

the needs of people infected, affected and at risk of HIV/AIDS. This is accomplished through leadership in prevention, education, supportive services and advocacy.”

2. Defendant Ohio Department of Health (“ODH”) is a cabinet-level agency in the State of Ohio with broad responsibility for administering public health programs. Among ODH’s responsibilities is the administration of specific funds received by the State of Ohio, in accordance with federal law, which are distributed to local non-profit organizations through a competitive grant application process for the purpose of improving the quality, availability, and organization of HIV health care and support services (“Part B” funds).

3. The Court possesses jurisdiction over the subject matter of this dispute pursuant to Ohio Rev. Code § 2305.01 et seq.

4. Venue is proper in this Court as Cuyahoga County is the county in which all or part of the claim for relief arose.

FACTS COMMON TO ALL CLAIMS

ATGC’s Tireless Service to Individuals Living with HIV/AIDS for over 35 Years

5. By way of background, ATGC has served both Cuyahoga County and the Greater Cleveland Metro area for nearly 35 years, and as such is the longest-tenured AIDS service organization in Ohio. Indeed, for more than three decades, despite fluctuating government support for people at-risk for and living with HIV/AIDS, ATGC has served thousands of the area’s most vulnerable residents: the sick, uninsured, marginalized, and often most indigent among us.

6. As it relates to the dispute at hand, ATGC has continuously received Part B funds from ODH for over 25 years, as reflected in the ODH’s records. The

organization has become a crucial component of the community-based HIV/AIDS care and management network in Cuyahoga County and the Greater Cleveland Metro area.

7. The majority of ATGC's clients identify as African-American or Latino. Many face the challenges of living in poverty, limited access to employment, transportation, and/or limited support systems. A great many struggle with issues of chronic and situational homelessness, often as a direct consequence of their status as minorities and/or members of the lesbian, gay, bisexual, transgender, or questioning (LGBTQ) community that are HIV positive.

8. According to the internal data collected on ATGC's client population:
- a. Nearly 50% of clients served have a history of substance abuse or diagnosis of chemical dependency;
 - b. Over 50% have at least one presenting mental health diagnosis, ranging from severe and persistent mental illness to clinical depression;
 - c. 75% have incomes below the federal poverty level;
 - d. Nearly one-third of clients have at least one significant health risk in addition to HIV, such as diabetes, heart disease, asthma, clinical obesity, and others; and
 - e. 69.5% of clients served under the Part B funding are over the age of 45.

Upon information and belief, the percentages listed above with respect to ATGC's client population are greater than those of any other area providers and, as a result, ATGC has over time developed targeted and specialized services and trained counselors to assist with the specific needs unique to its clients

9. ATGC provides the following services for people living with HIV/AIDS and their families, among other things:

- a. Assists clients in finding stability by ensuring their basic needs are met in terms of nutrition, AIDS Rental Assistance Program (ARAP), housing, and access to other service providers and government support programs;
- b. Organizes and facilitates group therapy sessions for men and women;
- c. Provides supportive services at housing facilities with fourteen 3-bedroom apartments for families, and fourteen 1-bedroom apartments for singles;
- d. Helps client's access government rent and utility assistance;
- e. Provides food for more than 33,000 meals annually through the Taskforce's "client choice" pantry, home-delivered hot meal, and home-delivered frozen meal programs; and
- f. Offers "one-stop shop" approach. ATGC offers medical and non-medical case management, food pantry, youth programs, housing, and testing to its clients. Additionally, through its affiliation with AIDS Healthcare Foundation ("AHF"), ATGC offers its clients an on-site clinic, Pharmacy and Free Wellness Clinic. This "one-stop" approach is not offered by any other organization in the Greater Cleveland area.

Upon information and belief, no other area providers offer all of the services listed above, which ATGC currently provides to its clients. These services are necessary and vital to effectively assist ATGC clients living with HIV/AIDS, who have additional complicating social and medical factors. From a public health perspective and that of the federal program being administered, ATGC is a unique position. ATGC has a foothold in the community in which it has operated for nearly 35 years to provide the services that are the subject of the grant at issue.

