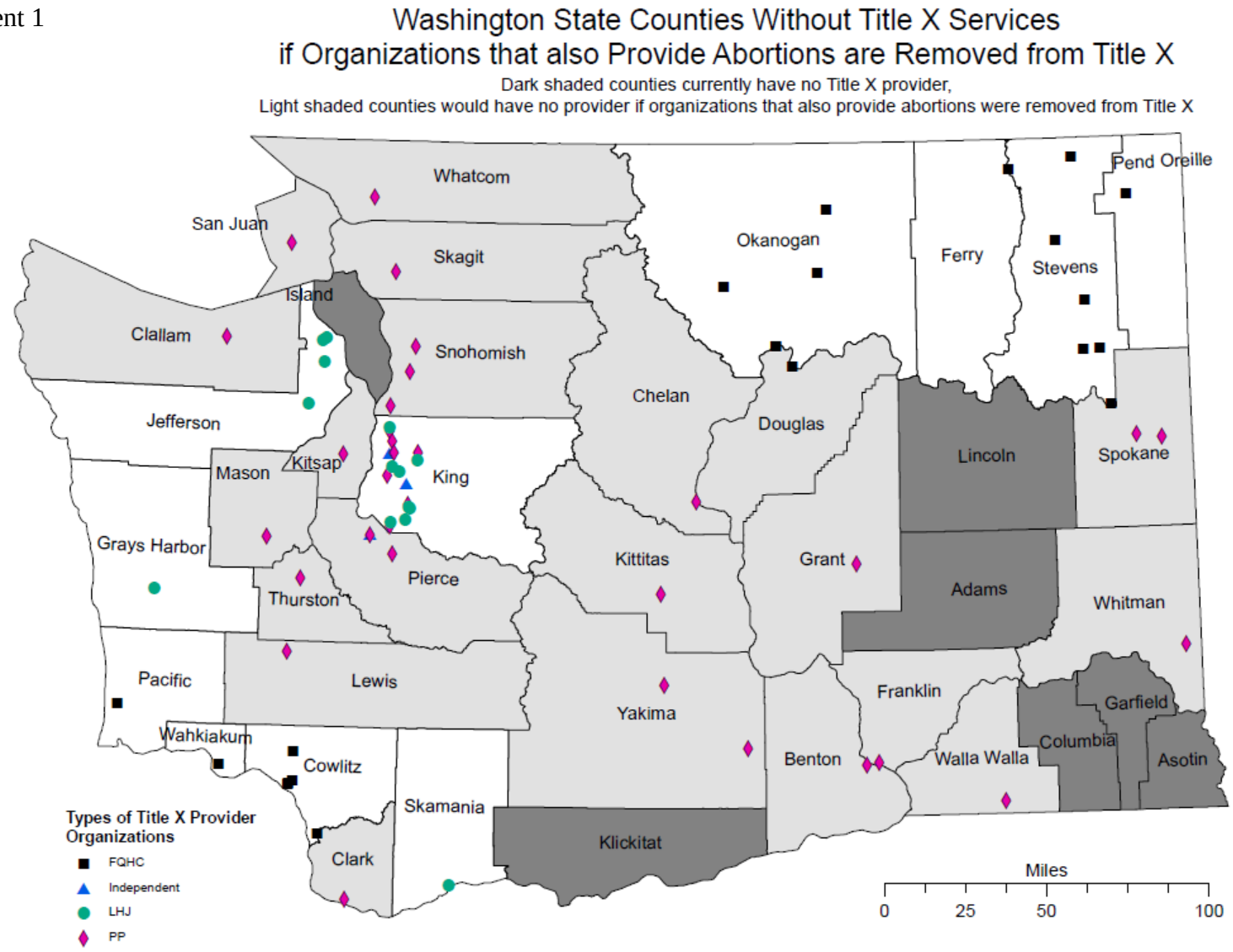
Maura Healey
Massachusetts Attorney General

Ellen Rosenblum
Oregon Attorney General



Thomas J. Donovan, Jr.
Vermont Attorney General

Attachment 1



From:	Diamond, Joshua
To:	Donovan, Thomas; Clark, Charity; Spottswood, Eleanor
Subject:	FW: Title X letter
Date:	Tuesday, July 31, 2018 2:09:23 PM
Attachments:	Final_Title_X_Comment_Letter_7.31.18 WAMAORVT.PDF

FYI. Josh

Joshua R. Diamond, Deputy Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, Vermont 05609
802-828-3175
joshua.diamond@vermont.gov

From: Aho, Brionna (ATG) <BrionnaF@ATG.WA.GOV>
Sent: Tuesday, July 31, 2018 2:06 PM
To: Gotsis, Chloe (AGO) <chloe.gotsis@state.ma.us>; kristina.edmunson@doj.state.or.us; Clark, Charity <Charity.Clark@vermont.gov>; Diamond, Joshua <Joshua.Diamond@vermont.gov>
Subject: RE: Title X letter

In case you don't have the final from your teams:

From: Aho, Brionna (ATG)
Sent: Tuesday, July 31, 2018 10:24 AM
To: 'Gotsis, Chloe (AGO)' <chloe.gotsis@state.ma.us>; 'kristina.edmunson@doj.state.or.us' <kristina.edmunson@doj.state.or.us>; 'Charity.Clark@vermont.gov' <Charity.Clark@vermont.gov>; 'Joshua.Diamond@vermont.gov' <Joshua.Diamond@vermont.gov>
Subject: Title X letter

Hi all,

Just wanted to update you, our plan is to send the letter at 11 a.m. Pacific/2 p.m. Eastern. Let me know if you have any questions.

Best regards,

Brionna

Brionna Aho
Communications Director | Office of State Attorney General Bob Ferguson
Office: 360-753-2727 | Cell: 360-338-2743 | Email: brionna.aho@atg.wa.gov
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Bob Ferguson
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July 31, 2018

VIA FEDERAL eRULEMAKING PORTAL

Secretary Alex M. Azar II
Assistant Secretary ADM Brett P. Giroir, M.D.
Deputy Assistant Secretary Diane Foley, M.D., FAAP
Attention: Family Planning
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 716G
200 Independence Avenue SW
Washington, DC 20201

RE: HHS–OS–2018–0008, Comments on Proposed Rule: *Compliance With Statutory Program Integrity Requirements*, Docket No.: HHS-OS-2018-0008

Dear Secretary Azar, Assistant Secretary Giroir, and Deputy Assistant Secretary Foley:

The undersigned, Attorneys General for the States of Washington, Oregon, and Vermont and the Commonwealth of Massachusetts, respectfully urge the Department of Health and Human Services (the Department) to withdraw its Proposed Rule: *Compliance with Statutory Program Integrity Requirements*, 83 Fed. Reg. 25,502 (June 1, 2018). We have grave concerns with the legality of the proposed rule, and do not believe it would survive judicial review in its current form.

The Title X family planning program was created to provide access to high-quality family planning and related preventive health care for low-income and underserved individuals. The proposed rule has a host of legal flaws. In some states, if implemented, it will eliminate from the Title X program many Title X providers and leave thousands of residents without reasonable options for critical family planning services. In other states, it will frustrate the ability of providers to deliver high-quality and complete care to their patients and will undermine the efficacy of the network as a whole. The proposed rule thus frustrates rather than promotes the purposes of Title X. The proposed rule shifts the burden and costs to the states, including myriad reproductive health services related to unintended pregnancies, treatment of sexually transmitted infections (STIs), cervical and breast cancer screening and treatment, and other public health

services that the Title X program currently covers. The public health impact will fall the heaviest on our States' most vulnerable populations – including low-income and rural women and families, immigrants and people of color that the program is intended to help.

Further, the proposed rule requires directive counseling, which is in violation of a federal statute governing Title X.[1] It illegally injects the government into the Title X medical examination room, and it violates the constitutional rights of providers and patients under the First and Fifth Amendments. The proposed rule also violates the Department's current statutory interpretation of "acceptable and effective family planning methods and services" without mentioning the current interpretation or the evidence justifying it. Various parts of the rule are unsupported by any evidence and are thus arbitrary and capricious. Finally, the proposed rule violates Executive Orders 12866 and 13562.

A. Relevant Background of Title X to the Public Health Service Act, 42 U.S.C. §§ 300-300a-6

The Family Planning and Services Population Research Act of 1970, which added Title X to the Public Health Service Act, authorizes the Secretary of Health and Human Services:

> to make grants to 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).

Title X projects serve an estimated four million women annually.[2] In 2015, 64 percent of U.S. counties had at least one safety-net family planning center supported by Title X, and 90 percent of women in need of publicly funded family planning care lived in those counties.[3] Title X clients are among the nation's most vulnerable populations: two-thirds have incomes at or below the Federal Poverty Level (FPL)($20,090 for a family of three in 2015), nearly half are uninsured—even after implementation of the Affordable Care Act's (ACA) major insurance

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[1] Public Law No. 115-141, § 118, https://www.congress.gov/bill/115th-congress/house-bill/1625/text.

[2] Fowler CI et al., Family Planning Annual Report: 2015 National Summary, Research Triangle Park, NC: RTI International, 2016, http://www.hhs.gov/opa/sites/default/files/title-x-fpar-2015.pdf (last accessed 7/17/18).

[3] Frost JJ and Zolna MR, Response to inquiry concerning the availability of publicly funded contraceptive care to U.S. women, memo to U.S. Senator Patty Murray, Senate Health, Education, Labor and Pensions Committee, New York: Guttmacher Institute, May 3, 2017, https://www.guttmacher.org/article/2017/05/guttmacher-murray-memo-2017 (last accessed 7/17/18).

expansions—and another 35 percent have coverage through Medicaid and other public programs.[4]

In 2015, the contraceptive care delivered by Title X–funded providers helped women avoid 822,000 unintended pregnancies, which would have resulted in 387,000 unplanned births and 278,000 abortions.[5] Without the contraceptive care provided by these health centers, the U.S. rates of unintended pregnancy and abortion would have been 31 percent higher, and the teen unintended pregnancy rate would have been 44 percent higher.[6] Title X is a vital program, especially for low-income women and teens as:

> access to and consistent use of the most effective contraceptive methods are not enjoyed equally by all U.S. women. Disparities in contraceptive use are a major reason why half of U.S. pregnancies—3.2 million each year—are unplanned. . . . [U]nplanned and teen pregnancies occur disproportionately to poor women (those with incomes below the federal poverty level), whose unplanned pregnancy rate is five times that of higher income women.[7]

Concern for low-income women led President Nixon to push for national family planning assistance in the 1960s, stating that "unwanted or untimely childbearing is one of the several forces which are driving many families into poverty or keeping them in that condition."[8] That remains a driving concern today. Studies have shown that access to family planning assistance makes it more likely that a teen will graduate high school, that a woman will achieve her educational and career goals, and that a woman will earn more money (positively impacting not only her life, but the lives of her family).[9] Access to family planning also leads to healthier

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[4] Fowler CI et al., Family Planning Annual Report: 2015 National Summary, Research Triangle Park, NC: RTI International, 2016, http://www.hhs.gov/opa/sites/default/files/title-x-fpar-2015.pdf (last accessed 7/17/18).

[5] Frost JJ, et al., Publicly Funded Contraceptive Services at U.S. Clinics, 2015, New York: Guttmacher Institute, 2017, https://www.guttmacher.org/report/publicly-funded-contraceptive-services-us-clinics-2015 (last accessed 7/17/18).

[6] Hasstedt K, Why We Cannot Afford to Undercut the Title X National Family Planning Program, Guttmacher Institute, Jan. 30, 2017, https://www.guttmacher.org/gpr/2017/01/why-we-cannot-afford-undercut-title-x-national-family-planning-program (last accessed 7/17/18).

[7] Adam Sonfield, *What Women Already Know: Documenting the Social and Economic Benefits of Family Planning*, Guttmacher Institute (Mar. 2013), *available at* https://www.guttmacher.org/gpr/2013/03/what-women-already-know-documenting-social-and-economic-benefits-family-planning.

[8] Special Message to the Congress on Problems of Population Growth (Jul. 18, 1969), *available at* http://www.presidency.ucsb.edu/ws/?pid=2132.

[9] Adam Sonfield et al., *The Social and Economic Benefits of Women's Ability To Determine Whether and When to Have Children*, Guttmacher Institute, *available at* https://www.guttmacher.org/report/social-and-economic-benefits-womens-ability-determine-whether-and-when-have-children, and *Staff of J. Economic Comm., 114th Cong. The Economic Benefits of Access to Family Planning, available at*

relationships, better health outcomes, and better parenting.[10] Title X is critical in assuring that teens and low-income women can achieve these same positive outcomes.

For many women, a visit to a family planning provider is about far more than birth control. During a visit for contraceptive services at a Title X site, women commonly receive other preventive sexual and reproductive health services, including preconception health care and counseling, STI testing and treatment, human papillomavirus (HPV) vaccinations, cancer screening, Pap tests for early detection of cervical cancer, and referrals for mammograms. Title X providers also screen for a host of other potential health issues, such as high blood pressure, diabetes, and depression, connecting clients to further care when needed.[11] For four in 10 women who obtain their contraceptive care from a safety-net family planning center that focuses on reproductive health, that provider is their only source of care.

Title X improves the health of our States' residents beyond helping them plan for their pregnancies. In 2010, the services provided within the Title X network prevented 87,000 preterm or low-weight births, 63,000 STIs and 2,000 cases of cervical cancer.[12]

B. Title X Is a Critical Program That Provides High-Quality Care To Thousands of Residents of Washington, Massachusetts, Oregon, and Vermont Every Year.

1. *Washington*

The Washington State Department of Health (DOH) is the sole grantee of Title X funds in Washington State and runs the program. Washington's current grant project period is one year and six months and ends August 31, 2018.

Washington's Title X expenditure for 2017 was approximately $13 million. The state-funded amount was approximately $9 million, and the federally funded amount was approximately $4 million.

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https://www.jec.senate.gov/public/_cache/files/d0a67745-74ff-439c-a75a-aacc47e0abc1/jec-fact-sheet---economic-benefits-of-access-to-family-planning.pdf.

[10] *Id.*

[11] Frost JJ, Gold RB and Bucek A, Specialized family planning clinics in the United States: why women choose them and their role in meeting women's health care needs, Women's Health Issues, 2012, 22(6):e519–e525, http://www.whijournal.com/article/S1049-3867(12)00073-4/pdf (last accessed 7/17/18).

[12] Sonfield A, Beyond preventing unplanned pregnancy: the broader benefits of publicly funded family planning services, *Guttmacher Policy Review*, 2014, 17(4):2–6, http://www.guttmacher.org/gpr/2014/12/beyond-preventing-unplanned-pregnancy-broader-benefits-publicly-funded-family-planning (last accessed 7/17/18). 2010 is the most recent year for which these data are available.

Washington served 91,284 patients through Title X in 2017, with 128,296 patient visits. In 2017, 57 percent of Washington's Title X-funded patients were at or below the FPL, and 81 percent had incomes below 200 percent of the FPL. Sixteen percent of Title X clients were women of color. Nine percent of patients were under the age of 18. The DOH projects that Title X services prevented 16,233 unintended pregnancies in 2017; the resulting cost savings for Title X services (including STI, HIV, HPV, and Pap tests) was $113,434,910.

DOH distributes Washington's Title X funds by an approved allocation process. DOH broadly distributes information about an upcoming competition for Title X funds toward the end of the project period. It conducts a formal Request for Proposals process to select providers. After the due date for proposals is past, they are reviewed by objective reviewers and scored on criteria that includes choosing the entities that can best utilize the available funding to carry out Title X requirements.

In addition to Title X funds, Washington separately funds contracted Title X health care providers for Title X-allowable services. Further, some Medicaid providers in Washington offer Title X-allowable services but are not Title X projects. The funding from Title X and Medicaid is separate and distinct. However, if an entity receives Title X funding, all clients that have received services according to Title X guidelines are counted as Title X clients in the data system regardless of their funding source.

There are 12 Title X sub-grantee agencies with 70 clinic sites across Washington State. Five of the 12 agencies that receive Title X funds in Washington perform abortions outside of the Title X project. There are several counties in Washington that only have one Title X provider, including Clallam, Grays Harbor, Pacific, Kitsap, Wahkiakum, Lewis, Thurston, Mason, Jefferson, Whatcom, Skagit, Clark, Skamania, Kittitas, Chelan, Ferry, Pend Oreille, Whitman, and Walla Walla. All sites have physicians on staff as medical directors, but nurse practitioners primarily provide care to patients. All sites have nurse practitioners accessible during all business hours.

Washington subjects Title X providers to numerous contractual requirements. These include: (1) they must be non-profit agencies; (2) they must be able to meet reporting requirements (including the ability to extract data from their Electronic Medical Records system to report to the contracted data vendor); (3) they must follow all regulations; (4) they must be able to separate abortion activities from Title X funding; and (5) they must have qualified personnel and licensed providers.

2. *Massachusetts*

Approximately $6,155,000 in Title X funding flows into Massachusetts annually. These funds support, either directly or indirectly, 90 family planning providers. In 2016 alone, Title X

providers in Massachusetts served 66,072 people.[13] Data from fiscal year 2017 shows that 88 percent of all Title X visits were made by female patients, 50 percent of all patients were between 18 and 29 years old, and 88 percent of all patients were at or below 200 percent of the FPL.

Title X providers in Massachusetts offer a wide range of services and care, including pregnancy testing and options counseling; contraceptive services and supplies; pelvic exams; screenings for cervical and breast cancer; screenings for high blood pressure, anemia, and diabetes; screenings and treatment for STIs; infertility services; health education; and referrals for other health and social services. These services not only have a profound and positive impact on patients' lives, but also save Massachusetts and the federal government money. In fact, according to one estimate, Title X services save Massachusetts and the federal government approximately $140 million per year in Massachusetts alone.[14] Beyond the significant fiscal impact, the services provided have a real and profound impact on the lives of Massachusetts women and their families. In 2014, Title X-funded centers met 15 percent of all contraceptive needs in Massachusetts[15] and helped avert 13,600 unintended pregnancies.[16]

Title X funds are crucial and must be spent wisely. Programs that currently receive these funds do so in a culturally competent and welcoming manner. They offer an array of services. They understand the health needs of their patients. The proposed rule does not advance Title X's purpose and undermines the ability of its recipients to do the important work that they do every day on behalf of some of Massachusetts' most vulnerable patients.

3. *Oregon*

The state of Oregon has been the umbrella grantee for Title X services throughout Oregon since 1970. The Oregon Health Authority's Reproductive Health Program administers the state's Title X grant. In fiscal year 2018, Oregon's Title X award was $3,076,000. This funding provides direct support to a network of 35 agencies with 106 clinic sites and is comprised of local public

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[13] *Title X in Massachusetts: Improving Public Health and Saving Taxpayer Dollars*, National Family Planning & Reproductive Health Association, at 1 (Dec. 2017), available at https://www.nationalfamilyplanning.org/file/state-snapshots-2017/Massachusetts.pdf.

[14] *Contraception, Cost Savings at Title X-Funded Centers: From Contraceptive Services*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=MA&dataset=data&topics=96 (last visited July 30, 2018).

[15] *Contraception, Title X-Funded Centers: Percentage of Need Met By Title X-Funded Centers*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=MA&dataset=data&topics=257 (last visited July 30, 2018).

[16] *Contraception, Outcomes Averted By Title X-Funded Centers: From Contraceptive Services*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=MA&topics=120&dataset=data (last visited July 30, 2018).

health authorities, federally qualified health centers (FQHCs), Planned Parenthood clinics, rural health centers, and other community health centers. Almost every county has at least one Title X Program provider, often with multiple clinic sites per provider.

A total of 37,012 unduplicated clients were served by Title X sub-recipient clinics in 2017. Of these clients, 15,225 (41 percent) were uninsured, meaning they have limited options for accessing affordable reproductive health services.

Oregon's Title X clinics provide essential, high-quality preventive reproductive health services to underserved individuals. Data from 2017 show that of the 37,012 clients served by Oregon's Title X clinics:

- 93 percent were female;
- 47 percent were females between the ages of 18 and 29;
- 95 percent were at or below 250 percent of the FPL and 66 percent were at or below 100 percent of the FPL; and
- 60,647 clinic visits were provided, including:
  - 6,511 cervical cancer screenings
  - 49,366 STI screenings
  - 12,649 annual/well-woman exams

Further evidence of the high quality of care in Oregon's Title X clinics comes from clients themselves. According to Oregon's 2015 Reproductive Health Client Satisfaction Survey, 99 percent of clients reported the following: that medical staff respected their values, they trust the medical staff to help them make decisions, and they would recommend the clinic to friends or family.

In addition to offering high quality care, Oregon's Title X program is also cost effective. In 2017, over 6,000 unintended pregnancies were averted through the provision of effective contraceptive methods and high-quality counseling services in Oregon's Title X clinics. Using a conservative estimate of $16,000 for an average delivery and the first year of infant health care under Oregon's Medicaid program, even if less than half of these 6,000 unintended pregnancies resulted in births, the savings to the state were in excess of $40 million in taxpayer funds in Oregon alone in 2017.

4. *Vermont*

The Vermont Department of Health, the sole grantee for Vermont, has relied on Title X grant funding for decades. The Vermont Department of Health receives about $775,000 annually from Title X, of which the majority is passed on directly to the sole sub-grantee, Planned Parenthood of Northern New England (PPNNE). With these funds, PPNNE provides reproductive health

services at 10 different clinics located throughout Vermont. These clinics serve a largely rural population—none are located in Chittenden County, the most populous county of Vermont.

Through these clinics, Title X provided family planning services to 9,808 Vermonters in 2016. Of these, 44 percent reported income of less than 100 percent of the FPL, and 76 percent had income less than 250 percent of the FPL. Vermont's Title X patients were 11 percent male, and 20 percent were under age 20. And 22 percent had no health insurance.[17]

Services provided by Title X funds in Vermont include "a broad range of family planning and related preventive health services for Vermont women, men, and their partners."[18] As required in 42 C.F.R. Part 59, all pregnancy counseling at Title X clinics in Vermont is nondirective.[19] In addition, Title X funds provided "patient education and counseling; breast and pelvic examinations; breast and cervical cancer screening according to nationally recognized standards of care; STI and Human Immunodeficiency Virus (HIV) prevention education, counseling, testing and referral; and pregnancy diagnosis and counseling."[20]

Title X funding has been an essential part of the success that Vermont has seen in reproductive health outcomes over time. For example, while the current Title X rules and program have been in place, the number of teen pregnancies in Vermont has steadily declined.[21] And, the number of teen abortions occurring in Vermont has steadily declined.[22] This is consistent with the overall drop in abortion rates in Vermont and nationwide.[23] Title X-specific analyses show that these trends over time are at least partly attributable to Title X funding. One estimate shows that approximately 1900 unintended pregnancies were averted by Title X-funded clinics in Vermont

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[17] Office of Population Affairs, Title X Family Planning Annual Report: Vermont (April 2017) (on file with Vermont Attorney General's Office).

[18] Office of Population Affairs, Program Review: Title X Family Planning Project: Vermont Department of Health, 1, 33 (May 2017) (on file with Vermont Attorney General's Office).

[19] *Id.* at 34-35.

[20] *Id.* at 1.

[21] Kathryn Kost et al., *Pregnancies, Births and Abortions Among Adolescents and Young Women in the United States, 2013: National and State Trends by Age, Race and Ethnicity*, 36 (Guttmacher Inst. Aug. 2017) (data going back to 1988), *available at* https://www.guttmacher.org/sites/default/files/report_pdf/us-adolescent-pregnancy-trends-2013.pdf

[22] *Id.* at 40.

[23] Vt. Dept. of Health, "Fig. 11: Vermont and U.S. Abortion Ratios 1980 – 2016," *2016 Vital Statistics: 132nd Report Relating to the Registry and Return of Births, Deaths, Marriages, Divorces, and Dissolutions*, 129 (Agency of Human Servs. 2016) (data going back to 1980), *available at* http://www.healthvermont.gov/sites/default/files/documents/pdf/Vital%20Statistics%20Bulletin%202016.pdf

in 2014.[24] Of those, 400 would have been teen pregnancies.[25] In addition, Title X's successes have not been limited to pregnancy outcomes. Although Title X is not the only public health program addressing these issues, cervical cancer rates[26] and new HIV/AIDS diagnoses[27] in Vermont have been generally declining as well. In 2016, Title X clinics screened 1,344 clients for cervical cancer and 2,834 clients for HIV.[28]

The successes of the Title X program translate from public health to the public fisc. By one estimate, Title X services in Vermont saved the state and federal governments $7,868,000 in 2010.[29] Of that money, the majority ($7,520,000) was saved in annual maternity and birth-related costs as a result of contraceptive services.[30] An additional $215,000 was saved in annual miscarriage and ectopic pregnancy costs.[31] Tens of thousands of dollars in public health costs were saved from STI and cancer screening at Title X clinics.[32]

C. The Fatal Deficiencies in the Proposed Rule

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[24] *Number of Unintended Pregnancies Averted by Title X-Funded Centers*, Data Ctr., Guttmacher Inst., https://data.guttmacher.org/states/table?state=VT&topics=114 (last visited July 30, 2018).

[25] *Number of Unintended Pregnancies Averted to Clients Aged <20 by Title X-Funded Centers*, Data Ctr., Guttmacher Inst., https://data.guttmacher.org/states/table?state=VT&topics=114 (last visited July 30, 2018).

[26] Vermont Cancer Registry, *HPV Associated Cancers—Data Brief*, 1 (Vt. Dept. of Health May 2018) (data going back to 1994), *available at* http://www.healthvermont.gov/sites/default/files/documents/pdf/stat_cancer_HPV_Assoc_Ca_Data_Brief.pdf.

[27] Decrease seen since the height of the epidemic, and the introduction of the first effective treatments, in the early 1990s. Vt. Dept. of Health, "History of the HIV/AIDS epidemic, Vermont residents at diagnoses 1984 – 2014," *Vermont HIV/AIDS Annual Report*, 2 (May 2015), *available at* http://www.healthvermont.gov/sites/default/files/documents/pdf/ID_HIV_surveillance_Vt%20HIV%20Annual%20Rep%202014.pdf; *see also* Vt. Dept. of Health, *2016 Vermont HIV Annual Report*, 2-3 (May 2018), *available at* http://www.healthvermont.gov/sites/default/files/documents/pdf/ID_HIV_VermontHIVAnnualReport2016.pdf.

[28] Office of Population Affairs, Title X Family Planning Annual Report: Vermont, 10, 13 (April 2017) (on file with Vermont Attorney General's Office).

[29] *Total Annual Gross Savings from Services Provided During Family Planning Visits at Title X-Funded Centers*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=VT&topics=98 (last visited July 30, 2018).

[30] *Annual Maternity and Birth Related Costs (Through 60 Months) Saved from Contraceptive Services*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=VT&topics=96 (last visited July 30, 2018).

[31] *Annual Miscarriage and Ectopic Pregnancy Costs Saved from Contraceptive Services*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=VT&topics=96 (last visited July 30, 2018).

[32] *Annual Costs Saved From Chlamydia, Gonorrhea and HIV Testing at Title X-Funded Centers; Annual Costs Saved from Pap and HPV Testing at Title X-Funded Centers*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=VT&topics=97 (last visited July 30, 2018).

1. *The proposed rule requires directive counseling in violation of the Consolidated Appropriations Act, 2018.*

In numerous ways, the proposed rule imposes unethical requirements to provide directive, mandatory patient counseling. This is contrary to the Consolidated Appropriations Act, 2018, which states that, with respect to the amounts appropriated "for carrying out the program under title X of the PHS Act to provide for voluntary family planning projects, . . . all pregnancy counseling shall be nondirective."[33] While Congress is free to "make a value judgment favoring childbirth over abortion,"[34] once Congress makes a policy choice executive agencies are not at liberty to ignore it. Here Congress has required that counseling of patients using Title X funds may not be slanted, and HHS may not direct Title X providers to disregard Congress's directive.

The proposed rule requires Title X funds be used for directive counseling in several ways. First, the rule prohibits Title X providers from referring a patient who discovers she is pregnant to abortion providers, except in the narrow circumstances where the patient "clearly states" that she has "already decided" she will have an abortion.[35] Of course, such a "clear decision" for someone who learned minutes earlier that she was pregnant would be unlikely, meaning the vast majority of patients will be referred away from abortion providers. Second, providers are prohibited from even "present[ing]" the option of abortion. Third, providers must refer patients for "appropriate prenatal and/or social services (such as prenatal care and delivery, infant care, foster care, or adoption)" whether or not the patient desires such referrals.[36] Fourth, providers are required to assist in setting up these referral appointments—unless the patient wants an abortion.[37] In short, if a pregnant patient says that she wants advice on birth or adoption options the provider is unencumbered, but if she wants to discuss the option of abortion, the provider may not assist her. Only if the patient states she wants an abortion may the provider offer her a list that includes abortion providers, but that list must obfuscate which clinics offer what she seeks and which do not.[38]

These provisions are intended to, and do, slant Title X counseling against termination and in favor of childbirth, in violation of Congress's directive otherwise. Indeed, the text of the proposed rule says nothing about nondirective counseling, instead eliminating the former

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[33] Pub. L. No. 115-141, div. H, tit. II, 132 Stat. 348, 716 (2018), https://www.congress.gov/bill/115th-congress/house-bill/1625/text.

[34] *Rust v. Sullivan*, 500 U.S. 173, 192 (1991) (quoting *Maher v. Roe*, 432 U.S. 464, 474 (1977)).

[35] 83 Fed. Reg. 25,531 (proposed § 59.14(a), (c)).

[36] 83 Fed. Reg. 25,531 (proposed § 59.14(b)).

[37] *Id*.

[38] 83 Fed. Reg. 25,531 (proposed § 59.14(c)).

requirement to provide "neutral, factual information and nondirective counseling . . . ." 42 C.F.R. 59.5(a)(5)(ii). Through the repeal of the nondirective counseling requirement and the addition of severe restrictions on referrals, the proposed rule seeks to replace what has been a patient-guided, provider-informed approach to care with a system that jeopardizes both providers' ethical obligations and patients' health.

2. *The proposed rule illegally injects the government into the provider-patient relationship.*

We are deeply troubled by the Department's proposed government interference in the relationship between a medical provider and a patient, and not only because it violates a federal law. The proposed rule purports to tell providers paid with Title X funds what they can and cannot say when a patient discovers she is pregnant. The government should have no role telling a health care provider what to say to a patient. Here, the proposed rule prohibits nurses and nurse practitioners, who see the majority of Title X patients, from mentioning abortion, and doctors may do so only in the very limited circumstances permitted in proposed section 59.14(c) and (d).[39] Under the proposed rule, Title X providers could not simply take off their "Title X hats" and offer the same nondirective advice that they currently offer because the rule would require Title X providers to comply with Title X requirements, whether or not Title X funds a particular patient's service.

As America's women's health providers have jointly stated in opposing the proposed rule, "[p]oliticians have no role in picking and choosing among qualified providers."[40] This government script for providers when addressing their Title X patients violates the American Medical Association's Code of Ethics, which states that "withholding information without the patients' knowledge or consent is ethically unacceptable."[41] Similarly, the Code of Ethics for Nursing requires nurses to give complete – not slanted – information to patients.[42]

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[39] 83 Fed. Reg. 25,531.

[40] "America's Women's Health Providers Oppose Efforts to Exclude Qualified Providers from Federally-Funded Programs," Join Statement of the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, the American College of Nurse-Midwives, the American College of Physicians, the Association for Physician Assistants in Obstetrics and Gynecology, the National Association of Nurse Practitioners in Women's Health, Nurses for Sexual and Reproductive Health, and the Society for Adolescent Health and Medicine (May 23, 2018), https://www.acog.org/About-ACOG/News-Room/Statements/2018/Health-Providers-Oppose-Efforts-to-Exclude-Qualified-Providers-from-Federally-Funded-Programs (last accessed on July 17, 2018).

[41] American Medical Association, Code of Medicaid Ethics Opinion 2.1.3, Withholding Information from Patients, available at https://www.ama-assn.org/delivering-care/withholding-information-patients (last accessed on July 17, 2018).

[42] Code of Ethics for Nursing, Provision 1.4, www.bc.edu/content/dam/files/schools/son/pdf2/ANA code of ethics.pdf (last accessed on July 17, 2018) (patients must be given "accurate, complete, and understandable information in a manner that facilitates an informed decision").

Further, the proposed rule is arbitrary and capricious because it only permits "a medical doctor" to provide the very limited referral for abortion the proposed rule allows.[43] In our States, this severely restricts the nondirective counseling Title X patients would receive. In Oregon, for example, over 93 percent of visits to Title X clinics in 2017 were conducted by non-physician caregivers such as nurse practitioners and physician assistants. The preamble to the proposed rule itself recognizes that only 22 percent of clinical service FTEs delivered to Title X patients were provided by medical doctors.[44] As a result, the proposed rule would prevent 78 percent of the medical professionals who see patients at Title X providers from providing even the limited and intentionally obfuscated abortion referral it claims to authorize. The Department does not explain why prohibiting such a large percentage of Title X caregivers from providing any kind of counseling on the legally available option of abortion comports with the statutory requirement that Title X funds be used only for nondirective counseling, and we request such an explanation.

The proposed rule's roadblocks for a patient seeking complete and accurate health information also are arbitrary and capricious. First, the patient must already know that she wants an abortion. This precludes the patient from engaging in an important conversation with her health care provider about the pros and cons of abortion. The Department fails to address the fact that many women do not ask directly about abortions immediately upon learning they are pregnant, and instead consider it as one of many medical options. We ask that the Department explain how its proposed restrictions can be reconciled with this experience of clinicians. Second, only a doctor can give the patient the referral list. This appears designed to undermine the provision of healthcare. Moreover, it is not clear what, if any, counseling a physician is entitled to provide to a woman who has decided to have an abortion given that the proposed rules prohibit providers from "promot[ing]" and "support[ing]" abortion as a method of family planning. Limiting the medical information that physicians can offer their patients unreasonably intrudes upon the physician-patient relationship and undermines ethical standards of care.

The preamble to the proposed rule relies on "Federal conscience statutes" to justify its diverging from the requirement in the Consolidated Appropriations Act that Title X-funded counseling must be nondirective.[45] This reliance is misplaced. The proposed rule does not merely create an exception to nondirective counseling for conscience objectors. Instead, it allows conscience objectors to dictate what all Title X providers may say. Purportedly to uphold conscience protections, the proposed rule prohibits nearly 80 percent of the medical professionals who treat patients at Title X clinics from saying anything about abortion, regardless of their religious or moral beliefs. Likewise, it severely restricts the information medical doctors can impart, again regardless of their religious or moral convictions. In doing so, it makes no accommodation for providers who have religious or moral convictions contrary to the proposed rule, for instance

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[43] 83 Fed. Reg. 25,531 (§ 59.14(a); *see also*, § 59.14(c)).

[44] 83 Fed. Reg. 25,523.

[45] 83 Fed. Reg. 25,506-507.

those whose convictions align more closely with professional ethics rules. These prohibitions go substantially further than necessary to vindicate a select number of providers' conscience objections, and we ask the Department to better explain its reasoning.

3. *The proposed rule is contrary to, and ignores, the Department's authoritative recommendations for evidence-based "family planning methods and services" without reason or explanation.*

A federal agency cannot simply ignore its prior statutory interpretations. This is especially true where, as here, the prior interpretation is based on factual findings or cited evidence, and the new interpretation fails to consider that evidence. "[T]he consistency of an agency's position is a factor in assessing the weight that position is due." *Good Samaritan Hospital v. Shalala*, 508 U.S. 402, 417 (1993). "To be sure, the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it is changing position." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

In 2014, the Department's Centers for Disease Control and Prevention (CDC) issued a Recommendations and Report entitled "Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs."[46] The report provided the agency's view on what are "acceptable and effective family planning methods and services."[47] The CDC stated:

> This report provides recommendations developed collaboratively by CDC and the Office of Population Affairs (OPA) of the U.S. Department of Health and Human Services (HHS). The recommendations outline how to provide quality family planning services, which include contraceptive services, pregnancy testing and counseling, helping clients achieve pregnancy, basic infertility services, preconception health services, and sexually transmitted disease services. The primary audience for this report is all current or potential providers of family planning services, including those working in service sites that are dedicated to family planning service delivery as well as private and public providers of more comprehensive primary care.[48]

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[46] Gavin, L, Moskosky, S, Carter, M, Curtis, K, Glass, E, Godfrey, E, Marcell, A, Mautone-Smith, N, Pazol, K, Zapata, L, "Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs." Morbidity and Mortality Weekly Report, 63 Recommendations and Reports No. 4 (April 25, 2014), available at https://www.cdc.gov/mmwr/pdf/rr/rr6304.pdf (last accessed July 19, 2018) (hereinafter "CDC Report and Recommendations").

[47] 42 U.S.C. § 300(a).

[48] CDC Report and Recommendations at 1.

The report provided "recommendations for how to help prevent and achieve pregnancy, emphasize[d] offering a full range of contraceptive methods for persons seeking to prevent pregnancy, highlight[ed] the special needs of adolescent clients, and encourage[d] the use of the family planning visit to provide selected preventive health services for women, in accordance with the recommendations for women issued by the Institute of Medicine and adopted by HHS."[49] In other words, it was a careful, evidence-based description of the best practices for family planning in the United States.

Without explanation, the proposed rule contradicts this report in numerous ways, and it does so without mentioning the report. The CDC report's "recommendations support offering a full range of Food and Drug Administration (FDA)-approved contraceptive methods,"[50] while the proposed rule eliminates "medically approved" from the requirement that projects provide a broad range of family planning methods.[51] The CDC report advocates a "[c]lient-centered approach" where the patient is offered a "broad range of contraceptive methods so that clients can make a selection based on their individual needs and preferences,"[52] while the proposed rule offers Title X funds to a clinic that chooses to offer only a single method of family planning.[53] The CDC report states that a provider, after administering a pregnancy test, should present "options counseling" and "appropriate referrals,"[54] while the proposed rule mandates concealing the full range of options available to the patient, including abortion, and directs omitting abortion providers from referral lists.[55] These changes undermine long-held, evidence-based standards of care.

The Department fails to explain why it is rejecting its own recommendations expressly "based on scientific knowledge."[56] Indeed, it fails even to acknowledge the existence of those

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[49] *Id*.

[50] CDC Report and Recommendations at 2.

[51] 83 Fed. Reg. 25,530 (proposed § 59.5).

[52] CDC Report and Recommendations at 2.

[53] 83 Fed. Reg. 25,530 (proposed § 59.5). Without doubt, the proposed regulations' emphasis on fertility awareness-based methods of family planning over all other forms of contraception will result in increased numbers of unintended pregnancies, including teen pregnancies. Table 3-2, Contraceptive Technology, http://www.contraceptivetechnology.org/wp-content/uploads/2013/09/CTFailureTable.pdf (last visited July 30, 2018) (listing a 24% failure rate for typical use of fertility awareness-based methods, compared to a less than 10% failure rate for typical use of hormonal contraceptives and less than 1% failure rate for long-acting reversible contraceptives).

[54] CDC Report and Recommendations at 14.

[55] 83 Fed. Reg. 25,531 (proposed § 59.14).

[56] CDC Report and Recommendations at 4.

recommendations. The proposed rule lacks the "reasoned analysis" the Department concedes is required.[57]

4. *The financial separation requirement reverses a prior agency interpretation and is unsupported by any evidence.*

The proposed rule imposes a new requirement of physical separation between Title X projects and the abortion activities of the Title X grantee/sub-recipient.[58] This requirement reverses the Department's prior interpretation, is imposed without supporting evidence, and does not reflect agency consideration of substantial evidence contradicting the Department's conclusion.

