UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA, Plaintiff, v. STATE OF NORTH CAROLINA; PATRICK MCCRORY, in his official capacity as Governor of North Carolina, NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY; UNIVERSITY OF NORTH CAROLINA; and BOARD OF GOVENORS OF THE UNIVERSITY OF NORTH CAROLINA, Defendants.	)	Case No. 1:16-cv-00425(TDS)(JEP)

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF JOINT MOTION TO ENJOIN AUTOMATIC SUSPENSION OF FUNDS RECEIVED UNDER THE VIOLENCE AGAINST WOMEN ACT

In this challenge to North Carolina Session Law 2016-3, House Bill 2 ("H.B.2"), the United States respectfully submits the following supplemental memorandum in support of the joint motion to prevent the automatic suspension of federal funds provided to the North Carolina Department of Public Safety ("DPS") and the University of North Carolina ("UNC") under the Violence Against Women Reauthorization Act of 2013 ("VAWA"), 42 U.S.C. § 13925(b)(13)(C). The United States also respectfully requests a further telephone conference on this matter prior to the Court's ruling.

VAWA's provision concerning automatic suspension of federal funds upon the filing of a complaint by the Attorney General recognizes that automatic suspension at the

outset of a case may not be appropriate and empowers the Court to chart an alternative path when warranted by the circumstances of a particular case.

As the parties have agreed, and as the Court itself has suggested, this is a clear example of a case where defaulting to automatic suspension would be an inappropriate step. The federal grants at issue serve the critically important goals of addressing sexual assault, domestic violence, and other violent crimes and the suspension of these funds would have a serious impact on the programs that these grants support. Moreover, suspension at this time is unnecessary to serve the public interest in addressing the discrimination caused by H.B.2, as the United States will promptly seek a preliminary and permanent injunction to enjoin Defendants from complying with and implementing part 1.3 of H.B.2 , thereby advancing the public interest more directly than the suspension of this discrete set of federal funds would in this instance.

ARGUMENT

On June 16, 2016, the Court held a conference concerning the parties' joint motion, at which it raised three questions: (1) whether the parties must satisfy the preliminary injunction standard, including showing Defendants' likelihood of prevailing on the merits, in order to enjoin automatic suspension; (2) whether irreparable harm will result if automatic suspension is not enjoined; and (3) whether, on balance, the public interest would be better served by continuing funding to North Carolina's VAWA-funded programs. Doc. 45. The responses to these concerns all support granting of the joint motion.

First, the preliminary injunction standard is inapplicable here, where the United States itself seeks to enjoin automatic suspension and thereby continue to provide funding. VAWA expressly recognizes that either party may seek such relief and, looking to the VAWA statute as a whole, the Court has broad authority pursuant to 42 U.S.C. § 3789d(c)(3) to provide such relief. The Rule 65 preliminary injunction standard is not mandated by the statute. Instead, it has been adopted by courts analogizing *a defendant's contested motion* to enjoin the United States from automatically suspending funds to a traditional preliminary injunction. That case law does not speak to the standard applicable to the United States' request to waive this statutory provision. To construe VAWA's automatic suspension provision to require a showing of the preliminary injunction elements in all instances would anomalously result in the United States filing an action under VAWA and shortly thereafter having to concede that it is unlikely to succeed on the merits if it wishes to seek the relief provided for in 42 U.S.C. § 3789d(c)(3)(E).

Second, the failure to enjoin automatic suspension under the present circumstances would cause irreparable harm. The federal grants at stake serve critically important goals of addressing sexual assault, domestic violence, and other violent crimes. Termination of funding at this stage would jeopardize the operations of organizations directly serving victims and their families, who depend in considerable measure on VAWA grants to pay specialized staff and to provide services such as help in obtaining protective orders, crisis intervention, and shelter.

Third, the public interest is better served by enjoining automatic suspension then by cutting off funding. The United States wholly agrees with the Court that federal funds should not be deployed discriminatorily by recipients. However, in the United States' considered judgment, the ultimate aim of this action—to enjoin enforcement of a state law that discriminates on the basis of sex and gender identity—is best served by first seeking to enjoin enforcement of H.B.2 rather than immediately terminating funding to domestic and sexual violence programs in North Carolina. That judgment is owed deference by the Court.

I. The Court Has Authority to Enter the Consent Order Preventing the Automatic Suspension of Funds.

As the parties noted in their joint memorandum, the Rule 65 standard does not apply to joint motions seeking relief from VAWA's automatic suspension provision—nor, indeed, to any such motion brought by the United States. *See* Doc. 35-1 at 6 n.2. Indeed, requiring a showing of a defendant funding recipient's likelihood of success on the merits when the United States seeks relief from VAWA's automatic suspension of funding provision is inconsistent with the text and meaning of the VAWA statute. The statute states that funding shall only be suspended if "*neither party* . . . has been granted such preliminary relief with regard to the suspension or payment of funds as may be otherwise available by law." 42 U.S.C. § 3789d(c)(2)(E) (incorporated into VAWA at 42 U.S.C. § 13925(b)(13)(C)) (emphasis added). Thus, Congress expressly contemplated that, not only defendant funding recipients, but also the plaintiff, which could only ever be the United States, would be able to seek relief from the default of automatic

suspension under VAWA. Congress could not have contemplated that, in order to seek such relief, the United States would have to argue that its opponent was likely to succeed on the merits, having just filed a complaint stating otherwise. Imposing the Rule 65 preliminary injunction standard onto motions brought by the United States under § 3789d(c)(2)(E), therefore, cannot be reconciled with the statutory scheme.

