UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

STATE OF NEW YORK, *et al.*, Plaintiffs, v. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*, Defendants.	Civil Action No. 1:26-cv-03405-DLB

DEFENDANTS' MOTION TO TRANSFER VENUE TO THE MIDDLE DISTRICT OF PENNSYLVANIA OR, IN THE ALTERNATIVE, TO THE DISTRICT OF COLUMBIA

Pursuant to 28 U.S.C. § 1404(a), Defendants respectfully move to transfer this action to the United States District Court for the Middle District of Pennsylvania or, in the alternative, to the United States District Court for the District of Columbia.

This is the third-filed of three facial challenges to the same agency document—the Title X Notice of Funding Opportunity for fiscal year 2027—the first of which is nearly fully briefed and set for argument on September 11, 2026 in the Middle District of Pennsylvania, and the second of which is pending in the District of Columbia, where every Defendant resides and where the challenged document was issued. This action could have been brought in either district, and the interest of justice decisively favors transfer to either.

Upon transfer, Defendants will promptly seek assignment of this action as related to the pending case in the transferee court, and Defendants consent to expedited briefing of Plaintiffs' claims in the transferee court on any reasonable schedule Plaintiffs propose. Defendants do not seek a particular judge; they seek fewer than three.

Defendants further respectfully request that the Court resolve this motion before taking up any other matter in the case and request a hearing on this motion pursuant to Local Rule 105.6. The grounds for this motion are set forth in the accompanying memorandum of law. A proposed order accompanies this motion pursuant to Local Rule 105.1.

September 4, 2026

Respectfully submitted,

/s/ *Landen P. Benson*
LANDEN P. BENSON
Attorney
GA Bar No. 863909
U.S. Department of Health and Human Services
200 Independence Ave., SW
Washington, DC 20201
landen.benson@hhs.gov

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2026, the foregoing Defendants' Motion to Transfer Venue was filed through the CM/ECF system, which will automatically generate notice upon all counsel of record.

/s/ *Landen P. Benson*

LANDEN P. BENSON
Attorney
GA Bar No. 863909
U.S. Department of Health and Human Services
200 Independence Ave., SW
Washington, DC 20201
landen.benson@hhs.gov

Counsel for Defendants

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

STATE OF NEW YORK, *et al.*, Plaintiffs, v. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*, Defendants.	Civil Action No. 1:26-cv-03405-DLB

MEMORANDUM OF LAW

IN SUPPORT OF DEFENDANTS' MOTION TO TRANSFER

INTRODUCTION

This is the third lawsuit, in the third judicial district, asking a federal court to answer the same questions about the same document:

- On June 18, 2026, the National Family Planning & Reproductive Health Association, the national membership association of Title X grantees, and a Pennsylvania Title X grantee filed a facial challenge to the fiscal year 2027 Title X Notice of Funding Opportunity (the "2027 NOFO") in the Middle District of Pennsylvania. *National Family Planning & Reproductive Health Ass'n v. Kennedy*, No. 1:26-cv-01684-JPW (M.D. Pa.) ("*NFPRHA*"). Merits briefing will completed on September 8, 2026, and oral argument is set for September 11, 2026.[1] *NFPRHA*, ECF No. 44 (scheduling order).[2] The operative complaint from *NFPRHA* is attached hereto as Exhibit 1.
- On July 28, 2026, Planned Parenthood Federation of America filed a second facial challenge to the same NOFO in the District of Columbia. *Planned Parenthood Federation of America, Inc. v. U.S. Dep't of Health & Human Servs.*, No. 1:26-cv-02656 (D.D.C.)

[1] Citation to the docket in the cases filed in other disticts will be prefaced with the abbreviated case name (e.g., "*NFPRHA*, ECF No. ___."). Citations to ECF Nos. without a case abbreviation shall refer to the docket in this action.

[2] On September 1, 2026, the Court in *NFPRHA* Action ordered supplemental briefing on the application of *Reno v. Catholic Soc. Servs.*, 509 U.S. 43 (1993) to the defendants' ripeness arguments. *See NFPRHA*, ECF No. 62. The supplemental briefing is to be completed by September 8, 2026. *Id.*

("*PPFA*"). Merits briefing begins on September 14. *PPFA*, Aug. 25, 2026, Minute Order. The operative complaint from *PPFA* is attached hereto as Exhibit 2.

- On August 27, 2026, twenty-one States and two Governors filed this action—a complaint that tracks the *PPFA* complaint claim for claim and challenged provision for challenged provision—in a third forum. ECF No. 1.

The three cases present identical, purely legal questions: whether conditions embedded in the 2027 NOFO (the "Agency Priorities") are facially invalid under the Administrative Procedure Act. All three challenges are facial. None turns on the circumstances of any applicant, grantee, or State, and the operative document is an exhibit to each complaint. Every question in this case should be answered once; certainly not more than twice. Importantly, the two earlier-filed cases are positioned for a decision on the merits before any applications are due or any award issues under the NOFO. This one, currently, is not.

The Supreme Court described a similar configuration long ago: "To permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy and money that § 1404(a) was designed to prevent." *Continental Grain Co. v. Barge FBL-585*, 364 U.S. 19, 26 (1960). Here, there are three cases involving the same issues, and the third was filed after briefing on shared questions nearly finished in the first forum.

That sequence speaks to the nature of this filing. Plaintiffs could have presented their claims by intervention in *NFPRHA* (a nearly fully briefed case in a district where one of the Plaintiffs, the Governor of Pennsylvania, resides) or by intervention or filing in the District of Columbia (where every Defendant resides). They instead initiated a third action in a third district, securing a third draw of a district judge on a question two other judges now hold. The claim spreading tactic has no stopping point. What's next? Plaintiff coalitions dividing and conquering, filing in dozens of judicial districts, needing to score only one shot on goal while the government

must save each one? The answer, Defendants submit, is § 1404(a)'s instruction that transfer serve "the interest of justice."

Defendants therefore ask the Court to transfer this action to the Middle District of Pennsylvania or alternatively, to the District of Columbia, "in the interest of justice." The principle Defendants advance here is narrow. Related cases do not always call for transfer. But three facial challenges to the same document involving the same claims and overlapping parties warrants it. The two earlier cases, filed by two different plaintiff groups before the duplication ripened, will remain pending in two districts. This Court decides whether there are three.

BACKGROUND

On July 9, 2026, the Office of Population Affairs ("OPA"), a component of the Office of the Assistant Secretary for Health within the Department of Health and Human Services, issued the operative Notice of Funding Opportunity governing the 2027–2032 Title X grant cycle. ECF No. 1, Compl. ¶ 3 & Ex. A. The NOFO was formulated and issued at the Department's headquarters in Washington, D.C., where every Defendant maintains its offices. ECF No. 1 at 3–4. It applies by its terms to every Title X applicant and grantee in the country, on identical terms in all fifty States. No application has been granted or denied under it. The complaint challenges six sets of "Agency Priorities" it labels the "Challenged Conditions," ECF No. 1 ¶ 3, and its challenge is to the face of the document—not to any award decision.

***NFPRHA* (first).** The *NFPRHA* case, before Judge Jennifer P. Wilson, proceeded immediately to dispositive motions after plaintiffs filed the complaint: the plaintiffs moved for summary judgment on July 2; Defendants moved to dismiss on July 31 and cross-moved for summary judgment on August 6; the plaintiffs responded on August 20; and the court will hear

argument on September 11, 2026 in Harrisburg, the seat of government of one of the Plaintiffs here. *NFPRHA*, ECF No. 44 (scheduling order).

***PPFA* (second).** The *PPFA* complaint seeks an order under 5 U.S.C. § 706 setting aside the same priority conditions, injunctive relief against their implementation "across all application and funding stages," and postponement of the NOFO's effective date under 5 U.S.C. § 705. *PPFA*, ECF No. 1. The case is assigned to Judge Christopher R. Cooper, who on August 19, 2026—eight days before this case was filed—decided a similar challenge to HHS grant-funding priorities, *Hennepin Cnty. v. U.S. Dep't of Health & Human Servs.*, No. 26-cv-2460 (CRC), 2026 WL 2426300 (D.D.C. Aug. 19, 2026). In *PPFA*, opening briefs are due September 14, 2026, and merits briefing will conclude on October 23, 2026. *See PPFA*, Aug. 25, 2026 Minute Order.

This case (third). Two days after Judge Cooper set merits briefing in *PPFA*, Plaintiffs filed this action. Their complaint challenges the same six sets of conditions under the same theories, and asks this Court to declare them unlawful, to "vacate the incorporation" of each in the 2027 NOFO under § 706, and to enjoin Defendants from applying them "to or upon **any applicant or grantee**," party or non-party alike. ECF No. 1, Prayer ¶¶ i–iii (emphasis added). Its Maryland-specific allegations, ECF No. 1 ¶¶ 78–83, describe effects on the Maryland Department of Health's grant that are identical in kind to those pleaded for grantees in the other plaintiff States.

LEGAL STANDARD

Section 1404(a) permits transfer, "[f]or the convenience of parties and witnesses, in the interest of justice," to any district where the action "might have been brought." Courts in this Circuit consider "(1) the weight accorded to plaintiff's choice of venue; (2) witness convenience and access; (3) convenience of the parties; and (4) the interest of justice." *Trs. of the Plumbers &*

Pipefitters Nat'l Pension Fund v. Plumbing Servs., Inc., 791 F.3d 436, 444 (4th Cir. 2015); *accord D2L Ltd. v. Blackboard, Inc.*, 671 F. Supp. 2d 768, 778 (D. Md. 2009).

The interest of justice is a distinct consideration "intended to encompass all those factors bearing on transfer that are unrelated to convenience of witnesses and parties," *D2L*, 671 F. Supp. 2d at 783, and it "may be determinative in a particular case, even if the convenience of the parties and witnesses might call for a different result," *Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 220 (7th Cir. 1986); *see also Byerson v. Equifax Info. Servs., LLC*, 467 F. Supp. 2d 627, 637 (E.D. Va. 2006) (finding interest of justice in many cases may dictate the outcome of a motion to transfer irrespective of the other factors). Transfer requires a "lesser showing of inconvenience" than common-law dismissal did. *Norwood v. Kirkpatrick*, 349 U.S. 29, 32 (1955).

"The decision whether to transfer venue is committed to the sound discretion of the trial court." *Mamani v. Bustamante*, 547 F. Supp. 2d 465, 469 (D. Md. 2008) (citing *Brock v. Entre Comput. Ctrs., Inc.,* 933 F.2d 1253, 1257 (4th Cir. 1991)).

ARGUMENT

I. This Action Could Have Been Brought in Either Transferee District.

Venue in an action against federal agencies and officers lies where "the plaintiff resides," 28 U.S.C. § 1391(e)(1)(C): the Governor of Pennsylvania, who sues in his official capacity on behalf of the Commonwealth, resides in Harrisburg, in the Middle District of Pennsylvania. ECF No. 1 at 3. Venue equally lies where "a defendant in the action resides" and where "a substantial part of the events or omissions giving rise to the claim occurred," *id.* § 1391(e)(1)(A)–(B): each of the federal agency Defendants resides in the District of Columbia, where the NOFO was formulated and issued. ECF No. 1 at 3–4. The threshold is satisfied for both forums; the only question is whether the § 1404(a) considerations favor transfer. They do, decisively.

II. The Interest of Justice Decisively Favors Transfer.

A. Three courts are being asked to decide one question.

Continental Grain transferred a case so that a single controversy, pending in two districts, could be decided in one, because duplicative adjudication of "precisely the same issues" is "the wastefulness of time, energy and money that § 1404(a) was designed to prevent." 364 U.S. at 26. *Continental Grain* was an admiralty case, but nothing exempts APA litigation from its holding. Nor does the case's reasoning require identical parties; it looks to issues. *Id.*

The duplication here is total: Three facial challenges to one document arguing the same theories. Claim for claim, the Complaint corresponds to the *PPFA* complaint. And nearly all the work has already been done once: *NFPRHA* is nearly fully briefed and seven days from argument. Requiring the same question to be briefed a third time here—while the first court's decision may issue within weeks and while the second court's briefing is about to occur—serves no interest the venue statutes recognize.

This District's law says so. "The interest of justice weighs heavily in favor of transfer when a related action is pending in the transferee forum," both to "facilitate efficient pretrial proceedings" and "because it avoids inconsistent results"—and transfer is favored "even if it is uncertain whether the transferred case will be consolidated with the related pending case." *D2L*, 671 F. Supp. 2d at 783. The interest of justice also "strongly favors transfer when a party has previously litigated a case involving similar issues and facts before the transferee court," because "[t]he transferee court's familiarity with the facts of the case and the applicable law promotes judicial economy." *Id.* at 784. Both propositions apply here. A related action is pending in each proposed transferee forum, and each transferee court is already invested in the subject: Judge Wilson, through a complete round of dispositive briefing in *NFPRHA*; and Judge Cooper, through his recent *Hennepin County* decision, on which the plaintiffs in *NFPRHA* themselves rely. *See also*

Shawnee Tribe v. United States, 298 F. Supp. 2d 21, 27 (D.D.C. 2002) ("The Court is also persuaded that transfer is appropriate by virtue of the fact that a possibly related case is already before the District Court for Kansas."). Upon transfer to either district, Defendants consent to expedited briefing of Plaintiffs' claims in the transferee court on any reasonable schedule Plaintiffs propose.

The schedule is important, too. Applications under the 2027 NOFO come due January 11, 2027, and the Department intends to issue awards by April 1, 2027. ECF No. 1 ¶ 67; Ex. A at 5 (anticipated award date listed in NOFO). Both earlier-filed cases are positioned to produce a decision on the merits before the application deadline. Because of Plaintiffs' own delay, this case is behind, and a third adjudication that cannot conclude well before the application deadline serves no remedial purpose the first two do not already serve sooner. Because the other courts are familiar with the issues and the Defendants are already preparing or have already prepared briefs in the other cases, the fastest route to a merits decision for these Plaintiffs—on their own claims—is a transferee forum, not a third round of expedited briefing in a different court.

B. Section 1404(a) exists to police claim spreading.

Because each complaint seeks relief operating against the government as to everyone—vacatur, and here an injunction expressly extending to "any applicant or grantee," ECF No. 1, Prayer ¶ iii—the challengers collectively need to prevail once, anywhere, while the government must prevail everywhere. A favorable ruling in any district resolves the question nationally, but an unfavorable one resolves nothing, because the same claim is pending elsewhere. Each successive filing in a new district therefore accomplishes exactly one thing the earlier cases could not: another shot on goal with a different judge.

The filing's untimeliness makes the inference unavoidable. If pre-award adjudication were the object, the time to sue was no later than July, when the operative NOFO issued and the first

challenge was already pending.[3] Or Plaintiffs could intervene in one or the other pending cases. Plaintiffs instead waited seven weeks, until briefing on the shared question was nearly complete elsewhere and their own case could no longer realistically be decided within the grant cycle. A suit filed too late to serve its own stated purpose is explicable as a hedge against an adverse ruling in the earlier forums, and little else. The Supreme Court flagged the incentive in *Trump v. CASA, Inc.*, 606 U.S. 831, 855 (2025) (universal relief "incentivize[s] forum shopping, since a successful challenge in one jurisdiction entails relief nationwide"), and the interest-of-justice clause is the venue system's precise answer: § 1404(a) "should not create or multiply opportunities for forum shopping," *Ferens v. John Deere Co.*, 494 U.S. 516, 523 (1990). This Circuit has held since 1956 that it has "no sympathy with shopping around for forums," *Clayton v. Warlick*, 232 F.2d 699, 706 (4th Cir. 1956). Just so here.

Declining to transfer would ratify this practice: bands of related plaintiffs or associations and states with overlapping memberships dividing a single controversy and conquering it forum by forum. Twenty-three state sovereigns or governors filed this complaint together. With no limiting principle, nothing prevents the same coalition from filing a dozen complaints in a dozen districts, each anchored by a different resident plaintiff, each drawing a different judge, each seeking universal relief—multiplying district courts' caseloads and seeding manufactured conflicts, with the first court to rule against the government, rather than the appellate hierarchy, settling national policy. That risk is concrete here. The three districts sit in three different circuits — the Third, the Fourth, and the District of Columbia — so a third adjudication threatens not only inconsistent district-court judgments about one document, but conflicting decisions about it.

[3] The Original FY2027 Title X NOFO was posted on April 3, 2026. *See NFPRHA*, ECF No. 45-2 (administrative record which includes original NOFO). This further undermines any justification for Plaintiffs' delay in bringing this action.

Importantly, Defendants ask for transfer to either of two districts—the first before a judge appointed by President Trump, the second before a judge appointed by President Obama who just ruled against HHS in significant part in *Hennepin County* eight days before this case was filed. Defendants do not seek a particular judge. They seek fewer than three cases pending of this character. The federal "courts of one District or Circuit must be presumed to be as able and as well qualified to handle litigation as those in another," *Clayton*, 232 F.2d at 706 (citation omitted), and one of two earlier forums should decide this controversy.

C. The three cases are one case.

Defendants do not contend that three related cases always warrant transfer. Parallel actions can of course differ in ways that matter: different plaintiffs plead different facts, press different claims, and seek judgments that bind only themselves. Where those differences exist, a second forum may have something to adjudicate that the first does not.

This is not that case. A facial challenge is adjudicated on the face of the document: no plaintiff's circumstances can alter the question presented, and no complaint in the three cases pleads a fact that bears on it. Each complaint seeks universal relief, which here, is vacatur of the conditions and an injunction running to "any applicant or grantee." ECF No. 1, Prayer ¶¶ ii–iii. So, the remedy any plaintiff obtains anywhere is the identical remedy every plaintiff seeks everywhere. To be sure, sovereign plaintiffs may hold interests that private plaintiffs do not. But in a facial challenge, those interests do not matter. Nor does transfer put any Plaintiff's remedy at risk. This is a motion to transfer, not to dismiss: Plaintiffs remain parties to their own action in the transferee court and retain their own judgment, whatever the ultimate scope of relief.

This case also presents a setup where venue selection carries maximum systemic consequence and minimum private cost. Systemic consequence: the chosen forum sets the terms of a national program for everyone, and challengers collectively need prevail only once. *See CASA*,

606 U.S. at 847 n.10, 855. Private cost: no Plaintiff loses anything when the one case is litigated in a forum where it already stands ready for decision. Section 1404(a) asks not whether venue is proper but whether *this* forum, among the proper ones, is where a controversy should be adjudicated in the interests of justice. With two more appropriate forums already engaged in the case, the answer in the third forum is decisively no.

III. Plaintiffs' Choice of Forum is Entitled to No Weight Here.

Defendants acknowledge the ordinary rule: "[u]nless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." *Collins v. Straight, Inc.*, 748 F.2d 916, 921 (4th Cir. 1984) (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)). But that weight is not fixed, and here three independent considerations reduce it to nothing.

First, no connection. The choice is "afforded less weight" where "the chosen forum is not the plaintiff's home or has little connection to the events giving rise to the litigation." *Thomas v. Nexion Health, Inc.*, No. CV RDB-15-2382, 2016 WL 3057987, at *4 (D. Md. May 31, 2016) (quoting *Tse v. Apple Computer*, No. 05–2149, 2006 WL 2583608, at *2 (D. Md. Aug. 31, 2006)); *see Lynch v. Vanderhoef Builders*, 237 F. Supp. 2d 615, 617 (D. Md. 2002); *D2L*, 671 F. Supp. 2d at 778–79. This forum has little connection to the events giving rise to the case. The challenged document was formulated and issued in Washington, D.C. *See Nat'l Ass'n of Home Builders v. U.S. E.P.A.*, 675 F. Supp. 2d 173, 179 (D.D.C. 2009) (APA claims arise where decision-making process occurred). The complaint's venue allegation rests on Maryland's residence and on in-district effects of a nationwide instrument, ECF No. 1 ¶ 13—effects pleaded and practically felt in materially identical terms for every plaintiff State. A nationwide instrument's effects are felt in every district to the same degree; if that sufficed, the presumption would be equally strong in all ninety-four.

Two specific features make the point concrete. *The effects are not yet felt anywhere.* No one has applied under the 2027 NOFO; no application has been scored, granted, or denied; and no award has been altered. The consequences the complaint describes are anticipated consequences of a competition yet to occur, and a forum cannot claim a distinctive connection to hypothetical injuries. *Also, uniform nationwide application is the opposite of a local interest.* Sitting en banc, the Fifth Circuit rejected a local-interest finding premised on the presence of a nationally distributed product in the forum, because that reasoning "could apply virtually to any judicial district or division in the United States." *In re Volkswagen of America, Inc.*, 545 F.3d 304, 318 (5th Cir. 2008). A NOFO applying on identical terms in all fifty States has the same posture: its reach establishes a connection to every district, which is to say a distinctive connection to none.

Second, the home-forum rationale reaches at most one plaintiff of twenty-three. The deference owed to a plaintiff's forum choice rests on a specific premise: that a litigant should not lightly be displaced from the forum in which it resides. For only one plaintiff is that satisfied. The other twenty-two are strangers to this District. Venue was accordingly proper under § 1391(e)(1)(C) in the home districts of twenty-one States, and the coalition selected among them. Assessed as to the group that made it, the home-forum interest diffuses to almost nothing.

