

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

PLANNED PARENTHOOD GULF COAST,
INC.; PLANNED PARENTHOOD CENTER
FOR CHOICE; JANE DOE #1; JANE DOE #2;
and JANE DOE #3,

Plaintiffs,

v.

REBEKAH GEE, in her official capacity as
Secretary of the Louisiana Department of
Health,

Defendant.

No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, by and through their attorneys, bring this Complaint against the above-named Defendant, her 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 statute, 42 U.S.C. § 1396a(a)(23), as well as the Equal Protection and Due Process Clauses of the United States Constitution. Plaintiffs Planned Parenthood Gulf Coast, Inc. (“PPGC”), Planned Parenthood Center for Choice (“PPCfC”), and the Patient Plaintiffs challenge the State of Louisiana’s unconstitutional attempts to prevent PPGC and PPCfC from providing comprehensive reproductive health care services, including abortion, to their patients in Louisiana who need that care.

2. For over thirty years, PPGC or its predecessor organizations have operated two health centers in Louisiana, specifically in Baton Rouge and New Orleans. At these health centers, PPGC has provided critically needed family planning and preventive health services to underserved women and men, including patients enrolled in the Louisiana Medicaid Program.

3. Starting over a decade ago, PPGC and its affiliated entity, PPCfC, began making plans to build a new and expanded health center in New Orleans (“New Orleans Health Center”) that would provide comprehensive reproductive health care services, including abortion.

4. The New Orleans Health Center will be the *first* Planned Parenthood health center in Louisiana that provides abortion.

5. Facing an increasingly hostile government environment, the number of abortion clinics in Louisiana has decreased drastically in recent years. As recently as 2010, Louisiana had seven abortion clinics. Now just three remain: one in Shreveport, one in Baton Rouge, and one in New Orleans. There is a dire need for additional clinics.

6. Despite this overwhelming need, PPCfC’s plans to provide abortion at the New Orleans Health Center have been met with an unprecedented level of opposition at every turn, causing setback after setback in Plaintiffs’ efforts to serve the women of New Orleans.

7. After years of delays, caused by, *inter alia*, intimidation and harassment of workers both on and off the job site, an arson attack, and a sham requirement that any new abortion facility receive “Facility Need Review” approval from the Louisiana Department of Health (“LDH”) as a prerequisite to licensure (a requirement that was ultimately withdrawn before it could face judicial scrutiny), the New Orleans Health Center finally opened its doors to patients on June 30, 2016, and began providing a range of family planning and other critical health care services (except abortions) to patients at its state-of-the-art facility.

8. Nearly simultaneously with the opening of the New Orleans Health Center, Louisiana Governor John Bel Edwards signed into law yet another obstacle to PPGC's and PPCfC's efforts to provide comprehensive reproductive health care to their patients at the New Orleans Health Center: Louisiana House Bill 606, 1st Regular Session (2016), *codified at* La. Rev. Stat. §§ 40-1061.6(A) & 36:21 ("Act") (attached hereto as Exhibit A).

9. The Act prohibits the State, or any local political subdivisions, from entering into any contracts with, or otherwise bestowing any funding upon, not only abortion providers and entities, but also organizations that merely contract with abortion providers. In effect, the Act bars abortion providers and those that contract with abortion providers from participating in Louisiana's Medicaid Program, or otherwise receiving state funds, solely because of their exercise of constitutionally protected activity.

10. At the direction of the Governor, the Act was drafted with the express purpose of excluding PPGC from Louisiana's Medicaid Program once its affiliated entity, PPCfC, begins providing abortions at the New Orleans Health Center.

11. Despite the Act, and all of the obstacles and setbacks placed in their path, Plaintiffs have held strong in their commitment to provide needed abortion services to the women of Louisiana. Accordingly, on September 29, 2016, PPCfC submitted its application to LDH for licensure as an outpatient abortion facility. The application guidelines recommend that a licensee apply six weeks in advance of an intended opening date, but LDH has processed PPCfC's application on a drastically different timeline. In June 2017, nearly nine months after the application was filed, Defendant sent PPCfC a letter claiming that LDH is unable to act on PPCfC's application because LDH needs to conduct an investigation of PPCfC.

