IN THE

United States Court of Appeals for the First Circuit

THE FAMILY PLANNING ASSOCIATION OF MAINE, D/B/A MAINE FAMILY PLANNING,

Plaintiff-Appellant

ν.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ROBERT F. KENNEDY, JR., in his official capacity as Secretary of Health & Human Services; CENTERS FOR MEDICARE & MEDICAID SERVICES; MEHMET OZ, in his official capacity as the Administrator of the Centers for Medicare & Medicaid Services;

Defendants-Appellees.

On Appeal from the United States District Court for the District of Maine No. 1:25-cv-00364-LEW, Hon. Lance E. Walker

JOINT APPENDIX

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U.S. District Court District of Maine (Bangor) CIVIL DOCKET FOR CASE #: 1:25-cv-00364-LEW

THE FAMILY PLANNING ASSOCIATION OF MAINE v. UNITED STATES DEPARTMENT OF HEALTH AND

HUMAN SERVICES et al

Assigned to: JUDGE LANCE E. WALKER

Referred to: MAGISTRATE JUDGE KAREN FRINK WOLF

Case in other court: First Circuit Court of Appeals, 25–01829

Cause: 28:2201 Constitutionality of State Statute(s)

Plaintiff

THE FAMILY PLANNING ASSOCIATION OF MAINE

doing business as MAINE FAMILY PLANNING

Date Filed: 07/16/2025 Jury Demand: None

Nature of Suit: 950 Constitutional – State

Statute

Jurisdiction: U.S. Government Defendant

represented by ASTRID MARISELA ACKERMAN

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MEHMET OZ

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Date Filed	#	Docket Text
07/16/2025	1	COMPLAINT against CENTERS FOR MEDICARE AND MEDICAID SERVICES, ROBERT F KENNEDY, JR, MEHMET OZ, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES PAYMENT OF FILING FEE DUE WITHIN 48 HOURS. IF FILING FEE IS BEING PAID WITH A CREDIT CARD COUNSEL ARE INSTRUCTED TO LOGIN TO CMECF AND DOCKET Case Opening Filing Fee Paid FOUND IN THE Complaints and Other Initiating Documents CATEGORY. CHECK PAYMENTS DUE WITHIN 48 HOURS., filed by THE FAMILY PLANNING ASSOCIATION OF MAINE. (Service of Process Deadline 10/14/2025) Fee due by 7/18/2025.(lcb) Modified on 7/16/2025 to correct party name (lcb). (Entered: 07/16/2025)
07/16/2025	2	CIVIL COVER SHEET. (lcb) (Entered: 07/16/2025)
07/16/2025	3	RULE 7.1 DISCLOSURE STATEMENT by THE FAMILY PLANNING ASSOCIATION OF MAINE. (lcb) (Entered: 07/16/2025)
07/16/2025	4	Summons Issued as to CENTERS FOR MEDICARE AND MEDICAID SERVICES, ROBERT F KENNEDY, JR, MEHMET OZ, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES. Counsel shall print the embossed summons and effect service in the manner in accordance with Fed.R.Civ.P.4.

		Note—If you are using Version 6 of Adobe Acrobat, be sure the PRINT WHAT field is set to DOCUMENTS AND COMMENTS (Click File, then Print to check this setting).
		(Attachments: # 1 Summons for United States Department of Health and Human Services, # 2 Summons for Robert F Kennedy Jr., # 3 Summons for Mehmet Oz)(lcb) Modified on 7/16/2025 to correct party name(lcb). (Entered: 07/16/2025)
07/16/2025	<u>5</u>	MOTION for Temporary Restraining Order, MOTION for Preliminary Injunction by THE FAMILY PLANNING ASSOCIATION OF MAINE Responses due by 8/6/2025. (Attachments: # 1 Declaration of Cassidy Jarvis, # 2 Declaration of Evelyn Kieltyka, # 3 Plaintiff Maine Family Planning's Memorandum of Law in Support of its Motion)(lcb) (Entered: 07/16/2025)
07/16/2025		Filing Fee Paid via Credit Card (Filing fee \$ 405 receipt number AMEDC-3138804.), filed by THE FAMILY PLANNING ASSOCIATION OF MAINE.(ASEN, TAYLOR) (Entered: 07/16/2025)
07/17/2025	<u>6</u>	CERTIFICATION for Admission Pro Hac Vice of Meetra Mehdizadeh, Esq. filed by TAYLOR ANDREW ASEN on behalf of THE FAMILY PLANNING ASSOCIATION OF MAINE (Total admission fee \$ 200 receipt number AMEDC-3139525.) The District of Maine is a CM/ECF NextGen Court. If PHV counsel has not previously been granted electronic filing rights with the District of Maine, PHV counsel will now need to submit a PRO HAC VICE request in this District via PACER at www.pacer.uscourts.gov (ASEN, TAYLOR) (Entered: 07/17/2025)
07/17/2025	7	CERTIFICATION for Admission Pro Hac Vice of Astrid Ackerman, Esq. filed by TAYLOR ANDREW ASEN on behalf of THE FAMILY PLANNING ASSOCIATION OF MAINE (Total admission fee \$ 200 receipt number AMEDC–3139527.) The District of Maine is a CM/ECF NextGen Court. If PHV counsel has not previously been granted electronic filing rights with the District of Maine, PHV counsel will now need to submit a PRO HAC VICE request in this District via PACER at www.pacer.uscourts.gov (ASEN, TAYLOR) (Entered: 07/17/2025)
07/17/2025	8	NOTICE of APPROVAL by Clerk's Office re 7 Certification for Admission Pro Hac Vice,, 6 Certification for Admission Pro Hac Vice,, Attorney MEETRA MEHDIZADEH, ASTRID MARISELA ACKERMAN for THE FAMILY PLANNING ASSOCIATION OF MAINE added to this specific case only.
		Maine has transitioned to the NextGen ECF filing system; therefore, to complete the admissions process, Attorney Mehdizadeh and Ackerman must register for a PACER account and/or request the appropriate e–filing rights in the District of Maine via PACER at www.pacer.uscourts.gov by 7/24/2025. NOTE: Counsel appearing Pro Hac Vice MUST click on the PRO HAC VICE link when requesting e–filing rights via PACER. For more details on NextGen/PACER go to our website at www.med.uscourts.gov. (lrt) (Entered: 07/17/2025)
07/21/2025	9	MOTION for Oral Argument/Hearing re <u>5</u> MOTION for Temporary Restraining Order MOTION for Preliminary Injunction by THE FAMILY PLANNING ASSOCIATION OF MAINE Responses due by 8/11/2025. (MEHDIZADEH, MEETRA) (Entered: 07/21/2025)
07/22/2025	10	ORDER granting <u>9</u> Motion for Oral Argument/Hearing By JUDGE LANCE E. WALKER. (clp) (Entered: 07/22/2025)
07/22/2025	11	NOTICE of Appearance by ROSALIE B.C. WENNBERG on behalf of THE FAMILY PLANNING ASSOCIATION OF MAINE (WENNBERG, ROSALIE) (Entered: 07/22/2025)
07/22/2025	12	NOTICE of Hearing on Motion <u>5</u> MOTION for Temporary Restraining Order, MOTION for Preliminary Injunction: Motion Hearing set for 8/14/2025 at 01:00 PM in Portland Courtroom 1 before JUDGE LANCE E. WALKER. (clp) (Entered: 07/22/2025)

07/23/2025	<u>13</u>	NOTICE/CORRESPONDENCE Re: Joint Motion for Briefing Schedule <i>on Plaintiff's Motion for a TRO and/or Preliminary Injunction</i> by THE FAMILY PLANNING ASSOCIATION OF MAINE (MEHDIZADEH, MEETRA) (Entered: 07/23/2025)
07/24/2025		Reset Deadlines as to <u>5</u> MOTION for Temporary Restraining Order, MOTION for Preliminary Injunction per directive of Chief U.S. District Judge Lance E. Walker: Responses due by 8/1/2025. Reply due by 8/8/2025. (clp) (Entered: 07/24/2025)
07/29/2025	<u>14</u>	CERTIFICATION for Admission Pro Hac Vice of Faith Gay, Esq. filed by TAYLOR ANDREW ASEN on behalf of THE FAMILY PLANNING ASSOCIATION OF MAINE (Total admission fee \$ 200 receipt number AMEDC–3145709.) The District of Maine is a CM/ECF NextGen Court. If PHV counsel has not previously been granted electronic filing rights with the District of Maine, PHV counsel will now need to submit a PRO HAC VICE request in this District via PACER at www.pacer.uscourts.gov (ASEN, TAYLOR) (Entered: 07/29/2025)
07/29/2025	<u>15</u>	CERTIFICATION for Admission Pro Hac Vice of Joshua Margolin, Esq. filed by TAYLOR ANDREW ASEN on behalf of THE FAMILY PLANNING ASSOCIATION OF MAINE (Total admission fee \$ 200 receipt number AMEDC-3145722.) The District of Maine is a CM/ECF NextGen Court. If PHV counsel has not previously been granted electronic filing rights with the District of Maine, PHV counsel will now need to submit a PRO HAC VICE request in this District via PACER at www.pacer.uscourts.gov (ASEN, TAYLOR) (Entered: 07/29/2025)
07/29/2025	16	NOTICE of APPROVAL by Clerk's Office re 15 Certification for Admission Pro Hac Vice,, 14 Certification for Admission Pro Hac Vice,, Attorney FAITH GAY, JOSHUA MARGOLIN for THE FAMILY PLANNING ASSOCIATION OF MAINE added to this specific case only.
		Maine has transitioned to the NextGen ECF filing system; therefore, to complete the admissions process, Attorney Gay and Margolin must register for a PACER account and/or request the appropriate e–filing rights in the District of Maine via PACER at www.pacer.uscourts.gov by 8/5/2025. NOTE: Counsel appearing Pro Hac Vice MUST click on the PRO HAC VICE link when requesting e–filing rights via PACER. For more details on NextGen/PACER go to our website at www.med.uscourts.gov. (lrt) Modified on 7/29/2025 to clarify docket text(lrt). (Entered: 07/29/2025)
07/29/2025	<u>17</u>	CERTIFICATION for Admission Pro Hac Vice of Olivia F. Summers filed by STEPHEN C. WHITING on behalf of American Center for Law and Justice (Total admission fee \$ 200 receipt number AMEDC–3146108.) The District of Maine is a CM/ECF NextGen Court. If PHV counsel has not previously been granted electronic filing rights with the District of Maine, PHV counsel will now need to submit a PRO HAC VICE request in this District via PACER at www.pacer.uscourts.gov (WHITING, STEPHEN) (Entered: 07/29/2025)
07/29/2025	<u>18</u>	CERTIFICATION for Admission Pro Hac Vice of Nathan Moelker filed by STEPHEN C. WHITING on behalf of American Center for Law and Justice (Total admission fee \$ 200 receipt number AMEDC–3146118.) The District of Maine is a CM/ECF NextGen Court. If PHV counsel has not previously been granted electronic filing rights with the District of Maine, PHV counsel will now need to submit a PRO HAC VICE request in this District via PACER at www.pacer.uscourts.gov (Attachments: # 1 Supplement List of Court Admissions)(WHITING, STEPHEN) Modified on 7/30/2025 to insert name of Pro Hac Attorney (lrt). (Entered: 07/29/2025)
07/30/2025	19	NOTICE of APPROVAL by Clerk's Office re <u>18</u> Certification for Admission Pro Hac Vice,, <u>17</u> Certification for Admission Pro Hac Vice,, Attorney OLIVIA FRANCES SUMMERS,NATHAN JEREMIAH MOELKER for American Center for Law and Justice added to this specific case only.
		Maine has transitioned to the NextGen ECF filing system; therefore, to complete the admissions process, Attorney Summers must register for a PACER account and/or request the appropriate e–filing rights in the District of Maine via PACER at www.pacer.uscourts.gov by 8/6/2025. NOTE: Counsel appearing Pro Hac Vice MUST click on the PRO HAC VICE link when requesting e–filing rights via PACER. For more details on NextGen/PACER go to our website at www.med.uscourts.gov. (lrt) (Entered: 07/30/2025)

07/31/2025	<u>20</u>	NOTICE of Appearance by ELISABETH NEYLAN on behalf of All Defendants (NEYLAN, ELISABETH) (Entered: 07/31/2025)
08/01/2025	21	Consent MOTION for Leave to File <i>Amicus Brief in Opposition to Plaintiff's Motion for a Preliminary injunction</i> by AMERICAN CENTER FOR LAW AND JUSTICE Responses due by 8/22/2025. (Attachments: # 1 Exhibit Proposed Amicus Brief in Opposition to Plaintiff's Motion for a Preliminary injunction,)(MOELKER, NATHAN) (Entered: 08/01/2025)
08/01/2025	22	ORDER granting <u>21</u> Motion for Leave to File Amicus Brief in Opposition to Plaintiff's Motion for a Preliminary Injunction By JUDGE LANCE E. WALKER. (clp) (Entered: 08/01/2025)
08/01/2025	<u>23</u>	BRIEF Amicus Brief in Opposition to Plaintiff's Motion for a Preliminary injunction by AMERICAN CENTER FOR LAW AND JUSTICE. (MOELKER, NATHAN) (Entered: 08/01/2025)
08/01/2025	<u>24</u>	RESPONSE in Opposition re <u>5</u> MOTION for Temporary Restraining Order MOTION for Preliminary Injunction filed by CENTERS FOR MEDICARE AND MEDICAID SERVICES, ROBERT F KENNEDY, JR, MEHMET OZ, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES. Reply due by 8/15/2025. (Attachments: # <u>1</u> Affidavit Declaration of Anne Marie Costello)(NEYLAN, ELISABETH) (Entered: 08/01/2025)
08/04/2025		Reset Deadlines as to <u>5</u> MOTION for Temporary Restraining Order MOTION for Preliminary Injunction per directive of Chief U.S. District Judge Lance E. Walker: Reply due by 8/8/2025. (clp) (Entered: 08/04/2025)
08/08/2025	<u>25</u>	REPLY to Response to Motion re <u>5</u> MOTION for Temporary Restraining Order MOTION for Preliminary Injunction filed by THE FAMILY PLANNING ASSOCIATION OF MAINE. (Attachments: # <u>1</u> Supplemental Declaration of Evelyn Kieltyka)(MEHDIZADEH, MEETRA) (Entered: 08/08/2025)
08/12/2025	<u>26</u>	NOTICE of Appearance by EMILY MARGARET HALL on behalf of All Defendants (HALL, EMILY) (Entered: 08/12/2025)
08/14/2025	27	Minute Entry for proceedings held before JUDGE LANCE E. WALKER: Oral Argument held re 5 MOTION for Temporary Restraining Order, MOTION for Preliminary Injunction filed by THE FAMILY PLANNING ASSOCIATION OF MAINE. Matter taken under advisement. Decision to enter. (Court Reporter: Lori Dunbar) (clp) (Entered: 08/14/2025)
08/14/2025	<u>28</u>	ORDER. (Set Deadlines: Briefs due by no later than 5:00PM on 8/15/2025. No responses permitted.) By JUDGE LANCE E. WALKER. (clp) (Entered: 08/14/2025)
08/15/2025	<u>29</u>	BRIEF re <u>28</u> Order by THE FAMILY PLANNING ASSOCIATION OF MAINE. (MEHDIZADEH, MEETRA) Modified on 8/18/2025 to clean up text (clp). (Entered: 08/15/2025)
08/15/2025	<u>30</u>	BRIEF re <u>28</u> Order, Set Deadlines BERT F KENNEDY, JR, MEHMET OZ, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Attachments: # <u>1</u> Exhibit Minnesota Jurisdictional Statement, # <u>2</u> Exhibit Minnesota Motion to Affirm)(NEYLAN, ELISABETH) Modified on 8/18/2025 to clean up text (clp). (Entered: 08/15/2025)
08/25/2025	<u>31</u>	ORDER ON MOTION FOR PRELIMINARY INJUNCTION denying 5 Motion for TRO/Motion for Preliminary Injunction By JUDGE LANCE E. WALKER. (clp) (Entered: 08/25/2025)
08/29/2025	32	NOTICE OF APPEAL as to <u>31</u> Order on Motion for TRO, Order on Motion for Preliminary Injunction by THE FAMILY PLANNING ASSOCIATION OF MAINE. (Filing fee \$ 605 receipt number AMEDC-3161832.)
		NOTICE TO FILER: A transcript Report/Order form <u>MUST</u> be completed and submitted to the First Circuit Court of Appeals. The form can be found under the Forms & Fees section on their website at https://www.ca1.uscourts.gov .