The proposed rule reverses the Department's longstanding interpretation that, "[i]f a Title X grantee can demonstrate [separation] by its financial records, counseling and service protocols, administrative procedures, and other means. . . …, then it is hard to see what additional statutory protection is afforded by the imposition of a requirement for 'physical' separation."[59] The Department states that this reversal is necessary to avoid the risk of (i) intentional or unintentional use of Title X funds for impermissible purposes or the commingling of funds, and (ii) public confusion that Title X funds being used by a family planning organization may be supporting the program's abortion activities.[60]

Despite the need for *evidence* to justify an agency's reversal of course, the preamble to the proposed rule cites no evidence of commingled funds or public confusion. The preamble states that the Department's concerns are "acute" because, according to a Guttmacher Institute report, the percentage of "nonspecialized clinics" such as doctors' offices accounting for abortions performed in the United States inched up 6 percent from 2008 to 2014, which may increase the risk of confusion and misuse of Title X funds.[61] However, the Department has no evidence that any of these nonspecialized clinics receive Title X funds. The Guttmacher Institute itself noted that the data its report relied on included inaccuracies and out-of-date information.[62] This is the only evidence the Department cites of potential public confusion and commingling of funds, yet

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[57] 83 Fed. Reg. 25,505.

[58] 83 Fed. Reg. 25,532 (proposed § 59.15).

[59] Standards of Compliance for Abortion Related Services in Family Planning Services Projects, 65 Fed. Reg. 41,270, 41,276 (Jul. 3, 2000).

[60] 83 Fed. Reg. 25,507.

[61] *Id*.

[62] Jones, RK, Jerman, J, Abortion Incidence and Service Availability In the United States, 2014, Guttmacher Institute Perspectives on Sexual and Reproductive Health (March 2017) ("Limitations"), https://www.guttmacher.org/journals/psrh/2017/01/abortion-incidence-and-service-availability-united-states-2014 (last accessed July 18, 2018).

it evinces no actual *use* of Title X funds.[63] In fact, unlike the Title X regulations proposed in 1988—which relied in part on two reports, one from the Department's Office of Inspector General (OIG) and the other from The General Accounting Office—the Department currently points to no reports or relevant evidence as justification for the proposed rule.

The Department fails to cite its own safeguards it already has in place to ensure that Title X funds are kept separate from abortion-related services. "According to [the Office of Population Affairs], family planning projects that receive Title X funds are closely monitored to ensure that federal funds are used appropriately and that funds are not used for prohibited activities, such as abortion."[64] These "[s]afeguards to maintain this separation include (1) careful review of grant applications to ensure that the applicant understands the requirements and has the capacity to comply with all requirements; (2) independent financial audits to examine whether there is a system to account for program-funded activities and non-allowable program activities; (3) yearly comprehensive reviews of the grantees' financial status and budget report; and (4) periodic and comprehensive program reviews and site visits by OPA regional offices."[65] Despite this thorough monitoring, the Department fails to provide any evidence of actual threats to Title X funding and instead relies on reports from the 1980s, old Medicaid audits, and unsupported assertions.

The Department's monitoring has been thorough. For example, the 2017 OPA Program Review Report for the Vermont Department of Health found the following:

> Financial documentation at service sites demonstrates that Title X funds are not being used for abortion services and adequate separation exists between Title X and non-Title X activities. (42 C.F.R. § 59.5(a)(5))
>
> REVIEW OF EVIDENCE
> The grantee does not provide abortion services. However, the sub-recipient does provide these services. The sub-recipient has established policies, procedures, and practices to ensure the adequate separation of Title X activities from non-Title X activities. Staff separates their time, after the fact, into clearly defined cost centers in the TimeForce system. This is done each day, is checked by the site supervisor,

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[63] In a separate part of the preamble addressing the purported need for monitoring of the use of Title X funds, the Department cites a Washington Medicaid Fraud Control Unit investigation. 83 Fed. Reg. 25,509. The Medicaid Fraud Control Unit is part of the Washington Attorney General's Office. Our investigation found that the individuals reporting the alleged violations relied only a newsletter sent out by American Life League and had no additional information or any firsthand knowledge, the state Medicaid agency auditor did not see any indication of fraudulent billing, and there was no pattern of intentional billing misconduct.

[64] Angela Napili, Cong. Research Serv., R45181, *Family Planning Program Under Title X of the Public Health Service Act* 16 (2018), *available at* https://fas.org/sgp/crs/misc/R45181.pdf.

[65] *Id*.

> and is further checked through an analysis of the number and type of services provided each day in the clinic setting by administrative staff.
>
> The sub-recipient demonstrated that no abortion-related activities were provided as part of the Title X project. This included policies and procedures and the actual practices in the clinic setting, counseling and service protocols, intake and referral procedures, and fiscal and other administrative procedures.
>
> This requirement [compliance with Section 1008] was MET.[66]

No evidence indicates that the Vermont Department of Health has ever had any issues complying with Section 1008.

In addition, the Department does not address the steps states like ours take to ensure sub-recipients' separation of Title X funds from any abortion-related activities. In Washington, the State Department of Health Family Planning Program ensures the separation of Title X funds from abortion services through contract language, desk reviews, and on-site monitoring. The goal of monitoring is to document the extent of sub-recipient agencies' compliance with state and federal laws and regulations. Monitoring helps the Family Planning Program assist local agencies with compliance with Federal Title X and state rules related to funding. This ensures accountability.

The Washington Department of Health (DOH) does three types of monitoring: Administrative, Clinical, and Fiscal. As federal grant funds flow through the Family Planning Program to a sub-recipient, the Family Planning Program maintains primary responsibility for ensuring enforcement of federal and state requirements. Those requirements pertain to sub-recipients as they receive state and federal funds. When a sub-recipient signs the Family Planning Program contract with the DOH, they agree to enforce those same certifications, assurances, cost principles, and administrative rules. All of these requirements are incorporated in contract language. Title X sub-recipient contract standard clauses include that the Contractor does "not provide abortion as a method of family planning within the Title X Project. (42 CFR 59.5(5))," and "[t]he Title X Project must not include sterilizations, abortions, or any flat rated service (for instance some STD or HIV testing) or income/revenue generated from them."

Furthermore, the DOH Fiscal Monitoring and Review Guide and On-site Monitoring Tool is used by site consultants and agency fiscal experts to perform on-site reviews every three years or more often if needed. They monitor for documentation that:

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[66] Office of Population Affairs, Program Review: Title X Family Planning Project: Vermont Department of Health, 21 (May 2017) (on file with Vermont Attorney General's Office).

i. The financial system provides for financial separation of Title X family planning service dollars and abortion service dollars;
ii. Agency personnel must be informed that they could be prosecuted, under Federal law, if they coerce, or try to coerce, anyone to undergo abortion or a sterilization procedure, and the agency has a policy in place to this end;
iii. The agency has written policies that clearly state that no Title X funds will be used in programs where abortion is a method of family planning;
iv. The agency is in compliance with Title X, specifically calling out Section 1008; and
v. Staff members have been trained about separating Title X family planning services and abortion services.

The site consultant verifies this onsite through the sub-recipients' policies and procedures, personnel records, and a review of the accounting system.

In addition, the Washington State Family Planning Manual[67] advises about separating Title X services from abortion, including that Contractors must be in full compliance with Section 1008 prohibiting the use of Title X funds for abortion as a method of family planning.

Oregon's Reproductive Health Program maintains a robust process for monitoring compliance among its Title X agencies. Ongoing and routine compliance reviews ensure that Title X agencies adhere to administrative, clinical, and fiscal requirements. The monitoring process includes:

i. Annual recertification of agencies;
ii. Onsite compliance reviews of consent forms, policies, procedures and protocols; chart audits; onsite clinical observation; and onsite observation of patient and physical environment; and
iii. Regular billing, client enrollment, and quality assurance reviews.

Like Washington's DOH, Oregon's Reproductive Health Program uses a comprehensive Program Certification Verification Tool to monitor its Title X agencies. Specific policies relating to abortion, including the requirement that no federal funds are used for abortion services and that abortion is not provided as a birth control method, are reviewed and verified.

In Massachusetts, the Department of Public Health's robust oversight of sub-recipients providing abortion services ensures compliance with current Title X requirements. The Department of Public Health requires that these sub-recipients establish and follow written policies that clearly indicate that Title X funds will not be used for abortion services, clearly segregate Title X funds to prevent allocation of Title X funding to abortion services; maintain separate inventory for

[67] *Family Planning Manual*, Washington State Department of Health, September 2016, available at https://www.doh.wa.gov/portals/1/Documents/Pubs/930-122-FPRHManualComplete.pdf (last visited July 30, 2018)

abortion and non-abortion services; and implement fiscal review and oversight procedures to assure that no Title X funds are used for abortion services. The Massachusetts Department of Public Health also engages in regular monitoring, and requires all providers to inform them of any changes in their practice.

In Vermont, in addition to the safeguards noted above, PPNNE undergoes an annual financial audit, which specifically examines its Title X expenditures. PPNNE passes its audit every year, including its accounting of Title X funds.[68]

The Department has not explained why these thorough guidance, monitoring, and auditing steps taken by our state agencies and by the Department itself are insufficient to prevent commingling of funds, and we ask the Department to provide this explanation.

5. *The proposed rule would violate the constitutional rights of Title X providers and their patients.*

The proposed rule imposes government restrictions on speech and denies women freedom from government interference in their most intimate and personal decisions that courts will find fatal under the First and Fifth Amendments. It should be withdrawn for these reasons.

In *Rust v. Sullivan*, the Supreme Court recognized that "funding by the government, even when coupled with the freedom of the fund recipients to speak outside of the scope of the Government-funded project," is not "invariably sufficient to justify Government control over the content of expression." 500 U.S. at 199. In some areas, particularly rural areas, the proposed rule is likely to drive all Title X providers from the program, leaving patients without reasonable access to any Title X services. And for those Title X providers remaining in the program, the Department's restriction on speech will extend beyond the Title X program to every patient encounter by every Title X provider, whether or not Title X funds are used. As a consequence, the proposed rule will force all Title X grantees to give up neutral abortion-related speech, whether or not they are wearing a "Title X hat." These facts are different from those presented in *Rust v. Sullivan*, which makes that decision distinguishable.

The massive contraction of the Title X program that would occur under the proposed rule, and is shown herein as to our States, results in a violation of the unconstitutional conditions doctrine and the vagueness and overbreadth doctrines of the First Amendment. The proposed rule interferes with a doctor's ability to provide, and a woman's right to receive, information concerning abortion and abortion-related services, both within and outside of the Title X program. This violates women's Fifth Amendment rights to be free of government interference

[68] Financial audits for 2015 – 2017 may be downloaded at the Federal Audit Clearinghouse, https://harvester.census.gov/facdissem/Main.aspx. Financial audits for 2013 and 2014 on file with the Vermont Attorney General's Office. Financial audits older than five years were not readily available.

in their decisions whether to continue pregnancies to term. It is also contrary to the First Amendment, especially given the Supreme Court's recent recognition that "[a]s with other kinds of speech, regulating the content of professionals' speech 'pose[s] the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information.'" *National Institute of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361, 2374 (2018) (quoting *Turner Broadcasting System v. FCC*, 512 U.S. 622, 641 (1994)). And it contravenes Supreme Court cases that reject "confin[ing] the attending physician in an undesired and uncomfortable straitjacket in the practice of his profession." *Planned Parenthood of Central Mo. v. Danforth*, 428 U.S. 52, 67 n.8 (1976). Finally, it interferes in the states' rights to design and implement health care programs in their states by causing the Title X regulations to be applicable outside the Title X program.

If the Department does not voluntarily withdraw the proposed rule, we ask it to explain, in light of these facts, how the proposed rule is consistent with the Constitution.

6. *The proposed rule includes many requirements that are unsupported by any evidence and, if not abandoned, will be found to be arbitrary and capricious.*

    a. *The primary care requirement is unsupported and arbitrary.*

The proposed rule requires that Title X providers "should offer either comprehensive primary health services onsite or have a robust referral linkage with primary health providers who are in close physical proximity to the Title X site."[69] This requirement is supposedly meant to "promote holistic health and provide seamless care."[70] This call for holistic and seamless care rings hollow considering that the Department is simultaneously proposing specific steps to limit the provision of complete health information and seamless care to patients through abortion counseling and referral restrictions. Instead, the primary care requirement appears intended to push out long-standing Title X providers who have specialized in family planning services and rural Title X providers who may not have "robust referral linkage[s] . . . in close physical proximity."[71]

This requirement alone could dramatically reduce the scope of the Title X program in our States depending upon how the Department defines "close physical proximity." This requirement is not stated in the statute. The Department must explain how it can be reconciled with the goals of the Title X program.

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[69] 83 Fed. Reg. 25,530.

[70] *Id.*

[71] *Id.*

b. *The provisions requiring reporting on minors are unsupported and irrational.*

Currently, Title X providers must attempt to encourage a minor to involve her or his family in the decision-making process when the minor seeks contraceptive services. Under the proposed rule, this "encouragement" would be replaced with undue pressure on both the provider and the minor. The proposed rule requires that a Title X provider document "in the minor's medical records the specific actions taken by the provider to encourage the minor to involve her/his family (including her/his parents or guardian) in her/his decision to seek family planning services."[72] The only exception to this requirement, which must be documented in the minor's medical record, is if the provider "suspects the minor to be the victim of child abuse or incest" and this has been reported in compliance with state or local law.

Today, if a minor explains to a Title X provider that she wishes not to involve her family, that wish is respected. Minors may choose not to involve their families in their health care decisions due to differences of religious belief, fear of violence, fear of abandonment, lack of a suitable adult to involve, or simply a desire for confidential care. By requiring that the providers' efforts to encourage family involvement be recorded in the medical record, the proposed rule could force providers to apply pressure on minor patients to involve their families even when doing so is not in the minor's best interests. The proposed rule could ultimately have a chilling effect on honest and open conversations between providers and minor patients. Further, the proposed rule imperils patient confidentiality to such a degree that minors could be discouraged from seeking care altogether.[73] This will serve neither the purposes of the Title X program nor patients.

c. *The other reporting requirements are unsupported, vague, and beyond the Department's legal authority.*

The proposed rule would bury Title X projects and sub-recipients in overly burdensome reporting requirements. For example, a Title X project would need to report for each sub-recipient and referral agency not only the exact services provided, but also a "[d]etailed description of the extent of the collaboration" even down to the individuals involved and inclusive of undefined "less formal partners within the community."[74]

Along with the inclusion of the "less formal partners," the proposed rule's definition of "referral agency" makes the reporting requirements overly broad. The proposed rule suggests that even if a referral agency does not receive Title X funds, it may still be "subject to the same reporting

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[72] *Id.*

[73] *See, e.g.*, *Planned Parenthood Fed'n of Am. v. Heckler*, 712 F.2d 650, 659-61 (D.C. Cir. 1983) (describing Congress's decision not to mandate family involvement in Title X care for minors).

[74] 83 Fed. Reg. 25,530.

requirements as a grantee or sub-recipient."[75] These requirements improperly overreach into relationships not otherwise governed by Title X regulations and burden projects, sub-recipients, and referral agencies. Rather than achieving the stated goal of creating a robust referral system, these requirements will cause projects and sub-recipients to limit their referral networks in order to control the amount of reporting.

These changes will have significant impacts. For example, the proposed regulations' applicability to "referral agencies"[76] of Title X clinics would impact a significant number of Vermont's health care providers. As a small and rural state, Vermont's pool of available health care referral partners is also small. PPNNE maintains a "comprehensive referral data base" of other local health care providers.[77] But the proposed regulations would be unnecessarily and prohibitively restrictive on those health care providers that do not receive Title X funds, interfering with those providers' and their patients' rights and their ability to provide ethical and professional care.

7. *The proposed rule does not comply with Executive Orders 12866 and 13562.*

Executive Orders 12866 and 13562 require agencies to "assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits." 83 Fed. Reg. 25521. Executive Order 12866 requires that a "significant regulatory action" comply with additional regulatory requirements. This proposed rule meets all the definitions of a "significant regulatory action" because it would (1) have an annual effect on the economy of $100 million or more and will "adversely and materially affect" the health sector of the economy, public health, and state and local governments; (2) create a serious inconsistency and interfere with an action taken or planned by another agency; (3) materially alter budgetary impacts of entitlement grants or the right and obligations of recipients thereof; and (4) raise novel legal or policy issues arising out of legal mandates.

The restrictive requirements of the proposed rule disqualify many current Title X grantees from the program across the country. Some Title X patients currently served by these providers will lose access altogether to family planning services, particularly among the uninsured and those residing in rural areas. In 2017, Title X services saved our four States alone many millions of dollars in costs for health care services. Extrapolating those cost savings across all states, the fiscal impact of the proposed rule on the economy will exceed $100 million and will adversely affect public health, the health care sector, and state treasuries. Additionally, the proposed rule materially changes the outflow of entitlement grants and the rights and obligations of grant

[75] 83 Fed. Reg. 25,514.

[76] 83 Fed. Reg. 25514.

[77] Office of Population Affairs, Program Review: Title X Family Planning Project: Vermont Department of Health, 11 (May 2017) (on file with Vermont Attorney General's Office).

applicants and recipients. It also raises novel legal and policy issues because of new restrictions on speech. The preamble wrongly concludes that the proposed rule is not economically significant and fails to address these considerations.

8. *The proposed rule is contrary to Congress's intent because it would exclude qualified and experienced Title X providers from the program and reduce access to essential preventive health services.*

The impact of the proposed rule is contrary to the Title X statute. The proposed rule appears to be designed to deny Title X funds to many of the current Title X providers in our States and nationwide, and it does not address the impact this rule will have on our States' residents and budgets. The proposed rule, if implemented, will leave many counties without a Title X provider. Because the proposed rule will undermine the quality of health care provided and impose burdensome and counterproductive separation and reporting requirements, many providers in our States will be unable or unwilling to comply. Further, the proposed rule falls particularly hard on uninsured patients and those in rural areas, who in some cases will have no other reasonable option for obtaining family planning services. As a result, thousands of people who rely on Title X providers for contraception and other family planning services will lose access to those services. The proposed rule thus frustrates, rather than promotes, the purpose of Title X.

It is no secret that the Department wants to expel Planned Parenthood from the network of Title X providers. As then-candidate Donald Trump stated, "We're not going to allow, and we're not going to fund, as long as you have the abortion going on at Planned Parenthood."[78] More recently, when introducing the proposed rule, President Trump stated: "For decades American taxpayers have been wrongfully forced to subsidize the abortion industry through Title X federal funding so today, we have kept another promise. My administration has proposed a new rule to prohibit Title X funding from going to any clinic that performs abortions."[79] The proposed rule would certainly achieve the President's goal, but as described herein, it would go much further than that.

For some Title X providers, creating a separate corporate entity with complete physical and financial separation will be prohibitively expensive. In Massachusetts, at least one Title X provider, if forced to create a separate corporate entity to continue providing abortion care, will have to stop participating in Title X at one of its locations, resulting in the loss of a geographically important Title X clinic. In Oregon, two major Title X agencies with 12 clinic sites would likely be unable to continue as Title X providers due to the onerous physical

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[78] Danielle Paquette, "Donald Trump's Incredibly Bizarre Relationship with Planned Parenthood," *Washington Post* (Mar. 2, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/03/02/donald-trumps-incredibly-bizarre-relationship-with-planned-parenthood/?utm_term=.db131f627e96 (last accessed 7/13/18).

[79] https://www.whitehouse.gov/briefings-statements/remarks-president-trump-susan-b-anthony-list-11th-annual-campaign-life-gala/ (last accessed 7/13/18).

separation requirements set forth in the rules. The same is true in Washington and Massachusetts. All of Vermont's Title X clinics would be ineligible to continue under the program. A wide range of Title X provider types will have no choice but to forgo Title X funds, thus reducing their capacity to provide much needed family planning services. For example, it is unclear whether a hospital that runs a Title X clinic (on or off site) that also provides abortion would be able to comply with the requirement to have "separate, accurate accounting records" or "separate personnel, electronic or paper-based health care records."[80] Would funds attributed to the clinic also be attributable to the hospital as a whole? In addition to the practical issues created by the proposed rule's separation requirement, it also creates serious risk to patient safety by requiring separate medical record systems and further stigmatizes legal medical procedures.

In 2017, in Washington, over 14,000 Title X-funded patients received their Title X services at Planned Parenthood or other clinics that provided abortions outside the Title X project. In fact, in 20 of Washington's 39 counties, the only Title X provider is one that performs abortions outside the Title X project.[81] If these Title X providers no longer could offer Title X-funded family planning services due to the separation and other requirements, these patients would need to either locate new Title X providers for their contraception and other family planning services, or forego the benefits of the Title X program. In all of eastern Washington, which is comprised of 20 counties, only four of those counties would have any Title X provider at all. In western Washington, the proposed rule would drive out the Title X providers in 10 additional counties. This includes six of the 10 most populous counties in Washington.

If the proposed regulations take effect, for the first time in the history of Title X, the Vermont Department of Health's Title X funding will be jeopardized. None of the current Title X clinics in Vermont will be eligible for Title X funds. Nor does Vermont have the health care infrastructure to make up for the anticipated loss in funding. Although Vermont has several FQHCs and rural health centers, they are not equipped to absorb all the family planning patients currently served by Title X clinics. Vermont FQHCs saw a total of 4,047 patients for contraceptive management in 2016.[82] By comparison, Vermont's Title X clinics served 9,808 family planning patients in 2016. The FQHCs would have to more than double their family planning patient services in rural areas to absorb the needs of all Title X patients. FQHCs in Vermont are not equipped to do this.

In the Department's zeal to punish providers that perform abortions *outside* of the Title X project, the Department is harming many recipients of Title X services in our States. The

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[80] 83 Fed. Reg. 25,519.

[81] *See* Attachment 1 (map of Washington counties without Title X services if organizations that also provide abortions are removed from Title X).

[82] 2016 Health Center Data: Vermont Data, Health Resources & Servs. Admin., https://bphc.hrsa.gov/uds/datacenter.aspx?q=tall&year=2016&state=VT (last visited July 30, 2018).

Department has not explained why issuing a rule to govern Title X that requires thousands of Title X-funded patients to search for a new Title X family planning provider—or go without one entirely—is consistent with Congress's intent in establishing the Title X program, and we ask the Department to provide this explanation.

The harmful consequences of the proposed rule uniquely impact rural and uninsured patients. In five Washington counties, for example, one quarter or more of Title X patients are uninsured, and the only Title X providers are ones that perform abortions outside the Title X project.[83] And in five other counties in rural Washington, Title X patients are served by small Title X clinics associated with providers that perform abortions outside the Title X project. These clinics are in Ellensburg (in Kittitas County), Walla Walla (in Walla Walla County), Wenatchee (in Chelan County), Pullman (in Whitman County), and Moses Lake (in Grant County). We are advised that, because they are so small and a significant amount of their work involves Title X-funded services, at least some of these clinics would not survive the loss of Title X funds. If these current Title X providers are driven from the Title X program, many of these patients will not be able to shift to another provider.[84] Even if some current Title X providers remain in the program, the distance these patients would have to travel to another Title X provider is impracticable. We ask that the Department explain how it reconciles the significant impact the proposed rule will have on rural and uninsured patients with the mission of the Title X program.

In Oregon, significant portions of the state, primarily the rural and frontier areas, are designated as Medically Underserved Areas because they have a shortage of primary health care providers and facilities coupled with high levels of need. The proposed rule will likely cause providers to decline Title X funds in order to maintain their quality of care, further straining access to reproductive health care for Oregonians in these areas. For the 40 percent of Oregon's Title X clients who are uninsured, this burden is heightened because the high quality of care at Title X clinics may not be available to them at other clinics. Title X clinics currently are required to provide the same high quality of care to all clients regardless of ability to pay, whereas other clinics may limit services for patients without coverage sources.

A remarkably broad coalition of Vermont health care providers has joined the nationwide medical community's condemnation of the proposed rule.[85] This Vermont coalition "strongly

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[83] These counties are Mason (24 percent of Title X patients were uninsured in 2017), San Juan (30 percent), Skagit (29 percent), Douglas (28 percent), and Whitman (27 percent). These counties do not have local health jurisdictions providing family planning services.

[84] In addition, under the proposed rule, eliminating Planned Parenthood and other abortion providers from Title X will cause the following colleges and universities in Washington to lose their Title X providers: Washington State University, Western Washington University, Central Washington University, Eastern Washington University, Big Bend Community College, Columbia Basin College, and Yakima Valley Community College.

[85] *Vermont Health Care Coalition Title X Statement*, Vt. Ass'n of Hosps. and Health Sys. (June 15, 2018), https://vahhs.org/title-x-statement.html (endorsing, among other things, a statement from the American Nurses Association stating, "The Code of Ethics for Nurses outlines that the nurse's primary commitment is to the patient,

opposes" the proposed regulations and warns that those regulations "will significantly restrict access to necessary care for both women and men particularly in rural, hard to serve areas of Vermont."[86] Vermont is a small state, and the Vermont coalition represents a significant majority of all health care providers in Vermont. It is therefore unlikely that the number of Vermont medical professionals who would consent to work in a clinic governed by the proposed regulations would be sufficient to replace the current robust number of Title X-funded providers statewide.

9. *The proposed rule would impose tens of millions of dollars of costs on the treasuries in Washington, Massachusetts, Oregon, and Vermont.*

The costs imposed on our States, along with all other states, by the proposed rule will be well over $100 million. Because the cost or burdens of compliance with the proposed rule will be prohibitively high for many providers, the network of Title X providers will shrink in our States and around the country. Further, some Title X patients will lose all access to family planning services as a result of the proposed rule. As mentioned, in Oregon 41 percent of Title X patients were uninsured in 2017, and in Washington there are counties where upwards of 30 percent of Title X patients are uninsured.

Yet the Department fails to analyze either the significant public health impact or the fiscal impact to states. The Department fails to grapple with the fact that, unless it is expecting the states to step in to plug the fiscal hole created by the loss of Title X funding, unplanned pregnancies and births will occur, cervical cancers will not be diagnosed in early stages, and complications will occur due to untreated STIs, among other things, all resulting in significant increased health care costs for states that Title X is meant to address.

The Department provides no analysis explaining why these impacts are consistent with the fundamental mission of the Title X program. In fact, they are not. Analyses show that significant cost savings are achieved by funding family planning services. Nationally, an estimated $7.09 is saved for every dollar spent.[87] In short, a significant portion of the cost savings created by

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whether an individual, family, group, community, or population. This proposed rule interferes with that relationship and violates the basic ethics of the profession."); *see also* Mike Faher, *Vermont health care coalition protests Title X change*, VTDigger.com (June 12, 2018), https://vtdigger.org/2018/06/12/vermont-health-care-coalition-protests-title-x-change/ (calling the Vermont Health Care Coalition opposing the proposed regulations "an unlikely group of allies in Vermont").

[86] *Vermont Health Care Coalition Title X Statement*, Vt. Ass'n of Hosps. and Health Sys. (June 15, 2018), https://vahhs.org/title-x-statement.html

[87] Jennifer J. Frost, *Return on Investment: A Fuller Assessment of the Benefits and Cost Savings of the US Publicly Funded Family Planning Program*, Milbank Quarterly, Vol. 92, No. 4, p. 668 (2014) (*available at* https://www.guttmacher.org/sites/default/files/pdfs/pubs/journals/MQ-Frost_1468-0009.12080.pdf).

funding family planning services is jeopardized by the proposed rule and would fall on our States, among others.

D. Conclusion

The proposed rule will drive many family planning providers from the Title X program. As a result, thousands of patients will lose reasonable access to family planning services and other critical reproductive health services. The Title X providers that remain will be prevented from delivering the high-quality and complete medical care that they have always provided. This frustrates rather than achieves the purposes of Title X, and the courts will strike down the proposed rule, if implemented, accordingly. The proposed rule would limit health care services to vulnerable populations that Congress intended to help. It also would shift the costs of reproductive health care, including services for unintended pregnancies, breast and cervical cancer diagnoses, spread of STIs, and other serious health conditions to our states. For these and the other reasons stated in our comments, we urge the Department to withdraw the proposed rule.

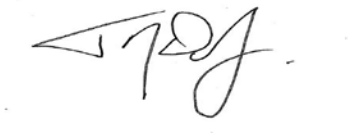
Thank you for considering our views.

Sincerely,

Bob Ferguson
Washington Attorney General

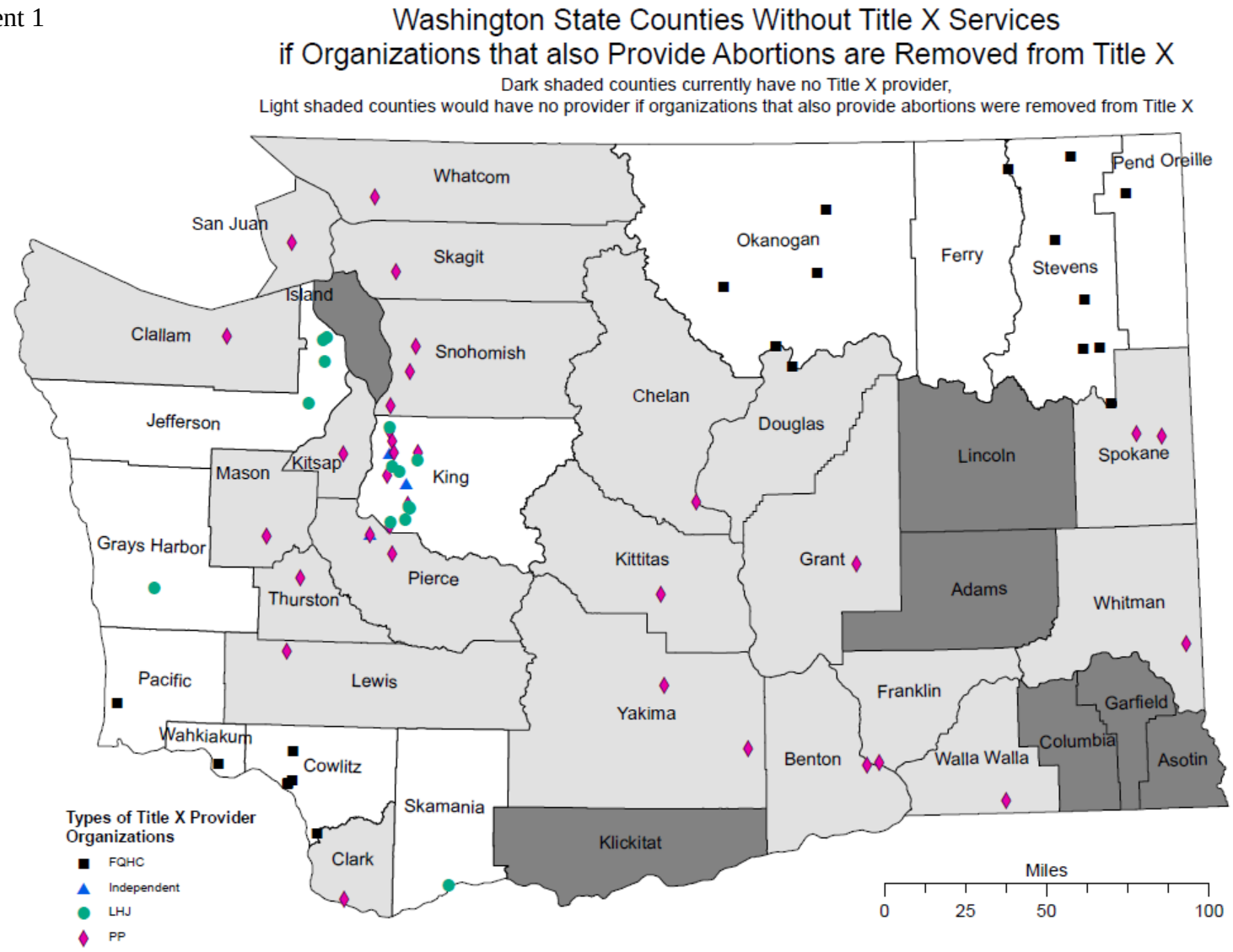
Maura Healey
Massachusetts Attorney General

Ellen Rosenblum
Oregon Attorney General



Thomas J. Donovan, Jr.
Vermont Attorney General

Attachment 1



From:	Clark, Charity
To:	Wemple, Doug
Subject:	FW: Title X letter
Date:	Tuesday, July 31, 2018 3:15:00 PM
Attachments:	Final_Title_X_Comment_Letter_7.31.18 WAMAORVT.PDF

Are you able to work on social media posts based on this letter? There are some good quotes in the opening paragraph and I was thinking the first page of the letter could be the image. We could have Jay create a link to the letter itself.
Thanks,
Charity

From: Aho, Brionna (ATG) <BrionnaF@ATG.WA.GOV>
Sent: Tuesday, July 31, 2018 2:06 PM
To: Gotsis, Chloe (AGO) <chloe.gotsis@state.ma.us>; kristina.edmunson@doj.state.or.us; Clark, Charity <Charity.Clark@vermont.gov>; Diamond, Joshua <Joshua.Diamond@vermont.gov>
Subject: RE: Title X letter

In case you don't have the final from your teams:

From: Aho, Brionna (ATG)
Sent: Tuesday, July 31, 2018 10:24 AM
To: 'Gotsis, Chloe (AGO)' <chloe.gotsis@state.ma.us>; 'kristina.edmunson@doj.state.or.us' <kristina.edmunson@doj.state.or.us>; 'Charity.Clark@vermont.gov' <Charity.Clark@vermont.gov>; 'Joshua.Diamond@vermont.gov' <Joshua.Diamond@vermont.gov>
Subject: Title X letter

Hi all,

Just wanted to update you, our plan is to send the letter at 11 a.m. Pacific/2 p.m. Eastern. Let me know if you have any questions.

Best regards,

Brionna

Brionna Aho
Communications Director | Office of State Attorney General Bob Ferguson
Office: 360-753-2727 | Cell: 360-338-2743 | Email: brionna.aho@atg.wa.gov
1125 Washington Street SE, Mailstop 40100 | Olympia| WA | 98504

Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
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PO Box 40100 ● Olympia, WA 98504-0100 ● (360) 753-6200

July 31, 2018

VIA FEDERAL eRULEMAKING PORTAL

Secretary Alex M. Azar II
Assistant Secretary ADM Brett P. Giroir, M.D.
Deputy Assistant Secretary Diane Foley, M.D., FAAP
Attention: Family Planning
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 716G
200 Independence Avenue SW
Washington, DC 20201

RE: HHS–OS–2018–0008, Comments on Proposed Rule: *Compliance With Statutory Program Integrity Requirements*, Docket No.: HHS-OS-2018-0008

Dear Secretary Azar, Assistant Secretary Giroir, and Deputy Assistant Secretary Foley:

The undersigned, Attorneys General for the States of Washington, Oregon, and Vermont and the Commonwealth of Massachusetts, respectfully urge the Department of Health and Human Services (the Department) to withdraw its Proposed Rule: *Compliance with Statutory Program Integrity Requirements*, 83 Fed. Reg. 25,502 (June 1, 2018). We have grave concerns with the legality of the proposed rule, and do not believe it would survive judicial review in its current form.

The Title X family planning program was created to provide access to high-quality family planning and related preventive health care for low-income and underserved individuals. The proposed rule has a host of legal flaws. In some states, if implemented, it will eliminate from the Title X program many Title X providers and leave thousands of residents without reasonable options for critical family planning services. In other states, it will frustrate the ability of providers to deliver high-quality and complete care to their patients and will undermine the efficacy of the network as a whole. The proposed rule thus frustrates rather than promotes the purposes of Title X. The proposed rule shifts the burden and costs to the states, including myriad reproductive health services related to unintended pregnancies, treatment of sexually transmitted infections (STIs), cervical and breast cancer screening and treatment, and other public health

services that the Title X program currently covers. The public health impact will fall the heaviest on our States' most vulnerable populations – including low-income and rural women and families, immigrants and people of color that the program is intended to help.

Further, the proposed rule requires directive counseling, which is in violation of a federal statute governing Title X.[1] It illegally injects the government into the Title X medical examination room, and it violates the constitutional rights of providers and patients under the First and Fifth Amendments. The proposed rule also violates the Department's current statutory interpretation of "acceptable and effective family planning methods and services" without mentioning the current interpretation or the evidence justifying it. Various parts of the rule are unsupported by any evidence and are thus arbitrary and capricious. Finally, the proposed rule violates Executive Orders 12866 and 13562.

A. Relevant Background of Title X to the Public Health Service Act, 42 U.S.C. §§ 300-300a-6

The Family Planning and Services Population Research Act of 1970, which added Title X to the Public Health Service Act, authorizes the Secretary of Health and Human Services:

> to make grants to 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).

Title X projects serve an estimated four million women annually.[2] In 2015, 64 percent of U.S. counties had at least one safety-net family planning center supported by Title X, and 90 percent of women in need of publicly funded family planning care lived in those counties.[3] Title X clients are among the nation's most vulnerable populations: two-thirds have incomes at or below the Federal Poverty Level (FPL)($20,090 for a family of three in 2015), nearly half are uninsured—even after implementation of the Affordable Care Act's (ACA) major insurance

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[1] Public Law No. 115-141, § 118, https://www.congress.gov/bill/115th-congress/house-bill/1625/text.

[2] Fowler CI et al., Family Planning Annual Report: 2015 National Summary, Research Triangle Park, NC: RTI International, 2016, http://www.hhs.gov/opa/sites/default/files/title-x-fpar-2015.pdf (last accessed 7/17/18).

[3] Frost JJ and Zolna MR, Response to inquiry concerning the availability of publicly funded contraceptive care to U.S. women, memo to U.S. Senator Patty Murray, Senate Health, Education, Labor and Pensions Committee, New York: Guttmacher Institute, May 3, 2017, https://www.guttmacher.org/article/2017/05/guttmacher-murray-memo-2017 (last accessed 7/17/18).

expansions—and another 35 percent have coverage through Medicaid and other public programs.[4]

In 2015, the contraceptive care delivered by Title X–funded providers helped women avoid 822,000 unintended pregnancies, which would have resulted in 387,000 unplanned births and 278,000 abortions.[5] Without the contraceptive care provided by these health centers, the U.S. rates of unintended pregnancy and abortion would have been 31 percent higher, and the teen unintended pregnancy rate would have been 44 percent higher.[6] Title X is a vital program, especially for low-income women and teens as:

> access to and consistent use of the most effective contraceptive methods are not enjoyed equally by all U.S. women. Disparities in contraceptive use are a major reason why half of U.S. pregnancies—3.2 million each year—are unplanned. . . . [U]nplanned and teen pregnancies occur disproportionately to poor women (those with incomes below the federal poverty level), whose unplanned pregnancy rate is five times that of higher income women.[7]

Concern for low-income women led President Nixon to push for national family planning assistance in the 1960s, stating that "unwanted or untimely childbearing is one of the several forces which are driving many families into poverty or keeping them in that condition."[8] That remains a driving concern today. Studies have shown that access to family planning assistance makes it more likely that a teen will graduate high school, that a woman will achieve her educational and career goals, and that a woman will earn more money (positively impacting not only her life, but the lives of her family).[9] Access to family planning also leads to healthier

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[4] Fowler CI et al., Family Planning Annual Report: 2015 National Summary, Research Triangle Park, NC: RTI International, 2016, http://www.hhs.gov/opa/sites/default/files/title-x-fpar-2015.pdf (last accessed 7/17/18).

[5] Frost JJ, et al., Publicly Funded Contraceptive Services at U.S. Clinics, 2015, New York: Guttmacher Institute, 2017, https://www.guttmacher.org/report/publicly-funded-contraceptive-services-us-clinics-2015 (last accessed 7/17/18).

[6] Hasstedt K, Why We Cannot Afford to Undercut the Title X National Family Planning Program, Guttmacher Institute, Jan. 30, 2017, https://www.guttmacher.org/gpr/2017/01/why-we-cannot-afford-undercut-title-x-national-family-planning-program (last accessed 7/17/18).

[7] Adam Sonfield, *What Women Already Know: Documenting the Social and Economic Benefits of Family Planning*, Guttmacher Institute (Mar. 2013), *available at* https://www.guttmacher.org/gpr/2013/03/what-women-already-know-documenting-social-and-economic-benefits-family-planning.

[8] Special Message to the Congress on Problems of Population Growth (Jul. 18, 1969), *available at* http://www.presidency.ucsb.edu/ws/?pid=2132.

