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21 UNITED STATES DISTRICT COURT
22 EASTERN DISTRICT OF WASHINGTON
23 SPOKANE DIVISION

24 PLANNED PARENTHOOD OF GREATER
25 WASHINGTON AND NORTH IDAHO;
26 PLANNED PARENTHOOD OF THE
27 GREAT NORTHWEST AND THE
28 HAWAIIAN ISLANDS; and PLANNED
PARENTHOOD OF THE HEARTLAND,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES and ALEX MICHAEL
AZAR II in his official capacity
as Secretary of the U.S.
Department of Health and Human
Services,

Defendants.

Case No.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

1 **INTRODUCTION**

2 1. Plaintiffs Planned Parenthood of Greater Washington and North Idaho
3 (“PPGWNI”), Planned Parenthood of the Great Northwest and the Hawaiian Islands
4 (“PPGNHI”), and Planned Parenthood of the Heartland (“PPH”) are three of 76
5 recipients of federal grant funding under the congressionally appropriated Teen
6 Pregnancy Prevention Program (the “TPP Program”), all of whom had their five-
7 year grant agreements abruptly terminated by the U.S. Department of Health and
8 Human Services (“HHS” or “the agency”). Plaintiffs bring this action to prevent
9 and declare unlawful the agency’s politically motivated decision to precipitously
10 terminate Plaintiffs’ grant agreements and end the TPP Program as a whole.

11 2. Created by a congressional appropriations statute for Fiscal Year
12 (“FY”) 2010, the TPP Program provides federal grants for evidence-based teen
13 pregnancy prevention programs, targeting communities with high rates of teen
14 pregnancy and focusing on youth that are often underserved, including youth of
15 color, youth in foster care, and youth in rural communities.

16 3. The TPP Program has been heralded as one of the country’s most
17 promising evidence-based programs,¹ receiving bipartisan support as an example of
18 how to administer a high quality evidence-based program. For example, the
19 September 2017 report from a bipartisan Commission on Evidence-Based
20 Policymaking established by House Speaker Paul Ryan (R-WI) and Senator Patty
21 Murray (D-WA) highlighted the TPP Program as an example of a federal program
22 developing increasingly rigorous portfolios of evidence.²

23 ¹ See, e.g., Robert Gordon & Ron Haskins, *Trump Team Doesn’t Understand*
24 *Evidence-Based Policies Regarding Social Problems*, THE HILL, (July 26, 2017),
25 <http://thehill.com/blogs/pundits-blog/the-administration/343908-trump-team-doesnt-understand-evidence-based-policies>.

26 ² COMM’N ON EVIDENCE-BASED POLICYMAKING, THE PROMISE OF EVIDENCE-BASED
27 (footnote continued)

1 4. Through 84 grants, HHS currently funds 76 TPP Program grantees
2 broadly consisting of states, non-profit organizations, school districts, universities,
3 and others.

4 5. As of September 2016, it was estimated that the TPP Program was on
5 track to serve an estimated 1.2 million youths across the United States.³

6 6. Since the TPP Program’s inception in 2010, the teen birth rate has
7 declined 41% from 2010 to 2016—a drop that is more than twice as large as the
8 decline in any other six-year period.⁴

9 7. Just recently, on January 5, 2018, the Centers for Disease Control and
10 Prevention (“CDC”) released results of its research on sexual intercourse among
11 high school students from 2005–2015 finding significant decreases in the proportion
12 of high school students nationwide who had ever had sexual intercourse.⁵ The CDC
13 noted that “innovations in and federal resources for . . . teen pregnancy prevention”
14 is one of the influences that may have contributed to the decline.⁶

15 _____
16 POLICYMAKING 94 (Sept. 2017).

17 ³ Evelyn Kappeler, *Building the Evidence to Prevent Adolescent Pregnancy*, 106
18 AM. J. PUB. HEALTH S1, S5 (2016).

19 ⁴ Valerie Strauss, *Trump Administration Cuts Funding for Teen Pregnancy*
20 *Prevention Programs. Here Are the Serious Consequences*, WASH. POST (Sept. 7,
21 2017), [https://www.washingtonpost.com/news/answer-sheet/wp/2017/09/07/trump-](https://www.washingtonpost.com/news/answer-sheet/wp/2017/09/07/trump-administration-cuts-funding-for-teen-pregnancy-prevention-programs-here-are-the-serious-consequences/?utm_term=.46e240f75cdb)
22 [administration-cuts-funding-for-teen-pregnancy-prevention-programs-here-are-the-](https://www.washingtonpost.com/news/answer-sheet/wp/2017/09/07/trump-administration-cuts-funding-for-teen-pregnancy-prevention-programs-here-are-the-serious-consequences/?utm_term=.46e240f75cdb)
23 [serious-consequences/?utm_term=.46e240f75cdb](https://www.washingtonpost.com/news/answer-sheet/wp/2017/09/07/trump-administration-cuts-funding-for-teen-pregnancy-prevention-programs-here-are-the-serious-consequences/?utm_term=.46e240f75cdb).

24 ⁵ In addition to overall decreases seen during this period, decreases were also seen
25 among 9th and 10th grade students, among African American students across all
26 grades, and among Hispanic students in three grades. Kathleen A. Ethier, Laura
27 Kann & Timony McManus, Ctrs. for Disease Control & Prevention, *Sexual*
28 *Intercourse Among High School Students—29 States and United States Overall,*
2005–2015, 66 *Morbidity & Mortality Weekly Report* 1393, 1395 (Jan. 5, 2018),
<https://www.cdc.gov/mmwr/volumes/66/wr/pdfs/mm665152a1-H.pdf>.

⁶ *Id.* at 1396.

1 8. HHS has also stated that the TPP Program has “significantly
2 contributed” to the research on effective programs to prevent teen pregnancy.⁷

3 9. Despite these commendations, on July 3, 2017, HHS abruptly informed
4 recipients of 81 TPP Program grants that HHS would be terminating their grant
5 agreements two years early.⁸ Specifically, HHS informed these TPP grantees,
6 including Plaintiffs, that their TPP projects would end on June 30, 2018, rather than
7 on June 30, 2020 as originally designed, awarded, and implemented.

8 10. HHS’s sudden decision to terminate Plaintiffs’ TPP grant agreements
9 and the TPP Program as a whole cannot be reconciled with HHS’s prior statements
10 regarding the Program’s effectiveness or Plaintiffs’ individual performance under it.

11 11. Rather, it is part and parcel of the Trump–Pence Administration’s
12 broader political agenda against sexual and reproductive health and evidence-based
13 and science-based programs.

14 12. The early termination of the TPP Program will lead to, and already has
15 had the effect of causing, irreparable harm to Plaintiffs and the high-need
16 communities they serve. Plaintiffs were expecting that the TPP Program would
17 enable them to continue their work in years four and five of their projects, and its
18 early termination equals a loss of more than \$200 million in funding program-wide
19 and a loss of over \$5.5 million in annual funding among Plaintiffs. This means an
20 end to critical education for the 1.2 million youths being served nationwide and the
21 40,000 youths to be served by Plaintiffs’ TPP Program projects specifically.