		NOTICE TO COUNSEL: Counsel should register for a First Circuit CM/ECF Appellate Filer Account at https://pacer.psc.uscourts.gov . Counsel should also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at https://www.ca1.uscourts.gov/cmecf (MEHDIZADEH, MEETRA) (Entered: 08/29/2025)
08/29/2025	33	Emergency MOTION for Preliminary Injunction <i>Pending Appeal</i> by THE FAMILY PLANNING ASSOCIATION OF MAINE Responses due by 9/19/2025. (Attachments: # 1 Memorandum of Law in Support of Plaintiff Maine Family Planning's Motion for An Injunction Pending Appeal)(MEHDIZADEH, MEETRA) (Entered: 08/29/2025)
08/29/2025	<u>34</u>	APPEAL COVER SHEET Re: 32 Notice of Appeal (jlm) (Entered: 08/29/2025)
08/29/2025	<u>35</u>	CLERK'S CERTIFICATE Re: <u>32</u> Notice of Appeal, Documents sent to the U.S. Court of Appeals. (jlm) (Entered: 08/29/2025)
08/29/2025		Reset Deadlines as to <u>33</u> Emergency MOTION for Preliminary Injunction <i>Pending Appeal</i> per directive of Chief U.S. District Judge Lance E. Walker: Responses due by 9/5/2025. Reply due by 9/8/2025. (clp) (Entered: 08/29/2025)
09/02/2025	36	USCA Case Number 25–1829 for <u>32</u> Notice of Appeal. (clp) (Entered: 09/02/2025)
09/05/2025	37	RESPONSE in Opposition re <u>33</u> Emergency MOTION for Preliminary Injunction <i>Pending Appeal</i> filed by CENTERS FOR MEDICARE AND MEDICAID SERVICES, ROBERT F KENNEDY, JR, MEHMET OZ, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES. Reply due by 9/19/2025. (HALL, EMILY) (Entered: 09/05/2025)
09/08/2025		Reset Deadlines as to <u>33</u> Emergency MOTION for Preliminary Injunction <i>Pending Appeal</i> per directive of Chief U.S. District Judge Lance E. Walker: Reply due by 9/8/2025. (clp) (Entered: 09/08/2025)
09/08/2025	<u>38</u>	ORDER ON MOTION FOR INJUNCTION PENDING APPEAL denying 33 Emergency Motion for Preliminary Injunction Pending Appeal By JUDGE LANCE E. WALKER. (clp) (Entered: 09/08/2025)
09/09/2025	<u>39</u>	CLERK'S FIRST SUPPLEMENTAL CERTIFICATE Re: <u>32</u> Notice of Appeal, Documents Sent to U.S. Court of Appeals (jlm) (Entered: 09/09/2025)
09/09/2025		Supplemental Record on Appeal transmitted to US Court of Appeals re <u>32</u> Notice of Appeal (jlm) (Entered: 09/09/2025)
09/10/2025	40	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings Oral Argument held on August 14, 2025, before Judge Lance E. Walker. Court of Appeals Docket Number 25–1829. Court Reporter/Transcriber: Lori Dunbar, Telephone Number: (207) 749–4072. NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be made remotely electronically available to the public without redaction after 90 calendar days. The policy is located on our website at www.med.uscourts.gov. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Release of Transcript Restriction set for 12/9/2025. (DUNBAR, LORI) (Entered: 09/10/2025)
09/12/2025	41	Consent MOTION to Stay Further District Court Proceedings Pending Resolution of Plaintiff's Motion for an Injunction Pending Appeal by CENTERS FOR MEDICARE AND MEDICAID SERVICES, ROBERT F KENNEDY, JR, MEHMET OZ, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES Responses due by 10/3/2025. (NEYLAN, ELISABETH) (Entered: 09/12/2025)
09/16/2025	42	ORDER granting <u>41</u> Motion to Stay Further District Court Proceedings Pending Resolution of Plaintiff's Motion for an Injunction Pending Appeal By JUDGE LANCE E. WALKER. (clp) (Entered: 09/16/2025)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE

THE FAMILY PLANNING ASSOCIATION)
OF MAINE D/B/A MAINE FAMILY)
PLANNING,)
)
Plaintiff,))
))
v.)
v.) Case No.
INITED OTATEC DEDADTMENT OF) case No
UNITED STATES DEPARTMENT OF) COMPLAINT FOR
HEALTH AND HUMAN SERVICES;) COMPLAINT FOR
) DECLARATORY AND
ROBERT F. KENNEDY, JR., in his official) INJUNCTIVE RELIEF
capacity as Secretary of Health and Human)
Services;)
)
CENTERS FOR MEDICARE & MEDICAID	REQUEST FOR
SERVICES;) IMMEDIATE RELIEF
· · · · · · · · · · · · · · · · · · ·)
and))
und))
MEHMET OZ, in his official capacity as the)
· • • •)
Administrator of the Centers for Medicare &	<i>)</i>
Medicaid Services,	<i>)</i>
)
Defendants.)

Plaintiff Family Planning Association of Maine d/b/a Maine Family Planning ("MFP"), through its attorneys, brings this Complaint for Declaratory and Injunctive Relief against the United States Department of Health and Human Services ("HHS"), Robert F. Kennedy, Jr., in his official capacity as Secretary of HHS, the Centers for Medicare & Medicaid Services ("CMS"), and Mehmet Oz in his official capacity as the Administrator of CMS, and alleges as follows:

INTRODUCTION

- 1. "[A]ffordable, confidential care"—"no matter who you are or where you live."¹

 True to its motto, Maine Family Planning has spent decades providing award-winning, essential health care and serves thousands of Mainers each year. Its services include contraception counseling, gynecological exams and check-ups, preventive care, cancer screenings, sexually transmitted infections ("STI") testing, well-person exams, and treatment of common acute and chronic conditions like strep throat, asthma, and diabetes.
- 2. MFP has continuously sought to improve and expand its services to meet the needs of Maine's most underserved populations, including lower-income, rural, and unhoused patients. Many of these Mainers could not access health care without MFP. Indeed, for approximately 70% of its patients, MFP is the only health care provider that they will see in a given year.² Because of the population MFP serves, almost half of MFP's patients who receive care other than abortion rely on Medicaid, and Medicaid funding comprises nearly one-quarter of MFP's budget.
- 3. After decades of providing a broad range of quality care to its Medicaid patients, on July 4, 2025, MFP was stripped of its ability to receive federal Medicaid reimbursements for all of its services—solely because MFP provides abortions in addition to its numerous other health care services. But existing federal law, known as the Hyde Amendment, already prohibits the use of federal Medicaid funding for abortions outside of extremely limited circumstances.³ MFP strictly abides by this restriction on the use of federal Medicaid funding, and has never been found to have improperly used Medicaid funding for abortions.

¹ Me. Fam. Plan., Home Page, https://mainefamilyplanning.org/ (last visited July 11, 2025).

² Chantelle Lee, *Abortion Is Legal in Maine, but Trump's 'Big Beautiful Bill' Could Gut Much of the State's Reproductive Health Care Access*, TIME (July 2, 2025, 14:49 PT), https://time.com/7299743/trump-big-beautiful-bill-reproductive-health-care-maine/.

³ Departments of Labor and Health, Education, and Welfare Appropriation Act of 1977, Pub. L. No. 94-439, § 209, 90 Stat. 1418, 1434 (1976); Further Consolidated Appropriations Act of 2024, Pub. L. No. 118-47 §§ 506, 507, 138 Stat. 460, 703 (2024).

- 4. On July 4, 2025, Section 71113⁴ (the "Defunding Provision") was signed into law as part of President Trump's "big beautiful bill." The Defunding Provision is the culmination of a years-long campaign to "defund" Planned Parenthood. The provision's parameters were designed to create plausible deniability that its sole target was Planned Parenthood; as a result, MFP got caught in its net.
- 5. The Defunding Provision bars federal Medicaid funding for *all* health care services, including preventive care and family planning services, for a *tiny subset* of American health care providers—including MFP—that, as of October 1, 2025, (1) are non-profit, (2) "essential community providers . . . primarily engaged in family planning services, reproductive health, and related medical care"—providers who, by definition, "serve[] predominantly low-income, medically underserved individuals," (3) received more than \$800,000 in federal and state Medicaid reimbursements in fiscal year 2023 (FY23), and (4) provide abortions that fall outside of the narrow exceptions in the Hyde Amendment.⁵
- 6. In stark contrast, the Defunding Provision does not apply to other entities providing the exact same Medicaid-reimbursable health care as MFP. Non-profit clinics providing family planning services but not abortion that receive a similar amount of Medicaid funding as MFP are not affected by the Defunding Provision. Non-profit clinics providing family planning and abortion services that received less than \$800,000 in Medicaid reimbursements in FY23 are not affected by the Defunding Provision. Non-profit clinics providing family planning services and abortion that receive a similar amount of Medicaid funding but do not "primarily" engage in providing reproductive health care or family planning are not affected by the Defunding Provision. For-profit

⁴ One Big Beautiful Bill Act, H.R.1, 119th Cong. § 71113 (2025) (as enrolled).

⁵ H.R. 1, § 71113(b).

entities providing family planning services and abortion care are not affected by the Defunding Provision.

- 7. The Defunding Provision thus deprives MFP of the same Medicaid funding available to other health care providers throughout the United States. Targeting health care providers who serve the populations with the fewest resources, and doing it by withholding funding simply because they also provide abortion care, is completely opposed to the goal of the Medicaid program—to ensure that adults and children with limited resources can access health care.
- 8. By irrationally including MFP to disguise its true purpose of targeting Planned Parenthood while allowing similarly situated entities to continue to bill Medicaid, the Defunding Provision violates the Fifth Amendment's guarantee of equal protection and endangers the health of thousands of Mainers, particularly those who are low-income, live in rural areas, and are women. Without federal Medicaid reimbursements, MFP's ability to provide comprehensive health care to Medicaid-eligible patients is at grave risk. The result is significant and irreparable harm to MFP and its patients, many of whom have nowhere else to turn for time-sensitive health care such as cancer screenings and STI testing.

PARTIES

I. Plaintiff Maine Family Planning

9. Plaintiff MFP is a 501(c)(3) non-profit incorporated in Maine with its principal place of business in Augusta, Maine. Its mission is to ensure that all Mainers have access to high-quality and affordable sexual and reproductive health care. MFP offers a range of family planning, reproductive health, and primary care services, including abortion care. MFP directly operates eighteen health care centers throughout Maine and provides funding through subcontracts that support forty-four additional sites. Plaintiff MFP sues on its own behalf.

II. Defendants

- 10. Defendant the United States Department of Health and Human Services ("HHS") is an executive department of the United States.
- 11. Defendant Robert F. Kennedy, Jr., is the Secretary of HHS and is sued in his official capacity. Secretary Kennedy has overall responsibility for implementation of the Medicaid program, including for the Defunding Provision.
- 12. Defendant Centers for Medicare & Medicaid Services ("CMS") is a subdivision of HHS.
- 13. Defendant Mehmet Oz is the Administrator of CMS and is sued in his official capacity. Administrator Oz is responsible for implementing the Medicaid program in a manner consistent with federal law, including the Defunding Provision.

JURISDICTION AND VENUE

- 14. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, as this action arises under the Constitution and laws of the United States. This Court has jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, Federal Rules of Civil Procedure 57 and 65, and the inherent equitable powers of this Court.
- 15. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(2) and (e)(1). MFP is located in this judicial district and has its principal place of business in this judicial district. A substantial part of the events or omissions giving rise to these claims occurred or is occurring in this judicial district. Defendants are United States departments and agencies and United States officials sued in their official capacities.

FACTUAL BACKGROUND

I. MFP Provides Critical Family Planning, Reproductive Health, and Primary Care.

- 16. MFP operates eighteen family planning clinics located in Augusta, Bangor, Belfast, Calais, Damariscotta, Dexter, Ellsworth, Farmington, Fort Kent, Houlton, Lewiston, Machias, Norway, Presque Isle, Thomaston, Rumford, Skowhegan, and Waterville—at least one site in twelve out of Maine's sixteen counties. MFP also has a mobile health clinic.
- 17. At its clinics, MFP provides a range of critical family planning and reproductive health care services, including contraceptive services; pregnancy testing and options counseling; family planning (or preconception) counseling; referrals for adoption; prenatal consultation; endometrial and vulvar biopsy; annual wellness visits; gynecological exams; breast exams; pap tests; colposcopies; screening for cervical and breast cancer; screening, diagnosis, and treatment of STIs, vaginal infections, and urinary tract infections; intrauterine insemination; vasectomy; consultations and prescriptions for HIV pre-exposure prophylaxis; miscarriage care; genderaffirming health care; and family support services for pregnant women, new moms, and their families. MFP offers procedural abortions at its Augusta clinic and medication abortions at all eighteen clinics.
- 18. Two MFP clinics are listed as an "essential community provider" in the family planning category on the HHS Rolling Draft Essential Community Provider (ECP) List for the Federally-facilitated Marketplace (the "ECP List").⁶ By definition, essential community providers serve "predominantly low-income, medically underserved individuals." 45 C.F.R. § 156.235(c).

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⁶ HHS Rolling Draft Essential Community Provider (ECP) List for the Federally-facilitated Marketplace, Ctrs. for Medicare & Medicaid Servs., https://data.healthcare.gov/rolling-draft-list (last visited July 11, 2025) [hereinafter ECP List].

- 19. MFP also provides funding through subcontracts that support forty-four additional sites. The sixty-two family planning centers in its network are located across the state, providing access in fifteen out of Maine's sixteen counties. In calendar year 2024, the network served approximately 28,000 patients across the state. MFP clinics served over 8,000 patients, including 645 abortion patients (7.4 percent of all patients), 633 primary care patients (7.25 percent of all patients), and 7,215 family planning patients (82.5 percent of all patients). Family planning patients had over 10,000 visits and primary care patients had over 2,000 visits.
- 20. MFP offers primary care at three of its clinic locations: Ellsworth, Houlton and Presque Isle. The primary care services include wellness and preventive care; diagnosis and treatment of common acute and chronic conditions; menopause management for mid-life women; adolescent health services; and geriatric health services. MFP began offering this care in Ellsworth in 2015 and in Houlton and Presque Isle in 2022 after realizing the dearth of health care providers in these regions. Even for patients who are not coming to MFP for primary care, MFP providers address patients' overall health, including identifying potential chronic illnesses, because MFP is often the only health care provider that its patients see in a given year.
- 21. As one MFP patient explained, "Maine Family Planning in Augusta is my Primary Care Physician. In the last four years I've received care there, not once did I have an abortion. I have however, had access to STD/STI testing, thyroid testing, blood panels, Pap smears, breast examinations, referrals for mammograms, [and] a Premenstrual Dysphoric Disorder diagnosis. The last two saved my life. Not only was I able to find a space and practitioner that felt safe enough to advocate for myself, they took my concerns seriously and they provided me care that would not

otherwise be accessible to me." And according to another patient: "Many of us count on our local MFP for a wide variety of basic, essential health care that often we can't otherwise access. Mainers are facing innumerable barriers to accessing health care, from insurance coverage fights to providers not accepting new patients, from transportation barriers to federal attacks on Medicaid funding."

