

No. 21-4235

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

STATE OF OHIO, ET AL.,	:	On Appeal from the
Plaintiffs-Appellants,	:	United States District Court
v.	:	for the Southern District of Ohio
	:	
XAVIER BECERRA, ET AL.,	:	District Court Case No.
Defendants-Appellees.	:	1:21-cv-675-TSB
	:	
	:	
	:	
	:	

---

**MOTION TO TAKE JUDICIAL NOTICE  
OF TITLE X GRANT ANNOUNCEMENT**

---

DAVE YOST  
Ohio Attorney General

BENJAMIN M. FLOWERS\*  
Solicitor General

*\*Counsel of Record*

STEPHEN P. CARNEY  
SYLVIA MAY MAILMAN  
Deputy Solicitors General  
30 East Broad Street, 17th Floor  
Columbus, Ohio 43215  
614-466-8980  
benjamin.flowers@ohioago.gov

*Counsel for State of Ohio*

*Additional counsel listed after signature block*

The Appellant States move the Court to take judicial notice of the U.S. Department of Health and Human Services' announcement of Title X grant amounts to States and other competing grantees for 2022–23, issued on March 30, 2022. The announcement is available online at the following web address: <https://www.hhs.gov/about/news/2022/03/30/hhs-awards-256-million-to-expand-restore-access-to-equitable-affordable-title-x-family-planning-services-nationwide.html>. (The website is archived at: <https://perma.cc/Z47W-PC5C>)

The Court may take notice of this information because it is “not subject to reasonable dispute” and “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b); *see United States v. Husein*, 478 F.3d 318, 337 (6th Cir. 2007) (applying rule to request on appeal). The grant information is listed on the website of the defendant federal agency (the U.S. Department of Health and Human Services). HHS informed this Court by letter on March 29 that this information would be forthcoming about March 30, and now it is here.

The notice confirms that at least some of the appellant States are receiving fewer Title X funds in light of the Final Rule's adoption. For example, HHS's website announced two grants in the State of Ohio: Planned Parenthood of Greater Ohio, which left the program because of the 2019 Rule, has now been awarded \$2

million. The Ohio Department of Health was awarded \$7,040,000. *See* <https://www.hhs.gov/about/news/2022/03/30/hhs-awards-256-million-to-expand-restore-access-to-equitable-affordable-title-x-family-planning-services-nationwide.html>. That is a decrease of \$1,760,000 from its previous (undisputed) annual award of \$8,800,000. *See* Clark Decl. ¶13, R.1-1, PageID#31

HHS, in its announcement of the grant award stressed the importance of those grants to entities who had been ineligible under the prior Rule: “These grants will restore access to Title X services nationwide” through “Title X providers withdrawing from the program over the past two and a half years in response to the previous administration’s Title X rule.” *Id.*

## CONCLUSION

The Court should take judicial notice of HHS’s announcement of Title X grant amounts for 2022–23.

STEVE MARSHALL  
Alabama Attorney General

THOMAS WILSON  
Deputy Solicitor General  
Office of the Attorney General  
501 Washington Ave  
Montgomery, AL 36130  
Phone: 332-242-7300  
Thomas.Wilson@AlabamaAG.gov

*Counsel for the State of Alabama*

MARK BRNOVICH  
Arizona Attorney General

KATE SAWYER  
Assistant Attorney General  
Arizona Attorney General's Office  
2005 N. Central Ave.  
Phoenix, AZ 85004  
Phone: 602-542-8304  
kate.sawyer@azag.gov

*Counsel for the State of Arizona*

DAVE YOST  
Ohio Attorney General

/s/ Benjamin M. Flowers  
BENJAMIN M. FLOWERS\*  
Solicitor General  
\**Counsel of Record*  
STEPHEN P. CARNEY  
SYLVIA MAY MAILMAN  
Deputy Solicitors General  
30 East Broad Street, 17th Floor  
Columbus, Ohio 43215  
614-466-8980  
benjamin.flowers@ohioago.gov

