

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

HEALTHY TEEN NETWORK
1501 St. Paul St., # 124
Baltimore, MD 21202

and

MAYOR AND CITY COUNCIL OF
BALTIMORE
100 N. Holliday Street, Suite 101
Baltimore, MD 21202

Plaintiffs,

v.

ALEX M. AZAR II, in his official capacity as
SECRETARY, U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES
200 Independence Avenue, SW
Washington, DC 20201,

and

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

Defendants.

Civil Action No. 1:18-cv-00468-CCB

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

This is an action pursuant to the Administrative Procedure Act (“APA”) challenging the U.S. Department of Health and Human Service’s (“HHS”) unlawful termination of five-year teen pregnancy prevention program grant awards to Plaintiffs Healthy Teen Network and the Mayor and City Council of Baltimore (“Baltimore” or the “City”), by and through its Department of Health, three years into the program.

In 2010, Congress created the Teen Pregnancy Prevention (“TPP”) Program to bring a rigorous, evidence-based focus to developing, studying, and replicating effective teen pregnancy prevention and adolescent health programs. Lauded by medical groups and HHS itself as contributing to sharp declines in teen pregnancy since its creation, and hailed as a “poster-child” for evidence-based policy, the TPP Program has been an unqualified success. In July 2017, however, following appointment of opponents of evidence-based programs, HHS informed all 81 TPP Program grantees that it was terminating the Program two years early. While no reason for the decision has been provided to the grantees, HHS officials have publicly offered shifting *post hoc* explanations, ranging from the unsupported claim that the grantee programs are ineffective to baldly asserting that the Congressionally-mandated TPP Program is not in line with the President’s proposed budget. Even if they could be credited, none of these explanations provides a basis for termination under HHS’s own regulations. And, none of them permits HHS to thwart the mandates of Congress.

The grantees affected include Baltimore City, by and through its Department of Health, which serves Baltimore’s more than 600,000 residents, and Healthy Teen Network, a Baltimore-based, national non-profit that builds capacity among adolescent health professionals and organizations to promote better health outcomes for teens.

In June 2015, the Baltimore City Department of Health was awarded a five-year grant under the TPP Program to bring evidence-based teen pregnancy prevention education to scale for adolescents of Baltimore in the city’s middle schools, high schools, and clinics funded through the federal Title X Family Planning Program, which provide comprehensive family planning and preventive health services to low-income

populations. The Baltimore City U Choose Evidence-Based Teen Pregnancy Prevention Program aimed to decrease the City's overall teen birth rate of 43.3 per 1,000 teen girls by 30% by the end of the five-year project; it also sought to ensure that evidence-based teen pregnancy prevention programs in Baltimore City were self-sustaining and could be perpetuated well into the future. HHS continually heralded Baltimore's program as a model for the TPP Program. The agency's abrupt and premature termination of Baltimore's grant will curtail the City's ability to deliver comprehensive teen pregnancy education and critical life skills development to the young people of Baltimore and will jeopardize the City's significant recent progress in reducing the teen pregnancy rate.

In July 2015, Healthy Teen Network was awarded a five-year grant under the TPP Program to conduct a randomized control trial to test Pulse, a new, web-based, bilingual English/Spanish mobile app that provides medically accurate, age-appropriate sexual and reproductive health information. During the first two years of the grant, including just a few weeks before the grant was terminated, HHS praised Healthy Teen Network for the quality of its study and innovation, highlighting Healthy Teen Network's work in its publications and conferences. HHS's about-face has upended the nature of Healthy Teen Network's study, causing Healthy Teen Network to abandon the Spanish-language portion of their project.

HHS's actions were arbitrary, capricious, and contrary to law, and they have harmed and continue to harm Baltimore, Healthy Teen Network, and the more than 10,000 preteens and teens served each year through the grants. Accordingly, HHS's premature termination of Plaintiffs' grants and its related denial of carry-over funds (*i.e.*,

funds not used in the prior year of the grant) should be set aside and HHS should be required to solicit and process Plaintiffs' applications for continued year-four funding.

Jurisdiction and Venue

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.
2. Venue is proper under 28 U.S.C. § 1391(e). Defendants are an agency of the United States and an official of the agency sued in his official capacity and Plaintiffs reside in this district.

Parties

3. Plaintiff Healthy Teen Network is a non-partisan, non-profit organization that for more than thirty years has worked on a national level to promote better outcomes for adolescents and young adults by advancing social change, cultivating innovation, and strengthening youth-supporting professionals and organizations. Located in Baltimore, Maryland, Healthy Teen Network promotes and supports unique and holistic programming to improve the health and well-being of young people.

4. Plaintiff Mayor and City Council of Baltimore ("Baltimore" or "the City") is a municipal corporation, organized pursuant to Articles XI and XI-A of the Maryland Constitution. The Baltimore City Department of Health is a City agency, *see* Baltimore City Charter, Article VII, §§ 54-56, that has wide-ranging responsibilities for providing health services to residents of the City, including those related to chronic disease prevention, HIV/STD prevention, maternal-child health, and school health services.

5. Defendant Alex M. Azar II is the Secretary of HHS. He is sued in his official capacity.

6. Defendant HHS is a federal agency headquartered in Washington, D.C. HHS administers the Teen Pregnancy Prevention Program, including Healthy Teen Network's grant and the Baltimore City Department of Health's grant, which are the subject of this action.

Background

The Health Risks of Teen Pregnancy to Mother and Child

7. Approximately one in four teenaged women in the United States will become pregnant before the age of 20.¹ While the rate of teen pregnancy in the United States has declined in recent decades, it remains higher than that of other industrialized countries.² Baltimore has a teen birth rate twice as high as the state of Maryland and one-and-a-half times as high as the national average.³

8. The vast majority of teen pregnancies are unintended—that is, pregnancies in which the mother has said that she did not intend or want to become pregnant.⁴

9. Teen pregnancy is linked to a variety of major social concerns such as poverty and poor outcomes for child well-being, health, and education.⁵

¹ Power to Decide [formerly The National Campaign to Prevent Teen and Unplanned Pregnancy], *Fast Facts: Teen Pregnancy in the United States* (Apr. 2016), <https://powertodecide.org/what-we-do/information/resource-library/fast-facts-teen-pregnancy-united-states> (citing data from the Centers for Disease Control).

² 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>.

³ Teen Pregnancy Prevention, *Baltimore City Department of Health*, <https://health.baltimorecity.gov/node/170> (last accessed Mar. 5, 2018).

⁴ Perper, K., Peterson, K., & Manlove, J., *Diploma attainment among teen mothers* (Fact Sheet #2010-01) (2010); Power to Decide, *Why It Matters*, <https://powertodecide.org/what-we-do/information/why-it-matters>.

⁵ *Id.*; Hotz, V. J., McElroy, S. W., & Sanders, S. G., *Teenage Childbearing and Its Life Cycle Consequences*. *The Journal of Human Resources*, XL (3), 683-715 (2005).

10. For example, only 38% of women who bear children during their teenage years receive a high school diploma;⁶ teen mothers are more likely to live in poverty and rely on government assistance than mothers who delay childbearing until past their teen years;⁷ and children born into poverty are at a greater risk for health issues and delays in educational advancement.⁸

11. 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 well-being.⁹ Teens have a higher risk of developing certain health problems during pregnancy (such as high blood pressure or anemia) than do older women.¹⁰ 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 and for those who do not receive any prenatal care.¹¹

12. The risks of teen pregnancy are especially acute in Baltimore. Nearly 83% of the students enrolled in the Baltimore City Public School System receive free or reduced lunches.¹² The City's violent crime rate is over four times the national rate and

⁶ *Id.*

⁷ *Id.*; Osofsky, J. D., Hann, D. M., & Peebles, C., *Adolescent Parenthood: Risks and Opportunities for Mothers and Infants*, in C. H. Zeanah (Ed.), *Handbook of Infant Mental Health* (1st ed. 1993, pp. 106-119).

