

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DEMOCRACY FORWARD FOUNDATION
1333 H Street, NW
Washington, DC 20005,

Plaintiff,

v.

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

Defendant.

Civil Action No.

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff Democracy Forward Foundation brings this action against Defendant Department of Health and Human Services (“HHS” or “the agency”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”).

Since it began in 2011, the Teen Pregnancy Prevention (“TPP”) Program—which, through competitively awarded grants, has funded evidence-based teen pregnancy prevention programs —has been associated with the sharpest declines in teen pregnancy rates in the U.S. since teen pregnancy rates peaked in 1991.¹ This success has led to the TPP Program being described as a “poster child” for evidence-based public policy.²

¹ Janet Burns, *The Trump Administration Just Axed \$213 Million from Teen Pregnancy Prevention, All By Itself*, Forbes (July 18, 2017), <https://www.forbes.com/sites/janetwburns/2017/07/18/the-trump-administration-just-axed-213m-from-teen-pregnancy-prevention/#2245eb104495>.

² Valerie Strauss, *Trump Administration Cuts Funding for Teen Pregnancy Prevention Programs. Here Are the Serious Consequences*, Wash. Post (Sept. 7, 2017), <https://www.washingtonpost.com/news/energy-environment/wp/2017/09/07/trump-administration-cuts-funding-for-teen-pregnancy-prevention-programs-here-are-the-serious-consequences/>.

In June 2017, President Trump appointed Valerie Huber chief of staff of HHS's Office of Adolescent Health ("OAH"), which oversees the TPP Program grants.³ Ms. Huber is a former lobbyist for abstinence-until-marriage programs that researchers have found ineffective, and she has claimed that peer-reviewed scientific studies concerning the effectiveness of contraceptives in preventing teen pregnancy are biased.⁴ A few weeks after she was appointed to her position at OAH, OAH abruptly and prematurely cut more than \$200 million in funding for five-year TPP Program grants awarded in 2015.

The Trump Administration's decision to rescind funding for TPP Program grantees has been criticized by the medical community, members of Congress, and community advocates.⁵ The Administration has largely kept the public in the dark as to its reasons for discontinuing the grant funding and regarding what it plans to do with the \$200 million of funds now that it has discontinued the grants. Accordingly, Plaintiff filed

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=.b98b67a86149.

³ Office of the Assistant Secretary, HHS.gov, *Chief of Staff: Valerie Huber*, <https://www.hhs.gov/ash/about-ash/leadership/valerie-huber/index.html>.

⁴ Julie Rovner Kaiser, *Drop in Pregnancies Is Due to More Contraceptives, Not Less Sex*, PBS Newshour (Sept. 2, 2016), <https://www.pbs.org/newshour/health/teen-pregnancies-contraceptives-less-sex>.

⁵ See, e.g., Statement of Haywood L. Brown, President, Am. Congress for Obstetricians & Gynecologists, *Unintended Pregnancy Prevention Is Essential to Women's Health* (July 17, 2017), <https://www.acog.org/About-ACOG/News-Room/Statements/2017/Unintended-Pregnancy-Prevention-is-Essential-to-Womens-Health>; Letter from Patty Murray et al., U.S. Senators, to Thomas E. Price, Sec'y of HHS (July 21, 2017), <https://www.help.senate.gov/imo/media/doc/071817%20Teen%20Pregnancy%20Program%20letter%20FINAL.pdf>; Letter from 28 large health departments, including Baltimore, Boston, Detroit, Chicago, & Los Angeles County, to Tom Price, Sec'y of HHS (July 25, 2017), <https://static1.squarespace.com/static/534b4cdde4b095a3fb0cae21/t/59836862cd39c38900030ff1/1501784163172/TPP.signon.7-25.pdf>.

a FOIA request seeking, among other things, records regarding HHS's basis for rescinding the grants as well as the role that Valerie Huber and other opponents of evidence-based approaches to teen pregnancy prevention appointed by President Trump played in the decision to end the TPP grant programs.

