

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

PLANNED PARENTHOOD SOUTHEAST,
INC.; PLANNED PARENTHOOD GREATER
MEMPHIS REGION, INC.; JANE DOE; and
JANE DOE #2,

Plaintiffs,

v.

DAVID J. DZIELAK, Executive Director,
Mississippi Division of Medicaid, in his official
capacity,

Defendant.

No. 3:16-cv-454 DPJ-FKB

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Planned Parenthood Southeast, Inc. (“PPSE”), Planned Parenthood Greater Memphis Region, Inc. (“PPGMR”), Jane Doe, and Jane Doe #2, by and through their attorneys, bring this Complaint against the above-named Defendant, his employees, agents, delegates, and successors in office, and in support thereof state the following:

INTRODUCTORY STATEMENT

1. This civil action is brought pursuant to 42 U.S.C. § 1983 and the United States Constitution to vindicate rights secured by the federal Medicaid statutes as well as the Equal Protection Clause and Due Process Clause of the United States Constitution.

2. Plaintiffs PPSE and PPGMR (the “Provider Plaintiffs”) provide critically needed family planning and preventive health services to women and men in underserved areas of

Mississippi through the Mississippi Medicaid program. Mississippi Medicaid does not pay for abortions except in extremely narrow circumstances.

3. As is required by federal law, Medicaid enrollees, such as Plaintiffs Jane Doe and Jane Doe #2 (collectively the “Jane Doe Plaintiffs”), may seek family planning services from the participating provider of their choice and have those services covered by Medicaid.

4. On May 10, 2016, Mississippi Governor Phil Bryant signed into law Mississippi Senate Bill 2238, 1st Regular Session (2016), to be codified at Miss. Code. Ann. § 43-13-117 (the “Act” or “SB 2238”) (attached hereto as Exhibit A). The Act disqualifies from eligibility to participate in Mississippi’s Medicaid program any entity that performs abortions, except in extremely narrowly defined circumstances.

5. The Act violates 42 U.S.C. § 1396a(a)(23), which is known as the Medicaid free choice of provider requirement, because it prevents the Provider Plaintiffs’ Mississippi Medicaid patients, including the Jane Doe Plaintiffs, from receiving services through the Medicaid program from the qualified, willing provider of their choice. The Act also violates the Equal Protection rights of the Provider Plaintiffs and their patients, including the Jane Doe Plaintiffs, because it singles them out for unfavorable treatment without a constitutionally sufficient justification. The Act further violates the Due Process rights of the Provider Plaintiffs and their patients because it imposes an unconstitutional condition on the Provider Plaintiffs’ eligibility to participate in Medicaid by disqualifying them from Medicaid based on their exercise of constitutionally protected activity.

6. As of July 1, 2016, the Act disqualifies the Provider Plaintiffs from providing critical services to Mississippi men and women who depend on them for that care. Until this Court grants relief, the Act will cause irreparable harm to the Provider Plaintiffs’ Medicaid

patients, including the Jane Doe Plaintiffs, who are no longer able to obtain their reproductive health care from the provider of their choice through the Medicaid program, and who risk losing their provider of choice and having their access to critical health services interrupted.

JURISDICTION AND VENUE

7. Subject-matter jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 & 1343.

8. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

9. Venue in this judicial district is proper under 28 U.S.C. § 1391.

THE PARTIES

A. Plaintiffs

10. Plaintiff PPSE is a not-for-profit corporation organized under the laws of Georgia. PPSE provides reproductive health care at a health center in Hattiesburg, Mississippi, as well as two health centers in Alabama and five in Georgia. PPSE participates in the Mississippi Medicaid program, providing medical services to low-income enrollees. The family planning and other preventive health services provided by PPSE at its Hattiesburg health center include physical exams, contraception and contraceptive counseling, screening for breast cancer, screening for cervical cancer, testing and treatment for certain sexually transmitted infections ("STIs"), and pregnancy testing and counseling. PPSE does not provide abortions in Mississippi but does in Alabama and Georgia. PPSE brings this action on behalf of itself and its patients.

11. Plaintiff PPGMR is a not-for-profit corporation organized under the laws of Tennessee. PPGMR provides reproductive health care at a health center in Memphis, Tennessee,

and many of the patients it serves reside in Mississippi counties that lie within the Memphis metropolitan area. PPGMR recently began to participate in the Mississippi Medicaid program, providing medical services to low-income enrollees. The family planning and other preventive health services provided by PPGMR at its Memphis health center include physical exams, contraception and contraceptive counseling, screening for breast cancer, screening for cervical cancer, testing and treatment for certain STIs, and pregnancy testing and counseling. PPGMR also provides abortions. PPGMR brings this action on behalf of itself and its patients.