10. Specifically, ATGC can attest to numerous accomplishments to the benefit of its clients, including but not limited to:

- a. 90% of clients reported an understanding of the importance of medication adherence and compliance with their prescribed regime;

- b. A recent randomized point in time study at ATGC to monitor the treatment cascade showed clients of ATGC at 81.25% virally suppressed. Another study of ATGC clients utilized Part A Careware data showed ATGC Part A clients as 86% virally suppressed. These results are significantly higher than the National Average;
- c. 90% of clients receiving case management services acknowledged improved understanding of HIV prevention, and report engaging in safe sex practices, thus helping lower their risk of re-infection and/or transmission of the virus;
- d. Approximately 1,095 clients received multiple services at our 2829 Euclid location, 719 clients in case management (454 in medical case management and 346 in non-medical case management/housing support), and approximately 900 clients received nutritional support;
- e. 94% of clients engaged in case management services were linked to primary care services;
- f. Approximately 40% of clients reported a decrease in emergency service utilization after case management intervention and attendance at disease management classes;
- g. In 2016, ATGC administered a total of 2,528 rapid HIV tests through its mobile HIV testing initiative. 496 of the completed tests were conducted during non-traditional hours in areas that lack HIV prevention services, resulting in a 2.6% positivity rate;
- h. More than 3000 at-risk young people within the LGBTQ community over the last decade were provided with information through Beyond Identities Community Center (BICC) social events (200 received OraQuick HIV testing); and
- i. 20,000 condoms were distributed across Greater Cleveland.

Upon information and belief, the percentages listed above with respect to ATGC's accomplishments are greater than those of any other area providers. Again, ATGC's accomplishments speak to the invaluable and tireless role it has played in addressing HIV/AIDS. ATGC's relationship and trust with the community and clients it serves has been developed over years and years and cannot simply be replaced.

11. ATGC has a program policy and personnel policy that will not allow the denial of services based on ethnic, racial, cultural and at-risk targeted populations and/or disenfranchised groups. Over the years, ATGC has faithfully adhered to these policies and, as a result, the community it serves has come to trust ATGC as a provider.

12. Given its location and client population, ATGC is unique in its experience in the community and recognized for providing services to a broad spectrum of ethnic, racial, cultural and at-risk targeted populations. Further, ATGC is recognized throughout the Northeast Ohio nonprofit community as a model of diversity management and planning, and within the HIV/AIDS provider community as an agency that actively supports capacity expansion across organizational boundaries. No other entity enjoys the type of status that ATGC does in serving its clients.

13. In particular, ATGC enjoys a reputation for providing flexibility in serving clients in our community. Though ATGC's regular hours of operation are Monday-Friday, 9:00am - 5:00pm, appointments for non-regular hours are made on request to meet the needs of persons who are unable to keep an appointment during normal business hours. ATGC is located on the edge of downtown and intersecting major bus lines. The services staff consistently makes allowances to accommodate a client's schedule or transportation barriers and will meet a client off-site. There is an understanding that clinical staff may need to be available during evening or weekend hours for appointments. ATGC clinical staff is able to make home visits and/or out-of-office appointments with clients based on the client's need. Clients are also provided RTA passes to make appointments or can access cab services, as needed, to ensure clients have no transportation barriers to service.

14. Such flexibility and additional services are not currently offered anywhere else for the patient population served by ATGC. These services and ATGC's commitment to its patients furthers the state and federal governments' uniform goal in maintaining a continuum of care for program targeted individuals through the administration of Part B funds. Without ATGC as a service provider, clients' health outcomes could be compromised and the overall community HIV viral load increased. From an individual patient and public health perspective, it is vital that ATGC continues to receive the funding that it has received over the last 25 years so that it can continue to work in assisting those living with HIV/AIDS.

***Ohio's Administration of the Federal Ryan White Part B Funding Grant
and the Application Process in Ohio***

15. The Ryan White Comprehensive AIDS Resources Emergency (Care) Act, a federal program first authorized in 1990 by Public Law 101-381, which after its recent reauthorization is now known simply as the "Ryan White Act." The Ryan White Act provides funding to states and cities for use in providing treatment to persons who are HIV-positive or at risk of HIV infection. Ryan White Act funds are distributed in support of five programs one of which is designated Part B. Part B funds are distributed to states to "to improve the quality, availability, and organization of HIV health care and support services." Part B grant funding is authorized pursuant to 42 U.S.C. §§ 300ff-21 et. seq., and regulated under 45 C.F.R. Part 75. At issue in this case is the State of Ohio's administration of federal Part B grant funds.

