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

MISSISSIPPI ASSOCIATION OF HEALTH PLANS, INC. PLAINTIFF

VS. Civil Action No. 3:24-cv-379-HTW-LGI

MIKE CHANEY, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF INSURANCE OF MISSISSIPPI DEFENDANT

COMMISSIONER MIKE CHANEY'S MOTION TO DISMISS

Mike Chaney, in his official capacity as Commissioner of Insurance for the State of Mississippi, ("Commissioner Chaney"), under Rules 12(b)(1) and 12(b)(6), *Federal Rules of Civil Procedure*, files this his motion to dismiss and in support thereof would show unto the Court the following:

1. Plaintiff's claims against Commissioner Chaney should be dismissed under Fed. R. Civ. P. 12(b)(1) for lack of subject-matter jurisdiction because (1) Plaintiff lacks standing to pursue its claims; (2) Plaintiff's claims against Commissioner Chaney are barred by sovereign immunity; and (3) Plaintiff's claims against Commissioner Chaney are not ripe for adjudication.

2. If this Court finds that it has subject-matter jurisdiction, then Plaintiff's claims against Commissioner Chaney should be dismissed under Fed. R. Civ. P. 12(b)(6) because Plaintiff has failed to allege violations of the Contract Clause or Due Process Clause of the United States Constitution.

3. This matter arises out of the Mississippi Legislature's recent enactment of 2024 H.B. 1489. Plaintiff seeks to have this Court invalidate the Legislature's lawful enactment of measures requiring health insurers to cover ambulance services when such services are provided in place (without transport) or when enrollees are transported to alternative destinations as identified in the statute. Plaintiff also seeks to have this court declare invalid that portion of H.B. 1489 requiring health insurers to reimburse out-of-network ambulance providers at rates established by the statute.

4. This lawsuit should be dismissed because Plaintiff has not alleged an injury in fact — an injury that invades a legally protected interest to one of its members and that is concrete, particularized, and actual or imminent, not conjectural or hypothetical. Second, Plaintiff has failed to allege a causal connection between an injury and the actions of Commissioner Chaney rather than the actions of some third party not before the court. Third, Plaintiff has failed to allege that a favorable decision from the Court will like remedy the alleged injury. Therefore, Plaintiff lacks Article III standing to pursue claims against Commissioner Chaney.

5. Relatedly, no provision of H.B. 1489 charges Commissioner Chaney with the particular duty to enforce any provision of either bill. Because Commissioner Chaney is not statutorily tasked with the particular duty to enforce the challenged provisions, the *Ex parte Young* doctrine does not apply, and Plaintiff's claims against Commissioner Chaney are barred by sovereign immunity.

6. Even if Commissioner Chaney is not immune, this action is not ripe. Commissioner Chaney has taken no action with respect to H.B. 1489, and it is unclear whether he will ever do so in the manner vaguely suggested by Plaintiff. Plaintiff filed this lawsuit shortly after H.B. 1489's passage and only three days before its effective date. So, when this lawsuit was filed, the Commissioner could not possibly have taken any steps towards enforcement.

7. Next, even if this Court finds in favor of subject matter jurisdiction, Plaintiff's claims fail on the merits. Plaintiff has failed to assert a proper violation of the Contract Clause under U.S. Const. art. I, § 10, cl. 1, as it only provides vague, conclusory allegations that there has been a substantial impact to health plan and insurance policies that might have been in effect before July 1, 2024. Likewise, Plaintiff has failed to show how the language used in H.B. 1489 is unconstitutionally vague.

8. Commissioner Chaney adopts and incorporates by reference, as if fully and completely set forth herein, the arguments and authorities set forth in the *Memorandum of Authorities in Support of Defendant Mike Chaney's Motion to Dismiss*, being filed contemporaneously.

9. Based on the grounds asserted here and as further set forth in that memorandum of authorities, this Court lacks subject-matter jurisdiction as to all claims asserted against the Commissioner Chaney. Alternatively, Plaintiff's claims that H.B. 1489 violates the Contract Clause or is unconstitutionally vague are baseless.

10. Under Fed. R. Civ. P. 12(b)(1) and 12(b)(6), Plaintiff's claims against Commissioner Chaney should be dismissed in their entirety.

WHEREFORE, PREMISES CONSIDERED, Mike Chaney, in his official capacity as Commissioner of Insurance for the State of Mississippi, respectfully requests that the Court make and enter its Order granting his motion to dismiss and dismissing all claims asserted against him in this matter, such that he is dismissed from this action in its entirety with prejudice.

THIS the 22nd day of July, 2024.

MIKE CHANEY, in his official capacity as Commissioner of Insurance of Mississippi, DEFENDANT

By: LYNN FITCH, ATTORNEY GENERAL FOR THE STATE OF MISSISSIPPI

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the ECF system, which shall provide notice thereof to all counsel of record.

This the 22nd day of July, 2024.

/s/ James H. Hall
JAMES H. HALL

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

MISSISSIPPI ASSOCIATION OF HEALTH PLANS, INC. PLAINTIFF

VS. Civil Action No. 3:24-cv-379-HTW-LGI

MIKE CHANEY, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF INSURANCE OF MISSISSIPPI DEFENDANT

MEMORANDUM OF AUTHORITIES IN SUPPORT OF DEFENDANT MIKE CHANEY'S MOTION TO DISMISS

Mike Chaney, in his official capacity as the Commissioner of Insurance for the State of Mississippi ("Commissioner Chaney"), files this memorandum of authorities in support of his Motion to Dismiss. This action should be dismissed in its entirety under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

INTRODUCTION

On May 2, 2024, Mississippi Governor Tate Reeves signed into law House Bill 1489 ("H.B. 1489") providing health insurance coverage and reimbursement requirements for certain ambulance services benefiting the citizens of Mississippi. Two months later, the Mississippi Association of Health Plans ("MAHP"), a trade association of large health insurance companies, filed this lawsuit complaining that H.B. 1489 may expand their obligations and costs. In conclusory fashion, MAHP alleges speculative future injuries.

MAHP's lawsuit should be dismissed for many reasons. Jurisdictionally, MAHP lacks standing, the Commissioner is immune, and this case is not ripe for

adjudication. On the merits, MAHP has failed to allege violations of the Contract Clause or Due Process Clause of the United States Constitution.

