No. 21-4235

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

STATE OF OHIO, ET AL.,
Plaintiffs-Appellants,
v.

XAVIER BECERRA, in his official capacity as Secretary of Health and Human Services, ET AL.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of Ohio, No. 1:21-CV-675
Before the Honorable Timothy S. Black

BRIEF FOR PLANNED PARENTHOOD FEDERATION OF AMERICA, INC. AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS-APPELLEES' OPPOSITION TO PLAINTIFFS-APPELLANTS' MOTION FOR AN INJUNCTION PENDING APPEAL

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January 14, 2022

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: _______________ Case Name: __________________________________

Name of counsel: ____

Pursuant to 6th Cir. R. 26.1, ____
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

CERTIFICATE OF SERVICE

I certify that on ____________________________________ the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/_____________________________
____
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This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

6th Cir. R. 26.1
DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

(a) **Parties Required to Make Disclosure**. With the exception of the United States government or agencies thereof or a state government or agencies or political subdivisions thereof, all parties and amici curiae to a civil or bankruptcy case, agency review proceeding, or original proceedings, and all corporate defendants in a criminal case shall file a corporate affiliate/financial interest disclosure statement. A negative report is required except in the case of individual criminal defendants.

(b) **Financial Interest to Be Disclosed**.

(1) Whenever a corporation that is a party to an appeal, or which appears as amicus curiae, is a subsidiary or affiliate of any publicly owned corporation not named in the appeal, counsel for the corporation that is a party or amicus shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the parent corporation or affiliate and the relationship between it and the corporation that is a party or amicus to the appeal. A corporation shall be considered an affiliate of a publicly owned corporation for purposes of this rule if it controls, is controlled by, or is under common control with a publicly owned corporation.

(2) Whenever, by reason of insurance, a franchise agreement, or indemnity agreement, a publicly owned corporation or its affiliate, not a party to the appeal, nor an amicus, has a substantial financial interest in the outcome of litigation, counsel for the party or amicus whose interest is aligned with that of the publicly owned corporation or its affiliate shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the publicly owned corporation and the nature of its or its affiliate's substantial financial interest in the outcome of the litigation.

(c) Form and Time of Disclosure. The disclosure statement shall be made on a form provided by the clerk and filed with the brief of a party or amicus or upon filing a motion, response, petition, or answer in this Court, whichever first occurs.

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Ctrs. for Disease Control & Prevention, Morbidity & Mortality Weekly Report, Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs (Apr. 25, 2014, updated Mar. 11, 2016), https://www.cdc.gov/mmwr/preview/mmwrhtml/rr6304a1.htm..................7

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Planned Parenthood Fed'n of Am., Public Comment, *Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services (RIN 0937-AA11)* (May 17, 2021), https://www.plannedparenthood.org/uploads/filer_public/6e/ad/6eadae40-f2b2-41f2-8fe6-bf5261aa1b00/ppfa_title_x_nprm_comment___51721.pdf......................11

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INTEREST OF AMICUS CURIAE[1]

Planned Parenthood Federation of America, Inc. ("PPFA") is the leading provider of sexual and reproductive health care in the United States, delivering that care through over 600 health centers operated by 49 affiliates.

Before being forced out of the Title X program by the 2019 Rule, Planned Parenthood affiliates had participated in the program since its inception over 50 years ago. Planned Parenthood was the largest Title X provider, serving 40% of the 4 million patients who received care through the program every year. PPFA therefore has an interest in ensuring that the 2021 Rule remains in effect, which is critical to avert severe negative public health consequences.

