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6 PROTECTING TITLE X AND SAFEGUARDING QUALITY

7 FAMILY PLANNING CARE

8 WEDNESDAY, JUNE 19, 2019

9 House of Representatives

10 Subcommittee on Oversight and Investigations

11 Committee on Energy and Commerce

12 Washington, D.C.

13

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16 The subcommittee met, pursuant to call, at 10:01 a.m., in

17 Room 2123 Rayburn House Office Building, Hon. Diana DeGette

18 [chairwoman of the subcommittee] presiding.

19 Members present: Representatives DeGette, Schakowsky,

20 Kennedy, Ruiz, Kuster, Castor, Sarbanes, Tonko, Clarke, Pallone

21 (ex officio), Guthrie, Burgess, Griffith, Brooks, Mullin, Duncan,

22 and Walden (ex officio).

23 Also present: Representatives Lujan, Veasey, Shimkus,

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24 Latta, Rodgers, Bilirakis, and Gianforte.

25 Staff present: Kevin Barstow, Chief Oversight Counsel;
26 Jacquelyn Bolen, Professional Staff; Jesseca Boyer, Professional
27 Staff Member; Jeff Carroll, Staff Director; Manmeet Dhindsa,
28 Counsel; Waverly Gordon, Deputy Chief Counsel; Tiffany Guarascio,
29 Deputy Staff Director; Zach Kahan, Outreach and Member Service
30 Coordinator; Chris Knauer, Oversight Staff Director; Una Lee,
31 Senior Health Counsel; Perry Lusk, GAO Detailee; Joe Orlando,
32 Staff Assistant; Tim Robinson, Chief Counsel; Benjamin Tabor,
33 Staff Assistant; C.J. Young, Press Secretary; Jennifer Barblan,
34 Minority Chief Counsel, O&I; Mike Bloomquist, Minority Staff
35 Director; Adam Buckalew, Minority Director of Coalitions and
36 Deputy Chief Counsel, Health; Jordan Davis, Minority Senior
37 Advisor; Margaret Tucker Fogarty, Minority Staff Assistant;
38 Theresa Gambo, Minority Human Resources/Office Administrator;
39 Peter Kielty, Minority General Counsel; Ryan Long, Minority
40 Deputy Staff Director; James Paluskiewicz, Minority Chief
41 Counsel, Health; Brannon Rains, Minority Staff Assistant; and
42 Natalie Sohn, Minority Counsel, O&I.

43 Ms. DeGette. The Subcommittee on Oversight and
44 Investigations will now come to order.
45 Today, the Subcommittee on Oversight and Investigations is
46 holding a hearing entitled Protecting Title X and Safeguarding
47 Quality Family Planning Care. The purpose of the hearing is to
48 examine the Federal Title X Family Planning Program.
49 The chair now recognizes herself for the purposes of an
50 opening statement.
51 Today, this subcommittee is holding the first congressional
52 hearing in nearly 25 years on the Title X Family Planning Program.
53 Established in 1970 with bipartisan support, Title X is the only
54 Federal program solely dedicated to supporting family planning
55 and related healthcare services, ensuring access to modern
56 methods of birth control for low-income people and underserved
57 communities.
58 Over the last half century, Title X has provided the gold
59 standard of high-quality family planning and sexual health care
60 to four million women and patients of all genders each year.
61 Title X providers serve a racially and ethnically diverse
62 population. Most patients are under 30 years old and, for many,
63 Title X centers are the only source of their care.
64 The nearly 4,000 Title X health centers around the country
65 come in all forms. They include local health departments,
66 Planned Parenthoods, community health centers, and private and

67 nonprofit organizations. My constituents, for example, can
68 access Title X services at 15 different health centers in Denver,
69 like the Stout Street Health Center and La Casa Family Health
70 Center, all part of the Title X network supported by the grantee
71 in my State, the Colorado Department of Public Health and the
72 Environment.

73 These health centers provide a range of life-saving
74 preventative health services, including breast and cervical
75 cancer screening, HIV and other STI testing and treatment, and
76 family planning and contraceptive information, supplies, and
77 services. For 5 decades, regardless of the setting, patients
78 seeking care at a Title X health center could depend on being
79 treated with respect and dignity. Yet, this patient-centered
80 care now faces an imminent threat. In March, the Trump
81 administration finalized new regulations referred to by experts
82 as the quote, gag rule that poses significant threats to the Title
83 X network and the patients' health and rights.

84 While anti-abortion ideology is fueling the
85 administration's action, that motivation has no bearing on the
86 Title X program. Using Title X to provide abortions has been
87 and is currently statutorily prohibited. In fact, the
88 administration cannot point to a single instance in the program's
89 entire history, where Title X funds have been misapplied for this
90 purpose.

91 Efforts to curb abortion providers' participation in Title
92 X program is a solution in search of a problem. This rule is
93 the administration's absurd effort to equate abortion referral
94 as tantamount to the actual provision of abortion services. And
95 as a result, the Government is inserting itself into the
96 patient-provider relationship. The rule forbids health
97 providers from giving complete information to patients on all
98 of their pregnancy options. Even further, it would allow
99 providers who oppose contraception and are in favor of promoting
100 other forms of family planning to participate in the program.
101 The rule also threatens the ability of patients, especially
102 young people, to have confidential conversations with their
103 providers about their sexual health and well-being.
104 The gag rule would force providers to choose between offering
105 limited information and care to their patients or to close their
106 doors. That seems like a dramatic and unfortunate choice to make.
107 And what it would do is lead to a dramatic decline in women's
108 and other patients' ability to received high quality and timely
109 sexual and reproductive health care.
110 The long-term health consequences of limiting access to care
111 could have dire consequences on critical public health
112 priorities, disrupting, for example, the decline of historically
113 low unintended pregnancy rates and a skyrocketing of HIV and other
114 STI rates, the latter already at the highest level in recorded

115 history.

116 According to the American Medical Association, the rule

117 would, quote, radically alter and decimate the Family Planning

118 Assistance Program established by Title X with severe and

119 irreparable public health consequences across the United States.

120

121 While the Title X gag rule is currently enjoined under

122 injunctions, the Trump administration is doubling down on its

123 commitment to dismantle this vital public health program,

124 indicating last week that it has no intention of enforcing

125 longstanding program requirements, like providing patients with

126 complete family planning and pregnancy options. Should the Trump

127 administration have its way, those who already face barriers to

128 voluntary and non-coercive family planning and related health

129 care, people of color, LGBTQ plus people, low-income people, young

130 people, and people living in rural areas will bear the harshest

131 consequences.

132 For 5 decades, Title X has relied on evidence of best

133 practices to center and serve the needs of patients and

134 communities. The Trump administration's agenda takes neither

135 evidence nor patients into account in its attempts to dismantle

136 the Title X network and to devastate access to high-quality family

137 planning and sexual health in the United States.

138 I want to welcome all of our witnesses here, particularly,

139 Dr. Foley. Thank you so much for coming this morning. We are
140 going to also hear from some other experts.
141 And I am now pleased to yield 5 minutes to the ranking member
142 of the subcommittee, Mr. Guthrie.
143 Mr. Guthrie. Thank you. Thank you, Chair DeGette, for
144 holding this hearing and thank you for yielding the time.
145 For nearly 50 years, the Title X program has helped ensure
146 that Americans have access to family planning methods and related
147 preventative health services. The program has been especially
148 important for low-income women. According to the most recent
149 family planning annual report data, services were provided to
150 more than four million individuals under the program in 2017.
151 The Title X program has helped a lot of men and women in
152 my home State of Kentucky. In 2015, almost 50,000 individuals
153 in Kentucky received services at a Title X clinic, including over
154 45,000 women. The Kentucky Cabinet for Health and Family
155 Services oversees Title X-funded health centers across the
156 Commonwealth. During the most recent funding cycle, HHS awarded
157 the Kentucky Cabinet for Health and Family Services $5 million
158 for fiscal year 2019.
159 Many Title X grantees work tirelessly to provide important
160 services to families and adolescents. I am concerned, however,
161 about the program integrity issues within the Title X program
162 and that some guarantees might not always using funds in a way

163 that is consistent with the statutory intent. Indeed, I joined
164 other Members of Congress in writing a letter to HHS in April
165 2018 asking the Department to update the Title X regulations to
166 ensure program integrity with respect to abortion.
167 When Congress created the Title X program in 1970, we drew
168 a line between family planning and abortion. The Title X statute
169 specifically states that, and I quote from the statute, none of
170 the funds appropriated under this Title shall be used in programs
171 where abortion is a method of family planning, unquote.
172 Unfortunately, the regulations issued by the Clinton
173 administration that have governed the Title X program for nearly
174 2 decades have blurred the line between family planning and
175 abortion by requiring Title X grantees to refer women for abortion
176 and allowing Title X clinics to co-locate within abortion clinics.
177 The Trump administration took an important step toward
178 improving program integrity and ensuring that Title X funds are
179 used consistently with the statutory intent when the
180 administration issued the Protect Life Rule.
181 Among other things, the Protect Life Rule helps ensure
182 compliance with the statutory requirement for the Title X program
183 that none of the funds appropriated for Title X may be used in
184 programs where abortion is a method of family planning.
185 While my colleagues on the other side of the aisle are likely
186 to express outrage at the Protect Life Rule, I would like to remind

187 them that these changes make the regulatory framework governing
188 the Title X program nearly identical to the regulatory framework
189 created by the Regan Era regulations for the Title X program.
190 Just like there have been lawsuits filed against the Protect
191 Life Rule, the Regan Era regulations were also challenged in
192 court. In 1991, the Supreme Court in Russ v. Sullivan upheld
193 the Regan Era regulations and said they were permissible
194 construction of the Title X statute.
195 One of the concerns I have heard about the Protect Life Rule
196 is that it will harm women's access to contraception under the
197 Title X program. The Title X statutory language is clear and
198 requires the Title X family planning projects, quote, provide
199 a broad range of acceptable and effective family planning methods
200 and related preventative health services, unquote. The Protect
201 Life Rule includes this exact language and the most recent funding
202 announcement for the Title X program directly states that each
203 Title X project must include a broad range of acceptable and
204 effective methods of family planning, including contraception.
205 Moreover, the funding announcement notes that a broad range does
206 not necessarily need to include all categories of services but
207 should include hormonal methods, since these are requested most
208 frequently by clients among the methods shown to be the most
209 effective in preventing pregnancy.
210 Given this language in the funding announcement, I hope to

211 hear more today about how, if at all, HHS expects access to
212 contraception through the Title X program to change when the
213 Protect Life Rule is fully implemented.
214 I am also looking forward to hearing from HHS about how they
215 felt changes to the Title X program will help ensure program
216 integrity with respect to abortion, where necessary.
217 I want to thank all the witnesses for being here today.
218 And before I yield back, I would like to do a unanimous
219 consent to enter the following items into the record: An April
220 30, 2018 letter to Secretary Azar signed by myself and more than
221 150 Members of Congress; a July 10 letter to Secretary Azar by
222 140 Members of Congress, including myself; and an April 3, 2019
223 letter to Secretary Azar signed by 100 Members, including myself;
224 and a June 18, 2019 letter to Representative Bilirakis from the
225 Family Research Council.
226 Ms. DeGette. Without objection, the documents will be
227 entered.
228 [The information follows:]
229 **********COMMITTEE INSERT**********

230 Mr. Guthrie. And I yield back.

231 Ms. DeGette. The chair now recognizes the ranking member
232 of the full committee--I am sorry--the chairman of the full
233 committee, Mr. Pallone, for 5 minutes for purposes of an opening
234 statement.

235 The Chairman. Thank you, Chairwoman DeGette.

236 Today's hearing is the latest step in this committee's
237 ongoing work to hold the Trump administration accountable for
238 the dramatic changes it has proposed to our nation's Title X Family
239 Planning Program. The administration's proposal not only
240 threatens the purpose of Title X but the health of every low-income
241 woman and family that the program is intended to serve.

242 Title X is a competitive grant program that allows the
243 providers who are best equipped to meet the unique health needs
244 of a community participate in the program. And this is how the
245 program is designed and it is a hallmark for why the program has
246 been successful.

247 Take my home State, for example. The New Jersey Family
248 Planning League operates a network of Title X health centers
249 serving nearly 100,000 patients a year, including locations in
250 my district operated by Planned Parenthood. Yet, this
251 administration is promoting harmful changes to the Title X program
252 because this diverse and community-driven network of health
253 centers includes abortion providers who offer abortion services

254 with non-Title X and non-federal funds.

255 Prior to the most recent round of project awards, 40 percent
256 of all women served by Title X-funded health centers were served
257 at Planned Parenthood sites. By targeting entities that provide
258 comprehensive reproductive healthcare services, the
259 administration's Title X gag rule stands to destroy the intent
260 of the Title X program and that is to serve those with limited
261 means to access high-quality family planning and related health
262 care. By denying funding to these providers, the Trump
263 administration is making it harder for low-income women and
264 families to get the health information and care that they need.

265 In fact in his ruling preventing the administration from
266 implementing its Title X Rule, Judge McShane with the U.S.
267 District Court of Oregon stated, and I am quoting, the final rule
268 would create a class of women who are barred from receiving care
269 consistent with accepted and established professional medical
270 standards. Judge McShane went on to say that, if implemented,
271 the final rule will, and I am quoting again, result in less
272 contraceptive services, more unintended pregnancies, less early
273 breast cancer detection, less screening for cervical cancer, less
274 HIV screening, and less testing for sexually transmitted disease.
275 HHS' response to these negative health outcomes is one of silence
276 and indifference.

277 Now that is damning, in my opinion, and unfortunately,

278 indifference is far too common with the Trump administration.
279 Under President Trump and Secretary Azar's leadership, HHS has
280 repeatedly promoted policies, practices, and proposals intent
281 on sabotaging health care in our nation and ripping health care
282 away from millions of Americans. And this administration is
283 comfortable putting its divisive ideology over the needs of people
284 and families.
285 So this committee has repeatedly sought answers on the
286 administration's ongoing threats to Title X programs and, to date,
287 the responses have been woefully inadequate from nearly
288 termination of Title X projects to funding announcements that
289 undermine the value of quality family planning providers to the
290 new rule that would gag providers and limit patients access to
291 information and care, the Trump administration has been intent
292 on replacing providers' and patients' judgment with their own.
293 And for nearly 50 years, when you walked in the door of a
294 Title X health center, you could trust that every staff member
295 would treat you with dignity and respect and that you would receive
296 complete and accurate medical information. But the Trump
297 administration's actions undermine that longstanding commitment,
298 sabotaging not just the Title X program and its patients but access
299 to high-quality family planning and related health care across
300 this country.
301 As long as the Trump administration continues its efforts

302 to undermine health care for millions of Americans, this committee
303 will continue to hold it accountable.
304 I don't know if anyone wants my minute or so. If not, I
305 will yield back, Madam Chair.
306 Ms. DeGette. The gentleman yields back.
307 The chair now recognizes the ranking member of the full
308 committee, Mr. Walden for 5 minutes for an opening statement.
309 Mr. Walden. Thank you, Madam Chair, and good morning to
310 our guests and our witnesses. We appreciate you all being here
311 today.
312 Title X Family Planning programs played a critical role in
313 ensuring access to a broad range of family planning and preventive
314 health services for nearly 50 years. While the Title X program
315 is the only Federal program dedicated solely to supporting the
316 delivery of family planning and related preventative health care,
317 there are many different Federal funding sources for family
318 planning services. Some of these other important programs
319 include Medicaid, the Health Center program, Maternal and
320 Children Health Block Grants, and Temporary Assistance for Needy
321 Families. In fact in fiscal year 2015, Medicaid accounted for
322 75 percent of public family planning expenditures in the United
323 States; Title X accounted for about 10 percent.
324 Although the Title X program only accounts for a very small
325 percentage of public funding expenditures for planning services,

326 it is an important program, especially for low-income women across
327 the country. And according to the most recent family planning
328 annual report data, Title X-funded sites in my State of Oregon
329 served 44,815 Oregonians in 2017, including 41,952 women. Of
330 the Oregonians that received Title X services in 2017, nearly
331 42,000 had incomes at or below 250 percent of the Federal poverty
332 level. The types of services that Oregonians received through
333 the Title X program include but are not limited to family planning
334 services, such as education, counseling, contraception, and
335 clinical services, STD testing and treatment, and HIV testing.
336 I was pleased to see that the HHS awarded the Oregon Health
337 Authority Reproductive Health Program more than $3 million in
338 Title X funds for fiscal year 2019. OHA sub-grantees include
339 community health departments and community health centers across
340 my district. Community health centers are an important component
341 of the Title X network because these centers provide comprehensive
342 primary care for entire families.
343 Given the important services Americans receive under the
344 Title X program, I am glad that we have HHS here today to learn
345 more about the recent actions relating to the Title X program
346 and how the administration thinks that these changes will impact
347 the program, and the services offered under the programs. Dr.
348 Foley, we are glad you are here.
349 When Congress created the Title X program, Congress

350 explicitly stated, and I quote, none of the funds appropriated
351 under the Title shall be used in programs where abortion is a
352 method of family planning, closed quote. That is the statute.
353 It is important that Federal programs are implemented and
354 operated in ways that are consistent with the law. And I am,
355 therefore, interested in knowing about any challenges HHS has
356 faced in overseeing the Title X program and why the agency decided
357 to make the recent changes to the Title X program.
358 Many patients and physicians have come to rely on the Title
359 X program since it was created in 1970, which is why it is critical
360 that changes to the program do not harm patient access to the
361 important services that Congress intended be provided under this
362 program. I have heard concerns from some groups, such as the
363 National Association of Community Health Centers that the recent
364 changes to the program could potentially harm access to care for
365 some individuals. So, I hope you will be able to address that
366 issue as well today, Dr. Foley.
367 While major focus of the Title X program is to right grants
368 to clinical service providers, the program also supports other
369 priorities and initiatives at HHS, such as HHS' initiative to
370 identify and provide solutions to reduce substance abuse
371 disorders and assisting the Government's response to infectious
372 disease outbreaks that impact the ability of individuals to
373 achieve healthy pregnancies, viruses like Zika, among others.

374 While these elements of the program are not likely to be
375 a focus of our conversation today, and I understand that, I am
376 interested in hearing more about them and whether there are any
377 issues that affect family planning projects that currently are
378 not addressed by the Title X program.

379 And Madam Chair, as you know, we have a subcommittee hearing
380 going on upstairs on important pipeline safety legislation
381 concurrent with this one, so I will be going back and forth as
382 the ranking member.

383 But I appreciate all the witnesses today and the fact that
384 we are having this hearing, and look forward to the testimony
385 of our witnesses and the opportunity to ask a few questions later
386 on.

387 With that, Madam Chair, I will yield back the remaining 44
388 seconds.

389 Ms. DeGette. The gentleman yields back.

390 I would ask unanimous consent that the members' written
391 opening statements be made a part of the records. Without
392 objection, so ordered.

393 I would now like to introduce our first witness for today's
394 hearing, Dr. Diane Foley, who is the Deputy Assistant Secretary,
395 Office of Population Affairs, with the Office of the Assistant
396 Secretary for Health at the U.S. Department of Health and Human
397 Services.

398 And Dr. Foley, I am particularly happy to welcome you because
399 you are from my home State of Colorado. So welcome.
400 I am sure you know that the subcommittee is holding an
401 investigative hearing. And when doing so, has had the practice
402 of taking testimony under oath. Do you have any objections to
403 testifying under oath today?
404 Dr. Foley. No, I do not.
405 Ms. DeGette. The witness has responded no. The chair then
406 advises you that under the rules of the House and the rules of
407 the Committee, you are entitled to be accompanied by counsel.
408 Do you desire to be accompanied by counsel during your testimony
409 today?
410 Dr. Foley. Yes.
411 Ms. DeGette. And if you could, introduce that counsel,
412 please.
413 Dr. Foley. I am going to ask them to introduce themselves.
414 They are here with us.
415 Ms. DeGette. Thank you.
416 Mr. Keveney. Sean Keveney with the Office of General
417 Counsel, HHS.
418 Ms. DeGette. Thank you. So now, if you would please,
419 Doctor, rise and raise your right hand so you may be sworn in.
420 [Witness sworn.]
421 Ms. DeGette. Let the record reflect the witness responded

422 yes. You may be seated.

423 Dr. Foley, you are now under oath and subject to the penalties

424 set forth in Title 18 Section 1001 of the U.S. Code. And I will

425 now recognize you for a 5-minute summary of your written

426 statement.

427 In front of you is a series--a microphone and a series of

428 lights. The light turns yellow when you have a minute left and

429 it turns red to indicate that your time has come to an end.

430 And you are now recognized for 5 minutes.

431 STATEMENT OF DIANE FOLEY, M.D., FAAP, DEPUTY ASSISTANT SECRETARY,
432 OFFICE OF POPULATION AFFAIRS, OFFICE OF THE ASSISTANT SECRETARY
433 FOR HEALTH, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
434
435 Dr. Foley. Thank you.
436 Chair DeGette, Ranking Member Guthrie, and members of the
437 subcommittee, thank you for this invitation to appear before you
438 on behalf of the Department of Health and Human Services. I
439 welcome the opportunity to discuss the Title X Rule and the Title
440 X Family Planning Program.
441 I am the Deputy Assistant Secretary for Population Affairs
442 under the Office of the Assistant Secretary for Health. Over
443 the past year, it has been my privilege to work with professional
444 career staff, grantees, and health professionals who make it their
445 mission to ensure that Title X funds are used to provide quality
446 family planning services to the adolescents, women, and men who
447 need them.
448 My professional career has been spent practicing pediatrics
449 with a focus on adolescent health. While chief resident in
450 pediatrics, I was a Title X provider in one of the first
451 school-based health clinics in Indiana. After residency, I
452 founded and served as medical director of a pediatric practice
453 and spent the next 17 years establishing one of the largest private
454 pediatric practices in Central Indiana.

455 In 2004, I relocated to Colorado and my practice was limited,
456 at that time, to adolescent gynecology. At the same time, I
457 provided direction to a non-profit organization and implemented
458 a federally-funded sex education program in the Colorado Springs
459 area. Part of that direction included developing a program to
460 teach adolescents about sexually transmitted infections and
461 contraception. Most recently, I practiced pediatrics in a rural
462 critical access hospital in south-eastern Colorado.
463 Title X of the Public Health Service Act was enacted in 1970
464 and authorized the establishment and operation of voluntary
465 family planning projects, offering a broad range of acceptable
466 and effective family planning methods and services, including
467 natural family planning methods, infertility services, and
468 services for adolescents.
469 The Title X program serves close to four million clients
470 every year in over 3,900 clinic sites. Currently, there are 90
471 grantees using Title X funds, including State Health Departments,
472 family planning councils, Federally Qualified Health Clinics,
473 and private non-profit entities. These grantees are located in
474 all 50 States, the District of Columbia, Puerto Rico, U.S. Virgin
475 Islands, and the six Pacific jurisdictions. I am proud to direct
476 the efforts of dedicated career staff who are committed to
477 promoting health across the reproductive life span.
478 The 2019 Title X Rule ensures program integrity and

479 compliance with statutory provisions. And in particular, the
480 statutory prohibition on funding programs where abortion is a
481 method of family planning. This rule will promote quality family
482 planning services to clients, while ensuring that taxpayer
483 dollars are spent according to the original intent of Congress.
484 This rule provides for clear financial and physical separation
485 between Title X and non-Title X activities. This will assist
486 grantees and prevent reporting deficiencies. It will make it
487 clear to clients and the general public that Title X funds are
488 being used according to the law. This rule protects the
489 provider-client relationship. It is not a gag rule. Health
490 professionals are free to provide non-directive pregnancy
491 counseling, including counseling on abortion. This rule
492 protects the conscious rights of health professionals, including
493 Title X providers, grantees and applicants, by eliminating the
494 requirement to counsel about and refer for abortion. This rule
495 ensures, consistent with and eliminates any confusion about, the
496 Department's longstanding policy to respect these rights. The
497 rule does not prohibit health professionals from providing
498 medically-necessary information to clients. In fact, by
499 requiring referral for those conditions where treatment is
500 medically necessary, this rule ensures quality health care for
501 women.
502 In line with statutory requirements, referral for abortion

503 as a method of family planning is prohibited. However, referral
504 for abortion is permitted in cases where there are emergency
505 medical situations. This rule will protect women and children
506 by ensuring that every Title X clinic has a plan to report abuse,
507 rape, incest, as well as intimate partner violence, and sex
508 trafficking. This is in accordance with the individual State
509 laws. It requires that all Title X clinics provide annual
510 training for staff, not only to recognize those clients who have
511 been or are being abused but also to provide appropriate follow-up
512 for them.

513 This rule provides guidance to grantees to encourage family
514 participation in the decision of minors seeking family planning
515 services. It will advance meaningful family communication,
516 providing important support to adolescents as they make these
517 decisions. By expanding criteria for grant applications, this
518 rule will increase competition and encourage innovative
519 approaches to unserved populations. First and foremost, the
520 revisions to the Title X Rule promote the well-being of
521 individuals, families, and communities across the nation.

522 Thank you once again for having me here today. I look
523 forward to discussing how this rule will ensure the Title X program
524 remains in compliance but also fulfills the original purpose of
525 Congress so that more adolescents, women, and men are able to
526 achieve their family planning goals.

527 [The prepared testimony of Dr. Foley follows:]

528

529 **********INSERT 1**********

530 Ms. DeGette. Thank you so much, Dr. Foley.

531 The chair now recognizes herself for 5 minutes for questions.

532 On June 1, 2018, as we noted, HHS published a proposed rule
533 to revise Title X and HHS received over 500,000 comments on the
534 rule. I just wanted to ask you about a couple of those
535 organizations that commented.

536 Many of the leading health organizations, over 19 of them
537 representing 4.3 million providers, submitted comments that
538 opposed the new proposed regulations. The American Medical
539 Association, for example, said quote, we are very concerned that
540 the proposed changes, if implemented, would undermine patients'
541 access to high-quality medical care and information, dangerously
542 interfere with the physician-patient relationship, and conflict
543 with physicians' ethical obligations, exclude qualified
544 providers, and jeopardize public health, end quote.

545 Were you aware of that AMA letter when you finalized the
546 rule, Dr. Foley?

547 Dr. Foley. Yes.

548 Ms. DeGette. And in a comment letter, the American Academy
549 of Pediatrics stated, quote, policy decisions about public health
550 must be firmly rooted in science and increased access to safe,
551 effective, and timely care. The proposed rule would interfere
552 with the patient-provider relationship, exacerbate disparities
553 for low-income and minority women, men, and adolescents, and harm

554 patient health, end quote.

555 Were you aware of this letter by the American Academy of

556 Pediatrics when you finalized the rule, Dr. Foley?

557 Dr. Foley. Yes.

558 Ms. DeGette. And in another letter, the American College

559 of Obstetricians and Gynecologists stated, quote, the proposed

560 rule regulates how providers talk to their patients and restricts

561 the provider's ability to offer the patient his or her best medical

562 judgment. The proposed rule uses medically inaccurate language,

563 placing political ideology over science, end quote.

564 Were you aware of ACOG's letter when you finalized the rule,

565 Dr. Foley?

566 Dr. Foley. Yes.

567 Ms. DeGette. And in its letter, the American Public Health

568 Association stated, quote, the proposed rule would significantly

569 and detrimentally alter the Title X Family Planning Program, which

570 has provided vital sexual and reproductive health services to

571 people across the country for more than 40 years, end quote.

572 Were you aware of APHA's letter when you finalized that rule,

573 Doctor?

574 Dr. Foley. Yes.

575 Ms. DeGette. Now these are just four of the major medical

576 associations that opposed the rule. Also opposing the rule were

577 the American College of Physicians, the American Academy of Family

578 Physicians, the American Academy of Nursing, and so on.

579 Now, I just wanted to ask you with seemingly every major
580 national provider organization, the science organizations
581 sounding the alarm, that rule was finalized with the most
582 disconcerting provisions intact. Would you say you ignored the
583 views and analyses of these leading health organizations? And
584 if not, how did you take their views into consideration?

585 Dr. Foley. The Department would respectfully disagree with
586 the premise of the question, in that the rule clearly allows for
587 providers to have full and open conversation with their clients
588 or patients, according to the statute. There is no--

589 Ms. DeGette. Well, let's talk about that statute for a
590 second because, as noted by both my colleagues and by you, the
591 statute says that abortion cannot be used as a form of birth
592 control. Is that right?