The more logical reading of the statute supports the Court's broad discretion to issue an order pursuant to 42 U.S.C. § 3789d(c)(3) relieving the United States from the automatic suspension provision because such an order is "necessary or appropriate to insure the full enjoyment of the rights" protected by VAWA's non-discrimination provision. VAWA's automatic suspension provision authorizes the Court to grant "such preliminary relief with regard to the suspension or payment of funds *as may be otherwise available by law*." 42 U.S.C. § 3789d(c)(2)(E) (emphasis added). Section § 3789d(c)(3) is a form of relief "available by law" under which the court has broad authority to issue the consent order requested by the parties.

As argued below and in the parties' joint memorandum, an order providing relief from the default suspension of funding is appropriate in this case "to insure the full enjoyment of the rights" protected by VAWA, including the right to not "be excluded from participation in" or "be denied the benefits of" programs funded by VAWA. 42 U.S.C. § 13925(b)(13)(A). Such an order strikes the appropriate balance between supporting efforts to prevent and address sexual assault and other crimes and the right to ensure that such efforts do not result in discrimination based on sex or gender identity, particularly because the United States will be addressing the latter concern by other

means—namely, a forthcoming motion for a preliminary and permanent injunction against Defendants' application of H.B.2. Thus, the Court may, and should, exercise its broad authority under § 3789d(c)(2) and (3) to prevent the automatic suspension of funds provided to DPS and UNC pursuant to VAWA.

As the Court noted in the telephone conference, the Fourth Circuit has applied the preliminary injunction standard when considering a contested motion brought by a defendant funding recipient. *See United States v. Commonwealth of Virginia*, 569 F.2d 1300, 1303 (4th Cir. 1978). As the court acknowledged in that case, "the legislative history surrounding this particular statute, and specifically the meaning of preliminary relief, provides little, if any guidance" as to what "preliminary relief means," but—as a matter of common sense—where a defendant funding recipient seeks to prevent the United States from suspending funding, "the result of relief granted through 'preliminary relief' is so akin to the purposes of a preliminary injunction that the same standards should apply to the granting of both." *Id.* at 1303.

That same common sense suggests a different conclusion when the United States seeks relief. In such a case, the relief is not "akin" to seeking a preliminary injunction, given the incongruity of requiring the United States—the plaintiff—to demonstrate a likelihood of the defendant recipient's success on the merits. Instead, the relief requested is more akin to an official waiver, made in the exercise of sound prosecutorial discretion, of the United States' right to exercise certain authority granted by Congress in a particular case—a waiver that, pursuant to § 3789d(c)(2)(E), requires the check of judicial approval to ensure the appropriate balance between the default presumption of

automatic suspension in such non-discrimination cases and executive discretion to make appropriate enforcement decisions accounting for specific factors in a particular case.

Moreover, at the time the Fourth Circuit applied the Rule 65 preliminary injunction standard to a defendant funding recipient's motion for relief from the automatic suspension provision, that standard required a flexible balance of interests and explicitly did *not* require demonstrating likelihood of success on the merits. The preliminary injunction standard cited in *Commonwealth of Virginia* came from the now-abrogated *Blackwelder Furniture Co. of Statesville, Inc. v. Seilig Mfg. Co., Inc.*, 550 F.2d 189 (4th Cir. 1977). *Blackwelder* held that it was error for a district court to require the moving party to show likelihood of success in order to be entitled to preliminary relief, *id.* at 195, and defined the proper test as a balancing of harm to the plaintiff against the harm to the defendant. *Id.* Indeed, in reaching the conclusion that "the standard normally applied in granting preliminary injunctions" should apply to a motion seeking relief from automatic suspension of funding, the court in *Commonwealth of Virginia* overruled the district court's apparent application of a "test of 'likelihood of success on the merits.'" 569 F.2d at 1303.[1] Thus, *Commonwealth of Virginia* does not support the proposition that the Court must find a likelihood of Defendants' success on the merits in order to enter the relief the parties have jointly requested in this case.

[1] *See also United States v. County of Fairfax*, 1979 U.S. Dist. LEXIS 14772 at * 5 (E.D. Va. Jan. 30, 1979) (applying the Fourth Circuit's decision in *United States v. Commonwealth of Virginia* to grant relief from the automatic suspension provision and acknowledging that the moving party "need not show a likelihood of success on the merits" to obtain such relief).