INTRODUCTION

For nearly five decades, the Title X program was an extraordinary success, serving to ensure that all individuals had access to family planning care—regardless of where they live or their economic means. As HHS explained, through the Title X program, clinics "served more than 190 million clients: 182.2 million women, 8.1 million men, comprising 139.5 million adults and 50.8 million adolescents, across 50 states, the District of Columbia, and eight U.S. territories

[1] All parties have consented to the filing of this amicus brief. No counsel for a party authored any part of this brief, and no person other than amicus curiae, their members, and their counsel made a monetary contribution to the preparation or submission of the brief.

and freely associated states."[2] For nearly all of these fifty years, the rules to the Title X program remained for the most part the same, and the Plaintiff States that operate Title X programs, including Ohio, all participated in the program *under those rules*.[3]

In 2019, HHS issued a rule (the "2019 Rule") that restricted information Title X providers may give their pregnant patients (including by banning providers from referring their pregnant patients to abortion providers) and forced them to provide information about prenatal care to every pregnant patient—regardless of their patients' requests.[4] The 2019 Rule also imposed onerous and unnecessary requirements mandating physical separation between the Title X project and all abortion-related activity (including abortion referrals).[5] These changes—opposed by every leading health care organization in the United States[6]—forced nearly 1,000 health centers, including Planned Parenthood affiliates, out of the program.

[2] Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services ("Proposed Rule"), 86 Fed. Reg. 19,812, 19,817 (Apr. 15, 2021).

[3] *See, e.g.*, Title X Grantee Profile: Ohio Department of Health, Off. Population Affs. (Oct. 2020), https://opa.hhs.gov/sites/default/files/2020-10/title-x-grantee-profile-oh.pdf.

[4] Compliance with Statutory Program Integrity Requirements, 84 Fed. Reg. 7714, 7788-7789 (Mar. 4, 2019).

[5] *Id.* at 7789.

[6] *See Mayor of Baltimore v. Azar*, 973 F.3d 258, 266 (4th Cir. 2020).

Concluding that the 2019 Rule "[could] not be squared with well-accepted public health principles,"[7] HHS promulgated a new final rule (the "2021 Rule")—returning to the rules that had governed the program for almost all of its existence—which took effect on November 8, 2021.[8] Ohio and other States, despite complying with similar rules for decades, then sued and sought a preliminary injunction enjoining the 2021 Rule. The district court denied the motion,[9] and the States appealed and moved this Court for an injunction pending appeal. PPFA urges the Court to deny that motion so that the Title X program can be restored and, once again, provide care for our nation's most vulnerable populations.

ARGUMENT

I. THE 2021 RULE CORRECTLY RECOGNIZES THAT "PHYSICAL SEPARATION" IS UNNECESSARY

The States assert that the 2021 Rule improperly allows "considerable financial and physical integration" and allows Title X funds to be used "in a

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[7] Proposed Rule, 86 Fed. Reg. at 19,816.

[8] *See* Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services ("Final Rule"), 86 Fed. Reg. 56,144 (Oct. 7, 2021) (codified at 42 C.F.R. pt. 59).

[9] *See* Order Den. Pls.' Mot. for Prelim. Inj., Case No. 1:21-cv-675, R. 50 ("Op.")

program where abortion is a method of family planning."[10] Not so. This interpretation repeatedly takes HHS's warning against intertwining "the abortion element" in family planning services with other aspects of the program out of context. And, as the district court found, the States' assertion "elides the distinction between a Title X 'grantee' and a Title X 'program' or 'project.'"[11] Under the 2021 Rule, the Title X project is the set of activities the grantee agreed to perform for the Title X funds.[12] Therefore, if a Title X grantee engages in any activities that are not within the scope of the program, the "Title X-supported project" must be "separate and distinguishable from those other activities."[13] The Supreme Court, as the district court correctly noted, specifically recognized "this possibility in *Rust* [*v. Sullivan*]" when it found that a "'Title X grantee can continue to perform abortions, provide abortion-related services, and engage in abortion advocacy' as long as it 'conduct[s] those activities through programs that are separate and independent from the project that receives Title X funds.'"[14]

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[10] Pls.' Mot. for Inj., Case No. 21-4235, R. 13, Page ID # 14-15 ("Pls.' Mot.").

[11] Op., R. 50, Page ID # 661.

[12] Provision of Abortion-Related Services in Family Planning Services Projects, 65 Fed. Reg. 41,281, 41,282 (July 3, 2000) (incorporated into the Final Rule by reference at 86 Fed. Reg. at 56,150).

