

Honorable John C. Coughenour

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KING COUNTY, a Washington municipal corporation,

Plaintiff,

v.

ALEX M. AZAR II, in his official capacity as SECRETARY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; and the U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendants.

No. 2:18-cv-00242-JCC

STIPULATED MOTION AND AGREED ORDER FOR PRESERVATION OF REMEDY AND BRIEFING SCHEDULE FOR EXPEDITED CROSS-MOTIONS FOR A PRELIMINARY INJUNCTION AND SUMMARY JUDGMENT [PROPOSED]

NOTE ON MOTION CALENDAR: MARCH 22, 2018

**STIPULATED MOTION**

1. Plaintiff King County, a recipient of a federal grant under Defendant U.S. Department of Health and Human Services’ (“HHS’s”) Teen Pregnancy Prevention Program (“TPP Program”), filed this action under the Administrative Procedure Act on February 15, 2018. Defendant HHS stated in its July 6, 2017 Notice of Award to Plaintiff that it would “shorten[] the [five-year] project period to end on June 30, 2018 at the end of this budget year.” Plaintiff contends that this action was arbitrary, capricious, and contrary to law. King County’s grant of \$1 million annually funds a long-term study of its sexual health

1 education curriculum, FLASH (Family Life and Sexual Health). The fourth year of  
2 funding was due to be disbursed to King County on July 1, 2018.

3 2. The parties have met and conferred. Due to timing constraints concerning the funding at  
4 issue and agency processes, the parties propose to proceed in the following manner in this  
5 litigation.

6 3. In order to preserve King County's remedy should it prevail in this matter, Defendants  
7 will preserve and refrain from obligating, through August 31, 2018, any monies  
8 appropriated for the TPP Program that would fund Plaintiff's grant. *See City of Houston,*  
9 *Tex. v. Dep't of Hous. & Urban Dev.*, 24 F.3d 1421, 1426 (D.C. Cir. 1994) (in grant  
10 funding disputes, "a court cannot reach" relevant funds to award relief "once [those  
11 funds] have been obligated"); *Cty. of Suffolk, N.Y. v. Sebelius*, 605 F.3d 135, 137 (2d Cir.  
12 2010) (same). Defendants plan to begin obligating TPP Program funds during the month  
13 of September 2018, absent a court order directing otherwise.

14 4. Defendants have also represented that should King County prevail, it will take HHS two  
15 months to process King County's application for the fourth year of funding in order to  
16 timely award the funding. An order from this Court would need to issue by May 30,  
17 2018, in order to avoid any lapse in funding should King County prevail.

18 5. Based on the foregoing, the parties have agreed to a briefing schedule that allows for  
19 early resolution of this matter in advance of any lapse of appropriations and to allow  
20 King County to adequately plan for that and any other funding contingencies caused by  
21 the loss in funding and the effect thereof on the County and the populations served by the  
22 grant.  
23  
24  
25  
26  
27

- 1 6. Accordingly, the parties agree to the following briefing schedule for cross-motions for a  
2 preliminary injunction and summary judgment pursuant to LCR 7(k):
- 3 a. King County will file its Motion for Preliminary Injunction and Summary  
4 Judgment on or before March 29, 2018, and note it for May 4, 2018.
- 5 b. Defendants will file their Opposition and Cross-Motion by April 17, 2018.
- 6 c. King County will file their Reply and Opposition to the Cross-Motion by April  
7 27, 2018.
- 8 d. Defendants will file their Reply in support of the Cross-Motion by May 4, 2018.
- 9
- 10 7. The parties also respectfully request that the Court render a decision on King County's  
11 Motion for Preliminary Injunction and Summary Judgment by May 30, 2018. A decision  
12 from the Court by that date is necessary given Defendants' representation that it will take  
13 two months to process King County's application for the fourth year of funding and King  
14 County's need to have the funds disbursed, at the latest, by August 1, 2018, in order to  
15 continue the FLASH research study. If the above briefing schedule does not allow the  
16 Court sufficient time to issue a ruling by May 30, 2018, the parties respectfully request  
17 that the Court inform them that this is the case.
- 18
- 19 8. Therefore, the parties stipulate to the foregoing and request that the Court enter the Order  
20 subjoined hereto.
- 21
- 22
- 23
- 24
- 25
- 26
- 27

