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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

STATE OF WASHINGTON, et al., Plaintiffs, v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al., Defendants.	No. 6:25-cv-01748-AA PLAINTIFF STATES' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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I. INTRODUCTION

Defendants' Gender Conditions fundamentally undermine Congress's goal to reduce teen pregnancy rates and sexually transmitted infections (STIs) in high-risk youth populations. And Congress's explicit direction is to educate youth from diverse communities, backgrounds, and experiences. Defendants cannot point to any statute or other authority permitting their unlawful attempt to encumber formula grant programs that Congress has authorized for decades. Defendants cling to the lack of an explicit reference to the term "gender identity" in the PREP and SRAE enabling statutes, but the statutes need not contain a comprehensive list of every topic that may be included in sexual health education curricula. Congress requires PREP and SRAE grantees to provide sexual health education that is "medically accurate and complete" as well as culturally appropriate. Plaintiff States' curricula meet those requirements. Defendants' sudden prohibition of any reference to gender identity—or even a simple acknowledgement of the fact that transgender people exist—violates the Administrative Procedure Act (APA) and the Constitution.

Defendants' arguments about jurisdiction mischaracterize Plaintiff States' claims. Defendants first insist that the claims are contract disputes subject to the Court of Federal Claims' exclusive jurisdiction. But Plaintiffs States do not challenge individual grant terminations or seek damages; they challenge Defendants' policy of categorically imposing Gender Conditions on millions of dollars in sexual health education funding. Plaintiff States' claims do not arise out of contract law, but from Defendants' violation of the APA and their lack of statutory and constitutional authority to adopt the Gender Conditions in the first place. Defendants next contend that their actions are committed to agency discretion and are not final agency action. Defendants are wrong on both counts. The APA's narrow "committed to agency discretion" exception to judicial review does not apply because both the PREP and SRAE statutes provide measurable standards for courts to determine whether Defendants' actions are authorized by statute. Further, adoption of federal funding conditions is final agency action because the conditions have an immediate legal effect on grantees.

Defendants' merits arguments fare no better. Defendants' actions are contrary to law, and their failure to cite any statutory language indicating they have the authority or discretion to impose entirely unrelated conditions on federal funding for sexual health education underscores this conclusion. Defendants' actions are also arbitrary and capricious. In arguing otherwise, Defendants rely on a tortured reading of the PREP and SRAE statutes and do not address the statutes' history or context, Plaintiff States' reliance interests, or the effects of Defendants' abrupt policy reversal. Defendants thus all but concede that they failed to address these important considerations when imposing the Gender Conditions. Defendants' actions also violate the Spending Clause, and Defendants do nothing to dispel the unrelated, ambiguous nature of the Gender Conditions that leave Plaintiff States with little understanding of what they might agree to when accepting federal funds. Additionally, Defendants' actions violate the separation of powers because they usurp the role of Congress by imposing conditions that are untethered from, and contrary to, the enabling statutes.

Finally, Defendants' perfunctory attempts to require a bond should be rejected. The scope of the harm Defendants have caused is extensive, as described in detail by the unrebutted state agency declarations discussing the sexual health education programs that depend upon federal funding. Such harm greatly outweighs any impact on Defendants, given that Plaintiff States have been successfully implementing gender identity inclusive curricula for years. A prohibitory preliminary injunction should issue without any bond requirement.

II. ARGUMENT

A. Plaintiff States' Claims Are Justiciable

Defendants argue that this Court lacks jurisdiction or cannot review Plaintiff States' claims because (1) the Tucker Act channels them to the Court of Federal Claims; (2) Defendants' actions are committed to agency discretion and thus unreviewable under the APA, and (3) Defendants' actions are also unreviewable under the APA because they are not final agency action. Doc 70-Pgs 16-25. These arguments are meritless. First, the Tucker Act is inapplicable because Plaintiff States do not raise contract claims; rather, they bring claims based on statutory and

constitutional rights. Defendants overread *Department of Education v. California*, 604 U.S. 650, 651 (2025) as barring Plaintiff States' constitutional claims when courts applying it have determined otherwise. Second, the PREP and SRAE enabling statutes provide meaningful standards and nothing in the statutes suggests an intent to make judicial review under the APA unavailable. Third, the Gender Conditions are final agency action for purposes of the APA because they determine Plaintiff States' rights and obligations and create legal consequences.

1. Plaintiff States do not raise contract claims belonging in the Court of Federal Claims; they challenge Defendants' attempt to impose a federal funding condition in violation of federal law and the Constitution

The Tucker Act grants the Court of Federal Claims jurisdiction over suits "based on" an express or implied contract with the United States. *Id.* (citing 28 U.S.C. § 1491). But the Tucker Act has no application here because Plaintiff States seek to enjoin unlawful conditions Defendants have imposed and raise both statutory and constitutional claims; they seek nothing resembling contract remedies.

In determining whether claims belong in the Court of Federal Claims, courts must look to "(1) 'the source of the rights upon which the plaintiff bases its claims' and (2) 'the type of relief sought (or appropriate).'" *United Aeronautical Corp. v. U.S. Air Force*, 80 F.4th 1017, 1026 (9th Cir. 2023) (quoting *Megapulse, Inc. v. Lewis*, 672 F.2d 959, 968 (D.C. Cir. 1982)). Regarding the source of rights, courts consider whether resolution of the claims primarily requires examination of statutes or regulations that the government allegedly violated, whether the right exists independently of any contract, and whether plaintiffs seek to enforce a contractual duty imposed upon the government. *Cmty. Legal Sers. in E. Palo Alto v. Dep't of Health & Hum. Servs.*, No. 25-2808, --- F.4th ----, 2025 WL 2884805, *4 (9th Cir. Oct. 10, 2025) (quoting *Crowley Gov't Servs., Inc. v. Gen. Servs. Admin.*, 38 F.4th 1099, 1108-09 (D.C. Cir. 2022)).

In this case, the sources of the rights Plaintiff States claim are statutory and constitutional—not based on any contract. *See* Doc 2-Pgs 27-37 (arguing that the grant conditions *themselves* violate substantive provisions of statute and the Constitution). Plaintiff States assert that the grant

conditions and directives imposed by the agency usurp separation of powers and violate the spending clause. Because the grants at issue are formula grants, not competitive ones, Plaintiff States have a statutory right to the funding so long as they meet the eligibility requirements set out by Congress. 42 U.S.C. § 713(a)(1)(A)(ii); 42 U.S.C. § 710(a)(1)(B). By contrast, a contract dispute is when two parties to a deal disagree about the terms of the deal; Plaintiff States do not raise a contract dispute by alleging that HHS is not following its statutory and constitutional obligations in its administration of federal funding. *See Bowen v. Massachusetts*, 487 U.S. 879, 892-901 (1988) (claims seeking enforcement of statutory requirements governing federal funding fell within the APA, 5 U.S.C. § 702, and were not barred by the Tucker Act). Plaintiff States' claims fall well within the heartland of the APA, 5 U.S.C. § 702. *See, e.g.*, *R.I. Coal. Against Domestic Violence v. Kennedy, Jr.*, No. 25-CV-342-MRD-PAS, 2025 WL 2899764, at *5 (D.R.I. Oct. 10, 2025) (Tucker Act did not apply because plaintiffs' challenge to grant conditions required analysis of the relevant statutes and regulations, and not an analysis of the respective grant agreements themselves); *Martin Luther King, Jr. Cnty. v. Turner*, 785 F. Supp. 3d 863, 878 (W.D. Wash. 2025) (rejecting federal government's Tucker Act arguments because plaintiffs seek "an order from this Court *declaring* that the *new funding conditions* are unlawful and *enjoining* Defendants from imposing them"). And Defendants cite no authority that Article III courts are jurisdictionally barred from hearing a constitutional challenge to an overarching agency policy like the one challenged here. The only case Defendants cite is *Tuscon Airport Authority v. General Dynamics Corporation*, 136 F.3d 641, 646-47 (9th Cir. 1998), which simply distingished cases involving contract disputes from cases that turn on federal law and are independent of contract, like this one.