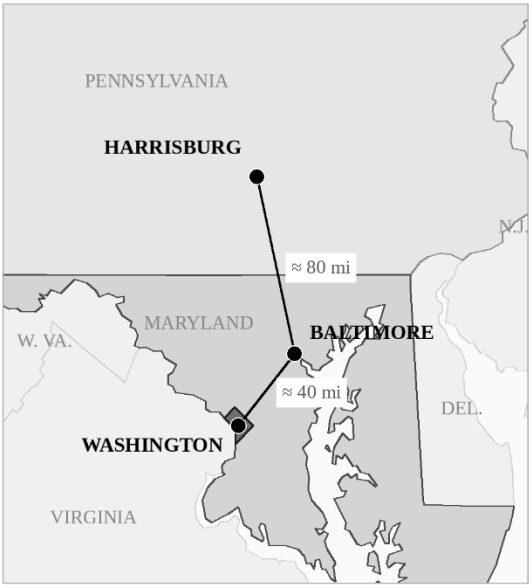
The corollary matters too: transfer displaces no one. Twenty-two of the twenty-three Plaintiffs are choosing to litigating away from home and will remain so in any forum. And the forums they passed over are hardly remote. The Middle District of Pennsylvania adjoins this District and sits in Harrisburg—the official seat of a Plaintiff, the Governor of Pennsylvania, and the forum where the first-filed case will be argued on September 11. The District of Columbia also adjoins this District, and it is where every Defendant resides, where the challenged decision making process occurred, and where the administrative record sits. Plaintiffs did not choose this

District over distant or burdensome alternatives. They chose the one District that sits in-between the two other Districts in which the related cases are pending, one being in a co-plaintiff's capital.

Third, forum shopping. Deference to a plaintiff's chosen forum is "negated by impermissible forum shopping." *Omega Demolition Corp. v. Hays Group, Inc.*, 306 F.R.D. 225, 233 n.4 (D. Minn. 2015) (citing *Clayton*, 232 F.2d at 706); *see Carolina Casualty Co. v. Data Broadcasting Corp.*, 158 F. Supp. 2d 1044, 1048 (N.D. Cal. 2001) ("If there is any indication that plaintiff's choice of forum is the result of forum shopping, plaintiff's choice will be accorded little deference."); *Polaroid Corp. v. Casselman*, 213 F. Supp. 379, 383 (S.D.N.Y. 1962) (choice "entitled to no weight whatever where it appears that the plaintiff was forum shopping"). The indicia here of forum shopping are strong: a third district, a third circuit, a third judge, a complaint that copies the second-filed case and waited out briefing in the first case. The tale of this tape shows litigation strategy, not legitimate venue interests. Plaintiffs' selection of forum is thus entitled to no weight against the systemic considerations above.

The pattern is visible at a glance. Three challenges to one document, filed in sequence over ten weeks, in three districts that span three circuits and roughly one hundred twenty miles of the same corridor—the third of them filed in the exact middle, forty miles from the second, on behalf of a universe of applicants and grantees for whom the first two associations already litigate.

* * *



1 M.D. Pa. · Third Circuit
NFPRHA v. Kennedy No. 1:26-cv-01684
Filed June 18, 2026
Fully briefed. Argument September 11, 2026.
Home forum of a Plaintiff: the Governor of Pennsylvania, who sues in his official capacity.

3 D. Md. · Fourth Circuit
New York v. HHS No. 1:26-cv-03405
Filed August 27, 2026
No responsive pleading. Briefing not begun.
THIS CASE. A third district, a third circuit, a third judge.

2 D.D.C. · D.C. Circuit
PPFA v. HHS No. 1:26-cv-02656
Filed July 28, 2026
Briefing closes mid-October 2026.
Every Defendant resides here. The NOFO issued here; the record is here.

ALREADY BEFORE A COURT — NFPRHA (Harrisburg) sues in a representative capacity for members that include 56 of the 77 current Title X grantees, operating 63 of the 84 grants: state, county, and local health departments; Planned Parenthood affiliates; and FQHCs. PPFA (Washington) sues on behalf of 46 affiliated organizations, 32 of which participate in Title X.

IV. The Remaining Factors Are Neutral, and This Motion Should Be Decided First.

This is a facial, record-review case: the challenged document is Exhibit A to the complaint, review will proceed on the *same* administrative record compiled in Washington that transmits electronically, and there will be no witnesses and no discovery on facial validity. Witness and party convenience are therefore neutral among the three districts. *See W. Watersheds Project v. Tidwell*, 306 F. Supp. 3d 350, 360 (D.D.C. 2017) (convenience factors carry little weight in APA cases).

Transfer is a non-merits threshold question, *Sinochem International Co. v. Malaysia International Shipping Corp.*, 549 U.S. 422, 432–33 (2007), and courts treat its prompt resolution as an entitlement: "disposition of that [transfer] motion should have taken a top priority in the handling of this case," *In re Horseshoe Entertainment*, 337 F.3d 429, 433 (5th Cir. 2003); *accord* In re Apple Inc., 52 F.4th 1360, 1362 (Fed. Cir. 2022) ("precedent entitles parties to have their venue motions prioritized"); *In re TracFone Wireless, Inc.*, 848 F. App'x 899, 900–01 (Fed. Cir. 2021) (transfer decided "before resolving the substantive issues").

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court transfer this action to the United States District Court for the Middle District of Pennsylvania or, in the alternative, to the United States District Court for the District of Columbia; that it resolve this motion before any other matter in the case; and that it set the motion for a hearing pursuant to Local Rule 105.6.

September 4, 2026

Respectfully submitted,

/s/ *Landen P. Benson*
LANDEN P. BENSON
Attorney
GA Bar No. 863909
U.S. Department of Health and Human Services
200 Independence Ave., SW
Washington, DC 20201
landen.benson@hhs.gov

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2026, the foregoing Memorandum of Law in Support of Defendants' Motion to Transfer was filed through the CM/ECF system, which will automatically generate notice upon all counsel of record.

/s/ *Landen P. Benson*

LANDEN P. BENSON
Attorney
GA Bar No. 863909
U.S. Department of Health and Human Services
200 Independence Ave., SW
Washington, DC 20201
landen.benson@hhs.gov

Counsel for Defendants

Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

NATIONAL FAMILY PLANNING & REPRODUCTIVE HEALTH ASSOCIATION; FAMILY HEALTH COUNCIL OF CENTRAL PENNSYLVANIA, Plaintiffs, v. ROBERT F. KENNEDY, JR., in his official capacity as United States Secretary of Health and Human Services; BRIAN CHRISTINE, in his official capacity as Assistant Secretary for Health; AMY L. MARGOLIS, in her official capacity as Deputy Director of the Office of Population Affairs, Defendants.	No. 1:26-cv-1684-JPW (Hon. Jennifer P. Wilson)

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
(Challenge to unlawful portions of the FY 2027 Notice of Funding Opportunity for Title X)

INTRODUCTION

1. This action, brought under the Administrative Procedure Act ("APA"), challenges aspects of Defendants' fiscal year ("FY") 2027 Notice of Funding

Opportunity ("NOFO") for Title X, the nation's only dedicated federal family planning program. The NOFO subverts the integrity of the Title X grantmaking process and, in so doing, enables Defendants to hijack the Title X program in order to give federal grants to entities that further Defendants' political agenda instead of fulfilling Congress's mandate to "offer a broad range of acceptable and effective family planning methods and services" to patients on a voluntary basis. *See* 42 U.S.C. § 300(a). Accordingly, well-qualified prospective Title X grantees, including highly experienced providers that have been in the Title X program for decades, are at serious risk of having their applications denied solely because they do not sufficiently align with Defendants' political priorities—some of which have nothing to do with the Title X program and some of which directly conflict with the current regulations. Indeed, alignment with Defendants' political priorities is worth 35 points at the merit review stage, more than any other scoring criteria, including compliance with the Title X statute and regulations. If Defendants are permitted to improperly invoke these ideological priorities under the NOFO to push highly qualified providers out of the program in favor of other entities, merely because the latter are "aligned" with Defendants' political views, it will be extremely detrimental to the patients that Title X serves, including potentially depriving them of critical family planning services.

2. To start, the NOFO makes clear that the success of an applicant will largely be determined by its alignment with three sets of agency priorities: Department of Health and Human Services ("HHS"), Office of the Assistant Secretary for Health ("OASH"), and Office of Population Affairs ("OPA").[1] These Agency Priorities include such things as "ending diversity, equity, and inclusion," and "ending support for gender ideology," which is defined by this administration as the "false claim that males can identify as and thus become women and vice versa . . . [and that] there is a vast spectrum of genders that are disconnected from one's sex."

3. The NOFO's requirement that all applicants, and all grantees after grants are awarded, align with the Agency Priorities to end diversity, equity, and inclusion—including by rejecting "ideologically-laden concepts like health equity"—and to end support for "gender ideology," conflicts with Title X regulations that require the opposite. In fact, the Title X regulations require that grantees demonstrate their ability to "*advance* health equity," 42 C.F.R. § 59.7(a)(3) (emphasis added), and that Title X projects "[p]rovide services in a manner that is client-centered, culturally and linguistically appropriate, inclusive, and trauma-informed," *id.* § 59.5(a)(3), "does not discriminate" based on "gender identity" and

[1] Hereinafter, HHS, OASH, and OPA will be referred to collectively as "the Agency," and the HHS, OASH and OPA priorities collectively as "Agency Priorities."

"sex characteristics," *id.* § 59.5(a)(4), and ensures that "transgender . . . persons" are "fully included and can actively participate in and benefit from family planning," *id.* § 59.2.

4. Furthermore, the NOFO's requirement of alignment with certain Agency Priorities is arbitrary and capricious because it fails to provide prospective grantees fair notice as to what is required of them, and it constitutes a reversal of prior agency position without reasoned decision-making. For instance, the NOFO demands that prospective grantees align themselves with Agency Priorities that directly conflict with the Agency's own regulations, without providing any acknowledgment of or explanation for the Agency's sudden reversal of position from its regulations, or any fair notice to prospective grantees as to how the Agency expects them to reconcile the conflicts.

5. The unlawful aspects of the NOFO will cause serious harm. The NOFO's lopsided weighting of prospective grantees' alignment with political priorities that are irrelevant to Title X or at odds with Title X requirements stacks the deck against highly qualified applicants that would otherwise be highly competitive. The NOFO enables Defendants to pick winners and losers based on political alignment, as opposed to merit and the ability to provide high-quality Title X services. This is not how federal grants should be awarded.

6. As a result, highly qualified applicants that are experts in family planning care and deeply rooted in their communities, where they live and serve patients, may be deprived of a fair competition for a Title X grant, to the detriment of the program and the patients it is intended to serve.

7. Accordingly, as discussed further below, Plaintiffs are entitled to relief under the APA, the challenged aspects and provisions of the NOFO must be declared unlawful and set aside, and Defendants must be enjoined from relying on them in the grant-making process.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1346(a)(2), as the claims asserted arise under federal law, and 5 U.S.C. § 702, as the claims asserted challenge final agency action.

9. This Court is authorized to issue injunctive and declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, Federal Rules of Civil Procedure 57 and 65, and the Court's inherent equitable powers.

10. This Court is also authorized to issue relief under the APA, 5 U.S.C. §§ 702, 705, 706, including vacating and setting aside the unlawful portions of the NOFO pursuant to 5 U.S.C. § 706.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)(1)(C) because Family Health Council of Central Pennsylvania's corporate headquarters and principal place of business is in Camp Hill, Pennsylvania.

PARTIES

Plaintiffs

12. Plaintiff National Family Planning & Reproductive Health Association ("NFPRHA") is a national, non-profit membership association that advances and elevates the importance of family planning in the nation's health care system and promotes and supports the work of family planning providers and administrators, especially those that provide care funded through government programs.

13. NFPRHA represents nearly 800 organizational members in forty-five states, Puerto Rico, and the District of Columbia. NFPRHA's membership includes state, county, and local health departments; private, non-profit family planning providers and administrators (including family planning councils, Planned Parenthood affiliates, and others); hospital-based health practices; and federally qualified health centers.

14. Within Title X, NFPRHA's members operate or administer more than 3,100 health centers that provide family planning services to more than 2.2 million patients each year.

15. The Title X program has 77 current grantees administering 84 grants. Fifty-six grantees are NFPRHA members, which operate 75% of the Title X projects (63 of the 84 total Title X grants). Many of NFPRHA's grantee members have provided Title X services for decades. It is anticipated that all or nearly all of NFPRHA's grantee members will apply for a Title X grant for FY 2027. As it has historically, NFPRHA intends to provide support and technical assistance to its members as they navigate the application process for FY 2027 funds.

16. NFPRHA brings this action in a representative capacity on behalf of its member organizations that intend to apply for a FY 2027 Title X grant, their staff, including clinicians, and the patients they serve.

17. The interests that NFPRHA seeks to vindicate in this suit are central to its mission. NFPRHA is the leading national advocacy organization for the Title X family planning program and works to maintain Title X as a critical part of the public health safety net. In addition to its Title X advocacy, NFPRHA provides education, resources, and technical assistance to Title X grantees and subrecipients and supports those entities as they apply for Title X grant funding, and on an ongoing basis as they implement Title X.

18. Among NFPRHA's members is Plaintiff Family Health Council of Central Pennsylvania ("FHCCP"), a private, not-for-profit organization with a

mission of building and supporting community-based health networks through partnership, advocacy, and effective resource provision.

19. FHCCP oversees and supports a diverse network of organizations providing a range of vital services and medical care, including gynecological care, cancer screening and education, tobacco prevention and cessation, housing, nutrition advice and healthy foods, and HIV/AIDS support services. Family planning is a cornerstone of FHCCP's services, and the organization prides itself on providing care to low-income and un- or under-insured individuals who otherwise may have no access to this health care.

20. Since the organization's founding in 1973, each grant cycle, FHCCP has applied for and been awarded Title X funding to provide family planning services, including a broad range of contraceptive services, natural family planning, pregnancy testing, screening for breast and cervical cancer, testing and treatment for sexually transmitted infections ("STIs"), basic infertility services, health education, and referrals for other health and social services.

21. Under its current Title X grant, FHCCP subcontracts with a network of 19 service providers at approximately 48 service sites in a 24-county region in Central Pennsylvania to support the delivery of confidential, high-quality family planning services to over 31,000 low-income Pennsylvanians each year.

22. There is an ongoing need for comprehensive family planning services in Central Pennsylvania. FHCCP has a demonstrated capacity to provide those services and aims to continue providing them as part of the Title X program. As it has done for more than half a century, FHCCP intends to apply for Title X funding in the next grant application cycle under the FY 2027 NOFO.

Defendants

23. Defendant Robert F. Kennedy Jr. is the United States Secretary of Health and Human Services ("the Secretary"), and he is sued in his official capacity. Secretary Kennedy is responsible for all aspects of the operation and management of HHS, including implementing and fulfilling HHS's duties under the United States Constitution, statutory law, and applicable regulations.

24. HHS is an "agency" within the meaning of the Administrative Procedure Act. 5 U.S.C. § 551(1). HHS is the agency to which congressional Title X funding is appropriated, *see* Consolidated Appropriations Act, 2026, Pub. L. No. 119-75, 140 Stat. 173, 262 (2026), and is responsible for implementing Title X.

25. Defendant Brian Christine is the Assistant Secretary for Health and heads OASH, an office within HHS, and he is sued in his official capacity. OASH will administer the competition for the funds available under the NOFO.

26. Defendant Amy L. Margolis is the Deputy Director of OPA, an office within HHS and within the purview of OASH, which administers and oversees the Title X program, and she is sued in her official capacity.

27. OPA is the entity that announced the availability of funds through the NOFO.

FACTUAL ALLEGATIONS

A. Overview of the Title X Program.

28. Title X became law as part of the "Family Planning Services and Population Research Act of 1970." Pub. L. No. 91-572, 84 Stat. 1504 (1970). The program provides high-quality family planning and sexual health care to all, with priority given to low-income patients. Title X provides access to effective contraceptive methods, cancer screenings, testing and treatment for STIs, other preventive services, and, fundamentally, the education and clinical care needed to either achieve or prevent pregnancy—decisions made by patients according to their needs and values.

29. The Title X program came into being a decade after the Food and Drug Administration's ("FDA") first approval of the oral contraceptive pill, which, at that time, was available only through physicians and at a high cost.

30. During the 1960s, many low-income women had more children than they desired, and this had a significant effect on poverty levels, individuals' ability

to obtain an education, and maternal and child health. Research established that it was inequitable access to contraceptives that made low-income women less able to match their actual childbearing with their desired family size.

31. President Richard M. Nixon therefore called on Congress to "establish as a national goal the provision of adequate family planning services . . . to all those who want them but cannot afford them," stressing that "no American woman should be denied access to family planning assistance because of her economic condition." Richard Nixon, *Special Message to the Congress on Problems of Population Growth* (July 18, 1969), available at https://www.presidency.ucsb.edu/documents/special-message-the-congress-problems-population-growth.

32. With overwhelming bipartisan support, Congress responded by enacting Title X. Congress's concern was the "medically indigent"—the low-income individuals who desired but could not access the most effective contraceptive methods that more affluent members of society could, and who were:

> forced to do without, or to rely heavily on the least effective nonmedical techniques for fertility control unless they happen to reside in an area where family planning services are made readily available by public health services or voluntary agencies.

S. Rep. No. 91-1004, at 9 (1970). Congress declared as the first purpose of the legislation that included Title X "making comprehensive voluntary family planning

services readily available to all persons desiring such services." Pub. L. No. 91-572, § 2(1).

33. Title X became, and remains, the only dedicated source of federal funding for family planning services in this country.

34. For over half a century, Title X funding has built and sustained a national network of family planning health centers that deliver critical preventive health care. It has enabled millions of low-income patients to both achieve and prevent pregnancy. For many people, Title X-funded care is the only health care they seek. In 2016, approximately 60% of patients sampled in a survey reported that a Title X health center was their only source of health care in the previous year.[2]

35. Many Title X-funded organizations have been providing care in the network for decades, often from the very beginning of the Title X program in 1971. Title X health care providers have accordingly developed deep expertise and high responsiveness to patient needs.

36. For instance, many Title X providers typically offer night and weekend hours, and have shaped their projects to best meet the needs of the local communities they serve. Many service sites are specialized family planning centers, whether run

[2] Managi Lord-Biggers & Amy Friedrich-Karnik, *Features and Benefits of the Title X Program*, Guttmacher Institute (Feb. 2025), https://www.guttmacher.org/fact-sheet/features-and-benefits-title-x-program.

by non-profit providers or within government health departments, with clinicians working full-time on family planning care. Their expertise has benefited patients in essential ways, including that these specialized providers are significantly more likely to provide the full range of FDA-approved contraceptives, including intrauterine devices ("IUDs") and contraceptive implants, onsite.

37. In 2023, the last year for which there are publicly available data, more than 3,800 Title X sites around the country served 2.8 million patients, with more than 4.3 million family planning visits.[3] Title X patients are disproportionately low-income, with the majority having incomes at or below the federal poverty level. *See* 2023 FPAR at 12–13. The program also serves a racially and ethnically diverse population: Title X patients are disproportionately African American and Latino/a, as compared to the general U.S. population.

38. Indispensable to our nation's health care safety net, Title X plays a key role in ensuring that patients get the care they need without cost being a barrier, offering no-cost family planning and sexual health services to patients at or below

[3] *See* Phil Killewald *et al.*, Off. of Population Affs., Off. of the Assistant Sec'y for Health, U.S. Dep't of Health & Hum. Servs., *Family Planning Annual Report: 2023 National Summary* 10 (2024) ("2023 FPAR"), https://opa.hhs.gov/sites/default/files/2025-08/2023-FPAR-national-summary.pdf.

100% of the federal poverty level ($15,960 per year for a single-person household in 2026).[4]

B. The Title X Statute, Legislative Mandates, Regulations, and Guidance.

39. The Title X program is governed by the statute Congress enacted in 1970, subsequent legislative mandates, regulations promulgated by HHS, and additional guidance that the Agency publishes from time to time.

40. The Title X statute establishes Congress's fundamental purpose in creating the program: "[T]he 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).

41. The statute also demonstrates Congress's intent that a broad swath of entities be eligible to apply for family planning funds. *See, e.g.*, *id.* (all "public or nonprofit private entities" are eligible to receive grants).

42. The Title X statute further requires that, in making funding decisions, the Secretary "shall" consider several enumerated factors. *See id.* § 300(b) ("In making grants and contracts under this section the Secretary shall take into account the number of patients to be served, the extent to which family planning services are

[4] Off. of the Assistant Sec'y for Plan. & Evaluation, *Poverty Guidelines*, U.S. Dep't of Health & Hum. Servs., https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines (last visited June 10, 2026).

needed locally, the relative need of the applicant, and its capacity to make rapid and effective use of such assistance.").

43. The statute also includes a prohibition on the use of Title X funds "in programs where abortion is a method of family planning." *Id.* § 300a-6.

44. Additionally, every year from 1996 to the present, in making appropriations for Title X, Congress has mandated that "all pregnancy counseling [in the Title X program] shall be nondirective." *See* Consolidated Appropriations Act, 2026, Pub. L. 119-75, 140 Stat. 173, 262.