12. In fact, the “investigation” referenced in the June 2017 letter is a sham. LDH has been conducting politically-motivated “investigations” of Plaintiffs for years, each time without finding *any* legitimate evidence of wrongdoing, never mind evidence that would justify the denial of PPCfC’s license to operate an abortion facility in New Orleans.¹ This latest requirement of an “investigation” is designed only to impose an indeterminate delay on PPCfC’s licensing application and to thereby deny Louisiana women their right to access abortion. There is no legitimate reason for the investigation, only LDH’s express animus toward Plaintiffs and/or abortion.

13. LDH’s June 2017 letter, purporting to require a sham investigation that is nowhere required in the application procedures, constructively denied PPCfC’s licensing application. Indeed, in the *eight months* since the letter, PPCfC has received no further communications from LDH regarding its licensing application or the “investigation” that LDH is purportedly conducting. LDH’s past course of conduct and the ensuing months of silence demonstrate that LDH intends *never* to make a formal decision on PPCfC’s application.

14. The denial of PPCfC’s abortion license application violates PPCfC’s and PPCfC’s patients’ rights to (1) substantive due process, because this denial has the purpose and/or effect of imposing a substantial obstacle on access to abortion, without sufficient justification; (2) equal protection, because it treats PPCfC differently than similarly situated licensing applicants, without sufficient justification; and (3) procedural due process, because it denies PPCfC’s

¹ Daryl Purpera, Legis. Auditor, *Response to Senate Concurrent Resolution No. 57 & House Resolution No. 105, 2013 Regular Sess.* (Feb. 19, 2014), [https://app.lla.state.la.us/PublicReports.nsf/5256EC014378E02E86257D57005363A0/\\$FILE/00037C6C.pdf](https://app.lla.state.la.us/PublicReports.nsf/5256EC014378E02E86257D57005363A0/$FILE/00037C6C.pdf); *Planned Parenthood of Gulf Coast, Inc. v. Gee*, 862 F.3d 445, 468 (5th Cir. 2017); *Planned Parenthood of Greater Tex. Family Planning & Preventative Health Servs., Inc. v. Smith*, 236 F. Supp. 3d 974, 989-90 (W.D. Tex. 2017).

abortion license without sufficient procedural protections. PPCfC intends to perform abortions as soon as LDH authorizes it to do so.

15. In addition, the Act violates 42 U.S.C. § 1396a(a)(23), which is known as the Medicaid “free choice of provider” requirement, for the same reason the courts enjoined Louisiana’s prior effort to exclude PPGC from Medicaid. *See Planned Parenthood of Gulf Coast, Inc. v. Gee*, 862 F.3d 445 (5th Cir. 2017). The Act will effectively prevent PPGC’s Louisiana Medicaid patients, including the Patient Plaintiffs, from receiving any services through the Medicaid Program from the qualified, willing provider of their choice (i.e., PPGC), solely because PPGC contracts with PPCfC, which intends to provide abortions.

16. The Act also violates the due process rights of PPGC and its patients, and the First Amendment rights of PPGC, by imposing an unconstitutional condition on PPGC’s eligibility to participate in Medicaid, i.e., disqualifying PPGC from Medicaid based on Plaintiffs’ and its patients’ constitutionally protected activities. The Act further violates the equal protection rights of PPGC, PPGC’s patients, PPCfC, and PPCfC’s patients (including the Patient Plaintiffs) because it singles them out for disfavorable treatment without a constitutionally sufficient justification.

17. Absent relief from this Court, the State’s actions will impose irreparable harm on Plaintiffs and their patients. The denial of PPCfC’s license deprives the women of Louisiana of access to high quality, timely, and safe abortion care, without a corresponding medical benefit. Similarly, the Act either disqualifies PPGC from providing critical services to the over 4,700 Louisiana Medicaid patients who depend on PPGC annually for that care or prevents Louisiana women from accessing abortions at the New Orleans Health Center.

JURISDICTION AND VENUE

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

19. 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.

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

THE PARTIES

I. Plaintiffs

21. Plaintiff PPGC is a not-for-profit corporation organized under the laws of Texas and licensed to do business in Louisiana. PPGC brings this action on behalf of itself and its Louisiana patients. PPGC (and its predecessor organizations) have provided high quality reproductive health care in Louisiana for more than thirty years. PPGC operates two health centers in Louisiana, one in New Orleans and one in Baton Rouge. It participates in the Medicaid Program, providing medical services to low-income enrollees. The family planning and other preventive health services provided by PPGC at these health centers include physical exams, contraception and contraceptive counseling, screening for breast cancer, screening and treatment for cervical cancer, testing and treatment for certain sexually transmitted infections ("STIs"), pregnancy testing and counseling, and other procedures, including colposcopy.