593 Dr. Foley. As a method of family planning.

594 Ms. DeGette. Right. So I guess I wanted to ask you, are
595 you aware of Title X money being used for abortions either for
596 as a method of family planning or otherwise? Do you have evidence
597 of that?

598 Dr. Foley. The Department, in writing the rule, had grave
599 concerns about the possibility of--

600 Ms. DeGette. That's not my question, Doctor. My question
601 is, Did the Department have evidence that Title X money was being

602 used in violation of the statute to use abortion as a method of
603 family planning?
604 Dr. Foley. There is evidence of significant confusion
605 surrounding what Title X is being used for.
606 Ms. DeGette. That is not what the statute says, Doctor.
607 That's not what the statute says.
608 In order to promulgate a rule, the Department is going to
609 have to find that there is some violation of that statute. And
610 what I am hearing from you is that there is no evidence that you
611 are aware of that Title X money is being used to provide abortions
612 as a method of birth control.
613 Dr. Foley. If you remember in 1988 the Department also
614 promulgated a rule that was very similar to this rule. That rule
615 was also reviewed by the Supreme Court and, at that time, the
616 Supreme Court stated that that was an acceptable interpretation
617 of Section 1008 of the--
618 Ms. DeGette. Well--
619 Dr. Foley. And so in that case, the Department has the
620 ability to place in regulation--
621 Ms. DeGette. Okay.
622 Dr. Foley. --rules that help to govern and make sure that
623 there is statutory compliance in the Title X program.
624 Ms. DeGette. So I would just point out that that regulation
625 was more than 30 years ago and the legislation has been clarified

626 that in its prohibition on Title X abortion funding, you can still
627 have nondirective counseling of pregnant women.
628 The chair now recognizes the ranking member for 5 minutes.
629 Mr. Guthrie. Thank you very much and I want to follow on
630 what you just said with nondirective pregnancy counseling. One
631 of the major provisions of the Protect Life Rule, which was
632 proposed in June 2018 and finalized in March 2019 is that it
633 permits but no longer requires nondirective pregnancy counseling,
634 including nondirective counseling on abortion to be provided by
635 physicians, practitioners, and nurses with advanced degrees.
636 So Dr. Foley, what is nondirective pregnancy counseling,
637 and why was such counseling previously required, and why has HHS
638 revised it now so that nondirective counseling is permitted but
639 not required?
640 Dr. Foley. The 2000 regulation discusses the fact that it
641 does not require pregnancy counseling. It says if there is
642 pregnancy counseling, that it must be nondirective. And
643 nondirective is defined in the fact that information is given
644 but the provider does not direct the client one way or the other,
645 it does not support one way or the other in their counseling.
646 So it is nondirective counseling.
647 The Department felt very strongly that it was not appropriate
648 for there to be regulations that specifically required or
649 specifically prohibited any conversation of healthcare providers

650 with their clients, that that needed to be up to the discretion
651 of the clients and the provider. And that is why in the final
652 rule that it is permitted but it is not required.
653 Mr. Guthrie. So all these organizations that letters were
654 just quoted from can still have these conversations with Title
655 X funds--
656 Dr. Foley. Absolutely.
657 Mr. Guthrie. --but they are just not mandated to do so.
658 Dr. Foley. Exactly.
659 Mr. Guthrie. So we are not interfering with a doctor-client
660 relationship that the previous law/rule actually does that, the
661 law that--
662 Dr. Foley. The regulation that we are currently under
663 because of the enjoined new rules states that if the patient
664 requests it, the provider is required to provide that information
665 to them.
666 Mr. Guthrie. So it has to be requested.
667 Dr. Foley. Again, that is requiring a physician to talk
668 about something and that is, to me, very similar to prohibiting
669 them from talking about something, which is why the Department
670 felt like that it needed to be very clear.
671 Mr. Guthrie. Let me get to another. In your testimony,
672 you state the Title X statute says, quote, we have said this a
673 couple of times, none of the funds appropriated under this Title

674 shall be used in programs where abortions are a method of family
675 planning. This is different from the traditional Hyde Amendment
676 that says none of the funds may be used for abortion or health
677 benefits that include abortion.

678 Can you explain why the reference to quote, a program where
679 abortion is a method of family planning is so important?

680 Dr. Foley. There is a difference between paying for the
681 procedure itself and also in any way encouraging or supporting
682 that. And that is why in Section 1008, where it said these funds
683 may not be used in a program where abortion is considered a method
684 of family planning, the Secretary's opinion, the Department's
685 opinion, is that if as a part of that you are referring a client
686 for a service of family planning, you are, indeed, are violating
687 Section 1008.

688 Mr. Guthrie. Thanks. I want to get another question.

689 There has been some concern that the new rule about the access
690 to contraception, which is different from the issue we just
691 discussed. As you noted, in the Title X Family Planning must
692 offer a broad range of acceptable effective family planning
693 methods and services. The broad range doesn't need to include
694 all categories but, according to fiscal year 2019 funding
695 announcement, should include hormonal methods of contraception,
696 which is probably the most commonly requested I understand.

697 So why does the funding announcement say Title X grantees

698 should include hormonal methods of contraception?

699 Dr. Foley. Because that is an important part of providing
700 a broad range of effective and acceptable family planning methods
701 and services. It is interesting to note that the 2000 regulation
702 does not mention contraception as a requirement. It simply
703 states the acceptable and effective.

704 This regulation, the new regulation specifically includes
705 contraception in the requirements for what a grantee must provide
706 within their project.

707 Mr. Guthrie. So that must be provided in that project.

708 So how does the--so we are going back to the previous issue
709 on funding of family planning in relation to abortion, how does
710 that provision of the rule interact with the Weldon Amendment,
711 which prevents HHS funding recipients from discriminating against
712 healthcare providers because they refuse to provide, pay for,
713 or refer to abortion?

714 Dr. Foley. There is support there and that is because there
715 are Federal statutes that support the ability for someone to not
716 refer for abortion or counsel about abortion as a result of a
717 conscience for them.

718 Mr. Guthrie. Thank you.

719 My time has expired and I yield back.

720 Ms. DeGette. I thank the gentleman.

721 The chair now recognizes the gentlelady from Illinois, Ms.

722 Schakowsky, for 5 minutes.

723 Ms. Schakowsky. So in 1967, an eager supporter of
724 federally-funded family planning wrote to Congress and said,
725 quote, no American woman should be denied access to family
726 planning assistance because of her economic condition and that
727 supporter was President Richard Nixon. And the next year, the
728 Title X Family Planning Program was finally enacted into law with
729 broad support. Co-sponsors of the legislation that established
730 the program included several Republican members, including
731 then-Congressman George H. W. Bush. And at the time, there was
732 an understanding on both sides of the aisle that many Americans,
733 and especially low-income women, were having unintended
734 pregnancies than they wanted.

735 And both Democrats and Republicans understood that the
736 primary driver of this phenomenon was inequitable access to
737 contraception and reproductive health services.

738 Researchers suggest that unintended child-bearing increases
739 poverty, limits education, reduces women's ability to participate
740 in the workforce, and was an overall detriment to the health of
741 women and girls. And so, the United States listened to the
742 experts, considered the facts, followed the science, and
743 established Title X. And almost 50 years later, what we are
744 looking at is the Trump administration deciding to turn back the
745 clock and really, in many ways, decimate for many people the robust

746 network of family planning providers across every State--so far,
747 still Missouri has availability of full range of reproductive
748 health--in our nation.
749 So here is--I think this is all about abortion. The name
750 of the bill, the rule that was passed--what is it--Protect Life,
751 something like that. This is about abortion. This is about
752 trying to limit women from having their full reproductive rights
753 because what doctors, then, have the option of is either
754 withholding critical information and limiting care to their
755 patients, leaving the program and scaling back clinic services,
756 laying off staff, or closing their doors due to the limited
757 resources. And all of these options are completely unacceptable.
758 The chairwoman of the subcommittee listed all of the groups,
759 literally all of the health provider groups, that oppose this
760 rule and have written very carefully what they said. Nineteen
761 leading women's healthcare provider groups, medical
762 organizations, and physician leaders have stated, and here is
763 a quote, this regulation will do indelible harm to the health
764 of Americans and to relations between patients and their
765 physicians by forcing providers to omit critical information
766 about health, health care, and resources available. The final
767 regulation directly undermines patient confidence in their care.
768 There is no room for politics in the exam room. This is the
769 politics of abortion that we are dealing with right now.

770 And I want to just state for the record women are not going
771 back. Women are not going back. This is not going to be
772 tolerated right now. And what I don't understand--are you saying
773 that any clinic now that provides comprehensive health care,
774 comprehensive scientific health care, can no longer co-locate
775 with any clinic that itself separately provides abortion?
776 Dr. Foley. Yes, that is what the new rule states.
777 Ms. Schakowsky. So the many, I don't know what the number
778 is, but the many clinics that do provide the whole range of health
779 care, those clinics, some that are the only provider in a
780 community, will have to somehow change their way of functioning
781 entirely. Do you not think that is going to be a difficult
782 process?
783 Dr. Foley. Again, it is not whether or not it is going to
784 be difficult, that is not the issue that this regulation is
785 addressing. It is addressing the fact that the statute says that
786 these funds may not be used in a program where abortion is a method
787 of family planning. And that, again, has been part of the statute
788 since it was developed.
789 Ms. Schakowsky. This is not going to stand and women around
790 this nation are not going to tolerate that.
791 Thank you. I yield back.
792 Ms. DeGette. I would just point out that is not what the
793 statute says. We can get to that later.

794 I would now recognize the ranking member of the full
795 committee, Mr. Walden, for 5 minutes.
796 Mr. Walden. Thank you, Madam Chair.
797 Again, Dr. Foley, thank you for being here.
798 What can physicians operating in a Title X clinic do under
799 the 2000 regulations that they can no longer do under the Protect
800 Life Rule? I think that is the heart of the matter here.
801 Dr. Foley. There is nothing that physicians, healthcare
802 providers, nothing that they cannot do except refer for abortion.
803 Mr. Walden. For family planning purposes or for any
804 purposes?
805 Dr. Foley. For family planning purposes--no, for family
806 planning purposes. They are permitted to refer for abortion in
807 the case of a medical situation or in the case of rape or incest.
808 Mr. Walden. Okay.
809 Dr. Foley. However, for family planning services, the
810 prohibition against referral for abortion as a method of family
811 planning.
812 Mr. Walden. And is it your position that the underlying
813 statute already precludes that?
814 Dr. Foley. Yes.
815 Mr. Walden. So why did HHS make these changes? What you
816 were asked earlier, you didn't really have a chance to respond
817 in depth. Was there any evidence of misuse of program dollars?

818 Dr. Foley. The Secretary felt that there was significant
819 opportunity for commingling of funds when there was co-location
820 of family planning provided services in a single location where
821 abortion was provided. There was opportunity for commingling
822 of funds.

823 He also went on to state that if, by being co-located, a
824 Title X provider was able to benefit from economy of scale,
825 fungibility of funds in any way, that also would be in violation
826 with Section 1008, which required that these funds may not be
827 used in a program where abortion is a method of family planning.

828 And based on his opinion, based on the opinion of the Supreme
829 Court finding that, again, this was a reasonable interpretation,
830 they also found those regulations to be completely clear from
831 any violation, statutory or constitutional as a result of that.

832 Mr. Walden. Okay. Some Community Health Centers are
833 concerned the changes to Title X will interfere with the
834 patient-provider relationship by limiting the provider's ability
835 to give their patients comprehensive information, even when the
836 patient directly asks for that specific information.

837 So my question is, Once the Protect Life Rule is fully
838 implemented, is there any information that a physician operating
839 in a Title X clinic will no longer be able to share with his or
840 her patient?

841 Dr. Foley. There is not.

842 Mr. Walden. None?

843 Dr. Foley. No, they are completely free, in a nondirective
844 way, which is mandated by Congress, that any counseling must be
845 nondirective. However, they are not prohibited from having full
846 conversations, answering those questions that their clients have.

847 Mr. Walden. So if a client came in and they had a child
848 that they were expecting determined to have a medical problem
849 that could be fatal, could that doctor say here are your options:
850 you could terminate the pregnancy today; you could do
851 compassionate care; or you might do some extraordinary activity
852 after birth?

853 Dr. Foley. Yes, they are free to provide counseling on all
854 of the options, including the options of abortion for their
855 client.

856 Mr. Walden. Okay. Now as I mentioned earlier, my district
857 is--well, it's bigger than any State east of the Mississippi,
858 so getting access to care for Oregonians is really essential in
859 these very rural, underserved areas. They have three counties
860 with no doctors and hospitals, hundreds of miles in-between.

861 So talk to me, given your experience as a pediatrician, as
862 somebody who has served in these sorts of areas, are a change
863 to the rules going to adversely affect my constituents' ability
864 to access reproductive health services and health care in these
865 Community Health Centers?

866 Dr. Foley. One of the other changes in this regulation and
867 rule is to encourage grantees to apply who have shown innovative
868 ways to address services for those particularly in unserved or
869 underserved areas, particularly rural areas. And we are hopeful
870 that there will be grantees that will provide those services that
871 currently are not being provided in some areas.
872 Mr. Walden. Because I understand under perhaps the existing
873 contract grant application process, one of the criteria is to
874 look at total number of people served. And as I said, I have
875 got counties with less than 2,000 people and hundreds, and
876 hundreds, and hundreds of square miles. And it seems to me, under
877 the current rules, they could be excluded.
878 Dr. Foley. Again, those criteria are not exclusionary.
879 It is one of the factors that we look at to determine who provides
880 the best coverage for a broad range. Those are not exclusionary.
881 However, I agree with you that if there is increased rural
882 coverage, there may be a decrease in the total number of patients
883 serviced. However, the opinion of the Department is that--
884 Mr. Walden. Un-accessed.
885 Dr. Foley. --in urban areas, there are other access areas
886 for them.
887 Mr. Walden. Thank you. My time has expired.
888 Thank you, Madam Chair.
889 Ms. DeGette. Thank you so much.

890 The chair now recognizes Dr. Ruiz for 5 minutes.

891 Mr. Ruiz. Thank you, Chairwoman.

892 Dr. Foley, my name is Dr. Raul Ruiz and doctor to doctor,
893 I want to tell you I am very concerned about the proposed changes
894 to the Title X Family Planning Program.

895 I represent the constituents of California's 36th District
896 to rely on the services of seven health centers that are Title
897 X-funded and most of them function in underserved, hard to reach
898 communities.

899 The Title X program has been in place for 50 years and helps
900 around four million people very year by providing them with
901 essential services like birth control, HIV/STD testing, men's
902 health care, and pregnancy testing. And Dr. Foley, as you
903 mentioned, you are a former Title X provider. You and I know
904 that the program helps low-income, uninsured individuals, and
905 individuals who live in rural areas.

906 The administration's recently published final rule on Title
907 X will harm the four million people it is intended to help. One
908 of the provisions in the final rule prohibits Title X providers
909 from referring their patients for abortion services, even if
910 specifically requested.

911 Now you just heard an example about an extreme case, where
912 somebody's health is on the line but how about the 13/14-year-old
913 made a mistake, comes into the clinic, says I want to know my

914 different options. Mother is there with her and says, What are
915 my options? Can you refer me to an abortion clinic? Just for
916 family planning, saying it is not my time, I am not prepared,
917 I am in a dysfunctional situation. Can that doctor refer that
918 patient to an abortion service clinic?
919 Dr. Foley. According to the statute, abortion cannot be
920 used--the funds cannot be used in that.
921 Mr. Ruiz. So no. So no.
922 And the other thing that this bill does is that it leaves
923 doctors to decide whether or not to follow certain guidelines,
924 whether or not to even refer them, even if they ask as well.
925 And that is a problem, you see.
926 We all know that Title X funds do not go towards abortion.
927 It never has. And you cannot even give us one example of any
928 violation of that statute or one example of Title X money going
929 towards abortion. You can't even give us an example. That fear
930 is unfounded.
931 Last year, the New England Journal of Medicine published
932 a perspective that stated that this rule, in fact, changes
933 implemented in April 2017 already allow grantees to shift Title
934 X funds away from sites that also provide abortion. It already
935 does. Several statute and appropriation restrictions already
936 protect providers who refuse on the basis of conscience to refer
937 clients for abortion service. They already have that option.

938 These proposed regulations go farther by restricting
939 providers' ability to deliver sound patient care in, essentially,
940 dismantling the well-established, well-functioning Title X care
941 system, disregarding local community care systems and policy
942 preferences. The consequence changes in the Title X system are
943 likely to increase unintended pregnancy rates in the most
944 vulnerable segments of the population and are, thus, more likely
945 to increase than to reduce the incidence of abortions.
946 I represent a district with rural and underserved areas and
947 this rule would create barriers that disproportionately impact
948 low and rural communities and augment the unsafe use of abortions.
949 Given your training and background as a pediatrician, do
950 you agree that the patient-provider relationship must be built
951 on trust?
952 Dr. Foley. Yes.
953 Mr. Ruiz. Numerous medical associations have strongly
954 opposed the rule for this very reason, including the American
955 Medical Association, the American Academy of Pediatrics, the
956 American College of OB/GYN, and the American Nurses Association.
957 In fact, the AMA, quote, says the ability of physicians to have
958 open, frank, and confidential communications with their patients
959 has always been a fundamental tenet of high-quality medical care.
960 The proposed rule would violate these core principles by
961 restricting the counseling and referrals that can be provided

962 to patients and by directing clinicians to withhold information
963 critical to patient decisionmaking.
964 The exact same example that I told you of a young adolescent,
965 maybe 18-year-old, 17-year-old coming in saying I want to know
966 all my options. If that doctor cannot give that patient the full
967 spectrum and help that patient understand the full risks of
968 all--and benefits of that clinical case of all the different
969 options available to that woman or girl, then they are violating
970 their patient trust relationship. And that's why many
971 organizations and many doctors, including myself, are opposed
972 to this rule.
973 I yield back my time.
974 Ms. DeGette. The gentleman yields back.
975 The chair now recognizes Dr. Burgess for 5 minutes.
976 Mr. Burgess. Dr. Foley, let me just give you a chance to
977 respond to what you just heard.
978 Dr. Foley. There is nothing in the rule that prohibits a
979 healthcare provider from giving the full range of information
980 about all the options, including everything you just said. There
981 is nothing that prohibits them from giving all of that information
982 to their clients.
983 Mr. Ruiz. You told me--
984 Mr. Burgess. Actually, reclaiming my time, Doctor.
985 Now, it was also asserted that the rule creates barriers

986 to care. Can you address that?

987 Dr. Foley. The new rule?

988 Mr. Burgess. The new rule.

989 Dr. Foley. The barriers to care that it may create, there

990 are many providers that avoid being a part of the Title X program

991 because of the current regulation that states that they are

992 required to refer for abortion and that they are required to have

993 counseling about that. And so there are a number of providers

994 that don't participate, as a result of that.

995 Mr. Burgess. Very well. And I know Mr. Guthrie asked you

996 some questions on the nondirective counseling part. And just

997 to follow-up on that a bit, you did say that it was up to the

998 discretion of the client and the provider. Can you clarify that?

999 Dr. Foley. The counseling is client-directed, based on the

1000 questions they are asking and what they have. The nondirective

1001 counseling is there is instruction that you provide the options,

1002 a full discussion of the options that they have and explain that

1003 to them. There is no prohibition on having that conversation.

1004 Mr. Burgess. Now we also heard that the nondirective

1005 counseling was equivalent to a gag rule. Can you address that?

1006 Dr. Foley. If you were prohibited from counseling about

1007 a certain area or prohibited from having that conversation, that

1008 would be a gag rule. The fact of the matter is, this new rule

1009 gives providers, does not prohibit them, in fact it allows them

1010 to have that conversation, whatever conversation they would like
1011 to have with their clients.
1012 Mr. Ruiz. Would the gentleman yield?
1013 Mr. Burgess. No. The other issue, of course, is
1014 co-location and how is this rule addressing the co-location,
1015 commingling aspect?
1016 Dr. Foley. There is great concern that co-location
1017 increases the opportunity for commingling of funds for
1018 fungibility for using of the funds for infrastructure and other
1019 things. That was a significant concern, enough of a concern for
1020 the regulation to be changed. What is interesting is that that
1021 concern was upheld by the number of comments we receiving showing
1022 significant misunderstanding of what the rule actually states,
1023 and talking about the need for abortion to be a part of what is
1024 covered, and significant confusion not only from commenters but
1025 as well as the general public.
1026 So in order to have statutory compliance with integrity,
1027 the final rule was engaged in the way that it was.
1028 Mr. Burgess. So let me ask you this. State flexibility
1029 and competition don't seem like they have always been given a
1030 high priority within the Title X program. How does the new rule
1031 aim to increase diversity amongst grant applicants?
1032 Dr. Foley. Part of the priorities are to look for innovative
1033 ways to, again, address areas that are underserved or unserved

1034 as a result of the Title X program and funding. So with those
1035 changes, that is encouraged and grantees are encouraged to provide
1036 those types of services, as they apply for this.
1037 Again, this is a competitive grant process. And so part
1038 of that competition is looking to see what provides the best
1039 coverage and into the areas of priority.
1040 Mr. Burgess. So you noted that the 2019 final rule requires
1041 medically-necessary referrals, such as referrals for prenatal
1042 care, for the health of the mother, as well as the baby. Was
1043 medically-necessary care for prenatal care not required under
1044 the previous rule?
1045 Dr. Foley. That is right, it was not required.
1046 Mr. Burgess. So what prompted you to add this portion to
1047 this rule?
1048 Dr. Foley. The idea of medical necessity was very
1049 important, particularly with the changing climate that we have
1050 seen with increased maternal mortality. And we know that the
1051 earlier someone who is pregnant is referred for prenatal care,
1052 the more likely they are to have a better outcome, both for them
1053 and for the child. And so in that case, that was the reason that
1054 this was considered a medical necessity that they would be
1055 referred.
1056 Mr. Burgess. And you may mark me down as being supportive
1057 of that change.

1058 So I will be happy to yield the last 16 seconds to Dr. Ruiz.
1059 Now, he's absent. Absent without leave.
1060 So Dr. Foley, just thank you for being here and testifying
1061 today. It has, I think, added a positive measure to the
1062 discussion.
1063 And I will yield back.
1064 Ms. DeGette. The gentleman yields back.
1065 The chair would just note that the rule says that medical
1066 professionals can have a full conversation, including about
1067 abortion but only--even if the patients asks, but only in the
1068 situation of medical necessity, rape, or incest. So at other
1069 times, they would be prohibited from having those conversations.
1070 The chair will now recognize the chair of the full committee
1071 for 5 minutes.
1072 The Chairman. Thank you, Madam Chair.
1073 I am obviously opposed to this rule but the thing that strikes
1074 me is how it is totally unnecessary. Just as an example, the
1075 proposed rule sets about requiring onerous physical and financial
1076 separation between Title X programs and those from abortion
1077 services, including referral, counseling, and any activity
1078 related to abortion. And the justification given by HHS is that
1079 it will, and I quote, protect against the intentional or
1080 unintentional commingling of resources. Yet, I don't see any
1081 evidence that this is actually happening, that there actually

1082 is commingling of resources.

1083 So I wanted to ask Dr. Foley, isn't it true that the Office

1084 of Population Affairs already had robust grantee reporting

1085 program reviews and auditing process in place before the proposed

1086 rule? Yes or no. You can just say yes or no if you want.

1087 Dr. Foley. There are provisions for that in place, however,

1088 that is not spelled out in the current regulation.

1089 The Chairman. Now you said, I guess in response to Dr. Ruiz,

1090 that there has been confusion whether Title X funds have been

1091 inappropriately used to perform abortions. I think that is what

1092 you said. If you disagree, you can say.

1093 But are there formal OIG audits? And if so, can you point

1094 to any in this regard that you know lead you know with regard

1095 to your statement about the confusion?

1096 Dr. Foley. The purpose of this was, again, to make sure

1097 that there was integrity and that the original intent was

1098 followed.

1099 The Chairman. But I mean were there any OIG audits?

1100 Dr. Foley. Not that I am aware of.

1101 The Chairman. All right. In his order granting a

1102 preliminary injunction on the implementation of the Title X rule,

1103 Judge McShane, who I quoted earlier, said, I quote, despite the

1104 nearly 50-year history of Title X, HHS cannot point to one instance

1105 where Title X funds have been misapplied under past or current

1106 rules.

1107 And I guess perhaps this explains why the American Medical
1108 Association said in their comments on the rule, and I quote, that
1109 HHS fails to justify why physical separation is needed. So Dr.
1110 Foley, can you understand why the AMA and other medical and public
1111 health organizations point to a lack of justification for the
1112 new rule when HHS itself can't provide evidence that the
1113 additional physical separation requirements are necessary?

1114 Dr. Foley. Again, the program integrity is the purpose of
1115 this rule. It was--that was the motivation for writing that,
1116 to make sure that according to statute that these funds are not
1117 used in a program where a program is a method of family planning.

1118 The Chairman. Well I understand what you are saying but
1119 I mean the problem is you know you go in to do these proposed
1120 rules, you are trying to say, accomplishing something which we
1121 don't even know whether or not there is a problem, and you yourself
1122 are saying there is some confusion about whether there really
1123 is a problem.

1124 So I mean it is all very nice to say you are trying to
1125 accomplish something but you create all this mischief at the same
1126 time. I don't mean you but you know the Department.

1127 I mean because HHS' Title X rule has been enjoined by the
1128 judge, the longstanding requirements for Title X remain in place
1129 and this includes a requirement that all pregnancy counseling

1130 must be nondirective, including information on all available
1131 options, including adoption, prenatal care, abortion. Yet, last
1132 week HHS has stated that it will not enforce this requirement
1133 with regard to abortion referrals.
1134 So Dr. Foley, does HHS intend, in your opinion or if you
1135 know, does HHS intend to enforce other requirements for Title
1136 X projects, namely, that they must provide the full range of
1137 medically-approved contraceptives, including hormonal and
1138 long-acting options, do you know?
1139 Dr. Foley. What they were referring to in that specific
1140 situation was the protection that is provided under a number of
1141 federal laws for conscious protection.
1142 The Chairman. Well, I understand that, but what I am--
1143 Dr. Foley. And what they were not going to be able to
1144 enforce--
1145 The Chairman. --concerned about though is that if HHS
1146 doesn't enforce these other requirements, that they have to
1147 provide the full range of contraceptives, hormonal, long-acting
1148 options, I am just afraid that you know they are just going to
1149 give out Title X funds to some group that you know just wants
1150 to narrowly focus their medical advice or whatever, or their
1151 advice on just a few things and not the full range of options
1152 in terms of family planning. And that is not what we intend with
1153 Title X.

1154 Dr. Foley. The Title X will continue to, as it has, require
1155 that grantees provide a broad range of effective and acceptable
1156 family planning methods and services. That will continue to be
1157 required.

1158 The Chairman. Well, I hope so because I am very concerned
1159 that what we may get into is very narrowly focused clinics or
1160 healthcare services that don't allow these, and then that becomes
1161 the full range, and then that becomes ideological in itself, which
1162 this administration is known for.

1163 In any case, I think that I certainly agree with healthcare
1164 leaders that say that the administration should retract its
1165 regulation because family planning policies shouldn't be--should
1166 be driven by facts, evidence, and necessity, not politics and
1167 ideology. And I think this is headed towards an ideological
1168 program, which is the last thing we need.

1169 But thank you for being here. I appreciate it.

1170 Ms. DeGette. The gentleman yields back.

1171 The chair now recognizes the gentlelady from Indiana, Mrs.
1172 Brooks, who, by the way, we are all very saddened about your news
1173 that you are leaving us.

1174 Mrs. Brooks. Thank you. Eighteen months to go, important
1175 work to do, and I will certainly miss this committee and the fine
1176 work that we are doing together.

1177 I do want to ask you, Dr. Foley, you lead the office that

1178 oversees these grants. Is that correct?

1179 Dr. Foley. That is correct.

1180 Mrs. Brooks. And in your written testimony, in addition
1181 to, because there is much being talked about with respect to the
1182 nondirective counseling, in your written testimony you have
1183 indicated that this final rule places a high priority on
1184 preserving the provider-client relationship and the regulation
1185 permits but does not require nondirective pregnancy counseling,
1186 including nondirective counseling on abortion. Is that correct?