[9] Adam Sonfield et al., *The Social and Economic Benefits of Women's Ability To Determine Whether and When to Have Children*, Guttmacher Institute, *available at* https://www.guttmacher.org/report/social-and-economic-benefits-womens-ability-determine-whether-and-when-have-children, and *Staff of J. Economic Comm., 114th Cong. The Economic Benefits of Access to Family Planning, available at*

relationships, better health outcomes, and better parenting.[10] Title X is critical in assuring that teens and low-income women can achieve these same positive outcomes.

For many women, a visit to a family planning provider is about far more than birth control. During a visit for contraceptive services at a Title X site, women commonly receive other preventive sexual and reproductive health services, including preconception health care and counseling, STI testing and treatment, human papillomavirus (HPV) vaccinations, cancer screening, Pap tests for early detection of cervical cancer, and referrals for mammograms. Title X providers also screen for a host of other potential health issues, such as high blood pressure, diabetes, and depression, connecting clients to further care when needed.[11] For four in 10 women who obtain their contraceptive care from a safety-net family planning center that focuses on reproductive health, that provider is their only source of care.

Title X improves the health of our States' residents beyond helping them plan for their pregnancies. In 2010, the services provided within the Title X network prevented 87,000 preterm or low-weight births, 63,000 STIs and 2,000 cases of cervical cancer.[12]

B. Title X Is a Critical Program That Provides High-Quality Care To Thousands of Residents of Washington, Massachusetts, Oregon, and Vermont Every Year.

1. *Washington*

The Washington State Department of Health (DOH) is the sole grantee of Title X funds in Washington State and runs the program. Washington's current grant project period is one year and six months and ends August 31, 2018.

Washington's Title X expenditure for 2017 was approximately $13 million. The state-funded amount was approximately $9 million, and the federally funded amount was approximately $4 million.

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https://www.jec.senate.gov/public/_cache/files/d0a67745-74ff-439c-a75a-aacc47e0abc1/jec-fact-sheet---economic-benefits-of-access-to-family-planning.pdf.

[10] *Id.*

[11] Frost JJ, Gold RB and Bucek A, Specialized family planning clinics in the United States: why women choose them and their role in meeting women's health care needs, Women's Health Issues, 2012, 22(6):e519–e525, http://www.whijournal.com/article/S1049-3867(12)00073-4/pdf (last accessed 7/17/18).

[12] Sonfield A, Beyond preventing unplanned pregnancy: the broader benefits of publicly funded family planning services, *Guttmacher Policy Review*, 2014, 17(4):2–6, http://www.guttmacher.org/gpr/2014/12/beyond-preventing-unplanned-pregnancy-broader-benefits-publicly-funded-family-planning (last accessed 7/17/18). 2010 is the most recent year for which these data are available.

Washington served 91,284 patients through Title X in 2017, with 128,296 patient visits. In 2017, 57 percent of Washington's Title X-funded patients were at or below the FPL, and 81 percent had incomes below 200 percent of the FPL. Sixteen percent of Title X clients were women of color. Nine percent of patients were under the age of 18. The DOH projects that Title X services prevented 16,233 unintended pregnancies in 2017; the resulting cost savings for Title X services (including STI, HIV, HPV, and Pap tests) was $113,434,910.

DOH distributes Washington's Title X funds by an approved allocation process. DOH broadly distributes information about an upcoming competition for Title X funds toward the end of the project period. It conducts a formal Request for Proposals process to select providers. After the due date for proposals is past, they are reviewed by objective reviewers and scored on criteria that includes choosing the entities that can best utilize the available funding to carry out Title X requirements.

In addition to Title X funds, Washington separately funds contracted Title X health care providers for Title X-allowable services. Further, some Medicaid providers in Washington offer Title X-allowable services but are not Title X projects. The funding from Title X and Medicaid is separate and distinct. However, if an entity receives Title X funding, all clients that have received services according to Title X guidelines are counted as Title X clients in the data system regardless of their funding source.

There are 12 Title X sub-grantee agencies with 70 clinic sites across Washington State. Five of the 12 agencies that receive Title X funds in Washington perform abortions outside of the Title X project. There are several counties in Washington that only have one Title X provider, including Clallam, Grays Harbor, Pacific, Kitsap, Wahkiakum, Lewis, Thurston, Mason, Jefferson, Whatcom, Skagit, Clark, Skamania, Kittitas, Chelan, Ferry, Pend Oreille, Whitman, and Walla Walla. All sites have physicians on staff as medical directors, but nurse practitioners primarily provide care to patients. All sites have nurse practitioners accessible during all business hours.

Washington subjects Title X providers to numerous contractual requirements. These include: (1) they must be non-profit agencies; (2) they must be able to meet reporting requirements (including the ability to extract data from their Electronic Medical Records system to report to the contracted data vendor); (3) they must follow all regulations; (4) they must be able to separate abortion activities from Title X funding; and (5) they must have qualified personnel and licensed providers.

2. *Massachusetts*

Approximately $6,155,000 in Title X funding flows into Massachusetts annually. These funds support, either directly or indirectly, 90 family planning providers. In 2016 alone, Title X

providers in Massachusetts served 66,072 people.[13] Data from fiscal year 2017 shows that 88 percent of all Title X visits were made by female patients, 50 percent of all patients were between 18 and 29 years old, and 88 percent of all patients were at or below 200 percent of the FPL.

Title X providers in Massachusetts offer a wide range of services and care, including pregnancy testing and options counseling; contraceptive services and supplies; pelvic exams; screenings for cervical and breast cancer; screenings for high blood pressure, anemia, and diabetes; screenings and treatment for STIs; infertility services; health education; and referrals for other health and social services. These services not only have a profound and positive impact on patients' lives, but also save Massachusetts and the federal government money. In fact, according to one estimate, Title X services save Massachusetts and the federal government approximately $140 million per year in Massachusetts alone.[14] Beyond the significant fiscal impact, the services provided have a real and profound impact on the lives of Massachusetts women and their families. In 2014, Title X-funded centers met 15 percent of all contraceptive needs in Massachusetts[15] and helped avert 13,600 unintended pregnancies.[16]

Title X funds are crucial and must be spent wisely. Programs that currently receive these funds do so in a culturally competent and welcoming manner. They offer an array of services. They understand the health needs of their patients. The proposed rule does not advance Title X's purpose and undermines the ability of its recipients to do the important work that they do every day on behalf of some of Massachusetts' most vulnerable patients.

3. *Oregon*

The state of Oregon has been the umbrella grantee for Title X services throughout Oregon since 1970. The Oregon Health Authority's Reproductive Health Program administers the state's Title X grant. In fiscal year 2018, Oregon's Title X award was $3,076,000. This funding provides direct support to a network of 35 agencies with 106 clinic sites and is comprised of local public

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[13] *Title X in Massachusetts: Improving Public Health and Saving Taxpayer Dollars*, National Family Planning & Reproductive Health Association, at 1 (Dec. 2017), available at https://www.nationalfamilyplanning.org/file/state-snapshots-2017/Massachusetts.pdf.

[14] *Contraception, Cost Savings at Title X-Funded Centers: From Contraceptive Services*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=MA&dataset=data&topics=96 (last visited July 30, 2018).

[15] *Contraception, Title X-Funded Centers: Percentage of Need Met By Title X-Funded Centers*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=MA&dataset=data&topics=257 (last visited July 30, 2018).

[16] *Contraception, Outcomes Averted By Title X-Funded Centers: From Contraceptive Services*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=MA&topics=120&dataset=data (last visited July 30, 2018).

health authorities, federally qualified health centers (FQHCs), Planned Parenthood clinics, rural health centers, and other community health centers. Almost every county has at least one Title X Program provider, often with multiple clinic sites per provider.

A total of 37,012 unduplicated clients were served by Title X sub-recipient clinics in 2017. Of these clients, 15,225 (41 percent) were uninsured, meaning they have limited options for accessing affordable reproductive health services.

Oregon's Title X clinics provide essential, high-quality preventive reproductive health services to underserved individuals. Data from 2017 show that of the 37,012 clients served by Oregon's Title X clinics:

- 93 percent were female;
- 47 percent were females between the ages of 18 and 29;
- 95 percent were at or below 250 percent of the FPL and 66 percent were at or below 100 percent of the FPL; and
- 60,647 clinic visits were provided, including:
  - 6,511 cervical cancer screenings
  - 49,366 STI screenings
  - 12,649 annual/well-woman exams

Further evidence of the high quality of care in Oregon's Title X clinics comes from clients themselves. According to Oregon's 2015 Reproductive Health Client Satisfaction Survey, 99 percent of clients reported the following: that medical staff respected their values, they trust the medical staff to help them make decisions, and they would recommend the clinic to friends or family.

In addition to offering high quality care, Oregon's Title X program is also cost effective. In 2017, over 6,000 unintended pregnancies were averted through the provision of effective contraceptive methods and high-quality counseling services in Oregon's Title X clinics. Using a conservative estimate of $16,000 for an average delivery and the first year of infant health care under Oregon's Medicaid program, even if less than half of these 6,000 unintended pregnancies resulted in births, the savings to the state were in excess of $40 million in taxpayer funds in Oregon alone in 2017.

4. *Vermont*

The Vermont Department of Health, the sole grantee for Vermont, has relied on Title X grant funding for decades. The Vermont Department of Health receives about $775,000 annually from Title X, of which the majority is passed on directly to the sole sub-grantee, Planned Parenthood of Northern New England (PPNNE). With these funds, PPNNE provides reproductive health

services at 10 different clinics located throughout Vermont. These clinics serve a largely rural population—none are located in Chittenden County, the most populous county of Vermont.

Through these clinics, Title X provided family planning services to 9,808 Vermonters in 2016. Of these, 44 percent reported income of less than 100 percent of the FPL, and 76 percent had income less than 250 percent of the FPL. Vermont's Title X patients were 11 percent male, and 20 percent were under age 20. And 22 percent had no health insurance.[17]

Services provided by Title X funds in Vermont include "a broad range of family planning and related preventive health services for Vermont women, men, and their partners."[18] As required in 42 C.F.R. Part 59, all pregnancy counseling at Title X clinics in Vermont is nondirective.[19] In addition, Title X funds provided "patient education and counseling; breast and pelvic examinations; breast and cervical cancer screening according to nationally recognized standards of care; STI and Human Immunodeficiency Virus (HIV) prevention education, counseling, testing and referral; and pregnancy diagnosis and counseling."[20]

Title X funding has been an essential part of the success that Vermont has seen in reproductive health outcomes over time. For example, while the current Title X rules and program have been in place, the number of teen pregnancies in Vermont has steadily declined.[21] And, the number of teen abortions occurring in Vermont has steadily declined.[22] This is consistent with the overall drop in abortion rates in Vermont and nationwide.[23] Title X-specific analyses show that these trends over time are at least partly attributable to Title X funding. One estimate shows that approximately 1900 unintended pregnancies were averted by Title X-funded clinics in Vermont

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[17] Office of Population Affairs, Title X Family Planning Annual Report: Vermont (April 2017) (on file with Vermont Attorney General's Office).

[18] Office of Population Affairs, Program Review: Title X Family Planning Project: Vermont Department of Health, 1, 33 (May 2017) (on file with Vermont Attorney General's Office).

[19] *Id.* at 34-35.

[20] *Id.* at 1.

[21] Kathryn Kost et al., *Pregnancies, Births and Abortions Among Adolescents and Young Women in the United States, 2013: National and State Trends by Age, Race and Ethnicity*, 36 (Guttmacher Inst. Aug. 2017) (data going back to 1988), *available at* https://www.guttmacher.org/sites/default/files/report_pdf/us-adolescent-pregnancy-trends-2013.pdf

[22] *Id.* at 40.

[23] Vt. Dept. of Health, "Fig. 11: Vermont and U.S. Abortion Ratios 1980 – 2016," *2016 Vital Statistics: 132nd Report Relating to the Registry and Return of Births, Deaths, Marriages, Divorces, and Dissolutions*, 129 (Agency of Human Servs. 2016) (data going back to 1980), *available at* http://www.healthvermont.gov/sites/default/files/documents/pdf/Vital%20Statistics%20Bulletin%202016.pdf

in 2014.[24] Of those, 400 would have been teen pregnancies.[25] In addition, Title X's successes have not been limited to pregnancy outcomes. Although Title X is not the only public health program addressing these issues, cervical cancer rates[26] and new HIV/AIDS diagnoses[27] in Vermont have been generally declining as well. In 2016, Title X clinics screened 1,344 clients for cervical cancer and 2,834 clients for HIV.[28]

The successes of the Title X program translate from public health to the public fisc. By one estimate, Title X services in Vermont saved the state and federal governments $7,868,000 in 2010.[29] Of that money, the majority ($7,520,000) was saved in annual maternity and birth-related costs as a result of contraceptive services.[30] An additional $215,000 was saved in annual miscarriage and ectopic pregnancy costs.[31] Tens of thousands of dollars in public health costs were saved from STI and cancer screening at Title X clinics.[32]

C. The Fatal Deficiencies in the Proposed Rule

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[24] *Number of Unintended Pregnancies Averted by Title X-Funded Centers*, Data Ctr., Guttmacher Inst., https://data.guttmacher.org/states/table?state=VT&topics=114 (last visited July 30, 2018).

[25] *Number of Unintended Pregnancies Averted to Clients Aged <20 by Title X-Funded Centers*, Data Ctr., Guttmacher Inst., https://data.guttmacher.org/states/table?state=VT&topics=114 (last visited July 30, 2018).

[26] Vermont Cancer Registry, *HPV Associated Cancers—Data Brief*, 1 (Vt. Dept. of Health May 2018) (data going back to 1994), *available at* http://www.healthvermont.gov/sites/default/files/documents/pdf/stat_cancer_HPV_Assoc_Ca_Data_Brief.pdf.

[27] Decrease seen since the height of the epidemic, and the introduction of the first effective treatments, in the early 1990s. Vt. Dept. of Health, "History of the HIV/AIDS epidemic, Vermont residents at diagnoses 1984 – 2014," *Vermont HIV/AIDS Annual Report*, 2 (May 2015), *available at* http://www.healthvermont.gov/sites/default/files/documents/pdf/ID_HIV_surveillance_Vt%20HIV%20Annual%20Rep%202014.pdf; *see also* Vt. Dept. of Health, *2016 Vermont HIV Annual Report*, 2-3 (May 2018), *available at* http://www.healthvermont.gov/sites/default/files/documents/pdf/ID_HIV_VermontHIVAnnualReport2016.pdf.

[28] Office of Population Affairs, Title X Family Planning Annual Report: Vermont, 10, 13 (April 2017) (on file with Vermont Attorney General's Office).

[29] *Total Annual Gross Savings from Services Provided During Family Planning Visits at Title X-Funded Centers*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=VT&topics=98 (last visited July 30, 2018).

[30] *Annual Maternity and Birth Related Costs (Through 60 Months) Saved from Contraceptive Services*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=VT&topics=96 (last visited July 30, 2018).

[31] *Annual Miscarriage and Ectopic Pregnancy Costs Saved from Contraceptive Services*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=VT&topics=96 (last visited July 30, 2018).

[32] *Annual Costs Saved From Chlamydia, Gonorrhea and HIV Testing at Title X-Funded Centers; Annual Costs Saved from Pap and HPV Testing at Title X-Funded Centers*, Guttmacher Institute Data Center, https://data.guttmacher.org/states/table?state=VT&topics=97 (last visited July 30, 2018).

1. *The proposed rule requires directive counseling in violation of the Consolidated Appropriations Act, 2018.*

In numerous ways, the proposed rule imposes unethical requirements to provide directive, mandatory patient counseling. This is contrary to the Consolidated Appropriations Act, 2018, which states that, with respect to the amounts appropriated "for carrying out the program under title X of the PHS Act to provide for voluntary family planning projects, . . . all pregnancy counseling shall be nondirective."[33] While Congress is free to "make a value judgment favoring childbirth over abortion,"[34] once Congress makes a policy choice executive agencies are not at liberty to ignore it. Here Congress has required that counseling of patients using Title X funds may not be slanted, and HHS may not direct Title X providers to disregard Congress's directive.

The proposed rule requires Title X funds be used for directive counseling in several ways. First, the rule prohibits Title X providers from referring a patient who discovers she is pregnant to abortion providers, except in the narrow circumstances where the patient "clearly states" that she has "already decided" she will have an abortion.[35] Of course, such a "clear decision" for someone who learned minutes earlier that she was pregnant would be unlikely, meaning the vast majority of patients will be referred away from abortion providers. Second, providers are prohibited from even "present[ing]" the option of abortion. Third, providers must refer patients for "appropriate prenatal and/or social services (such as prenatal care and delivery, infant care, foster care, or adoption)" whether or not the patient desires such referrals.[36] Fourth, providers are required to assist in setting up these referral appointments—unless the patient wants an abortion.[37] In short, if a pregnant patient says that she wants advice on birth or adoption options the provider is unencumbered, but if she wants to discuss the option of abortion, the provider may not assist her. Only if the patient states she wants an abortion may the provider offer her a list that includes abortion providers, but that list must obfuscate which clinics offer what she seeks and which do not.[38]

These provisions are intended to, and do, slant Title X counseling against termination and in favor of childbirth, in violation of Congress's directive otherwise. Indeed, the text of the proposed rule says nothing about nondirective counseling, instead eliminating the former

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[33] Pub. L. No. 115-141, div. H, tit. II, 132 Stat. 348, 716 (2018), https://www.congress.gov/bill/115th-congress/house-bill/1625/text.

[34] *Rust v. Sullivan*, 500 U.S. 173, 192 (1991) (quoting *Maher v. Roe*, 432 U.S. 464, 474 (1977)).

[35] 83 Fed. Reg. 25,531 (proposed § 59.14(a), (c)).

[36] 83 Fed. Reg. 25,531 (proposed § 59.14(b)).

[37] *Id*.

[38] 83 Fed. Reg. 25,531 (proposed § 59.14(c)).

requirement to provide "neutral, factual information and nondirective counseling . . . ." 42 C.F.R. 59.5(a)(5)(ii). Through the repeal of the nondirective counseling requirement and the addition of severe restrictions on referrals, the proposed rule seeks to replace what has been a patient-guided, provider-informed approach to care with a system that jeopardizes both providers' ethical obligations and patients' health.

2. *The proposed rule illegally injects the government into the provider-patient relationship.*

We are deeply troubled by the Department's proposed government interference in the relationship between a medical provider and a patient, and not only because it violates a federal law. The proposed rule purports to tell providers paid with Title X funds what they can and cannot say when a patient discovers she is pregnant. The government should have no role telling a health care provider what to say to a patient. Here, the proposed rule prohibits nurses and nurse practitioners, who see the majority of Title X patients, from mentioning abortion, and doctors may do so only in the very limited circumstances permitted in proposed section 59.14(c) and (d).[39] Under the proposed rule, Title X providers could not simply take off their "Title X hats" and offer the same nondirective advice that they currently offer because the rule would require Title X providers to comply with Title X requirements, whether or not Title X funds a particular patient's service.

As America's women's health providers have jointly stated in opposing the proposed rule, "[p]oliticians have no role in picking and choosing among qualified providers."[40] This government script for providers when addressing their Title X patients violates the American Medical Association's Code of Ethics, which states that "withholding information without the patients' knowledge or consent is ethically unacceptable."[41] Similarly, the Code of Ethics for Nursing requires nurses to give complete – not slanted – information to patients.[42]

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[39] 83 Fed. Reg. 25,531.

[40] "America's Women's Health Providers Oppose Efforts to Exclude Qualified Providers from Federally-Funded Programs," Join Statement of the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, the American College of Nurse-Midwives, the American College of Physicians, the Association for Physician Assistants in Obstetrics and Gynecology, the National Association of Nurse Practitioners in Women's Health, Nurses for Sexual and Reproductive Health, and the Society for Adolescent Health and Medicine (May 23, 2018), https://www.acog.org/About-ACOG/News-Room/Statements/2018/Health-Providers-Oppose-Efforts-to-Exclude-Qualified-Providers-from-Federally-Funded-Programs (last accessed on July 17, 2018).

[41] American Medical Association, Code of Medicaid Ethics Opinion 2.1.3, Withholding Information from Patients, available at https://www.ama-assn.org/delivering-care/withholding-information-patients (last accessed on July 17, 2018).

[42] Code of Ethics for Nursing, Provision 1.4, www.bc.edu/content/dam/files/schools/son/pdf2/ANA code of ethics.pdf (last accessed on July 17, 2018) (patients must be given "accurate, complete, and understandable information in a manner that facilitates an informed decision").

Further, the proposed rule is arbitrary and capricious because it only permits "a medical doctor" to provide the very limited referral for abortion the proposed rule allows.[43] In our States, this severely restricts the nondirective counseling Title X patients would receive. In Oregon, for example, over 93 percent of visits to Title X clinics in 2017 were conducted by non-physician caregivers such as nurse practitioners and physician assistants. The preamble to the proposed rule itself recognizes that only 22 percent of clinical service FTEs delivered to Title X patients were provided by medical doctors.[44] As a result, the proposed rule would prevent 78 percent of the medical professionals who see patients at Title X providers from providing even the limited and intentionally obfuscated abortion referral it claims to authorize. The Department does not explain why prohibiting such a large percentage of Title X caregivers from providing any kind of counseling on the legally available option of abortion comports with the statutory requirement that Title X funds be used only for nondirective counseling, and we request such an explanation.

The proposed rule's roadblocks for a patient seeking complete and accurate health information also are arbitrary and capricious. First, the patient must already know that she wants an abortion. This precludes the patient from engaging in an important conversation with her health care provider about the pros and cons of abortion. The Department fails to address the fact that many women do not ask directly about abortions immediately upon learning they are pregnant, and instead consider it as one of many medical options. We ask that the Department explain how its proposed restrictions can be reconciled with this experience of clinicians. Second, only a doctor can give the patient the referral list. This appears designed to undermine the provision of healthcare. Moreover, it is not clear what, if any, counseling a physician is entitled to provide to a woman who has decided to have an abortion given that the proposed rules prohibit providers from "promot[ing]" and "support[ing]" abortion as a method of family planning. Limiting the medical information that physicians can offer their patients unreasonably intrudes upon the physician-patient relationship and undermines ethical standards of care.

The preamble to the proposed rule relies on "Federal conscience statutes" to justify its diverging from the requirement in the Consolidated Appropriations Act that Title X-funded counseling must be nondirective.[45] This reliance is misplaced. The proposed rule does not merely create an exception to nondirective counseling for conscience objectors. Instead, it allows conscience objectors to dictate what all Title X providers may say. Purportedly to uphold conscience protections, the proposed rule prohibits nearly 80 percent of the medical professionals who treat patients at Title X clinics from saying anything about abortion, regardless of their religious or moral beliefs. Likewise, it severely restricts the information medical doctors can impart, again regardless of their religious or moral convictions. In doing so, it makes no accommodation for providers who have religious or moral convictions contrary to the proposed rule, for instance

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[43] 83 Fed. Reg. 25,531 (§ 59.14(a); *see also*, § 59.14(c)).

[44] 83 Fed. Reg. 25,523.

[45] 83 Fed. Reg. 25,506-507.

those whose convictions align more closely with professional ethics rules. These prohibitions go substantially further than necessary to vindicate a select number of providers' conscience objections, and we ask the Department to better explain its reasoning.

3. *The proposed rule is contrary to, and ignores, the Department's authoritative recommendations for evidence-based "family planning methods and services" without reason or explanation.*

A federal agency cannot simply ignore its prior statutory interpretations. This is especially true where, as here, the prior interpretation is based on factual findings or cited evidence, and the new interpretation fails to consider that evidence. "[T]he consistency of an agency's position is a factor in assessing the weight that position is due." *Good Samaritan Hospital v. Shalala*, 508 U.S. 402, 417 (1993). "To be sure, the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it is changing position." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

In 2014, the Department's Centers for Disease Control and Prevention (CDC) issued a Recommendations and Report entitled "Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs."[46] The report provided the agency's view on what are "acceptable and effective family planning methods and services."[47] The CDC stated:

> This report provides recommendations developed collaboratively by CDC and the Office of Population Affairs (OPA) of the U.S. Department of Health and Human Services (HHS). The recommendations outline how to provide quality family planning services, which include contraceptive services, pregnancy testing and counseling, helping clients achieve pregnancy, basic infertility services, preconception health services, and sexually transmitted disease services. The primary audience for this report is all current or potential providers of family planning services, including those working in service sites that are dedicated to family planning service delivery as well as private and public providers of more comprehensive primary care.[48]

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[46] Gavin, L, Moskosky, S, Carter, M, Curtis, K, Glass, E, Godfrey, E, Marcell, A, Mautone-Smith, N, Pazol, K, Zapata, L, "Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs." Morbidity and Mortality Weekly Report, 63 Recommendations and Reports No. 4 (April 25, 2014), available at https://www.cdc.gov/mmwr/pdf/rr/rr6304.pdf (last accessed July 19, 2018) (hereinafter "CDC Report and Recommendations").

[47] 42 U.S.C. § 300(a).

[48] CDC Report and Recommendations at 1.

The report provided "recommendations for how to help prevent and achieve pregnancy, emphasize[d] offering a full range of contraceptive methods for persons seeking to prevent pregnancy, highlight[ed] the special needs of adolescent clients, and encourage[d] the use of the family planning visit to provide selected preventive health services for women, in accordance with the recommendations for women issued by the Institute of Medicine and adopted by HHS."[49] In other words, it was a careful, evidence-based description of the best practices for family planning in the United States.

Without explanation, the proposed rule contradicts this report in numerous ways, and it does so without mentioning the report. The CDC report's "recommendations support offering a full range of Food and Drug Administration (FDA)-approved contraceptive methods,"[50] while the proposed rule eliminates "medically approved" from the requirement that projects provide a broad range of family planning methods.[51] The CDC report advocates a "[c]lient-centered approach" where the patient is offered a "broad range of contraceptive methods so that clients can make a selection based on their individual needs and preferences,"[52] while the proposed rule offers Title X funds to a clinic that chooses to offer only a single method of family planning.[53] The CDC report states that a provider, after administering a pregnancy test, should present "options counseling" and "appropriate referrals,"[54] while the proposed rule mandates concealing the full range of options available to the patient, including abortion, and directs omitting abortion providers from referral lists.[55] These changes undermine long-held, evidence-based standards of care.

The Department fails to explain why it is rejecting its own recommendations expressly "based on scientific knowledge."[56] Indeed, it fails even to acknowledge the existence of those

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[49] *Id*.

[50] CDC Report and Recommendations at 2.

[51] 83 Fed. Reg. 25,530 (proposed § 59.5).

[52] CDC Report and Recommendations at 2.

[53] 83 Fed. Reg. 25,530 (proposed § 59.5). Without doubt, the proposed regulations' emphasis on fertility awareness-based methods of family planning over all other forms of contraception will result in increased numbers of unintended pregnancies, including teen pregnancies. Table 3-2, Contraceptive Technology, http://www.contraceptivetechnology.org/wp-content/uploads/2013/09/CTFailureTable.pdf (last visited July 30, 2018) (listing a 24% failure rate for typical use of fertility awareness-based methods, compared to a less than 10% failure rate for typical use of hormonal contraceptives and less than 1% failure rate for long-acting reversible contraceptives).

[54] CDC Report and Recommendations at 14.

[55] 83 Fed. Reg. 25,531 (proposed § 59.14).

[56] CDC Report and Recommendations at 4.

recommendations. The proposed rule lacks the "reasoned analysis" the Department concedes is required.[57]

4. *The financial separation requirement reverses a prior agency interpretation and is unsupported by any evidence.*

The proposed rule imposes a new requirement of physical separation between Title X projects and the abortion activities of the Title X grantee/sub-recipient.[58] This requirement reverses the Department's prior interpretation, is imposed without supporting evidence, and does not reflect agency consideration of substantial evidence contradicting the Department's conclusion.

The proposed rule reverses the Department's longstanding interpretation that, "[i]f a Title X grantee can demonstrate [separation] by its financial records, counseling and service protocols, administrative procedures, and other means. . . …, then it is hard to see what additional statutory protection is afforded by the imposition of a requirement for 'physical' separation."[59] The Department states that this reversal is necessary to avoid the risk of (i) intentional or unintentional use of Title X funds for impermissible purposes or the commingling of funds, and (ii) public confusion that Title X funds being used by a family planning organization may be supporting the program's abortion activities.[60]

Despite the need for *evidence* to justify an agency's reversal of course, the preamble to the proposed rule cites no evidence of commingled funds or public confusion. The preamble states that the Department's concerns are "acute" because, according to a Guttmacher Institute report, the percentage of "nonspecialized clinics" such as doctors' offices accounting for abortions performed in the United States inched up 6 percent from 2008 to 2014, which may increase the risk of confusion and misuse of Title X funds.[61] However, the Department has no evidence that any of these nonspecialized clinics receive Title X funds. The Guttmacher Institute itself noted that the data its report relied on included inaccuracies and out-of-date information.[62] This is the only evidence the Department cites of potential public confusion and commingling of funds, yet

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[57] 83 Fed. Reg. 25,505.

[58] 83 Fed. Reg. 25,532 (proposed § 59.15).

[59] Standards of Compliance for Abortion Related Services in Family Planning Services Projects, 65 Fed. Reg. 41,270, 41,276 (Jul. 3, 2000).

[60] 83 Fed. Reg. 25,507.

[61] *Id*.

[62] Jones, RK, Jerman, J, Abortion Incidence and Service Availability In the United States, 2014, Guttmacher Institute Perspectives on Sexual and Reproductive Health (March 2017) ("Limitations"), https://www.guttmacher.org/journals/psrh/2017/01/abortion-incidence-and-service-availability-united-states-2014 (last accessed July 18, 2018).

it evinces no actual *use* of Title X funds.[63] In fact, unlike the Title X regulations proposed in 1988—which relied in part on two reports, one from the Department's Office of Inspector General (OIG) and the other from The General Accounting Office—the Department currently points to no reports or relevant evidence as justification for the proposed rule.

The Department fails to cite its own safeguards it already has in place to ensure that Title X funds are kept separate from abortion-related services. "According to [the Office of Population Affairs], family planning projects that receive Title X funds are closely monitored to ensure that federal funds are used appropriately and that funds are not used for prohibited activities, such as abortion."[64] These "[s]afeguards to maintain this separation include (1) careful review of grant applications to ensure that the applicant understands the requirements and has the capacity to comply with all requirements; (2) independent financial audits to examine whether there is a system to account for program-funded activities and non-allowable program activities; (3) yearly comprehensive reviews of the grantees' financial status and budget report; and (4) periodic and comprehensive program reviews and site visits by OPA regional offices."[65] Despite this thorough monitoring, the Department fails to provide any evidence of actual threats to Title X funding and instead relies on reports from the 1980s, old Medicaid audits, and unsupported assertions.

The Department's monitoring has been thorough. For example, the 2017 OPA Program Review Report for the Vermont Department of Health found the following:

> Financial documentation at service sites demonstrates that Title X funds are not being used for abortion services and adequate separation exists between Title X and non-Title X activities. (42 C.F.R. § 59.5(a)(5))
>
> REVIEW OF EVIDENCE
> The grantee does not provide abortion services. However, the sub-recipient does provide these services. The sub-recipient has established policies, procedures, and practices to ensure the adequate separation of Title X activities from non-Title X activities. Staff separates their time, after the fact, into clearly defined cost centers in the TimeForce system. This is done each day, is checked by the site supervisor,

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[63] In a separate part of the preamble addressing the purported need for monitoring of the use of Title X funds, the Department cites a Washington Medicaid Fraud Control Unit investigation. 83 Fed. Reg. 25,509. The Medicaid Fraud Control Unit is part of the Washington Attorney General's Office. Our investigation found that the individuals reporting the alleged violations relied only a newsletter sent out by American Life League and had no additional information or any firsthand knowledge, the state Medicaid agency auditor did not see any indication of fraudulent billing, and there was no pattern of intentional billing misconduct.

[64] Angela Napili, Cong. Research Serv., R45181, *Family Planning Program Under Title X of the Public Health Service Act* 16 (2018), *available at* https://fas.org/sgp/crs/misc/R45181.pdf.

[65] *Id*.

> and is further checked through an analysis of the number and type of services provided each day in the clinic setting by administrative staff.
>
> The sub-recipient demonstrated that no abortion-related activities were provided as part of the Title X project. This included policies and procedures and the actual practices in the clinic setting, counseling and service protocols, intake and referral procedures, and fiscal and other administrative procedures.
>
> This requirement [compliance with Section 1008] was MET.[66]

No evidence indicates that the Vermont Department of Health has ever had any issues complying with Section 1008.

In addition, the Department does not address the steps states like ours take to ensure sub-recipients' separation of Title X funds from any abortion-related activities. In Washington, the State Department of Health Family Planning Program ensures the separation of Title X funds from abortion services through contract language, desk reviews, and on-site monitoring. The goal of monitoring is to document the extent of sub-recipient agencies' compliance with state and federal laws and regulations. Monitoring helps the Family Planning Program assist local agencies with compliance with Federal Title X and state rules related to funding. This ensures accountability.

The Washington Department of Health (DOH) does three types of monitoring: Administrative, Clinical, and Fiscal. As federal grant funds flow through the Family Planning Program to a sub-recipient, the Family Planning Program maintains primary responsibility for ensuring enforcement of federal and state requirements. Those requirements pertain to sub-recipients as they receive state and federal funds. When a sub-recipient signs the Family Planning Program contract with the DOH, they agree to enforce those same certifications, assurances, cost principles, and administrative rules. All of these requirements are incorporated in contract language. Title X sub-recipient contract standard clauses include that the Contractor does "not provide abortion as a method of family planning within the Title X Project. (42 CFR 59.5(5))," and "[t]he Title X Project must not include sterilizations, abortions, or any flat rated service (for instance some STD or HIV testing) or income/revenue generated from them."

Furthermore, the DOH Fiscal Monitoring and Review Guide and On-site Monitoring Tool is used by site consultants and agency fiscal experts to perform on-site reviews every three years or more often if needed. They monitor for documentation that:

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[66] Office of Population Affairs, Program Review: Title X Family Planning Project: Vermont Department of Health, 21 (May 2017) (on file with Vermont Attorney General's Office).

i. The financial system provides for financial separation of Title X family planning service dollars and abortion service dollars;
ii. Agency personnel must be informed that they could be prosecuted, under Federal law, if they coerce, or try to coerce, anyone to undergo abortion or a sterilization procedure, and the agency has a policy in place to this end;
iii. The agency has written policies that clearly state that no Title X funds will be used in programs where abortion is a method of family planning;
iv. The agency is in compliance with Title X, specifically calling out Section 1008; and
v. Staff members have been trained about separating Title X family planning services and abortion services.

The site consultant verifies this onsite through the sub-recipients' policies and procedures, personnel records, and a review of the accounting system.

In addition, the Washington State Family Planning Manual[67] advises about separating Title X services from abortion, including that Contractors must be in full compliance with Section 1008 prohibiting the use of Title X funds for abortion as a method of family planning.

Oregon's Reproductive Health Program maintains a robust process for monitoring compliance among its Title X agencies. Ongoing and routine compliance reviews ensure that Title X agencies adhere to administrative, clinical, and fiscal requirements. The monitoring process includes:

i. Annual recertification of agencies;
ii. Onsite compliance reviews of consent forms, policies, procedures and protocols; chart audits; onsite clinical observation; and onsite observation of patient and physical environment; and
iii. Regular billing, client enrollment, and quality assurance reviews.

Like Washington's DOH, Oregon's Reproductive Health Program uses a comprehensive Program Certification Verification Tool to monitor its Title X agencies. Specific policies relating to abortion, including the requirement that no federal funds are used for abortion services and that abortion is not provided as a birth control method, are reviewed and verified.

In Massachusetts, the Department of Public Health's robust oversight of sub-recipients providing abortion services ensures compliance with current Title X requirements. The Department of Public Health requires that these sub-recipients establish and follow written policies that clearly indicate that Title X funds will not be used for abortion services, clearly segregate Title X funds to prevent allocation of Title X funding to abortion services; maintain separate inventory for

[67] *Family Planning Manual*, Washington State Department of Health, September 2016, available at https://www.doh.wa.gov/portals/1/Documents/Pubs/930-122-FPRHManualComplete.pdf (last visited July 30, 2018)

abortion and non-abortion services; and implement fiscal review and oversight procedures to assure that no Title X funds are used for abortion services. The Massachusetts Department of Public Health also engages in regular monitoring, and requires all providers to inform them of any changes in their practice.

In Vermont, in addition to the safeguards noted above, PPNNE undergoes an annual financial audit, which specifically examines its Title X expenditures. PPNNE passes its audit every year, including its accounting of Title X funds.[68]

The Department has not explained why these thorough guidance, monitoring, and auditing steps taken by our state agencies and by the Department itself are insufficient to prevent commingling of funds, and we ask the Department to provide this explanation.

5. *The proposed rule would violate the constitutional rights of Title X providers and their patients.*

The proposed rule imposes government restrictions on speech and denies women freedom from government interference in their most intimate and personal decisions that courts will find fatal under the First and Fifth Amendments. It should be withdrawn for these reasons.

In *Rust v. Sullivan*, the Supreme Court recognized that "funding by the government, even when coupled with the freedom of the fund recipients to speak outside of the scope of the Government-funded project," is not "invariably sufficient to justify Government control over the content of expression." 500 U.S. at 199. In some areas, particularly rural areas, the proposed rule is likely to drive all Title X providers from the program, leaving patients without reasonable access to any Title X services. And for those Title X providers remaining in the program, the Department's restriction on speech will extend beyond the Title X program to every patient encounter by every Title X provider, whether or not Title X funds are used. As a consequence, the proposed rule will force all Title X grantees to give up neutral abortion-related speech, whether or not they are wearing a "Title X hat." These facts are different from those presented in *Rust v. Sullivan*, which makes that decision distinguishable.

The massive contraction of the Title X program that would occur under the proposed rule, and is shown herein as to our States, results in a violation of the unconstitutional conditions doctrine and the vagueness and overbreadth doctrines of the First Amendment. The proposed rule interferes with a doctor's ability to provide, and a woman's right to receive, information concerning abortion and abortion-related services, both within and outside of the Title X program. This violates women's Fifth Amendment rights to be free of government interference

[68] Financial audits for 2015 – 2017 may be downloaded at the Federal Audit Clearinghouse, https://harvester.census.gov/facdissem/Main.aspx. Financial audits for 2013 and 2014 on file with the Vermont Attorney General's Office. Financial audits older than five years were not readily available.

in their decisions whether to continue pregnancies to term. It is also contrary to the First Amendment, especially given the Supreme Court's recent recognition that "[a]s with other kinds of speech, regulating the content of professionals' speech 'pose[s] the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information.'" *National Institute of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361, 2374 (2018) (quoting *Turner Broadcasting System v. FCC*, 512 U.S. 622, 641 (1994)). And it contravenes Supreme Court cases that reject "confin[ing] the attending physician in an undesired and uncomfortable straitjacket in the practice of his profession." *Planned Parenthood of Central Mo. v. Danforth*, 428 U.S. 52, 67 n.8 (1976). Finally, it interferes in the states' rights to design and implement health care programs in their states by causing the Title X regulations to be applicable outside the Title X program.

If the Department does not voluntarily withdraw the proposed rule, we ask it to explain, in light of these facts, how the proposed rule is consistent with the Constitution.

6. *The proposed rule includes many requirements that are unsupported by any evidence and, if not abandoned, will be found to be arbitrary and capricious.*

    a. *The primary care requirement is unsupported and arbitrary.*

The proposed rule requires that Title X providers "should offer either comprehensive primary health services onsite or have a robust referral linkage with primary health providers who are in close physical proximity to the Title X site."[69] This requirement is supposedly meant to "promote holistic health and provide seamless care."[70] This call for holistic and seamless care rings hollow considering that the Department is simultaneously proposing specific steps to limit the provision of complete health information and seamless care to patients through abortion counseling and referral restrictions. Instead, the primary care requirement appears intended to push out long-standing Title X providers who have specialized in family planning services and rural Title X providers who may not have "robust referral linkage[s] . . . in close physical proximity."[71]

This requirement alone could dramatically reduce the scope of the Title X program in our States depending upon how the Department defines "close physical proximity." This requirement is not stated in the statute. The Department must explain how it can be reconciled with the goals of the Title X program.

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[69] 83 Fed. Reg. 25,530.