///

1 STIPULATED to this 22<sup>nd</sup> day of March, 2018.

2  
3 PACIFICA LAW GROUP LLP

UNITED STATES DEPARTMENT OF JUSTICE

4 By s/ Gregory J. Wong

5 Gregory J. Wong, WSBA #39329  
6 Athanasios P. Papailiou, WSBA #47591  
7 1191 2<sup>nd</sup> Ave, Suite 2000  
8 Seattle, WA 98118  
9 Tel: (206) 245-1700  
Fax: (206) 245-1750  
greg.wong@pacificallawgroup.com  
athan.papailiou@pacificallawgroup.com

By s/ Michael J. Gerardi

Michael J. Gerardi, D.C. Bar #1017949  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Ave. NW, Room 7223  
Washington, D.C. 20530  
Tel: (202) 616-0680  
Fax: (202) 616-8460  
michael.j.gerardi@usdoj.gov

10 *Attorneys for Plaintiff King County*

*Attorneys for Defendants*

11  
12 DEMOCRACY FORWARD FOUNDATION

13 Javier M. Guzman, *Admitted Pro Hac Vice*  
14 Josephine T. Morse, *Admitted Pro Hac Vice*  
15 Skye L. Perryman, *Admitted Pro Hac Vice*  
16 1333 H Street, NW  
17 Washington, D.C. 20005  
18 Tel: (202) 701-1772  
jguzman@democracyforward.org  
jmorse@democracyforward.org  
sperryman@democracyforward.org

19 *Attorneys for Plaintiff King County*

20  
21  
22  
23  
24  
25  
26  
27 STIPULATED MOTION FOR PRESERVATION OF  
REMEDY AND BRIEFING SCHEDULE FOR  
EXPEDITED CROSS-MOTIONS - 4

Case No. 2:18-cv-00242-JCC  
90002 00092 hc222m18n8

PACIFICA LAW GROUP LLP  
1191 SECOND AVENUE  
SUITE 2000  
SEATTLE, WASHINGTON 98101-3404  
TELEPHONE: (206) 245.1700  
FACSIMILE: (206) 245.1750

**ORDER**

Based on the foregoing Stipulated Motion of the Parties, the Court hereby ORDERS that:

- (1) Defendants must preserve and refrain from obligating, through August 31, 2018, any monies appropriated for the TPP Program that would fund King County’s grant;
- (2) King County will file its Motion for Preliminary Injunction and Summary Judgment on or before March 29, 2018, and note it for May 4, 2018;
- (3) Defendants will file their Opposition and Cross-Motion by April 17, 2018;
- (4) King County will file their Reply and Opposition to the Cross-Motion by April 27, 2018; and
- (5) Defendants will file their Reply in support of the Cross-Motion by May 4, 2018.

IT IS SO ORDERED this \_\_\_\_ of \_\_\_\_\_, 2018.

---

Honorable John C. Coughenour  
United States District Court Judge

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

1 Jointly Presented by:

2 PACIFICA LAW GROUP LLP

3

4 By s/ Gregory J. Wong  
5 Gregory J. Wong, WSBA #39329  
6 Athanasios P. Papailiou, WSBA #47591

7 *Attorneys for Plaintiff King County*

8

9 DEMOCRACY FORWARD FOUNDATION

10 Javier M. Guzman, *Admitted Pro Hac Vice*  
11 Josephine T. Morse, *Admitted Pro Hac Vice*  
12 Skye L. Perryman, *Admitted Pro Hac Vice*

13 *Attorneys for Plaintiff King County*

14

15

16 UNITED STATES DEPARTMENT OF JUSTICE

17

18 By s/ Michael J. Gerardi  
19 Michael J. Gerardi, D.C. Bar # 1017949

20 *Attorneys for Defendants*

21

22

23

24

25

26

27

STIPULATED MOTION FOR PRESERVATION OF  
REMEDY AND BRIEFING SCHEDULE FOR  
EXPEDITED CROSS-MOTIONS - 6

Case No. 2:18-cv-00242-JCC  
90002 00092 hc222m18n8

PACIFICA LAW GROUP LLP  
1191 SECOND AVENUE  
SUITE 2000  
SEATTLE, WASHINGTON 98101-3404  
TELEPHONE: (206) 245.1700  
FACSIMILE: (206) 245.1750