1187 Dr. Foley. That is correct.

1188 Mrs. Brooks. And that is what you have said today. So this
1189 means--and I would also like to point out that the Federal
1190 Register, which has tried to explain a lot of this, and it is
1191 like 103 pages long, but it talks about nondirective counseling
1192 does not mean that the counselor is uninvolved in the process
1193 or that counseling and education offer no guidance but, instead,
1194 that the clients take the active role in processing their
1195 experiences and identifying the direction of the interaction.
1196 And they may provide, still, what I am reading. A Title X
1197 provider may provide a list of licensed, qualified, comprehensive
1198 primary health care providers, some of which may provide abortion.
1199 Is that correct?

1200 Dr. Foley. That is what the rule states.

1201 Mrs. Brooks. That is what the rule states. And so while

1202 yes, there is much discussion about this, it does not mean that
1203 nondirective counseling--what does nondirective counseling mean
1204 to you, as a doctor?
1205 Dr. Foley. Nondirective counseling means that the
1206 information is provided, the questions are answered, but I do
1207 not direct them one way or another towards a decision.
1208 Mrs. Brooks. It seems very clear but yet still, as a
1209 provider, you must and may lay out all of the options.
1210 Dr. Foley. That is correct.
1211 Mrs. Brooks. That is correct but you may not tell the
1212 patient what is best for them, or what is appropriate, or what
1213 you like, or don't like? What does that mean? Let's talk about
1214 that a little bit.
1215 Dr. Foley. When you look at the statute, what it says is,
1216 again, these funds cannot be used in a program where abortion
1217 is a method of family planning. So any encouragement of,
1218 promotion of, support of, referral for abortion would violate
1219 that standard.
1220 Mrs. Brooks. And that is Section 1008--
1221 Dr. Foley. That is right.
1222 Mrs. Brooks. --of the law that is in place.
1223 Dr. Foley. That is correct.
1224 Mrs. Brooks. I want to shift a moment to make sure that
1225 people understand that in the 2000 Title X rule, it did not mention

1226 contraception but the new rule does explicitly list
1227 contraception. Because I want to make sure people realize this
1228 rule is not trying to take away contraception.
1229 Why did you add a direct mention of contraception in the
1230 rule?
1231 Dr. Foley. By definition, when the statute requires that
1232 these grantees provide a broad range of effective and acceptable
1233 family planning methods and services, contraception is a very
1234 critical part of that and that needs to be included. And it was
1235 to clarify the fact that the intent of the Department was not
1236 to remove contraception as an option for the women, and men,
1237 adolescents that are seeking that.
1238 Mrs. Brooks. Can an entity that provides only one method
1239 of family planning service receive funding as a Title X grantee?
1240 Dr. Foley. This was actually part of the 2000 regulation
1241 as well, where it states that each sub-recipient is not required
1242 to provide all of the methods; however, within a project, all
1243 of those must be provided.
1244 So this has been something that has been in place since the
1245 2000 regulation was in place and this has just been continued
1246 into the new regulation.
1247 Mrs. Brooks. And how do you and your Department that is
1248 overseeing this entire project and the grantees, how do you
1249 determine whether or not they have provided a broad range of family

1250 planning methods?

1251 Dr. Foley. They are required to list the sub-recipients

1252 and what services they are going to be offering. And we look

1253 at those, look at the geographic area that they have indicated

1254 that they will cover, and make sure that a broad range is available

1255 in that area, as much as is possible.

1256 Mrs. Brooks. Thank you. I yield back.

1257 Ms. DeGette. The chair now recognizes the gentleman from

1258 Maryland, Mr. Sarbanes, for 5 minutes.

1259 Mr. Sarbanes. Thank you, Madam Chair.

1260 Thank you, Dr. Foley, for being here, as we discuss the

1261 implementation of the Title X gag rule, which seems to occur not

1262 just without any scientific or medical input, in my view, but

1263 in spite of those things.

1264 I want to echo what has been pointed out by my colleagues,

1265 many patients seeking care at Title X clinics have no other source

1266 of care. This is really critical. In fact, there is a 2016

1267 nationally-representative study that showed that 60, six-zero,

1268 percent of Title X patients had no other source of health care

1269 in the prior year.

1270 I am very proud that in Maryland, we have been a leader in

1271 expressing our opposition and taking action against the gag rule

1272 and the negative impacts that it would have on Maryland

1273 communities. As a State, Maryland receives about $3.2 million

1274 in annual funding from Title X. Almost half of that, $1.43
1275 million, goes to the City of Baltimore, which I represent, which
1276 uses it to provide a range of services to more than 16,000 patients
1277 annually.
1278 In the Federal lawsuit that was filed against HHS to prevent
1279 the rule from take effect, Baltimore City outlines that many Title
1280 X grantees would lose funding under this rule and the city would
1281 be then responsible for replacing that lost funding. If not
1282 replaced, the public health impacts would include an increase
1283 in unintended pregnancies, an increase in sexually transmitted
1284 infections, an increase in undetected cancers, and a decrease
1285 in access to prenatal care. Each of these issues is associated
1286 with increased healthcare costs for patients and for the city.
1287 Now you know that Title X was enacted by Congress in 1970,
1288 correct? And that represented a commitment at the Federal level
1289 to provide funding for family planning services and to make that,
1290 in part, a federal responsibility.
1291 What I am curious about is when this rule was being developed,
1292 were considerations given to how the grantees would inevitably
1293 lose Federal funding, many of the ones who are currently receiving
1294 Title X, and how this would impact the communities that they are
1295 located in? In other words, did anyone in your office consider
1296 how State and local funding would have to be diverted from other
1297 sources to support the family planning activities that would no

1298 longer be receiving Federal support? Was that part of the
1299 analysis?
1300 Dr. Foley. There is nothing about the new rule that intends
1301 to keep providers from being part of the Title X program. The
1302 purpose of the rule was to make sure that there was statutory
1303 compliance with the regulations, the mandates that are in place
1304 in the statute.
1305 And the decision for grantees--again, this is a competitive
1306 grant process, the decision for grantees is their decision to
1307 make. There was nothing in this rule that would preclude anyone
1308 from being a part of our Title X program, as long as they complied
1309 with the regulations, and the statute, and the mandates, bringing
1310 things back into compliance with the intent of Congress in
1311 establishing this rule.
1312 Mr. Sarbanes. I understand but you are sort of putting
1313 blinders on. I mean you can stick to that narrative and I
1314 understand why you are doing it but, in terms of continuing to
1315 meet the Federal Government's responsibility and intention of
1316 making sure that these kinds of services are available,
1317 particularly in low-income communities, others who have
1318 difficulty accessing this kind of care, instances where it is
1319 the only source of care, it seems to me that your office ought
1320 to have given consideration to what the practical impact would
1321 be, what the ripple effect would be. That's the kind of

1322 perspective that when you are developing a new regulation ought
1323 to be in the mix. There is no evidence that that happened here.
1324 And the impact that is being predicted from implementing
1325 this gag rule is it will have a tremendous effect on access to
1326 care and all of the services that I referred to a moment ago.
1327 So, I would recommend that you broaden the lens here and look
1328 seriously at how the effects of this rule cut against what Congress
1329 intended when it put the program in place back in 1970 and I think
1330 that that commitment represents the expectations of the broad
1331 majority of Americans across the country.
1332 With that, I will yield back my time. Thank you.
1333 Ms. DeGette. The chair now recognizes the gentleman from
1334 Oklahoma, Mr. Mullin, for 5 minutes.
1335 Mr. Mullin. Thank you, Madam Chair.
1336 Just there is a lot of confusion about what the rule does
1337 and doesn't do. And first of all, it seems like people are
1338 thinking that it makes a change to the law itself, especially
1339 when it is pertaining to abortions. But underneath Section 108
1340 it says, very specifically, it says none of the funds appropriated
1341 under this title shall be used in programs where abortion is a
1342 method of family planning. Is that correct?
1343 Dr. Foley. Yes.
1344 Mr. Mullin. Does your rule make any changes to that?
1345 Dr. Foley. No, it did not.

1346 Mr. Mullin. So this is current law that has been there since
1347 1970. Is that what we just referred to?
1348 So there is no changes to that. So some of my colleagues
1349 on the other side of the aisle now want to add to it and say that
1350 that should be an option now offered but, underneath current law,
1351 that can't be an option. Is that correct?
1352 Dr. Foley. Yes, that is correct.
1353 Mr. Mullin. And let's just say because Planned Parenthood
1354 seems to be brought up here a lot, there isn't any sources that
1355 Planned Parenthood currently offers underneath the clinics that
1356 are operating underneath Title X that changes, right? They just
1357 can't perform abortions but they have never been able to perform
1358 abortions out of the same building. Is that correct?
1359 Dr. Foley. The co-location--currently, there is
1360 co-location of a number of clinics that providing abortion as
1361 well as providing Title X services. The change in what Title
1362 X funds can pay for has not changed.
1363 Mr. Mullin. Right, so that doesn't change. You are just
1364 saying that they can't perform them out of the same building.
1365 Dr. Foley. The idea that there is the opportunity to
1366 commingle funds, there is the perception, certainly, by the
1367 public, by grantees, by other people that Title X covers that
1368 because it is in the same location, these--
1369 Mr. Mullin. As a business, sure.

1370 Dr. Foley. --are all of the things that we were concerned.

1371 Mr. Mullin. Absolutely. Well, as a business owner, the
1372 way I can cut costs from business, to business, to business,
1373 because my wife and I own multiple businesses, is that we can
1374 utilize the resources by bringing them underneath one building.
1375 We can utilize the electric. We can utilize the cost of
1376 overhead. We can utilize personnel and they can coexist
1377 underneath one umbrella and it brings down the cost. It is
1378 cost-sharing among the companies. And what we are saying is that
1379 because it is 100 percent prohibited underneath Title X from 1970,
1380 we just got to make sure that isn't happening. And underneath
1381 the new rule, you are trying to clarifying that, correct?

1382 Dr. Foley. That is correct.

1383 Mr. Mullin. Because it has been kind of a gray area because
1384 we have some on the left that think that tax dollars should be
1385 used for abortions but, yet, the law doesn't say that. The law
1386 is very, very clear.

1387 So those on the other side of the aisle, if they wanted to
1388 try to change that, then they need to change the law but your
1389 rule doesn't make a change to this. So the gag order, to whatever
1390 they are saying, they are calling it, that's actually just a myth.
1391 Is that correct?

1392 Dr. Foley. The gag rule--it is not a gag rule.

1393 Mr. Mullin. Which they refer to as a gag rule.

1394 Dr. Foley. It is not a gag rule.

1395 Mr. Mullin. Right, it is just clarification.

1396 Does the new rule help with rural areas, as far as trying
1397 to get services to family planning?

1398 Dr. Foley. It is a priority of the Department and it is
1399 made specifically in the new regulation that part of the grant
1400 application process will place a priority on serving underserved
1401 or unserved areas and many of those are rural areas.

1402 Mr. Mullin. Because a lot of times rural areas are you know
1403 overlooked because they are rural but it still is very important.
1404 My district is extremely rural and we do need resources down
1405 there. We need to make sure that we are not overlooking it, that
1406 disproportionately, the dollars are going to major metropolitan
1407 areas. It needs to be proportionately spread out to the rural.
1408 So I do appreciate that.

1409 How does it encourage parent and child communication in
1410 family planning decisions?

1411 Dr. Foley. The mandates from Congress, for a number of
1412 years, have stated that there needs to be family involvement when
1413 it comes to, particularly, adolescents in their decisionmaking.
1414 And while that has been in the mandate, there has been nothing
1415 in current regulations that actually operationalize that or
1416 explain how that should be done and how that needs to be reported
1417 back to the Federal Government if Title X funds are going to be

1418 used in that situation.

1419 Mr. Mullin. And adolescent is age--what do you consider

1420 an adolescent?

1421 Dr. Foley. Adolescent, that varies depending on who you

1422 are talking to but, typically, it is a minor, someone who is

1423 considered a minor.

1424 Mr. Mullin. Under 18.

1425 Dr. Foley. And that may change. That may change depending

1426 on the State laws and that type of thing.

1427 Mr. Mullin. Just like we have tobacco laws, just like we

1428 have drinking laws, age appropriate. This is still the same thing

1429 and this doesn't change it. It just clarifies it that it needs

1430 to--we need to do more to encourage family participation when

1431 an adolescent is facing a very, very tough decision.

1432 Dr. Foley. Right. And again, it also does clarify that

1433 there are situations if the adolescent is in danger that that

1434 is not required.

1435 Mr. Mullin. Right.

1436 Dr. Foley. For example, if we know that there is abuse going

1437 on or if it has already been reported to the State and local

1438 authorities, then the encouragement to include family is not a

1439 part of what will be done through this regulation.

1440 Mr. Mullin. Thank you.

1441 Madam Chair, I yield back. Thank you.

1442 Ms. DeGette. The chair now recognizes the gentlelady from
1443 New York for 5 minutes.
1444 Ms. Clarke. Thank you, Madam Chairwoman, and I thank the
1445 ranking member for convening this very important hearing on what
1446 can be done or should be done to safeguard quality family planning
1447 care.
1448 I am deeply concerned that, at a time when we should be
1449 discussing how to dramatically increase Title X funding and bring
1450 reproductive health care to millions of women in need, we are
1451 instead being forced to focus our oversight authority on how to
1452 protect Title X from the Trump administration's recent assault
1453 on women's reproductive rights and women's health and well-being.
1454 Despite the important mission of Title X, Federal funding
1455 has decreased by $31 million nationally since fiscal year 2010.
1456 Over $1 million of this decrease in funding has occurred in my
1457 home State of New York. Even with this decrease, Title X has
1458 remained a critical source of funding throughout New York City.
1459 Between years 2012 and 2015, 22 different organizations in New
1460 York City received Title X funding, enabling these organizations
1461 to provide comprehensive primary and reproductive healthcare
1462 services to an average of 148,000 New Yorkers annually.
1463 Three of these clinics that rely on Title X funding are
1464 situated right in my congressional district within Brooklyn,
1465 where I was born, raised, and live to this day. All three health

1466 centers provide essential sexual and reproductive health care
1467 to low-income women, women of color, and other underserved
1468 patients every day. They also provide patients with a range of
1469 preventative care services that might otherwise be out of reach,
1470 including breast and cervical cancer detection.
1471 Now, through its proposed gag rule, the Trump administration
1472 is directly undercutting Title X by forcing health centers top
1473 make the impossible choice between proper health care on the one
1474 hand and Federal funding on the other. The Trump
1475 administration's recent proposal is nothing more than an effort
1476 to undermine women in our human right to preventative health care.
1477 We must, therefore, safeguard Title X to ensure that all
1478 patients, regardless of their background, social status, or
1479 whether they have health insurance, has access to quality health
1480 care.
1481 What I find interesting is the wordsmithing that has been
1482 taking place here today. None of what you are trying to preempt
1483 has even occurred. You have yet to state anything that says that
1484 you have evidence that people are commingling dollars, that any
1485 of this is taking place. And so we are only left to what we see
1486 and know has been an ongoing assault on women's reproductive
1487 rights.
1488 So Title X serves a disproportionately high number of black
1489 and Latinx patients, compared to national rates. In fact, nearly

1490 one-third of the Title X patients are people of color. Public
1491 health professionals and leaders within communities of color have
1492 raised serious concerns regarding the potential impact of Trump
1493 administration's new Title X rule.

1494 Dr. Foley, why has HHS disagreed with the American Public
1495 Health Association's assessment of the impact of the new rule
1496 as it relates to health inequities within the United States?
1497 What the American Public Health Association says is that increased
1498 health inequities widen the gap between women who are able to
1499 access healthcare services and those who are not.

1500 Dr. Foley. There, again, is nothing in the new regulation
1501 that precludes any of our current Title X grantees from receiving
1502 funding as we move forward. Again, when we are talking about
1503 the ability for a healthcare provider to provide a full range
1504 of information to their clients, there is no restriction on that.

1505 Earlier--

1506 Ms. Clarke. I understand what you are saying but here is
1507 the thing. Most organizations are able to segregate their
1508 funding streams. And you are making it seem as though there has
1509 been this mass issue of commingling of funds. This has never
1510 been the case. You failed to document it. And it would seem
1511 to me that you would be proceeding based on fact. What you are
1512 doing is proceeding based on speculation.

1513 So my next question, Dr. Foley, is: According to black women

1514 leaders of Our Own Voice, a partnership of five black women-led
1515 organizations serving communities across the country, Title X,
1516 the gag rule, would be especially detrimental to low-income women
1517 and women of color. We already face heighten barriers to family
1518 planning resources. HHS is gambling with our lives, putting
1519 black women at an even greater risk.

1520 Dr. Foley, do you share those concerns?

1521 Dr. Foley. I disagree with the premise of your question
1522 in that this new regulation is a gag rule. I also disagree with
1523 the premise that healthcare providers are going to be forced to
1524 provide--limit the information that they give to their clients
1525 that are there. There is nothing in this rule that will preclude
1526 that from happening and that is not the intent. The intent is
1527 simply to maintain and make sure that this rule is following,
1528 is compliant with the statute that has been in place, and with
1529 the intent.

1530 Ms. Clarke. I yield back.

1531 Ms. DeGette. The gentlelady's time has expired.

1532 The chair now recognizes the gentlelady from Florida, Ms.
1533 Castor, for 5 minutes.

1534 Ms. Castor. Thank you, Madam Chair.

1535 Ms. Castor. Thank you, Madam Chair.

1536 You know almost 50 years ago America established an important
1537 public policy through Title X that birth control, and

1538 contraceptives, and family planning should be just as available
1539 to working class and uninsured women as they are to every other
1540 woman across the country. And despite all the progress we have
1541 made and all of the new modern types of birth control that have
1542 become available, many women and families still struggle with
1543 access to contraceptives, preconception care, and vital health
1544 screenings.

1545 Now, the Trump administration wants to pass a rule that takes
1546 America backwards, that deemphasizes contraceptives, and birth
1547 control, promotes abstinence and the rhythm method. This is
1548 something of a battle we fought 50 years ago, isn't it? And what
1549 strikes me is that it is clear that this Trump administration
1550 proposed rule is going to increase the number of unintended
1551 pregnancies. And don't just take it from me, that's what all
1552 of our trusted health groups have said, the American Medical
1553 Association, the American College of Obstetricians and
1554 Gynecologists, the American Public Health Association. Why are
1555 they wrong, Dr. Foley?

1556 Dr. Foley. I disagree with the premise that this new
1557 regulation is going to not emphasize contraceptives and emphasize
1558 other methods are more important. That is not what it says.

1559 Ms. Castor. Well, America is always at its best when we
1560 base policy on science. And Title X--that is particularly true
1561 for Title X because it has always been seen as the gold standard

1562 for family planning care in this country, based on the best
1563 standards of care.
1564 Now this proposed rule is going to change that. Since the
1565 year 2000, Title X regulations have stated that services are going
1566 to be a broad range of acceptable, and effective,
1567 medically-approved family planning methods and services,
1568 including natural family planning, right? That's what the
1569 regulations have said.
1570 Dr. Foley. The current regulation states that.
1571 Ms. Castor. So your final rule now would remove the
1572 requirement that methods of family planning include those that
1573 are, quote, medically approved. Instead, the rule emphasizes
1574 the provision of natural family planning over other methods.
1575 Now America's College of Obstetricians and Gynecologists
1576 have said about that, this modification appears to be diluting
1577 long-standing Title X program requirements, lowering the
1578 standards governing the services that must be offered. These
1579 changes threaten the quality of family planning available to Title
1580 X patients.
1581 Now, don't just take it from those experts. The American
1582 Academy of Family Physicians advised you that in removing
1583 medically approved from current requirements, the rule, quote,
1584 allows Title X grantees to exclude certain forms of FDA-approved
1585 contraceptives, restricting access to safe and effective

1586 contraception.

1587 Did you look at how many more unintended pregnancies will

1588 result from this rule?

1589 Dr. Foley. I would disagree with the premise that medically

1590 approved is an issue.

1591 Ms. Castor. Can you just say--can you answer directly?

1592 Did you examine how many more unintended pregnancies will result

1593 because of the change in policy?

1594 Dr. Foley. The--

1595 Ms. Castor. Yes or no?

1596 Dr. Foley. In the estimation of that, there would not be

1597 a change based on any changes made to the rule.

1598 Ms. Castor. Well why do you disagree with all of the--I

1599 mean who are we going to trust out there, Americans Obstetricians

1600 and Gynecologists, the AMA, the American Family Physicians? They

1601 are the ones that have said that this rule will lead to negative

1602 health outcomes, it will lead to more unintended pregnancies.

1603 That is, unfortunately, going to be the result when you have

1604 less contraceptive services, medically--approved, that are

1605 available to women and families across the country. You have

1606 elevated ideology over evidence in the public health and you have

1607 done so to the detriment of women and families.

1608 And I yield back at this time.

1609 Ms. DeGette. The gentlelady yields back.

1610 The chair now recognizes the gentleman from Virginia for
1611 5 minutes.

1612 Mr. Griffith. Thank you very much, Madam Chair.

1613 Dr. Foley, this does not make it so that there are less
1614 contraceptive services unless you include abortion. Isn't that
1615 correct?

1616 Dr. Foley. That is correct.

1617 Mr. Griffith. So the premise that somehow there is less
1618 contraceptive services, unless you are counting abortion, it is
1619 just not accurate.

1620 Dr. Foley. There is nothing in the rule that would lead
1621 to that.

1622 Mr. Griffith. And in fact when I read the code section,
1623 it seems pretty clear that if they were doing what the other side
1624 of the aisle seems to think they were doing, they were already
1625 in violation of the law. Am I misreading the law there? I know
1626 you are not a lawyer. You can say I am not a lawyer. It is all
1627 right.

1628 Dr. Foley. I am not a lawyer.

1629 Mr. Griffith. All right. Well, I am a lawyer and that is
1630 the way I read it. It looks like to me if what they are saying
1631 is accurate, they were--somebody was violating the law all along.

1632 Speaking about that, there has been a lot of discussion about
1633 the co-location requirements. What percentage of Title X clinics

1634 are currently in violation of the co-location requirements in
1635 the new rule?
1636 Dr. Foley. The estimate by a congressional report was that
1637 approximately ten percent of the Title X service sites are in
1638 co-location. If you look in the preamble, the discussion and
1639 the calculations that the Department made to look at economic
1640 impact with a physical separation made an estimate that possibly
1641 there would be 20 percent. So they increased that to make sure
1642 that there was enough of a balance to really properly look at
1643 what economic impact there might be for requiring physical
1644 separation.
1645 Mr. Griffith. Out of all the thousands of locations, we
1646 are talking about somewhere between 10 and 20 percent may be
1647 impacted by this. Is that correct?
1648 Dr. Foley. That is the estimation, yes.
1649 Mr. Griffith. And my understanding is is that co-location
1650 requirement is not heavy or heavily onerous. So it is something
1651 that most of these locations can probably fix fairly easily.
1652 Isn't that also correct?
1653 Dr. Foley. Again, that is a determination for those
1654 particular entities. I--
1655 Mr. Griffith. But the rule was not interpreted or it was
1656 not intended to be overly burdensome, just trying to follow the
1657 law. Isn't that correct?

1658 Dr. Foley. It is trying to make sure that we are in
1659 compliance with the statute, yes.
1660 Mr. Griffith. Amazing an administration wants to follow
1661 the statute. Just amazing.
1662 Let me ask you some other questions, if I might. Can you
1663 describe the program reviews that HHS uses to audit Title X grantee
1664 compliance with the terms of their Title X grants?
1665 Dr. Foley. We currently have a number monitoring processes
1666 in place. One of them is an extensive program review that occurs
1667 once every funding period, where there is an extensive
1668 administrative, clinical, and financial audit and review of the
1669 grantee, as well as a number of sub-recipients.
1670 Mr. Griffith. So these program reviews do extend to the
1671 sub-recipients?
1672 Dr. Foley. They do.
1673 Mr. Griffith. Okay and--
1674 Dr. Foley. Not all of the sub-recipients but there are one
1675 or two that are chosen for site visits.
1676 Mr. Griffith. And how frequently does HHS conduct program
1677 reviews or other audits of the Title X grantees?
1678 Dr. Foley. They are done once a project period. So
1679 typically, a grantee would be reviewed once every 2 to 3 years.
1680 Mr. Griffith. Okay, so we are not talking about monthly,
1681 or quarterly, or anything like that. No.

1682 And what are some of the common findings these audits have
1683 had over the last 5 to 10 years?
1684 Dr. Foley. When those have been reviewed, there are a number
1685 of administrative types of things that have shown up, as far as
1686 not reporting different kinds of things. There have been
1687 situations where there have been instances where funds have been
1688 commingled that have been a citation, again, not to the level
1689 of--when something--when we find a citation, typically, we notify
1690 the grantee of that. And then they are required to fix whatever
1691 that was, and then get back to us about how they have done that,
1692 and then we follow up again.
1693 So there have been a number of instances, over the past 5
1694 years, that have shown misunderstanding with grantees and some
1695 sub-recipients as far as what the funds can be used for and not
1696 used for.
1697 Mr. Griffith. Now my time is almost up but can you elaborate
1698 on your written testimony and tell me how the Protect Life Rule
1699 would expand innovation?
1700 Dr. Foley. Part of what the requirements in the new rule
1701 are that we would extend a--as part of the application process,
1702 that there would be priority given to grantees that show
1703 innovation in reaching underserved or unserved populations. And
1704 so looking to try to expand beyond maybe where we are having
1705 services or we are providing services already.

1706 Mr. Griffith. So the hope is that you will have a greater
1707 impact on the communities, particularly the lower income
1708 communities.

1709 Dr. Foley. Yes.

1710 Mr. Griffith. Yes.

1711 I yield back.

1712 Ms. DeGette. The chair now recognizes the gentleman from
1713 New York, Mr. Tonko, for 5 minutes.

1714 Mr. Tonko. Thank you, Madam Chairwoman.

1715 Dr. Foley, just a point of clarification before I begin my
1716 questions. You keep on saying that the rule does not prohibit
1717 discussion about abortions. That may be true. However, isn't
1718 it true that under the rule a provider can choose to withhold
1719 that information?

1720 Dr. Foley. That protection is given under the Federal
1721 statutes that protect conscience protection.

1722 Mr. Tonko. But so is it true that the provider can choose
1723 to withhold that information?

1724 Dr. Foley. Under their Federal--yes, under their Federal
1725 rights.

1726 Mr. Tonko. Well how you can say the rule preserves open
1727 communication if a provider can decide what information to share
1728 or which information to withhold from the patient?

1729 Dr. Foley. That is actually no different than the way things

1730 are currently. Providers still, for a conscience ability, are
1731 able to withhold that information now, even under the current
1732 regulation. The Department, since those Federal conscience
1733 regulations were put into place in 2006-2009, the Department has
1734 not held grantees or providers to the standard of having to refer
1735 or talk about abortion if they have a conscience objection to
1736 it.

1737 Mr. Tonko. So as we are discussing the Title X Family
1738 Planning Program today, I think it is imperative that we focus
1739 on the fact that the program was created to ensure that low-income
1740 women had access to the family planning method of their choice,
1741 that they had access to related preventative health care, and
1742 that they had access to care. Yet, if the administration's new
1743 rule were to proceed, according to the American Congress of
1744 Obstetricians and Gynecologists, and I quote, more than 40 percent
1745 of Title X patients at risk of losing access to critical primary
1746 and preventative care services.

1747 So those at risk include many in my home State of New York,
1748 where Title X supported 187 Health Centers that provide care to
1749 306,000 plus New Yorkers. Some of these patients shared their
1750 stories with me.