45. The Title X regulations operate similarly to the statute. First, they confirm that the program's *raison d'être* is "the establishment and operation of voluntary family planning projects," which "shall consist of the educational, comprehensive medical, and social services necessary to aid individuals to determine freely the number and spacing of their children." 42 C.F.R. § 59.1. The regulations further clarify that family planning services "include a broad range of medically approved services, which includes Food and Drug Administration (FDA)-approved contraceptive products and natural family planning methods, for clients who want to prevent pregnancy and space births, pregnancy testing and counseling, assistance to achieve pregnancy, basic infertility services, sexually transmitted infection (STI) services, and other preconception health services." *Id.* §§ 59.2, 59.5(a)(1); *see also id.* § 59.5(b)(1) (each project must provide "for medical services

related to family planning (including . . . contraceptive supplies) . . . and provide for the effective usage of contraceptive devices and practices").

46. The regulations also specify the criteria the Agency will use to decide which family planning services projects to fund, which includes all the criteria mandated to be considered by the statute. *See id.* § 59.7.

47. Additionally, a major focus of the regulations is HHS's emphasis on advancing health equity through the Title X program and ensuring that projects provide inclusive family planning services to diverse, underserved communities. For example, the Title X regulations direct the Secretary to take into account "[t]he ability of the applicant to advance health equity" in assessing Title X grant applications. *Id.* § 59.7(a)(3).

48. HHS defines "[h]ealth equity" to mean "when all persons have the opportunity to attain their full health potential and no one is disadvantaged from achieving this potential because of social position or other socially determined circumstances" and defines "[q]uality healthcare" as healthcare that is not only safe and effective but also "equitable." *Id.* § 59.2.

49. The Agency's regulations instruct that "[e]ach project supported" in the Title X program "must" "[p]rovide services in a manner that is client-centered, culturally and linguistically appropriate, inclusive, and trauma-informed." *Id.* § 59.5(a)(3).

50. The Agency regulations define "[i]nclusive" to mean that "all people are fully included and can actively participate in and benefit from family planning, including, but not limited to, individuals who belong to underserved communities." *Id.* § 59.2. This definition of inclusive care specifically identifies "transgender . . . persons" as individuals who must be able to benefit from and be included in family planning. *Id.*; *see also id.* (defining "[c]ulturally and linguistically appropriate services" as health care that is "respectful of, and responsive to, the health beliefs, practices and needs of diverse patients"). The regulations prohibit Title X projects from providing services in a discriminatory manner, with explicit protections against discrimination on the basis of, *inter alia*, "gender identity" and "sex characteristics." *Id.* § 59.5(4).

51. The Title X regulations further instruct that each Title X project must "[p]rovide for opportunities for community education, participation, and engagement to," *inter alia*, "[p]romote continued participation in the project by diverse persons to whom family planning services may be beneficial to ensure access to equitable, affordable, client-centered, quality family planning services." *Id.* § 59.5(b)(3)(iii).

52. The regulations require Title X projects to "[o]ffer pregnant clients the opportunity to be provided information and counseling regarding . . . [p]renatal care and delivery;" "[i]nfant care, foster care, or adoption; and" "[p]regnancy

termination." *Id.* § 59.5(a)(5)(i)(A)–(C). If a client requests such information and counseling, the Title X project must "provide neutral, factual information and nondirective counseling on each of the options, and, referral upon request, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling." *Id.* § 59.5(a)(5)(ii).

53. Existing guidance documents reinforce these regulatory mandates. For example, the Title X Handbook, a guidance document produced by OPA which "provides information critical to managing a Title X project" and is intended to "help recipients and subrecipients be successful as they implement their Title X projects,"[5] further instructs that "[a]dvancing equity for all, including people from low-income families, people of color, and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, is a priority for HHS, OPA, and Title X." Title X Program Handbook at 12.

54. The Title X regulations also require family planning services offered within the program to be provided "consistent with nationally recognized standards of care." 42 C.F.R. § 59.5(a)(3). On OPA's website, it states that *Providing Quality Family Planning Services in the United States: Recommendations of the U.S. Office*

[5] Off. of Population Affs., Title X Program Handbook 6 (2024) ("Title X Handbook"), https://opa.hhs.gov/sites/default/files/2025-01/Title%20X%20Program%20Handbook_Dec%202024_FINAL.pdf.

of Population Affairs (Revised 2024)[6] (the "2024 QFP") "is a nationally recognized standard of care when implementing the Title X requirements." *See* Off. Population Affs., *OPA Program Policy Notice 2024-02*, https://opa.hhs.gov/node/4173 (last visited July 13, 2026). The 2024 QFP is an update to the 2014 QFP standards,[7] which Title X-funded entities have been required to adhere to since they were issued in 2014. *See* Title X Program Handbook at 10.

55. The 2024 QFP update to the 2014 QFP "includes newer approaches to care by adopting a health equity lens and recognizing the impact of structural and interpersonal racism, classism, ableism, and bias based on sexual orientation and/or gender identity on health and [sexual and reproductive health] care." *See* 2024 QFP at S42; *see also id.* at S47–48 (listing "[i]nclusivity," including for LGBTQI people, as one of the "guiding principles" of sexual and reproductive health care delivery); *id.* at S72 ("Providers should support the sexual and reproductive health care needs of all people regardless of their gender identity by providing gender-inclusive and affirming care.").

---

[6] Sarah E. Romer, et al., *Providing Quality Family Planning Services in the United States: Recommendations of the U.S. Office of Population Affairs (Revised 2024)*, Am. J. Prev. Med. 2024; 67, S41-S86, https://www.ajpmonline.org/article/S0749-3797(24)00310-6/fulltext.

[7] Loretta Gavin et al., *Providing quality family planning services: recommendations of CDC and the U.S. Office of Population Affairs*, MMWR Recomm. Rep. 2014 (1-54), https://www.cdc.gov/mmwr/preview/mmwrhtml/rr6304a1.htm ("2014 QFP").

56. The 2024 QFP update further instructs that "[p]roviders should also support people interested in using birth control methods for reasons other than contraception. Noncontraceptive indications for some methods include STI prevention; gender-affirming care; menstrual management or suppression; and treatment of acne, premenstrual dysphoric disorder (PMDD), heavy or painful periods, polycystic ovary syndrome (PCOS), and endometriosis." *Id*. at S55.

57. Furthermore, the 2014 QFP says the recommendations "encourage taking a client-centered approach" to providing care. 2014 QFP at 2. The 2014 QFP defines "client-centered" care as care that "is respectful of, and responsive to, individual client preferences, needs, and values; client values guide all clinical decisions." *Id.* at 4. The 2014 QFP also explains that taking a "client-centered approach" involves, *inter alia*, "highlighting that the client's primary purpose for visiting the service site must be respected," "encouraging the availability of a broad range of contraceptive methods so that clients can make a selection based on their individual needs and preferences," and "reinforcing the need to deliver services in a culturally competent manner so as to meet the needs of all clients, including . . . those who are lesbian, gay, bisexual, transgender, or questioning their sexual identity (LGBTQ)." *Id.* at 2.

58. The 2014 QFP also prioritizes effectiveness and, for example, "support[s] offering a full range of Food and Drug Administration (FDA)-approved

contraceptive methods as well as counseling that highlights the effectiveness of contraceptive methods" so that "clients can make a selection based on their individual needs and preferences." *Id.* at 2. The 2014 QFP further emphasizes "[e]quitable," "[e]vidence-based," and "quality" care that is "consistent with current professional knowledge" and "does not vary in quality because of the personal characteristics of clients." *Id*. at 4.

C. Title X Grant-Making Process.

59. As described *supra*, the Title X statute authorizes the Secretary of HHS to make grants to "public or nonprofit private entities to assist in the establishment and operation of voluntary family planning projects." 42 U.S.C. § 300(a). These Title X grants support Title X "projects" for particular geographic locations. Within each Title X project, there are typically three levels: (1) the grantee entity, (2) subrecipient organizations, and (3) individual health centers, or service sites, operated either directly by the grantee or run by subrecipients.

60. In making grants, the statute directs that "the Secretary *shall* take into account the number of patients to be served, the extent to which family planning services are needed locally, the relative need of the applicant, and its capacity to make rapid and effective use of such assistance." *Id*. § 300(b) (emphasis added); *see also* 42 C.F.R. § 59.7 (regulations setting out factors Agency must "tak[e] into account" in making grant awards, including all the statutory factors).

61. The Agency solicits applications for Title X funding by publishing a Notice of Funding Opportunity or NOFO. A NOFO describes the availability of funding, encourages entities to apply for funding, offers an overview of the program's requirements and priorities, and details how applications will be evaluated.

62. Interested entities structure their applications in accordance with the requirements and programmatic priorities set out in the NOFO. Applicants typically devote multiple months to coordinating the content of and preparing their applications. This is because applications must satisfy extensive and detailed requirements; accordingly, applicants generally need a significant amount of time to gather and compile all the requisite information in the manner directed by the NOFO.

63. For example, applications must include a project narrative of no more than 50 pages, which sets out the applicant's capabilities and work plan for delivering Title X-funded services. Supporting documentation of no more than 50 pages is also required. The application must detail all health care and educational services that would be provided under the grant, the areas of the country that the applicant seeks to serve, and the providers through which services will be offered. This includes the providers' locations and hours of operation; the estimated number of people that the providers will serve; and the nature of the services that will be offered at each service site. Further, if all Title X services cannot be offered at a

particular service site, applicants must offer a justification for why this is the case and describe their plan to ensure access to the full range of Title X services for people that seek care in that particular site.

64. Applicants must also provide evidence of their expertise in providing clinical care and their experience working in the proposed service area and provide documentation of the need for Title X services in that area, as well as the process through which a needs assessment was conducted. Applicants must also report on how, using the needs assessment, they will provide services and improve service delivery. Applicants must describe the populations that would be served using Title X grant funds and how they would address barriers to people's access to and use of Title X care.

65. Applicants must provide a detailed staffing plan, including how clinical providers' licensure and credentialing are verified and maintained, and describe their plans for financial monitoring, accounting, internal control and compliance, and quality improvement for all providers funded under the grant.

66. Governmental health departments, in particular, need sufficient time to prepare and submit their applications, as their draft applications generally must go through multiple levels of internal review. For example, some state health departments must have their application reviewed by several bureaus/divisions within the health department, including the legal department and the

finance/accounting department, and the governor's office. Some health departments have subrecipients apply for subgrants after the NOFO is released and before applications are due so that information and budgeting can be included in the grant application.

67. A Title X project is defined by the proposed family planning activities to be conducted by the grantee and any subrecipients that are described in detail in the grantee's application to HHS and then funded through the finalized grant. Historically, prospective grantees that go on to be selected for and receive Title X grant awards are held to the representations they made in their applications regarding the nature, purpose, and scope of their Title X project and associated activities. Accordingly, what a prospective grantee represents it will do in an application for a grant is very important as—if awarded a grant—that grantee will then be expected to make good on those representations.

68. Title X grant funds are generally awarded for a period of performance of up to five years, to be funded in annual increments (called budget periods). To obtain funds for subsequent budget periods of the approved period of performance, successful applicants that are awarded grants are required to submit noncompeting continuation grant applications that include a project narrative, work plan, budget, and budget justification for the upcoming year.

69. The Agency generally makes award decisions and issues grants to successful applicants by April 1, around the time the prior performance period ends on March 31. This timing ensures that there is no lapse in funding and, accordingly, no lapse in the provision of critical family planning services.

D. The Title X FY 2027 NOFO.

70. In April of 2026, OPA released funds for the final budget period (i.e., FY 2026) of the approved five-year period of performance under the FY 2022 NOFO. At the same time, OPA published a new competitive NOFO, soliciting applications for projects to provide Title X services starting in FY 2027, for a five-year term, with an anticipated grant award date of April 1, 2027.

71. On July 9, 2026, Defendants published a new version of the NOFO, which is the subject of this litigation. *See* the NOFO (attached as Ex. A).

72. The deadline to apply for funding under the NOFO is January 11, 2027. *Id.* at 1.

73. The NOFO indicates that a "Technical Assistance Webinar" will take place on November 9, 2026. *Id.* Following the webinar, the Agency typically will post a document addressing frequently asked questions regarding the grant application process. *Id.* at 35.

74. NFPRHA expects that some of its members that intend to submit applications for FY 2027 Title X grants will soon start preparing their applications,

and those that have not started—particularly governmental health departments—will need to do so roughly 90 days before the application deadline, which is October 13, 2026, in order to meet the January 2027 deadline for submission.

75. The NOFO states that Title X grantees "must align [their] program design and activities with agency priorities where consistent with program authority and the scope of the award ([“]Priorities of the Office of the Assistant Secretary for Health," available online at: https://health.gov/priorities), and when authorized by law according to the Title X statute, regulations, legislative mandates, and additional program guidance." NOFO at 7.

76. The NOFO directs prospective applicants to a webpage detailing OASH's priorities, which include "[e]nding diversity, equity, and inclusion (DEI) policies and practices across OASH's programs," "[e]nding support for gender ideology, including sex-rejecting procedures for children," "[r]educing overmedicalization in health care," and "[e]nforcing the Hyde Amendment." *Id.* at 7; Priorities of Off. of the Assistant Sec'y for Health (attached as Ex. B) ("OASH Priorities").

77. Under the "Ending diversity, equity, and inclusion (DEI) policies and practices across OASH's programs" priority on OASH's website, OASH maintains that it "has previously invested in ideologically-laden concepts like health equity" but that "[t]his has not translated into measurable improved health for minority

populations, and in many cases has undermined core American values." OASH Priorities.

78. Accordingly, OASH states that it "will prioritize efforts that go beyond the use of ideologically laden concepts and focus on solution-oriented approaches," which it states "includes actively testing, advancing, scaling, and implementing innovative evidence-based interventions and treatments that address poor health outcomes, including the root causes of Americans' chronic disease epidemic." *Id.*

79. Under this priority, OASH also professes its "commit[ment] to restoring merit-based opportunities and, to the extent permitted by law, removing discriminatory or otherwise illegal practices, such as providing benefits and advantages based on race or ethnicity rather than need, severity of disease, or another legitimate basis." *Id.*

80. Under the "Ending support for gender ideology, including sex-rejecting procedures for children, and ensuring evidence-based care" priority on OASH's website, OASH states that it is "a priority of OASH to protect children from [medical] interventions" such as "puberty blockers, cross-sex hormones, and surgeries, that attempt to reject a child's sex," and that it is also "an OASH priority to ensure OASH programs accurately reflect science, including the biological reality

that a person's sex, as either male or female, is unchangeable and determined by objective biology." *Id.*

81. Accordingly, OASH states that it will "prioritize OASH programs and funding that accurately reflect the scientific biological reality of sex." *Id.*

82. The NOFO also instructs that "[i]n addition to the statute, regulations, legislative mandates, and additional program guidance that apply to Title X, Title X grantees should align their programs with OPA priorities to the extent authorized by law and within the scope of the program," and that "OPA expects recipients to develop and implement plans to address the program priorities and provide evidence of [a] project's capacity to address program priorities." NOFO at 10.

83. The NOFO states that OPA's program priorities for recipients funded under the NOFO "are in part informed" by the OASH priorities available on OASH's website. *Id.*

84. The NOFO identifies the following as OPA priorities: Addressing the chronic disease epidemic through the delivery of Title X services; Reducing overmedicalization in health care and increasing focus on optimal health through the delivery of Title X services; Promoting body and health literacy through the delivery of Title X services; Advancing reproductive goals counseling through the delivery of Title X services; Promoting evidence-based care through the delivery of Title X services; Enforcing the Hyde Amendment through the delivery of Title X services;

Ensuring OASH funds benefit eligible individuals and not illegal aliens through the delivery of Title X services; and Implementing a Quality Improvement and Quality Assurance (QI/QA) Plan. *See id.* at 10–14 ("OPA Priorities").

85. Under the "Reducing overmedicalization in health care and increasing focus on optimal health through the delivery of Title X services" priority, the NOFO states that "OPA recognizes the overreliance on pharmaceutical and surgical treatments," asserts that various reports "have shown a decrease in females' current use of any contraception," and that "the most common reason women reported for discontinuing use related to dissatisfaction was side effects. This approach has failed to adequately address the root causes of the nation's chronic disease burden, resulting in ongoing health challenges that affect fertility, pregnancy outcomes, and long-term health outcomes." *Id.* at 11–12; *see also* OASH Priorities.

86. Under this priority, the NOFO also states that "[t]hrough the delivery of Title X services, OPA seeks to strengthen approaches that focus on the underlying behavioral and lifestyle factors of health—such as nutrition, sleep, physical activity, stress management, and environmental factors—that impact overall health and are shown to be effective in improving optimal health," and "expect[s] applicants to demonstrate how their Title X projects will integrate noninvasive, evidence-based practices that promote health literacy, fertility awareness, and reproductive health without unnecessary medicalization or symptom suppression." NOFO at 12.

87. The NOFO identifies "expanding access to fertility-awareness-based methods (often referred to as natural family planning)" as a "[k]ey strateg[y]" for advancing optimal health under the "Reducing overmedicalization" priority. *Id.*

88. The word contraception is only used once in the NOFO, in the context of discussing a decrease in its use and alleged patient dissatisfaction with its side effects under the "Reducing overmedicalization" priority. *Id.* at 11; *see also, generally, id.*

89. Under the "Promoting evidence-based care through the delivery of Title X services" priority, the NOFO states that "HHS will prioritize funding for grantees who maintain a science-driven approach to healthcare, including by . . . respecting biological reality," and identifies key strategies for promoting this priority, including "providing developmentally appropriate counseling rooted in biological science" and "ensuring referral pathways align with evidence-based care." *Id.* at 13.

90. Under the "Enforcing the Hyde Amendment through the delivery of Title X services" priority, the NOFO states that OPA "expect[s] recipients to demonstrate how their Title X projects . . . contribute to broader HHS efforts to safeguard life-affirming, lawful, and ethical program delivery." *Id.* at 14.

91. The NOFO does not define what constitutes "life-affirming . . . program delivery." *Id.* at 14; *see also, generally, id.*

92. The NOFO instructs that an applicant's "Project Narrative is the most important part of [the] application," and that "[s]uccessful proposals should include" a description of "plans and strategies for providing family planning services that address OPA program priorities," including "[r]educing overmedicalization," "[p]romoting evidence-based care" and "[e]nforcing the Hyde Amendment." *Id.* at 19, 21.

93. The NOFO states that the review of the merits of applications for Title X grants will be conducted by "[f]ederal staff and an independent review panel" (the "Merit Review"). *Id*. at 39.

94. The most significant criterion in the Merit Review—valued at 35 potential points out of a total of 100—is the "extent to which the applicant proposes strategies that meaningfully advance OPA's program priorities . . . and HHS priorities." *Id*. at 40.

95. HHS's priorities include ending diversity, equity, and inclusion. *See HHS Priorities*, U.S. Dep't of Health & Hum. Servs., https://www.hhs.gov/about/priorities/index.html ("HHS Priorities") (attached as Ex. C). Under this priority, HHS states that "[r]ather than supporting DEI programs, HHS will end race-based special preferences in grant making and instead direct resources to programs that advance the health and longevity of all Americans." *Id.*

96. HHS's priorities also include "[c]ombat[ing] gender ideology," and "respect[ing] the dignity of human life at all stages of development." *Id.*

97. HHS's priorities include some that are unrelated to the provision of family planning services, such as "[f]urther[ing] our understanding of autism," "[t]oxins," "[i]nvestigat[ing] and car[ing] for those with Long COVID," "[a]dvanc[ing] the scientific understanding of the aging process," "[p]romot[ing] work and self-sufficiency," "[e]nd[ing] crime and disorder on America's streets," "[i]mprov[ing] oversight of foreign funded institutions," and "[e]nding dangerous gain-of-function research." *Id.*

98. The NOFO does not explain how a Title X grantee is expected to align themselves with unrelated HHS priorities within the context of the Title X program, with limited Title X funds. *See generally,* NOFO.

99. In the Merit Review, while alignment with OPA and HHS priorities is allotted 35 points, the extent to which applicants describe the provision of a "broad range of methods and services to address client needs" and identify "the number of low-income clients to be served"—factors drawn directly from the Title X statute—is worth only 10 points, and the degree to which applicants comply with the Title X statute, regulations, and legislative mandates is worth only 15 points. *Id*. at 39–40.

100. In addition to the independent review panel, the NOFO indicates that "Federal staff will review each application for technical (programmatic), budgetary,

and grants management compliance" and that OPA "will coordinate with a senior appointee to provide recommendations for funding to the Grants Management Officer to conduct the required risk analysis consistent with 2 CFR 200 and applicable HHS policy." *Id*. at 41.

101. The NOFO states that "[i]n providing these recommendations, the program office will take into consideration . . . [a]lignment with HHS and OASH priorities, where authorized by law and within the scope of the program." *Id.*

102. The NOFO makes clear that "[n]o award decision is final until a Notice of Award is issued by the Grants Management Officer, in coordination with a senior appointee or appointee's designee, consistent with the Executive Order on 'Improving Oversight of Federal Grantmaking.'" *Id.*

103. The NOFO states that Title X grant recipients "must demonstrate ongoing compliance with [the agency] priorities . . . through program design, implementation, reporting, and evaluation," and that "[f]ailure to meaningfully align funded activities with the applicable requirements may result in corrective action," "including termination . . . for no longer effectuating program goals or agency priorities." *Id*. at 7.