[70] *Id.*

[71] *Id.*

b. *The provisions requiring reporting on minors are unsupported and irrational.*

Currently, Title X providers must attempt to encourage a minor to involve her or his family in the decision-making process when the minor seeks contraceptive services. Under the proposed rule, this "encouragement" would be replaced with undue pressure on both the provider and the minor. The proposed rule requires that a Title X provider document "in the minor's medical records the specific actions taken by the provider to encourage the minor to involve her/his family (including her/his parents or guardian) in her/his decision to seek family planning services."[72] The only exception to this requirement, which must be documented in the minor's medical record, is if the provider "suspects the minor to be the victim of child abuse or incest" and this has been reported in compliance with state or local law.

Today, if a minor explains to a Title X provider that she wishes not to involve her family, that wish is respected. Minors may choose not to involve their families in their health care decisions due to differences of religious belief, fear of violence, fear of abandonment, lack of a suitable adult to involve, or simply a desire for confidential care. By requiring that the providers' efforts to encourage family involvement be recorded in the medical record, the proposed rule could force providers to apply pressure on minor patients to involve their families even when doing so is not in the minor's best interests. The proposed rule could ultimately have a chilling effect on honest and open conversations between providers and minor patients. Further, the proposed rule imperils patient confidentiality to such a degree that minors could be discouraged from seeking care altogether.[73] This will serve neither the purposes of the Title X program nor patients.

c. *The other reporting requirements are unsupported, vague, and beyond the Department's legal authority.*

The proposed rule would bury Title X projects and sub-recipients in overly burdensome reporting requirements. For example, a Title X project would need to report for each sub-recipient and referral agency not only the exact services provided, but also a "[d]etailed description of the extent of the collaboration" even down to the individuals involved and inclusive of undefined "less formal partners within the community."[74]

Along with the inclusion of the "less formal partners," the proposed rule's definition of "referral agency" makes the reporting requirements overly broad. The proposed rule suggests that even if a referral agency does not receive Title X funds, it may still be "subject to the same reporting

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[72] *Id.*

[73] *See, e.g.*, *Planned Parenthood Fed'n of Am. v. Heckler*, 712 F.2d 650, 659-61 (D.C. Cir. 1983) (describing Congress's decision not to mandate family involvement in Title X care for minors).

[74] 83 Fed. Reg. 25,530.

requirements as a grantee or sub-recipient."[75] These requirements improperly overreach into relationships not otherwise governed by Title X regulations and burden projects, sub-recipients, and referral agencies. Rather than achieving the stated goal of creating a robust referral system, these requirements will cause projects and sub-recipients to limit their referral networks in order to control the amount of reporting.

These changes will have significant impacts. For example, the proposed regulations' applicability to "referral agencies"[76] of Title X clinics would impact a significant number of Vermont's health care providers. As a small and rural state, Vermont's pool of available health care referral partners is also small. PPNNE maintains a "comprehensive referral data base" of other local health care providers.[77] But the proposed regulations would be unnecessarily and prohibitively restrictive on those health care providers that do not receive Title X funds, interfering with those providers' and their patients' rights and their ability to provide ethical and professional care.

7. *The proposed rule does not comply with Executive Orders 12866 and 13562.*

Executive Orders 12866 and 13562 require agencies to "assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits." 83 Fed. Reg. 25521. Executive Order 12866 requires that a "significant regulatory action" comply with additional regulatory requirements. This proposed rule meets all the definitions of a "significant regulatory action" because it would (1) have an annual effect on the economy of $100 million or more and will "adversely and materially affect" the health sector of the economy, public health, and state and local governments; (2) create a serious inconsistency and interfere with an action taken or planned by another agency; (3) materially alter budgetary impacts of entitlement grants or the right and obligations of recipients thereof; and (4) raise novel legal or policy issues arising out of legal mandates.

The restrictive requirements of the proposed rule disqualify many current Title X grantees from the program across the country. Some Title X patients currently served by these providers will lose access altogether to family planning services, particularly among the uninsured and those residing in rural areas. In 2017, Title X services saved our four States alone many millions of dollars in costs for health care services. Extrapolating those cost savings across all states, the fiscal impact of the proposed rule on the economy will exceed $100 million and will adversely affect public health, the health care sector, and state treasuries. Additionally, the proposed rule materially changes the outflow of entitlement grants and the rights and obligations of grant

[75] 83 Fed. Reg. 25,514.

[76] 83 Fed. Reg. 25514.

[77] Office of Population Affairs, Program Review: Title X Family Planning Project: Vermont Department of Health, 11 (May 2017) (on file with Vermont Attorney General's Office).

applicants and recipients. It also raises novel legal and policy issues because of new restrictions on speech. The preamble wrongly concludes that the proposed rule is not economically significant and fails to address these considerations.

8. *The proposed rule is contrary to Congress's intent because it would exclude qualified and experienced Title X providers from the program and reduce access to essential preventive health services.*

The impact of the proposed rule is contrary to the Title X statute. The proposed rule appears to be designed to deny Title X funds to many of the current Title X providers in our States and nationwide, and it does not address the impact this rule will have on our States' residents and budgets. The proposed rule, if implemented, will leave many counties without a Title X provider. Because the proposed rule will undermine the quality of health care provided and impose burdensome and counterproductive separation and reporting requirements, many providers in our States will be unable or unwilling to comply. Further, the proposed rule falls particularly hard on uninsured patients and those in rural areas, who in some cases will have no other reasonable option for obtaining family planning services. As a result, thousands of people who rely on Title X providers for contraception and other family planning services will lose access to those services. The proposed rule thus frustrates, rather than promotes, the purpose of Title X.

It is no secret that the Department wants to expel Planned Parenthood from the network of Title X providers. As then-candidate Donald Trump stated, "We're not going to allow, and we're not going to fund, as long as you have the abortion going on at Planned Parenthood."[78] More recently, when introducing the proposed rule, President Trump stated: "For decades American taxpayers have been wrongfully forced to subsidize the abortion industry through Title X federal funding so today, we have kept another promise. My administration has proposed a new rule to prohibit Title X funding from going to any clinic that performs abortions."[79] The proposed rule would certainly achieve the President's goal, but as described herein, it would go much further than that.

For some Title X providers, creating a separate corporate entity with complete physical and financial separation will be prohibitively expensive. In Massachusetts, at least one Title X provider, if forced to create a separate corporate entity to continue providing abortion care, will have to stop participating in Title X at one of its locations, resulting in the loss of a geographically important Title X clinic. In Oregon, two major Title X agencies with 12 clinic sites would likely be unable to continue as Title X providers due to the onerous physical

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[78] Danielle Paquette, "Donald Trump's Incredibly Bizarre Relationship with Planned Parenthood," *Washington Post* (Mar. 2, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/03/02/donald-trumps-incredibly-bizarre-relationship-with-planned-parenthood/?utm_term=.db131f627e96 (last accessed 7/13/18).

[79] https://www.whitehouse.gov/briefings-statements/remarks-president-trump-susan-b-anthony-list-11th-annual-campaign-life-gala/ (last accessed 7/13/18).

separation requirements set forth in the rules. The same is true in Washington and Massachusetts. All of Vermont's Title X clinics would be ineligible to continue under the program. A wide range of Title X provider types will have no choice but to forgo Title X funds, thus reducing their capacity to provide much needed family planning services. For example, it is unclear whether a hospital that runs a Title X clinic (on or off site) that also provides abortion would be able to comply with the requirement to have "separate, accurate accounting records" or "separate personnel, electronic or paper-based health care records."[80] Would funds attributed to the clinic also be attributable to the hospital as a whole? In addition to the practical issues created by the proposed rule's separation requirement, it also creates serious risk to patient safety by requiring separate medical record systems and further stigmatizes legal medical procedures.

In 2017, in Washington, over 14,000 Title X-funded patients received their Title X services at Planned Parenthood or other clinics that provided abortions outside the Title X project. In fact, in 20 of Washington's 39 counties, the only Title X provider is one that performs abortions outside the Title X project.[81] If these Title X providers no longer could offer Title X-funded family planning services due to the separation and other requirements, these patients would need to either locate new Title X providers for their contraception and other family planning services, or forego the benefits of the Title X program. In all of eastern Washington, which is comprised of 20 counties, only four of those counties would have any Title X provider at all. In western Washington, the proposed rule would drive out the Title X providers in 10 additional counties. This includes six of the 10 most populous counties in Washington.

If the proposed regulations take effect, for the first time in the history of Title X, the Vermont Department of Health's Title X funding will be jeopardized. None of the current Title X clinics in Vermont will be eligible for Title X funds. Nor does Vermont have the health care infrastructure to make up for the anticipated loss in funding. Although Vermont has several FQHCs and rural health centers, they are not equipped to absorb all the family planning patients currently served by Title X clinics. Vermont FQHCs saw a total of 4,047 patients for contraceptive management in 2016.[82] By comparison, Vermont's Title X clinics served 9,808 family planning patients in 2016. The FQHCs would have to more than double their family planning patient services in rural areas to absorb the needs of all Title X patients. FQHCs in Vermont are not equipped to do this.

In the Department's zeal to punish providers that perform abortions *outside* of the Title X project, the Department is harming many recipients of Title X services in our States. The

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[80] 83 Fed. Reg. 25,519.

[81] *See* Attachment 1 (map of Washington counties without Title X services if organizations that also provide abortions are removed from Title X).

[82] 2016 Health Center Data: Vermont Data, Health Resources & Servs. Admin., https://bphc.hrsa.gov/uds/datacenter.aspx?q=tall&year=2016&state=VT (last visited July 30, 2018).

Department has not explained why issuing a rule to govern Title X that requires thousands of Title X-funded patients to search for a new Title X family planning provider—or go without one entirely—is consistent with Congress's intent in establishing the Title X program, and we ask the Department to provide this explanation.

The harmful consequences of the proposed rule uniquely impact rural and uninsured patients. In five Washington counties, for example, one quarter or more of Title X patients are uninsured, and the only Title X providers are ones that perform abortions outside the Title X project.[83] And in five other counties in rural Washington, Title X patients are served by small Title X clinics associated with providers that perform abortions outside the Title X project. These clinics are in Ellensburg (in Kittitas County), Walla Walla (in Walla Walla County), Wenatchee (in Chelan County), Pullman (in Whitman County), and Moses Lake (in Grant County). We are advised that, because they are so small and a significant amount of their work involves Title X-funded services, at least some of these clinics would not survive the loss of Title X funds. If these current Title X providers are driven from the Title X program, many of these patients will not be able to shift to another provider.[84] Even if some current Title X providers remain in the program, the distance these patients would have to travel to another Title X provider is impracticable. We ask that the Department explain how it reconciles the significant impact the proposed rule will have on rural and uninsured patients with the mission of the Title X program.

In Oregon, significant portions of the state, primarily the rural and frontier areas, are designated as Medically Underserved Areas because they have a shortage of primary health care providers and facilities coupled with high levels of need. The proposed rule will likely cause providers to decline Title X funds in order to maintain their quality of care, further straining access to reproductive health care for Oregonians in these areas. For the 40 percent of Oregon's Title X clients who are uninsured, this burden is heightened because the high quality of care at Title X clinics may not be available to them at other clinics. Title X clinics currently are required to provide the same high quality of care to all clients regardless of ability to pay, whereas other clinics may limit services for patients without coverage sources.

A remarkably broad coalition of Vermont health care providers has joined the nationwide medical community's condemnation of the proposed rule.[85] This Vermont coalition "strongly

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[83] These counties are Mason (24 percent of Title X patients were uninsured in 2017), San Juan (30 percent), Skagit (29 percent), Douglas (28 percent), and Whitman (27 percent). These counties do not have local health jurisdictions providing family planning services.

[84] In addition, under the proposed rule, eliminating Planned Parenthood and other abortion providers from Title X will cause the following colleges and universities in Washington to lose their Title X providers: Washington State University, Western Washington University, Central Washington University, Eastern Washington University, Big Bend Community College, Columbia Basin College, and Yakima Valley Community College.

[85] *Vermont Health Care Coalition Title X Statement*, Vt. Ass'n of Hosps. and Health Sys. (June 15, 2018), https://vahhs.org/title-x-statement.html (endorsing, among other things, a statement from the American Nurses Association stating, "The Code of Ethics for Nurses outlines that the nurse's primary commitment is to the patient,

opposes" the proposed regulations and warns that those regulations "will significantly restrict access to necessary care for both women and men particularly in rural, hard to serve areas of Vermont."[86] Vermont is a small state, and the Vermont coalition represents a significant majority of all health care providers in Vermont. It is therefore unlikely that the number of Vermont medical professionals who would consent to work in a clinic governed by the proposed regulations would be sufficient to replace the current robust number of Title X-funded providers statewide.

9. *The proposed rule would impose tens of millions of dollars of costs on the treasuries in Washington, Massachusetts, Oregon, and Vermont.*

The costs imposed on our States, along with all other states, by the proposed rule will be well over $100 million. Because the cost or burdens of compliance with the proposed rule will be prohibitively high for many providers, the network of Title X providers will shrink in our States and around the country. Further, some Title X patients will lose all access to family planning services as a result of the proposed rule. As mentioned, in Oregon 41 percent of Title X patients were uninsured in 2017, and in Washington there are counties where upwards of 30 percent of Title X patients are uninsured.

Yet the Department fails to analyze either the significant public health impact or the fiscal impact to states. The Department fails to grapple with the fact that, unless it is expecting the states to step in to plug the fiscal hole created by the loss of Title X funding, unplanned pregnancies and births will occur, cervical cancers will not be diagnosed in early stages, and complications will occur due to untreated STIs, among other things, all resulting in significant increased health care costs for states that Title X is meant to address.

The Department provides no analysis explaining why these impacts are consistent with the fundamental mission of the Title X program. In fact, they are not. Analyses show that significant cost savings are achieved by funding family planning services. Nationally, an estimated $7.09 is saved for every dollar spent.[87] In short, a significant portion of the cost savings created by

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whether an individual, family, group, community, or population. This proposed rule interferes with that relationship and violates the basic ethics of the profession."); *see also* Mike Faher, *Vermont health care coalition protests Title X change*, VTDigger.com (June 12, 2018), https://vtdigger.org/2018/06/12/vermont-health-care-coalition-protests-title-x-change/ (calling the Vermont Health Care Coalition opposing the proposed regulations "an unlikely group of allies in Vermont").

[86] *Vermont Health Care Coalition Title X Statement*, Vt. Ass'n of Hosps. and Health Sys. (June 15, 2018), https://vahhs.org/title-x-statement.html

[87] Jennifer J. Frost, *Return on Investment: A Fuller Assessment of the Benefits and Cost Savings of the US Publicly Funded Family Planning Program*, Milbank Quarterly, Vol. 92, No. 4, p. 668 (2014) (*available at* https://www.guttmacher.org/sites/default/files/pdfs/pubs/journals/MQ-Frost_1468-0009.12080.pdf).

funding family planning services is jeopardized by the proposed rule and would fall on our States, among others.

D. Conclusion

The proposed rule will drive many family planning providers from the Title X program. As a result, thousands of patients will lose reasonable access to family planning services and other critical reproductive health services. The Title X providers that remain will be prevented from delivering the high-quality and complete medical care that they have always provided. This frustrates rather than achieves the purposes of Title X, and the courts will strike down the proposed rule, if implemented, accordingly. The proposed rule would limit health care services to vulnerable populations that Congress intended to help. It also would shift the costs of reproductive health care, including services for unintended pregnancies, breast and cervical cancer diagnoses, spread of STIs, and other serious health conditions to our states. For these and the other reasons stated in our comments, we urge the Department to withdraw the proposed rule.

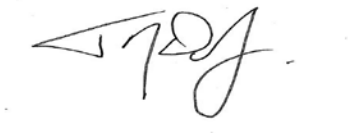
Thank you for considering our views.

Sincerely,

Bob Ferguson
Washington Attorney General

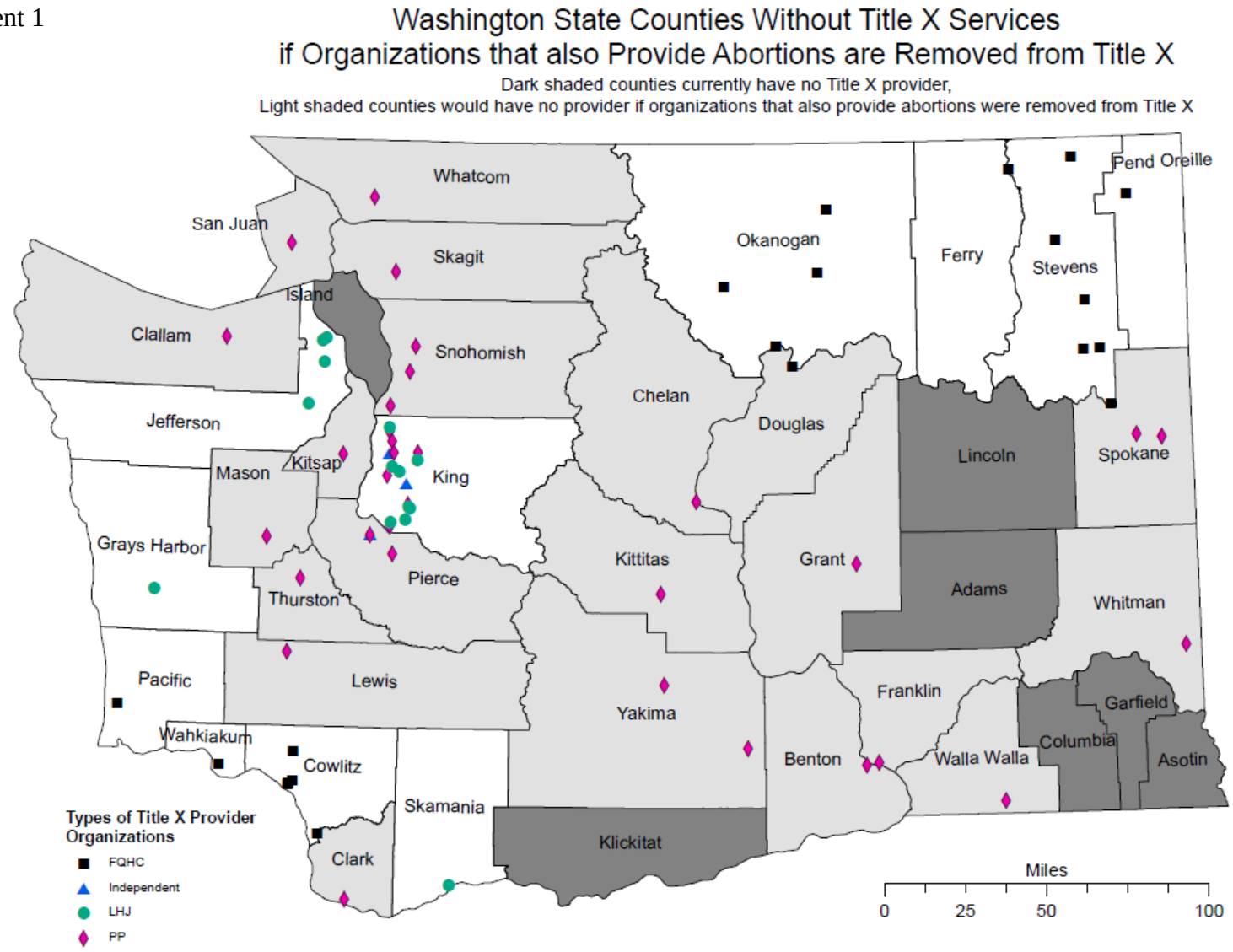
Maura Healey
Massachusetts Attorney General

Ellen Rosenblum
Oregon Attorney General



Thomas J. Donovan, Jr.
Vermont Attorney General

Attachment 1



From:	Sullivan, Eileen
To:	Wemple, Doug
Cc:	Clark, Charity
Subject:	RE: Title X comments from the public to date?
Date:	Wednesday, August 1, 2018 10:23:49 AM

Good to know! When I get a total from our national office, I will let you know. Thanks again!

Eileen

From: Wemple, Doug [mailto:Doug.Wemple@partner.vermont.gov]
Sent: Wednesday, August 1, 2018 10:11 AM
To: Sullivan, Eileen <Eileen.Sullivan@ppnne.org>
Cc: Clark, Charity <Charity.Clark@vermont.gov>
Subject: RE: Title X comments from the public to date?

Unfortunately, we can't quantify how many comments were submitted because that website isn't maintained by us - but I can share that the link was clicked 759 times from our website.

Doug Wemple
Executive Assistant
Vermont Attorney General's Office
109 State Street - Montpelier, VT
Office: (802)828-5515

From: Sullivan, Eileen [mailto:Eileen.Sullivan@ppnne.org]
Sent: Wednesday, August 01, 2018 10:04 AM
To: Wemple, Doug <Doug.Wemple@partner.vermont.gov>
Cc: Clark, Charity <Charity.Clark@vermont.gov>
Subject: RE: Title X comments from the public to date?

Thank you so much, Doug!

Eileen

From: Wemple, Doug [mailto:Doug.Wemple@partner.vermont.gov]
Sent: Wednesday, August 1, 2018 9:59 AM
To: Sullivan, Eileen <Eileen.Sullivan@ppnne.org>
Cc: Clark, Charity <Charity.Clark@vermont.gov>
Subject: RE: Title X comments from the public to date?

Hi Eileen,

Likewise! I will check with our IT department to see if we can quantify how many comments were submitted through our office. 1,400 – wow! Glad to see so many people spoke out on the proposed

rule changes.

I'll let you know once I hear back

Thanks!

Doug

Doug Wemple
Executive Assistant
Vermont Attorney General's Office
109 State Street - Montpelier, VT
Office: (802)828-5515

From: Sullivan, Eileen [mailto:Eileen.Sullivan@ppnne.org]
Sent: Wednesday, August 01, 2018 9:52 AM
To: Wemple, Doug <Doug.Wemple@partner.vermont.gov>
Cc: Clark, Charity <Charity.Clark@vermont.gov>
Subject: FW: Title X comments from the public to date?

Hi Doug,

I hope you're well!

The comment deadline for Title X has now passed and I'm reaching out to see if you think you'll have a sense of how many people submitted comments through your site? We'll be getting a total on Vermont comments from our national office, and right now it looks to be just shy of 1,400 through our site/social media pushes.

Can you let me know if you have any figures to share when you're able? I really appreciate it!

Eileen

Eileen Sullivan (She/Her/Hers)
Communications Director, Vermont
Planned Parenthood of Northern New England
784 Hercules Drive, Suite 110
Colchester, Vermont 05446
O: 802-448-9714 | C: 646-467-0674
www.ppnne.org | Eileen.Sullivan@ppnne.org

From: Sullivan, Eileen
Sent: Wednesday, July 25, 2018 12:16 PM

To: Wemple, Doug <Doug.Wemple@partner.vermont.gov>
Cc: Clark, Charity <Charity.Clark@vermont.gov>
Subject: Re: Title X comments from the public to date?

Hi Doug! 860 clicks is amazing! Thank you, thank you!!
Eileen

Sent from my iPhone

On Jul 25, 2018, at 11:55 AM, Wemple, Doug <Doug.Wemple@partner.vermont.gov> wrote:

> Hi Eileen,
>
> Per our IT department, 860 clicks have been made to the page on our website!
>
> I just looked on the comment page and almost 100,000 comments have been submitted.
>
> Thanks!
>
> Doug
>
> **Doug Wemple**
> Executive Assistant
> Vermont Attorney General's Office
> 109 State Street - Montpelier, VT
> Office: (802)828-5515
>
> ---
>
> **From:** Sullivan, Eileen [mailto:Eileen.Sullivan@ppnne.org]
> **Sent:** Wednesday, July 25, 2018 11:13 AM
> **To:** Clark, Charity <Charity.Clark@vermont.gov>; Wemple, Doug <Doug.Wemple@partner.vermont.gov>
> **Subject:** Title X comments from the public to date?
>
> Hello Charity and Doug!
>
> I hope you're both doing well! I'm checking in to see if you know how many people have visited the AG's site to submit their comments about Title X?
>
> This is NOT for publication, just for me to get a sense of how many people in Vermont have commented to date. On our end, it's just over 1,200 people.
>
> Many thanks!
>
> Eileen

Eileen Sullivan (She/Her/Hers)
Communications Director, Vermont
Planned Parenthood of Northern New England
784 Hercules Drive, Suite 110
Colchester, Vermont 05446
O: 802-448-9714 | C: 646-467-0674
www.ppnne.org | Eileen.Sullivan@ppnne.org

From: Clark, Charity [mailto:Charity.Clark@vermont.gov]
Sent: Wednesday, July 18, 2018 10:03 AM
To: Wemple, Doug
Cc: Sullivan, Eileen
Subject: Re: Press release quote

Great. Thanks, Doug!

Sent from my iPhone

On Jul 18, 2018, at 9:59 AM, Wemple, Doug <Doug.Wemple@partner.vermont.gov> wrote:

> Thank you! I will add now
>
> **Doug Wemple**
> Executive Assistant
> Vermont Attorney General's Office
> 109 State Street - Montpelier, VT
> Office: (802)828-5515
>
> ---
>
> **From:** Sullivan, Eileen [mailto:Eileen.Sullivan@ppnne.org]
> **Sent:** Wednesday, July 18, 2018 9:59 AM
> **To:** Clark, Charity <Charity.Clark@vermont.gov>
> **Cc:** Wemple, Doug <Doug.Wemple@partner.vermont.gov>
> **Subject:** RE: Press release quote
>
> We cover all bases by saying, "Planned Parenthood of Northern New England is the only Title X provider in Vermont."
>
> Thank you for the media update, and we'll see you soon!
>
> Eileen
>
> **Eileen Sullivan (She/Her/Hers)**
> Communications Director, Vermont

Planned Parenthood of Northern New England
784 Hercules Drive, Suite 110
Colchester, Vermont 05446
O: 802-448-9714 | C: 646-467-0674
www.ppnne.org | Eileen.Sullivan@ppnne.org

From: Clark, Charity [mailto:Charity.Clark@vermont.gov]
Sent: Wednesday, July 18, 2018 9:48 AM
To: Sullivan, Eileen
Cc: Wemple, Doug
Subject: Re: Press release quote

Doug, after the quote, please add the sentence: Planned Parenthood is the only recipient of Title X funds in Vermont. (Eileen, is that an appropriate characterization, or is the "recipient" technically the Vermont Department of Health, and we should use a different term to describe PP, like "beneficiary"? I prefer "recipient" so I hope that's good.)

Eileen, we have made follow-up calls to all TV stations and reporters who have written in this topic in the past. We know some are coming.

See you soon!
Charity

Sent from my iPhone

On Jul 17, 2018, at 4:52 PM, Sullivan, Eileen <Eileen.Sullivan@ppnne.org> wrote:

> Will do! Many thanks to both of you!
>
> Charity – I look forward to meeting you tomorrow! My cell is 646-467-0674.
>
> Eileen
>
> **Eileen Sullivan (She/Her/Hers)**
> Communications Director, Vermont
> Planned Parenthood of Northern New England
> 784 Hercules Drive, Suite 110
> Colchester, Vermont 05446
> O: 802-448-9714 | C: 646-467-0674
> www.ppnne.org | Eileen.Sullivan@ppnne.org

From: Clark, Charity [mailto:Charity.Clark@vermont.gov]
Sent: Tuesday, July 17, 2018 4:16 PM
To: Sullivan, Eileen
Cc: Wemple, Doug
Subject: Press release quote

Hi, Eileen,

Once you have the approved quote for the press release, please email it to my assistant, Doug Wemple, and me. Doug will be making the final edits to our press release and can include the quote once it's ready.

See you tomorrow!
Charity
P.S. My cell phone if you need it tomorrow: 802-917-1993.

Charity R. Clark
Chief of Staff
Office of the Attorney General
109 State St.
Montpelier, Vermont 05609
802-828-3737

From:	Spottswood, Eleanor
To:	Bailey, Jay; Clark, Charity
Subject:	RE: This is what the page looks like
Date:	Thursday, August 2, 2018 10:13:21 AM
Attachments:	Website edits post comment ELPS.docx image001.png

Jay and Charity,

Here's a proposed edit for the website. Charity, please review/approve?

Thanks,

Ella

From: Bailey, Jay
Sent: Thursday, August 2, 2018 9:49 AM
To: Spottswood, Eleanor <Eleanor.Spottswood@vermont.gov>
Subject: RE: This is what the page looks like

Ella,

There's html code on this page so I'm going to send you the text in blocks:

The United States Department of Health and Human Services is trying to defund healthcare organizations, such as Planned Parenthood, that help people who have low incomes. It is writing new rules for distributing money from Title X, the only nationwide program for affordable birth control and reproductive healthcare.

You can help!

Join us in opposing the HHS efforts to change Title X regulations that would adversely impact equal access to reproductive healthcare in Vermont and across America.

Comment now on their proposed new rules: PROTECT ACCESS TO HEALTHCARE. COMMENT NOW!

Tell HHS:

- You want the federal government to keep funding evidence-based healthcare
- You want the same Title X rules that have worked well for Vermonters for the last 30 years
- The new rules will hurt Vermonters' access to healthcare
- If you are comfortable, feel free to share your story about the impact that access to reproductive healthcare has had on your life

Or, if you have a different message for HHS and the Trump administration about this rule, you can say that, too!

Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines. No deletions, modifications, or redactions will be made to the comments received. Comments may be submitted anonymously.

Title X clinics never use Title X funding for any abortion services.

Find out more….

What is Title X and how does it provide access to reproductive healthcare services?

-
-
-

How would these new rules limit access to healthcare?

-
-
-
-
-

Who would these new rules affect most?

-
-
-
-
-
-
-
-

The deadline for telling HHS what you think is July 31.

Thank you for speaking up for equal access to healthcare!

Thanks

Jay

IT Manager
Vermont Attorney General
109 State Street, Montpelier, VT 05609-1001
P (802) 828-2718

From: Spottswood, Eleanor
Sent: Thursday, August 02, 2018 9:31 AM
To: Bailey, Jay <Jay.Bailey@vermont.gov>
Subject: RE: This is what the page looks like

Thanks, Jay. I am working off site today so I can't come down. Can you give me a cut and paste of the text, so I can mark it up in track changes and send it back to you?

Thanks again!

Ella

From: Bailey, Jay
Sent: Thursday, August 2, 2018 8:06 AM
To: Spottswood, Eleanor <Eleanor.Spottswood@vermont.gov>
Subject: This is what the page looks like

Ella,

See below, this is what it looks like; charity suggested something like "Thank you to the hundreds of Vermonters who visited this webpage to learn more and make your voiced heard." If you want to come down we can work on this and review it while it's "offline" and you can see how it would look before we turn it back on.

Thanks

Jay

IT Manager
Vermont Attorney General
109 State Street, Montpelier, VT 05609-1001
P (802) 828-2718

The United States Department of Health and Human Services is trying to defund healthcare organizations, such as Planned Parenthood, that help people who have low incomes. It is writing new rules for distributing money from Title X, the only nationwide program for affordable birth control and reproductive healthcare.

Stand with us, act now!

You can help!

Join us in opposing the HHS efforts to change Title X regulations that would adversely impact equal access to reproductive healthcare in Vermont and across America.

Comment now on their proposed new rules: **PROTECT ACCESS TO HEALTHCARE. COMMENT NOW!**

Tell HHS:

- You want the federal government to keep funding evidence-based healthcare
- You want the same Title X rules that have worked well for Vermonters for the last 30 years
- The new rules will hurt Vermonters' access to healthcare
- If you are comfortable, feel free to share your story about the impact that access to reproductive healthcare has had on your life

Or, if you have a different message for HHS and the Trump administration about this rule, you can say that, too!

Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines. No deletions, modifications, or redactions will be made to the comments received. Comments may be submitted anonymously.

Title X clinics never use Title X funding for any abortion services.

Find out more....

+ What is Title X and how does it provide access to reproductive healthcare services?

+ How would these new rules limit access to healthcare?

+ Who would these new rules affect most?

The deadline for telling HHS what you think is July 31.

Thank you for speaking up for equal access to healthcare!

~~The United States Department of Health and Human Services is trying to defund healthcare organizations, such as Planned Parenthood, that help people who have low incomes. It is writing new rules for distributing money from Title X, the only nationwide program for affordable birth control and reproductive healthcare.~~

Thank you to the hundreds of Vermonters who visited this webpage to learn more and make your voices heard. The comment period has now closed, but you can view and search all the comments made here.

Now we have to wait and see how HHS will respond to our comments.

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Commented [SE1]: Link to: https://www.regulations.gov/docketBrowser?rpp=25&po=0&dct=PS&D=HHS-OS-2018-0008&refD=HHS-OS-2018-0008-0001

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~~You can help!~~

~~Join us in opposing the HHS efforts to change Title X regulations that would adversely impact equal access to reproductive healthcare in Vermont and across America.~~

~~Comment now on their proposed new rules:~~ ~~PROTECT ACCESS TO HEALTHCARE. COMMENT NOW!~~

~~Tell~~ Vermonters told HHS:

- ~~You~~We ~~-~~ want the federal government to keep funding evidence-based healthcare
- ~~You~~ We want the same Title X rules that have worked well for Vermonters for the last 30 years
- The new rules will hurt Vermonters' access to healthcare
- And other messages, too!
- ~~If you are comfortable, feel free to share your story about the impact that access to reproductive healthcare has had on your life~~

~~Or, if you have a different message for HHS and the Trump administration about this rule, you can say that, too!~~

~~*Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines. No deletions, modifications, or redactions will be made to the comments received. Comments may be submitted anonymously.*~~

What was it all about?

The United States Department of Health and Human Services is trying to defund healthcare organizations, such as Planned Parenthood, that help people who have low incomes. It is writing new rules for distributing money from Title X, the only nationwide program for affordable birth control and reproductive healthcare.

Title X clinics never use Title X funding for any abortion services.

Find out more….

What is Title X and how does it provide access to reproductive healthcare services?

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How would these new rules limit access to healthcare?

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Who would these new rules affect most?

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~~**The deadline for telling HHS what you think is July 31.**~~

Thank you for speaking up for equal access to healthcare!

From: Clark, Charity
To: Spottswood, Eleanor
Cc: Bailey, Jay
Subject: Re: This is what the page looks like
Date: Thursday, August 2, 2018 10:27:35 AM
Attachments: image001.png

These changes look great. Just what I had in mind. Thanks, Ella! Jay, let's make these changes and get the website back up. Thank you!

Charity

Sent from my iPhone

On Aug 2, 2018, at 10:13 AM, Spottswood, Eleanor <Eleanor.Spottswood@vermont.gov> wrote:

> Jay and Charity,
>
> Here's a proposed edit for the website. Charity, please review/approve?
>
> Thanks,
>
> Ella
>
> ---
>
> **From:** Bailey, Jay
> **Sent:** Thursday, August 2, 2018 9:49 AM
> **To:** Spottswood, Eleanor <Eleanor.Spottswood@vermont.gov>
> **Subject:** RE: This is what the page looks like
>
> Ella,
>
> There's html code on this page so I'm going to send you the text in blocks:
>
> The United States Department of Health and Human Services is trying to defund healthcare organizations, such as Planned Parenthood, that help people who have low incomes. It is writing new rules for distributing money from Title X, the only nationwide program for affordable birth control and reproductive healthcare.
>
> ## You can help!
>
> Join us in opposing the HHS efforts to change Title X regulations that would adversely impact equal access to reproductive healthcare in Vermont and across America.

Comment now on their proposed new rules: **PROTECT ACCESS TO HEALTHCARE. COMMENT NOW!**

Tell HHS:

<!--[if !supportLists]-->o <!--[endif]-->You want the federal government to keep funding evidence-based healthcare

<!--[if !supportLists]-->o <!--[endif]-->You want the same Title X rules that have worked well for Vermonters for the last 30 years

<!--[if !supportLists]-->o <!--[endif]-->The new rules will hurt Vermonters' access to healthcare

<!--[if !supportLists]-->o <!--[endif]-->If you are comfortable, feel free to share your story about the impact that access to reproductive healthcare has had on your life

Or, if you have a different message for HHS and the Trump administration about this rule, you can say that, too!

Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines. No deletions, modifications, or redactions will be made to the comments received. Comments may be submitted anonymously.

Title X clinics never use Title X funding for any abortion services.

Find out more….

What is Title X and how does it provide access to reproductive healthcare services?

<!--[if !supportLists]-->• <!--[endif]-->

<!--[if !supportLists]-->• <!--[endif]-->

<!--[if !supportLists]-->• <!--[endif]-->

How would these new rules limit access to healthcare?

<!--[if !supportLists]-->• <!--[endif]-->

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Who would these new rules affect most?

<!--[if !supportLists]-->• <!--[endif]-->

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<!--[if !supportLists]-->• <!--[endif]-->
<!--[if !supportLists]-->• <!--[endif]-->

The deadline for telling HHS what you think is July 31.

Thank you for speaking up for equal access to healthcare!

Thanks

Jay

IT Manager
Vermont Attorney General
109 State Street, Montpelier, VT 05609-1001
P (802) 828-2718

From: Spottswood, Eleanor
Sent: Thursday, August 02, 2018 9:31 AM
To: Bailey, Jay <Jay.Bailey@vermont.gov>
Subject: RE: This is what the page looks like

Thanks, Jay. I am working off site today so I can't come down. Can you give me a cut and paste of the text, so I can mark it up in track changes and send it back to you?

Thanks again!

Ella

From: Bailey, Jay
Sent: Thursday, August 2, 2018 8:06 AM
To: Spottswood, Eleanor <Eleanor.Spottswood@vermont.gov>
Subject: This is what the page looks like

Ella,

See below, this is what it looks like; charity suggested something like "Thank you to the hundreds of Vermonters who visited this webpage to learn more and make your voiced heard." If you want to come down we can work on this and review it while it's "offline" and you can see how it would look before we turn it back on.

Thanks

Jay

IT Manager
Vermont Attorney General
109 State Street, Montpelier, VT 05609-1001
P (802) 828-2718

<Website edits post comment ELPS.docx>

From:	Tania Mercado
To:	Jaclyn.Severance@ct.gov; Marrisa.Geller@dc.gov; Robert.Marus@dc.gov; David.Mayorga@dc.gov; andrew.phifer@dc.gov; Carl.Kanefsky@state.de.us; dana.o.viola@hawaii.gov; James.W.Walther@hawaii.gov; pthompson@atg.state.il.us; eboyce@atg.state.il.us; mpossley@atg.state.il.us; eric.tabor@ag.iowa.gov; lynn.hicks@ag.iowa.gov; cathleen.white@ag.iowa.gov; melissa.oneal@maine.gov; rcoombs@oag.state.md.us; awarmack@oag.state.md.us; fschantz@oag.state.md.us; paul.bologna@state.ma.us; chloe.gotsis@state.ma.us; Jillian.Fennimore@state.ma.us; Emalie.Gainey@state.ma.us; Margaret.Quackenbush@state.ma.us; benjamin.wogsland@ag.state.mn.us; Leland.Moore@njoag.gov; Sharon.Lauchaire@njoag.gov; dcarl@nmag.gov; Amy.Spitalnick@ag.ny.gov; kristina.edmunson@doj.state.or.us; akempe@riag.ri.gov; CGomer@oag.state.va.us; mkelly@oag.state.va.us; Diamond, Joshua; Clark, Charity; BrionnaF@ATG.WA.GOV; IanC@atg.wa.gov; BethC@atg.wa.gov; AndreaP2@atg.wa.gov; DanJ1@atg.wa.gov
Cc:	Bethany Lesser; Joanne Adams
Subject:	RE: CA TPS amicus brief embargo time
Date:	Thursday, August 30, 2018 3:15:26 PM
Attachments:	Amicus Brief - Ramos TPS (ND Cal.) FILED 08.30.2018.pdf

Please see the brief attached.

Final list of states: California, the District of Columbia, Massachusetts, Connecticut, Delaware, Hawai'i, Illinois, Iowa, Maine, Maryland, Minnesota, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington.