Even outside this Circuit, there is no case law supporting the proposition that a Rule 65 preliminary injunction standard applies when the United States seeks relief from VAWA's automatic suspension provision. All of the relevant case law addresses the inapposite situation of a contested motion brought by a defendant funding recipient. *See, e.g.*, *Commonwealth of Virginia*, 569 F.2d at 1303; *United States v. Los Angeles*, 595 F.2d 1386, 1389 (9th Cir. 1979); *United States v. Rhode Island*, 81-CV-216, 1981 WL 300, at *1 (D. N.H. Nov. 13, 1981); *United States v. County of Milwaukee*, 449 F. Supp. 949, 950 (E.D. Wis. 1978). No authority supports the proposition that the Court must find a likelihood of *Defendants'* success on the merits in order to grant the *Plaintiff* United States' motion for relief from the automatic suspension provision, and the Court should not create such a new doctrinal requirement in this case, particularly since it cannot be reconciled with the statute's text or the structure of its enforcement regime.

Likewise, the regulation the Court identified interpreting the automatic suspension provision, 42 C.F.R. § 42.215(b)(2), does not compel application of the Rule 65 preliminary injunction in this case. Although that regulation notes that the government "expects that preliminary relief authorized by [the automatic suspension provision] will not be granted unless the party making the application for such relief meets the standard for preliminary injunction," *id.*, the history of that regulation makes clear that it was addressing only applications brought by defendant funding recipients, and not motions by the United States. *See* 42 Fed. Reg. 9492, 9496 (explaining that the Department of Justice added this subsection to the final regulation to state the expectation that "a *recipient* seeking to enjoin the suspension of funds . . . should have the burden of

showing that it is likely to prevail on the merits") (emphasis added).[2] Thus, this regulation was not intended to address the burden applicable to the United States, and to read it otherwise would conflict with the statutory scheme.

The history of enforcement of the automatic funding provision in fact provides further support for the notion that the preliminary injunction standard should not be applied to motions brought by or consented to by the United States. In *Alexander v. Bahou*, 86 F.R.D. 194, 197 (N.D.N.Y. 1980), a decision approving a consent decree to remedy employment discrimination, the court referenced the fact that suspension of funds had "been enjoined" "because there had been substantial progress in the negotiations following commencement of the Justice Department's action [and] the United States agreed to continue the City's funding for an additional fourteen days." Although it is not expressly stated in the decision (and there is no reported decision on the motion resulting in the referenced relief), the decision's recitation of the basis for entering a comprehensive and extensive remedial agreement, which suggested the strength of the United States' case, cannot be reconciled with the notion of having recently found the defendant's likelihood of success on the merits.

[2] Although Plaintiff did not understand the Court to be suggesting otherwise, it is equally implausible that a finding of the United States' likelihood of success on the merits should be a prerequisite to a motion seeking relief from the automatic suspension of funds, notwithstanding the regulation's reference to the burden of "moving party." First, the United States should not have to make a special showing of the merits of its enforcement action in order to waive its right to deploy a particular aspect of its enforcement authority. Second, imposing such a requirement would prevent opposing parties from ever seeking joint relief, as neither would concede the other side's likelihood of success, a result Congress likely did not intend. Should the Court determine such a showing is required, however, it is clear the United States is likely to succeed for the reasons stated in note 3, *infra*.

Thus, because imposing the Rule 65 standard on this motion cannot be reconciled with the statute and is not supported by the case law, the Court should find that it has authority to enter the parties' jointly proposed order providing relief from the automatic suspension of funds under VAWA, irrespective of the parties' relative likelihood of success on the merits.[3]

[3] Moreover, it is clear that the Court should not find that Defendants are likely to succeed on the merits. Defendants are not likely to succeed on the merits of the VAWA claim because VAWA explicitly prohibits discrimination based on gender identity and because H.B.2's policy of exclusion, on its face, discriminates on the basis of gender identity by denying transgender people access to sex-segregated facilities on equal terms to non-transgender people because their gender identity diverges from their sex assigned at birth.