Defendants, relying principally on dicta in the Supreme Court's stay order in *Department of Education*, 604 U.S. 650, suggest that any connection to grants or contracts removes a claim from the reach of the APA, 5 U.S.C. § 702. But Defendants misread *Department of Education*, as shown by the Supreme Court's more recent stay ruling in *National Institutes of Health v. American Public Health Association* (*NIH*), 145 S.Ct. 2658 (2025). In *NIH*, the Supreme Court stayed a portion of a district court judgment that "vacat[ed] the Government's termination of

various . . . grants." *Id.* (citing *Dep't of Educ.*, 604 U.S. 650). But the court denied a stay of other portions of the district court judgment that vacated the agency policies that had led to the grant terminations. *Id*. Five Justices reaffirmed that challenges to broader "policies related to grants" are properly brought in federal district court under the APA. *Id.* at 2661 (Barrett, J., concurring) (distinguishing between "challenges to . . . grant terminations," which "belong[ed] in the Court of Federal Claims," and challenges to "policies related to grants," which belonged in federal district court); *id.* at 2663 (Roberts, C.J., concurring in part) (reasoning, in an opinion joined by three other Justices, that the plaintiffs' challenge to grant-related policies set the case apart from *Department of Education* and fell "well within the scope of the District Court's jurisdiction under the Administrative Procedure Act"); *see also id.* at 2671 (Jackson, J., concurring in part) (noting that five Justices agreed that "district courts may still exercise jurisdiction over—and vacate—grant-related policies that contravene federal law").

Additionally, Plaintiff States' request is for declaratory and injunctive relief—in other words, not anything that would require Defendants either to make payments or to award funding to Plaintiff States. In these circumstances, courts around the country have consistently held that the Tucker Act does not apply to prevent challenges to a policy under the Constitution or the APA about the threatened termination of grant funding based on compliance with new conditions, even if the Tucker Act may require that recovering payments from the termination itself should proceed in the Court of Federal Claims.[1] In short, Defendants' Tucker Act arguments have been consistently rejected by courts in cases like this one. This Court should reject it too.

[1] *See, e.g.*, *President & Fellows of Harvard Coll. v. Dep't of Health & Hum. Servs.*, No. 25-cv-11048-ADB, No. 25-cv-10910-ADB, --- F.Supp.3d ----, 2025 WL 2528380 at *12 (D. Mass. Sept. 3, 2025) (holding Tucker Act did not bar an APA challenge to internal agency guidance otherwise reviewable under the APA); *Am. Ass'n of Physics Tchrs., Inc. v. Nat'l Sci. Found.*, No. 25-cv-1923 (JMC), 2025 WL 2615054 at *2, 12-13 (D.D.C. Sept. 10, 2025) (holding Tucker Act did not bar jurisdiction over prospective APA claims and constitutional claims); *City of Fresno v. Turner*, No. 25-cv-1923, 2025 WL 2721390 at *6 (N.D. Cal. Sept. 23, 2025) (holding Tucker Act did not apply where "Plaintiffs challenge the Defendant agencies' *policies* and *guidance* to condition funding on the Grant Conditions on *statutory*, namely APA, and *constitutional* grounds, and they seek injunctive relief barring Defendants' imposition of the conditions and setting aside related internal

2. APA review is available because the PREP and SRAE statutes provide meaningful standards and eligibility for the grants is not committed to agency discretion by law

Defendants assert that its determination of how best to allocate and condition PREP and SRAE funding is discretionary agency action and thus Plaintiff States' APA claims are unreviewable. Doc 70-Pgs 19-21. Not true. Judicial review under the APA is presumptively available, but an exception exists "to the extent that . . . agency action is committed to agency discretion by law." 5 U.S.C. § 701(a)(2). "In determining whether judicial review is precluded by § 701(a)(2), 'we consider the language of the statute and whether the general purposes of the statute would be endangered by judicial review.'" *Perez Perez v. Wolf*, 943 F.3d 853, 856 (9th Cir. 2019) (quoting *ASSE Int'l, Inc. v. Kerry*, 803 F.3d 1059, 1068 (9th Cir. 2015)). "Only where there is truly 'no law to apply' have we found an absence of meaningful standards of review." *Id.* at 861; *see also id.* at 862 (collecting cases finding meaningful standards in statutory language such as "feasible and prudent alternative," "consistent with sound business principles," "if he considers it feasible," "reliable," "currently available," "likely to assist in promoting the objectives," and "affected unit of local government.").

Here, nothing about the statutes providing PREP or SRAE grants suggest an intent to make judicial review unavailable. These are formula grants to which Plaintiff States are entitled if they meet statutory criteria. *See City of Los Angeles v. Barr*, 941 F.3d 931, 942 (9th Cir. 2019) (holding that it is "antithetical to the concept of a formula grant" for an agency to have "broad authority to impose any condition"). If HHS could disregard the statutory criteria for eligibility entirely, it would render Congress's carefully prescribed conditions under which funding can be withheld "superfluous." *See id.*

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agency directives."); *Planned Parenthood of Greater N.Y. v. Dep't of Health & Hum. Servs.*, No. 25-2453, 2025 WL 2840318 at *13 (D.D.C. Oct. 7, 2025) (holding Tucker Act did not bar APA challenge to Policy Notice concerning use of grant funds); *Illinois v. FEMA*, No. 25-206 WES, --- F.Supp.3d ----, 2025 WL 2716277 at *9 (D.R.I. Sept. 24, 2025) (Tucker Act did not bar APA claims where "Plaintiff States challenge the validity of DHS's promulgated conditions under the APA and the Constitution, not a termination decision sounding in contract or seeking monetary relief.").

Additionally, 42 U.S.C. § 710 and § 713 provide a meaningful rubric for judicial review, notwithstanding Defendants' *ipse dixit* to the contrary. Doc 70-Pg 28. These statutes require that educational programs funded by PREP and SRAE be "medically accurate and complete," 42 U.S.C. §§ 710, 713; and be "culturally appropriate," 42 U.S.C. § 710, or "provided in the cultural context that is most appropriate" (42 U.S.C. § 713). Even if these statutes provide HHS *some* discretion, they still provide judicially manageable standards for evaluating HHS's actions. *See Perez Perez*, 943 F.3d at 862 ("[C]ourts routinely treat discretion-laden standards as providing 'law to apply."); *see also Martin Luther King, Jr. Cnty.*, 785 F. Supp. 3d at 883 (holding challenge to new grant conditions was reviewable under the APA because "the grants at issue here abound with specific directives.").

Defendants predominantly rely on *Lincoln v. Vigil*, 508 U.S. 182 (1993), to assert that the Gender Conditions are discretionary agency action. Doc 70-Pgs 20-21. But, if anything, *Lincoln* serves as a useful counterexample against which to judge this case. There, the Indian Health Service chose to allocate part of a lump-sum appropriation from Congress to establish residential treatment centers for Indian children, even though "Congress never expressly appropriated funds for these centers." *Lincoln*, 508 U.S. at 186. When the discontinuation of the program was challenged, the Court held that allocating funds out of a lump sum appropriation was committed to agency discretion by law and therefore not challengeable under the APA. *Id.* at 193. In contrast, here, Congress enacted two separate *formula grants* that entitle the Plaintiff States to funding if they comply with the statutory criteria. 42 U.S.C. §§ 710, 713. The agency's discretion here is necessarily circumscribed in ways not present in *Lincoln*. Defendants' disregard of statutory criteria is not committed to agency discretion and is, instead, subject to judicial review under the APA.

3. The Gender Conditions are reviewable final agency action

In their final failed attempt to assert that this Court lacks jurisdiction, Defendants argue that the Gender Conditions do not qualify as "final agency action" reviewable under the APA. Defendants suggest the Gender Conditions do not themselves terminate grants, so they are "at

most, expressions of agency policy and program administration." Doc 70-Pg 22. Defendants are wrong. The adoption of the Gender Conditions satisfies the pragmatic and flexible standard used for final agency action. *See Saliba v. SEC*, 47 F.4th 961, 967 (9th Cir. 2022). Both the issuance of the PREP Directive to eliminate offending curricula or risk termination of federal awards, Doc 7-21-Pg 7, and the sudden imposition of the Notices of Award (NOAs) and Supplemental Terms and Conditions (Supplemental T&Cs), Docs 7-13, 7-14, evidence the "'consummation' of [Defendants'] decisionmaking process." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997). The Gender Conditions determine Plaintiff States' rights and obligations and create legal consequences. *Id.* at 178.