22 13. Consequently, by terminating the TPP Program, hundreds of thousands
23

24 ⁷ HHS, Office of Adolescent Health, *About the Teen Pregnancy Prevention (TPP)*
25 *Program*, <https://www.hhs.gov/ash/oah/grant-programs/teen-pregnancy-prevention-program-tpp/about/index.html> (last visited Feb. 13, 2018).

26 ⁸ The remaining three grants were terminated in September 2017.
27

1 of young people will be deprived of the high-quality information and education that
2 have demonstrated effectiveness in helping young people make healthy decisions
3 about their health and their futures.

4 14. In addition, terminating the TPP Program mid-stream means that the
5 federal government and researchers will be deprived of completing current research
6 on whether programs models that have demonstrated effectiveness work with
7 additional populations and on new evidence-informed programs that are needed to
8 maintain the important gains that have been made in helping adolescents avoid
9 unintended pregnancy. This amounts to a waste of millions of dollars in resources.

10 15. In addition, the termination will cause, and in some cases, has already
11 caused, Plaintiffs and/or their sub-grantees to lay off employees who have as their
12 sole responsibility implementation of the TPP Program in the communities they
13 serve, resulting in fewer trained educators. The termination has also imposed
14 additional hurdles on Plaintiffs to making effective partnerships in the communities
15 they serve and has caused reputational harm.

16 16. Plaintiffs bring this action and seek preliminary and permanent
17 injunctive relief to prevent irreparable harms caused by Defendants' unlawful
18 termination of their grants.

19 **JURISDICTION AND VENUE**

20 17. Pursuant to 28 U.S.C. § 1331, this Court has jurisdiction over
21 Plaintiffs' claims arising under the Administrative Procedure Act, 5 U.S.C. §§ 701-
22 706, and the First and Fifth Amendments to the United States Constitution.

23 18. Venue is proper in the Eastern District of Washington under 28 U.S.C.
24 § 1391(e) because Plaintiff PPGWNI is headquartered in this district and a
25 substantial part of the events giving rise to the claims occurred and continues to
26 occur in this district. PPGNHI and PPH are properly joined as plaintiffs pursuant to
27 Rule 20(a) of the Federal Rules of Civil Procedure as they assert rights to relief

1 arising out of the same transaction and occurrence as PPGWNI, and common
2 questions of law and fact will arise in this action with respect to all parties.

3 **PARTIES**

4 19. **Plaintiff PPGWNI** is a not-for-profit corporation organized under the
5 laws of Washington. For over 50 years, PPGWNI has been helping women, men,
6 and teens make responsible decisions about their sexual health and is dedicated to
7 delivering the highest quality reproductive health care services at eleven health
8 centers throughout eastern Washington as well as providing evidence-based
9 sexuality education and teen pregnancy prevention. PPGWNI's grant agreement to
10 provide teen pregnancy prevention services through the TPP Program has been
11 terminated by Defendants.

12 20. **Plaintiff PPGNHI** is a not-for-profit corporation organized under the
13 laws of Washington. PPGNHI provides high-quality, affordable reproductive health
14 care through twenty-eight health centers in Alaska, Hawaii, Idaho, and western
15 Washington. PPGNHI's mission includes providing evidence-based teen pregnancy
16 prevention programs in the communities it serves. PPGNHI's four grant agreements
17 to provide teen pregnancy prevention services through the TPP Program have been
18 terminated by Defendants.

19 21. **Plaintiff PPH** is a not-for-profit corporation organized under the laws
20 of Iowa. PPH delivers clinical, educational, and counseling services at ten health
21 centers in Iowa and Nebraska, and evidence-based sex education and teen pregnancy
22 prevention programs. PPH's grant agreements to provide teen pregnancy prevention
23 services through the TPP Program have been terminated by Defendants.

24 22. **Defendant HHS** is a Department of the Executive Branch of the U.S.
25 Government and is an agency within the meaning of 5 U.S.C. § 551(1). HHS is the
26 federal agency responsible for awarding and administering funds under the TPP
27 Program.

1 appropriated funds shall be “available for research and demonstration grants to
2 develop, replicate, refine, and test additional models and innovative strategies for
3 preventing teenage pregnancy.” *Id.* These “evaluation” grants are referred to as
4 Tier 2.¹⁰

5 29. When HHS originally sought the 2010 appropriations that would fund
6 the TPP Program, HHS stated that “utilizing evidence-based models and promising
7 practices” were “necessary to permit teen pregnancy prevention funds to be targeted
8 more effectively.”¹¹

9 30. HHS’s Office of Adolescent Health (OAH) is responsible for
10 implementing and administering the TPP Program.

11 31. Since the inception of the TPP Program in 2010 through the most
12 recent appropriations for Fiscal Year 2017, overall annual funding under the TPP
13 Program has remained nearly constant, with Congress appropriating approximately
14 \$100 million in funding each year.

15 32. This funding supports grants in the form of competitively-awarded
16 funding agreements with five-year periods of performance to a variety of eligible
17 organizations, including school districts, community-based organizations,
18 universities, and health departments.

19 33. Because no appropriations bill for Fiscal Year 2018 (October 1, 2017,
20 through September 30, 2018) has yet been signed into law, HHS, like the rest of the
21 federal government, currently operates under a continuing budget resolution, a series
22 of which have been in effect since September 8, 2017 (and will remain in effect until

23 ¹⁰ See CARMEN SOLOMON-FEARS, CONG. RESEARCH SERV., *Teenage Pregnancy*
24 *Prevention: Statistics and Programs* 12 (2016),
25 <https://fas.org/sgp/crs/misc/RS20301.pdf>; Consolidated Appropriations Act, 2017,
26 Pub. L. 115-31, 131 Stat. 135 (2016).

27 ¹¹ HHS FY 2010, Justification for Estimates for Appropriations Committees 11.
28

1 a FY 2018 appropriation law is passed).¹² By operation of those continuing
2 resolutions, Congress has maintained current FY 2018 funding for the TPP Program
3 consistent with funding levels for FY 2017.

4 **HHS Issues Five-Year TPP Project Grants for 2015-2020**

5 34. After an initial round of TPP funding that took place from 2010
6 through 2015, HHS solicited applications for another round of five-year funding.
7 Specifically, in April 2015, HHS issued Funding Opportunity Announcements
8 (FOAs) for Tier 1 and Tier 2 funds, which expressly stated that “[a]wards will be in
9 the form of a five-year cooperative agreement with the grantee.”¹³

10 35. Before announcing grant opportunities for the TPP Program, HHS
11 sponsored an independent review of the available evidence on teen pregnancy
12 prevention that identified a list of approved evidence-based models.¹⁴

13 36. This “Evidence Review” is what determines whether programs have
14 been “proven effective through rigorous evaluation to reduce teenage pregnancy,
15 behavioral risk factors underlying teenage pregnancy, or other associated risk
16 factors” as Congress directed in creating the TPP Program. Consolidated
17 Appropriations Act, 2010, Pub. L. No. 111-117, 123 Stat. at 3253.

