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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

MULTNOMAH COUNTY, an existing
county government and a body politic and
corporate,

Plaintiff,

v.

ALEX M. AZAR II, in his official capacity
as Secretary, U.S. Department of Health and
Human Services; VALERIE HUBER, in her
official capacity as the Senior Policy Advisor
for the Office of the Assistant Secretary of
Health and the Acting Deputy Assistant
Secretary for the Office of Population
Affairs; and U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES

Defendants.

Case No. 18-cv-01015-HZ

DECLARATION OF KIM TOEVS
In Support of Plaintiff's Motion for
Preliminary Injunction and Partial
Summary Judgment

DECLARATION OF KIM TOEVS

I, Kim Toevs, declare as follows:

1. I am the Director of Adolescent Sexual Health Equity and STD/HIV/HCV Programs at the Multnomah County Health Department, where I have been employed for the past 12 years. I hold a Masters of Public Health from San Jose State University with a concentration in Community Health Education.

2. In my present position, which I have held for nine years, I oversee the Health Department's adolescent public health promotion program the Youth Sexual Health Equity Program, whose core mission is to impart medically accurate, culturally inclusive comprehensive sexual education to students, families, and educators to assist the County's youth in making informed choices about their bodies, sexual health, and healthy relationships. I also oversee the County's participation in the Teen Pregnancy Prevention Program through a federal grant from the Department of Health and Human Services ("HHS"), which makes up more than 75% of our annual budget for the adolescent public health promotion program.

3. The mission of the County's Youth Sexual Health Equity Program is aligned with Oregon state law, which requires that students within the state be taught comprehensive sexual education and provided a "comprehensive plan of instruction," that "emphasize[s] abstinence, but not to the exclusion of condom and contraceptive skills-based education." Course materials "are to acknowledge the value of abstinence, while not devaluing or ignoring those students who have had or are having sexual relationships," and "must not, in any way, use shame or fear based tactics" to teach about human sexuality. State law further emphasizes that course materials "shall enhance students' understanding of sexuality as a normal and healthy aspect of human development."

4. In 2015, the County's Health Department competed for and was awarded a \$6.25 million, five-year Tier 1B grant as part of the second cohort of TPP Program grantees in order to offer comprehensive sexual education through what we called the Adolescents & Communities Together ("ACT") program. The ACT program is a collaborative effort between the County and numerous community partners to replicate evidence-based teen pregnancy prevention programs from the list of effective programs published by the Office of Adolescent Health ("OAH") in school and community settings with especially high concentrations of African-American, Latino, and Native American youth. The ACT program has a racial equity focus that is specifically aimed at eradicating the disproportionately high teen pregnancy rates in these populations and doing so in a manner that is self-sustaining and therefore can be perpetuated well into the future. The County partnered with three community organizations that serve these specific populations—Native American Youth and Family Center, Latino Network, and Self Enhancement Inc.—as well as Planned Parenthood Columbia Willamette and the Boys and Girls Club of Portland Metropolitan Area. Like the County, these organizations are committed to offering medically accurate, comprehensive sexual education in a manner that is both sensitive to and inclusive of differing cultural norms in the County's diverse classrooms.

5. Consistent with Oregon law and the mission and values of our partners, the County deliberately selected evidence-based programs that acknowledge abstinence within a wider, comprehensive sexual education framework, where students are informed about healthy relationships, contraceptives, sexually transmitted infections, gender identity, and sexual health rights, among other topics. The County also made a deliberate choice not to adopt a shame or fear-based approach to these topics in the ACT program: We do not debase students who have chosen to become sexually active. Nor do we tell students how to think or what to do with their

bodies. Instead, we equip students with information and skills based in research and evidence to make informed decisions regarding their sexual health and protect themselves if they choose to be sexually active.

6. The ACT program has achieved great success. Since 2015, the ACT program has educated over 15,000 teens and trained 107 teachers in 32 middle and high schools throughout the County. And the Health Department has received numerous commendations from HHS for this work, both during its reviews by the agency and following a site visit by OAH personnel.

7. Despite these successes, in July 2017, the County received a notice of award for the third grant year and was informed, with no reasoning or explanation, that its grant would be terminated two years early, on June 30, 2018. The notice included a single sentence informing the County of the termination: “This award also shortens the project period to end on June 30, 2018 at the end of this budget year.” HHS’s praise of the County has continued even after the termination: in November 2017, after the termination of the County’s grant, OAH featured ACT as an exemplar of a program “successfully” working to erase disparities in teen pregnancy rates among racial and ethnic minorities.