1751 Emily, for instance, from the Capital Region in my district,
1752 and I quote, says the only care that I could receive was from
1753 Planned Parenthood. Planned Parenthood was there for me with

1754 no judgment. They provided the necessary and affordable medical
1755 care that I needed when no one else would.
1756 Jasmine, another constituent, and I quote, as someone who
1757 has benefitted from Title X, my ability to continue seeing the
1758 healthcare provider I know and trust is on the line. My health
1759 care is not a political game. It should not matter who you are,
1760 or where you live, or what kind of insurance you have; every single
1761 person should be able to make their own decisions about their
1762 health care.
1763 I couldn't agree more.
1764 So, Dr. Foley, in your testimony you indicate that a purpose
1765 of the rule is to expand coverage and increase the number of
1766 clients served within the Title X programs. So, Doctor, has HHS
1767 conducted an analysis to estimate the number of patients who stand
1768 to lose or gain access to care under your new rule?
1769 Dr. Foley. Again, the primary purpose of the rule is to
1770 ensure that there is compliance.
1771 Mr. Tonko. No, have they conducted an analysis? I just
1772 want that answered.
1773 Dr. Foley. There has been a careful analysis of looking
1774 at coverage.
1775 Mr. Tonko. Is it a formal analysis? Can you share it with
1776 us?
1777 Dr. Foley. It is analysis that has been done as the rule

1778 was being written. It is analysis that is ongoing. We have every
1779 hope--

1780 Mr. Tonko. Well wait a minute. If it is ongoing, why would
1781 you go forward with the rule?

1782 Dr. Foley. We have every hope that we will not lose grantees
1783 already.

1784 Mr. Tonko. You have hope and you have an ongoing analysis.
1785 Did you conduct an analysis before you inducted the rule?

1786 Dr. Foley. There was analysis done that looked to see,
1787 again, what was going to be the effect of this. And our hope
1788 was, again, as I mentioned in answering another question, if the
1789 grantees that currently co-locate, that they refuse to follow
1790 that regulation, that is approximately ten percent of the sites
1791 we have currently, in looking at that, there are other clinics
1792 in those areas that would be able to take those patients. And
1793 so yes, there was that type analysis done.

1794 Mr. Tonko. Okay. Well, it doesn't seem like a strong
1795 enough analysis, as you described it.

1796 The American College of Physicians, along with other leading
1797 medical and health organizations believes that the provisions
1798 of the Title X gag rule threaten patients' access to care. They
1799 state clearly that, and I quote, the significant changes to Title
1800 X will jeopardize access to health care for vulnerable, often
1801 working, low-income patients who may have limited to no access

1802 to health insurance.

1803 So Doctor, do you still contend that the rule does not place
1804 patients' access to care at risk?

1805 Dr. Foley. Again, the rule does not preclude full
1806 conversation with clients about what they have--

1807 Mr. Tonko. But why are they wrong? Why are these people
1808 wrong in their analysis?

1809 Dr. Foley. In their analysis, I am not sure. I have not
1810 seen that analysis or talked with them. So I am not sure what
1811 they are talking about in this situation. However, there is
1812 nothing in the rule that forces physicians or health care
1813 providers to withhold information. There is nothing in the rule
1814 that would preclude the full range, broad range of effective and
1815 acceptable contraception, family planning methods to be given.
1816 It is stated in the rule that is the requirement, that is the
1817 expectation of grantees under this new rule.

1818 Mr. Tonko. Well, I have used up my time. I would hope you
1819 would provide evidence to back that claim. And with that, I yield
1820 back.

1821 Ms. DeGette. The chair now recognizes the gentleman from
1822 South Carolina for 5 minutes.

1823 Mr. Duncan. Thank you, Madam Chair.

1824 You know Republicans are being painted that we are anti-Title
1825 X and nothing could be further from the truth. In fact, I am

1826 a fan of Title X. There are about 4,000 service sites, I think,
1827 in the country that Title X funds. Only about 500 of them are
1828 Planned Parenthood.
1829 The argument from the other side is that with this Title
1830 X funding, after this rule, that many low-income Americans will
1831 no longer have access to the health resources available to them.
1832 That is just wrong because there are only 500 Planned Parenthood
1833 sites, 4,000 Title X sites. These are Federally Qualified Health
1834 Centers, which I am a big fan of. In fact, I think we should
1835 have expanded the Federally Qualified Health Centers before we
1836 allowed the Affordable Care Act to pass. We should have looked
1837 at where the rubber meets the road, where low-income Americans
1838 have access to health services on a wide spectrum at the Federally
1839 Qualified Health Centers across this country. We should have
1840 expanded the Federally Qualified Health Centers across this
1841 country, not expanding Planned Parenthood, per se, but places
1842 that are meeting the needs of the poor folks in our country.
1843 But when the Government confiscates the tax dollars from
1844 Americans, and I think the abortion issue in this country is
1845 probably about 50-50, that is just guessing off the cuff here,
1846 so 50 percent of the country doesn't want their tax dollars to
1847 go to pay for abortion services. And Government takes that money
1848 and then uses it to pay for abortions. In fact, Planned
1849 Parenthood gets about $50-60 million in Title X funds. Now not

1850 100 percent of that goes to abortion. In fact, I think it is
1851 very difficult to determine how much of that tax dollars go to
1852 abortion because the money is commingled at Planned Parenthood
1853 and some of that money pays for regular health services that
1854 Planned Parenthood provides, but some of it pays, commingled money
1855 they get from private donors, money they get from tax dollars
1856 commingled and they use to pay for all the services that Planned
1857 Parenthood provides. And so it is very difficult.
1858 Does the HHS have any concerns about the financial oversight
1859 of Title X Planned Parenthood sites and that commingling that
1860 I am talking about?
1861 Dr. Foley. That is the reason that one of the--that a part
1862 of this rule is that there is going to be physical and financial
1863 separation in the case where there is co-location because of
1864 the--to make sure that there is no commingling of funds, to make
1865 sure that there isn't fungibility that is used, and to make sure
1866 that there isn't a benefit based on economy of scale, which, again,
1867 would be against the Section 1008 of the statute.
1868 Mr. Duncan. All right. Do you agree with me that the
1869 Federally Qualified Health Centers--take Planned Parenthood out
1870 of it for just a second, but the other Federally Qualified Health
1871 Centers actually meet the needs of folks around the country?
1872 Dr. Foley. There are a lot of Federally Qualified Health
1873 Centers that are part of our Title X network that we work with

1874 and that do provide great service.

1875 Mr. Duncan. Right. Many have been calling this final rule
1876 a gag rule. In a statement released in March by Planned
1877 Parenthood, it referred to the final rule as the Trump-Pence
1878 administration's unethical, illegal, and harmful Title X gag
1879 rule. This could not be further from the truth. It is not the
1880 banning of abortion or abortion referral in the private sector,
1881 it is only governing programs that the Federal Government funds
1882 with tax dollars. As I mentioned earlier, Planned Parenthood
1883 chooses to prioritize their abortion services over the rest of
1884 the services they provide.

1885 The final rule is very clear, if Title X sites want to
1886 continue receiving Federal dollars, they simply must comply with
1887 the provisions of the final rule, which are consistent with the
1888 original statute. Go back to the original statute. It requires
1889 that none of the funds, quote, in Section 1008 of Title X says
1890 that none of the funds appropriated under this program shall be
1891 used in programs where abortion is a method of family planning.
1892 That is in the statute. That is not my words. That is in the
1893 statute.

1894 And so the rule is clear. It says that if Title X sites
1895 want to continue receiving Federal dollars, they simply must
1896 comply with the provisions of the final rule, which are consistent
1897 with the original statute. Wouldn't you agree with that? If

1898 not, they will have to seek their own private funding to continue
1899 the services, wouldn't they?
1900 Dr. Foley. I am not aware of what their financial situation
1901 is.
1902 Mr. Duncan. Right. Also under the final rule, grantees
1903 are permitted, just no longer required, to provide nondirective
1904 pregnancy counseling, including nondirective counseling on
1905 abortion to their patients. Isn't that right under the rule?
1906 Dr. Foley. That is a stamp yes.
1907 Mr. Duncan. And can you go into further detail on how this
1908 is different from the original 1988 policy?
1909 Dr. Foley. The 1988 regulation actually was more
1910 restrictive, in that it prohibited any counseling about abortion
1911 and it also prohibited referral for abortion. Again, these
1912 Supreme Court upheld that as consistent, both from a statutory
1913 as well as a constitutional standpoint, that that particular one
1914 stood that test.
1915 However, we believe, as we were looking at this rule, that
1916 we needed to make sure that health professionals were able to
1917 have conversations with their clients that they wanted to have.
1918 Ms. DeGette. The gentleman's time has expired.
1919 Mr. Duncan. Thank you very much. I yield back.
1920 Ms. DeGette. The chair now recognizes the gentleman from
1921 Massachusetts, Mr. Kennedy, for 5 minutes.

1922 Mr. Kennedy. Thank you, Madam Chair.

1923 And Dr. Foley, you said that the goal of this proposed rule
1924 is to maintain and make sure that the rule is compliant with the
1925 statute. Is that right?

1926 Dr. Foley. To maintain the statutory integrity.

1927 Mr. Kennedy. Okay. So on the Office of Public
1928 Affairs--Office of Population Affairs website, your office
1929 measures performance based on the effectiveness of contraceptive
1930 care and the access to long-acting reversible contraceptive care,
1931 LARCs. Do you have any evidence whatsoever that imposing a rule
1932 that will likely shutter essentially family planning clinics,
1933 which you have estimated to be 10 to 20 percent of them and largely
1934 in underserved communities, would force others to forego Title
1935 X funding and increase access to LARCs?

1936 Dr. Foley. The idea that--

1937 Mr. Kennedy. Any evidence?

1938 Dr. Foley. The evidence that we have is from the 500,000
1939 comments that we received. And of those comments, there were
1940 a number of them, providers, who stated that part of the reason
1941 why they were not involved with Title X was based on the
1942 requirement to refer for abortion.

1943 Mr. Kennedy. So you read--

1944 Dr. Foley. And if that was--

1945 Mr. Kennedy. Ma'am, reclaiming my time. How many of those

1946 500,000 comments did you look at?

1947 Dr. Foley. I looked at most of them.

1948 Mr. Kennedy. And you didn't have time, based off of your

1949 testimony to Mr. Tonko, didn't have time to look at a letter from

1950 the American College of Obstetricians and Gynecologists, or the

1951 AMA, or the American Academy of Family Physicians. You didn't

1952 look at those?

1953 Dr. Foley. I did read those letters.

1954 Mr. Kennedy. You did. So when you indicated to Mr. Tonko

1955 that you weren't aware of why every one of these groups is against

1956 it, you said you weren't familiar with their analysis, did you

1957 look at them or did you not?

1958 Dr. Foley. I read the letters.

1959 Mr. Kennedy. And so are you familiar with why they are

1960 against the analysis, why they are strongly, according to the

1961 AMA, strongly opposed to the final rule?

1962 Dr. Foley. What I said was that I disagreed with the premise

1963 upon which that they base their statement.

1964 Mr. Kennedy. And so those three leading organizations are

1965 not--have not approached--there is an issue with the way in which

1966 they, all three of them, conducted their studies?

1967 Dr. Foley. The issue that this was a gag rule, specifically.

1968 Mr. Kennedy. The issue that--and that is the only reason

1969 why you believe that they are against the existing--this rule

1970 is because of the gag rule function. It has nothing to do with
1971 the closure of the 10 to 20 percent of the hospitals--of the
1972 clinics across the country.
1973 Dr. Foley. That, in addition.
1974 Mr. Kennedy. In addition but you have also spent the last
1975 hour-plus saying that there is no major change in this existing
1976 rule from the existing law that is already out there. Yet, you
1977 indicated that the prior, the violation of this commingling, of
1978 which you have offered zero evidence of, zero evidence, the
1979 evidence of that was such a grave violation of that before and
1980 prior to this rule you offered a letter to work with them to try
1981 to address the commingling, and now we are closing 10 to 20 percent
1982 of the clinics across the country? That is the remedy? We are
1983 shifting from a letter to closure. That is the appropriate
1984 response?
1985 Dr. Foley. The choice to close is not of the Department.
1986 The choice to close is of the individual--
1987 Mr. Kennedy. Aside from the fact, ma'am, let's address that
1988 next point as well. You have indicated that you are not aware
1989 of the financial circumstances of these clinics, yet Kaiser Family
1990 Foundation has pointed out that it would cost up to a quarter
1991 of the existing budget of the entire program to come into
1992 compliance with the rule, a quarter.
1993 So are you familiar with that analysis?

1994 Dr. Foley. We disagreed with the premise of that
1995 discussion.
1996 Mr. Kennedy. So you disagree with Kaiser, ACOG, AMA, and
1997 American Academy of Family Physicians. Let's see who else you
1998 disagree with.
1999 You indicated that you were unaware of the financial
2000 circumstances provided by these clinics. Are you aware of the
2001 financial circumstances of the American public, yes or no?
2002 Are you aware of the fact that 40 percent of the American
2003 public cannot come up with money to spend $400 for an emergency
2004 medical bill? Yes or no?
2005 Dr. Foley. Can you repeat that question for me?
2006 Mr. Kennedy. Did you know that 40 percent of American
2007 families cannot afford an unexpected $400 medical bill?
2008 Dr. Foley. Yes.
2009 Mr. Kennedy. Did you know how many Americans would drop
2010 below 150 percent of the Federal poverty line if you subtracted
2011 out the cost of medical care?
2012 Dr. Foley. I am not aware of that.
2013 Mr. Kennedy. Seven million.
2014 Do you know the percentage of clients who rely on Title X
2015 sites are now either poor or low income?
2016 Dr. Foley. At our last report, approximately 60 percent
2017 of our--

2018 Mr. Kennedy. The data I have is 87 percent.

2019 Dr. Foley. That--

2020 Mr. Kennedy. And so your data is 60 percent. My data is
2021 87 percent. We are closing a rule that you say doesn't actually
2022 address any major change in law, that four major medical
2023 associations are against, that targets directly low-income
2024 individuals' access to critical family care, you are saying is
2025 just not that big a deal.

2026 Dr. Foley. We are not aware nor in the 500,000 comments
2027 that we got was there sufficient evidence to show that these would
2028 all close as well. Again, it was--

2029 Mr. Kennedy. There are 500 studies that I pointed out.
2030 No--

2031 Dr. Foley. Again, it was an estimation of what might happen
2032 and there was not sufficient evidence to show what would happen
2033 as a result of this.

2034 Mr. Kennedy. So ma'am, does your organization take a
2035 position on repealing the ACA mandate that contraception be
2036 available with no patient out-of-pocket costs and do you have
2037 an analysis as to how that would impact access to LARCs?

2038 Dr. Foley. The statute requires that for clients who are
2039 100 percent or below the Federal poverty level, that the
2040 contraceptive broad range are given to them at no cost.

2041 Mr. Kennedy. You support the mandate. You support the

2042 mandate.

2043 Dr. Foley. And then again, there is a sliding fee scale

2044 for those above 100 percent.

2045 Mr. Kennedy. Do you support the mandate, yes or no?

2046 Dr. Foley. We support what is in the statute, as well as

2047 required by Title X.

2048 Mr. Kennedy. And how about a $1.5 trillion cut to Medicaid,

2049 do we think that that increases women's access to long-term

2050 planning or long-term contraception care or no?

2051 Dr. Foley. That again, is beyond the scope of the Title

2052 X program.

2053 Mr. Kennedy. And how about the 14 States that have not yet

2054 expanded Medicaid? Would expanding Medicaid actually help women

2055 gain long-term access to care, yes or no?

2056 Dr. Foley. Again, that is out of the scope of what the Title

2057 X program is in charge of.

2058 Mr. Kennedy. I am sure it is.

2059 Ms. DeGette. The chair now recognizes the gentlelady from

2060 New Hampshire, Ms. Kuster, for 5 minutes.

2061 Ms. Kuster. Thank you, Madam Chair and thank you to our

2062 witness for appearing before us today.

2063 You have talked about confusion. And frankly, I think you

2064 are adding to the confusion, if you will. But I want to know,

2065 because it seems to me that this would require a physician to

2066 be omniscient, in a sense. Tell me the protocol for determining
2067 whether an abortion is sought, quote, for purposes of family
2068 planning. Walk me through. What would the question be? And
2069 just let's use as an example, a 13-year-old raped by her father.
2070 Dr. Foley. Again, the regulation allows for referral for
2071 abortion in the case of--
2072 Ms. Kuster. I am just asking you as a physician.
2073 Dr. Foley. --rape or incest.
2074 Ms. Kuster. As a physician--okay, so let's say it wasn't
2075 rape and it wasn't her father, it was the neighbor. The neighbor
2076 having sex with the 13-year-old resulting with the pregnancy.
2077 And walk me through, as a physician, the protocol for you to
2078 make the omniscient determination that this is for the purposes
2079 of family planning.
2080 Dr. Foley. What the rule states and, again, the statute
2081 states in regulation--
2082 Ms. Kuster. Just walk me through the protocol.
2083 Dr. Foley. --it does say that if it is not a medical
2084 emergency--
2085 Ms. Kuster. Right, and how would you determine--
2086 Dr. Foley. --then it is a method of family planning.
2087 Ms. Kuster. --this for the purposes of family planning?
2088 Dr. Foley. If it is--
2089 Ms. Kuster. This is the first abortion, the second

2090 abortion, the third abortion, what is using abortion for family
2091 planning?
2092 Dr. Foley. For anything other than medical emergencies or
2093 in the case of rape or incest.
2094 Ms. Kuster. Okay. And in those cases, it is prohibited
2095 to make a recommendation. You said--you talked about this
2096 nondirective. You said if the patient asks. I am talking about
2097 a 13-year-old. Like she probably doesn't even know how the
2098 pregnancy occurred. Why would she ask? What would she know to
2099 ask?
2100 Dr. Foley. Following what the statute says in Title X
2101 clinics--again, this doesn't restrict anything that a doctor can
2102 do outside of Title X-funded programs.
2103 Ms. Kuster. Well, frankly--
2104 Dr. Foley. And what that says--
2105 Ms. Kuster. --they are going to close without the Title
2106 X funding. I mean you have taken care of that.
2107 Dr. Foley. There is no evidence that shows that they will
2108 close.
2109 Ms. Kuster. So in my--I have a rural community. They would
2110 not be able to. They can't afford--this whole question of
2111 commingling, and we have heard a number of times today that there
2112 is virtually zero evidence. You have not cited any evidence of
2113 commingling of funds.

2114 So meanwhile, they can't afford to have two different sites.
2115 So trust me, they are going to close. And there is no other
2116 option in my district. These are rural communities. They cannot
2117 get there.
2118 Are you aware that in a rural community where I live there
2119 is no childcare up to 6 months? Are you familiar with that?
2120 Dr. Foley. I am not familiar with New Hampshire, no.
2121 Ms. Kuster. And are you familiar that when you have a child,
2122 and you live in a rural area, and most of the people working there
2123 do not have any paid medical leave, so they do not have any place
2124 for the child to be cared for by someone else, nor can they probably
2125 afford it if they are working on the typical wage there and the
2126 childcare is going to cost them 40, 50, 60 percent of their monthly
2127 wage.
2128 So what about the circumstance where they just simply can't
2129 afford to have a child? Is that a conversation? Say it is an
2130 older person. Say it is someone in their 20s. Say it is one
2131 of my nieces, working, unable to afford to have a child, or unable
2132 to find childcare for that child, can that conversation include
2133 how to make a determination about the pregnancy? Does it include
2134 adoption? Does it include terminating the pregnancy? What are
2135 the options that you can discuss?
2136 Dr. Foley. You can discuss with that client all of the
2137 options that are available to them as the pregnancy--

2138 Ms. Kuster. But only in a nondirective way. So only if
2139 the client asks the right questions--
2140 Dr. Foley. No.
2141 Ms. Kuster. --not if you think that this is--
2142 Dr. Foley. Nondirective means that you can--you give the
2143 options to them and then you answer the questions they have.
2144 Directive means--you don't direct them, support, encourage one
2145 or the other. That is nondirective.
2146 Ms. Kuster. Let me ask you about that because does this
2147 new rule include, say for example, a church program and the only
2148 options that they offer are the rhythm method or abstinence.
2149 Is that appropriate under this rule?
2150 Dr. Foley. Only if they also--
2151 Ms. Kuster. They would get Federal funding?
2152 Dr. Foley. Only--
2153 Ms. Kuster. They could get my tax dollars in Federal
2154 funding?
2155 Dr. Foley. Only if they are associated within their project
2156 with other locations that provide the rest of the broad range.
2157 Ms. Kuster. So that would be okay.
2158 Dr. Foley. The rest of the broad range.
2159 Ms. Kuster. A church that only offered the rhythm method
2160 and abstinence, that would be sufficient counseling for a period.
2161 And is there a medical exception to that or we will go back to

2162 the rape and incest?

2163 Dr. Foley. That, again, is under the current regulation,

2164 the 2000 regulation allows for entities to provide only one

2165 method, as long as they are associated--

2166 Ms. Kuster. I think there is a lot of confusion.

2167 Ms. DeGette. The gentlelady's time has expired.

2168 Ms. Kuster. I think this is more confusion but I yield back.

2169 Ms. DeGette. The members of the subcommittee now have

2170 finished their questioning. And so we thank other members for

2171 coming to waive on and for their interest in this topic.

2172 And the first I will recognize is Mr. Shimkus for 5 minutes.

2173 Mr. Shimkus. Thank you, Madam Chair. I am appreciate you

2174 letting us waive on. And for the record, Diane DeGette and I

2175 are pretty good friends. Sometimes we disagree but in this era

2176 of tenseness in Washington, I think that's important to put on

2177 the table.

2178 Dr. Foley, thank you for your service. And Joe Kennedy is

2179 a good friend of mine, too, but I would ask you, do you know that

2180 we have the lowest unemployment since 1969 in this economy? We

2181 do. Do you know that the tax cuts passed provided almost $3,000

2182 for a family with two kids? We do. Do you know that unemployment

2183 is at 3.6 percent, which is almost, by economists' standards,

2184 full employment? The answer is that is a fact. So better wealth,

2185 income for our citizens helps across the board.

2186 I also want to take this time, because I had to pull up your
2187 bio or parts of it, because you are a compassionate doctor in
2188 this field. Originally from Indiana, Dr. Foley founded and
2189 served as medical director of Northpoint Pediatrics. Shortly
2190 after completing a residency in pediatrics, Dr. Foley's areas
2191 of special interest are adolescent gynecology, prevention and
2192 treatment of sexually transmitted diseases, healthy family
2193 formation, and global health.

2194 Most recently, she was in part-time clinical practice at
2195 Certified Centers for CMS, a critical access hospital in Lamar,
2196 Colorado. At the same time Dr. Foley served as Director of
2197 Medical Ministries for Global Partners of the Wesleyan Church,
2198 where her responsibilities included oversight of mission
2199 hospitals in Sierra Leone, Zambia, and Haiti. Dr. Foley is a
2200 graduate of Marion College, now Indiana Wesleyan University, and
2201 the Indiana University School of Medicine.

2202 Sometimes I think it is important to know people's
2203 background. We get in a hyper partisan event, although this
2204 hearing has been conducted respectfully and I attribute that to
2205 the chair and her demeanor.

2206 A couple questions. What is the--what are some of
2207 the--because this commingling of funds and this co-location issue
2208 has always been a debate in this arena, what are some of the ways
2209 Title X grantees may spend the funds available to them?

2210 Dr. Foley. The funds that are used in Title X programs must
2211 be used to provide a broad range of effective and acceptable family
2212 planning methods and including associated preventative services
2213 as well. So in addition to providing contraception, to providing
2214 training on natural family planning methods, they also can be
2215 used for screenings that are related to health, such as screening
2216 for sexually transmitted infections, such as cancer screenings--
2217 Mr. Shimkus. Let me ask, because I filibustered and used
2218 a lot of my time, how are these types of expenses tracked?
2219 Dr. Foley. They are reported to the Federal Government and
2220 there are reports that have to be turned into the grant office.
2221 Mr. Shimkus. Let me ask another question. May Title X
2222 grantees count clients as Title X clients and also bill Medicaid
2223 for services provided to the client?
2224 Dr. Foley. Yes.
2225 Mr. Shimkus. In the Clinton era, Title X regulations put
2226 an emphasis on privacy to the exclusion of parental involvement,
2227 despite the statute and annual appropriation bills putting
2228 emphasis on parental involvement. How does this rule improve
2229 family involvement and communication?
2230 Dr. Foley. Again, the statutory and the appropriations have
2231 mandated that there needs to be family involvement. And what
2232 we have done is just require that there is a way within the patient
2233 record that it is notified that they encourage that. Again, we

2234 cannot require that there is parental consent. That is not within
2235 our purview. However, using the best adolescent development
2236 information we know now, and in fact there was a study that was
2237 just released--

2238 Mr. Shimkus. Okay, let me go. You are doing great. I have
2239 got one more I need to get in.

2240 You mentioned 2009 in this conscience protection discussion
2241 we had earlier. Who was the President at that time? President
2242 Barack Obama.

2243 Dr. Foley. It was the last administration.

2244 Mr. Shimkus. So conscience protection is very important
2245 in this whole debate and it shouldn't be discarded.

2246 With that, Madam Chair, I will yield back my time.

2247 Ms. Castor. [Presiding.] Mr. Lujan, you are recognized for
2248 5 minutes.

2249 Mr. Lujan. Thank you, Madam Chair. I want to thank you
2250 and the ranking member for this important hearing.

2251 Dr. Foley, thank you for being with us today. Dr. Foley,
2252 yes or no, are you a medical doctor?

2253 Dr. Foley. I am.

2254 Mr. Lujan. Are you familiar with both AMA's Code of Medical
2255 Ethics and the AMA's comments on the rule?

2256 Dr. Foley. Yes.

2257 Mr. Lujan. Do you agree with the AMA that this rule will

2258 cause doctors to violate medical ethics by limiting their ability
2259 to counsel their patients about all of their options and to provide
2260 referrals?

2261 Dr. Foley. What I--I do not agree that this rule limits
2262 their options to be able to talk with the patients about all.
2263 It does not limit their ability to talk about all of the options.

2264 According to the statute, referral is not--is prohibited.
2265 However, all along, Congress, as well as other bodies, have
2266 separated, and the AMA also separates out counseling from
2267 referral. Those are two different types of things.

2268 And so from a medical/ethical standpoint, I firmly believe
2269 physicians need to be fully able to have full and open
2270 conversations with their clients about all of the different
2271 options and provide that information to their patients in an
2272 ethical way. It is mandated, again by Congress, that that is
2273 done non-directively, in that information is given, questions
2274 are answered, however, one method is not--we don't direct them
2275 to make one method over another. There is not one that is
2276 encouraged more than another.

2277 Mr. Lujan. Dr. Foley, would you agree that the American
2278 Medical Association essentially wrote the book on medical ethics?
2279 Is that a fair statement?

2280 Dr. Foley. I would say that there are--there may be--it
2281 certainly is the medical body association. There are a number

2282 of people, and we found that from the 500,000 comments that we
2283 got, that disagree that this rule is in violation of medical
2284 ethics.

2285 Mr. Lujan. Do you disagree with the AMA's Code of Medical
2286 Ethics? You said you were familiar with them.

2287 Dr. Foley. I disagree with the premise of the question that
2288 this rule violates that.

2289 Mr. Lujan. No, no, that is not what I am asking. That is
2290 not what I am asking.

2291 Do you disagree with AMA's Code of Medical Ethics? You said
2292 you were familiar with them when I asked the question initially.

2293 Dr. Foley. Yes, I do not disagree with that.

2294 Mr. Lujan. You do not disagree with AMA's Code of Medical
2295 Ethics.

2296 Dr. Foley. Yes.

2297 Mr. Lujan. I heard you say yes. Is that correct?

2298 Dr. Foley. Yes.

2299 Mr. Lujan. Well here is what the AMA said about this rule,
2300 and I quote, the inability to counsel patients about all of their
2301 options in the event of a pregnancy and to provide any and all
2302 appropriate referrals, including for abortion services are
2303 contrary to the AMA's Code of Medical Ethics.

2304 Dr. Foley. And what I would say is I disagree with the
2305 premise that this rule violates that.

2306 Mr. Lujan. Dr. Foley, the folks that wrote the rule, that
2307 have a responsibility to make sure that these medical ethics are
2308 not being violated are talking about the concerns that they have.
2309 I think it is the premise of the question that you have been
2310 asked by several of our colleagues today. And so if you do not
2311 object to the AMA's Code of Medical Ethics, I think that we should
2312 listen to the experts from the AMA when they say that they have
2313 a concern that the AMA's Code of Medical Ethics are going to be
2314 violated. That is what you are requiring doctors to do.

