

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

**PLANNED PARENTHOOD OF** )  
**KANSAS AND MID-MISSOURI,** )  
**Plaintiff,** )  
) )  
**and** )  
) )  
**Dodge City Family Planning Clinic, Inc.,** )  
**Plaintiff-Intervener** )  
) )  
**vs.** )  
) )  
**SAM BROWNBACK, Governor of** )  
**Kansas, and ROBERT MOSER, M.D.,** )  
**Secretary, Kansas Department of** )  
**Health and Environment,** )  
) )  
**Defendants.** )  
\_\_\_\_\_ )

**CIVIL ACTION**  
**Case No.: 11-2357 JTM/DJW**

**DECLARATION OF KARLA M. DEMUTH, MSN, ARNP FNP-BC**

KARLA M. DEMUTH, MSN, ARNP FNP-BC, declares and states the following:

1. I am the Executive Director of Plaintiff-Intervener Dodge City Family Planning Clinic, Inc. (“DCFP”), where I am in charge of all operations including medical services, policies, practices, and clinical operations. I am an Advanced Registered Nurse Practitioner and a board-certified Family Nurse Practitioner licensed to practice nursing in Kansas, and I have a Masters of Science in Nursing. I am the medical professional providing care at DCFP. I submit this declaration on the basis of my personal knowledge, and in support of DCFP’s Motion for Temporary Restraining Order and Preliminary Injunction and Motion for Intervention.

2. I am familiar with Section 107(l) of H.B. 2014, 84th Leg. (Kan. 2011), the appropriations bill that Governor Sam Brownback signed into law on May 28, 2011. I am painfully familiar with the new law's effect on DCFP, its patients, and its two employees – our receptionist and myself. As of July 1, because of this law, DCFP lost its Title X funds, which were 40% of its budget – even though we do not provide abortion services. No other medical provider in Ford County is willing to provide Title X services; no entity has applied for the Title X funds.

3. Since July 1, the only reason that DCFP has not shut down – and the only reason that the patients we serve have still had access to the kinds of services Title X funds – is that my colleague and I started working without pay. DCFP has already lost patients because, fearing we will close, some don't want to set up appointments. We provide services on a sliding scale, described below, but the patients who have forgone appointments with us because they fear we will close are largely among the minority of our patients who do not qualify for any discount. In other words, we have lost a disproportionate number of the patients who help us remain solvent. We have also lost other funding because other funders likewise fear we will close.

4. And they are right: this cannot go on. I am very committed to providing these services to our patients, particularly our low-income patients, but the financial and emotional toll on my colleague, myself, and our families is enormous. Absent relief from the court, DFCP will close within a very few weeks, or even a matter of days, leaving hundreds of patients without access to critical services.

5. DCFP is a 501(c)(3) non-profit Kansas corporation; our sole clinic & location is in Dodge City. DCFP is not a public health entity, a hospital, or a federal

qualified health center (“FQHC”). We specialize in providing family planning and related services to low-income Kansans. We have provided women and families with access to this care since 1976, when we first received Title X funds. Up until June 30, 2011, DCFP was the single Title X provider in Ford County. Starting July 1, 2011, when we lost our Title X funding, there has been no Title X provider in Ford County.

6. Every year, DCFP provides confidential, culturally and linguistically appropriate health services to approximately 650 individuals from a large area of southwestern Kansas. We provide services regardless of a patient’s ability to pay, and most of our patients are low-income. We use a sliding scale: one third of our patients pay nothing at all and one third qualify for services at a 50% discount – but we ask all our patients to make a donation, even a small one, if they possibly can, to help us stay open. About 60% of our patients are Hispanic, and many of them place the highest value on accessing these services from a female medical professional able to provide the care in Spanish, as I do.

7. The care we provide includes pap tests and other cancer screenings; contraception; pregnancy testing and related services; screenings for HIV/AIDS; screenings and treatment for other sexually transmitted infections; and counseling related to all our services. Last year we provided approximately 700 contraception visits; 450 pap tests; and 250 tests for sexually transmitted infections. We also provide health education services, including at local high schools, and I provide public education regarding available services for community groups such as The Women’s Chamber and the employees at the local packing plants.

8. From 1976 through June 30, 2011, DCFP consistently received federal Title X funds through subgrants from the Kansas Department of Health and Environment (“KDHE”). In all these years, there has never been any allegation whatsoever that we failed in any way to fulfill our agreements with KDHE or our obligations under Title X. In 2007, we passed a federal audit with flying colors, and the auditor commented that we were the most cost-efficient operation he had inspected. Part of the way we keep our costs low is that my colleague and I have low salaries; we use such savings to make our medical services more affordable for more low-income patients.