16. ODH administers the Part B funds received by the State of Ohio pursuant to Ohio Administrative Code 3701-44-01 et. seq. In accordance with federal law, Ohio Administrative Code 3701-44-02(A), and Ohio Rev. Code § 3701.241, ODH is to

distribute Part B funds to local non-profit organizations through what is supposed to be a neutral, competitive grant application process that takes into consideration factors that best serves the purpose of the federal program.

17. The award of Part B and other grants is governed by the Ohio Grants Administration Policies and Procedures Manual (OGAPP). A true and accurate copy of the OGAPP is attached at Exhibit A. OGAPP and federal regulations label organizations that receive federal-originated grant funding that is administered by states as “subrecipients.” Within ODH, the Grant Services Unit (“GSU”) has primary administrative and enforcement authority over the grants administered by ODH.

18. ODH uses a web-based interface called the Grant Management Information System (“GMIS”) to administer Part B and other grants. Part B grants are funded through reimbursements. Subrecipients submit eligible expenses to ODH which reimburses the subrecipients for those expenses. Under OGAPP, ODH announces the availability of new grants funds by issuing a Request for Proposals (“RFP”). A true and accurate copy of the RFP issued with respect to the Part B funds for FY 2017 is attached at Exhibit B.

19. OGAPP Section C1.3 governs ODH’s review and approval or rejection of all grant applications. OGAPP requires that all applications are judged generally on their “quality, clarity, and completeness” as well as other criteria. Section C1.3 of OGAPP also regulates the internal processes by which ODH reviews grant applications. OGAPP requires that the ODH Program unit, the GSU Processing unit, and the GSU Compliance unit review all grant applications. During the review process, ODH staff applies comments and special conditions via the GMIS. OGAPP provides that “[a]fter final

approval of the application, funding level recommendations are made to the Director of Health.” *See* OGAPP, Exhibit A, at p. 25.

20. With respect to the ODH’s RFP for the Part B funds for FY 2017, ODH noted that “up to fifteen (15) grants will be awarded for an amount up to \$6,600,000 for medical case management. Up to fifteen (15) grants will be awarded for an amount up to \$1,400,000 for non-medical case management.” Further, “[a]ny award made through this program is contingent on the availability of funds for Ryan White Part B services and activities. The sub-recipient agency must be prepared to cover the costs of operating the program in the event of a delay in grant payments.” *See* RFP, Exhibit B, at p. 4.

21. According to ODH, “The purpose of this grant program is to assist local regions in developing and/or enhancing access to a comprehensive continuum of high quality HIV care and treatment for low-income people living with HIV (“PLWH”). As such, the funding supports the National HIV/AIDS Strategy (“NHAS”) goals of: reducing HIV incidence, increasing access to care and optimizing health outcomes, and reducing HIV-related health disparities.” *See* RFP, Exhibit B, at p. 2.

22. Further, according to the RFP issued by ODH:

A comprehensive HIV/AIDS continuum of care includes multiple core medical services. The core medical services funding associated with this solicitation is directed towards medical case management. The medical case management positions conduct client assessments of other core services needs and make referrals for outpatient and ambulatory health services, AIDS Drug Assistance Program (“ADAP”) medications, AIDS pharmaceutical assistance (local), oral health care, early intervention services, health insurance premium and cost sharing assistance, home healthcare, medical nutrition therapy, hospice services, home and community-based health services, mental health services, treatment adherence services, and substance abuse outpatient care, as well as, appropriate supportive services that assist PLWH in accessing treatment of HIV infection that is consistent with HHS Treatment Guidelines.

See RFP, Exhibit B, at p. 2.

