

MINUTE ORDER (paperless), upon consideration of plaintiffs' 17 Emergency Motion for Clarification of the Denial of the TRO, which motion helpfully and expeditiously includes defendants' statement in opposition, DENYING plaintiffs' motion. Whether framed as a motion for clarification, as presented by plaintiffs, or a motion for reconsideration, as defendants urge, see Pls.' Mot. at 2, plaintiffs' motion is denied because plaintiffs were afforded no relief on their motion for the temporary restraining order ("TRO") that may require "clarification," as explained orally and for the reasons stated on the record, see 18 Tr. of July 31, 2025, TRO Hearing ("TRO Tr."), at 56:19-66:5. Plaintiffs explain their "understand[ing]" that the Court "determined [] there was no irreparable harm because Plaintiffs currently have the option to draw down funds unless and until the Policy Notice is enforced against them," id. at 1, citing as the basis for this determination that defendants made clear "it is not independently unlawful to draw down funds with a certification 'under protest' as they did when 'fil[ing] their continuing grant applications,'" id. (quoting Defs.' Opp'n Mot. TRO at 2, ECF No. 14). The Court indeed used this example as one reason why the plaintiffs' showing of irreparable harm was inadequate. See 18 TRO Tr. at 63:20-64:14 ("Plaintiffs... also frame their irreparable harm as the difficult choice they have between foregoing the sole funding for their sex education programs or drawing down funds at the risk of arbitrary enforcement..., but that choice does not constitute irreparable harm."). Contrary to plaintiffs' suggestion, however, this was not the sole basis for the denial of the requested TRO. See id. at 62:15-63:14 (explaining how neither plaintiffs nor the Court know how the challenged July 1 Program Policy Notice will be interpreted and enforced). To be sure, plaintiffs are rightly concerned that withdrawing funds accompanied by plaintiffs' certification of compliance poses a risk of enforcement consequences, but defendants, not the Court, are the source of identifying the option of making such certification "under protest," Defs.' Opp'n Mot. TRO at 2, raising the possibility that following this path may mitigate plaintiffs' risks down the line, though this Court offers no opinion on this possibility. The

bottom line is that the July 1, 2025, Teenage Pregnancy Prevention ("TPP") Program Policy Notice has not been enforced against plaintiffs and, as defendants pointed out, this Notice is "not self-effectuating." See 18 TRO Tr. at 47:22-23. The risk that such enforcement may occur in a form that is existentially threatening to plaintiffs' TPP programs, at some possible point in the future, possibly after review by the agency of, and possible conferral among plaintiffs and the agency about any possible alterations to, plaintiffs' program materials, rests on too many possibilities and, consequently, is too speculative to constitute the "certain and great" concrete, imminent irreparable harm required for the extraordinary emergency injunctive relief requested. *Wisc. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). Signed by Judge Beryl A. Howell on August 2, 2025. (lcbah4) (Entered: 08/02/2025)