[13] *Id.*

[14] Op., R. 50, Page ID # 662 (quoting *Rust v. Sullivan*, 500 U.S. 173, 196 (1991)).

Contrary to the States' assertion, HHS has ensured compliance with this separation requirement—through regular grant reports, compliance monitoring visits, third-party audits, compliance guidance, and grantee education—for decades.[15] Between 1993 and 2019, HHS monitoring found no direct diversion of grant funds that would justify the greatly increased compliance and oversight costs the 2019 Rule required.[16] The district court, accordingly, found that HHS's decision to re-implement the 2000 Rule's monitoring and enforcement policies, as opposed to the 2019 Rule's separation guidelines, is "especially persuasive because [the agency] can rely on decades of experience using precisely these monitoring and enforcement mechanisms with minimal compliance issues."[17]

Likewise, the district court properly rejected the States' argument that the 2021 Rule subsidizes abortions because Title X funds are "fungible."[18] The government, as a matter of law, cannot restrict access to funds for one activity

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[15] Final Rule, 86 Fed. Reg. at 56,145.

[16] Proposed Rule, 86 Fed. Reg. at 19,816. Rather than rebutting this claim, the States argue that "the failure to uncover violations does not mean that no violations occurred — it could mean that the guidelines were ineffective at exposing violations." Pls.' Mot., R. 13, Page ID # 22. Not so. On review for arbitrary and capricious decision-making—as the district court noted—it is not necessary to "wade into the reliability of reports covering 45 years from three separate federal agencies." Op., R. 50, Page ID # 670.

[17] Op., R. 50, Page ID # 670.

[18] *Id.* Page ID # 664.

simply because it may free up funds for another activity.[19] Moreover, because the 2019 Rule still allowed abortion providers to receive Title X funds so long as they complied with the onerous separation requirements, the 2019 Rule—by the States' logic—also permitted Title X funds to subsidize abortions. The States, therefore, fail to explain how restoring that Rule would address their claims.

II. APPROPRIATE MEDICAL REFERRALS ARE ESSENTIAL FOR ETHICAL, EVIDENCE-BASED PATIENT CARE

The States also claim that HHS failed to consider whether "mandating referrals comported with medical ethics" when it promulgated the 2021 Rule.[20] As the district court noted, the record belies that contention.[21] HHS considered the 2019 Rule's prohibition on referrals and noted that "appropriate referrals with nondirective counseling have been the practice and implicit standard of care in Title X programs for essentially its entire history."[22] As such, the CDC and HHS

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[19] *See Babbitt v. Planned Parenthood of Cent. & N. Ariz.*, 479 U.S. 925 (1986) (summarily affirming *Planned Parenthood of Cent. & N. Ariz. v. Arizona*, 718 F.2d 938, 945 (9th Cir. 1983), which concluded that "as a matter of law, the freeing-up theory cannot justify withdrawing all state funds from otherwise eligible entities merely because they engage in abortion-related activities disfavored by the state").

[20] Pls.' Mot., R. 13, Page ID # 25-26.

[21] Op., R. 50, Page ID # 677. In addition, referrals are not mandated unless they are requested by the patient; it is the 2019 Rule that required that patients receive a referral (for prenatal care) regardless of patient wishes. *See* 84 Fed. Reg. 7714.

[22] Proposed Rule, 86 Fed. Reg. at 19,816.

have long included "[r]eferral to appropriate providers of follow-up care" in the case of a positive pregnancy test, at the request of the client, in their recommendations for Quality Family Planning Services ("QFP").[23] All major medical organizations—which uniformly take the position that the 2019 Rule's prohibition against using Title X funds to refer a patient, upon the patient's request, was contrary to medical ethics and best practice—opposed the 2019 Rule and now also support the 2021 Rule's re-adoption of a patient-centric approach.[24] Accordingly, as the district court found, HHS did consider and adequately address medical ethics relating to abortion referrals.[25]