23. As expressly stated within the RFP, ODH's purposes in releasing funds for case management services are to:

- a. **Provide accessible and culturally competent case management services to a highly diverse population of individuals living with HIV;**
- b. Assure that case management services are available to people living with HIV and their families in every county of the State of Ohio through a sub-recipient office, satellite office, or in-home client visits;
- c. Assure that all individuals living with HIV have access to core medical care consistent with the guidelines developed by the U.S. Public Health Services;
- d. Provide information and education to people living with HIV regarding horizontal or vertical transmission, secondary infection, and resistance;
- e. Make individuals aware of, and assist them in, accessing healthcare related resources for which they may be eligible in order to improve the quality of their lives; and as a last resort approve the use of Ryan White Part B funds and/or refer individuals to other Ryan White programs or pay sources;
- f. Provide access to quality case management services, based on the national Association of Social Work (NASW) model of case management to people living with HIV/AIDS (PLWHA);
- g. **Implement activities and strategies that respond to the disproportionate impact of HIV/AIDS among Ohio's racial and ethnic minorities.**

See RFP, Exhibit B, at p. 4-5 (emphasis added).

24. Part of the application process requires submission of letters of collaboration, which demonstrate a referral relationship that exists between Part B funded agency and key points of entry (*i.e.*, hospital, health center, etc.). See RFP, Exhibit B at Program Attachment #3. In that attachment, ODH expressly states that "letters of

collaboration with local LGBTQ organizations and organizations that **focus on minority health and outreach are strongly encouraged.**” *Id.* (emphasis added).

25. Further, as expressly set forth in the Ryan White HIV/AIDS Program Part B Manual prepared by the HRSA (“Part B Manual”):

The [Ryan White HIV/AIDS Program] requires [Ohio] to develop a comprehensive continuum of HIV/AIDS care accessible to eligible PLWH. The system of care should address the service needs of all PLWH, including newly affected and underserved populations, **especially disproportionately impacted communities of color and emerging populations.** The HIV/AIDS care should be consistent with HRSA’s goals of increasing access to services and decreasing HIV/AIDS health **disparities among affected subpopulations and historically underserved communities.**

See Part B Manual, attached as Exhibit C, at p. 18 (emphasis added).

ODH Denies ATGC’s Application for Part B Funds for FY 2017

26. ODH’s denial of ATGC’s Application does not square with its own stated purpose for the funds and the clear purpose noted by the federal government on whose behalf the funds are administered by ODH. Among all the providers applying for the funds at issue, ATGC is unique in its longstanding commitment to and service of disproportionately impacted HIV/AIDS communities of color and subpopulations that have been historically underserved. Yet, for reasons that are arbitrary and not in accordance with ODH and the federal government’s HIV strategy, ATGC’s Part B funding is being stripped.

27. On or about November 1, 2016, ODH issued the RFP for Part B funding for the period beginning on April 1, 2017 and ending on March 31, 2018.

28. On or about December 16, 2016, ATGC timely submitted its application for the 2017 Part B grant (“Application”). A copy of ATGC’s Application is attached as Exhibit D.

29. As set forth in the Application, ATGC requests \$559,681.00 primarily for programmatic funding for FY 2017 (“Requested Funds”). In alignment with the goals set forth by ODH in the RFP, the Requested Funds would be used to assist ATGC in maintaining a comprehensive HIV/AIDS continuum of care by providing ATGC HIV Medical Case Management services to HIV positive individuals. Specifically, the primary use of the Requested Funds (*i.e.*, around \$521,428, or over 93% of the total funds requested by ATGC) would be to support eleven (11) individuals providing valuable services to ATGC: the Program Director; the Director of Accounting; and nine (9) case management staff (which includes seven (7) full-time Medical Case Managers, a full time Non-medical Case Manager, and a Case Aide).

30. Three separate persons within ODH graded ATGC’s Application and the applications of those other agencies seeking Part B funding. As expressly set forth on the sample scoring sheet attached to the RFP, the “minimum score to be eligible for funding” was 70 points. *See* RFP, Exhibit B, at Program Attachment #8. **ATGC received sufficient scores from all graders to be eligible for Part B funds.** A true and accurate copy of the score sheets for ATGC are attached as Exhibit E. As ATGC satisfied the scoring threshold to be eligible for Part B funds, it is beyond contestation that ATGC qualified for funding under ODH’s delineated scoring standard.

31. On or about February 14, 2017, ATGC received the following comment on its Application via the GMIS: “Application reviewed by GSU Ronda Merriman-

Fugitt; Special Conditions applied, **recommend approval.**” See Application, Exhibit D, at Application Status Page.

32. Yet in spite of this recommendation for approval, qualifying application scores, ATGC’s longstanding history of providing services to the HIV/AIDS community, and ATGC’s continual receipt of Part B funding for 25 years, ODH informed ATGC that its Application was denied and that it would not receive Part B funding for FY 2017.

