

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No.

MABEL WADSWORTH WOMEN'S)
HEALTH CENTER; FAMILY)
PLANNING ASSOCIATION OF)
MAINE)
d/b/a MAINE FAMILY PLANNING)
AND PRIMARY CARE SERVICES; and)
PLANNED PARENTHOOD OF)
NORTHERN NEW ENGLAND,)

Plaintiffs,)

v.)

MARY MAYHEW, COMMISSIONER)
OF THE MAINE DEPARTMENT OF)
HEALTH AND HUMAN SERVICES, in)
her official capacity,)

Defendant.)

COMPLAINT

COMPLAINT

INTRODUCTION

1. More than twenty years ago, Maine declared its express public policy not to restrict a woman's "exercise of her private decision to terminate a pregnancy." But, contrary to that policy, the Maine Department of Health and Human Services prevents women living in poverty from using their otherwise comprehensive insurance plan (MaineCare) to cover the cost of an abortion. In doing so, the Department of Health and Human Services violates both Maine statutory law and the state constitutional guarantees of liberty, safety, and equality.

2. The statutory mission of the Maine Department of Health and Human Services is to provide health and human services to Mainers “so that all persons may achieve and maintain their optimal level of health and their full potential for economic independence and personal development.”

3. In furtherance of this goal, the State runs a Medicaid program, known as MaineCare, through which it provides comprehensive medical coverage for its poorest residents.

4. Yet, in violation of the State’s express public policy, as well as constitutional requirements, the Department of Health and Human Services has issued a regulation withholding coverage for abortion from Medicaid-eligible women in nearly all circumstances. 10-144 C.M.R. ch. 101(II), § 90.05-2(A). By contrast, *every* Medicaid-eligible pregnant woman who continues her pregnancy is able to use MaineCare to cover all related medical care.

5. This exclusion of Medicaid coverage for abortion causes substantial negative effects on the health and well-being of women with low incomes. For example, pregnant women with a variety of serious, but common, medical conditions, such as heart disease, diabetes, chronic hypertension, and obesity, are denied coverage for the abortions they need to prevent extraordinary damage to their health, including excruciating pain, damage to major organ systems, and in some cases, even shortened life expectancy. Pregnant women who require medications that can cause harm to a growing fetus to treat or manage an underlying medical condition, such as cancer, high blood pressure, or certain mental

illnesses, are denied coverage for the abortions they need to be able to continue receiving this critical care. Women who discover that their fetuses have severe or fatal anomalies are denied coverage for abortions that are necessary to prevent mental anguish and unnecessary suffering. Women who experience intimate partner violence are denied coverage for abortions even though the pregnancies may exacerbate the abuse and the birth of a child may forever tie them to their abuser.

6. Without state assistance, these women and their families must make tremendous sacrifices to gather the money for the medical care they need. For many women, gathering the funds to pay for an abortion comes at the sacrifice of paying for other necessities, such as food, rent, heat, or transportation. For others, the effort to raise the necessary funds takes a significant amount of time, thus delaying their care and further compromising their health. And still other women are never able to raise the money they need, and are forced to continue their pregnancies to term against their will, in violation of their statutory and constitutional rights, and to the detriment of their physical and/or mental health.

7. This action challenges the exclusion of abortions from Maine's otherwise comprehensive Medicaid program. Plaintiffs bring this action under the Maine Administrative Procedures Act ("MAPA"), 5 M.R.S. § 8058, and Article 1, Sections 1 and 6-A of the Maine Constitution. The regulation should be declared unlawful and unconstitutional, and its enforcement should be permanently enjoined.

JURISDICTION AND VENUE

8. Jurisdiction is pursuant to 4 M.R.S. § 105; 5 M.R.S. § 8058; 14 M.R.S. §§ 5951-5963; and 14 M.R.S. § 6051(13).

9. Venue is proper in Cumberland County, pursuant to 14 M.R.S. § 505.

PARTIES

Plaintiffs

10. Plaintiff Mabel Wadsworth Women's Health Center ("Mabel Wadsworth Center") is a Nonprofit Corporation incorporated in Maine with its principal place of business in Bangor, Maine.

