

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MAINE

JULIE A. JENKINS, *et al.*,

Plaintiff,

v.

R. CHRISTOPHER ALMY, District Attorney
of Penobscot and Piscataquis Counties, *et al.*,

Defendants.

CIVIL NO.: 2:17-cv-00366-NT

DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS

Pursuant to Local Rule 56(b), defendants set forth the following undisputed material facts in support of their Motion for Summary Judgment:

1. Abortion is the termination of a potential human life. Jenkins Dep., p. 49, lines 7 to 12 (ECF Doc. 38-4, PageID # 244).
2. Abortion is a controversial issue in the United States. Jenkins Dep., p. 47, lines 8 to 23 (ECF Doc. 38-4, PageID # 243).
3. In the United States, abortion is a very politicized and volatile issue. KIELTYKA Depo., at 45 lines 12-20 (ECF Doc. 38-5, PageID # 267).
4. The Guttmacher Institute was founded in 1968 and was originally affiliated with the Planned Parenthood Federation of America. <https://www.guttmacher.org/about/history> (last visited on Sept. 18, 2018).
5. The Guttmacher Institute bills itself as a "leading research and policy organization committed to advancing sexual and reproductive health and rights in the United States and globally." <https://www.guttmacher.org/about> (last visited on Sept. 18, 2018).

6. According to the Guttmacher Institute, nineteen states require that abortions be performed in a hospital after a specified point in the pregnancy. <https://www.guttmacher.org/state-policy/explore/overview-abortion-laws> (last visited on Sept. 18, 2018).
7. According to the Guttmacher Institute, nineteen states require participation by a second physician after a specified point in the pregnancy. *Id.*
8. According to the Guttmacher Institute, eighteen states require that before receiving abortions, women must be given specific information on issues like the purported link between abortion and breast cancer, the ability of a fetus to feel pain, and the long-term mental health consequences of abortions for women. *Id.*
9. According to the Guttmacher Institute, 27 states require women to wait a specified period of time (usually 24 hours) between receiving counseling and the performance of an abortion, and 37 states require parental involvement in a minor's decision to have an abortion. *Id.*
10. According to the Guttmacher Institute, many states require facilities where abortions are performed to meet licensing standards comparable to those applicable to ambulatory surgical centers. <https://www.guttmacher.org/state-policy/explore/targeted-regulation-abortion-providers> (last visited on Sept. 19, 2018).
11. According to the Guttmacher Institute, some states require physicians who perform abortions to have admitting privileges at a local hospital. *Id.*
12. When asked, the Rule 30(b)(6) designee for Maine Family Planning could not think of any other medical procedure in the United States that is as volatile and politicized as abortion. Kieltyka Dep., p. 45 lines 21-24 (ECF Doc. 38-5, PageID # 267).

13. Some physicians who perform abortions for MFP will not perform abortions as part of their private practice because they do not want to be known as providers of that procedure and because their staff would not support providing abortions. Kieltyka Dep., p. 44 line 16 to p. 45 line 11 (ECF Doc. 38-5, PageID # 266-67).
14. At its Augusta clinic, MFP provides abortions primarily on Thursdays. Kieltyka Depo., p. 42, lines 20-25 (ECF Doc. 38-5, PageID # 266).
15. In 2017, 48 of the 507 abortions performed at MFP's Augusta clinic were performed on a day other than Thursday. MFP Ans. to Int. 5 (ECF Doc. 38-2, PageID # 179).
16. Not all MFP nurses are trained in ultrasound or in providing counseling and other care for medication abortion services. Jenkins Dep., p. 78, lines 6 to 14 (ECF Doc. 38-4, PageID # 251).
17. Five physicians perform abortions at MFP's Augusta clinic on a regular basis. Kieltyka Dep., p. 43, lines 12 to 22 (ECF Doc. 38-5, PageID # 266).
18. The physicians who provide abortion services at MFP's Augusta clinic are independent contractors. Kieltyka Dep., p. 43, lines 1 to 8 (ECF Doc. 38-5, PageID # 266).
19. MFP pays physicians \$90 for each medication abortion and each aspiration abortion the physician performs. Kieltyka Dep., p. 46, lines 18-20 (ECF Doc. 38-5, PageID # 267); p. 49, line 11 to p. 50, line 1 (ECF Doc. 38-5, PageID # 268).
20. MFP has never asked any of the physicians it has under contract to provide abortion services whether he or she would be willing to work one day a week at MFP's Belfast clinic. Kieltyka Dep., p. 68, lines 7 to 20 (ECF Doc. 38-5, PageID # 272).