9. For the 2011 fiscal year, which ended June 30, 2011, KDHE awarded DCFP \$39,288 in Title X funds, including \$8,360 to expand the availability of family planning care to greater numbers of low-income patients, for a total of at least 590 Title X family planning patients. *See* Letter from Kevin Shaughnessy, KDHE, to Karla Demuth, Exec. Dir., DCFP (Dec. 6, 2010) (attached as Exhibit 1 to this Declaration). We met that goal. Part of the reason KDHE gave us money to expand is that Ford County is a high-need county in terms of family planning, and is in an area of southwest Kansas with many high-need counties. In addition, the counties directly north and south of Ford County have no Title X provider.

10. Our Title X funding represented approximately 40% of our annual budget. Until June 9, 2011, we fully expected to have a contract for the 2012 fiscal year as well. In fact, in the first week of June 2011, I saw many KDHE employees at the Family Planning Annual Conference in Wichita, which KDHE required me to attend as a condition of DCFP receiving Title X funds for the fiscal year to start July 1, 2011 – and no one there mentioned any problem to me.

11. On June 9, 2011, two employees of KDHE (whom I had just seen at the conference a few days before) phoned me and informed me that because of the new budget provision, DCFP would not receive Title X funds for the 2012 fiscal year and that KDHE was cancelling our contract (our “Universal Contract”). That was the first I knew of this terrible loss. (I later received a letter from KDHE, dated June 14, 2011, stating that KDHE was cancelling DCFP’s Universal Contract “[d]ue to recent legislative action.” *See* Letter from Robert Moser, Secretary, KDHE, to Karla Demuth, Exec. Dir., DCFP (June 14, 2011) (attached as Exhibit 2 to this Declaration). During the June 9 phone call, I asked if anyone else was affected by the law, and they said that it was only Planned Parenthood and DCFP.

12. I was truly shocked and upset. I was terribly worried about the survival of DCFP; about my livelihood and that of my colleague; and about the continued ability of our patients to obtain the services that they need so very badly. I asked the KDHE employees who phoned me what I could do to preserve the services; other than asking politicians for help (which I tried), they suggested that I ask the Ford County Health Department and Mexican American Ministries Clinic, an FQHC in Garden City connected with the Methodist Church, if one of them would take over the Title X project.

13. Taking on the Title X project would represent a real change for those entities. The Ford County Health Department provides no family planning care whatsoever; does not do pap tests; and does not have anyone on staff who can write a prescription. The FQHC has a very small contraceptive formulary (for example, it offers only one kind of birth control pill) and has a 2-3 month wait for an appointment. Patients can get an appointment at DCFP within a week. In addition, the medical professional at

the FQHC is a man, which means many of our patients would hesitate to seek contraceptive and other reproductive health care from the FQHC with its current staffing.

14. I initiated several contacts with both the Ford County Health Department and the FQHC. I spoke with decision-makers in each facility, asking them if they would apply for the Title X funds to take over DCFP's patients, and possibly DCFP's staff. Over the course of these conversations, the FQHC informed me that KDHE was contacting them often to encourage them – strongly – to apply for the grant, but they are not interested in being a Title X provider. Similarly, I learned that KDHE had contacted the Ford County Health Department even before phoning me June 9, to ask them to apply for the Title X money. The health department is likewise not interested. Neither the FQHC nor the health department has applied for the Title X funds. Hence, again, today there is no Title X provider in Ford County, and the only reason our patients have access to the kind of services Title X funds is that I am working without pay.

15. On August 31, I received another phone call from the same two KDHE employees who phoned me June 9, 2011. They asked if DCFP was still open. I assume that they wanted to know whether the very high-need population we serve still has access to services. I explained that by scraping by, and working for free, my colleague and I have kept the clinic open – but barely. We discussed the fact that there is no other entity in this high-need area willing to undertake the Title X project, and the terrible loss of services our patients will experience if and when DCFP closes.

16. The next day, September 1, 2011, there were press reports that KDHE would comply with the court's order not to enforce the budget provision that Planned Parenthood had challenged in this suit, and a reporter phoned me to ask a question I could

not answer: Would DCFP get its Title X funding back? Very much hoping that we would get it back, that same day I sent an email to the same two KDHE employees, explaining that our situation is really desperate, and asking them to let me know as soon as possible, as I wanted to let our entire community know that DCFP is here to stay. They have not responded.

