

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLANDRHODE ISLAND COALITION AGAINST
DOMESTIC VIOLENCE, *et al.**Plaintiffs,*

v.

ROBERT F. KENNEDY, JR., in his official
capacity as Secretary of the United States
Department of Health and Human Services, *et al.**Defendants.*

Case No. 1:25-cv-00342

**Department of Health and Human Services and HHS-Affiliated Defendants’
Supplemental Memorandum in Support of Opposition
to the Plaintiffs’ Motion for Preliminary Relief**

On September 3, 2025, the defendants affiliated with the Department of Health and Human Services (“HHS”), collectively referred to below as the HHS Defendants,¹ and the Plaintiffs entered a stipulation concerning the Plaintiffs’ desire to include a challenge to a Title IX certification that HHS added to the August 2025 revision of its Grants Policy Statement (“August GPS”) as one of their claims for preliminary relief. *See* ECF No. 52. Pursuant to the terms of that stipulation, which permitted limited supplemental briefing by each side, the HHS Defendants submit this short memorandum along with the declaration of Dale Bell attached as Exhibit A (“Bell Decl.”).

¹ In addition to HHS, these defendants include Robert F. Kennedy Jr., in his official capacity as Secretary of HHS, Defendant the Administration for Children and Families (“ACF”), Defendant Centers for Disease Control and Prevention, Defendant Health Resources and Services Administration (“HRSA”), and Andrew Gradison, Susan Monarez, and Thomas Engels.

Background

As detailed in the accompanying declaration, the August GPS applies to all HHS discretionary awards except for NIH awards, and is incorporated by reference as a standard term and condition in the official Notices of Awards issued to grant recipients. Bell Decl. ¶¶4-5. The August GPS, which supersedes previous versions of the GPS, applies to awards and award modifications that add funding on or after October 1, 2025. *Id.* ¶6. Each HHS Notice of Award incorporates both the HHS GPS and any HHS Operating-Division-specific terms and conditions.² *Id.* ¶8.

HHS has the authority to require grant recipients to submit annual certifications. *Id.* ¶7. All recipients of federal financial assistance from HHS are required to have an “Assurance of Compliance with Non-Discrimination Laws and Regulations” on file with HHS. *Id.* ¶12. This Assurance, which has been required for many years, has always required the recipient to comply with Title IX. *Id.* Signing the Assurance also indicates the recipient’s agreement that “compliance with this assurance constitutes a material condition of continued receipt of Federal financial assistance[.]” *Id.* (This latter statement is in the current version of the Assurance, which was last updated in November 2019. *Id.*)

The August GPS included a certification related to Title IX, 20 U.S.C. § 1681 et seq., that was not in the prior version of the GPS. Bell Decl. ¶9. This “GPS Title IX Certification” requires a grant recipient who is otherwise subject to Title IX requirements to certify that the recipient is compliant with Title IX (including the requirements of Executive Order 14,168

² As the Court is aware, Plaintiffs and the HHS Defendants have stipulated that the ACF “Civil Rights Assurance” (a.k.a. ACF Anti-DEI Certification) term and condition is not at issue for purposes of the motion for preliminary relief the Court is currently considering. *See* ECF No. 39.

concerning gender ideology), as well as Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. Bell Decl. ¶9. Additionally, the certification requires various assurances related to the grant recipient's awareness that the Title IX certification is a material term of the grant agreement. *Id.* Like the rest of the August GPS, the Title IX certification will be in effect for awards and award modifications that add funding on or after October 1, 2025. *Id.* ¶10. To the extent that an HHS operating division such as ACF or HRSA has a Title IX certification in its terms and conditions, those will be in effect for recipients as well. *Id.* ¶11.

Discussion

In their motion for preliminary relief, Plaintiffs have asked the Court to enjoin application and enforcement of the Title IX certifications required by ACF and HRSA on a variety of grounds, *e.g.*, the Administrative Procedure Act, the Fifth Amendment, and the separation of powers. In addition to opposing these claims on the merits and contending that the criteria for emergency injunctive relief have not been met, the HHS Defendants have also argued that the Court lacks jurisdiction to consider them.

As with the ACF and HRSA Title IX Certifications, the HHS Defendants contend that the GPS Title IX Certification is valid and enforceable. In support of that position, the HHS Defendants rely on the arguments set forth in their opposition memorandum (ECF No. 43) as well as the reasons defense counsel articulated during oral argument on September 4, 2025.