In addition, notwithstanding UNC's claim that it has no present intention to actively enforce H.B.2, there is no dispute that H.B.2 requires UNC—as one of the "public agencies" to whom the statute's directive is addressed—to "require multiple occupancy bathrooms or changing facilities . . . be designated for and *only used by* individuals based on their biological sex" and thereby deny transgender people access to facilities consistent with their gender identity. N.C. Session Law 2016-03, § 1.3(b) (emphasis added). Unlike a criminal law directed at individual behavior, such a statute does not require a specific enforcement mechanism or threat of enforcement, as it is a directive from the State of North Carolina to its constituent public agencies. UNC has indisputably informed students and other persons on campus that its bathroom and changing facilities are covered by H.B.2's policy, and has affirmed that it is required by state law to comply with the statute's mandate. Doc. 2 ¶¶ 20, 23. Given that, UNC clearly has "enforced" H.B.2 by communicating the applicability of its state law mandate to the campus community and thereby fostering an expectation of compliance. UNC's disavowal of any specific, present intention to remove transgender people from facilities and its reaffirmation of its non-discrimination policy is a laudable effort to mitigate the harm H.B.2 poses to the campus community, but it is not sufficient to resolve the irreconcilable conflict between the requirements of H.B.2 and the requirements of federal law or to obviate the harm inflicted on transgender people by the application of H.B.2. on campus. Moreover, UNC's statements reflect, at best, a statement of present intention with regard to enforcement, which is insufficient to deflect the case and controversy created by H.B.2's undisputed application to UNC's campus. UNC is a state agency ultimately under the control of the state itself, and given the clear intentions of both the Governor and state legislators to defend and enforce H.B.2, *see, e.g.*, Doc. 32 and Doc. 8-1, statements of present intention with regard to enforcement cannot obviate the risks to UNC students and employees posed by H.B.2, whether framed in terms of the ripeness or justiciability of this action or in terms of the ongoing harm to transgender people on campus. *See, e.g.*, *N. Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 711 (4th Cir. 1999) (holding that defendant Board's "promise" that it would interpret a statute as not enforceable against the plaintiff's activity did not render the controversy non-justiciable because it was "no guarantee

II. Failure to Preserve the Status Quo Would Cause Irreparable Harm By Interrupting Important Federally Funded Programs.

As the Court has noted, and as the parties' joint memorandum explains, the federal grants jeopardized in this case serve the critically important goals of addressing sexual assault, domestic violence, and other violent crimes. The declaration of Nadine Neufville, Deputy Director for Grant Development and Management in the Department of Justice's Office on Violence Against Women, filed with this supplemental memorandum, describes the activities supported by those grants in greater detail, explains the role federal funding plays in maintaining those projects, and outlines the impact interrupting federal funding would have on the operations of grant-funded programs.

In particular, the Neufville declaration notes that suspending funding risks jeopardizing operations of sub-grantees whose budgets cannot absorb even a temporary interruption in funds; losing key experienced staff because personnel costs are covered by the grant; and ultimately the denying services such as "victim advocacy, court accompaniment, help obtaining protection orders, crisis intervention, counseling, safety planning, and even shelter." Neufville Decl. ¶¶ 25-27. Failure to preserve the status quo while the Court considers the legal questions raised by this action would, therefore, inflict

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that the Board might not tomorrow bring its interpretation more in line with the provision's plain language" and a "litigation position that it will voluntarily refrain from enforcing the statute according to its plain language" was an insufficient defense).

irreparable harm upon the victims and survivors of violent crimes, as well as their families.

III. Suspending VAWA Funds in This Particular Instance is Unnecessary to Advance the Public's Interest in Enforcement of VAWA.

As the Court has noted, the Court should weigh the public interest served by automatically suspending federal funding while the United States pursues this action. Congress included the automatic suspension provision in order to support and advance the enforcement of VAWA's prohibition on discrimination. However, in this case, suspending funding at this time is not necessary to support or advance that interest because the United States intends promptly to seek preliminary and permanent injunctive relief to require Defendants to cease the discrimination at issue. Indeed, the United States has been diligently preparing a record to support such a motion.

In addition, the Court must consider the public interest served by the specific programs supported by federal funding—namely, rape crisis centers, other victim service providers, educational programs, prosecution, and law enforcement. These programs protect and support victims of domestic violence, sexual assault, dating violence, and stalking and are beneficial to the health and safety of vulnerable residents of North Carolina and, thus, to the public interest. *See, e.g.*, *de Jesus Paiva v. Aljets*, 03-CV-6075, 2003 WL 22888865, at *7 (D. Minn. Dec. 1, 2003) (noting that Congress's passage of VAWA reflects a "strong indication of the public's interest in protecting battered women and children").

Thus, considering all the factors particular to this case, including both the specific effect of suspension on the programs served by federal funding and the United States' promptly forthcoming efforts to obtain preliminary injunctive relief to promptly address the ongoing harm caused by H.B.2., relief from the automatic suspension provision strikes the balance "necessary or appropriate to insure the full enjoyment of the rights" under VAWA's non-discrimination provision. 42 U.S.C. § 3789d(c)(3). In other words, the public interest is best served in this instance by ensuring that federal funds continue and that the discrimination at issue is promptly addressed by preliminary and permanent injunction preventing further violation of VAWA. This is particularly so given that, in this case, many of the victims of the discrimination mandated by H.B.2 are likely to be among the beneficiaries of the programs whose funding is in jeopardy from the automatic suspension provision. It is well-documented that transgender people are particularly vulnerable to violent crime, especially sexual assault. *See* U.S. Dep't of Justice, Office on Victims of Crime, *Responding to Transgender Victims of Sexual Assault* (June 2014), (*available at* http://www.ovc.gov/pubs/forge/sexual_numbers.html).