Defendants dismiss without analysis two district court cases Plaintiff States cited in their motion holding that the adoption of grant conditions constituted final agency action. Doc 70-Pg 25 (referring to *R.I. Coal. Against Domestic Violence v. Bondi*, No. CV 25-279 WES, 2025 WL 2271867, at *6 (D.R.I. Aug. 8, 2025); *S.F. Unified Sch. Dist. v. AmeriCorps*, No. 25-CV-02425-EMC, 2025 WL 1713360, at *13 (N.D. Cal. June 18, 2025)). However, Defendants fail to identify any case involving grant conditions going their way. That's because *Bondi* and *AmeriCorps* are not outliers; courts have routinely concluded that the adoption of new grant conditions constitutes final agency action because it "effectively prevent[s] [Plaintiffs] from participating in the application process and from receiving funding Congress has appropriated for supporting their missions." *Kennedy, Jr.*, 2025 WL 2899764, at *5; *see also City of Fresno*, 2025 WL 2469330, at *3 (concluding DEI and "gender ideology" grant conditions are reviewable final agency action because they "take[] 'definitive' legal position[s]" that are enforceable against plaintiffs); *City of Chicago v. Sessions*, 321 F. Supp. 3d 855, 866 (N.D. Ill. 2018) (concluding immigration-related grant conditions constitute final agency action that is ripe for judicial review, even though the agency had yet to make final funding decisions for the grant program); *California ex rel. Becerra v. Sessions*, 284 F. Supp. 3d 1015, 1030-31 (N.D. Cal. 2018) (similar).

Defendants carefully detail HHS's administrative remedies process but stop short of suggesting Plaintiff States must exhaust here. That's for good reason: HHS's administrative

remedies are not available to Plaintiff States. HHS's appeal process is for when HHS suspends or terminates a particular grant. *See* 45 C.F.R. pt. 16, App. A (indicating the appeals process is available to challenge "disallowances," "decisions relating to repayment and withholding" under grant programs) 45 C.F.R. § 75.374 (allowing objections to "suspension or termination action[s]"). It does not apply when Plaintiff States, as here, have not agreed to the Gender Conditions nor have their grants been suspended or terminated. Judicial review under the APA does not simply duplicate a federal agency's administrative review process. Defendants purport to establish a new requirement that Plaintiff States must meet under pain of losing federal funding and incurring additional penalties. *See U.S. Army Corps. of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 599-600 (2016) (explaining that an agency's decision qualified as final, even if no separate administrative or criminal enforcement proceeding had been brought, because the agency action gave regulated parties the choice to conform or face "the risk of significant" penalties); *see also League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 8-9 (D.C. Cir. 2016) ("Damocles's sword does not have to actually fall on all . . . before the court will issue an injunction.").

Finally, Plaintiff States' challenge is not an impermissible "programmatic attack." Doc 70-Pg 24. Claims under the APA must be directed at "particular," "identifiable" agency actions, and may not simply seek "*wholesale* improvement" of an agency program. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 890-91, 899 n.2 (1990). Plaintiff States' claims here target "particular," "identifiable" agency actions—specifically, HHS's incorporation of Gender Conditions into the specific programs they administer. An agency decision to apply a "particular measure across the board" in this way "can of course be challenged under the APA." *New York v. Trump*, 133 F.4th 51, 67-68 (1st Cir. 2025) (quoting *Lujan*, 497 U.S. at 890 n.2).

B. Plaintiff States Are Likely to Succeed on the Merits

On the merits, Defendants' statutory arguments fail because Congress did not authorize such sweeping conditions that require the elimination of any reference to transgender, gender diverse, and DSD youth from sexual health education curricula—in fact, the PREP and SRAE statutes require the opposite. As to the arbitrary and capricious claims, Defendants do not contest

that when engaging in the challenged agency action, they failed to consider the Gender Conditions' statutory basis, Plaintiff States' reliance interests, and the harms the Gender Conditions would inflict; instead, they present post hoc justifications without any support. With respect to the Spending Clause, Defendants cannot rebut the conclusion that the Gender Conditions are both prospective and retroactive, ambiguous, and entirely unrelated to the sexual health education program that they encumber. Finally, Defendants violate the separation of powers by attempting to condition disbursement of funds in part on grounds not authorized by Congress, but rather on Executive Branch policy.

1. Defendants' actions purporting to require Plaintiff States erase any reference to or acknowledgment of gender identity are contrary to law

Defendants' Gender Conditions, which seek to erase transgender, gender diverse, and DSD youth from PREP and SRAE curricula, are contrary to law because they: (1) conflict with the enabling statutes' requirement that grant programming be "culturally appropriate, recognizing the experiences of youth from diverse communities, backgrounds, and experiences" (42 U.S.C. § 710(b)(2)(E)); (2) conflict with the grants' purpose of targeting "high-risk, vulnerable, and culturally under-represented youth populations," *id.* § 713(a)(1)(C)(ii)(III), (b); and (3) are contrary to PREP and SRAE statutory requirements of providing "medically []accurate and complete" sexual health and responsibility curricula, *id.* §§ 713(b)(2)(B)(ii), (iv); *id.* § 713 (e)(2); *id*. §§ 710(b)(2)(B), (C); *id.* § 710(e)(2).

In response, Defendants flatly assert that "HHS's decision to exclude gender-identity instruction preserves the scientific and behavioral focus that Congress explicitly mandated." Doc 70-Pg 27. Yet, Defendants do not cite a statute or proffer any evidence at all to show the Gender Conditions are authorized by Congress. And Defendants do not contest that the near unanimous consensus of the medical and scientific community is that "gender identity is distinct from sex. Doc 8-Pg 8 ¶ 29. Indeed, HHS sent the PREP Directive to no less than 46 states and territories that apparently had "gender ideology" in their sexual health education materials. Doc 7-22. Nor do Defendants contest that, as recently as 2024, HHS did not merely accept content related to gender

identity—it *required* such content. Doc 2-Pg 15. Just as it was in prior years, the inclusion of information related to gender identity in PREP and SRAE programs is consistent with the priorities and requirements of the enabling statutes.

Defendants also do not address, and thus concede, Plaintiff States' mountain of evidence demonstrating that (1) transgender, gender diverse, and DSD youth exist in our youth populations and are entitled to culturally appropriate sexual health and responsibility education as required by PREP and SRAE; and that (2) failing to provide complete and medically accurate information to these populations will put them at higher risk for STIs, pregnancy, and other high-risk sexual behavior. *See* Doc 70-Pgs 25-28; *see also Ramirez v. Ghilotti Bros., Inc.*, 941 F.Supp.2d 1197, 1210 n.7 (N.D. Cal. 2013) (collecting cases holding that failure to address an argument in opposition brief constitutes waiver). This evidence further supports that inclusion of gender identity in sexual health curricula is both culturally appropriate and medical accurate.

Defendants rely solely on the omission of the phrase "gender identity" from the statutes at issue to argue that medically accurate, culturally appropriate programming for transgender, gender diverse, and DSD students is outside the purposes of PREP and SRAE. This argument is unconvincing. Defendants suggest "the term 'culturally appropriate' refers to respecting individuals regardless of factors such as their background or beliefs." Doc 70-Pg 28. But even under their definition, programming must be inclusive of youth who are transgender, gender diverse, and DSD. In any event, the statutory text is more instructive than Defendants contend. SRAE requires that programming under the statute "be culturally appropriate, recognizing the experiences of youth from diverse communities, backgrounds, and experiences." 42 U.S.C. § 710(b)(2)(E). PREP's requirement is similar, requiring "information and activities carried out under the program are provided in the cultural context that is most appropriate for individuals in the particular population group to which they are directed." *Id.* § 713(b)(2)(B)(vi). Gender identity, and the experience of being a youth who is transgender, gender diverse, or DSD fits within these statutory mandates. *See* Doc 2-Pg 13 (noting that HHS's own website specifically states that state PREP programs target youth "from minority groups (including sexual minorities)"). Transgender,

gender diverse, and DSD youth, just like their cisgender counterparts, require medically accurate and complete information to equip them to make responsible decisions regarding abstinence, sexual activity, contraception, relationships, and other adult preparation topics.