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21 ¹² Pub. L. 115-56 (“2017 Continuing Resolution”); Pub. L. 115-90; Pub. L. 115-96.

22 ¹³ See, e.g., April 2015 Tier 1A Funding Opportunity Announcement,
23 <https://www.hhs.gov/ash/oah/sites/default/files/tier1a-foafile.pdf> (last visited
24 February 12, 2018).

25 ¹⁴ This independent review was sponsored through HHS’s Office of the Assistant
26 Secretary for Planning and Evaluation (ASPE), the Office of Adolescent Health
27 (OAH) within the Office of the Assistant Secretary for Health, and the Family and
28 Youth Services Bureau (FYSB) within the Administration for Children and Families
(ACF).

1 37. The Evidence Review has been conducted and updated periodically
2 since 2009, and the most recent results were published in 2016 reflecting studies
3 through August 2015.

4 38. Tier 1 (replication) grantees selected an existing evidence-based model
5 from this Evidence Review when applying for grants funded through the TPP
6 Program. Thus, the models utilized by Plaintiffs in applying for TPP Program
7 grants and were approved as evidence-based. Tier 2 (evaluation) grants are new or
8 innovative evidence-informed programs that help to fill gaps in existing
9 interventions for underserved youth by expanding the number of programs available
10 to help reduce teen pregnancy.

11 39. As of July 2016, there were 44 evidence-based program models
12 approved for use in Tier 1 funded programs.¹⁵ To meet the criteria for inclusion on
13 HHS's list, the program must have evidence of at least one favorable, statistically
14 significant impact on at least one sexual risk behavior or reproductive health
15 outcome of interest (sexual activity, number of sexual partners, contraceptive use,
16 STIs, or pregnancy).¹⁶ Upon information and belief, researchers submitted
17 additional evaluations of TPP Program models in November 2016, but despite over
18 a year having gone by, HHS has not published the results of that updated review.¹⁷

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21 ¹⁵ HHS, Office of Adolescent Health, *Evidence-Based TPP Programs*,
22 [https://www.hhs.gov/ash/oah/grant-programs/teen-pregnancy-prevention-program-
tppevidencebasedprograms/index.html](https://www.hhs.gov/ash/oah/grant-programs/teen-pregnancy-prevention-program-tppevidencebasedprograms/index.html); *see also* JULIETA LUGO-GIL ET AL.,
23 UPDATED FINDINGS FROM THE HHS TEEN PREGNANCY PREVENTION EVIDENCE
24 REVIEW: JULY 2014 THROUGH AUGUST 2015 at 1 (June 2016),
https://tppevidencereview.aspe.hhs.gov/pdfs/Summary_of_findings_2015.pdf.

25 ¹⁶ *Id.*

26 ¹⁷ *See HHS Teen Pregnancy Prevention (TPP) Evidence Review, Call for Studies*,
https://tppevidencereview.aspe.hhs.gov/pdfs/2016_Call_for_Studies.pdf.

1 40. Following a highly competitive grant application process, in July 2015,
2 HHS awarded 84 new five-year TPP Program grants.

3 41. In each of the governing cooperative agreements with Plaintiffs, HHS
4 specified that the TPP Program project period would run for five years—from July
5 1, 2015 through June 30, 2020.

6 42. Each FOA required that applicants submit a detailed work plan for the
7 “five-year project period.”

8 43. In setting up the grants to run for five years, HHS intended that the first
9 year would be for planning whereas years two through five were for implementation
10 of the projects. HHS required that grantees’ applications and work plans
11 demonstrate staffing, budget, goals, and milestones over the course of the five-year
12 project period.

13 44. Plaintiffs PPGWNI, PPH, and PPGNHI are three of the current TPP
14 Program grantees, receiving six TPP Program grants among them.

15 45. Specifically, Plaintiff PPGWNI was awarded a five-year Tier 1 grant to
16 implement a project titled Inland Northwest Healthy Youth Initiative (hereinafter the
17 “Healthy Youth Initiative”).

18 46. Plaintiff PPH was awarded a five-year Tier 1 grant to implement a
19 project called Education & Prevention, Information & Conversation (“EPIC”).

20 47. Plaintiff PPGNHI currently receives four TPP Program grants: two
21 with Tier 1 (replication) funding and two with Tier 2 (evaluation) funding.

22 48. Consistent with the terms of FOAs and their funding agreements,
23 Plaintiffs have each been operating their respective TPP Program projects with this
24 anticipated five-year project period in mind, and have been making vital
25 contributions to reducing teen pregnancy in the high-need communities they serve.

26 49. For example, since 2015, Plaintiff PPGWNI has been working with
27 more than 40 formal partners through its Healthy Youth Initiative to implement

1 evidence-based teen pregnancy prevention programs in four Washington
2 communities with some of the highest live birth rates for women ages 15 to 19 years
3 in the state. All four target communities have higher than national average rates of
4 children under eighteen living in households below the federal poverty level and
5 receiving public assistance. One example of a successful Healthy Youth Initiative
6 partnership is with Domestic Violence Services of Benton & Franklin Counties (“DVS”).
7 That organization has been so impressed by the programming that it has requested
8 PPGWNI training for the majority of the DVS staff in order to continue the program’s
9 beneficial impact on local teens who have experienced domestic violence. The Healthy
10 Youth Initiative project was structured to serve 2,000 young people per year in years
11 two through five of the TPP Program grant project, amounting to a total of 8,000
12 youth served in the five-year grant period.

13 50. Plaintiff PPH is using its Tier 1 funding to reduce unintended
14 pregnancy rates among high risk, vulnerable, and underserved youth populations in
15 three high-need communities in Iowa and Nebraska. Each of the targeted
16 communities has teen birth rates above the state and national averages and, within
17 those elevated rates, African American and Latina youth are disproportionately
18 represented. With its TPP Program grant agreement, Plaintiff PPH had aimed to
19 reach more than 13,875 young people during the five-year grant period.

20 51. Plaintiff PPGNHI is using its Tier 1 funding to implement a program
21 called “Stronger Together: The Northwest Coalition for Adolescent Health Capacity
22 Building Project.” Through this grant, PPGNHI helps other non-profit organizations
23 learn how to deliver education previously determined to be effective at reducing
24 teen pregnancy with a particular focus on programs that target vulnerable young
25 people, including young people in foster care and young people experiencing
26 homelessness in Oregon and Washington. For instance, through this grant, PPGNHI
27 works with a homelessness organization called YouthCare in Seattle Washington to
28

1 train their staff to teach youth about sexual and reproductive health. Through the
2 Stronger Together program, Plaintiff PPGNHI had aimed to reach more than 3,500
3 young people during the five-year grant period.

4 52. Plaintiff PPGNHI also implements a Tier 1 grant program called
5 “Improving the Lives of Teens.” This programs aims to replicate evidence-based
6 teen pregnancy prevention programs in seven communities with disproportionately
7 high teen pregnancy rates in Alaska, Hawaii, Idaho, and Washington. In each
8 community, there are three distinct implementation settings ranging from faith-
9 based institutions, to foster care youth programs, to high-school settings and school-
10 based health centers. Through the Improving the Lives of Teens program, PPGNHI
11 had aimed to serve 2,275 people per year for a total of 9,100 youth in years two
12 through five of the program.