104. The NOFO represents the consummation of the Agency's decision-making process as to its considerations, criteria, and priorities for evaluating FY 2027 Title X grant applications and making FY 2027 Title X grant awards.

105. There is nothing in the NOFO that would indicate that it is interim, temporary, or subject to further revision. Indeed, the NOFO makes clear that prospective grantees are "encourage[d] . . . to review all program requirements, eligibility information, application format and submission information, evaluation criteria, and other information in this funding announcement to ensure that their application complies with all requirements and instructions." *Id*. at 3.

106. As of the date of this filing, Plaintiffs have received no communication from the Agency indicating that that NOFO is interim, temporary, or subject to further revision.

LEGAL ALLEGATIONS

A. The NOFO Requires Alignment with Agency Priorities That Are Contrary to Law.

1. The Anti-DEI Priority.

107. The OASH and HHS Priorities with which applicants must align include the priority of "[e]nding diversity, equity, and inclusion . . . policies and practices." *See* OASH Priorities; HHS Priorities ("End[ing] illegal race discrimination"). As detailed above, under this priority, OASH instructs that it will "prioritize efforts that go beyond the use of ideologically laden concepts" like "health equity," which OASH claims "has not translated into measurable improved health for minority populations." OASH Priorities. Similarly, HHS's priorities

describe "[s]o-called 'diversity, equity, and inclusion' (DEI) programs" as "illegal race discrimination" that the Agency "will not tolerate." HHS Priorities. (Together, and independently, these constitute the Agency's "Anti-DEI Priority.")

108. The Anti-DEI Priority is in direct conflict with the Title X regulations' command that projects provide services in an "inclusive" and "equitable" manner and encourage participation in the project by "diverse persons," 42 C.F.R. §§ 59.5(a)(3), (b)(3)(iii); *see also id.* § 59.2 (defining "inclusive" as "when all people are fully included and can actively participate in and benefit from family planning, including, but not limited to, individuals who belong to underserved communities," specifically identifying racial and ethnic minorities and "lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons"). The Anti-DEI Priority is similarly in conflict with the Title X regulatory requirement that applicants for grant funding demonstrate the "ability . . . to *advance* health equity." *Id.* § 59.7(a)(3) (emphasis added); *see also id.* § 59.5(a)(3) (Title X projects must "ensure[] equitable and quality service delivery").

2. The Anti-Gender Ideology Priority.

109. The OASH and HHS priorities targeting transgender individuals and transgender-related health care fall under the OPA priority of "[p]romoting evidence-based care through the delivery of Title X services." NOFO at 13. The Agency describes this priority as "Ending support for" or "Combat[ing]" what it calls

"gender ideology." OASH Priorities; HHS Priorities; NOFO at 13 (together, and independently, the Agency's "Anti-Gender Ideology Priority").

110. The Trump administration has defined "gender ideology" as an ideology that "replaces the biological category of sex with an ever-shifting concept of self-assessed gender identity, permitting the false claim that males can identify as and thus become women and vice versa . . . [and that] there is a vast spectrum of genders that are disconnected from one's sex." *See* Exec. Order No. 14168, 90 Fed. Reg. 8615 (Jan. 20, 2025). Furthermore, on page 41, the NOFO references the "Improving Oversight of Federal Grantmaking" Executive Order, which says that "discretionary awards must . . . demonstrably advance the President's policy priorities" and "discretionary awards shall not be used to fund, promote, encourage, subsidize, or facilitate . . . denial by the grant recipient of the sex binary in humans or that the notion that sex is a chosen or mutable characteristic." NOFO at 41; *see also* Exec. Order No. 14332, 90 Fed. Reg. 38929 (Aug. 7, 2025).

111. As detailed above, under the Anti-Gender Ideology Priority, the Agency has stated an intent to "prioritize OASH programs and funding that accurately reflect the scientific biological reality of sex," "including the biological reality that a person's sex, as either male or female, is unchangeable and determined by objective biology." OASH Priorities; *see also* HHS Priorities ("It is an HHS priority to ensure our programs accurately reflect science, including the biological reality that a

person's sex as either male or female is unchangeable and determined by objective biology."); NOFO at 13 (corresponding OPA priority instructs that the Agency "will prioritize funding for grantees who . . . respect[] biological reality").

112. The NOFO's requirement of alignment with the Anti-Gender Ideology Priority conflicts with the Title X regulations' explicit requirement that family planning projects ensure that "transgender . . . persons" are "fully included and can actively participate in and benefit from family planning." 42 C.F.R. § 59.2; *see id.* § 59.5(a)(3) (Title X projects must provide care that is "client-centered" and "inclusive"). Additionally, alignment with the Anti-Gender Ideology Priority contravenes the regulations' prohibition on providing family planning services in a manner that discriminates on the basis of "gender identity" and "sex characteristics." *Id.* § 59.5(4).

B. The NOFO Reverses Prior Agency Positions Without Observance of the Procedure Required by Law.

113. The Title X regulations were the product of notice and comment rulemaking. *See* Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services, 86 Fed. Reg. 56177 (Oct. 7, 2021).

114. To the extent the Agency is attempting to amend, repeal, and/or replace the regulatory mandates regarding advancing "health equity," providing services in a "inclusive" and "equitable" manner, and encouraging the participation of "diverse" persons, *see supra* ¶¶ 47–51, via the NOFO's requirement of alignment with the

Anti-DEI Priority, it failed to do so through notice and comment rulemaking, as required by law.

115. Similarly, to the extent the Agency is attempting to amend, repeal, and/or replace the regulatory mandates regarding inclusivity, client-centeredness, and non-discrimination on the basis of gender identity and sex-characteristics, *see supra* ¶¶ 49–50, via the NOFO's requirement of alignment with the Anti-Gender Ideology Priority, it failed to do so through notice and comment rulemaking, as required by law.

C. The NOFO's Requirement of Alignment with Agency Priorities Is Arbitrary and Capricious.

1. Requiring Alignment with the Anti-DEI Priority Is Arbitrary and Capricious.

116. The Anti-DEI Priority is in direct conflict with the Agency's regulations requiring Title X projects to advance health equity through the provision of family planning services by providing inclusive care to diverse communities. *See supra* ¶¶ 107–108. As a result, the Agency is effectively requiring grantees to comply with contradictory requirements, or to comply with a requirement that violates the Agency's own regulations, without providing any explanation for the conflict or guidance to prospective grantees as to how to reconcile this conflict.

117. The direct conflict between the Anti-DEI Priority and the Agency's regulations and program guidance also indicates that the Agency is reversing its prior

position in favor of diversity, health equity, and inclusion. But the Agency does not acknowledge this change in position within the context of the Title X program, let alone provide a reasoned explanation for it.

118. Even absent a conflict with the regulations, the NOFO's requirement of alignment with the Anti-DEI Priority is so vague as to deprive applicants for funding of the opportunity to know what is required of them. For instance, the Anti-DEI Priority seems to focus principally on the *Agency's* conduct. *See, e.g.*, OASH Priorities (describing *OASH's* "commit[ment] to restoring merit-based opportunities and, to the extent permitted by law, removing discriminatory or otherwise illegal practices"); HHS Priorities ("*HHS* will end race-based special preferences in grant making and instead direct resources to programs that advance the health and longevity of all Americans." (emphasis added)). Applicants are left to guess at how *they*—as opposed to the Agency—are meant to align with these priorities.

119. Moreover, it is not clear how applicants would even be capable of "focus[ing] on solution-oriented approaches," "includ[ing] testing, advancing, scaling, and implementing innovative evidence-based interventions and treatments that address poor health outcomes." *See* OASH Priorities. It is similarly unclear what "efforts" the Agency expects grantees to take that would "go beyond the use of ideologically laden concepts" like DEI and health equity, or how Title X grantees

are expected to "implement . . . interventions" that address the "root causes of Americans' chronic disease epidemic." *Id.*

2. Requiring Alignment with the Anti-Gender Ideology Priority Is Arbitrary and Capricious.

120. As explained *supra* ¶¶ 109–112, the Anti-Gender Ideology Priority conflicts with the Agency's own regulations, which explicitly require the inclusion of transgender individuals in the provision of family planning services and prohibit discrimination on the basis of gender identity and sex characteristics. The NOFO is silent on how to reconcile this conflict.

121. Given the stark conflict between the Anti-Gender Ideology Priority and the Agency's regulations and guidance materials requiring the inclusion of transgender individuals in Title X-funded family planning services, this Priority suggests a reversal of the Agency's prior position within the Title X program. But the Agency has neither acknowledged this reversal nor provided a reasoned explanation for it.

122. Furthermore, it is unclear how a potential grantee is expected align itself with OASH's priority to "ensure" that OASH programs "reflect . . . the biological reality that a person's sex, as either male or female, is unchangeable," and the NOFO provides no guidance as to how to do so. OASH Priorities; *see also, generally,* NOFO.

3. Requiring Prospective Grantees to Contribute to Agency Efforts to "Safeguard Life Affirming Program Delivery" Is Arbitrary and Capricious.

123. The NOFO also indicates that applicants are expected to "contribute to broader HHS efforts to safeguard life-affirming, lawful, and ethical program delivery." NOFO at 13–14.

124. Although it is unclear what the term "life-affirming" means, given that this phrase is used under the Agency's "Enforcing the Hyde Amendment" priority, which relates to restrictions on the use of federal funds to pay for abortions, the phrase appears to reflect an anti-abortion position.

125. All Title X grantees already must comply with the Title X statute, which provides that "[n]one of the funds appropriated under this title shall be used in programs where abortion is a method of family planning." 42 U.S.C. § 300a-6. Moreover, grantees are precluded from "tak[ing] [] affirmative action (such as negotiating a fee reduction, making an appointment, providing transportation) to secure abortion services for the patient." Provision of Abortion-Related Servs. in Fam. Plan. Servs. Projects, 65 Fed. Reg. 41281 (July 3, 2000).

126. At the same time, the Title X regulations and congressional rider mandate that projects provide non-directive counseling to pregnant clients about their pregnancy options, including "[p]regnancy termination." 42 C.F.R. § 59.5(a)(5)(i); Pub. L. No. 119-75, 140 Stat. at 262. When requested by a client,

Title X projects must also provide referrals for abortion care. 42 C.F.R. § 59.5(a)(5)(ii); Pub. L. 119-75, 140 Stat. at 262.

127. How applicants are expected to satisfy their obligations to provide information about and referrals for abortion, while also advancing the priority of "safeguard[ing] life-affirming . . . program delivery," is never addressed in the NOFO. NOFO at 14; *see also* OASH Priorities (OASH will prioritize programs that "respect the dignity of life"); HHS Priorities ("HHS will prioritize programs and funding mechanisms that respect the dignity of human life at all stages of development"). Applicants therefore do not know what this Agency Priority means nor how to navigate the tension between it and the regulations and congressional rider.

4. The Provisions of the NOFO That Deprioritize Contraception Are Arbitrary and Capricious.

128. The NOFO also requires alignment with the Agency's priority to "reduc[e] overmedicalization in health care" ("Reducing Overmedicalization Priority"). *See* NOFO at 11–12, 21; OASH Priorities.

129. The NOFO's only mention of contraception is under this heading, and it is in a disparaging context. The NOFO says that "OPA recognizes the overreliance on pharmaceutical and surgical treatments" and notes that there has a been "a decrease in females' current use of any contraception" and that "the most common reason women reported discontinuing use related to dissatisfaction was side effects."

NOFO at 11. The NOFO states that the "approach" of overreliance on pharmaceutical and surgical treatments "has failed to adequately address the root causes of the nation's chronic disease burden, resulting in ongoing health challenges that affect fertility, pregnancy outcomes, and long-term health outcomes." *Id*. at 11–12; *see also* OASH Priorities ("OASH recognizes the pervasive overreliance on pharmaceutical and surgical interventions, which have failed to sufficiently address the chronic disease epidemic.").

130. The NOFO also states that OPA is seeking to "strengthen approaches that focus on the underlying behavioral and lifestyle factors of health—such as nutrition, sleep, physical activity, stress management, and environmental factors," which "impact overall health and are shown to be effective in improving optimal health," through the delivery of Title X services. NOFO at 12. The NOFO says that a key strategy for "advancing optimal health" includes "expanding access to fertility-awareness–based methods (often referred to as natural family planning)." *Id.* at 12.

131. Moreover, in the Merit Review process, "[t]he extent to which the applicant . . . describes the broad range of methods and services that will be provided" is worth only 10 points in the scoring process, *id.* at 39, while "[t]he extent to which the applicant proposes strategies that meaningfully advance OPA's program priorities" is worth 35 points, *id*. at 40.

132. However, Congress has mandated that the Title X program "offer a broad range of acceptable and effective family planning methods and services," 42 U.S.C. § 300(a)—a mandate that is the core purpose of the program.

133. Further, as discussed *supra* ¶ 56, the 2024 QFP update instructs that "[p]roviders should also support people interested in using birth control methods for reasons other than contraception," including menstrual management or suppression, treatment of acne, PMDD, heavy or painful periods, PCOS, and endometriosis. Indeed, millions of patients rely on contraceptives not only to prevent pregnancy but to manage, treat, or prevent various gynecological or endocrine issues.

134. The NOFO creates tension between, on the one hand, the Title X statute and regulations' emphases on a "broad range" of "family planning methods," including contraception, and, on the other, the NOFO's provisions that deprioritize contraception.

135. The NOFO also creates tension between, on the one hand, the QFP's instruction that patients should be supported in using contraceptives for purposes other than pregnancy prevention, and, on the other hand, the NOFO's provisions that emphasize reducing reliance on "pharmaceutical treatments" and deprioritizing medical contraception.

136. This tension leaves applicants to guess at how to align themselves with the Agency's Reducing Overmedicalization Priority and the NOFO's overarching,

seeming deemphasis of contraception, while also (1) complying with the statutory and regulatory requirement to provide a broad range of family planning methods, *including* contraceptive products, and (2) providing contraception in line with the QFP, evidence-based practice, and patient needs for myriad purposes other than pregnancy prevention.

137. Moreover, to the extent that the NOFO reflects the Agency's abandonment of its longstanding approach of promoting access to high-quality, effective family planning services (including *both* medical contraceptives *and* natural family planning methods), in favor of prioritizing applicants focused primarily on the provision of natural family planning methods, that is a reversal of the Agency's prior position without any acknowledgment or reasoned explanation.

138. Likewise, to the extent that the NOFO reflects the Agency's abandonment of its longstanding approach of supporting patient use of contraceptives for reasons other than pregnancy prevention, in favor of prioritizing applicants focused primarily or solely on non-pharmaceutical methods of addressing gynecological and endocrine issues that could otherwise be treated through medical contraceptives, that is a reversal of the Agency's prior position without any acknowledgment or reasoned explanation.

5. Requiring Alignment with Irrelevant HHS Priorities Is Arbitrary and Capricious.

139. The NOFO's requirement of alignment with HHS priorities is arbitrary and capricious given that a number of those priorities have nothing to do with the provision of family planning services, and the NOFO is ambiguous as to whether and to what extent the Agency considers alignment with those seemingly irrelevant priorities to be "within the scope" of the Title X program. *See* NOFO at 39–40 (indicating that the largest component of an application's score is the "extent to which the applicant proposes strategies that meaningfully advance . . . HHS priorities" without limiting those priorities to those applicable to Title X); *see, e.g.*, HHS Priorities (priorities include "[f]urther[ing] our understanding of autism," "[t]oxins," "[i]nvestigat[ing] and car[ing] for those with Long COVID," "[a]dvanc[ing] the scientific understanding of the aging process," "[p]romot[ing] work and self-sufficiency," "[e]nd[ing] crime and disorder on America's streets," "[i]mprov[ing] oversight of foreign funded institutions," and "[e]nding dangerous gain-of-function research.").

140. This creates significant confusion and provides no fair notice to prospective grantees as to how to satisfy the requirement of alignment with these priorities. The NOFO also does not explain how a grantee should further all of these priorities with limited grant funds.

E. The 2027 NOFO Risks Imposing Severe and Irreparable Harms and Costs.

141. The NOFO inflicts several significant harms on Plaintiff NFPRHA's members (including Plaintiff FHCCP), their staff, and the patients they serve.

142. First, the NOFO puts well-qualified prospective Title X grantees, including highly experienced providers that have been in the program for decades, at serious risk of having their applications for a Title X grant denied solely because they do not sufficiently align with unlawful, irrelevant, and/or vague political priorities.

143. If highly qualified providers are denied the ability to participate in the Title X program based on failure to sufficiently align with unlawful, irrelevant, and/or vague political priorities, and entities in alignment with those priorities are given grants in their stead, the patients whom the Title X program is intended to serve will suffer the consequences and will be at risk of losing access to high-quality, community-based Title X family planning services.

144. Second, because some Agency Priorities are in direct conflict with the Title X regulations, *supra* ¶¶ 107–112, and others are in tension with the Title X regulations and/or guidance, *supra* ¶¶ 116–138, the NOFO's requirement that grant recipients "develop and implement plans to address the program priorities and provide evidence of the project's capacity to address program priorities," NOFO at 10, essentially forces prospective grantees to attest that they will act in ways that are,

at best, in tension with, and, at worst, directly contrary to governing Title X regulations and guidance or have their applications for funding for critical family planning services grants denied. Forcing prospective grantees to commit to acting contrary to the Title X regulations and guidance—including guidance setting forth the nationally recognized standards of care for providing family planning services—will impose significant harms on Title X patients and the Title X network generally.

145. Third, inasmuch as certain Agency Priorities conflict with the Title X regulations and are an attempt to amend the regulations, the Agency was required to undertake notice and comment rulemaking. The Agency's failure to do so deprived Plaintiff NFPRHA's members, including Plaintiff FHCCP, of the opportunity to comment on a regulatory matter of the utmost importance to their organizations and the patients they serve.

146. The allegations of the preceding paragraphs are incorporated by reference in the following claims.

FIRST CAUSE OF ACTION

(Violation of APA – Not in Accordance with Law, 5 U.S.C. § 706(2)(A))

147. The APA provides that courts "shall . . . hold unlawful and set aside" final agency action that is "not in accordance with the law." 5 U.S.C. § 706(2)(A). This includes action that is contrary to or violative of the Agency's own "existing

valid regulations." *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

148. The NOFO constitutes final agency action. It marks the consummation of the agency's decision-making process as to its priorities, considerations, and criteria for evaluating FY 2027 Title X grant applications and making awards, as well as the requirements for grantees upon receiving a grant award, and rights and obligations are therefore determined by, and legal consequences flow from, the NOFO.

149. The NOFO's requirement that Title X grantees align themselves with the Agency's Anti-DEI and Anti-Gender Ideology Priorities conflicts with and is contrary to the Title X regulations, which require grantees to, *inter alia*, demonstrate their "ability . . . to advance health equity," 42 C.F.R. § 59.7(a)(3), and to "[p]rovide services in a manner that is client-centered, culturally and linguistically appropriate, inclusive, and trauma-informed," *id.* § 59.5(a)(3), "does not discriminate" on the basis of "gender identity" and "sex characteristics," *id.* § 59.59(a)(4), and ensures that "transgender . . . persons" are "fully included and can actively participate in and benefit from family planning," *id.* § 59.2.

150. As a result of Defendants' unlawful conduct, Plaintiff NFPRHA's members, including Plaintiff FHCCP, their staff, and the individuals they serve are at serious risk of suffering irreparable harm.

SECOND CAUSE OF ACTION

(Violation of APA – Without Observance of Procedure Required by Law, 5 U.S.C. § 706(2)(D))

151. The APA provides that courts "shall . . . hold unlawful and set aside" final agency action that is "without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

152. The NOFO constitutes final agency action. It marks the consummation of the agency's decision-making process as to its priorities, considerations, and criteria for evaluating FY 2027 Title X grant applications and making awards, as well as the requirements for grantees upon receiving a grant award, and rights and obligations are therefore determined by, and legal consequences flow from, the NOFO.

153. To reverse or amend a rule issued in the first instance through notice and comment rulemaking, an agency must again allow for notice-and-comment and, following from that, engage in reasoned decision making.

154. To the extent the NOFO's requirement of alignment with the Agency's Anti-DEI and/or Anti-Gender Ideology Priorities constitutes an amendment to or reversal of the Title X regulations that those priorities conflict with, *see supra* Count I, the Agency failed to "observ[e]" the notice and comment rulemaking "procedure required by law." 5 U.S.C. § 706(2)(D).

155. As a result of Defendants' unlawful conduct, Plaintiff NFPRHA's members, including Plaintiff FHCCP, their staff, and the individuals they serve are at serious risk of suffering irreparable harm.

THIRD CAUSE OF ACTION

(Violation of APA – Arbitrary, Capricious, and Abuse of Discretion, 5 U.S.C. § 706(2)(A))

156. The APA provides that courts "shall . . . hold unlawful and set aside" final agency action that is "arbitrary, capricious, [or] an abuse of discretion . . . ." 5 U.S.C. § 706(2)(A).

157. The NOFO constitutes final agency action. It marks the consummation of the agency's decision-making process as to its priorities, considerations, and criteria for evaluating FY 2027 Title X grant applications and making awards, as well as the requirements for grantees upon receiving a grant award, and rights and obligations are therefore determined by, and legal consequences flow from, the NOFO.