21. MFP has never asked any of the physicians it has under contract to provide abortion services whether he or she would be willing to work one day a month at MFP's Fort Kent clinic. Kieltyka Dep., p. 68, line 21 to p. 69, line 9 (ECF Doc. 38-5, PageID # 272-73).
22. MFP has never asked any of the physicians it has under contract to provide abortion services whether he or she would be willing to travel to one of MFP clinics other than in Augusta. Kieltyka Dep., p. 72, lines 7 to 12 (ECF Doc. 38-5, PageID # 273).
23. At MFP, it is rare that a woman has to wait more than two weeks to be scheduled for an aspiration abortion. Kieltyka Dep., p. 48, lines 7 to 14 (ECF Doc. 38-5, PageID # 267).
24. Maine is one of only a few states in which abortion services are provided through telemedicine. Jenkins Dep., p. 92, lines 13 to 20 (ECF Doc. 38-4, PageID # 254).
25. MFP has the ability to perform medication abortions through its telemedicine program at all 18 of its clinics in Maine. Kieltyka Dep. p. 97, lines 16 to 20 (ECF Doc. 38-5, PageID # 280).
26. Physicians have provided abortions through MFP's telemedicine program without being physically located at MFP's Augusta clinic. Jenkins Dep., p. 64, lines 11 to 17 (ECF Doc. 38-4, PageID # 247).
27. Assuming that there is health care facility on Vinalhaven with the ability to perform ultrasound examinations, a woman, through the Meds by Mail program, could obtain a medication abortion without ever leaving the island. Kieltyka Depo., p. 88, lines 1 to 12 (ECF Doc. 38-5, PageID # 277).
28. Three physicians perform abortions at PPNNE's Portland facility. Bates Dep., p. 37, lines 8 to 11 (ECF Doc. 38-3, PageID # 215).

29. At its Portland clinic, PPNNE provides abortion procedures primarily on Fridays. Bates Dep., p. 36, lines 14 to 19 (ECF Doc. 38-3, PageID # 214).
30. In 2017, PPNNE performed 11 abortions at its Portland clinic on a day other than Friday. PPNNE Ans. to Int. 5 (ECF Doc. 38-1, PageID # 153).
31. On a single Friday, a physician at PPNNE's Portland clinic can provide up to 32 abortions, with appointments scheduled from 8:00 a.m. until 1:30 or 2:00 p.m. Bates Dep., p. 51 line 19 to p. 54 line 25 (ECF Doc. 38-3, PageID # 218-19); p. 80, lines 3 to 6 (ECF Doc. 38-3, PageID # 225).
32. In New Hampshire, APRNs are allowed to perform aspiration abortions. Riley Dep., p. 30, lines 4 to 9 (ECF Doc. 38-6, PageID # 296).
33. At PPNNE's clinic in Manchester, New Hampshire, aspiration abortions are currently provided only on Wednesdays. Riley Dep., p. 31, lines 4 to 9 (ECF Doc. 38-6, PageID # 296).
34. In addition to obtaining abortion services through MFP and PPNNE, women may obtain abortion services through the Mabel Wadsworth Center in Bangor, Maine Medical Center in Portland, and Central Maine Medical Center in Lewiston. MFP Ans. to Int. 9 (ECF Doc. 38-2, PageID # 185); PPNNE Ans. to Int. 9 (ECF Doc. 38-1, PageID # 157).
35. One of the barriers to obtaining an abortion in Maine is the cost of the procedure. Kieltyka Dep., p. 122, line 20 to p. 123, line 2 (ECF Doc. 38-5, PageID # 286); Jenkins Dep., p. 87, lines 12-15 (ECF Doc. 38-4, PageID # 253); p. 89, line 23 to p. 90, line 6 (ECF Doc. 38-4, PageID # 254).

36. Neither MFP nor PPNNE is aware of any specific woman in Maine who was unable to obtain an abortion because of the Physician-Only Law. MFP Ans. to Int. 10 (ECF Doc. 38-2, PageID # 193); PPNNE Ans. to Int. 10 (ECF Doc. 38-1, PageID # 164).
37. Neither MFP nor PPNNE is aware of any specific woman in Maine who desired an abortion but was unable to obtain one for any reason and was instead forced to carry her pregnancy to term. MFP Ans. to Int. 11 (ECF Doc. 38-2, PageID # 196); PPNNE Ans. to Int. 11 (ECF Doc. 38-1, PageID # 166).
38. In 2016, a survey was conducted of 31 women who obtained a telehealth abortion through MFP. Kieltyka Dep., p. 114, lines 5 to 8 (ECF Doc. 38-5, PageID # 284).
39. The 31 women were asked what they would have done had abortions via telehealth not been available. Kieltyka Dep., p. 114, lines 9 to 13 (ECF Doc. 38-5, PageID # 284).
40. In response to the question, 29 percent of the women said that they would have gone to another abortion provider and 71 percent said that they would have gone to the MFP clinic in Augusta. Not one woman said that that the lack of a telehealth option would have resulted in her not having an abortion. Kieltyka Dep., p. 114, lines 14 to 24 (ECF Doc. 38-5, PageID # 284).
41. When asked if she had an opinion regarding the reason for the decreasing number of abortions on the national level, the Rule 30(b)(6) designee for Planned Parenthood of Northern New England stated that it was because “the scope of preventative care has expanded to include things like long-active contraceptives” and “that access and opportunity for patients to choose and utilize those methods has significantly reduced the amount of unintended pregnancy.” Bates Dep., p. 49, lines 13-21 (ECF Doc. 38-3, PageID # 218).

DATED: September 21, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 21st day of September, 2018, I electronically filed the above document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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To my knowledge, there are no non-registered parties or attorneys participating in this case.

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