11. Since 1984, Mabel Wadsworth Center has provided women's reproductive health care, including: annual gynecological exams; screening for cervical and breast cancer; colposcopy; family planning counseling and contraceptive services; pregnancy testing and counseling regarding pregnancy options (including carrying to term and raising a child, placing it for adoption, or abortion); prenatal care; referrals for adoption and parenting classes; lesbian health care; screening, diagnosis, and treatment for urinary, vaginal, and sexually transmitted infections; consultation on menopause, menstrual concerns, and other women's health issues; hormone therapy and other services for transgender clients; and fertility awareness.

12. Mabel Wadsworth Center offers surgical abortion services generally up to 13.6 weeks (*i.e.*, 13 weeks and 6 days) as measured from the first day of the woman's last menstrual period ("LMP") (and up to 14.6 weeks LMP in rare cases),

and medication abortion services up to 10 weeks LMP.

13. Mabel Wadsworth Center is an enrolled MaineCare provider, and many of its patients are enrolled in or eligible for MaineCare. This includes MaineCare eligible women who need abortions. These women have substantial difficulty amassing the funds necessary to obtain the procedure and some are not able to get the care at all. In some cases, the Mabel Wadsworth Center offers these women discounts, sometimes performing the abortion at a financial loss to the organization.

14. The Mabel Wadsworth Center sues on behalf of its patients who seek abortions and are enrolled in or eligible for MaineCare, but are or would be denied MaineCare coverage for abortion.

15. Plaintiff Family Planning Association of Maine d/b/a Maine Family Planning and Primary Care Services (“Maine Family Planning”) is a Nonprofit Corporation incorporated in Maine with its principal place of business in Augusta, Maine.

16. For more than forty years, Maine Family Planning has served the reproductive health care needs of women and men around the state. Maine Family Planning’s clinical services include: annual gynecological exams; screening for cervical and breast cancer; family planning counseling and contraceptive services; pregnancy testing and counseling regarding pregnancy options (including carrying to term and raising a child, placing it for adoption, or abortion); referrals for adoption and parenting classes; prenatal consultation; colposcopy; screening,

diagnosis, and treatment of urinary, vaginal, and sexually transmitted infections; hormone therapy and other services for transgender clients; and services for mid-life women.

17. Maine Family Planning also provides surgical abortion services up to 14.0 weeks LMP, and medication abortion services up to 10 weeks LMP.

18. Maine Family Planning is an enrolled MaineCare provider and many of their clients are enrolled in or eligible for MaineCare. This includes MaineCare eligible women who need abortions. These women have substantial difficulty amassing the funds necessary to obtain the procedure and some are not able to get the care at all. In some cases, Maine Family Planning offers these women discounts, sometimes performing the abortion at a financial loss to the organization.

19. Maine Family Planning sues on behalf of its patients who seek abortions and are enrolled in or eligible for MaineCare, but are or would be denied MaineCare coverage for abortion.

20. Plaintiff Planned Parenthood of Northern New England (“PPNNE”) is a Nonprofit Corporation incorporated in Vermont with established places of business in Topsham, Portland, Sanford, and Biddeford, Maine.

21. PPNNE provides reproductive health services throughout Vermont, New Hampshire, and Southern Maine. These services include: annual gynecological exams; family planning counseling; contraceptive services; pregnancy tests; counseling regarding pregnancy options (including carrying to term and raising a child, placing it for adoption, or abortion); adoption referral; prenatal consultation;

breast and cervical cancer screening; colposcopy; screening, diagnosis, and treatment of urinary, vaginal, and sexually transmitted infections; and HIV testing.

22. In Maine, PPNNE offers abortions only at its Portland health center, including surgical abortions up to 18.6 weeks LMP, and medication abortions up to 10 weeks LMP.