STANDARDS FOR DISMISSAL

1. Fed. R. Civ. P. 12(b)(1)

"When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, the court should consider the Rule 12(b)(1) jurisdictional attack before addressing any attack on the merits." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). Federal courts are courts of limited jurisdiction; without jurisdiction conferred by statute, they lack the power to adjudicate claims. *In re FEMA Trailer Formaldehyde Prods. Liab. Litig.*, 668 F.3d 281, 286–287 (5th Cir. 2012). Under Rule 12(b)(1), a claim is "properly dismissed for lack of subject-matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate" the claim. *Id.* (quoting *Home Builders Ass'n of Mississippi, Inc. v. City of Madison, Miss.*, 143 F.3d 1006, 1010 (5th Cir. 1998)). Considering a Rule 12(b)(1) motion to dismiss first "prevents a court without jurisdiction from prematurely dismissing a case with prejudice." *Id.* (citing *Ramming*, 281 F.3d at 161).

There are two categories of motions under Rule 12(b)(1): facial attacks on jurisdiction or factual attacks on jurisdiction. *See, e.g., Paterson v. Weinberger*, 644 F.2d 521, 524 (5th Cir. 1981). A "facial attack" accepts the facts of the complaint as true and tests the sufficiency of those allegations. *Id.* Conversely, a "factual attack" rejects the facts underlying a plaintiff's jurisdictional claim. *Id.* This Motion presents a facial attack under Rule 12(b)(1). Accepting the facts of the Complaint as true,

MAHP's allegations are insufficient to establish standing, overcome sovereign immunity, or demonstrate ripeness. Any one of these deficiencies would justify dismissal.

2. Fed. R. Civ. P. 12(b)(6)

When considering a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a claim should be dismissed when a plaintiff has not alleged enough facts to state a plausible claim for relief on its face. *See Shakeri v. ADT Sec. Servs., Inc.*, 816 F.3d 283, 290 (5th Cir. 2016); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). Under Fed. R. Civ. P. 12(b)(6), a court must accept all well-pleaded facts as true and view those facts in the light most favorable to the plaintiff. *See Shakeri*, 816 F.3d at 290.

"Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). Although a complaint does not need detailed factual contentions, the "allegations must be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp.*, 550 U.S. at 555. "[C]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss." *Turner v. Lieutenant Driver*, 848 F.3d 678, 685 (5th Cir. 2017) (quotation omitted).

ARGUMENT

I. MAHP LACKS STANDING TO BRING THIS LAWSUIT.

MAHP challenges two sections of H.B. 1489, which it labels the "coverage mandate" and the "reimbursement mandate." (Dkt. 1, ¶¶ 9-10). MAHP argues that (1) the coverage mandate, which requires MAHP members to cover ambulance services provided in place or at alternative destinations, violates the Due Process Clause of the Fourteenth Amendment because the mandate is impermissibly vague, and (2) the reimbursement mandate, which requires MAHP members to reimburse out-of-network ambulance providers at rates provided in the statute, violates the Contract Clause because the mandate impairs its members' contracts.

Before it may challenge these two provisions of H.B. 1489, however, MAHP must first show that it has standing. Indeed, MAHP must show that it has standing as to each provision challenged. *See Nat'l Fed'n of the Blind of Texas, Inc. v. Abbott*, 647 F.3d 202, 208–09 (5th Cir. 2011) ("Standing is not dispensed in gross."); *In re Gee*, 941 F.3d 153, 160 (5th Cir. 2019) ("It is now beyond cavil that plaintiffs must establish standing for each and every provision they challenge.").

A. Law – Standing

Article III of the Constitution limits federal courts to deciding "Cases" and "Controversies." U.S. Const. art. III, § 2. "[S]tanding is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L.Ed.2d 351 (1992). "The law of Article III standing, which is built on separation-of-powers principles, serves to

prevent the judicial process from being used to usurp the powers of the political branches." *E.g., Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408, 133 S. Ct. 1138, 1146–47, 185 L. Ed. 2d 264 (2013).

The requirements for standing are well-known. *First*, a plaintiff must show that he has suffered an injury in fact — an injury that invades a legally protected interest and is concrete, particularized, and actual or imminent, not conjectural or hypothetical. *Second*, a plaintiff must show a causal connection between the veridical injury and the actions of the defendant rather than the actions of some third party not before the court. *Third*, a plaintiff must show that it is likely a favorable decision from the Court will remedy the alleged injury. *Lujan*, 504 U.S. at 560–561.

"If any one of these three elements – injury, causation, and redressability – is absent, plaintiffs have no standing in federal court under Article III of the Constitution to assert their claim." *Okpalobi v. Foster*, 244 F.3d 405, 425 (5th Cir. 2001) (citing *Lujan*). "The requirements of *Lujan* are entirely consistent with the long-standing rule that a plaintiff may not sue a state official who is without any power to enforce the complained-of statute." *Okpalobi*, 244 F.3d at 426.

Regarding the first requirement of standing – injury in fact – the Supreme Court has explained, "[a]lthough imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes – that the injury is certainly impending." *Lujan*, 504 U.S. at 565, n. 2. Thus, the Supreme Court has "repeatedly reiterated that 'threatened injury must be certainly impending to constitute injury in

fact,' and that '[a]llegations of possible future injury' are not sufficient.'" *Clapper*, 568 U.S. at 409 (emphasis added).

The second and third requirements of standing – causation and redressability – "share some overlap and are often considered in tandem." *Campaign for S. Equal. v. Miss. Dep't of Hum. Servs.*, 175 F. Supp. 3d 691, 701 (S.D. Miss. 2016). And the focus is on the defendant: a plaintiff must show (1) how the *defendant* plays a causal role in the plaintiffs' injury, and (2) how the *defendant* can redress the injury. *Okpalobi*, 244 F.3d at 426. When the defendant is an executive-branch officer like Commissioner Chaney, "the required causal connection comes from an officer's 'coercive power' ***regarding the disputed statute***." *Campaign for S. Equal.*, 175 F. Supp. 3d at 702 (emphasis added).