2315 So my concern is that it would appear that HHS would be
2316 putting providers in the impossible position of choosing between
2317 their patients' rights or what the government dictates.
2318 According to the AMA, before HHS issued the final rule, Title
2319 X providers were required to advise their patients about their
2320 healthcare options according to the patient's interests. That
2321 is medical practices and accepted standards of professional
2322 ethics under the final rule. However, Title X providers are no
2323 longer held to such standards, closed quote.

2324 Why is this administration comfortable lowering the
2325 standards of provider care and dictating what can and cannot be
2326 said in a doctor's office?

2327 Dr. Foley. I disagree with the premise of that. There is
2328 nothing in the final rule that will not allow a physician to have
2329 that full conversation with their clients. That is not part of

2330 what the rule states.

2331 Mr. Lujan. So you stand by saying that the gag order that

2332 is being put in place by this administration does not restrict

2333 the conversation that doctors can have. That is what you are

2334 saying. That is your interpretation.

2335 Dr. Foley. That is true.

2336 Mr. Lujan. And you would fight to protect that in court?

2337 So if you a doctor violated your rule and had a conversation

2338 in court, you are saying that they are not in violation?

2339 Dr. Foley. I am not a lawyer. I am here representing what

2340 the rule says.

2341 Mr. Lujan. You are the expert. This is your

2342 responsibility.

2343 Dr. Foley. I am an expert as a physician and you asked me

2344 about the ethics.

2345 Mr. Lujan. All right.

2346 Dr. Foley. I would say to you that this rule does not violate

2347 those ethics.

2348 Mr. Lujan. Well, Madam Chair, as my time expired, I think

2349 there is a bit of a conflict here because what I just heard was

2350 that the rule does not restrict any physicians from having these

2351 conversations. I hope I can get that in writing so that we can

2352 give that direction. Because the way that I read this and the

2353 AMA reads this, there is a gag order that is being put in place

2354 and restrictions being put in place.

2355 And with that, I yield back.

2356 Ms. DeGette. [Presiding.] The chair now recognizes the

2357 gentleman from Ohio--

2358 [Disturbance in hearing room.]

2359 Ms. DeGette. The committee will come to order.

2360 The chair will now recognize Mr. Latta from Ohio for 5

2361 minutes.

2362 Mr. Latta. Well thank you very much, Madam Chair and thanks

2363 very much for allowing me to participate in the hearing. I really

2364 appreciate it. And thanks to our witness for being here today.

2365 Dr. Foley, the final rule requires that all Title X clinics

2366 provide annual training for staff to ensure compliance with State

2367 reporting laws for child abuse, child molestation, sexual abuse,

2368 rape, incest, intimate partner violence, and trafficking.

2369 Are the new rape and abuse reporting requirements different

2370 from those in the old Title X rule?

2371 Dr. Foley. The current regulation does not state what Title

2372 X providers or grantees are required to do to show that they

2373 followed the mandate that says that they need to be reporting

2374 according to State laws.

2375 So what this new regulations has done is put into place the

2376 process requiring annual training and then requiring the

2377 recording of the fact that they are following that mandate.

2378 Mr. Latta. You know when you say the annual training, has
2379 there been a requirement for annual training in the past?
2380 Dr. Foley. No, that has not been in regulation. That has
2381 been a practice that Title X program has had and is recommended
2382 in quality family planning but has never been put in as far as
2383 something that is required that would need to be reported upon.
2384 Mr. Latta. Okay, thank you.
2385 We had a little discussion here about the gag rule and some
2386 have called this a gag rule, which implies that freedom of speech
2387 is being impinged. Does this rule impact what grantees may do
2388 at locations not funded by Title X programs?
2389 Dr. Foley. Not at all.
2390 Mr. Latta. And do grantees who don't agree with the Protect
2391 Life Rule have the freedom to forego taxpayer dollars and seek
2392 private funding instead and elsewhere?
2393 Dr. Foley. Yes, it simply is putting restrictions on how
2394 Federal funds can be used.
2395 Mr. Latta. Okay. In 2015, Planned Parenthood served 2.4
2396 million clients and 1.6 million of these clients received Title
2397 X--were Title X patients, meaning that 67 percent of Planned
2398 Parenthood clients were Title X clients served by a program that
2399 makes up just four percent of their total $1.46 billion in revenue.
2400 How do we or you reconcile these numbers? Is there a way
2401 to reconcile that and is it possible that clients are counted

2402 as receiving Title X services when they are also receiving
2403 services funded under other federally or privately funded type
2404 programs?

2405 Dr. Foley. Most of our grantees--we do not have enough
2406 funding to fund family planning services that our grantees and
2407 our sub-recipients need. And so most of them have a variety of
2408 other funds that help to fund the services that they have. So
2409 that is likely what has happened as a result of that.

2410 Mr. Latta. Just backing up, would there be any other federal
2411 dollars out there did you say?

2412 Dr. Foley. Medicaid is the primary, actually would be the
2413 primary funding source for most of our Title X clients because
2414 it is a service reimbursement.

2415 Mr. Latta. Okay.

2416 Well thank you very much, Madam Chair, and I yield back.

2417 Ms. DeGette. The chair now recognizes Mr. Bilirakis for
2418 5 minutes.

2419 Mr. Bilirakis. Thank you, Madam Chair. I appreciate it
2420 so very much.

2421 And I want to thank the chair, Ms. DeGette, and also my good
2422 friend from Florida, my neighbor, Ms. Castor.

2423 But Dr. Foley, I have a couple questions. Title X is the
2424 only Federal program dedicated solely to the provision of family
2425 planning and related preventative health care. What services

2426 are encompassed under the Title X program?

2427 Dr. Foley. The Title X program is authorized to provide

2428 voluntary family planning projects. They must offer a broad

2429 range of acceptable and effective family planning methods and

2430 services and, in addition, related preventative services, those

2431 that relate to family planning, which is to help prevent pregnancy

2432 or to help to achieve a pregnancy. So that would include or could

2433 include things that might affect infertility, sexually

2434 transmitted infection screening, cancer screening, those types

2435 of things, basic infertility services.

2436 Mr. Bilirakis. Okay, very good.

2437 While Title X is the only program dedicated solely to this

2438 purpose, as you said, what other federal programs also provide

2439 services for family planning and related preventative health

2440 care?

2441 Dr. Foley. There--

2442 Mr. Bilirakis. If you could give me an example or give me

2443 a few. Yes.

2444 Dr. Foley. There aren't any that strictly provide just

2445 family planning services. Again, Medicaid is a reimbursement

2446 service, so that would be another Federal program that would help

2447 to cover that.

2448 Mr. Bilirakis. Okay but there are alternatives out there

2449 and Medicaid does cover those programs.

2450 Under the proposed Title X rule, the amount of funding
2451 available for family planning would not diminish. I am pretty
2452 sure that is correct. It would only be redirected away from
2453 providers so determined to provide abortion that they refused
2454 to comply with the new rules.
2455 Under the Clinton era regulation, Title X grantees were
2456 required to refer for abortion. Is that correct?
2457 Dr. Foley. If the patient requested that, they were
2458 required to refer for abortion.
2459 Mr. Bilirakis. Okay, what does this mean for entities that
2460 want to provide care without referring for abortion because it
2461 goes against their moral convictions or religious beliefs, and
2462 how would the new rule change that, the Trump rule?
2463 Dr. Foley. The new rule that is currently enjoined states
2464 that because--that referrals for abortion are prohibited, except
2465 in the case of medical emergencies, or rape, or incest. So for
2466 family planning, for the purpose of family planning, referral
2467 for abortion is prohibited as a part of that program.
2468 Mr. Bilirakis. So we are basically going back to prior 2000.
2469 Is that correct, to a certain extent?
2470 Dr. Foley. Consistent with the 1988 regulations.
2471 Mr. Bilirakis. To 1988, okay, very good.
2472 I yield back, Madam Chair. I appreciate it very much.
2473 Ms. DeGette. The chair thanks the gentleman.

2474 And now the chair recognizes the gentleman from Montana for
2475 5 minutes.
2476 Mr. Gianforte. Thank you, Madam Chair.
2477 And Dr. Foley, thank you for being here today. You testified
2478 earlier that, under this new rule, providers would not be
2479 restricted from fully counseling their clients on the range of
2480 options. Is that correct?
2481 Dr. Foley. That is correct.
2482 Mr. Gianforte. Yes, and I just wanted--there was some
2483 dispute here earlier with some of the interaction. I just I was
2484 looking at the rule itself. And just reading directly from the
2485 rule it says Title X provider may provide a list of licensed,
2486 qualified, comprehensive primary healthcare providers, including
2487 providers of prenatal care, some of which may provide abortion,
2488 in addition to comprehensive primary care. So it seems that the
2489 actual rule verifies what you testified in front of this
2490 committee. So I just wanted to set that clear in the record that
2491 it does not restrict doctors in any way from discussing a full
2492 range of options.
2493 As you know, Montana is an incredibly rural State. Most
2494 parts of Montana are still considered frontier areas. Providing
2495 medical care there is more difficult because of just the expanse.
2496 This makes accessing family planning services incredibly
2497 difficult for the women in our State.

2498 So one of the goals, as I understand, in the Protect Life
2499 Rule, is to increase innovation, expand diversity of grantees,
2500 and to clarify the flexibility the program directors have to
2501 provide services. Do you think that this new rule will help
2502 promote a diversity of grantees under Title X?
2503 Dr. Foley. That is what we are hoping for. In addition,
2504 again, this is a competitive grant application. And so it depends
2505 on the people who apply for this grant to provide services.
2506 However, what the new rule does allow for is innovation in
2507 providing services to areas that are unserved or underserved and
2508 increasing the emphasis on those areas, looking for grantees who
2509 are willing, or who are located in those areas, and would like
2510 to provide service.
2511 Mr. Gianforte. So what, specifically, would this new rule,
2512 what impact would it have on rural areas in the United States?
2513 Dr. Foley. The idea would be that if there are--if current
2514 grantees even would look for sub-recipients that maybe in more
2515 rural areas and expand their services in that area, that would
2516 impact the access for rural areas.
2517 Mr. Gianforte. So this new rule, in your opinion, would
2518 expand access to services for women in rural areas.
2519 Dr. Foley. With that emphasis, yes.
2520 Mr. Gianforte. Okay. So what impact, if any, will this
2521 diversity in grantees have on helping ensure the Title X program

2522 is serving patients in these underserved areas?

2523 Dr. Foley. Again, by emphasizing those that are providing
2524 or suggesting innovative ways to provide services to underserved
2525 areas, we would be able to focus our funding in those areas.

2526 Mr. Gianforte. Okay. And this is a real priority for me,
2527 particularly in a rural State like Montana.

2528 So a question of the difference between the prior rule and
2529 this new rule, could an entity that had a conscience objection
2530 to certain Title X services required under the 2000 regulation
2531 participate in the program?

2532 Dr. Foley. They could participate in the program. In fact,
2533 the Department has issued guidelines that because--the regulation
2534 was written before some of these conscience guidelines came into
2535 effect. And so when the Federal conscience guidelines were in
2536 effect, the Department has stated, and it has been long-standing,
2537 that they cannot require someone to refer for abortion, counsel
2538 about abortion, if they have a moral objection to that.

2539 Mr. Gianforte. Okay. And how does that change under the
2540 new rule?

2541 Dr. Foley. Well in the new rule, the referral for abortion
2542 is prohibited. Again, the same conscience protection. The
2543 Federal conscience protections don't change but there has been
2544 confusion surrounding the fact that if it states it in the
2545 regulation that you must refer for abortion and you must counsel

2546 about abortion, even if you have conscience concerns about it.
2547 There has been confusion that they would still be able to
2548 participate.
2549 Mr. Gianforte. Okay.
2550 Dr. Foley. And so I think that clarifies and makes
2551 that--brings those into line.
2552 Mr. Gianforte. Okay, thank you, Dr. Foley. I would just
2553 say, based on what we have heard here today from your testimony,
2554 also from a reading of the rule, this new rule does not restrict
2555 a doctor's ability to provide all options to their patients and,
2556 in fact, the rule will help particularly in bringing additional
2557 services to women in rural areas of the country. So I thank you
2558 for your work on it and I appreciate your being here.
2559 With that, Madam Chair, I yield back.
2560 Ms. DeGette. The gentleman yields back.
2561 Dr. Foley, I want to thank you for coming today. I just
2562 have one last piece of housekeeping that I hope you can help me
2563 with.
2564 This committee has sent four letters to Secretary Azar
2565 starting January 29, 2018 regarding the Title X program. We got
2566 a response, finally, on April 17th of this year, and thank you.
2567 Your agency started providing documents.
2568 But here is the problem. These are the kinds of documents
2569 we are getting. You can see I have page after page of documents

2570 that have been completely redacted. And we understand there is
2571 some pending litigation but we haven't gotten justification on
2572 why each particular document was redacted.
2573 And so I bring this up because it has been a pattern with
2574 HHS in general of not getting documents and then getting documents
2575 that are redacted. And so since you signed the initial letter
2576 producing documents and most of the documents lie within your
2577 agency, will you commit to working with this committee to provide
2578 as many unredacted documents as possible and explaining why
2579 certain documents have been redacted?
2580 Dr. Foley. We will be able to provide explanation for you.
2581 What we have done is we have followed the Federal laws as far
2582 as information that is privileged and information that might be
2583 involved with litigation and that has been the reason for it.
2584 However--
2585 Ms. DeGette. That is--
2586 Dr. Foley. --we will look at that again and we will get
2587 back with you.
2588 Ms. DeGette. I appreciate that. You know that is the
2589 reason that was given but, again, it wasn't given for each
2590 particular document. And so if you can work with us, that would
2591 be great.
2592 I do see that Mr. Veasey has joined us and I will, since
2593 I have given comity to all of the witnesses, I thank you for coming,

2594 Mr. Veasey. And we will just recognize him for 5 minutes and
2595 then we will let you go.
2596 Mr. Veasey. Thank you, Madam Chair.
2597 Dr. Foley, with seemingly every major national provider
2598 organization sounding the alarm, HHS finalized the rule with the
2599 most disconcerting provisions intact.
2600 Nineteen leading women health care provider groups, medical
2601 organizations, and physicians have stated that, quote, this
2602 regulation will do indelible harm to the health of Americans and
2603 to the relationship between the patients and their providers by
2604 forcing providers to omit critical information about their health
2605 care resources and current requirements that Title X
2606 sites--excuse me--and for the reasons discussed in more detail
2607 and in our court complaint, the AMA strongly opposed the final
2608 rule. We are very concerned that the proposed changes, if
2609 implemented, would undermine patients' access to high-quality
2610 medical care and information, dangerously exclude qualified
2611 providers, and jeopardize public health.
2612 In addition to the legal arguments that the final rule be
2613 permanently overturned by the Federal courts, the AMA urges
2614 Congress to swiftly take legislative action to prevent further
2615 attempts by the administration to jeopardize the critical Federal
2616 healthcare program.
2617 Dr. Foley, I wanted you to weigh in, when it comes to the

2618 patients' confidence and some of the things that I have just
2619 mentioned earlier, to please tell us why this rule would not
2620 interfere with the patient-provider relationship, will not cause
2621 providers to violate ethical standards, and will not put improper
2622 restrictions on the practice of medicine, and does not put
2623 ideology over science, and will not jeopardize public health as
2624 experts have stated.

2625 Are all of these medical organizations wrong?

2626 Dr. Foley. What I would say is that the rule was written
2627 and revised to allow complete full conversation, allow
2628 physicians, healthcare providers, to have complete conversation
2629 with the clients about the options that they have. There is no
2630 restriction on that.

2631 I would also say that this rule was written very similar
2632 to the 1988 rule that was written and that rule was then upheld
2633 by the Supreme Court that it did not violate statutory or
2634 constitutional standards. And in addition, that they did
2635 not--they also stated that it did not violate the Code of Medical
2636 Ethics based on what this--based on their interpretation of that.

2637 Mr. Veasey. Dr. Foley, I think that this is--so, are you
2638 saying that they are wrong?

2639 Dr. Foley. What I am saying is--

2640 Mr. Veasey. You really didn't answer my question. So, are
2641 they wrong?

2642 Dr. Foley. What I am saying is that this rule, this new
2643 regulation, does not force physicians to omit information. There
2644 is nothing in this new rule that omits them--that causes them
2645 to force--to omit information.
2646 Mr. Veasey. Okay, so you are not saying--you are not
2647 answering the question about whether they are wrong.
2648 Ms. DeGette. Will the gentleman yield?
2649 Mr. Veasey. Yes.
2650 Ms. DeGette. It doesn't force them to omit it but allows
2651 them to omit it, correct?
2652 Dr. Foley. And the allowing them to omit is based on the
2653 Federal conscience statutes that, again, preclude the law. And
2654 that is what is important to understand.
2655 Mr. Veasey. Dr. Foley, it is just hard to put a lot of stock
2656 into what you are saying today. Numerous medical and public
2657 health organizations have detailed how this rule will lead to
2658 negative health outcomes. They have stated that the rule will
2659 result in less contraceptive services, more unintended
2660 pregnancies, which is a big problem in the district that I
2661 represent in Dallas right now. We are seeing rates go down in
2662 other parts of the country but we have seen a steep increase in
2663 STDs and unplanned pregnancies in the Dallas area. And I just
2664 think that HHS is putting ideology over evidence and public
2665 health.

2666 I yield back my time.

2667 Ms. DeGette. I thank the gentleman. And again, Dr. Foley,
2668 I thank you for joining us today. We will look forward to getting
2669 your documents. And with that, you are dismissed.

2670 The chair will call up the next panel.

2671 Dr. Foley. Thank you.

2672 Ms. DeGette. The committee will come to order and the
2673 witnesses will take their seats.

2674 The chair will advise members, while we are waiting for Dr.
2675 McLemore, that we are expecting a series of votes around 1:00
2676 or 1:15 and it will be, unfortunately, a very long series of votes.
2677 I had hoped to be able to finish this panel but I think that
2678 probably we may have to have the member questions after we return.
2679 So I just wanted to let you know that.

2680 The chair will now introduce our second panel of witnesses
2681 and welcome all of you. Thank you so much for your patience.
2682 Ms. Clare Coleman, the President and Chief Executive Officer
2683 of the National Family Planning and Reproductive Health
2684 Association; Ms. Kami Geoffray, the Chief Executive Officer of
2685 the Women's Health and Family Planning Association of Texas; Dr.
2686 Monica McLemore, the Chair-Elect of the Sexual and Reproductive
2687 Health Section of the American Public Health Association; Dr.
2688 Jamila Perritt, Physicians for Reproductive Health Fellow; and
2689 Ms. Catherine Glenn Foster, President and Chief Executive Officer

2690 of the Americans United for Life.

2691 Thanks and welcome to all of the witnesses. As all of you

2692 are aware, we are holding an investigative hearing and so, when

2693 doing so, we have the practice of taking testimony under oath.

2694 Do any of you have any objections to testifying under oath today?

2695 Let the record reflect the witnesses responded no.

2696 The chair will then advise you, under the rules of the House

2697 and the rules of the committee, you are entitled to be accompanied

2698 by counsel. Do any of you desire to be accompanied by counsel

2699 today? Let the record reflect the witnesses responded no.

2700 And so if you would, could you please rise and raise your

2701 right hand so you may be sworn in?

2702 [Witnesses sworn.]

2703 Ms. DeGette. You may be seated. Let the record reflect

2704 the witnesses have responded affirmatively.

2705 And you are now under oath and subject to the penalties set

2706 forth in Title 18, Section 1001 of the U.S. Code.

2707 The chair will now recognize our witnesses for a 5-minute

2708 summary of their written statements. As I explained to the last

2709 panel, you have a microphone and then you have lights. And the

2710 light turns yellow when you have 1 minute and red when your time

2711 is at the end.

2712 And so first I would like to recognize Ms. Coleman for

2713 purposes of an opening statement, 5 minutes.

2714 STATEMENT OF CLARE COLEMAN, PRESIDENT AND CHIEF EXECUTIVE
2715 OFFICER, NATIONAL FAMILY PLANNING AND REPRODUCTIVE HEALTH
2716 ASSOCIATION; KAMI GEOFFRAY, CHIEF EXECUTIVE OFFICER, WOMEN'S
2717 HEALTH AND FAMILY PLANNING ASSOCIATION OF TEXAS; MONICA MCLEMORE,
2718 CHAIR-ELECT, SEXUAL AND REPRODUCTIVE HEALTH SECTION, AMERICAN
2719 PUBLIC HEALTH ASSOCIATION; JAMILA PERRITT, M.D., FELLOW,
2720 PHYSICIANS FOR REPRODUCTIVE HEALTH; AND CATHERINE GLENN FOSTER,
2721 PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICANS UNITED FOR LIFE.
2722
2723 STATEMENT OF CLARE COLEMAN
2724
2725 Ms. Coleman. Thank you, Chairwoman DeGette. Thank you,
2726 Ranking Member Guthrie and the members of the subcommittee for
2727 the opportunity to testify.
2728 I am Clare Coleman. For nearly 10 years--closer--for nearly
2729 10 years, I have been the President and CEO of the National Family
2730 Planning and Reproductive Health Association, known as NFPRHA.
2731 Founded the year after Title X's enactment, NFPRHA advances and
2732 elevates the importance of family planning in the Nation's
2733 healthcare system. NFPRHA represents the vast majority of Title
2734 X providers, with members in all 50 States, D.C., and the
2735 territories.
2736 Title X plays an essential role in ensuring access to
2737 high-quality family planning and sexual health care in our

2738 country. Congress created Title X to equalize access to
2739 biomedical contraceptives and related medical care, and to ensure
2740 that those services were voluntary and confidential. These
2741 purposes remain Title X's focus 50 years on.
2742 Today, Title X helps more than four million people access
2743 contraception and related health services at nearly 4,000 Health
2744 Centers across the country. For many, Title X services are the
2745 only source of health care of any kind, offering patients health
2746 care they need, exams and contraceptives, sexually transmitted
2747 disease testing and treatment, cancer screenings, and information
2748 and counseling, including referrals to care outside the scope
2749 of Title X.
2750 Title X provider networks are designed by communities for
2751 communities to facilitate access to care in the service area
2752 covered by the Title X grant. So the network includes State,
2753 city, and local health departments, Federally Qualified Health
2754 Centers, freestanding family planning providers, Planned
2755 Parenthood affiliates, hospitals, and school-based and
2756 university-based health centers.
2757 But because Title X is a funding stream, there is no Title
2758 X sign on a health center door. Instead, patients know they are
2759 in a Title X center by the patient-centered and culturally
2760 responsive care they receive from a broad range of FDA-approved
2761 methods available on-site to the thorough and nondirective

2762 counseling offered.

2763 Title X standards of care are the gold standard in family

2764 planning. Despite this, Title X is facing the fight of a

2765 generation. In March, the administration published a final rule

2766 which, if enacted, would destroy the quality and integrity of

2767 Title X.

2768 NFPRHA's opposition to this rule is well-documented and here

2769 are just some of our reasons why. The new rule undermines the

2770 Federal Government's own standard of care and opens the door to

2771 fund providers that will not offer a broad range of FDA-approved

2772 contraceptive methods. It eliminates the requirement that

2773 providers offer pregnancy options counseling at the patient's

2774 request, while requiring that all pregnant patients be referred

2775 for prenatal care, regardless of what the patient wishes. And

2776 it bars, absolutely, referrals for abortion, no matter the

2777 patient's wishes.

2778 It requires that Title X-funded activities be physically

2779 separated from any non-Title X activity that touches on abortion

2780 and this would include health education and public health

2781 initiatives.

2782 By limiting the services and the information available

2783 through Title X agencies, the rule undermines the trust and

2784 confidentiality that is so important when it comes to this most

2785 intimate and personal care.

2786 If the rule is implemented, all Title X providers in every
2787 single location would be forced into only bad choices. They can
2788 withhold critical information and limit care to patients or they
2789 can leave the program and be less able or unable to care for
2790 low-income people in their community. This rule shows no respect
2791 and no regard for the millions of low-income people who today
2792 rely on Title X for their primary and often only health care.
2793 Title X centers are located in 60 percent of U.S. counties
2794 but that is where 90 percent of women in need live. So these
2795 services are located where people need it and our services are
2796 intended to meet them where they live, focused on their needs
2797 and their values.
2798 In addition to this rule, over the last decade, Title X has
2799 endured funding cuts that have led to more than a million people
2800 losing access to care and recent repeated funding announcements
2801 that have dismissed the expertise of so many longstanding
2802 providers. These attacks are wholly unwarranted and they are
2803 unjustifiable.
2804 Title X has demonstrated, over 49 years, both quality and
2805 integrity. It is a true public health success story and it
2806 deserves strong bipartisan support.
2807 I appreciate the opportunity to speak about the essential
2808 value that Title X plays in our nation's healthcare system.
2809 Ms. DeGette. The lady's time has expired.

2810 Ms. Coleman. I welcome any questions you have.

2811 [The prepared testimony of Ms. Coleman follows:]

2812

2813 **********INSERT 2**********

2814 Ms. DeGette. The chair now recognizes Ms. Geoffray for 5
2815 minutes.

2816 STATEMENT OF KAMI GEOFFRAY

2817

2818 Ms. Geoffray. Chairwoman DeGette, Ranking Member Guthrie,
2819 and members of the subcommittee, thank you for holding this
2820 hearing and inviting me to testify today.
2821 As Chief Executive Officer of the Women's Health and Family
2822 Planning Association of Texas, I oversee the administration of
2823 the second largest Title X Family Planning Services grant award
2824 in the nation. I am here today to tell you about the serious
2825 challenges faced by the family planning safety-net providers in
2826 my State and the clients they serve, and to share my concerns
2827 that, if implemented, the changes the current administration
2828 seeks to impose on the Title X Family Planning program will reduce
2829 access to critical reproductive health services in communities
2830 across the country, mirroring what we experienced in Texas in
2831 recent years.
2832 I also am here to tell you about the role Title X grantees
2833 and sub-recipients play in providing high-quality family planning
2834 services that are informed by the unique needs of each community
2835 and delivered with respect and dignity for each individual.
2836 The Texas experience serves as a cautionary tale of the
2837 deeply harmful consequences that can result when policymakers
2838 target particular family planning providers. In 2011, State
2839 lawmakers made a series of funding and policy decisions that

2840 ultimately resulted in 82 family planning clinics, one out of
2841 every four in our State, closing or reducing hours, restricting
2842 access to critical reproductive health services across the State.
2843 The intended target was family planning providers that also
2844 provide abortion services or affiliate with abortion service
2845 providers but the consequences reached much further. Two-thirds
2846 of the clinics impacted were family planning providers that had
2847 no affiliation with abortion service providers and tens of
2848 thousands of Texans lost access to services.

2849 The impact was quickly observed. Contraceptive use
2850 decreased, while the rates of unintended pregnancies and
2851 abortions increased. Overall, the Texas experience teaches us
2852 that once lost, access to critical reproductive health services
2853 is difficult or impossible to reestablish. Over the last 8 years,
2854 significant funding has been invested to bolster a family planning
2855 safety-net that was weakened by a series of the Texas
2856 legislature's decisions. Yet, it appears that State-funded
2857 programs still are not serving as many individuals today as they
2858 did in 2011.

2859 The Title X rule finalized by the current administration
2860 seeks to implement several of the misguided policies piloted in
2861 Texas, forcing family planning providers that also provide
2862 abortion services from the program, and prioritizing primary care
2863 providers over those focused on reproductive health care. If

2864 implemented, these policy proposals will reduce access to family
2865 planning services and likely result in similarly negative
2866 outcomes as those seen in Texas in recent years.
2867 Finally, I would like to speak about the qualified providers
2868 of high-quality family planning services that make up the Title
2869 X grantee and sub-recipient network.
2870 We develop health care networks that are informed by our
2871 communities that we serve and that are as diverse as the geography
2872 and demographics of the States in which we work. We work
2873 diligently to ensure that the Federal dollars that we have been
2874 entrusted with administering are used to support evidence-based,
2875 client-centered family planning care of the highest quality.
2876 We implement detailed systems to ensure compliance with program
2877 statutes, regulations, and legislative mandates at the grantee
2878 and sub-recipient levels. Collectively, we provide critical
2879 reproductive health services and a full range of contraceptive
2880 methods to four million individuals each year but we have the
2881 capacity to do so much more if additional funding were made
2882 available.
2883 In closing, I urge you to learn from Texas and ensure that
2884 Title X funding continues to be administered by those most
2885 qualified and committed to providing a full package of family
2886 planning services in an evidence-based, client-centered manner,
2887 helping to advance the reproductive health and well-being of

2888 millions of low-income, uninsured, and underinsured individuals

2889 who turn to Title X for care every year.

