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THE CURRENT STATE OF TITLE X

INTRODUCTION

Since its creation, the Title X program has supported a network of family planning clinics that deliver evidence-based reproductive and sexual health care services to millions of individuals every year.¹ Although the Title X program ensures care for millions, the program faces ongoing threats that challenge its ability to meet the needs of all individuals in need of care.

Without well-funded Title X services, millions of patients would lose access to crucial sexual and reproductive health care services and health care providers would no longer be able to meet the reproductive and sexual health care needs of their community. The loss of the Title X network will worsen maternal health outcomes, rates of sexually transmitted infections (STIs) will increase, people's ability to access pregnancy planning support and resources will decrease, and cancer screenings and other preventive care services will no longer be accessible.

The Hyde Amendment and other restrictions on federal dollars being used to fund abortion care prevents Title X clinics from providing the entire spectrum of reproductive health care and severely limits people's ability to access abortion care when they need it. Although the Title X network acts as a key source of sexual and reproductive health care in many ways, the bar that prevents Title X clinics from providing abortion care leaves people unable to access the full spectrum of care they need.

Every person should be able to determine if, when, and how to start a family, and all individuals deserve access to comprehensive sexual and reproductive health care. However, ongoing attacks to the Title X network and limitations on the care Title X clinics can provide threaten the ability to ensure millions of individuals are able to access comprehensive care.

THE 2019 RULE: TITLE X UNDER THE TRUMP ADMINISTRATION.

On March 4, 2019, the Trump Administration published devastating and damaging regulations governing the implementation of Title X and distribution of funds, titled "Compliance with Statutory Program Integrity Requirements" (hereafter referred to as the 2019 Rule). The 2019 Rule drastically changed the requirements providers must adhere to in order to receive Title X funding, making it nearly impossible for the Title X network to still provide key sexual and reproductive health care services. Specifically,

the 2019 Rule was intended to target clinics that provided abortion care or referrals with care, in order to push these clinics out of the Title X network and severely restricting access to these critical services.ⁱⁱ The 2019 Rule had far-reaching implications that severely diminished the network's ability to provide care.

The biggest threat to care in the 2019 Rule was that Title X recipients were prohibited from referring patients for abortion care or having co-located family planning and abortion services.ⁱⁱⁱ The Trump Administration interpreted Section 1008 of Title X broadly to mean that Title X recipients were barred from using federal funds to “promote, counsel, or refer” clients for abortion care and prohibited recipients from providing abortion care at the same clinics, even if federal dollars were in no way used in the provision of abortion services.^{iv} The only other Administration to interpret Section 1008 this broadly was the Reagan Administration.^v This complete bar on referring to abortion care at Title X clinics is commonly referred to as the “Domestic Gag Rule.”^{vi} The Domestic Gag Rule pushes out crucial care providers from the Title X network and severely limits individuals' ability to access care.

The 2019 Rule also drastically changed the way Title X clinics could provide pregnancy options counseling to patients.^{vii} The rule removed the longstanding regulatory requirement that required Title X clinics to provide nondirective counseling for pregnant people on all their options, including prenatal care and delivery, infant care, foster care or adoption, and abortion care.^{viii} Instead, the 2019 Rule mandated that all Title X clinics must provide pregnant patients with referrals for prenatal care, regardless of the patient's wishes, and left the provision of other forms of counseling as optional.^{ix} Providers were explicitly barred from the provision of abortion care referrals, even upon a patient's request.^x This rule change shamed people seeking abortion care and worsened abortion stigma, preventing individuals from accessing desired and necessary care referrals, and discouraging patients from continuing to see Title X providers for other health care needs.^{xi}

The 2019 Rule also removed the language of “medically approved” from the longstanding regulatory requirement that mandated Title X clinics to provide “a broad range of acceptable and effective medically approved family planning methods.”^{xii} This rule change undermined the standard of care by allowing Title X funded clinics to refuse to offer the broad range of FDA-approved contraceptive methods and to offer mis- and disinformation related to sexual and reproductive health care.^{xiii}