⁸ National Campaign to Prevent Teen and 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>.

⁹ National Campaign to Prevent Teen and 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>.

¹⁰ The American 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>.

¹¹ *Id.*

¹² Maryland State Department of Education, *Official Number of Students Approved for Free and Reduced-Price and Percent of Enrollment by Agency as of October 31, 2017*,

that crime is disproportionately concentrated in low-income neighborhoods.¹³ Substance abuse is also comparatively high in Baltimore: the percentage of high school students who tried heroin is 8.3% in the City versus 4.2% in Maryland and 2.1% nationally.¹⁴ Similarly, 15.7% of Baltimore high school students had tried marijuana before the age of 13 versus only 8.0% in Maryland and 7.5% nationally.¹⁵ More than 30% of the City's youth have also experienced at least two adverse childhood experiences, compared with 19% in Maryland and 22% nationally.¹⁶ Youth who live in low-income neighborhoods and have high levels of hopelessness are twice as likely to have sex compared with youth in high-income neighborhoods.¹⁷

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

13. Until 2010, most federal funding for teen pregnancy prevention was disbursed without regard to whether the funded initiatives were proven to be effective. Little funding supported research on the efficacy of teen pregnancy prevention programs. And the evidence that did exist failed to show that programs receiving funding were

<http://www.marylandpublicschools.org/programs/Pages/School-Community-Nutrition/FreeReducedPriceMealStatistics.aspx>.

¹³ FBI Uniform Crime Reports, *Crime in the U.S. 2016*, Table 6, <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/tables/table-6/table-6-state-cuts/maryland.xls>.

¹⁴ [XXX]

¹⁵ [XXX]

¹⁶ Bloomberg School of Public Health at Johns Hopkins University, Child & Adolescent Measurement Initiative, 2014.

¹⁷ Rapid Assessment for Adolescent Preventive Services 17, 18, https://www.hhs.gov/ash/oah/sites/default/files/ash/oah/oah-initiatives/teen_pregnancy/training/Assests/2014%20Conference/using_technology.pdf.

delivering on their promises to reduce teen pregnancy, delay sexual intercourse, or prevent other sexually risky behaviors.¹⁸

14. The lack of funding for evidence-based teen pregnancy prevention programs led the medical, public health, and scientific communities to call for federal funding for evidence-based interventions and new and innovative approaches to address teen pregnancy.

15. To address that gap in funding, Congress in 2010 created the TPP Program “to fund medically accurate and age appropriate programs that reduce teen pregnancy.”¹⁹

16. The TPP Program is administered by HHS through the Office of Adolescent Health (“OAH”) and overseen by the Office of the Assistant Secretary of Health.²⁰

17. Heralded as a “poster child” for evidence-based policy,²¹ the TPP Program is designed to fund teen pregnancy prevention interventions that have been proven by the results of a rigorous evaluation to be effective. TPP is funded to expand programs at the community level that have been proven effective, to test such programs with new populations and adapt them as required, and to develop and test new and innovative approaches using modern day technologies.

¹⁸ Sexuality Information and Education Council of the United States, *A Brief History of Federal Funding for Sex Education and Related Programs*, <http://www.siecus.org/index.cfm?fuseaction=page.viewPage&pageID=1341&nodeID=1>.

¹⁹ Consolidated Appropriations Act, Pub. L. No. 111-117, 123 Stat. 3034, 3253 (2010), <https://www.gpo.gov/fdsys/pkg/PLAW-111publ117/html/PLAW-111publ117.htm>.

²⁰ *Id.*

²¹ Valerie Strauss, *Trump Administration Cuts Funding for Teen Pregnancy Prevention Programs*, Wash. Post (Sept. 7, 2017), 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=.cf94ab0a8063.

18. The TPP Program focuses on proven results rather than ideological preferences. It promotes curricula and other interventions that are scientifically proven to be effective and provides funds to study and evaluate new interventions in order to build a body of resources for evidence-based policy. While some progressive advocates preferred the federal government to simply fund comprehensive sex education and contraception and some conservative advocates preferred an “abstinence-only-until marriage” approach, the TPP Program’s approach was unique: instead of advancing a particular political ideology, it posited that reliance on science and data would ultimately better address social needs and be a more effective use of government resources.²²

19. Many of the programs embraced by OAH and funded through the TPP Program include abstinence as part of a more comprehensive approach to sexual health and education. And a few of the TPP Program grants specifically emphasize abstinence because the particular characteristics of those projects met the rigorous standards for funding. Through funding evidence-based approaches and studies based in scientific principle, the TPP Program has been described as providing “a library of proven choices from which communities can decide which best meets their needs.”²³ Put simply, the TPP Program funds interventions that are shown to effectively address teen pregnancy and/or that study new science-based methods, as opposed to funding programs based on political ideology.

²² Charles Homer, *Teenage Pregnancy Prevention Is The Latest Front In The War On Science*, Health Affairs: Health Affairs Blog (Aug. 18, 2017, 10:13 AM), <https://www.healthaffairs.org/doi/10.1377/hblog20170818.061589/full/>.

²³ Strauss, *supra* note 21.

20. In addition to facilitating evidence-based approaches to teen pregnancy prevention, the TPP Program also seeks to provide teen pregnancy prevention education to populations that historically have had few, if any, such resources. For example, prior to the TPP Program, the Baltimore City Public School System had not offered evidence-based sexual health education as a standard part of the health education curriculum. The education that the TPP Program has funded in Baltimore is more than simply a sexual education course in a school: it is an integrated effort to reduce the City's teen pregnancy rate by facilitating connections between the City's education system, behavioral health providers, and the broader health care system.²⁴

21. Since the TPP program's creation in 2010, teen pregnancy rates have declined at an increasing rate and many—including OAH itself—have cited the TPP Program as contributing to this trend.

22. In creating the TPP Program, Congress appropriated over \$100 million and directed HHS to fund programs and studies as follows:

\$110,000,000 shall be for making competitive contracts and grants to public and private entities to fund medically accurate and age appropriate programs that reduce teen pregnancy and for the Federal costs associated with administering and evaluating such contracts and grants, of which not less than \$75,000,000 shall be for replicating programs that have been proven effective through rigorous evaluation to reduce teenage pregnancy, behavioral risk factors underlying teenage pregnancy, or other associated risk factors, of which not less than \$25,000,000 shall be available for research and demonstration grants to develop, replicate, refine, and test additional models and innovative strategies for preventing teenage pregnancy, and of which any remaining amounts shall be available for training and technical assistance, evaluation, outreach, and additional program support activities: Provided further, That of the amounts provided under this heading from amounts available under section 241 of the PHS

²⁴ Trump Administration Targets Teen Pregnancy Prevention Programs, *Baltimore Sun*, Aug. 29, 2017, <http://www.baltimoresun.com/news/opinion/oped/bs-ed-op-0830-teen-pregnancy-funding-20170829-story.html>.

