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

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

Plaintiffs,

v.

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

Defendant.

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

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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

INTRODUCTORY STATEMENT

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

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

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

3. As is required by federal law, Medicaid enrollees, such as Plaintiff Jane Doe, may seek family planning services from the participating provider of their choice and have those services covered by Medicaid.

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

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

6. As of July 1, 2016, the Act will disqualify the Provider Plaintiffs from providing critical services to Mississippi men and women who depend on them for that care. Without timely relief from this Court, the Act will cause irreparable harm to the Provider Plaintiffs'

Medicaid patients, including Jane Doe, who will lose their provider of choice and will find their access to critical health services interrupted.

JURISDICTION AND VENUE

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

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

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

THE PARTIES

A. Plaintiffs

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

11. Plaintiff PPGMR is a not-for-profit corporation organized under the laws of Tennessee. PPGMR provides reproductive health care at a health center in Memphis, Tennessee, and many of the patients it serves reside in Mississippi counties that lie within the Memphis

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

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

B. Defendant

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

THE ACT

14. The Act provides that the Division of Medicaid "shall not authorize payment of part or all of the costs of care and services rendered by an entity that performs nontherapeutic abortions, maintains or operates a facility where nontherapeutic abortions are performed, or is affiliated with such an entity." SB 2338 § 1. The Act goes on to define "nontherapeutic abortions" as "abortions that are not qualified for federal matching funds under the Medicaid program, 42 USC Section 1396 et seq." *Id.* Such abortions are those limited to life endangerment, rape and incest. Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. H, tit. V, §§ 506–507, 129 Stat. 2242, 2649.

THE MEDICAID PROGRAM

A. The Medicaid Statute

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

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

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

18. Congress has singled out family planning services for special additional protections to ensure freedom of choice, specifically providing that, with respect to these services and with certain limited exceptions not applicable here, "enrollment of an individual eligible for medical assistance in a primary care case-management system . . . , a medicaid managed care organization, or a similar entity shall not restrict the choice of the qualified person from whom the individual may receive services . . . ." 42 U.S.C. § 1396a(a)(23)(B); 42 C.F.R. § 431.51(b)(2) (implementing regulations requiring the same).

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

B. Implementation of the Medicaid Act

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

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

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

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

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

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

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

Letter from Vikki Wachino, Dir., CMS, to State Medicaid Dirs. 2 (Apr. 19, 2016), https://www.medicaid.gov/federal-policy-guidance/downloads/SMD16005.pdf.

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

Medicaid Dir., Iowa Dep't of Human Servs. (Feb. 2, 2015), http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ia/wellness-plan/ia-wellness-plan-current-appvl-02022015.pdf (denying similar request from Iowa: "No waiver of freedom of choice is authorized for family planning providers.").

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

MISSISSIPPI'S HISTORY OF ANIMUS TOWARD ABORTION

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

27. Current Mississippi laws already severely restrict access to abortion. The state imposes a 24-hour delay on women seeking abortion following receipt of state-mandated information. Miss. Code. Ann. § 41-41-33. Women must undergo an ultrasound and must be offered the opportunity to view the ultrasound and hear the fetal heartbeat prior to obtaining an abortion. Miss. Code. Ann. § 41-41-34. It is illegal to perform an abortion after 20 weeks

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

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

29. During the 2016 legislative session, in addition to the Act, Mississippi banned the most common method of second trimester abortions in the United States. Mississippi House Bill 519, attached hereto as Ex. B. Upon signing the bill, Governor Bryant stated, "We're making Mississippi the safest place in America for an unborn child." Jeff Amy, *Bryant signs bill banning 2nd trimester abortion method*, Clarion Ledger (Apr. 15, 2016),

http://www.clarionledger.com/story/news/ politics/2016/04/15/bryant-signs-bill-banning-2nd-trimester-abortion-method/83092298/.

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

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

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

32. The Mississippi Division of Medicaid approved PPGMR as an enrolled Mississippi Medicaid provider in 2016. Prior to becoming an enrolled provider, PPGMR received 1–2 phone calls per week from Mississippi Medicaid patients inquiring as to whether PPGMR accepted Mississippi Medicaid.