B. Law – Associational Standing

Notably, MAHP is not asserting that it has standing *itself* but that it has "associational standing" for some of its members. (Dkt. 1, ¶ 2). To establish associational standing, an association must show "(a) its members [or any one of them] would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 2441, 53 L. Ed. 2d 383 (1977); *see also Warth v. Seldin*, 422 U.S. 490, 511, 95 S. Ct. 2197, 2211, 45 L. Ed. 2d 343 (1975) (requiring allegation of injury by association's members "or any one of them").

C. MAHP does not allege an injury-in-fact.

Again, to satisfy the first element of standing, at least one member of MAHP must be able to show injury-in-fact. At the pleading stage, MAHP must allege that at least one member has an injury that is concrete, particularized, and actual or imminent, not conjectural or hypothetical. *See Lujan*, 504 U.S. at 560–561. "Allegations of possible future injury are not sufficient." *Clapper*, 568 U.S. at 409.

As to the coverage mandate, MAHP does not allege some concrete, particularized, or actual or imminent injury for any one member. It only alleges a range of *possible future injuries*. According to MAHP, "[t]he vague language [of the coverage mandate] will create uncertainty for MAHP's member plans, leaving plans without direction as to what claims may require coverage and what claims may not." (Dkt. 1, ¶40). This allegation, advancing uncertainty, is not an allegation that a member is currently or imminently facing a particular coverage dispute or legal action. This opinion is only a general allegation that members will face a range of uncertainties regarding insurance coverage in the future.

Since MAHP is only alleging that the coverage mandate may cause future uncertainties in the future, not an injury in fact, MAHP fails to allege the first element of standing to challenge the coverage mandate. *See Nat'l Press Photographers Ass'n v. McCraw*, 90 F.4th 770, 782 (5th Cir. 2024) (stating that "[t]he issue of whether the Surveillance and No-Fly provisions are unlawfully vague in their proscriptions is therefore a mere hypothetical dispute lacking the concreteness and imminence required by Article III. In the absence of any imminent or even credible

threat of prosecution under Chapter 423, Plaintiffs lack standing to preemptively challenge Chapter 423 under the Due Process Clause.").

As for the reimbursement mandate, again, MAHP does not allege some concrete, particularized, and actual or imminent injury for any one member. MAHP only alleges generally that "[m]andating a minimum allowable reimbursement rate up to any amount an out of network ambulance service provider wishes to charge imposes a significant change in coverage obligations and cost increase on current health benefit plans and health insurance policies that unreasonably and substantially impairs bargained for terms." (Dkt. 1, ¶ 26). This is not an allegation that a member is currently or imminently facing a particular reimbursement dispute or legal action. This is only a general allegation that members *might* face increased reimbursement demands from an ambulance service in the future. Since MAHP is only alleging that the reimbursement mandate *could* increase cause reimbursement demands in the future, not an injury in fact, MAHP fails to allege the first element of standing to challenge the reimbursement mandate. Likewise, MAHP's claim that H.B. 1489 "incentivizes ambulance service providers not to enter into network provider agreements and terminate existing network provider agreements" is speculative. (Dkt. 1, ¶ 28).

Having failed to allege an injury in fact to an association member, MAHP lacks standing to challenge either "mandate."

D. The Complaint fails to establish the requisite causation and redressability elements for standing.

Even if MAHP sufficiently alleges injury, the Complaint still fails to allege the requisite causation and redressability elements as to Commissioner Chaney. Where the defendant is an executive-branch officer, "the required causal connection comes from an officer's 'coercive power' *regarding the disputed statute*." *Campaign for S. Equal.*, 175 F. Supp. 3d at 702 (emphasis added).

MAHP alleges that Commissioner Chaney has "broad powers" to regulate insurers' "actions and insurance services . . ." (Dkt. 1, ¶ 44). These include:

- The power "to deny approval of policy terms he finds inconsistent with state law"
- The power "to deny approval of premium rates he determines to be unreasonable for coverage provided"
- The power "to examine and investigate licensees to determine if he believes they are in compliance with state insurance laws"
- The power "to impose sanctions on [licensees] to enforce state insurance laws"
- The power "to order [an insurer] to take any action the commissioner considers necessary and appropriate to cure [] violations [of any law or regulation]"
- The power to "initiate any [regulatory] proceedings or actions as provided by law"
- The power to "issue a cease-and-desist order [enforceable by punishments listed]"

(Dkt. 1, ¶¶ 44-45). These are broad powers, but they are not specific to the coverage or reimbursement mandates challenged by MAHP in the Complaint.

Again, the disputed statute requires MAHP members to do two things: cover certain ambulance services and, separately, reimburse out-of-network ambulance providers under certain circumstances. Commissioner Chaney's authority alleged by MAHP addresses *neither* topic. Since Commissioner Chaney's general powers are not

specific to the challenged mandates, they are insufficient to satisfy the causation and redressability requirements of standing.

There must be a causal connection between the injury and the conduct complained of—the injury must be "fairly ... trace[able] to the challenged action of the defendant, **and not ... th[e] result [of] the independent action of some third party not before the court**." *Lujan*, 504 U.S. at 561 quoting *Simon*, 426 U.S. at 41–42 (emphasis added). MAHP relies solely on speculative actions by either "an enrollee" (i.e., an insured individual consumer) or an "out-of-network ambulance provider" that *might* then lead to the claimed injury of MAHP or its members. But what is clear from the Complaint is that regardless of Commissioner Chaney's acts, omissions or authority, there is no alleged injury that will result only because *of Chaney's actions*. Without the "independent actions" of an enrollee or an ambulance service (neither of whom is a party here), MAHP's claims fail under the second prong of the standing test.

As to redressability, MAHP has not alleged how the injunctive relief requested in this case will remedy MAHP's alleged member injury. Under H.B. 1489, MAHP's members are required to cover certain ambulance services and reimburse out-of-network ambulance providers at certain rates. If one of MAHP's members fails to cover ambulance expenses for an insured, the insured (assuming *arguendo* that the insured is injured) could file a civil action against the member. Likewise, if one of MAHP's members fails to reimburse an "out-of-network" ambulance provider in accordance with the reimbursement mandate, that ambulance provider could sue to redress its commercial injury. In either action, the Commissioner would not be a

party. By contrast, the Commissioner is a party in this case, and MAHP seeks expansive injunctive relief against him. (Dkt. 1, ¶ 47a-47e). Even so, requested injunctive relief against the Commissioner in this case would not stop separate civil actions by ambulance providers and insureds. MAHP fails to allege otherwise.