Nearly three months have passed, and HHS has failed to provide a response or produce any documents. In response to inquiries from Plaintiff as to the status of the request, HHS representatives have promised on several occasions that a response and documents would be forthcoming, but at every turn has failed to meet the promised response dates. At one point, the agency attributed its failure to respond to the fact that, among other things, any release of information would need to be reviewed by a political appointee. Regardless of the agency's reasons for delay, the FOIA requires that HHS provide a response within 20 working days of Plaintiff's request. 5 U.S.C. § 552. HHS has failed to do so, and, accordingly, Plaintiff sues to compel the production of responsive records.

Jurisdiction and Venue

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).
3. Because Defendant has failed to comply with the applicable time limit provisions in FOIA, Plaintiff is deemed to have exhausted its administrative remedies pursuant to 28 U.S.C. § 552(a)(6)(C)(i).

Parties

4. Plaintiff Democracy Forward Foundation is a not-for-profit organization incorporated under the laws of the District of Columbia and based in Washington, D.C. Plaintiff works to promote transparency and accountability in government, in part, by educating the public on government actions and policies.

5. Defendant U.S. Department of Health and Human Services is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1), that is headquartered in Washington, D.C. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

Background

6. Approximately one in four teenaged women in the United States will become pregnant before the age of 20.⁶ While the rate of teen pregnancy in the U.S. has declined over the past few decades, the teen pregnancy rate in the United States remains higher than that of other industrialized countries.⁷

7. The vast majority of teen pregnancies are unplanned—that is, pregnancies in which the mother has said that she did not intend or want to become pregnant.⁸

8. Teen pregnancy is linked to a variety of major social concerns such as poverty and poor outcomes for child well-being, health, education, and child welfare.⁹

⁶ Nat'l Campaign to Prevent Teen & Unwanted Pregnancy, *Fast Facts: Teen Pregnancy in the United States* (Apr. 2016), https://thenationalcampaign.org/sites/default/files/resource-primary-download/fast_facts_-_teen_pregnancy_in_the_united_states.pdf (citing data from the Centers for Disease Control).

⁷ Guttmacher Institute, *New Release: Teen Pregnancy Rates Declined in Many Countries Between the Mid-1990s and 2011; United States Lags Behind Many Other Developed Nations* (Jan. 23, 2015), <https://www.guttmacher.org/news-release/2015/teen-pregnancy-rates-declined-many-countries-between-mid-1990s-and-2011>.

⁸ Nat'l Campaign to Prevent Teen & Unplanned Pregnancy, *Why It Matters*, <https://thenationalcampaign.org/why-it-matters/teen-pregnancy>.

⁹ *Id.*

9. For example, only 38% of women who bear children during their teen years receive a high school diploma.¹⁰ Teen mothers are more likely to live in poverty and rely on government assistance than mothers who delay childbearing until past their teen years.¹¹ Children born into poverty are at greater risk for health issues and delays in educational advancement.¹²

10. Teen mothers are also nearly twice as likely to forgo critical prenatal care in the first trimester of their pregnancies, which creates medical risks to child-wellbeing.¹³ Teens have a higher risk of developing certain health problems during pregnancy (such as high blood pressure or anemia) than older women.¹⁴ Pregnant teens are also more likely to experience preterm birth. The risks are even higher for teenage women who are younger than 15 years old or for those who do not receive prenatal care at all.¹⁵

¹⁰ *Id.*

¹¹ *Id.*

¹² Nat'l Campaign to Prevent Teen & Unplanned Pregnancy, *Why It Matters: Teen Childbearing, Education, and Economic Wellbeing* (July 2012), <https://thenationalcampaign.org/sites/default/files/resource-primary-download/childbearing-education-economicwellbeing.pdf>.

¹³ Nat'l Campaign to Prevent Teen & Unplanned Pregnancy, *Why It Matters: Teen Childbearing and Infant Health* (Oct. 2012), <https://thenationalcampaign.org/sites/default/files/resource-primary-download/childbearing-infant-health.pdf>.

¹⁴ Am. College of Obstetricians & Gynecologists, *Having a Baby (Especially for Teens) Frequently Asked Questions for Teens* (Apr. 2015), <https://www.acog.org/Patients/FAQs/Having-a-Baby-Especially-for-Teens>.