- 22. To better serve populations with difficulty accessing health care, MFP established an outreach program called the Reproductive Empowerment Project for people with opioid addiction that includes contraceptive consultation, harm reduction, STI screening, pregnancy testing, and options counseling.
- 23. In late 2024, MFP also launched "Health on Wheels," a mobile health care facility that travels across the state to serve populations with difficulty accessing health care, such as people with opioid addiction or people who are unhoused. Health on Wheels provides services like primary, wound, and reproductive health care including birth control, Pap smears, HIV prevention, and STI testing. The mobile clinic travels "up to 100 miles in any direction" from where it is housed, providing care at locations including syringe service programs, encampments, soup kitchens, and places with known HIV clusters. These services are critical given ongoing increases

⁷An Act to Improve Women's Health and Economic Security by Funding Family Planning Services: Hearing on L.D. 143 Before the J. Standing Comm. on Health & Human Servs., 132nd Leg., 1st Spec. Sess. (Me. 2025) (testimony of Ashley Smith).

¹⁰ Bush, *supra* note 9; Charpentier, *supra* note 9.

⁸ Kelsey Linnell, *Family Planning Health Centers Are a Crucial Safety*, Bangor Daily News (June 16, 2025), https://www.bangordailynews.com/2025/06/16/opinion/opinion-contributor/family-planning-health-centers-safety-net-joam40zk0w/.

⁹ Brianna Bush, *Health on Wheels Brings Care Services to Mainers Who Have Limited Access*, News Ctr. Me. (Dec. 17, 2024,21:02 EST), https://www.newscentermaine.com/article/news/health/health-on-wheels-accessible-healthcare-maine-west-gardiner-maine-family-planning/97-5e88683c-b613-4c29-846c-614681ad97ec; Joe Charpentier, *Maine Family Planning Tours Lewiston with Mobile Medical Unit*, Sun J. (Nov. 20, 2024), https://www.sunjournal.com/2024/11/20/maine-family-planning-tours-lewiston-with-mobile-medical-unit/.

in HIV and STI cases in Maine, particularly among these underserved populations.¹¹ If MFP could not reach this patient population, most of these individuals would otherwise not be able to receive care.

- 24. The care MFP provides is crucial because Maine already faces a shortage of health care providers. Thirteen of Maine's sixteen counties contain health professional shortage areas for primary care, ¹² and 85,155 Maine residents live in these areas. ¹³ In some regions of the state, MFP is the only clinic where patients can obtain long-acting reversible contraception ("LARCs"), such as IUDs or implants, without having to schedule around limited provider availability and facing extensive wait times.
- 25. Further compounding the provider shortage, factors such as geography, poverty, and low population density can make health care even more difficult to access in Maine. Maine is one of the most rural states in the country, and 40% of its population lives in Maine's rural counties. Indeed, in eleven of the twelve counties where MFP operates clinics, more than 50% of the population lives in a rural area. Many patients live long distances from Maine's cities, and transportation and excessive travel times are major obstacles to accessing health care, especially with limited public transportation outside of Maine's one large city, Portland. The remote and rural areas with low population densities have fewer health care choices compared with Maine's more

¹¹ Div. of Disease Surveill., Me. Ctr. for Disease Control & Prevention, *Infectious Disease Prevention Program*, Me. Dep't of Health & Human Servs. https://www.maine.gov/dhhs/mecdc/infectious-disease/hiv-std/ (last visited July 11, 2025).

¹² Health Professional Shortage Areas: Primary Care, by County, April 2025 - Maine, Rural Health Info. Hub, https://www.ruralhealthinfo.org/charts/5?state=ME (last visited July 11, 2025).

¹³ Primary Care Health Professional Shortage Areas (HPSAs), Kaiser Fam. Found. (Dec. 31, 2024), https://www.kff.org/other/state-indicator/primary-care-health-professional-shortage-areas-hpsas/?currentTimeframe =0&selectedRows=%7B%22states%22:%7B%22maine%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D.

¹⁴ Me. Ctr. For Disease Control & Prevention, *Rural Health in Maine*, https://www.maine.gov/dhhs/mecdc/public-health-systems/rhpc/rural-health.shtml (last visited July 11, 2025).

U.S. Census Bureau, *County Rurality Level: 2010*, at 39, https://www2.census.gov/geo/pdfs/reference/ua/County Rural Lookup v4.pdf (last visited July 11, 2025).

heavily populated southern counties. Transportation within and between remote counties is also limited. Interstate 95 is the sole north-south highway; in winter weather, it is usually reduced to one lane north of Orono and is occasionally closed. There are no east-west interstates, and travel along Route 2, which goes from Bangor to the New Hampshire border, can be very slow in some parts of the state.

- 26. With travel posing such a hurdle to accessing care, local clinics in rural areas are a crucial part of the health care system. As one Mainer explained, "At the current funding level, many of Maine's rural health centers are open 1-2 days a week. . . . In my reproductive years I was fortunate to have Family Planning nestled in my Waterville neighborhood. In fact, services remain within walking distance for many consumers. We have many in our low-moderate income neighborhood who depend on affordable Family Planning. Waterville is a service center for many in Somerset County, one of the poorest counties in Maine."
- 27. MFP's confidential, nonjudgmental, quality care has gained the trust of Mainers over decades of providing care throughout the state, and many MFP patients continue to return for care. Particularly in rural areas, patients worry about anonymity when visiting a health center. Many patients may feel more comfortable—and less stigmatized—discussing sensitive topics related to reproductive health care at MFP, where they know they will receive confidential care from clinicians who specialize in reproductive health. As one MFP patient explained: "When I began to need family planning services, I was uncomfortable going to the same primary care provider I'd had since childhood . . . My experience at a family planning provider was the first time I ever received kind, comprehensive, non-coercive information about birth control My

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¹⁶ An Act to Improve Women's Health and Economic Security by Funding Family Planning Services: Hearing on L.D. 143 Before the J. Standing Comm. on Health & Human Servs., 132nd Leg., 1st Spec. Sess. (Me. 2025) (testimony of Kimberly Hallee), https://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=10035608.

family planning providers were and continue to be compassionate, knowledgeable and truly nonjudgmental."¹⁷

28. MFP has won several awards for its dedication to providing quality care, including the 2013 National Family Planning & Reproductive Health Association Dr. Allan Rosenfield Access Award for achievement in improving access to reproductive health care at the local level; the 2018 Dr. Wendy J. Wolf Health Leadership Award from the Maine Health Access Foundation, recognizing MFP President/CEO George Hill and MFP's dedication to providing access to quality health care; the 2018 Pump Handle Award from the Maine Center for Disease Control and Prevention for important contributions to helping reduce the impact of infectious diseases in Maine; the 2021 Maine Association for Health, Physical Education, Recreation, and Dance Honor Award, recognizing MFP and its staff's efforts to provide evidence-based sexuality information for STI/HIV and pregnancy prevention to teachers in Maine; and the 2024 WIC Breastfeeding Award of Excellence for MFP WIC of Hancock and Washington Counties' prenatal education and breastfeeding peer counseling program.

II. Medicaid Is Essential for Mainers Seeking Health Care, Including at MFP.

29. Medicaid is a government program that provides crucial health care services to adults and children with limited resources. First established in 1965, the purpose of Medicaid is to allow states "to furnish . . . medical assistance" to patients "whose income and resources are insufficient to meet the costs of necessary medical services" and to provide "rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care." 42 U.S.C. § 1396-1. The provision of medical services must be administered in a

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¹⁷ Jake Richards, *Advocates and Lawmakers Push for increased funding for Maine Planned Parenthood*, News Ctr. Me. (Mar. 7, 2025), https://www.newscentermaine.com/article/news/health/push-for-increased-maine-planned-parenthood-funding/97-cd57cd5c-0d4f-4e99-bd15-1b628bd93294.

manner consistent with "simplicity of administration and the best interests of the recipients." 42 U.S.C. § 1396a(a)(19).

- 30. The Medicaid program is funded by both state and federal funding. 42 C.F.R. § 430.0. State governments have latitude to determine coverage and management of each state's Medicaid program, within broad guidelines set by the federal government. 42 U.S.C. §§ 1396a, 1396b; Atkins v. Rivera, 477 U.S. 154, 156–57 (1986).
- 31. MaineCare is the state of Maine's Medicaid program. MaineCare covers medically necessary services, including primary care visits, family planning services, prescription medications, and behavioral health. 18 MaineCare plays a critically important role in ensuring that rural Mainers have access to care. Adults and children living in rural areas, including most of Maine, are more likely to rely on MaineCare or CHIP (the Children's Health Insurance Program) than adults and children who live in urban areas. 19 Indeed, more than half of Medicaid enrollees in Maine live in rural areas, 20 and more than 20% of non-elderly adults in Maine who live outside of urban areas are covered by Medicaid.²¹ In some rural counties like Aroostook County, Washington County, and Somerset County, where five MFP clinics are located, the number of Mainers who rely on MaineCare is as high as 40%.²²
- 32. Almost half of MFP's patients who receive care other than abortion rely on Medicaid. Between July 1, 2022 and June 30, 2023, 41% of MFP family planning network's patients had public insurance, and 82% fell below 250% of the federal poverty level and, as a

¹⁸ Off. MaineCare Servs., Me. Dep't Health & Human Servs., MaineCare Member Handbook, at 8-9 (2024), https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/mainecare-member-handbook.pdf.

¹⁹ Joan Alker et al., Medicaid's Role in Small Towns and Rural Areas, Geo. Univ. Ctr. Child. & Fams. (Jan. 15, 2025), https://ccf.georgetown.edu/2025/01/15/medicaids-role-in-small-towns-and-rural-areas/.

²⁰ Medicaid in Maine, Kaiser Fam. Found. (May 2025), https://files.kff.org/attachment/fact-sheet-medicaid-state-ME (52% of Medicaid enrollees in Maine live in a rural area).

²¹Alker et al., *supra* note 19.

²² Letter from Janet T. Mills, Gov., State of Me., to Sen. Susan Collins et al. (June 25, 2025), https://mainemorningstar.com/wp-content/uploads/2025/06/6.25.25 Governor-Mills-Delegation-Letter.pdf.

result, qualified for free or reduced services.²³ And in calendar year 2024, 49.8% of patients who received services other than abortion care at MFP were enrolled in MaineCare. Without MaineCare, many of these patients could not afford to see a health care provider and might postpone or forgo care altogether.

- 33. Medicaid funding is essential to MFP and allows MFP to serve low-income patients. Prior to the passage of the Defunding Provision, MFP billed MaineCare when it provided covered services to patients on MaineCare and would then be reimbursed for the cost of the specific service provided. Reimbursements for Medicaid funding are a significant part of MFP's annual budget—approximately 20 to 25%, or roughly \$1.9 million. Thus, in FY23, MFP received more than \$800,000 from Medicaid reimbursements.
- 34. Unlike MFP, many health care providers in private practice do not accept Medicaid because the reimbursement rates are often lower than private insurance.²⁴ As a result, Medicaid patients have fewer options when finding a health care provider.²⁵ These patients may face long waitlists when scheduling care,²⁶ or have to travel longer distances to find a provider who is able to see them in a timely manner. Even if other health care providers accept Medicaid, MFP makes intentional efforts to reach particularly underserved patient populations, including through the Reproductive Empowerment Project and Health on Wheels—programs that other health care providers are unlikely to replicate.

²³ Me. Fam. Plan., *Annual Report 2023*, at 4, https://mainefamilyplanning.org/wp-content/uploads/MFP2023 AnnualReport.pdf (last visited July 14, 2025).

²⁴ FamilyCare Health, *The Medicaid Payment Crisis: Why Many Doctors Are No Longer Accepting Patients* (March 14, 2025), https://familycare.health/resources/the-medicaid-payment-crisis/.

²⁵ Suzanne Blake, *Medicaid Patients Are Losing Their Doctors Because of Costs*, Newsweek (July 19, 2024), https://www.newsweek.com/medicaid-patients-are-losing-doctors-because-costs-1927849; Walter R Hsiang et al., *Medicaid Patients Have Greater Difficulty Scheduling Health Care Appointments Compared With Private Insurance Patients: A Meta-Analysis*, 56 Inquiry: J. Health Care Org, Provision, & Fin. 1, 6 (2019).

²⁶ Evelyn G. Gotlieb et al., *Disparities in Primary Care Wait Times in Medicaid versus Commercial Insurance*, 34 J. Am. Bd. of Fam Med. 3 (2021).

36. Federal Medicaid funding does not cover abortions outside of limited exceptions. Since 1977, a federal law—commonly known as the Hyde Amendment—has prohibited the use of

⁴² U.S.C. § 1396d; 42 C.F.R. § 441.20; CMS, Mandatory & Optional Medicaid Benefits, https://www.medicaid.gov/medicaid/benefits/mandatory-optional-medicaid-benefits (last visited July 11, 2025); Jennifer J. Frost et al., Guttmacher Inst., Publicly Supported Family Planning Services in the United States: Likely Need, Availability and Impact, 2016, at 19 (2019), https://www.guttmacher.org/sites/default/files/report pdf/publiclysupported-fp-services-us-2016.pdf (without access to publicly funded family planning services, in 2016, "an estimated 1.3 million women would have foregone or postponed cervical cancer testing" and "6.7 million women would have foregone screening" for STIs).

²⁸ Usha Ranji et al., Medicaid Coverage of Family Planning Benefits: Findings from a 2021 State Survey, Kaiser Fam. Found. (Feb.17, 2022), https://www.kff.org/womens-health-policy/report/medicaid-coverage-of-family-planningbenefits-findings-from-a-2021-state-survey; Am. Coll. of Obstetricians & Gynecologists, Medicaid, https://www.acog.org/practice-management/ payment-resources/payer-policies/Medicaid (last visited July 11, 2025). ²⁹ Nat'l Ctr. for Health Stats., Ctrs. for Disease Control & Prevention, Birth Data (June 13, 2025), https://www.cdc.gov/nchs/nvss/births.htm; Usha Ranji et al., 5 Key Facts About Medicaid and Pregnancy, Kaiser Fam. Found. (May 29, 2025), https://www.kff.org/medicaid/issue-brief/5-key-facts-about-medicaid-and-pregnancy.

³⁰ Alice Burns et al., 10 Things to Know About Medicaid, Kaiser Fam. Found. (Feb. 18, 2025), https://www.kff.org/medicaid/issue-brief/10-things-to-know-about-medicaid; see also Benjamin Sommers et al., Changes in Utilization and Health Among Low-Income Adults After Medicaid Expansion or Expanded Private Insurance, 176 JAMA Internal Med. 1501, 1507-08 (2016); Steven C. Hill & Salam Abdus, The Effects of Medicaid on Access to Care and Adherence to Recommended Preventive Services, 56 Health Servs. Res. 84, 89-92 (2020).

³¹ Burns et al., supra note 30; see also Julia Paradise & Rachel Garfield, What Is Medicaid's Impact on Access to Care, Health Outcomes, and Quality of Care? Setting the Record Straight on the Evidence, Kaiser. Fam. Found. (Aug. 2, 2013), https://www.kff.org/report-section/what-is-medicaids-impact-on-access-to-care-health-outcomes-and-qualityof-care-setting-the-record-straight-on-the-evidence-issue-brief.

federal Medicaid dollars to pay for abortions, except in extremely limited circumstances.³² Today, the Hyde Amendment prohibits the use of federal Medicaid funds to pay for abortions except when (1) the pregnancy is the result of rape or incest; or (2) a pregnant person "suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the [pregnant person] in danger of death unless an abortion is performed."33

37. Consistent with these restrictions, MFP does not use federal Medicaid funding for abortion services outside of these limited exceptions. Indeed, MFP has been a recipient of federal funding for over 50 years, has always adhered to the abortion-related restrictions placed on such funds, and has never been found to have improperly used federal funds for abortion services.

III. MFP Is Ensnared In Congress's Latest Attempt to Exploit the Budget Process to Strip Medicaid Funding from Planned Parenthood.

- 38. The Defunding Provision is the culmination of a years-long attempt to exclude Planned Parenthood from receiving federal funding for any health care services. Although legislative history indicates that Planned Parenthood was the intended target of the legislation, to circumvent procedural barriers, Congress drafted the Defunding Provision to include some additional entity other than Planned Parenthood. MFP got caught in Congress' net.
- 39. Indeed, Congress has previously tried to pass defunding prohibitions that mirrored the current Defunding Provision in all respects other than the amount of Medicaid reimbursements that an entity had received to be a "prohibited entity." During a previous attempt to defund Planned Parenthood using the budget reconciliation process, the House of Representatives passed a bill with a provision to prohibit Medicaid funding for "prohibited entit[ies]" that met criteria

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³² See, e.g., Fabiola De Liban et al., Abortion Coverage Under Medicaid, Nat'l Health Law Program (2025), https://healthlaw.org/wp-content/uploads/2022/04/2025-Abortion-Coverage-Under-Medicaid.pdf.