Act, \$4,455,000 shall be available to carry out evaluations (including longitudinal evaluations) of teenage pregnancy prevention approaches.²⁵

23. In April 2010, OAH issued two Funding Opportunity Announcements (“FOAs”) related to the TPP Program. One FOA sought applications for Tier 1 grant projects that were designed to replicate program models that had demonstrated positive impact on key sexual behavioral outcomes, including reduction of teen pregnancy and delay of sexual activity. The other FOA sought applications for Tier 2 grant projects that were designed to develop and rigorously test new and innovative approaches to prevent teen pregnancy.²⁶

24. The FOAs for both Tier 1 and Tier 2 grant projects specified that the projects would be funded for a five-year grant period.²⁷ The FOAs instructed applicants to, among other things, “provide a detailed five-year work plan and a timetable for the first year of the project” and to “create a logic model that provides an overview of the entire program for the five years of the cooperative agreement.”²⁸ The FOAs for both

²⁵ Consolidated Appropriations Act, Pub. L. No. 111-117, 123 Stat. 3034, 3253 (2010).

²⁶ Teenage Pregnancy Prevention (TPP): Research and Demonstration Programs and Personal Responsibility Education Program (PREP); Funding Opportunity Announcement and Application Instructions, http://wayback.archive-it.org/3909/20140324182152/http://www.hhs.gov/ash/oah/grants/assets/funding_announcement_04012010.pdf [hereinafter “April 2010 Tier 1 FOA”]; Teenage Pregnancy Prevention (TPP): Research and Demonstration Programs and Personal Responsibility Education Program (PREP); Funding Opportunity Announcement and Application Instructions, http://wayback.archive-it.org/3909/20140324182153/http://www.hhs.gov/ash/oah/grants/assets/foa_tpp_tier_2.pdf [hereinafter “April 2010 Tier 2 FOA”]; Evelyn M. Kappeler and Amy Feldman Farb, *Historical Context for the Creation of the Office of Adolescent Health and the Teen Pregnancy Prevention Program*, J. ADOLESCENT HEALTH, 54, S3-S9 (2014).

²⁷ *Id.*

²⁸ *Id.*

Tier 1 and Tier 2 grant projects specified that the projects would be funded for a five-year grant period.²⁹

25. Between FY 2010 and FY 2014, OAH funded 102 grantees through competitively awarded grants as part of the TPP Program. The grantees' projects 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 identify the factors that contribute to the effectiveness of specific programs.³⁰

OAH Announces Funding For Additional Five-Year Teen Pregnancy Prevention Program Grants and Solicits Applications

26. Since the first group of TPP Program grants was competitively awarded, Congress has continued to appropriate funds for the TPP Program through formal appropriations bills and continuing budget resolutions.

27. To both extend the reach of existing evidence-based teen pregnancy prevention approaches to at-risk populations and to develop new interventions, OAH issued new FOAs in January 2015 requesting applications for a second cohort of competitive, five-year grants (collectively, the "2015 FOAs"). The 2015 FOAs announced various types of available awards, including for programs that provide capacity-building assistance to replicate evidence-based TPP programs in defined service areas with demonstrated needs (known as Tier 1A grants) and for supporting and

²⁹ *Id.*

³⁰ 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>.

enabling early innovation to advance adolescent health and prevent teen pregnancy (known as Tier 2A).

28. As relevant here, the 2015 FOAs also announced awards for programs intended to “replicate evidence-based TPP programs to scale in communities with the greatest need,” which are known as Tier 1B grants.³¹ Per the Tier 1B FOA, the Tier 1B grants were designed to have “significant impact on reducing rates of teen pregnancy and existing disparities by replicating evidence-based TPP programs to scale in at least 3 settings in communities and with populations at greatest need.” OAH explained that the “intent of this FOA is to target limited resources to serving communities with the greatest need for preventing teen pregnancy and reducing existing disparities.”³²

29. OAH explained that despite the progress that had been made over recent years in reducing the teen pregnancy rate, “great disparities continue to exist – by age, race and ethnicity, geography, urbanicity, and among especially vulnerable populations.”³³ Accordingly, the FOA announced that OAH would make approximately \$60 million of awards available for Tier 1B programs.

30. The 2015 FOAs also announced awards for programs intended to “increase the number of evidence-based TPP interventions available by rigorously

³¹ Office of Adolescent Health, Replicating Evidence-Based Teen Pregnancy Prevention Programs to Scale in Communities with the Greatest Need (Tier 1B), <https://www.hhs.gov/ash/oah/sites/default/files/tier1b-foafile.pdf> [hereinafter Tier 1B FOA].

³² *Id.*

³³ *Id.*

evaluating new or innovative approaches for preventing teen pregnancy and related high risk behaviors,” known as Tier 2B grants.³⁴

31. Per the Tier 2B FOA, these Tier 2B grants were designed to address gaps in the existing evidence and reduce adolescent sexual and reproductive health disparities,³⁵ particularly in populations, including older teens and Latino youth, that are “at disproportionate risk for teen pregnancy” and “where limited evidence-based TPP programs [are] currently available.”³⁶

32. The Tier 2B FOA also made clear that “many of the evidence-based TPP programs identified by the HHS TPP evidence review were created more than a decade ago” such that “many do not address the role of technology or use technology for program delivery”; accordingly, grants awarded under this FOA were to be directed towards “[i]nterventions which incorporate technologies, such as internet and social media, [that] have strong potential to reach teens of diverse racial, ethnic and socio-economic backgrounds.”³⁷

33. The Tier 2B FOA announced that OAH would fund approximately \$18 million for Tier 2B grants.

34. Due to the “substantial programmatic involvement . . . anticipated between OAH and the grantee during performance of the project,” both the Tier 1B and 2B FOAs specified that the grants would be funded “in the form of a five-year cooperative

³⁴ Office of Adolescent Health, Rigorous Evaluation of New or Innovative Approaches to Prevent Teen Pregnancy (Tier 2B), <https://www.hhs.gov/ash/oah/sites/default/files/tier2b-foafile.pdf> [hereinafter Tier 2B FOA].

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

agreement with the grantee” under which OAH, among other things, would review all implementation and evaluation plans as well as “all program materials prior to use in the project to ensure the materials are medically accurate and complete.”³⁸

35. The Tier 1B and 2B FOAs established five-year “project period[s]” and one-year “budget periods” for the grants, meaning that for each of the five grant years, the recipient would be required to submit a “[n]on-competing [c]ontinuation [a]pplication,” consisting of a “progress report for the current budget year, and work plan, budget and budget justification for the upcoming year.” The Tier 1B and 2B FOAs further stated that funding for these subsequent years “is generally level with the initial award amount and is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of Federal funds.”³⁹

36. The Tier 1B and 2B FOAs set forth detailed evaluation and review criteria for grant applicants. The proposals were to be scored by an independent panel consisting of experts in teen pregnancy prevention drawn from academic institutions, non-profit organizations, state and local government, and other federal agencies.

Plaintiff Baltimore’s Tier 1B Grant, Its Early Success, and HHS’s Abrupt and Arbitrary Termination of Its Grant

37. In response to the 2015 FOA for the Tier 1B grant, the Baltimore City Department of Health proposed a five-year project, the Baltimore City U Choose Evidence-Based Teen Pregnancy Prevention Program (“the City’s TPP Program” or “the Program”), which aimed to decrease the overall teen birth rate of 43.3 per 1,000 teen girls

³⁸ Tier 1B FOA; 2B FOA.