22. Plaintiff Jane Doe #1, a Louisiana resident and Medicaid patient, obtains her reproductive health care at PPGC's New Orleans Health Center and desires to continue to do so.

23. Plaintiff Jane Doe #2, a Louisiana resident and Medicaid patient, obtains her reproductive health care at PPGC's New Orleans Health Center and desires to continue to do so.

24. Plaintiff Jane Doe #3, a Louisiana resident and Medicaid patient, obtains her reproductive health care at PPGC's Baton Rouge health center and desires to continue to do so.

25. Plaintiffs Jane Doe #1, Jane Doe #2, and Jane Doe #3 appear pseudonymously because of the private and personal nature of the medical care that they receive at PPGC and their desire not to have that information become public in order for them to assert their legal rights.

26. Plaintiff PPCfC is a not-for-profit corporation organized under the laws of Texas and licensed to do business in Louisiana. PPCfC brings this action on behalf of itself and its Louisiana patients. PPCfC has a facilities and services agreement with PPGC that allows PPCfC to lease space, services, and staff from PPGC in order for PPCfC to provide abortions at health centers owned by PPGC. PPCfC has applied to the Defendant for a license to provide abortions at the New Orleans Health Center.

II. Defendant

27. Defendant Rebekah Gee is the Secretary of LDH. LDH is the agency that is responsible for licensing abortion facilities in Louisiana. La. Rev. Stat. § 40:2175.6. LDH is also the agency that administers the Louisiana Medicaid Program that, in the absence of the Act, would disburse the funds at issue to PPGC. La. Rev. Stat. § 46:437.11. Defendant Gee is sued in her official capacity, as are her employees, agents, and successors in office.

BACKGROUND ON ABORTION

28. Abortion is one of the safest and most common medical procedures performed in the United States. Less than 0.3% of abortion patients experience a complication that requires hospitalization.

29. Nationwide, roughly three out of every ten women will have had an abortion by the age of 45.

30. In the United States, approximately 39% of women who obtain abortions are white; 28% are black; 25% are Hispanic; and 9% come from other racial or ethnic backgrounds. Three-fourths of all abortion patients are low-income (i.e., have incomes less than 199% of the federal poverty level).² The limited publicly available data for Louisiana shows that approximately 70% of the women obtaining abortions in Louisiana are non-white.³

31. The reasons women give for having an abortion overwhelmingly relate to concerns about their ability to care for family members. Three-fourths of women cite responsibility to other individuals (such as children or elderly parents). Most also say they cannot afford to become a parent or add to their family and that having a baby would interfere with work, school, or their ability to care for dependents. Half of all abortion patients say they do not want to be a single parent or are not in a stable relationship.⁴

32. Nearly 60% of women having abortions already have at least one child.⁵ Most also report plans to have children (or additional children) when they are older, financially able to

² Jenna Jerman et al., *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008*, N.Y.: Guttmacher Instit. (2016), <https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014>.

³ La. Dep't of Health, *Induced Terminations of Pregnancy by Weeks of Gestations, Race, Age, and Marital Status Reported Occurring in Louisiana, 2014*, http://new.dhh.louisiana.gov/assets/oph/Center-RS/healthstats/New_Website/ITOP/Ap14_T21.pdf.

⁴ Lawrence Finer et al., *Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives*, 37 *Persp. on Sexual and Reprod. Health*, 2005, No. 3, 110-118, <https://www.guttmacher.org/journals/psrh/2005/reasons-us-women-have-abortions-quantitative-and-qualitative-perspectives>.

⁵ Jerman et al., *supra* note 2.

provide for children, and/or in a supportive relationship with a partner so the children will have two parents.⁶

PLAINTIFFS' DECADE-LONG EFFORT TO PROVIDE WOMEN'S HEALTH SERVICES IN NEW ORLEANS

33. PPGC and PPCfC have been engaged in a decade-long effort to provide the New Orleans community with a new, expanded health center that will provide patients with comprehensive reproductive health services, including abortion. Throughout repeated setbacks and delays they have held steadfast in their commitment to open the New Orleans Health Center, which will be the first Planned Parenthood health center in Louisiana that offers abortions.