The rule also allowed for organizations that formally did not qualify for Title X grants to receive federal funding. The Trump administration granted Title X funds to organizations that did not provide comprehensive care and, instead, only provided fertility awareness or abstinence counseling as options. Moreover, these “single-method” clinics and organizations were not required to refer clients to other clinics that provide the full spectrum of family planning services, including FDA-approved contraceptive methods, which is the standard of care for medical providers.^{xiv}

The “single-method” rule change encouraged anti-abortion organizations to apply and receive Title X funding for crisis pregnancy centers (CPCs) and faith-based clinics.^{xv} These clinics only provide limited services, including pregnancy tests and ultrasounds,

and are designed to deter pregnant people from seeking abortion and contraceptive care by providing misinformation on reproductive health care.^{xvi} For example, a California-based organization, Obria Group, received a \$1.7 million dollar Title X grant to operate anti-abortion clinics and openly refused to ever provide referrals for contraceptive and abortion care.^{xvii}

The Impact of The Trump Administration Regulations

The 2019 Rule had severe and harmful consequences to Title X programs across the country. Prior to the implementation of the 2019 Rule, more than four million people relied on Title X clinics to receive reproductive and sexual preventive health care. However, the Domestic Gag Rule that prevented Title X providers from informing patients about how they could safely and legally access abortion care resulted in many longstanding Title X providers to leave the program, including numerous Planned Parenthood facilities.^{xviii}

Following the 2019 Rule, over four hundred Planned Parenthood clinics and almost nine hundred other Title X clinics left the Title X program due to the Domestic Gag Rule and the impossible burdens it imposed on clinics.^{xix} These clinics left the Title X network because compliance with the 2019 Rule harmed the patients they served and made it impossible for the clinics to continue providing crucial health care to their communities. Between June 2020 and April 2021, almost a third of past Title X clinics left the program.^{xx} This mass exodus of providers from Title X programs resulted in six states having zero Title X health centers for nearly two years, including Hawaii, Maine, Oregon, Utah, Vermont, and Washington.^{xxi} Eight states lost over half of their Title X clinics due to the 2019 Rule, including Arkansas, Connecticut, Illinois, Massachusetts, Maryland, Minnesota, New York, and New Hampshire.^{xxii}

As a result, there was a significant decrease in the number of people able to obtain care from Title X clinics and programs following the 2019 Rule. In 2019, even though the rule was only implemented for five months, only 3.1 million people were able to access care at a Title X site, which was a 21% decrease from 2018.^{xxiii} Only 1.5 million people were able to receive Title X funded care in 2020, as compared to the four million people who were able to receive care in prior years.^{xxiv} This sharp decrease in the number of patients being served resulted in almost two million fewer clinic visits, including 400,000 fewer cisgender women being able to access contraception, almost 270,000 fewer cancer screenings performed, and 1.5 million fewer STI and HIV tests conducted.^{xxv} Under the Trump Administration, approximately 300,000 fewer uninsured patients and 800,000 fewer patients living on low incomes were able to receive Title X funded care.^{xxvi}

The Trump Administration's 2019 Rule has caused tremendous harm to the state of reproductive and sexual health care throughout the United States and severely limited people's access to key family planning services. However, in 2021, the Biden Administration repealed the harmful regulations and enacted new rules to mitigate the harms caused by the 2019 Rule.

THE 2021 RULE: RE-ESTABLISHING AND EXPANDING TITLE X-FUNDED CARE

In April 2021, the Biden Administration proposed new regulations to reverse the 2019 Rule.^{xxvii} In November of the same year, the Biden Administration's 2021 Rule went into effect and the Administration started to work to rebuild the Title X network.^{xxviii} The Office of Population Affairs (OPA) set out three priorities for Title X grantees when establishing the 2021 Rule: (1) advancing health equity through the delivery of Title X services; (2) improving and expanding access to Title X services; and (3) ensuring the delivery of the highest quality of care.^{xxix}

The 2021 Rule revoked the 2019 Rule in its entirety, re-establishing the previous Title X regulations with revisions designed to ensure access to equitable and client-centered care at all Title X clinics.^{xxx} The 2021 Rule restored the requirement for all Title X clinics to provide pregnant patients with comprehensive pregnancy options counseling that included abortion care referrals.^{xxxi} The Rule also removed the ban on co-located abortion services, removing the Domestic Gag Rule and allowing for providers like Planned Parenthood to qualify for Title X funds again.^{xxxii}

The 2021 Rule also established a more comprehensive definition for "family planning services" and requires all Title X clinics and providers to deliver a broad range of family planning services that are consistent with the nationally recognized standards of care.^{xxxiii} The 2021 Rule required Title X participants that did not provide the full range of family planning services on site to provide referrals and prescriptions for the services.^{xxxiv} This rule change effectively pushed out the single-method providers, including CPCs, out of the Title X network.