13 53. Plaintiff PPGNHI is using its Tier 2 funding to evaluate the
14 effectiveness of a program called “Linking Families and Teens,” which includes
15 sessions for parents-caregivers and their children, as well as a joint community
16 service component. The program targets young people in grades 9–12 and their
17 parent/caregiver(s) living in rural communities in Alaska, Hawaii, Idaho, Oregon,
18 Utah, and Washington. The goal of the program is to “reduce teen pregnancy rates,
19 increase the use of contraceptives, and delay initiation of sexual activity by
20 increasing parent/caregiver-youth connectedness, and increasing youth’s self-
21 efficacy, knowledge, and skill related to sexual health and pregnancy prevention.”¹⁸
22 Plaintiff PPGNHI planned to evaluate the program’s effectiveness through a
23 randomized control trial, the most rigorous form of program research, measuring the
24 program’s impact by evaluating changes in knowledge, communication and self-

1 efficacy, sexual initiation, contraceptive use, and pregnancy. PPGNHI planned to
2 reach 500 young people per year with this intervention.

3 54. Plaintiff PPGNHI's other Tier 2 funding is used to evaluate the
4 effectiveness of a program called "IN-clued: Inclusive Healthcare—Youth and
5 Providers Empowered," which is a teen pregnancy intervention designed
6 specifically for lesbian, gay, bisexual, transgender, queer, and questioning
7 ("LGBTQ") young people who experience higher rates of unintended teen
8 pregnancy than their heterosexual peers. Young people who receive the IN-clued
9 programming are from urban communities in Alaska, Massachusetts, Minnesota,
10 Oregon, Utah, and Washington. The intervention includes a three-hour workshop for
11 health-care staff and providers that addresses best practices with LGBTQ young
12 people and a three-hour interactive workshop for LGBTQ young persons that
13 includes education related to sexual risk prevention and healthy relationships, and
14 information about how to access sexual health services, delivered by trained peer
15 health educators. To evaluate the effectiveness of this intervention, PPGNHI
16 planned to conduct a randomized control trial with 1,500 LGBTQ young persons
17 over three years, measuring its impact through receipt of reproductive health
18 services and use of birth control.

19 55. Over the first three years of the latest round of TPP Program funding,
20 HHS has consistently commended all three Plaintiffs for their implementation of
21 their respective TPP Program projects.

22 56. For example, PPGWNI has consistently received praise from HHS for
23 its implementation of the Healthy Youth Initiative. On February 22, 2016, HHS
24 provided PPGWNI with its progress report on the first six months of the project, in
25 which HHS commended PPGWNI's "selecting and reviewing evidence-based
26 programs (EBPs) for each intervention site" and its "focus on recruiting Hispanic
27 and Native populations," among other things. In this progress report, HHS stated
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1 that “[t]he grantee is working hard to meet the milestones for the project and is
2 solidifying the project in the intervention communities.”

3 57. On September 1, 2016, an HHS medical education specialist and OAH
4 Project Officer sent PPGWNI a letter in response to PPGWNI’s annual progress
5 report submission for Year 1. In it, HHS wrote “[c]ongratulations on successfully
6 completing year one of the OAH TPP grant” and stated that PPGWNI
7 “accomplished a lot.” HHS further acknowledged that PPGWNI “successfully
8 completed [its] planning year milestones.” In closing, HHS noted that it was “a
9 pleasure to work with [PPGWNI] and [its] program;” that HHS “look[ed] forward to
10 the continuing progress in the coming years;” and remarked, “[c]ongratulations on a
11 job well done, on your Year 1 achievements, and thank you for all that you and your
12 team do each and every day to improve the lives of adolescents!”

13 58. PPGWNI again received several commendations from HHS in its Year
14 2 review. HHS commended PPGWNI for “provid[ing] goals and objectives for
15 Year 3 that were specific and measurable and aligned with OAH expectations such
16 as implementing evidence based programs in 5 counties across Washington State.”
17 In its review HHS also commended PPGWNI’s plans “to expand programming to
18 include at least three new middle, high, or alternative schools in each community
19 they are working in by the end of year 3.”

20 59. Similarly, HHS has repeatedly commended Plaintiff PPH’s grant
21 performance throughout the duration of the TPP Program. For example, PPH was
22 featured in OAH’s Technical Review of Year 1 Annual Progress Report (10/17/16).
23 The Program Officer wrote: “I look forward to the continued progress in the coming
24 years. Congratulations on a job well done, on your Year 1 achievements, and thank
25 you for all that you and your team do each and every day to improve the lives of
26 adolescents!”

27 60. The same is true for Plaintiff PPGNHI. Not only has HHS lauded
28

1 PPGNHI as a “success story” for its implementation of TPP programs during the
2 previous round of funding from 2010–2015, but HHS has also consistently praised
3 PPGNHI for its performance during the second, current round of funding, always
4 indicating that PPGNHI is meeting or exceeding expectations and milestones.

5 61. For example, in connection with its Tier 1 funding for Improving the
6 Lives of Teens, HHS commended PPGNHI for “exhibit[ing] strong organizational
7 skills during the first six months of this project, meeting appropriate milestones,
8 [and] engaging multiple partners to establish a strong structure for the coming
9 years.”

10 62. After PPGNHI’s first full year of performance, HHS stated that
11 PPGNHI “successfully completed [its] planning year milestones,” and an OAH
12 employee stated that she “looked forward to the continued progress in the coming
13 years”; congratulated PPGNHI for “a job well done”; and thanked PPGNHI for its
14 “achievements” and all it does “each and every day to improve the lives of
15 adolescents.”

16 **The Trump–Pence Administration Takes Office**

17 63. The Trump–Pence Administration has a demonstrated aversion to
18 evidence and science, where even the terms “evidence-based” and “science-based”
19 are discouraged. For example, in December 2017, senior officials at the CDC
20 informed policy analysts that certain words were forbidden from budget documents,
21 including “evidence-based,” “science-based,” and “diversity.”¹⁹

22 64. This is also not the only time the Administration has rejected evidence-

23 ¹⁹ Lena H. Sun & Juliet Eilperin, *CDC Gets List of Forbidden Words: Fetus,*
24 *Transgender, Diversity*, Wash. Post (Dec. 15, 2017),
25 https://www.washingtonpost.com/national/health-science/cdc-gets-list-of-forbidden-words-fetus-transgender-diversity/2017/12/15/f503837a-e1cf-11e7-89e8-edec16379010_story.html.
26

1 based programs. On December 28, 2017, the Substance Abuse and Mental Health
2 Services Administration, a part of HHS, unexpectedly terminated its contract for the
3 highly successful National Registry of Evidence-Based Programs and Practices,
4 which was started in 1997 and lists 453 behavioral health programs that have been
5 proven to be effective.

6 65. Outside of HHS, other federal agencies have also attempted to remove
7 science from policymaking.