¹⁵ *Id.*

11. These issues are especially pronounced in rural areas where the birth rate of pregnant teenagers is almost 33% higher than in the rest of the country due to lack of access to health clinics, contraception, and counseling resources.¹⁶

Approaches to Teen Pregnancy Prevention

12. Although approaches to sexual education and pregnancy prevention programs vary, they generally can be divided into two categories: (1) abstinence-only programs, which encourage and expect adolescents and teens to abstain from sexual activity; and (2) comprehensive sexual education programs, which encourage sexual abstinence as the least risky choice but also educate adolescents and teens who are or plan to be sexually active to use protection, such as condoms and other methods of contraception to help mitigate the risk of unwanted pregnancy or sexually transmitted infections (STIs).¹⁷

13. Studies overwhelmingly show that comprehensive sexual education is effective in reducing sexually risky behaviors, while there is little to no evidence demonstrating that abstinence-only programs are effective.¹⁸

¹⁶ Laura Santhanam, *Why Is the Teen Birth Rate So Much Higher in Rural Areas?*, PBS News Hour (Nov. 16, 2016), <https://www.pbs.org/newshour/health/teen-birth-rate-higher-rural-areas>.

¹⁷ Douglas Kirby, *Emerging Answers 2007: Research Findings on Programs to Reduce Teen Pregnancy and Sexually Transmitted Diseases* (Nov. 2007), https://thenationalcampaign.org/sites/default/files/resource-primary-download/EA2007_full_0.pdf.

¹⁸ *See, e.g., id.* (“At present, there does not exist any strong evidence that any abstinence program delays the initiation of sex, hastens the return to abstinence, or reduces the number of sexual partners.”); 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 (Sept. 2017), [http://www.jahonline.org/article/S1054-139X\(17\)30260-4/fulltext](http://www.jahonline.org/article/S1054-139X(17)30260-4/fulltext) (“The weight of scientific evidence finds that [Abstinence-Only-Until Marriage] programs are not effective in delaying initiation of sexual intercourse or changing other sexual risk behaviors.”); Cora Collette Breuner, *Talking About Sex: AAP*

14. According to the American Medical Association, a review of evidence found “no delay of initiating sexual activity, no reduction in the number of sexual partners and no increase in abstinence” from abstinence-only-until-marriage programs.¹⁹ The programs have also not been found to be effective at preventing sexually risky behaviors, such as having unprotected sexual intercourse.

15. Buttredding this research, the National Coalition to Support Sexuality Education, which has over 140 members from the mainstream medical community, has stated that there is no peer-reviewed research proving that abstinence-only programs are effective.²⁰

16. A 2007 federally funded and Congressionally mandated study by Mathematica Policy Research found abstinence-only programs to be ineffective.²¹ Another study concluded that abstinence-only programs were “ineffective in preventing teenage pregnancy and may actually be contributing to the high teenage pregnancy rates in the U.S.”²²

Recommends Evidence-based Education, with Pediatricians Help, AAP News (Jul. 18, 2016), <http://www.aappublications.org/news/2016/07/18/SexEd071816>.

¹⁹ Sexuality Info. & Educ. Council of the U.S., *American Medical Association Renews Its Support for Comprehensive Sex Education* (July 2009), <http://www.siecus.org/index.cfm?fuseaction=Feature.showFeature&featureID=1787>.

²⁰ Nat’l Coal. to Support Sexuality Educ., *Federal Abstinence Only Until Marriage Policy*, <http://www.ncsse.com/index.cfm?pageId=936> (last visited Nov. 13, 2017).

²¹ Chris Trenholm et al., *Impacts of Abstinence Education on Teen Sexual Activity, Risk of Pregnancy, and Risk of Sexually Transmitted Diseases*, 27 *J. Policy Analysis & Mgmt.* 255 (2008).

²² Katherine F. Stranger-Hall & David W. Hall, *Abstinence Only and Teenage Pregnancy Rates: Why We Need Comprehensive Sex Education in the U.S.*, *PLoS ONE* (Jun. 10, 2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3194801/>.

