

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

MULTNOMAH COUNTY,

Plaintiff,

v.

ALEX M. AZAR II *et al.*,

Defendants.

Civil Action No. 3:18-cv-01015-HZ

DECLARATION OF JEFFREY B.
DUBNER IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION AND
PARTIAL SUMMARY JUDGMENT

I, Jeffrey B. Dubner, am competent to testify and I have personal knowledge of the matters herein:

1. I am a Senior Counsel at Democracy Forward Foundation, which serves as counsel to Plaintiff Multnomah County in the above-captioned matter.
2. Attached hereto as Exhibit 1 is a true and correct copy of a Funding Opportunity Announcement issued by the U.S. Department of Health and Human Services ("HHS") on April 20, 2018 entitled *Announcement of Availability of Funds for Phase I Replicating Programs (Tier 1) Effective in the Promotion of Healthy Adolescence and the Reduction of Teenage Pregnancy and Associated Risk Behaviors*.
3. Attached hereto as Exhibit 2 is a true and correct copy of a document published by Mathematica Policy Research entitled *Identifying Programs That Impact Teen Pregnancy, Sexually Transmitted Infections, and Associated Sexual Risk Behaviors—Review Protocol*.
4. Attached hereto as Exhibit 3 is a true and correct copy of a Funding Opportunity Announcement issued by HHS on April 2, 2010 entitled *Teenage Pregnancy Prevention*:

Replication of Evidence-based Programs Funding Opportunity Announcement and Application Instructions.

5. Attached hereto as Exhibit 4 is a true and correct copy of a Funding Opportunity Announcement issued by HHS on April 2, 2010 entitled *Teenage Pregnancy Prevention (TPP): Research and Demonstration Programs and Personal Responsibility Education Program (PREP) Funding Opportunity Announcement and Application Instructions.*

6. Attached hereto as Exhibit 5 is a true and correct copy of a document published by the Office of Adolescent Health (“OAH”) entitled *Results from the OAH Teen Pregnancy Prevention Program.*

7. Attached hereto as Exhibit 6 is a true and correct copy of excerpts of a report published by the Commission on Evidence-Based Policymaking entitled *The Promise of Evidence-Based Policymaking* (Sept. 2017). A complete copy is available at <https://www.cep.gov/content/dam/cep/report/cep-final-report.pdf>

8. Attached hereto as Exhibit 7 is a true and correct copy of a paper authored by Amy Feldman Farb and Amy L. Margolis, *The Teen Pregnancy Prevention Program (2010-2015): Synthesis of Impact Findings*, 106 Am. J. Pub. Health S9 (Sept. 2016).

9. Attached hereto as Exhibit 8 is a true and correct copy of a Funding Opportunity Announcement issued by HHS on January 10, 2015 entitled *Capacity Building to Support Replication of Evidence-Based TPP Programs (Tier 1A) Funding Opportunity Announcement and Application Instructions.*

10. Attached hereto as Exhibit 9 is a true and correct copy of a Funding Opportunity Announcement issued by HHS on January 10, 2015 entitled *Replicating Evidence-Based Teen*

*Pregnancy Prevention Programs to Scale in Communities with the Greatest Need (Tier 1B)
Funding Opportunity Announcement and Application Instructions.*

11. Attached hereto as Exhibit 10 is a true and correct copy of a document published by the National Abstinence Education Association in June 2012 entitled *Sexual Risk Avoidance (SRA) Education: Considerations for Protecting Teen Health—Part 2: Why Sexual Risk Avoidance is the Best Educational Approach, Based on Theory, Research, and Effectiveness*, as archived at https://web.archive.org/web/20150514014607/http://www.thenaea.org:80/research/lowqual_SRA_Education_Report_Part2.

12. Attached hereto as Exhibit 11 is a true and correct copy of excerpts of a paper authored by Valerie Huber, *A Historical Analysis of Public School Sex Education in America Since 1900* (2009). A complete copy is available at https://digitalcommons.cedarville.edu/cgi/viewcontent.cgi?article=1020&context=education_theses

13. Attached hereto as Exhibit 12 is a true and correct copy of an article authored by Sara Israelsen-Hartley, *What's the Right Approach to Sex Ed Curriculum?*, Wash. Times (Jan. 8, 2017).

14. Attached hereto as Exhibit 13 is a true and correct copy of a December 10, 2009 National Abstinence Education Association press release entitled *NAEA Opposes Consolidated Appropriations Act of 2010*, as archived at https://web.archive.org/web/20100530124731if_/http://www.abstinenceassociation.org:80/newsroom/pr_121009_naea_opposes_consolidated_appropriateions_act.html.

15. Attached hereto as Exhibit 14 is a true and correct redacted copy of an email thread and attachments sent by Valerie Huber and forwarded to an HHS official, dated February

8, 2017, produced by HHS in response to a Freedom of Information Act request filed by Democracy Forward Foundation. All redactions were made by HHS.

16. Attached hereto as Exhibit 15 is a true and correct redacted copy of an email and attachments sent by Valerie Huber to HHS officials, dated March 8, 2017, produced by HHS in response to a Freedom of Information Act request filed by Democracy Forward Foundation. All redactions were made by HHS.

17. Attached hereto as Exhibit 16 are excerpts of a true and correct copy of a budget proposal proposed by HHS for fiscal year 2018. A complete copy is available at <https://www.hhs.gov/sites/default/files/combined-general-department-management.pdf>.

18. Attached hereto as Exhibit 17 is a true and correct copy of Multnomah County's Year 3 Notice of Award for its Adolescents & Communities Together (ACT) Tier 1B Teen Pregnancy Prevention Project.