34. Anti-choice leaders and politicians in Louisiana, however, have also been engaged in a lengthy, organized effort to stop the New Orleans Health Center from opening, and more specifically, to stop it from offering abortions.

35. Plaintiffs have faced obstacles at every stage of the process. Just getting the building constructed was a herculean feat.

36. Workers on the project were subjected to routine harassment and threats, not just while working on the job-site, but also in their communities and even at their homes. One subcontractor received death threats because of his work on the project, prompting an FBI investigation. A security firm was needed at the job-site in order to ensure the safety of the workers.

37. The harassment of Plaintiffs was not limited to the job-site. Plaintiffs have also been subject to politically-motivated “investigations” of their practices since at least 2013 as a result of their plans to provide abortions at the New Orleans Health Center. In that year, the

⁶ Stanley K. Henshaw & Kathryn Kost, *Abortion Patients in 1994-1995: Characteristics and Contraceptive Use*, 28(4) Fam. Plan. Persp., 140, 144 (1996), <https://www.guttmacher.org/sites/default/files/pdfs/pubs/journals/2814096.pdf>.

Louisiana Legislature directed LDH, the Division of Administration, the legislative auditor, and the Office of State Inspector General to “review and monitor” the practices of PPGC in order to “determine whether the organization is in compliance with all state and federal laws and regulations.” Exhibit B at 3. The Legislature was motivated by PPGC’s “plans to build a four million two hundred thousand dollar, seven thousand square foot facility where they intend to perform abortions.” *Id.* at 1. These investigations uncovered no evidence of any wrongdoing.

38. Efforts to prevent the New Orleans Health Center from opening also included LDH’s bogus requirement that any new abortion clinics in the state receive “facility need review” approval (“FNR”) before obtaining a license to perform abortions.

39. Upon information and belief, LDH promulgated in 2012 the FNR requirement for abortion facilities for the specific purpose of preventing PPCfC from providing abortions at the New Orleans Health Center. LDH imposed this requirement even though there was no legitimate state purpose served by the FNR requirement for abortion facilities and even though such a requirement was beyond LDH’s statutory authority.

40. In spite of the improper purpose of the FNR requirement, PPCfC attempted to comply with the FNR requirement in good faith. PPCfC first submitted a 79-page application for FNR approval on October 16, 2014, demonstrating in the application and supporting reports from experts in the field that the New Orleans Health Center would satisfy an unmet need for abortion services for thousands of women. LDH denied the FNR application on January 8, 2015. PPCfC promptly appealed and, in the midst of that administrative appeal of the FNR denial, LDH offered PPCfC an opportunity to “supplement” its FNR application. PPCfC then submitted a 131-page supplemental FNR application on April 22, 2015, again including reports from experts in the field on the need for PPCfC’s services. Instead of acting on PPCfC’s application,

LDH informed PPCfC on June 19, 2015 that it had instead “decided to rescind its facility need review (“FNR”) requirements for outpatient abortion facilities effective immediately.” LDH thereafter adopted an emergency regulation purporting to rescind the requirement that an applicant for an outpatient abortion facility license receive facility need review approval. 41 La. Reg. 1238 (July 20, 2015).

41. Given LDH’s representation that the FNR requirement had been rescinded and was no longer applicable to abortion clinics (though the requirement remains in the abortion facility licensing regulations, La. Admin. Code tit. 48, pt. I, § 4405), PPCfC did not resubmit its request for FNR approval. Instead PPCfC moved forward with its plans to finish construction on the long-awaited New Orleans Health Center and apply for licensure as an abortion facility.

42. But many obstacles still stood in Plaintiffs’ path. First, in July 2015, a radical anti-abortion group with ties to violent extremists began to release misleading and deceptively edited YouTube videos purporting to depict Planned Parenthood’s practices related to fetal tissue donation.

43. Soon thereafter, in August 2015, the New Orleans Health Center was the subject of an arson attack: In the middle of the night, an arsonist attempted to set fire to the building structure. Unsuccessful at these efforts, the arsonist instead set fire to a car parked inside the locked gate at the construction site. This arson is still the subject of an FBI investigation.