³⁹ *Id.*

by 30% by the end of the Program, and to ensure sustainable delivery of evidence-based teen pregnancy prevention programs in Baltimore into the future.

38. The Baltimore City Department of Health proposed to partner with the Baltimore City Public School System and a network of seven Title X clinics, among other community partners, to reach 10,000 adolescents ages 12-19 each year with evidence-based programs implemented in middle schools, high schools, and Title X clinics in Baltimore City. The City's TPP Program was to build upon existing efforts of a City-wide strategic plan called *U Choose* and use the federal TPP Program funds to ensure that Baltimore's middle- and high-school students had access to evidence-based reproductive health education in schools and City clinics. The City's TPP Program would rely on best practices and approaches for dealing with a population that experiences significant rates of trauma, coupled with strategies to address such social determinants as poverty and mental health.

39. On June 29, 2015, OAH awarded the Baltimore City Department of Health a five-year, \$8.745 million grant, with \$1.749 to be awarded annually, as outlined in the Notice of Award and Cooperative Agreement between OAH and the Baltimore City Department of Health.

40. On July 6, 2015, the Baltimore City Department of Health received a letter of congratulations from OAH Director Evelyn Kappeler stating that the office was looking "forward to working with [the City] over the next five years to support [its] project and ensure [its] continued success."⁴⁰ Ms. Kappeler also stated that the five-year

⁴⁰ Letter from OAH Director Evelyn Kappeler to Baltimore City Health Dept. (July 6, 2015).

grants awarded by OAH for all TPP programs would serve 290,000 youth annually and 1.2 million youth over the entire grant period in 38 states and the Marshall Islands.

41. The Notice of Award and Cooperative Agreement received by the Baltimore City Department of Health established a five-year project period for the \$8.745 million award spanning from July 1, 2015 to June 30, 2020. The award fully funded the grant for the first year and indicated that \$1.749 million was the amount of funding for each subsequent grant year, noting only that this “recommended future support” was “[s]ubject to the availability of funds and satisfactory progress of the project.”

42. The majority of the City’s grant funds have been used to support partners to engage in delivering the evidence-based programs to adolescents. The current subgrantees include Plaintiff Healthy Teen Network, Inc., the Baltimore City Public School System, The Johns Hopkins Center for Adolescent Health, The Johns Hopkins Center for Communications Programs, The Johns Hopkins University Harriet Lane Teen Clinic, Baltimore Medical System, Inc., Planned Parenthood of Maryland, Inc., Family Health Centers of Baltimore, Inc., and Behavioral Health Systems of Baltimore.

The Early Work and Success of Baltimore’s TPP Program Project

43. During the first year of the grant, the Baltimore City Department of Health established the Program’s organizational structure, executed all partner agreements, implemented successful pilots within each of the three settings (middle schools, high schools, Title X clinics), and completed all OAH year-one milestones.

44. The Baltimore City Department of Health worked in close collaboration with *U Choose* coalition partners to identify teen pregnancy prevention curricula that met the particular needs of Baltimore’s population. Specifically, Baltimore sought to identify

materials that were medically accurate, age appropriate, culturally and linguistically appropriate, trauma-informed, inclusive of LGBTQ youth, and received parental buy-in. After a thorough selection process, the Baltimore City Department of Health chose to implement three different evidence-based programs: (1) “It’s Your Game” in middle schools; (2) “Making Proud Choices” in high school; (3) and “Seventeen Days” in clinics.

45. The curricula selected by Baltimore and funded under its TPP Program grant were and continue to be included in the list of evidence-based curricula approved by OAH.

46. The Baltimore City Department of Health worked with each school to devise the best method for implementing the appropriate curriculum in each Baltimore middle and high school. It invested in identifying and training educators to deliver the materials. The Department of Health also collaborated with community stakeholders to ensure that these curricula would be taught in safe and supportive environments for youth and their families. It created work plans to promote linkages with youth-friendly health services, and conducted communications activities to raise awareness of the teen pregnancy prevention programs with youth, families, and community stakeholders.

47. OAH frequently sought Baltimore’s counsel for improving the TPP Program. In 2016, the agency asked the Baltimore City Department of Health to serve on the Sustainability Committee for the TPP Program. In this role, the Baltimore City Department of Health advised OAH on best approaches for updating educational materials, providing technical support, and enabling other grantees to continue operations past the grant period.

48. The Baltimore City Department of Health has also frequently made presentations along with OAH leaders at conferences and events. For example, Catherine Watson and Vira David Rivera of the Baltimore City Department of Health spoke alongside OAH leaders at the Healthy Teen Network conference on November 14-16, 2016 in Las Vegas.

49. OAH continued to support the TPP Program grants during 2016 and the first half of 2017.

50. In April 2016, the Baltimore City Department of Health submitted a non-competing continuation application for the second year of the TPP Program grant.

51. OAH made a second award of \$1.749 million in July 2016 to fund the City's TPP Program.

52. On February 3, 2017, the Baltimore City Department of Health's request was granted to carry-over \$329,782.67 from year one to use in year two, in addition to the \$1.749 million in year two funding.

53. In the second year of the grant, the Baltimore City Department of Health reached 10,317 youth through teen pregnancy prevention programming, which exceeded the Program's goal of reaching 10,000 young people. The Program had full implementation of the evidence-based programs in the high schools and Title X clinics. Faculty in nearly 50% of middle schools were trained and a quarter of the schools implemented the Program by the end of year two. OAH commended the City for training 158 new facilitators and delivering follow-up training to 143 facilitators in year two. It also commended the Program for its "high" mean attendance for the "It's Your Game"

program (91%) and Seventeen Days program (100%), noting that “90% of participants for [It’s Your Game] and 100% for Seventeen Days attended 75% or More of sessions.”

54. The Baltimore City Department of Health received numerous additional commendations in its reviews by OAH. In the response to the application for year two, OAH praised Baltimore for its budget that was “detailed, reasonable, adequate, cost efficient,” its “strong parent engagement program,” and its incorporation of “OAH assessment tools to ensure safety and inclusivity.” In the year two technical review, OAH commended Baltimore for proposing “robust activities to support strategic communication and dissemination” and for a work plan that “supports the holistic approach of the TPP program with at least one objective geared towards each of the OAH expectations.”

55. To the extent these reviews included recommendations for improvements moving forward, the Baltimore City Department of Health took steps to address them.

56. OAH supported the TPP Program in the first half of 2017, as well. On April 26, 2017, for example, in honor of Teen Pregnancy Prevention Month, HHS touted “TPP grantees work to reach young people in greatest need using evidence-based/innovative strategies.” OAH also held numerous conferences and workshops during this period aimed at supporting the grants, and advising grantees about their projects.

57. In April 2017, the Baltimore City Department of Health submitted a non-competing continuation application for the third year of the grant. In preparing the application, staff at the Baltimore City Department of Health spoke with career staff at OAH regarding the trajectory of the City’s TPP Program and plans regarding carry-over

funding. OAH staff members encouraged Baltimore City Health Department to submit its application for carry-over funding.

58. At no point did OAH staff indicate that there would be an issue with Baltimore's application.

HHS's Abrupt Termination of Baltimore's TPP Program Grant

59. On July 3, 2017, the Baltimore City Department of Health received a Notice of Award for year three of the TPP grant stating that "[t]his award also shortens the project period to end on June 30, 2018 at the end of this budget." The Award also advised of requirements for "final reports to closeout this grant."