E. The Complaint fails to establish the remaining elements of associational standing.

Again, to establish associational standing, an association must show three things: (a) at least one member has standing to sue in its own right; (b) the interests MAHP seeks to protect are germane to its purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *See Hunt*, 432 U.S. at 343. As discussed above, MAHP fails to allege the first element of associational standing (the standing of any member). MAHP also fails to allege the third element associational standing because MAHP is asserting that some of its members will suffer increased costs—an evidentiary issue which varies by member—so both the claim asserted, and the relief requested, will require the participation of individual MAHP members in discovery.

II. THE COMMISSIONER HAS IMMUNITY.

Even if the Court finds that MAHP has alleged standing, dismissal is still required under Rule 12(b)(1) because the Commissioner is immune from suit, and *Ex parte Young* provides no exception to this immunity.[1]

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[1] As the Fifth Circuit has explained, "Article III standing analysis and *Ex parte Young* analysis 'significantly overlap.'" *City of Austin v. Paxton*, 943 F.3d 993, 1002 (5th Cir. 2019). The "significant [] overlap" between standing and our *Ex parte Young* enforcement connection guideposts primarily rests with the traceability and redressability components of standing. . . ." *Mi Familia Vota v. Ogg*, 105 F.4th 313, 329 (5th Cir. 2024) (citing *City of Austin*, 943 F.3d at 1002).

A. Three Guideposts

"States are immune from private suits unless they consent or unless Congress validly strips their immunity. Despite this general rule, *Ex parte Young* permits plaintiffs to sue a state officer in his official capacity for an injunction to stop ongoing violations of federal law." *Texas All. for Retired Americans v. Scott*, 28 F.4th 669, 671–72 (5th Cir. 2022) (citing *Ex parte Young*, 209 U.S. 123, 155–56, 28 S. Ct. 441, 52 L. Ed. 714 (1908)). Even so, "[t]he officer sued 'must have some ***connection*** with the enforcement of the [challenged] act.'" *Id.* (emphasis added). "To be a proper defendant under *Ex parte Young*, a state official must have some connection with the enforcement of the law being challenged." *Mi Familia Vota v. Ogg*, 105 F.4th 313, 325 (5th Cir. 2024).

To aid courts in deciding whether a defendant has the required connection with the enforcement of the challenged act, the Fifth Circuit recently provided three guideposts: "(1) the state official has more than the general duty to see that the laws of the state are implemented, i.e., a ***particular duty to enforce the statute in question,*** (2) the state official has a ***demonstrated willingness to exercise that duty,*** and (3) the state official, ***through [his] conduct***, compels or constrains persons to obey the challenged law." *Mi Familia Vota*, 105 F.4th at 325 *(emphasis added) (citing Texas Alliance for Retired Americans*, 28 F.4th at 672).

B. MAHP's Complaint does not satisfy the guideposts

MAHP has not alleged facts to satisfy the Fifth Circuit's guideposts in *Texas Alliance* and *Mi Familia Vota*. MAHP merely alleges that Commissioner Chaney has

"broad powers" to regulate insurers' "actions and insurance services . . ." (Dkt. 1, ¶ 44). Examples listed by MAHP include the Commissioner's powers "to deny approval of policy terms he finds inconsistent with state law," "to examine and investigate licensees to determine if he believes they are in compliance with state insurance laws," and "to impose sanctions on [licensees] to enforce state insurance laws" . . . (Dkt. 1, ¶¶ 44-45). While these powers may be broad, they do not satisfy the Fifth Circuit's three guideposts. Here is a discussion of each guidepost:

(1) **No particular duty.** Under the first guidepost, a defendant must have a "particular duty to enforce the statute in question." *Mi Familia Vota*, 105 F.4th at 325. But MAHP makes no such allegation. MAHP alleges that the Commissioner has the power to "enforce state insurance laws," but this falls short of a "particular duty" to enforce the coverage mandate or the reimbursement mandate.

As the Fifth Circuit explained last month in *Mi Familia Vota*, "[a] general duty to enforce the law is insufficient." *Id.* (quoting *Texas Democratic Party v. Abbott*, 978 F.3d 168, 181 (5th Cir. 2020)). In *Mi Familia Vota*, civil rights groups challenged voting rights legislation, and sued the District Attorney under *Ex parte Young* because the District Attorney allegedly had the duty to enforce the Texas Election Code. *Id.* at 326. The District Attorney agreed "that she has *authority* to enforce the relevant provisions of law that the plaintiffs challenge . . . . [However] she has no duty to bring any prosecutions; instead, she has 'complete discretion' over whether to bring criminal charges, which is distinct from the 'specific duty' required for *Ex parte Young* to apply." *Id.* Agreeing with the District Attorney, the Fifth Circuit held "mere

authority is not enough." *Id.* at 326. The Fifth Circuit further explained that its "analysis is 'provision-by-provision.' The officer must enforce 'the particular statutory provision that is the subject of the litigation.'" *Id.* at 327.

In this case, Commissioner Chaney may have the broad authority to enforce insurance laws, but that mere authority is not enough. Before MAHP may successfully assert claims against Commissioner Chaney under *Ex parte Young*, MAHP must first allege, and ultimately prove, that the Commissioner has the specific duty to enforce the specific provisions of the statute in question. MAHP has made no such allegation, and no enforcement provisions are expressed in the law.

(2) No demonstrated willingness to enforce. The second guidepost provides that the defendant must have a "demonstrated willingness" to enforce the challenged statute. MAHP does not allege that Commissioner Chaney has a demonstrated willingness to enforce the coverage mandate or the reimbursement mandate.

To show a demonstrated willingness, "[t]he state official must have taken some step to enforce the statute. In deciding how big the step must be, the bare minimum appears to be some scintilla of affirmative action by the state official." *Mi Familia Vota*, 105 F.4th at 329 (citations and quotations omitted). In *Mi Familia Vota*, there was no "demonstrated willingness" because the District Attorney had taken "no action with respect to the Texas Election Code provisions challenged by Plaintiffs." *Id.* at 330. In fact, the District Attorney "never enforced the challenged provision in

the past, as this suit was brought only *six days* after the governor signed [the challenged statute]." *Id.* (emphasis added).