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

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

35. Over the past decade, the need for publicly funded contraceptive services has increased while resources have decreased. Of the estimated 335,980 Mississippi women who needed family planning services in 2013, a significant majority (67.4%) require publicly funded contraceptive services and supplies. Jennifer L. Frost et al., Guttmacher Institute, *Contraceptive*

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

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

37. The Provider Plaintiffs seek to continue to work to meet the need for publicly supported family planning services by continuing as Medicaid providers. PPSE's Hattiesburg health center, for example, provides care in an HHS-designated Primary Care Health

Professional Shortage Area—a geographic area in which primary care professionals are practically inaccessible. Each of the six counties that neighbor Forrest County, where the health center is located, is also designated as a medically underserved population area. PPGMR's Memphis health center is just across the border from DeSoto County, Mississippi, which is designated as a medically underserved population area. The three additional closest Mississippi counties to PPGMR's health center (Tunica, Tate, and Marshall Counties) have been designated as both medically underserved population areas and as primary care professional shortage areas. U.S. Dep't of Health and Human Servs., Find Shortage Areas, Health Resources and Services Administration, http://datawarehouse.hrsa.gov/tools/analyzers/geo/ShortageArea.aspx (enter clinic or county seat address and click "submit").

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

39. In order to continue to fulfill their mission of ensuring broad access to reproductive healthcare in Mississippi, the Provider Plaintiffs will temporarily continue to serve Mississippi Medicaid patients while they litigate this case, but they will not be able to do so

indefinitely. PPSE will temporarily utilize grant money to assist Medicaid patients to cover the costs of their services, but that grant money is finite. PPGMR will serve Mississippi Medicaid patients and refrain from submitting claims for reimbursement for those services, which they may do for a year under the terms of the program, unless and until they prevail in this lawsuit, taking on the financial risk that they may be unable to seek reimbursement. However, if Plaintiffs do not timely receive relief from this Court, PPSE and PPGMR will be forced to either turn away Mississippi Medicaid patients or require them to self-pay for their care.

40. Therefore, if the Act is upheld, it will cause Plaintiffs' Mississippi Medicaid patients, including Jane Doe, to be denied access to the provider of their choice. Patients insured through Medicaid choose to receive their reproductive health care from Planned Parenthood based on a number of factors that are generally not available at other providers. With their evidence-based practices and up-to-date technology, Planned Parenthood health centers are known as providers of high-quality medical care. Many patients also turn to these providers for their reproductive health care because they are concerned about their privacy and fear being judged by other providers.

41. In addition, many low-income patients have unique scheduling constraints because they are juggling inflexible work schedules, childcare obligations, transportation challenges, and lack of childcare resources. To ensure that these patients have access to family planning services, PPSE and PPGMR offer walk-in appointments, and offer same day birth control shots, birth control implants, and intrauterine devices (which are the most effective methods of contraception), so that patients only need to make one trip to a health center to obtain their contraceptive method of choice. PPGMR also offers extended hours and Saturday hours.

PPSE and PPGMR also have either Spanish-speaking staff or translator services available to non-English speaking patients at all times.

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

43. Plaintiffs have no adequate remedy at law.

CLAIMS FOR RELIEF

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

44. Plaintiffs hereby incorporate Paragraphs 1 through 43 above.

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

CLAIM II—FOURTEENTH AMENDMENT EQUAL PROTECTION

46. Plaintiffs hereby incorporate Paragraphs 1 through 43 above.

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

CLAIM III—FOURTEENTH AMENDMENT DUE PROCESS

48. Plaintiffs hereby incorporate Paragraphs 1 though 43 above.

49. The Act violates the due process rights of the Provider Plaintiffs and their patients by imposing an unconstitutional condition on the Provider Plaintiffs' eligibility to participate in

Medicaid based on their exercise, and their patients' exercise, of constitutionally protected activity.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court:

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

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

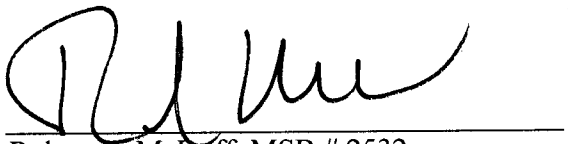
52. Issue a declaratory judgment that the Act violates the Due Process Clause of the Fourteenth Amendment and is therefore void and of no effect;

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

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

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

Respectfully submitted this 15th day of June, 2016.