60. The Notice of Award provided no explanation for the termination of the City's grant.

61. Moreover, at no time has HHS provided Baltimore or the Baltimore City Department of Health with an explanation for the termination of its grant.

62. As discussed more fully below, the abrupt decision to terminate the City's grant came just weeks after the appointment of Valerie Huber and other opponents of evidence-based teen pregnancy prevention programs to political positions at HHS, and at the behest of Ms. Huber and other political appointees.

63. Indeed, even after its abrupt termination of the grant, OAH continued to praise Baltimore's Program. For example, in a September 8, 2017 review, OAH praised the Baltimore City Department of Health for scaling up its evidence-based programs to reach 10,317 young people in year two, which it found to be "a tremendous accomplishment" and "[n]oteworthy" for exceeding the Program's goal of reaching 10,000 young people per year. OAH said that the City's Program team had "done a

tremendous job of working together on a shared vision and achieving results,” which OAH attributed to “clear and consistent communication, harnessing individual partners’ strengths and expertise, diligently working together to overcome systemic challenges through innovative solutions, and practicing continuous quality improvement in an authentic manner.” OAH also found in its review that “overall quality for all 3 program models was high (above 90% scored 4 or more on overall quality).”

64. On August 3, 2017, the Baltimore City Department of Health appealed the termination of its grant. It has not received a response from OAH.

65. On September 29, 2017, the Baltimore City Department of Health submitted a request to carry-over \$130,243.46 in unused funds from year two into year three, as it had done the year prior.

66. On November 27, 2017, the Baltimore City Department of Health received a letter from HHS’s Office of Grants Management denying the request for carry-over funds as “not necessary for successful project completion.”

67. The Baltimore City Department of Health complied with all program requirements throughout the grant.

68. Baltimore City achieved a 20% decrease in the teen birth rate from 2014-2016. In addition, in Baltimore, the disparity in the teen birth rate between white and African-American teenagers decreased 45% between 2014-2016, and the disparity in the teen birth rate between white and Latina teenagers decreased 34% between 2014-2016. The Baltimore City U Choose Evidence-Based Teen Pregnancy Prevention Program has contributed to this positive trend.

Plaintiff Healthy Teen Network Tier 2B Grant, Its Early Success, And HHS's Abrupt and Arbitrary Termination of Its Grant

69. In response to the 2015 FOA for the Tier 2B grant, Plaintiff Healthy Teen Network proposed a five-year randomized control trial to test Pulse, a web-based, bilingual English/Spanish mobile app that provides medically accurate, age-appropriate sexual and reproductive health information through text and graphics, self-assessments, and racially diverse videos and films that promote birth control use, clinic utilization, and communication with a partner.

70. Healthy Teen Network proposed to use social media to recruit 1,500 primarily Black and Latina young women aged 18-19, located in geographically diverse locations nationwide, to complete a baseline survey to assess their knowledge and behaviors concerning use of contraception, clinic access, and protection from sexually transmitted infections. Participants would then be given access for up to six months to either the English-language version of the Pulse app or a control app containing general health and fitness information. To discern the impact of Pulse, surveys would be administered 6 weeks and 6 months following the baseline survey. In the later years of the grant, Healthy Teen Network proposed to similarly study the efficacy of the Spanish-language version of Pulse.

71. On July 1, 2015, OAH awarded Healthy Teen Network a five-year, \$3.6 million grant, with \$723,000 to be awarded annually, as outlined in the Cooperative Agreement between OAH and Healthy Teen Network.

72. Reviewers found that Healthy Teen Network's proposal did "an exemplary job in addressing medical accuracy (review by clinicians and a CDC Lead Medical Officer), age, cultural and linguistic appropriateness (Black and Latina girls

were involved in content review and decisions)”; that “the team has conducted impressive formative work in developing the intervention”; and that the “web-based intervention is quite innovative, and with its targeting of older African-American and Latina teen girls, it fills an important gap in the list of” evidence-based programs.

73. On July 6, 2015, Healthy Teen Network received a letter of congratulations from OAH Director Evelyn Kappeler stating that the office was looking “forward to working with [Healthy Teen Network] over the next five years to support [its] project and ensure [its] continued success.” As with Baltimore, Ms. Kappeler also stated that the five-year grants awarded by OAH for all TPP programs would serve 290,000 youth annually and 1.2 million youth over the entire grant period in 38 states and the Marshall Islands.

74. The Notice of Award and Cooperative Agreement received by Healthy Teen Network along with Ms. Kappeler’s letter established a five-year project period for the \$3.6 million award spanning from July 1, 2015 to June 30, 2020. Healthy Teen Network’s Award fully funded the grant for the first year and indicated that \$723,000 was the amount of funding for each subsequent grant year, noting only that this “recommended future support” was “[s]ubject to the availability of funds and satisfactory progress of the project.” As indicated in the initial Tier 2B FOA, grounds for termination of grants awarded under the program were limited to a grantee’s failure to (1) “meet major milestones as required/defined by OAH”; (2) “receive OAH approval for their evaluation plan by the end of year one”; (3) “complete planning year milestones and receive OAH approval to begin implementation and evaluation of the intervention no

later than 12 months after receipt of funding”; or (4) “collect and report on the full set of performance measures at any time during the grant cycle.”⁴¹

75. Healthy Teen Network also received two subawards: The first was an award that averaged \$100,000 annually to increase capacity and provide training in support of Plaintiff Baltimore’s 5-year, \$8.75 million Tier 1B grant. The second was an award that averaged \$13,000 annually to increase capacity and provide training and technical assistance in support of a 5-year, \$3.5 million Tier 1A grant awarded to the South Carolina Campaign to Prevent Teen Pregnancy to assist 16 youth organizations in providing OAH-approved, evidence-based programming to teens in juvenile justice or foster care.

76. In 2015, HHS convened a conference in Washington, D.C. for all the Tier 2B grantees at which it announced that Mathematica Policy Research would be providing technical assistance to the grantees on study design to ensure that grantees’ ultimate evaluations would meet rigorous evidence review standards.

The Early Work and Success of Healthy Teen Network’s TPP Program Evaluation Project

77. Following receipt of its award from OAH, Healthy Teen Network proceeded with content development and medical accuracy screening for Pulse and developed and launched a social media campaign to recruit participants for the study.

78. Healthy Teen Network has received numerous commendations in its reviews by OAH. For example, OAH praised Healthy Teen Network for a “job well done” and “continued excellence” in year one and, subsequently, for “activities focused

⁴¹ Tier 2B FOA.

on the rigorous evaluation plan including continued recruitment of youth participants, evaluation implementation monitoring, data collection protocols, and performance measures monitoring and input.”

79. To the extent these reviews included recommendations for improvements moving forward, Healthy Teen Network took steps to address them.

80. Healthy Teen Network complied with all program requirements throughout the grant.

HHS’s Abrupt Termination of Healthy Teen Network’s TPP Program Grant

81. In April 2016, Healthy Teen Network submitted a non-competing continuation application for the second year of the grant.

82. OAH made a second award of \$723,000 to Healthy Teen Network in July 2016 for the Pulse study. Healthy Teen Network also continued to receive payments on the subawards during year two of the grant.

83. On October 17, 2016, Healthy Teen Network was awarded an additional \$62,629 in carry-over funding to use in year two of the Pulse grant.