17. Our patients are already suffering, as is the Title X mission in Ford County and southwestern Kansas. Once we lost funding, I had to replace some of our contraceptive options with less expensive alternatives. Our patients who have therefore had to switch, for example, from one birth control pill to another, are not pleased with the change. As anyone involved in public health knows, a patient who is unhappy with her contraceptive options is far more likely to experience an unintended pregnancy.

18. The loss of Title X funding is harming DCFP and its patients in additional ways. First, we have lost support from other sources: United Way has been giving us \$6000-\$7000 per year, but after their staff read in a newspaper article that we had lost our Title X funding, United Way informed us that they would not continue the grant, because DCFP would close without Title X funds. Second, the loss of Title X funds also causes DCFP to lose its eligibility to participate in the 340B drug pricing program, which enables Title X providers to purchase outpatient drugs at a discount.

19. For years, KDHE has asked us to increase our patient numbers, and particularly our low-income patient numbers, and we have done so. As of July 1, 2011, however, our patient numbers have dropped, and are off by over 25% compared to the same period last year. I believe that these are very disproportionately those patients (about a third of our patients) who have insurance; do not qualify for free or discounted

services and thus help us remain solvent; and yet have the means to go elsewhere if they fear we will close. DCFP may never be able to get these patients back.

20. Hence, because of losing our Title X funds – which in turn has cost us other funds, our 340B discounted drug pricing, and those patients who don't make appointments because they fear we will close – we have lost over 60% of our budget.

21. DCFP and its two employees are strongly committed to maintaining the medical services we provide for our patients, most of whom are low-income, and many of whom are desperately poor. Many have no means of transportation to travel farther to get care, and cannot pay more money for that care. If DCFP closes, then, as KDHE knows very well, many of those patients will simply lose access to these essential services. Their health will suffer, as will family health and public health in our high-need community and in the greater southwest Kansas area. In addition, many of our patients would hesitate to seek care if their only option were a male provider and/or someone who cannot provide the care in Spanish. For some, DCFP is their only access to the health care system; some of them will simply not get care if DCFP closes. Of those who do manage to access care, some will be forced to travel further to seek treatment or medications, wait longer for appointments, delay testing and other procedures, or otherwise receive care that is not of the same quality as the Title X-quality services that DCFP provides. But the greatest single concern for our patients is increased fees, which many of them simply cannot pay.

22. On July 1, 2011, when we lost our Title X funds, DCFP would have closed, but for the fact that my colleague and I started working without pay. I have not received a pay check since July, and I continue to work for free for one reason: I know



how devastating it would be for our patients and our community if DCFP closed. But we cannot keep this up. My colleague literally cannot afford needed medical care without her paycheck. I am facing difficulties with house payments; my children, in college, have had to take out additional loans for living expenses that I had committed to helping them with; and the emotional burden on my husband and me is enormous. My salary may look small to many people, but my household cannot survive without it. DCFP's patients are deeply appreciative of our work; I love my job, and would be truly stricken to leave it; but I have had no choice but to search for a new job.

23. No one associated with DCFP *ever* imagined we would sue the state; that is not the kind of relationship we want to have with KDHE. But we have no choice. I have tried phone calls and emails, both before and after the court issued a preliminary injunction in this case. I have approached the Ford County Health Department and the FQHC about applying for the Title X funds, but they are not interested. We clearly have no other recourse: without the relief we are seeking from the court, DCFP will close in a matter of a very few weeks, if not days.

24. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dodge City, Kansas, on September 29, 2011.

/s/ Karla M. Demuth  
Karla M. Demuth, MSN, ARNP FNP-BC



Mark Parkinson, Governor  
John W. Mitchell, Acting Secretary

DEPARTMENT OF HEALTH  
AND ENVIRONMENT

www.kdheks.gov

December 6, 2010

Karla Demuth, ARNP Director  
Dodge City Family Planning Clinic  
811 N 2nd Ave, P.O. Box 1152  
Dodge City KS 67801

Dear Ms. Demuth:

Effective July 1, 2010, your SFY 2011 Contract Attachment #5 Family Planning grant program is hereby increased by \$11,037.00, for a total of \$39,288.00. The increased amount provides supplemental federal funding in the amount of:

- \$8,360.00 to expand the availability of clinical family planning services that will result in increased User numbers, particularly among low-income individuals. It is anticipated that your agency will increase your family planning User numbers, thereby providing family planning services to a total of 590 Users in SFY 2011.
- \$2,677.00 one-time additional support for contraceptives.