8 66. For example, in December 2017, the Department of the Interior
9 implemented a new grant review policy that gives a single political appointee the
10 authority to screen research grants to ensure that they “better align with the
11 Secretary’s priorities.”²⁰ This action prompted criticism from the scientific
12 community, including a joint statement issued by the National Academies of
13 Science, Engineering, and Medicine that they “view any political review of
14 scientific proposals as inappropriate.”²¹

15 67. In May 2017, President Trump’s proposed budget for FY 2018 called
16 for eliminating the TPP Program²² and sought a \$277 million investment in

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18 ²⁰ U.S. DEP’T OF THE INTERIOR, GUIDANCE FOR FINANCIAL ASSISTANCE ACTIONS
19 EFFECTIVE IN FISCAL YEAR 2018 (Dec. 28, 2017),
20 [https://assets.documentcloud.org/documents/4344915/Interior-guidance-for-fiscal-
2018-grants.pdf](https://assets.documentcloud.org/documents/4344915/Interior-guidance-for-fiscal-2018-grants.pdf).

21 ²¹ Press Release, The National Academies of Sciences, Engineering, and Medicine,
22 Statement by NAS, NAE, and NAM Presidents on the Political Review of Scientific
23 Proposals (Jan. 16, 2018)
<http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=1162018>.

24 ²² U.S. HEALTH AND HUMAN SERVS., GENERAL DEPARTMENTAL MANAGEMENT
25 BUDGET at 91, [https://www.hhs.gov/sites/default/files/combined-general-
26 department-management.pdf](https://www.hhs.gov/sites/default/files/combined-general-department-management.pdf) (“The teenage pregnancy rate has declined
27 significantly over recent years, but it does not appear this program has been a major
28 driver in that reduction.”)

1 extending abstinence education.²³

2 68. Generally, abstinence education programs teach that abstinence from
3 sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually
4 transmitted diseases, and other associated health problems. Abstinence only programs
5 have been proven ineffective in delaying initiation of sexual intercourse or changing other
6 sexual risk behaviors, and moreover, may provide medically inaccurate and stigmatizing
7 information, as well as withhold important information about sexuality that young people
8 need to make healthy decisions.²⁴

9 69. Significantly, on June 5, 2017, President Trump appointed Valerie
10 Huber as Chief of Staff for the Office of the Assistant Secretary of Health,²⁵ the
11 office at HHS under which OAH falls.²⁶

12 70. Prior to serving at HHS, Ms. Huber served as the abstinence education
13 coordinator for her home state of Ohio's Department of Health from 2004 to 2007.
14 A report on abstinence-only-until-marriage programs in Ohio issued in 2005 during
15 Huber's tenure found that Ohio's abstinence only curriculum "misrepresent[ed]
16 religious convictions as scientific fact."²⁷ It further found that "the content of

17
18 ²³ BUDGET OF THE U.S. GOVERNMENT, FISCAL YEAR 2018, at Table S-6,
19 <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/budget.pdf>;
20 Lisa Ryan, *Trump's Proposed Budget Would Invest \$277 Million in Abstinence-Only Education*, THE CUT (May 24, 2017), <https://www.thecut.com/2017/05/trump-budget-abstinence-only-sex-ed.html>.

21 ²⁴ John S. Santelli et al., *Abstinence-Only-Until-Marriage: An Updated Review of U.S. Policies and Programs and Their Impact*, 61 J. Adolescent Health 273 (2017).

22 ²⁵ See HHS, Office of the Assistant Sec'y for Health, *Valerie Huber*,
23 <https://www.hhs.gov/ash/about-ash/leadership/valerie-huber/index.html>.

24 ²⁶ HHS, Office of the Assistant Sec'y for Health, *Organizational Chart*,
25 <https://www.hhs.gov/ash/about-ash/organizational-chart/index.html>.

26 ²⁷ Scott H. Frank, *Report on Abstinence-Only-Until-Marriage Programs in Ohio*, 3,
17-18 (June 2005),

27 (footnote continued)

1 abstinence-only-until-marriage curriculum [has] raised concerns regarding the
2 likelihood of stigma and disenfranchisement of students who do not share the
3 religious, cultural, and ideologically narrow message proffered by these
4 programs.”²⁸

5 71. For example, popular abstinence-only program *True Love Waits* was
6 promoted in Ohio by Valerie Huber. *True Love Waits* had students take the
7 following pledge: “Believing that true love waits, I make the commitment to God,
8 myself, my family, my friends, my future mate, and my future children to a lifetime
9 of purity including sexual abstinence from this day until the day I enter a biblical
10 marriage relationship.”²⁹

11 72. Ms. Huber officially resigned from Ohio’s Department of Health in
12 January of 2007, and then formed the National Abstinence Educators Association—
13 a lobbying arm of the abstinence education industry, later known as Ascend. She is
14 also responsible for attempting to rebrand abstinence education as “sexual risk
15 avoidance.”

16 73. Soon before her appointment to HHS, Ms. Huber penned an op-ed
17 promoting abstinence-only education and complaining of the lack of funding for it,
18 stating that “[o]nly ten cents out of every federal sex education dollar is devoted to
19 Sexual Risk Avoidance (SRA) education.”³⁰ In the same op-ed, Ms. Huber

20
21 https://www.researchgate.net/publication/266456924_Report_on_Abstinence-Only-Until-Marriage_Programs_in_Ohio.

22 ²⁸ *Id.* at 4.

23 ²⁹ Scott H. Frank, Report on Abstinence-Only-Until-Marriage Programs in Ohio, 3, 17-18
24 (June 2005); *see also* LifeWay, True Love Waits, <https://www.lifeway.com/en/product-family/true-love-waits> (describing the program as “a tremendous movement, orchestrated
25 by God, to further spread the biblical message of sex and purity to a younger generation”).

26 ³⁰ Valerie Huber, *Sexual Risk Avoidance Education: Common sense, science and
27 health are winning the day*, THEHILL.COM (Mar. 12, 2017),

28 (footnote continued)

1 maligned the TPP Program, referring to it as “so-called comprehensive sex
2 education” and claiming that it “normalizes teen sex.” She also attacked the
3 effectiveness of the TPP Program, stating inaccurately that “more than 80 percent of
4 teens in the [TPP] program fared either worse or no better than their peers who were
5 not a part of the program.”

6 74. Huber has claimed that peer-reviewed scientific studies concerning the
7 effectiveness of contraceptives in preventing teen pregnancy are biased.³¹

8 75. Less than a month after her appointment to her position as Chief of
9 Staff for the office that administers the TPP Program, HHS terminated all TPP
10 Program grants.

11 **HHS Abruptly Terminates All TPP Program Grants**

12 76. Despite the consistent commendations that Plaintiffs received from
13 HHS, in July 2017, HHS notified the recipients of 81 TPP Program grants, including
14 Plaintiffs, that their TPP program grants would be terminated as of June 30, 2018,
15 two full years before their respective projects were set to end.

16 77. Specifically, without warning, HHS notified Plaintiffs PPGNHI,
17 PPGWNI, and PPH via a Notice of Award for year three of their grants that “[t]his
18 award also shortens the project period to end on June 30, 2018 at the end of this
19 budget year.”