³³ Further Consolidated Appropriations Act, 2024, Pub. L. No. 118-47, §§ 506, 507, 138 Stat.460, 703 (2024).

substantively identical to the Defunding Provision, but with a much higher threshold of \$350,000,000 in Medicaid payments.³⁴ This attempt failed when the Senate Parliamentarian determined that "prohibit[ing] only Planned Parenthood from receiving Medicaid funds for one year" violates the Byrd Rule,³⁵ a procedural rule that prevents inclusion of "extraneous" non-budgetary provisions in budget reconciliation legislation, and therefore requires 60 votes in the Senate to waive (rather than the ordinary 51 votes for budget reconciliation legislation).³⁶ Anti-abortion politicians in the Senate responded by reducing the threshold for "prohibited entities" from \$350 million to \$1 million.³⁷ The Parliamentarian allowed the bill to proceed with the \$1 million threshold, though the bill ultimately failed to pass.

40. Learning from its prior efforts to defund Planned Parenthood, Congress used a lower threshold for Medicaid reimbursements in the Defunding Provision to avoid targeting only Planned Parenthood and thus implicating the Byrd Rule.³⁸ As passed, the Defunding Provision provides that "[n]o federal funds that are considered direct spending and provided to carry out a State plan under title XIX of the Social Security Act or a waiver of such a plan shall be used to make payments to a prohibited entity for items and services furnished during the 1-year period beginning on the date of the enactment of this Act"³⁹ A "prohibited entity" is defined as any entity that meets the following criteria as of "the first day of the first quarter beginning after the date of enactment" of the Defunding Provision: (1) is organized as a 501(c)(3) and exempt from

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³⁴ American Health Care Act of 2017, H.R. 1628, 115th Cong. § 103 (2017).

³⁵ S. Comm. on the Budget, 115th Cong., *Background on the Byrd Rule Decisions from the Senate Budget Committee Minority Staff* (2017), https://www.budget.senate.gov/imo/media/doc/Background%20on%20Byrd%20Rule%20 decisions_7.21%5B1%5D.pdf; Better Care Reconciliation Act of 2017, H.R. 1628, 115th Cong., § 123 (2017) (July 20, 2017 discussion draft), https://www.budget.senate.gov/imo/media/doc/ERN17500.pdf.

³⁶ Bill Heniff Jr., Cong. Rsch. Serv., RL30862, *The Budget Reconciliation Process: The Senate's "Byrd Rule"* 3-5 (2022), https://www.congress.gov/crs-product/RL30862.

³⁷See S. Amend. 267 to H.R. 1628, 115th Cong. § 106 (2017).

³⁸ H.R. 1, § 71113.

³⁹ *Id*.

tax under 501(a) of the Internal Revenue Code of 1986; (2) is an essential community provider under 45 C.F.R. § 156.235 and "primarily engaged in family planning services, reproductive health, and related medical care"; (3) provides abortions for reasons other than to terminate pregnancies caused by rape or incest or where the patient is at risk of death without an abortion; and (4) received more than \$800,000 in federal and state expenditures under Medicaid in FY23.⁴⁰

- 41. Upon information and belief, the Defunding Provision was drafted to ensure that, while exempting hospitals from Medicaid cuts, it would also ensure *at least one other health care entity in addition to Planned Parenthood* and thus avoid an unfavorable ruling by the Senate Parliamentarian similar to the ruling in 2017.
- 42. The bill was signed into law on July 4, 2025. Though the Defunding Provision defines "prohibited entity" based on the entity's activities as of the first day of the next quarter following enactment, or October 1, 2025, the Defunding Provision states that it takes effect immediately, prior to the determination of whether an organization qualifies. Thus, though an entity may not know for certain whether it would be a "prohibited entity" until October 1, it would nonetheless be prohibited from receiving Medicaid funding for all of its services as of July 4.
- 43. The Defunding Provision does not purport to be a cost-saving measure. Rather, because the Defunding Provision targets a small number of specific health care entities rather than eliminating services or reducing patient eligibility, it leaves open the possibility that patients could access care from other Medicaid providers who would bill for reimbursement from the federal government—in which case, the federal government would still be covering the cost of their care and would not be saving on costs (though in practice, many of MFP's patients will struggle to find alternative providers if they cannot go to MFP). Moreover, the Congressional Budget Office

⁴⁰ *Id*.

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("CBO") estimates that the Defunding Provision will cost taxpayers \$52 million over the next 10 years, and an additional \$1 million has been appropriated just for implementation costs in FY26 alone. And, as CBO noted during a prior attempt to enact a similar provision, prohibitions like the Defunding Provision will result in individuals losing health care access, including "services that help women avert pregnancies," especially in "areas without other health care clinics or medical practitioners who serve low-income populations."

IV. The Defunding Provision Discriminates Against Abortion Providers Like MFP and Will Have a Devastating Impact on MFP and its Patients.

- 44. Along with Planned Parenthood, MFP falls within the Defunding Provision's criteria for "prohibited entities." 43
- 45. The Defunding Provision does not prohibit family planning providers that are similarly situated to MFP from receiving federal Medicaid reimbursements. For example, at least three other providers in Maine are not impacted by the Defunding Provision even though they provide similar family planning and primary care services and serve similar patient populations as MFP:

⁴¹ Cong. Budget Off., *Estimated Budgetary Effects of an Amendment in the Nature of a Substitute to H.R. 1, the One Big Beautiful Bill Act* (June 29, 2025), https://shorturl.at/0Qp6c ("Title VII" tab, Section 71115 "Federal Payments to Prohibited Entities"); H.R.1,§ 71113(c).

⁴² Cong. Budget Off., *Cost Estimate, American Health Care Act* 23 (Mar. 13, 2017), https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/americanhealthcareact.pdf.

⁴³ Planned Parenthood filed suit on July 7, 2025. *Planned Parenthood Fed'n of Am. v. Kennedy*, No. 1:25-cv-11913 (D. Mass. filed July 7, 2025), ECF No. 1. The court issued a temporary restraining order the same day, enjoining defendants from "enforcing, retroactively enforcing, or otherwise applying the provisions of Section 71113 of 'An Act to provide for reconciliation pursuant to title II of H. Con. Res. 14," against Planned Parenthood and requiring defendants to "take all steps necessary to ensure that Medicaid funding continues to be disbursed in the customary manner and timeframes" to Planned Parenthood. TRO, *Planned Parenthood Fed'n of Am. v. Kennedy*, No. 1:25-cv-11913 (D. Mass. July 7, 2025), ECF No. 18; Am. TRO, *Planned Parenthood Fed'n of Am. v. Kennedy*, No. 1:25-cv-11913 (D. Mass. July 11, 2025), ECF No. 46.

- a. The Mabel Wadsworth Center ("Mabel's")⁴⁴ is a 501(c)(3) organization which, like MFP, has a clinic in Bangor.⁴⁵ Mabel's provides the "full spectrum of sexual and reproductive health care and primary care services," including wellness exams, birth control, vasectomies, cancer screenings, testing and treatment for STIs and vaginal infections, infertility consultation, pregnancy testing and options counseling, prenatal care, primary care, and mental health counseling.⁴⁶ Mabel's also provides medication and procedural abortion.⁴⁷ Nearly half of Mabel's patients rely on MaineCare.⁴⁸ Upon information and belief, Mabel's is not impacted by the Defunding Provision.
- b. Greater Portland Health ("GPH") is a 501(c)(3) federally qualified health center that provides a range of family planning, women's health care, and maternal and prenatal health services, including contraception management and management of HIV/AIDS, Hepatitis C, and other infectious diseases. ⁴⁹ GPH also provides primary care, including wellness exams, sick visits, and management of chronic conditions like diabetes and asthma; behavioral health care, including substance use disorder services; and dental care. ⁵⁰ Like MFP, GPH has clinics within the Greater Portland

⁴⁴*AbortionFinder*, https://www.abortionfinder.org/results?location=maine&age=18%20or%20older&Impepoch=unsure&telehealth=physical only&page=1 (last visited July 11, 2025).

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⁴⁵ Mabel Wadsworth Ctr., *Donate*, https://www.mabelwadsworth.org/donate (last visited July 11, 2025).

⁴⁶ Mabel Wadsworth Ctr., *Health Services*, https://www.mabelwadsworth.org/services (last visited July 11, 2025).

⁴⁷ Mabel Wadsworth Ctr., *Abortion Care*, https://www.mabelwadsworth.org/services/pregnancy-care/abortion-services (last visited July 11, 2025).

⁴⁸ Remarks by Andrea Irwin, *Maine Community Leaders Urge Senators Collins and King to Oppose Kyle Duncan's Nomination*, Mabel Wadsworth Ctr. (Feb. 15, 2018), https://www.mabelwadsworth.org/2018/02/26/maine-community-leaders-urge-senators-collins-king-oppose-kyle-duncans-nomination.

⁴⁹ Greater Portland Health, *Services*, https://www.greaterportlandhealth.org/services#newpatients (last visited July 11, 2025); Greater Portland Health, *Our Story*, https://www.greaterportlandhealth.org/about/our-story (last visited July 11, 2025); Greater Portland Health, *School-Based Health Centers*, https://www.greaterportlandhealth.org/services/school-based-health-centers (last visited July 11, 2025).

⁵⁰ Services, supra note 49.

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c. MaineHealth Maine Medical Center ("MMC") is part of MaineHealth, a 501(c)(3) integrated health care system that provides family planning and reproductive health care at some locations, including in Portland, such as routine gynecological exams; preventive screenings; infertility and family planning counseling; birth control services; pregnancy screening; diagnosis and treatment of urinary, vaginal, and sexually transmitted infections; biopsies for gynecological issues; and miscarriage care. MMC also provides a range of other medical and behavioral health services, like primary care, urgent and inpatient care, and other specialized care. MMC

51 Greater Portland Health, *Hours & Locations*, https://www.greaterportlandhealth.org/locations (last visited July 11, 2025).

⁵² ECP List, supra note 6.

⁵³ Greater Portland Health, *Payments & Insurance*, https://www.greaterportlandhealth.org/for-patients/payment-and-insurance (last visited July 11, 2025); Greater Portland Health, *Annual Report 2023*, at 14 (2023), https://files.aptuitivcdn.com/eGVOpZw261-1791/docs/2023-Annual-Report-1.pdf; Greater Portland Health, *Annual Report 2024*, at 14 (2024), https://files.aptuitivcdn.com/eGVOpZw261-1791/docs/2024-Annual-Report.pdf.

⁵⁴MaineHealth, *About MaineHealth*, https://www.mainehealth.org/about-mainehealth (last visited July 11, 2025); MaineHealth, *Obstetrics & Gynecology*, https://www.mainehealth.org/care-services/obstetrics-gynecology-obgyn (last visited July 11, 2025); MaineHealth, *Sexually Transmitted Diseases*, https://www.mainehealth.org/care-services/infectious-disease-care-travel-medicine/sexually-transmitted-disease-std (last visited July 11, 2025); MaineHealth, *Uterine Cancer/Endometrial Cancer*, https://www.mainehealth.org/mainehealth-cancer-care/cancer-conditions-services/uterine-cancer-endometrial-cancer (last visited July 11, 2025); MaineHealth, *Miscarriage Testing & Treatment*, https://www.mainehealth.org/care-services/prenatal-care-and-childbirth/miscarriage-testing-treatment (last visited July 11, 2025).

⁵⁵ MaineHealth, Care & Services, https://www.mainehealth.org/care-services (last visited July 11, 2025); MaineHealth, https://www.mainehealth.org/mainehealth-cancer-care/cancer-conditions-Cervical Cancer, services/cervical-cancer (last visited July 11, 2025); MaineHealth, Vaginal Cancer, https://www.mainehealth.org/mainehealth-cancer-care/cancer-conditions-services/vaginal-cancer (last visited July 11, https://www.mainehealth.org/care-services/prenatal-care-and-2025); Testing, MaineHealth, Prenatal childbirth/prenatal-testing-pregnancy-screening (last visited July 11, 2025); MaineHealth, Obstetrics & Gynecology, MaineHealth Franklin Hospital, https://www.mainehealth.org/mainehealth-franklin-hospital/care-services/obstetricsgynecology-mainehealth-franklin-hospital (last visited July 11, 2025).

provides abortions, including in cases of lethal fetal conditions.⁵⁶ MMC accepts MaineCare, and its Portland location appears on the ECP List.⁵⁷ Upon information and belief, MMC is not impacted by the Defunding Provision.

- 46. The Defunding Provision provides no rationale for its differential treatment of MFP and these similarly situated providers. Nor does the Defunding Provision provide any rationale for summarily excluding MFP from Medicaid solely because it is a non-profit essential community provider that provides family planning and abortions when other similarly situated health care providers would be guaranteed process before they are excluded from Medicaid—including those entities who have been convicted of serious criminal offenses like fraud or patient neglect/abuse.⁵⁸
- 47. Because the Defunding Provision states that it is effective immediately, MFP has stopped billing for Medicaid-covered services effective July 5, 2025.
- 48. Almost half of MFP's patients who receive care other than abortion rely on Medicaid, and, if MFP no longer receives federal Medicaid funding, these patients will likely lose their only accessible health care provider and be forced to forgo essential family planning, reproductive health, and primary care services, including wellness and preventative care, wound care, cancer screenings, STI and HIV testing and treatment, contraceptive care, and treatment of common acute and chronic conditions like diabetes. For example, almost all of the patients that MFP sees through the Health on Wheels program are enrolled in Medicaid, and MFP is the only

⁵⁶ Yves-Yvette Young et al., Expanding Access to Later Abortion Care in Maine: Improving In-State Clinic Referral Systems, Ibis Reprod. Health Abortion Initiative, Later at https://www.ibisreproductivehealth.org/publications/ expanding-access-later-abortion-care-maine-improving-stateclinic-referral-systems.

⁵⁷ ECP List, supra note 6; MaineHealth, Billing & Financial Services, https://www.mainehealth.org/patientsvisitors/billing-and-financial-services (last visited July 11, 2025); MaineHealth, Health Insurance Coverage, https://www.mainehealth.org/patients-visitors/billing-and-financial-services/mainehealth-access-care/healthinsurance-coverage (last visited July 11, 2025).

⁵⁸ See, e.g., 42 C.F.R. pt. 1001, subparts E-F; id. pt. 1003 subpart O; MaineCare Benefits Manual ch. I, § 1.23-1 (codified at 10-144 Me. Code R. ch. 101, § 1.23-1).

health care provider that many of these patients see in a given year. If not enjoined, the Defunding Provision would strip these already underserved individuals of health care services altogether.

- 49. Even patients who may be able to access health care elsewhere will face significant delays due to the overstretched health care system in Maine. There is already a shortage of providers who accept Medicaid because of its lower reimbursement rates, and it will be difficult if not impossible for the thousands of patients MFP sees each year to find new practices willing to take on additional Medicaid recipients. Those practices may also lack MFP's geographic reach, particularly in more rural areas. Many patients will be forced to travel further distances and incur additional expenses to access care. These additional burdens will fall on patients who, by definition, already face significant hurdles in accessing care in the first place.
- 50. MFP has already had to stop taking new patients enrolled in MaineCare who are seeking primary care. For existing patients, the Defunding Provision has disrupted MFP's ability to continue providing care for longer than a few more months. MFP cannot abruptly discharge patients from its care, as its patients rely on MFP to treat a variety of medical conditions, including ones that require recurring medical appointments and follow-ups, such as individuals who tested positive for chlamydia, patients who have had colposcopies (examination of the cervix), or patients with abnormal cervical cancer screenings. MFP's practice is to provide patients with 30 days' notice prior to discharging them from MFP. MFP has determined that, without injunctive relief, it will have to notify its MaineCare family planning and primary care patients by September 30, 2025, that it is discharging them from care, effective October 31, 2025.
- 51. Without federal Medicaid reimbursements, MFP cannot cover the costs of services to the nearly half of its patients who receive care other than abortion who are enrolled in MaineCare. Already, Medicaid reimburses clinics at a lower rate than private insurance; as a result,

MFP already faces significant cost deficits. MFP's health centers in Rumford, Damariscotta, and Dexter only operate one or two days per week due to these current funding deficits. Without Medicaid funding, these clinics and others would have to make up for the shortfall and will be forced to limit or end the services that they currently provide.