158. The NOFO's requirement that Title X grantees align themselves with the Agency's Anti-DEI and Anti-Gender Ideology Priorities is arbitrary and capricious because (1) it demands that prospective grantees align themselves with Agency Priorities that directly conflict with Title X regulations, *see supra* Count I, without any explanation of how to reconcile the two; (2) appears to amount to a reversal of Agency position on DEI, including health equity, and "gender ideology"

within the Title X program, without any display of awareness that the Agency made that change in the Title X program, or reasoned explanation for it; and (3) it fails to provide prospective grantees with fair notice as to what is required of them for alignment.

159. The NOFO's requirement that Title X grantees align themselves with the Agency's Priority of "safeguard[ing] life-affirming . . . program delivery" is arbitrary and capricious because it fails to provide prospective grantees with fair notice as to what is required of them for alignment.

160. The NOFO's requirement of alignment with the Reducing Overmedicalization Priority, coupled with its seeming deemphasis of contraception, is in tension with both the Title X statutory and regulatory requirements that projects offer a broad range of family planning methods, including contraceptive products, and Agency guidance that directs providers to support patients interested in using contraception for reasons other than pregnancy prevention.

161. The NOFO's requirement of alignment with the Reducing Overmedicalization Priority, coupled with its seeming deemphasis of contraception, is thus arbitrary and capricious because it (1) fails to provide prospective grantees with fair notice as to what is required of them given the tension between the NOFO, on one hand, and the Title X statute, regulations, and guidance, on the other; and (2) appears to amount to a reversal of Agency position on the importance of the

provision of broad range of family planning methods, including contraception, and support for patients interested in using contraception for reasons other than pregnancy prevention in the Title X program, without any display of awareness of that change in the Title X program, or reasoned explanation for it.

162. The NOFO's requirement to align with Agency Priorities that have nothing to do with the Title X program is arbitrary and capricious.

163. As a result of Defendants' unlawful conduct, Plaintiff NFPRHA's members, including Plaintiff FHCCP, their staff, and the individuals they serve are at serious risk of suffering irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

(A) Declare unlawful and set aside the following portions of the FY 2027 NOFO:

i. The requirement that prospective Title X grantees demonstrate, and that Title X grant recipients ensure, alignment with:

1. The Agency's Anti-Gender Ideology Priority, *see* Exs. A–C;
2. The Agency's Anti-DEI Priority, *see* Exs. A–C;
3. The Agency's Priority of "safeguard[ing] life-affirming . . . program delivery," *see* Exs. A–C;

4. The Agency's "Reducing Overmedicalization" Priority, *see* Exs. A–B, to the extent that the application of and alignment with that priority within the context of the Title X program constitutes a departure from the statutory and regulatory requirement that Title X projects provide a broad range of family planning methods, including contraception, and/or a departure from agency guidance directing providers to support patients interested in using contraception for reasons other than pregnancy prevention; and
5. Any Agency Priority that is irrelevant to the Title X program, including, but not limited to, HHS priorities of "[f]urther[ing] our understanding of autism," "[t]oxins," "[i]nvestigat[ing] and car[ing] for those with Long COVID," "[a]dvanc[ing] the scientific understanding of the aging process," "[p]romot[ing] work and self-sufficiency," "[e]nd[ing] crime and disorder on America's streets," "[i]mprov[ing] oversight of foreign funded institutions," and "[e]nding dangerous gain-of-function research." *See* Ex. C.

(B) Declare that, to the extent the Agency is purporting to amend the Title X regulations with respect to DEI, including health equity, and transgender inclusion and non-discrimination via the NOFO, the Agency has failed to observe the notice and comment rulemaking procedure required by law;

(C) Award injunctive relief prohibiting Defendants from:

i. Using the Agency's Anti-Gender Ideology Priority in the Agency's evaluation of an entity's application for Title X funding in any respect;

ii. Using the Agency's Anti-DEI Priority in the Agency's evaluation of an entity's application for Title X funding in any respect;

iii. Using the Agency's priority of "safeguard[ing] life-affirming . . . program delivery," in the Agency's evaluation of an entity's application for Title X funding in any respect;

iv. Using the Agency's "Reducing Overmedicalization" Priority in the Agency's evaluation of an entity's application for Title X funding in any respect, to the extent that doing so would penalize an entity's intended provision of contraception in a manner that constitutes a departure from the statutory and regulatory requirement that Title X projects provide a broad range of family

planning methods, including contraception, and/or a departure from agency guidance directing providers to support patients interested in using contraception for reasons other than pregnancy prevention;

v. Using the Agency Priorities that are irrelevant to the Title X program—including, but not limited to, HHS priorities of "[f]urther[ing] our understanding of autism," "[t]oxins," "[i]nvestigat[ing] and car[ing] for those with Long COVID," "[a]dvanc[ing] the scientific understanding of the aging process," "[p]romot[ing] work and self-sufficiency," "[e]nd[ing] crime and disorder on America's streets," "[i]mprov[ing] oversight of foreign funded institutions," and "[e]nding dangerous gain-of-function research,"—in the Agency's evaluation of an entity's application for Title X funding in any respect; and

vi. Requiring grant recipients funded under the NOFO to align their projects with the Agency's Anti-Gender Ideology, Anti-DEI, "safeguard[ing] life-affirming program delivery," "Reducing Overmedicalization" Priorities, to the extent that doing so would conflict with the Title X statute, legislative mandates, and/or

regulations, and to align with the aforementioned Agency Priorities that are irrelevant to the Title X program.

(D) Award Plaintiffs their costs and their attorney's fees in bringing this action pursuant to 28 U.S.C. § 2412; and

(E) Grant such other or further relief as this Court may deem just and proper.

July 13, 2026

Respectfully submitted,

/s/ Brigitte Amiri

Brigitte Amiri*
NY Bar # 3017167
Meagan Burrows*
NY Bar # 5341094
Ryan Mendias*
NY Bar # 5742242
Chelsea Tejada*
NY Bar # 5845300
Nora Ellmann*
NY Bar # 6192355
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
T: (212) 549-2500
bamiri@aclu.org
mburrows@aclu.org
rmendias@aclu.org
ctejada@aclu.org
nellmann@aclu.org

Sara Rose
Pa. Bar # 204936

Witold J. Walczak
Pa. Bar # 62976
American Civil Liberties Union of Pennsylvania
P.O. Box 23058
Pittsburgh, PA 15222
T: (412) 681-7736
srose@aclupa.org
vwalczak@aclupa.org

Attorneys for Plaintiffs

Robin Summers*
D.C. Bar # 219473
National Family Planning & Reproductive Health Association
1025 Vermont Ave. NW, Suite 800
Washington, D.C. 20005
T: (202) 293-3114
rsummers@nfprha.org

Attorney for Plaintiff National Family Planning & Reproductive Health Association

**Special admission granted*

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2026, I filed the foregoing First Amended Complaint electronically through the CM/ECF system, which caused all counsel of record to be served by electronic means.

/s/ Brigitte Amiri
Brigitte Amiri

Exhibit 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PLANNED PARENTHOOD FEDERATION OF AMERICA, INC.
123 William Street, 10th Floor
New York, NY 10038

Plaintiff,

v.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
200 Independence Avenue SW
Washington, DC 20201

OFFICE OF THE ASSISTANT SECRETARY FOR HEALTH
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

OFFICE OF POPULATION AFFAIRS
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

ROBERT F. KENNEDY, JR., *in his official capacity as Secretary of Health and Human Services*
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

BRIAN CHRISTINE, *in his official capacity as Assistant Secretary for Health*
Office of the Assistant Secretary for Health
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Civil Action No. 1:26-cv-02656

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

AMY L. MARGOLIS, *in her official capacity as Deputy Director of the Office of Population Affairs*
Office of Population Affairs
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Defendants.

COMPLAINT

Plaintiff Planned Parenthood Federation of America, Inc. ("PPFA"), by and through its attorneys, hereby alleges as follows:

INTRODUCTION

1. PPFA brings this challenge to stop the Department of Health and Human Services ("HHS") from misusing the Title X program for an overtly political and ideological agenda that is at odds with Title X's statutory purpose of funding comprehensive family-planning care for those who cannot afford it. HHS's funding announcement for Title X grants for fiscal year 2027 outlines priorities that require prospective grantees to "align" with political positions such as advocating for fertility tracking while disfavoring contraceptives, counseling patients towards a narrow set of reproductive choices and family structures, and ending support for what the Trump Administration calls "gender ideology," among other things. Absent judicial intervention, these funding priorities severely disadvantage PPFA's members in competing for Title X funding and risk devastating access to family-planning services for low-income patients across the country.

2. Title X of the Public Health Service Act is the only domestic federal program devoted solely to family planning for uninsured, underinsured, and low-income people. Congress enacted Title X in 1970 with broad bipartisan support in response to growing recognition of the effects of unintended childbearing on poverty levels, educational attainment, and adverse maternal

and child health outcomes—and of the fact that newly available contraceptive options like oral contraceptives (i.e., "the pill") were unaffordable for too many Americans. Congress declared that Title X's "purpose" was "making comprehensive voluntary family planning services readily available to all persons desiring such services." Family Planning Services and Population Research Act of 1970, Pub. L. No. 91-572, § 2, 84 Stat. 1504, 1504.

3. Since the program's inception, PPFA members have used Title X funds to fulfill exactly this purpose, providing reproductive and family-planning care to millions of low-income patients.

4. Notwithstanding PPFA members' critical role in providing Title X services, the White House announced that "this year will be the last that Planned Parenthood is funded by [Title X] grants."[1]

5. On July 9, 2026, Defendants issued a notice of funding opportunity for Title X grants to be awarded for fiscal year 2027 that no longer supports the goals of the Title X program. U.S. Dep't of Health & Human Servs., Off. of Population Affs., Notice of Funding Opportunity: Title X Family Planning Services Grants, No. PA-FPH-27-001 (July 9, 2026), attached as Exhibit 1 ("NOFO"). According to the NOFO, in evaluating and awarding Title X grants, Defendants will consider the extent to which applicants "advance" and "align with" a series of political priorities. Those priorities include mandates such as "[r]educing overmedicalization in health care" by promoting natural family-planning methods, contributing to agency efforts to "safeguard life-affirming … program delivery," counseling patients about "marriage prior to childbearing," and "respecting biological reality" (collectively, the "Challenged Priorities"). NOFO at 11-14. The

[1] Mary Margaret Olahan, *Citing Legal Challenges, Trump Admin Extends Biden Era Planned Parenthood Awards Another Year*, Daily Wire (Mar. 31, 2026), https://perma.cc/J25M-SF3T.

Challenged Priorities are each contrary to law and/or arbitrary and capricious. By requiring alignment with these Challenged Priorities in order to be competitive for a Title X grant—including priorities that conflict with Title X regulations—the NOFO places PPFA's members at a competitive disadvantage in the FY 2027 Title X grant cycle. The Challenged Priorities are also so vague that applicants are left to guess at how to demonstrate "alignment" with many of them, both in their proposals and should they be selected as grantees.

6. Compounding the confusion for applicants, in addition to the Challenged Priorities, the NOFO references two other sets of priorities: (1) "HHS priorities"; and (2) priorities of the Office of the Assistant Secretary for Health ("OASH"), *see, e.g.*, NOFO at 7, 40-41, without clear guidance as to *which* of them apply to Title X applicants or how applicants can be expected to align with them. The NOFO therefore further fails to give applicants fair notice of what is required of them either at the application stage or in performing Title X services upon receipt of funding.

7. PPFA members' inability to compete on a fair footing for Title X funding due to the unlawful NOFO provisions, which is likely to result in the denial of Title X funds, would cause serious harm not only to their organizations but also to low-income patients nationally, including loss of necessary services like access to birth control, cancer screenings, and sexually transmitted infection ("STI") testing, ultimately translating to grave health consequences for patients who lose access to care.

8. The NOFO's requirements violate the Administrative Procedure Act (the "APA") several times over and attempt to impose conditions inconsistent with the Spending Clause of the United States Constitution. Accordingly, PPFA, on behalf of its members who intend to apply for grants for the 2027-2031 Title X funding cycle, respectfully requests that the Court set aside the NOFO's requirements that applicants align with the Challenged Priorities as well as with the HHS

and OASH priorities and enjoin Defendants from considering those priorities during the 2027 Title X funding competition and grant cycle.

PARTIES

9. PPFA is a 501(c)(3) not-for-profit corporation organized under the laws of New York. PPFA is a membership organization whose members are 46 separately incorporated 501(c)(3) charitable organizations that provide essential reproductive health care services. PPFA and its members share a mission of ensuring that people can receive high-quality, inclusive, and comprehensive sexual and reproductive health care regardless of income, insurance, gender identity, sexual orientation, or race. PPFA's members have played a central role in fulfilling Title X's mission since the inception of Title X over half a century ago.

10. PPFA does not itself provide health care but instead provides support to its member organizations, which collectively operate approximately 550 health centers across 46 states and the District of Columbia and serve over two million patients each year.

11. Title X provides funding for grantees who either offer direct services to low-income Americans or contract with subgrantees to offer those services, or both. Currently, 32 PPFA members participate in Title X, seven as direct grantees and others as subgrantees. Over 240 health centers operated by PPFA members across 29 states participate in the Title X program.

12. PPFA brings this lawsuit on behalf of its members that intend to apply for the next cycle of Title X funding, including members that are currently direct grantees of Title X. The current direct grantees are Planned Parenthood of Southern New England ("PPSNE"), Planned Parenthood of Northern New England ("PPNNE"), Virginia League for Planned Parenthood ("VLPP"), Planned Parenthood North Central States ("PPNCS"), Planned Parenthood South Atlantic ("PPSAT"), Planned Parenthood of Greater Ohio ("PPGOH"), and Planned Parenthood Association of Utah ("PPAU").

13. The direct grantees and other PPFA members that receive Title X funds as subgrantees provide services such as comprehensive birth-control options, cancer screenings, and testing for STIs. They have spent years developing clinical best practices, building an unparalleled group of health centers dedicated specifically to reproductive health, and establishing a reputation for high-quality, accessible, and nonjudgmental care. PPFA's members routinely offer weekend, after-work hours, and same-day appointments, and other measures to make their services broadly accessible.

14. HHS is an agency under the definition provided in the Administrative Procedure Act. 5 U.S.C. § 551(1). HHS is the agency responsible for implementing Title X.

15. Defendant Robert F. Kennedy, Jr. is the United States Secretary of Health and Human Services. He is sued in his official capacity. Secretary Kennedy is responsible for all operations within HHS, including overseeing the offices within HHS that manage the Title X funding process.

16. OASH is an office within HHS that administers the competitive review of applications for Title X funding.

17. Defendant Brian Christine is the Assistant Secretary for Health and heads OASH. He is sued in his official capacity.

18. The Office of Population Affairs ("OPA") is the office within OASH that administers the Title X program. OPA is the entity that announced the release of the NOFO and administers the Title X application process.

19. Defendant Amy L. Margolis is the Deputy Director of OPA. She is sued in her official capacity.

JURISDICTION AND VENUE

20. The Court has subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1346(a)(2) because PPFA's claims arise under federal law, including the U.S. Constitution and the Administrative Procedure Act, and because Defendants are the United States Secretary of Health and Human Services and two offices within that agency, the Assistant Secretary for Health, and the Deputy Director of OPA, who are all sued in their official capacities. The Court is authorized to issue the relief sought here under the APA, 5 U.S.C. §§ 702, 705, and 706, the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the Court's inherent equitable powers.

21. Venue is proper under 28 U.S.C. § 1391(e) because the individual Defendants, who are sued in their official capacities, reside in Washington, D.C.

FACTUAL ALLEGATIONS

I. TITLE X PROVIDES CONGRESSIONAL FUNDING FOR COMPREHENSIVE AND EFFECTIVE FAMILY-PLANNING CARE

A. Title X's Purpose And Impact

22. Enacted in 1970, the Family Planning Program established by Title X of the Public Health Service Act makes family-planning services available to low-income individuals for free or at low cost. *See* 42 U.S.C. §§ 300 *et seq.*

23. The original impetus for the law arose when the Food and Drug Administration (the "FDA") first approved the oral-contraceptive pill in 1960. The pill was available only with a physician's prescription and often at a high cost. As a result, it was inaccessible to many low-income women. Research conducted at the time established that low-income women often had more children than they wanted because of inequitable access to oral contraceptives, with

significant effects on poverty levels. This led lawmakers to undertake an effort to make all types of family-planning services available more broadly.

24. The result was Title X, which was enacted with broad bipartisan support. The basic purpose of Title X is to fund family-planning services for people unable to afford them. The Senate Report explains that it was intended to help Americans who were "forced to do without, or to rely heavily on the least effective nonmedical techniques for fertility control unless they happen to reside in an area where family planning services are made readily available by public health services or voluntary agencies." S. Rep. No. 91-1004, at 9 (1970). And President Richard Nixon, who later signed the bill, explained that it sought to fulfill the promise that "no American woman should be denied access to family planning assistance because of her economic condition." Richard Nixon, *Special Message to the Congress on Problems of Population Growth* (July 18, 1969), in Public Papers of the Presidents of the United States: Richard M. Nixon 528 (1971).

25. Today, Title X provides grants to fund family-planning services, making them accessible for free or at low cost to patients in almost every state. It funds a broad range of services, including contraceptive methods and services, information, and education; education about natural family-planning methods; infertility services; services to adolescents; testing and referral for STIs and HIV; basic preventive care such as well-woman visits and breast and cervical-cancer screenings; pregnancy testing and counseling; and training for providers and clinic personnel.

26. Many Title X-funded organizations have been providing care for decades—indeed, from the inception of the Title X program in 1971. Several PPFA members are among this group.

27. The Title X program has benefited millions of people. In a single year, Title X providers serve almost three million patients. In 2023, Title X health centers provided contraceptives to 1.9 million people, and Title X funds helped provide 4.6 million STI tests,

including nearly one million confidential HIV tests, as well as over 460,000 Pap tests. Patients who receive this care largely do not have the financial resources to pay for it: More than 60 percent of people receiving preventive care through the Title X program live in poverty, and 83 percent have incomes that are at or below 250 percent of the federal poverty level.[2]

28. Title X's impact on public health has been significant. For instance, as compared to clinics that do not receive Title X funds, Title X-funded clinics "provide[] 52 percent more of the most effective contraceptives"—i.e., long-acting reversible-contraception methods ("LARCs") such as intrauterine devices ("IUDs") and contraceptive implants—"to women at risk for pregnancy."[3] As another example, Title X providers play a critical role in efforts to identify and treat STIs by screening for chlamydia and treating it early to help prevent infertility. Title X sites are more likely than other public non-Title X providers and private providers to follow chlamydia-screening guidelines for testing those most at risk for chlamydia.[4] In addition to STI testing, Title X providers also perform hundreds of thousands of screenings for breast, cervical, and other forms of cancer each year.[5]

---

[2] Phil Killewald et al., Off. of Population Affs., Off. of Assistant Sec'y for Health, U.S. Dep't of Health & Hum. Servs., *Family Planning Annual Report: 2023 National Summary* 9-16 (2024) ("*Family Planning Annual Report*"), https://perma.cc/LR95-JQMJ.

[3] Blair G. Darney et al., *Title X Improved Access To Most Effective And Moderately Effective Contraception In US Safety-Net Clinics, 2016–18*, 41 Health Affs. 497, 497-498, 502 (2022), https://perma.cc/9AKH-3K2D.

[4] Joan M. Chow et al., *Comparison of Adherence to Chlamydia Screening Guidelines Among Title X Providers and Non-Title X Providers in the California Family Planning, Access, Care, and Treatment Program*, 21 J. Women's Health 837 (2012), https://perma.cc/PF74-4W7Z; Daniel Teixeira da Silva et al., *Chlamydia Trachomatis/Neisseria Gonorrhea Retesting Among Adolescents and Young Adults in a Primary Care Network*, 71 J. Adolescent Health 545 (2022), https://perma.cc/L3WV-BC53 (finding significantly greater guideline-recommended retesting rates at Title X clinics compared to non-Title X clinics).

[5] *Family Planning Annual Report*, *supra* note 2, at 16.

29. Title X's role is particularly important because Title X projects provide services to many people who otherwise would be unlikely to receive the relevant care. According to survey data, 60 percent of people who received Title X services reported that a Title X clinic was their only source of health care in the previous year.[6] Because healthy women of child-bearing age may not otherwise seek out care, Title X health centers facilitate a crucial "touch" with medical personnel that might otherwise not have happened (and create the potential for referrals for other health care).

30. The Title X program's impact is particularly significant in rural areas and for communities of color. In rural areas, Title X health centers are often the only providers of reproductive and family-planning care for low-income individuals. In many communities, a Title X-backed health center is the only comprehensive family-planning option for people without the means to seek other care.[7] And of the 2.8 million patients served by Title X health centers in 2023, almost half were people of color.[8]

B. Title X's Statutory And Regulatory Scheme

31. Under the Title X statute, "[t]he Secretary is authorized 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 (including natural family planning methods, infertility services, and services for adolescents)." 42 U.S.C. § 300(a).