12. Plaintiff Jane Doe is a Mississippi resident and Medicaid patient who obtains reproductive health care from PPGMR and desires to continue to do so.

13. Plaintiff Jane Doe #2 is a Mississippi resident and Medicaid patient who obtains reproductive health care from PPSE and desires to continue to do so.

B. Defendant

14. Defendant David J. Dzielak is the Executive Director of the Mississippi Division of Medicaid (“MDM”), the agency that administers the state Medicaid program which, in the absence of the Act, would disburse the funds at issue to PPSE and PPGMR. Defendant Dzielak is sued in his official capacity.

THE ACT

15. The Act provides that the Division of Medicaid “shall not authorize payment of part or all of the costs of care and services rendered by an entity that performs nontherapeutic abortions, maintains or operates a facility where nontherapeutic abortions are performed, or is affiliated with such an entity.” SB 2338 § 1. The Act goes on to define “nontherapeutic abortions” as “abortions that are not qualified for federal matching funds under the Medicaid program, 42 USC Section 1396 et seq.” *Id.* Such abortions are those limited to life

endangerment, rape and incest. Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. H, tit. V, §§ 506–507, 129 Stat. 2242, 2649.

THE MEDICAID PROGRAM

A. The Medicaid Statute

16. The Medicaid program, established under Title XIX of the Social Security Act of 1935, 42 U.S.C. § 1396 *et seq.*, pays for medical care for eligible needy people. A state may elect whether or not to participate; if it chooses to do so, it must comply with the requirements imposed by the Medicaid statute and by the Secretary of the U.S. Department of Health and Human Services (“HHS”) in her administration of Medicaid. *See generally* 42 U.S.C. § 1396a(a)(1)–(83).

17. To receive federal funding, a participating state must develop a “plan for medical assistance” and submit it to the Secretary of HHS for approval. 42 U.S.C. § 1396a(a).

18. Among other requirements, the State plan must provide that: “[A]ny individual eligible for medical assistance . . . may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required . . . who undertakes to provide him such services.” 42 U.S.C. § 1396a(a)(23)(A).

19. Congress has singled out family planning services for special additional protections to ensure freedom of choice, specifically providing that, with respect to these services and with certain limited exceptions not applicable here, “enrollment of an individual eligible for medical assistance in a primary care case-management system . . . , a medicaid managed care organization, or a similar entity shall not restrict the choice of the qualified person

from whom the individual may receive services” 42 U.S.C. § 1396a(a)(23)(B); 42 C.F.R. § 431.51(b)(2) (implementing regulations requiring the same).

20. The federal government reimburses the state of Mississippi 90% of expenditures attributable to offering, arranging, and furnishing family planning services and supplies in Medicaid. 42 U.S.C. § 1396b(a)(5).

B. Implementation of the Medicaid Act

21. For decades, the Centers for Medicare & Medicaid Services (“CMS”), the agency within HHS that administers Medicaid (and its predecessor organization), has repeatedly interpreted the “qualified” language in Section 1396a(a)(23) to prohibit states from denying access to a provider for reasons unrelated to the ability of that provider to perform Medicaid-covered services or to properly bill for those services, including reasons such as the scope of the medical services that the provider offers.

22. CMS has long explained that “[t]he purpose of the free choice provision is to allow [Medicaid] recipients the same opportunities to choose among available providers of covered health care and services as are normally offered to the general population.” Ctrs. for Medicare & Medicaid Servs., CMS Manuals Publication #45, State Medicaid Manual § 2100.

23. Consistent with this, CMS has issued guidance making clear that

States are not [] permitted to exclude providers from the program solely on the basis of the range of medical services they provide. . . . Medicaid programs may not exclude qualified health care providers . . . from providing services under the program because they separately provide abortion services (not funded by Medicaid dollars, consistent with the federal prohibition) as part of their scope of practice.

Cindy Mann, Dir., CMS, CMCS Informational Bulletin: Update on Medicaid/CHIP, June 1, 2011, <https://www.medicaid.gov/Federal-Policy-Guidance/downloads/6-1-11-Info-Bulletin.pdf>.