The Biden Administration also used the 2021 Rule to improve and strengthen the Title X program. The 2021 Rule allows for Title X programs to provide telehealth services.^{xxxv} The rule also reaffirmed young people's confidentiality protections by barring Title X programs from requiring parental consent or notification for care provided to minors.^{xxxvi} The Administration also mandated that all family planning services funded by Title X must be client-centered, culturally and linguistically appropriate, inclusive, and trauma-informed.^{xxxvii} Finally, the 2021 Rule clarified that a Title X program's income verification requirement cannot be burdensome on patients with low incomes nor can it impede a patient's ability to access care.^{xxxviii}

In addition to repealing the harmful 2019 Rule, the Biden Administration awarded \$6.6 million dollars to eight Title X grantees in 2022 as a part of the American Rescue Plan.^{xxxix} These funds were granted to address "dire family planning needs" throughout the country, with grantees located in Alabama, Hawaii, Maine, New Hampshire, New York, Texas, and Washington.^{xl} These funds are intended to help communities rebuild their Title X networks and address threats their communities face to reproductive health care.^{xli}

Following the 2021 Rule and the interventions by the Biden Administration, 286 Planned Parenthood clinics and 531 other clinics that left during the Trump Administration rejoined the Title X network.^{xlii} Additionally, 777 new sites that were not previously Title X clinics received Title X funds, joining the Title X network.^{xliii} As of 2023, there were 4,108 Title X clinics and sites throughout the country.^{xliv}

Although the 2021 Rule has helped re-expand the Title X network, it is still unable to provide care at the levels it once did prior to the gutting of the network by the Trump Administration. The Title X program needs significant and increased reinvestment to meet the growing sexual and health care needs of individuals throughout the country. The most recent federal estimates suggest that the Title X program needs a yearly investment of at least \$737 million for the network to adequately provide care to all individuals in need of publicly funded family planning care.^{xlv}

CURRENT CHALLENGES TO TITLE X

Following the implementation of the 2021 Rule and the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, which revoked the constitutional right to abortion care, the Title X program has faced numerous legal threats and challenges that have interfered with the program's ability to provide reproductive and sexual health care services in all states and U.S. territories.

State Abortion Restrictions in Conflict with the 2021 Title X Regulations

State restrictions on abortion care following the *Dobbs* decision are impeding the provision of Title X care within restricted states.^{xlvi} Title X providers in states that have abortion restrictions and bans face difficulties in satisfying the comprehensive pregnancy options counseling requirement in the 2021 Rule, as providers are unable to refer patients to abortion care within the state. Title X providers in banned states will have to rely on out of state referrals or risk losing their Title X funding due to lack of compliance. In fact, in March of 2023, Tennessee lost all Title X funding within the state because the state has imposed a policy that requires Title X clinics to only provide pregnancy options counseling for options that are legal in the state, which excludes abortion care counseling.^{xlvii} HHS held that the Tennessee policy directly conflicts with the 2021 Rule's pregnancy options counseling requirements, and subsequently denied Title X funds to clinics operating in Tennessee.^{xlviii}

Other states with abortion restrictions could follow in Tennessee's footsteps and lose their Title X funding, impacting care for thousands of people. Following the enactment of Idaho's abortion ban, State Attorney General (AG) Labrador issued an opinion letter declaring that the state's total abortion ban also prohibited an Idaho medical provider from referring patients to out-of-state abortion care.^{xlix} Based on the Idaho AG's opinion, not only is abortion care banned within the state, but the ban would also allow for the criminalization of providers who simply refer patients for out-of-state care.^l Idaho physicians and Planned Parenthood Great Northwest, Hawai'i, Indiana, and Kentucky filed a lawsuit against the Idaho AG's opinion, arguing that Labrador's construction of the state abortion ban will prevent health care professionals from providing information and referrals for abortion care.^{li} If the opinion is enforced, then Title X providers would not be able to adhere to the counselling requirement in the 2021 Rule. Without court intervention, Labrador's opinion could result in the loss of Title X funding in the state of Idaho, similar to the loss of funding in Tennessee.