---

[6] *Features and Benefits of the Title X Program*, Guttmacher Inst. (Feb. 2025), https://perma.cc/Z7PN-PX96.
[7] *What Are Title X Family Planning Clinics?*, Off. of Population Affs., U.S. Dep't of Health & Hum. Servs. (July 2024), https://perma.cc/5QL7-7P3V.
[8] *Family Planning Annual Report*, *supra* note 2, at 13-14.

32. As this statutory language reflects, the program's fundamental mission is to make "comprehensive voluntary family planning services readily available to all persons desiring such services." Pub. L. No. 91-572, § 2, 84 Stat. 1504, 1504 (1970).

33. The Title X statute enumerates four factors that HHS "shall take into account" in making grants: (1) "the number of patients to be served" by the applicant; (2) "the extent to which family planning services are needed locally"; (3) "the relative need of the applicant"; and (4) the applicant's "capacity to make rapid and effective use of such assistance." 42 U.S.C. § 300(b).

34. The regulations for the Title X program provide additional program requirements. They specify the criteria the Agency must "tak[e] into account" in deciding which family-planning projects to fund, which includes all of the criteria mandated by statute. *See* 42 C.F.R. § 59.7(a). The regulations further direct the Secretary to take into account "[t]he ability of the applicant to advance health equity" in assessing Title X grant applications. *Id.* § 59.7(a)(3). The regulations define "health equity" as a state of affairs "when all persons have the opportunity to attain their full health potential and no one is disadvantaged from achieving this potential because of social position or other socially determined circumstances." *Id.* § 59.2. The regulations further define "[q]uality healthcare" as health care that is not only safe and effective but also "equitable." *Id.*

35. The regulations also mandate that Title X projects "must" "[p]rovide services in a manner that is client-centered, culturally and linguistically appropriate, inclusive, and trauma-informed." 42 C.F.R. § 59.5(a)(3). "Culturally and linguistically appropriate services" are defined to include health care that is "respectful of and responsive to the health beliefs, practices and needs of diverse patients." 42 C.F.R. § 59.2. "[C]lient-centered care" is defined as care that "is respectful of, and responsive to, individual client preferences, needs, and values; client values guide all clinical decisions." *Id.*

36. The term "[i]nclusive" is defined to mean that "all people are fully included and can actively participate in and benefit from family planning, including, but not limited to, individuals who belong to underserved communities." 42 C.F.R. § 59.2. The regulations specify that "transgender … persons" must be able to receive Title X services. *Id.*

37. The regulations also require projects to provide services in a non-discriminatory manner and incorporate explicit protections from discrimination on the basis of "gender identity" and "sex characteristics," among other traits. 42 C.F.R. § 59.5(a)(4).

38. Elaborating on the objectives of equity and non-discrimination in Title X programs, OPA's Title X Handbook—guidance intended to "help recipients and subrecipients be successful as they implement their Title X projects"—instructs as follows: "Advancing equity for all, including people from low-income families, people of color, and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, is a priority for HHS, OPA, and Title X." OASH, *Title X Program Handbook* 12 (Dec. 2024), https://perma.cc/CYX6-3Z2F.

39. Title X regulations elaborate that "voluntary family planning projects … shall consist of the educational, comprehensive medical, and social services necessary to aid individuals to determine freely the number and spacing of their children." 42 C.F.R. § 59.1. The regulations provide that family-planning services "include a broad range of medically approved services, which includes [FDA-approved] contraceptive products and natural family planning methods, for clients who want to prevent pregnancy and space births, pregnancy testing and counseling, assistance to achieve pregnancy, basic infertility services, sexually transmitted infection (STI) services, and other preconception health services." *Id.* §§ 59.2, 59.5(a)(1); *see also id.* § 59.5(b)(1) (each project must provide "for medical services related to family planning (including …

contraceptive supplies) … and provide for the effective usage of contraceptive devices and practices").

40. Although the Title X statute prohibits using Title X funds "in programs where abortion is a method of family planning," 42 U.S.C. § 300a-6, since 1996 Congress has mandated in annual Title X appropriations riders that all pregnancy counseling be "nondirective," *see, e.g.*, Department of Health and Human Services Appropriations Act, 2019, Pub. L. No. 115-245, 132 Stat. 2981, 3070–3071 (2018); Department of Health and Human Services Appropriations Act, 1996, Pub. L. No. 104-134, 110 Stat. 1321–221 (1996). Nondirective counseling focuses on a patient's preferences and desires, ensures a patient has support to make informed choices concerning their options, and does not guide or instruct a patient towards any particular option. *See* Romer et al., *Providing Quality Family Planning Services in the United States: Recommendations of the U.S. Office of Population Affairs (Revised 2024)*, 67 Am. J. Prevention Med. S41, S79 (2024), https://perma.cc/KF7M-7PGC ("2024 QFP").

41. The regulations further specify that projects must "[o]ffer pregnant clients the opportunity to be provided information and counseling regarding … [p]renatal care and delivery"; "[i]nfant care, foster care, or adoption"; and "[p]regnancy termination." 42 C.F.R. § 59.5(a)(5)(i)(A)-(C). In response to a patient's request, a Title X-funded provider must "provide neutral, factual information and nondirective counseling on each of the options, and, referral upon request, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling." *Id.* § 59.5(a)(5)(ii).

42. All Title X program participants must offer services "consistent with nationally recognized standards of care." 42 C.F.R. § 59.5(a)(3). Since 2014, Title X projects have been required to adhere to the Office of Population Affairs' Quality Family Planning ("QFP")

publication. *See Title X Program Handbook* at 10. The OPA recognizes that the QFP is "a nationally recognized standard of care when implementing the Title X requirements." *See* Off. of Population Affs., OPA Program Policy Notice 2024-02, https://perma.cc/8X5B-W7YJ (last accessed July 28, 2026).

43. The 2014 QFP "support[s] offering a full range of Food and Drug Administration (FDA)-approved contraceptive methods as well as counseling that highlights the effectiveness of contraceptive methods" so that "clients can make a selection based on their individual needs and preferences." CDC, *Providing Quality Family Planning Services Recommendations of CDC and the U.S. Office of Population Affairs* 2 (Apr. 25, 2014), https://perma.cc/DU99-FC5S ("2014 QFP").

44. The 2014 QFP encourages projects to take "a client-centered approach" to providing care, defining "client-centered" care as that which "is respectful of, and responsive to, individual client preferences, needs, and values; client values guide all clinical decisions." 2014 QFP 4 (quoting 42 C.F.R. § 59.2). A "client-centered approach" "highlight[s] that the client's primary purpose for visiting the service site must be respected," "encourag[es] the availability of a broad range of contraceptive methods so that clients can make a selection based on their individual needs and preferences," and "reinforc[es] the need to deliver services in a culturally competent manner so as to meet the needs of all clients, including … those who are lesbian, gay, bisexual, transgender, or questioning their sexual identity (LGBTQ)." *Id.* at 2. The 2014 QFP states that projects should provide "[e]quitable," "[e]vidence-based," and "quality" care that is "consistent with current professional knowledge" and "does not vary in quality because of the personal characteristics of clients." *Id.* at 4.

45. The 2014 QFP was updated in 2024. *See* 2024 QFP.

C. The Title X Grantmaking Process

46. Title X makes clear that "public or nonprofit private entities" are eligible to receive grants. 42 U.S.C. § 300(a). Implementing regulations reaffirm that "[a]ny public or nonprofit private entity in a State may apply." 42 C.F.R. § 59.3.

47. Since at least 1990, HHS has issued notices of funding opportunities, or NOFOs, inviting applications for Title X funds. A NOFO typically outlines the funds available, describes the requirements for applications, and provides an overview of how applications will be evaluated.

48. HHS typically releases a NOFO months before the application deadline. It takes a significant amount of time for applicants to prepare the requisite in-depth application.

49. Applicants are required to propose a project to be funded. An applicant must apply on its own but may include other entities in its project as grant subrecipients. Once funded, a project is carried out at health centers or service sites run either by the grant recipient or its subrecipients.

50. An application for a Title X award defines the scope of the proposed Title X project, including the family-planning services to be provided and whether the grantee intends to make any subgrants. In the "Project Narrative" portion of the application, applicants typically make representations about how they will provide services. HHS has described the Project Narrative as "the most important part" of the application and stated that the applicant's "work plan should reflect, and be consistent with, the Project Narrative … and must cover all years of the period of performance." NOFO at 19, 23.

51. Funding is typically awarded in multi-year cycles, with funds disbursed annually upon review of additional documentation (called noncompeting continuation-grant applications). These annual submissions include a project narrative, work plan, proposed budget, and budget justification for the following year.

52. The current set of five-year grants is set to end in March 2027.

II. THE FY 2027 NOFO

53. On April 3, 2026, HHS issued notices of award to current Title X grantees for the last year of funding in the current cycle of five-year grants, including to the seven direct PPFA member-grantees. In response to anti-abortion advocates' negative reactions to this funding, a White House spokesperson announced that "this year will be the last that Planned Parenthood is funded by [Title X] grants."[9]

54. In April 2026, OPA issued a Notice of Funding Opportunity for the Title X program for fiscal year 2027, calling for applications for five-year grants to begin in the Spring of 2027. On July 9, 2026, OPA released a revised Notice of Funding Opportunity.

55. The NOFO specifies January 11, 2027 as the deadline for applications and states that a Technical Assistance Webinar will take place on November 9, 2026.

56. The NOFO outlines the requirements for applications and Defendants' process for evaluating applications and making decisions on grant issuance. A central feature of the application and evaluation process is so-called "alignment" with new political priorities. *See, e.g.*, NOFO at 7. The NOFO lists eight priorities specific to the Title X program set forth by OPA that both influence grant selection and apply as conditions for selected grantees. In addition, the NOFO at various points refers generally to alignment with HHS and OASH priorities.

57. The NOFO describes each OPA priority at a high level and, for some, provides a list of requirements or expectations for Title X participants relevant to that priority.

58. There are no "HHS priorities" set forth anywhere in the NOFO (directly or via a URL). The agency's website lists several priorities, some of which appear entirely unrelated to

[9] Olahan, *supra* note 1.

the types of services funded by Title X. *See* U.S. Dep't of Health & Human Servs., *HHS Priorities*, https://perma.cc/6YLA-FZAY (last accessed July 28, 2026) ("*HHS Priorities Statement*"). For example, the HHS priorities include "[f]urther[ing] our understanding of autism," "[a]dvanc[ing] the scientific understanding of the aging process," and "[t]oxins." *Id.* The HHS priorities also include aims such as "[a]ddress[ing] the chronic disease epidemic," "[e]mpower[ing] patients to make informed decisions about health care," "[f]oster[ing] marriage and family formation," "[e]nd[ing] illegal race discrimination," "and [c]ombat[ting] gender ideology and protect[ing] children." *Id.* The NOFO does not specify which of the HHS priorities the agency considers relevant to applications for Title X grants.

59. As with HHS priorities, the NOFO does not set out the OASH priorities that should apply. *See* NOFO at 7, 14. OASH's priorities, along with a brief description, are listed on the OASH website. *See* Office of the Assistant Secretary for Health, *Priorities of Office of the Assistant Secretary for Health*, https://perma.cc/3UZS-FUNY (last accessed July 28, 2026) ("*OASH Priorities Statement*"). The OASH priorities include goals such as "[a]ddressing the chronic disease epidemic," "[e]nding diversity, equity, and inclusion (DEI) policies and practices across OASH's programs," "[e]nding support for gender ideology," and "[e]nsuring adolescent program materials are age-appropriate." *Id.*

60. According to the NOFO, eligible applications will be assessed by federal staff in two steps: (1) an independent merit review panel (the "merit review") and (2) a "Federal Staff Review." NOFO at 41.

A. Merit Review

61. The merit review consists of an "independent merit review panel," made up of experts from academic institutions, non-profit organizations, state and local government, and federal government agencies, that "evaluate[s] applications that are qualified and eligible." NOFO

at 37. The panel assesses applications according to various criteria, each of which is assigned a point value. *Id.* at 39-40.

62. One of the criteria, worth 35 out of 100 points—the largest category by point value—is "[t]he extent to which the applicant proposes strategies that meaningfully advance" (1) the eight OPA priorities set out in the NOFO and (2) "HHS priorities." NOFO at 40. This criterion is presented without further guidance on, or examples of, what it means for initiatives or programs to "meaningfully advance" HHS priorities. NOFO at 40. This stage of review does not appear to include the OASH priorities.

63. Applicants can only earn up to a maximum of 15 points—fewer than half of the prior category—for "[t]he degree to which the project plan adequately provides for the requirements set forth in the Title X statute, regulations (42 C.F.R. part 59, subpart A), and legislative mandates."

64. The NOFO states that grantees "should align their programs" with the priorities "to the extent authorized by law and within the scope of the program" and that they are expected to "develop and implement plans" and "provide evidence of the project's capacity" to address the priorities. NOFO at 10.

B. Federal Staff Review

65. In addition to the merits review, the NOFO states that OPA will coordinate with a senior political appointee to conduct a "Federal Staff Review." NOFO at 41. The Federal Staff Review consists of an unnamed "[f]ederal staff" member, also referred to as a "senior appointee," "review[ing] each application for technical (programmatic), budgetary, and grants management compliance." *Id.* The senior appointee will then provide a recommendation for funding to the Grants Management Officer. *Id.* In making this recommendation, the NOFO requires the senior

appointee to "take into consideration" "[a]lignment with HHS and OASH priorities, where authorized by law and within the scope of the program." *Id.*

C. Conditions On Successful Applicants

66. The NOFO also purports to impose requirements on successful applicants who become grantees.

67. In a section entitled "Required Alignment with OASH Mission and Agency Priorities," the NOFO states that grantees "must align program design and activities with agency priorities where consistent with program authority and the scope of the award … and when authorized by law according to the Title X statute, regulations, legislative mandates, and additional program guidance." NOFO at 7. It further states that "[f]unded activities must advance and support OASH's mission to improve the health and well-being of Americans." *Id.*

68. Despite most references in this section referring to the requirement to "align" with agency priorities, the NOFO also states that grantees "must demonstrate ongoing compliance with these priorities, in all programs that are authorized to advance them, through program design, implementation, reporting, and evaluation." NOFO at 7.

69. Failure to continually align with agency priorities, as assessed by the agency, comes with significant consequences. "Failure to meaningfully align funded activities with the applicable requirements may result in corrective action." *Id.*

70. In addition to alignment with OASH priorities, the NOFO also mandates that grantees maintain alignment with OPA priorities, though the NOFO contains contradictory provisions discussing which OPA priorities apply to grantees. First, the NOFO mentions alignment with only three of the OPA priorities. NOFO at 7. It then mandates that grantees must align with ***all*** of the OPA priorities: "Title X grantees should align their programs with OPA priorities" and "develop and implement plans to address the program priorities." NOFO at 10.

71. Elaborating on standards applicable to grantees, the NOFO further states that "OPA's program priorities for recipients funded under this NOFO are in part informed by the Office of the Assistant Secretary for Health's Statement of Priorities." NOFO at 10. But the NOFO never makes clear which OASH priorities inform which OPA priorities or to what extent OPA priorities are informed by OASH's priorities.

72. The NOFO represents the consummation of the agency's decision-making process as to the process and criteria for evaluating applications and awarding grants and eventual grantees' obligations to align with agency priorities in implementing their grants. Nothing in the NOFO indicates that it is temporary or subject to revision. Moreover, the NOFO gives rise to direct and appreciable legal consequences for Title X grant applicants.

III. DEFENDANTS' EVALUATION AND PURPORTED CONDITIONS FOR FY 2027 TITLE X GRANTS ARE UNLAWFUL

B. Defendants Require Alignment With The Challenged Priorities, Which Are Arbitrary, Vague, And Contrary To Law

73. The Challenged Priorities are arbitrary, contrary to law, in excess of agency authority, and place unconstitutional conditions on Title X funds. The agency's mandate to seek "[a]lignment" with the Challenged Priorities is unlawful.

i. The Anti-Contraception Priorities

74. The NOFO requires applicants (and, eventually, recipients) to advance two priorities that deviate from Title X's core purpose and mandate. The first is "[r]educing overmedicalization in health care and increasing focus on optimal health and addressing underlying root causes." This priority includes the NOFO's only mention of contraception, and it is a disfavorable one. NOFO at 11. It states that "OPA recognizes the overreliance on pharmaceutical and surgical treatments," that there has been "a decrease in females' current use of any contraception," and that "the most common reason women reported discontinuing use related

to dissatisfaction was side effects." *Id.* In contrast, the NOFO speaks favorably about "noninvasive, evidence-based practices that promote health literacy, fertility awareness, and reproductive health without unnecessary medicalization or symptom suppression" and directs applicants to show "how their Title X projects will integrate" these practices. NOFO at 12. It states that a "key strateg[y] for advancing optimal health through Title X services" is "expanding access to fertility-awareness-based methods (often referred to as natural family planning)." NOFO at 12.

75. A second, partly overlapping OPA program priority is titled, "[p]romoting body and health literacy through the delivery of Title X services" (together with the overmedicalization priority, the "Anti-Contraception Priorities"). In describing the second priority, the NOFO states that "gaps in biological understanding contribute to delayed diagnosis of health conditions and to the nation's growing infertility crisis," and that, in response, applicants "will be required to incorporate foundational body and health literacy into reproductive health counseling," including "education on menstrual cycle physiology, hormonal health, male and female fertility awareness, and early indicators of reproductive disorders …." NOFO at 12. The goal of this counseling is to "equip individuals to recognize when symptoms such as pain, irregular cycles, hormonal disruption, or changes in sexual health warrant further medical evaluation rather than symptom suppression." *Id.* Together, these two priorities require applicants to show alignment with Defendants' preference for natural family-planning methods over contraceptives, whether for pregnancy prevention or other medical reasons. The language of the NOFO incorporates "restorative reproductive medicine" principles—a priority of the "Make America Healthy Again" movement.

76. A prospective grantee's meaningful advancement of the Anti-Contraception Priorities, along with other OPA and unspecified HHS priorities, is worth 35 of 100 points in the merit review process, while the extent to which the prospective grantee "adequately provides for" statutory and regulatory requirements is worth only 15 points. *See* NOFO at 39-40.

77. The Anti-Contraception Priorities conflict with agency regulations and agency guidance because they require applicants and grantees to prioritize certain types of family planning over others.

78. *First*, the Anti-Contraception Priorities conflict with Title X's implementing regulations, which require that projects "[p]rovide a broad range of acceptable and effective medically approved family planning methods … and services." 42 C.F.R. § 59.5(a)(1).

79. The regulations likewise require that projects "[p]rovide services without subjecting individuals to any coercion to accept services or to employ or not to employ any particular methods of family planning." *Id.* § 59.5(a)(2). The Anti-Contraception Priorities discourage Title X applicants and grantees from offering a "broad range" of family-planning methods and from providing services without coercion because they require prioritizing certain types of family planning over others.

80. These implementing regulations were promulgated through notice-and-comment rulemaking. The NOFO's requirement that applicants align instead with the Anti-Contraception Priorities was not.

81. The NOFO does not address HHS's regulations requiring that projects provide a broad range of acceptable and medically approved family-planning methods in requiring advancement of and alignment with the Anti-Contraception Priorities. Nor does the NOFO explain

how applicants or grantees should reconcile the inconsistency between the Priorities and program requirements.

82. *Second*, the Anti-Contraception Priorities conflict with agency guidance. The 2024 QFP, articulating the national standard of care required under 42 C.F.R. § 59.5(a)(3), states that Title X providers should "not prioritize one method [of contraception] over the other," 2024 QFP at S55, and clarifies that "[p]erson-centered contraceptive care focuses on providing contraception services in alignment with each individual's values, preferences, needs, and desires," *id.* at S54. The 2024 QFP also states that Title X "[p]roviders should also support people interested in using birth control methods for reasons other than contraception." *Id.* at S55. This can include gynecological or endocrine issues like heavy or painful periods, PCOS, endometriosis, PMDD, and acne. *Id.* These are exceedingly common uses of birth control methods.

83. The NOFO does not address the 2024 QFP, which directs Title X providers not to prioritize one method of contraception over another and the QFP's instruction that patients should be supported in using contraceptives for reasons other than preventing pregnancy. The NOFO also does not explain how applicants or grantees should reconcile the inconsistency between the Anti-Contraception Priorities and the 2024 QFP.

84. Defendants have not acknowledged, addressed the consequences of, or otherwise provided a rational explanation for the change in policy represented by the requirement that prospective grantees advance and align with the Anti-Contraception Priorities.

85. The Anti-Contraception Priorities are also vague in that they do not specify what actions are sufficient to constitute "alignment" with those priorities.

86. The NOFO also requires alignment with the Anti-Contraception Priority once grantees receive funding. Because the NOFO fails to describe the actions required in order to align

with these priorities, Defendants have not provided prospective grantees, including PPFA's members, with fair and advance notice of what the condition requires.

ii. The Marriage & Parenthood Counseling Priority

87. The NOFO requires applicants (and, eventually, recipients) to advance and administer their projects in accordance with OPA's priority of "[a]dvancing reproductive goals counseling." NOFO at 12. As part of this priority, the NOFO states that grantees will be expected to "offer reproductive goals counseling that presents evidence-informed pathways associated with improved economic stability and family stability, including completion of education, participation in the workforce, and marriage prior to childbearing" (the "Marriage & Parenthood Counseling Priority"). *Id.* at 13. It specifies that "[p]rogram counseling should affirm marriage and parenthood as meaningful and valued components of adult life." *Id.* The description of this priority further states that "[a]s part of these efforts to support family planning, Title X clinics are expected to provide services that support individuals and families seeking to have children," *id.*, but does not mention provision of services to individuals and families who are not seeking to have children. In describing the Marriage & Parenthood Counseling Priority, the NOFO suggests that "[r]esearch demonstrates that individuals who follow" Defendants' preferred sequencing of life milestones "experience substantially lower risks of poverty across socioeconomic groups," without citing any such research. NOFO at 13.