23. PPNNE is an enrolled MaineCare provider and many of its patients are enrolled in MaineCare. These women have substantial difficulty amassing the funds necessary to obtain the procedure and some are not able to get the care at all. In some cases, PPNNE offers these women discounts, sometimes performing the abortion at a financial loss to the organization.

24. PPNNE sues on behalf of its patients who seek abortions and are enrolled in or eligible for MaineCare, but are or would be denied MaineCare coverage for abortion.

Defendant

25. Defendant Mary Mayhew is sued in her official capacity as the Commissioner of the Maine Department of Health and Human Services (“DHHS”), which is located in Augusta, Maine.

26. Commissioner Mayhew is responsible for the control and supervision of DHHS, 22-A M.R.S. §§ 204-216, which is the Maine state agency responsible for the administration of MaineCare, 22 M.R.S. §§ 42, 3173.

27. Commissioner Mayhew is responsible for the administration and proper implementation of MaineCare’s policies and procedures and is obligated to

administer the department and its programs, including MaineCare, in accordance with DHHS's authorizing statute, 22-A M.R.S. § 205(1), and all other applicable state and federal laws.

28. At all times relevant to this Complaint, Commissioner Mayhew has acted in her official capacity and under color of state law.

STATUTORY AND REGULATORY FRAMEWORK

29. It is the public policy of the State of Maine that it “not restrict a woman’s exercise of her private decision to terminate a pregnancy before viability,” except to the extent it permits the involvement of a parent, guardian, or adult family member in a minor’s abortion decision. 22 M.R.S. § 1598(1).

30. The statutory mission of DHHS is to “to provide health and human services to the people of Maine so that all persons may achieve and maintain their optimal level of health and their full potential for economic independence and personal development.” 22-A M.R.S. § 202(1).

31. Title 22-A directs that “[w]ithin available funds, [DHHS] *shall* provide supportive, preventive, protective, public health and intervention services to children, families and adults.” *Id.* (emphasis added).

32. Medicaid is a joint federal-state program that provides medical assistance to the poor. 42 U.S.C. §§ 1396-1396v; 42 C.F.R. § 430.0. Medicaid is funded by a combination of state and federal dollars.

33. Like every other state in the nation, Maine participates in the Medicaid program. The Maine Medicaid program is known as “MaineCare.”

34. DHHS administers the MaineCare program. 22 M.R.S. §§ 42, 3173; 10-144 C.M.R. Ch. 101(I), § 1.02-1. In order to receive matching federal funds, MaineCare must meet the minimum statutory requirements for coverage and eligibility, as set forth by federal law. *See* 42 U.S.C. § 1396a.

35. MaineCare “covers those reasonably necessary medical and remedial services that are provided in an appropriate setting and recognized as standard medical care required for the prevention and/or treatment of illness, disability, infirmity or impairment and which are necessary for health and well-being.” 10-144 C.M.R. ch. 101(II), § 90.04.

36. MaineCare provides a comprehensive array of “reasonably necessary medical and remedial services” to eligible residents. *Id.* This includes physician services, in-patient and out-patient hospital services, prescription drug coverage, x-ray and laboratory tests, and mental health services. 22 M.R.S. § 3173; 10-144 C.M.R. ch. 101(II), §§ 45, 55, 65, 80, 90. MaineCare also provides reimbursement for transportation costs, and related travel expenses such as meals, lodging, and the costs related to a minor traveling with an adult member (who cannot find alternative childcare), incurred in obtaining covered medical care. 10-144 C.M.R. ch. 101(I), § 1.15; 10-144 C.M.R. ch. 101(II), § 113. If a covered service is not available in Maine, and provided other criteria are met, MaineCare will authorize payment for services provided out-of-state, including transportation costs. DHHS, MaineCare Services, Prior Authorization Manual: *Provider Guide for MIHMS Prior Authorizations*, 5.2; 10-144 C.M.R. ch. 101(II), § 113.06-7(C)(4)(E).

37. This comprehensive coverage includes services and supplies to prevent pregnancy. For example, MaineCare covers a range of family planning services, which are defined by regulation as “the informed and voluntary determination by the member of desired family size and timing of child bearing,” for eligible residents. 10-144 C.M.R. ch. 101(II), § 30.01. This includes the provision of contraceptive procedures and supplies.