Litigation Against the Requirements of the 2021 Rule

Some of the expansive requirements of the 2021 Rule are being challenged in court by conservative states and private individuals. In particular, these challenges target the provisions of the 2021 Rule that work to ensure that people have access to the entire spectrum of reproductive and sexual health care, including the provisions related to abortion care and confidentiality.

a. *Ohio v. Becerra*

Ohio and ten other states, including Alabama, Arkansas, Florida, Kansas, Kentucky, Missouri, Nebraska, Oklahoma, South Carolina, and West Virginia, filed suit challenging the 2021 Rule's provisions related to abortion care.^{lii} In *Ohio v. Becerra*, the eleven states challenged the 2021 Rule in order to block the enforcement of two provisions.^{liii} First, the states challenged the 2021 Rule's elimination of the 2019 Rule's requirement for the strict physical and financial separation between Title X programs and abortion-related services.^{liv} Second, the states challenged the 2021 Rule's comprehensive pregnancy options counseling requirement.^{lv} The states assert that these provisions of the 2021 Rule violate Section 1008 of Title X, which bars use of federal funds from "being used in programs where abortion is a method of family planning."^{lvi}

Recently, the Sixth Circuit Court of Appeals issued a ruling in *Ohio v. Becerra* and upheld the 2021 Rule's comprehensive pregnancy options counseling requirement, including referrals for abortion care, finding the provision to be permissible under Section 1008.^{lvii} However, the Court also found that the 2021 Rule does not require adequate separation between abortion care and services funded through Title X grants.^{lviii} The Court granted Ohio a preliminary injunction, allowing the Ohio AG to require Title X clinics to adhere a stronger separation between abortion care and Title X services, similar to the requirements under the 2019 Rule.^{lix} The full impact of the injunction is still being determined, but under this injunction, Planned Parenthood and other Title X recipients within the state of Ohio may be compelled by the Ohio AG to either stop the provision of abortion care at their facilities or forfeit Title X funds.^{lx}

b. *Deanda v. Becerra*

In addition to challenges to the provisions related to abortion care, the 2021 Rule has faced challenges related to the provision that protects young people's access to confidential services at Title X clinics. In *Deanda v. Becerra*, a Texas resident filed suit against the 2021 Rule, arguing that the rule's provisions violate both Texas law and the U.S. Constitution. In particular, Deanda asserts that the provisions of the 2021 Rule that allow young people to access Title X services without parental consent impede his statutory right under Texas law to consent to his child's medical care and his paternal rights under the U.S. Constitution.^{lxi} Federal district Judge Matthew Kacsmark held that minors being able to obtain Title X services without parental consent violated both Texas state law and the U.S. Constitution.^{lxii} Judge Kacsmark's decision was appealed by the Administration to the Fifth Circuit Court of Appeals.^{lxiii}

In March of 2024, the Fifth Circuit released their opinion and held that minors obtaining contraceptive care under Title X without parental consent were in violation of the Texas state law.^{lxiv} The Fifth Circuit also held that due to the issue being improperly raised, the

current Title X regulation that protects young people's access to confidential care without parental consent still remains in place.^{lxv} Although the extent of the implications of the Fifth Circuit's decision is still unclear, the recent decision could have devastating effects on young people's ability to access confidential sexual and reproductive health care.^{lxvi}

c. Texas v. Becerra

In July of 2024, Texas Attorney General Ken Paxton filed a suit challenging Title X's provision that ensures young people can access contraceptive care without parental consent. Notably, this is the same provision challenged in *Deanda v. Becerra*.^{lxvii} Attorney General Paxton argues that this provision violates Texas law, which prohibits young people from accessing prescription contraception without parental consent.^{lxviii} This lawsuit has also been joined by Carmen Robles Frost, who believes that the provision that allows young people to access contraceptive care weakens her ability to raise her family "in accordance with the teaching of the Christian faith."^{lxix} Mrs. Robles Frost is being represented by Jonathan F. Mitchell, a notorious anti-abortion attorney, who represented Mr. Deanda in his Title X case, and was the architect of SB-8, the state's extreme abortion ban.^{lxx}