Lacking any actual citation or evidence that Congress mandated the Gender Conditions, Defendants invent congressional intent from whole cloth. Defendants claim that the inclusion of "abstinence-based and culturally grounded components [of the statutes] shows Congress's intent to anchor these programs in traditional understandings of biological sex, responsibility, and health risk—rather than in evolving theories of identity or gender expression." Doc 70-Pg 27. But nothing about this argument is right. First, neither PREP nor SRAE is exclusively abstinence-based. SRAE allows for information regarding contraception, and PREP requires curriculum to educate youth about both abstinence and contraception. 42 U.S.C. § 710(b)(4)(A); *id.* § 713 (b)(2)(B)(iii). Second, nothing in the statutory history supports either Defendants' claim that the programs must be "traditional," or their apparent definition of what it means to be "culturally grounded"—by which Defendants apparently mean as restricted to education solely about heterosexual behavior and cisgender identity. What the statutes actually require is that the education be appropriate for the culture of the youth to whom it is directed, not an unspecified (but implicitly heterosexual and cisgender) cultural norm. 42 U.S.C. §§ 710(b)(2)(E), 713(b)(2)(B)(vi).

Regardless, even if sexual health education were supposed to be abstinence-based and promote a particular cultural point of view to the exclusion of all others, that still wouldn't mean that mere acknowledgement of and respect for transgender, gender diverse, and DSD youth would be outside the purpose of the program. Defendants' argument boils down to the assertion that congressional enactments should be presumed to exclude transgender people unless shown otherwise. There is no such canon of statutory construction. HHS's directives to ignore gender identity stand in direct opposition to statutory and constitutional requirements. The Gender Conditions should be set aside under the APA as contrary to law.

2. Defendants' actions purporting to require Plaintiff States erase any reference to or acknowledgment of gender identity are arbitrary and capricious

HHS's implementation of the Gender Conditions is arbitrary and capricious because (1) the Conditions are contrary to the statute's goals and requirements; (2) the Conditions discriminate on the basis of sex; (3) HHS's abrupt change in policy was not reasonably explained nor did the agency consider significant reliance interests; and (4) its rationale for the change is pretext for the administration's goal of erasing transgender, gender diverse, and DSD youth. Defendants' response to each point offers little more than impermissible, post hoc rationalizations.

First, Defendants do not meaningfully address Plaintiff States' argument that Defendants neither "look[ed] to" nor "discuss[ed]" statutory "requirements." *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 682 (2020). Defendants instead observe that the phrases "gender identity" and "gender ideology" do not expressly appear in the language of the PREP and SRAE statutes. But the enabling statutes both require "complete" information—they need not identify every single topic to be included in sexual health education curricula. *See* 42 U.S.C. §§ 710, 713. Although Defendants unilaterally assert that "these statutes do not authorize instruction in 'gender ideology' or gender identity issues *unrelated to pregnancy prevention or risk avoidance*," Doc 70-Pg 30 (emphasis added), they provide no citation or evidence in support of this contention and ignore Plaintiff States' fulsome explanation of how gender identity impacts pregnancy prevention, risk avoidance, and several PREP adult preparation topics. *See* Doc 2-Pgs 18-19.

Defendants struggle to reconcile the conflict between the Gender Conditions, the purpose of the grants, and the presence of transgender, gender diverse, and DSD youth. Again, the statutes require PREP and SRAE programs to (1) reach "youth populations that are the most high-risk or vulnerable;" (2) provide "medically-accurate and complete" information; (3) provide information "in the cultural context that is most appropriate for individuals in the particular population group to which they are directed[;]" (4) develop "healthy attitudes and values about adolescent growth and development, [and] body image;" (5) and reduce adolescent pregnancy and STIs.

42 U.S.C. §§ 713(a)(1)(C)(3), (b)(2)(A)(i), (b)(2)(B)(ii), (vi), (b)(2)(C)(ii); *id.* § 710(a)(2)(B). Defendants' demand that Plaintiff States ignore a population of youth at high risk for pregnancy and STIs contravenes the purpose of these statutes. *See Planned Parenthood of Greater Wash. & N. Idaho v. Dep't of Health & Hum. Servs.*, 946 F.3d 1100, 1113 (9th Cir. 2020) (HHS grant criteria's preference for abstinence-only programs was contrary to law, which required programs to "replicat[e] programs that have been proven effective . . . to reduce teenage pregnancy"). Grant criteria are arbitrary and capricious when they deviate from the purpose of the authorizing statute.

Second, Defendants argue the Gender Conditions do not equate to sex discrimination because there is a difference "between participant eligibility (nondiscrimination) and curriculum content (statutory scope)." Doc 70-Pgs 29-30. That makes no sense. The Gender Conditions bar transgender, gender diverse, and DSD youth from participation in any meaningful sense. Not only do they prohibit these youth from receiving medically accurate information necessary for them to make responsible decisions regarding sexual health and adult preparation—they prohibit PREP and SRAE programs from even acknowledging the *existence* of these youth. And the Gender Conditions violate HHS's own rule expressly recognizing that "sex discrimination includes discrimination based on sexual orientation and gender identity." 45 C.F.R. § 75.300(e). This interpretation of sex discrimination explicitly applies to Maternal and Child Health Services Block Grants. 45 C.F.R. § 75.300(e)(8). For Maternal and Child Health Services Block Grants, which include PREP and SRAE programs, Congress declared broadly that "no person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to [sex] discrimination." 42 U.S.C. § 708. Any suggestion that the HHS rule is limited to "accessing federally funded programs" and not "substantive content" is pure sophistry. *See, e.g.*, *M.S.L. v. Bostock*, No. 6:25-cv-01204-AA, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (holding agency's "fail[ure] to follow its own regulations" was "arbitrary and capricious").

Third, Defendants' abrupt change in policy is arbitrary and capricious. "Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change, display awareness that they are changing position, and consider serious reliance interests."

Thakur v. Trump, 148 F.4th 1096, 1106 (9th Cir. 2025) (internal citations omitted). "A reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016) (internal citation omitted). While Defendants cite general principles suggesting that courts must defer to an agency's reasoning, such arguments assume that there was any "consideration of the relevant factors" to begin with. *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971). Defendants have provided no good reasons (or any reasons at all) for why this policy change is in line with the goals of the PREP and SRAE grants or how it will better serve the youth receiving education funded by the grants. Nor have they addressed the arguments Plaintiff States have made regarding the harmful consequences of this policy change. Because Defendants failed to even consider these factors at all, they acted arbitrarily. *See Dep't of Homeland Sec., v. Regents of the Univ. of Cal.*, 591 U.S. 1, 25 (2020); *Martin Luther King, Jr. Cnty.*, 785 F. Supp. 3d at 888 ("Defendants have failed to demonstrate that the new funding conditions were the result of 'reasoned decisionmaking,' let alone have been 'reasonably explained."); *Kennedy, Jr.*, 2025 WL 2899764, at *7 (finding similar condition on grant funding arbitrary and capricious where "nothing in the Defendants' opposition articulates a 'satisfactory explanation' for their decision to implement the Challenged Conditions, let alone discusses the process they engaged in to arrive at such decision.").

Nor is there any evidence that HHS considered reliance interests before imposing the Gender Conditions and threatening to terminate the grants and programs for failure to comply with them. *See Thakur*, 148 F.4th 1106. Plaintiff States have relied upon the longstanding policy that LGBT youth should be included, and at times even specially targeted for programming, based on agreement in educational and medical circles that inclusive sexual health education is necessary for reducing rates of pregnancy and STIs and that withholding inclusive sexual health education has serious negative consequences on the mental and physical health of transgender, gender diverse, and DSD youth. Doc 2-Pgs 18-19. Plaintiff States have built their programs with LGBT youth in mind, selecting sub-recipients and curricula, hiring staff, and providing training for instructors to present the curricula, and have successfully provided this programming for years.

Doc 2-Pgs 15-16, 40. Defendants' Gender Conditions lay waste to all of the work Plaintiff States have put in to create successful PREP and SRAE programming.