52. MFP and its patients have become collateral damage to the Defunding Provision's intent to defund Planned Parenthood. In so doing, the Defunding Provision decimates access to critical health care in some of Maine's most underserved areas.

CLAIM FOR RELIEF

DENIAL OF EQUAL PROTECTION

- 53. The foregoing allegations in paragraphs 1 through 52 are re-alleged and incorporated by reference as if fully restated herein.
- 54. The Due Process Clause of the Fifth Amendment prohibits the United States from denying MFP equal protection under law.
- 55. The Defunding Provision prohibits MFP from receiving federal Medicaid reimbursements while allowing thousands of similarly situated health care entities throughout the United States to continue to receive federal Medicaid reimbursements for the same critical health care services that MFP provides.
- 56. Defendants have not and cannot proffer any rationale—let alone a constitutionally legitimate justification—as to why MFP should be subject to the Defunding Provision while thousands of similarly situated health care entities throughout the United States are not. The Defunding Provision will not save the government money, and in fact will cost the government millions of dollars more than simply allowing patients to continue to seek care from providers like MFP.

- 57. To the extent that the Defunding Provision is motivated by a desire to ensure that federal funds are not used for abortion, that is duplicative of existing legislation, and such duplication "necessarily casts considerable doubt upon the proposition that the [law] could rationally have been intended to prevent those very same abuses." *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 537 (1973).
- 58. The legislative record indicates that the only purpose of the Defunding Provision is a "bare congressional desire to harm a politically unpopular group," namely Planned Parenthood. *Id.* at 534. Ensnaring MFP to cloak its targeting of Planned Parenthood in a veil of plausible deniability cannot transform that bare desire to harm into anything remotely resembling a "legitimate governmental interest." *Id.*
- 59. Targeting a tiny subset of the myriad of providers throughout the United States who provide abortions outside of the Hyde Amendment exceptions is arbitrary and does not serve any legitimate government interest.
- 60. Targeting a tiny subset of the essential community providers throughout the United States who are "primarily engaged in family planning services, reproductive health, and related medical care" is arbitrary and does not serve any legitimate government interest.
- 61. Targeting a tiny subset 501(c)(3) nonprofit organizations throughout the United States is arbitrary and does not serve any legitimate government interest.
- 62. The \$800,000 threshold is devoid of explanation or record support, is entirely arbitrary, and does not serve any legitimate government interest.
- 63. Absent declaratory and injunctive relief, the Defendants' violations will continue to cause devastating and ongoing harm to the Plaintiff and its low-income, rural, and female patients in particular.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

- a. Issue a declaratory judgment that the Defunding Provision violates the Fifth Amendment of the United States Constitution on its face and/or as applied to MFP;
- b. Enter a preliminary and permanent injunction prohibiting Defendants from implementing or enforcing the Defunding Provision as to MFP and/or vacating the Defunding Provision in its entirety;
- c. Award MFP attorneys' fees and costs, as provided by applicable statute or regulation or the inherent powers of the Court; and
- d. Grant all further and additional relief that the Court deems just and proper.

Dated: July 16, 2025 Respectfully submitted,

/s/ Taylor Asen

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* Application for admission pro hac vice forthcoming

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE

THE FAMILY PLANNING ASSOCIATION)
OF MAINE D/B/A MAINE FAMILY)
PLANNING;)
)
Plaintiff,)
	j
V.)
v .) Casa Na
INTER OF A TEC DED A DEL CENTE OF) Case No
UNITED STATES DEPARTMENT OF)
HEALTH AND HUMAN SERVICES;)
)
ROBERT F. KENNEDY, JR., in his official)
capacity as Secretary of Health and Human)
Services;)
Scr vices,)
CENTEDS FOR MEDICADE 0)
CENTERS FOR MEDICARE &)
MEDICAID SERVICES;)
)
and)
)
MEHMET OZ, in his official capacity as the)
Administrator of the Centers for Medicare &)
Medicaid Services,)
Wichicald Sci vices,	<i>)</i>
D C 1)
Defendants.)

DECLARATION OF CASSIDY JARVIS IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

- I, Cassidy Jarvis, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:
- 1. I have been a Site Administrative Coordinator at Maine Family Planning's ("MFP") Fort Kent and Presque Isle clinics in Aroostook County for the past ten years. In my role as a Site Administrative Coordinator, I work at the front desk, check patients in and out, field any calls from patients to the clinic, and triage patients who come to the clinic to pick up birth control pills. For

the last five years or so, I have also worked as a Certified Medical Assistant ("CMA") at these two clinics. In my role as a CMA, I assist with patient care, including rooming patients; taking patients' medical, social, and family history; collecting urine samples; and helping with procedures like colposcopies, endometrial biopsies, and insertion and removal of long-acting reversible contraception ("LARC") like Nexplanon and IUDs.

- 2. I am familiar with section 71113 of the One Big Beautiful Bill Act, H.R. 1, 119th Cong. (2025) (the "Defunding Provision") and the impact it has had and will continue to have on MFP's Fort Kent and Presque Isle clinics. I submit this declaration in support of Plaintiff's motion for a temporary restraining order and/or preliminary injunction. It is based on my personal knowledge and experience.
- 3. Our Fort Kent and Presque Isle clinics provide essential care in a rural and remote part of Maine. In many parts of Aroostook County, health care is hard to access: some patients may not have access to cars, not many providers are within walking distance, and there is not a lot of public transportation. Even if patients can access care elsewhere, many prefer to get their care at MFP. Many hospitals in the area use locum doctors (temporary or traveling doctors) who stay for only short periods of time, so their providers are constantly changing. In contrast, we have had the same providers at our Fort Kent and Presque Isle clinics for the last ten years, who have built trust with our patients and community over that time. As a result, our patients feel comfortable sharing intimate details about their sexual and reproductive health, including details that may be difficult to discuss, with our providers. Many of our female patients also feel more comfortable receiving care like pelvic exams at MFP because our providers are female, while many of the health care providers in the surrounding area are male. Finally, our patients trust us to provide confidential care. Because the community in this area is small, many patients prefer to get their

sexual and reproductive health care at MFP clinics rather than at hospitals, where there is a higher chance of running into someone they know. Because we have spent time and effort building these trusting relationships with our patients, many of them continue to come back to MFP for care; they do not want to go elsewhere for care, especially when going to a new provider would mean having to again tell someone else intimate and potentially difficult-to-discuss details about their sexual and reproductive health.

- 4. The Defunding Provision has had a devastating impact on our ability to keep providing essential care to our patients. Since the Defunding Provision was signed into law on July 4, 2025, we have been forced to stop accepting new primary care patients who are on Medicaid, even though we have people coming in almost daily who want to sign up as new primary care patients. If we cannot take Medicaid, I worry these patients will not be able to get primary care elsewhere, particularly because some primary care offices in the area are not accepting new patients at this time.
- 5. Our existing Medicaid patients are scared and confused about what the Defunding Provision means for their ability to keep getting care. We have continued to see Medicaid patients at the Fort Kent and Presque Isle clinics because we know our patients rely on us for care. But we have been forced to stop submitting Medicaid reimbursements. In the short time the Defunding Provision has been in effect, our patients—including those who have traveled significant distances to receive care at our clinics—have expressed concerns about their ability to pay out of pocket for birth control and other care. Necessities like heating and electricity are expensive in Aroostook County, and paying out of pocket for one pack of birth control pills costs \$25 per month, so if we cannot accept Medicaid, many patients will be forced to make tough decisions about whether they can afford to pay for birth control out of pocket given the high cost of other necessities. I have also

observed patients who were worried and distraught about being forced to go without birth control and potentially experiencing a life-changing unplanned pregnancy as a result.

- 6. If we continue not being able to take Medicaid, our patients may also be forced to forgo getting tested or treated for infections, including sexually transmitted infections ("STIs"). I worry that patients will not get the antibiotics they need and that there will be spikes in STIs like syphilis in the area. Moreover, we generally try to schedule patients for follow-up care if, for example, they have abnormal results after a cervical cancer screening or feel lumps in their breasts that might indicate breast cancer. If we cannot take Medicaid, patients may not be able to afford to pay for this follow-up care out of pocket and may not be able to get this potentially life-saving care elsewhere.
- 7. The Defunding Provision has also had an impact on MFP staff like me. We all have bills to pay and families to take care of, and I am personally afraid of what the Defunding Provision means for MFP clinics and for my job. I love working at MFP. I feel like I belong here and that I am part of a family here. I love connecting with our patients and witnessing how providing care for them is often a source of relief and self-affirmation. It is incredibly hard to deal with the uncertainty that the Defunding Provision has created for the clinics and our staff while trying to continue providing quality care to our patients and reassuring them that we are going to be here for them for as long as we can.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15day of July, 2025 at ___Fort Kent , Maine.

Cassidy Jarvis

5

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE

THE FAMILY PLANNING ASSOCIATION OF MAINE D/B/A MAINE FAMILY)	
PLANNING;)	
Plaintiff,)	
V.)	
) Case No	
UNITED STATES DEPARTMENT OF)	
HEALTH AND HUMAN SERVICES;		
ROBERT F. KENNEDY, JR., in his official)	
capacity as Secretary of Health and Human)	
Services;)	
CENTERS FOR MEDICARE &)	
MEDICAID SERVICES)	
and)	
)	
MEHMET OZ, in his official capacity as the)	
Administrator of the Centers for Medicare &)	
Medicaid Services,)	
)	
Defendants.)	
)	
)	
)	

DECLARATION OF EVELYN KIELTYKA IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

- I, Evelyn Kieltyka, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:
- 1. I am the Senior Vice President of Program Services for Plaintiff Maine Family Planning ("MFP"), where I have worked for nearly 31 years. In this position, I oversee MFP's programming, which includes clinical care at sites throughout the state, as well as educational, health, and social service programs. I also oversee our quality assurance program and manage our

budget for clinical services to ensure we are meeting revenue and expense targets. I submit this declaration in support of Plaintiff's motion for a temporary restraining order and/or preliminary injunction. It is based on my personal knowledge and experience, and my review of MFP's business records.

- 2. I am educated and trained as a family nurse practitioner, and I currently hold an active registered nurse license in Maine. I received a Master's of Science in Maternal-Child Health at the Harvard School of Public Health (now the Harvard T.H. Chan School of Public Health) and a Master's in Nursing at Simmons College in 1992. I earned my certificate as a Family Planning Nurse Practitioner at the College of Medicine and Dentistry of New Jersey in 1979. I received my Bachelor's of Science in Nursing degree at Sacred Heart University.
- 3. I have provided clinical care as a registered nurse and APRN (Advanced Practice Registered Nurse) throughout my career. In 2000, I was awarded the Nurse Practitioner of Excellence Award by the American Academy of Nurse Practitioners and the Maine Nurse Practitioner Association ("MNPA").
- 4. I am also a past President of the Board of Directors of MNPA, a position I held from 1995 to 1997 and 2015 to 2017. As President, I was responsible for overseeing advocacy and lobbying, member recruitment, and public relations and press work, as well as cultivating and maintaining MNPA's relationships with other medical professional associations.
- 5. I am familiar with section 71113 of the One Big Beautiful Bill Act, H.R. 1, 119th Cong. (2025) (the "Defunding Provision") and the devastating impact it will have on MFP. The Defunding Provision threatens our ability to continue caring for our patients, approximately half of whom are Medicaid recipients. The Defunding Provision will also gravely harm the thousands

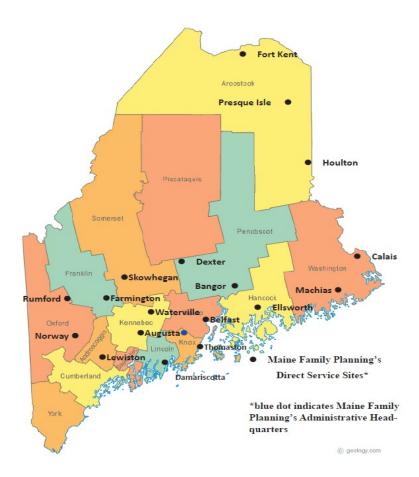
of patients who depend on MFP for accessible, affordable, compassionate, and nonjudgmental care, particularly those from rural and underserved communities.

I. Maine Family Planning Provides Essential Health Care.

- 6. MFP is a 501(c)(3) non-profit corporation incorporated in Maine with its principal place of business in Augusta, Maine. MFP was founded on the promise of health care for all. MFP's mission is "to ensure that all people have access to high-quality, culturally relevant and affordable sexual and reproductive health care services, comprehensive sexual health education, and the right to control their sexual and reproductive lives."
- 7. MFP offers a range of health care services, including annual gynecological exams; screening for cervical and breast cancer; family planning counseling; birth control/contraception services; preconception consultation; screening, diagnosis and treatment of urinary tract, vaginal, and sexually transmitted infections; biopsies for gynecological issues; hormone therapy; and miscarriage and abortion care.
- 8. Today, MFP operates eighteen family planning clinics, with at least one site in twelve of Maine's sixteen counties, and a mobile clinic. As pictured below, MFP's family planning clinics are located in Augusta, Bangor, Belfast, Calais, Damariscotta, Dexter, Ellsworth, Farmington, Fort Kent, Houlton, Lewiston, Machias, Norway, Presque Isle, Rumford, Skowhegan, Thomaston, and Waterville. MFP subcontracts with several other entities that in total provide access to sexual and reproductive health care in fifteen counties out of Maine's sixteen counties.

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¹ Me. Family Plan., 2023-2024 Impact Report, at 2 (2024), https://mainefamilyplanning.org/wp-content/uploads/MFP-2024-Annual-Report-v.4-single-pages-1.pdf.



- 9. Maine is one of the most rural states in the United States. According to Maine's Center for Disease Control & Prevention, 40 percent of the state's population live in rural areas.² Many patients live long distances from Maine's cities and find it difficult to access a health care provider. Moreover, due to Maine's challenging weather conditions, critical roads are often completely impassable during parts of the winter, particularly in rural Aroostook and Washington Counties.
- 10. Eleven of the counties where MFP operates clinics are more than 50 percent rural, as defined by the U.S. Census Bureau; eight of them are more than 80 percent rural.³ Many of

² Me. Ctr. For Disease Control & Prevention, *Rural Health in Maine*, https://www.maine.gov/dhhs/mecdc/public-health-systems/rhpc/rural-health.shtml (last visited July 11, 2025).

³ U.S. Census Bureau, *County Rurality Level: 2010*, at 39, https://www2.census.gov/geo/pdfs/reference/ua/County_Rural_Lookup_v4.pdf (last visited July 11, 2025); see also U.S. Census Bureau, *County-level Urban and Rural Information for the 2020 Census, (Tab "2020_UA_COUNTY," Column "POPPCT RUR," County Name Penobscot, Kennebec, Knox, Oxford, Somerset, Aroostook, Waldo, Lincoln,*

MFP's direct service clinics are located in regions of the state designated by the U.S. Health Resources and Services Administration as Medically Underserved Areas.⁴ In many of these areas, reproductive health care has basically disappeared—for example, MFP is the sole provider of comprehensive family planning and reproductive health care services in Norway and Farmington in western Maine, as well as in Washington County in eastern Maine. Two MFP clinics are listed as an essential community provider in the family planning category on the HHS Rolling Draft Essential Community Provider (ECP) List for the Federally-facilitated Marketplace ("ECP List").⁵

11. Our family planning network subcontracts with forty-four additional sites, for a total of sixty-two family planning centers (sixty-three including the mobile clinic) located across the state. In recent years, our family planning network has served approximately 30,000 patients/year, providing services including STI/HIV tests, cervical cancer screenings, and placements of long-acting reversible contraception ("LARC"), such as IUDs or implants.⁶ In calendar year 2024, the network served approximately 28,000 patients across the state, and MFP clinics specifically served 8,735 patients, including 645 abortion patients (7.38 percent of all patients), 633 primary care patients (7.25 percent of all patients), and 7,215 family planning patients (82.5 percent of all patients). Family planning patients had over 10,725 visits, including gynecological exams, pap smears, breast exams, STI testing, and birth control. Primary care

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Franklin, Hancock, Washington); https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww2.census.gov%2Fgeo%2Fdocs%2Freference%2Fua%2F2020_UA_COUNTY.xls x&wdOrigin=BROWSELINK (last updated September, 2023).