From: Tania Mercado
Sent: Thursday, August 30, 2018 11:03 AM
To: 'Jaclyn.Severance@ct.gov' <Jaclyn.Severance@ct.gov>; 'Marrisa.Geller@dc.gov' <Marrisa.Geller@dc.gov>; 'Robert.Marus@dc.gov' <Robert.Marus@dc.gov>; 'David.Mayorga@dc.gov' <David.Mayorga@dc.gov>; 'andrew.phifer@dc.gov' <andrew.phifer@dc.gov>; 'Carl.Kanefsky@state.de.us' <Carl.Kanefsky@state.de.us>; 'dana.o.viola@hawaii.gov' <dana.o.viola@hawaii.gov>; 'James.W.Walther@hawaii.gov' <James.W.Walther@hawaii.gov>; 'pthompson@atg.state.il.us' <pthompson@atg.state.il.us>; 'eboyce@atg.state.il.us' <eboyce@atg.state.il.us>; 'mpossley@atg.state.il.us' <mpossley@atg.state.il.us>; 'eric.tabor@ag.iowa.gov' <eric.tabor@ag.iowa.gov>; 'lynn.hicks@ag.iowa.gov' <lynn.hicks@ag.iowa.gov>; 'cathleen.white@ag.iowa.gov' <cathleen.white@ag.iowa.gov>; 'melissa.oneal@maine.gov' <melissa.oneal@maine.gov>; 'rcoombs@oag.state.md.us' <rcoombs@oag.state.md.us>; 'awarmack@oag.state.md.us' <awarmack@oag.state.md.us>; 'fschantz@oag.state.md.us' <fschantz@oag.state.md.us>; 'paul.bologna@state.ma.us' <paul.bologna@state.ma.us>; 'chloe.gotsis@state.ma.us' <chloe.gotsis@state.ma.us>; 'Jillian.Fennimore@state.ma.us' <Jillian.Fennimore@state.ma.us>; 'Emalie.Gainey@state.ma.us' <Emalie.Gainey@state.ma.us>; 'Margaret.Quackenbush@state.ma.us' <Margaret.Quackenbush@state.ma.us>; 'benjamin.wogsland@ag.state.mn.us' <benjamin.wogsland@ag.state.mn.us>; 'Leland.Moore@njoag.gov' <Leland.Moore@njoag.gov>; 'Sharon.Lauchaire@njoag.gov' <Sharon.Lauchaire@njoag.gov>; 'dcarl@nmag.gov' <dcarl@nmag.gov>; 'Amy.Spitalnick@ag.ny.gov' <Amy.Spitalnick@ag.ny.gov>; 'kristina.edmunson@doj.state.or.us' <kristina.edmunson@doj.state.or.us>; 'akempe@riag.ri.gov' <akempe@riag.ri.gov>; 'CGomer@oag.state.va.us' <CGomer@oag.state.va.us>; 'mkelly@oag.state.va.us' <mkelly@oag.state.va.us>; 'Joshua.Diamond@vermont.gov' <Joshua.Diamond@vermont.gov>; 'Charity.Clark@vermont.gov' <Charity.Clark@vermont.gov>; 'BrionnaF@ATG.WA.GOV' <BrionnaF@ATG.WA.GOV>; 'IanC@atg.wa.gov' <IanC@atg.wa.gov>; 'BethC@atg.wa.gov' <BethC@atg.wa.gov>; 'AndreaP2@atg.wa.gov' <AndreaP2@atg.wa.gov>; 'DanJ1@atg.wa.gov' <DanJ1@atg.wa.gov>

Cc: Bethany Lesser <Bethany.Lesser@doj.ca.gov>; Joanne Adams <Joanne.Adams@doj.ca.gov>
Subject: RE: CA TPS amicus brief embargo time

All,

We are experiencing unexpected technical difficulties with the filing and will need some extra time. Can we please hold another hour on this? The updated embargo time is 12PM (PT) /3PM (ET).

In the meantime, please see the template press release below.

Thank you very much for understanding.

-Tania

NAME Joins Amicus Brief Defending Temporary Protected Status Holders

SACRAMENTO – NAME today joined an 18-state coalition in filing an amicus brief in *Ramos v. Nielsen*, supporting plaintiffs' efforts to prevent the potential deportation of hundreds of thousands of people who hold Temporary Protected Status (TPS). In this case, plaintiffs seek a preliminary injunction blocking a new rule issued by the United States Department of Homeland Security (DHS) for purposes of determining whether to extend a country's TPS designation. The plaintiffs allege that the resulting termination of TPS status for natives of El Salvador, Haiti, Nicaragua, and Sudan violate the due process rights of TPS holders and their children, and are discriminatory actions driven by President Trump's racist views about TPS holders from Latin America and Africa.

STATEMENT

TPS protects individuals who are in the United States and whose home countries face armed conflict, natural disasters, or other crises that make the return of TPS holders to their home countries unsafe. Many TPS holders have lived here for a decade or more and have started families and businesses, bought homes, and significantly contributed to their communities.

Under the Trump Administration, DHS changed its long-standing practice of looking at the entirety of the conditions in a country when determining whether it is safe for TPS holders to return. Without any substantial explanation, DHS now argues that it can only look narrowly at the original condition in the home country that prompted its TPS designation when deciding whether to extend that designation. Such a practice would ignore other conditions that pose serious threats to the safety of TPS holders. The plaintiffs in this case allege that DHS enacted its new rule without following legal requirements.

The amicus brief argues that DHS's new rule is contrary to the public interest and that it will harm the people of California in a number of ways, including its impact on:

- **Family members**, including hundreds of thousands of U.S. citizen children, who will suffer trauma and hardship from unnecessary and forced separation;
- **The economy and the workforce**, which are enriched by the employment,

entrepreneurship and contributions of TPS holders;

- **Public revenues**, which are enhanced by the taxes contributed by TPS holders, including an estimated $100 million alone in property taxes collected annually from Salvadoran homeowners with TPS;
- **Healthcare delivery**, which will suffer from disruptions in care provided by TPS holders who work at child care facilities, nursing homes, and hospitals;
- **Public health**, which will be hindered by the loss of employer-sponsored insurance for TPS holders and their families; and
- **Public safety**, which will be damaged by making TPS holders less likely to report crime.

NAME joined today's brief along with Attorneys General California, the District of Columbia Massachusetts, Connecticut, Delaware, Hawai'i, Illinois, Iowa, Maine, Maryland, Minnesota, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington.

###

From: Tania Mercado
Sent: Wednesday, August 29, 2018 11:34 AM
To: 'Jaclyn.Severance@ct.gov' <Jaclyn.Severance@ct.gov>; 'Marrisa.Geller@dc.gov' <Marrisa.Geller@dc.gov>; 'Robert.Marus@dc.gov' <Robert.Marus@dc.gov>; 'David.Mayorga@dc.gov' <David.Mayorga@dc.gov>; 'andrew.phifer@dc.gov' <andrew.phifer@dc.gov>; 'Carl.Kanefsky@state.de.us' <Carl.Kanefsky@state.de.us>; 'dana.o.viola@hawaii.gov' <dana.o.viola@hawaii.gov>; 'James.W.Walther@hawaii.gov' <James.W.Walther@hawaii.gov>; 'pthompson@atg.state.il.us' <pthompson@atg.state.il.us>; 'eboyce@atg.state.il.us' <eboyce@atg.state.il.us>; 'mpossley@atg.state.il.us' <mpossley@atg.state.il.us>; 'eric.tabor@ag.iowa.gov' <eric.tabor@ag.iowa.gov>; 'lynn.hicks@ag.iowa.gov' <lynn.hicks@ag.iowa.gov>; 'cathleen.white@ag.iowa.gov' <cathleen.white@ag.iowa.gov>; 'melissa.oneal@maine.gov' <melissa.oneal@maine.gov>; 'rcoombs@oag.state.md.us' <rcoombs@oag.state.md.us>; 'awarmack@oag.state.md.us' <awarmack@oag.state.md.us>; 'fschantz@oag.state.md.us' <fschantz@oag.state.md.us>; 'paul.bologna@state.ma.us' <paul.bologna@state.ma.us>; 'chloe.gotsis@state.ma.us' <chloe.gotsis@state.ma.us>; 'Jillian.Fennimore@state.ma.us' <Jillian.Fennimore@state.ma.us>; 'Emalie.Gainey@state.ma.us' <Emalie.Gainey@state.ma.us>; 'Margaret.Quackenbush@state.ma.us' <Margaret.Quackenbush@state.ma.us>; 'benjamin.wogsland@ag.state.mn.us' <benjamin.wogsland@ag.state.mn.us>; 'Leland.Moore@njoag.gov' <Leland.Moore@njoag.gov>; 'Sharon.Lauchaire@njoag.gov' <Sharon.Lauchaire@njoag.gov>; 'dcarl@nmag.gov' <dcarl@nmag.gov>; 'Amy.Spitalnick@ag.ny.gov' <Amy.Spitalnick@ag.ny.gov>; 'kristina.edmunson@doj.state.or.us' <kristina.edmunson@doj.state.or.us>; 'akempe@riag.ri.gov' <akempe@riag.ri.gov>; 'CGomer@oag.state.va.us' <CGomer@oag.state.va.us>; 'mkelly@oag.state.va.us' <mkelly@oag.state.va.us>; 'Joshua.Diamond@vermont.gov' <Joshua.Diamond@vermont.gov>; 'Charity.Clark@vermont.gov' <Charity.Clark@vermont.gov>; 'BrionnaF@ATG.WA.GOV' <BrionnaF@ATG.WA.GOV>; 'IanC@atg.wa.gov' <IanC@atg.wa.gov>;

'BethC@atg.wa.gov' <BethC@atg.wa.gov>; 'AndreaP2@atg.wa.gov' <AndreaP2@atg.wa.gov>; 'DanJ1@atg.wa.gov' <DanJ1@atg.wa.gov>
Cc: Bethany Lesser <Bethany.Lesser@doj.ca.gov>; Joanne Adams <Joanne.Adams@doj.ca.gov>
Subject: CA TPS amicus brief embargo time

Hello all,

I hope this email finds you well. I am writing because your attorney general has either agreed to join or is considering joining our amicus brief in the case *Ramos v. Nielsen*, defending Temporary Protected Status holders.

The embargo time for this press release is **tomorrow, Thursday, August 30, at 11:00 AM (PT) / 2:00 PM (ET).** We will send along a template press release and final list of states shortly.

Please feel free to reach me by phone or email if you have any questions.

Thank you,
Tania

Tania Mercado
Press Secretary
California Department of Justice
Attorney General Xavier Becerra
300 South Spring Street
Los Angeles, CA 90013
(213) 269-6412
Facebook.com/XavierBecerra
Twitter.com/AGBecerra
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XAVIER BECERRA
Attorney General of California
MICHAEL NEWMAN
Senior Assistant Attorney General
JAMES F. ZAHRADKA II (SBN 196822)
Deputy Attorney General
1515 Clay Street, 20th Floor
Oakland, CA 94612-0550
Telephone: (510) 879-1247
Fax: (510) 622-2270
E-mail: James.Zahradka@doj.ca.gov
Attorneys for the State of California

[Additional Counsel Listed on Signature Page]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CRISTA RAMOS, individually and on behalf of others similarly situated; CRISTINA MORALES; BENJAMIN ZEPEDA, individually and on behalf of others similarly situated; ORLANDO ZEPEDA; JUAN EDUARDO AYALA FLORES, individually and on behalf of others similarly situated; MARIA JOSE AYALA FLORES; ELSY YOLANDA FLORES DE AYALA; HNAIDA CENEMAT, individually and on behalf of others similarly situated; WILNA DESTIN; RILYA SALARY, individually and on behalf of others similarly situated; SHERIKA BLANC; IMARA AMPIE; MAZIN AHMED; and HIWAIDA ELARABI, Plaintiffs, v. KIRSTJEN NIELSEN, in her official capacity as Secretary of Homeland Security; ELAINE C. DUKE, in her official capacity as Deputy Secretary of Homeland Security; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; and UNITED STATES OF AMERICA, Defendants.	Case No. 3:18-cv-01554-EMC **BRIEF OF AMICI STATES CALIFORNIA, DISTRICT OF COLUMBIA, MASSACHUSETTS, CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, IOWA, MAINE, MARYLAND, MINNESOTA, NEW JERSEY, NEW MEXICO, NEW YORK, OREGON, RHODE ISLAND, VERMONT, AND WASHINGTON IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES

OTHER AUTHORITIES

I. INTRODUCTION AND INTEREST OF AMICI STATES

The Amici States[1] are home to hundreds of thousands of people from El Salvador, Haiti, Nicaragua, and Sudan who hold Temporary Protected Status ("TPS")—a legal status provided to foreign nationals who are present in the United States when their countries of origin become unsafe and cannot handle their return. TPS holders are nurses, roofers, pastors, chefs, bus drivers, teachers, landscapers, and child care providers. They are homeowners, business owners, union members, class presidents, and civic leaders. They are our neighbors, co-workers, family members, and friends.

The Department of Homeland Security's ("DHS") termination of TPS for El Salvador, Haiti, Nicaragua, and Sudan would strip these community members of legal authorization to work and could result in their deportation to countries that are unsafe and unprepared to receive them. Many TPS holders would presumably be deported or otherwise have no choice but to leave; others would go into the shadows; all would lose the right to remain legally in the United States and support themselves and their families under the terms of TPS. The result would be harm to the welfare of TPS holders and their families, shuttered businesses, labor shortages, empty church pews, and greater strain on public and private social services.

Already, TPS terminations are hurting our economy and civil society, as the prospect of widespread deportation has left whole communities uncertain, confused, and afraid. But these terminations will inflict even greater damage in the months ahead if they are not enjoined, including considerable harm to a range of Amici States' interests. The public interest, as seen through the lens of these harms to Amici States discussed below, weighs strongly in favor of the preliminary injunction sought by plaintiffs; accordingly, Amici States have a profound interest in this matter.

[1] The States are California, the District of Columbia, Massachusetts, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington. The District of Columbia is included as an "Amici State" for the purposes of this brief.

II. THE PUBLIC INTEREST FAVORS A PRELIMINARY INJUNCTION BECAUSE DHS'S POLICY WILL INFLICT SERIOUS AND IRREPARABLE HARM ON INDIVIDUALS, FAMILIES, COMMUNITIES, AND THE AMICI STATES.

The public interest strongly favors plaintiffs as evidenced, in part, by the significant harm that Amici States will suffer without the preliminary relief that plaintiffs seek.[2] DHS's decisions are already inflicting broad and systemic harm on the public. The overwhelming majority of TPS holders have lived here for many years—in some instances, decades. For example, on average, Salvadoran recipients have lived in the United States for 21 years and Haitian recipients for 13 years.[3] These individuals have built lives in the United States. They have started families, founded businesses, bought homes, joined churches, received degrees, and advanced in their careers. They contribute to our economy and civic life in countless ways, both quantifiable and intangible. Granting the injunction that plaintiffs seek could prevent needless harm not only to TPS holders, but to those who rely on them for care, friendship, family and community cohesion, and economic vitality.

On the other side of the ledger, the federal government can assert little to no legally cognizable harm from entry of the injunction. As the Ninth Circuit has held, "the government[] . . . cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required to avoid constitutional concerns." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (citing *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983)).[4] The only conceivable harm to

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[2] In cases like this one, which affects many non-parties (including Amici States), courts consider the hardship to third parties as part of the public interest analysis even when the government is a party. *See Golden Gate Rest. Ass'n v. City & Cty. of S.F.*, 512 F.3d 1112, 1126–27 (9th Cir. 2008); *see also Ms. L. v. U.S. Immigration & Customs Enf't*, 310 F. Supp. 3d 1133, 1148 (S.D. Cal. 2018) (considering public interest in case involving separation of minor immigrant children from their parents) (citing *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017)).

[3] Nicole Prchal Svajlenka et al., *TPS Members Are Integral Members of the U.S. Economy and Society*, Ctr. Am. Progress (Oct. 20, 2017), https://tinyurl.com/TPSCAP. TPS holders from El Salvador and Haiti represent 75 percent of the total TPS population.

[4] *See also NAACP v. Trump*, 2018 U.S. Dist. LEXIS 139663, at *15 (D.D.C. Aug. 17, 2018) (finding lack of injury to federal government from order "simply correct[ing] the improper exercise of [DHS] authority" in case relating to rescission of Deferred Action for Childhood Arrivals ["DACA"]).

the federal government here would be some period of delay in effectuating the TPS terminations if its actions are ultimately found to have been legal, a "harm" of vanishing significance when juxtaposed with the harms that will befall plaintiffs, Amici States, and others if TPS is terminated for the countries at issue. TPS recipients have been vetted extensively and, in many instances, repeatedly,[5] and their individual status is subject to withdrawal if they lose eligibility by, for example, being convicted of a felony.[6] Clearly, this group cannot be said to present a public safety or national security threat such that immediate termination of their status is required even if defendants' actions were legal.[7] Thus, as discussed by plaintiffs, the balance of equities tips in favor of an injunction here. Pls.' Mot. for Prelim. Inj. 31–33.

Courts have repeatedly taken the kinds of public harms asserted by Amici States here into account when assessing whether issuing a preliminary injunction is appropriate. These have included **harms to family members**, *Hernandez*, 872 F.3d at 996 (citing "indirect hardship to [plaintiffs'] friends and family members," including harm to children who "had to receive counseling because of the trauma of their government-compelled separation from their father") (citing *Golden Gate Rest. Ass'n*, 512 F.3d at 1126), *Doe v. Trump*, 288 F. Supp. 3d 1045, 1084 (W.D. Wash. 2017) (citing "public interest in uniting families") (citation omitted);[8] **economic**

[5] Amer. Immig. Council, *Fact Sheet: Temporary Protected Status in the United States* (Oct. 23, 2017), https://tinyurl.com/AIC-TPS (noting that TPS holders are subjected to background checks every time their TPS is renewed).

[6] 8 U.S.C. §§ 1254a(c)(2)(B)(i), 1254a(c)(3)(A).

[7] *See Vidal v. Nielsen*, 279 F. Supp. 3d 401, 436 (E.D.N.Y. 2018) (entering injunction against rescission of DACA, holding that DHS's interest in ending program was "not so compelling" because, *inter alia*, former DACA recipients would not be enforcement priorities and DHS could revoke specific recipients' deferred action and work authorization if needed).

[8] *See also Hawaii v. Trump*, 878 F.3d 662, 699 (9th Cir. 2017), *rev'd and remanded on other grounds*, 138 S. Ct. 2392 (2018) (holding that harm caused to third parties by "prolonged separation from family members" due to immigration decisions is cognizable) (citation omitted); *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (citing "separated families" due to Muslim travel ban); *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 612 (4th Cir. 2017), *vacated and remanded on other grounds* sub nom. *Trump v. Int'l Refugee Assistance*, 138 S. Ct. 353 (2017) ("the public has an interest . . . in avoiding separation of families") (citation omitted); *Ms. L.*, 310 F. Supp. 3d at 1148 (citing "relationship between parent and child" in family separation context).

and employment-based harms, *All. for the Wild Rockies v. U.S. Forest Serv.*, 2016 U.S. Dist. LEXIS 78984, at *16 (D. Idaho June 14, 2016) (denying injunction against project on National Forest land, citing "employment and economic benefits to the surrounding communities"), *Colo. River Indian Tribes v. DOI*, 2015 U.S. Dist. LEXIS 182548, at *107 (C.D. Cal. June 11, 2015) (citing job creation in analysis of public interest factor); *Earth Island Inst. v. Quinn*, 2014 U.S. Dist. LEXIS 105647, at *22 (E.D. Cal. July 31, 2014) (citing potential job losses in analysis of injunction against timber harvesting project);[9] **increased public health care expenses**, *Golden Gate Rest. Ass'n*, 512 F.3d at 1126 (citing municipality's "overall health care expenses"); **public health harms**, *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1139 (9th Cir. 2009) (citing potential impact on "health of state residents") (quotation marks omitted), *Planned Parenthood of Greater Wash. & N. Idaho v. U.S. Dep't of Health and Hum. Servs.*, 2018 U.S. Dist. LEXIS 69213, at *43 (E.D. Wash. Apr. 24, 2018) (finding that public interest served by issuing injunction to prevent termination of federal pregnancy prevention program), *Ross v. Inslee*, 2014 U.S. Dist. LEXIS 151364, at *23 (E.D. Wash. Oct. 24, 2014) (citing public interest "in assuring that people with mental health issues receive adequate treatment");[10] **public safety harms**, *Spiegel v. City of Houston*, 636 F.2d 997, 1002 (5th Cir. 1981) (finding injunction's impact on overbroad range of law enforcement practices contrary to public interest), *Earth Island Inst. v. Elliott*, 290 F. Supp. 3d 1102, 1125 (E.D. Cal. 2017) (examining public safety implications of proposed injunction on Forest Service tree removal project);[11] and **impacts to public services**, *Morris v. N. Haw. Cmty. Hosp.*, 37 F. Supp. 2d 1181, 1188–89 (D. Haw. 1999) (discussing public interest in ensuring that eligible people receive home health care benefits).[12] All of these types of harms will clearly be

[9] *See also City of Sausalito v. O'Neill*, 386 F.3d 1186, 1199 (9th Cir. 2004) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 184 (2000)).

[10] *See also United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 176 (9th Cir. 1987) (citing "the public interest in the purity of its food") (citing *Smith v. California*, 361 U.S. 147, 152 (1959)).

[11] *See also City of Sausalito*, 386 F.3d at 1198 (addressing alleged "public safety" harms to municipality).

[12] *See also Cty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 537 (N.D. Cal. 2017) *appeal dismissed as moot, City & Cty. of S.F. v. Trump*, 2018 WL 1401847 (9th Cir. Jan. 4, 2018)

felt by Amici States and their residents if the TPS terminations at issue are not enjoined.

A. Families Will Be Torn Apart.

Having lived and worked legally in the United States for years, many TPS holders have gotten married, had children, and raised families in the Amici States. In fact, hundreds of thousands of children—each of whom is a U.S. citizen by birth—have been born to TPS holders in the United States.[13] As a result, hundreds of thousands of people live in "mixed-status" households, where one or both parents hold TPS, while some or all of their children (and, sometimes, a spouse) are U.S. citizens.

Terminating TPS guarantees that these "mixed-status" families will—at the very least—face agonizing choices. With the loss of TPS, a parent will face the unacceptable options of (1) returning to her country of origin alone, leaving her children behind; (2) taking her U.S. citizen children with her to a dangerous country that the children do not know, and where the safety of the TPS holder and her children cannot be ensured; or (3) staying in the United States and retreating into the shadows, knowing she cannot work legally and could be deported at any time. These are choices no parent should have to face, yet DHS is forcing hundreds of thousands of families to make these decisions through its new policy.

In fact, the prospect of confronting these choices is already harming children. Due to fears about family members' deportation, children across the country are experiencing serious mental

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(holding that uncertainty generated by Executive Order denying federal funds to "sanctuary" jurisdictions "interferes with the Counties' ability to . . . properly serve their residents . . . [T]he Counties will be obligated to . . . mak[e] cuts to services") (citing *United States v. North Carolina*, 192 F. Supp. 3d 620, 629 (M.D.N.C. 2016) [entering injunction based, in part, on public interest in avoiding reduction or elimination of "programs that support vital public services"]).

[13] TPS holders from El Salvador and Haiti have almost 220,000 United States citizen children, over 50,000 of whom live in California. Ten percent of Salvadoran and nine percent of Haitian TPS holders are married to a legal U.S. resident. Robert Warren & Donald Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti*, 5 J. MIGRATION & HUM. SECURITY 577, 577–78, 581 (2017), https://tinyurl.com/WarKer; Ctr. Am. Progress, *TPS Holders in California, Temporary Protected Status: State-by-State Fact Sheets* (Oct. 20, 2017), https://tinyurl.com/CAP-CA-TPS.

health problems, including depression, anxiety, self-harm, and regression.[14] Studies show that children's concerns about their parents' immigration status can impair their socioemotional and cognitive development.[15] And perhaps unsurprisingly, children whose immigrant mothers are subject to deportation have higher incidence of adjustment and anxiety disorders.[16]

Of course, these harms are worsened when fears of forcible separation come true. In one study, children with deported parents refused to eat, pulled out their hair, had persistent stomach-aches and headaches, engaged in substance abuse, lost interest in daily activities, and had trouble maintaining positive relationships with non-deported parents.[17] These traumatic childhood experiences can also inflict lasting harm, including severe impairments of a child's self-worth and ability to form close relationships later in life, increased anxiety, and depression.[18]

In addition to threatening children's health, deporting a family's financial breadwinner can lead to economic hardship and loss of housing for remaining family members, and can put the care of children, seniors, and disabled family members at serious risk.[19] As a result, many families will be forced to seek increased social services, stretching the limited resources of the Amici States. For example, as of 2011, more than 5,000 children nationally were estimated to be

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[14] Wendy Cervantes et al., *Our Children's Fear: Immigration Policy's Effects on Young Children*, Ctr. Law & Soc. Pol'y (Mar. 2018), https://tinyurl.com/ChildFears.

[15] HIROKAZU YOSHIKAWA, IMMIGRANTS RAISING CITIZENS: UNDOCUMENTED PARENTS AND THEIR YOUNG CHILDREN 120–36 (2011).

[16] Jens Hainmueller et al., *Protecting unauthorized immigrant mothers improves their children's mental health*, SCIENCE (Aug. 31, 2017), https://tinyurl.com/HainScience (concluding that "[p]arents' unauthorized status is [] a substantial barrier to normal child development and perpetuates health inequalities through the intergenerational transmission of disadvantage").

[17] Heather Koball et al., *Health and Social Service Needs of US-Citizen Children with Detained or Deported Immigrant Parents*, Migration Pol'y Inst. 5 (Sept. 2015), https://tinyurl.com/MIRFinal.

[18] Kristen Lee Gray, *Effects of Parent-Child Attachment on Social Adjustment and Friendship in Young Adulthood*, Cal. Poly. St. U., San Luis Obispo (June 2011), https://tinyurl.com/j3lgrno.

[19] Randy Capps et al., *Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families: A Review of the Literature*, Migration Pol'y Inst. (Sept. 2015), https://tinyurl.com/CappsMPI.

living in foster care due to their parents' detention or deportation.[20] With long-term foster care estimated to cost about $25,000 per child per year,[21] these immigration enforcement actions cost states and local governments $125 billion dollars annually.[22] That burden could substantially increase if TPS holders lose status and are forced to separate from their families.

All of these harms are exacerbated by the fact that—despite DHS's determination to the contrary—returning TPS holders to their countries of origin would "pose a serious threat to their personal safety."[23] As recently as last year, the United States itself warned that that the affected countries do not have the ability to ensure that large numbers of TPS beneficiaries and their U.S. citizen children can safely return. Specifically, the State Department concluded that:[24]

- "Haiti continues to lack the capacity to ensure that the large population [of] TPS beneficiaries currently residing in the United States can return in safety."
- "El Salvador. . . continue[s] to have [one] of the world's highest homicide rates, and weak law enforcement capabilities and inadequate government services will make it difficult for [its] government[] to ensure the protection of returning citizens—no less the U.S. citizen children who may accompany their parents."
- "El Salvador remains unable, due to ongoing security and economic conditions, to handle adequately the precipitous return of its nationals . . . . including a significant amount of children, most of whom are dual U.S.-Salvadoran nationals . . . . Parents in many communities in El Salvador fear boys may be targeted for gang recruitment and

[20] Seth Freed Wessler, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Applied Res. Ctr. 22 (Nov. 2011), https://tinyurl.com/ARCFam.

[21] Nicholas Zill, *Better Prospects, Lower Cost: The Case for Increasing Foster Care Adoption*, Nat'l Council for Adoption (May 1, 2011), https://tinyurl.com/ZillFoster.

[22] *See also* Section D, *infra*, for a discussion of increased public health care costs to states and their political subdivisions if TPS holders are left without legal status.

[23] 8 U.S.C. § 1254a(b)(1)(A).

[24] U.S. Dep't of St., *Recommendations Regarding TPS for Haiti, Honduras, and El Salvador* (Oct. 31, 2017), https://tinyurl.com/TPS-St-Dept.

girls may be forced into sexual relations with gang members. Many parents in El Salvador refuse to even send their children to school out of fear of the gangs."

In addition, the State Department has issued a "Level 3: Reconsider Travel" advisory for Sudan, citing, *inter alia*, civil unrest and terrorism.[25] Indeed, some areas of Sudan (including Darfur) are under a "Level 4: Do Not Travel" advisory, where "violent crime, such as kidnapping, armed robbery, home invasion, and carjacking, is particularly prevalent." The State Department will not allow family members under 21 years of age (still less young children) to accompany U.S. government employees to Sudan.

Nicaragua is also under a Level 3 advisory, due to, *inter alia*, crime and civil unrest.[26] Conditions are so severe that on July 6, 2018, the U.S. government ordered non-emergency personnel to leave the county. According to the State Department, "government-controlled parapolice forces" engage in "kidnapping and detaining individuals, taking over privately owned land, and committing other crimes . . . . Government authorities detain protesters, and some people have disappeared. Human rights groups have documented credible claims of torture of detainees . . . . Violent crime, such as sexual assault and armed robbery, is common and has increased as security forces focus on the civil unrest."

Although defendants claim to have received and reviewed input from "other appropriate U.S. Government agencies" in the course of their decisions to terminate TPS,[27] they seem to have ignored not only these warnings from State Department experts, but the in-depth, fact-specific research of USCIS professionals as well. In fact, as set forth in detail by plaintiffs, communications among decisionmakers and staff in the Administration show a radical departure from the normal process, with political appointees repeatedly overriding career expert staff who had concluded that the TPS countries were, in fact, far too dangerous for people to safely return.

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[25] U.S. Dep't of St., *Sudan Travel Advisory* (July 2, 2018), https://tinyurl.com/Sud-trv-adv.

[26] U.S. Dep't of St., *Nicaragua Travel Advisory* (July 7, 2018), https://tinyurl.com/Nic-trv-adv.

[27] *See, e.g.*, Termination of Designation of El Salvador for TPS, 83 Fed. Reg. 2654, 2655 (Jan. 18, 2018).

See Pls.' Mot. for Prelim. Inj. 2-3, 6-14, 15-16. These warnings show that the impossible choices faced by TPS holders are, literally, matters of life and death, despite the Administration's efforts to whitewash these conditions to justify its actions.

B. Amici States' Economies and Workforces Will Suffer.

State economies will also suffer if the TPS terminations are upheld. The labor force participation rate for TPS holders from El Salvador is 88 percent, and for TPS holders from Haiti 81 percent, significantly higher than the overall national rate (63 percent).[28] Over ten years, loss of legal status for these TPS holders is projected to cost $132.6 billion in GDP (due to lost earnings as well as decreased industry outputs),[29] $5.2 billion in Social Security and Medicare contributions,[30] and $733 million in employers' turnover costs.[31]

This impact will be felt most acutely in fields where TPS holders are concentrated, including construction, hospitality, food service, landscaping, child care, and retail.[32] These jobs may prove difficult to fill, leading to a lack of needed services and economic strain. For example, an estimated 37,000-70,000 construction workers are TPS holders.[33] In the Los Angeles and District of Columbia metropolitan areas, almost one in five TPS holders (16,000 individuals) works in construction.[34] More broadly, almost 16 percent of employed African-born immigrants (including Sudanese immigrants) work in construction,[35] as do 17,000 Nicaraguan immigrants.[36]

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[28] Warren & Kerwin, *supra* note 13 at 577, 582.

[29] Svajlenka, *supra* note 3 (data in appendix: https://tinyurl.com/CAP-APPX).

[30] Amanda Baran & Jose Magaña-Salgado, *Economic Contributions by Salvadoran, Honduran, and Haitian TPS Holders*, Immigrant Legal Resource Ctr. 7 (Apr. 2017), https://tinyurl.com/TPSEcon.

[31] *Id.* at 8.

[32] Warren & Kerwin, *supra* note 13 at 583–84.

[33] Kim Slowey, *DACA Expiration, TPS Elimination Threaten 100K+ Construction Jobs*, Construction Dive (Jan. 24, 2018), https://tinyurl.com/TPSConst.

[34] New Amer. Econ. Res. Fund, *How Temporary Protected Status Holders Help Disaster Recovery and Preparedness* (Nov. 6, 2017), https://tinyurl.com/NewAmTPS.

[35] Kristen McCabe, *African Immigrants in the United States*, Migration Policy Institute (July 21, 2011), https://tinyurl.com/Afr-immig.

[36] Gustavo López, *Hispanics of Nicaraguan Origin in the United States, 2013*, Pew Research Center (Sept. 15, 2015), https://tinyurl.com/Nic-constr.

Construction companies in the District of Columbia area estimate that termination of TPS will cause them to lose 20 percent of their skilled workforce.[37] The loss of these workers would hurt the construction industry, which is already "having trouble hiring workers."[38] Among other things, this labor shortage jeopardizes the Amici States' ability to prepare for natural disasters,[39] as well as rebuild after them (for example, the recent California wildfires).[40]

The Amici States will also suffer by losing TPS holders as homeowners. Thirty-two percent of TPS holders from El Salvador and Haiti have mortgages,[41] and almost 42 percent of Nicaraguan immigrants are homeowners,[42] an important measure of their economic contribution to the Amici States. Salvadoran TPS homeowners pay an estimated $100 million in property taxes annually, including up to $32 million in the Los Angeles area alone.[43] These homeowners' loss of status could lead to job loss or deportation, which would in turn result in more foreclosures.[44] In turn, foreclosures cause hardship for families and require more local resources to be spent to address the effects of foreclosure, including declining property values, abandoned homes, crime and social disorder.[45]

C. Vulnerable Residents Will Suffer from Disruptions in Care Provided by TPS Holders.

Terminating TPS will also disrupt child care facilities, nursing homes, home healthcare companies, and hospitals, many of which rely on TPS holders in their workforce. Almost seven

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[37] D.C. Council, Rep. on PR-22-448 at 9, 37, & 58 (Nov. 21, 2017).

[38] Slowey, *supra* note 33.

[39] New Amer. Econ. Res. Fund, *supra* note 34.

[40] Louis Hansen, *Another problem for fire victims — shortage of construction workers*, SAN JOSE MERCURY NEWS, Aug. 2, 2018, https://tinyurl.com/Merc-Contstr.

[41] Warren & Kerwin, *supra* note 13 at 582.

[42] López, *supra* note 36, https://tinyurl.com/Nic-homeowner.

[43] Zillow Res., *TPS-Protected Salvadoran Homeowners Paid Approx. $100M in Property Taxes Last Year* (Jan. 8, 2018), https://tinyurl.com/zillow-tax.

[44] *See* Jacob S. Rugh & Matthew Hall, *Deporting the American Dream: Immigration Enforcement and Latino Foreclosures*, 3 SOC. SCI. 1053 (2016), https://tinyurl.com/Rugh-frclse.

[45] G. Thomas Kingsley et al., *The Impacts of Foreclosures on Families and Communities*, The Urb. Inst. 13 (May 2009), https://tinyurl.com/GTKUrban.

percent of female TPS holders work in child care,[46] including 6,100 TPS holders from El Salvador and Haiti alone.[47] Children rely on these providers for care and education, and parents require these services to maintain their own employment. Losing child care workers will be disruptive for the children and families they serve and for the economy, especially given how difficult it is for parents to find affordable, trustworthy, and convenient child care.[48]

TPS terminations will also hurt seniors and people with disabilities. Studies show that 77,400 direct care workers across the country are immigrants from Haiti and El Salvador.[49] In Massachusetts alone, nursing facilities employ about 4,300 Haitians.[50] If TPS holders can no longer legally work in these jobs, vulnerable residents will lose the services of health care workers with whom they have established trusting relationships. This loss of care could cause a serious deterioration in their physical and mental health. Moreover, it may prove difficult for employers to fill the positions TPS holders are forced to leave. Workers in direct care fields generally receive low wages and no or minimal benefits, and the work is physically and emotionally demanding. As a result, turnover in the industry is high. In Massachusetts, one in seven certified nursing assistant positions is vacant, leaving a shortage of 3,000 workers.[51] Making matters worse, the demand for direct care assistance is increasing with a growing elderly population.[52] If home care positions go unfilled, patients who would otherwise be able to stay in

[46] Cecilia Menjívar, *Temporary Protected Status in the United States: The Experiences of Honduran and Salvadoran Immigrants*, U. Kan. Ctr. Migration Res. 14 (May 2017), http://ipsr.ku.edu/migration/pdf/TPS_Report.pdf.

[47] Warren & Kerwin, *supra* note 13 at 583–84.

[48] NPR, Robert Wood Johnson Found., Harv. T.H. Chan Sch. of Pub. Health, *Child Care and Health in America* (Oct. 2016), https://tinyurl.com/RWJchildcare.

[49] Robert Espinoza, *Immigrants and the Direct Care Workforce*, Paraprofessional Healthcare Institute (June 2017), https://tinyurl.com/PHI-Immig.

[50] Marva Serotkin & Tara Gregorio, *Nursing facilities, and their residents, will feel impact if Haitians' status ends*, BOSTON GLOBE, Dec. 4, 2017, https://tinyurl.com/Serotkin.

[51] Melissa Bailey, *As Trump Targets Immigrants, Elderly Brace to Lose Caregivers*, KAISER HEALTH NEWS, Mar. 26, 2018, https://tinyurl.com/KHNImmig.

[52] In California and Massachusetts, the position of home health aide is the fastest growing job, predicted to grow by 41% and 38%, respectively, in the next few years. Cal. Employ. Dev. Dep't, *2016-2026 Statewide Employment Projections Highlights*, https://tinyurl.com/CALabMar ("CA Long-Term" tab); Mass. Exec. Off. of Labor & Workforce Dev., *Labor Market*

their homes may be forced to move to nursing facilities, incurring higher costs for them and the Amici States and, in many cases, significantly decreasing patients' quality of life.[53]

D. Public Health Will Suffer.

The TPS terminations will also harm public health and strain state resources. When TPS holders lose work authorization, many will lose employer-sponsored health insurance for themselves and their families, hindering their access to health care.[54] For example, studies show that children of undocumented immigrants are often sicker when seeking emergency room care and frequently miss their preventive annual exams.[55] In the same vein, undocumented women are less likely to receive needed healthcare and preventive screenings than the general U.S. population; this leads to significantly higher rates of adverse conditions, including cervical cancer and birth complications, neonatal morbidity, respiratory distress syndrome, and seizures for newborns.[56] All these individual health problems add up, creating public health consequences that could have been prevented if these patients had had better access to preventive and routine care. Less employer-sponsored health insurance increases Amici States' costs to provide care to uninsured residents—including emergency health insurance, payments to hospitals and community health centers, and funding for public health programs that serve underinsured patients.[57]

Information: Most Job Openings for Massachusetts, https://tinyurl.com/MASSLabMar.

[53] *See, e.g.,* Christine Olsen et al., *Differences in quality of life in home-dwelling persons and nursing home residents with dementia – a cross-sectional study*, 16 BMC GERIATRICS 137 (2016), https://tinyurl.com/NursHomeQual.

[54] *See, e.g.*, Decl. of Anne McCleod, *Regents v. U.S. Dep't of Homeland Security*, 3:17-cv-05211, ECF No. 118-1 (App. 789–90) (N.D. Cal. Nov. 1, 2017); Decl. of Jesse M. Caplan, *New York v. Trump*, 1:17-cv-05228, ECF No. 55-83 (E.D.N.Y. Oct. 4, 2017); Meredith L. King, *Immigrants in the U.S. Health Care System*, Ctr. for Am. Progress (June 2007), https://tinyurl.com/ImmHealth.

[55] King, *supra* note 54; K. Yun et al., *Parental immigration status is associated with children's health care utilization*, 17 MATERN. CHILD HEALTH J. 1913, 1913–21 (2013).

[56] Am. C. of Obstets. & Gynecols., *Health care for unauthorized immigrants*, Comm. Op. No. 627, 125 OBSTET. GYNECOL. 755 (2015), https://tinyurl.com/ACOG627.

