

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES, *et al.*,

Defendants.

Civil Action No. 1:19-cv-4676-PAE

Civil Action No. 1:19-cv-5433-PAE

Civil Action No. 1:19-cv-5435-PAE

SECOND DECLARATION OF KIMBERLY CUSTER

I, Kimberly Custer, declare and state as follows:

1. I am the Executive Vice President of the Health Care Division for Planned Parenthood Federation of America, Inc. (“PPFA”), a plaintiff in this action.

2. I submitted a declaration on June 17, 2019 in support of Plaintiffs’ Motion for a Preliminary Injunction. *See* Civil Action No. 1:19-cv-05433-PAE, ECF No. 21-2 (“First Custer Decl.”). In my initial declaration, I discussed the participation of Planned Parenthood’s affiliates in the federal Title X program. Due to recent events leading to Planned Parenthood’s being forced to withdraw from the Title X program, I submit this second declaration to apprise the court of these changed facts. I submit this declaration in further support of Plaintiffs’ Motion for a Preliminary Injunction, and also in support of Plaintiffs’ motion for summary judgment.

3. I incorporate by reference my background and experience as set forth in my initial declaration. *See* First Custer Decl. ¶¶ 2, 8–10.

4. As I explained in my first declaration, *see* First Custer Decl. ¶ 30, Title X of the federal Public Health Service Act subsidizes the provision of family planning services to people with low incomes. Under Title X, the Secretary of the U.S. Department of Health and Human

Services (“HHS”) is authorized to make grants to public or nonprofit private entities for the purpose of operating voluntary family planning projects. 42 U.S.C. § 300(a). Title X grantees may either provide the program services themselves or contract with delegate agencies (or “subgrantees”). At the time my initial declaration was filed, Planned Parenthood affiliates served as both direct grantees and subgrantees in the Title X program.

5. Since that time, however, due to HHS’s implementation of new Title X regulations, all Planned Parenthood affiliates have been compelled to withdraw from the Title X program.

6. Specifically, on March 4, 2019, HHS finalized new regulations that change the Title X program dramatically. *See* 84 Fed. Reg. 7714-91. Among other changes, the new Title X regulations (1) categorically prohibit Title X providers from referring for abortion; (2) require Title X providers to refer all pregnant patients for prenatal care, regardless of the patient’s wishes; and (3) authorize Title X providers to decline to discuss abortion, even when a pregnant patient explicitly asks about it—all this notwithstanding the statutory mandate that all pregnancy counseling in Title X be nondirective.

7. PPFA, on behalf of its affiliates, along with numerous other Title X providers, sued to block the new regulations, and in April and May 2019 multiple district courts enjoined the new Title X regulations from taking effect. I understand that subsequently HHS appealed those decisions and that at least two courts of appeal granted a stay of the injunctions while the appeals are pending, such that the new regulations are currently in effect.

8. Rather than violate professional ethics and the medical standard of care in order to comply with the new Title X regulations, and having been denied emergency judicial relief, Planned Parenthood’s affiliates were forced to terminate their participation in the Title X program.

As a result, Planned Parenthood's affiliates are no longer using federal funding through the Title X program, either as direct Title X grantees or as subgrantees.

9. However, as I stated in my initial declaration, Planned Parenthood's affiliates receive hundreds of millions of dollars in federal funds through programs other than Title X. *See* First Custer Decl. ¶¶ 28–29, 32. This federal funding remains under threat from the Refusal of Care Rule challenged in this lawsuit.

10. For example, in 2017, Planned Parenthood's affiliates received more than \$418 million in Medicaid reimbursement; more than \$3 million through the Social Services Block Grant program; almost \$2 million from the Maternal and Child Health Block Grant program; more than \$4 million from the Teen Pregnancy Prevention Intervention Grant program; more than \$100,000 from the Ryan White AIDS program; and more than \$350,000 from the National Breast and Cervical Cancer Early Detection Program.

11. As I stated in my initial declaration, which remains true, many of Planned Parenthood's affiliates would be forced to reduce their hours, cut their staff, and/or even close health centers if they lost federal funding. This outcome would be devastating to Planned Parenthood and to the individuals who rely on us—especially people with low incomes, rural residents, and people of color who often have no other affordable option for high-quality and often life-saving reproductive care.

12. For this and all of the other reasons discussed in my initial declaration, *see* First Custer Decl. ¶¶ 34–70, I believe that the Refusal of Care Rule will do significant harm to Planned Parenthood's patients, providers, and professional integrity.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct and that this declaration was executed on this 4th day of September 2019.


Kimberly Custer