⁴ Health Res. & Servs. Admin., *MUA Find*, https://data.hrsa.gov/tools/shortage-area/mua-find (last visited July 14, 2025).

⁵ HHS Rolling Draft Essential Community Provider (ECP) List for the Federally-facilitated Marketplace, Ctrs. for Medicare & Medicaid Servs., https://data.healthcare.gov/rolling-draft-list (last visited July 11, 2025) [hereinafter ECP List].

⁶ Me. Fam. Plan., *Annual Report 2023*, at 4, https://mainefamilyplanning.org/wp-content/uploads/MFP2023AnnualReport.pdf (last visited July 14, 2025) (over 34,000 patients served by family planning network); Me. Fam. Plan., *2023-2024 Impact Report*, *supra* note 1, at 5 (over 31,000 patients served by family planning network).

patients had over 2,000 visits, including management of chronic conditions and menopause, physical exams, and geriatric health services.

- 12. Aside from MFP and some of the subgrantees in its family planning network (including Planned Parenthood of Northern New England ("PPNNE") and Greater Portland Health ("GPH")), to the best of my knowledge, family planning services in Maine are available only through private gynecologists, non-specialist practitioners, Federally Qualified Health Centers ("FQHCs"), MaineHealth Maine Medical Center, and an independent health center, Mabel Wadsworth Center ("Mabel's").
- 13. To the best of my knowledge, the only other publicly accessible health centers where a pregnant person can obtain abortion care in Maine aside from MFP are PPNNE clinics or Mabel's. To the best of my knowledge, PPNNE is also impacted by the Defunding Provision.
- 14. Mabel's is a 501(c)(3) organization located in Bangor,⁷ one of Maine's most populated cities. People who live in rural areas of Maine would have to travel long distances to access care at Mabel's. Mabel's provides the "full spectrum of sexual and reproductive health care and primary care services," including wellness exams, birth control, vasectomies, cancer screenings, testing and treatment for STIs and vaginal infections, infertility consultation, pregnancy testing and options counseling, prenatal care, primary care, and mental health counseling.⁸ Mabel's also provides medication and procedural abortion.⁹ Nearly half of Mabel's patients rely on Medicaid.¹⁰ To the best of my knowledge, Mabel's is not impacted by the Defunding Provision.¹¹

⁷ Mabel Wadsworth Ctr., *Donate*, https://www.mabelwadsworth.org/donate/ (last visited July 14, 2025).

⁸ Mabel Wadsworth Ctr., *Health Services*, https://www.mabelwadsworth.org/services/ (last visited July 14, 2025).

⁹ Id.

¹⁰ Remarks by Andrea Irwin, *Maine Community Leaders Urge Senators Collins and King to Oppose Kyle Duncan's Nomination*, Mabel Wadsworth Ctr. (Feb. 15, 2018), https://www.mabelwadsworth.org/2018/02/26/maine-community-leaders-urge-senators-collins-king-oppose-kyle-duncans-nomination/.

¹¹ ECP List, supra note 5.

- 15. GPH is a 501(c)(3) federally qualified health center that provides a range of family planning, women's health care, and maternal and prenatal health services, including contraception management and management of HIV/AIDS, Hepatitis C, and other infectious diseases. GPH also provides primary care, including wellness exams, sick visits, and management of chronic conditions like diabetes and asthma; behavioral health care, including substance use disorder services; and dental care. GPH does not provide abortions. GPH has locations in the Greater Portland metropolitan area, including a health center at 180 Park Avenue in Portland, which appears on the ECP List as a family planning provider. People who live in rural areas of Maine would have to travel long distances to access care at GPH. GPH accepts Medicaid, and in 2023 and 2024, approximately 51 percent of GPH's patients were on Medicaid.
- 16. MaineHealth Maine Medical Center ("MMC") is part of MaineHealth, a 501(c)(3) integrated health care system that provides family planning and reproductive health care at some locations, including in Portland, such as routine gynecological exams; preventive screenings; infertility and family planning counseling; birth control services; pregnancy screening; diagnosis and treatment of urinary tract, vaginal, and sexually transmitted infections; biopsies for gynecological issues; and miscarriage care. MMC provides a range of other medical and

¹² Greater Portland Health, *Services*, https://www.greaterportlandhealth.org/services (last visited July 14, 2025); Greater Portland Health, *Our Story*, https://www.greaterportlandhealth.org/about/our-story (last visited July 14, 2025); Greater Portland Health, *School Based Health Centers*, https://www.greaterportlandhealth.org/services/school-based-health-centers (last visited July 14, 2025).

¹³ Greater Portland Health, Services, supra note 12.

¹⁴ Greater Portland Health, *Hours & Locations*, https://www.greaterportlandhealth.org/locations (last visited July 14, 2025).

¹⁵ ECP List, supra note 5.

¹⁶ Greater Portland Health, *Payment and Insurance*, https://www.greaterportlandhealth.org/payment-and-insurance (last visited July 14, 2025); Greater Portland Health, *2023 Annual Report*, at 14, https://files.aptuitivcdn.com/eGVOpZw261-1791/docs/2023-Annual-Report-1.pdf (last visited July 14, 2025); Greater Portland Health, *2024 Annual Report*, at 14, https://files.aptuitivcdn.com/eGVOpZw261-1791/docs/2024-Annual-Report.pdf (last visited July 14, 2025).

¹⁷ MaineHealth, *About MaineHealth*, https://www.mainehealth.org/about-mainehealth (last visited July 14, 2025); MaineHealth, *Obstetrics & Gynecology (OB/GYN)*, https://www.mainehealth.org/care-services/obstetrics-gynecology-obgyn (last visited July 14, 2025); MaineHealth, *Sexually Transmitted Diseases*,

behavioral health services, such as primary care, urgent and inpatient care, and other specialized care. MMC provides abortions, including for lethal fetal conditions, but generally only to existing or referred patients. MMC accepts Medicaid, and its Portland location appears on the ECP List. 20

- 17. This shortage of family planning and reproductive health care providers has only been exacerbated by several hospitals in Maine closing their labor and delivery units and, as a result, OB/GYNs leaving the area and patients having to rely on their primary care providers for family planning and reproductive health services. However, my understanding is that some primary care providers tell their patients to come to MFP because they do not feel comfortable providing services they do not specialize in or routinely provide, or because they have caps on the number of Medicaid patients they accept into their practice.
- 18. After seeing the growing need for additional primary care providers, particularly given ongoing shortages of providers and long wait times, MFP decided to start offering primary care at our Ellsworth clinic in 2015 and at our Houlton and Presque Isle clinics in 2022. Those

https://www.mainehealth.org/care-services/infectious-disease-care-travel-medicine/sexually-transmitted-disease-std (last visited July 14, 2025); MaineHealth, *Uterine Cancer/Endometrial Cancer*, https://www.mainehealth.org/mainehealth-cancer-care/cancer-conditions-services/uterine-cancer-endometrial-cancer (last visited July 14, 2025); MaineHealth, *Miscarriage Testing & Treatment*, https://www.mainehealth.org/care-services/prenatal-care-and-childbirth/miscarriage-testing-treatment (last visited July 14, 2025).

¹⁸ MaineHealth, Care & Services, https://www.mainehealth.org/care-services (last visited July 14, 2025); MaineHealth. Cervical Cancer, https://www.mainehealth.org/mainehealth-cancer-care/cancer-conditionsservices/cervical-cancer 14, 2025); MaineHealth, Vaginal (last visited July Cancer, https://www.mainehealth.org/mainehealth-cancer-care/cancer-conditions-services/vaginal-cancer (last visited July 14, 2025); MaineHealth, Prenatal Testing/ Pregnancy Screening, https://www.mainehealth.org/careservices/prenatal-care-and-childbirth/prenatal-testing-pregnancy-screening (last visited July 14, 2025); MaineHealth, Obstetrics & Gynecology - MaineHealth Franklin Hospital, https://www.mainehealth.org/mainehealth-franklinhospital/care-services/obstetrics-gynecology-mainehealth-franklin-hospital (last visited July 14, 2025).

¹⁹ Yves-Yvette Young et. al., *Expanding Access to Later Abortion Care in Maine*, Ibis Reprod. Health, Later Abortion Initiative, at 1 (Feb. 2021), https://www.ibisreproductivehealth.org/publications/expanding-access-later-abortion-care-maine-improving-state-clinic-referral-systems.

²⁰ MaineHealth, *Billing and Financial Services*, https://www.mainehealth.org/patients-visitors/billing-and-financial-services (last visited July 14, 2025); MaineHealth, *Health Insurance Coverage*, https://www.mainehealth.org/patients-visitors/billing-and-financial-services/mainehealth-access-care/health-insurance-coverage (last visited July 14, 2025); *ECP List*, *supra* note 5.

clinics offer a range of primary care services including wellness and preventive care; diagnosis and treatment of common acute and chronic conditions like strep throat, asthma, or diabetes; and geriatric health services. MFP also uses our referral network to ensure our patients can receive primary care outside of the areas served by those three clinics and access diagnostic screenings and services that we do not offer onsite.

- 19. For approximately 70 percent of our patients, we are the only health care provider they will see in a given year. Even if they are not seeing us for primary care, we will discuss their overall health and identify potential chronic illnesses.
- 20. Last year, MFP launched a mobile health care van that travels across the state to serve populations that have difficulty accessing health care, such as the unhoused, people with substance use disorder, and migrant farm workers, making stops at locations like safe injection sites and soup kitchens. These populations often have difficulty traveling to our brick-and-mortar clinics and often distrust or have experienced stigma and judgment by more traditional medical facilities. The mobile health care van provides urgent primary care, wound care, and family planning and reproductive health services including birth control, Pap smears, and STI testing. We also identify potential chronic illnesses that, without proper diagnosis and treatment, could lead to serious or even life-threatening illnesses. We are generally the sole health care provider these populations see in a given year, and many of these patients would otherwise not be able to access care.
- 21. MFP has won several awards for its provision of quality care, including the 2013 National Family Planning & Reproductive Health Association Dr. Allan Rosenfield Access Award for achievement in improving access to reproductive health care at the local level; the 2018 Dr. Wendy J. Wolf Health Leadership Award from the Maine Health Access Foundation, recognizing

MFP President/CEO George Hill and MFP's dedication to providing access to quality health care; the 2018 Pump Handle Award from the Maine Center for Disease Control and Prevention for important contributions to helping reduce the impact of infectious diseases in Maine; the 2021 Maine Association for Health, Physical Education, Recreation, and Dance Honor Award, recognizing MFP and its staff's efforts to provide evidence-based sexuality information for STI/HIV and pregnancy prevention to teachers in Maine; and the 2024 WIC Breastfeeding Award of Excellence for MFP WIC of Hancock and Washington Counties' prenatal education and breastfeeding peer counseling program.

II. Loss of Medicaid Funding Has Been Devastating to Maine Family Planning and Its Patients.

- 22. As of July 7, 2025, the first business day after the Defunding Provision went into effect, we are no longer accepting new patients enrolled in Medicaid who are seeking primary care. On average, we have about four new primary care patients who have Medicaid as either their primary or secondary insurance contact us every week. For existing patients with Medicaid, who come to us for family planning and primary care, we are continuing to see them for now. But we have determined that by September 30, 2025, we will start notifying all of our existing family planning and primary care patients that we will no longer be able to serve them past October 31, 2025. Overall, without Medicaid funding, several MFP clinics may be forced to limit or end their services.
- 23. MFP strives to make health care accessible to all patients, regardless of their income. MaineCare is the state of Maine's Medicaid program; it is the largest health insurance program in the state and is jointly funded by the federal and state governments. The federal government funds 62 percent of the insurance program, but in some cases, it can fund as high as

90 percent.²¹ MFP started providing patient care in 1997 and has accepted Medicaid since 1998. All eighteen clinics, plus the mobile clinic, accept Medicaid today.

- 24. Medicaid is essential to MFP. About 20 to 25 percent of MFP's annual budget—roughly \$1.9 million dollars—comes from Medicaid funding. Specifically, from July 1, 2022 to June 30, 2023, 22.7 percent of MFP's budget came from Medicaid (listed as "Program Fees"). In federal fiscal year 2023, October 1, 2022 to September 30, 2023, MFP received more than \$800,000 from Medicaid reimbursements. However, because of the Defunding Provision's immediate effective date, we have stopped billing Medicaid for all services effective July 5, 2025.
- 25. The state of Maine covers the costs of abortion care for Medicaid patients using state funds. Outside of the narrow Hyde Amendment exceptions, we receive no federal funding for abortion care provided in Maine. MFP strictly ensures that our use of federal funds, including Medicaid funds, complies with abortion-related restrictions on these funds. In MFP's approximately fifty-year tenure as the Title X grantee for the state of Maine, MFP has never been found to have misappropriated funding or to have failed to distinguish between federal funding for non-abortion services and separate funding for abortion care.
- 26. The Defunding Provision has created a chaotic and uncertain financial future. To ensure that we (and the subgrantees in our family planning network) can continue to see patients without having to immediately close clinic sites or drastically cut services, MFP is currently relying on reserve funding. After careful consideration, MFP has concluded that it is unsustainable to deplete these reserves, and we can only continue providing care to all of our existing Medicaid family planning and primary care patients through October 2025, at the latest.

²¹ Impact of Federal Medicaid Proposals on Maine, Me. Dep't of Health & Human Servs. (May 2, 2025) https://www.maine.gov/dhhs/blog/impact-federal-medicaid-proposals-maine-2025-05-02.

²² Me. Fam. Plan., *Annual Report 2023*, supra note 6 at 16.

- 27. We cannot abruptly discharge our Medicaid patients. Our practice is to provide at least 30 days' notice, explain the reason for the discharge and that we will continue providing them with emergency medical care during the 30-day notice period, and offer them resources to find alternative sources of medical care. Our patients rely on us for treatment of complex, chronic medical conditions; if we stopped seeing them, it could take them weeks or months to find and establish care with a new provider who takes Medicaid—if they are able to find one at all—given the burdens of longer travel, longer waits, and a statewide provider shortage. Without access to a Medicaid provider, many patients will be unable to afford care out of pocket.
- 28. Moreover, we have patients with recurring or follow-up appointments whose care may be interrupted by the Defunding Provision. For several of the procedures or treatments that we provide, follow-up appointments are recommended to confirm that the treatment worked and that the patient's condition has improved. For example, when patients test positive for chlamydia, our protocol is to follow-up in 12 weeks to ensure they are no longer infected; when patients have colposcopies (an examination of the cervix), our protocol is to follow-up in six months; and when patients have abnormal cervical cancer screenings, our protocol is to follow-up with them in three to six months. But now, we do not know whether patients that we see for these procedures will be able to return for follow-up appointments because we do not know whether we will be able to continue operating all of our clinic locations and offering these services. If we cannot see these patients or are not able to get them in for a follow-up appointment, I do not know if they could obtain care covered by Medicaid elsewhere. This has the potential to dramatically impact their health.
- 29. We have no choice but to begin notifying Medicaid patients by September 30 that we must discharge them. To do so, our staff will have to spend time—time that they could

otherwise use to serve patients—processing medical releases, preparing medical records, and finding alternate providers, as well as explaining to patients why we cannot continue to serve them. Moreover, once these patients are notified, it will be unlikely that they return to MFP, even if the Defunding Provision is blocked. Patients will be confused as to why we discharged them only to later learn that we can continue to serve them. Disruptions in care are detrimental to the patient-provider relationship.