88. A prospective grantee's meaningful advancement of the Marriage & Parenthood Counseling Priority, along with other OPA and unspecified HHS priorities, is worth 35 of 100 points in the merit review process, while the extent to which the prospective grantee adequately provides for statutory and regulatory requirements is worth only 15 points.

89. The Marriage & Parenthood Counseling Priority conflicts with agency regulations and agency guidance because they require applicants and grantees to counsel patients in a way that discriminates against certain reproductive choices and family structures.

90. *First*, the Marriage & Parenthood Counseling Priority conflicts with Title X's implementing regulations, which require that Title X projects provide services that are "client-centered," "inclusive," 42 C.F.R. § 59.5(a)(3), "in a manner that does not discriminate against any client based on … marital status," *id.* § 59.5(a)(4), and "without subjecting individuals to any coercion to accept services or to employ or not to employ any particular methods of family planning," *id.* § 59.5(a)(2). The regulations also provide that, when counseling pregnant patients, organizations must "offer pregnant clients the opportunity to be provided information and counseling regarding" "(A) [p]renatal care and delivery; (B) [i]nfant care, foster care, or adoption; and (C) [p]regnancy termination" and, upon request, must "provide neutral, factual information and nondirective counseling on each of the options, and, referral upon request, except with respect to any option(s) about which the pregnant client indicates they do not wish to receive such information and counseling." 42 C.F.R. § 59.5(a)(5).

91. These regulations make clear that Title X projects may not provide services in a way that discriminates against individuals who are not married, including by suggesting that they should be married or pressuring them to pursue marriage. They also mandate that Title X projects cannot emphasize parenthood over pregnant patients' other options. The Marriage & Parenthood Counseling Priority contravenes both of these regulatory requirements.

92. The Title X regulations regarding the provision of services to people regardless of marital status and the provision of neutral, factual information regarding options concerning

pregnancy were promulgated through notice-and-comment rulemaking. The NOFO's requirement that applicants align instead with the Marriage & Parenthood Counseling Priority was not.

93. The NOFO does not address HHS regulations mandating that Title X projects provide services without discriminating against any client based on marital status and that pregnancy counseling be nondirective. Nor does the NOFO explain how applicants or grantees should reconcile the inconsistency between the Marriage & Parenthood Counseling Priority and regulatory requirements.

94. *Second*, the NOFO conflicts with agency guidance. The 2024 QFP, articulating the national standard of care required under 42 C.F.R. § 59.5(a)(3), states: "Patients should be fully informed about all pregnancy options: parenting, adoption, and abortion." 2024 QFP at S68. It further directs Title X providers to "offer nondirective counseling and be equipped to offer factual, neutral, nonjudgmental information about each option." *Id.* at S69. The 2024 QFP also states that Title X providers should screen for reproductive desires because doing so "enables providers to offer appropriate services for those patients who are seeking to avoid pregnancy as well as for those who are open to or seeking pregnancy and those interested in other mechanisms to build their families." *Id.* at S53. It recognizes that people hold "nuanced, fluctuating, and sometimes contradictory thoughts and feelings … regarding future pregnancy." *Id.* at S54.

95. The NOFO also ignores research showing that alignment with this priority would not lead to improved health outcomes. The NOFO does not reference or cite, for example, studies suggesting that marriage earlier in life is associated with substantially higher likelihood of later-life poverty and, relative to marriage in one's late twenties or early thirties, a higher risk of divorce,

or that delaying childbearing yields measurable gains in women's earnings and career advancement.[10]

96. The NOFO does not address the 2024 QFP, which requires Title X providers to offer nonjudgmental information about all pregnancy options and to offer appropriate services for those people seeking to avoid pregnancy as well as for those people seeking pregnancy, or other current research demonstrating that early marriage can be associated with worse outcomes. The NOFO also does not explain how applicants or grantees should reconcile the inconsistency between the Marriage & Parenthood Counseling Priority and the 2024 QFP.

97. Defendants have not acknowledged, addressed the consequences of, or otherwise provided a rational explanation for the change in policy represented by the requirement that prospective grantees advance and align with the Marriage & Parenthood Counseling Priority.

98. The Marriage & Parenthood Counseling Priority is also vague in that it does not specify what is sufficient to "align" with it. It is unclear what it would mean to "affirm marriage and parenthood as meaningful and valued components of adult life" in the context of providing medical care. The NOFO does not specify how applicants (and, eventually, grantees) would be expected to address this requirement.

99. The NOFO also requires alignment with the Marriage & Parenthood Counseling Priority once grantees receive funding. Because the NOFO fails to describe the actions required in order to align with the priority, Defendants have not provided prospective grantees, including PPFA's members, with fair and advance notice of what the condition requires.

[10] Gordon B. Dahl, *Early Teen Marriage and Future Poverty*, 47 Demography 689 (2010), https://perma.cc/T689-BPT8; Amalia R. Miller, *The Effects of Motherhood Timing on Career Path*, 24 J. Population Econ. 1071 (2011), https://www.jstor.org/stable/41488341.

iii. The "Life Affirming Program Delivery" Priority

100. The NOFO requires applicants (and, eventually, recipients) to advance and align their projects with OPA's priority of "[e]nforcing the Hyde Amendment through the delivery of Title X services." NOFO at 14. This priority includes references to existing restrictions on the use of federal funds to pay for abortions, and also states that applicants are expected to "contribute to broader HHS efforts to safeguard life-affirming, lawful, and ethical program delivery" (the "'Life Affirming Program Delivery' Priority").

101. A prospective grantee's meaningful advancement of the "Life Affirming Program Delivery" Priority, along with other OPA and unspecified HHS priorities, is worth 35 of 100 points in the merit review process, while the extent to which the prospective grantee adequately provides for statutory and regulatory requirements is worth 15.

102. The "Life Affirming Program Delivery" Priority is vague in that the NOFO does not specify what is sufficient to "align" with it. The NOFO fails to define what it would mean for an applicant or grantee to "safeguard life-affirming" care. The NOFO does not specify how applicants (and, eventually, grantees) would be expected to address this requirement in the way they treat patients or some other aspect(s) of their work.

103. The NOFO also requires alignment with the "Life Affirming Program Delivery" Priority once grantees receive funding. Because the NOFO fails to describe the actions required in order to align with this priority, Defendants have not provided prospective grantees, including PPFA's members, with fair and advance notice of what the condition requires.

104. The NOFO also does not address HHS's regulations requiring that the project provide nondirective counseling to pregnant clients and referrals for abortion care upon request, 42 C.F.R. § 59.5(a)(5)(i), (ii); *see also* Consolidated Appropriations Act, 2026, Pub. L. No. 119-

75, 140 Stat. 173, 262 (2026), in requiring advancement of and alignment with the "Life Affirming Program Delivery" Priority. Neither does the NOFO explain how applicants or grantees should reconcile any inconsistency between that Priority and the Title X implementing regulations requiring that care be nondirective and requiring that Title X projects provide referrals for abortion care where requested.

105. The NOFO does not address the 2024 QFP, which directs Title X providers to offer patients nonjudgmental, neutral, and factual information about all pregnancy options and to refer patients for additional health care needs, including abortion. 2024 QFP at S68. The NOFO also does not explain how applicants or grantees should reconcile any inconsistency between the "Life Affirming Program Delivery" Priority and the standard of care under 42 C.F.R. § 59.5(a)(3), as stated in the 2024 QFP.

106. Defendants have not acknowledged, addressed the consequences of, or otherwise provided a rational explanation for any change in policy represented by the requirement that prospective grantees advance and align with the "Life Affirming Program Delivery" Priority.

iv. The "Biological Reality" Priority

107. The NOFO requires applicants (and, eventually, recipients) to advance and align their projects with the OPA priority of "[p]romoting evidence-based care," which, according to the NOFO, includes a mandate that applicants "protect[] children" and "respect[] biological reality." NOFO at 13. It also provides that a "[k]ey strategy for this priority" is "providing developmentally appropriate counseling rooted in ***biological science***." *Id.* (emphasis added). This priority (the "'Biological Reality' Priority") targets transgender patients and the health care provided to them. The overlapping HHS and OASH priorities use the same phrases to refer to the denial of gender identity. *See HHS Priorities Statement* (defining "biological reality" as the concept that "a

person's sex as either male or female is unchangeable and determined by objective biology"); *OASH Priorities Statement* ("It is also an OASH priority to ensure OASH programs accurately reflect science, including the biological reality that a person's sex, as either male or female, is unchangeable and determined by objective biology.").

108. A prospective grantee's so-called "meaningful[] advance[ment]" of the "Biological Reality" Priority, along with other OPA and unspecified HHS priorities, is worth 35 of 100 points in the merit review process, while the extent to which the prospective grantee adequately provides for statutory and regulatory requirements is worth only 15 points.

109. The "Biological Reality" Priority diverges from Title X's statutory purpose, HHS regulations, and HHS guidance.

110. *First*, the "Biological Reality" Priority conflicts with Title X regulations, which expressly require that projects "[p]rovide services in a manner that does not discriminate against any client based on … sex, … gender identity, [or] sex characteristics." 42 C.F.R. § 59.5(a)(4). Title X's implementing regulations also require that projects provide services in a manner that is "client-centered," "inclusive," and "protects the dignity of the individual." 42 C.F.R. § 59.5(a)(3). The regulations define "inclusive" as a state of affairs where "all people are fully included and can actively participate in and benefit from family planning, including, but not limited to, … lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons." *Id.* § 59.2.

111. Title X regulations also require that grantees "ensure[] equitable and quality service delivery consistent with nationally recognized standards of care"—and that they do not "discriminate against any client based on … sex, sexual orientation, gender identity, [or] sex characteristics." 42 C.F.R. § 59.5(a)(3)-(4).

112. These existing regulations were promulgated through notice-and-comment rulemaking. The NOFO's requirement that applicants align with the "Biological Reality" Priority was not.

113. In requiring advancement of and alignment with the "Biological Reality" Priority, the NOFO does not address these HHS regulations. Nor does the NOFO explain how applicants or grantees should reconcile the inconsistency between the "Biological Reality" Priority and regulatory requirements.

114. *Second*, the NOFO's "Biological Reality" Priority conflicts with HHS guidance. The 2024 QFP, articulating the national standard of care required under 42 C.F.R. § 59.5(a)(3), states: "Providers should support the sexual and reproductive health care needs of all people regardless of their gender identity." 2024 QFP at S72. The 2024 QFP also emphasizes the use of "gender-inclusive language," *id.* at S43-S44, and directs Title X providers to "ask patients about their sex assigned at birth, current anatomy, preferred name, gender identity, and pronouns," *id.* at S48. It also instructs Title X providers to "take steps to educate themselves and their medical teams about appropriate language and the health care needs of transgender patients." *Id.* at S72.

115. In addition, the "Biological Reality" Priority fails to consider the impact of incentivizing providers of family-planning services to deny patients' gender identity, which goes against current medical guidance. Professional bodies have explained that a physician's nonjudgmental recognition of a patient's gender identity "enhances the ability to render optimal patient care."[11] And research shows that access to affirming, nondiscriminatory care is associated with materially better health outcomes—including significantly reduced rates of depression,

[11] Am. Med. Ass'n, *Health Care Needs of Lesbian, Gay, Bisexual, Transgender and Queer Populations*, Policy H-160.991, https://perma.cc/49TS-CGCE (last modified 2025).

anxiety, and suicidality—while stigmatizing or discriminatory treatment is associated with worse outcomes.[12]

116. The NOFO does not address its inconsistency with the 2024 QFP and other medical guidance, which requires Title X providers to administer gender inclusive care. Nor does the NOFO explain how applicants or grantees should reconcile the inconsistency between the "Biological Reality" Priority and agency guidance.

117. Defendants have not acknowledged, addressed the consequences of, or otherwise provided a rational explanation for the change in policy represented by the requirement that prospective grantees advance and align with the "Biological Reality" Priority. This priority bears no relation to Title X's statutory purpose of funding voluntary and comprehensive family-planning care and is instead based on HHS's current political and ideological preferences.

118. The "Biological Reality" Priority is also vague in that it never specifies what is sufficient for grantees to "align" with it. It is unclear how a project can "align" with a priority to "reflect biological reality" in satisfaction of the requirement to advance and align with the "Biological Reality" Priority. The NOFO does not specify how applicants would be expected to address this priority in the way they treat patients, their staffing, and/or some other aspect(s) of their work.

119. The NOFO also requires alignment with the "Biological Reality" Priority once grantees receive funding. Because the NOFO fails to describe the actions required in order to align

[12] Diana M. Tordoff et al., *Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care*, 5 JAMA Network Open 1 (2022), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2789423; Am. Med. Ass'n, *Advocating for the LGBTQ Community*, https://www.ama-assn.org/public-health/population-health/advocating-lgbtq-community (last accessed July 28, 2026).

with the priority, Defendants have not provided prospective grantees, including PPFA's members, with fair and advance notice of what the condition requires.

C. Defendants Also Require Alignment With Additional, Unspecified Priorities During The Review Process, Which Is Arbitrary, Contrary To Law, And Exceeds Agency Authority

120. As described above, the NOFO's merit review includes an assessment of whether applicants "meaningfully advance" certain unspecified HHS priorities. NOFO at 40; *see also supra* ¶ 62.

121. In addition to a merits review, the Federal Staff Review includes "consideration [of] … additional factors," including "[a]lignment with HHS and OASH priorities, where authorized by law and within the scope of the program," NOFO at 41, thereby making alignment with both the HHS and OASH priorities part of the review process. Neither set of priorities is identified or described in the NOFO.

122. The websites that presently list HHS and OASH priorities are subject to change at any point, without notice to potential applicants or Title X grantees.

123. The HHS and OASH priorities are also vague and unclear, both as to whether they apply and also as to what they would require if they did apply.

124. Many of the OASH and HHS priorities appear clearly inapplicable to Title X.

125. As of the date of this Complaint, there are 24 HHS priorities listed on HHS's Website. Some of those priorities, such as "[f]oster marriage and family formation," "[c]ombat gender ideology and protect children," and "[e]nforce the Hyde Amendment," overlap with OPA's program priorities. *HHS Priorities Statement*. Consideration of those overlapping HHS priorities in the Title X grant selection process would be unlawful for the reasons described above.

126. Other HHS priorities appear to be entirely inapplicable to the Title X program. For example, HHS's sprawling set of priorities ranges from a heading labeled "[t]oxins" to "[e]nd[ing]

crime and disorder on America's streets," "[p]romot[ing] work and self-sufficiency," and "[i]mprov[ing] oversight of foreign funded institutions." *HHS Priorities Statement*.

127. A third category of HHS priorities appear potentially related to Title X in some contexts, meaning that applicants have no way to be sure whether they are intended to apply under the NOFO. For example, HHS's priorities include "[e]nd illegal race discrimination." *HHS Priorities Statement*.

128. As of the date of this Complaint, there are 10 OASH priorities listed on the OASH website. Some of those priorities, such as "[e]nforcing the Hyde Amendment" overlap with HHS and/or OPA priorities. *OASH Priorities Statement*. As to those overlapping priorities, their consideration in the Title X grant selection process is unlawful for the reasons described above. Others are unclear as to whether or not they are meant to apply to the Title X program.

129. The NOFO does not specify which HHS and OASH priorities are applicable to the evaluation of Title X projects—either during the merits review or during the Federal Staff Review—and thus fails to specify which priorities senior agency personnel will "consider[]" as part of a review and the weight that will give to any particular priority.

130. Therefore, the NOFO fails to identify which HHS and OASH priorities Defendants consider to be within the scope of the Title X program for purposes of making funding recommendations. Nor can Defendants reasonably leave it to individual participants to guess in the first instance—on pain of losing access to essential Title X funding—whether HHS's priorities fall "within the scope of the program." NOFO at 41.

131. Defendants' failure to identify in unambiguous fashion the complete set of HHS and OASH priorities relevant to the agency's evaluation of grant applications under the NOFO deprives applicants of fair notice of what is required of them to obtain Title X funding.

132. In addition to failing to identify the relevant priorities, Defendants fail to explain how an applicant or grantee would be expected to align with them.

133. For example, one of the OASH priorities is titled, "Ending diversity, equity, and inclusion (DEI) policies and practices across OASH's programs." *OASH Priorities Statement*. HHS has a related priority titled "[e]nd illegal race discrimination" that states that, "[r]ather than supporting DEI programs, HHS will end race-based special preferences in grant making and instead direct resources to programs that advance the health and longevity of all Americans." *HHS Priorities Statement*.

134. Under this anti-DEI priority, OASH states that it will prioritize efforts that "go beyond the use of ideologically laden concepts" "like health equity," and "focus on solution-oriented approaches" "includ[ing] actively testing, advancing, scaling, and implementing innovative evidence-based interventions and treatments that address poor health outcomes." *OASH Priorities Statement*. But the website does not say what an organization would need to do to "go beyond" health equity or what "testing, advancing, scaling and implementing innovative evidence-based interventions and treatments that address poor health outcomes" would look like in a program for providing family-planning care.

135. Nor do Defendants acknowledge the Title X regulations' requirement that HHS take into account "[t]he ability of the applicant to advance health equity" when awarding Title X funds, 42 C.F.R. § 59.7(a)(3), or that projects provide services in an "inclusive" manner, ensure "equitable" delivery of services, and encourage participation in the project by "diverse persons," *id.* §§ 59.5(a)(3), (b)(3)(iii); *see also id.* § 59.2 (defining "inclusive" as "when all people are fully included and can actively participate in and benefit from family planning, including, but not

limited to, individuals who belong to underserved communities," specifically identifying racial and ethnic minorities and "lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons").

136. OASH's priority titled, "[e]nsuring adolescent program materials are age-appropriate" is another example of a priority that is so vague as to deprive applicants and grantees of what is required. *OASH Priorities Statement*. This priority states that "OASH will focus on programs that do not promote material that depicts, describes, exposes or presents obscene, indecent, or sexually explicit content, including content that encourages, normalizes or promotes sexual activity for minors." *Id.*

137. OASH gives no guidance regarding how a project can ensure its program materials are "age appropriate" and that they "do not promote material that depicts, describes, exposes or presents obscene, indecent, or sexually explicit content" and that they do not include "content that encourages, normalizes or promotes sexual activity for minors." Neither the NOFO nor the OASH website explains how an applicant or grantee is expected to align with the OASH priority regarding adolescent materials. Nor do they explain how a Title X project can provide family-planning services to adolescents that does not include content involving discussion of sexual activity for minors.

138. As these two examples show, the NOFO's limited references to the HHS and OASH priorities do not give applicants fair notice of what is required to be considered in alignment with them.

139. In addition, the NOFO's mandate that applicants align with these priorities—many of which are entirely unrelated to the purpose of the Title X program—exceeds the agency's statutory authority 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).

D. Requiring Alignment With The OPA Priorities And OASH Priorities After Grants Are Awarded Fails To Give Potential Grantees Adequate Notice Of The Conditions Attached To The Funds

140. After grants are awarded, the NOFO requires continued alignment with the OPA priorities, and also with the unspecified HHS and OASH priorities.

141. The NOFO does not identify which HHS and OASH priorities Defendants consider to be authorized by law and/or consistent with program authority and the scope of the award for purposes of assessing a grantee's ongoing alignment.

142. In addition, the NOFO requires that grantees administer their programs "in accordance with" the OPA priorities to: "1) Promote body and health literacy; 2) Advance reproductive goals counseling; [and] 3) Implement a Quality Improvement and Quality Assurance (QI/QA) Plan with the goal to achieve optimal health outcomes." NOFO at 7; *see* NOFO at 12-14. Recipients must "demonstrate ongoing compliance with" the priorities through "program design, implementation, reporting, and evaluation." *Id.* This provision in the NOFO implies that grantees must align with only these three OPA priorities.

143. However, on the next page, the NOFO states that "[a]ll activities funded under this announcement" must be "in compliance with additional program guidance issued by OPA," this time without limiting that compliance to just the three priorities listed on page 7. NOFO at 8. This provision—in conflict with the language a few pages earlier listing only a subset of OPA guidance—appears to require grantees to maintain alignment with all OPA priorities.

144. By giving conflicting accounts of which OPA priorities become conditions after grantees receive funding, Defendants fail to specify which OPA priorities they consider to be

authorized by law and/or consistent with program authority and the scope of the award for purposes of assessing a grantee's ongoing alignment.

145. Defendants' failure to identify which OPA, OASH, and HHS priorities grantees will be required to demonstrate alignment with as a condition of accepting a grant issued under the NOFO, or to provide any explanation of how alignment with those priorities will be assessed, deprives applicants of the notice required to knowingly and voluntarily decide whether to apply for and ultimately accept the funds.