24. CMS recently reiterated this guidance on April 19, 2016 via a letter to all State Medicaid Directors, which stated:

The “free choice of provider” provision is specific with respect to the free choice of family planning providers. . . . [S]tates may not deny qualification to family planning providers, or take other action against qualified family planning providers, that affects beneficiary access to those providers—whether individual providers, physician groups, outpatient clinics or hospitals—solely because they separately provide family planning services or the full range of legally permissible gynecological and obstetric care, including abortion services (not funded by federal Medicaid dollars, consistent with the federal prohibition), as part of their scope of practice.

Letter from Vikki Wachino, Dir., CMS, to State Medicaid Dirs. 2 (Apr. 19, 2016),

<https://www.medicaid.gov/federal-policy-guidance/downloads/SMD16005.pdf>.

25. Accordingly, CMS has a long history of rejecting state plans that seek to limit the type of provider that can provide particular services. For example, in 2011 CMS rejected an Indiana plan that barred state agencies from contracting with or making grants to any entities that perform abortion because it violated the Medicaid freedom of choice provision. Letter from Donald M. Berwick, Adm’r., CMS, to Patricia Casanova, Dir., Ind. Office of Medicaid Policy and Planning (June 1, 2011), http://www.politico.com/static/PPM169_110601_indiana_letter.html. *See also* 53 Fed. Reg. 8699-03 (Mar. 16, 1988) (noting rejection of a state plan that would limit providers to “private nonprofit” organizations); 67 Fed. Reg. 79121 (Dec. 27, 2002) (noting disapproval of a state plan amendment that would have limited “beneficiary choice . . . by imposing standards that are not reasonably related to the qualifications of providers”); Letter from Marilyn Tavenner, Adm’r, CMS, to Beverly Mackereth, Sec’y, Pa. Dep’t of Pub. Welfare (Aug. 28, 2014), <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/pa/pa-healthy-ca.pdf> (denying request from Pennsylvania to waive § 1396a(a)(23) in demonstration projects under Social Security Act, § 1115: “No waiver

of freedom of choice is authorized for family planning providers.”); Letter from Manning Pellanda, Dir., CMS Div. of State Demonstrations and Waivers, to Julie Lovelady, Interim Medicaid Dir., Iowa Dep’t of Human Servs. (Feb. 2, 2015), <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ia/wellness-plan/ia-wellness-plan-current-appvl-02022015.pdf> (denying similar request from Iowa: “No waiver of freedom of choice is authorized for family planning providers.”).

26. Furthermore, when two states, Indiana and Arizona, passed statutes virtually identical to the Act at issue in this case, those statutes were found to violate the Medicaid free choice of provider requirement and were struck down. *Planned Parenthood of Ind., Inc. v. Comm’r of Ind. State Dep’t of Health*, 699 F.3d 962 (7th Cir. 2012), *cert. denied*, 133 S. Ct. 2736 (2013); *Planned Parenthood Ariz. Inc. v. Betlach*, 727 F.3d 960 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 1283 (2014).

MISSISSIPPI’S HISTORY OF ANIMUS TOWARD ABORTION

27. Mississippi has among the most restrictive abortion laws in the country. As a result, the number of abortion providers in Mississippi has steadily declined, from 14 providers in 1981 to just one remaining today. Kate Sheppard, *Inside Mississippi’s Last Abortion Clinic*, Mother Jones (Jan. 22, 2013), <http://www.motherjones.com/politics/2013/01/inside-mississippi-last-abortion-clinic>. Governor Bryant and other anti-abortion politicians in Mississippi have consistently worked to restrict access to abortion and, ultimately, to shut down that last provider and eliminate abortion access in the state entirely.

28. Current Mississippi laws already severely restrict access to abortion. The state imposes a 24-hour delay on women seeking abortion following receipt of state-mandated information. Miss. Code. Ann. § 41-41-33. Women must undergo an ultrasound and must be

offered the opportunity to view the ultrasound and hear the fetal heartbeat prior to obtaining an abortion. Miss. Code. Ann. § 41-41-34. It is illegal to perform an abortion after 20 weeks gestation unless the woman's life is in danger or she is at risk of severe health impairment or if there is a severe fetal anomaly. Miss. Code. Ann. § 41-41-137. Minors require the written consent of both their parents in order to obtain an abortion. Miss. Code. Ann. § 41-41-53. Abortion is covered in insurance policies for public employees only in cases of life endangerment, rape or incest or fetal abnormality. Miss. Code. Ann. § 41-41-91. Insurance provided in any exchange established pursuant to the Affordable Care Act cannot cover abortions except in cases of life-endangerment, rape or incest. Miss. Code. Ann. § 41-41-99.