Like *Mi Familia Vota*, MAHP filed this lawsuit shortly after passage and only three days before the statute's effective date. The Commissioner could not possibly have taken any of the steps required to show a demonstrated willingness to enforce H.B. 1489. Accordingly, MAHP cannot allege, and has not alleged, the Commissioner's demonstrated willingness required by this guidepost.

(3) **No Conduct to Compel or Constrain.** The third guidepost states that the defendant "through his conduct, compels or constrains persons to obey" the challenged statute. "Although there may be many officials involved in enforcing a statute, 'if the official does not compel or constrain anyone to obey the challenged law, enjoining that official could not stop any ongoing constitutional violation.'" *Id.* at 332 (quoting *Texas Alliance for Retired Americans*, 28 F.4th at 672).

Here, MAHP has not alleged the process for compulsion or constraint regarding Commissioner Chaney envisioned by H.B. 1489. Under H.B. 1489, MAHP members are required to cover certain ambulance services and reimburse out-of-network ambulance providers at certain rates. As discussed above, if one of MAHP's members fails to cover ambulance expenses for an insured, the insured may consider filing a civil action against the member. Likewise, if one of MAHP's members fails to reimburse an out-of-network ambulance provider, that ambulance provider may also consider filing a civil action. Although H.B. 1489 does not expressly provide a private right of action, nothing in the law forecloses such an action in the face of a purely

commercial dispute. And it undeniably does not saddle Commissioner Chaney with an express requirement to enforce the statute in those circumstances. MAHP fails to allege otherwise. Therefore, MAHP cannot show that an order enjoining Commissioner Chaney would protect MAHP's members from legal action by third parties under H.B. 1489.

At the very least, the third guidepost requires MAHP to allege that Commissioner Chaney "through his conduct, compels or constrains" members to obey the challenged statute. MAHP has made no such allegation.

In sum, MAHP fails to allege the facts necessary to invoke *Ex parte Young* and overcome sovereign immunity. This case should be dismissed under Rule 12(b)(1).

III. THIS CASE IS NOT RIPE FOR ADJUDICATION.

Even if the Court finds that MAHP overcomes sovereign immunity, this case is still not justiciable because MAHP's claims are not ripe for adjudication.

"A court should dismiss a case for lack of 'ripeness' when the case is abstract or hypothetical." *Choice Inc. of Texas v. Greenstein*, 691 F.3d 710, 715 (5th Cir. 2012) (citations omitted). "A case is generally ripe if any remaining questions are purely legal ones; conversely, a case is not ripe if further factual development is required." *Id.* at 715 (citation omitted). This case is not ripe because a substantial quantum of future factual development is required. In *Wallace v. Cheeks*, No. 3:13CV436TSL-JMR, 2013 WL 4519720, at *2 (S.D. Miss. Aug. 26, 2013), the district court said, "[a] controversy, to be justiciable, must be such that it can be presently litigated and decided and not on hypothetical, conjectural, conditional or based upon the possibility

of a factual situation that may never develop." *Id.* (emphasis supplied) (citing *Rowan Companies, Inc. v. Griffin*, 876 F.2d 26, 28 (5th Cir. 1989)).

Moreover, "[r]ipeness requires that an alleged injury be "actual or imminent rather than conjectural or hypothetical." *Id.* (quoting *Mississippi State Democratic Party v. Barbour*, 529 F.3d 538, 545 (5th Cir. 2008). "Ripeness is a constitutional prerequisite to the exercise of jurisdiction." *Id.* (quoting *Shields v. Norton*, 289 F.3d 832, 835 (5th Cir. 2002); *Monk v. Huston*, 340 F.3d 279, 282 (5th Cir. 2003) ("A court should dismiss a case for lack of 'ripeness' when the case is abstract or hypothetical") (citation omitted). MAHP's claims are not ripe because they necessarily depend upon factual situations that admittedly have not or may never occur. *Wallace*, at *2.

Even if he has authority to enforce the law, Commissioner Chaney has taken no action with respect to H.B. 1489, and it is unclear whether he will ever do so in the manner vaguely suggested by MAHP. MAHP filed this lawsuit shortly after H.B. 1489's passage and only three days before its effective date. So, when this lawsuit was filed, the Commissioner could not possibly have taken any of any steps towards enforcement.

IV. MAHP'S COMPLAINT FAILS TO STATE A VIOLATION OF THE CONTRACT CLAUSE

Shifting to the 12(b)(6) standard, MAHP fails to sufficiently allege that the reimbursement mandate violates the Contract Clause. The Contract Clause restricts States from substantially disrupting contractual arrangements. It provides that "[n]o State shall ... pass any ... Law impairing the Obligation of Contracts." *Ashley Sveen v. Kaye Melin*, 584 U.S. 811, 138 S. Ct. 1815, 1821, 201 L. Ed. 2d 180 (2018) (quoting

U.S. Const. art. I, § 10, cl. 1). The Contract Clause originally applied to legislation that relieved debtor obligations following the Revolutionary War; this was later expanded to all contracts. *See id.* But not all laws affecting preexisting contracts violate the Clause. *See City of El Paso v. Simmons*, 379 U.S. 497, 506–507, 85 S. Ct. 577, 13 L. Ed. 2d 446 (1965).

To determine when a state law violates the Contract Clause, the United States Supreme Court has long applied a two-step test. *First,* the Court asks whether the state law operates "as a *substantial impairment* of a contractual relationship." In answering that question, the Court has considered the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights. *See Texaco, Inc. v. Short*, 454 U.S. 516, 531, 102 S. Ct. 781, 70 L. Ed. 2d 738 (1982). *Second*, the court asks whether the state law is drawn in an "appropriate" and "reasonable" way to advance "a significant and legitimate public purpose." *Energy Rsrvs. Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 411–412, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983).

A. MAHP's complaint fails to show that the reimbursement mandate has caused a substantial impairment to its members' contracts.