17. In contrast to the lack of evidence showing that abstinence-only education is effective, there is overwhelming evidence that more comprehensive approaches to sex education reduce sexual risk and change sexual behaviors among young people.²³

18. Comprehensive sexual education programs contribute to “knowledge about risks and consequences of pregnancy and STD; values and attitudes about having sex and using condoms or contraception; perception of peer norms about sex and contraception; confidence in the ability to say ‘no’ to unwanted sex, to insist on using condoms or contraception, or to actually use condoms or contraception; intention to avoid sex or use contraception; and communication with parents or other adults about these topics.”²⁴ Overall, these programs have proven effective at delaying sexual intercourse and increasing use of sexual contraception among sexually active youth.

19. Medical and public health organizations—as well as the majority of Americans—support comprehensive sexual health education and risk prevention programs.²⁵

20. In 2016, a study in the *Journal of Adolescent Health* attributed the decline in teen pregnancy rates in the U.S. to access and education about contraception, as

²³ Cora Collette Breuner, *Talking About Sex: AAP Recommends Evidence-based Education, with Pediatricians Help*, AAP News (Jul. 18, 2016), <http://www.aapublications.org/news/2016/07/18/SexEd071816>; Douglas Kirby, *Emerging Answers 2007: Research Findings on Programs to Reduce Teen Pregnancy and Sexually Transmitted Diseases* (Nov. 2007), https://thenationalcampaign.org/sites/default/files/resource-primary-download/EA2007_full_0.pdf.

²⁴ Douglas Kirby, *Emerging Answers 2007: Research Findings on Programs to Reduce Teen Pregnancy and Sexually Transmitted Diseases* (Nov. 2007), https://thenationalcampaign.org/sites/default/files/resource-primary-download/EA2007_full_0.pdf.

²⁵ Sexuality Info. Council of the U.S., *In Good Company: Who Supports Comprehensive Sexuality Education* (Apr. 2010), <http://www.siecus.org/index.cfm?fuseaction=Page.ViewPage&PageID=1198>.

opposed to abstinence from sexual activity. The article concluded that “efforts to further improve access to and use of contraception among adolescents are necessary to ensure they have the means to prevent pregnancy.”²⁶

Federal Support for Evidence-Based Teen Pregnancy Prevention Initiatives and the Creation of the Teen Pregnancy Prevention Program

21. To address the lack of federal funding for effective, evidence-based teen pregnancy prevention programs, the Obama Administration and Congress created the Teenage Pregnancy Prevention (“TPP”) Program to be run by the Office of Adolescent Health (“OAH”) in the Office of the Assistant Secretary of Health at HHS. The TPP Program was created “to fund medically accurate and age appropriate programs that reduce teen pregnancy.”²⁷

22. Heralded as a “poster child” for evidence-based policy,²⁸ the program is designed to fund teen pregnancy prevention programs that have been proven by evaluation of their results to be effective. The program also seeks to study teen pregnancy prevention programs across the U.S. and then to scale up the ones that were effective in achieving results.

23. Accordingly, in December of 2009, Congress appropriated \$110 million dollars to create the program. At least \$75 million was appropriated to the replication of programs that “have been proven effective through rigorous evaluation to reduce teenage pregnancy, behavioral risk factors underlying teenage pregnancy, or other associated risk

²⁶ L. Lindberg, J. Santelli, & S. Desai, *Understanding the Decline in Adolescent Fertility in the United States, 2007-2011*, 59 *J. Adolescent Health* 577 (Jun. 24, 2016), <https://www.ncbi.nlm.nih.gov/pubmed/27595471>.

²⁷ Consolidated Appropriations Act, Pub. L. No. 111-117 (2010), <https://www.gpo.gov/fdsys/pkg/PLAW-111publ117/html/PLAW-111publ117.htm>.

²⁸ Strauss, *supra* note 2.

factors” and that at least \$25 million be available to research and demonstration grants to “develop, replicate, refine, and test additional models and innovative strategies for preventing teenage pregnancy.”²⁹

24. Instead of advocating an underlying political philosophy, the TPP Program is focused only on proven results. It promotes curriculums that are scientifically proven to work. Most of its programs include abstinence as part of a more comprehensive approach to sexual health and education and some are abstinence-based where results support the program. The TPP Program has been described as providing “a library of proven choices from which communities can decide which best meets their needs.”³⁰