Robert B. McDuff, MSB # 2532
Sibyl C. Byrd, MSB # 100601
McDuff & Byrd
767 North Congress Street
Jackson, MS 39202

(601) 969-0802
(601) 969-0804 (telefacsimile)
rbm@mcdufflaw.com
scb@mcdufflaw.com

Melissa Cohen,* NY Bar #4782918
Planned Parenthood Federation of America
123 William St., 9th Floor
New York, NY 10038
(212) 261-4649
(202) 296-3480 (telefacsimile)
melissa.cohen@ppfa.org

Carrie Y. Flaxman,* DC Bar # 458681
Planned Parenthood Federation of America
1110 Vermont Ave., NW, Suite 300
Washington, DC 20005
(202) 973-4830
(202) 296-3480 (telefacsimile)
carrie.flaxman@ppfa.org

Counsel for Plaintiffs

* *Pro hac vice* admission to be applied for

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

3:16-cv-454 DPJ-FKB

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Planned Parenthood Southeast, Inc.; Planned Parenthood of the Greater Memphis Region, Inc.; Jane Doe

(b) County of Residence of First Listed Plaintiff Forrest County
(EXCEPT IN U.S. PLAINTIFF CASES)

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
JUN 15 2016
ARTHUR JOHNSTON
BY _____ DEPUTY

(c) Attorney's (Firm Name, Address, and Telephone Number)
See attachment.

DEFENDANTS

Mississippi Division of Medicaid, David J. Dzielak, Executive Director, in his official capacity

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 610 Agriculture	☐ 422 Appeal 28 USC 158	☐ 400 State Reapportionment
☐ 120 Marine	☐ 310 Airplane	☐ 362 Personal Injury - Med. Malpractice	☐ 620 Other Food & Drug	☐ 423 Withdrawal 28 USC 157	☐ 410 Antitrust
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 365 Personal Injury - Product Liability	☐ 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	☐ 430 Banks and Banking
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability	☐ 630 Liquor Laws	☐ 820 Copyrights	☐ 450 Commerce
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	☐ 640 R.R. & Truck	☐ 830 Patent	☐ 460 Deportation
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 650 Airline Regs.	☐ 840 Trademark	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 660 Occupational Safety/Health		☐ 480 Consumer Credit
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 690 Other		☐ 490 Cable/Sat TV
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	LABOR	SOCIAL SECURITY	☐ 810 Selective Service
☐ 190 Other Contract	☐ 360 Other Personal Injury		☐ 710 Fair Labor Standards Act	☐ 861 HIA (1395ff)	☐ 850 Securities/Commodities/ Exchange
☐ 195 Contract Product Liability			☐ 720 Labor/Mgmt. Relations	☐ 862 Black Lung (923)	☐ 875 Customer Challenge 12 USC 3410
☐ 196 Franchise			☐ 730 Labor/Mgmt.Reporting & Disclosure Act	☐ 863 DIWC/DIWW (405(g))	☐ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	☐ 740 Railway Labor Act	☐ 864 SSID Title XVI	☐ 891 Agricultural Acts
☐ 210 Land Condemnation	☐ 441 Voting	☐ 510 Motions to Vacate Sentence	☐ 790 Other Labor Litigation	☐ 865 RSI (405(g))	☐ 892 Economic Stabilization Act
☐ 220 Foreclosure	☐ 442 Employment	Habeas Corpus:	☐ 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS	☐ 893 Environmental Matters
☐ 230 Rent Lease & Ejectment	☐ 443 Housing/ Accommodations	☐ 530 General		☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 894 Energy Allocation Act
☐ 240 Torts to Land	☐ 444 Welfare	☐ 535 Death Penalty		☐ 871 IRS—Third Party 26 USC 7609	☐ 895 Freedom of Information Act
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 540 Mandamus & Other			☐ 900Appeal of Fee Determination Under Equal Access to Justice
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	☐ 550 Civil Rights			☐ 950 Constitutionality of State Statutes
	☒ 440 Other Civil Rights	☐ 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
42 U.S.C. 1983 and 42 U.S.C 1396a(a)(23)