This conclusion further reflects the Department of Justice's considered view based on its experience and expertise in managing VAWA grants and enforcing its non-discrimination provision, and, therefore, is entitled to some deference from this Court. *See United States v. Mead Corp.*, 533 U.S. 218, 234-35 (2001) (holding that tariff rulings, representing the Customs Services' application of certain tariff rules to particular products, may be entitled to *Skidmore* deference because the agency can "bring the

benefit of specialized experience to bear on the subtle questions" implicated by the judgment).

CONCLUSION

For the foregoing reasons, the United States respectfully requests the Court issue an order providing relief pursuant to 42 U.S.C. § 3789d(c)(2)(E) and (3) from the automatic suspension provision of 42 U.S.C. § 13925(b)(13)(A) & (C) and 42 U.S.C. § 3789d(c)(2)(E).

Respectfully submitted this 20th day of June, 2016,

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UNITED STATES DISTRICT COURT
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UNITED STATES OF AMERICA, Plaintiff, v. STATE OF NORTH CAROLINA; PATRICK MCCRORY, in his official capacity as Governor of North Carolina; NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY; UNIVERSITY OF NORTH CAROLINA; and BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA, Defendants.	)	Case No. 1:16-cv-425

DECLARATION OF NADINE M. NEUFVILLE

I, Nadine M. Neufville, declare as follows:

1. I am the Deputy Director for Grant Development and Management in the United States Department of Justice's Office on Violence Against Women (OVW). In this capacity, I provide oversight and guidance for OVW's Grant Development and Management Division, which is responsible for the programmatic and financial management of the 19 federal grant programs administered by OVW, a number of special and/or demonstration projects, and OVW's Training and Technical Assistance Initiative. Prior to becoming Deputy Director in June 2012, I served as an Associate Director for more than a decade. I joined OVW in 1996 as a Senior Associate focusing on grant program development and technical assistance.

2. As Deputy Director, I directly supervise OVW staff members who manage the administration of OVW's grant programs, including the OVW Associate Directors who manage

OVW's Sexual Assault Services Formula Grant Program (SASP Formula Program), Services*Training*Officers*Prosecutors (STOP) Violence Against Women Formula Grant Program (STOP Program), and Grants to Reduce Sexual Assault, Domestic Violence, Dating Violence, and Stalking on Campus Program (Campus Program). In addition, I directly supervise the Associate Director for OVW's Grants Financial Management Division.

3. Throughout my 20 years of service at OVW, I have worked closely with OVW-funded organizations and gained extensive knowledge of the type of projects that OVW funds and the services provided by OVW grantees and subgrantees, including those funded by OVW's SASP Formula, STOP, and Campus Programs.

4. The purpose of this Declaration is to explain the potential impact on recipients of OVW funding in North Carolina, as well as the victims of sexual assault, domestic violence, dating violence, and stalking these grantees and subgrantees serve, if OVW is required to suspend access to funding currently available through its grants to the North Carolina Department of Public Safety and the University of North Carolina.

5. In preparing this Declaration, I have reviewed the following: (a) payment history reports in the United States Department of Justice's Financial Management Information System (FMIS2); (b) signed grant award documents regarding OVW grants to the North Carolina Department of Public Safety and the University of North Carolina; (c) annual progress reports submitted by subgrantees of OVW's STOP and SASP Formula Programs in North Carolina; (d) semi-annual progress reports submitted to OVW by the University of North Carolina at Chapel Hill and at Wilmington; and (e) summary reports aggregating quantitative data submitted by STOP and SASP subgrantees in North Carolina and created by the Muskie School of Public

Service, University of Southern Maine (the Muskie School) under a cooperative agreement with OVW.

6. OVW currently has seven open grant awards to the North Carolina Department of Public Safety and three open grant awards to the University of North Carolina. According to payment history reports in FMIS2, the balance of funds remaining on these ten awards as of June 17, 2016 was $5,657,150.97. Of these ten open awards, six were awarded in Fiscal Year (FY) 2014 or FY 2015. The balance of funds remaining on these six awards as of June 17, 2016 was $5,097,081.36, which breaks down by individual award as follows:

Program/FY	Grantee	Award No.	Award Amount	Balance
SASP FY 2014	NC DPS	2014-KF-AX-0053	$380,388	$134,636.20
SASP FY 2015	NC DPS	2015-KF-AX-0037	$420,418	$420,418.00
STOP FY 2014	NC DPS	2014-WF-AX-0015	$3,933,568	$1,292,928.95
STOP FY 2015	NC DPS	2015-WF-AX-0025	$3,836,305	$2,755,532.79
Campus FY 2014	UNC at Wilmington	2014-WA-AX-0004	$300,000	$194,442.42
Campus FY 2015	UNC at Chapel Hill	2015-WA-AX-0015	$299,123	$299,123.00

7. By September 30, 2016, OVW anticipates making an FY 2016 STOP Program award of approximately $4.23 million and an FY 2016 SASP Formula Program award of approximately $490,825 to the North Carolina Department of Public Safety.