25. Between FY 2010 and FY 2014, the OAH funded 102 grantees through the TPP Program. During this time period, the funded programs reached more than half a million young people in 39 states and the District of Columbia. The grantees also trained a combined 6,100 facilitators, created 3,800 community partnerships, and funded over 40 rigorous evaluation studies to determine information about the factors that contribute to effectiveness of specific programs.³¹

26. Since 2010, teen pregnancy rates have declined at an increasing rate and many have cited the TPP Program as contributing to this trend.³²

HHS’s Office of Adolescent Health Awards Five Year Pregnancy Prevention Program Grants

²⁹ Consolidated Appropriations Act, Pub. L. No. 111-117 (2010), <https://www.gpo.gov/fdsys/pkg/PLAW-111publ117/html/PLAW-111publ117.htm>.

³⁰ Strauss, *supra* note 2.

³¹ Office of Adolescent Health, HHS, *Results from the OAH Teen Pregnancy Prevention Program*, <https://www.hhs.gov/ash/oah/sites/default/files/tpp-cohort-1/tpp-results-factsheet.pdf> (last visited Nov. 10, 2017).

³² Statement of Haywood L. Brown, *supra* note 5; Strauss, *supra* note 2.

27. To reach additional teens and communities in need as well as to continue to develop innovative educational methods for pregnancy prevention, in April of 2015, OAH published five FY 2015 funding opportunity announcements (FOAs) to support and build upon the early success of the TPP program.

28. Through this competitive process, OAH entered into agreements with 81 programs. Between FY 2015 and FY 2019, the OAH planned to disperse \$89 million a year to these organizations. The OAH predicted that these grantees would serve 1.2 million youth in 40 states and the Marshall Islands during the five-year project period.³³

President Trump Appoints Opponents of Evidence-Based Pregnancy Prevention Programs to Key Positions in the Department of Health and Human Services (HHS)

29. Since his inauguration, President Trump has appointed numerous opponents of evidence-based pregnancy prevention programs to key positions at HHS.

30. Relevant to this action, in June, President Trump appointed Valerie Huber to serve as Chief of Staff to the Assistant Secretary of Health at HHS. Ms. Huber is a proponent of abstinence-only programs and has been critical of evidence-based comprehensive approaches that discuss and provide access to contraception. Prior to serving at HHS, Ms. Huber was the president of Ascend, an association that promotes abstinence education, formerly known as the National Abstinence Education Association.³⁴

31. Ms. Huber also previously served as the Department of Health Abstinence Education Program Director in Ohio. A study conducted by Case Western Reserve

³³ Office of Adolescent Health, *supra* note 31.

³⁴ Jessie Hellman, *Abstinence Education Advocate Named to HHS Post*, Hill (Jun. 6, 2017), <http://thehill.com/policy/healthcare/336620-abstinence-education-advocate-named-to-hhs-post>.

University found that Ms. Huber’s work promoting abstinence-only education in Ohio had “critical problems,” including that it contained “false and misleading information regarding sexual health and wellness,” “misrepresent[ed] religious convictions as scientific fact,” and “contain[ed] false information about contraceptives.”³⁵ Ms. Huber was ultimately found to have engaged in ethics violations and suspended by the Ohio Department of Health after she tried to direct state contracts to a company to which she had ties.³⁶

32. Ms. Huber has ignored peer reviewed scientific literature concerning teen pregnancy prevention when it does not fit her existing view. For example, when interviewed regarding a study published in the *Journal of Adolescent Health*, a leading journal in the field of adolescent health and development, that found the recent decline in teen pregnancy rates in the U.S. has resulted from increased access and use of contraception as opposed to a decline in the number of teens that have sexual intercourse,³⁷ Ms. Huber stated that the study was biased toward birth control.³⁸

HHS Abruptly Rescinds More than \$200 Million in Grant Funding for TPP Programs

33. Only a few weeks after President Trump appointed Ms. Huber to OAH, that office notified all 81 TPP program grantees that their funding would end on June 30,

³⁵ Scott H. Frank, Case W. Reserve Univ., *Report on Abstinence-Only-Until-Marriage Programs in Ohio* (June 2005); Sexuality Info. & Educ. Council of the U.S., *Abstinence-Only Leader Appointed to Key HHS Leadership Role* (Jun. 6, 2017), <http://www.siecus.org/index.cfm?fuseaction=Feature.showFeature&FeatureID=2482>.