8. The County is a member of a class action that sued to declare the terminations of multiple grantees unlawful. I understand that the Court ruled in favor of the class and ordered HHS to process the year-four funding applications of class members, including the County. I also understand that HHS has said that this process could take until August 20, so that our program is presently unfunded as of June 30, 2018.

9. To continue to replicate evidence-based, comprehensive sexual education to target the disparities in teen pregnancy rates among our African-American, Latino, and Native American youth, the County submitted a letter of intent on May 18, 2018 to apply for the new

Tier 1 Funding Opportunity Announcement (“FOA”) announced by the agency on April 20, 2018. If the County does not obtain some or all of its year-four funding for its 2015 grant, the funds from the new FOA would go towards sustaining the current ACT program. If the County is ultimately successful in obtaining and maintaining all of its year-four funding, it would use the funds awarded in the 2018 Tier 1 FOA to further expand evidence-based, comprehensive sexual education to serve youth in mainstream and non-mainstream schools and settings, such as in juvenile detention facilities, residential treatment centers, or foster care, where our priority populations of African-American, Latino, and Native-American youth are overrepresented. The County would also use the funds from the 2018 Tier 1 FOA to expand the network of culturally-specific partner organizations with which it subcontracts, as well as to engage parents. We similarly plan to apply for future years of Tier 1 funding to continue to serve these populations.

10. The new FOA, however, imposes different requirements than the present TPP Program. For example, the FOA does not require the replication of evidence-based programs already evaluated and shown to be effective and instead instructs applicants to choose curricula that adhere to elements of one of two “tools.” The new FOA also privileges sexual risk avoidance education, also known as abstinence-only education, over the comprehensive, evidence-based sexual education that forms the core of our programs. The new FOA reserves the largest category of points (25 out of 100) for programs that promote what I understand from my knowledge and experience in the field of sexual and reproductive health education to be abstinence-only messages. These messages include “clearly communicat[ing] that teen sex is a risk” that has negative physical, sociological, and economic consequences, and “[p]roviding cessation support” to bring those teens who are already sexually active back to a

state of abstinence. Further, the new FOA requires *all* applicants to “place a priority” on teaching sexual risk avoidance and to provide “cessation support.”

11. The County will be at a significant competitive disadvantage under this new FOA because of our commitment to continue to replicate comprehensive, evidence-based sexual education programs. Consistent with our mission and Oregon state law, we cannot “prioritize” untested abstinence-only content and messaging as the new FOA mandates. For example, rather than emphasize the negative sociological and economic consequences of teen sex, our programs teach that sex and sexual attraction are normal parts of human development and furnish teens with accurate statistics concerning the number of teens who report having sex and using protection. We provide education on the proper use of contraceptives and on strategies for increasing contraceptive use, rather than primarily emphasizing the failure rate or limitations of contraceptives, as I understand “sexual risk avoidance” principles to require. We also do not emphasize returning already sexually active teens to an abstinent state, but we teach skills and model behaviors for protecting against unintended pregnancies and sexually transmitted diseases and stress that there are “safe” ways for teens to express their sexuality.

12. Doing what is required under the FOA, and what is necessary to gain a quarter of the available points, conflicts with our programs and is out of line with our mission to equip teens with information to make informed decisions regarding their sexual health. I also do not believe that adding the untested abstinence-only content onto our programs would comply with Oregon state law requirements, with which I have become familiar during my time with the County, that students be taught that sexuality is a “normal and healthy aspect of human development”; that students who are already having sexual relationships not be “devalu[ed]”; or that educators not “use shame or fear based tactics.” Our community partners have also made

clear that they would not support or implement a program that prioritizes this content and these messages.

13. The County thus faces an impossible choice of either incorporating into our programs these new criteria that would compromise our mission and values, impair our organizational objectives, destroy our community relationships, and be inconsistent with state law, or forgo a major source of funding, thereby harming the County and our ability to provide high-quality sexual education to our most at-risk residents.

14. If we are unsuccessful under the new FOA and there is a loss of continued TPP Program funding, the County will be forced to cut up to five staff positions. We would likewise be unable to expand the ACT program into additional settings and could be forced to terminate it altogether. Doing so would deprive thousands of the most at-risk teens of access to high-quality evidence-based comprehensive sexual education and would jeopardize the enormous gains the County has already made with its at-risk youth.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed June 22, 2018 in Portland, Oregon



Kim Toevs