

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

OLGA AKSELROD (NY Bar No. 4132825) (Appearance *Pro Hac Vice*)

oakselrod@aclu.org

VERA EIDELMAN (CA Bar No. 308535)

veidelman@aclu.org

RACHEL MEEROPOL (NY Bar No. 4100954) (Appearance *Pro Hac Vice*)

rmeeropol@aclu.org

ALEXIS AGATHOCLEOUS (NY Bar No. 4227062) (Appearance *Pro Hac Vice*)

aagathocleous@aclu.org

125 Broad Street, 18th Floor

New York, NY 10004

Telephone: (212) 549-2659

Attorneys for Plaintiffs

(Additional Counsel on Following Page)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ARGHAVAN SALLES; ABIGAIL HATCHER;
ANDREA ROSSO; ANN D. COHEN-WILSON;
DOLORES ALBARRACIN; HEIDI MOSESON;
JADE PAGKAS-BATHER; JONATHAN KYLE
DAW; KATIE EDWARDS; KELTON MINOR;
MICHAEL D. GREEN; SARA JACKSON;
SUZANNE BELL; and MIKAELA SMITH, *on behalf
of themselves and all others similarly situated,*

Plaintiffs,

v.

NATIONAL INSTITUTES OF HEALTH; JAY
BHATTACHARYA, *in his official capacity as
Director of the National Institutes of Health*; UNITED
STATES DEPARTMENT OF HEALTH AND
HUMAN SERVICES; ROBERT F. KENNEDY, JR.,
*in his official capacity as Secretary of the United States
Department of Health and Human Services*; and
UNITED STATES DOGE SERVICE,

Defendants.

Case No. 3:26-cv-10510-VC

**DECLARATION OF
MIKAELA SMITH**

Judge: Vince Chhabria

Courtroom: 03, 17th floor

(Additional Counsel on Behalf of Plaintiffs)

**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA**

GRAYCE ZELPHIN (CA Bar No. 279112)

gzelphin@aclunc.org

CHESSIE THACHER (CA Bar No. 296767)

cthacher@aclunc.org

NEIL K. SAWHNEY (CA Bar No. 300130)

nsawhney@aclunc.org

39 Drumm Street

San Francisco, CA 94111

Telephone: (415) 621-2493

PROTECT DEMOCRACY PROJECT

SHALINI AGARWAL (DC Bar No. 990963) (Appearance *Pro Hac Vice*)

shalini.agarwal@protectdemocracy.org

2020 Pennsylvania Avenue, NW, Suite 163

Washington, DC 20006

KENNETH PARRENO (TX Bar No. 24130477) (Appearance *Pro Hac Vice*)

kenneth.parreno@protectdemocracy.org

15 Main Street, Suite 312

Watertown, MA 02472

Telephone: (202) 579-4582

CENTER FOR SCIENCE IN THE PUBLIC INTEREST

LISA S. MANKOFSKY (DC Bar No. 411931) (Appearance *Pro Hac Vice*)

lmankofsky@cspi.org

OSCAR HEANUE (DC Bar No. 90036939) (Appearance *Pro Hac Vice*)

oheanue@cspi.org

1250 I Street, NW, Suite 500

Washington, DC 20005

Telephone: (202) 777-8381

JACOBSON LAWYERS GROUP PLLC

DANIEL F. JACOBSON (DC Bar No. 1016621) (Appearance *Pro Hac Vice*)

dan@jacobsonlawyersgroup.com

LYNN D. EISENBERG (DC Bar No. 1017511) (Appearance *Pro Hac Vice*)

lynn@jacobsonlawyersgroup.com

STEPHEN K. WIRTH (DC Bar No. 1034038) (Appearance *Pro Hac Vice*)

stephen@jacobsonlawyersgroup.com

5100 Wisconsin Avenue, NW, Suite 301

Washington, DC 20016

Telephone: (301) 823-1148

I, Mikaela Smith, declare:

1. I have personal knowledge of the facts set forth in this declaration, and if called to testify as a witness thereto, could do so competently under oath.

2. I am offering this declaration in my individual capacity and not on behalf of my employer.

3. I am a research scientist at The Ohio State University (OSU). My research focuses on utilization of abortion and contraception care within Ohio. My areas of expertise include public opinion, travel for abortion care, rural health disparities, contraception preferences, and quantitative methodologies.