2890 Thank you for the opportunity to testify today. I look

2891 forward to answering any questions you may have.

2892 [The prepared testimony of Ms. Geoffray follows:]

2893

2894 **********INSERT 3**********

2895 Ms. DeGette. Thank you so much.

2896 The chair now recognizes Dr. McLemore for 5 minutes for

2897 purposes of an opening statement.

2898 STATEMENT OF MONICA MCLEMORE

2899

2900 Ms. McLemore. Chair DeGette, ranking members, and the
2901 entire committee, I really appreciate you providing me an
2902 opportunity to be able to provide my expertise for you and with
2903 you. It has been interesting we have been hearing about
2904 scientific experts and it is kind of ironic that I am the first
2905 one to speak.

2906 I am grateful to provide clinical, scientific, and research
2907 expertise to the committee. I have been a licensed registered
2908 nurse since 1993 and for most of my career, I worked clinically
2909 in facilities that receive Title X funding. Since 2002, I have
2910 worked clinically at Zuckerberg San Francisco General Hospital
2911 and Trauma Center, a place with co-located services.

2912 I am an expert nurse in the provision of sexual and
2913 reproductive health services. I sit before you as the incoming
2914 chair for Sexual and Reproductive Health for the American Public
2915 Health Association.

2916 Ensuring all people of reproductive age can achieve their
2917 reproductive life goals is an essential component of reproductive
2918 health and public health. Additionally, reproductive justice
2919 is essential to bodily autonomy, human rights principles, and
2920 existential liberation for all humans. Simply put, reproductive
2921 justice posits that every person has the right to decide if, when,

2922 and how to become pregnant, and to determine the conditions under
2923 which they will birth and create families.
2924 Next, every person has the right to decide that they will
2925 not become pregnant, and have all options for preventing and/or
2926 ending pregnancies, and have those means be accessible and
2927 available.
2928 Third, individuals have the right to parent their children
2929 they already have with dignity and without fear of violence from
2930 individuals of the Government.
2931 And finally, individuals have the right to disassociate sex
2932 from reproduction and that health, healthy sexuality, and
2933 pleasure are essential components to a whole and full human life.
2934 Academicians, activists, clinicians, researchers, and
2935 scholars like me believe that Title X and Title V are essential
2936 components to achieving reproductive justice. There are
2937 currently 4,000 entities designated as Title X grantees and 40
2938 percent are Planned Parenthood health facilities. I wanted to
2939 correct that incorrection from earlier. Half the people served
2940 at Title X clinics are people of color.
2941 I also want to correct the record that nurses, nurse
2942 practitioners, nurse midwives, and public health nurses have been
2943 the mainstay of the sexual reproductive healthcare workforce,
2944 including in Title X and Planned Parenthood centers and we provide
2945 a crucial access for vulnerable and low-income populations.

2946 These clinics also provide essential training for nursing and
2947 medical students and potential clinic closures can reduce the
2948 pipeline of appropriately trained clinicians.
2949 The proposed rule change violates the American Nurses
2950 Association Code of Ethics that reads, and I quote, the ANA has
2951 historically advocated for the healthcare needs of all patients,
2952 including services related to reproductive health. The American
2953 Nurses Association also believes that healthcare clients have
2954 the right to privacy and the right to make decisions about personal
2955 health care based on full information and without coercion.
2956 As a nurse scientist, this work is personal for me. Let
2957 me tell you how Title X has helped me earn three degrees from
2958 public institutions, and become a visible scholar and thought
2959 leader on black maternal health. I am a member of the populations
2960 most served by Title X. As a poor post-doc in 2011, I almost
2961 bled out in my car, due to fibroids, driving into San Francisco
2962 to see my mentor. My sister, my mom, and like many black
2963 Americans, fibroids is a huge problem. And I was able to receive
2964 a Mirena IUD at a Title 10 clinic that I still have to this day.
2965
2966 This allowed me to complete my studies, to generate and
2967 publish 48 papers, including 17 op-eds, two of which were about
2968 the protection of Title X. And in those publications, I also
2969 was able to optimize information to the public during Black

2970 Maternal Health Awareness Week, sponsored by the Black Mamas
2971 Matter Alliance.
2972 I have been able to provide clinical care to the public,
2973 which I still do, and am soon to becoming the incoming chair for
2974 Sexual and Reproductive Health at the American Public Health
2975 Association.
2976 In November, I will be fortunate enough to be inducted as
2977 a fellow of the American Academy of Nursing, who also signed on
2978 against this rule change. And I am still waiting to hear if I
2979 will become the fifth tenured black person in a 113-year history
2980 of the University of California San Francisco School of Nursing.
2981 Achieving my reproductive goals has allowed me to become
2982 the scholar, and the reproductive justice has been
2983 operationalized in my life, and all the people served by Title
2984 X clinics and providers deserve the same opportunity.
2985 Thank you.
2986 [The prepared testimony of Monica McLemore follows:]
2987
2988 **********INSERT 4**********

2989 Ms. DeGette. Thank you so much, Doctor.

2990 Dr. Perritt, I am now pleased to recognize you for 5 minutes

2991 for purposes of an opening statement.

2992 STATEMENT OF JAMILA PERRITT, M.D.

2993

2994 Dr. Perritt. Thank you so much, Chairman Pallone, Chair
2995 DeGette, Ranking Member Guthrie, and members of the subcommittee.
2996 My name is Dr. Jamila Perritt and I am a board-certified,
2997 fellowship-trained obstetrician and gynecologist, and a fellow
2998 with the Physicians for Reproductive Health. I am here today
2999 to give voice to the people I take care of, a voice that is often
3000 missing from the rhetoric in the political theater that we see
3001 during these debates.
3002 Whether rural or urban, young or old, all of my patients
3003 share one thing in common. They are making thoughtful and
3004 sometimes difficult decisions about their health and about their
3005 well-being. The patient-provider relationship relies on trust
3006 and open and honest communication. These rules will compromise
3007 that trust and result in substandard care for the communities
3008 that already experience discrimination and inequities in health
3009 care and healthcare delivery, like the communities I serve. It
3010 goes against everything I know as a physician and against the
3011 oath that I took when I began this work.
3012 As a kid, I dreamed of becoming a doctor and, in fact, I
3013 have never wanted to be anything else. I studied for 20 plus
3014 years to do this work and I was taught in medical school to respect
3015 the agency and the autonomy of my patients. A shared

3016 understanding and communication of the risks, benefits, and
3017 alternatives to any options for care undergirds this process and
3018 is my professional duty.

3019 We heard Congressman Lujan mention the American College of
3020 Obstetricians and Gynecologists Code of Professional Ethics,
3021 which states, and I quote, that the patient-physician
3022 relationship is essential to the focus of all ethical concerns.
3023 ACOG also requires OB/GYNs to serve as the patient's advocate
3024 and exercise all reasonable means to ensure that appropriate care
3025 is provided to the patient.

3026 This new rule directly violates these principles and that
3027 is why leading medical organizations oppose it.

3028 Whether I am talking to with my patients about options for
3029 birth control, prenatal care and birth care, or pregnancy, I am
3030 ethically bound to make sure that they have all the information
3031 they need to understand and access their options. When speaking
3032 about pregnancy, that means answering questions about carrying
3033 a pregnancy to term and parenting, putting the child up for
3034 adoption, or ending a pregnancy. My patients trust me to give
3035 them the information they need and request and I trust them to
3036 make the decisions that are right for them.

3037 These new rules will not allow me to deliver ethical and
3038 quality care. The Federal Government is telling providers what
3039 we can and cannot say to our patients. It is telling my patients

3040 what they can and cannot hear from their doctors. It is ordering
3041 me to deprive my patients of information they need, even if they
3042 request it. It is an attempt to strip from my patients their
3043 basic human rights.

3044 I share Chairman Pallone's earlier voiced concern regarding
3045 the equally as problematic focus of this rule on organizations
3046 that may offer one method of family planning disguised as
3047 comprehensive coverage, such as fertility awareness-based
3048 methods at the expense of others. Although fertility awareness
3049 methods may be right for some, any women's health provider can
3050 tell you that birth control and pregnancy prevention is not one
3051 size fits all. Everyone deserves access to the full range of
3052 contraceptive methods. And it is only through having a choice
3053 of methods that someone can decide what is right for them and
3054 avoid the pressure and coercion that comes with being offered
3055 only one class of methods.

3056 I can remember a patient I cared for who was seeking birth
3057 control. She was a mother of small children and worked at night
3058 so she could provide care for her children during the day and
3059 be home when her oldest got in from school. She was seeking a
3060 birth control option but was concerned because she had tried just
3061 about everything and nothing worked. Her high blood pressure
3062 prevented her from using some method like pills. She had side
3063 effects from other methods like the shot. And ultimately, she

3064 settled, like Dr. McLemore, on an IUD because it helped to prevent
3065 pregnancy and also had the benefit of helping manage her heavy
3066 periods.
3067 My patient would not have been able to afford this method
3068 without being seen at a clinic where I provide care and she
3069 received funding through the Title X program.
3070 Dr. McLemore discussed reproductive justice, a vision where
3071 the lives of historically marginalized communities and
3072 individuals are essential to the fight for equity and justice.
3073 It is grounded in an understanding of reproductive health and
3074 autonomy as basic human rights.
3075 What I want us all to understand is that no one is making
3076 decisions about their reproductive health in a vacuum. Our lives
3077 are intersectional. These new rules not only contradict
3078 professional ethics and practice guidelines, they perpetuate a
3079 system of injustice. They make it clear that if you are an
3080 individual with a low income in need of services, you will be
3081 getting substandard care. They tell me if you are poor, you are
3082 less deserving. When you desire information, you won't get it.
3083 This is not health care. This is manipulation, punishment, and
3084 coercion.
3085 Please protect individuals in the Title X program and their
3086 access to high-quality care. My patients deserve it.
3087 [The prepared testimony of Dr. Perritt follows:]

3088 **********INSERT 5**********

3089 Ms. DeGette. Thank you, Doctor.

3090 And I would now like to recognize for 5 minutes, for purposes

3091 of an opening statement, Ms. Foster.

3092 STATEMENT OF CATHERINE GLENN FOSTER

3093

3094 Ms. Foster. Thank you, Chairwoman DeGette, Ranking Member
3095 Guthrie, and members of the committee.

3096 I am Catherine Glenn Foster, President and CEO of Americans
3097 United for Life, America's original national pro-life
3098 organization and leader in life-affirming law and policy.

3099 I want to emphasize two key points today, both of which I
3100 elaborate on in greater depth in my written testimony. First,
3101 Congress acted intentionally when it excluded abortion from Title
3102 X. Second, challenges to the HHS rule are rooted in the desire
3103 to cast aside congressional intent and use Title X funding for
3104 abortion-related services.

3105 First, Congress enacted Title X of the Public Health Service
3106 Act in 1970 to provide financial support for healthcare
3107 organizations offering pre-pregnancy family planning services.
3108 Since 1970, the Act, through Section 1008, has explicitly
3109 excluded abortion from the scope of family planning methods and
3110 services.

3111 Let me underscore, Congress has statutorily excluded
3112 abortion from the scope of Title X projects.

3113 Consistent with the U.S. Supreme Court's decision in Rust
3114 v. Sullivan, the HHS rule at issue requires physical and financial
3115 separation between Title X projects and abortion-related

3116 activities.

3117 Second, today's challenges to the HHS rule are rooted in
3118 the desire to cast aside congressional intent and use Title X
3119 funding for abortion-related services. Any consideration of
3120 access to abortion should carry no legal weight because Title
3121 X explicitly excludes abortion from the scope of its projects.

3122 It is worth asking why Plaintiffs did not raise a legal
3123 challenge to the HHS rule based on the undue burden rationale.
3124 The answer is plainly because the scope of the abortion right,
3125 as discovered in the constitution by seven men in Roe v. Wade,
3126 includes neither a right to public funding for abortion nor a
3127 third party's right to provide abortion.

3128 If you listen to the rhetoric of my sisters sitting beside
3129 me today, you could be forgiven for thinking that abortion
3130 represented some public good. The hand-waving, the euphemisms,
3131 and the, frankly, tired rhetoric that I have heard today not only
3132 obscures the constitutional realities surrounding Title X but
3133 worse, it obscures the truth about what they seek to promote:
3134 abortion.

3135 Men and women who advocate for abortion share a strange kind
3136 of faith. They believe that women's own empowerment demands the
3137 disempowerment of another. We never become stronger, as women,
3138 when we abort our own children. I know this, both because I am
3139 a mother and because I lived with the regret of having been coerced

3140 into an abortion.

3141 I bear the marks of trauma from abortion. But as a woman,
3142 I can tell you that my autonomy and empowerment are not a result
3143 of the violence and self-harm of abortion, a violence and
3144 self-harm which too many seek to perpetuate and to normalize.

3145 Abortion can never be considered a form of family planning
3146 because thriving families are characterized by their living
3147 members and the life they share in common. Abortion can never
3148 be legitimately considered a form of family planning because what
3149 defines a successful abortion is a dead member of the human family
3150 full stop. There is no way around this reality.

3151 Twenty years ago, a younger Donald Trump appeared on Meet
3152 the Press and assured Tim Russert that he was, quote, pro-choice
3153 in every respect and as far as it goes, unquote.

3154 Today, President Trump has been described by some as
3155 America's most pro-life President. If President Trump can show
3156 the courage to admit that he was wrong and to embrace life, I
3157 believe that there is hope that perhaps some here today might
3158 be similarly willing to look past ideology and to confront the
3159 reality of abortion, too. Every American, and especially every
3160 woman, deserves better than abortion.

3161 In closing, let me underscore Congress was clear when it
3162 enacted the Title X program in 1970 and Congress has not deviated.
3163 The intent was clearly to exclude abortion. The HHS rule adds

3164 accountability and transparency to the Title X program. The HHS
3165 rule is sound public policy and the HHS rule can withstand
3166 constitutional scrutiny.
3167 Thank you.
3168 [The prepared testimony of Ms. Foster follows:]
3169
3170 **********INSERT 6**********

3171 Ms. DeGette. Thank you, Ms. Foster. I thank the panel.

3172 In accordance with the chair's previous comments, this

3173 committee will be recessed pending votes on the floor. They are

3174 saying we have 12 votes on the floor. It could be an hour to

3175 an hour and a half. So, I suggest you get some lunch.

3176 This committee is in recess.

3177 [Recess.]

3178 AFTERNOON SESSION

3179 Ms. DeGette. The committee is reconvened and I just can't
3180 thank all of the witnesses enough for staying around while we
3181 had our mega vote-a-thon on the floor. I really appreciate it.
3182 The chair will recognize herself for 5 minutes for the
3183 purposes of questioning. And I would like to start with you,
3184 Dr. Perritt.
3185 I know all of you heard Dr. Foley's testimony on the first
3186 panel. And what I would like you to do is listen to the questions
3187 that I am going to ask you and answer specifically to me what
3188 the issues that you have with this rule. And the reason is because
3189 if you listen to Dr. Foley, then it is really no big deal. It
3190 is just clarifying the statute that was passed in 1980. So we
3191 hear this dichotomy between what you are saying, and she is saying,
3192 and I would like to clarify.
3193 And I would like to start with you, Dr. Perritt. Dr. Foley
3194 testified that health providers can have a complete conversation
3195 with their patients about their pregnancy options. From your
3196 perspective, as a provider, is that an accurate statement? And
3197 if not, what specifically in this rule would prevent providers
3198 from having that conversation with their patients?
3199 Dr. Perritt. Thank you so much. You know it absolutely
3200 is not my understanding of what the rule says and it is problematic
3201 for a number of reasons.

3202 Ms. DeGette. And why is that?

3203 Dr. Perritt. It is absolutely a gag rule. This theoretical
3204 dispensation of information without actual support to achieve
3205 these services is not nondirective counseling. So that is a
3206 global issue with our ability to actually provide care in a
3207 comprehensive way.

3208 And so my understanding is this limitation on your ability
3209 to actually provide counseling about all of the options, including
3210 providing information regarding referrals, and that is an
3211 absolute gag of what I am able to say to my patients is not
3212 nondirective counseling. It is in inhibiting their ability to
3213 make a decision that is right for them with all of the information.

3214 Ms. DeGette. Dr. McLemore, what is your position on that?

3215 Ms. McLemore. I agree with what Dr. Perritt said. And I
3216 also would like to also add that I think it is really important
3217 that patient-provider relationship is built on trust and trust
3218 in the public, especially coming from the perspective of an nurse,
3219 means that we will provide you all of your options that are
3220 available to you, answer your questions, and be able to center
3221 you and your needs to get you the care that you need.

3222 And so if I am having to deal with lying by omission, then
3223 I think that is really a problematic breach of trust.

3224 Ms. DeGette. So if a patient, for example, came in and said
3225 to one of your nurses I would like information about abortion

3226 but that nurse was personally opposed to abortion, then would
3227 you think that that nurse should have to tell the patient all
3228 of their options anyway?
3229 Ms. McLemore. No, we already have protections under the
3230 ANA Code of Ethics and I didn't get an opportunity to read this
3231 earlier because I think it is important that I do because I ran
3232 out of time, but all nurses have the right to refuse to participate
3233 in a particular case on ethical grounds. However, is a client's
3234 life is in jeopardy, nurses are obligated to provide for the
3235 client's safety and to avoid abandonment.
3236 Ms. DeGette. And would the nurse also have to, if they were
3237 opposed, refer them to somebody else so that they could give them
3238 the information they were asking for?
3239 Ms. McLemore. Correct.
3240 Ms. DeGette. And that is what would not happen under this
3241 rule.
3242 Ms. McLemore. Correct.
3243 Ms. DeGette. Is that correct?
3244 Ms. McLemore. Correct.
3245 Ms. DeGette. Ms. Coleman, I wanted to ask you, Ms. Foley
3246 seemed to indicate that there wouldn't really be any problem with
3247 separating the facilities where there is abortion facilities and
3248 family planning facilities in one location because it was only
3249 10 or 20 percent. Is that the view of your members and if not,

3250 why not?

3251 Ms. Coleman. The rule affects all Title X entities, whether

3252 or not they provide abortion care outside of their Title X funds.

3253 And the reason that it affects all Title X agencies is because,

3254 in addition to requiring physical separation, if you provide

3255 abortion care with non-Title X funds, it also says the Title X

3256 projects cannot do anything to encourage, promote, support, or

3257 advocate for any part of abortion.

3258 So for example, if you are a State Health Department that

3259 also monitors abortion care and you monitor the Title X program,

3260 you would have to physically separate the building, the staff,

3261 the payroll records, the files, everything related to your

3262 oversight of abortion care in your State.

3263 Ms. DeGette. So this would be far, far more reaching than

3264 the Department would seem to indicate.

3265 Ms. Coleman. Correct, it does not only affect abortion

3266 providers.

3267 Ms. DeGette. Ms. Geoffray, I just wanted to ask you very

3268 briefly, you saw something like this happen in Texas. What did

3269 this do for the provision of health care for lower income and

3270 rural women?

3271 Ms. Geoffray. So after the funding cuts and the policy

3272 changes in 2011, over 50 percent of women that were receiving

3273 services at the time lost access to services. What we saw was

3274 a discontinuation of contraceptive methods because people did
3275 not have access to healthcare services. We saw increases in STI
3276 rates. We saw increases in unintended pregnancies. We saw
3277 increases in abortion rates. And we, obviously, saw impacts to
3278 maternal mortality that had varying causes but there is some
3279 belief that access to family planning being lost also impacted
3280 that.
3281 Ms. DeGette. Thank you so much to all of you.
3282 The ranking member is now recognized for 5 minutes.
3283 Mr. Guthrie. Thank you. And thank you all for being here.
3284 We appreciate it very much.
3285 The first thing, I want to ask unanimous consent to include
3286 in the record a letter from the Concerned Women for America
3287 Legislative Action Committee. I think it was submitted to your
3288 staff just previously.
3289 Ms. DeGette. Without objection.
3290 [The information follows:]
3291
3292 **********COMMITTEE INSERT**********

3293 Mr. Guthrie. Thank you very much. And thank you very much.

3294

3295 And Ms. Foster, I think I had to learn, started getting ready
3296 for this hearing, different terms, nondirective counseling,
3297 directive counseling. As Ms. Foley said, she is not a lawyer.
3298 I am not a physician as well. We are trying to learn and figure
3299 the differences and how it complies with what is important.

3300 The congressional statute, and obviously Congress can always
3301 change the statute if they wanted it to be different, as long
3302 as you get a majority of the House, the Senate, or a veto-proof
3303 majority, obviously, but that is our system.

3304 So in your definition, what is the nondirective counseling
3305 and how does it differ from directive counseling?

3306 Ms. Foster. So nondirective counseling would allow for a
3307 full discussion of all of the options with any pregnancy. It
3308 includes parenting. It includes adoption. It includes
3309 abortion. The directive counseling piece would come in when a
3310 woman, a girl is being urged in one direction. And we know from
3311 whistle blowers that sometimes that does happen. That is a
3312 problem.

3313 And so one of the goals of this rule is to prevent directive
3314 counseling, while still allowing women and girls to get the full
3315 information about their range of options.

3316 Mr. Guthrie. So in your opinion, does the change in the

3317 rule from mandatory nondirective counseling to permitted
3318 nondirectional counseling better align with the Title X program
3319 and its statutory frameworks and requirements?
3320 Ms. Foster. Absolutely. And when you look back at Rust
3321 v. Sullivan, the 1991 Supreme Court case, what the Supreme Court
3322 upheld was in fact more restrictive than this Protect Life Rule.
3323 What they upheld was in fact more of a restriction on counseling.
3324 This rule says, please, discuss the options, discuss all the
3325 range of choices before women and girls that they have to choose
3326 from. Simply, don't be directive about it.
3327 Mr. Guthrie. Okay, thanks. And you know it seems, if you
3328 just listen to some of the questioning earlier today and some
3329 of the answers with Dr. Foley, that it seems to be hear some saying
3330 all we are saying is it is nondirected, nonmandatory, and people
3331 have the opportunity to speak with their patient. It is between
3332 the patient and the client. That is who it is between and there
3333 is nothing directed for them. It is not telling anybody what
3334 they can do or can't do.
3335 You know some people were saying this rule tells what they
3336 can or can't say to their patient. What is your response to that?
3337 It just seems there is two different--there is one set of facts
3338 and two different views of the same set of facts.
3339 Ms. Foster. Yes, I would say that this rule, one of the
3340 primary goals of it is to in fact increase the diversity of

3341 providers available to women and girls out there. Because what
3342 this does is allow providers, who have not previously been
3343 eligible, I am thinking specifically of Obria, for example, to
3344 be included within the Title X program.
3345 And I am thinking also of a dear friend of mine, an immigrant,
3346 a young woman, came to the United States, fell in love, was seeking
3347 contraception as she planned her wedding. But she is a person
3348 of faith and she said you know what, I want a healthcare provider
3349 who can match my story, match my background, a healthcare provider
3350 who is likewise a person and entity of faith. And you know she
3351 had nowhere to turn prior to this rule. She didn't know where
3352 to go. She didn't want to go to Planned Parenthood but she didn't
3353 know where in fact she could go. And so she really was at a loss
3354 under the prior regime.
3355 Now, under the Protect Life Rule, she has options because
3356 of what you could call the pooling and the ability of a more diverse
3357 field of providers to engage in Title X, and the program, and
3358 in the services. So she, thankfully, actually just had her second
3359 planned child but she encountered such resistance at the time.
3360 It was very disappointing to try to walk with her along that
3361 journey and not be able to find a provider who could meet her
3362 needs as a young immigrant, low-income woman.
3363 Mr. Guthrie. Thanks.
3364 Dr. Perritt, in my opening statement, this has been an

3365 important program, Title X, to Kentucky. A lot of people have
3366 benefitted from it.
3367 And you said that--I am sorry, I am bout out of time so I
3368 hate to ask you a question and only give you a few seconds but
3369 you said that this rule tells what you can or cannot say to your
3370 patients. What do you have to say to your patients because of
3371 this rule and what can you not say? What does it prevent you
3372 from doing?
3373 Dr. Perritt. I think what--
3374 Mr. Guthrie. Now that you got the question, I really want
3375 the answer.
3376 Dr. Perritt. I think what Dr. McLemore said really serves
3377 it best. These are lies of omission. When we are talking about
3378 what we can and cannot say in the office with our patients, this
3379 is not a decision that should be held in a body of legislation.
3380 These are medical decisions.
3381 You mentioned earlier you are not a doctor. I am. I studied
3382 medicine. I practice medicine and I practice in communities that
3383 deserve the same care that you and I would get, should we show
3384 up to see our provider.
3385 Mr. Guthrie. You said it is omission but what can you not
3386 say? I guess what would you want to be able to share that you
3387 can't share?
3388 Dr. Perritt. If someone--sure. If someone says I would

3389 like an abortion where can I go, I cannot say this is where you
3390 can go. That is what I can't say.
3391 Mr. Guthrie. Yes, but that is limited in the statute as
3392 well, not necessarily the rule. Yes, so it is family planning.
3393 Dr. Perritt. I disagree.
3394 Ms. DeGette. The gentleman's time has expired. We will
3395 clarify this.
3396 The chair recognizes the chairman of full committee, Mr.
3397 Pallone.
3398 The Chairman. Thank you, Madam Chair.
3399 It seems to me that the trust between a provider and a patient
3400 is at the heart of quality family planning and I am particularly
3401 disturbed by the alarm raised by numerous medical associations
3402 and in the testimony today about the devastating impacts the new
3403 Title X rule could have on this relationship, if allowed to be
3404 implemented.
3405 So as providers yourself, I will go back to Dr. Perritt and
3406 Dr. McLemore, I wanted to ask, I will start with Dr. Perritt,
3407 why is trust essential to the patient and provider relationship
3408 and what role does trust play in supporting that patient's family
3409 planning and health needs? I know you talked a little bit but
3410 if you would, elaborate.
3411 Dr. Perritt. Absolutely. I could not imagine showing up
3412 to see my provider and have their hands tied regarding the type

3413 of counseling for any medical procedure, any complication, or
3414 any condition, anything that I show up for.
3415 So this baseline level of trust means that when a
3416 provider--when a patient shows up to my office, then I can have
3417 an honest conversation. They don't have to be concerned that
3418 my motive is anything different or distracting from what their
3419 ultimate desire is.
3420 As a physician, my priority is always my patient. This
3421 conversation around promoting abortion in one way or another,
3422 the only thing that I promote and prioritize is the health care
3423 of the community I serve, period.
3424 The Chairman. And Dr. McLemore, would you agree or do you
3425 have anything to add? I mean I think what, if I understand what
3426 she is saying, is that you know even what my previous colleague
3427 said is true, that you can't even mention or even give information
3428 about abortion, that in itself is harmful to the patient provider
3429 relationship that you have to limit what you say in any way.
3430 Ms. McLemore. I do. I mean if that is what patients want
3431 that is the whole essence of patient-centeredness. It is to be
3432 able to ascertain and create a situation where patients can tell
3433 us what they need and, as service providers, we can provide them
3434 what they need.
3435 I do want to point out that the patient-provider relationship
3436 is inherently one of unequal power. And we hold that power in

3437 the relationships that we have you know with patients. We have
3438 information that the public needs. And so if you can't give them
3439 the full range of the information that they have to make the
3440 choices and decisions that they need to make, I think it really
3441 puts us in a bind with potentially catastrophic consequences.
3442 The Chairman. All right, well, I agree.
3443 Dr. Foley's testimony stated that the new rule, and I quote,
3444 places a high priority on preserving the provider-client
3445 relationship. Ms. Coleman, based on your familiarity with both
3446 the new rule and Title X providers across the country, do you
3447 agree with Dr. Foley's and HHS' contention that the new rule places
3448 a priority on preserving the provider-patient relationship, and
3449 why, or why not?
3450 Ms. Coleman. Mr. Pallone, I would start with the fact that,
3451 under this rule, the Title X program which exists to help women
3452 achieve or prevent pregnancy would not require pregnancy
3453 counseling at all. The rule would allow it but not require it.
3454 In the National Family Planning Program, meant by Congress
3455 to help people prevent or achieve pregnancy, this rule drops out
3456 the requirement that you discussed medically approved
3457 contraception that are both acceptable and effective to clients.
3458 And this rule says that if a patient asked you for a contraceptive
3459 method that the provider disagreed with or did not support
3460 offering, the provider does not need to mention, the entire entity

3461 does not need to include certain types of contraception that the
3462 entity or an individual provider finds objectionable.
3463 So for all of those reasons, of course this rule steps into
3464 the relationship between a patient and a provider.
3465 The Chairman. See one of my concerns, and I don't know if
3466 I can articulate this, is that this is going to allow so-called
3467 providers who don't believe in contraception, who don't believe
3468 in abortion, who don't believe in any of the above, to still get
3469 Title X funds.
3470 Ms. Coleman. Well, they don't get them now under the current
3471 rules.
3472 The Chairman. No, but they would under the new rule.
3473 Ms. Coleman. But they will if this rule is applied.
3474 The Chairman. So you could actually get--you could
3475 actually--I mean the way I read this thing, I could go there and
3476 say look, the only thing I do is preach abstinence, right, and
3477 I want Title X money. They would probably be approved.
3478 Ms. Coleman. Certainly, a service site could do that.
3479 It also, I mean the rule itself says a couple of times that
3480 entities should be allowed to apply conscience in deciding what
3481 the service mix is. And the rule also says that the referral
3482 requirements in place now deter qualified providers from
3483 participating.
3484 The Chairman. It is just scary.