³⁶ Scott Swenson, *Abstaining from Ethics While Imposing Morality*, *Rewire* (Apr. 9, 2007), <https://rewire.news/article/2007/04/09/abstaining-from-ethics-while-imposing-morality/>.

³⁷ Lindberg, Santelli, & Desai, *supra* note 26.

³⁸ Julie Rovner Kaiser, *Drop in Pregnancies Is Due to More Contraceptives, Not Less Sex*, *PBS Newshour* (Sept. 2, 2016), <https://www.pbs.org/newshour/health/teen-pregnancies-contraceptives-less-sex>.

2018, two years early.³⁹ Additionally, several grantees were informed their grants were terminated, effective immediately.⁴⁰

34. HHS has provided little explanation for its decision to end funding for the TPP Program grantees. The agency suggested that the program “didn’t quite align with administration priorities”⁴¹ and claimed—without any explanation—that there was “very weak evidence of positive impact of these programs.”⁴²

35. OAH’s decision to abruptly cut funding for the 81 grantees has been criticized by members of Congress, the medical community, and numerous community advocates. The decision jeopardizes the wellbeing of more than one million women and children throughout the United States.

36. In a letter to then-Secretary of HHS, Tom Price, 37 U.S. Senators stated that the action is “short-sighted and puts at risk the health and well-being of women and our most vulnerable youth who depend on the evidenced-based work that TPP Program grantees are doing across the nation”⁴³ The letter went on to note that “[t]he TPP

³⁹ “*Trump Administration Abruptly Cuts Funding to Teen Pregnancy Programs*,” NBC News (Aug. 25, 2017), <https://www.nbcnews.com/news/us-news/trump-administration-abruptly-cuts-funding-teen-pregnancy-prevention-programs-n795321>.

⁴⁰ Letter from Patty Murray to Thomas E. Price, *supra* note 5.

⁴¹ Kathryn Watson, “*Trump Administration Cuts Short Teen Pregnancy Prevention Program Funding*,” CBS News (Aug. 11, 2017), <https://www.cbsnews.com/news/trump-administration-cuts-short-teen-pregnancy-prevention-program-funding>.

⁴² “*Trump Administration Abruptly Cuts Funding to Teen Pregnancy Programs*,” NBC News (Aug. 25, 2017), <https://www.nbcnews.com/news/us-news/trump-administration-abruptly-cuts-funding-teen-pregnancy-prevention-programs-n795321>.

⁴³ Letter from Patty Murray et al., U.S. Senators, to Thomas E. Price, Sec’y of HHS (July 21, 2017), <https://www.help.senate.gov/imo/media/doc/071817%20Teen%20Pregnancy%20Program%20letter%20FINAL.pdf>

Program is making a vital contribution to building a body of knowledge of what works to prevent teen pregnancy.”⁴⁴

37. The American College of Obstetricians and Gynecologists has called HHS’s actions “a step backward for ensuring healthy moms and healthy babies.”⁴⁵ It has credited the TPP Program as contributing to the sharp declines in teen pregnancy rates over the past six years.⁴⁶

Plaintiff Seeks Records Concerning the Early and Abrupt Termination of TPP Program Grants

38. In light of HHS’s lack of explanation for discontinuing its funding of TPP Program grantees, Democracy Forward Foundation sought records to uncover the reasons and influences underlying HHS’s decision.

39. Specifically, on August 14, 2017, Democracy Forward Foundation submitted a FOIA request seeking the following records:

- A copy of letters issued between June 1, 2017 and August 14, 2017 in which HHS provided notification to grantees of the immediate and/or early termination in 2018 of Teen Pregnancy Prevention Program (TPP) five year grants.
- Any records addressing the early and/or immediate termination of TPP grants generated between January 20, 2017 and August 14, 2017.

⁴⁴ *Id.*

⁴⁵ Statement of Haywood L. Brown, *supra* note 5.