*Counsel for the State of Ohio*

ERIC S. SCHMITT  
Missouri Attorney General

D. JOHN SAUER  
Solicitor General  
Office of the Missouri Attorney  
General  
Supreme Court Building  
207 West High Street  
Jefferson City, MO 65102  
Phone: 573-751-8870  
John.Sauer@ago.mo.gov

*Counsel for the State of Missouri*

LESLIE RUTLEDGE  
Arkansas Attorney General

DOUGLAS J. PETERSON  
Nebraska Attorney General

VINCENT M. WAGNER  
Deputy Solicitor General  
Office of the Arkansas Attorney General  
323 Center Street, Suite 200  
Little Rock, Arkansas 72201  
Phone: 501-682-6302  
vincent.wagner@arkansasag.gov

JAMES A. CAMPBELL  
Solicitor General  
Office of the Nebraska  
Attorney General  
2115 State Capitol  
Lincoln, NE 68509  
Phone: 402-471-2682  
jim.campbell@nebraska.gov

*Counsel for the State of Arkansas*

*Counsel for the State of Nebraska*

ASHLEY MOODY  
Florida Attorney General

JOHN M. O'CONNOR  
Oklahoma Attorney General

NATALIE CHRISTMAS  
Assistant Attorney General of Legal Policy  
Office of the Attorney General  
PL-01 The Capitol  
Tallahassee, FL 32399-1050  
Phone: 850-414-3300  
Fax: 850-410-267  
Natalie.christmas@myfloridalegal.com

ZACH WEST  
Assistant Solicitor General  
Office of the Oklahoma Attorney  
General  
313 N.E. Twenty-First St.  
Oklahoma City, OK 73105  
Phone: 405-522-4392  
zach.west@oag.ok.gov

*Counsel for the State of Florida*

*Counsel for the State of Oklahoma*

DEREK SCHMIDT  
Kansas Attorney General

KURTIS WIARD  
Assistant Solicitor General  
Office of Kansas Attorney General  
120 SW 10th Avenue, 3rd Floor  
Topeka, KS 66612-1597  
Phone: 785-368-8435  
Fax: 785-291-3767  
kurtis.wiard@ag.ks.gov

*Counsel for the State of Kansas*

DANIEL CAMERON  
Kentucky Attorney General

OLIVIA F. AMLUNG (0098606)  
Assistant Attorney General  
Office of Kentucky Attorney General  
1840 Simon Kenton Way, Suite 5300  
Covington, KY 41011  
Phone: 502-696-5300  
Fax: 502-564-2894  
Olivia.Amlung@ky.gov

*Counsel for the Commonwealth of Kentucky*

ALAN WILSON  
South Carolina Attorney General

EMORY SMITH  
Deputy Solicitor General  
THOMAS T. HYDRICK  
Assistant Deputy Solicitor General  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Phone: 803-734-3742  
ThomasHydrick@scag.gov

*Counsel for the State of South Carolina*

PATRICK MORRISEY  
West Virginia Attorney General

LINDSAY S. SEE  
Solicitor General  
Office of the West Virginia  
Attorney General  
State Capitol, Bldg 1, Room E-26  
Charleston, WV 25305  
Phone: 681-313-4550  
Lindsay.S.See@wvago.gov

*Counsel for the State of West Virginia*

## CERTIFICATE OF COMPLIANCE

I hereby certify, in accordance with Rule 32(g) of the Federal Rules of Appellate Procedure, that this motion complies with the type-volume requirements and contains 319 words. *See* Fed. R. App. P. 27(d)(2)(A).

I further certify that this motion complies with the typeface requirements of Federal Rule 32(a)(5) and the type-style requirements of Federal Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Equity font.

/s/ Benjamin M. Flowers

Benjamin M. Flowers

Ohio Solicitor General

## CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2022, the foregoing was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Benjamin M. Flowers

Benjamin M. Flowers

Ohio Solicitor General