38. MaineCare also covers the cost of male and female sterilization procedures for eligible residents, provided that federal informed consent standards are met. 10-144 C.M.R. ch. 101(II), § 90.05-2(B).

39. Eligible pregnant women who want to continue their pregnancies to term are covered by MaineCare throughout their pregnancies and for at least sixty days of postpartum care, which extends through the last day of the month in which the sixtieth day falls. 10-144 C.M.R. ch. 332, pt. 3, § 4.3; 10-144 C.M.R. ch. 332, pt. 2, § 13.1(III). This coverage includes antepartum (prenatal) care, delivery, postpartum care, and “other services normally provided in uncomplicated maternity care.” 10-144 C.M.R. ch. 101(II), § 90.04-4(B).

40. MaineCare also covers treatment for medical complications of pregnancy and any “other problems [a pregnant woman might experience] requiring additional or unusual services and requiring hospitalization.” *Id.*

41. Additionally, if a woman is covered by MaineCare (or covered retroactively) on the day her baby is born, her newborn will also be covered under MaineCare for a year beginning at birth, regardless of whether the woman

maintains eligibility for Medicaid throughout the year. 10-144 C.M.R. ch. 332, pt. 2, § 13.1(III). MaineCare will continue to cover children and teenagers through age twenty, provided they meet certain family income eligibility requirements. 10-144 C.M.R. ch. 332, pt. 3, § 4.4.

42. By contrast, MaineCare will cover abortions only in three enumerated circumstances: when the pregnancy is life-threatening or results from rape or incest. 10-144 C.M.R. ch. 101(II), § 90.05-2. It does not cover abortions in other circumstances in which a medical provider determines that the care is a “reasonably necessary medical and remedial service[] . . . for the prevention and/or treatment of illness, disability, infirmity or impairment and which [is] necessary for health and well-being.” *See, contra*, 10-144 C.M.R. ch. 101(II), § 90.04.

43. Thus, with the exception of abortion, MaineCare leaves the determination of what constitutes reasonably medically necessary pregnancy-related care to the provider’s discretion.

44. Although federal law bars the use of federal Medicaid funds to cover the cost of abortion outside these three enumerated circumstances, federal law does not prevent states from using state funds to provide coverage for a broader range of services, and/or to broaden the eligibility requirements, beyond the minimum required by federal law.

45. Seventeen states, including Vermont, Connecticut, and Massachusetts, cover abortions in their state Medicaid programs in circumstances beyond those where the pregnancy was caused by rape or incest, or endangers the woman’s life.

HEALTH CONDITIONS RELATED TO CONTINUED PREGNANCY

46. While a source of joy for a great many women and families, continuing a pregnancy carries with it medical risks for all women.

47. Pregnancy affects a woman's physical and psychological health in myriad ways, some of them permanent. Every organ and gland of the woman's body is affected. For example, during pregnancy a woman's blood volume increases by 30-50% and her heart rate also increases. This forces a pregnant woman's heart to work much harder throughout her pregnancy, during labor and delivery, and after giving birth. A woman's immune system is also weakened during pregnancy, making her more vulnerable to infections.

48. The risks related to continued pregnancy are particularly significant for women with certain preexisting medical conditions, such as heart disease, lupus, cancer, diabetes, obesity, hypertension, renal disease, liver disease, and other physical and mental health disorders. Pregnancy can exacerbate these conditions, causing even more severe health problems including seizures, diabetic coma, hemorrhage, heart damage, and loss of kidney function.

49. Pregnancy can also interfere with the ability to treat other medical conditions. For example, some drugs—such as those used to control hypertension, to treat cancer, or to treat certain mental illnesses like bipolar disorder—pose a risk to the developing fetus. When a woman taking one of these drugs becomes pregnant, she must decide whether to continue taking the drug and risk harm to

the developing fetus, stop taking the drug and risk harm to herself, or terminate the pregnancy.