3485 Ms. Coleman. So it seems very clear the rule was written
3486 to open the door to ideological providers and completely walks
3487 away from our commitment to be client-centered in family planning
3488 care.
3489 The Chairman. It is such a scary thing to me that you know
3490 ideology--it is already a problem but if it gets to that point,
3491 it is even you know a worse situation.
3492 Thank you. Thank you, Madam Chair.
3493 Ms. DeGette. Thank you very much, Mr. Chairman.
3494 The chair now recognizes the gentleman from Virginia, Mr.
3495 Griffith, for 5 minutes.
3496 Mr. Griffith. Thank you, Madam Chair.
3497 Dr. McLemore, you state in your written statement that, and
3498 I am quoting, I employ reproductive justice, RJ, as a theory and
3499 praxis to guide all of my work. And then it goes on to define
3500 RJ. Simply put, RJ posits that every person has the right to
3501 decide if and when to become pregnant and to determine the
3502 conditions under which they will birth and create families.
3503 In the Virginia legislature this year, there was a bill and,
3504 in answering questions, Delegate Tran was answering questions
3505 being put forward by Delegate Gilbert. Delegate Gilbert asked
3506 if under the bill, as it was put forward, if you could have an
3507 abortion as late as the time when the mother was already dilated.
3508 And the bill went on to say that it could be for any reason,

3509 as long as there was one doctor, even some emotional reason at
3510 that late stage, and that there could be an abortion.
3511 Does that fit into your definition of RJ or reproductive
3512 justice?
3513 Ms. McLemore. I have to say that the question seems a little
3514 off-putting from the context that we are talking about Title X
3515 grantees and funding.
3516 Mr. Griffith. Yes, ma'am, and I would not have asked it
3517 if you had not included it both in your written statement and
3518 in your oral statement to this committee. So I agree it is a
3519 little different but--
3520 Ms. McLemore. So here is--
3521 Mr. Griffith. --you brought it up and so I just want to
3522 know the answer. Is that a part of what you consider to be
3523 reproductive justice?
3524 Ms. McLemore. Here is the interesting thing about
3525 reproductive justice. It is not necessarily so much about what
3526 I think. The people who we serve are the experts in their own
3527 lives and so they get to decide. It is not about what I think
3528 or what I believe. I have reproductive justice as it is defined
3529 in my own life. The really great thing about human rights is
3530 is that people get to determine what rights they want to exercise
3531 within their lives and that they have the capacity to make the
3532 decisions that they think are most important. Mr.

3533 Griffith. But do you think then, under Title X, it would be
3534 appropriate if somebody had a definition that included up to the
3535 point of dilation, that they should be counseled to where they
3536 could go get an abortion in that late third trimester? They are
3537 already dilated. Should one of the Title X clinics then be
3538 counseling them to here is where you go to get that late-term
3539 abortion?

3540 Ms. McLemore. I don't think that that is a question that
3541 I can answer, given that Title X grantees do not receive monies
3542 to be able to provide abortions.

3543 Mr. Griffith. But the issue here today is whether they can
3544 make referrals or talk about it. And if reproductive justice,
3545 as you have defined it, would include, under some individuals'
3546 philosophy, up to the point of I am dilated, I am getting ready
3547 to give birth, and I have decided I don't want to.

3548 I mean I know these are tough questions but it was raised
3549 by your testimony. That is why I asked.

3550 Ms. McLemore. Well, I think there is a lot more background
3551 that would need to be provided. First of all, most abortions,
3552 almost 90 percent, happen in the first trimester. Late-term
3553 abortions are very, very rare.

3554 Mr. Griffith. I don't disagree with that. But is it
3555 really--either it is allowed under your view or it is not allowed.

3556 Ms. McLemore. It wouldn't be my decision to make.

3557 Mr. Griffith. All right, Ms. Foster, what do you say about
3558 that?
3559 Ms. Foster. I would consider that to be quite concerning,
3560 of course.
3561 Mr. Griffith. I thank you very much. I yield back.
3562 Ms. DeGette. The gentlelady from Illinois is recognized
3563 for 5 minutes.
3564 Ms. Schakowsky. So I wanted to put a few things on the record
3565 on who actually takes advantage of Title X services. Six out
3566 of ten women seeking contraceptive care at Title X-funded health
3567 centers report that center was their only source of care that
3568 year.
3569 So this is for comprehensive health care that people go to
3570 these centers. Sixty-seven percent of Title X participants had
3571 incomes at or below the Federal poverty level in 2017. Ninety
3572 percent of the Title X patients had incomes at or below 250 percent
3573 of the Federal poverty level, which means that they qualified
3574 for no-cost or subsidized services. Twenty-two percent
3575 self-identified as African American. Thirty-three percent
3576 identified as Hispanic or Latino. And finally, forty-two percent
3577 of the Title X patients are uninsured. So these programs provide
3578 essential services that go--in their settings--beyond just
3579 contraception.
3580 But I wanted to ask a couple of things that are really unclear

3581 to me. So Dr. Foley was saying that the reason you couldn't
3582 co-locate a clinic with any provider of abortion is the
3583 opportunity for commingling of funds. And I am wondering if,
3584 Ms. Coleman, we have any evidence that the current law has been
3585 violated and that there has been a commingling.
3586 Ms. Coleman. There is no evidence to support that claim.
3587 Ms. Schakowsky. I think that is really important to put
3588 on the record. The opportunity doesn't mean that there has been
3589 some sort of a violation.
3590 There was also an example given of a 13- or 14-year-old who
3591 made a mistake. So we are not talking about rape or incest.
3592 We are saying this child made a mistake and is pregnant and, then,
3593 goes to a Title X clinic with her mom, and asks for information
3594 about getting an abortion because she does not want to be pregnant
3595 at 13 or 14 years old. The answer was because that was a decision
3596 about family planning, that the doctor could not refer her to
3597 an abortion clinic. Does that make--
3598 Let me ask Ms. Foster. Does that make sense to you, the
3599 child should have that baby because--
3600 Ms. Foster. Well, as we discussed previously, Title X was
3601 enacted provide financial support for pre-pregnancy family
3602 planning services. So if there was the desire to expand it to
3603 family planning services--
3604 Ms. Schakowsky. Do you think a 13- or 14-year-old should

3605 be able to be told by the doctor that she went to with her mom
3606 that there is an abortion available for her?
3607 Ms. Foster. Well, that would be nondirective counseling
3608 and would be eligible under this rule.
3609 Ms. Schakowsky. No, no, no, it wouldn't because that kind
3610 of referral cannot be made, if the abortion is for family planning.
3611 That is what this rule says. Am I wrong, Ms. Coleman?
3612 Ms. Coleman. I think the important thing to think about
3613 is the national standard, the CDC Office of Population Affairs
3614 standard says that counseling and referral are part of the same
3615 action. So when a provider may or may not offer information and
3616 this rule allows a provider simply to be nonresponsive to that
3617 adolescent and her parent, the provider would have the opportunity
3618 to say I can't help you at all.
3619 So the provider can limit counseling and may not refer.
3620 And that is in direct contradiction to this country's own clinical
3621 standard that was in put in place in April of 2014 and remains
3622 in place today.
3623 Ms. Schakowsky. Is it also possible for that doctor to
3624 provide a list of places that does not include abortion services?
3625 Ms. Coleman. The rule would allow a provider who chose to
3626 offer a patient a list for referral. On that list must be
3627 comprehensive primary care providers. There may or may not be
3628 an abortion provider included on the list. That would be the

3629 choice of the provider and the entity. And the provider, in no
3630 case, could identify to the patient if there were an abortion
3631 provider listed and if so, which one of the health centers listed
3632 was the abortion-providing entity.

3633 Ms. Schakowsky. Thank you.

3634 I am concerned about this issue of co-locating and the kind
3635 of disruption, and I don't know who on the panel can best describe
3636 what that would mean. As I said, most--six out of ten women,
3637 when they go for contraception, this is their total care. They
3638 expect the availability of all the services. And if they are
3639 in a place where abortion is provided, what would happen to the
3640 clinics around the country if they had to set up a whole separate
3641 operation?

3642 Ms. DeGette. The gentlelady's time has expired but--

3643 Ms. Schakowsky. It did?

3644 Ms. DeGette. --we can go back to that.

3645 Ms. Schakowsky. Oh, I am sorry. Okay.

3646 Ms. DeGette. The chair will now recognize Dr. Burgess for
3647 5 minutes.

3648 Mr. Burgess. Thank you.

3649 And thank you, Ms. Foster, for pointing out that under Title
3650 X it is pre-pregnancy family planning and that is what we are
3651 talking about.

3652 So let me ask you if there are any implications of the 2019

3653 final rule that would deter grantees from applying for Title X
3654 grants in the future.
3655 Ms. Foster. No, and in fact a wider variety, a more diverse
3656 population of organizations would be able to apply for Title X
3657 grants.
3658 Mr. Burgess. So you think it would increase then the
3659 universe of people offering this service, pre-pregnancy family
3660 planning?
3661 Ms. Foster. Absolutely. And in fact, applicants who had
3662 a conscience objection prior to the 2019 rule, according to the
3663 prior requirement the Title X grantees must refer for abortion,
3664 can now in fact apply to receive Title X funds.
3665 For example, Obria Group operates a chain of clinics
3666 throughout California and was denied in 2018 but would be eligible
3667 under the 2019 rule.
3668 Mr. Burgess. Would you be concerned at all that abortion
3669 is a large enough percentage of the business of some grantee
3670 services that they would just simply pull out of Title X?
3671 Ms. Foster. I would certainly hope not. If an organization
3672 chose not to apply for a grant, that would be their choice but
3673 every organization who is currently in compliance with the law,
3674 would continue to be in compliance with the law.
3675 Mr. Burgess. So according to the April 2019 Title X
3676 directory, Texas has two grantees and 34 sub-recipients. Do you

3677 anticipate that this new rule will attract new grant applications?

3678 Ms. Foster. I would expect that it would, yes.

3679 Mr. Burgess. And ultimately, that would be a good thing.
3680 Is that correct?

3681 Ms. Foster. Absolutely. If we have a broader diversity
3682 of grant applicants and hopefully grantees, then that would be
3683 a good thing. We would have a wider variety of options for women
3684 to choose from.

3685 Mr. Burgess. So each State has different needs when it comes
3686 to the health and well-being of its citizens. Can you speak to
3687 the importance of allowing States the flexibility to choose their
3688 own Title X grant recipients?

3689 Ms. Foster. Certainly. It is absolutely critical that
3690 States have the ability to choose their Title X grant recipients,
3691 that we have that diversity and options for women.

3692 Speaking, again, of the friend that I referenced earlier,
3693 immigrant low-income women have the same right to access and
3694 should be able to access life-affirming choices, if that is what
3695 they so choose. They should be able to access a provider that
3696 shares their faith background, if they so choose, and that really
3697 should be available to women in every walk of life.

3698 Mr. Burgess. Well, thank you for those responses.

3699 Madam Chair, I would just like to submit for the record a
3700 letter to me from Dr. Michael New. Dear Dr. Burgess, I would

3701 like to draw your attention data showing overall positive trends
3702 in Texas, including a reduction in the number abortions year after
3703 year. He is talking about 2011-2015. Between that time frame,
3704 the last year for which data is publicly available, the pregnancy
3705 rate for minors in Texas fell by 39 percent, the birth rate for
3706 minors fell by 36 percent, and the number of abortions performed
3707 on minors fell by 53 percent. Additionally, during this time,
3708 the overall abortion rates in Texas declined by over 29 percent
3709 and the State birth rate exhibited little change.
3710 And this is in the background of--I mean we are growing in
3711 Texas. We are getting bigger. The female population age 15 to
3712 44 just under 5,400--I am sorry--5,400,000 in 2011 and is now
3713 5,700,000 in 2015. The female population age 13 to 17 likewise
3714 increased significantly between 2011 and 2015. So it is not a
3715 declining population that is resulting in these declining
3716 numbers. It is providing the timely services, pre-pregnancy
3717 family planning.
3718 Thank you very much and I will submit this for the record.
3719 Ms. DeGette. So I will just say, in terms of admitting this
3720 to the record, as a former trial letter, this would never go into
3721 the record, since we don't know who Dr. New is or what is
3722 methodology was. But having said that, we have a general practice
3723 in this committee of admitting letters that go to members.
3724 And so with the caveat that we don't know if any of this

3725 data is accurate and, without objection, I will admit it into

3726 the record.

3727 [The information follows:]

3728

3729 **********COMMITTEE INSERT**********

3730 Mr. Burgess. So happily for you, that is referenced in the
3731 Department of Health and Human Services--
3732 Ms. DeGette. We have admitted it.
3733 Mr. Burgess. --with the State of Texas. It is easily
3734 verifiable.
3735 Ms. DeGette. It has been admitted.
3736 The chair will now recognize Ms. Castor from Florida for
3737 5 minutes.
3738 Ms. Castor. Well, thank you, Chair DeGette.
3739 In addition to dictating what information Title X providers
3740 would or wouldn't be allowed to share with their patients, the
3741 administration's new Title X rule appears to undermine
3742 evidence-based standards of care. And you heard before lunchtime
3743 a lot of discussion. The American Medical Association opposes
3744 this. American College of Obstetricians and Gynecologists
3745 opposes it. American Family Physicians, American Public Health
3746 Association, most of our witnesses today, they oppose this new
3747 rule. For example, ACOG and 18 other leading health
3748 organizations said of the rule that, quote, the final Title X
3749 regulation disregards expert opinion and evidence-based
3750 practices.
3751 Dr. Perritt, do you agree that the final rule disregards
3752 evidence-based practices?
3753 Dr. Perritt. Absolutely. We rely really heavily on the

3754 evidence to make medical decisions and to help guide our patients.
3755 It violates it without question.
3756 Ms. Castor. Do you think that this rule is likely to lead
3757 to more unintended pregnancies?
3758 Dr. Perritt. If we decrease access to comprehensive family
3759 planning services, yes, it will lead to decrease access. We heard
3760 lots of conversation about hoping that it improves access. We
3761 hope that it increases access. We hope that more people get care.
3762 The patients that I take care cannot bank on our hope. They
3763 need actual legitimate services that are comprehensive, that are
3764 respectful, that respect their agency and autonomy. They deserve
3765 that.
3766 Ms. Castor. Do let's take a step back for a minute and
3767 recognize the progress that we have made in the United States
3768 of America in decreasing the number of unintended pregnancies.
3769 A lot of that success goes right back to Title X because, for
3770 about 50 years, we have made every effort to ensure that every
3771 woman, no matter where she lives, no matter what her income has,
3772 has equal access to contraceptives and can make those family
3773 planning decisions with her family, her husband, her faith, the
3774 doctors, all the healthcare providers. It has been a tremendous
3775 thing. That is why it is just so mindboggling why the
3776 administration voices an intent to decrease the number of
3777 unintended pregnancies is doing the exact opposite of what should

3778 be done. We should be strengthening the healthcare safety-net
3779 for women and families.

3780 The Title X, current Title X guidance specifies that
3781 projects, quote, provide a broad range of acceptable and effective
3782 medically-approved family planning methods and services. Yet,
3783 the administration's new rule would eliminate the term
3784 medically-approved.

3785 Ms. Coleman, what signal is the administration sending by
3786 eliminating this term?

3787 Ms. Coleman. Again, the administration has made clear in
3788 the rule that they believe that entities applying for Title X
3789 and providers who work in those entities should be able to choose
3790 according to their own preferences and beliefs what range of
3791 contraceptive methods and services will be available. The rule
3792 says that explicitly. And so we have great fear that some of
3793 the most effective and acceptable methods of contraception would
3794 simply be eliminated from Title X-funded projects. And that
3795 would mean you could come in, perhaps with no idea of what you
3796 would like to have as your method, but want to have a full
3797 conversation and be told that certain conversations are not open;
3798 this provider is not willing to engage; or those methods aren't
3799 available to you.

3800 Ms. Castor. Then do you also believe that if this rule is
3801 adopted, it likely will lead to more unintended pregnancies?

3802 Ms. Coleman. I think that is certainly the case. And I
3803 want to draw attention again to the fact that the Federal
3804 Government went through a scientific clear 4-year process,
3805 involving both Government officials and nongovernmental experts.
3806 They produced a 50-page report that is available to the public
3807 that is based on evidence from ACOG, evidence from the AMA,
3808 evidence from the American Cancer Society, evidence from the U.S.
3809 Preventive Services Task Force. That is the clinical standard
3810 that is in place today and it is designed to be responsive to
3811 clients but also to help prevent unintended pregnancy.
3812 Ms. Castor. And Ms. Geoffray, we don't have to imagine what
3813 the impacts of this shift might be. You say in your testimony,
3814 should this administration be allowed to undermine evidence-based
3815 and client-centered services and interfere with the
3816 patient-provider relationship in the Title X Family Planning
3817 Program, our experience in Texas shows that we risk the loss of
3818 qualified providers and, in turn, reduced access to high-quality
3819 family planning services in communities across the country.
3820 So based on your experience in Texas, could you go into more
3821 detail about the impact of undermining evidence-based care will
3822 have on communities?
3823 Ms. Geoffray. Absolutely. As I shared this morning, as
3824 a result of the funding and policy changes that happened in Texas
3825 in 2011, we saw 82 clinics close, one out of four our State closed

3826 or reduced hours. Two-thirds of those clinics had no affiliation
3827 with abortion service providers and so it was a much larger net
3828 than I think was intended to be cast.

3829 We saw clients lose services. Again, after the 2011 cuts,
3830 54 percent of clients lost services. Studies have documented
3831 that thoroughly.

3832 I think that we also see that whenever we put overly
3833 burdensome requirements or the Government interferes with the
3834 patient-provider relationship, that causes providers to
3835 disengage from these programs. In Texas, we saw providers who
3836 were not willing to sign attestation forms stating that they did
3837 not elect--perform elective abortion or affiliate with those who
3838 perform elective abortion, simply because they did not believe
3839 that it was something the Government should be asking of them
3840 and that it might violate their ethics and their duties of care.

3841 Ms. DeGette. The gentlelady's time has expired.

3842 Ms. Geoffray. And then also, we saw people not want to sign
3843 into a program that didn't allow the coverage of emergency
3844 contraception. So again, moving away from evidence-based.

3845 Ms. DeGette. The gentlelady's time has expired. Thank
3846 you.

3847 The chair now recognizes the gentlelady from Indiana, Mrs.
3848 Brooks.

3849 Mrs. Brooks. Thank you, Madam Chair.

3850 And I want to thank everybody for a very good discussion
3851 about an incredibly difficult subject. And I know we certainly
3852 all might not agree but a couple of things that I want to make
3853 sure everybody appreciates is the importance of contraception,
3854 the importance of prevention of unplanned pregnancies, and that
3855 I think everyone can certainly agree.

3856 I am curious, though, whether or not each of you were here
3857 during Dr. Foley's testimony and whether or not you read Dr.
3858 Foley's testimony. Ms. Coleman, and did you read her testimony?

3859 Ms. Coleman. I was present and I did review the testimony
3860 ahead of the hearing.

3861 Mrs. Brooks. Thank you. Ms. Geoffray?

3862 Ms. Geoffray. Yes, I was present and I read the testimony.

3863 Mrs. Brooks. Okay, thank you. Dr. McLemore?

3864 Ms. McLemore. I was present and I read her testimony.

3865 Mrs. Brooks. Thank you. Dr. Perritt?

3866 Dr. Perritt. I was present but I did not read her testimony.

3867 Mrs. Brooks. Okay, thank you. Ms. Foster?

3868 Ms. Foster. I was present and read her testimony.

3869 Mrs. Brooks. And what I have struggled with today is the
3870 fact that as a physician, and I am a lawyer, I am not a physician,
3871 so I have gone to the Federal Register to try to read what has
3872 been written about this rule and I am focused on the nondirective
3873 counseling piece that I have struggled with and you heard me ask

3874 those questions before.

3875 And that is what I cannot quite reconcile today from what
3876 all of the associations and what the organizations that we have
3877 all heard about but yet, I am hearing from the top official who
3878 oversees the office that oversees these grants. And her
3879 testimony, both written, and present today, and backing up this
3880 rule, which is the Federal Register rule, 42 CFR Part 59, continues
3881 to talk about the fact that nondirective pregnancy counseling
3882 does provide and allow for providers to give lists of qualified
3883 comprehensive primary healthcare providers which may provide
3884 abortion services.

3885 And so I am really struggling with the assertions that that
3886 will no longer be allowed under this rule. And I have such
3887 tremendous respect for the patient-client--not client--I am the
3888 lawyer-client--the physician-patient relationship and yet why
3889 would a physician, under this rule, where the rule allows, and
3890 the Federal Register allows, and the top doc overseeing this said
3891 it is okay, and in fact it is permitted, why would they not be
3892 able to provide a list and to have a discussion about abortion
3893 when the 13-year-old came in with her mother? Why do you believe
3894 that, when she came out very specifically and said that is not
3895 what we have written in the rule, that is not how the Federal
3896 Register is being interpreted, that is not what we are stating,
3897 that is not what she is testifying to under oath?

3898 Why do you believe those discussions cannot happen? Dr.
3899 Perritt, whether you have--you heard what she said, whether you
3900 read it or not.

3901 Dr. Perritt. So let--

3902 Mrs. Brooks. And I respect what you do. I do, I respect
3903 what all of you do. And so I am confused why everyone is not
3904 listening to what she said.

3905 Dr. Perritt. Sure, let me offer some clarification. I
3906 think Ms. Coleman really spoke to it best when she really stressed
3907 the linkage between counseling and referral. There is something
3908 in the medical field called linkage to care. It means that you
3909 don't just give someone a piece of paper, say good luck, I wish
3910 you well, be on your way, particularly when we are talking about
3911 under-resourced communities.

3912 Being trapped in a cycle of poverty is very--it preoccupies
3913 you with survival. So what that means is that even disconnecting
3914 services and moving them out of the same building is a barrier
3915 for people. It is a barrier for the communities that I take care
3916 of. So when we offer a list with no context, with no additional
3917 information, no realistic avenue to access those services because
3918 it is not tied to a referral, that means people cannot get the
3919 care that they need. That is not nondirective. That is not
3920 patient care. That is not how medicine works.

3921 Mrs. Brooks. But would you not agree that a provider can

3922 have the discussion, even under the rule, and can talk about the
3923 pros and the cons but, as I read it, now I am a lawyer so I am
3924 trying to read this rule literally and what the CFR literally
3925 says, but they can provide counseling and education but the client
3926 has to take that active in then deciding that information.

3927 So why is that not--so that 13-year-old and her mother, a
3928 provider can answer questions, can say here is the list of places
3929 that provide all sorts of services, including abortion, according
3930 to this, they may provide in addition to comprehensive primary
3931 care. That is what is stated here. And that is what I just heard
3932 Dr. Foley testify to.

3933 Now it is not in the same building. That is true. This
3934 rule does not allow it to be co-located. It does not allow that.
3935 But I do not see how the rule does not allow, and I think we
3936 have a fundamental disagreement on what I believe Dr. Foley said
3937 can happen, and what the rule is stating can happen, and what
3938 the community you are representing is saying can happen.

3939 Ms. DeGette. The gentlelady's time has expired.

3940 Mrs. Brooks. And with that, I yield back.

3941 Ms. DeGette. The gentlelady from New Hampshire is
3942 recognized.

3943 Ms. Kuster. I would like to pick up right here. Maybe
3944 people who have a different life experience might understand these
3945 experiences differently. I have been an adoption attorney for

3946 25 years. I have literally represented young birth moms who had,
3947 frankly, no idea even how they got pregnant. And for them to
3948 be able to direct a conversation with a healthcare provider to
3949 ask specifically for options, including terminating the pregnancy
3950 I think is beyond the imagination.

3951 I think what we are talking about here is breaching the
3952 confidentiality and the sacred nature of the conversation between
3953 a healthcare provider and their patient. And for the
3954 Government--I believe in less Government interference with
3955 people's personal lives. And for the Government to say what that
3956 conversation should be is far too much interference.

3957 And I would love, Ms. Coleman, if you would, to give your
3958 thoughts on this.

3959 Ms. Coleman. I think it is first important to again note
3960 that the provider can choose to have no conversations at all in
3961 the context of a family planning visit and in the context of a
3962 positive pregnancy test.

3963 Ms. Kuster. I apologize for interrupting. Can we just
3964 clarify for the record? A church can now receive these funds
3965 for a program that is solely abstinence or rhythm.

3966 Ms. Coleman. If the rule were implemented, and it is not
3967 in place today, a church with a health service could participate
3968 in a Title X program and provide a single service or a limited
3969 range of services.

3970 Ms. Kuster. So my tax dollars, against my will, going to
3971 a church without giving the full range of options that any
3972 healthcare provider would provide.
3973 Ms. Coleman. I do want to clarify that under today's law,
3974 it is permissible under Title X program to have a service site
3975 offer a single service. It doesn't happen often but it can happen
3976 and it has long been part of the program.
3977 So for example, if a State Health Department wanted to
3978 contract with a Catholic University for a university-based health
3979 center and that university-based health center said all we want
3980 to do is fertility awareness methods, that is permissible under
3981 the current Title X program, as long as the--
3982 Ms. Kuster. So a 22-year-old--
3983 Ms. Coleman. --other access points in that area, in that
3984 project, which may be statewide or may be more limited, offers
3985 a broad range of medically-approved methods and services.
3986 So it does allow for diversity of a service mix. The law
3987 allows for that now.
3988 Ms. Kuster. So a 22-year-old student who, because of her
3989 own privacy, is not going to pursue a full-blown rape allegation,
3990 but was in a situation, in a fraternity basement, that someone
3991 took advantage of her, she goes in to this university health care
3992 and what is she told? She is told that adoption is her option?
3993 Ms. Coleman. No, ma'am.

3994 Ms. Kuster. I mean how does she get any advice?

3995 Ms. Coleman. Under the current rules, upon a patient's
3996 request, you provide full options counseling. So if a patient
3997 comes in and either knows she is already pregnant or you confirm
3998 pregnancy at the visit, it is led by the patient. So, I often
3999 say if the patient says I am thrilled, you don't say let me talk
4000 to you about giving up your child for adoption or abortion. You
4001 respond to the client that is in front of you.

4002 Ms. Kuster. Right but I am saying she is distressed. She
4003 doesn't remember anything. She was given a Rohypnol pill and
4004 she finds herself pregnant. She does not want to be pregnant.
4005 She wants to continue her studies and carry on with her life.
4006 And in that case of the religious school with the sole source,
4007 they would say oh--

4008 Ms. Coleman. Let's separate the offering of the methods
4009 from the requirements to do full comprehensive options counseling
4010 upon the patient's request. Those are different.

4011 So that patient could come, they could offer one method of
4012 contraception but, if the patient has a positive pregnancy test,
4013 was in deep distress, and asked for information about a single
4014 option, termination, or all three options because she needed time
4015 to think about it, the organization in Title X today would be
4016 required to furnish her with nondirective medically-accurate,
4017 neutral information, and referral upon request.