4. I achieved a BA in Mathematics from Mount Holyoke College, earned my PhD in Sociology from the University of California at Irvine, and completed a postdoctoral fellowship in the College of Public Health at OSU.

5. I am very active in my field. I have published widely, including in *The American Journal of Public Health*, *Perspectives on Sexual and Reproductive Health*, *Contraception*, *The Journal of the American Medical Association*, and *The Lancet*. My work has been recognized at national conferences, including receiving a third place poster award at the Society for Epidemiological Research's annual meeting and being nominated for a poster award at the Society of Family Planning's (SFP) annual meeting. My research has received local and national media attention. I am a member of SFP, I served on SFP's national WeCount project steering committee, and I serve on the editorial board for the journal *Perspectives on Sexual and Reproductive Health*.

6. My position is fully grant funded. I have been principal investigator (PI) on two small grants from private organizations during my time at OSU. One was from the National Institute for Reproductive Health for a collaborative study to explore the potential impact of an Ohio abortion ban on pregnancy-related mortality using health department data. The other was from SFP to study post-*Dobbs* interstate travel for abortion using national clinic survey data. The R03 referred to here would have been my first NIH grant, and an important part of building my professional development, achieving the goals needed for promotion, and securing my long-term employment.

7. My research activities demonstrate the key motivating factor of my work, which is to enhance health equity in the state, region, and country. Access to reproductive healthcare is a vital component of enhancing overall health, however laws and policies vary widely by state and can create insurmountable barriers to accessing this necessary care. My work focuses on identifying how policies that have already been passed enhance or inhibit access to care, including how access varies by social, financial, and other resources. I pursue this work to provide stakeholders, including policymakers, advocacy groups, and medical providers with the necessary science to make informed decisions to enhance the health and wellbeing of their patients and constituents.

8. I applied for an R03 grant in February 2025 with the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development (NICHD). The grant sought funding to analyze medical chart data from three facilities in Ohio to describe how patient populations and medical care characteristics changed from 2021-2025, a time when federal and state policies were in flux. Specifically, we wanted to explore how medical characteristics (such as timing of care, distance from facility, and whether patient received the care), differed at different points in time and by key sociodemographic characteristics (such as race, age, education, rurality, and other factors) that are shown to be associated with differential medical care access. We did not enter into the study with any particular future policy changes or political agenda in mind; rather, our goal was to accurately and rigorously study the data and disseminate our results in the hopes that they would inform policy, wherever that led. The study was also time-sensitive, given that federal and state health policy have continued to shift.

9. Given the current, well-reported implications of using certain words in NIH applications, along with advice from colleagues, prior to submission I had reviewed the public-facing portions of my proposal (title, abstract and narrative), and removed language that I thought might lead to the proposal being blocked from receiving funding despite it still falling within stated NICHD priorities. This included not referring to abortion, health disparities, privilege, gestation, intersectionality, or the specific policy event (*Dobbs v. Jackson Women's Health Organization*).

10. For example, I initially drafted the following sentences:

Following the *Dobbs v. Jackson Women's Healthcare* decision by the United States Supreme Court in June 2022, Ohio enacted, for three months, a ban on abortions after around 6 weeks' gestation. This ban resulted in the number of abortions in the state decreasing by more than half. Prior research on abortion patients shows that those without social and economic privileges are more likely to experience delays in care. However, it remains unknown which patient populations were unable to receive care in Ohio during this ban. Furthermore, prior research has failed to center the intersectional nature of barriers to healthcare and these barriers' roots in the intersection of oppression based on race, class, gender, age, geography, and other factors.

Prior to submission I edited them as follows:

In June 2022, Ohio enacted, for three months, a change in laws about eligibility for specific types of healthcare. These changes coincided with the number patients who received this care decreasing by more than half. Prior research shows a range of factors are associated with delays in accessing care and denial of care due to ineligibility. However, it remains unknown what factors were associated with an inability to receive care in Ohio during this specific time period. Given policy changes happening in other states at this time, it is possible that patterns of access may differ from those seen in prior research. Furthermore, newer methodological techniques now exist for assessing factors associated with accessing care, but have yet to be applied to this specific area of study.