84. OAH also praised Healthy Teen Network’s work on the Pulse study during this period. In July 2016, at OAH’s invitation, Healthy Teen Network presented at HHS’s Teen Pregnancy Prevention Conference on the topic of “Taking Sexual Health Research to the Mobile World.” OAH continued to commend Healthy Teen Network’s Pulse project during 2017. In a May 19, 2017 review, OAH recognized that Healthy Teen Network’s “activities focusing on program evaluation appear to appropriately align with the current approved evaluation plan” and “balance nicely between ensuring quality program development and ensuring the evaluation will maintain its rigor.” Indeed, in

May 2017, OAH widely circulated a report lauding Healthy Teen Network for its “success with targeted recruiting using social media for its evaluation of Pulse.”

85. During this time, preparations were well underway by OAH to fund the grants for year three in support of the full five-year projects. In April 2017, Healthy Teen Network submitted a non-competing continuation application for the third year of the grant; it also conferred with career staff at OAH regarding the trajectory of its study, carrying funding over from the second year to the third year, and plans for the fourth and fifth years of the grant.

86. Yet, OAH’s recently appointed political leadership had other plans, shifting the agency’s course dramatically.

87. On June 5, 2017, Valerie Huber was appointed to serve as Chief of Staff in the office of the Assistant Secretary of Health at HHS, the office that oversees OAH. Ms. Huber is a longtime opponent of the TPP Program, which she now oversees, and her appointment followed the appointment of other opponents of evidence-based programs to key positions at HHS.

88. Prior to serving at HHS, Ms. Huber was the president of Ascend, formerly known as the National Abstinence Education Association, an association that promotes abstinence-only-until-marriage (often referred to as “sexual risk avoidance”) education. Researchers at Case Western Reserve University found that the sexual education programs Ms. Huber ran when she served in state government in Ohio provided “false and misleading information,” perpetuated “destructive, inaccurate gender stereotypes,”

and presented “religious convictions as scientific fact.” One curriculum said that teenagers who have sex before marriage should “be prepared to die.”⁴²

89. When interviewed regarding a study published in the widely-respected *Journal of Adolescent Health* that attributed the recent decline in teen pregnancy rates to increased access and use of contraception, Ms. Huber discounted the study as “biased” toward birth control.⁴³

90. Following Ms. Huber’s appointment, Healthy Teen Network criticized the Trump Administration for the appointment of someone who has a history of disregarding evidence-based findings in favor of her own personal biases. For example, in a public statement on June 9, 2017 following Ms. Huber’s appointment, Healthy Teen Network noted that Ms. Huber “has promoted programs and policies that are ineffective, lack any scientific groundings, and instill fear through medically inaccurate information.” Healthy Teen Network’s statement also expressed concern that Ms. Huber’s commitment to abstinence-until-marriage education reflects “limited religious values and views that cannot be considered even remotely universal values and fail to support our young people and prepare them to be healthy adults who can participate and contribute to our society.”

91. On July 6, 2017, within a few weeks of Ms. Huber’s appointment at HHS and Healthy Teen Network’s public and open criticism thereof, Healthy Teen Network received a Notice of Award for year three stating that “[t]his award also shortens the

⁴² Laura Lindberg, John Santelli, & Sheila Desai, *Understanding the Decline in Adolescent Fertility in the United States, 2007-2012*, [http://www.jahonline.org/article/S1054-139X\(16\)30172-0/pdf](http://www.jahonline.org/article/S1054-139X(16)30172-0/pdf).

⁴³ Julie Royner 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>.

project period to end on June 30, 2018 at the end of this budget year.” The Award also advised of requirements for “final reports to closeout this grant.”

92. The Notice of Award provided no explanation for the termination of Healthy Teen Network’s grant.

93. The Baltimore and South Carolina grants of which Healthy Teen Network was a subgrantee were also terminated prematurely.

94. At no time was Healthy Teen Network provided any explanation by the agency for the termination of its grant. Ms. Kappeler held an informal webinar for grantees shortly after the termination, but did not provide any particular explanation as to why HHS terminated the grants. During the webinar, Ms. Kappeler did note that despite the terminations, OAH was at work on guidance concerning requests to carry-over funds unused from year two of the grant and instructed grantees to submit such requests as soon as possible.

95. Career employees at OAH previously working to support the grants expressed surprise that the grants were terminated.

96. The decision to terminate the grants came from Ms. Huber and other political appointees.

97. Following the grant terminations, Healthy Teen Network’s President and CEO Patricia Paluzzi was particularly outspoken, repeatedly criticizing the agency’s action in interviews for multiple television, online, and print media outlets. For example, Dr. Paluzzi was quoted in a July 14, 2017 *Reveal Magazine* article stating that the Administration does not “like to deal with the sexual reproductive health of teens” and that “[p]ublic health issues shouldn’t be political issues.” And in a column by Dr. Paluzzi

that appeared in *Cosmopolitan* four days later, she said that the terminations were also “out of character for an administration that claims to want to reduce government waste” because “[e]nding a project two years early means research findings are incomplete and sustainability is lost, rendering the dollars spent to date a loss.” Dr. Paluzzi also stated that the grant terminations were rooted in “ideology”—namely, the fact that those in HHS’s political leadership have been “strong opponents of comprehensive sexual education and contraceptive services, and vehement proponents of abstinence-only education”—and implored *Cosmopolitan*’s readership to call upon their legislators to “demand that the Trump administration not play politics with the lives of teens.”

98. In August 2017, Healthy Teen Network was advised by an agency employee that there would be no use in appealing its grant termination.

99. Even after the grant termination, employees for Healthy Teen Network continued ongoing discussions with career employees at OAH about applying for carry-over funding for year three and the role such funding would play in the completion of the Pulse project.

100. On August 1, 2017, Healthy Teen Network submitted a request to carry-over \$51,213 in unused funds from year two into year three.

101. On August 7, 2017, consistent with Ms. Kappeler’s instruction during the webinar, OAH again notified grantees that they could request to carry-over unused funds.

102. On September 26, 2017, Healthy Teen Network received a letter from the HHS’s Office of Grants Management denying the organization’s request for carry-over funds as “not necessary for successful project completion.” The denial of carry-over

funds followed statements by Healthy Teen Network and other grantees criticizing, among other things, HHS officials for terminating the TPP grants prematurely.

103. Also in late September 2017, OAH notified grantees that they would no longer be receiving technical and evaluation support from Mathematica.

104. This notwithstanding, OAH continued to praise Healthy Teen Network's Project. For example, in a November 9, 2017 review, OAH commended Healthy Teen Network for an "excellent job at maintaining a high level of quality in the [Pulse] app programming."

105. HHS's abrupt decision to eliminate funding for the City, Healthy Teen Network, and other grantees was made outside the traditional federal budget process and is directly contrary to the TPP Program's appropriations statute. Congress has continued to fund the TPP Program through annual appropriations that specifically mandate funds to be used for, among other things, "competitive contracts and grants to public and private entities to fund medically accurate and age appropriate programs that reduce teen pregnancy."

106. Congress has not yet passed an appropriation for FY 2018, but has continued to fund the TPP Program through a series of continuing budget resolutions.

HHS's Shifting Public Explanations for Terminating TPP Program Grants

107. Notably, HHS has not provided an explanation to Plaintiff Baltimore or Plaintiff Healthy Teen Network for the termination of their grants. When HHS has publicly addressed the grant terminations at large, it has given shifting explanations, stating, for example, that there was "strong evidence of negative impact or no impact" by the funded projects—a purported rationale that is contradicted by the agency's own

evidence. The explanation could have no application to Tier 1B grants, which provide methods of teen pregnancy prevention continually endorsed by OAH to vulnerable patient populations with great need, such as students in Baltimore who, but for the TPP Program, did not have access to this programming. And the explanation is simply irrational as applied to Tier 2B grants, as the whole purpose of these grants was to test the impact of new innovative approaches.

