

Congress of the United States
Washington, DC 20515

April 13, 2021

President Joseph R. Biden
The White House
1600 Pennsylvania Ave. NW
Washington, DC 20500

Secretary Xavier Becerra
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear President Biden,

We write to express our serious concern regarding your executive memo to the Department of Health and Human Services (HHS) and the subsequent March 18th decision to suspend and revise the Compliance With Statutory Program Integrity Requirements rule (Protect Life Rule) finalized March 3, 2019.¹

Created by Congress in 1970, Title X of the Public Health Service Act authorized taxpayer funds to assist “voluntary family planning projects.”² The Title X statute clearly intended to prohibit federal funds from being used “in programs where abortion is a method of family planning.”³ The Protect Life Rule fulfills the spirit and letter of this decades-old law by separating abortion from family planning. It does not cut any funding for family planning services: it merely directs taxpayer funds to family planning providers who are not in the business of abortion.

The Protect Life Rule is necessary to maintain the bright line drawn in the original authorizing statute between family planning and abortion. Previously, under the Clinton era regulations, all Title X grantees were required to refer for abortion.⁴ Additionally, the 2000 regulation was in direct violation of the Weldon Amendment that explicitly protects entities from discrimination based on their not providing, paying for, providing coverage of, or referring for abortion. Not only did this run counter to the program’s statutory prohibition on funding programs, but it discouraged program applicants who do not consider abortion to be a method of family planning from participating in the program. If reinstated the previous regulation will be in direct violation of standing law.

Without the Protect Life Rule, the separation between abortion and family planning is blurred by permitting Title X clinics to be “co-located” within the same facility as an entity that provides

¹<https://www.federalregister.gov/documents/2000/07/03/00-16759/provision-of-abortion-related-services-in-family-planning-services-projects>

² 42USC, 300

³ 42 U.S. Code § 300a–6

⁴ 42CFR 59.5

abortion. These arrangements raise concerns about the program's integrity. To ensure that federally funded family planning services offered by Title X grant recipients are unquestionably separate and distinct from abortion, Title X service sites should be physically, as well as financially, separate.

Additionally, the Protect Life Rule addressed a growing concern about the lack of action previous Title X recipients took on behalf of women and children experiencing abuse. For instance, in 2019, a report compiled several court cases, state health department reports and testimonies from former Planned Parenthood employees, who highlighted multiple incidents where the organization failed to report suspected abuse.⁵ Planned Parenthood had been a major recipient of Title X funding, receiving \$170 million through the Title X program between 2013 and 2015.⁶ The final Protect Life Rule implemented a stronger focus to protect women and children from being victimized by child abuse, sexual abuse, rape, incest, intimate partner violence and trafficking. If you choose to rescind the Protect Life Rule, you will strip away these much-needed updates to ensure that Title X grantees participate in annual staff education and maintain site-specific protocol to aid victims and report suspected crimes. This language includes parental engagement and communication in family planning without compromising doctor-patient confidentiality.

Lastly, the Protect Life Rule allows states that receive Title X grants to prioritize funding according to the needs of their citizens and increase patient access. After years without reform, the new rule updated and expanded the review and scoring criteria for grant applications. Combined with the removal of the abortion referral mandate, this increases the potential for diversity as some providers that otherwise would not apply for Title X funds can do so with no abortion counseling mandate in place.

These critical reforms were not without precedent. In 1991, the Supreme Court upheld the Reagan Administration's Title X regulations to set a standard of compliance with the statutory requirement that no funds appropriated under Title X may be used in programs where abortion is a method of family planning.⁷ Those regulations required, in part, the physical separation of abortion activities from Title X sites and did not permit grantees to make abortion referrals. The Protect Life Rule contained these similar provisions which were upheld again by the Ninth U.S. Circuit Court of Appeals on February 4, 2020.

A decision to rescind the Protect Life Rule would not only damage the integrity of Title X, but reverse needed reforms that allowed this program to work for all Americans. We urge you to retain the Protect Life Rule to ensure that Title X funding does not go to programs that support abortion as a method of family planning and protects women and children under their care.

⁵ <https://www.liveaction.org/what-we-do/investigations/aidingabusers/>

⁶ Government Accountability Office. "Federal Obligations to and Expenditures by Selected Organizations Involved in Health-Related Activities, Fiscal Years 2013-2015." March 8, 2018. <<https://www.gao.gov/products/GAO-18-204R>>

⁷ Rust v. Sullivan, 500 US 173, (1991)

⁷ <http://cdn.ca9.uscourts.gov/datastore/opinions/2020/02/24/19-15974.pdf?bcs-agent-scanner=7e7f803a-1f39-0a48-9778-27039d052533>

Sincerely,



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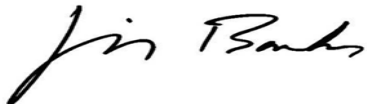
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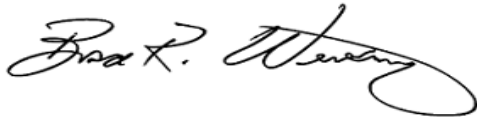
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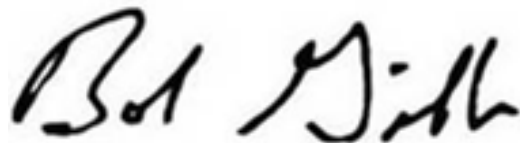
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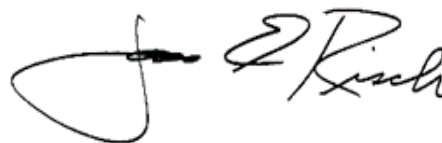
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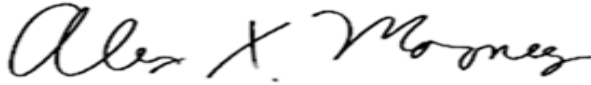


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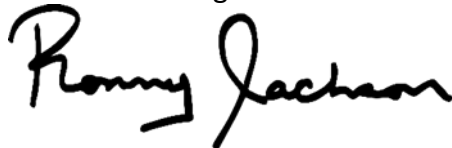
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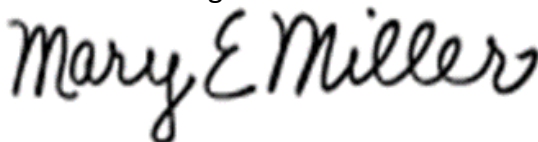
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