11. My proposal was reviewed and discussed by study section members. On July 26, 2025 NIH released the summary statement to me, which showed that my study received an impact score of 34 and fell within the top 9th percentile. My NIH Program Officer (PO) shared with me that they are often able to fund R03's that fall in the top 10th percentile. Thus, while I knew I had to wait until that year's federal budget decisions were finalized, given this excellent score, I felt optimistic that my award would be competitive for funding.

12. On January 27, 2026, I received an email from my PO indicating that the specific aims needed "minor clarifications" as "NICHD's Division of Extramural Activities has flagged the following words in your aims as potentially signaling misalignment with priorities: 'equity' and the phrase

‘structural nature of inequitable outcomes.’” Attached hereto as **Exhibit 1** is a true and correct copy of this email.

13. On January 29, I met virtually with my PO. They shared with me that there is a computational text analysis tool, that is essentially an R script, that is run on all proposals and creates documentation of the degree to which the proposal contains certain “flagged” words, which is how they identified the language that needed potential clarification/revision in my specific aims. This process has also been documented publicly by journalists. Attached hereto as **Exhibits 2** and **3** are true and correct copies of these articles.

14. I was under the impression that if I did not make changes to my proposal to remove the flagged words, my grant would not have been allowed to continue going through the proposal process.

15. After meeting with my PO, on January 30, I received an email from the NICHD grants manager specialist referring to my meeting with the PO and letting me and my grants office know that my proposal had reached the “just in time” (JIT) stage. This is a normal stage in the NIH proposal process wherein additional forms are filled out, budgets are updated, and minor changes to the study aims can be made. I made the changes to the language that I discussed with my PO. My PO explained that receiving a JIT request is not a guarantee that a grant will be disbursed, but it suggests that the grant scored well enough and there is sufficient funding in that budget cycle that it should be able to get funded. My university grants office submitted the JIT in February 2026. On March 29, I received an email from my university to sign an agreement related to intellectual property mandatory for “all individuals involved in federally funded research at Ohio State.”

16. I received no further information on my grant for the next month or so. On May 5, 2026, I checked the submission portal which stated the status as “Pending administrative review. Refer any questions to Program Official or Grants Management Specialist.” My understanding from conversations with my PO was that this status indicates that an application has been approved to move forward for funding by the NICHD Director. The next part of the process, referred to as “Award Prepared,” involves the non-public-facing components of the grant (i.e. specific aims) being made available to members of congress for about a week before the grant is officially awarded, so that congresspeople can be made aware of projects coming to their constituents. I now understand that the award was caught in the Status

19 stage as described in the NOTUS article. See this NIH documentation for the list of proposal statuses and their description: https://www.era.nih.gov/docs/era_status_codes.pdf. Attached hereto as **Exhibit 4** is a true and correct copy of an email chain that includes documentation of the changing status of my grant.

17. I spoke with my PO in early May 2026. They stated that the lack of movement on my proposal was likely due to my application having been identified as non-aligned with NIH priorities, and that they had not received much explanation or rationale for this decision. From the Nature article, I believe this was done by HHS, rather than by the scientists at NICHD. By May 20, 2026 my submission portal listed my grant status as “Council review completed” which, according to my PO, is a stage that usually takes place before “Pending administrative review”. My PO relayed to me that they were told that the project was blocked for “trying to influence policy,” despite the fact that my research aimed to evaluate the impact of a policy change that had already occurred, not influence or advocate for a specific policy; the Nature article documents how “policy” became a flagged word for pausing grants. We thought that perhaps the inclusion of the word “abortion” in the aims might also have led to it being flagged, despite “abortion” not being one of the previously identified trigger words from the R script. In addition to impacting the Feb 2025 R03 submission, I also learned that this would impact my resubmission of this grant which was already underway (resubmissions are a normal part of the NIH submission process, and often take place while decisions on the initial submission are still pending). This meant that even if in a resubmission I made language changes to clarify that the project did not advocate for a specific policy, but rather evaluated the impact of a prior policy change, the flag would remain. Essentially, I cannot move forward with funding any version of this submission.