A minimal alteration of contractual obligations should end the inquiry at its first stage. Conversely, severe contractual impairments will push the inquiry past the first step and into the examination of the nature and purpose of the state legislation. *Allied Structural Steel Co.*, 438 U.S. at 245. Parties from heavily regulated industries, such as insurance, are considered to have less reasonable expectations

that legislation will not alter their contractual arrangements. *See Energy Reserves Group, Inc.*, 459 U.S. at 411.

MAHP asserts two arguments for why Section 2 reimbursement mandate violates the Contract Clause. *First*, MAHP contends that the reimbursement mandate substantially affects the insurance policies that were in place prior to July 1, 2024, in that they increase the "allowable amounts" that the insurance companies pay for ambulance services.[2] (Dkt. 1, ¶ 26). *Second*, MAHP contends that the reimbursement mandate constricts its ability to negotiate with ambulance companies for in-network provider agreements because the bill allegedly "incentivizes ambulance companies to terminate existing network provider agreements with insurers" given that they might make more money out-of-network. (Dkt. 1, ¶ 28).

MAHP's claims are nebulous, uncorroborated and unripe. There is no basis to conclude that ambulance service providers intend to submit unreasonable bills for their services. MAHP has not named one "in-network" ambulance provider, much less pointed to such a provider that might want to leave the "network."

Substantial impairments are those that "go to the heart of the contract, that affect [the] terms upon which the parties have reasonably relied, or significantly alter the duties of the parties." *See Donohue v. Paterson*, 715 F. Supp. 2d 306, 318

[2] MAHP claims that those policies in effect on July 1, 2024, were required to be submitted to the Mississippi Insurance Department months before to obtain approval. Because of this, MAHP implies that its members did not have time to incorporate the provisions of the reimbursement mandate into the health plans and policies active on July 1, 2024. MAHP's claim that its members were surprised by H.B. 1489 is misleading. H.B. 1489 was passed on May 2, 2024, sixty days before the enactment date. Undoubtedly, MAHP has been aware of this bill for months as it typically participates in the legislative process. MAHP had time to evaluate and draft conforming policy provisions and or change its premium rates well before the July 1, 2024, enactment date.

(N.D.N.Y. 2010) (citing *Allied Structural Steel Co.*, 438 U.S. at 245). MAHP's Complaint fails to provide anything more than superficial illustrations of imagined future injuries. As it is, the parties' duties have not been significantly altered as the purpose of any health plan policy is to provide medical coverage in exchange for a premium. H.B. 1489 does not alter these duties. Unless the "central undertaking" of the contract is substantially impaired by state law, then there is no violation of the Contract Clause. *See City of El Paso v. Simmons*, 379 U.S. 497, 514, 85 S. Ct. 577, 586, 13 L. Ed. 2d 446 (1965). Here, H.B. 1489 does not change the central undertaking of its members health plans.

Indeed, H.B. 1489 contains language that attempts to minimize its effect on insurance policies, allowing the insurance companies to retain their cost sharing provisions as noted in Section 2 (2): "payment made by the health insurer shall be considered payment in full for the covered services provided, except for any copayment, coinsurance, deductible and other cost-sharing feature amounts required to be paid by the enrollee." MAHP's Complaint has not identified, and cannot identify, any concrete, substantial impairment caused by the reimbursement mandate in H.B. 1489. Its claims are speculative and identify nothing more than possible future injuries that may never come to pass.

B. Even if the reimbursement mandate results in substantial impairment, MAHP has failed to allege that the mandate is contrary to the public interest.

Assuming this Court finds a substantial impairment from H.B.1489, it must still consider whether there is a "significant and legitimate public purpose behind the regulation." *Energy Reserves Group, Inc.*, 459 U.S. at 411 (citation omitted).

Generally, remedying a broad and general social or economic problem will constitute a significant and legitimate public purpose, but providing a benefit to a narrow group of people will not. *See Allied Structural Steel Co.*, 438 U.S. at 247, 249; *see also Lipscomb v. Columbus Mun. Separate Sch. Dist.*, 269 F.3d 494, 504–05 (5th Cir. 2001). This requirement helps ensure "that the State is exercising its police power, rather than providing a benefit to special interests." *Energy Reserves Group, Inc.*, 459 U.S. at 412. If there is a significant and legitimate public purpose behind the regulation, "the next inquiry is whether the adjustment of 'the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption.'" *Id.*

Where, as here, the state is not a contracting party, "[a]s is customary in reviewing economic and social regulation [,] ... courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." *Energy Reserves Group, Inc.*, 459 U.S. at 412–13. MAHP thus bears the burden of showing that the law does not serve a valid public purpose or that it is unreasonable. *See Apartment Ass'n of Los Angeles Cnty., Inc. v. City of Los Angeles*, 10 F.4th 905, 913 (9th Cir. 2021).

MAHP's Complaint does not meet this burden. Instead, MAHP vaguely alleges that the bill is nothing more than "special interest favoritism." (Dkt. 1, ¶ 29). MAHP's unsupported alarmism ignores the legislative history accompanying H.B. 1489, and the Court may take notice that the bill was passed in support of Mississippi

consumers, as well as the ambulance providers[3] who have been performing services, often on-site life-saving treatments, without compensation from the insurance companies. *See* Mississippi College Law School Legislative History Project; H.B. 1489, 2024 Sess. (Miss. 2024) at https://s3.amazonaws.com/legislative/H.B.1489_03132024.mp4 (last visited July 12, 2024). *See id;* H.B. 1629[4], 2024 Sess. (Miss. 2024) at https://s3.amazonaws.com/legislative/H.B.1629_03132024.mp4 (last visited July 17, 2024) (floor statements indicating that the reimbursement mandate was drafted to address an EMS crisis where, because of low/non-payments from insurance companies, ambulance providers have been unable to retain enough medics and ambulances, often resulting in the counties supplementing the costs).[5]

V. MAHP CANNOT SUCCEED ON ITS VAGUENESS CLAIM

Separately, MAHP argues that Section 1 of H.B. 1489 ("coverage mandate") "violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution because it is impermissibly vague and, therefore, void." (Dkt. 1, ¶ 9b). MAHP generally contends that compliance with Section 1 of H.B. 1489 is impossible given that its terms are "so vague and indefinite as really to be no rule or standard

[3] Some counties in Mississippi are actually "ambulance providers" that are similarly burdened by the uncompensated services H.B. 1489 seeks to alleviate. Hence, the public, the private ambulance services, and public ambulance services all benefit.