The new lawsuit is seeking to clarify the ruling in *Deanda*, to ensure that young people are not able to access contraceptive care without parental involvement. The lawsuit could open the door for nationwide limitations, as such precedent would allow states to pass legislation barring young people from being able to access Title X funded services without parental consent. This new challenge to the 2021 Rule is not unexpected, given the lack of clarity in the Fifth Court's decision in *Deanda*. It is likely that attacks against Title X will continue to arise.

CONCLUSION

The Title X program is crucial to ensuring that people can access necessary preventive sexual and reproductive health services within their own communities. However, the current state of the Title X network is ever changing due to ongoing threats the Title X program faces. Further, the current state of funding for Title X is not yet enough to meet the needs of everyone who would benefit from publicly funded sexual and reproductive health care.

To ensure that the Title X network can continue to meet the health care needs of millions of individuals throughout the country, the regulations governing the Title X network must ensure that all Title X clinics provide the full spectrum of evidence-based sexual and reproductive health care, including, at the minimum, referrals for abortion care. Additionally, the annual federal funding for the Title X program needs to be increased to at least \$737 million^{lxxi} to ensure that all individuals have access to family planning services.

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- ⁱⁱ National Family Planning & Reproductive Health Association, *Fact Sheet: 2019 Title X Rule’s Impact* (June 2021), <https://www.nationalfamilyplanning.org/file/documents---policy--communication-tools/Title-X-Rule-Impact-101.pdf>.
- ⁱⁱⁱ Brittini Frederiksen, Ivette Gomez, & Alina Salganicoff, *Rebuilding Title X Network Under the Biden Administration*, *KFF Women’s Health Policy* (May 25, 2023), <https://www.kff.org/womens-health-policy/issue-brief/rebuilding-the-title-x-network-under-the-biden-administration/>.
- ^{iv} *Id.*
- ^v *Id.*
- ^{vi} *Title X: The Nation’s Program for Affordable Birth Control and Reproductive Health Care*, Planned Parenthood, <https://www.plannedparenthoodaction.org/issues/health-care-equity/title-x>, (last visited Jan. 30, 2024).
- ^{vii} *Analysis of 2019 Final Rule on Title X Family Planning Program*, National Family Planning & Reproductive Health Association (March 4, 2019), <https://www.nationalfamilyplanning.org/file/2019-Title-X-Final-Rule----Detailed-Analysis---3.4.2019-FINAL.pdf>.
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- ^{ix} *Id.*
- ^x *Id.*
- ^{xi} National Family Planning & Reproductive Health Association, *Fact Sheet: Domestic Gag Rule* (May 2018), <https://www.nationalfamilyplanning.org/file/Domestic-Gag-Rule-Fact-Sheet--May-2018.pdf>.
- ^{xii} *Analysis of 2019 Final Rule on Title X Family Planning Program*, *supra* note vii.
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- ^{xiv} Brittini Frederickson, *supra* note iii.
- ^{xv} Victoria Colliver, *Anti-Abortion Clinics Tapping into Federal Funds Under Trump*, *Politico* (Dec. 16, 2018), <https://www.politico.com/story/2018/12/16/abortion-pregnancy-centers-planned-parenthood-1007765>.
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- ^{xvii} Dennis Carter, *An Anti-Choice Group Pledged It Would ‘Never’ Provide Contraception as It Pursued Title X Funds*, *rewire news group* (My 14, 2019), <https://rewirenewsgroup.com/2019/05/14/an-anti-choice-group-pledged-it-would-never-provide-contraception-as-it-pursued-title-x-funds/>.
- ^{xviii} Brittini Frederiksen, *supra* note iii.
- ^{xix} *Id.*
- ^{xx} *Id.*
- ^{xxi} *Fact Sheet: 2019 Title X Rule’s Impact* (June 2021), *supra* note ii.
- ^{xxii} Brittini Frederiksen, Alina Salganicoff, Laurie Sobel, & Ivette Gomez, *Key Elements of the Biden Administration’s Proposed Title X Regulation*, (May 5, 2021), <https://www.kff.org/womens-health-policy/issue-brief/key-elements-of-the-biden-administrations-proposed-title-x-regulation/>.
- ^{xxiii} *Fact Sheet: 2019 Title X Rule’s Impact* (June 2021), *supra* note ii.
- ^{xxiv} *Id.*
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- ^{xxvii} *Id.*
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xxxv *Id.*