20 78. HHS neither provided an explanation for that decision nor did it give
21 Plaintiffs or any of the other grantees any ability to challenge that decision.

22 _____
23 [http://thehill.com/blogs/pundits-blog/healthcare/323590-sexual-risk-avoidance-
24 education-common-sense-science-and-health.](http://thehill.com/blogs/pundits-blog/healthcare/323590-sexual-risk-avoidance-education-common-sense-science-and-health)

25 ³¹ Julie Rovner Kaiser, *Drop in Pregnancies Is Due to More Contraceptives, Not
26 Less Sex*, PBS NEWSHOUR (Sept. 2, 2016),
[https://www.pbs.org/newshour/health/teen-pregnancies-contraceptives-less-sex.](https://www.pbs.org/newshour/health/teen-pregnancies-contraceptives-less-sex)
27

1 79. On August 1, 2017, Plaintiffs each separately wrote to HHS
2 challenging the termination of their grants mid-stream, particularly in light of the
3 commendations that Plaintiffs had each received from HHS since 2015.

4 80. As of the date of this filing, HHS still has not responded, let alone
5 given Plaintiffs any explanation for the abrupt termination.

6 81. Nor was there any indication in Plaintiffs' annual evaluations that there
7 were any issues that could result in termination or that termination was likely.

8 **HHS Gives Contradictory Explanations for Terminating TPP**

9 82. Although HHS has yet to provide any explanation for the termination to
10 Plaintiffs themselves, HHS has provided various statements to the media or
11 Congress in an attempt to justify the termination.

12 83. In mid-July 2017, HHS explained in a media statement that the
13 termination decision was made because "the President's FY 2018 Budget eliminated
14 funding for the Teen Pregnancy Prevention Program, so our grants office informed
15 the grantees of their June 30, 2018 end date, to give them an opportunity to adjust
16 their programs and plan for an orderly closeout,"³² even though Congress had not
17 enacted an FY 2018 budget or otherwise indicated it was concluding the TPP
18 Program.

19 84. One month later, HHS changed course, claiming in another media
20 statement it believed there was "weak evidence of positive impacts," that the TPP
21 Program was "a poor use of more than \$800 million in taxpayer dollars" and that
22 "HHS hit the pause button on it."³³ Hitting the "pause button" on the congressional

23 ³² Megan Molteni, *Teen Pregnancy Researchers Regroup After Trump's HHS Pulls*
24 *Funding*, WIRED.COM (July 19, 2017), [https://www.wired.com/story/teen-](https://www.wired.com/story/teen-pregnancy-researchers-regroup-after-trumps-hhs-pulls-funding/)
25 [pregnancy-researchers-regroup-after-trumps-hhs-pulls-funding/](https://www.wired.com/story/teen-pregnancy-researchers-regroup-after-trumps-hhs-pulls-funding/).

26 ³³ Jacqueline Howard, *Why the Trump Administration is Cutting Teen Pregnancy*
27 *Prevention Funding*, CNN.COM (Aug. 17, 2017),

28 (footnote continued)

1 mandated program, HHS said, was meant to “give[] the Department time to continue
2 its review of the program and the evidence, to ensure that should Congress continue
3 it, the program provides positive reinforcement of the healthy decisions being made
4 by a growing majority of teens.”³⁴

5 85. In late November 2017, HHS responded to inquiries by several U.S.
6 Senators and Representatives by repeating its conclusory assertions that continuing
7 the TPP Program was “not a reasonable option” due to “strong evidence of negative
8 impact or no impact”; that the TPP Program had “failed to deliver” on its promises
9 and “jeopardize[ed] the youth who were served”; and that the program was “a poor
10 use” of taxpayer dollars.³⁵

11 86. But even taking these post-hoc justifications at face value, they cannot
12 be reconciled with HHS’s own statements about the success of Plaintiffs’
13 implementation of their individual programs and the positive impacts of the TPP
14 Program as a whole.

15 87. Indeed, even after the abrupt termination of the TPP Program grants,
16 HHS has continued to praise Plaintiffs’ individual performance under them.

17 88. Specifically, on October 18, 2017, HHS issued a report commending
18 Plaintiff PPGWNI for, among other things, “prepar[ing] their educators to be
19 Trainers of Trainers,” “focusing on ways to make teaching and learning practices
20 more inclusive for all ethnicities and genders,” and “developing a comprehensive

21 _____
22 [http://www.cnn.com/2017/08/17/health/teen-pregnancy-prevention-programs-
23 funding/index.html](http://www.cnn.com/2017/08/17/health/teen-pregnancy-prevention-programs-funding/index.html).

24 ³⁴ *Id.*

25 ³⁵ Letter from Barbara Clark, Acting Assistant Sec’y for Legislation, Dep’t of
26 Health and Hum. Servs., to U.S. Senator Patty Murray (Nov. 22, 2017); Letter from
27 Barbara Clark, Acting Assistant Sec’y for Legislation, Dep’t of Health and Hum.
28 Servs., to U.S. Representative Barbara Lee (Nov. 28, 2017).

1 and community-specific referral guide that has up-to-date information for local
2 youth friendly services.”

3 89. HHS’s newfound criticism of the TPP Program also is inconsistent with
4 the agency’s own data. According to HHS materials, out of 41 evaluations, 12
5 programs (or 29%) “were found effective at changing the behavior of program
6 participants,”³⁶ including 4 programs funded through Tier 1 and 8 programs funded
7 through Tier 2. In research fields, a finding that 29% of programs had statistically
8 significant positive behavioral outcomes is significantly higher than expected,
9 particularly when compared to replication efforts from other fields.

10 90. The fact that HHS is terminating *all* TPP Program grants, including
11 Tier 2 evaluation programs, further undercuts HHS’s argument that its decision to
12 terminate is based on effectiveness of the program. By congressional definition,
13 Tier 2 programs utilize funding for the express purpose of testing new and
14 innovative approaches to determine whether such programs are in fact effective.
15 Thus, to terminate Tier 2 programs based on the notion that they are presently
16 ineffective is not only premature, but illogical.

17 91. HHS, driven by ideology and a disregard for evidence-based
18 policymaking, has disseminated its misleading and skewed interpretation of the TPP
19 Program’s evaluation results. For example, HHS recently issued a press release
20 condemning the TPP program, even going so far as to say the TPP Program is a
21

22
23 ³⁶ HHS, Office of Adolescent Health, *Summary of Evaluated Programs Effective at*
24 *Changing Behavior*, [https://www.hhs.gov/ash/oah/evaluation-and-research/grantee-](https://www.hhs.gov/ash/oah/evaluation-and-research/grantee-led-evaluation/evaluated-programs-effective-at-changing-behavior/index.html)
25 *led-evaluation/evaluated-programs-effective-at-changing-behavior/index.html*; *see*
26 *also* Amy Feldman Farb & Amy L. Margolis, *The Teen Pregnancy Prevention*
27 *Program (2010-2015): Synthesis of Impact Findings*, 106 AM. J. PUB. HEALTH
28 S1, S9 (2016).