[4] H.B. 1629 introduced the reimbursement mandate before it was joined into H.B. 1489.

[5] *See* Fed. R. Evid. 201(b)(2)("The court may judicially notice a fact that is not subject to reasonable dispute because it ... can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."); *see, e.g., Territory of Alaska v. Am. Can Co.*, 358 U.S. 224, 226–27, 79 S. Ct. 274, 3 L.Ed.2d 257 (1959)(stating that [t]he Court is entitled to take judicial notice of the legislative history of a bill.)

at all, and many of its terms are substantially incomprehensible." (Dkt. 1, ¶ 33). MAHP then complains that Section 1 of H.B. 1489 "fails to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits and authorizes, and encourages arbitrary and discriminatory enforcement." *Id.* MAHP's vagueness argument centers on the definition of "alternative destination" as found in Section 1(2)(b)(i) as well as the definition of "encounter" in Section 1(3)(b). MAHP also complains about the term "911 call" in Section 1(2)(a) and the term "contract" found in Section 1(6). For following reasons, MAHP's vagueness claim must fail.

In evaluating vagueness, a court should consider (1) whether the law "[g]ives the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly;" and (2) "whether the law provides explicit standards for those applying them to avoid arbitrary and discriminatory applications." *Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 551 (5th Cir. 2008) (internal quotation marks omitted). "[T]o be unconstitutionally vague, a statute must be impermissibly vague in all its applications, including its application to the party bringing the vagueness challenge." *United States v. Rafoi*, 60 F.4th 982, 996 (5th Cir. 2023) (internal quotation marks omitted). "[T]he mere fact that close cases can be envisioned" does not "render[ ] a statute vague," *see United States v. Williams*, 553 U.S. 285, 305, 128 S. Ct. 1830, 170 L. Ed. 2d 650 (2008), and the "prohibition against excessive vagueness does not invalidate every statute which a reviewing court believes could have been drafted with greater precision." *Rose v. Locke*, 423 U.S. 48, 49, 96 S. Ct. 243, 46 L. Ed. 2d 185 (1975). "[P]erfect clarity and precise guidance" are

not required. *See Doe I v. Landry*, 909 F.3d 99, 117 (5th Cir. 2018) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 794, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989)). "Condemned to the use of words," legislative bodies "can never [speak with] mathematical certainty." *See Grayned v. City of Rockford*, 408 U.S. 104, 110, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972). "[O]nly a *reasonable degree of certainty* is required." *Roark & Hardee LP*, 522 F.3d at 552–53 (internal quotation marks omitted) (emphasis in original).

"The degree of vagueness that the Constitution tolerates—as well as the relative importance of fair notice and fair enforcement— depends in part on the *nature of the enactment*." *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498, 102 S. Ct. 1186, 1193, 71 L. Ed. 2d 362 (1982) (emphasis added). "[E]conomic regulation is subject to a less strict vagueness test because its subject matter is often more narrow, and because businesses, which face economic demands to plan behavior carefully, can be expected to consult relevant legislation in advance of action." *Id.* The Supreme Court "has also expressed greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe," though "a scienter requirement may mitigate a law's vagueness, especially with respect to the adequacy of notice to the complainant that his conduct is proscribed." *Id.* at 498–99.

MAHP first claims that Section 1's definition of "alternative destination" renders the bill unconstitutionally vague. (Dkt. 1, ¶ 35). MAHP argues that the use

of "including, without limitation" is seemingly endless in scope to include non-emergency facilities. (Dkt. 1, ¶ 36).

Section 2(b)(i) states:

> "Alternative destination" means a lower-acuity facility that provides medical services, including, without limitation:
>
> 1. A federally qualified health center;
> 2. An urgent care center;
> 3. A physician's office or medical clinic, as chosen by the patient; and
> 4. A behavioral or mental health care facility, including, without limitation, a crisis stabilization unit and a diversion center.

Section 2(b)(ii):

> "Alternative destination" does not include a:
>
> 1. Critical access hospital;
> 2. Dialysis center;
> 3. Hospital;
> 4. Private residence; or
> 5. Skilled nursing facility

The definition of "alternative destination" is not so vague that a person of ordinary intelligence would fail to understand it. The statute sets out four distinct categories of lower-acuity facilities. Nor does the "including, without limitation" preceding clause render it vague. If Mississippi lawmakers had intended the specific words to be used in their unrestricted sense, they would have made no mention of the four categories of facilities. *See e.g. Shelby Cnty. State Bank v. Van Diest Supply Co.*, 303 F.3d 832, 837 (7th Cir. 2002)("[I]t would be bizarre as a commercial matter to claim a lien in everything, and then to describe in detail only a smaller part of that whole.") *See also In re Clark*, 154 N.H. 420, 910 A.2d 1198 (2006) ("When the

legislature uses the phrase 'including, but not limited to' in a statute, the application of that statute is limited to the types of items therein particularized.") In drafting H.B. 1489 the legislature likely intended, permissibly so, to capture whatever inventive interpretations could be imagined by health plan providers to circumvent the statute's class of facilities identified as "alternative destinations." As much can be seen in MAHP's Complaint, claiming that "alternative destinations" could include ambulance transports to dermatologists, pharmacists, chiropractors, and the like. There is simply no justification for MAHP's conjectural brainwork. A statute is not unconstitutionally vague merely because a company or an individual can raise uncertainty about its application to the facts of their case. A statute is unconstitutionally vague "only where no standard of conduct is outlined at all; when no core of prohibited activity is defined." *Margaret S. v. Edwards*, 794 F.2d 994, 997 (5th Cir. 1986). No doubt the coverage mandate outlines a clear standard of conduct by requiring MAHP's members to ensure coverage for certain ambulance services provided to its enrollees. That MAHP and its members object to the new requirements does not render those items impermissibly vague.