50. Even women who begin their pregnancies with no underlying medical complications may develop serious, but not immediately life-threatening, health problems related to the pregnancy, such as gestational diabetes, hypertension, or hyperemesis gravidarum (severe vomiting that can lead to significant weight loss, dehydration, mental disturbance, damage to the fetus, and multiple hospital admissions throughout the pregnancy).

51. Pregnancy and the postpartum period are also times of increased vulnerability to mental health issues. Mental health issues may present for the first time during pregnancy, and pregnancy also poses a significant risk of relapse or worsening of symptoms across a broad range of psychiatric illnesses, including bipolar disorder, schizophrenia, and obsessive-compulsive disorder.

52. In addition, pregnancy poses a significant risk to women who have suffered mental illness during a prior pregnancy, such as postpartum depression.

53. Some women experience significant psychological and emotional distress as a result of being forced to continue an unwanted pregnancy.

54. Some women suffer severe psychological distress at the thought of continuing a pregnancy to term after they learn the fetus they are carrying has a severe anomaly or has a condition incompatible with life.

55. Some women want to avoid bringing children into families already suffering from physical, sexual, or psychological abuse.

56. Continuing a pregnancy may increase a woman's risk of intimate partner violence, and the birth of a child prevents some women from escaping an abusive partner, thus forcing the woman and her children to endure ongoing and serious threats to their physical and mental health.

57. Some women suffer significant distress because they feel that their dreams of a better life will vanish because an unwanted pregnancy will prevent them from finishing school or going to college, or result in increased financial strain on their family, or prevent them from being able to provide and care for other children and family members.

58. For some women with low incomes, trying to obtain an education or to maintain employment, being forced to carry an unwanted pregnancy to term hinders or derails these plans, and prevents some girls and women from escaping the cycle of poverty, despite their best efforts.

59. MaineCare will not cover the cost of an abortion for any woman in these or any other circumstances unless the pregnancy is the result of rape or incest, or unless and until her health deteriorates to the point where her life is at risk.

WOMEN SEEKING ABORTIONS IN MAINE

60. Legal abortion is one of the safest procedures in contemporary medical practice, in terms of both mortality (death) and morbidity (medical complications short of death).

61. The risk of death associated with childbirth is approximately fourteen times higher than that associated with abortion, and every pregnancy-related complication is more common among women having live births than among those having abortions.

62. Although abortion overall is significantly safer than continuing pregnancy through childbirth, the risks associated with abortion increase as gestation advances.

63. Approximately one in three women in this country will have an abortion by age forty-five. A majority of women having abortions (61%) already have at least one child and most (66%) also plan to have a child or additional children in the future.

64. According to the U.S. Census Bureau, Maine has the second highest poverty rate in New England. In 2013, approximately 14% of Mainers were living below the federal poverty level (“the FPL”), a frequent measure of low-income populations set by the U.S. government.

65. Current government guidelines define the FPL as a single person who makes less than \$11,770 per year, with an additional \$4,160 per year for each additional member of the household.

66. The highest poverty rates in Maine are in the rural “rim” counties: Washington, Somerset, and Franklin.

67. Women enrolled in MaineCare are, by definition, poor. To qualify for MaineCare, a pregnant woman must be at or below 214% of the FPL.

68. The majority of Plaintiffs' abortion patients are enrolled in or eligible for MaineCare.

69. In Maine, abortions performed up to approximately 14 weeks LMP cost \$500-\$600. After 14 weeks LMP, the price goes up substantially. Abortions performed at 14.0-15.6 weeks LMP cost \$725, and from 16.0-18.6 weeks LMP cost \$1,000.

70. In addition to the cost of the procedure itself, women incur numerous expenses associated with obtaining abortions, such as transportation, lodging, child care, and missed work.

71. Access to an abortion provider is a significant problem for many women in Maine, but the problem is especially dire for poor women.

72. There are only three publicly-accessible clinics that provide abortions in Maine. These clinics are located in Portland, Augusta, and Bangor. Women who live outside these cities—rural women, in particular—face severely limited access to abortion.