[57] *See, e.g.*, Cong. Budget Off., *The Impact of Unauthorized Immigrants on the Budgets of State and Local Governments* 8 (Dec. 2007), https://tinyurl.com/CBOImm (stating that county governments that share a border with Mexico incurred almost $190 million in costs for providing

E. Public Safety Will Suffer.

The signatories to this brief are Attorneys General, most of whom serve as the Amici States' chief law enforcement officers. In that role, the Attorneys General are dedicated to ensuring that police and prosecutors are able to do their jobs to protect public safety. Terminating TPS will make that job harder because former TPS holders and their families will be less likely to report crime, even if they are victims, after they lose legal status.[58] When law enforcement is unable to obtain evidence of crimes, public safety suffers, and the Amici States will have more difficulty enforcing their criminal codes, a core aspect of state sovereignty. *See, e.g.*, *Alfred L. Snapp & Son, Inc. v. P.R.* ex rel. *Barez*, 458 U.S. 592, 601 (1982).

III. CONCLUSION

Plaintiffs' motion for preliminary injunction should be granted.

Dated: August 30, 2018

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uncompensated care to unauthorized immigrants in 2000, representing about one-quarter of all their uncompensated health costs); Caplan Decl., *supra* note 54 (discussing fiscal harms to Massachusetts when immigrants lose employer-sponsored health insurance).

[58] Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, Dep't of Urb. Plan. & Pol'y, U. of Ill. at Chi. (May 2013), https://tinyurl.com/InsecComm (70 percent of undocumented immigrants reporting they are less likely to contact law enforcement if they were victims of a crime "for fear they will ask me or other people I know about our immigration status"); James Queally, *Fearing deportation, many domestic violence victims are steering clear of police and courts*, L.A. TIMES, Oct. 9, 2017, https://tinyurl.com/Queally (Los Angeles law enforcement officials reporting precipitous drop in domestic violence reports in Latino community, which they attributed to victims' fear of deportation).

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Subject: FW: CA TPS amicus brief embargo time
Date: Thursday, August 30, 2018 3:50:00 PM
Attachments: Amicus Brief - Ramos TPS (ND Cal.) FILED 08.30.2018.pdf

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Hi, Ella,

By any chance, is this case one you handled with Josh? I'm trying to determine whether this merits any media outreach by us. I assume not.

Thanks,
Charity

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Sent: Thursday, August 30, 2018 2:59 PM
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Subject: RE: CA TPS amicus brief embargo time

Please see the brief attached.

Final list of states: California, the District of Columbia, Massachusetts, Connecticut, Delaware, Hawai'i, Illinois, Iowa, Maine, Maryland, Minnesota, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington.

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Subject: RE: CA TPS amicus brief embargo time

All,

We are experiencing unexpected technical difficulties with the filing and will need some extra time. Can we please hold another hour on this? The updated embargo time is 12PM (PT) /3PM (ET).

In the meantime, please see the template press release below.

Thank you very much for understanding.

-Tania

NAME Joins Amicus Brief Defending Temporary Protected Status Holders

SACRAMENTO – NAME today joined an 18-state coalition in filing an amicus brief in *Ramos v. Nielsen*, supporting plaintiffs' efforts to prevent the potential deportation of hundreds of thousands of people who hold Temporary Protected Status (TPS). In this case, plaintiffs seek a preliminary injunction blocking a new rule issued by the United States Department of Homeland Security (DHS) for purposes of determining whether to extend a country's TPS designation. The plaintiffs allege that the resulting termination of TPS status for natives of El Salvador, Haiti, Nicaragua, and Sudan violate the due process rights of TPS holders and their children, and are discriminatory actions driven by President Trump's

racist views about TPS holders from Latin America and Africa.

STATEMENT

TPS protects individuals who are in the United States and whose home countries face armed conflict, natural disasters, or other crises that make the return of TPS holders to their home countries unsafe. Many TPS holders have lived here for a decade or more and have started families and businesses, bought homes, and significantly contributed to their communities.

Under the Trump Administration, DHS changed its long-standing practice of looking at the entirety of the conditions in a country when determining whether it is safe for TPS holders to return. Without any substantial explanation, DHS now argues that it can only look narrowly at the original condition in the home country that prompted its TPS designation when deciding whether to extend that designation. Such a practice would ignore other conditions that pose serious threats to the safety of TPS holders. The plaintiffs in this case allege that DHS enacted its new rule without following legal requirements.

The amicus brief argues that DHS's new rule is contrary to the public interest and that it will harm the people of California in a number of ways, including its impact on:

- **Family members**, including hundreds of thousands of U.S. citizen children, who will suffer trauma and hardship from unnecessary and forced separation;
- **The economy and the workforce**, which are enriched by the employment, entrepreneurship and contributions of TPS holders;
- **Public revenues**, which are enhanced by the taxes contributed by TPS holders, including an estimated $100 million alone in property taxes collected annually from Salvadoran homeowners with TPS;
- **Healthcare delivery**, which will suffer from disruptions in care provided by TPS holders who work at child care facilities, nursing homes, and hospitals;
- **Public health**, which will be hindered by the loss of employer-sponsored insurance for TPS holders and their families; and
- **Public safety**, which will be damaged by making TPS holders less likely to report crime.

NAME joined today's brief along with Attorneys General California, the District of Columbia Massachusetts, Connecticut, Delaware, Hawai'i, Illinois, Iowa, Maine, Maryland, Minnesota, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington.

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Cc: Bethany Lesser <Bethany.Lesser@doj.ca.gov>; Joanne Adams <Joanne.Adams@doj.ca.gov>
Subject: CA TPS amicus brief embargo time

Hello all,

I hope this email finds you well. I am writing because your attorney general has either agreed to join or is considering joining our amicus brief in the case *Ramos v. Nielsen*, defending Temporary Protected Status holders.

The embargo time for this press release is **tomorrow, Thursday, August 30, at 11:00 AM (PT) / 2:00 PM (ET).** We will send along a template press release and final list of states shortly.

Please feel free to reach me by phone or email if you have any questions.

Thank you,

Tania

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CRISTA RAMOS, individually and on behalf of others similarly situated; CRISTINA MORALES; BENJAMIN ZEPEDA, individually and on behalf of others similarly situated; ORLANDO ZEPEDA; JUAN EDUARDO AYALA FLORES, individually and on behalf of others similarly situated; MARIA JOSE AYALA FLORES; ELSY YOLANDA FLORES DE AYALA; HNAIDA CENEMAT, individually and on behalf of others similarly situated; WILNA DESTIN; RILYA SALARY, individually and on behalf of others similarly situated; SHERIKA BLANC; IMARA AMPIE; MAZIN AHMED; and HIWAIDA ELARABI, Plaintiffs, v. KIRSTJEN NIELSEN, in her official capacity as Secretary of Homeland Security; ELAINE C. DUKE, in her official capacity as Deputy Secretary of Homeland Security; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; and UNITED STATES OF AMERICA, Defendants.	Case No. 3:18-cv-01554-EMC **BRIEF OF AMICI STATES CALIFORNIA, DISTRICT OF COLUMBIA, MASSACHUSETTS, CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, IOWA, MAINE, MARYLAND, MINNESOTA, NEW JERSEY, NEW MEXICO, NEW YORK, OREGON, RHODE ISLAND, VERMONT, AND WASHINGTON IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES

OTHER AUTHORITIES

I. INTRODUCTION AND INTEREST OF AMICI STATES

The Amici States[1] are home to hundreds of thousands of people from El Salvador, Haiti, Nicaragua, and Sudan who hold Temporary Protected Status ("TPS")—a legal status provided to foreign nationals who are present in the United States when their countries of origin become unsafe and cannot handle their return. TPS holders are nurses, roofers, pastors, chefs, bus drivers, teachers, landscapers, and child care providers. They are homeowners, business owners, union members, class presidents, and civic leaders. They are our neighbors, co-workers, family members, and friends.

The Department of Homeland Security's ("DHS") termination of TPS for El Salvador, Haiti, Nicaragua, and Sudan would strip these community members of legal authorization to work and could result in their deportation to countries that are unsafe and unprepared to receive them. Many TPS holders would presumably be deported or otherwise have no choice but to leave; others would go into the shadows; all would lose the right to remain legally in the United States and support themselves and their families under the terms of TPS. The result would be harm to the welfare of TPS holders and their families, shuttered businesses, labor shortages, empty church pews, and greater strain on public and private social services.

Already, TPS terminations are hurting our economy and civil society, as the prospect of widespread deportation has left whole communities uncertain, confused, and afraid. But these terminations will inflict even greater damage in the months ahead if they are not enjoined, including considerable harm to a range of Amici States' interests. The public interest, as seen through the lens of these harms to Amici States discussed below, weighs strongly in favor of the preliminary injunction sought by plaintiffs; accordingly, Amici States have a profound interest in this matter.

[1] The States are California, the District of Columbia, Massachusetts, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington. The District of Columbia is included as an "Amici State" for the purposes of this brief.

II. THE PUBLIC INTEREST FAVORS A PRELIMINARY INJUNCTION BECAUSE DHS'S POLICY WILL INFLICT SERIOUS AND IRREPARABLE HARM ON INDIVIDUALS, FAMILIES, COMMUNITIES, AND THE AMICI STATES.

The public interest strongly favors plaintiffs as evidenced, in part, by the significant harm that Amici States will suffer without the preliminary relief that plaintiffs seek.[2] DHS's decisions are already inflicting broad and systemic harm on the public. The overwhelming majority of TPS holders have lived here for many years—in some instances, decades. For example, on average, Salvadoran recipients have lived in the United States for 21 years and Haitian recipients for 13 years.[3] These individuals have built lives in the United States. They have started families, founded businesses, bought homes, joined churches, received degrees, and advanced in their careers. They contribute to our economy and civic life in countless ways, both quantifiable and intangible. Granting the injunction that plaintiffs seek could prevent needless harm not only to TPS holders, but to those who rely on them for care, friendship, family and community cohesion, and economic vitality.

On the other side of the ledger, the federal government can assert little to no legally cognizable harm from entry of the injunction. As the Ninth Circuit has held, "the government[] . . . cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required to avoid constitutional concerns." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (citing *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983)).[4] The only conceivable harm to

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[2] In cases like this one, which affects many non-parties (including Amici States), courts consider the hardship to third parties as part of the public interest analysis even when the government is a party. *See Golden Gate Rest. Ass'n v. City & Cty. of S.F.*, 512 F.3d 1112, 1126–27 (9th Cir. 2008); *see also Ms. L. v. U.S. Immigration & Customs Enf't*, 310 F. Supp. 3d 1133, 1148 (S.D. Cal. 2018) (considering public interest in case involving separation of minor immigrant children from their parents) (citing *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017)).

[3] Nicole Prchal Svajlenka et al., *TPS Members Are Integral Members of the U.S. Economy and Society*, Ctr. Am. Progress (Oct. 20, 2017), https://tinyurl.com/TPSCAP. TPS holders from El Salvador and Haiti represent 75 percent of the total TPS population.

[4] *See also NAACP v. Trump*, 2018 U.S. Dist. LEXIS 139663, at *15 (D.D.C. Aug. 17, 2018) (finding lack of injury to federal government from order "simply correct[ing] the improper exercise of [DHS] authority" in case relating to rescission of Deferred Action for Childhood Arrivals ["DACA"]).

the federal government here would be some period of delay in effectuating the TPS terminations if its actions are ultimately found to have been legal, a "harm" of vanishing significance when juxtaposed with the harms that will befall plaintiffs, Amici States, and others if TPS is terminated for the countries at issue. TPS recipients have been vetted extensively and, in many instances, repeatedly,[5] and their individual status is subject to withdrawal if they lose eligibility by, for example, being convicted of a felony.[6] Clearly, this group cannot be said to present a public safety or national security threat such that immediate termination of their status is required even if defendants' actions were legal.[7] Thus, as discussed by plaintiffs, the balance of equities tips in favor of an injunction here. Pls.' Mot. for Prelim. Inj. 31–33.

Courts have repeatedly taken the kinds of public harms asserted by Amici States here into account when assessing whether issuing a preliminary injunction is appropriate. These have included **harms to family members**, *Hernandez*, 872 F.3d at 996 (citing "indirect hardship to [plaintiffs'] friends and family members," including harm to children who "had to receive counseling because of the trauma of their government-compelled separation from their father") (citing *Golden Gate Rest. Ass'n*, 512 F.3d at 1126), *Doe v. Trump*, 288 F. Supp. 3d 1045, 1084 (W.D. Wash. 2017) (citing "public interest in uniting families") (citation omitted);[8] **economic**

[5] Amer. Immig. Council, *Fact Sheet: Temporary Protected Status in the United States* (Oct. 23, 2017), https://tinyurl.com/AIC-TPS (noting that TPS holders are subjected to background checks every time their TPS is renewed).

[6] 8 U.S.C. §§ 1254a(c)(2)(B)(i), 1254a(c)(3)(A).

[7] *See Vidal v. Nielsen*, 279 F. Supp. 3d 401, 436 (E.D.N.Y. 2018) (entering injunction against rescission of DACA, holding that DHS's interest in ending program was "not so compelling" because, *inter alia*, former DACA recipients would not be enforcement priorities and DHS could revoke specific recipients' deferred action and work authorization if needed).

[8] *See also Hawaii v. Trump*, 878 F.3d 662, 699 (9th Cir. 2017), *rev'd and remanded on other grounds*, 138 S. Ct. 2392 (2018) (holding that harm caused to third parties by "prolonged separation from family members" due to immigration decisions is cognizable) (citation omitted); *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (citing "separated families" due to Muslim travel ban); *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 612 (4th Cir. 2017), *vacated and remanded on other grounds* sub nom. *Trump v. Int'l Refugee Assistance*, 138 S. Ct. 353 (2017) ("the public has an interest . . . in avoiding separation of families") (citation omitted); *Ms. L.*, 310 F. Supp. 3d at 1148 (citing "relationship between parent and child" in family separation context).

and employment-based harms, *All. for the Wild Rockies v. U.S. Forest Serv.*, 2016 U.S. Dist. LEXIS 78984, at *16 (D. Idaho June 14, 2016) (denying injunction against project on National Forest land, citing "employment and economic benefits to the surrounding communities"), *Colo. River Indian Tribes v. DOI*, 2015 U.S. Dist. LEXIS 182548, at *107 (C.D. Cal. June 11, 2015) (citing job creation in analysis of public interest factor); *Earth Island Inst. v. Quinn*, 2014 U.S. Dist. LEXIS 105647, at *22 (E.D. Cal. July 31, 2014) (citing potential job losses in analysis of injunction against timber harvesting project);[9] **increased public health care expenses**, *Golden Gate Rest. Ass'n*, 512 F.3d at 1126 (citing municipality's "overall health care expenses"); **public health harms**, *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1139 (9th Cir. 2009) (citing potential impact on "health of state residents") (quotation marks omitted), *Planned Parenthood of Greater Wash. & N. Idaho v. U.S. Dep't of Health and Hum. Servs.*, 2018 U.S. Dist. LEXIS 69213, at *43 (E.D. Wash. Apr. 24, 2018) (finding that public interest served by issuing injunction to prevent termination of federal pregnancy prevention program), *Ross v. Inslee*, 2014 U.S. Dist. LEXIS 151364, at *23 (E.D. Wash. Oct. 24, 2014) (citing public interest "in assuring that people with mental health issues receive adequate treatment");[10] **public safety harms**, *Spiegel v. City of Houston*, 636 F.2d 997, 1002 (5th Cir. 1981) (finding injunction's impact on overbroad range of law enforcement practices contrary to public interest), *Earth Island Inst. v. Elliott*, 290 F. Supp. 3d 1102, 1125 (E.D. Cal. 2017) (examining public safety implications of proposed injunction on Forest Service tree removal project);[11] and **impacts to public services**, *Morris v. N. Haw. Cmty. Hosp.*, 37 F. Supp. 2d 1181, 1188–89 (D. Haw. 1999) (discussing public interest in ensuring that eligible people receive home health care benefits).[12] All of these types of harms will clearly be

[9] *See also City of Sausalito v. O'Neill*, 386 F.3d 1186, 1199 (9th Cir. 2004) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 184 (2000)).

[10] *See also United States v. Odessa Union Warehouse Co-op*, 833 F.2d 172, 176 (9th Cir. 1987) (citing "the public interest in the purity of its food") (citing *Smith v. California*, 361 U.S. 147, 152 (1959)).

[11] *See also City of Sausalito*, 386 F.3d at 1198 (addressing alleged "public safety" harms to municipality).

[12] *See also Cty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 537 (N.D. Cal. 2017) *appeal dismissed as moot, City & Cty. of S.F. v. Trump*, 2018 WL 1401847 (9th Cir. Jan. 4, 2018)

felt by Amici States and their residents if the TPS terminations at issue are not enjoined.

A. Families Will Be Torn Apart.

Having lived and worked legally in the United States for years, many TPS holders have gotten married, had children, and raised families in the Amici States. In fact, hundreds of thousands of children—each of whom is a U.S. citizen by birth—have been born to TPS holders in the United States.[13] As a result, hundreds of thousands of people live in "mixed-status" households, where one or both parents hold TPS, while some or all of their children (and, sometimes, a spouse) are U.S. citizens.

Terminating TPS guarantees that these "mixed-status" families will—at the very least—face agonizing choices. With the loss of TPS, a parent will face the unacceptable options of (1) returning to her country of origin alone, leaving her children behind; (2) taking her U.S. citizen children with her to a dangerous country that the children do not know, and where the safety of the TPS holder and her children cannot be ensured; or (3) staying in the United States and retreating into the shadows, knowing she cannot work legally and could be deported at any time. These are choices no parent should have to face, yet DHS is forcing hundreds of thousands of families to make these decisions through its new policy.

In fact, the prospect of confronting these choices is already harming children. Due to fears about family members' deportation, children across the country are experiencing serious mental

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(holding that uncertainty generated by Executive Order denying federal funds to "sanctuary" jurisdictions "interferes with the Counties' ability to . . . properly serve their residents . . . [T]he Counties will be obligated to . . . mak[e] cuts to services") (citing *United States v. North Carolina*, 192 F. Supp. 3d 620, 629 (M.D.N.C. 2016) [entering injunction based, in part, on public interest in avoiding reduction or elimination of "programs that support vital public services"]).

[13] TPS holders from El Salvador and Haiti have almost 220,000 United States citizen children, over 50,000 of whom live in California. Ten percent of Salvadoran and nine percent of Haitian TPS holders are married to a legal U.S. resident. Robert Warren & Donald Kerwin, *A Statistical and Demographic Profile of the US Temporary Protected Status Populations from El Salvador, Honduras, and Haiti*, 5 J. MIGRATION & HUM. SECURITY 577, 577–78, 581 (2017), https://tinyurl.com/WarKer; Ctr. Am. Progress, *TPS Holders in California, Temporary Protected Status: State-by-State Fact Sheets* (Oct. 20, 2017), https://tinyurl.com/CAP-CA-TPS.

health problems, including depression, anxiety, self-harm, and regression.[14] Studies show that children's concerns about their parents' immigration status can impair their socioemotional and cognitive development.[15] And perhaps unsurprisingly, children whose immigrant mothers are subject to deportation have higher incidence of adjustment and anxiety disorders.[16]

Of course, these harms are worsened when fears of forcible separation come true. In one study, children with deported parents refused to eat, pulled out their hair, had persistent stomach-aches and headaches, engaged in substance abuse, lost interest in daily activities, and had trouble maintaining positive relationships with non-deported parents.[17] These traumatic childhood experiences can also inflict lasting harm, including severe impairments of a child's self-worth and ability to form close relationships later in life, increased anxiety, and depression.[18]

In addition to threatening children's health, deporting a family's financial breadwinner can lead to economic hardship and loss of housing for remaining family members, and can put the care of children, seniors, and disabled family members at serious risk.[19] As a result, many families will be forced to seek increased social services, stretching the limited resources of the Amici States. For example, as of 2011, more than 5,000 children nationally were estimated to be

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[14] Wendy Cervantes et al., *Our Children's Fear: Immigration Policy's Effects on Young Children*, Ctr. Law & Soc. Pol'y (Mar. 2018), https://tinyurl.com/ChildFears.

[15] HIROKAZU YOSHIKAWA, IMMIGRANTS RAISING CITIZENS: UNDOCUMENTED PARENTS AND THEIR YOUNG CHILDREN 120–36 (2011).

[16] Jens Hainmueller et al., *Protecting unauthorized immigrant mothers improves their children's mental health*, SCIENCE (Aug. 31, 2017), https://tinyurl.com/HainScience (concluding that "[p]arents' unauthorized status is [] a substantial barrier to normal child development and perpetuates health inequalities through the intergenerational transmission of disadvantage").

[17] Heather Koball et al., *Health and Social Service Needs of US-Citizen Children with Detained or Deported Immigrant Parents*, Migration Pol'y Inst. 5 (Sept. 2015), https://tinyurl.com/MIRFinal.

[18] Kristen Lee Gray, *Effects of Parent-Child Attachment on Social Adjustment and Friendship in Young Adulthood*, Cal. Poly. St. U., San Luis Obispo (June 2011), https://tinyurl.com/j3lgrno.

[19] Randy Capps et al., *Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families: A Review of the Literature*, Migration Pol'y Inst. (Sept. 2015), https://tinyurl.com/CappsMPI.

living in foster care due to their parents' detention or deportation.[20] With long-term foster care estimated to cost about $25,000 per child per year,[21] these immigration enforcement actions cost states and local governments $125 billion dollars annually.[22] That burden could substantially increase if TPS holders lose status and are forced to separate from their families.

All of these harms are exacerbated by the fact that—despite DHS's determination to the contrary—returning TPS holders to their countries of origin would "pose a serious threat to their personal safety."[23] As recently as last year, the United States itself warned that that the affected countries do not have the ability to ensure that large numbers of TPS beneficiaries and their U.S. citizen children can safely return. Specifically, the State Department concluded that:[24]

- "Haiti continues to lack the capacity to ensure that the large population [of] TPS beneficiaries currently residing in the United States can return in safety."
- "El Salvador. . . continue[s] to have [one] of the world's highest homicide rates, and weak law enforcement capabilities and inadequate government services will make it difficult for [its] government[] to ensure the protection of returning citizens—no less the U.S. citizen children who may accompany their parents."
- "El Salvador remains unable, due to ongoing security and economic conditions, to handle adequately the precipitous return of its nationals . . . . including a significant amount of children, most of whom are dual U.S.-Salvadoran nationals . . . . Parents in many communities in El Salvador fear boys may be targeted for gang recruitment and

[20] Seth Freed Wessler, *Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System*, Applied Res. Ctr. 22 (Nov. 2011), https://tinyurl.com/ARCFam.

[21] Nicholas Zill, *Better Prospects, Lower Cost: The Case for Increasing Foster Care Adoption*, Nat'l Council for Adoption (May 1, 2011), https://tinyurl.com/ZillFoster.

[22] *See also* Section D, *infra*, for a discussion of increased public health care costs to states and their political subdivisions if TPS holders are left without legal status.

[23] 8 U.S.C. § 1254a(b)(1)(A).

[24] U.S. Dep't of St., *Recommendations Regarding TPS for Haiti, Honduras, and El Salvador* (Oct. 31, 2017), https://tinyurl.com/TPS-St-Dept.

girls may be forced into sexual relations with gang members. Many parents in El Salvador refuse to even send their children to school out of fear of the gangs."

In addition, the State Department has issued a "Level 3: Reconsider Travel" advisory for Sudan, citing, *inter alia*, civil unrest and terrorism.[25] Indeed, some areas of Sudan (including Darfur) are under a "Level 4: Do Not Travel" advisory, where "violent crime, such as kidnapping, armed robbery, home invasion, and carjacking, is particularly prevalent." The State Department will not allow family members under 21 years of age (still less young children) to accompany U.S. government employees to Sudan.

Nicaragua is also under a Level 3 advisory, due to, *inter alia*, crime and civil unrest.[26] Conditions are so severe that on July 6, 2018, the U.S. government ordered non-emergency personnel to leave the county. According to the State Department, "government-controlled parapolice forces" engage in "kidnapping and detaining individuals, taking over privately owned land, and committing other crimes . . . . Government authorities detain protesters, and some people have disappeared. Human rights groups have documented credible claims of torture of detainees . . . . Violent crime, such as sexual assault and armed robbery, is common and has increased as security forces focus on the civil unrest."

Although defendants claim to have received and reviewed input from "other appropriate U.S. Government agencies" in the course of their decisions to terminate TPS,[27] they seem to have ignored not only these warnings from State Department experts, but the in-depth, fact-specific research of USCIS professionals as well. In fact, as set forth in detail by plaintiffs, communications among decisionmakers and staff in the Administration show a radical departure from the normal process, with political appointees repeatedly overriding career expert staff who had concluded that the TPS countries were, in fact, far too dangerous for people to safely return.

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[25] U.S. Dep't of St., *Sudan Travel Advisory* (July 2, 2018), https://tinyurl.com/Sud-trv-adv.

[26] U.S. Dep't of St., *Nicaragua Travel Advisory* (July 7, 2018), https://tinyurl.com/Nic-trv-adv.

[27] *See, e.g.*, Termination of Designation of El Salvador for TPS, 83 Fed. Reg. 2654, 2655 (Jan. 18, 2018).

See Pls.' Mot. for Prelim. Inj. 2-3, 6-14, 15-16. These warnings show that the impossible choices faced by TPS holders are, literally, matters of life and death, despite the Administration's efforts to whitewash these conditions to justify its actions.

B. Amici States' Economies and Workforces Will Suffer.

State economies will also suffer if the TPS terminations are upheld. The labor force participation rate for TPS holders from El Salvador is 88 percent, and for TPS holders from Haiti 81 percent, significantly higher than the overall national rate (63 percent).[28] Over ten years, loss of legal status for these TPS holders is projected to cost $132.6 billion in GDP (due to lost earnings as well as decreased industry outputs),[29] $5.2 billion in Social Security and Medicare contributions,[30] and $733 million in employers' turnover costs.[31]

This impact will be felt most acutely in fields where TPS holders are concentrated, including construction, hospitality, food service, landscaping, child care, and retail.[32] These jobs may prove difficult to fill, leading to a lack of needed services and economic strain. For example, an estimated 37,000-70,000 construction workers are TPS holders.[33] In the Los Angeles and District of Columbia metropolitan areas, almost one in five TPS holders (16,000 individuals) works in construction.[34] More broadly, almost 16 percent of employed African-born immigrants (including Sudanese immigrants) work in construction,[35] as do 17,000 Nicaraguan immigrants.[36]

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[28] Warren & Kerwin, *supra* note 13 at 577, 582.

[29] Svajlenka, *supra* note 3 (data in appendix: https://tinyurl.com/CAP-APPX).

[30] Amanda Baran & Jose Magaña-Salgado, *Economic Contributions by Salvadoran, Honduran, and Haitian TPS Holders*, Immigrant Legal Resource Ctr. 7 (Apr. 2017), https://tinyurl.com/TPSEcon.

[31] *Id.* at 8.

[32] Warren & Kerwin, *supra* note 13 at 583–84.

[33] Kim Slowey, *DACA Expiration, TPS Elimination Threaten 100K+ Construction Jobs*, Construction Dive (Jan. 24, 2018), https://tinyurl.com/TPSConst.

[34] New Amer. Econ. Res. Fund, *How Temporary Protected Status Holders Help Disaster Recovery and Preparedness* (Nov. 6, 2017), https://tinyurl.com/NewAmTPS.

[35] Kristen McCabe, *African Immigrants in the United States*, Migration Policy Institute (July 21, 2011), https://tinyurl.com/Afr-immig.

[36] Gustavo López, *Hispanics of Nicaraguan Origin in the United States, 2013*, Pew Research Center (Sept. 15, 2015), https://tinyurl.com/Nic-constr.

Construction companies in the District of Columbia area estimate that termination of TPS will cause them to lose 20 percent of their skilled workforce.[37] The loss of these workers would hurt the construction industry, which is already "having trouble hiring workers."[38] Among other things, this labor shortage jeopardizes the Amici States' ability to prepare for natural disasters,[39] as well as rebuild after them (for example, the recent California wildfires).[40]

The Amici States will also suffer by losing TPS holders as homeowners. Thirty-two percent of TPS holders from El Salvador and Haiti have mortgages,[41] and almost 42 percent of Nicaraguan immigrants are homeowners,[42] an important measure of their economic contribution to the Amici States. Salvadoran TPS homeowners pay an estimated $100 million in property taxes annually, including up to $32 million in the Los Angeles area alone.[43] These homeowners' loss of status could lead to job loss or deportation, which would in turn result in more foreclosures.[44] In turn, foreclosures cause hardship for families and require more local resources to be spent to address the effects of foreclosure, including declining property values, abandoned homes, crime and social disorder.[45]

C. Vulnerable Residents Will Suffer from Disruptions in Care Provided by TPS Holders.

Terminating TPS will also disrupt child care facilities, nursing homes, home healthcare companies, and hospitals, many of which rely on TPS holders in their workforce. Almost seven

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[37] D.C. Council, Rep. on PR-22-448 at 9, 37, & 58 (Nov. 21, 2017).

[38] Slowey, *supra* note 33.

[39] New Amer. Econ. Res. Fund, *supra* note 34.

[40] Louis Hansen, *Another problem for fire victims — shortage of construction workers*, SAN JOSE MERCURY NEWS, Aug. 2, 2018, https://tinyurl.com/Merc-Contstr.

[41] Warren & Kerwin, *supra* note 13 at 582.

[42] López, *supra* note 36, https://tinyurl.com/Nic-homeowner.

[43] Zillow Res., *TPS-Protected Salvadoran Homeowners Paid Approx. $100M in Property Taxes Last Year* (Jan. 8, 2018), https://tinyurl.com/zillow-tax.

[44] *See* Jacob S. Rugh & Matthew Hall, *Deporting the American Dream: Immigration Enforcement and Latino Foreclosures*, 3 SOC. SCI. 1053 (2016), https://tinyurl.com/Rugh-frclse.

[45] G. Thomas Kingsley et al., *The Impacts of Foreclosures on Families and Communities*, The Urb. Inst. 13 (May 2009), https://tinyurl.com/GTKUrban.

percent of female TPS holders work in child care,[46] including 6,100 TPS holders from El Salvador and Haiti alone.[47] Children rely on these providers for care and education, and parents require these services to maintain their own employment. Losing child care workers will be disruptive for the children and families they serve and for the economy, especially given how difficult it is for parents to find affordable, trustworthy, and convenient child care.[48]

TPS terminations will also hurt seniors and people with disabilities. Studies show that 77,400 direct care workers across the country are immigrants from Haiti and El Salvador.[49] In Massachusetts alone, nursing facilities employ about 4,300 Haitians.[50] If TPS holders can no longer legally work in these jobs, vulnerable residents will lose the services of health care workers with whom they have established trusting relationships. This loss of care could cause a serious deterioration in their physical and mental health. Moreover, it may prove difficult for employers to fill the positions TPS holders are forced to leave. Workers in direct care fields generally receive low wages and no or minimal benefits, and the work is physically and emotionally demanding. As a result, turnover in the industry is high. In Massachusetts, one in seven certified nursing assistant positions is vacant, leaving a shortage of 3,000 workers.[51] Making matters worse, the demand for direct care assistance is increasing with a growing elderly population.[52] If home care positions go unfilled, patients who would otherwise be able to stay in

[46] Cecilia Menjívar, *Temporary Protected Status in the United States: The Experiences of Honduran and Salvadoran Immigrants*, U. Kan. Ctr. Migration Res. 14 (May 2017), http://ipsr.ku.edu/migration/pdf/TPS_Report.pdf.

[47] Warren & Kerwin, *supra* note 13 at 583–84.

[48] NPR, Robert Wood Johnson Found., Harv. T.H. Chan Sch. of Pub. Health, *Child Care and Health in America* (Oct. 2016), https://tinyurl.com/RWJchildcare.

[49] Robert Espinoza, *Immigrants and the Direct Care Workforce*, Paraprofessional Healthcare Institute (June 2017), https://tinyurl.com/PHI-Immig.

[50] Marva Serotkin & Tara Gregorio, *Nursing facilities, and their residents, will feel impact if Haitians' status ends*, BOSTON GLOBE, Dec. 4, 2017, https://tinyurl.com/Serotkin.

[51] Melissa Bailey, *As Trump Targets Immigrants, Elderly Brace to Lose Caregivers*, KAISER HEALTH NEWS, Mar. 26, 2018, https://tinyurl.com/KHNImmig.

[52] In California and Massachusetts, the position of home health aide is the fastest growing job, predicted to grow by 41% and 38%, respectively, in the next few years. Cal. Employ. Dev. Dep't, *2016-2026 Statewide Employment Projections Highlights*, https://tinyurl.com/CALabMar ("CA Long-Term" tab); Mass. Exec. Off. of Labor & Workforce Dev., *Labor Market*

their homes may be forced to move to nursing facilities, incurring higher costs for them and the Amici States and, in many cases, significantly decreasing patients' quality of life.[53]

D. Public Health Will Suffer.

The TPS terminations will also harm public health and strain state resources. When TPS holders lose work authorization, many will lose employer-sponsored health insurance for themselves and their families, hindering their access to health care.[54] For example, studies show that children of undocumented immigrants are often sicker when seeking emergency room care and frequently miss their preventive annual exams.[55] In the same vein, undocumented women are less likely to receive needed healthcare and preventive screenings than the general U.S. population; this leads to significantly higher rates of adverse conditions, including cervical cancer and birth complications, neonatal morbidity, respiratory distress syndrome, and seizures for newborns.[56] All these individual health problems add up, creating public health consequences that could have been prevented if these patients had had better access to preventive and routine care. Less employer-sponsored health insurance increases Amici States' costs to provide care to uninsured residents—including emergency health insurance, payments to hospitals and community health centers, and funding for public health programs that serve underinsured patients.[57]

Information: Most Job Openings for Massachusetts, https://tinyurl.com/MASSLabMar.

[53] *See, e.g.,* Christine Olsen et al., *Differences in quality of life in home-dwelling persons and nursing home residents with dementia – a cross-sectional study*, 16 BMC GERIATRICS 137 (2016), https://tinyurl.com/NursHomeQual.

[54] *See, e.g.*, Decl. of Anne McCleod, *Regents v. U.S. Dep't of Homeland Security*, 3:17-cv-05211, ECF No. 118-1 (App. 789–90) (N.D. Cal. Nov. 1, 2017); Decl. of Jesse M. Caplan, *New York v. Trump*, 1:17-cv-05228, ECF No. 55-83 (E.D.N.Y. Oct. 4, 2017); Meredith L. King, *Immigrants in the U.S. Health Care System*, Ctr. for Am. Progress (June 2007), https://tinyurl.com/ImmHealth.

[55] King, *supra* note 54; K. Yun et al., *Parental immigration status is associated with children's health care utilization*, 17 MATERN. CHILD HEALTH J. 1913, 1913–21 (2013).

[56] Am. C. of Obstets. & Gynecols., *Health care for unauthorized immigrants*, Comm. Op. No. 627, 125 OBSTET. GYNECOL. 755 (2015), https://tinyurl.com/ACOG627.

[57] *See, e.g.*, Cong. Budget Off., *The Impact of Unauthorized Immigrants on the Budgets of State and Local Governments* 8 (Dec. 2007), https://tinyurl.com/CBOImm (stating that county governments that share a border with Mexico incurred almost $190 million in costs for providing

E. Public Safety Will Suffer.

The signatories to this brief are Attorneys General, most of whom serve as the Amici States' chief law enforcement officers. In that role, the Attorneys General are dedicated to ensuring that police and prosecutors are able to do their jobs to protect public safety. Terminating TPS will make that job harder because former TPS holders and their families will be less likely to report crime, even if they are victims, after they lose legal status.[58] When law enforcement is unable to obtain evidence of crimes, public safety suffers, and the Amici States will have more difficulty enforcing their criminal codes, a core aspect of state sovereignty. *See, e.g.*, *Alfred L. Snapp & Son, Inc. v. P.R.* ex rel. *Barez*, 458 U.S. 592, 601 (1982).

III. CONCLUSION

Plaintiffs' motion for preliminary injunction should be granted.

Dated: August 30, 2018

Respectfully Submitted,

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State of California

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uncompensated care to unauthorized immigrants in 2000, representing about one-quarter of all their uncompensated health costs); Caplan Decl., *supra* note 54 (discussing fiscal harms to Massachusetts when immigrants lose employer-sponsored health insurance).

[58] Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, Dep't of Urb. Plan. & Pol'y, U. of Ill. at Chi. (May 2013), https://tinyurl.com/InsecComm (70 percent of undocumented immigrants reporting they are less likely to contact law enforcement if they were victims of a crime "for fear they will ask me or other people I know about our immigration status"); James Queally, *Fearing deportation, many domestic violence victims are steering clear of police and courts*, L.A. TIMES, Oct. 9, 2017, https://tinyurl.com/Queally (Los Angeles law enforcement officials reporting precipitous drop in domestic violence reports in Latino community, which they attributed to victims' fear of deportation).

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From:	Battles, Benjamin
To:	Spottswood, Eleanor; Clark, Charity
Subject:	FW: A.G. UNDERWOOD LEADS NEW AMICUS BRIEF OPPOSING EFFORTS TO DEFUND PLANNED PARENTHOOD
Date:	Wednesday, September 5, 2018 10:57:24 AM

Just making sure this made it to both of you.

From: Etlinger, Laura <Laura.Etlinger@ag.ny.gov>
Sent: Wednesday, September 5, 2018 10:27 AM
To: Etlinger, Laura <Laura.Etlinger@ag.ny.gov>
Subject: FW: A.G. UNDERWOOD LEADS NEW AMICUS BRIEF OPPOSING EFFORTS TO DEFUND PLANNED PARENTHOOD

Dear Colleagues,

Our amicus brief in *Planned Parenthood of Greater Ohio v. Himes* was accepted for filing in the 6th Circuit yesterday afternoon. Our press office then circulated the press release below. I believe our press officer sent it to the press contacts in your office.

Thank you again for your support on this important brief.

Regards,
Laura

Laura Etlinger
Assistant Solicitor General
Office of the Attorney General
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Albany, New York 12224
(518) 776-2028

From: New York Attorney General Press Office <nysattorneygeneral@public.govdelivery.com>
Sent: Tuesday, September 04, 2018 4:23 PM
To: Etlinger, Laura <Laura.Etlinger@ag.ny.gov>
Subject: A.G. UNDERWOOD LEADS NEW AMICUS BRIEF OPPOSING EFFORTS TO DEFUND PLANNED PARENTHOOD

News from the New York Attorney General's Office

FOR IMMEDIATE RELEASE
September 4, 2018

Attorney General's Office Press Office / 212-416-8060
nyag.pressoffice@ag.ny.gov

A.G. UNDERWOOD LEADS NEW AMICUS BRIEF OPPOSING EFFORTS TO DEFUND PLANNED PARENTHOOD

As Defunding Efforts Continue Around Country, 18 AGs File Brief in Sixth Circuit En Banc Rehearing of Ohio Law that Would Defund Planned Parenthood and Other Health Service

Providers that Perform Abortions

Attorneys General Argue that Ohio Law Violates First Amendment and Due Process Clause

New York Attorney General Barbara D. Underwood – leading a coalition of 18 Attorneys General offices – filed an amicus brief with the U.S. Court of Appeals for the Sixth Circuit, challenging an Ohio state law that would defund Planned Parenthood and other health service providers that perform or promote abortions. The full appellate court will hear the matter en banc on October 3rd.

The Attorneys General argue that the Ohio law violates the First Amendment and Due Process Clause because the law imposes an unconstitutional condition on state grants that infringes on plaintiffs' right to free speech, as well as plaintiffs' right to provide access to abortion services, and their clients' right to receive such services.

"A woman's fundamental right to make her own reproductive health choices is under attack across the country," said **Attorney General Underwood**. "This Ohio law – like so many other regressive measures – tries to force health care providers to choose between protecting a woman's right to reproductive health care, and providing other critical health services. My office will continue to fight back."

The amicus brief – filed in *Planned Parenthood of Greater Ohio v. Himes* – was signed by a total of 18 Attorneys General offices, including New York, California, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Vermont, Virginia, Washington, and the District of Columbia.