8. STOP Program grants are critical to addressing sexual assault, domestic violence, dating violence and stalking. These grants, which are awarded to all states and territories according to a statutory population-based formula, are used to enhance the capacity of local communities to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women and to support services for victims of these crimes. Each state and territory must allocate 25 percent of its STOP award for law enforcement, 25 percent for prosecutors, 30 percent for victim services (of which 10 percent must be distributed to culturally specific, community-based organizations), and 5 percent to state and local courts, with the

remainder allocated at the discretion of the state administering agency within 20 statutory program purpose areas. STOP program funds are used primarily to provide victim services, training, and dedicated personnel in law enforcement and prosecution for responding to sexual assault, domestic violence, dating violence, and stalking.

9. STOP funds are used to provide services to victims and their families as they cope with the immediate and long-term impact of violence in their lives. These services help victims stay safe and establish independence after leaving abusive relationships, and they connect victims with resources to support their recovery and pursuit of justice. Direct services funded under the STOP Program include:

- Crisis intervention and victim advocacy to help victims deal with their immediate needs after being victimized, find resources, and plan for safety in the aftermath of violence;
- Legal advocacy and representation in civil and criminal matters, which help victims navigate the legal system and obtain favorable outcomes in their cases;
- Assistance obtaining orders of protection, which research shows reduce violence and improve the quality of life for victims; and
- Shelter and transitional housing for victims fleeing abuse, with accompanying services to help them find employment and permanent housing for themselves and their children.

10. STOP funds are also used to strengthen the response of criminal justice systems to sexual assault, domestic violence, dating violence, and stalking. STOP subgrants often provide salaries for personnel in law enforcement and prosecution agencies who develop special expertise handling cases involving these four crimes. The funds support other innovations such

lethality assessments to curb domestic-violence related homicides; improved forensic examinations for sexual assault victims; enhanced training for law enforcement, prosecutors, and judges; investigation and prosecution policies that focus on the offender and account for the effects of trauma on the victim; and collaborations among community partners to ensure a coordinated response to these crimes.

11. Each year, STOP Program state administering agencies, including the North Carolina Department of Public Safety, submit STOP subgrantee progress reports that document the grant-funded activities of each subgrantee in their state. A summary of data from subgrantee reports submitted by the North Carolina Department of Public Safety shows that a total of 87 North Carolina subgrantees reported on their STOP-funded activities during 2014, the most recent year for which final data currently are available. The data in these 2014 reports provide a recent snapshot of how local victim service providers, police departments, prosecutors' offices, and other organizations in North Carolina use STOP Program funds over the course of one year.

12. In 2014, the reporting North Carolina subgrantees most often were: prosecution agencies (19 count, 22%), dual domestic violence/sexual assault services programs (12 count, 14%), law enforcement agencies (11 count, 13%), community-based organizations (10 count, 12%), and domestic violence programs (9 count, 10%). These STOP subgrantees reported funding 117.13 full-time equivalent (FTE) staff positions during 2014, with program coordinator (18%), victim advocate (12%), attorney (10%), law enforcement officer (10%), and prosecutor (10%) being the types of positions most frequently represented by STOP-funded staff.

13. Forty-four percent of these North Carolina STOP subgrantees reported using funds for victim services, serving a total of 7,986 victims in 2014. Eighty-one percent of those victims presented primarily needing help with issues related to domestic/dating violence, while 15%

presented primarily needing help with issues related to sexual assault. Civil legal assistance (36%), civil legal advocacy (29%), victim advocacy (24%), crisis intervention (22%), and counseling (17%) were the most frequently provided services. A total of 391 victims and 310 family members received a total of 15,659 bed nights in emergency shelter, and eight victims and 10 family members received a total of 2,978 bed nights in transitional housing. A total of 9,398 hotline calls were answered by STOP subgrantees during the year.

14. Subgrantees reported that STOP-funded law enforcement officers answered 1,657 calls for service, took 1,395 incident reports, and investigated 1,230 cases. They referred 777 cases to prosecutors. STOP-funded prosecution agencies accepted 3,751 domestic violence cases for prosecution, 26 sexual assault cases, and 51 stalking cases. They obtained 1,503 convictions in cases prosecuted in 2014.

15. North Carolina STOP subgrantees also trained 7,926 people through 276 training events in 2014, including victim advocates, law enforcement officers, court personnel, and prosecutors.

16. The SASP Formula Program is the only federal formula program dedicated solely to providing direct services for victims of sexual assault and their families. SASP Formula grants provide funding to states and territories to assist them in supporting rape crisis centers and other programs that provide services, direct intervention, and related assistance to victims of sexual assault. These services include 24-hour hotlines providing crisis intervention and referrals; accompaniment and advocacy through the medical, criminal justice, and social support systems; crisis intervention and short-term individual and group support services; and information and referral to assist victims and their family members.

