

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

**The Obria Group, Inc. and Vita
Nuova Inc.**, on behalf of themselves and
others similarly situated,

Plaintiffs,

v.

Xavier Becerra, in his official capacity as
Secretary of Health and Human
Services; **United States of America**,

Defendants.

Case No. 4:19-cv-00532-O

**REPLY TO THE DEFENDANTS' BRIEF IN OPPOSITION TO THE
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND RESPONSE
TO THE DEFENDANTS' CROSS MOTION FOR SUMMARY
JUDGMENT**

The plaintiffs agree with the government that neither Vita Nuova nor Obria can demonstrate the existence of an Article III case or controversy in light of Obria's recent decision to withdraw from the Title X program. Although it is possible that Obria will reapply for Title X funding at some point in the future, its plans at this point are too speculative and contingent to support an Article III case or controversy. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 564 (1992). In addition, Vita Nuova has not been able to get its operations off the ground, and it is no longer in a position where it can credibly assert (let alone prove) that the Church Amendment is inflicting Article III injury.

The Court should therefore dismiss this case for lack of an Article III case or controversy, and it should dismiss the plaintiffs' claims without prejudice. *See Boudloche v. Conoco Oil Corp.*, 615 F.2d 687, 688–89 (5th Cir. 1980) (“The district court properly concluded that it did not have jurisdiction but it erred in granting summary judgment and dismissing with

prejudice. Since the court lacked jurisdiction over the action, it had no power to render a judgment on the merits. *Dassinger v. South Central Bell Telephone Co.*, 505 F.2d 672, 674 (5th Cir. 1974); 10 C. Wright & A. Miller, *Federal Practice & Procedure* § 2713 (1973). On remand, the district court should expunge its initial judgment and enter an order dismissing the case for want of subject matter jurisdiction.”).

CONCLUSION

The Court should enter an order dismissing the case for lack of subject-matter jurisdiction.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I certify that on May 14, 2021, I served this document through CM/ECF upon:

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