The definition of "alternative destination" must be read in conjunction with the rest of the bill. When done, MAHP's vagueness claim falters at the gate. In Mississippi, "[t]he primary rule of construction is to ascertain the intent of the legislature from the statute as a whole and from the language used therein." *DePriest v. Barber*, 798 So. 2d 456, 458 (Miss. 2001) (quotation marks and citation omitted). A statute's "disputed section should be interpreted in light of all other provisions of the

Act." *State v. Beebe*, 687 So. 2d 702, 707 (Miss. 1996) (citing *Broadhead v. Monagha n*, 238 Miss. 239, 117 So. 2d 881, 886 (1960)(holding that when "construing a statute the court must seek to ascertain the legislative intent from the statute as a whole, and not from a segregated portion, considered apart from the rest of the statute")). *Marlow, L.L.C. v. BellSouth Telecommunications, Inc.*, 686 F.3d 303, 307 (5th Cir. 2012). And when read in its entirety, the law concerns itself with emergency medical care, rather than routine trips to the dermatologist.

For instance, Section 1(4)(a) states that "[t]he coverage required under this section is subjected to the initiation of ambulance service treatment as a result of a 911 call that is documented in the records of the ambulance service." Under Section 1(2)(a) a "'911 call' means a communication made on behalf of an enrollee indicating that the enrollee may need emergency services." When "alternative destination" is read in the context of the rest of the bill, the mandated coverage applies to potential emergency situations, judged by the health plan enrollee to be such that the situation requires ambulance service. This does not mandate coverage for suspicious skin moles, pharmacy refills or chiropractic adjustments.

Next, MAHP claims that H.B. 1489 is unconstitutionally vague in its use of the term "encounter." (Dkt. 1, ¶ 33). Section 1(3)(b) requires coverage for "[a]n *encounter* between an ambulance service and enrollee that results without transport of the enrollee." Citing the Merriam-Webster Dictionary, MAHP facetiously claims that "encounter" is generally defined as "to meet as an adversary or enemy; to engage in conflict with; to come upon face-to-face; to come upon unexpectedly." Yet MAHP fails

to turn to other sources, more relevant, that use the word encounter – say, for instance, the Mississippi State Department of Health ("MSDH") regulations covering ambulance licensure and emergency medical services. *See generally* 15 Code Miss. R. Pt. 12, Subpt. 31, R. 3.3, Subpt. 31, R. 3.3. There, MSDH uses the term encounter many times, all without specifically defining the word *encounter* or referencing the Merriam-Webster Dictionary. MSDH requires "all licensed ambulance services operating in the State of Mississippi must electronically submit . . . the State of Mississippi Patient ***Encounter*** Form . . ." 15 Code Miss. R. Pt. 12, Subpt. 31, R. 3.3, Subpt. 31, R. 3.3 (emphasis added). As MSDH understands the term encounter when used in the context of ambulance and medical services, so should MAHP and its members.[6]

MAHP next challenges the use of the "911 call" claiming that it could mean something other than picking up the phone and calling 911. H.B. 1489 §1(2)(a) defines "911 call" as "a communication made on behalf of an enrollee indicating that the enrollee may need emergency medical services." According to MAHP, this definition is unconstitutionally vague because it does not define a "911 call" as "a call to a county's or municipality's E-911 services reached by calling "'911.'" (Dkt. 1, ¶ 38).

[6] While H.B. 1489 does not define encounter, there are provisions in the bill that aid in its interpretation. For instance, an encounter here is limited only to times that a 911 call has been placed indicating that a Mississippi consumer may need emergency services. Next, the term encounter is limited to those that occur between an ambulance service provider and the enrollee. The bill defines "ambulance service provider" as a person or entity that provides ambulance transportation and emergency medical services to a patient for which a permit is required under Section 41-59-9. When H.B. 1489 is read as a whole, the term encounter should be understood to encompass emergencies or, at a minimum, suspected emergencies that do not result in transport to any of the expressed exempt locations in §2(b)(ii) of H.B. 1489.

Instead, MAHP concludes that "911 call," as used in the statute, could allow for an enrollee to call an ambulance service directly. *Id.* Respectfully, this argument makes no sense, and a person of ordinary intelligence would understand "911 call" to mean just that – calling "911" from a telephone. This argument ignores the use of the word "911 call" in §1(4)(a) that states that the coverage mandate "[i]s subject to the initiation of ambulance service treatment as a result of *a 911 call* that is documented in the records of the ambulance services." MAHP's attempt to construe "911 call" to mean anything other than a "911 call" is palpably unreasonable.[7]

Finally, MAHP struggles with the definition of "contracts" used in Section 1(6). MAHP claims that the definition of "contracts" is unconstitutionally vague because it is unclear which "contracts" fall within the meaning of the coverage mandate. (Dkt. 1, ¶ 39). Section 1(6) indicates that "[t]his section shall apply to ***all contracts*** described in this section that are ***entered into or renewed on or after July 1, 2024***." (emphasis added). The language could not be clearer – if there is coverage under a health benefit plan, then that plan will contain the coverage mandate, either explicitly or implicitly, so long as it was "entered into or renewed on or after July 1, 2024." Emphasizing the July 1, 2024, date MAHP states, without citing any real-world examples, that it would be impossible to include the coverage mandate in plans that begin on July 1, 2024, because "new terms included in health benefit plans are approved by the

[7] In reaching this conclusion MAHP does what it failed to do with the term "encounter" – it turned to the MDHS emergency management service regulations. There MDHS indicates that 911 is the universal emergency phone number for public access of Emergency Medical Services in the State. Ambulance service providers shall only advertise 911 as their emergency number. 15 Code Miss. R. Pt. 12, Subpt. 31, R. 1.1, Subpt. 31, R. 1.1

Commissioner months before they may be issued." (Dkt. 1, ¶ 39). Respectfully, this is not a vagueness argument at all given the clear and unambiguous terms of the enactment date. MAHP's challenge to the application of Section 1's definitive enactment date has no relevance as to its comprehensibility. MAHP's vagueness claim fails under Rule 12(b)(6) and should be dismissed.

CONCLUSION

For all these reasons, MAHP's Complaint should be dismissed under Fed. R. Civ. P. 12(b)(1) and 12(b)(6).

THIS the 22nd day of July, 2024.

Respectfully submitted,

MIKE CHANEY, in his official capacity as Commissioner of Insurance of Mississippi, DEFENDANT

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the ECF system, which shall provide notice thereof to all counsel of record.

This the 22nd day of July, 2024.

/s/ James H. Hall