44. In response to the deceptive YouTube “fetal tissue” videos, LDH launched yet another “investigation” into PPCfC’s fetal tissue disposal practices and then tried, on two separate occasions, to terminate PPGC’s Medicaid provider agreements for reasons wholly unrelated to PPGC’s competence to provide care in the Louisiana Medicaid Program. Those

efforts were instead part and parcel of the State's campaign to oppose abortion and punish Plaintiffs for attempting to provide abortions in Louisiana.

45. Litigation challenging the Medicaid terminations ensued, *see Planned Parenthood of Gulf Coast, Inc. v. Kliebert*, 141 F. Supp. 3d 604 (M.D. La. 2015), and Defendant's efforts to kick PPGC out of Louisiana Medicaid failed every time. The Fifth Circuit upheld a preliminary injunction of the termination of PPGC's provider agreements, holding that Plaintiffs are substantially likely to succeed in showing that Defendant's attempt "to terminate PPGC's Medicaid provider agreements for reasons unrelated to its qualifications" violates the free choice of provider requirement. *Planned Parenthood of Gulf Coast, Inc.*, 862 F.3d at 470.

46. Unsuccessful in its attempts to kick PPGC out of the Louisiana Medicaid Program through a termination of its provider contracts, anti-choice forces took yet another tactic: a legislative 'fix' that would bar PPGC from participating in Medicaid if PPCfC provides abortion at the New Orleans Health Center.

47. The Act provides that "[n]o institution, board, commission, department, agency, official, or employee of the state, or of any local political subdivision thereof, shall contract with, award any grant to, or otherwise bestow any funding upon an entity or organization that performs abortions, or contracts with an entity or organization that performs abortions, in this state." The Act goes on to exempt those entities that may "from time to time" perform abortions in extremely limited circumstances: abortions that are "medically necessary to prevent the death of the mother" and abortions where "the mother is a victim of rape or incest." Louisiana House Bill 606, 1st Regular Session (2016), *codified at* La. Rev. Stat. §§ 40:1061.6(A) & 36:21.

48. The Act discriminates against abortion providers and stigmatizes the provision of abortion care.

49. Because of the contractual relationship between PPGC and PPCfC, the Act means that PPGC will be disqualified from participating in Louisiana's Medicaid Program once PPCfC begins providing constitutionally protected abortions at the New Orleans Health Center. On information and belief, the Act was specifically drafted with the intent of making it impossible for PPGC to continue participating in the Louisiana Medicaid Program once its contractually affiliated entity, PPCfC, begins performing abortions in Louisiana.

50. In addition, the Act's broad language forces every business in the State of Louisiana into the dilemma of being eligible to do business with the entire state and local public sector or contracting with abortion clinics. Accordingly, it threatens abortion clinics' business relationships with all of their vendors, on whom they depend on for a vast array of essential services. If vendors refuse to contract with abortion clinics, including PPCfC, because they wish to remain eligible to work with the public sector in Louisiana, it will be impossible for abortion clinics to operate.

51. During legislative deliberations, the Act's intended effect on PPGC was front and center. One legislator asked PPGC whether the Act's effect on the ability of abortion providers to receive Medicaid reimbursement would impact PPCfC's provision of abortion in New Orleans, apparently attempting to figure out whether the Act would deter PPCfC from providing abortion: "Does the decision of the state to give or not give you Medicaid reimbursement factor in your decision to provide abortions?" Exhibit C at 21:17-21 (Transcript of Hearing on H.B. 606, La. House Reps., Health & Welfare Comm., Apr. 20, 2016). Yet another legislator asked why more representatives from PPGC were not at the committee hearing on the Act to "defend why they think women should get abortions in Louisiana." *Id.* at 34:17-18.

52. Similarly, the Act’s sponsor asked the legislative director for Louisiana Right to Life to present the Act in the Senate committee. The legislative director’s testimony made clear that the Act was targeted at PPGC’s efforts to provide abortion at the New Orleans Health Center: She testified that the Act was designed to affect those organizations that “willingly and knowingly change their current practice in order to begin performing elective abortion procedures [T]he Act puts the decision in the hands of that organization or business; do they want to be continue to be funded at current levels and provide services to our citizens, or is it more important for them to become an abortion business? It’s entirely up to them once this legislation goes into effect.” La. S. Health & Welfare Comm., Hearing on H.B. 606 (May 11, 2106), http://senate.la.gov/video/videoarchive.asp?v=senate/2016/05/051116H~W_0 at 3:39:15-3:39:40 (Statement of Deanna Wallace).