1 “waste of taxpayer money.”³⁷ But Congress has already determined otherwise,
2 funding TPP at consistent levels since its inception in 2010 through the most recent
3 appropriations for FY 2018, and has specifically directed HHS to utilize the
4 appropriated funds for evidence-based programs. The release even criticizes
5 Congress for “prematurely ending and then eliminating more than 150 Community-
6 Based Abstinence Education (CBAE) Program grants and repurposing the monies”
7 to the TPP Program in 2010, and suggesting that Congress’s “unprecedented”
8 decision to “hastily end[]” the CBAE Program is precedent allowing HHS to end the
9 TPP Program.

10 92. The effort to end this highly regarded program, because it does not
11 conveniently fit into the Administration’s agenda, goes against Congress’s mandate
12 that HHS fund “medically accurate and age appropriate programs that reduce teen
13 pregnancy and for the Federal costs associated with administering and evaluating
14 such contracts and grants.” Consolidated Appropriations Act, 2017, Pub. L. No.
15 115-31, 131 Stat. 135, 536 (May 5, 2017).

16 93. While HHS has not identified what it plans to replace the TPP Program
17 with, the President’s 2018 Budget, proposed in January of last year, proposed to
18 spend \$277 million on abstinence-only education.³⁸ The President’s 2019 Budget,
19 proposed just this month, proposes to spend “\$75 million for the Health and Human
20 Services Department to fund abstinence-only ‘and personal responsibility’ sex-
21

22 ³⁷ Press Release, U.S. Dep’t of Health & Human Servs., Teen Pregnancy Prevention
23 Program Facts: False Claims vs. The Facts (Aug. 28, 2017),
24 <https://www.hhs.gov/ash/about-ash/news/2017/teen-pregnancy-prevention-program-facts.html>.

25 ³⁸ Lisa Ryan, *Trump’s Proposed Budget Would Invest \$277 Million in Abstinence-
26 Only Education*, The Cut (May 24, 2017), <https://www.thecut.com/2017/05/trump-budget-abstinence-only-sex-ed.html>.

1 education program,” while zeroing out funding for more comprehensive sex-
2 education programs, including the TPP Program.³⁹

3 94. As the Washington Post reported, “[m]any speculate that HHS’s real
4 motivation [in withdrawing all TPP Program funding] is antipathy to anything
5 connected to comprehensive sex education. [Former HHS Secretary Tom] Price is a
6 strong proponent of abstinence-only education, and Valerie Huber, the new chief of
7 staff to the department’s assistant secretary for health, was until recently president
8 of a national abstinence education organization.”⁴⁰

9 95. As a writer for Tonic recently explained, “[t]he scariest thing to witness
10 [in the first year of the Trump administration] was the way the administration cozied
11 up to advocates of abstinence-only sex education, while freezing out supporters of
12 evidence-based approaches to sexual health promotion. Nowhere was this more
13 evident than in the federal budget proposal released in the spring, which
14 recommended retaining millions of dollars in funding for the government’s
15 ‘Abstinence Education and Personal Responsibility Education Program,’ an
16 initiative the Obama administration sought to eliminate completely from the budget
17 the year prior.”⁴¹

19 ³⁹ Emily Richmond, *Does Trump’s Education Budget Even Matter?*, The Atlantic
20 (Feb. 13, 2018), [https://www.theatlantic.com/education/archive/2018/02/does-
21 trumps-education-budget-even-matter/553271/](https://www.theatlantic.com/education/archive/2018/02/does-trumps-education-budget-even-matter/553271/).

22 ⁴⁰ Jessica Lander & Carolyn Smith-Lin, *Trump administration cuts funding for teen
23 pregnancy prevention programs. Here are the serious consequences.*, Washington
24 Post (Sept. 7, 2017), [https://www.washingtonpost.com/news/answer-
25 sheet/wp/2017/09/07/trump-administration-cuts-funding-for-teen-pregnancy-
26 prevention-programs-here-are-the-serious-consequences/?utm_term=.32bb7fcc3937](https://www.washingtonpost.com/news/answer-sheet/wp/2017/09/07/trump-administration-cuts-funding-for-teen-pregnancy-prevention-programs-here-are-the-serious-consequences/?utm_term=.32bb7fcc3937).

27 ⁴¹ Justin Lehmler, *Trump’s Embrace of Abstinence-Only Sex Ed Is a Threat to Your
28 Health*, Tonic (Jan. 18, 2018), [https://tonic.vice.com/en_us/article/bjyb8v/trumps-
29 embrace-of-abstinence-only-sex-ed-is-a-threat-to-your-health](https://tonic.vice.com/en_us/article/bjyb8v/trumps-embrace-of-abstinence-only-sex-ed-is-a-threat-to-your-health).

1 96. HHS is not at liberty to ignore the clear statutory mandate in favor of
2 programs that are more in line with its ideological objectives. Nor may it make
3 religiously-motivated and coercive spending decisions.

4 **Terminating TPP Program Impacts Plaintiffs and the Communities They Serve**

5 97. By terminating Plaintiffs' TPP Program projects, HHS has deprived
6 Plaintiffs of the opportunity to continue providing these important teen pregnancy
7 prevention services to the communities they serve during the final two years of their five-
8 year grant agreements. The early termination requires immediate action to wind up
9 operations. As part of that wind-up, Plaintiffs will have to lay off full-time employees;
10 indeed, some of Plaintiffs' employees have already left. Plaintiffs have also had to spend
11 time on contingency planning. Plaintiffs also will not have the resources necessary to
12 devote to increasing participation rates, engaging new partners, or completing their
13 research on program effectiveness. Plaintiffs will suffer injury to their ability to fulfill
14 their missions of providing evidence-based teen pregnancy prevention programs in
15 their communities.

16 98. In addition, and most significantly, terminating the TPP Program is
17 likely to harm some of the country's most vulnerable youth by denying them high-
18 quality information and education that will help them make healthy decisions about
19 their futures. TPP Program grantees served half a million youth from FY 2010 to FY
20 2014, and were well on their way to serving an additional 1.2 million youth in 39
21 states and the Marshall Islands during the current five-year project period.⁴² It is
22 these youth who will suffer from the termination of the final two years of the
23 program.

24 _____
25 ⁴² HHS, Office of Adolescent Health, *Results from the OAH Teen Pregnancy*
26 *Prevention Program*, <https://www.hhs.gov/ash/oah/sites/default/files/tpp-cohort-1/tpp-results-factsheet.pdf> (last visited February 12, 2018).
27

1 99. Finally, cutting off research midstream is not only disruptive and
2 wasteful, but it denies the public the benefit from advancements in learning about
3 what currently works to prevent teen pregnancy.

4 **FIRST CLAIM FOR RELIEF**
5 **Administrative Procedure Act—Arbitrary and Capricious**

6 100. Plaintiffs incorporate Paragraphs 1 through 99 above.

7 101. The Administrative Procedure Act, 5 U.S.C. § 706, authorizes this
8 court to set aside agency action that is arbitrary and capricious, including when an
9 agency adopts a course of action that is contrary to its own regulations.

