

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

**Vita Nuova Inc.**, on behalf of itself and  
others similarly situated,

Plaintiff,

v.

**Alex M. Azar II**, et al.,

Defendants.

Case No. 4:19-cv-00532-O

**AFFIDAVIT OF CAROL EVERETT**

I, Carol Everett, being duly sworn, state as follows:

1. I am over 21 years old and fully competent to make this affidavit. I submit this affidavit in support of the plaintiff's response to the defendants' motion to dismiss for lack of subject-matter jurisdiction.

2. I am the founder and CEO of Vita Nuova, Inc. Vita Nuova is a Christian, pro-life organization that provides health-care services to women, including family-planning services. Vita Nuova will serve five counties with hidden pockets of low-income women and men in desperate need of comprehensive and reproductive health care. Quality health care offered through low-income programs is limited to some of the target counties because of the lower populations and rural locations. Bastrop, Bell, Burnet, Caldwell, Lee, and Milam counties would be considered rural. Williamson and Travis counties are served but pockets of under- and unserved still exist. Women and men delay needed health care or go to emergency rooms (which do not provide long term care) and medical homes. Vita Nuova will be a medical home for men, women, and families of these counties.

3. Before I founded Vita Nuova, I served as founder and CEO of the Heidi Group, which I continue to lead today. Like Vita Nuova, the Heidi Group is a Christian, pro-life organization that provides health-care services to women, including family-planning services, but does not provide abortions or abortion referrals. The Heidi Group provided prenatal care in two Dallas zip codes: 75212—the 11th most severely poverty-stricken zip code in the nation—and 75210, which is considered the most poverty-stricken zip code in the nation. Patient counts grew from 16 per day to 60 patients per day. The Heidi Group developed relationships with two hospitals to facilitate safe deliveries for patients. Two physicians, both medical doctors, oversaw three nurse practitioners to offer quality medical care free of charge to uninsured patients and patients waiting for Medicaid approval. (Upon Medicaid approval, patients were transferred to the offices of The Heidi Group’s medical directors, who were obstetric specialists.)

4. Vita Nuova will offer the following services in Bastrop, Bell, Burnet, Caldwell, Lee, Milan, Tarrant, and Williamson through an office located in Round Rock and a mobile medical unit to serve other counties:

Comprehensive Health Care	Contraceptive Services
Well Woman Health Care	Pregnancy Testing and Counseling
STD Testing and Treatment	
Basic Infertility Services	Preconception Health Services
Annual Well Woman Exams	Prenatal Care
Contraceptive Services and Counseling	

5. Vita Nuova will not perform abortions, and it will not provide abortion referrals or abortion counseling.

6. Vita Nuova intends to apply for Title X funding from the U.S. Department of Health and Human Services at the next available opportunity. The next round for

applying for Title X funding is will begin in November 2020, and the Department will select the grantees in the spring of 2021.

7. In 2000, the Department issued agency rules that would disqualify Vita Nuova from the Title X program, because Vita Nuova will not provide abortion referrals or abortion counseling. *See* Provision of Abortion-Related Services in Family Planning Services Projects, 65 Fed. Reg. 41,281, 41,281 (July 3, 2000) (quoting 42 C.F.R. § 59.5(a)(5)). The 2000 rule provides no exceptions for entities that oppose abortion for sincere religious reasons.

8. The 2000 rule also makes Title X funds available to entities that provide abortion referrals and abortion counseling; that encourage, promote, and advocate for abortion; and that fail to maintain physical and financial separation between their Title X services and their abortion-related activities. *See* Provision of Abortion-Related Services in Family Planning Services Projects, 65 Fed. Reg. 41,281, 41,281–82 (July 3, 2000). Under an earlier agency rule from 1988, these entities were categorically ineligible to participate in the Title X program. *See* Statutory Prohibition on Use of Appropriated Funds in Programs Where Abortion is a Method of Family Planning; Standard of Compliance for Family Planning Services Projects, 53 Fed. Reg. 2,922, 2945–46 (Feb. 2, 1988). By allowing these entities to participate in the Title X program, the 2000 rule makes it more difficult for organizations such as Vita Nuova to obtain Title X funds because it increases the number of potential recipients competing for the allotted money.