An amended budget outlining projected expenditures for the total grant funds and matching funds is required on or about January 15, 2011.

Semi-Annual Reporting requirements for the supplemental clinical expansion funds received are:

1. **DETAILED CLIENT ENCOUNTER DATA COLLECTION/REPORTING:**  
Submit detailed client encounter data, in either paper or electronic format, in accordance with the guidance provided by the Children & Families Section, BFH.
2. **MID-YEAR/END-OF-YEAR:** On January 15, 2011 (for the period July-December, 2010) and July 15, 2011 (for the period January-June 2011), provide a progress report addressing each activity listed below, including any additional information relevant to the project. Discuss accomplishments and challenges encountered.
  - a. Expand the number of hours clinic is available for Family Planning services. Report will: Submit office/clinic hours during which Family Planning services are available and impact on User numbers.
  - b. Collaborate with public and private entities to facilitate client access to Family Planning services by increasing community awareness. Report will: List types of contacts made; describe increase in community awareness and its impact on User numbers.
  - c. Provide sexuality education and contraceptive counseling to high school physical education classes. Report will: Provide an overview of presentations made, number of participants and impact on User numbers.

DIVISION OF MANAGEMENT AND BUDGET  
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 570, TOPEKA, KS 66612-1368  
Voice 785-296-1507 Fax 785-296-8465 <http://www.kdheks.gov>

Exhibit 1



Mark Parkinson, Governor  
John W. Mitchell, Acting Secretary

DEPARTMENT OF HEALTH  
AND ENVIRONMENT

www.kdheks.gov

- d. Provide public speaking and PSAs when asked to increase community awareness and clinic utilization. Report will: List/describe presentations/PSAs and discuss impact on increasing User numbers.

All other requirements remain as described in the Contract.

**Please sign below that you accept these additional funds as stated above and return an original signature copy of the letter to Kevin Shaughnessy's attention at KDHE - Division of Management and Budget, 1000 SW Jackson - Suite 570, Topeka, KS 66612-1368.** By accepting these additional funds you agree to expend them in accordance with the terms of the Contract. Please retain a copy of this letter for your records. It will serve as the amendment to your Contract. Your agency will not receive a separate Amended Contract. Upon receipt of the signed agreement, a payment of \$11,037.00 will be processed.

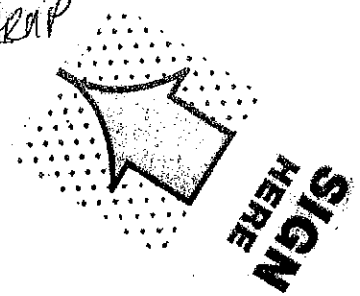
You will find enclosed an amended copy of the List of Grant Awards for your records. If you have questions or concerns in regards to the contractual process or reporting requirements, please contact me at 785-296-1507 or Janis Bird at 785-296-1205.

Sincerely,

Kevin Shaughnessy,  
Division of Management and Budget

**I/WE HEREBY ACCEPT THE TERMS OF THIS AMENDMENT**

Local Agency Authorized Signature Karla M Demuth  
Date: 2/28/2010



cc: BFH

DIVISION OF MANAGEMENT AND BUDGET  
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 570, TOPEKA, KS 66612-1368  
Voice 785-296-1507 Fax 785-296-8465 <http://www.kdheks.gov>

Exhibit 1

Bureau of Family Health  
1000 SW Jackson  
Topeka, KS 66612-1274



Phone: 785-291-3368  
Fax: 785-296-6553  
lkenney@kdheks.gov  
www.ks.gov/bfh

Robert Moser, MD, Secretary

Department of Health & Environment

Sam Brownback, Governor

June 14, 2011

Karla Demuth, ARNP, Director  
Dodge City Family Planning Clinic  
811 N. 2nd Ave, P.O. Box 1152  
Dodge City, KS 67801

Dear Ms. Demuth:

This is to notify you that KDHE is unable to provide Title X family planning funding to your organization during state fiscal year 2012.

As you are aware, our contract with your organization is contingent upon the availability of State or Federal funds. When such funds are no longer available, the contract may be terminated without penalty by KDHE upon thirty (30) days written notice. Due to recent legislative action funding is no longer available for your organization. As a result, please accept this letter as notice to you of cancellation of the Universal Contract between your organization and the Kansas Department of Health and Environment.

Best wishes,

A handwritten signature in black ink, appearing to read "Robert Moser". The signature is written in a cursive style.

Robert Moser, MD  
Secretary