Brief description of cause:
Challenge to statute excluding Plaintiffs from Mississippi Medicaid program

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 6/15/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

#34643039816

ATTACHMENT TO CIVIL COVER SHEET

Plaintiffs' Attorneys

Robert B. McDuff, MSB # 2532
McDuff & Byrd
767 North Congress Street
Jackson, MS 39202
(601) 969-0802
(601) 969-0804 (telefacsimile)
rbm@mcdufflaw.com

Sibyl C. Byrd, MSB # 100601
McDuff & Byrd
767 North Congress Street
Jackson, MS 39202
(601) 969-0802
(601) 969-0804 (telefacsimile)
scb@mcdufflaw.com

Melissa Cohen,* NY Bar #4782918
Planned Parenthood Federation of America
123 William St., 9th Floor
New York, NY 10038
(212) 261-4649
(202) 296-3480 (telefacsimile)
melissa.cohen@ppfa.org

Carrie Y. Flaxman,* DC Bar # 458681
Planned Parenthood Federation of America
1110 Vermont Ave., NW, Suite 300
Washington, DC 20005
(202) 973-4830
(202) 296-3480 (telefacsimile)
carrie.flaxman@ppfa.org

* *Pro hac vice* admission to be applied for

EXHIBIT A

MISSISSIPPI LEGISLATURE REGULAR SESSION 2016

By: Senator(s) Fillingane, Watson, McDaniel To: Medicaid; Appropriations

SENATE BILL NO. 2238
(As Sent to Governor)

AN ACT TO PROHIBIT THE DIVISION OF MEDICAID FROM AUTHORIZING PAYMENT OF PART OR ALL OF THE COSTS OF CARE AND SERVICES RENDERED BY ANY ENTITY THAT PERFORMS NONTHERAPEUTIC ABORTIONS, MAINTAINS OR OPERATES A FACILITY WHERE NONTHERAPEUTIC ABORTIONS ARE PERFORMED, OR IS AFFILIATED WITH SUCH AN ENTITY; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Notwithstanding any other provision of Section 43-13-117, the division shall not authorize payment of part or all of the costs of care and services rendered by any entity that performs nontherapeutic abortions, maintains or operates a facility where nontherapeutic abortions are performed, or is affiliated with such an entity. For purposes of this provision, "nontherapeutic abortions" means abortions that are not qualified for federal matching funds under the Medicaid program, 42 USC Section 1396 et seq., and as amended hereafter, and "affiliated with" means having a legal relationship with another entity created or governed by one or more written instruments that demonstrates common control, ownership, franchisee status or management, or that grants a license or other authority to utilize

the other entity's brand name, trademark, service mark or other registered identification mark.

SECTION 2. This act shall take effect and be in force from and after July 1, 2016.

~ OFFICIAL ~

ST: Abortion services; prohibit Division of Medicaid from reimbursing Planned Parenthood Federation of America (PPFA).

EXHIBIT B

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2016

By: Representatives Mims, Eubanks, Dixon, Hopkins, Henley, Crawford, Formby, Gipson

To: Public Health and Human Services

HOUSE BILL NO. 519
(As Sent to Governor)

AN ACT TO BE KNOWN AS THE MISSISSIPPI UNBORN CHILD PROTECTION FROM DISMEMBERMENT ABORTION ACT; TO DEFINE CERTAIN TERMS; TO PROVIDE THAT IT IS UNLAWFUL FOR ANY PERSON TO PURPOSELY PERFORM OR ATTEMPT TO PERFORM A DISMEMBERMENT ABORTION AND THEREBY KILL AN UNBORN CHILD UNLESS NECESSARY TO PREVENT SERIOUS HEALTH RISK TO THE UNBORN CHILD'S MOTHER; TO AUTHORIZE INJUNCTIONS TO PREVENT DISMEMBERMENT ABORTIONS; TO AUTHORIZE A CAUSE OF ACTION FOR CIVIL DAMAGES AGAINST PERSONS WHO HAVE PERFORMED DISMEMBERMENT ABORTIONS; TO PROVIDE CRIMINAL PENALTIES FOR VIOLATIONS OF THIS ACT; TO PROVIDE FOR THE PROTECTION OF PRIVACY IN COURT PROCEEDINGS FOR WOMEN UPON WHOM AN ABORTION HAS BEEN PERFORMED; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Short title. This act may be cited as the "Mississippi Unborn Child Protection from Dismemberment Abortion Act."