10 102. HHS’s decision to terminate the previously awarded competitive grants
11 is contrary to HHS’s own regulations.

12 103. In awarding federal grants under the TPP Program, HHS is bound by
13 its general grant regulations at 45 C.F.R. Part 75. These regulations are referenced
14 in each of Plaintiffs’ TPP Program grant agreements.

15 104. Under those regulations, a “termination” is defined as “any ending of a
16 Federal award, in whole or in part, at any time prior to the planned end of a period
17 of performance.” *See* 45 C.F.R. § 75.2. Here, by unilaterally shortening Plaintiffs’
18 period of performance under the TPP Program grants from five years to three,
19 HHS’s actions constitute the “ending of a Federal award, in whole or in part, at any
20 time prior to the planned end of a period of performance” and thus amount to a
21 “termination.” *See* 45 C.F.R. § 75.2; 2 C.F.R. § 200.95.

22 105. But HHS did not have authority to terminate Plaintiffs’ grants. There
23 are only three circumstances under which a federal agency may effect a
24 “termination”: (1) where the grantee “fails to comply with the terms and conditions of
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26
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1 the award;” (2) “for cause;” or (3) with consent. 45 C.F.R. § 75.372(a)(1)–(3).⁴³

2 106. None of these three circumstances exists here. First, HHS cannot
3 justify the termination based on a failure to comply with the terms of the conditions
4 of the award (and any attempt to do so would be in stark contrast to HHS’s own
5 prior statements about Plaintiffs’ successful performance under the grants); second,
6 HHS has not demonstrated that the termination was “for cause,” nor is there any
7 such “cause”; and third, Plaintiffs did not consent to the termination.

8 107. Moreover, HHS’s rationale for terminating the TPP Program is
9 inconsistent with HHS’s own data and its frequent commendations of Plaintiffs’
10 implementation of their TPP Program grants, is based on an irrational and
11 incomplete reading of the HHS’s own evidence relating to the impact of TPP
12 Program models, and reflects a misunderstanding of the very purpose of Tier 2
13 funded programs, which is to determine which TPP Program models are in fact
14 effective.

15 108. Accordingly, HHS’s termination of Plaintiffs’ grants under the TPP
16 Program is arbitrary and capricious, contrary to its own regulations, and must be set
17 aside.

18 109. As a result of HHS’s conduct, Plaintiffs have suffered and will continue
19 to suffer irreparable injury.

20 **SECOND CLAIM FOR RELIEF**
21 **Administrative Procedure Act—Contrary to Law**

22 110. Plaintiffs incorporate Paragraphs 1 through 99 above.

23 111. The Administrative Procedure Act, 5 U.S.C. § 706, authorizes federal
24 courts to set aside agency action that is contrary to law.

25 ⁴³ The fourth circumstance applies to termination by the *grantee* and thus is not
26 applicable here. *See* 45 C.F.R. § 75.372(a)(4).
27

1 112. HHS’s unilateral decision to terminate all TPP Program grant
2 agreements and its refusal to continue the TPP Program is directly contrary to the
3 statutory requirement and congressional mandate that HHS “mak[e] competitive
4 contracts and grants to public and private entities to fund medically accurate and age
5 appropriate programs that reduce teen pregnancy.” As such, HHS’s conduct is
6 contrary to law and must be set aside.

7 113. As a result of HHS’s conduct, Plaintiffs have suffered and will continue
8 to suffer irreparable injury.

9 **THIRD CLAIM FOR RELIEF**
10 **Establishment Clause**

11 114. Plaintiffs hereby incorporate Paragraphs 1 through 99 above.

12 115. The Establishment Clause of the First Amendment to the U.S.
13 Constitution provides that “Congress shall make no law respecting an establishment
14 of religion.”

15 116. HHS has violated, and will continue to violate, Plaintiffs’ rights under
16 the Establishment Clause, including in the following ways:

17 117. HHS’s conduct has and will continue to have the primary purpose of
18 promoting and advancing religion.

19 118. HHS’s conduct has and will continue to have the effect of endorsing
20 and advancing religion.

21 119. HHS’s conduct excessively entangles the government with religion.

22 120. HHS’s conduct constitutes governmental endorsement of religion
23 because a reasonable observer would believe that HHS has endorsed a particular
24 religious view.

25 121. HHS’s conduct impermissibly coerces grantees into adopting Christian
26 views by withdrawing access to funding for pregnancy prevention programs unless
27 grantees espouse a Christian viewpoint in administering those programs.

1 122. Absent declaratory and injunctive relief, HHS’s violations will cause
2 ongoing harm to Plaintiffs.

3 **FOURTH CLAIM FOR RELIEF**
4 **Due Process Clause**

5 123. Plaintiffs hereby incorporate Paragraphs 1 through 99 above.

6 124. Under the Due Process Clause of the Fifth Amendment, the
7 government may not deprive a person or entity of a protected property interest
8 without due process of the law.

9 125. In April 2015, to solicit applications for Tier 1 and Tier 2 funds, HHS
10 issued Funding Opportunity Announcements (FOAs), which expressly stated that
11 “[a]wards will be in the form of a five-year cooperative agreement with the
12 grantee.”⁴⁴

13 126. Each FOA required that applicants submit a detailed work plan for the
14 “five-year project period.”

15 127. In each of the governing cooperating agreements with Plaintiffs, HHS
16 specified that the TPP Program project period would run for five years—from July
17 1, 2015, through June 30, 2020.

18 128. Accordingly, based on these statements and documents, Plaintiffs had
19 protected property interests in the final two years of their five-year federal grant
20 agreements with HHS.

21 129. HHS unconstitutionally deprived Plaintiffs of these property interests
22 when it abruptly terminated these grants two years early without adequate process.

23 130. HHS did not provide Plaintiffs with sufficient notice or opportunity for
24

25 ⁴⁴ See, e.g., April 2015 Tier 1A Funding Opportunity Announcement,
26 <https://www.hhs.gov/ash/oah/sites/default/files/tier1a-foafile.pdf> (last visited
27 February 12, 2018).

1 pre-termination hearings, therefore denying the Plaintiffs of adequate procedural
2 protections in violation of the Plaintiffs' Fifth Amendment rights.

3 131. As a result of HHS's conduct, Plaintiffs have suffered and will continue
4 to suffer irreparable injury.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs request that this Court:

7 1. Declare that Defendants' decision to terminate the Plaintiffs' TPP
8 Program grant agreements was arbitrary, capricious, not in accordance with the law,
9 in violation of the Establishment Clause, and in violation of Plaintiffs' right to due
10 process of law.

11 2. Declare that Defendants' decision to terminate the TPP Program as a
12 whole was arbitrary, capricious, and not in accordance with the law.

13 3. Enter a preliminary, followed by permanent, injunction barring
14 Defendants, and their successors and agents, from terminating Plaintiffs'
15 cooperative agreements or the TPP Program as a whole except as allowed by federal
16 law and consistent with due process.

17 4. Such other and further relief as this Court may deem just and proper.
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1 DATED: February 15, 2018

Respectfully submitted,

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