9. On March 4, 2019, the Department issued a final rule that revoked the policies in the 2000 rule described in paragraphs 7–8. *See* Compliance with Statutory Program Integrity Requirements, 84 Fed. Reg. 7,714 (March 4, 2019). This rule was scheduled to take effect on May 3, 2019.

10. Before the 2019 rule took effect, two courts issued nationwide injunctions against its implementation and enforcement. *See Washington v. Azar*, No. 1:19-cv-

03040-SAB (ECF No. 54) (E.D. Wash.) (April 25, 2019); *Oregon v. Azar*, No. 6:10-cv-00317 (ECF No. 142) (D. Oregon) (April 29, 2019). Because of these nationwide injunctions, the Department continued to enforce the policies in the 2000 rule, even after the 2019 rule was supposed to take effect on May 3, 2019.

11. On June 20, 2019, a three-judge panel of the Ninth Circuit unanimously stayed the nationwide injunctions that had been entered in *Washington* and *Oregon*. See *California v. Azar*, 927 F.3d 1068 (9th Cir. 2019).

12. On July 3, 2019, however, the Ninth Circuit ordered the Washington, Oregon, and California cases reheard en banc. See *California v. Azar*, 927 F.3d 1045 (9th Cir. 2019). The order July 3, 2019, stated that the earlier order of June 20, 2019, “shall not be cited as precedent by or to any court of the Ninth Circuit.” *Id.* Vita Nuova interpreted this ruling as a vacatur of the earlier panel decision that had stayed the nationwide injunction.

13. The Department did not cease its enforcement of the 2000 rule in response to the Ninth Circuit’s orders. Instead, the Department continued enforcing the policies in the 2000 rule until the en banc Ninth Circuit issued an order on July 11, 2019, that clarified that its order of July 3, 2019, had not vacated the stay of the nationwide injunctions that the three-judge panel had issued on June 20, 2019.

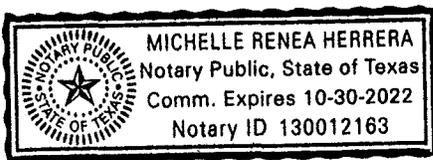
14. On July 16, 2019, someone forwarded me an e-mail from Shannon Royce, director of the Center for Faith and Opportunity Initiatives at the U.S. Department of Health and Human Services, which announced that the Department would finally begin enforcing the 2019 rule on July 15, 2019. A copy of that e-mail is attached to the plaintiff’s response to the motion to dismiss as Exhibit B.

15. The Department’s decision to begin enforcing the 2019 rule on July 15, 2019, does not eliminate Vita Nuova’s injury in fact, and Vita Nuova continues to suffer present-day injury. First, Vita Nuova has no assurance that the 2019 rule will remain in effect in the spring 2021, when the Department will decide the next round

of Title X recipients. Vita Nuova is facing the very real prospect that another court will reinstate the nationwide injunctions against the 2019 rule, and compel the Department to revert to the 2000 policies that exclude Vita Nuova from the Title X program. There are pending appeals in the First, Fourth, and Ninth Circuits—and an adverse ruling from any one of those three courts will halt the enforcement of the 2019 final rule and resurrect enforcement of the 2000 rule. Vita Nuova is also facing the prospect that the Democratic Party could win the Presidency in 2020. If that were to happen, then the Department’s 2019 rule is certain to be revoked, and the policies in the 2000 rule are certain to be restored.

16. This present-day uncertainty inflicts present-day injury on Vita Nuova, because it hinders our fundraising efforts as well as our efforts to recruit doctors, nurses, and employees. Vita Nuova needs a declaratory judgment against the Secretary so that Vita Nuova can be assured that it will remain eligible for Title X funds in 2021, and that it will not have to compete with Planned Parenthood and other pro-abortion entities. Only with this judicial assurance can Vita Nuova raise funds and build its organization without taking the risk that its efforts will be wasted if the policies in the 2000 rule are suddenly resurrected.

This concludes my sworn statement. I swear under penalty of perjury that, to the best of my knowledge, the facts stated in this affidavit are true and complete.



A handwritten signature in black ink, appearing to read "Carol Everett".

CAROL EVERETT

Subscribed and sworn to me  
this 27 day of October, 2018<sup>g</sup>

A handwritten signature in black ink, appearing to read "Michelle Renea Herrera".

NOTARY