IV. THE NOFO WILL HARM PPFA MEMBERS AND THE PATIENTS THEY SERVE

146. PPFA members have consistently participated in Title X funding opportunities to provide core Title X services. Some PPFA members have done so for decades, tracing back to the program's inception in 1971. Using Title X funding, PPFA members' health centers offer a full range of reproductive health care services, including well-woman preventive-care visits, breast exams, Pap tests, general health assessments, a wide range of contraception methods, risk assessments and referral services for pregnant women, pregnancy testing, STI treatment and testing, urinary tract infection treatment, and cervical cancer and testicular cancer screenings.

147. Nationally, of those who report their income, approximately 64 percent of patients visiting Planned Parenthood health centers have incomes at or below 150 percent of the federal poverty level.

148. Several PPFA members, including current Title X grantees, plan to apply for Title X funds for the fiscal year 2027 grant cycle. Applications under the FY 2027 NOFO are due on January 11, 2027.

149. If the NOFO's requirements to advance and align with HHS, OPA, and OASH priorities are permitted to stand, PPFA members and their patients will be irreparably harmed.

C. The NOFO Disadvantages PPFA Members During The Title X Grant Selection Process

150. PPFA members provide high-quality inclusive and comprehensive family-planning services with respect and compassion. They do so without regard to patients' income, insurance, gender identity, sexual orientation, or race.

151. To maintain their status as PPFA members, members must, among other things, provide medical services in accordance with national guidelines and adhere to the shared Planned Parenthood mission.

152. In furtherance of their shared mission, PPFA members counsel patients and provide services in a manner that is client-centered, culturally and linguistically appropriate, inclusive, trauma-informed, and that protects the dignity of the individual.

153. Consistent with applicable membership requirements and the Title X statute and regulations, PPFA members provide and/or refer for a broad range of effective, medically approved family-planning methods (including natural family-planning methods) and services (including pregnancy testing and counseling, assistance to achieve pregnancy, basic infertility services, STI services, pre-conception health services, and adolescent-friendly health services).

154. In addition—and consistent with applicable membership requirements, the shared Planned Parenthood mission, and the Title X statute and regulations—PPFA members provide patient-centered counseling about family-planning options and do not direct or coerce patients towards particular methods of family planning or making particular life choices, including getting married before having children or having children at all if that is not what patients want.

155. Consistent with applicable membership requirements, the shared Planned Parenthood mission, and the Title X statute and regulations, PPFA members also provide care to

patients wanting to prevent pregnancy and provide referrals upon request to patients wishing to terminate a pregnancy.

156. PPFA members provide all services in compliance with the Hyde Amendment. PPFA members who are Title X grantees do not use abortion as a method of family planning within their Title X projects. However, where legally permissible, PPFA members provide abortion services. Members maintain separation between these services and their Title X projects, as required by the Title X statute and regulations.

157. Finally, in accordance with federal law and applicable law of the states in which they operate, PPFA members provide services, including Title X services, to patients regardless of religion, race, national origin, age, sex, sexual orientation, gender identity, sex characteristics, number of pregnancies, or marital status.

158. The NOFO's requirement to align with the Challenged Priorities therefore harms PPFA members and puts them at a disadvantage to other prospective applicants who share the political agenda reflected in the priorities, notwithstanding the extent to which PPFA members' proposed projects fulfill Title X's actual purpose and applicable statutory and regulatory requirements.

159. Moreover, PPFA members that wish to apply for Title X grants for FY 2027 are unclear about how to address the requirement to align with the Challenged Priorities, OASH Priorities, and HHS Priorities because the priorities are arbitrary, conflict with federal law, and/or the NOFO is vague about what practices are required in order to show alignment.

160. Nor can PPFA members know what they would be agreeing to "align with" if their applications were successful because the Challenged Priorities, OASH Priorities, and HHS Priorities are also confusing and vague. To the extent that the NOFO purports to condition the

receipt of funds on alignment with the Challenged Priorities, HHS priorities, and OASH priorities, PPFA members are harmed by the lack of fair and advance notice of the conditions needed to knowingly and willingly accept them.

161. PPFA members thus face the risk that, even if their applications are successful, their acceptance of a Title X award would require continued, undefined alignment with agency priorities that are confusing, vague, arbitrary, and contrary to existing law. If they were later determined not to be in alignment, such a finding could result in corrective action or termination of their awards. *See* NOFO at 7.

D. Excluding PPFA Members From The Title X Program Will Harm Them And The Patients They Serve

162. If PPFA members are excluded from the Title X program—either because they cannot reasonably determine what it would mean to align with requisite agency priorities, or because Defendants determine that PPFA members do not sufficiently align with OPA, HHS, and OASH priorities—they will suffer financial, operational, and reputational harm, and their patients will be harmed by their decreased ability to access subsidized or free family-planning care.

163. ***Harm to PPFA's members*:** Title X funding is critical to helping PPFA members provide services to low-income families and individuals. In addition to providing free or low-cost clinical services, Title X funding is also used to support other critical needs that are not reimbursable under Medicaid or commercial insurance, such as individual patient education, community-level outreach, and public education about family planning and related sexual-health issues.

164. In 2026 alone, PPFA members received over $11 million in direct Title X grant funds.

165. Without Title X funding, some members will no longer be able to offer family planning and other Title X services at reduced or no cost to their patients or, at a minimum, could not do so indefinitely, causing a significant harm to their mission of providing that care.

166. To try to continue offering free or reduced-cost family-planning services without Title X funding, some PPFA member-grantees would need to conduct additional fundraising and/or secure alternative funding streams to make up for funding that would otherwise be reimbursed by Title X. This would require diversion of resources from other aspects of PPFA members' missions and core business activities.

167. If they are unable to secure alternative funding streams, some PPFA member-grantees would be forced to make difficult operational and staffing decisions.

168. If PPFA members were no longer able to offer subsidized care under Title X, this would also tarnish Planned Parenthood's longstanding reputation as a reliable, affordable, and accessible option for patients with nowhere else to turn. That reputation has been built over decades of work in the communities that PPFA's members serve and would be impaired if PPFA's members were forced to turn patients away for lack of means to pay for family-planning services.

169. ***Harm to Patients*:** The NOFO also poses a grave risk to the health of PPFA members' Title X patients who are low-income individuals already facing barriers to care. PPFA's members that receive Title X funding often work in under-resourced areas where patients face barriers to access appropriate reproductive care. These patients will have an even more difficult time accessing such care if they cannot obtain Title X care from their local Planned Parenthood health center. Many patients risk being cut off from health care services altogether, threatening significant harm to those patients and U.S. public health more broadly.

170. As history shows, PPFA's members are integral to the Title X network.

171. In 2019, a revision to the Title X regulations prohibited Title X grantees from providing abortion referrals; required pregnant patients be provided with a referral to prenatal care; and mandated complete physical and financial separation between Title X-funded activities and abortion-related services, among other things.[13] These requirements forced PPFA members and others to withdraw from the program.[14] Between 2018 and 2020, the number of patients served by Title X clinics fell from 3.9 million to 1.5 million; family-planning visits declined from 6.5 million to 2.7 million; and the number of participating clinic sites dropped from 3,954 to 3,031—a nearly 25 percent decline.[15] As a consequence, for almost two years, several states were left without a single Title-X-funded health center.[16]

172. Today, PPFA direct-grantee members care for a disproportionate number of individuals who depend on publicly funded family-planning services, from a health care-safety-net provider, including low-income patients, patients in rural areas, patients who are not proficient in English, and communities of color. And in at least one state, a PPFA direct-grantee member is the only Title X service provider.

173. Even where there are other Title X service providers in a given area, the health care infrastructure where PPFA's direct-grantee members operate may be unable to absorb the flood of

[13] *See* Compliance with Statutory Program Integrity Requirements, 84 Fed. Reg. 7714 (Mar. 4, 2019); Off. of Population Affs., Title X Family Planning Annual Report: 2020 National Summary (2021).
[14] Janice Hopkins Tanne, *Planned Parenthood Rejects Restrictive US Government Funding and "Gag Rule,"* 366 BMJ l5227 (Aug. 20, 2019), https://doi.org/10.1136/bmj.l5227; Rachel Benson Gold & Lauren Cross, *The Title X Gag Rule Is Wreaking Havoc — Just as Trump Intended*, Guttmacher Inst. (Aug. 29, 2019), https://www.guttmacher.org/article/2019/08/title-x-gag-rule-wreaking-havoc-just-trump-intended.
[15] *See* Brittni Frederiksen et al., *Rebuilding Title X: New Regulations for the Federal Family Planning Program*, KFF (Nov. 3, 2021), https://www.kff.org/womens-health-policy/rebuilding-title-x-new-regulations-for-the-federal-family-planning-program/.
[16] *See id.*

new patients that may be triggered if patients are no longer able to receive Title X care at Planned Parenthood health centers. And these providers may not provide the same services as PPFA members, including extended hours, which many patients with low incomes rely on due to work schedules and other responsibilities.

174. With nowhere to turn for low or no-cost, high-quality reproductive-health and family-planning care, many patients with limited means will simply go without these vital services.

175. Patients are especially likely to lose contraceptive care, including access to LARCs, the most effective forms of contraception for preventing unwanted pregnancies, if PPFA's members lose Title X funding. Because LARCs are so expensive, lower-income patients, particularly those who are uninsured, under-insured, or unable to use their insurance, almost certainly would not be able to obtain them absent subsidization from a Title X grantee.

176. As a result of Defendants' unlawful actions, PPFA's members intending to apply for Title X funding and the communities they serve are at risk of irreparable harm.

177. Each of PPFA's members intending to apply for Title X funding under the NOFO would have standing to bring this action in its own right. The interests PPFA is seeking to advance and protect through this action are integral to its core, mission-driven work supporting its members' provision of high-quality, inclusive, and comprehensive sexual and reproductive health care services, regardless of income, insurance, gender identity, sexual orientation, or race. And the claims PPFA is asserting and the relief it is requesting do not require the participation of PPFA members in this suit. *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

178. PPFA's members must decide well in advance of the January 2027 application deadline whether to apply and commit resources to the planning, scoping, internal approval, and application pre-drafting processes.

179. The NOFO is currently harming PPFA's members because its unlawful criteria are hampering and burdening members' current decision-making and preparations to apply for fiscal year 2027 Title X grants.

180. PPFA's challenge to the NOFO is purely legal, requiring no additional factual development for this Court to adjudicate the matter. Withholding judicial review would force a costly, imminent decision by PPFA's members about whether to apply for funding while facing an impossible situation. Once final awards issue, the competitive distortion cannot be undone.

COUNT ONE
APA – CONTRARY TO LAW

181. PPFA incorporates by reference the allegations of the preceding paragraphs.

182. The APA requires courts to "hold unlawful and set aside agency action" that is "not in accordance with law." 5 U.S.C. § 706(2)(A).

183. "'[I]t is axiomatic that an agency is bound by its own regulations,'" unless the regulations are duly amended or repealed. *Alon Refin. Krotz Springs, Inc. v. EPA*, 172 F.4th 12, 17 (D.C. Cir. 2026) (ellipsis omitted).

184. The NOFO's requirement that applicants and grantees align with the Challenged Priorities constitutes final agency action.

185. The Title X regulations at 42 C.F.R. Part 59—including §§ 59.5(a)(1)-(5), 59.7(a)(3), and 59.10—bind Defendants and require, among other things, nondiscrimination on the basis of gender identity and sex characteristics; client-centered, inclusive care; a broad range of family-planning methods; and that programs advance health equity.

186. The NOFO's "Biological Reality" Priority, Marriage & Parenthood Counseling Priority, and Anti-Contraception Priority, and the HHS and OASH priorities that overlap with them, are contrary to those binding regulations.

COUNT TWO
APA – IN EXCESS OF STATUTORY AUTHORITY

187. PPFA incorporates by reference the allegations of the preceding paragraphs.

188. The APA requires courts to "hold unlawful and set aside agency action[s], findings, and conclusions" that are "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(C).

189. The NOFO's requirement that applicants and grantees align with the Challenged Priorities and the HHS and OASH priorities constitutes final agency action.

190. Defendants may exercise only authority granted to them by statute. *See, e.g.*, *FCC v. AT&T, Inc.*, 146 S. Ct. 1418, 1428 (2026); *West Virginia v. EPA*, 597 U.S. 697, 723 (2022).

191. The Title X statute, 42 U.S.C. § 300(a), does not authorize HHS to condition Title X funding on alignment with the NOFO's Challenged Priorities or the HHS and OASH priorities.

COUNT THREE
APA – ARBITRARY AND CAPRICIOUS

192. PPFA incorporates by reference the allegations of the preceding paragraphs.

193. The APA requires courts to "hold unlawful and set aside agency action" that is "arbitrary and capricious" or "an abuse of discretion." 5 U.S.C. § 706(2)(A).

194. "'An agency is not free to ignore or violate its regulations while they remain in effect,'" and "'an agency action may be set aside as arbitrary and capricious if the agency fails to comply with its own regulations.'" *Alon Refin. Krotz Springs, Inc. v. EPA*, 172 F.4th 12, 17-18 (D.C. Cir. 2026).

195. The NOFO's requirement for applicants and grantees to align with the Challenged Priorities and the HHS and OASH priorities constitutes final agency action.

196. The NOFO's requirement to align with the Challenged Priorities and the HHS and OASH priorities is arbitrary and capricious. Among other reasons, the NOFO's requirement to

align with these priorities demands that prospective grantees align themselves with political goals that directly conflict or are inconsistent with Title X regulations without explaining how to reconcile the conflict; relies on factors that Congress did not intend Defendants to consider and instead supplants Congress's intent and purpose in authorizing grants under Title X; represents departures from regulation and longstanding agency policy without acknowledgment, much less reasoned explanations for those departures; fails to take into account relevant issues and important aspects of the problem; fails to provide applicants with fair notice of what is required of them; and fails to consider the reliance interests of longstanding Title X service providers.

COUNT FOUR
APA – FAILURE TO OBSERVE REQUIRED PROCEDURE

197. PPFA incorporates by reference the allegations of the preceding paragraphs.

198. The APA provides that courts "shall … hold unlawful and set aside" final agency action that is "without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

199. To reverse, repeal, or amend an agency rule, an agency must promulgate a new rule based on reasoned decision-making. *See* 5 U.S.C. § 551(5) ("rule making" means "agency process for formulating, amending, or repealing a rule").

200. The APA "mandate[s] that agencies use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance." *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 101 (2015).

201. The NOFO's "Biological Reality" Priority, Marriage & Parenthood Counseling Priority, and Anti-Contraception Priority constitute a reversal or amendment of the Title X regulations, promulgated via notice-and-comment, with which those priorities conflict.

202. Having failed to use notice-and-comment rulemaking to issue the "Biological Reality" Priority, Marriage & Parenthood Counseling Priority, and Anti-Contraception Priority, Defendants have failed to follow the procedures required by law to impose such requirements.

COUNT FIVE
VIOLATION OF THE SPENDING POWER UNDER U.S. CONST. ART. I, § 8, CL. 1

203. PPFA incorporates by reference the allegations of the preceding paragraphs.

204. Congress's power to attach conditions to federal spending is "not unlimited" and is "subject to several general restrictions." *South Dakota v. Dole*, 483 U.S. 203, 207 (1987).

205. Among other requirements, funding recipients must have fair and advance notice of conditions that apply to federal funds so that recipients can "knowingly and voluntarily" decide whether to accept funds. *Landor v. Louisiana Dep't of Corr. & Pub. Safety*, 146 S. Ct. 1931, 1941 (2026). Grant recipients cannot knowingly accept conditions they are "unaware" of or "unable to ascertain." *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17, 25 (1981).

206. The above requirements apply to federal Executive Branch agencies.

207. In addition to requiring applicants to demonstrate how their proposed projects will align with Defendants' political priorities, the NOFO states that funding recipients must "align program design and activities with agency priorities … when authorized by law according to the Title X statute, regulations, legislative mandates, and additional program guidance"; and demonstrate ongoing alignment with those agency priorities. NOFO at 7.

208. The NOFO fails to provide PPFA's members adequate notice of what alignment, implementation, and/or effectuation of the outlined OPA program priorities would require. PPFA's members are thus currently experiencing constitutional injury because they cannot now knowingly decide whether to apply for Title X grants for fiscal year 2027 given unascertainable conditions.

209. In addition, to the extent any PPFA member(s) were to receive an award, the conditions for maintaining that award are likewise unascertainable. The NOFO fails to sufficiently elaborate on the HHS and OASH priorities with which any potential PPFA member grantee would be required to align or what ongoing alignment with those priorities would require. Instead of enumerating specific HHS and OASH priorities, the NOFO directs readers to an external Web site whose contents could change at any time.

210. Therefore, to the extent the NOFO purports to outline conditions for the acceptance of Title X grants, it violates the Spending Clause because it does not provide the notice required for a prospective grantee knowingly and voluntarily to accept them and, separately, to maintain grants if any are awarded.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Court:

211. Declare unlawful and set aside the requirement in the FY 2027 NOFO that applicants demonstrate meaningful advancement of, alignment with, and, if awarded a grant, ensure alignment with the following priorities:

a) "Biological Reality" Priority and the HHS and OASH priorities that overlap with it;

b) Marriage & Parenthood Counseling Priority and the HHS and OASH priorities that overlap with it;

c) Anti-Contraception Priority and the HHS and OASH priorities that overlap with it;

d) "Life Affirming Program Delivery" Priority and the HHS and OASH priorities that overlap with it;

e) HHS priorities;

f) OASH priorities.

212. Preliminarily and permanently enjoin Defendants, their agents, and all persons acting in concert or participation with Defendants from imposing or implementing the following unlawful provisions of FY 2027 NOFO at all stages of the application process and to the extent that HHS may seek to have funding recipients take any action in accordance with them:

a) "Biological Reality" Priority and the HHS and OASH priorities that overlap with it;

b) Marriage & Parenthood Counseling Priority and the HHS and OASH priorities that overlap with it;

c) Anti-Contraception Priority and the HHS and OASH priorities that overlap with it;

d) "Life Affirming Program Delivery" Priority and the HHS and OASH priorities that overlap with it;

e) HHS priorities;

f) OASH priorities.

213. Pursuant to 5 U.S.C. § 705, grant all appropriate relief to preserve the status quo pending judicial review, including postponing the effective date of, or staying implementation of, the following unlawful provisions of the NOFO:

a) "Biological Reality" Priority and the HHS and OASH priorities that overlap with it;

b) Marriage & Parenthood Counseling Priority and the HHS and OASH priorities that overlap with it;

c) Anti-Contraception Priority and the HHS and OASH priorities that overlap with it;

d) "Life Affirming Program Delivery" Priority and the HHS and OASH priorities that overlap with it;

e) HHS priorities, to the extent that they apply and are contrary to federal law or regulations and/or are arbitrary and capricious;

f) OASH priorities, to the extent that they apply and are contrary to federal law or regulations and/or are arbitrary and capricious.

214. Grant such other relief as this Court deems just and proper.

July 28, 2026

Respectfully submitted,

/s/ *Alan E. Schoenfeld*

DEEPA ALAGESAN (D.D.C. BAR NO. NY0261)
CAMILA VEGA (*pro hac vice* pending)
PLANNED PARENTHOOD FEDERATION
OF AMERICA, INC.
123 William Street
New York, NY 10038
(212) 541-7800
deepa.alagesan@ppfa.org
camila.vega@ppfa.org

PAUL R.Q. WOLFSON (DC BAR NO. 414759)
CARRIE Y. FLAXMAN (DC BAR NO. 458681)
ROBIN F. THURSTON (DC BAR NO. 1531399)
DEMOCRACY FORWARD FOUNDATION
1445 New York Ave NW
Washington, DC 20005
(202) 448-9090
pwolfson@democracyforward.org
cflaxman@democracyforward.org
rthurston@democracyforward.org

ALAN E. SCHOENFELD (DC BAR NO. 1725277)
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8800
alan.schoenfeld@wilmerhale.com

SOFIA BROOKS (*pro hac vice* pending)
CHRISTOPHER R. STEVENSON (*pro hac vice* pending)
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
sofie.brooks@wilmerhale.com
chris.stevenson@wilmerhale.com

LEAH FUGERE (*pro hac vice* pending)
WILMER CUTLER PICKERING
HALE AND DORR LLP
350 South Grand Ave, Suite 2400
Los Angeles, CA 90071
(213) 443-5300
leah.fugere@wilmerhale.com

Attorneys for Plaintiff Planned Parenthood Federation of America, Inc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

STATE OF NEW YORK, *et al.*, Plaintiffs, v. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*, Defendants.	Civil Action No. 1:26-cv-03405-DLB

[PROPOSED] ORDER

Upon consideration of Defendants' Motion to Transfer Venue, the memorandum in support, and any opposition and reply, it is this ____ day of _____, 2026, by the United States District Court for the District of Maryland, hereby

ORDERED that Defendants' Motion to Transfer Venue is GRANTED; and it is further ORDERED that this action is TRANSFERRED to the United States District Court for the [Middle District of Pennsylvania / District of Columbia] pursuant to 28 U.S.C. § 1404(a); and it is further

ORDERED that the Clerk shall transmit the record in this action to the Clerk of the transferee court and CLOSE this case.

_____
JUDGE DEBORAH L. BOARDMAN
United States District Judge