29. In 2012, Mississippi passed a law requiring physicians who provide abortion and are associated with an abortion facility to have admitting privileges at a local hospital. Miss. Code. Ann. § 41-75-1. Politicians were clear that the purpose of the bill was to “close the only abortion clinic in Mississippi.” Joe Sutton and Tom Watkins, *Mississippi Legislature Tightens Restrictions on Abortion Providers*, CNN Politics (Apr. 4 2012), <http://www.cnn.com/2012/04/04/politics/mississippi-abortion>. Governor Bryant signed the bill and stated, “I will continue to work to make Mississippi abortion-free.” *Mississippi On Way to Becoming ‘Abortion-Free’ State?*, NBC News (Apr. 5, 2012), http://usnews.nbcnews.com/_news/2012/04/05/11039503-mississippi-on-way-to-becoming-abortion-free-state. The law has been enjoined. *Jackson Women’s Health Org. v. Currier*, 760 F.3d 448 (5th Cir. 2014), *petition for cert. filed*, No. 14-997.

30. During the 2016 legislative session, in addition to the Act, Mississippi banned the most common method of second trimester abortions in the United States. Mississippi House Bill 519, attached hereto as Ex. B. Upon signing the bill, Governor Bryant stated, “We’re making

Mississippi the safest place in America for an unborn child.” Jeff Amy, *Bryant signs bill banning 2nd trimester abortion method*, Clarion Ledger (Apr. 15, 2016), <http://www.clarionledger.com/story/news/politics/2016/04/15/bryant-signs-bill-banning-2nd-trimester-abortion-method/83092298/>.

31. The Act is yet another attack on abortion and abortion providers. State Senator Joey Fillingane, who authored the Act, stated, “The idea that we would take state tax dollars, which these are, and provide to an entity like Planned Parenthood, which is the number one abortion provider in the country, is just mind blowing. . . They provide family planning services, which is a nice, tidy way of saying . . . if you don’t want to keep this baby, you should go to an abortion clinic.” Amanda LaBrot, *Mississippi Senate Votes to Stop Funding Planned Parenthood*, MS News Now (Mar. 3, 2016), <http://www.msnewsnow.com/story/31382112/mississippi-senate-votes-to-stop-funding-planned-parenthood>. Governor Bryant similarly issued a statement saying “Happy to sign Senate Bill 2238. Taxpayers dollars should not fund abortions.” Phil Bryant (@PhilBryantMS), Twitter (May 10, 2016), <https://twitter.com/PhilBryantMS/status/730151336709390337>.

THE PROVIDER PLAINTIFFS’ PARTICIPATION IN MISSISSIPPI MEDICAID AND THE IMPACT OF THE ACT

31. PPSE has been an enrolled provider in the Mississippi Medicaid program since 2013. PPSE has recently been working to expand services, including services for Mississippi Medicaid patients, at its Hattiesburg health center in order to increase access to reproductive healthcare for patients in the area.

32. The Mississippi Division of Medicaid approved PPGMR as an enrolled Mississippi Medicaid provider in 2016. Prior to becoming an enrolled provider, PPGMR

received 1–2 phone calls per week from Mississippi Medicaid patients inquiring as to whether PPGMR accepted Mississippi Medicaid.

33. Only the neediest individuals in Mississippi are eligible to receive Medicaid coverage. In order to qualify for Mississippi Medicaid, among other requirements, an adult must be low-income and pregnant, disabled, or the parent/caretaker of a child. MDM, *Who Qualifies for Coverage?*, <https://medicaid.ms.gov/medicaid-coverage/who-qualifies-for-coverage/>. For example, in order for an adult to qualify for Mississippi Medicaid as the parent or caregiver of a child, the monthly income of a family of four cannot exceed \$462. MDM, *Income Limits for Medicaid and CHIP Programs*, <https://medicaid.ms.gov/medicaid-coverage/who-qualifies-for-coverage/income-limits-for-medicaid-and-chip-programs/>. Mississippi also has a Family Planning waiver program which expands Medicaid eligibility for family planning services only for men and women of reproductive age. In order to be eligible for the waiver program, a beneficiary must have income at or below 194% of the federal poverty level. *Id.*