Further, many Plaintiff States have state laws requiring inclusive sexual health education and/or anti-discrimination laws protecting individuals on the basis of gender identity. Defendants flippantly suggest that Plaintiff States can use state funds to teach about gender identity. Doc 70-Pg 31. However, states cannot simply separate teaching about gender identity from other sexual health topics, because a student's gender identity permeates their learning and informs their decision-making. In fact, many of the teacher's manuals for PREP and SRAE curricula speak to the vital importance of creating an inclusive environment for students of all gender identities. *See, e.g.*, Doc 7-Pgs 109, 201 ("It is important for educators to routinely teach inclusively, as every classroom will likely have students who identify (or will later identify) as LGBTQ, as well as students with family and friends who identify as LGBTQ."); *id.*-pgs 71-72 ("Being prepared to teach about gender identity and expression may be new skills for some teachers. Preparation can include checking out some of the links below, talking with colleagues who have taught these topics before, and taking a minute to practice new phrases or use of pronouns. You have transgender young people in your classes, you always have! Your preparation to actively acknowledge and include them can be lifesaving!") Because Plaintiff States cannot realistically separate out the concept of gender identity from their curricula and training programs, many will have to forego substantial funds altogether to avoid violating their own state laws.

Defendants assert that they need not consider Plaintiff States' reliance interests because they are not regulated entities. Doc 70-Pg 30. "But the Supreme Court and the Ninth Circuit have applied this framework and considered reliance interests even where the plaintiff is not a regulated entity." *Or. Council for Hums. v. DOGE Serv.*, No. 3:25-CV-829-SI, --- F. Supp. 3d. ----, 2025 WL 2237478, at *31 (D. Or. Aug. 6, 2025) (government's failure to consider reliance interests in the termination of grants was arbitrary and capricious). *See also Thakur*, 148 F.4th at 1106 (denying federal government's request for a stay after finding, in relevant part, there was no evidence that

the agencies considered reliance interests before terminating grants); *AmeriCorps*, 2025 WL 1713360 at *23-26 (same).

Fourth, HHS's explanation for imposing the Gender Conditions—that they are based on "a reasoned re-evaluation of the statutory limits imposed by Congress,"—is pretextual. Doc 70-Pg 30 Defendants cannot escape the obvious: the Gender Conditions represent a transparent attempt to suppress content and target gender diverse youth. Although courts generally "presume good faith and regularity," here, we have "clear evidence to the contrary." *United States v. Chem. Found.*, 272 U.S. 1, 14-15 (1926). For example, in August 2025, after HHS terminated California's PREP grant funding for refusing to erase transgender students from its PREP curricula, HHS issued a press release declaring, "[I]n a disturbing and egregious abuse of federal funds, California has been using taxpayer money to teach curricula that could encourage kids to contemplate mutilating their genitals." Press Release, U.S. Dep't of Health & Hum. Servs., HHS Defunds California's Attempt to Indoctrinate Children with Gender Ideology, (Aug. 21, 2025), available at https://www.hhs.gov/press-room/hhs-defunds-californias-attempt-indoctrinate-children-gender-ideology.html. The release further referred to "radical gender ideology," "egregious gender ideology," and "delusional gender ideology." *Id.* The press release warns that, "accountability is coming for every state that uses federal funds to teach children delusional gender ideology." *Id.* Regardless of Defendants' promise that the Gender Conditions are "grounded in law – not politics or ideology," Doc 70-Pg 30, this Court should not presume good faith based on the agency's own incendiary comments. Rather, this Court should find Defendants' purported explanation for the Gender Conditions is an impermissible pretext for the preordained goal of erasing transgender, gender diverse, and DSD individuals. *Saget v. Trump*, 375 F.Supp.3d 280, 361 (E.D.N.Y. 2019) ("An agency's actions are arbitrary and capricious under the APA if they are pretextual") (citing *Cowpasture River Pres. Ass'n v. Forest Serv.*, 911 F.3d 150, 176-79 (4th Cir. 2018)).

In sum, Defendants do not actually grapple with the law or the completeness of the medical evidence. And this administration's overtly hostile comments regarding transgender people render

Defendants' argument unbelievable. HHS's imposition of the Gender Conditions was arbitrary and capricious.

3. Defendants' attempt to require PREP and SRAE grantees erase references to gender identity violates the spending clause

Defendants' actions violate the Spending Clause because they: (1) unlawfully impose retroactive funding conditions, (2) impose vague and ambiguous prospective conditions, and (3) impose conditions that are not only unrelated—but completely undermine—the central purpose of the sexual health education programs at issue. Plaintiff States are thus likely to succeed on the merits of their Spending Clause claim.

First, the PREP Directive is unlawfully retroactive. The subject line of that letter indicates that it concerns PREP grants for fiscal years 2023, 2024, and 2025. *See, e.g.*, Doc 7-21 ("RE: State Personal Responsibility Education Program grants for Fiscal Years 2023 (#2301WAPREP), 2024 (#2301WAPREP), and 2025 (#2501WAPREP)." By its own terms, the PREP Directive applies to awards from all three fiscal years, jeopardizing funding for projects and programs that are well underway. And in substance, the letter states that it has deemed the putative impermissible content as exceeding the authority of the authorizing statutes—reasoning that is not limited to any specific grant period. This is a clear violation of the Spending Clause, which prohibits Defendants from "surprising participating states with post-acceptance or 'retroactive' conditions." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 584 (2012). Defendants flatly ignore the PREP Directive's retroactive conditions in their response and instead focus on the NOAs and supplemental T&Cs. This should be treated as a concession that the PREP Directive is unlawful. *See Carolyn R. v. Comm'r, Soc. Sec. Admin.*, No. 6:23-cv-01595-AN, 2025 WL 553599, at *5 (D. Or. Feb. 19, 2025) ("'if a party fails to counter an argument that the opposing party makes . . . the court may treat that argument as conceded'") (citation modified) (quoting *Justice v. Rockwell Collins, Inc.*, 117 F.Supp.3d 1119, 1134 (D. Or. 2015)).

Second, the NOAs and supplemental T&Cs are impermissibly vague and ambiguous. The Spending Clause requires that States have clear notice of any conditions on federal funds and that

such conditions be imposed "unambiguously." *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17, 25 (1981); *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006). States "cannot knowingly accept conditions of which they are 'unaware' or which they are 'unable to ascertain.'" *Id.* Defendants argue—without citation to the record—that "[t]he term 'gender ideology' is defined in the NOA terms and conditions referenced by plaintiffs." Doc 70-Pg 33. But the NOA's terms and conditions contain no such definition. *See, e.g.*, Doc 7-Pg 3. Rather, they simply state that "[r]ecipients are prohibited from including gender ideology in any program or service that is funded with this award" and that the enabling statute "does not authorize teaching students that gender identity is distinct from biological sex or boys can identify as girls and vice versa, or that there is a vast spectrum of genders that are disconnected from one's sex." *Id.*

Although Defendants claim this "definition" provides "sufficient clarity," Defendants offer a refinement: "In this context, the term would refer to *classroom content or programming* that treats gender as independent of biological sex or introduces identity-based theories *unrelated to human reproduction or sexual risk avoidance*." Doc 70-Pg 33 (emphasis added). But Defendants' attempt to rewrite the condition only highlights its ambiguity. Defendants' rewritten condition is fundamentally inconsistent with the content it flagged as objectionable in the PREP Directive. For example, while Defendants interpret the condition as applying only to "classroom content or programming," the PREP Directive instructed Washington to remove information in teachers' guides about how to support transgender and non-binary youth and offering teachers a list of resources. Doc 7-Pg 3. Likewise, it directed Delaware and other states to remove information instructing facilitators to "[d]emonstrate acceptance and respect for all participants, regardless of personal characteristics, including race, cultural background, religion, social class, sexual orientation or gender identity." Doc 19-4-Pg 4.

Similarly, while Defendants read the condition as ensuring content focused on human reproduction and sexual risk avoidance, Defendants directed Washington to remove a statement from a high school curriculum that "[p]eople of all sexual orientations and gender identities need to know how to prevent pregnancy and STOs [sic], either for themselves or to help a friend." Doc

7-21-Pg 5. Minnesota was further directed to remove the following statement from a youth program facilitator's introduction: "We know that sometimes lesbian, gay, bisexual, transgender, and queer or questioning young people don't have access to information and services that is for them. That's why we're here, to spend some time together talking about LGBTQ+ sexual healthcare in particular." Doc 16-7-Pg 3. Such content *directly* relates to human reproduction or sexual risk avoidance and should be permissible under Defendants' own interpretation, yet, inexplicably, it's not. At the end of the day, not even Defendants can accurately predict which content falls within the scope of the funding conditions at issue. This falls far short of providing clear notice of unambiguous conditions. *See Pennhurst State Sch.*, 451 U.S. at 17; *Kennedy, Jr.*, 2025 WL 2899764 *9 (concluding plaintiffs facing similar gender ideology prohibitions were "left unsure whether . . . using preferred pronouns to refer to a non-binary person would 'promote' 'gender ideology.'").