III. THE RE-ENTRY OF EXPERIENCED TITLE X PROVIDERS TO THE TITLE X PROGRAM IS IN THE PUBLIC INTEREST AND DOES NOT IMPOSE IRREPARABLE INJURY ON THE STATES

Ohio now complains that the re-entry of experienced Title X providers to the program constitutes an irreparable injury since Ohio will then be subject to unfair competition for Title X funds. But as the district court found, "an increase in fair

[23] *See* Ctrs. for Disease Control & Prevention, Morbidity & Mortality Weekly Report, Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs 14 (Apr. 25, 2014, updated Mar. 11, 2016), https://www.cdc.gov/mmwr/preview/mmwrhtml/rr6304a1.htm.

[24] Proposed Rule, 86 Fed. Reg. at 19,816 ("The 2019 [R]ule abandoned this client centered approach over the objection of every major medical organization without any countervailing public health rationale.").

[25] Op., R. 50, Page ID # 677.

competition for public grants"[26] does not constitute irreparable injury warranting injunctive relief. In fact, the record shows that restoring fair competition for Title X funds is critical to serving the public interest. For instance, the additional Title X funds Ohio secured after the 2019 Rule took effect have done little to address the significant gap in coverage caused by Planned Parenthood's departure from the program: Ohio "experienced a 10 percent decline in service sites between 2018 and 2020, an 18 percent decline in clients from 2018 to 2019, and a 57 percent decline in clients from 2019 to 2020."[27]

Regardless of Ohio's or other, unidentified efforts by other states to try to fill the gap in Title X services, as the district court found, "[t]he 2019 Rule harms our most vulnerable members of society daily."[28] Since the 2019 Rule became effective, "the number of family planning services grantees has dropped precipitously,"[29] as 19 out of 90 Title X grantees, 231 subrecipients, and 945 service sites withdrew from the program.[30] Currently, Title X services are not available in any form in six states—Hawaii, Maine, Oregon, Utah, Vermont, and

[26] Op., R. 50, Page ID # 678.

[27] Final Rule, 86 Fed. Reg. at 56,151.

[28] Op., R. 50, Page ID # 680.

[29] Proposed Rule, 86 Fed. Reg. at 19,815.

[30] Final Rule, 86 Fed. Reg. at 56,146.

Washington—and are available only in limited form in Alaska, Connecticut, Massachusetts, Minnesota, New Hampshire, New York, and Illinois.[31]

As the district court noted, the Office of Population Affairs "estimates that the 2019 Rule caused 1.5 million fewer patients to participate in Title X-funded services between 2019 and 2020."[32] In accord with that trend, HHS data shows that the remaining 71 Title X grantees served 844,083 fewer clients in 2019, after the 2019 Rule was promulgated, as compared to 2018.[33] That amounts to a 22% overall decrease in client services.[34] The Guttmacher Institute, a nonprofit, nonpartisan corporation that specializes in research, policy analysis, and public education related to sexual and reproductive health, confirms that "there has never been as sharp a decline in the number of patients served by the [Title X] program as occurred between 2018 and 2019."[35] Overall family planning encounters provided by Title X sites also decreased in 2020 by almost two million.[36]

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[31] *Id.* at 56,146, 56,171.

[32] Op., R. 50, Page ID # 652.

[33] Final Rule, 86 Fed. Reg. at 56,151.

[34] *Id.*

[35] Guttmacher Inst., Public Comment, *Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services (RIN 0937-AA11)* at 3 (May 17, 2021), https://www.guttmacher.org/sites/default/files/article_files/attachments/guttmacher_2021_title_x_nprm_comments.pdf.

[36] Final Rule, 86 Fed. Reg. at 56,146.