19. Attached hereto as Exhibit 18 is a true and correct copy of a May 18, 2017 memo entitled *Fiscal Year 2017 Funding to Support OAH Continuation Grants—Decision*, sent from Amy Margolis, Director, Division of Program Development and Operations, Office of Adolescent Health, to Evelyn M. Kappeler, Director, Office of Adolescent Health, and approved by Ms. Kappeler. The document was produced by HHS in response to a Freedom of Information Act request filed by Democracy Forward Foundation.

20. Attached hereto as Exhibit 19 is a true and correct redacted copy of a July 28, 2017 email sent from Evelyn Kappeler to Evelyn Kappeler, produced by HHS in response to a Freedom of Information Act request filed by Democracy Forward Foundation. All redactions were made by HHS.

21. Attached hereto as Exhibit 20 is a true and correct redacted copy of an email thread between Evelyn Kappeler and Don Wright, dated August 7, 2017, produced by HHS in response to a Freedom of Information Act request filed by Democracy Forward Foundation. All redactions were made by HHS.

22. Attached hereto as Exhibit 21 is a true and correct copy of a Funding Opportunity Announcement issued by HHS on April 20, 2018, entitled *Announcement of the Availability of Funds for Phase 1 New and Innovative Strategies (Tier 2) to Prevent Teenage Pregnancy and Promote Healthy Adolescence*.

23. Attached hereto as Exhibit 22 is a true and correct copy of OAH's online *FAQs for Current FOAs* as it appeared on June 21, 2018 at <https://www.hhs.gov/ash/oah/grant-programs/funding-opportunities/faqs-for-current-foas/index.html>.

24. Attached hereto as Exhibit 23 is a true and correct copy of the *Tool to Assess the Characteristics of Effective Sex and STD/HIV Education Programs*, published by ETR and Healthy Teen Network in 2007.

25. Attached hereto as Exhibit 24 is a true and correct copy of the *SMARTool: Systematic Method for Assessing Risk-avoidance Tool: Assessing Potential Effectiveness for Sexual Risk Avoidance Curricula and Programs*, published by The Center for Relationship Education in 2010.

26. Attached hereto as Exhibit 25 is a true and correct copy of a paper published by HHS's Office of the Assistant Secretary for Planning and Evaluation ("OASPE") in April 2018 entitled *Updated Findings from the HHS Teen Pregnancy Prevention Evidence Review: August 2015 Through October 2016*.

27. Exhibit 26 is a true and correct copy of a recording of remarks made by Valerie Huber on May 31, 2018 at the 2018 Adolescent Pregnancy Prevention Conference in Washington, DC. The video will be provided to the Court separately.

28. Attached hereto as Exhibit 27 is a true and correct copy of a document published on April 20, 2018 by HHS's Office of the Assistant Secretary for Health entitled *Fact Sheet: FY 2018 Funding Opportunity Announcements for Teen Pregnancy Prevention Program*.

29. Attached hereto as Exhibit 28 is a true and correct copy of a research brief published in November 2012 by OASPE entitled *Using Systematic Reviews to Inform Policy Initiatives*.

30. Attached hereto as Exhibit 29 is a true and correct copy of excerpts of a paper authored by George C. Patton et al., *Our Future: A Lancet Commission on Adolescent Health and Wellbeing*, 387 Lancet 2423 (June 11, 2016). A complete copy is available at [https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(16\)00579-1.pdf](https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(16)00579-1.pdf).

31. Attached hereto as Exhibit 30 is a true and correct copy of a paper authored by Brenda J. Lohman and Amanda Billings, *Protective and Risk Factors Associated with Adolescent Boy's Early Sexual Debut and Risky Sexual Behaviors*, 37 J. Youth & Adolescence 723 (2008).

32. Attached hereto as Exhibit 31 is a true and correct copy of a paper authored by Kelly L. Wilson et al., *Encouraging Innovation in Teen Pregnancy Prevention Programs*, 8 Creative Educ. 294 (2017)


33. Attached hereto as Exhibit 32 is a true and correct copy of paper authored by Aliksandr Amialchuk and Laura Gerhardinger, *Contraceptive Use and Pregnancies in Adolescents' Romantic Relationships: Role of Relationship Activities and Parental Attitudes and Communication*, 36 J. Dev. & Behavioral Pediatrics (2015).

34. Attached hereto as Exhibit 33 is a true and correct copy of excerpts of a paper authored by Douglas Kirby and published by the National Campaign to Prevent Teen and Unplanned Pregnancy in November 2007 entitled *Emerging Answers 2007: Research Findings on Programs to Reduce Teen Pregnancy and Sexually Transmitted Diseases*. A complete copy is available at <https://powertodecide.org/sites/default/files/resources/primary-download/emerging-answers.pdf>.

35. Attached hereto as Exhibit 34 is a true and correct copy of the Declaration of A. Michon Kretschmaier in *Choctaw Nation of Oklahoma v. Azar*, No. 18-cv-971 (D.D.C. May 10, 2018), ECF No. 12-3.

36. Attached hereto as Exhibit 35 is a true and correct copy of an article by Jessie Hellmann, *Groups Working to Stop Teen Pregnancy Alarmed by Trump Shift*, Hill (Apr. 28, 2018).

Executed June 22, 2018 in Washington, DC.


JEFFREY B. DUBNER

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of June, 2018, I electronically filed the foregoing document with the Clerk of the United States District Court District of Oregon using the CM/ECF system which will send notification of such filing to all parties who are registered with the CM/ECF system and separately provided a copy of Exhibit No. 26 via email to the same parties.

DATED this 22nd day of June, 2018.

PACIFICA LAW GROUP LLP

s/ Jessica A. Skelton

Jessica A. Skelton, OSB No. 102714
jessica.skelton@pacificalawgroup.com