33. Specifically, on March 1, 2017, an employee of ODH, Laurie Rickert (“Rickert”) and Katherine Shumate (“Shumate”), an ODH administrator, notified ATGC’s Interim Director, LaRaun Clayton, via telephone that ATGC’s grant application would be denied because of “past compliance problems.”

34. However, on or about March 7, 2017, ATGC received an unsigned letter from ODH Director Richard Hodges (“ODH Letter”), which stated in part, “due to limited funding and high demand, the [ODH] was unable to fund your agency’s application.” See ODH Letter, attached as Exhibit F. Notably, the ODH Letter said nothing about any past compliance problems with ATGC.

35. The next day, on or about March 8, 2017, ODH held a public meeting in Columbus in which Shumate indicated (when answering questions regarding the recent round of Part B funding decisions) that ATGC’s Part B application had been denied because of ATGC’s alleged past history of compliance issues. At no time during the March 8, 2017 meeting did Shumate cite limited funding or high demand as a reason for denying any Part B grant applications.

36. Though ATGC received scores making it eligible to receive funding again this year in support of its laudable activities for serving historically underrepresented

communities suffering from HIV/AIDS in Ohio and one of the graders specifically recommended funding approval, ODH denied its Application offering conflicting rationales for its denial.

37. Such conflicting rationales highlight the arbitrary nature of ODH's decision and call into question the discretion exhibited by ODH in its evaluation of ATGC's Application and its denial of funding. ODH is required to advance the goals, mission, and purpose set forth in its own RFP, as well as the OGAPP and Part B Manual. To the contrary, ODH acted in an arbitrary and capricious manner in its decision to deny FY 2017 Part B funding to ATGC without any clear, consistent justification, and in spite of ATGC's sufficient scoring and the unique, unmatched variety of services that ATGC's brings to its patients.

38. This was not the first time that ODH has attempted to set forth multiple narratives to belatedly justify a clear abuse of its discretion in the selection process for Part B funding.

39. In December, 2012 ATGC submitted a prior application for Part B grant funding beginning in April 2013. On or about January 7, 2013 during a conference at ATGC's office, Shumate informed Tracy Jones ("Jones"), an ATGC director, that the organization's Part B grant application would be denied and that "maybe you [ATGC] should just go away."

40. After this meeting, on or about January 2013, Jones received a phone call from Rickert, and Rickert informed Jones that ATGC's application would be rejected. Rickert informed Jones in this phone call that the true reason for the rejection of ATGC's

application was that Shumate wished to direct Part B funds to another organization, but that the “official” position of ODH would be that ATGC was not fiscally sound.

41. When ATGC questioned the arbitrariness of that decision, ODH ultimately approved ATGC’s Part B application.

42. ODH’s changing justification used to support its denial of the Application subject to this dispute (yet again) calls into serious question the propriety and integrity of the competitive bidding process and ODH’s decision to once again deny funding to ATGC – one of the oldest HIV/AIDS organization servicing the most underrepresented communities in the greater Cleveland area.

***ODH’s Arbitrary and Capricious Decision will Irreparably Harm
ATGC and Harm the Desperate, Disadvantaged Patients For Which
ATGC Has Provided Longstanding Care***

43. Despite being an effective grantee of Part B funding since the funding’s inception and one of the only accessible “one-stop shop” area AIDS service providers prioritizing people living with HIV/AIDS (PLWHA), ODH has arbitrarily denied ATGC’s request for continued funding to support its clients.

44. The denial of the Requested Funds, which represent over 30% of ATGC’s operating budget, would cripple the organization and dramatically impact its ability to continue to serve some of the neediest among us – namely, LGBT minorities living with HIV/AIDS and suffering from mental health issues or other serious, debilitating illnesses.

45. The denial of the Requested Funds will cause devastating harm to the historically underserved minority and marginalized individuals that are currently being served by ATGC. The denial of the funding will lead to the loss of nine (9) full-time case management staff who bring an average of 10-15 years of experience to their caseload,

including five case managers who conduct client home visits across five counties. ATGC case management clients need the stability and consistency of the uninterrupted case management relationships they have developed over the years with ATGC's team. These relationships are hard-won and require the skill, commitment, experience, and compassion found with the case managers the clients have worked with, in some instances for more than a decade. ATGC has been serving the community for over 35 years and practices developed over that time to serve the local population it serves cannot be replaced easily. Specifically, as a result of the loss of ATGC's case managers that are funded by the Ryan White Part B program, the health and welfare of approximately 350 ATGC clients that are served by those case managers will be put at further risk.