17. As with the STOP Program, SASP Formula Program state administering agencies, including the North Carolina Department of Public Safety, submit annual SASP subgrantee

progress reports that document grant-funded activities. Again, aggregated SASP subgrantee data from North Carolina for 2014 show the scope of grant-funded work accomplished by SASP subgrantees. Twenty-eight SASP Formula subgrantees reported funding 9.63 FTEs in 2014, 6.16 of which were victim advocates. They served 1,258 victims of sexual assault, with the most frequently-provided services being victim advocacy (1,050 victims), crisis intervention (867 victims), and counseling/support groups (737 victims). SASP subgrantees answered 1,797 hotline calls and assisted victims in obtaining 161 final orders for protection.

18. In narrative questions on the annual progress reports, OVW asks STOP and SASP subgrantees to explain how OVW funds have enabled them to accomplish work on behalf of victims that they could not have accomplished without the funds. A few examples from the 2014 reports illustrate the impact of STOP and SASP funding in communities across North Carolina:

- The Cleveland County Abuse Prevention Council, Inc. in Shelby, NC reported: "The STOP Program funding has allowed the agency to hire a new staff person to focus specifically on serving and advocating for clients that are identified as [being from] underserved populations. The Underserved Victim Specialist (UVS) provides targeted case management to sexual assault and domestic violence survivors who are elderly (over age 62), living with a disability or identify as LGBTQ . . . ."

- District 13 District Attorney's Office in Bolivia, NC reported: "The STOP Program funding has allowed the 13th Prosecutorial District in Brunswick County to hire a full-time domestic violence prosecutor. A full-time prosecutor has allowed for more personalized contact with victims and survivors of domestic violence. The District Attorney's Office was able to devote more time and attention to domestic violence cases because an entire court docket was reserved specifically for a specialized prosecutor. . . ."

- Durham Crisis Response Center in Durham, NC reported: "STOP Program funding has allowed our agency to turn not just more of our own attention, but the attention of multiple agencies, to sexual assault to a much greater degree than in years past. . . . With STOP Program funds, we have been able to support the efforts and sharpen the focus of the agencies partnering in our Sexual Assault Response Team (SART). The SA [Sexual Assault] Advocate, funded by the STOP program, works within the courthouse to

reach victims who may not otherwise be able to access services or assistance. Because the court system has few resources available for victims of sexual assault, contact with our advocate can be the key factor in a victim receiving assistance with legal issues or other services. . . . A STOP-funded Investigator in the District Attorney's office has helped prosecutors build strong cases against sexual assault perpetrators. Because the investigator works within the parameters of this grant, she is able to concentrate her efforts on sexual assault . . . . This has helped move sexual assault cases up in priority for the prosecutor's office. . . ."

- Our Voice, Inc. in Asheville, NC reported: "SASP Program has allowed us to create a program that is the only one of its kind in Western North Carolina. . . . [M]ale victims from surrounding counties and states have accessed our services. . . . Since January 2014, we have seen an increase of males contacting our agency for crisis counseling and individual and group counseling. In addition, we have changed the perception of our agency being a 'women's agency' to being a rape crisis center that serves all individuals ages 13 and up impacted by sexual violence. We could not have done that without SASP Program funding."

- CrossRoads Sexual Assault Response and Resource Center in Burlington, NC reported: "Our data will show that we have 63 secondary clients. These clients are receiving the same services as our primary clients. About 95% of the secondary clients are survivors of sexual assault from their childhood and/or adulthood. They come in the door because of their child or loved one has been abused and needs support to process that experience, but are then able to also get support on their own history. Often they have never shared their own abuse. . . ."

- Family Services of Davidson County in Lexington, NC reported: "Without SASP funding, Family Services would not be able to accomplish most of the work we do serving survivors of sexual assault. . . . We have found that many survivors of sexual assault engaging in counseling at our agency often receive services worth several thousands of dollars due to the intensive treatment and collaborative efforts it requires, and they receive this professional service at no cost. . . . We want to use this SASP funding to continue to reach out to survivors so no one feels alone in their journey towards healing, and to continue to partner with others to end sexual violence in our community. Our program requires this funding in order to be able to continue to offer this resource to meet the dire needs of our community."

19. The Campus Program seeks to strengthen the response of institutions of higher education to sexual assault, domestic violence, dating violence and stalking on campuses and to enhance

collaboration among campuses, local law enforcement, and victim advocacy organizations. As noted above, OVW currently provides Campus grants to the University of North Carolina campuses at Chapel Hill and Wilmington.

20. Every six months, all OVW Campus Program grantees, including the University of North Carolina, are required to submit to OVW a semi-annual progress report that documents their grant-funded activities. A review of the two most recent progress reports submitted by the University of North Carolina at Chapel Hill and Wilmington, for the July 1 to December 30, 2015 reporting period, illustrates the type of programming and victim services funded by these two grants.