34. The need for publicly supported family planning services is great in Mississippi. In 2010, 62% of pregnancies in Mississippi were unintended, well above the national rate of 45%. Guttmacher Inst., *State Facts About Unintended Pregnancy: Mississippi* (2014), <https://www.guttmacher.org/fact-sheet/state-facts-about-unintended-pregnancy-mississippi>. Mississippi has the second highest rate of teen pregnancies in the country, at 70 pregnancies per 1000 women aged 15-19. Guttmacher Inst., *U.S. Teenage Pregnancies, Births and Abortions, 2011: State Trends by Age, Race and Ethnicity* (2016), <https://www.guttmacher.org/report/us-teen-pregnancy-state-trends-2011#full-article>.

35. Over the past decade, the need for publicly funded contraceptive services has increased while resources have decreased. Of the estimated 335,980 Mississippi women who

needed family planning services in 2013, a significant majority (67.4%) require publicly funded contraceptive services and supplies. Jennifer L. Frost et al., Guttmacher Institute, *Contraceptive Needs and Services, 2013 Update* 18, 20 (July 2015), <https://www.guttmacher.org/sites/default/files/pdfs/pubs/win/contraceptive-needs-2013.pdf>. From 2010 to 2013, the number of women needing publicly funded contraceptive services and supplies increased 6%, *id.* at 22, while the number of women being served *decreased* 17%. *Id.* at 26. Indeed, from 2001 to 2013, the percentage of need met by publicly supported family planning centers has decreased from well over half to less than one-third. *Id.* at 28.

36. Mississippi also regularly ranks among the worst states for STIs, with rates at or above the national average for every STI tracked by Centers for Disease Control (“CDC”) surveillance. Among these are chlamydia and gonorrhea (second highest rates in the country), primary and secondary syphilis, and HIV. CDC, *Sexually Transmitted Disease Surveillance 2014* 81, 93, 107 (Nov. 2015), <https://www.cdc.gov/std/stats14/surv-2014-print.pdf>. The geographical area designated by the Mississippi State Department of Health as Public Health District 8, which includes the county where PPSE’s Hattiesburg clinic is located, has the third highest rate of HIV in the state. Miss. State Dep’t of Health, *Reported Cases & Rates of HIV Disease by Dist. and Cty.: Miss., 2010-2014*, http://msdh.ms.gov/msdhsite/_static/resources/6001.pdf. Mississippi’s capitol, Jackson, has the fourth highest rate of HIV of all metropolitan statistical areas in the entire country. CDC, *Diagnoses of HIV Infection in the United States & Dependent Areas, 2014*, 26 HIV Surveillance Report (Nov. 2015), <http://www.cdc.gov/hiv/pdf/library/reports/surveillance/cdc-hiv-surveillance-report-us.pdf>.

37. The Provider Plaintiffs seek to continue to work to meet the need for publicly supported family planning services by continuing as Medicaid providers. PPSE's Hattiesburg health center, for example, provides care in an HHS-designated Primary Care Health Professional Shortage Area—a geographic area in which primary care professionals are practically inaccessible. Each of the six counties that neighbor Forrest County, where the health center is located, is also designated as a medically underserved population area. PPGMR's Memphis health center is just across the border from DeSoto County, Mississippi, which is designated as a medically underserved population area. The three additional closest Mississippi counties to PPGMR's health center (Tunica, Tate, and Marshall Counties) have been designated as both medically underserved population areas and as primary care professional shortage areas. U.S. Dep't of Health and Human Servs., Find Shortage Areas, Health Resources and Services Administration, <http://datawarehouse.hrsa.gov/tools/analyzers/geo/ShortageArea.aspx> (enter clinic or county seat address and click "submit").

38. Because of the Act, unless the Provider Plaintiffs cease providing abortions (except under the extremely narrow circumstances allowed under the Medicaid program), they are no longer able to receive reimbursement for providing healthcare services to patients through the Mississippi Medicaid program. Being unable to provide services through the Medicaid program fundamentally defeats the core of their missions: to provide the health care and information people need to plan their families and their futures, with a special concern for patients living near the poverty line, and to promote their patients' health, safety and well-being. They are also losing the revenue from providing services to Medicaid patients. Although that revenue is currently small, both PPSE and PPGMR have been working to expand and hope to continue to do so.