46. In addition, the denial of the Requested Funds would create a barrier for clients to access many of the “one-stop shop” services (including nutrition, AIDS Rental Assistance Program (ARAP), housing, transportation and access to other service providers and government support programs).

47. With this denial of funding, many persons living with HIV/AIDS will have their treatment adherence jeopardized, which will result in negative health outcomes and may increase public health risks for the entire community. As such, ODH’s decision is not only arbitrary and capricious from a legal standpoint, but it is also contrary to the policy goals of the Ryan White Act (the statute under which the federal funds at issue are provided) and the National HIV/AIDS Strategy.

48. Upon information and belief, in part based on prior communication directly from ODH, other providers may be receiving the Requested Funds that are at issue here. Specifically, ODH stated that it has expanded existing contracts with other

Cleveland area providers to ensure there are no gaps in the delivery of these important case management services. ATGC interprets this statement to mean that other providers will be awarded the Requested Funds, representing an additional amount of funding beyond what the providers sought and were granted already as part of the RFP process.

49. ATGC is uniquely situated to serve the needs of its client, who are predominantly low income, minority residents that reside in an area not serviced by any other provider. ATGC is located just east of Downtown Cleveland (28th and Euclid) and its clients by and large lack the transportation to obtain services elsewhere. Further, many patients of ATGC who suffer from mental illness have been previously refused care by other providers. Other providers do not offer patients the “one stop shop” services which ATGC provides its clients. A transition of care to any new provider would require ATGC’s patients to rebuild trust and comfort with a new caseworker, as ODH has sought fit to arbitrarily deny them access to caseworkers that have continued to provide them with tireless care and attention for years.

50. For these reasons among others, the denial of funding to ATGC and the loss of ATGC’s ability to continue its care for such patients will ultimately amount to an interruption in the continuity of care for these desperate and needy patients. Without continuity of care, positive health outcomes for these patients will be impossible. These patients will be closer to an end of life proposition and will be forced to suffer through a more difficult and painful experience while continuing to live with HIV/AIDS.

51. In light of these grave concerns and the complete lack of consistency regarding the unlawful decision by ODH, counsel for ATGC sent a letter to ODH seeking a reconsideration of the denial of ATGC’s Application. A true and accurate copy of the

Letter is attached as Exhibit G. In the letter, ATGC requested that the Requested Funds not be committed or disbursed until ODH had the opportunity to review ATGC's request for reconsideration. However, ODH has informed ATGC that it is unwilling to reconsider its decision and/or believes that such reconsideration would not lead to a different result.

52. As such, ATGC has filed this case seeking a review by the Court of the unlawful, arbitrary and capricious decision of ODH to deny Part B grant funding to ATGC, and instead, to redirect the Requested Funds elsewhere despite ATGC's clear eligibility to receive funding and the obvious detrimental effect that would befall upon some of the most desperate, disadvantaged sufferers from HIV/AIDS in the entire state.

53. ATGC seeks an injunction to maintain the status quo relative to the Requested Funds so the improper decision of the ODH can be reviewed by the court.

FIRST CLAIM FOR RELIEF
(INJUNCTIVE RELIEF - VIOLATION OF PUBLISHED RULES AND
CRITERIA FOR COMPETITIVE AWARD)

54. ATGC incorporates by reference herein each and every allegation set forth above, the same as if fully rewritten herein.

55. Under Ohio law, a public agency may not violate its own published rules and criteria for awarding contracts if such a violation constitutes an abuse of discretion or an arbitrary decision.

56. OGAPP governs the standards and procedures by which ODH evaluates grant applications. In addition, the Part B Funds awarded by ODH are supposed to advance the goals of the Ryan White Act (the statute under which the federal funds at issue are provided) and the National HIV/AIDS Strategy.