18. On August 18, 2026, I received an email from the grants management specialist stating that the grant was not approved for funding, and that unfortunately, there was no additional information to share. That email appears in the email chain attached as Exhibit 4.

19. My award being blocked at this stage has had negative impacts on my research, my professional development, and my emotional wellbeing. First, without the funds that we requested in the R03 meant to support my salary to analyze the chart review data, I have had to look elsewhere to find funds to continue this work. This specific project will likely be able to proceed using other funds

available to me through my research team at Ohio State, but at the cost of other projects that that money would otherwise have gone to. Second, in my particular field, receipt of grants, in particular NIH grants, is a necessary part of professional development and opportunity for promotion. By not receiving this grant, I become less competitive for future grant applications (we were planning to use this R03 as a step toward a multi-state R01 study). Receipt of this R03 would have also supported my promotion to senior research scientist. Similarly, it would have allowed me to more firmly establish myself as an expert in my area within my professional networks. Third, the delays and eventual stagnation of the grant process have been difficult emotionally. In addition to the effort and time I have had to spend navigating the changing grant landscape, it is extremely disheartening to see my work, which was evaluated to be excellent by my scientific peers, and recommended for funding through all normal processes, just disappear.

20. I am currently in the process of putting together an R01 application to expand the work that was proposed in the R03 to three additional states. Specifically, using medical clinic chart data, we aim to describe how medical care and patient characteristics changed, or remained the same, in different states representing specific types of geographies and policy environments (more/less restrictive, and closer to/further from states with restrictive policies). Additionally, we are proposing a qualitative aim wherein we will interview staff at participating clinics to learn about their experiences adapting to these changing policy environments. The progression from the smaller R03 mechanism to the larger, and more prestigious, R01 mechanism is a normal part of the process in grants-based research. Reading these articles I previously mentioned reaffirmed my understanding that if I do not avoid flagged words, my application will be subjected to extra scrutiny and might be blocked altogether. This reporting is impacting the way I describe my work, but not the substance of the work I'd like to do.

21. While I am continuing with the R01 proposal with plans to submit in 2027, in public-facing documents (abstract and narrative), I will continue to avoid words on the list reported by Nature like "policy," and "equity," even though this goes against best scientific practices. I also worry it makes those sections quite vague; one of my reviewers of my proposal suggested as such in their feedback. And I anticipate that should I get as far as the JIT, I may have to make additional changes to the specific aims, including censoring more words than I did last time, like "abortion". The effort needed to put

together a complete R01 application is enormous, and so while I do so in hopes that my application receives good enough scores to be funded, it continues to be emotionally draining knowing that without notice it could be taken away from me, even if it scores well.

22. I entered the field of science because I want to use the tools and skills I have in order to improve the health and well-being of my community. The effort and time taken to self-censor my grant proposal is effort and time taken away from me being able to complete the work that I am trained to do, and which can lead to improved health outcomes. Furthermore, this censoring is purely political and does not have any scientific merit. The tools I use, the skills I have learned, and the scientific findings I produce all go through a rigorous, established process wherein they are evaluated by my scientific peers in order to ensure that the work I am doing is ethical and scientifically valid. Political-based censoring has no place in this process and only serves to hold back science, and hold back the information that is needed to improve health outcomes.

23. Going through this process makes me angry for what I have lost, but also angry about a system that holds back good scientific work. I am lucky that I am able to continue the project I requested funding for, even if not on the timeline or with the optimism that I had originally held. I don't know that I will be as lucky for the R01. And surely there are other extremely qualified scientists who won't have the opportunity to improve peoples' lives, and studies that will just never see the light of day, due to this political interference.

24. [Intentionally left blank]

25. [Intentionally left blank]

26. [Intentionally left blank]

27. [Intentionally left blank]

28. I understand that, as a class representative, I represent the interests of everyone in the class, and not just myself. I am prepared to stay informed about what is happening with my case and stay in touch with my attorneys to give them information they need. I am committed to being a class representative because I do not want other researchers to be subjected to the same unlawful policies and actions that I have experienced. I have never served as a class representative in any prior action.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed in Massachusetts this 13th day of October, 2026.

A handwritten signature in cursive script, reading "Mikaela Smith".

Mikaela Smith