The brief highlights the fact that, since 2009 alone, 20 states have now passed laws or taken executive actions to prohibit family-planning and other public health funds from being awarded to Planned Parenthood affiliates and other providers of abortion services, even when those funds are specifically directed to support services that have nothing to do with abortion. The federal government has proposed the so-called Title X "gag rule" that would prevent health care providers who participate in Title X's family-planning program from referring their patients for safe, legal abortions; and Congress has passed a resolution that encourages states to pass defunding measures, repealing a Department of Health and Human Services rule that prohibits states from denying federally funded family-planning grants for reasons unrelated to the entity's ability to provide family-planning services.

Ohio's law, which was enjoined before it could take effect, would have prohibited the State from awarding public health grants to providers who perform or promote safe and legal abortions, even though the grants have nothing to do with abortion services. Those grants instead provide funds for other health services, such as education to prevent violence against women, screening for breast and cervical cancer, HIV and AIDS prevention, testing and treatment of sexually transmitted diseases, and infant mortality prevention.

With defunding efforts of this kind proliferating around the country, the Attorneys General seek to ensure the availability of safe abortion services and other important public health services from accessible providers in each of their states, and to protect the right of providers to engage in constitutionally protected activity.

The brief was prepared by New York Deputy Solicitor General Andrea Oser and Assistant Solicitor General Laura Etlinger.

###

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From:	Silver-AGO052019, Natalie
To:	Donovan, Thomas; Clark, Charity; Diamond, Joshua
Subject:	RE: Draft Title X lawsuit press release
Date:	Monday, March 4, 2019 1:12:17 PM

Ok. I will plan to put out after embaro is lifted at 2, followed by social media.

Natalie Silver
Community Outreach and Policy Coordinator
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From: Donovan, Thomas <Thomas.Donovan@vermont.gov>
Sent: Monday, March 4, 2019 1:07 PM
To: Clark, Charity <Charity.Clark@vermont.gov>; Diamond, Joshua <Joshua.Diamond@vermont.gov>
Cc: Silver, Natalie <Natalie.Silver@vermont.gov>
Subject: Re: Draft Title X lawsuit press release

Looks good . Montpelier fine
Thanks
Tjd

Get Outlook for iOS

From: Clark, Charity
Sent: Monday, March 4, 2019 12:42:00 PM
To: Donovan, Thomas; Diamond, Joshua
Cc: Silver, Natalie
Subject: Draft Title X lawsuit press release

Here is a draft release on the Title X lawsuit. We are still waiting for PPNNE's quote. In case you can't see my comments on your phones, I have two: 1) Should we list your location as Montpelier, even though you're in D.C.? 2) We are still waiting for the final state to get us to 21.

We haven't yet seen the draft national release from Oregon. As I mentioned in my text, the press embargo will be lifted at 11 Pacific/2 Eastern.

Thanks,
Charity

STATE OF VERMONT
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FOR IMMEDIATE RELEASE:
March 4, 2019

CONTACT: Eleanor Spottswood
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802-828-3171

VERMONT TO JOIN LAWSUIT OVER TITLE X FUNDING

Vermont's Reproductive Health Clinics Jeopardized by New Federal Rule

WASHINGTON, D.C. – Attorney General T.J. Donovan today announced his intent to file a lawsuit against the federal government over a new Title X funding regulation. Title X is the only national federal grant program that is dedicated solely to providing comprehensive family planning and preventative health care. In Vermont, 10,000 people rely on Title X for their healthcare. The new rule includes a "gag rule" that limits providers' ability to give neutral, factual information to their patients about abortion, and prohibits abortion referrals. The new rule also redirects funding priorities from the CDC's birth control recommendations to only "natural family planning methods." In Vermont, the only recipient of Title X funds are the 10 Planned Parenthood clinics located around the State.

"The new Title X rule is contrary to law," Attorney General Donovan said. "And it will have a devastating impact on reproductive healthcare for low income Vermonters. No Title X funds go toward abortion. Instead, the rule will deprive Vermonters of basic healthcare." Title X funds basic healthcare services, including wellness exams, cervical and breast cancer screenings, birth control, contraception education, and testing for sexually transmitted diseases and HIV.

As a result of the new regulations, Title X providers will be forced to give incomplete and misleading information to patients—a "gag rule" on providing services or information related to abortion, even to patients who affirmatively say that they want one. The gag rule would also apply to any "referral partners" of Title X clinics. The new rules stretch Title X funding to try to cover gaps in healthcare created by employers who opt out of providing insurance to cover contraception. The new rule also redefines "family planning" to promote "natural family planning methods" over more effective forms of birth control. The new rule never mentions the CDC's evidence-based best practices guidelines, "Providing Quality

Family Planning Services," which was the gold standard for healthcare under the old Title X regulations. In addition, the new rule requires Title X clinics to be physically located in a separate facility from any abortion provider. Title X funding is not, and never has been, used for abortions.

Vermont has ten clinics supported by Title X funds, located in Barre, Bennington, Brattleboro, Hyde Park, Rutland, Middlebury, Newport, St. Albans, St. Johnsbury, and White River Junction. All provide crucial basic health care to underserved populations. Funding for each of these clinics is jeopardized by the new rule. Title X has been providing high quality preventative health care to millions of Americans for decades.

"[Quote from PPNNE]," said Meagan Gallagher, CEO and President of Planned Parenthood of Northern New England.

Vermont will be joined by Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Virginia, and Wisconsin. The basis for the anticipated lawsuit is that the new Title X rule is contrary to the U.S. Constitution and to governing statutes, including the Administrative Procedures Act. If the rule went into effect, it will harm Vermont by increasing health care costs as a result of an increase in unintended pregnancies, cancers not detected in early stages, and the spread of sexually transmitted infections.

# # #

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From:	Donovan, Thomas
To:	Diamond, Joshua
Cc:	Clark, Charity
Subject:	Re: Important: Title X media plan for next week
Date:	Monday, March 4, 2019 7:57:44 AM

Quote is ok
Please send so we r included in release
Please
Get Outlook for iOS

From: Diamond, Joshua
Sent: Monday, March 4, 2019 7:48:49 AM
To: Donovan, Thomas
Subject: Fwd: Important: Title X media plan for next week

Let's discuss in the cab to the hotel. Josh

Sent from my iPhone

Begin forwarded message:

> **From:** "Clark, Charity" <Charity.Clark@vermont.gov>
> **Date:** March 4, 2019 at 7:30:14 AM EST
> **To:** "Diamond, Joshua" <Joshua.Diamond@vermont.gov>, "Silver, Natalie" <Natalie.Silver@vermont.gov>
> **Subject: Re: Important: Title X media plan for next week**
>
> Today's the deadline for a quote on Title X. Josh, any embellishments on my suggestion below?
>
> By the way, Kristina never responded to my voicemail message re a press conference today.
>
> Charity
>
> Sent from my iPhone
>
> On Mar 1, 2019, at 3:09 PM, Clark, Charity <Charity.Clark@vermont.gov> wrote:
>
> > I've left a message with Kristina, planting the seed for a Monday press conference in D.C.
> >
> > As to a quote from T.J., I'm inclined to defer to Josh or Ella who know more about the lawsuit. That said, here are some ideas:
> >
> > "Vermont's Title X clinics provide critical health services, like

cancer screenings and HIV testing. These clinics serve primarily poor people, and the new rule would deprive these people of needed health care."

Charity

Sent from my iPhone

On Mar 1, 2019, at 2:24 PM, Clark, Charity <Charity.Clark@vermont.gov> wrote:

> FYI
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> **From:** Edmunson Kristina <kristina.edmunson@doj.state.or.us>
> **Date:** March 1, 2019 at 12:48:36 PM EST
> **To:** "kdosreis@riag.ri.gov" <kdosreis@riag.ri.gov>, "bcollins@riag.ri.gov" <bcollins@riag.ri.gov>, "Lawrence.pacheco@coag.gov" <Lawrence.pacheco@coag.gov>, "drummondgl@doj.state.wi.us" <drummondgl@doj.state.wi.us>, "krishna.f.jayaram@hawaii.gov" <krishna.f.jayaram@hawaii.gov>, "Mat.Marshall@delaware.gov" <Mat.Marshall@delaware.gov>, "rcoombs@oag.state.md.us" <rcoombs@oag.state.md.us>, "Charity.Clark@vermont.gov" <Charity.Clark@vermont.gov>, "Monica C. Moazez" <MMoazez@ag.nv.gov>, "Rossman-McKinney, Kelly (AG)" <RossmanMcKinneyK@michigan.gov>, "PThompson@atg.state.il.us" <PThompson@atg.state.il.us>, "Kempner, Delaney" <Delaney.Kempner@ag.ny.gov>, "Benton, Elizabeth" <Elizabeth.Benton@ct.gov>, "mkelly@oag.state.va.us" <mkelly@oag.state.va.us>, "Margaret.Quackenbush@mass.gov"

<Margaret.Quackenbush@mass.gov>
Subject: Important: Title X media plan for next week

Hi all,

I'm writing because your AG has signed off on the multi-state Title X lawsuit, which will most likely be filed the morning (PST) of Tuesday, March 5th. The exact time of the filing, and embargo, is still TBD, but the lawsuit will be filed in Oregon. Currently, we have **17 states** who are joining our lawsuit (with the potential for more). Not for public release, but Planned Parenthood Federation of America and the AMA will also be filing a separate lawsuit at the same time as ours.

Our AG colleagues in California and Washington will be filing two separate lawsuits on Title X on Monday, March 4th. Because of this, there is some interest in a two-prong media strategy. Is everybody comfortable with this approach? Please write or call me today, if you have any concerns or questions. I know many of our AG's will be together next week at NAAG in DC as well.

Media plan:

- Monday, March 4th : exact time TBD, but issue a group release saying there is a coalition of AG's who have been working on a lawsuit, and we will be filing the next day, Tuesday, March 5th. In the release, we can include a short (2-3 sentence) statement from every AG who wants to participate. <u>If your AG would like to include a statement in the group release, please send me something by TOMORROW (Saturday, March 2nd).</u> I will work on the template and send it to everybody by Sunday evening, with the exact time the statement can be released. Each

office will be able to share the release with their press lists. In this release, unfortunately, we will not be able to say that Planned Parenthood is filing a similar lawsuit.

- Tuesday, March 5th: exact time TBD, but once we have the filing time we will be able to issue our own press releases saying that the lawsuit has been filed, and that Planned Parenthood has also filed a similar lawsuit. I will send a template release by Monday.

Again, please email or call me if you have any questions/concerns with this media approach. We want to make sure we make the media cycle on Monday when the other two lawsuits are filed, so that is why we are doing a two-pronged approach.

My cell is 503-580-7146 if you have any questions. Also, don't forget to send me a short statement from your AG to include in the Monday release.

Thank you!
Kristina

Kristina Edmunson
Communications Director
Attorney General Ellen Rosenblum
Oregon Department of Justice
Kristina.edmunson@state.or.us
Office: 503-378-6002
Cell: 503-580-7146

delete the message and any attachments
from your system.

****

From: Donovan, Thomas
To: Clark, Charity; Diamond, Joshua
Cc: Silver-AGO052019, Natalie
Subject: Re: Draft Title X lawsuit press release
Date: Monday, March 4, 2019 1:07:13 PM

Looks good . Montpelier fine
Thanks
Tjd

Get Outlook for iOS

From: Clark, Charity
Sent: Monday, March 4, 2019 12:42:00 PM
To: Donovan, Thomas; Diamond, Joshua
Cc: Silver, Natalie
Subject: Draft Title X lawsuit press release

Here is a draft release on the Title X lawsuit. We are still waiting for PPNNE's quote. In case you can't see my comments on your phones, I have two: 1) Should we list your location as Montpelier, even though you're in D.C.? 2) We are still waiting for the final state to get us to 21.

We haven't yet seen the draft national release from Oregon. As I mentioned in my text, the press embargo will be lifted at 11 Pacific/2 Eastern.

Thanks,
Charity

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT 05609-1001

FOR IMMEDIATE RELEASE:
March 4, 2019

CONTACT: Eleanor Spottswood
Assistant Attorney General
802-828-3171

VERMONT TO JOIN LAWSUIT OVER TITLE X FUNDING

Vermont's Reproductive Health Clinics Jeopardized by New Federal Rule

WASHINGTON, D.C. – Attorney General T.J. Donovan today announced his intent to file a lawsuit against the federal government over a new Title X funding regulation. Title X is the only national federal grant program that is dedicated solely to providing comprehensive family planning and preventative health care. In Vermont, 10,000 people rely on Title X for their healthcare. The new rule includes a "gag rule" that limits providers' ability to give neutral,

factual information to their patients about abortion, and prohibits abortion referrals. The new rule also redirects funding priorities from the CDC's birth control recommendations to only "natural family planning methods." In Vermont, the only recipient of Title X funds are the 10 Planned Parenthood clinics located around the State.

"The new Title X rule is contrary to law," Attorney General Donovan said. "And it will have a devastating impact on reproductive healthcare for low income Vermonters. No Title X funds go toward abortion. Instead, the rule will deprive Vermonters of basic healthcare." Title X funds basic healthcare services, including wellness exams, cervical and breast cancer screenings, birth control, contraception education, and testing for sexually transmitted diseases and HIV.

As a result of the new regulations, Title X providers will be forced to give incomplete and misleading information to patients—a "gag rule" on providing services or information related to abortion, even to patients who affirmatively say that they want one. The gag rule would also apply to any "referral partners" of Title X clinics. The new rules stretch Title X funding to try to cover gaps in healthcare created by employers who opt out of providing insurance to cover contraception. The new rule also redefines "family planning" to promote "natural family planning methods" over more effective forms of birth control. The new rule never mentions the CDC's evidence-based best practices guidelines, "Providing Quality Family Planning Services," which was the gold standard for healthcare under the old Title X regulations. In addition, the new rule requires Title X clinics to be physically located in a separate facility from any abortion provider. Title X funding is not, and never has been, used for abortions.

Vermont has ten clinics supported by Title X funds, located in Barre, Bennington, Brattleboro, Hyde Park, Rutland, Middlebury, Newport, St. Albans, St. Johnsbury, and White River Junction. All provide crucial basic health care to underserved populations. Funding for each of these clinics is jeopardized by the new rule. Title X has been providing high quality preventative health care to millions of Americans for decades.

"[Quote from PPNNE]," said Meagan Gallagher, CEO and President of Planned Parenthood of Northern New England.

Vermont will be joined by Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Virginia, and Wisconsin. The basis for the anticipated lawsuit is that the new Title X rule is contrary to the U.S. Constitution and to governing statutes, including the Administrative Procedures Act. If the rule went into effect, it will harm Vermont by increasing health care costs as a result of an increase in unintended pregnancies, cancers not detected in early stages, and the spread of sexually transmitted infections.

# # #

Charity R. Clark
Chief of Staff
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
802-828-3737

From: Silver-AGO052019, Natalie
To: Clark, Charity; Donovan, Thomas
Subject: TPP info and VT data
Date: Tuesday, March 19, 2019 12:54:15 PM

It does not appear that Vermont has any TPP grant recipients right now. However, in 2017 a Vermont based organization, Youth Catalytics, was a TPP recipient, and in the second year of their five year grant, when Federal Government abruptly pulled all funding with no explanation. https://vtdigger.org/2017/07/24/teen-pregnancy-program-abruptly-loses-millions-from-feds/ Youth Catalytics had won the funding to improve communication between parents, foster care providers, educators and teens about sexual health and pregnancy prevention.

Public and private organizations in Vermont may apply and receive these grants in the future. I am not sure if that changes our feelings about putting out the release. Planned Parenthood of NNE is in support of this release and feel the TPP Grant is an essentially piece of teen pregnancy prevention. I have asked if they know of any organizations applying for funding currently. Let me know what you both think.

For reference, I found these numbers about teen pregnancy in Vermont:

Vermont Department of Health Report in 2016:

74% of unplanned births are publicly funded in VT
VT spends $30 million per year on unintended pregnancies
Pregnancy and delivery services yield highest potentially avoidable costs

Source: Guttmacher 2010-2015, Medicaid Maternal & Infant Health Initiative 2015, Brandeis Report 2014.

According to UVMMC:
Teen pregnancy rates in Vermont are reducing largely due to increased contraceptive use. UVMMC attributes 86% of the decline to increased access to contraceptives.

Link to VTDPH report:
https://women.vermont.gov/sites/women/files/pdf/PreventiveReproductiveHealthFeb2016.pdf

Natalie Silver
Community Outreach and Policy Coordinator
Vermont Attorney General's Office
Natalie.Silver@vermont.gov
802 595 8679

From:	Silver-AGO052019, Natalie
To:	Donovan, Thomas; Clark, Charity; Diamond, Joshua
Cc:	Spottswood, Eleanor
Subject:	RE: Draft press release: Title X lawsuit motion
Date:	Thursday, March 21, 2019 10:47:57 AM

Great. Will do.

Natalie Silver
Community Outreach and Policy Coordinator
Vermont Attorney General's Office
Natalie.Silver@vermont.gov
802 595 8679

From: Donovan, Thomas <Thomas.Donovan@vermont.gov>
Sent: Thursday, March 21, 2019 10:33 AM
To: Clark, Charity <Charity.Clark@vermont.gov>; Diamond, Joshua <Joshua.Diamond@vermont.gov>
Cc: Silver, Natalie <Natalie.Silver@vermont.gov>; Spottswood, Eleanor <Eleanor.Spottswood@vermont.gov>
Subject: Re: Draft press release: Title X lawsuit motion

Looks good
Please do sm as well

Get Outlook for iOS

From: Clark, Charity
Sent: Thursday, March 21, 2019 7:08:54 AM
To: Donovan, Thomas; Diamond, Joshua
Cc: Silver, Natalie; Spottswood, Eleanor
Subject: Draft press release: Title X lawsuit motion

Hi, T.J.,

Here is a draft press release in the Title X lawsuit. We don't have a time that the press embargo will be lifted, but we assume later this afternoon. We will link to the motion for PI once final. Please let us know if you approve the release. I have highlighted your quote.

[redacted]

Charity

VERMONT MOVES TO PROTECT FUNDING IN TITLE X LAWSUIT

Preliminary Injunction Would Stay New Federal Rule

MONTPELIER – Attorney General T.J. Donovan announced that Vermont, and 20 other states, have moved to protect Title X funding while a lawsuit challenging the constitutionality of the Trump Administration's Title X "gag rule" is pending. The "gag rule" limits providers' ability to give neutral, factual information to their patients about abortion, and prohibits abortion referrals. The new rule also redirects funding priorities from the CDC's birth control recommendations to "natural family planning methods." Attorney General Donovan seeks to protect funding to 10 of Vermont's Title X-funded healthcare centers that provide essential access to healthcare services. In Vermont, 10,000 people rely on Title X for basic healthcare. Title X is the only national federal grant program that is dedicated solely to providing comprehensive family planning and preventative health care. In Vermont, the only recipients of Title X funds are 10 Planned Parenthood healthcare centers located around the State.

"Thousands of low-income Vermonters rely on these funds for their basic healthcare," Attorney General Donovan said. Title X funds basic healthcare services, including wellness exams, cervical and breast cancer screenings, birth control, contraception education, and testing for sexually transmitted diseases and HIV. "It's unreasonable to ask healthcare providers to withhold crucial information from their patients."

As a result of the new regulations, Title X providers will be forced to give incomplete and misleading information to patients—a "gag rule" on providing services or information related to abortion, even to patients who affirmatively say that they want one. The gag rule would also apply to any "referral partners" of Title X health care centers. The new rule stretches Title X funding to try to cover gaps in healthcare created by employers who opt out of providing insurance to cover contraception. The new rule also redefines "family planning" to promote "natural family planning methods" over more effective forms of birth control. The new rule never mentions the CDC's evidence-based best practices guidelines, "Providing Quality Family Planning Services," which was the gold standard for healthcare under the old Title X regulations. In addition, the new rule requires Title X health care centers to be physically located in a separate facility from any abortion provider. Title X funding is not, and never has been, used for abortions.

"This gag rule violates medical ethics and nationally accredited standards, and reputable institutions including the American Medical Association strongly oppose it," said Lucy Leriche, Vice President of Public Policy at Planned Parenthood of Northern New England. "We are grateful to Attorney General Donovan for his leadership and action to prevent the Trump Administration's gag rule from taking effect in early May. We will continue fighting to protect the ability of providers to give the medically ethical, accurate, quality health care that our patients have come to expect from PPNNE."

Funding for all of Vermont's Title X healthcare centers is jeopardized by the new rule. Without Title X funding, there is not yet any other organization capable of providing Title X services statewide. Vermont has 10 healthcare centers supported by Title X funds, located in Barre, Bennington, Brattleboro, Hyde Park, Rutland, Middlebury, Newport, St. Albans, St. Johnsbury, and White River Junction. All provide crucial basic health care to underserved populations. Title X has been providing high quality preventative health care to millions of Americans for decades.

The basis for the lawsuit, filed by 21 states, is that the new Title X rule is contrary to the U.S. Constitution and to governing statutes, including the Administrative Procedures Act. If the rule went into effect, it will harm Vermont by increasing health care costs, including costs to Medicaid spending, as a result of an increase in unintended pregnancies, cancers not detected in early stages, and the spread of sexually transmitted infections.

# # #

Charity R. Clark
Chief of Staff
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
802-828-3737

From: Donovan, Thomas
To: Clark, Charity; Diamond, Joshua
Cc: Silver-AGO052019, Natalie; Spottswood, Eleanor
Subject: Re: Draft press release: Title X lawsuit motion
Date: Thursday, March 21, 2019 10:33:20 AM

Looks good
Please do sm as well

Get Outlook for iOS

From: Clark, Charity
Sent: Thursday, March 21, 2019 7:08:54 AM
To: Donovan, Thomas; Diamond, Joshua
Cc: Silver, Natalie; Spottswood, Eleanor
Subject: Draft press release: Title X lawsuit motion

Hi, T.J.,

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# # #

Charity R. Clark
Chief of Staff
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
802-828-3737

From:	Silver-AGO052019, Natalie
To:	Clark, Charity; Donovan, Thomas
Subject:	Fwd: re Revised Template Release re Kentucky Abortion Services
Date:	Wednesday, April 3, 2019 2:12:11 PM
Attachments:	Kentucky Abortion Services Template Release.docx

This is the amicus brief about Kentucky's recent action on abortion. Please let me know if you want to put this out.

Get Outlook for iOS

From: Spottswood, Eleanor <eleanor.spottswood@vermont.gov>
Sent: Wednesday, April 3, 2019 1:48 PM
To: Clark, Charity; Silver, Natalie
Subject: FW: re Revised Template Release re Kentucky Abortion Services

Charity and Natalie,

No pressure to do this at all, just want you to have the revised info re the sample press release I sent this morning.

Ella

From: Monica C. Moazez <MMoazez@ag.nv.gov>
Sent: Wednesday, April 3, 2019 1:35 PM
To: 'KOHolleran@oag.state.va.us' <KOHolleran@oag.state.va.us>; 'Nathan.Blake@ag.iowa.gov' <Nathan.Blake@ag.iowa.gov>; 'Eric.Tabor@ag.iowa.gov' <Eric.Tabor@ag.iowa.gov>; 'ABraun@atg.state.il.us' <ABraun@atg.state.il.us>; 'KJanas@atg.state.il.us' <KJanas@atg.state.il.us>; 'Kamala.H.Shugar@doj.state.or.us' <Kamala.H.Shugar@doj.state.or.us>; 'Donna.Cassutt@ag.state.mn.us' <Donna.Cassutt@ag.state.mn.us>; 'Elizabeth.Wilkins@dc.gov' <Elizabeth.Wilkins@dc.gov>; 'Natalie.Ludaway@dc.gov' <Natalie.Ludaway@dc.gov>; 'William.Chang@dc.gov' <William.Chang@dc.gov>; 'Lisa.Raymond@dc.gov' <Lisa.Raymond@dc.gov>; 'Caroline.vanzile@dc.gov' <Caroline.vanzile@dc.gov>; 'loren.alikhan@dc.gov' <loren.alikhan@dc.gov>; 'Alfred.Dillione@state.de.us' <Alfred.Dillione@state.de.us>; 'Aaron.Goldstein@state.de.us' <Aaron.Goldstein@state.de.us>; 'Gregory.Patterson@state.de.us' <Gregory.Patterson@state.de.us>; 'Lauren.Vella@state.de.us' <Lauren.Vella@state.de.us>; Spottswood, Eleanor <Eleanor.Spottswood@vermont.gov>; 'Dana.O.Viola@hawaii.gov' <Dana.O.Viola@hawaii.gov>; 'Krishna.F.Jayaram@hawaii.gov' <Krishna.F.Jayaram@hawaii.gov>; 'clyde.j.wadsworth@hawaii.gov' <clyde.j.wadsworth@hawaii.gov>; 'Kimberly.T.Guidry@hawaii.gov' <Kimberly.T.Guidry@hawaii.gov>;

'SDearmin@ncdoj.gov' <SDearmin@ncdoj.gov>; 'SWood@ncdoj.gov' <SWood@ncdoj.gov>; 'TMaestas@nmag.gov' <TMaestas@nmag.gov>; 'susan.herman@maine.gov' <susan.herman@maine.gov>; 'Mike.Firestone@mass.gov' <Mike.Firestone@mass.gov>; 'Joanna.Lydgate@mass.gov' <Joanna.Lydgate@mass.gov>; 'bessie.dewar@mass.gov' <bessie.dewar@mass.gov>; 'david.kravitz@state.ma.us' <david.kravitz@state.ma.us>; 'KateK@atg.wa.gov' <KateK@atg.wa.gov>; 'JeffS2@atg.wa.gov' <JeffS2@atg.wa.gov>; Edmunson Kristina <kristina.edmunson@doj.state.or.us>; 'Andrea.Oser@ag.ny.gov' <Andrea.Oser@ag.ny.gov>; 'mfischer@attorneygeneral.gov' <mfischer@attorneygeneral.gov>; 'cquattrocki@oag.state.md.us' <cquattrocki@oag.state.md.us>; 'Clare.Kindall@ct.gov' <Clare.Kindall@ct.gov>; 'ShermanA@michigan.gov' <ShermanA@michigan.gov>
Cc: Heidi P. Stern <HStern@ag.nv.gov>; Jeffrey M. Conner <JConner@ag.nv.gov>; Jessica L. Adair <JAdair@ag.nv.gov>
Subject: re Revised Template Release re Kentucky Abortion Services

All,

Please see a slightly revised template release for today's press—revisions have been made to the paragraph beneath the AG Quote, as well as to the final paragraph listing the participating states. At this time, our coalition includes 20 states and territories (including Nevada), and I will let you know if there are any last minute participants. Please continue to hold until I follow up with an email noting that the embargo has been lifted.

Many thanks,

Monica Moazez
Communications Director
Nevada Attorney General's Office
555 E. Washington Ave.
Las Vegas, NV 89101
(702) 486-0657

From: Silver-AGO052019, Natalie
To: Donovan, Thomas; Clark, Charity; Diamond, Joshua
Subject: Kentucky press
Date: Thursday, April 4, 2019 4:41:33 PM
Attachments: Kentucky release CRC NRS edits.docx

A lot of press today. Sorry, trying to keep pace!

Attached is a press release on the Kentucky brief. The press embargo has lifted and we are now free to release and do social media. We can put this out tomorrow as well, but keep in mind border wall will go out tomorrow. Let me know your thoughts.

Natalie

Natalie Silver
Community Outreach and Policy Coordinator
Vermont Attorney General's Office
Natalie.Silver@vermont.gov
802 595 8679

From:	Silver-AGO052019, Natalie
To:	Donovan, Thomas
Subject:	FW: Kentucky press
Date:	Friday, April 5, 2019 2:18:42 PM
Attachments:	Kentucky release CRC NRS edits.docx

Natalie Silver
Community Outreach and Policy Coordinator
Vermont Attorney General's Office
Natalie.Silver@vermont.gov
802 595 8679

From: Silver, Natalie
Sent: Thursday, April 4, 2019 4:42 PM
To: Donovan, Thomas <Thomas.Donovan@vermont.gov>; Charity Clark (Charity.Clark@vermont.gov) <Charity.Clark@vermont.gov>; Diamond, Joshua <Joshua.Diamond@vermont.gov>
Subject: Kentucky press

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Natalie

Natalie Silver
Community Outreach and Policy Coordinator
Vermont Attorney General's Office
Natalie.Silver@vermont.gov
802 595 8679

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT 05609-1001

FOR IMMEDIATE RELEASE:
April 4, 2019

CONTACT: Eleanor Spottswood
Assistant Attorney General
802-828-3171

ATTORNEY GENERAL DONOVAN JOINS BRIEF PROTECTING WOMEN'S ACCESS TO ABORTION SERVICES

MONTPELIER- Today, Attorney General Donovan joined a coalition of 20 attorneys general in filing an amicus brief asking the U.S. Court of Appeals for the Sixth Circuit to affirm a lower court's finding about a Kentucky abortion law. The lower court found that the regulating abortion services is unconstitutional under the 14th Amendment of the U.S. Constitution. The brief argues that the availability of abortion services in neighboring states does not excuse a state from the Constitution's prohibition on unduly burdening a woman's ability to access abortion services in her home state. Additionally, the brief urges the Court to ensure that regulations imposed on abortion services actually promote women's health without erecting substantial obstacles to the availability of these services. In Vermont, Attorney General Donovan has actively supported the passage of an amendment to the Vermont constitution that guarantees a woman's right to an abortion and has worked to protect women's access to preventative and reproductive healthcare services.

A copy of the brief can be found here.

The implications of this case for the women of Kentucky are particularly severe, as the law at issue would effectively eliminate the only abortion provider in the state. In their brief, the attorneys general further argue that allowing a state—like Kentucky—to rely on neighboring

states for abortion services harms neighboring states. Allowing Kentucky's analysis could have unintended consequences on neighboring states whose demand for abortion services could increase.

Plaintiff-Appellee EMW Women's Surgical Center (EMW) is Kentucky's only licensed abortion facility. While EMW has provided safe abortions since the 1980s, in 2017, Kentucky's Cabinet for Health and Family Services (Cabinet) notified EMW that its license to perform abortions had been renewed in error, citing alleged violations of Kentucky law. EMW filed suit in March 2017, with Planned Parenthood later intervening in the case. Planned Parenthood had been trying unsuccessfully to obtain an abortion license until the Cabinet abruptly informed the organization that its transfer and transport agreements with a hospital and ambulance company were allegedly "deficient."

The District Court for the Western District of Kentucky ultimately agreed with EMW and Planned Parenthood, finding that the Kentucky law regarding transport and transfer agreement requirements imposed an undue burden on Kentucky women seeking to exercise their constitutional right to access abortion services. In response, the Cabinet appealed this decision last month in the federal courts, challenging the District Court's findings. Today's brief was filed in support of Planned Parenthood and EMW's legal challenge.

Joining Attorney General Donovan in filing today's brief are the attorneys general of California, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Virginia and Washington.

###

From:	Silver-AGO052019, Natalie
To:	Diamond, Joshua; Clark, Charity; Battles, Benjamin; Spottswood, Eleanor; Donovan, Thomas
Subject:	Ohio law, FYI
Date:	Friday, April 12, 2019 11:10:12 AM

NPR: A Bill Banning Most Abortions Becomes Law In Ohio. Gabe Rosenberg, 4/11/19

The six-week abortion ban known as the "heartbeat bill" is now law in Ohio. That makes Ohio the sixth state in the nation to attempt to outlaw abortions at the point a fetal heartbeat can be detected. Gov. Mike DeWine signed the bill Thursday afternoon, just one day after it passed the Republican-led General Assembly. The law is slated to take effect in 90 days, unless blocked by a federal judge. Now known as the "Human Rights Protection Act," SB 23 outlaws abortions as early as five or six weeks into a pregnancy, before many women know they're pregnant. It is one of the most restrictive abortion laws in the country. The bill does include an exception to save the life of the woman, but no exceptions for cases of rape or incest. Anti-abortion groups such as Ohio Right To Life say they intend the heartbeat bill to trigger a U.S. Supreme Court case striking down the 1973 Roe v. Wade decision. That case legalized abortion up until viability, usually at 22-24 weeks. "If this is what it takes, we will see you at the Supreme Court," said Planned Parenthood of Ohio President Iris Harvey at a rally Wednesday outside the Statehouse. The bill institutes criminal penalties for doctors who violate the law. Doctors who perform abortions after detecting a heartbeat would face a fifth-degree felony and up to a year in prison. Legislators attempted several times before to pass the heartbeat bill, but the legislation was twice vetoed by former Gov. John Kasich, who warned it would prove costly for the state to defend in court.

Natalie Silver
Community Outreach and Policy Coordinator
Vermont Attorney General's Office
Natalie.Silver@vermont.gov
802 595 8679

From:	Donovan, Thomas
To:	Clark, Charity; Diamond, Joshua; Spottswood, Eleanor
Cc:	Silver-AGO052019, Natalie
Subject:	Re: Title X Lawsuit PI Decision.docx
Date:	Monday, April 29, 2019 5:25:53 PM

Looks good

Get Outlook for iOS

From: Clark, Charity
Sent: Monday, April 29, 2019 5:02:01 PM
To: Donovan, Thomas; Diamond, Joshua; Spottswood, Eleanor
Cc: Silver, Natalie
Subject: Title X Lawsuit PI Decision.docx

Hi, T.J.,

I have attached a draft press release regarding the Oregon decision in our Title X lawsuit. As with past Title X press releases, I have reached out to PPNNE to inquire whether they would like to include a quote. I told them we plan to issue our release tomorrow. In the meantime, please let me know if you have any changes and if your quote is ok.

Ella, can you let me know how many days the federal government has to appeal? (And let me know if you have any other edits.)

Thanks,
Charity

FEDERAL JUDGE GRANTS INJUNCTION IN TITLE X LAWSUIT

Judge: Final Rule "Recklessly" Disregards Health Outcomes

MONTPELIER – Vermont Attorney General T.J. Donovan announced that an Oregon court has enjoined the federal government from implementing a new Title X funding regulation. Vermont joined the lawsuit to protect the basic healthcare needs of 10,000 Vermonters. Title X is the only national federal grant program that is dedicated solely to providing comprehensive family planning and preventative health care, such as cancer screenings. In Vermont, the only recipient of Title X funds are the 10 Planned Parenthood health care centers located around the State.

In the decision, Judge Michael J. McShane said, "At best, the Final Rule is a solution in search of a problem. At worst, it is a ham-fisted approach to health policy that recklessly

disregards the health outcomes of women, families, and communities."

Attorney General Donovan explained, "What this ruling means is that 10,000 Vermonters still have access to affordable healthcare."

Department of Health Commissioner Mark Levine, MD greeted the judge's order with cautious hope for the long-term prospects of Title X: "The administration's efforts to undercut public health care services is misguided and jeopardizes the very health and lives of women in Vermont and across the country. We will continue working to ensure that any future such actions will not diminish access to affordable, quality care in Vermont."

"Quote from PPNNE," said Meagan Gallagher, President and CEO of Planned Parenthood of Northern New England.

The new rule would have forced Title X providers to give incomplete and misleading information to patients—a "gag rule" on providing services or information related to abortion, even to patients who affirmatively say that they want one. The gag rule would have applied to any "referral partners" of Title X health care centers. The new rule would have stretched Title X funding to try to cover gaps in healthcare created by employers who opt out of providing insurance to cover contraception. The new rule also redefines "family planning" to promote "natural family planning methods" over more effective forms of birth control. The new rule never mentions the CDC's evidence-based best practices guidelines, "Providing Quality Family Planning Services," which is the gold standard for healthcare under the old Title X regulations. In addition, the new rule would have required Title X health care centers to be physically located in a separate facility from any abortion provider. Title X funding is not, and never has been, used for abortions.

Vermont has ten health care centers supported by Title X funds, located in Barre, Bennington, Brattleboro, Hyde Park, Rutland, Middlebury, Newport, St. Albans, St. Johnsbury, and White River Junction. All provide crucial basic health care to underserved populations. Funding for each of these health care centers is jeopardized by the new rule. Title X has been providing high quality preventative health care to millions of Americans for

decades. Title X funds basic healthcare services, including wellness exams, cervical and breast cancer screenings, birth control, contraception education, and testing for sexually transmitted diseases and HIV.

The court's decisions can be found here. The federal government has [x] days to appeal the ruling.

# # #

From:	Silver-AGO052019, Natalie
To:	Clark, Charity; Donovan, Thomas; Diamond, Joshua; Spottswood, Eleanor; Battles, Benjamin
Subject:	Final press release
Date:	Tuesday, April 30, 2019 9:56:13 AM
Attachments:	FEDERAL JUDGE GRANTS INJUNCTION IN TITLE X LAWSUIT.docx

Attached is the final draft. I will plan to put this out at 10:20 unless I hear otherwise. I have incorporated the quote from PPNNE.

I will tweet and post on social media once it is released.

Natalie

Natalie Silver
Community Outreach and Policy Coordinator
Vermont Attorney General's Office
Natalie.Silver@vermont.gov
802 595 8679

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT 05609-1001

FOR IMMEDIATE RELEASE:
April 30, 2019

CONTACT: Eleanor Spottswood
Assistant Attorney General
802-828-3171

FEDERAL JUDGE GRANTS INJUNCTION IN TITLE X LAWSUIT

Judge: Final Rule "Recklessly" Disregards Health Outcomes

MONTPELIER – Vermont Attorney General T.J. Donovan announced that an Oregon court has enjoined the federal government from implementing a new Title X funding regulation. Vermont joined the lawsuit to protect the basic healthcare needs of 10,000 Vermonters. Title X is the only national federal grant program that is dedicated solely to providing comprehensive family planning and preventative health care, such as cancer screenings. In Vermont, the only recipient of Title X funds are the 10 Planned Parenthood health care centers located around the State.

In the decision, Judge Michael J. McShane said, "At best, the Final Rule is a solution in search of a problem. At worst, it is a ham-fisted approach to health policy that recklessly disregards the health outcomes of women, families, and communities."

Attorney General Donovan explained, "What this ruling means is that 10,000 Vermonters still have access to affordable healthcare."

Department of Health Commissioner Mark Levine, MD greeted the judge's order with cautious hope for the long-term prospects of Title X: "The administration's efforts to undercut public health care services is misguided and jeopardizes the very health and lives of women in Vermont and across the country. We will continue working to ensure that any future such actions will not diminish access to affordable, quality care in Vermont."

"We are relieved by this decision that prevents the Trump administration's medically unethical gag rule from taking effect this week," said Meagan Gallagher, President and CEO of Planned Parenthood of Northern New England. "For now, the court's ruling will protect access to birth control, breast and cervical cancer screenings, and STD testing for 10,000 low-income Vermonters who rely on the Title X program for health care. We are grateful to Attorney General Donovan for his continued leadership in fighting for the health and wellbeing of Vermont's women, men, and families."

The new rule would have forced Title X providers to give incomplete and misleading information to patients—a "gag rule" on providing services or information related to abortion, even to patients who affirmatively say that they want one. The gag rule would have applied to any "referral partners" of Title X health care centers. The new rule would have stretched Title X funding to try to cover gaps in healthcare created by employers who opt out of providing insurance to cover contraception. The new rule also redefines "family planning" to promote "natural family planning methods" over more effective forms of birth control. The new rule never mentions the CDC's evidence-based best practices guidelines, "Providing Quality Family Planning Services," which is the gold standard for healthcare under the old Title X regulations. In addition, the new rule would have required Title X health care centers to be physically located in a separate facility from any abortion provider. Title X funding is not, and never has been, used for abortions.

Vermont has ten health care centers supported by Title X funds, located in Barre, Bennington, Brattleboro, Hyde Park, Rutland, Middlebury, Newport, St. Albans, St. Johnsbury, and White River Junction. All provide crucial basic health care to underserved populations. Funding for each of these health care centers is jeopardized by the new rule. Title X has been providing high quality preventative health care to millions of Americans for decades. Title X

funds basic healthcare services, including wellness exams, cervical and breast cancer screenings, birth control, contraception education, and testing for sexually transmitted diseases and HIV.

The court's decisions can be found here. The federal government has 60 days to appeal the ruling.

# # #

From: Silver-AGO052019, Natalie
To: Clark, Charity; Donovan, Thomas
Subject: RE: Title X press
Date: Thursday, May 17, 2018 2:30:01 PM
Attachments: TITLE x nat edits.docx

Hi there,

I included the info that Vermont has ten title x clinics around the state that serve roughly 9,000 patients. Also, 47% of these patients live at or below the federal poverty level. This info comes from the brief that was filed.