Dated: September 8, 2025

Respectfully submitted,

U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES; ROBERT
F. KENNEDY, JR., in his official
capacity as Secretary of Health and
Human Services,

By their Attorneys,

SARA MIRON BLOOM
Acting United States Attorney

/s/ Lauren S. Zurier

LAUREN S. ZURIER

Assistant United States Attorney
One Financial Plaza, 17th Floor
Providence, RI 02903
(401) 709-5000
Lauren.Zurier@usdoj.gov

Certification of Service

On this 8th day of September, 2025, I caused the within document to be filed electronically. It is available for viewing and downloading from the Court's ECF system, which will serve it upon all counsel of record.

/s/ Lauren S. Zurier

LAUREN S. ZURIER

Assistant United States Attorney

Exhibit A

Declaration of Dale Bell

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DECLARATION OF DALE BELL

I, Dale Bell, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the Deputy Assistant Secretary for Grants within the Office of Grants (OG), Office of the Assistant Secretary for Financial Resources (ASFR), U.S. Department of Health and Human Services (HHS). I have held this position since October 22, 2022. In this role, I am responsible for setting grants policy on behalf of HHS, including issuing the HHS Grants Policy Statement, which is HHS's primary sub-regulatory guidance document at HHS relating to discretionary grants and cooperative agreements.

2. This declaration is based upon my personal knowledge, information acquired by me in the course of performing my official duties, information contained in the records and systems of HHS to which I have access in the course of my duties, and information conveyed to me by other knowledgeable HHS employees with whom I work on a regular basis.

HHS Grants Policy Statement

3. The HHS Grants Policy Statement (GPS) is a public facing document that provides information regarding grants and cooperative agreements. It provides information on HHS agencies that make awards, the award process, and where to find and apply for awards. The GPS also provides information about the legal and regulatory rules that apply to awards.

4. The GPS applies to all HHS discretionary awards, except for NIH awards, and the requirements flow down to subawards.

5. The GPS is incorporated by reference in the official Notices of Award issued to grant recipients as a standard term and condition.

6. HHS recently updated its GPS to Version 2.0. GPS Version 2.0 applies to awards and award modifications that add funding on or after October 1, 2025. GPS Version 2.0 supersedes previous versions of the GPS.

Title IX Certifications

7. HHS is authorized to require a grant recipient to submit annual certifications and representations to HHS. 2 C.F.R. § 200.209.*

8. Each HHS Notice of Award incorporates both the HHS GPS and any HHS Operating Division-specific terms and conditions.

9. GPS Version 2.0 includes a Civil Rights Assurance. This Civil Rights Assurance includes a certification requirement related to Title IX that was not in the prior version of the GPS. “All recipients subject to Title IX requirements” must adhere to the certification’s terms. The GPS Title IX certification states:

By accepting this award, including the obligation, expenditure, or drawdown of award funds, recipient certifies as follows:

- Recipient is compliant with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., including the requirements set forth in Presidential Executive Order 14168 titled Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq., and recipient will remain compliant for the duration of the Agreement.
- The above requirements are conditions of payment that go the essence of the Agreement and are therefore material terms of the Agreement.
- Payments under the Agreement are predicated on compliance with the above requirements, and therefore Recipient is not eligible for funding under the Agreement or to retain any funding under the Agreement absent compliance with the above requirements.
- Recipient acknowledges that this certification reflects a change in the government’s position regarding the materiality of the foregoing

* Effective October 1, 2025, HHS will adopt 2 C.F.R. Part 200. 89 Fed. Reg. 80,055 (Oct. 2, 2024).

requirements and therefore any prior payment of similar claims does not reflect the materiality of the foregoing requirements to this Agreement.

- Recipient acknowledges that a knowing false statement relating to Recipient's compliance with the above requirements and/or eligibility for the Agreement may subject Recipient to liability under the False Claims Act, 31 U.S.C. § 3729, and/or criminal liability, including under 18 U.S.C. §§ 287 and 1001.

10. This GPS Title IX certification will be in effect for awards and award modifications that add funding on or after October 1, 2025.

11. To the extent that an HHS Operating Division has a Title IX certification in its terms and conditions, those will be in effect for recipients as well. *See, e.g.*, Baugh Decl. ¶¶ 16-17; Chon Decl. ¶¶ 19-20.

12. Finally, all recipients of federal financial assistance from HHS are required to have an "Assurance of Compliance with Non-Discrimination Laws and Regulations" on file with HHS. The HHS-690 Assurance of Compliance has been required for many years and has always required the recipient to comply with Title IX. Signing the HHS-690 also indicates the recipient's agreement that "compliance with this assurance constitutes a material condition of continued receipt of Federal financial assistance[.]" This latter statement is in the current version of the Assurance of Compliance, which was last updated in November 2019.

Executed on September 8, 2025.



Dale Bell