- 30. Being forced to deny care to our existing patients and being unable to serve new patients is devastating. MFP clinics serve Maine counties with some of the highest rates of enrollment in Medicaid: for example, about 40 percent of the population in rural counties like Aroostook County, Washington County and Somerset County relies on Medicaid.²³ Between July 1, 2022 and June 30, 2023, 41 percent of our family planning network's patients had public insurance, 12 percent were uninsured, and 82 percent fell at or below 250 percent of the federal poverty level and, as a result, qualified for free or reduced services.²⁴ In calendar year 2024, 49.8 percent of patients who received care other than abortion at MFP were enrolled in Medicaid. Without access to Medicaid, most of these patients could not afford to see a health care provider.
- 31. MFP offers a broad range of health care to patients with Medicaid coverage or who are presumptively eligible under Maine's Limited Family Planning Benefit (which provides limited coverage for family planning services). For example, MFP provides these patients routine gynecologic exams, pregnancy testing, contraceptive services, cancer screenings, and STI testing.
- 32. For many Mainers, MFP is the only provider where they can practically obtain LARCs. All MFP clinics offer LARCs while, outside of MFP clinics, LARC availability is

²⁴ Me. Fam. Plan., *Annual Report 2023*, supra note 6.

²³ Letter from Janet T. Mills, Gov., State of Me., to Sen. Susan Collins et al. (June 25, 2025), https://mainemorningstar.com/wp-content/uploads/2025/06/6.25.25_Governor-Mills-Delegation-Letter.pdf.

sporadic and dependent on who is scheduled to work. This care is expensive and necessitates Medicaid funding. For contraceptive care, including LARCs, Medicaid reimburses providers not only for the visit but also for the cost of the contraceptive device. IUDs cost, on average, between \$400 and \$500. Since we have stopped billing Medicaid for covered services, we are now covering the cost of both the visit and the contraceptive devices themselves.

- 33. Many of our patients prefer to be seen at MFP rather than another Medicaid provider because we specialize in family planning and reproductive health care, and patients trust us to provide sensitive care like STI screening in a nonjudgmental and confidential manner. Likewise, because Maine's population is small—particularly in some of the less densely populated areas where MFP clinics are located—some patients prefer to keep their family planning- and reproductive health-related care at MFP separate from their primary care to avoid the chance of their acquaintances finding out about intimate and potentially stigmatizing health care decisions. Because MFP works hard to build strong, trusting relationships with our patients, many of our patients continue to come back to us for care.
- 34. If we can no longer accept Medicaid, MFP will have no choice but to turn away the patients who seek our services. Many of them will have nowhere else to turn, since MFP has clinics in many rural areas of the state where there are very few other health care providers, and none that specialize in family planning care. Indeed, most of the patients we see in the mobile health care facility are Medicaid-enrolled, and not being able to accept Medicaid threatens our ability to continue offering care to these populations due to the expense of maintaining the program.
- 35. Even patients who may be able to access health care elsewhere will face significant delays from the already overstretched health care system in Maine. There is already a shortage of providers who accept Medicaid, and it will be difficult if not impossible for the thousands of

patients we see each year to find new practices willing to take on additional Medicaid recipients. Many of our patients will be forced to travel further distances and face longer wait times and higher costs to access alternate care. Many may be forced to forgo health care altogether. These additional burdens will fall on patients who, by definition, already face significant hurdles in accessing care in the first place.

36. Now that MFP has been labeled a "prohibited entity" under the Defunding Provision, I worry that our patients will be confused about whether MFP is precluded from receiving Medicaid funds because it is guilty of fraud or other serious criminal behavior. We will have to spend staff time and resources explaining that MFP is being excluded solely because we also provide abortion care. This may impact the trust and reputation that we worked hard to build.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of July 2025 at Augusta, Maine.

Evelyn Kieltyka

Evelyn J. Kielthan

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE

THE FAMILY PLANNING ASSOCIATION OF MAINE d/b/a MAINE FAMILY PLANNING,

Plaintiff,

No. 1:25-cv-00364-LEW

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.,

Defendants.

DECLARATION OF ANNE MARIE COSTELLO

I, Anne Marie Costello, declare as follows:

1. I am employed by the Department of Health and Human Services (HHS) in the Center for Medicaid and CHIP Services (CMCS) at the Centers for Medicare & Medicaid Services (CMS), located at 7500 Security Boulevard, Baltimore, MD 21244. I am a Deputy Director for CMCS. I have held this position since January 2020. Before that, I served as the Director of the Children and Adults Health Programs Group within CMCS. I have been employed at CMS since 2010. In my role as a Deputy Director of CMCS, I manage a team of professional and administrative staff with a variety of advanced degrees in fields including economics, law, medicine, public health, public policy, finance, and business operations. My team is responsible for policy development, management, oversight, budget, and performance issues related to Medicaid, the Children's Health Insurance Program (CHIP), and the Basic Health Program (BHP) on behalf of CMS. My team and I regularly interact with representatives from states and other stakeholders.

- 2. Medicaid is a joint state/federal partnership. States are responsible for providing care to Medicaid beneficiaries and do so through both fee-for-service (FFS) and managed care delivery systems. States design their Medicaid programs including determining which delivery system(s) to utilize for providing care to Medicaid beneficiaries and which benefits are offered in each delivery system. The federal government outlines Medicaid program requirements and reviews and approves many components of a state's Medicaid program, such as underlying authorities for benefits, eligibility, FFS provider reimbursement rates, managed care, and managed care contracts and rates.
- 3. The federal government also contributes federal financial participation (FFP) towards the Medicaid program. Federal law and regulations require that CMS issue advanced funding (through "initial grant awards") to states at the beginning of each quarter based on CMS-reviewed state expenditure estimates.
- 4. Once the advanced funding request is approved, the state can draw down the federal advance for the allotted amount as costs are incurred. 42 C.F.R. § 430.30(d)(3). The state draws down federal funds through a subaccount operated through the Payment Management System (PMS) application within HHS' Program Support Center (PSC). Section 430.30(d)(3), 42 C.F.R., provides that the grant award "authorizes the State to draw Federal funds as needed to pay the Federal share of disbursements." The state's quarterly federal Medicaid award is only to be used to reimburse Medicaid providers for actual payments. 42 C.F.R. § 430.30 and 45 C.F.R. § 95.13.
- 5. Those initial awards are reconciled to actual state expenditures following a finalization process that includes quarterly CMS reviews of state-submitted, actual expenditures and state draw-downs from its PMS subaccount. The Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program (Form CMS-64) is the accounting statement that

each state Medicaid agency submits each quarter to CMS to claim FFP for its Medicaid expenditures.

- 6. The Form CMS-64 is a summary of actual expenditures derived from source documents including invoices, payment vouchers, governmental funds transfers, expenditure certifications, cost reports and settlements, and eligibility records. It does not include claim-level information.
- 7. Medicaid provider payment occurs at the state level; CMS does not directly pay providers. In the FFS delivery system, the state Medicaid agency must conduct prepayment review for all claims received. Additionally, in both the FFS and managed care delivery systems, the state or the health plan respectively, must generally pay 90 percent of clean claims (i.e., claims that can be processed without obtaining additional information) within 30 days of the date of receipt. Although CMS is not involved in the process, CMS therefore understands that a Medicaid provider in any given state can generally expect to receive payment from the state within 30 days of submitting a claim for service rendered to a Medicaid beneficiary.
- 8. Family planning services and supplies are a mandatory Medicaid benefit in accordance with Section 1905(a)(4)(C) of the Social Security Act. Family planning services must also be provided to individuals receiving Medicaid services through an Alternative Benefit Plan, as described in Section 1937(b)(7) of the Act. This benefit can be provided in both the FFS and managed care delivery systems.

¹ 42 C.F.R. § 447.45(f)

² 42 C.F.R. § 447.45(d)(2); 42 C.F.R. § 447.46(c). In a managed care delivery system, this requirement applies only to managed care organizations (MCOs), and the MCO and its providers may, by mutual agreement, establish an alternative payment schedule.

State Expenditure Reporting and Claims for FFP

- 9. To claim FFP, each state submits its aggregate expenditures on a quarterly basis to CMS electronically via the Medicaid Budget and Expenditure System (MBES) using the Form CMS-64. The state submits this form electronically to CMS 30 days after the end of each quarter (January 30, April 30, July 30, and October 30).
- 10. When submitting its quarterly expenditures, each state certifies that its expenditures are allowable under federal requirements. The Form CMS-64 consists of a series of forms that separate expenditures based on certain categories of services (typically aligned with statutorily defined benefit categories such as inpatient hospital services, nursing facility services, etc., though managed care expenditures are separate reporting line(s)). The Form CMS-64 is CMS's official accounting record of Medicaid expenditures.
- 11. CMS must assure that state expenditures claimed for federal matching funds under Medicaid are programmatically reasonable, allowable, and allocable in accordance with existing federal laws, regulations, and policy guidance. To achieve this, CMS relies primarily upon quarterly reviews of the Form CMS-64 performed by CMCS financial management staff across the country. The quarterly expenditure review process is complex, with up to 225 individual reporting lines for each state, which can result in over 1,000 pages of detailed expenditures each quarter. For each quarter, CMS Medicaid financial staff has 60 days to complete their review, including verifying the accuracy of reported expenditures; determining whether the expenditures are properly supported; verifying the authority for FFP in the expenditures; and verifying the federal match rate.
- 12. CMS has a standard National CMS-64 Review Guide which is used by staff to ensure consistency of the reviews. The Review Guide targets specific areas on which to focus the review, based on risk, while also providing flexibility for staff and managers to use their

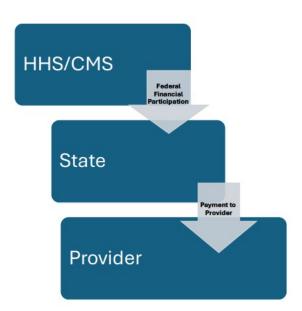
professional discretion to expand or curtail the review based on the complexity of the state's program and issues identified during the review process.

- 13. Although review times may vary, it typically takes CMS up to 6 months from the date of submission of Form CMS-64 to pay any additional FFP requested by the state.
- 14. Section 1132(a) of the Social Security Act requires states to claim FFP for Medicaid and CHIP expenditures within two years of the date of the expenditure. Implementing regulations at 45 C.F.R. 95 Subpart A specify FFP will be available only if the state files a claim within two years after the calendar quarter in which the expenditures were made. Under certain limited circumstances, the Medicaid statute and regulations provide for exceptions to the two-year time limit. Section 1132(a) of the Act and regulations at 45 C.F.R. 95.19 specify that time limit does not apply for any claims that: (a) are an adjustment to prior year costs (this is limited to interim payments reconciled to actual cost); (b) result from an audit exception; (c) result from a court-ordered retroactive payment; or (d) for which the Secretary determines there was good cause for the failure by the state to file the claim within the time period.

Medicaid Fee-for-Service (FFS)

15. In an FFS delivery system, the state directly reimburses providers for each service delivered to Medicaid beneficiaries. States claim FFP for these costs from CMS.

16. The graphic below illustrates the payment relationship in an FFS delivery system at a high level:



Medicaid Managed Care

- 17. Managed care is the predominant delivery system for most Medicaid beneficiaries. In a managed care delivery system, the state contracts with risk-based health plans³ to provide services to Medicaid beneficiaries who are enrolled in the plan (known as enrollees). The state executes a contract with one or more health plans, and this contract outlines the contractual responsibilities of the plan. The state pays health plans capitation payments for taking on these contractual obligations. The state claims FFP for capitation payments.
- 18. A capitation payment is a periodic payment (generally monthly), that a state makes to a health plan on behalf of each beneficiary enrolled under a contract, similar to a health insurance

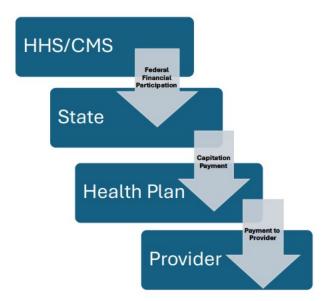
³ 42 C.F.R. § 438.2. There are three types of risk-based health plans (often referred to as managed care plans): (1) MCOs; (2) prepaid inpatient health plans (PIHPs); and prepaid ambulatory health plans (PAHPs). Generally, MCOs are comprehensive health plans while PIHPs and PAHPs are limited benefit plans.

premium paid in employer-sponsored insurance.⁴ The state makes this payment regardless of whether the particular beneficiary receives services during the period covered by the payment.

- 19. The health plan is responsible for contracting with a provider network, negotiating provider payment rates, and paying providers for covered services. Health plans are responsible for maintaining a sufficient provider network to meet the needs of the anticipated number of enrollees. In managed care, enrollees are generally restricted to only utilize the provider network of a health plan (i.e., network providers) with some exceptions for out-of-network providers. A network provider has a provider agreement with a health plan or subcontractor of that plan. Network and out-of-network providers submit claims to the health plans for payment and health plans pay both network and out-of-network providers.
- 20. The graphic below illustrates the Medicaid managed care payment relationship at a high level:

⁴ 42 C.F.R. § 438.2.

⁵ Definition of network provider in 42 C.F.R. § 438.2.



21. With respect to family planning specifically, Sections 1902(a)(23)(B) and 1915(b) of the Social Security Act allow Medicaid managed care enrollees to obtain family planning services and supplies from providers of their choice, including those out-of-network. Thus, in practice, when family planning services and supplies are included in managed care, enrollees receive family planning services from network providers and out-of-network providers, and both provider types are paid by the health plans.

* * *

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct, to the best of my knowledge and belief.

Dated: August 1, 2025

ANNE MARIE COSTELLO

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE

THE FAMILY PLANNING ASSOCIATION)	
OF MAINE D/B/A MAINE FAMILY)	
PLANNING;)	
*)	
Plaintiff,)	
,)	
V.)	
	í	Case No. 1:25-cv-00364
UNITED STATES DEPARTMENT OF)	
HEALTH AND HUMAN SERVICES;)	
,	í	
ROBERT F. KENNEDY, JR., in his official	Ś	
capacity as Secretary of Health and Human	Ś	
Services;	í	
	Ś	
CENTERS FOR MEDICARE &	Ś	
MEDICAID SERVICES	Ś	
and	Ś	
	Ś	
MEHMET OZ, in his official capacity as the	j	
Administrator of the Centers for Medicare &	Ś	
Medicaid Services,	j	
interioria sorvicos,	ì	
Defendants.)	
Determine.)	
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SUPPLEMENTAL DECLARATION OF EVELYN KIELTYKA IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

- I, Evelyn Kieltyka, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that the following is true and correct:
- 1. I am the Senior Vice President of Program Services for Plaintiff Maine Family Planning ("MFP"). As I stated in my first declaration dated July 15, 2025 ("July Declaration"), among other responsibilities, I oversee clinical services to ensure MFP is meeting our revenue and expense targets. This includes helping to manage our five-year Title X grant.

- 2. Title X is a federal grant program administered by the Office of Population Affairs within the Department of Health and Human Services ("HHS"). Title X provides funding for family planning services, including contraception, screening for sexually transmitted infections, and cancer screenings for low-income families. Title X funding is not used for abortion. I have the overall responsibility of managing the performance of our family planning subgrantees, communicating with subgrantees, and applying every year for the renewal of MFP's Title X grant. I submit this supplemental declaration in support of Plaintiff's motion for a temporary restraining order and/or preliminary injunction. It is based on my personal knowledge and experience, and my review of MFP's business records.
- 3. Since my July Declaration, there have been updates to MFP's status as a Title X grantee. In 2022, MFP was awarded a five-year non-competitive Title X grant with a project period of April 1, 2022 through March 31, 2027. During each year of the five-year project period, MFP has to apply for a continuation award. Until this year, the grant was renewed annually during the non-competitive yearly application process. Without any prior notice, on March 31, 2025, MFP received a letter from HHS stating that our Title X grant was temporarily withheld. But on July 23, 2025, MFP received another letter from HHS notifying us that our Title X grant would be restored, and on August 6, 2025, MFP received the Notice of Award, which includes the amount of the grant and the grant's terms and conditions.
- 4. At the time of my July Declaration, MFP had not received any notice regarding the restoration of Title X funds. Our calculation that we would have to discharge all Medicaid patients was thus based on an understanding that MFP would not have *any* Title X funding, which is no longer true.