SECTION 2. Definitions. For the purposes of this act, the following terms shall be defined as provided in this section:

(a) "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device:

(i) To purposely kill the unborn child of a woman known to be pregnant; or

(ii) To purposely terminate the pregnancy of a woman known to be pregnant, with a purpose other than:

1. After viability to produce a live birth and preserve the life and health of the child born alive; or

2. To remove a dead unborn child.

(b) "Attempt to perform an abortion" means to do or omit to do anything that, under the circumstances as the actor believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in oneself performing an abortion. Such substantial steps include, but are not limited to:

(i) Agreeing with an individual to perform an abortion on that individual or on some other person, whether or not the term "abortion" is used in the agreement, and whether or not the agreement is contingent on another factor such as receipt of payment or a determination of pregnancy; or

(ii) Scheduling or planning a time to perform an abortion on an individual, whether or not the term "abortion" is used, and whether or not the performance is contingent on another factor such as receipt of payment or a determination of pregnancy.

This definition shall not be construed to require that an abortion procedure actually must be initiated for an attempt to occur.

(c) "Dismemberment abortion" means, with the purpose of causing the death of an unborn child, purposely to dismember a

living unborn child and extract him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors or similar instruments that, through the convergence of two rigid levers, slice, crush, and/or grasp a portion of the unborn child's body to cut or rip it off.

The term "dismemberment abortion" does not include an abortion that uses suction to dismember the body of the unborn child by sucking fetal parts into a collection container, although it does include an abortion in which a dismemberment abortion is used to cause the death of an unborn child but suction is subsequently used to extract fetal parts after the death of the unborn child.

(d) "Physician" means a person licensed to practice medicine and surgery or osteopathic medicine and surgery, or otherwise legally authorized to perform an abortion.

(e) "Purposely" means the following: A person acts purposely with respect to a material element of an offense when:

(i) If the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and

(ii) If the element involves the attendant circumstances, he is aware of the existence of those circumstances or he believes or hopes that they exist.

(f) "Serious health risk to the unborn child's mother" means that in reasonable medical judgment, she has a condition

that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No such condition may be determined to exist if it is based on a claim or diagnosis that the woman will engage in conduct that she intends to result in her death or in substantial and irreversible physical impairment of a major bodily function.

(g) "Woman" means a female human being whether or not she has reached the age of majority.

SECTION 3. Dismemberment abortion prohibited. (1) Notwithstanding any other provision of law, it shall be unlawful for any person to purposely perform or attempt to perform a dismemberment abortion and thereby kill an unborn child unless necessary to prevent serious health risk to the unborn child's mother.

(2) A person accused in any proceeding of unlawful conduct under subsection (1) of this section may seek a hearing before the State Board of Medical Licensure on whether the dismemberment abortion was necessary to prevent serious health risk to the unborn child's mother. The board's findings are admissible on that issue at any trial in which the unlawful conduct is alleged. Upon a motion of the person accused, the court shall delay the beginning of the trial for not more than thirty (30) days to permit such a hearing to take place.

(3) No woman upon whom an abortion is performed or attempted to be performed shall be thereby liable for performing or attempting to perform a dismemberment abortion. No nurse, technician, secretary, receptionist or other employee or agent who is not a physician but who acts at the direction of a physician, and no pharmacist or other individual who is not a physician but who fills a prescription or provides instruments or materials used in an abortion at the direction of or to a physician shall be thereby liable for performing or attempting to perform a dismemberment abortion.