Please review and give thoughts

Natalie Silver
Community Outreach and Policy Coordinator
Vermont Attorney General's Office
109 State St, Montpelier VT
Office: 802 828 3173
Cell: 802 595 8679

-----Original Message-----
From: Clark, Charity
Sent: Thursday, May 17, 2018 1:36 PM
To: Silver, Natalie <Natalie.Silver@vermont.gov>; Donovan, Thomas <Thomas.Donovan@vermont.gov>
Subject: RE: Title X press

Attached are some suggested changes and a proposed quote ("Denying women preventative health care and effective family planning is not sensible public policy. Ensuring women's control over their own reproductive health empowers them and strengthens Vermont families for the long term. ").
Charity

-----Original Message-----
From: Silver, Natalie
Sent: Thursday, May 17, 2018 11:59 AM
To: Clark, Charity <Charity.Clark@vermont.gov>; Donovan, Thomas <Thomas.Donovan@vermont.gov>
Subject: Title X press

Hi there,

I'd like to put this out today. Too much going on yesterday, but this is a good issue and one we haven't spoken on in a while. Let me know your thoughts. I'm editing press release now but here is a template for you.

Natalie Silver
Executive Assistant to the Attorney General Vermont Attorney General's Office
109 State Street, Montpelier Vermont 05609-1001 natalie.silver@vermont.gov
Office: 802 828 3173
Cell: 802 595 8679

~~Attorney General Donovan~~VERMONT Joins Fight ~~19 Attorneys General in Urging for a National Injunction~~ to Protect Women's Access to Family Planning

More than 4 million Americans rely on ~~Title X~~Title X funding, which is currently being threatened by the Trump-Pence Administration

[~~CITY~~MONTPELIER] ~~–~~ Vermont has ~~[Attorney General XX],~~ joined 19 ~~a coalition of XX~~ states~~Attorneys General led by California Attorney General Xavier Becerra,~~ in filing an amicus brief in the U.S. District Court for the District of Columbia in support of a nationwide preliminary injunction that would block a recent attempt by the Trump-Pence Administration to reduce access to Title X.~~Title X,~~ the nation's family planning program. Title X ~~Title X~~ provides family planning services including birth control, and other critical preventive care to uninsured, under insured patients. The new set of requirements put forward by the Trump-Pence Administration would jeopardize the lives and the health of millions of low-income women and families across the United States, and thousands of Vermonters, by threatening funding for birth control, sexually transmitted disease testing, breast and cervical cancer screenings, and infertility treatment.

"~~AG Quote~~Denying women preventative health care and effective family planning is not sensible public policy. Ensuring women's control over their own reproductive health empowers them and strengthens Vermont families for the long term~~.~~," Attorney General TJ Donovan said.

On February 23, 2018, the U.S. Department of Health and Human Services released a new set of requirements that would strip away funding for women's healthcare providers like Planned Parenthood, and instead provide funding for natural family planning methods and

Commented [CC1]: If the amicus is filed by the State of Vermont, not AG Donovan, then I prefer saying Vermont. Otherwise, repeatedly mentioning the AG's name just feels like a gratuitous media grab. Mentioning the AG "fighting" in the headline works ok, I think.

Formatted: Don't add space between paragraphs of the same style, Line spacing: Double

Commented [CC2]: Do we know how many Vermonters take advantage of this program, or what it means for Vermont in dollars?

Formatted: Indent: First line: 0.5", Don't add space between paragraphs of the same style, Line spacing: Double

abstinence-only education. The new requirements threaten funding for comprehensive reproductive healthcare centers and instead favor facilities that do not provide women with fact-based information or comprehensive healthcare. These new requirements directly threaten the state of ~~California~~Vermont, which ~~has the largest Title X program in the nation~~serves about 9,000 patients at 10 Title X clinics around the state. Additionally, the elimination of these healthcare providers in Vermont would largely impact those living below the poverty line. Of the 9,000 patients served in Vermont, roughly 47% have incomes at or below the federal poverty level. ~~[stats about how this would affect Vermont].~~

Planned Parenthood of Wisconsin, Planned Parenthood of Greater Ohio and Planned Parenthood Association of Utah, along with the National Family Planning and Reproductive Health Association, are challenging the Administration. Filed in the U.S. District Court for the District of Columbia on May 2, 2018, these organizations argue that new funding requirements for ~~Title X~~Title X are in conflict with the underlying ~~Title X~~Title X statute and regulations. The plaintiffs also claim that the Administration has no clear basis for the policy change, and the resulting requirements are arbitrary and capricious. Lastly, they argue that the new criteria improperly change the nature of ~~Title X~~Title X funding. The current statute requires providers who receive ~~Title X~~Title X funding to provide patients with a range of family planning methods, yet the new requirements would emphasize only one set of family planning options (abstinence or natural family planning).

~~Joining Attorney General [XX] in~~Joining Vermont in filing ~~today's~~ the motion are the Attorneys General of: California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland,

Commented [CC3]: Can we refer to this as "controversial" in that it doesn't work?

Formatted: Don't add space between paragraphs of the same style, Line spacing: Double

Minnesota, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Virginia, Vermont, Washington, and the District of Columbia.

###

Commented [CC4]: Again, it seems overly political to me to list "AGs of…" instead of simply the States.

From: Silver-AGO052019, Natalie
To: Donovan, Thomas; Clark, Charity
Subject: Re: Title X press
Date: Thursday, May 17, 2018 3:42:50 PM

They are the planned parenthood clinics in Bennington, Brattleboro, Hyde Park, Middlebury, Newport, St. Albans, WRJ, Barre, Rutland and St. Johnsbury. They already know because PP has already put something out. Lucy Leriche and I spoke and all of their affiliates know about the suit.

_____

From: Donovan, Thomas
Sent: Thursday, May 17, 2018 3:38:58 PM
To: Silver, Natalie; Clark, Charity
Subject: RE: Title X press

Thanks.
What are the ten Vermont facilities? Do we owe them a heads up?

-----Original Message-----
From: Silver, Natalie
Sent: Thursday, May 17, 2018 2:59 PM
To: Clark, Charity <Charity.Clark@vermont.gov>; Donovan, Thomas <Thomas.Donovan@vermont.gov>
Subject: RE: Title X press

Clean copy attached

Natalie Silver
Community Outreach and Policy Coordinator Vermont Attorney General's Office
109 State St, Montpelier VT
Office: 802 828 3173
Cell: 802 595 8679

-----Original Message-----
From: Clark, Charity
Sent: Thursday, May 17, 2018 2:51 PM
To: Silver, Natalie <Natalie.Silver@vermont.gov>; Donovan, Thomas <Thomas.Donovan@vermont.gov>
Subject: RE: Title X press

I made a few additional, minor edits. Looks great. TJ, do you approve the quote so we can get this out today? ("Denying women preventative health care and effective family planning is not sensible public policy. Ensuring women's control over their own reproductive health empowers them and strengthens Vermont families for the long term," Attorney General TJ Donovan said.) Charity

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From: Silver, Natalie
Sent: Thursday, May 17, 2018 2:30 PM
To: Clark, Charity <Charity.Clark@vermont.gov>; Donovan, Thomas <Thomas.Donovan@vermont.gov>
Subject: RE: Title X press

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of these patients live at or below the federal poverty level. This info comes from the brief that was filed.

Please review and give thoughts

Natalie Silver
Community Outreach and Policy Coordinator Vermont Attorney General's Office
109 State St, Montpelier VT
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Subject: Title X press

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Natalie Silver
Executive Assistant to the Attorney General Vermont Attorney General's Office
109 State Street, Montpelier Vermont 05609-1001 natalie.silver@vermont.gov
Office: 802 828 3173
Cell: 802 595 8679

From: Silver-AGO052019, Natalie
To: Clark, Charity; Donovan, Thomas
Subject: RE: Title X press
Date: Thursday, May 17, 2018 2:58:50 PM
Attachments: VERMONT JOINS FIGHT TO PROTECT WOMEN'S ACCESS TO FAMILY PLANNING.docx

---

Clean copy attached

Natalie Silver
Community Outreach and Policy Coordinator
Vermont Attorney General's Office
109 State St, Montpelier VT
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STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER VT 05609-1001

FOR IMMEDIATE RELEASE: MAY 17, 2018 **CONTACT: Natalie silver**
802 595 8679

VERMONT JOINS FIGHT TO PROTECT WOMEN'S ACCESS TO FAMILY PLANNING

More than 9,000 Vermonters rely on Title X funding, which is currently being threatened by the Trump-Pence Administration

MONTPELIER – Vermont has joined 19 states in filing an amicus brief in the U.S. District Court for the District of Columbia in support of a nationwide preliminary injunction that would block a recent attempt by the Trump-Pence Administration to reduce access to Title X, the nation's family planning program. Title X provides family planning services, including birth control and other critical preventive care, to uninsured and under insured patients. The new set of requirements put forward by the Trump-Pence Administration would jeopardize the lives and the health of millions of low-income women and families across the United States, and thousands of Vermonters, by threatening funding for birth control, sexually transmitted disease testing, breast and cervical cancer screenings, and infertility treatment.

"Denying women preventative health care and effective family planning is not sensible public policy. Ensuring women's control over their own reproductive health empowers them and strengthens Vermont families for the long term," Attorney General TJ Donovan said.

On February 23, 2018, the U.S. Department of Health and Human Services released a new set of requirements that would strip away funding for women's healthcare providers like Planned Parenthood, and instead provide funding for natural family planning methods and

abstinence-only education. The new requirements threaten funding for comprehensive reproductive healthcare centers and instead favor facilities that do not provide women with fact-based information or comprehensive healthcare. These new requirements directly threaten the state of Vermont, which serves about 9,000 patients at 10 Title X clinics around the state. Additionally, the elimination of these healthcare providers in Vermont would largely impact those living below the poverty line. Of the 9,000 patients served in Vermont, roughly 47% have incomes at or below the federal poverty level.

Planned Parenthood of Wisconsin, Planned Parenthood of Greater Ohio and Planned Parenthood Association of Utah, along with the National Family Planning and Reproductive Health Association, are challenging the Administration. Filed in the U.S. District Court for the District of Columbia on May 2, 2018, these organizations argue that new funding requirements for Title X are in conflict with the underlying Title X statute and regulations. The plaintiffs also claim that the Administration has no clear basis for the policy change, and the resulting requirements are arbitrary and capricious. Lastly, they argue that the new criteria improperly change the nature of Title X funding. The current statute requires providers who receive Title X funding to provide patients with a range of family planning methods, yet the new requirements would emphasize only one set of family planning options (abstinence or natural family planning).

Joining Vermont in filing the motion are California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Virginia, Washington, and the District of Columbia.

###

To: Donovan, Thomas
Subject: Info from Ben on Title X
Date: Friday, May 18, 2018 11:35:39 AM

From Ben on Title X suit:

From Ben:

- The amicus brief was filed in federal court in DC on behalf of 19 States (including VT) and DC.
- It supports Planned Parenthood's request for a preliminary injunction to block the Trump Administration's new Title X funding criteria, which favor abstinence-only counseling and "natural family planning" over contraception. This is different than the gag rule being announced today.
- The new Title X funding criteria will make it much more difficult for providers like Planned Parenthood to obtain the funds that they have relied on for decades.
- Vermont, and the other amici States, depend on groups like Planned Parenthood to provide a wide variety of healthcare services to their residents, and in particular, to vulnerable populations.
- The new Title X funding criteria threatens to disrupt the network of care in Vermont and other states by favoring providers that may not be willing or able to provide the full range of family planning and related preventive care that is needed and relied upon by the State and its residents.

Natalie Silver
Community Outreach and Policy Coordinator
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109 State Street, Montpelier Vermont 05609-1001
natalie.silver@vermont.gov
Office: 802 828 3173
Cell: 802 595 8679

From:	Wemple-ATG102018, Doug
To:	Donovan, Thomas; Diamond, Joshua; Clark, Charity; Spottswood, Eleanor
Subject:	Today"s Press Release w/PPNE Quote
Date:	Wednesday, July 18, 2018 9:45:55 AM
Attachments:	Title X Press Release 7.18.2018.pdf

Attached! Let me know if you have any questions or changes. Otherwise, it's ready to go once the conference is over.

Thanks!

Doug Wemple
Executive Assistant
Vermont Attorney General's Office
109 State Street - Montpelier, VT
Office: (802)828-5515

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT 05609-1001

FOR IMMEDIATE RELEASE:
July 18, 2018

CONTACT: Eleanor Spottswood
Assistant Attorney General
802-828-3178

AG DONOVAN REQUESTS PUBLIC FEEDBACK ON RULE CHANGE AFFECTING WOMEN'S AND REPRODUCTIVE HEALTHCARE

Reproductive Health Clinics Jeopardized By Proposed Federal Regulations

MONTPELIER – Attorney General T.J. Donovan today announced the launch of a website to allow Vermonters to provide feedback on a proposed rule affecting clinics that receive Title X funds. The U.S. Department of Health and Human Services (HHS) is writing new rules for recipients of Title X funding. Title X is the only nationwide program for affordable birth control and reproductive health care. The proposed rules would implement a "gag rule" on abortion referrals and redirect funding priorities from the CDC's birth control recommendations to "natural family planning methods." HHS is accepting public comments on the new rules until July 31. The AG's website where the public can provide feedback is located at: http://ago.vermont.gov/act_now_for_reproductive_health/.

"Title X clinics provide essential health care to low-income Vermonters," Attorney General Donovan said. "It's critical that they continue. That's why I've created a website for Vermonters to tell HHS that these rules are bad for Vermont."

Vermont has relied on funding from Title X for decades. Title X funds basic health care services, including wellness exams, cervical and breast cancer screenings, birth control, contraception education, and testing for sexually transmitted diseases and HIV. As a result of the new regulations, however, Title X providers will be forced to give incomplete and misleading information to patients—a "gag rule" on providing services or information related to abortion,

even to patients who affirmatively say that they want one. But the rules don't stop there. The gag rule would also apply to any "referral partners" of Title X clinics. And, the new rules stretch Title X funding to try to cover gap in health care created by employers who opt out of providing insurance to cover contraception. The new rules also redefine "family planning" itself to promote "natural family planning methods" over more effective forms of birth control. The new rules never mention the CDC's evidence-based best practices guidelines, "Providing Quality Family Planning Services," which was the gold standard for health care under the old Title X regulations. In addition, the new rules require Title X clinic to be physically located in a separate facility from any abortion provider. Title X funding is not, and never has been, used for abortions.

Vermont has ten clinics supported by Title X funds, located in Barre, Bennington, Brattleboro, Hyde Park, Rutland, Middlebury, Newport, St. Albans, St. Johnsbury, and White River Junction. All provide crucial basic health care to underserved populations. Funding for each of these clinics is jeopardized by the new rules.

"It's important that the federal government hear from people whose lives will be affected by these rule changes. And, it's important that the federal government hear from people who support evidence-based health care," Donovan said.

"For decades, people in Vermont have benefited from affordable reproductive health care through Title X, and new rule changes from the Trump administration threaten to take that away," said Meagan Gallagher, CEO and President of Planned Parenthood of Northern New England. "We are incredibly grateful to Attorney General Donovan for his ongoing support for access to high-quality health care for all Vermonters, and for creating a new avenue for people to tell the administration they won't stand for attacks on access to reproductive health care."

Vermonters who are concerned about the impact of these regulations can get more information and submit comments through a website set up by the Attorney General's Office: http://ago.vermont.gov/act_now_for_reproductive_health/

More information about the changes to Title X can be found at the independent Guttmacher Institute: https://www.guttmacher.org/article/2018/06/domestic-gag-rule-and-more-administrations-proposed-changes-title-x

# # #

From: Silver, Natalie
To: [redacted]
Subject: FOR IMMEDIATE RELEASE: VERMONT MOVES TO PROTECT FUNDING IN TITLE X LAWSUIT
Date: Friday, March 22, 2019 10:38:36 AM
Attachments: VERMONT MOVES TO PROTECT FUNDING IN TITLE X LAWSUIT .pdf

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FOR IMMEDIATE RELEASE: March 22, 2019
CONTACT: Eleanor Spottswood
Assistant Attorney General
802-828-3171

VERMONT MOVES TO PROTECT FUNDING IN TITLE X LAWSUIT
Preliminary Injunction Would Stay New Federal Rule

MONTPELIER –Attorney General T.J. Donovan announced that Vermont, and 20 other states, have filed a motion for preliminary injunction that would stay the Trump Administration's new federal rules governing the Title X program. The coalition of state attorneys general moved to protect Title X funding while a lawsuit challenging the constitutionality of the Trump Administration's Title X "gag rule" is pending. The "gag rule" limits providers' ability to give neutral, factual information to their patients about abortion, and prohibits abortion referrals. The new rule also redirects funding priorities from the CDC's birth control recommendations to "natural family planning methods." Attorney General Donovan seeks to protect funding to 10 of Vermont's Title X-funded healthcare centers that provide essential access to healthcare services. In Vermont, 10,000 people rely on Title X for basic healthcare. Title X is the only national federal grant program that is dedicated solely to providing comprehensive family planning and preventative health care. In Vermont, the only recipients of Title X funds are 10 Planned Parenthood healthcare centers located around the State.

A copy of the motion can be found here.

"Thousands of low-income Vermonters rely on these funds for their basic healthcare," Attorney General Donovan said. "It's unreasonable to ask healthcare providers to withhold crucial information from their patients." Title X funds basic healthcare services, including wellness exams, cervical and breast cancer screenings, birth control, contraception education, and testing for sexually transmitted diseases and HIV.

As a result of the new regulations, Title X providers will be forced to give incomplete and misleading information to patients—a "gag rule" on providing services or information related to abortion, even to patients who affirmatively say that they want one. The gag rule would also apply to any "referral partners" of Title X health care centers. The new rule stretches Title X funding to try to cover gaps in healthcare created by employers who opt out of providing insurance to cover contraception. The new rule also redefines "family planning" to promote

“natural family planning methods” over more effective forms of birth control. The new rule never mentions the CDC’s evidence-based best practices guidelines, “Providing Quality Family Planning Services,” which was the gold standard for healthcare under the old Title X regulations. In addition, the new rule requires Title X health care centers to be physically located in a separate facility from any abortion provider. Title X funding is not, and never has been, used for abortions.

“This gag rule violates medical ethics and nationally accredited standards, and reputable institutions including the American Medical Association strongly oppose it,” said Lucy Leriche, Vice President of Public Policy at Planned Parenthood of Northern New England. “We are grateful to Attorney General Donovan for his leadership and action to prevent the Trump Administration’s gag rule from taking effect in early May. We will continue fighting to protect the ability of providers to give the medically ethical, accurate, quality health care that our patients have come to expect from PPNNE.”

Funding for all of Vermont’s Title X healthcare centers is jeopardized by the new rule. And, there is not yet any other organization capable of providing Title X services statewide. Vermont has 10 healthcare centers supported by Title X funds, located in Barre, Bennington, Brattleboro, Hyde Park, Rutland, Middlebury, Newport, St. Albans, St. Johnsbury, and White River Junction. All provide crucial basic health care to underserved populations. Title X has been providing high quality preventative health care to millions of Americans for decades.

The basis for the lawsuit, filed on March 5, 2019, is that the new Title X rule is contrary to the U.S. Constitution and to governing statutes, including the Administrative Procedures Act. If the rule went into effect, it will harm Vermont by increasing health care costs, including costs to Medicaid spending, as a result of an increase in unintended pregnancies, cancers not detected in early stages, and the spread of sexually transmitted infections.

# # #

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FOR IMMEDIATE RELEASE:
March 22, 2019

CONTACT: Eleanor Spottswood
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802-828-3171

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A copy of the motion can be found here.

"Thousands of low-income Vermonters rely on these funds for their basic healthcare," Attorney General Donovan said. "It's unreasonable to ask healthcare providers to withhold crucial information from their patients." Title X funds basic healthcare services, including

wellness exams, cervical and breast cancer screenings, birth control, contraception education, and testing for sexually transmitted diseases and HIV.

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# # #

From: Silver, Natalie
To: [redacted]
Subject: FOR IMMEDIATE RELEASE: FEDERAL JUDGE GRANTS NATIONWIDE INJUNCTION IN TITLE X LAWSUIT
Date: Tuesday, April 30, 2019 10:18:44 AM
Attachments: FEDERAL JUDGE GRANTS INJUNCTION IN TITLE X LAWSUIT.pdf

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FOR IMMEDIATE RELEASE: April 30, 2019
CONTACT: Eleanor Spottswood
Assistant Attorney General
802-828-3171

FEDERAL JUDGE GRANTS NATIONWIDE INJUNCTION IN TITLE X LAWSUIT

Judge: Final Rule "Recklessly" Disregards Health Outcomes

MONTPELIER – Vermont Attorney General T.J. Donovan announced that an Oregon court has enjoined the federal government from implementing a new Title X funding regulation. Vermont joined the lawsuit to protect the basic healthcare needs of 10,000 Vermonters. Title X is the only national federal grant program that is dedicated solely to providing comprehensive family planning and preventative health care, such as cancer screenings. In Vermont, the only recipient of Title X funds are 10 Planned Parenthood health care centers located around the State.

In the decision, Judge Michael J. McShane said, "At best, the Final Rule is a solution in search of a problem. At worst, it is a ham-fisted approach to health policy that recklessly disregards the health outcomes of women, families, and communities."

Attorney General Donovan explained, "What this ruling means is that 10,000 Vermonters still have access to affordable healthcare."

Department of Health Commissioner Mark Levine, MD greeted the judge's order with cautious hope for the long-term prospects of Title X: "The administration's effort to undercut public health care services is misguided and jeopardizes the very health and lives of women in Vermont and across the country. We will continue working to ensure that any future such actions will not diminish access to affordable, quality care in Vermont."

"We are relieved by this decision that prevents the Trump administration's medically unethical gag rule from taking effect this week," said Meagan Gallagher, President and CEO of Planned Parenthood of Northern New England. "For now, the court's ruling will protect

access to birth control, breast and cervical cancer screenings, and STD testing for 10,000 low-income Vermonters who rely on the Title X program for health care. We are grateful to Attorney General Donovan for his continued leadership in fighting for the health and wellbeing of Vermont's women, men, and families."

The new rule would have forced Title X providers to give incomplete and misleading information to patients—a "gag rule" on providing services or information related to abortion, even to patients who affirmatively say that they want one. The gag rule would have applied to any "referral partners" of Title X health care centers. The new rule would have stretched Title X funding to try to cover gaps in healthcare created by employers who opt out of providing insurance to cover contraception. The new rule also redefines "family planning" to promote "natural family planning methods" over more effective forms of birth control. The new rule never mentions the CDC's evidence-based best practices guidelines, "Providing Quality Family Planning Services," which is the gold standard for healthcare under the old Title X regulations. In addition, the new rule would have required Title X health care centers to be physically located in a separate facility from any abortion provider. Title X funding is not, and never has been, used for abortions.

Vermont has ten health care centers supported by Title X funds, located in Barre, Bennington, Brattleboro, Hyde Park, Rutland, Middlebury, Newport, St. Albans, St. Johnsbury, and White River Junction. All provide crucial basic health care to underserved populations. Funding for each of these health care centers is jeopardized by the new rule. Title X has been providing high quality preventative health care to millions of Americans for decades. Title X funds basic healthcare services, including wellness exams, cervical and breast cancer screenings, birth control, contraception education, and testing for sexually transmitted diseases and HIV.

The court's decisions can be found here. The federal government has 60 days to appeal the ruling.

# # #

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FOR IMMEDIATE RELEASE:
April 30, 2019

CONTACT: Eleanor Spottswood
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802-828-3171

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The court's decisions can be found here. The federal government has 60 days to appeal the ruling.

# # #

From: Clark, Charity
To: [redacted]
Subject: [AGOPress] MEDIA ADVISORY: AG Donovan to announce website on rule change affecting reproductive healthcare
Date: Monday, July 16, 2018 1:11:19 PM
Attachments: ATT00001.txt
ATT00002.htm
Title X Media Advisory.pdf
ATT00003.txt

The following press release information is sent to you by the Office of Vermont Attorney General.

MEDIA ADVISORY
7/18/18
11:00am

AG DONOVAN TO ANNOUNCE WEBSITE ON RULE CHANGE AFFECTING REPRODUCTIVE HEALTHCARE

WHAT: **Press conference**
AG Donovan will announce the launch of a website for collecting feedback from Vermonters on the Trump Administration's proposed rule change to Title X funding. Title X is a nationwide program that provides healthcare funding to low-income populations. Vermont has 10 clinics throughout the State that are supported by Title X funds.

Joining AG Donovan will be Meagan Gallagher, CEO and President of Planned Parenthood of Northern New England.

WHEN: Wednesday, July 18 @ 11:00 am

WHERE: Planned Parenthood, 784 Hercules Drive, Colchester, Vermont

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From: Wemple, Doug
To: [redacted]
Subject: Press Release - AG Donovan Requests Public Feedback on Rule Change Affecting Women"s and Reproductive Healthcare
Date: Wednesday, July 18, 2018 12:00:14 PM
Attachments: Title X Press Release 7.18.2018.pdf

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT 05609-1001

FOR IMMEDIATE RELEASE
July 18, 2018
CONTACT:
Eleanor Spottswood
Assistant Attorney General
802-828-3718

AG DONOVAN REQUESTS PUBLIC FEEDBACK ON RULE CHANGE AFFECTING WOMEN'S AND REPRODUCTIVE HEALTHCARE

Reproductive Health Clinics Jeopardized By Proposed Federal Regulations

MONTPELIER – Attorney General T.J. Donovan today announced the launch of a website to allow Vermonters to provide feedback on a proposed rule affecting clinics that receive Title X funds. The U.S. Department of Health and Human Services (HHS) is writing new rules for recipients of Title X funding. Title X is the only nationwide program for affordable birth control and reproductive health care. The proposed rules would implement a "gag rule" on abortion referrals and redirect funding priorities from the CDC's birth control recommendations to "natural family planning methods." HHS is accepting public comments on the new rules until July 31. The AG's website where the public can provide feedback is located at: http://ago.vermont.gov/act_now_for_reproductive_health/.

"Title X clinics provide essential health care to low-income Vermonters," Attorney General Donovan said. "It's critical that they continue. That's why I've created a website for Vermonters to tell HHS that these rules are bad for Vermont."

Vermont has relied on funding from Title X for decades. Title X funds basic health care services, including wellness exams, cervical and breast cancer screenings, birth control, contraception education, and testing for sexually transmitted diseases and HIV. As a result of the new regulations, however, Title X providers will be forced to give incomplete and misleading information to patients—a "gag rule" on providing services or information related to abortion, even to patients who affirmatively say that they want one. But the rules don't stop there. The gag rule would also apply to any "referral partners" of Title X clinics. And, the new rules stretch Title X funding to try to cover gap in health care created by employers who opt out of providing insurance to cover contraception. The new rules also redefine "family planning" itself to promote "natural family planning methods" over more effective forms of birth control. The new rules never mention the CDC's evidence-based best practices guidelines, "Providing Quality Family Planning Services," which was the gold standard for health care under the old Title X regulations. In addition, the new rules require Title X clinic to be physically located in a separate facility from any abortion provider. Title X funding is not, and never has been, used for abortions.

Vermont has ten clinics supported by Title X funds, located in Barre, Bennington, Brattleboro, Hyde Park, Rutland, Middlebury, Newport, St. Albans, St. Johnsbury, and White River Junction. All provide crucial basic health care to underserved populations. Funding for

each of these clinics is jeopardized by the new rules.

"It's important that the federal government hear from people whose lives will be affected by these rule changes. And, it's important that the federal government hear from people who support evidence-based health care," Donovan said.

"For decades, people in Vermont have benefited from affordable reproductive health care through Title X, and new rule changes from the Trump administration threaten to take that away," said Meagan Gallagher, CEO and President of Planned Parenthood of Northern New England. "We are incredibly grateful to Attorney General Donovan for his ongoing support for access to high-quality health care for all Vermonters, and for creating a new avenue for people to tell the administration they won't stand for attacks on access to reproductive health care." Planned Parenthood of Northern New England is the only Title X provider in Vermont.

Vermonters who are concerned about the impact of these regulations can get more information and submit comments through a website set up by the Attorney General's Office: http://ago.vermont.gov/act_now_for_reproductive_health/

More information about the changes to Title X can be found at the independent Guttmacher Institute: https://www.guttmacher.org/article/2018/06/domestic-gag-rule-and-more-administrations-proposed-changes-title-x

###

Doug Wemple
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FOR IMMEDIATE RELEASE:
July 18, 2018

CONTACT: Eleanor Spottswood
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802-828-3178

AG DONOVAN REQUESTS PUBLIC FEEDBACK ON RULE CHANGE AFFECTING WOMEN'S AND REPRODUCTIVE HEALTHCARE

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even to patients who affirmatively say that they want one. But the rules don't stop there. The gag rule would also apply to any "referral partners" of Title X clinics. And, the new rules stretch Title X funding to try to cover gap in health care created by employers who opt out of providing insurance to cover contraception. The new rules also redefine "family planning" itself to promote "natural family planning methods" over more effective forms of birth control. The new rules never mention the CDC's evidence-based best practices guidelines, "Providing Quality Family Planning Services," which was the gold standard for health care under the old Title X regulations. In addition, the new rules require Title X clinic to be physically located in a separate facility from any abortion provider. Title X funding is not, and never has been, used for abortions.

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# # #

From: Silver, Natalie
To: [redacted]
Subject: FOR IMMEDIATE RELEASE: AG DONOVAN JOINS BRIEF PROTECTING WOMEN'S ACCESS TO ABORTION SERVICES
Date: Friday, April 5, 2019 2:48:55 PM
Attachments: ATTORNEY GENERAL DONOVAN JOINS BRIEF PROTECTING WOMEN'S ACCESS TO ABORTION SERVICES .pdf

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FOR IMMEDIATE RELEASE: April 5, 2019
CONTACT: Eleanor Spottswood
Assistant Attorney General
802-828-3171

ATTORNEY GENERAL DONOVAN JOINS BRIEF PROTECTING WOMEN'S ACCESS TO ABORTION SERVICES

MONTPELIER- Attorney General Donovan announced today that he joined a coalition of 20 attorneys general in filing an amicus brief asking the U.S. Court of Appeals for the Sixth Circuit to affirm a lower court's finding about a Kentucky abortion law. The lower court found that the regulating abortion services is unconstitutional under the 14th Amendment of the U.S. Constitution. The brief argues that the availability of abortion services in neighboring states does not excuse a state from the Constitution's prohibition on unduly burdening a woman's ability to access abortion services in her home state. Additionally, the brief urges the Court to ensure that regulations imposed on abortion services actually promote women's health without erecting substantial obstacles to the availability of these services. In Vermont, Attorney General Donovan has actively supported the passage of an amendment to the Vermont constitution that guarantees a woman's right to an abortion and has worked to protect women's access to preventative and reproductive healthcare services.

A copy of the brief can be found here.

The implications of this case for the women of Kentucky are particularly severe, as the law at issue would effectively eliminate the only abortion provider in the state. In their brief, the attorneys general further argue that allowing a state—like Kentucky—to rely on neighboring states for abortion services harms neighboring states. Allowing Kentucky's analysis could have unintended consequences on neighboring states whose demand for abortion services could increase.

Plaintiff-Appellee EMW Women's Surgical Center (EMW) is Kentucky's only licensed abortion facility. While EMW has provided safe abortions since the 1980s, in 2017,

Kentucky's Cabinet for Health and Family Services (Cabinet) notified EMW that its license to perform abortions had been renewed in error, citing alleged violations of Kentucky law. EMW filed suit in March 2017, with Planned Parenthood later intervening in the case. Planned Parenthood had been trying unsuccessfully to obtain an abortion license until the Cabinet abruptly informed the organization that its transfer and transport agreements with a hospital and ambulance company were allegedly "deficient."

The District Court for the Western District of Kentucky ultimately agreed with EMW and Planned Parenthood, finding that the Kentucky law regarding transport and transfer agreement requirements imposed an undue burden on Kentucky women seeking to exercise their constitutional right to access abortion services. In response, the Cabinet appealed this decision last month in the federal courts, challenging the District Court's findings. Today's brief was filed in support of Planned Parenthood and EMW's legal challenge.

Joining Attorney General Donovan in filing today's brief are the attorneys general of California, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Virginia and Washington.

###

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FOR IMMEDIATE RELEASE:
April 5, 2019

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###

From: Silver, Natalie
To: [redacted]
Subject: FOR IMMEDIATE RELEASE: VERMONT TO JOIN LAWSUIT OVER TITLE X FUNDING
Date: Monday, March 4, 2019 2:18:27 PM
Attachments: VERMONT TO JOIN LAWSUIT OVER TITLE X FUNDING.pdf

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FOR IMMEDIATE RELEASE: March 4, 2019
CONTACT: Eleanor Spottswood
Assistant Attorney General
802-828-3171

VERMONT TO JOIN LAWSUIT OVER TITLE X FUNDING

Vermont's Reproductive Health Clinics Jeopardized by New Federal Rule

MONTPELIER – Attorney General T.J. Donovan today announced his intent to file a lawsuit against the federal government over a new Title X funding regulation. Title X is the only national federal grant program that is dedicated solely to providing comprehensive family planning and preventative health care. In Vermont, 10,000 people rely on Title X for their healthcare. The new rule includes a "gag rule" that limits providers' ability to give neutral, factual information to their patients about abortion, and prohibits abortion referrals. The new rule also redirects funding priorities from the CDC's birth control recommendations to only "natural family planning methods." In Vermont, the only recipient of Title X funds are the 10 Planned Parenthood health care centers located around the State.

"The new Title X rule is contrary to law," Attorney General Donovan said. "And it will have a devastating impact on reproductive healthcare for low income Vermonters. No Title X funds go toward abortion. Instead, the rule will deprive Vermonters of basic healthcare." Title X funds basic healthcare services, including wellness exams, cervical and breast cancer screenings, birth control, contraception education, and testing for sexually transmitted diseases and HIV.

As a result of the new regulations, Title X providers will be forced to give incomplete and misleading information to patients—a "gag rule" on providing services or information related to abortion, even to patients who affirmatively say that they want one. The gag rule would also apply to any "referral partners" of Title X health care centers. The new rule stretches Title X funding to try to cover gaps in healthcare created by employers who opt out

of providing insurance to cover contraception. The new rule also redefines "family planning" to promote "natural family planning methods" over more effective forms of birth control. The new rule never mentions the CDC's evidence-based best practices guidelines, "Providing Quality Family Planning Services," which was the gold standard for healthcare under the old Title X regulations. In addition, the new rule requires Title X health care centers to be physically located in a separate facility from any abortion provider. Title X funding is not, and never has been, used for abortions.

Vermont has ten health care centers supported by Title X funds, located in Barre, Bennington, Brattleboro, Hyde Park, Rutland, Middlebury, Newport, St. Albans, St. Johnsbury, and White River Junction. All provide crucial basic health care to underserved populations. Funding for each of these health care centers is jeopardized by the new rule. Title X has been providing high quality preventative health care to millions of Americans for decades.

"These changes are dangerous and unethical and could impact health care access for low-income Vermonters," said Meagan Gallagher, President and CEO of Planned Parenthood of Northern New England. "Since taking office, the Trump administration has pushed policy after policy to take away basic rights and health care with incessant, hostile attacks on reproductive rights. We are grateful to Attorney General Donovan for fighting for Vermonters' rights and access to health care."

Vermont will be joined by Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Virginia, and Wisconsin. The basis for the anticipated lawsuit is that the new Title X rule is contrary to the U.S. Constitution and to governing statutes, including the Administrative Procedures Act. If the rule went into effect, it will harm Vermont by increasing health care costs as a result of an increase in unintended pregnancies, cancers not detected in early stages, and the spread of sexually transmitted infections.

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VERMONT TO JOIN LAWSUIT OVER TITLE X FUNDING

Vermont's Reproductive Health Clinics Jeopardized by New Federal Rule

MONTPELIER – Attorney General T.J. Donovan today announced his intent to file a lawsuit against the federal government over a new Title X funding regulation. Title X is the only national federal grant program that is dedicated solely to providing comprehensive family planning and preventative health care. In Vermont, 10,000 people rely on Title X for their healthcare. The new rule includes a "gag rule" that limits providers' ability to give neutral, factual information to their patients about abortion, and prohibits abortion referrals. The new rule also redirects funding priorities from the CDC's birth control recommendations to only "natural family planning methods." In Vermont, the only recipient of Title X funds are the 10 Planned Parenthood health care centers located around the State.

"The new Title X rule is contrary to law," Attorney General Donovan said. "And it will have a devastating impact on reproductive healthcare for low income Vermonters. No Title X funds go toward abortion. Instead, the rule will deprive Vermonters of basic healthcare." Title X funds basic healthcare services, including wellness exams, cervical and breast cancer screenings, birth control, contraception education, and testing for sexually transmitted diseases and HIV.

As a result of the new regulations, Title X providers will be forced to give incomplete and misleading information to patients—a "gag rule" on providing services or information related to abortion, even to patients who affirmatively say that they want one. The gag rule

would also apply to any "referral partners" of Title X health care centers. The new rule stretches Title X funding to try to cover gaps in healthcare created by employers who opt out of providing insurance to cover contraception. The new rule also redefines "family planning" to promote "natural family planning methods" over more effective forms of birth control. The new rule never mentions the CDC's evidence-based best practices guidelines, "Providing Quality Family Planning Services," which was the gold standard for healthcare under the old Title X regulations. In addition, the new rule requires Title X health care centers to be physically located in a separate facility from any abortion provider. Title X funding is not, and never has been, used for abortions.

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# # #

From: Silver, Natalie
To: [redacted]
Subject: News Clips 5/22/18
Date: Tuesday, May 22, 2018 10:21:57 AM

News Clips 5/22/18

LOCAL

VTDIGGER

Lawmakers list six non-money bills they plan to pass in special session- Gov. Phil Scott has been clear about what he wants for an upcoming special session, but legislative leaders don't seem to care. Last week they scoffed at his suggestion that the session last for only three days, and presented a tentative calendar that spans a week at the least. Now they say at least half a dozen bills that aren't the budget will be taken up, defying Scott's request to keep things focused on money bills.

Trump rule change would hit Planned Parenthood in Vermont- Planned Parenthood is already **challenging in court** a change the Trump administration made to eligibility criteria for the Title X program which the organization argues would "warp" the mission of the nearly half-century-old program. Twenty state attorneys general, including Vermont Attorney General TJ Donovan, threw their support behind the suit this week.

SEVEN DAYS

Betrayed: Can Gun-Rights Activists 'Take Back Vermont'? - Robby Mazza thought he could trust Phil Scott to protect his gun rights. So when Scott ran for governor in 2016, Mazza had his back. The Colchester man kept more than 150 yard signs at his home and distributed them at the Scott campaign's request. He even tacked them onto his excavation company's dump trucks.

The Cannabis Catch-Up: More on Expungements - We wrote last week about plans for expungement clinics in Chittenden and Windsor counties next month. Applicants can file to have their misdemeanor marijuana possession convictions in those counties wiped clean.

BURLINGTON FREE PRESS

Vermont Legislature 2018: What passed- MONTPELIER - The second year of the legislative session carried many bills to fruition, including significant work touching economic issues, education and criminal justice.

Criminal probe underway into 20 cow deaths on Essex farm- The Agency of Agriculture, the Essex Police Department and Chittenden County State's Attorney Sarah George all confirmed Monday that a criminal investigation is continuing. "We just received the case and we are reviewing it, but no decisions have been made about charging," George wrote in an email Monday afternoon to the Burlington Free Press.

NATIONAL

WASHINGTON POST

There's something huge missing from the White House's prison bill- By Eric H. Holder Jr

Over the past decade, Republicans and Democrats across the country have joined forces to advocate for a fairer, more effective criminal-justice system — one that would keep us safe while reducing unnecessary mass incarceration. At the heart of that effort has been an attempt to reduce overly punitive sentences that fill our prisons for no discernible public-safety rationale.

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