- 5. MFP's reinstated Title X grant totals approximately \$1.78 million for the funding period from April 1, 2025, through March 31, 2026. As the sole Title X grantee for the state of Maine, MFP distributes a portion of this funding to subgrantees and does not use all the funding at MFP clinics. For this grant cycle, approximately \$1.08 million of the total funding received will be used by MFP, though some of that funding will be used for grant monitoring and program management. Approximately \$880,000 of the total Title X grant will be available for use at MFP clinics.
- 6. Title X requires grantees to prioritize serving patients from low-income families while Title X funds are available. For us to comply with this program requirement—while Title X funds are available—we cannot discharge Medicaid patients from our family planning practice, as many of them qualify as low-income families under Title X regulations. We are also required to continue accepting new Medicaid patients for family planning services.
- 7. But MFP's share of Title X funding does not allow us to continue to serve *all* Medicaid patients. Specifically, because Title X funding is for family planning services, we cannot use those funds to provide primary care services unrelated to family planning care. We currently provide primary care at our clinics in Presque Isle, Houlton, and Ellsworth. We started offering primary care in these areas because there are provider shortages, and patients faced long wait times to see a provider. Our primary care practice has been modeled to serve Medicaid patients, and without Medicaid funding, our primary care practice is not self-sustaining.
- 8. As I stated in my July Declaration, we have already stopped taking new primary care patients enrolled in Medicaid. Since my July Declaration, we have determined that we cannot continue the primary care practice if we cannot serve Medicaid patients. No later than September 30, we will notify all existing primary care patients that, regardless of insurance status, we will no longer be able to provide them with primary care unrelated to family planning services past the

end of October 2025. Additionally, while we plan to continue serving family planning patients for as long as we can, once Title X funds run out, we will need to discharge or stop serving family planning patients enrolled in Medicaid. We expect the grant funds will run out around September 2025. Without court intervention, unless we can identify a new funding source, we will have to look at our limited reserve funding to continue providing family planning care to Medicaid patients. We do not know for how long we will be able to provide that care before we have to close clinics or discharge patients.

- 9. As I stated in my July Declaration, discharging our patients will interfere with our ability to carry on our mission of ensuring that all people have access to high-quality, culturally relevant and affordable health care services. Our primary care clinics in Houlton and Presque Isle are located in Aroostook County, and our Ellsworth clinic is in Hancock County. Both counties face a significant shortage of healthcare providers. Patients in these areas rely on MFP's clinics for primary care, often traveling considerable distances to access services. If we are forced to discharge patients, there will be few—if any—local providers available to meet their needs. Additionally, ending our primary care practice would require us to terminate two providers who currently provide primary care; without these providers, it would be challenging reestablish a primary care practice in the future.
- 10. Turning away vulnerable patients will also damage MFP's reputation as a trusted community provider. Even if Medicaid funding is later restored, I worry that patients who have been discharged from MFP because of the Defunding Provision may feel like they cannot come back, or cannot trust that we will not have to discharge them from care again.

Evelyn J. Kieltham

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 8 day of August 2025 at Augusta, Maine.

Evelyn Kieltyka

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE

THE FAMILY PLANNING ASSOCIATION)
OF MAINE D/B/A MAINE FAMILY)
PLANNING;)
)
Plaintiff,)
)
v.)
) Case No. 1:25-cv-00364
UNITED STATES DEPARTMENT OF)
HEALTH AND HUMAN SERVICES;)
,)
ROBERT F. KENNEDY, JR., in his official)
capacity as Secretary of Health and Human)
Services;)
,)
CENTERS FOR MEDICARE &)
MEDICAID SERVICES)
and)
)
MEHMET OZ, in his official capacity as the)
Administrator of the Centers for Medicare &)
Medicaid Services,)
,)
Defendants.)
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	,

NOTICE OF APPEAL

Please take notice that Plaintiff Family Planning Association of Maine d/b/a Maine Family Planning hereby appeals to the United States Court of Appeals for the First Circuit from this Court's August 25, 2025 Order on Motion for Preliminary Injunction, ECF No. 31.

Dated: August 29, 2025 Respectfully submitted,

/s/ Meetra Mehdizadeh

Meetra Mehdizadeh*
Astrid Marisela Ackerman*
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UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

THE FAMILY PLANNING	
ASSOCIATION OF MAINE d/b/a)
MAINE FAMILY PLANNING,)
ŕ)
Plaintiff)
)
v.) No. 1:25-cv-00364-LEW
)
UNITED STATES DEPARTMENT)
OF HEALTH AND HUMAN)
SERVICES,)
)
ROBERT F. KENNEDY, JR.)
in his official capacity as Secretary of)
the Department of Health and Human)
Services,)
)
CENTERS FOR MEDICARE)
& MEDICAID SERVICES, and)
,)
MEHMET OZ, in his official capacity)
as the Administrator of the Centers for)
Medicare & Medicaid Services,)
,)
Defendants)
	· /

ORDER ON MOTION FOR INJUNCTION PENDING APPEAL

Plaintiff The Family Planning Association of Maine d/b/a Maine Family Planning seeks an injunction pending appeal. Pl.'s Emergency Mot. for Injunction Pending Appeal (ECF No. 33). On August 25, 2025, I issued an Order on Motion for Preliminary Injunction (ECF No. 31), in which I denied Plaintiff's request that the Court enjoin Defendants from

compliance with certain federal spending legislation pending the resolution of this litigation. The Rules require that I address Plaintiff's request for an injunction pending appeal in the first instance. *See* Fed. R. App. P. 8(a)(1)(C). The following discussion assumes the reader is familiar with the August 25 Order.

To secure from a district court injunctive relief pending appeal, "the moving party need not persuade the court that it is likely to be reversed on appeal." Canterbury Liquors & Pantry v. Sullivan, 999 F. Supp. 144, 150 (D. Mass. 1998). However, "more than a mere possibility of relief is required." Nken v. Holder, 556 U.S. 418, 434 (2009) (internal quotation marks omitted). The provision of a stay pending appeal is a discretionary matter attuned to the circumstance of the case at hand. Id. at 433. The exercise of that discretion is guided by the moving party's ability to convincingly demonstrate the following: (1) likelihood of success on appeal; (2) irreparable harm absent injunctive relief; (3) a lack of substantial injury to others having an interest in the decision under appeal; and (4) service of the public interest. Id. at 434; Arborjet, Inc. v. Rainbow Treecare Sci. Advancements, Inc., 794 F.3d 168, 171 (1st Cir. 2015). Of these elements, the "first two factors are the most critical," Respect Maine PAC v. McKee, 622 F.3d 13, 15 (1st Cir. 2010), but failure to "show a strong likelihood of success" on appeal is an independent basis for denial of an injunction pending appeal, id.; Acevedo-Garcia v. Vera-Monroig, 296 F.3d 13, 16 (1st Cir. 2002) (per curiam); *In re Elias*, 182 Fed. App'x 3 (1st Cir. 2006) (per curiam).

Plaintiff argues that my previous assessment of the merits was misguided because each of the factors set forth in section 71113 of the One Big Beautiful Bill Act (hereafter

"BBB")¹ that disqualifies certain entities from receiving Medicaid reimbursement lacks a rational basis. According to Plaintiff, the individual factors do not "advance" any governmental justification, Pl.'s Mem. of Law (ECF No. 33-1) at 7-10, and, consequently, are exposed as a naked act of discriminatory animus toward Planned Parenthood, *id.* at 4-7.

As indicated in the August 25 Order, Plaintiff's arguments against each of the several factors are well reasoned but amount to, in the end, a valorous debate performance on matters that are ultimately assigned to Congress. The relief Plaintiff seeks is not available so long as there exists "any reasonably conceivable state of facts that could provide a rational basis for the classification." FCC v. Beach Comms., Inc., 508 U.S. 307, 313 (1993). The Equal Protection Clause "is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *Id.* "The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted." Vance v. Bradley, 440 U.S. 93, 97 (1979) (footnote omitted). Consequently, even though Plaintiff's challenges are well reasoned and may persuade a large cross section of the public, Plaintiff still cannot win a mere rational basis contest where the light of reason shines on the choices made by Congress. Unlike other legal contexts, persuading a judge that your reasoning is better

¹ Pub. L. No. 119-21, H.R. 1, 119th Cong. (2025).

does not ensure a victory in a rational basis regime. *Beach Comms.*, 508 U.S. at 313; *Vance v. Bradley*, 440 U.S. at 97.

Furthermore, while Plaintiff aims to kick each of the four legs out from under the disqualification provision, Plaintiff overlooks the fact that those factors, in combination, serve to identify the larger providers of non-qualifying abortion services in the United States, according to Congress, and Congress could rationally believe that these providers have the abortion reach they do in part thanks to their enjoyment of federal funding and tax-exempt status. In fact, Plaintiff appears to concede that the disqualification provision is meant to have precisely this targeting effect. And although Plaintiff observes that any targeting must not be the product of animus, unconstitutional animus is different than the generalized disfavor members of Congress may harbor based on deeply held views about controversial conduct coupled with a desire to reduce subsidies to or programmatic dependence on the major providers of non-qualifying abortion products and services. In fact, it is plausible that Congress means to advance the latter, permissible objective, even if certain members of Congress have in the past voiced some manner of political grudge against Planned Parenthood. Because the permissible course is plausible, my inquiry is supposed to be at an end. United States v. Skrmetti, 605 U.S. ---, 145 S. Ct. 1816, 1835 (2025).

"The rational basis inquiry 'employs a relatively relaxed standard reflecting the Court's awareness that the drawing of lines that create distinctions is peculiarly a legislative task and an unavoidable one." *Id.* (quoting *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 314 (1976)). "Perfection in making the necessary classifications is neither possible

nor necessary." *Massachusetts Bd. of Ret.*, 427 U.S. at 314. With section 71113 of the BBB, Congress appears to be doing with Medicaid spending what it routinely does in any number of other pieces of legislation, *i.e.*, drawing lines between preferred and disfavored conduct, based on a combination of factors.

Plaintiff also offers supplemental arguments concerning the precedential weight of Planned Parenthood of Minnesota v. Minnesota, 612 F.2d 359 (8th Cir. 1980), sum. aff'd, 448 U.S. 901 (1980). Plaintiff argues that because the analysis there was not based on the constitutionality of abortion, the recent issuance of Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022), has no importance or relevance to the merits of their equal protection challenge. But that is like saying that a challenge to a firearm regulation would be stronger in the absence of the Second Amendment. The fundamental nature of the right in question animates the deliberative process whether it is expressly acknowledged as causative to the outcome or not. When a fundamental right is removed from the equation, normative (i.e., policy) considerations are permitted and positive assessments about what is "most" rational are not supposed to dictate outcomes in a judicial venue. Pers. Adm'r of Massachusetts v. Feeney, 442 U.S. 256, 272 (1979) ("The calculus of effects, the manner in which a particular law reverberates in a society, is a legislative and not a judicial responsibility.").

Additionally, *Planned Parenthood of Minnesota* was decided in 1980, not long after the Supreme Court decided *Roe v. Wade*, 410 U.S. 113 (1973). The prohibition in *Minnesota* applied to any non-profit other than a hospital or health maintenance organization that performed any abortions at all, regardless of any distinction between what

are, for purposes of federal law, qualifying and non-qualifying abortions. 612 F.2d at 360. The current legislation draws a distinction between the two. Furthermore, the current legislation is drawn in the context of what members of Congress could fairly characterize as a steady outgrowth and increase of non-qualifying abortion provision over the course of 45 years due, in part, to a steady stream of federal subsidies under Medicaid and Title X though neither statutory scheme is meant to compensate non-qualifying abortion care. In that time, certain providers—plausibly, those who meet all four of the criteria for prohibition—have come to be regarded within their respective regions as "Big Abortion," at least by members of Congress. That historical development modifies the factual controversy in this case sufficiently, for purposes of a rational basis inquiry, to step outside the precedential impact of the Supreme Court's unwritten summary affirmance in Minnesota. The District Court Judge who engaged in fact finding in Minnesota would not have anticipated that steady development any more than the Circuit Court judges and Supreme Court justices who reviewed the decision would have. Allen v. Wright, 468 U.S. 737, 764 (1984), abrogated by Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118 (2014) (observing that a prior summary affirmance "could hardly establish principles contrary to those set out in opinions issued after full briefing and argument" (citing Fusari v. Steinberg, 419 U.S. 379, 392 (1975) (Burger, C. J., concurring))); Fusari, 419 U.S. at 391-92 ("When we summarily affirm, without opinion, . . . we affirm the judgment but not necessarily the reasoning by which it was reached. An unexplicated summary affirmance settles the issues for the parties, and is not to be read as a renunciation by this Court of doctrines previously announced in our opinions after full argument."

(Footnote omitted)); Cent. Maine Power Co. v. Maine Comm'n on Gov'tal Ethics & Election Practices, 144 F.4th 9, 23 n.5 (1st Cir. 2025) (citing Anderson v. Celebrezze, 460 U.S. 780, 784 n.5 (1983) (same)).

Plaintiff also critiques the significance of *Rust v. Sullivan*, 500 U.S. 173 (1991), on which I relied in part, because it involved challenges based on the First Amendment and the then, substantive due process right to abortion. The significance of *Rust* is in its relation to congressional leeway when it comes to imposing conditions in the context of a similar federal spending program (Title X) and the Court's decision to uphold conditions on the receipt of funding despite challenges based on fundamental rights, whereas the current case involves only non-suspect classifications. ²

For the reasons articulated in the August 25 Order, I disagree with Plaintiff that, absent judicial policy ranking, it is likely to achieve a court ruling that Congress is

Plaintiff suggests in a footnote that the August 25 Order asserted that corporations are not entitled to equal protection of the law. Pl.'s Emergency Mot. for Inj. Pending Appeal at 7, n.1. That is not an accurate interpretation of the Order. The reference to corporate entities was clearly modified to identify those serving congressional objectives in the context of a federal program, not to suggest that corporations are not protected by the Equal Protection Clause. See August 25 Order at 10 ("[T]he written Supreme Court opinions in this line all appear to involve profound irrationalities that target individuals for disfavored treatment rather than the selective treatment of entities enlisted through federal funding to carry out congressional objectives."). Plaintiff also suggests in the same footnote that I did not understand that the Equal Protection Clause could restrain congressional spending activities, but I quite clearly stated: "It is well-established that spending decisions must not offend the Equal Protection Clause." August 25 Order at 8. To the extent my language suggested reticence, that is simply because Plaintiff does not ask the Court to enjoin an Executive Branch's refusal to honor a spending bill enacted by the Legislative Branch, but rather to enjoin members of the Executive Branch to disregard a spending bill enacted by the Legislative Branch. Finally, Plaintiff's citation of Regan v. Taxation With Representation of Washington, 461 U.S. 540 (1983), only tends to reinforce my prediction on the merits of this case. See id. at 549 (observing that Congress can condition access to "largesse" in the nature of appropriations and tax exemptions as it wills).

constitutionally barred from charting a new legislative course—in the context of a federal

spending program—that separates, incrementally, providers from the Medicaid funding

stream based in part on concerns over the scope of such entities' reach when it comes to

the provision of non-qualifying abortions or presumptions about the number of non-

qualifying abortions they provide. Because I find that Plaintiff is not likely to succeed on

the merits, I conclude that an injunction pending appeal is not warranted.

The Emergency Motion for Preliminary Injunction pending appeal (ECF No. 33) is

DENIED.

SO ORDERED.

Dated this 8th day of September, 2025.

/s/ Lance E. Walker

Chief U.S. District Judge

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CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system, which will serve copies on registered CM/ECF users.

CENTER FOR REPRODUCTIVE RIGHTS

/s/ Meetra Mehdizadeh

Meetra Mehdizadeh

Counsel for Plaintiff-Appellant