4018 Ms. Kuster. How about after the rule, if this rule goes
4019 into effect?
4020 Ms. Coleman. After the rule, neither the counseling nor
4021 referral for--well, referral for abortion wholly prohibited.
4022 Directive prenatal referral required.
4023 So if she was in distress and just said I need some time
4024 to talk about it, under this rule, you wouldn't give her time.
4025 You would see, here is a prenatal care referral but you could
4026 skip all the discussion and the rule doesn't require that your
4027 counseling be medically accurate.
4028 Ms. Kuster. I am out of time.
4029 Ms. DeGette. The gentlelady's time has expired.
4030 Ms. Kuster. I had some great questions that I will refer
4031 to the record. Thank you.
4032 Ms. DeGette. The gentleman from Oklahoma is recognized for
4033 5 minutes.
4034 Mr. Mullin. Thank you, Madam Chair, and thank you for the
4035 panel that stayed.
4036 I am going to ask some tough questions but it is really not
4037 an I got you question, Dr. Perritt, because most of them are going
4038 to be coming to you. It is not an I got you question. It is
4039 about information. You were very precise on answering some
4040 questions a while ago, where you said it is about the context,
4041 and the information to your patient, and providing them with their

4042 best choices but part of that is actually understanding what those
4043 options are, and what those options include.
4044 So with that being said, you are an OB/GYN, right?
4045 Dr. Perritt. I am.
4046 Mr. Mullin. And you have delivered babies and you have also
4047 performed abortions or you currently still perform abortions.
4048 Is that correct?
4049 Dr. Perritt. Yes.
4050 Mr. Mullin. What is the latest stage that you have performed
4051 an abortion?
4052 Dr. Perritt. So I would love to talk with you a little bit
4053 about what is happening with my patients but my medical practice
4054 right now is not what I came here to discuss.
4055 Mr. Mullin. I know.
4056 Dr. Perritt. We have a lot of time--
4057 Mr. Mullin. No, no, this is about--no, no, this is about
4058 information. I am asking questions.
4059 Dr. Perritt. Information that is relevant to Title X?
4060 Mr. Mullin. Yes, it is because it is about information to
4061 which we are talking about here. If we are going to have these
4062 options out to the public, then they also got to know what their
4063 choices are. This is what you are saying, that you want to provide
4064 your patient with the best information possible. And you are
4065 saying that under Title X, underneath the new rule, that that

4066 will be prohibited for you to do so but yet, we have had this
4067 discussion back and forth saying it wouldn't be.
4068 So let's talk about the information. You have performed
4069 abortions, correct?
4070 Dr. Perritt. I have already said that I do.
4071 Mr. Mullin. Okay, so how many babies have you delivered?
4072 Dr. Perritt. I don't know the answer to that and once,
4073 again--
4074 Mr. Mullin. Just roughly. Just roughly.
4075 Dr. Perritt. --we are here talking about--I don't the
4076 answer to that.
4077 Mr. Mullin. Okay, so how many abortions have you performed?
4078 Dr. Perritt. What I--and I don't know the answer to that.
4079 Mr. Mullin. You don't?
4080 Dr. Perritt. What I would like to talk with you about--
4081 Mr. Mullin. No, ma'am, I am asking the questions.
4082 Dr. Perritt. Sure.
4083 Mr. Mullin. I am asking the questions here.
4084 Can you tell me then what the difference is between a baby
4085 being delivered and performing an abortion?
4086 Dr. Perritt. I can tell you the difference between taking
4087 care of low-income people--
4088 Mr. Mullin. No.
4089 Dr. Perritt. --who need access to reproductive services--

4090 Mr. Mullin. That is not my question that I am asking you.
4091 You want to provide information to the patient but for some
4092 reason, you don't want to talk about the abortion, what procedures
4093 take place.
4094 My question to you is: What is the difference? When you
4095 are delivering a baby or you are performing an abortion, what
4096 is the difference?
4097 Dr. Perritt. What I would like--
4098 Ms. DeGette. So I am going to stop this right now. And
4099 the reason I am going to stop it is because the rules of the House
4100 say that we have the responsibility to preserve order and decorum.
4101 Mr. Mullin. And so where am I out of order on this?
4102 Ms. DeGette. Let me finish. The title of this hearing is
4103 on the Protecting Title X and Safe-Guarding Quality Family
4104 Planning Care. And it is completely outside the--
4105 Mr. Mullin. Abortion has been brought up multiple times
4106 in this hearing.
4107 Ms. DeGette. Excuse me. The gentleman will come to order.
4108 It is outside the purview of this--
4109 Mr. Mullin. No, it is outside the purview because you guys
4110 don't want to talk about it. And yet anybody else on that side
4111 can bring up whatever they want to, and they can talk about
4112 whatever they want to. But when I am asking a question--
4113 Ms. DeGette. The gentleman will yield back.

4114 Mr. Mullin. --and I said it is very clear, I am not trying
4115 to I got you, it is trying to be information that all of a sudden
4116 you don't want to talk about it.
4117 Ms. DeGette. The gentleman will suspend and the chair will
4118 explain.
4119 The title of this hearing is on Protecting Title X and
4120 Safe-Guarding Quality Family Planning care. It is not on the
4121 nature of Dr. Perritt's personal medical services.
4122 Mr. Mullin. It is about information that needs to be given
4123 out.
4124 Ms. DeGette. --and if the gentleman wishes to ask about
4125 the topic of this hearing, he is more than welcome to, as have--
4126 Mr. Mullin. The topic has been about abortions the whole
4127 time. Everybody has been talking about the abortions. Yet, when
4128 I want to discuss it because I want to talk about the procedures
4129 that want to be done, now all of a sudden we can't talk about
4130 it?
4131 Ms. DeGette. The gentleman may proceed to talk about the
4132 topic of this hearing.
4133 Mr. Mullin. So then tell me what the topic is, I guess,
4134 because I have been hearing you guys talk about everything
4135 underneath the sun but yet we can't talk about abortion now that
4136 I want to? Because you guys are.
4137 No, seriously, where is the line? Because I don't know where

4138 the line is anymore.

4139 Ms. DeGette. As the chair has noted, questions to the
4140 witnesses, the physician and--the medical witnesses about the
4141 character of their--

4142 Mr. Mullin. She is here talking about her profession, that
4143 she is an OB/GYN--

4144 Ms. DeGette. The gentleman has an answer to that question.

4145 Mr. Mullin. --and she is testifying on that behalf about
4146 her patient and providing her patient information. If they are
4147 talking about information, then the procedure of how the abortion
4148 is performed should be part of the information that the patient
4149 receives.

4150 Ms. DeGette. Sir--

4151 Mr. Mullin. Is that not accurate?

4152 Ms. DeGette. --you are attacking the witness--

4153 Mr. Mullin. I am not attacking.

4154 Ms. DeGette. --on her personal medical--her medical
4155 practice.

4156 Mr. Mullin. How am I attacking? I am asking questions.

4157 Ms. DeGette. She has a--

4158 Mr. Mullin. Tell me one thing that has been a personal
4159 attack.

4160 Ms. DeGette. The gentleman is out of order. He can ask
4161 questions about the topic of this hearing.

4162 Mr. Mullin. That is the topic of the hearing.

4163 Ms. DeGette. You may proceed.

4164 Mr. Mullin. On the discussion that I was saying?

4165 Still wanting to know what the difference between performing
4166 an abortion and delivering a baby is.

4167 Dr. Perritt. As I mentioned before, I am happy to talk with
4168 you about the patients that I take care of and--

4169 Mr. Mullin. Ma'am, you are here as a professional
4170 testifying. And I am asking an information question that I am
4171 not attacking you personally on. I am simply wanting to know
4172 what the difference is.

4173 Dr. Perritt. Whether or not--

4174 Mr. Mullin. I think it is important for the public to know
4175 because you are talking about choice. You are talking about
4176 understanding the differences and providing your patient with
4177 the information. This is prevalent, too.

4178 Dr. Perritt. My concern is not whether or not you are
4179 attacking me personally.

4180 Mr. Mullin. I am not.

4181 Dr. Perritt. I am not here as a personal individual. I came
4182 here only to talk about--

4183 Mr. Mullin. Okay, then answer my question.

4184 Dr. Perritt. I came to talk about the people that I take
4185 care of.

4186 Mr. Mullin. And this is part of it.

4187 Dr. Perritt. We are talking a lot about--

4188 Mr. Mullin. This is part of it.

4189 Dr. Perritt. We are talking a lot about providers, the care
4190 that I provide inside the office, and what Planned Parenthood
4191 does.

4192 Mr. Mullin. What--

4193 Dr. Perritt. There is not one single person here, other
4194 than the medical providers who are talking about the people that
4195 are impacted, the patients. That is why I am here.

4196 Mr. Mullin. This is talking about the patient. The patient
4197 needs to know the information. So what is the difference between
4198 delivering a baby and performing an abortion? Ma'am, you have
4199 done both. You are the best person to ask this question to.

4200 Dr. Perritt. I am the best person to talk about--

4201 Mr. Mullin. Then answer it.

4202 Dr. Perritt. --what happens in the office when individuals
4203 don't have the care that they need. I am the best person to talk
4204 about what it means to--

4205 Mr. Mullin. Then why won't you answer this question?

4206 Dr. Perritt. --be in an urban place, or a rural place and
4207 not be--

4208 Mr. Mullin. Why are you avoiding the question?

4209 Dr. Perritt. I am not avoiding any question.

4210 Mr. Mullin. Ma'am, you are, too, because I have asked it
4211 to you three times--
4212 Dr. Perritt. I am trying to--I would love to--
4213 Mr. Mullin. --and you just won't answer it.
4214 Dr. Perritt. --talk about family planning services and
4215 reproductive health care in the context of Title X.
4216 Mr. Mullin. Okay, ma'am, obviously you don't want to talk
4217 about it. You want to provide every option but you don't want
4218 to get into the details.
4219 Do you think those details are important that your patient
4220 should receive those details when you are making a referral for
4221 them to go get an abortion? Do you think you should give that
4222 information to your patient to tell them what it is going to
4223 entail, that how you are going to kill that baby is going to take
4224 place, how the abortion is going to be performed, and then what
4225 the difference is? You don't think that information is
4226 prevalent?
4227 Dr. Perritt. What I think is that your rhetoric is
4228 inflammatory.
4229 Mr. Mullin. Rhetoric?
4230 Dr. Perritt. It is not medically-based--
4231 Mr. Mullin. It's not medically-based?
4232 Dr. Perritt. --and it is absolutely offensive because you
4233 suggest--

4234 Mr. Mullin. Do you end the life of the fetus?

4235 Dr. Perritt. --that neither or I nor my patients know what

4236 they are there to talk about or what care that they need.

4237 Mr. Mullin. Do you end the life of the fetus?

4238 Ma'am, there is no way that I am out of time because you

4239 and I had a discussion for a minute and a half.

4240 Ms. DeGette. We stopped the clock.

4241 Mr. Mullin. I watched it run.

4242 Ms. DeGette. We stopped the clock.

4243 The chair will now recognize the gentleman from New York,

4244 Mr. Tonko, for 5 minutes.

4245 Mr. Tonko. Thank you, Madam Chairwoman.

4246 We have heard today just how pivotal the role of Title X

4247 has played over the past 50 years in building a network of family

4248 planning clinics that ensure access to high-quality reproductive

4249 care, for low-income, or uninsured individuals, many of whom face

4250 barriers to care.

4251 We have also heard today from Dr. Foley that provisions

4252 within the Trump administration's new Title X rule were, and I

4253 quote, designed to increase the number of clients served within

4254 the Title X programs. In fact, Dr. Foley also contends that the

4255 rule, and I again quote, focuses on innovative approaches to

4256 expand Title X services and make inroads into sparsely population

4257 areas.

4258 So Ms. Geoffray--do I have that correct--let me being with
4259 you, since the Title X network you manage in Texas presumably
4260 spans some sparsely populated areas.

4261 Do you believe the provisions in the rule would lead to an
4262 increase in the number of Title X clients served?

4263 Ms. Geoffray. I think that the provisions of the rule, as
4264 they are--if they would be implemented, would allow providers
4265 that do not provide comprehensive family planning care that is
4266 evidence-based and client-centered to enter our network. And
4267 while clients may be served by those providers, we have serious
4268 concerns about the types of services they would receive.

4269 I also have concerns that those most qualified providers,
4270 those who are providing evidence-based client-centered care,
4271 would be disincentivized from continuing their participation in
4272 the program, if these rules went into effect, specifically as
4273 it relates to options counseling and what they could and could
4274 not say in the context of those counseling sessions.

4275 Mr. Tonko. And similarly, Ms. Geoffray, I am curious as
4276 to whether you would characterize the rule as focusing on what
4277 they call innovative approaches to expand Title X services.

4278 Ms. Geoffray. I do not. I would like to speak a bit about
4279 the innovations that the current grantees, including what we are
4280 doing in Texas, what we are doing now, if that is okay with you.

4281 Mr. Tonko. Sure.

4282 Ms. Geoffray. So many of our counterparts around the
4283 country are working to integrate substance use disorder treatment
4284 into the family planning care that we provide. We are using
4285 telemedicine and telehealth to deliver family planning services
4286 to remote and rural locations. We are providing outreach in
4287 culturally-competent ways across different communities across
4288 the country to ensure that people are accessing much-needed care.
4289 We are working in school-based health centers to help teens
4290 understand their sexual and reproductive health needs and how
4291 to access services.
4292 So I would say that we are doing a lot of very innovative
4293 care across the country right now. If what the rule promotes
4294 is increased access to one method of care, specifically fertility
4295 awareness-based methods, I would not call that innovation. I
4296 would actually call that something that our providers are doing
4297 in the context of the broad range of family planning care right
4298 now.
4299 Mr. Tonko. Thank you.
4300 And Ms. Coleman, you have heard the answers that we received
4301 here from Ms. Geoffray. Are there reasons to be concerned that
4302 the administration's rule may in fact result in the opposite
4303 outcomes, should it be implemented?
4304 Ms. Coleman. Certainly. So there have been a number of
4305 State governments and a number of provider entities that have

4306 stated publicly that they would not be able to continue to
4307 participate in Title X-funded care if this rule were implemented.
4308 There are many, many places in the country where the provider
4309 network is dominated by one kind of provider, whether they be
4310 local health departments, for example, in a State like South
4311 Carolina or Montana. And so we have great concerns that there
4312 may be wholesale withdrawals or just withdrawals in certain parts
4313 of a State and that would certainly impact access to care.
4314 I will say something that I said earlier, which is Title
4315 X-provided services are in 60 percent of U.S. counties but that
4316 is where 90 percent of women in need live. And so when the
4317 administration persists in saying there are underserved areas,
4318 there are underserved areas, there is no conversation happening
4319 with our grantees, at this stage, about where those last ten
4320 percent of women in need, and I want to recognize that there are
4321 more than just women who require family planning and sexual health
4322 services under Title X, but there is no discussion with this
4323 network about how we might meet that last bit of need that is
4324 not being attended to by a provider site right now.
4325 Mr. Tonko. Thank you. Well, I am curious, Ms. Coleman.
4326 If we were in fact committed to increasing the number of patients
4327 to Title X program services they could access, even in remote
4328 areas, what would Congress and the administration be doing to
4329 realize these goals?

4330 Ms. Coleman. I am pleased you asked that question. NFPRHA
4331 came to the Hill this year and asked for $737 million, which is
4332 derived from a 2016 Health Affairs research study that was a CDC
4333 Office of Population Affairs and George Washington University
4334 researchers collaborated. And they said with Medicaid
4335 expansion, and with the Affordable Care Act somewhat in place,
4336 they made certain assumptions, that we would need $737 million
4337 annually appropriated to Title X just to meet the needs of women.
4338
4339 I just want to remark that under our last set of data, about
4340 12 percent of the people we see are men in Title X. So we probably
4341 need more than $737 million a year but that would go a long way
4342 to meeting the needs of low-income women in this country.
4343 Mr. Tonko. Well, I thank all of you for testifying today.
4344 And with that, I yield back.
4345 Ms. DeGette. The gentleman yields back. The chair now
4346 recognizes Mr. Bilirakis for 5 minutes.
4347 Mr. Bilirakis. Thank you, Madam Chair. I appreciate it
4348 so much. Thank you for your testimony today and thanks for
4349 allowing me to sit in. I am not on this subcommittee, so I really
4350 appreciate you allowing me to sit in.
4351 Ms. Foster, historically, there have been a limited
4352 competition among Title X grantees. In 2009, the Institute of
4353 Medicine, now the National Academies Press, issued a report noting

4354 that, and I quote, competition rarely occurs among grantees in
4355 the program, since there are few applications for any given award,
4356 and there is almost no guaranteed turnover, less than two percent
4357 per year, according to the Institute. Since at least fiscal year
4358 2010, HHS' congressional budget justification has commonly
4359 emphasized the importance of competition and noted the program's
4360 desire to, and I quote, to increase competition for family
4361 planning services--service funds.

4362 So the question is, Why is it important to have competition
4363 in the Title X program among grant recipients? Does competition
4364 make for a healthier Title X program?

4365 Ms. Foster. Absolutely. Competition will make for a
4366 healthier Title X program. It will increase the diversity among
4367 the program grantees. It will allow for a broader range of
4368 grantees, of organizations, of clinics, of services, to include
4369 the full range of family planning services. And I believe that
4370 it will make the entire program better, that everyone will rise
4371 to the challenge.

4372 We know that, for example, when it comes to family planning
4373 Federal funding more broadly, things like Medicaid and so on,
4374 we know that there is evidence of family planning clinics billing
4375 for abortion-related services. We know that from Georgia, from
4376 Maine, from Nebraska, from New York, over and over, and over,
4377 Massachusetts, Washington State. And Maine called one instance

4378 a clear violation. We know that one New York audit found that
4379 42 percent of a sample of billing instances were improperly billed
4380 as--they were abortion services, abortion-related services and
4381 42 of the sample was improperly billed to the Federal Government
4382 as abortion services, when it should not have been.
4383 So it will work to ensure that that sort of misbilling, of
4384 waste, and abuse, and improper commingling will not take place
4385 and that we will increase the diversity within the program.
4386 Mr. Bilirakis. So what steps are HHS taking to increase
4387 competition and diversity in the Title X--for Title X grantees?
4388 Ms. Foster. Well this rule is about transparency, and
4389 consistency, and accountability. It is not new. The
4390 requirement about nondirective counseling is not new. And as
4391 we discussed earlier, Rust v. Sullivan even upheld a stricter
4392 construction of counseling.
4393 So if Congress disagrees with the Title X requirements
4394 supported by this rule, Congress is free to readdress the Title
4395 X requirements. But in the meantime, this rule supports those
4396 requirements and even works to increase diversity, to increase
4397 the range of providers who will be in the marketplace for women.
4398 Mr. Bilirakis. Okay and that includes ideological
4399 diversity; if so, why is it important? Why is that an important
4400 measure for diversity under the Title X program?
4401 And then also, I have one last question. Does it also

4402 include geographical diversity and, if so, why is that important
4403 that we have geographic diversity as well?
4404 Ms. Foster. Ideological and geographical diversity are
4405 both critical to the Title X program. Low-income women,
4406 immigrant women deserve to be able to access providers who match
4407 their backgrounds, who match their--whether it is a faith
4408 background or some other background, they should be able to access
4409 the services that they desire from the provider that they desire.
4410 And in the past, we have had issues where, for example, we
4411 had Title X requirements that went against the Weldon Amendment,
4412 for example, and would have required referrals against the
4413 conscience rights of healthcare providers. This prevents that
4414 and ensures that a broader range of providers, who are offering
4415 a broad range of services, many of them may be offering services
4416 that include things like hormonal contraception, that include
4417 a full range of family planning services, but are more
4418 ideologically aligned to the women. And by increasing the number
4419 of providers in the marketplace, we would hope to be able to see
4420 a greater geographical diversity as well and more clinics in
4421 women's own neighborhoods, in their backyards, so that they are
4422 able to easily access.
4423 Mr. Bilirakis. All right, thank you very much.
4424 I yield back, Madam Chair.
4425 Ms. DeGette. The gentleman's time has expired.

4426 Welcome to Mrs. Rodgers from Washington State. We are glad
4427 you are here. We recognize you for 5 minutes.
4428 Mrs. Rodgers. Thank you Madam Chair, Ranking Member, and
4429 thank you everyone for being here today.
4430 Title X of the Public Health Service Act provides family
4431 planning services to low-income women. Today, there are
4432 approximately 4,000 Title X service sites in the United States,
4433 including State and county health departments, Community Health
4434 Centers, non-profit clinics, and Planned Parenthoods.
4435 The Protect Life Rule ensures that taxpayer-funded family
4436 planning centers will serve their intended purpose, to help women
4437 receive comprehensive, preventative health care, while ensuring
4438 the separation of taxpayer funds from abortion services.
4439 Ms. Foster, I have a couple of questions for you. First,
4440 how do these centers that are eligible for Title X funding under
4441 the Protect Life Rule provide comprehensive and primary care to
4442 women?
4443 Ms. Foster. Centers that will be eligible under the Protect
4444 Life Rule will be able to provide the range of family planning
4445 services. Thanks to pooling, not every center may provide a full
4446 range, that is true, but within a geographical area, the full
4447 of range of family planning services will be provided.
4448 Mrs. Rodgers. If abortions only make up a small percentage
4449 of services offered by Planned Parenthood, it should be no problem

4450 for them to comply with this rule. If they or organizations
4451 similar to them were willing to comply with these simple rules,
4452 would they continue to receive funding? Ms. Foster. Any
4453 organization that complies with the rule which, again, supports
4454 Title X as enacted by Congress, will be eligible to continue to
4455 receiving funding.

4456 Mrs. Rodgers. So if they choose to prioritize abortion over
4457 preventative women's health care, they would be denying their
4458 own access to this funding.

4459 Ms. Foster. I would consider that to be detrimental to women
4460 and girls.

4461 Mrs. Rodgers. Who will fill the gap if Planned Parenthood
4462 refuses to comply with the Protect Life Rule?

4463 Ms. Foster. We know that there are many organizations in
4464 the marketplace. Of course we don't know exactly how it will
4465 impact the market because we don't know who will enter the market,
4466 who may leave the market, and to whom HHS will award grants but
4467 we are confident that the market can accommodate this change
4468 between Community Health Centers, Federally Qualified Health
4469 Centers, and the range of providers that have expressed interest
4470 and are applying that have been denied, like Obria Group, but
4471 would be eligible under the Protect Life Rule to receive Title
4472 X funding for family planning services.

4473 Mrs. Rodgers. Out of 4,000 Title X sites, less than 500

4474 are Planned Parenthoods. In my district alone, there are 26
4475 Federally Qualified Health Care Centers, the FQHCs, compared to
4476 four Planned Parenthoods. So this change would only allow for
4477 an expansion of coverage to more locations, including all of those
4478 26 FQHCs that don't offer abortions, as well as allowing
4479 faith-based family planning centers to apply for grants without
4480 slashing access to women's health care. By opening the process
4481 and allowing for religious protections, this will actually expand
4482 preventative healthcare services for more providers to receive
4483 funding and provide additional preventative health care to
4484 low-income communities.
4485 Thank you, Madam Chair, for allowing me to join you today
4486 and I yield back.
4487 Ms. DeGette. Thank you so much for coming, Mrs. Rodgers.
4488 I appreciate it.
4489 Mr. Guthrie doesn't have anything further. So I just have
4490 a couple of questions, and a comment, and then some document
4491 requests.
4492 Ms. Foster said that programs are billing for--Title X
4493 programs are billing for abortion services. And Dr. Foley, in
4494 her testimony, said that she was unable to present any evidence
4495 of that. And of course, if Title X programs were billing for
4496 abortion, that would be illegal.
4497 So Ms. Coleman, I am just wondering if briefly you can let

4498 me know if that is happening, if you know whether that is
4499 happening, and just clarify.
4500 Ms. Coleman. There is no evidence or data to indicate that
4501 any Title X funds are being used to subsidize abortion care.
4502 When the proposed rule came out last year, the administration
4503 made a contention that Medicaid funds, subject to OIG audit, had
4504 been found with some discrepancies in abortion billing. That
4505 is completely separate from the Title X program and there has
4506 been no implication that Title X entities or Title X funds are
4507 implicated. And the reason why we know the administration agrees
4508 with that is when they put out the final rule, they withdrew the
4509 portions about the Medicaid billing issues and said we recognize
4510 that these are not the same.
4511 Ms. DeGette. Thank you very much.
4512 And I just want to close by clarifying. I think there has
4513 been a little confusion today and I think we need to be really
4514 clear what we are talking about.
4515 The first thing is I want to thank all of the witnesses for
4516 coming today, all five of you, and presenting your perspectives.
4517 I also want to apologize for some of the badgering that you have
4518 had to encounter but this is a tough issue and I am proud of you
4519 for the answers and for standing up.
4520 Here is what we are dealing with. The law that we have all
4521 been talking about says none of the funds appropriated under this

4522 Title shall be used in programs where abortion is a method of
4523 family planning. Ever since the statute was passed in 1970,
4524 organizations that provide abortion services do not receive Title
4525 X funding for family planning. And they keep it completely
4526 separate. And as we have heard, the evidence is that
4527 organizations that perform abortions do not get the Title X money.
4528 The confusion is around counseling, pregnancy counseling
4529 and what that means. And as has been discussed, there was a court
4530 decision, the Rust decision, where the question was did Congress
4531 mean organizations that provide counseling for abortion services
4532 and other types of services or does it mean the abortion services
4533 themselves. And the court in the Rust decision said Congress
4534 needs to give direction as to what it means, if the statute was
4535 intended to not fund abortion or abortion counseling.
4536 So in 1996, Congress passed a law and it said all pregnancy
4537 counseling shall be nondirective. What that has meant, for over
4538 20 years, since 1996, is that providers are required to give
4539 nondirective counseling and they have been given scientific
4540 nondirective counseling to patients which, as the doctors on our
4541 panel and the nurses testified, is so important for patient health
4542 and safety.
4543 So that is what this new--that is what this new rule that
4544 HHS has tried to promulgate violates. What it says is we can
4545 give Title X money to organizations that will not--where the

4546 organization will not provide the patient with the full range
4547 of health care information that they need, even if the patient
4548 requests it. That is why Dr. Perritt, and Dr. McLemore, and
4549 others have pointed out that this interferes with the
4550 patient-doctor relationship.

4551 And it is also against public policy to try to prevent
4552 unwanted pregnancies. This is what just amazes me. If we want
4553 to prevent unwanted pregnancies, if want to prevent increases
4554 in abortion, or in unwanted children being born, then we should
4555 have robust family planning programs that are evidence-based,
4556 that are targeted at the patient, and that the doctor and patient
4557 can talk about. And that is why Title X has been so effective
4558 and that is why we need to keep it.

4559 And also, P.S., that is why the court has enjoined the
4560 enactment of this rule because it violates the ethics of medicine.

4561 And so I know this was a discussion today and it is always
4562 a tough discussion but I am going to say what I always say on
4563 the floor when we have these bills, if we really want to prevent
4564 unwanted pregnancies and reduce abortion, I think we should all
4565 work together on both sides of the aisle to pass robust birth
4566 control legislation, including long-acting birth control, which
4567 is wildly successful in my State and all around the country.

4568 So thanks again, everybody, for coming.

4569 I would ask unanimous consent to put the following documents

4570 into the record, and the minority has seen them: a letter from
4571 the AMA opposed to this regulation dated June 18, 2009; a letter
4572 from the American College of Obstetricians and Gynecologists
4573 dated July 31, 2018; an article entitled The Final Title X
4574 Regulation Disregards Expert Opinion and Evidence-Based
4575 Practices dated February 26, 2019; a letter from the American
4576 Public Health Association dated July 30, 2018 opposing the
4577 regulation; a letter from the American Academy of Pediatrics--did
4578 I do that one already--dated July 31, 2018; and a letter from
4579 the AMA dated July 31, 2018.

4580 Without objection, so ordered.

4581 [The information follows:]

4582

4583 **********COMMITTEE INSERT**********

4584 Ms. DeGette. Again, I want to thank all the witnesses and
4585 thank you for waiting for us.
4586 This hearing is adjourned.
4587 [Whereupon, at 4:41 p.m., the subcommittee was adjourned.]