39. In order to continue to fulfill their mission of ensuring broad access to reproductive healthcare in Mississippi, the Provider Plaintiffs are assisting their Mississippi Medicaid patients to continue to access care while the Act is in effect. PPSE is giving patients the option to pay for services on a sliding-scale basis, as its self-pay patients do; however, PPSE is not able to cover the full cost of services for all of its Medicaid patients. Further, PPSE does not know how long it will be able to continue subsidizing these services, or at what level, as PPSE is a non-profit with limited funding. PPGMR will serve Mississippi Medicaid patients and refrain from submitting claims for reimbursement for those services, which they may do for a year under the terms of the program, unless and until they prevail in this lawsuit, taking on the financial risk that they may be unable to seek reimbursement.

40. Therefore, until this Court grants relief, the Provider Plaintiffs' Mississippi Medicaid patients, including the Jane Doe Plaintiffs, are no longer able to obtain their reproductive health care from the provider of their choice through the Medicaid program, and these patients are at risk of losing access to their provider of choice altogether. Patients insured through Medicaid choose to receive their reproductive health care from Planned Parenthood based on a number of factors that are generally not available at other providers. With their evidence-based practices and up-to-date technology, Planned Parenthood health centers are known as providers of high-quality medical care. Many patients also turn to these providers for their reproductive health care because they are concerned about their privacy and fear being judged by other providers.

41. In addition, many low-income patients have unique scheduling constraints because they are juggling inflexible work schedules, childcare obligations, transportation challenges, and lack of childcare resources. To ensure that these patients have access to family

planning services, PPSE and PPGMR offer walk-in appointments, and offer same day birth control shots, birth control implants, and intrauterine devices (which are the most effective methods of contraception), so that patients only need to make one trip to a health center to obtain their contraceptive method of choice. PPGMR also offers extended hours and Saturday hours. PPSE and PPGMR also have either Spanish-speaking staff or translator services available to non-English speaking patients at all times.

42. Women and men who are unable to obtain family planning care, or encounter delays in obtaining it, can face devastating consequences, including undetected cancers and diseases. Delays in obtaining contraception will result in unintended pregnancies, many of which may end in abortion.

43. Plaintiffs have no adequate remedy at law.

CLAIMS FOR RELIEF

CLAIM I—MEDICAID ACT (TITLE XIX OF SOCIAL SECURITY ACT)

44. Plaintiffs hereby incorporate Paragraphs 1 through 43 above.

45. The Act violates Section 1396a(a)(23) of Title 42 of the United States Code by denying the Provider Plaintiffs' Mississippi Medicaid patients, including the Jane Doe Plaintiffs, the right to choose any willing, qualified health care provider in the Medicaid program.

CLAIM II—FOURTEENTH AMENDMENT EQUAL PROTECTION

46. Plaintiffs hereby incorporate Paragraphs 1 through 43 above.

47. The Act violates the equal protection rights of the Provider Plaintiffs and their patients, including the Jane Doe Plaintiffs, by singling them out for unfavorable treatment without adequate justification.

CLAIM III—FOURTEENTH AMENDMENT DUE PROCESS

48. Plaintiffs hereby incorporate Paragraphs 1 through 43 above.

49. The Act violates the due process rights of the Provider Plaintiffs and their patients by imposing an unconstitutional condition on the Provider Plaintiffs' eligibility to participate in Medicaid based on their exercise, and their patients' exercise, of constitutionally protected activity.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court:

50. Issue a declaratory judgment that the Act violates the Medicaid Act and is therefore void and of no effect;

51. Issue a declaratory judgment that the Act violates the Equal Protection Clause of the Fourteenth Amendment and is therefore void and of no effect;

52. Issue a declaratory judgment that the Act violates the Due Process Clause of the Fourteenth Amendment and is therefore void and of no effect;

53. Issue permanent injunctive relief, without bond, restraining the enforcement, operation, and execution of the Act by enjoining Defendant, his agents, employees, appointees, delegates, or successors from enforcing, threatening to enforce, or otherwise applying the provisions of the Act;

54. Grant Plaintiffs' attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988; and,

55. Grant such further relief as this Court deems just and proper.

Respectfully submitted this 6th day of July, 2016.

/s/ Melissa Cohen

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2016 I transmitted a copy of the foregoing document via electronic mail to the following recipients who have not yet entered an appearance via the ECF system:

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