108. Other agency officials, such as HHS spokeswoman Diane Gianelli, have claimed that the cuts to the TPP Program are related to the President's FY 2018 Budget. In an email to the *LA Times*, Ms. Gianelli stated "the President's FY 2018 Budget eliminated funding for the Teen Pregnancy Prevention Program, so our grants office informed the grantees of their June 30, 2018 end date, to give them an opportunity to adjust their programs and plan for an orderly closeout." Not only does this explanation differ from the other public explanations provided by the agency, but it also ignores that the President's budget proposal is merely a *proposal* and has not been enacted by Congress. Congress continues to fund the TPP Program, notwithstanding the President's request that it not do so.

109. At the same time, OAH has continued to herald Plaintiffs' work, as described in the paragraphs above, and the results of the TPP Program more generally.

110. In OAH's Annual Report released in November 2017, the agency touted the TPP Program for having "more than tripled the number of youth served in 2017 compared to 2016, reaching 213,000 young people with evidence-based and evidence-informed teen pregnancy prevention programs" and as "a model of a Federal program developing increasingly rigorous portfolios of evidence."

111. Also in November 2017, HHS announced that it was directing approximately \$10 million in funds for “new research and evaluation collaboration to support and improve teen pregnancy prevention and sexual risk avoidance programs” within HHS.

HHS’s Abrupt and Unexplained Termination of the Grant Has Injured and Continues To Injure Plaintiffs and the Populations They Serve

112. OAH’s decision to abruptly cut funding for the 81 TPP Program grantees jeopardizes the well-being of vulnerable individuals throughout the United States. It has been criticized by members of Congress, the medical community, and numerous community advocates. For example, in a letter to then-Secretary of HHS, Tom Price, 37 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 evidence-based work that TPP Program grantees are doing across the nation.”⁴⁴ The letter further noted that “[t]he TPP Program is making a vital contribution to building a body of knowledge of what works to prevent teen pregnancy.”⁴⁵ Additionally, the American College of Obstetricians and Gynecologists (“ACOG”) has called HHS’s actions “a step backward for ensuring

⁴⁴ 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>

⁴⁵ *Id.*

healthy moms and healthy babies.”⁴⁶ ACOG has credited the TPP Program for contributing to the sharp declines in teen pregnancy rates over the past six years.⁴⁷

113. Plaintiffs and the populations they serve are experiencing immediate and irreparable harm as a result of OAH’s abrupt termination of the grants.

114. The termination of grant funding undermines both the remaining work that the City is doing under the grant and threatens the City’s TPP Program’s sustainability. Already, Baltimore has had to adjust its Program in order to meet in year three of the TPP Program grant as many of the sustainability goals as possible that it had planned for years four and five. In addition, due to the loss of funding, Baltimore has been unable to meet goals, such as training all teachers in the Baltimore City Public School System. For example, 125 teachers will now either not receive important refresher materials or not be trained at all. Importantly, the City’s teen pregnancy prevention curricula will not be adapted as planned for certain special audiences, including youth with developmental disabilities. Each of these curtailments of planned implementation and additional program alterations not mentioned here, jeopardize the ability of the City’s schools and clinics to continue delivering the health curriculum past the expiration of the grant.

115. The City’s TPP Program grant has funded fourteen staff positions in Baltimore: one Program Manager and five Health Education Staff members at the Baltimore City Department of Health, four Health Education staff at the subgrantee

⁴⁶ Statement of Haywood L. Brown, President, American College of Obstetrics and 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>.

⁴⁷ *Id.*

clinics, as well as two full-time Evaluation Staff, one Technical Assistance Provider, and one Health Education Coordination Lead, in the chronically underfunded Baltimore City Public School System. As a result of HHS's action, the Baltimore City Department of Health and the Baltimore City Public School System will have to divert funds beginning in July 2018 that would have been used for other programs (such as Youth Leadership Development, Community Health Education and Outreach, and Youth-Friendly Clinical Standards) that benefit the public's health in order to attempt to avert staff layoffs. In addition, the Baltimore City Public School System will have to reduce the purchase of educational materials to support science and other core programs.

116. The Baltimore City Department of Health has had to divert staff time and critical resources from core programmatic activities such as clinical management and collective impact development to conduct fundraising efforts in an attempt to secure alternative funding in order to continue a version of the City's TPP Program. The Department has reached out to the State government and to private philanthropic foundations for financial support, but has come up dramatically short of the funds needed to make up for the loss of the OAH grant. Funds committed by private foundations to the City's TPP Program also mean fewer funds that the City and its many community partners can use for other projects that are vital to the community.

117. The abrupt and premature termination of the City's TPP Program grant jeopardizes the great strides that the City has already made in reducing its teen pregnancy rate since 2014. Approximately 20,000 preteens and teens who would have been educated through the Program will now not receive this education during years four and five of the grant. In addition, because the plan for year five was to ensure the sustainability of the

Program beyond the grant term, countless additional young people will not have the benefit of this Program going forward.

118. This premature termination will disproportionately impact Baltimore's most disadvantaged and vulnerable young people. Latina teenagers in Baltimore continue to experience rates of teen pregnancy at nearly double the rate of the white Baltimore teen population. Yet there is no comprehensive, evidence-based Spanish language teen pregnancy prevention curriculum in Baltimore, and the City's development of that curriculum, planned for year four of the grant, will have to be discontinued unless the OAH funding is restored. In addition, Baltimore's LGBTQ youth continue to suffer disproportionately high rates of teen pregnancy and suicide, and the City's ability to serve this population will be significantly diminished by the termination of OAH funds.

119. Plaintiff Healthy Teen Network and the populations served by its grant and sub-grant projects are also experiencing immediate and irreparable harm from the abrupt termination of the grants. The loss of years four and five of grant funding for the Pulse project has compelled Healthy Teen Network to reduce its sample size from 1,500 to 1,300 and cancel outright the Spanish-language portion of its study, although a major aim of the Pulse study and the Tier 2B grants was to address the critical gap in evidence-based sexual health education for Latino youth.

120. Healthy Teen Network itself has also been deeply harmed by the loss of grant funds from the Pulse project and the subawards, which together made up approximately one-third of its overall budget. Healthy Teen Network has been forced to sign a new lease for smaller office space and plans to vacate its current premises in April 2018. Because of HHS's actions, the organization has also had to leave the positions of

three departed employees unfilled, and anticipates needing to lay off at least three more staff members (which together amount to one-third of the organization's total staff) if it does not secure alternative funding.

121. Finally, as a consequence of its budget contracting so dramatically owing to HHS's actions, Healthy Teen Network has had to divert staff time and critical resources from core programmatic activities, such as developing and adapting teen-pregnancy related content for e-learning and offering training for a new teen pregnancy prevention intervention, to fundraising efforts in an as yet unsuccessful attempt to secure sufficient alternative funding to continue this project and the organization's other important work.