Third, the Gender Conditions violate the Spending Clause because they are unrelated to the federal interest in the programs at issue. *See South Dakota v. Dole*, 483 U.S. 203, 206–07 (1987) (requiring that Spending Clause conditions are related "to the federal interest in particular national projects or programs" at issue). Defendants feebly argue that the Gender Conditions are "directly related to the federal interest in promoting medically accurate sexual risk avoidance education." Doc 70-Pg 35. But there is no plausible argument that requiring *removal* of a statement that "[p]eople of all sexual orientations and gender identities need to know how to prevent pregnancy and STOs[sic]" serves to *promote* sexual risk avoidance education. On the contrary, such a directive only serves to erase transgender, gender diverse, and DSD youth and deprive them of critical health sexual health information specific to their individual circumstances. Depriving people of critical sexual health information does the exact *opposite* of what Congress intended. "Education about gender identity is integral to teaching about sexual health including abstinence and contraception." Doc 8-Pg 12 ¶ 39. For example, "if a cisgender male who is sexually and romantically interested in other men were to become sexually active with a transgender man (*e.g.*, an individual designated female at birth with a male gender identity) pregnancy could result." *Id.*-

Pg 13. Accordingly, "[w]ithout understanding gender identity, adolescents cannot be expected to make educated choices regarding their sexual choices especially as it pertains to their risk of pregnancy." *Id.*-Pg 12.

Moreover, experts recognize that gender and sexual minority youth tend to experience "increased sexual risk behaviors and adverse health outcomes" compared to their heterosexual and cisgender peers, including "the use of alcohol or drugs before sex, decreased condom and contraceptive use . . . higher incidences of forced sex, dating violence, suicidal thoughts, attempted suicide, bullying, alcohol and drug use, earlier initiation into sex, more sexual partners…and two to seven times higher incidents of teen pregnancy." *See, e.g.*, Maureen Rabbitte*, Sex Education in School, are Gender and Sexual Minority Youth Included? A Decade in Review*, Am. J. Sexual Educ. 15(4) 530-42 (Oct 13, 2020), https://pmc.ncbi.nlm.nih.gov/articles/PMC7986966/. Gender-inclusive sexual health education is thus essential to providing vulnerable youth accurate and relevant information to make informed and healthy sexual decisions. *See generally*, *id; see also* Doc 8-Pg 14 ¶ 43 ("If the educational programs funded by the PREP or SRAE grants incorrectly insist that sex and gender are binary, they cannot adequately educate transgender and gender diverse adolescents or adolescents with DSD in accordance with the PREP and SRAE enabling statutes.").

Defendants further ignore Congress's mandate that PREP programs teach youth various adult preparation subjects, including "[h]ealthy relationships[,]" "[a]dolescent development, such as the development of healthy attitudes and values about adolescent growth and development, body image, racial and ethnic diversity, and other related subjects[,]" and "[p]arent-child communication." 42 U.S.C. § 713(b)(2)(C). Plaintiff States submitted unrebutted evidence that "[t]opics of sex and gender identity are relevant to learning about adolescent development and that "[a]n understanding of gender identity is relevant to learning about healthy relationships and parent-child communication" as "these identities can color relationships." Doc 8-Pg 13 ¶¶ 41-42. Education about gender identity is crucial to ensuring that the goals of PREP and SRAE are met, and Defendants' bald assertions to the contrary fail to establish otherwise.

Finally, Defendants' reliance on *Rust v. Sullivan* does not save their arguments. 500 U.S. 173, 184 (1991) In that case, the Supreme Court upheld HHS regulations that prohibited the use of funds to provide counseling or referral for abortion services. But the authorizing statute there, Title X of the Public Health Service Act, explicitly stated that "[n]one of the funds appropriated under this subchapter shall be used in programs where abortion is a method of family planning." *Id.* The Court upheld the challenged regulations because the regulations ensured grantees did not engage in activities outside of what Congress contemplated. That is not the situation here, where the statutory language contains no similar prohibition. In fact, as argued above, Defendants' actions are fundamentally *inconsistent* with the statutory language and purpose. Because the Gender Conditions completely undermine the central purpose of these programs, they are unlawful under the Spending Clause. Plaintiff States are likely to prevail on this claim.

4. Defendants' attempt to require PREP and SRAE grantees erase references to gender identity violate the separation of powers

Plaintiff States are also likely to succeed on their Separation of Powers claim because Defendants' attempt to rewrite funding conditions for pre-existing programs and invent new conditions usurps Congress's legislative role.

Defendants concede that "the Executive's duty is to administer that statute in accordance with its text, purpose, and limitations." Doc 70-Pg 36. Yet in defending the Gender Conditions, Defendants fail to grapple with the goals and statutory language of the PREP and SRAE statutes. It is undisputed that the primary goal of these programs is to reduce teen pregnancy and STIs. *See* Doc 70-Pgs 26, 30. And as noted earlier, Plaintiff States presented ample evidence that "[e]ducation about gender identity is integral to teaching about sexual health including abstinence and contraception." Doc 8-Pg 12 ¶ 39; *see also id.*-pg 13 ¶ 42 ("If sexual education does not include a discussion of gender identity, adolescents cannot adequately understand their risk for pregnancy"). Indeed, including gender identity in comprehensive sexuality education is supported and recommended by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists. *Id.*-Pgs 12-13 ¶ 39 (citing Breuner & Mattson, 2016; Committee

on Adolescent Health, 2016). Education about gender identity thus directly furthers Congress's goals and the purpose of PREP and SRAE.

Education about gender identity is also entirely consistent with PREP and SRAE's statutory language. The enabling statutes require that the programs be "medically-accurate and complete," and "culturally appropriate" or "provided in the cultural context that is most appropriate for individuals in the particular population group to which they are directed." 42 U.S.C. §§ 713(B)(ii), (iv); *id.* §§ 710(2)(B), (E). Discussion of gender identity is "medically-accurate and complete" because "the fact that gender identity is distinct from biological sex is widely accepted by the medical and scientific community and supported by numerous professional medical organizations including the American Academy of Pediatrics, Endocrine Society, Pediatric Endocrine Society, and American College of Obstetricians and Gynecologists." Doc 8-Pg 8 ¶ 29 (citing Cronin & Stockdale, 2021; Hembree et al., 2017; *PES Statement Supporting Access to Gender Care - Pediatric Endocrine Society*, n.d.; Rafferty et al., 2018)). It is also "culturally appropriate" because transgender and gender diverse identities are more common in modern day adolescents than in prior generations, Doc 8-Pg 9 ¶ 30, and they comprise a significant youth population in Plaintiff States and in PREP and SRAE programs. *See* Jody L. Herman & Andrew R. Flores, UCLA School of Law Williams Institute, *How Many Adults and Youth Identify as Transgender in the United States?*, https://williamsinstitute.law.ucla.edu/publications/trans-adults-united-states/ (last visited Sept. 25, 2025). Moreover, PREP requires education about various adult preparation subjects, including "healthy relationships," "adolescent development," and "parent-child communication." Discussion of gender identity is inextricably intertwined with these topics. This statutory language directly supports Plaintiff States' inclusion of gender identity in its curricula.

In claiming otherwise, Defendants again rely on the fact that Congress did not "explicitly" include gender ideology or related instruction within the authorizing language of the PREP or SRAE statutes. Doc 70-Pg 36. But it is unnecessary for Congress to "explicitly" reference every single topic of instruction in order to conclude that it falls within the scope of the statute. The statute does not explicitly reference teaching about anatomy and physiology, menstrual cycles, or

consent, yet no one would dispute that those topics promote sexual health education. In short, the statute's omission does not provide Defendants carte blanche authority to exclude any reference to "gender identity." *See Holy Trinity Church v. United States*, 143 U.S. 457, 459 (1892) ("A thing may be within the letter of the statute and yet not within the statute,"); *Church of Scientology of Cal. v. Dep't of Justice*, 612 F.2d 417 (9th Cir. 1979) ("A statute should not be interpreted so as to produce an absurd result."); *see also Cnty. of Amador v. Dep't of Interior*, 872 F.3d 1012, 1022 (9th Cir. 2017) ("[W]e must (as usual) interpret the relevant words [in a statute] not in a vacuum, but with reference to the statutory . . . history[] and purpose.").