(4) This act does not prevent abortion for any reason, including rape and incest by any other method.

SECTION 4. Remedies - Injunctions against dismemberment abortions. (1) Civil and criminal penalties for violations of this act may be imposed under the following priority:

(a) Injunctive relief;

(b) Civil cause of action; and

(c) Criminal action.

(2) A cause of action for injunctive relief against a person who has performed or attempted to perform a dismemberment abortion in violation of Section 3 of this act may be maintained as a priority action by:

(a) A woman upon whom such a dismemberment abortion was performed or attempted to be performed;

(b) A person who is the spouse, parent or guardian of, or a current or former licensed health care provider of, a woman upon whom such a dismemberment abortion was performed or attempted to be performed; or

(c) A prosecuting attorney with appropriate jurisdiction.

(3) The injunction shall prevent the defendant from performing or attempting to perform further dismemberment abortions in violation of Section 3 of this act in this state.

SECTION 5. Civil remedies. (1) Only in the event a cause of action for injunctive relief under Section 4 has been denied by a court of competent jurisdiction, a cause of action for civil damages against a person who has performed a dismemberment abortion in violation of Section 3 of this act may be maintained by:

(a) Any woman upon whom a dismemberment abortion has been performed in violation of Section 3 of this act;

(b) The father of the unborn child, if married to the woman at the time the dismemberment abortion was performed; or

(c) If the woman had not attained the age of eighteen (18) years at the time of the dismemberment abortion or has died as a result of the abortion, the maternal grandparents of the unborn child.

(2) No damages may be awarded a plaintiff if the pregnancy resulted from the plaintiff's criminal conduct.

(3) Damages awarded in such an action shall include:

(a) Money damages for all injuries, psychological and physical, occasioned by the dismemberment abortion; and

(b) Statutory damages equal to three (3) times the cost of the dismemberment abortion.

SECTION 6. Attorney's fees. (1) If judgment is rendered in favor of the plaintiff in an action described in Section 4 or 5 of this act, the court shall also render judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant.

(2) If judgment is rendered in favor of the defendant in an action described in Section 4 or 5 of this act and the court finds that the plaintiff's suit was frivolous and brought in bad faith, the court shall render judgment for a reasonable attorney's fee in favor of the defendant against the plaintiff.

(3) No attorney's fee may be assessed against the woman upon whom a dismemberment abortion was performed or attempted to be performed except in accordance with subsection (2) of this section.

SECTION 7. Criminal penalty. Only in the event a judgment is rendered in favor of the defendant in an action described in Section 4 or 5 of this act, a district attorney with jurisdiction may bring an indictment for criminal punishment under this section. Any person who violates Section 3 of this act is guilty of a felony and, upon conviction, shall be punished by a fine not more than Ten Thousand Dollars ($10,000.00), or commitment to the

custody of the Department of Corrections for not more than two (2) years, or both.

SECTION 8. Protection of privacy in court proceedings. In every civil, criminal, or administrative proceeding or action brought under this act, the court shall rule whether the anonymity of any woman upon whom a dismemberment abortion has been performed or attempted to be performed shall be preserved from public disclosure if she does not give her consent to the disclosure. The court, upon motion or sua sponte, shall make such a ruling and, upon determining that her anonymity should be preserved, shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard her identity from public disclosure. Each such order shall be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman upon whom a dismemberment abortion has been performed or attempted to be performed, anyone other than a public official who brings an action under Section 4 or 5 of this act shall do so under a pseudonym. This section may not be construed to conceal the identity of the plaintiff or of witnesses from the defendant or from attorneys for the defendant.

SECTION 9. Construction. Nothing in this act shall be construed as creating or recognizing a right to abortion, nor a right to a particular method of abortion.

SECTION 10. Severability. If any one or more provisions, sections, subsections, sentences, clauses, phrases or words of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is declared to be severable and the balance of this act shall remain effective notwithstanding such unconstitutionality. The Legislature declares that it would have passed this act, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provisions, sections, subsections, sentences, clauses, phrases or words be declared unconstitutional.

SECTION 11. This act shall take effect and be in force from and after July 1, 2016.