73. Over half of Maine women live in counties that have no abortion clinic. For example, there are no abortion clinics in Washington, Somerset, and Franklin counties, which are the poorest counties in the state.

74. Some women live more than 200 miles from the nearest clinic and have to travel more than four hours each way in order to obtain an abortion.

75. A recent national study found that, for more than half the women studied, the out-of-pocket costs for the procedure and related travel expenses were

equivalent to more than one-third of their monthly personal income. For women obtaining abortions later in pregnancy, such costs approached two-thirds of their monthly personal income.

76. Without MaineCare assistance, women with low incomes have great difficulty paying for abortions and are forced to draw upon money saved for food, rent, clothing, and other family essentials in an attempt to pay for an abortion.

77. Many women have to delay their procedure in order to raise the money they need.

78. Because the cost of an abortion increases the later it is performed in pregnancy, and because only one clinic in the state performs abortions beyond the fourteenth week of pregnancy, delay makes an abortion more difficult to obtain.

79. That clinic, Plaintiff PPNNE's Portland health center, is located at the southern tip of the state.

80. At Plaintiff PPNNE's Portland health center, abortions at or above 16.0 weeks LMP are two-day procedures, requiring women to stay overnight in a hotel or make two round-trip visits to the clinic, compounding the costs associated with the procedure (*i.e.*, lodging, child care, and missed work).

81. There are no clinics in Maine that perform abortions after 18.6 weeks LMP. If a woman is unable to obtain an abortion in time in Maine, she will have to go out-of-state to get the care she needs. For some women, the costs associated with traveling out-of-state for an abortion after 18.6 weeks LMP will be prohibitive.

82. Some women are forced to continue their pregnancies to term because they cannot afford or obtain an abortion.

83. Plaintiffs are able to offer limited, privately-funded financial aid to certain women, but this financial aid does not fully cover the cost of the procedure, or transportation and other related costs.

84. Rather than turn poor women away, Plaintiffs will sometimes reduce their rates for women in particularly desperate circumstances, sometimes at a loss to the clinics.

85. Even with the discounts or private financial aid that some facilities are able to offer eligible patients, it is extremely difficult, and in some instances impossible, for low-income women to pay for abortion.

**IMPACT OF DENIAL OF COVERAGE FOR
ABORTIONS ON PLAINTIFFS' PATIENTS**

86. Denied coverage for abortions, Medicaid-eligible women receive abortions later in their pregnancies, thereby placing their health at greater risk.

87. Denied coverage for abortions, Medicaid-eligible women are forced to carry pregnancies to term, at the expense of their physical and mental health.

88. In addition to the harm to their health, research shows that two years after being denied the ability to obtain an abortion, women forced to carry unwanted pregnancies to term are three times more likely to be living below the federal poverty level than are their socioeconomic counterparts who were able to obtain abortions.

89. Denied coverage for abortions, Medicaid-eligible women and their families are forced to sell items of value, forego other necessities (e.g., food, rent, heat, or other health care), borrow money from an abusive partner, or take any number of other extreme measures to collect the funds to pay for the procedure. This harms not only women, but also their children and other family members.

90. By denying Medicaid-eligible women coverage for abortions, Defendant restricts women's ability to obtain abortions, in violation of official public policy, codified at 22 M.R.S. § 1598, and in excess of DHHS's statutory authority under, *inter alia*, 22 M.R.S. §§ 42, 3173 and 22-A M.R.S. § 202.

91. The medical costs to the state associated with covering pregnancy and childbirth services for a Medicaid-eligible woman (particularly a woman with a medically complicated pregnancy) far exceed the cost of an abortion.

92. By providing necessary coverage for women who continue their pregnancies, but denying necessary assistance to women who have abortions, the government infringes on poor women's right to liberty, safety, equality, and the enjoyment of their civil rights in violation of the Maine Constitution.