By ignoring the statutory history and purpose and acting directly contrary to Congress's intent, Defendants' actions are no different than those in *Washington v. Trump*, 768 F. Supp. 3d 1239, 1261-63 (W.D. Wash. 2025). In *Washington*, the federal government purported to end federal funding of "gender ideology." *Id.* at 1262. Because the federal government attempted "to condition congressionally appropriated funds 'in a matter that effectively rewr[ote] the law,'" the district court concluded plaintiffs' separation of powers claim was likely to prevail. Defendants attempt to cast *Washington*, which addressed President Trump's executive orders, as an example of "executive overreach," *see* Doc 70-Pg 37, but district courts have struck down NOAs and T&Cs that, like here, impose new conditions that lack any statutory basis. *See, e.g.*, *Martin Luther King, Jr. Cnty.*, 785 F. Supp. 3d 863. In *King County*, the district court enjoined two federal agencies from imposing a variety of grant conditions, i.e., prohibitions on "gender ideology," "DEI initiatives," and abortion, in recognition that the executive branch cannot "redistribute or withhold properly appropriated funds in order to effectuate its own policy goals." The Court should find the same here. Defendants do not, and could not, reasonably argue that the Gender Conditions were explicitly authorized by Congress. Far from faithfully adhering to congressional intent, Defendants' actions usurp Congress's role and violate the Separation of Powers.

C. Irreparable Harm and the Balance of the Equities Weigh in Plaintiff States' Favor, and a Prohibitory Preliminary Injunction Is in the Public Interest

In claiming that Plaintiff States fail to show irreparable harm, Defendants misconstrue the injunctive relief Plaintiff States seek and ignore the facts. Plaintiff States seek a prohibitory preliminary injunction, not a mandatory one. Defendants argue that Plaintiff States seek to "unwind what has already occurred," Doc 70-Pg 39, but at no point explain what needs to be unwound. Nor could they. Plaintiff States ask this court to preserve the status quo by enjoining the implementation and enforcement of the PREP Directive, the NOAs, and the Supplemental T&Cs. Doc 2-Pg 44.

The status quo here is the well-established approval of PREP and SRAE funding that has been in place for years. *See GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) ("The status quo ante litem refers not simply to any situation before the filing of a lawsuit, but instead to 'the last uncontested status which preceded the pending controversy.'") (quoting *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963)). There is "no bright line rule for when a controversy arises," but it is not necessarily at the time of the lawsuit. Instead, the status quo is the "'legally relevant relationship between the parties before the controversy arose.'" *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664 (9th Cir. 2023) (quoting *Ariz. DREAM Act Coal. v. Brewer*, 757 F.3d 1053, 1061 (9th Cir. 2014)). In *Fellowship of Christian Athletes* for example, the school district's new policy to enforce non-discrimination rules altered the status quo of providing plaintiffs' clubs with student body association recognition for nearly 20 years. 82 F.4th at 684. Accordingly, the Ninth Circuit held that "the status quo was one in which FCA enjoyed recognition" even though that had changed at the time the plaintiffs filed their complaint. *Id. See also Ariz. DREAM Act Coal.*, 757 F.3d at 1061 (concluding prohibitory injunction was proper where status quo was a legal regime where all holders of federal Employment Authorization Documents were eligible for a drivers' license despite Arizona revising their policy to prevent DACA recipients from obtaining one).

The PREP Directive does not alter the status quo until at least October 27, 2025, which is the deadline for Plaintiff States to remove all "gender ideology" content. And to the extent that Defendants believe that the NOAs and Supplemental T&Cs have already altered the status quo, Defendants are wrong. Accepting contract terms—much less one party unilaterally imposing them—does not alter the status quo. *Cf N.D. ex rel. v. Haw. Dep't of Educ.*, 600 F.3d 1104, 1112 n.6 (9th Cir. 2010) (noting that an injunction prohibiting public school furlough days was prohibitory because the furlough days had not been taken yet, even though the furlough contracts had already been signed). Even for states that may have been forced to accept terms under duress to access crucial spending, this would not alter the status quo, which is the status of PREP and SRAE funding prior to HHS's sudden imposition of the Gender Conditions. *Kennedy, Jr.*, 2025 WL 2899764, at *4 (explaining that even where some of the plaintiffs had "already accepted grant contracts subject to the challenged conditions before Plaintiffs brought this lawsuit" they were similarly situated to the rest of the plaintiffs given the nature of the controversy).

Unlike cases involving mandatory injunctions that sought to require affirmative action, enjoining Defendants from seeking to impose disputed new conditions to an existing stream of funding would not alter the status quo. *See, e.g.*, *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (dissolving mandatory injunction requiring Google to take the affirmative action of *removing* content from its platforms); *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313 (9th Cir. 1994) (stating that injunction requiring defendant to re-install plaintiff as head basketball coach "would not have maintained the status quo" because plaintiff "was no longer a USC employee"); *Anderson v. United States*, 612 F.2d 1112, 1115 (9th Cir. 1979) (inappropriate mandatory injunction that required the Air Force to promote a female plaintiff to a position for which she was never hired, and provide back pay and damages).

Defendants rely on *Marlyn Nutraceuticals, Incorporated v. Mucos Pharma GmbH and Company*, but that case demonstrates precisely why Plaintiff States' requested injunction is prohibitory. 571 F.3d 873 (9th Cir. 2009). There, the company had already distributed a dietary supplement, and the district court's order required the manufacturer to "recall its product and give

restitution to customers who had bought its product." *Id.* There is no analogous recall, clawback, or restitution here, even for states that may have been forced to update their curricula to access vital PREP and SRAE funding. Plaintiff States' requested relief would prevent imminent, irreparable injury from occurring without requiring any affirmative action from Defendants. Instead, Plaintiff States seek to preserve the last uncontested status that preceded the sudden implementation of the unlawful Gender Conditions.

Defendants further miss the point entirely when they claim that Plaintiff States can "'just decline the funds'" and that "voluntary decision" would mean there is no harm. Doc 70-Pg 40 (quoting *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214 (2013)). Without a prohibitory preliminary injunction, the Gender Conditions force Plaintiff States into accepting one of two equally objectionable harmful options: comply with unlawful funding conditions or lose critical federal funding. *Martin Luther King, Jr. Cnty.*, 785 F. Supp. 3d at 889 (Plaintiffs similarly faced with "two untenable options" of "accepting conditions that they believe are unconstitutional, [or] risking the loss of hundreds of millions of dollars in federal grant funding, including funding that they have already budgeted and are committed to spending."). This "Hobson's choice," requiring Plaintiff States to "decide between two losing options[,] constitutes irreparable injury because 'very real penalty attaches to [Plaintiff States] regardless of how they proceed." *AmeriCorps*, 2025 WL 974298 at *4.

As to the first choice, being forced to accept unlawful funding conditions is "unquestionably" an irreparable harm. *Martin Luther King, Jr. Cnty.*, 785 F.Supp.3d at 889-90. Plaintiff States identify numerous state laws that instruct school districts to include gender in state curriculum—thus causing States to potentially violate their own state laws if they remove references to gender identity. Doc 2-Pg 34; *see also* doc 1-pgs 15-23 ¶¶62-92 (citing state laws requiring, for example, school districts to include instruction on diversity of gender and sexual orientation). *See also Maryland v. King*, 567 U.S. 1301 (2012) (observing that a State "suffers a form of irreparable" injury "any time" it is unable "to effectuat[e] statutes enacted by representatives of its people"). Unrebutted evidence also demonstrates that complying with the

unlawful funding conditions also inflicts very real harm on transgender, gender diverse, and DSD youth who will be deprived of essential sexual health education and will be deprived of necessary information to keep them safe. *See, e.g.*, Doc 30-Pgs 10-11 ¶¶ 27-30; Doc 31-Pgs 10-12 ¶¶29-33; Doc 32-Pgs 20-21 ¶¶54-56; Barnes-DC Decl. ¶¶ 19-21,.