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xxxvii *Id.*

xxxviii *Id.*

xxxix Brittni Frederiksen, *supra* note iii.

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xlvi Rachana Pradhan, [A Catch-22 for Clinics: State Bans Limit Abortion Counseling. Federal Title X Rules Require It.](https://kffhealthnews.org/news/article/family-planning-clinics-abortion-counseling-state-bans-federal-rules/) *KFF Health News* (May 26, 2023), <https://kffhealthnews.org/news/article/family-planning-clinics-abortion-counseling-state-bans-federal-rules/>.

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xlviii Brittni Frederiksen, *supra* note iii.

xliv Ryan Mendias, [Idaho Attorney General’s Abortion Opinion Shows Overturning Roe was Only the Beginning](https://www.aclu.org/news/reproductive-freedom/idaho-attorney-generals-abortion-opinion-shows-overturning-roe-was-only-the-beginning), *ACLU* (April 25, 2023), <https://www.aclu.org/news/reproductive-freedom/idaho-attorney-generals-abortion-opinion-shows-overturning-roe-was-only-the-beginning>.

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ⁱⁱⁱ [Ohio v. Becerra](https://www.opn.ca6.uscourts.gov/opinions.pdf/23a0261p-06.pdf), No. 1:21-cv-00675 (6th Cir. 2023), <https://www.opn.ca6.uscourts.gov/opinions.pdf/23a0261p-06.pdf>.

ⁱⁱⁱⁱ *Id.*

^{lv} *Id.*

^{lv} *Id.*

^{lvi} *Id.*

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Id.

^{lix} *Planned Parenthood, Sixth Circuit Rules in Title X Case, Upholds Abortion Referral Requirements but Requires Future Further Separation of Title X Projects from Abortion Care in Ohio*, *Planned Parenthood Action Fund* (Nov. 30, 2023), <https://www.plannedparenthoodaction.org/pressroom/sixth-circuit-rules-in-title-x-case-upholds-abortion-referral-requirements-but-requires-future-further-separation-of-title-x-projects-from-abortion-care-in-ohio>.

^{lx} [News Releases: Ohio Wins Injunction in Lawsuit Challenging Biden Administration’s HHS Rules on Title X Funding](https://www.ohioattorneygeneral.gov/Media/News-Releases/December-2023/Ohio-Wins-Injunction-in-Lawsuit-Challenging-Biden), Dave Yost Ohio Attorney General (Dec. 1, 2023), <https://www.ohioattorneygeneral.gov/Media/News-Releases/December-2023/Ohio-Wins-Injunction-in-Lawsuit-Challenging-Biden>.

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^{lxiii} *Planned Parenthood, Planned Parenthood Reacts to 5th Circuit Oral Arguments in Case Trying to Requirement Parental Consent for Young People to Obtain Birth Control* (Nov. 6, 2023), <https://www.plannedparenthood.org/about-us/newsroom/press-releases/planned-parenthood-reacts-to-5th-circuit-oral-arguments-in-case-trying-to-require-parental-consent-for-young-people-to-obtain-birth-control-2>.

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^{lxvi} Planned Parenthood, 5th Circuit Rules, *supra* note ^{lxii}.

^{lxvii} *Texas v. Becerra* Complaint, United States District Court Northern District of Texas, Amarillo Division, <https://www.texasattorneygeneral.gov/sites/default/files/images/press/DOH%20Title%20X%20Complaint%20Filed.pdf>.

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