⁴⁶ *Id.*

- Any records relating to the use or reprogramming of unexpended funding initially designated for the TPP grants between January 20, 2017 and August 14, 2017. Search terms should include “abstinence.”
- Any records related to the relevant HHS legal authority for the early or immediate termination of TPP grants between January 20, 2017 and August 14, 2017.
- All records that constitute any appointment calendar maintained by Ms. Valerie Huber or on Ms. Valerie Huber[']s behalf, from the date she began serving as a Department of Health and Human Services employee until August 14, 2017.

40. The request letter is attached hereto as Exhibit A.

41. On August 16, HHS acknowledged receipt of the FOIA request and assigned it a tracking number of 17-0284-FOIA.

42. Twenty working days passed and HHS did not provide a response or any records.

43. In response to an inquiry into the status of the request, on September 19, a representative of HHS informed Plaintiff by email that there was a “large volume of responsive records” and that it expected to provide a “first interim response” by September 29, 2017, with a rolling production to follow.

44. On September 29, 2017, HHS failed to provide any records or a response.

45. On October 3, 2017, a representative from Plaintiff called HHS to inquire as to the status of any response and/or productions. HHS acknowledged that it had not

responded and said that the delay was due, in part, to the fact that an HHS political appointee would need to review the records prior to any release.

46. On October 13, 2017, a representative from HHS informed Plaintiff that she was working to “address some issues” and that she would make every effort to “get the final response cleared” by the close of business the following week, which would have been October 20, 2017.

47. October 20, 2017 came and went and no response was received nor were records produced.

48. On October 25, 2017, Plaintiff sought a status update on its request via email. In a reply, a representative from HHS stated that it was still “processing” the request and that it “hope[d] to have the first interim release available soon.”

49. Having not received any response, Plaintiff again wrote to HHS on November 2, 2017 asking that it provide a response and records immediately, but, in any event, prior to November 9, 2017.

50. On November 3, 2017, HHS announced a \$10 million research endeavor to “support teen pregnancy prevention programs,” including studying efforts to encourage teens to abstain from sexual intercourse.

51. On November 8, 2017, a representative from HHS left a voicemail for Plaintiff stating that the agency was “preparing to respond” to the FOIA request but provided no details as to when such a response will be received. The representative said that she would further follow up “with an email . . . memorializing the points . . . covered in the voicemail.” As of filing, Plaintiff has not received any such email.

52. As of the filing of this Complaint, HHS has not provided a response to Plaintiff's FOIA request. Nor has it produced any responsive documents.

Claim for Relief
Count One
(Violation of FOIA, 5 U.S.C. § 552)

53. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

54. By failing to respond to Plaintiff's request within the statutorily prescribed time limit, Defendant has violated its duties under 5 U.S.C. § 552 and its own regulations implementing FOIA at 45 C.F.R. § 5 *et seq.*, including but not limited to the duties to notify Plaintiff of its determination and the reasons therefor, to conduct a reasonable search for responsive records, to take reasonable steps to release all nonexempt information, and to not withhold responsive records. Among other things, Defendant has failed to "send" Plaintiff a "response informing [it] of [the] release determination, including whether any responsive records were located, how much response material was located, whether the records are being released in full or withheld in full or in party," as well as any determination of fee or fee waiver. 45 C.F.R. § 5.28(a).

WHEREFORE, Plaintiff prays that this Court:

1. Order Defendant to conduct a search for any and all responsive records to Plaintiff's FOIA request using search methods reasonably likely to lead to discovery of all responsive records;

2. Order Defendant to produce, by a date certain, any and all non-exempt responsive records and a *Vaughn* index of any responsive records withheld under a claim of exemption;

3. Enjoin Defendant from continuing to withhold any and all non-exempt responsive records;
4. Order Defendant to grant in full Plaintiff's request for a fee waiver;
5. Award Plaintiff its costs, attorneys' fees, and other disbursements for this action; and
6. Grant any other relief this Court deems appropriate

Dated: November 13, 2017

Respectfully submitted,

/s/ Skye L. Perryman

Javier M. Guzman (D.C. Bar No. 462679)
Skye L. Perryman (D.C. Bar No. 984573)
Democracy Forward Foundation
1333 H. Street NW
Washington, D.C. 20005
(202) 448-9090
jguzman@democracyforward.org
sperryman@democracyforward.org