21. During this reporting period, the University of North Carolina at Chapel Hill used grant funds for 1.57 FTE staff positions, including a full-time victim advocate and 40 percent of the time of a trainer/educator. According to the report, grant-funded staff coordinates campus and community response through a community-wide Sexual Assault Response Team and Domestic Violence Task Force. The University also reported using Campus Program funds to train 89 students and 172 staff members to respond compassionately to a disclosure of sexual or relationship violence or stalking and connect the victim to appropriate resources. Campus Program funding was used to reach 1,259 students, staff, and others through campus education activities, including bystander education programming. Finally, the University used grant funds to serve 48 victims of sexual assault, domestic/dating violence, and stalking. Services provided included academic/education advocacy, crisis intervention, disciplinary board advocacy, housing assistance, legal advocacy/court accompaniment, and victim/survivor advocacy. Grant-funded staff assisted victims obtain two stalking protection orders.

22. The University of North Carolina at Chapel Hill also reported that Campus Program funding has enabled it to "provide all our investigators in the UNC Department of Public Safety with training they would not have otherwise been able to access. The addition of our Gender Violence Services Coordinator is a tremendous resource/asset to our community that we would not have otherwise been able to support at this time."

23. During this reporting period, the University of North Carolina at Wilmington used grant funds for 1.25 FTE staff positions, including 15 percent of a counselor, 50 percent of a program coordinator, 50 percent of a trainer/educator, and 10 percent of a victim advocate. According to the report, Campus Program funds were used to provide prevention and education programming to 773 incoming students. Grant-funded staff host three separate coordinated community response (CCR) teams on relationship violence, violence prevention, and Title IX and participate in CCR teams in the local community. Grant-funded staff provided training on sexual assault, domestic violence, dating violence, and stalking to 468 peer educators, student affairs staff, resident assistants, and others. Finally, the University used grant funds to serve 29 victims of sexual assault, domestic/dating violence, and stalking. Services provided included academic/education advocacy, crisis intervention, disciplinary board advocacy, support group/counseling services, and victim/survivor advocacy. Grant-funded staff assisted victims obtain three domestic violence/dating violence protection orders.

24. The University of North Carolina at Wilmington also reported that Campus Program funding has enabled it to "train 180 new My Stand Mentors in bystander intervention and trauma focused crisis response and referral skills. . . . That number includes [the University's] first faculty/staff training group as well as targeted training to specific groups, including the Greek community. . . . Additionally, [the University's] grant-funded Case Manager position has been

essential in meeting the increasing needs for direct services. . . . Twenty-nine of those students served were able to meet with grant-funded staff to receive more in-depth support through clinical counseling services."

25. Based on the activities that grantees and subgrantees report conducting with OVW grant funding provided to the North Carolina Department of Public Safety and the University of North Carolina, as well as my experience working with OVW funding recipients, I conclude that a suspension of OVW funds could have a profoundly negative impact on service providers, their grant-funded staff, and victims in North Carolina. In my experience, many victim service providers are small organizations without significant resources, and funding interruptions can significantly damage their ability to provide services and maintain on-going projects.

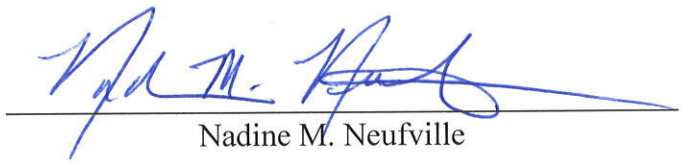
26. When grant funding is lost – or is inaccessible for a protracted period of time – such organizations often are forced to lay off staff. Such lay-offs not only harm individual employees, they also cause lasting damage to an organization, which cannot easily replace experienced staff members, particularly for grant-funded positions of limited duration. In addition, projects lose momentum when key staff members leave because it takes time to hire staff, re-build relationships with community partners, and develop needed expertise.

27. Moreover, if North Carolina victim service providers lose experienced staff such as victim advocates and attorneys, they will be forced to turn away victims seeking their services. As noted above, STOP and SASP subgrantees in North Carolina reported serving over 9,200 victims of sexual assault, domestic violence, dating violence, and stalking in 2014. Therefore, if OVW suspends access to STOP and SASP funds, there is a risk that some victims in North Carolina will be unable to access such critical services as victim advocacy, court

accompaniment, help obtaining protection orders, crisis intervention, counseling, safety planning, and even shelter.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 18th day of June, 2016 at Washington, DC.



Nadine M. Neufville

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA Plaintiff, v. STATE OF NORTH CAROLINA; PATRICK MCCRORY, in his official capacity as Governor of North Carolina; NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY; UNIVERSITY OF NORTH CAROLINA; and BOARD OF GOVERNORS OF THE UNIVERISTY OF NORTH CAROLINA, Defendants.	)	1:16-CV-00425-TDS-JEP

CERTIFICATE OF SERVICE

I certify that on June 20, 2016, I caused a copy of the *United States' Supplemental Memorandum in Support of Joint Motion to Enjoin Automatic Suspension of Funds Received Under the Violence Against Women Act* to be sent via the Court's ECF system to the following:

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