CLAIMS FOR RELIEF

Count One

(Administrative Procedure Act, 5 U.S.C. § 706(2))

Defendants' Termination of Plaintiffs' Grants Violates the Administrative Procedure Act

122. Plaintiffs incorporate by reference the foregoing paragraphs as if fully set forth herein.

123. The Administrative Procedure Act (APA) provides, among other requirements, that a court "shall . . . hold unlawful and set aside agency action . . . [that is] arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

124. Defendants' termination of Plaintiffs' grants constitutes final agency action, reviewable under the APA.

125. Defendants' denials of carry-over funds requested by Plaintiffs Baltimore (by and through its Department of Health) and Healthy Teen Network constitute final agency action, reviewable under the APA.

126. Defendants' termination of Plaintiffs' grants is contrary to law.

127. Specifically, the 2017 Consolidated Appropriations Act mandated:

That of the funds made available under this heading, \$101,000,000 shall be for making competitive contracts and grants to public and private entities to fund medically accurate and age appropriate programs that reduce teen pregnancy and for the Federal costs associated with administering and evaluating such contracts and grants, of which not more than 10 percent of the available funds shall be for training and technical assistance, evaluation, outreach, and additional program support activities, and of the remaining amount 75 percent shall be for replicating programs that have been proven effective through rigorous evaluation to reduce teenage pregnancy, behavioral risk factors underlying teenage pregnancy, or other associated risk factors, and 25 percent shall be available for research and demonstration grants to develop, replicate, refine, and test additional models and innovative strategies for preventing teenage pregnancy: *Provided further*, That of the amounts provided under this heading from amounts available under section 241 of the PHS Act, \$6,800,000 shall be available to carry out evaluations (including longitudinal evaluations) of teenage pregnancy prevention approaches.⁴⁸

128. This Appropriations Act, which remains in place through continuing budget resolutions, requires that HHS fund the TPP Program. In particular, in the Continuing Appropriations Act, 2018, as well as subsequent acts extending it, Congress appropriated to HHS “[s]uch amounts as may be necessary, at a rate for operations as provided in the applicable appropriations Acts for fiscal year 2017 and under the authority and conditions provided in such Acts, for continuing projects or activities ...

⁴⁸ FY 2017 Consolidated Appropriations Act, Pub. L. No. 115-131, 131 Stat. 135, 536 (2017).

that were conducted in fiscal year 2017.”⁴⁹ Congress mandated that such appropriations “shall be available to the extent and in the manner that would be provided by the [fiscal year 2017 appropriations acts].”⁵⁰ In terminating Plaintiffs’ grants midway through the program, HHS has ignored this statutory mandate and has improperly impounded Congressionally appropriated funds. HHS is acting contrary to law in violation of the APA and Congressional mandates.

129. HHS’s actions are also contrary to the Congressional Budget and Impoundment Control Act of 1974 (the “Impoundment Control Act”), which requires that the President make appropriated funds “available for obligation,” unless the President sends a special message to Congress detailing a request to rescind or reserve funds and Congress then passes a rescission bill rescinding the funding. 2 U.S.C. § 683(a). There has been no transmission of a special message to Congress by the President seeking to have TPP Program funding rescinded and Congress has not otherwise acted to rescind the funding. The President is thus required by the Impoundment Control Act to expend the appropriated TPPP funding. Accordingly, Defendants’ termination of the TPP Program grants despite continued funding for the TPP Program constitutes final agency action contrary to the Impoundment Control Act, in violation of the APA.

130. HHS’s actions are also contrary to the agency’s own regulations. HHS’s regulations provide that a Federal award may be terminated in whole or in part only

⁴⁹ Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017, Pub. L. No. 115-56, § 101, 131 Stat. 1129, 1139-40; *see* Bipartisan Budget Act of 2018, Pub. L. No. 115-123 (amending Continuing Appropriations Act, 2018, to extend appropriations through March 23, 2018).

⁵⁰ Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017, Pub. L. No. 115-56, § 103.

where the grantee has failed to comply with the terms and conditions of an award, for cause, with consent of the grantee, or by the grantee upon providing written notification of the reasons for such termination. *See* 45 C.F.R. § 75.372(a)(1)-(4). HHS has terminated Plaintiffs' grants without identifying any regulatory basis for the termination or following any of the specific procedures required by governing regulations.

131. Defendants' actions are also arbitrary and capricious. To date, HHS has failed to provide a reasoned or legally sufficient justification for terminating Plaintiffs' grants. Indeed, HHS has failed to provide any specific justification to Healthy Teen Network or Baltimore City.

132. Thus, in terminating the grant awards, Defendants have acted arbitrarily, capriciously, and contrary to law in the following ways, among others:

- a. terminating Plaintiffs' grant awards and other TPP Program grant awards in the face of a Congressional mandate;
- b. terminating Plaintiffs' grant awards without grounds and otherwise failing to follow HHS grant termination procedures;
- c. denying requests by Plaintiffs Baltimore and Health Teen Network for carry-over funds;
- d. failing to respond to Plaintiff Baltimore's appeal;
- e. failing to explain the basis of its decisions;
- f. providing shifting and unreasoned *post hoc* explanations for its decisions;
- g. making decisions based on undue political interference by agency officials rather than merit; and

- h. making decisions in retaliation for the criticism that Plaintiff Healthy Teen Network and other grantees have levied against Ms. Huber, HHS, and/or the Trump Administration.

Count Two
(Administrative Procedure Act, 5 U.S.C. § 706(1))

Defendants Are Unlawfully Withholding and/or Delaying Action

133. Plaintiffs incorporate by reference the foregoing paragraphs as if fully set forth herein.

134. The APA provides, among other things, that a court “shall compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

135. Defendants’ refusal to solicit, accept, and process Plaintiffs’ non-competing continuation grant funding applications for each of the annual terms laid out in Plaintiffs’ five-year grant awards are agency action that has been withheld and/or unreasonably delayed in violation of, among other things, HHS’s own regulations, the Consolidated Appropriations Act, and the APA.

136. Defendants’ refusal to continue to process Plaintiffs’ grant funding for each year of the five-year term is agency action that has been withheld and/or unreasonably delayed and violation of this provision of the APA.

Count Three
(Equitable Relief to Preserve Remedy)

137. Plaintiffs incorporate by reference the foregoing paragraphs as if fully set forth herein.

138. Defendants are poised to transfer or otherwise obligate the funds at issue in this action.

139. Plaintiffs are entitled to a full, fair, and meaningful process to adjudicate the unlawful termination of its grant.

140. Plaintiffs will suffer irreparable injury if Defendants transfer, disburse, or otherwise obligate the funds that are the subject of this action before final resolution of this matter. *See City of Houston v. Dep't of Hous. & Urban Dev.*, 24 F.3d 1421, 1427 (D.C. Cir. 1994).

141. Accordingly, to ensure that Plaintiffs have meaningful relief should they prevail in this action, the Court should enjoin Defendants from transferring or otherwise obligating the funds at issue.

WHEREFORE, Plaintiffs pray that this Court:

1. Declare Defendants' termination of Plaintiffs' grants unlawful;
2. Order Defendants to reinstate the terms of the Notices of Award for Plaintiffs, including, but not limited to, the five-year funding term;
3. Order Defendants to reinstate FY18 funding;
4. Order Defendants to solicit, accept, and process Plaintiffs' non-competing continuation application for FY19 funding;
5. Enjoin Defendants from disbursing, transferring, or otherwise obligating Plaintiffs' grant funds for years four and five of their grants until this matter is adjudicated;
6. Award Plaintiffs costs, attorneys' fees, and other disbursements for this action; and,
7. Grant any other relief this Court deems appropriate.

Dated: March 22, 2018

Respectfully submitted,

/s/ Barry J. Reingold

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**Application for Admission to United States District
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