Although HHS acknowledged that the COVID-19 pandemic played a role in this trend, it ultimately concluded that "the pattern of the losses in the program initiated by the 2019 [R]ule was exacerbated in 2020 for an already disrupted and weakened network."[37]

The record also shows that patients who managed to receive services within this weakened network received far fewer services overall. HHS data reveals that in 2019, compared to 2018, "225,688 fewer clients received oral contraceptives; 49,803 fewer clients received hormonal implants; and 86,008 fewer clients received intrauterine devices (IUDs)," one of the most effective forms of long-acting reversible contraception.[38] Title X sites provided 90,386 fewer Papanicolaou ("Pap") tests (for screening for cervical cancer), 188,920 fewer clinical breast exams, 276,109 fewer human immunodeficiency virus ("HIV") tests, 256,523 fewer chlamydia tests, 625,802 fewer gonorrhea tests, and 77,524 fewer syphilis tests.[39] Of individuals who were either pregnant or sought pregnancy, 71,145 fewer were served at Title X sites in 2019 compared to 2018.[40]

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[37] *Id.*

[38] *Id.* at 56,147.

[39] *Id.*

[40] *Id.*

The impact of the 2019 Rule on the ability of the program to serve communities of color and patients with low incomes is particularly severe. The 2018 and 2019 Family Planning Annual Report data shows that compared to 2018, in 2019, 573,650 fewer clients under 100 percent of the federal poverty level, 139,801 fewer clients between 101 percent to 150 percent of the federal poverty level, 65,735 fewer clients between 151 percent and 200 percent of the federal poverty level, and 30,194 fewer clients between 201 percent to 250 percent of the federal poverty level received Title X services.[41] The same reports show that in 2019, "128,882 fewer Black or African Americans; 50,039 fewer Asians; 6,724 fewer American Indians/Alaska Natives; 7,218 fewer Native Hawaiians/Pacific Islanders; and 269,569 fewer Hispanics/Latinos received Title X services."[42]

This trend has borne out among Planned Parenthood affiliates. After the 2019 Rule became effective, some affiliates have reported decreases of over 25% in patient visits from uninsured patients or those at or below the federal poverty line.[43] Other affiliates report decreases in patient visits from people of color,

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[41] *Id.* at 56,146.

[42] *Id.* at 56,147.

[43] Planned Parenthood Fed'n of Am., Public Comment, *Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services (RIN 0937-AA11)* at 10 n.30 (May 17, 2021), https://www.plannedparenthood.org/uploads/filer_public/6e/ad/6eadae40-f2b2-41f2-8fe6-bf5261aa1b00/ppfa_title_x_nprm_comment___51721.pdf ("Planned Parenthood Comment").

including a drop of 30% fewer patients who identify as African-American, 10% of patients who identify as Asian, and 20% fewer patients who identify as multiracial.[44] Under the 2021 Rule, some Planned Parenthood providers have *already* returned to the program as subgrantees, or will soon do so, to resume providing services to the most vulnerable members of society.[45]

As the district court found, the decline in available Title X services caused by the 2019 Rule has "overwhelmingly affected the program's low-income users."[46] That Rule should not be restored.

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[44] Planned Parenthood Comment at 9.

[45] Bacharier, *Planned Parenthood's Springfield, Joplin Clinics to Rejoin Federal Grant Program after Trump Rule Reversed*, Springfield News-Leader (Oct. 22, 2021), https://www.news-leader.com/story/news/politics/2021/10/22/springfield-joplin-mo-planned-parenthood-rejoins-federal-program-title-x-after-trump-rule-reversed/6119400001/.

[46] Op., R. 50, Page ID # 680.

CONCLUSION

For the foregoing reasons, this Court should deny Plaintiffs-Appellants' motion for an injunction pending appeal.

Respectfully submitted,

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January 14, 2022

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Pursuant to Fed. R. App. P. 32(g)(1), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) and Fed. R. App. P. 29(a)(5).

1. Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(f), the brief contains 2,589 words.

2. The brief has been prepared in proportionally spaced typeface using Microsoft Office 365 in 14-point Times New Roman font. As permitted by Fed. R. App. P. 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

/s/ Alan E. Schoenfeld
Alan E. Schoenfeld

January 14, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Alan E. Schoenfeld
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