57. ODH's decision to not award ATGC the Requested Funds, and instead redistribute them to other providers, is contrary to the OGAPP and the stated purposes of its own RFP, as well as the stated purpose of the Ryan White Act and the National HIV/AIDS Strategy, and constitutes an abuse of discretion.

58. ODH's multiple inconsistent justifications for denying ATGC's Application, in spite of ATGC's clear eligibility and unique services provided to its patients, constitutes arbitrary decision making and an abuse of its discretion.

59. ODH's decision to cease the longstanding funding of ATGC and to redistribute the Requested Funds to other providers that are not as uniquely capable to adequately address the needs of ATGC's patients, thereby causing a lack of continuum of care among the disproportionately needy population in Cleveland, is an abuse of discretion.

60. Unless restrained by this Court, ODH's unlawful decision will result in the irreparable harm to ATGC and its ability to provide these desperate patients its services within this impoverished, predominantly minority within the community.

61. ODH's unlawful decision will result in irreparable harm to ATGC and the clients it serves, many of whom will lose the care ATGC now provides, either because they are forced to seek care from a provider that has previously turned them away or because they do not have access to transportation or the necessary mobility to continue treatment from a new provider.

62. ODH has refused to reconsider or reverse its unlawful decision regarding the Requested Funds sought by ATGC.

63. ATGC has no adequate remedy at law and is entitled to a temporary restraining order and preliminary injunction, enjoining ODH from distributing the Requested Funds, for which ATGC is eligible and which ATGC had been previously recommended by ODH staff to receive for the upcoming grant cycle.

SECOND CLAIM FOR RELIEF
(DECLARATORY JUDGMENT)

64. ATGC incorporates by reference herein each and every allegation set forth above, the same as if fully rewritten herein.

65. As delineated above, ODH has violated its own rules for awarding Part B funds, as it relates to the Requested Funds.

66. ODH actions are contrary to the stated goals of the Ryan White Act (the statute under which the federal funds at issue are provided), the National HIV/AIDS Strategy, and the mission, purpose and goal set forth in ODH's RFP.

67. As delineated above, ODH's unlawful acts will have a detrimental, irreparable impact on both ATGC and its clients, who are among the most impoverished and neglected HIV/AIDS patients in the Greater Cleveland area.

68. ODH's decision to redistribute the Requested Funds to other providers is an abuse of its discretion and amounts to arbitrary and capricious decision-making.

69. As a result, ATGC seeks a declaratory judgment from the Court finding that ODH abused the discretion with respect to the Requested Funds and requiring that the Requested Funds be awarded to ATGC.

70. In the alternative, ATGC seeks a declaratory judgment from the Court that ODH abused the discretion with respect to the Requested Funds and remanding the

dispute back to ODH for reconsideration regarding the Requested Funds in light of the findings of fact and law determined by the Court after an evidentiary hearing.

WHEREFORE, Plaintiff ATGC demands the following relief:

1. Judgment in favor of Plaintiff ATGC on all claims asserted;
2. A temporary restraining order and preliminary injunction enjoining Defendant ODH from committing and/or disbursing the Requested Funds, which represent the \$559,681.00 of Part B grant funding that is the subject of this action, to any other organization or individual, while Plaintiff ATGC's claims remain pending before the Court;
3. Judgment in favor of Plaintiff ATGC on its declaratory judgment finding that abused discretion and ordering ODH to reverse its decision relative to the Requested Funds, or reconsider its decision based on the findings of fact and law determined by the Court.
4. An award of costs, interest and attorneys' fees; and
5. Such other relief in law or in equity to which Plaintiff ATGC may be entitled.

Respectfully submitted,

s/ Robert A. Zimmerman

Robert A. Zimmerman (0055478)
BENESCH, FRIEDLANDER, COPLAN
& ARONOFF LLP
200 Public Square, Suite 2300
Cleveland, OH 44114-2378
216-363-4437 Phone
216-363-4588 Fax
rzimmerman@beneschlaw.com

Mark D. Tucker (0036855)
Steven A. Oldham (0080876)
BENESCH, FRIEDLANDER, COPLAN
& ARONOFF LLP
41 South High Street, Suite 2600
Columbus, OH 43215-3506
614-223-9374 Phone
614-223-9330 Fax
mtucker@beneschlaw.com
soldham@beneschlaw.com

*Attorneys for Plaintiff
AIDS Task Force of Greater Cleveland*