As to the second choice, forgoing crucial funding is not purely an economic harm, as Defendants argue. Certainly, the termination of PREP and SRAE funding will cause economic harm—an immediate loss of at least $35 million to the Plaintiff States, *see* Doc 7-22-Pg 6—but this is by no means the only harm Plaintiff States will suffer. Plaintiff States are facing imminent, irreparable harm to school education, staffing, public health, and more. Defendants imply that there is only a "possibility" that the myriad of harms Plaintiff States identify will come to pass. Doc 70-Pg 39. But the unrebutted facts show otherwise. *Martin Luther King, Jr. Cnty.*, 785 F. Supp. 3d at 890 ("[I]t is this looming risk [of losing grant funding] itself that is the injury"). As Plaintiff States described in detail, loss of PREP and SRAE funding may force some states to discontinue sexual health education or lay off staff who provide this education, including for underserved communities. Doc 16-Pg 14 ¶ 35(b); Doc 69-Pg 6 ¶¶ 19-20; Doc 15-Pgs 2-3, 9-10 ¶¶ 5, 23; Barnes-DC Decl. ¶ 17. Some school districts may have to stop providing sexual health education curriculum entirely. Doc 22-Pg 9 ¶ 27. For others, funding cuts would result in losing access to training and technical support, crucial support that educators rely on. Doc 10-Pgs 3-4, 5-6 ¶¶ 5-6; 11-12; *see also* Doc 12-Pg 5 ¶ 11; Doc 13-Pgs 3-4 ¶¶ 8-9; Doc 9-Pg 11 ¶ 33 (describing training and technical support in Washington as "invaluable," "essential" and "crucially important").

Plaintiff States have "designed their budgets, programming, staffing, and partnerships with community organizations based on the understanding that HHS would fulfill its obligations." *Planned Parenthood of Greater Wash. & N. Idaho v. Dep't of Health & Hum. Servs. (Planned Parenthood)*, 328 F.Supp.3d 1133, 1150 (E.D. Wash. 2018). Funding termination threats that may disrupt the ability of Plaintiff States to continue those "operations as planned" or threaten relationships and goodwill with local community partners constitute irreparable harm. *Id.* at 1150-

51; *Martin Luther King, Jr. Cnty.*, 785 F.Supp.3d at 890 (the "injury of acute budgetary uncertainty is irreparable").

The loss of PREP and SRAE funding will also negatively impact unplanned pregnancy rates and STI rates. Doc 9-Pg 12 ¶ 35; Doc 28-Pg 7 ¶ 22. And forcing states to remove gender identity from comprehensive sexual health education puts gender expansive youth at risk—including of suicide. Doc 10-Pgs 11-12 ¶ 27. These are "irreparable consequences for public health." *State v. Bureau of Land Mgmt.*, 286 F.Supp.3d 1054, 1074 (N.D. Cal. 2018). Money cannot remedy these harms. *Planned Parenthood*, 328 F.Supp.3d at 1151 (monetary remedies are "inadequate to compensate for the injury to the youth and communities that Plaintiffs serve."). Taken as a whole, these impending injuries are exactly the type of irreparable harms that warrant an injunction.

Defendants' remaining arguments also fall flat. Defendants try to minimize the sweeping breadth of the "gender ideology" terminology, claiming that there are "marginal amounts of such content in proportion to the full text" and only "small amount[s] of gender ideology content." Not so. Defendants are forcing Plaintiff States to remove *every single reference* to gender or gender identity—even seemingly benign statements like "[d]emonstrate acceptance and respect for all participants, regardless of personal characteristics, including race, cultural background, religion, social class, sexual orientation or gender identity." Doc 19-4 Pg 4; Doc 30-Pgs 4-5 ¶ 11. Such meticulous demands to every aspect of sexual health education materials (which often additionally require approval by individual school boards) undercut Defendants' last-ditch attempt to shrug off the Gender Conditions as "marginal."

Finally, Defendants misunderstand how Plaintiff States have been using PREP and SRAE funding for years or, in some instances, decades. Defendants claim that Plaintiff States can simply use their own funds to administer "separate programs that allow for the inclusion of state-funded gender ideology." However, that is not a real option. School districts in Plaintiff States often go through a lengthy process to carefully select sexual health curricula. *See, e.g.*, Doc 12-Pg 3 ¶¶ 6-7. Establishing a separate program is no easy fix. In reliance on PREP and SRAE funding, many

Plaintiff States form partnerships with community organizations to provide training and support during the school year. This process begins months in advance—often in the spring before the next school year has even started. Doc 10-Pgs 4-5 ¶ 8. Plaintiff States cannot be expected to suddenly pivot to the whims of the current administration.

These facts also demonstrate how the equities and public interest weigh strongly in support of Plaintiff States' requested relief. Plaintiff States use PREP and SRAE funding to support sexual health education for youth across the country, and high-risk youth, in particular. Defendants argue that "the public interest is harmed when the federal government is forced to pay out funds under terms that do not comply with the statutory purpose of these funds because it may not be able to recover them." This is dubious when, just last year, the federal government approved PREP and SRAE funding that included the terms at issue. This sudden reversal of interpretation cannot be the basis for harm to the public interest. Even if it was, those supposed economic harms would not weigh more heavily than the clear harms to education, health, and safety for thousands of youth in Plaintiff States. The balance of the equities and the public interest favor Plaintiff States and the youth that are served by PREP and SRAE funding.

D. The Court Should Issue the Modest Relief Plaintiff States Request

Plaintiff States seek only a preliminary injunction that would prevent enforcement of the challenged directives against the Plaintiff States themselves. This Court has the equitable power to protect the Plaintiff States before it. *See* Doc 70-Pg 44 (citing *Trump v. CASA, Inc.*, 606 U.S. 831, 837 (2025)). Defendants concede that, should the Court find entry of preliminary injunctive relief is warranted, an injunction that protects Plaintiff States is appropriate. The Court should reject any piecemeal proposal Defendants offer to undercut an injunction against application of the Gender Conditions to Plaintiff States.

E. No Bond Requirement or Stay Should Issue

Finally, Defendants request that the Court stay its preliminary injunction, should it issue one. Doc 70-Pg 45. However, Defendants do not attempt to address the standard for granting a stay under *Nken v. Holder*, 556 U.S. 418, 434 (2009), and even if they had, Defendants could not meet

it as the *Nken* factors are virtually identical to those supporting a preliminary injunction. *See generally id.*; *see also generally* Doc 2. Neither is an administrative stay warranted. "[A]n administrative stay is only intended to preserve the status quo until the substantive motion for a stay pending appeal can be considered on the merits." *Nat'l Urban League v. Ross*, 977 F.3d 698, 700-01 (9th Cir. 2020) (quoting *Doe #1 v. Trump*, 944 F.3d 1222, 1223 (9th Cir. 2019) (internal quotation marks omitted)). As argued above, the preliminary injunction here is necessary to preserve the status quo ante litem. An administrative stay would allow the PREP Directive, with its deadline of October 27, to enter into effect, undermining any preliminary injunction. The Court should not administratively stay an injunction to allow Defendants to unlawfully alter the status quo.

Neither should a bond issue for the same reason. "Rule 65(c) invests the district court with discretion as to the amount of security required, *if any*." *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (quoting *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003)) (internal quotation marks omitted). Here, the Plaintiff States are statutorily *entitled* to the grants at issue if they comply with Congress's conditions—not Defendants' ad hoc requirements. *See* 42 U.S.C. §§ 710, 713. Plaintiff States have so complied, and an injunction is necessary to stop Defendants from imposing their unlawful gender ideology prohibition on Plaintiff States' sexual education programs. Defendants cannot show they will suffer any harm from an injunction against enforcing these illegal policies, and no bond is appropriate. *See Jorgensen*, 320 F.3d at 919 ("The district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct."); *see also Washington v. Trump*, 145 F.4th 1013, 1037 (9th Cir. 2025) (holding that the executive branch has no legitimate interest in implementing unlawful policies).

III. CONCLUSION

This Court should immediately enjoin the implementation and enforcement of the PREP Directive, the PREP and SRAE NOAs, and the PREP and SRAE Supplemental T&Cs. The Court should prohibit Defendants from withholding or terminating federal funding based on the Gender

Conditions, and from taking any adverse action against any Plaintiff State (including barring Plaintiff States from receiving federal funding or making Plaintiff States ineligible for federal funding) based on the Gender Conditions.

DATED this 17th day of October 2025.

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