53. Similarly, Louisiana Right to Life’s executive director publicly heralded the Act for its effect on PPGC, stating that “[b]usinesses that sell abortions, like Planned Parenthood Gulf Coast plans to do at the facility under construction in New Orleans, should never receive the tax dollars of American citizens.”⁷

54. Other discussion during legislative deliberations on the Act made clear that the Act was also motivated by opposition to abortion, with one legislator stating that the Act sought to prevent “our state dollars funding a procedure that we object to” and another stating that the Act is about “defunding the [abortion] procedure,” *see* Exhibit C at 40:6-7, even though

⁷ La. Right to Life, *Louisiana Senate Committee Passes Bill to Defund Planned Parenthood Abortion Company*, LifeNews.com (May 11, 2016), <http://www.lifenews.com/2016/05/11/louisiana-senate-committee-passes-bill-to-defund-planned-parenthood-abortion-company/>.

Louisiana law already prohibits the use of state funds for abortions, except in extremely narrow circumstances, La. Rev. Stat. § 40:1061.6(A)(1).

55. The Act was signed into law on June 2, 2016, and became effective on that date.

56. The Act violates federal Medicaid law for the same reason that Louisiana's prior two attempts to kick PPGC out of the Medicaid Program violated this law: The Act attempts to kick PPGC out of the Louisiana Medicaid Program for reasons unrelated to its qualifications as a Medicaid provider.

57. Under federal law, a state's Medicaid plan must provide that "any 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).⁸

58. For years, courts consistently have 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 and properly bill for Medicaid-covered services.

59. For example, when two states, Arizona and Indiana, passed statutes nearly identical to the Act that barred abortion providers, or those who operate or maintain a facility where abortions are performed, from participating in each state's Medicaid Program, the Ninth and Seventh Circuits enjoined them, reasoning that they either violated, or were likely to violate, the Medicaid free choice of provider requirement. *Planned Parenthood Ariz., Inc. v. Betlach*,

⁸ 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).

727 F.3d 960 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 1283 (2014); *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).

60. Thus, when Defendant previously tried to terminate PPGC’s Medicaid provider agreements, the Fifth Circuit made clear that it agreed with the reasoning of the Ninth and Seventh Circuits and that a “state may not exclude a provider simply based on the scope of the services it provides.” *Planned Parenthood of Gulf Coast, Inc.*, 862 F.3d at 469.

61. The New Orleans Health Center finally opened its doors to patients on June 30, 2016, and currently provides compassionate reproductive health care to its patients in its state-of-the-art-facility.

62. But Plaintiffs have yet to begin providing abortion care at the New Orleans Health Center because of yet another barrier: Louisiana law requires any outpatient abortion facility in the state to first obtain a license from LDH. *See* La. Rev. Stat. § 40:2175.4(A) (“An outpatient abortion facility may not be established or operated in this state without an appropriate license issued under this Part.”).

63. On September 29, 2016, PPCfC applied to LDH for licensure as an outpatient abortion facility, following the Department’s recommendation to apply for licensing approval approximately six weeks before the abortion facility is ready to provide abortion services.⁹

64. But the licensing application process for PPCfC has lasted far beyond this six-week time frame. PPCfC’s licensing application was filed nearly *seventeen months* ago.

⁹ Dep’t Health & Hosp., Health Standards Section Initial Licensing Process: Abortion Facility, <http://dhh.louisiana.gov/index.cfm/page/1171>.

65. On November 16, 2016, LDH requested additional information related to PPCfC's application for licensure, which PPCfC promptly submitted. After dutifully complying with every single one of LDH's requests for follow-up information and clarification, PPCfC expected that the next step on its licensing application would be LDH *finally* scheduling an inspection of the New Orleans Health Center. *See* La. Rev. Stat. 40:2175.6(C) ("Following receipt of the application and licensing fee, the licensing agency shall issue a license if, after an on-site inspection, it finds that the outpatient abortion facility meets the requirements established under this Part and the licensing standards adopted in pursuance thereof."); La. Admin. Code tit. 48, pt. I, § 4405(F) ("Upon receipt of a complete initial licensing application packet, the department *shall* conduct an on-site initial licensing survey prior to issuing a full initial license.") (emphasis added).