**FIRST CAUSE OF ACTION:
THE DHHS ABORTION BAN VIOLATES THE MAINE
ADMINISTRATIVE PROCEDURES ACT BECAUSE IT EXCEEDS
DHHS'S RULEMAKING AUTHORITY AND IS OTHERWISE NOT IN
ACCORDANCE WITH LAW**

93. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 92 inclusive.

94. Under the MAPA, rules that exceed an agency’s rule-making authority are invalid. 5 M.R.S. § 8058.

95. Under the MAPA, rules that are “not in accordance with law” are invalid. *Id.*

96. By singling out and excluding abortions from MaineCare, the DHHS abortion ban, 10-144 C.M.R. ch. 101(II), § 90.05-2(A), is “in excess of the agency’s rule-making authority” and/or “otherwise not in accordance with law” under the MAPA, because it violates, *inter alia*, the public policy of the State of Maine, as enshrined in statute, *see* 22 M.R.S. § 1598, as well as the plain language of DHHS’s statutory mission, duties, and authority, *see, e.g.*, 22-A M.R.S. § 202; 22 M.R.S. §§ 42, 3173.

**SECOND CAUSE OF ACTION:
THE DHHS ABORTION BAN VIOLATES THE MAINE STATE
CONSTITUTIONAL RIGHTS TO LIBERTY AND SAFETY**

97. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 96 inclusive.

98. By singling out and excluding abortions from MaineCare, the DHHS abortion ban, 10-144 C.M.R. ch. 101(II), § 90.05-2(A), violates Plaintiffs’ patients’ “natural, inherent and unalienable” rights under the Maine State Constitution to “life and liberty . . . and of pursuing . . . safety” as guaranteed by Article I, Section I (Natural Rights) of the Maine Constitution.

**THIRD CAUSE OF ACTION:
THE DHHS ABORTION BAN VIOLATES THE MAINE STATE
CONSTITUTIONAL RIGHT TO EQUAL PROTECTION**

99. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 98 inclusive.

100. The regulation singling out and excluding abortions from MaineCare violates Plaintiffs' patients' constitutional rights to equal protection of the laws, as guaranteed by Article I, Sections 1 (Natural Rights) and 6-A (Discrimination Against Persons).

101. By singling out and excluding abortions from MaineCare, the DHHS abortion ban, 10-144 C.M.R. ch. 101(II), § 90.05-2(A), violates Plaintiffs' patients' constitutional right not to be denied "the enjoyment of [their] civil rights or be discriminated against in the exercise thereof," as guaranteed by Article I, Section 6-A (Discrimination Against Persons).

**FOURTH CAUSE OF ACTION:
THE DHHS ABORTION BAN VIOLATES THE MAINE STATE
CONSTITUTIONAL RIGHT TO PRIVACY (SUBSTANTIVE DUE PROCESS)**

102. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 101 inclusive.

103. By singling out and excluding abortions from MaineCare, the DHHS abortion ban, 10-144 C.M.R. ch. 101(II), § 90.05-2(A), violates Plaintiffs' patients' constitutional right to privacy/substantive due process, as guaranteed by Article I, Sections 1 (Natural Rights) and 6-A (Discrimination Against Persons).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

104. declare 10-144 C.M.R. ch. 101(II), § 90.05-2(A) “in excess of the agency’s rule-making authority” and/or “otherwise not in accordance with law” under the MAPA, 5 M.R.S. § 8058;

105. declare 10-144 C.M.R. ch. 101(II), § 90.05-2(A) unconstitutional under Article I, Sections 1 and/or 6-A of the Maine Constitution;

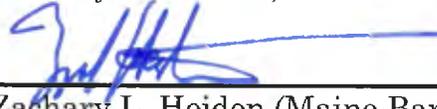
106. enjoin enforcement of 10-144 C.M.R. ch. 101(II), § 90.05-2(A);

107. award Plaintiffs’ costs; and

108. grant Plaintiffs such other, further, and different relief as the Court may deem just and proper.

Dated: November 24, 2015.

Respectfully submitted,



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** motion for admission pro hac vice
pending*