66. But the licensing process did not proceed in the ordinary course. Instead, nearly *nine months* after PPCfC submitted its licensing application, PPCfC received a letter, dated June 13, 2017, indicating that the Department has taken the position that it cannot make a determination on PPCfC's license application because the Department needs to first "conduct[] an investigation to determine if Planned Parenthood Center for Choice, either in its own name or through the actions of Planned Parenthood Gulf Coast, is in violation of any federal or state law or regulation." Exhibit D.

67. This "investigation" is a complete sham. The letter references the Report of the U.S. House of Representatives Select Investigative Panel of the Energy & Commerce Committee, which was issued on December 30, 2016, as providing a reason for the "investigation" of PPGC, and it broadly states that the "investigation will include, among other things, interfacing with the Louisiana Attorney General, the Texas Attorney General, and other

federal entities.” But the Select Investigative Panel Report, which was issued over six months before the Department’s letter, relates to the *same* deceptively edited YouTube videos that LDH already investigated, beginning over two years ago. These videos, which have been widely debunked, do not show any evidence that any members of PPGC’s staff violated *any* laws or other applicable standards.

68. Multiple state investigations have found that the videos provide no evidence of wrongdoing by Planned Parenthood affiliates,¹⁰ including a grand jury in Texas that cleared PPGC of any wrongdoing and instead indicted two anti-abortion activists who made the videos.¹¹

69. Similarly, a federal district court in Texas has already determined that the state of Texas had no legitimate basis for terminating PPGC’s Texas Medicaid provider contracts based on the same concerns about PPGC’s fetal tissue donation practices, including the purported findings of the Select Investigative Panel Report. *See Planned Parenthood of Greater Tex. Family Planning & Preventative Health Servs., Inc. v. Smith*, 236 F. Supp. 3d 974, 990 (W.D.

¹⁰ *See, e.g., Indiana Clears Planned Parenthood of Wrongdoing After Videos*, Associated Press, July 30, 2015, <http://bigstory.ap.org/article/14e6280c406a4d21920c5594107dfdc4/indiana-clears-planned-parenthood-wrongdoing-after-videos>; David Scharfenberg, *Planned Parenthood ‘Fully Compliant’ with Law, Healey Says*, Bos. Globe, July 29, 2015, <http://www.bostonglobe.com/metro/2015/07/29/healey-mass-planned-parenthood-fully-compliant-with-law/Fc6pYYrY1ONGQvRTEqkWHK/story.html>; *Health Department: No Evidence of Fetal Tissue Sale In State*, KDLT News, Aug. 12, 2015, <http://www.kdlt.com/news/local-news/Health-Department-No-Evidence-Of-Fetal-Tissue-Sale-In-State/34668964>; Virginia Anderson, *Georgia Abortion Clinics Follow Law on Fetal Remains, State Says*, Atlanta J.-Const., Aug. 12, 2015, <http://www.ajc.com/news/news/local/georgia-abortion-clinics-follow-law-fetal-remains-/nnJSk/>; Marie McCullough, *Pa. Inquiry Clears Planned Parenthood*, Phila. Inquirer, Aug. 22, 2015, http://www.philly.com/philly/hp/news_update/20150822_Pa_inquiry_clears_Planned_Parenthod.html.

¹¹ Manny Fernandez, *2 Abortion Foes Behind Planned Parenthood Videos Are Indicted*, N.Y. Times, Jan. 25, 2017, <https://www.nytimes.com/2016/01/26/us/2-abortion-foes-behind-planned-parenthood-videos-are-indicted.html>.

Tex. 2017) (“[T]here is no evidence in the record PPGC violated any medical or ethical standard.”).

70. In fact, there is no legitimate basis for LDH’s continued investigation of Plaintiffs. LDH’s “investigation” of Plaintiffs based on these deceptive videos has been ongoing for over two and a half years, without any legitimate finding that they have committed any legal or regulatory violations.

71. LDH’s “investigation” of Plaintiffs has not been limited to Plaintiffs’ fetal tissue disposal practices. LDH has been conducting politically-motivated investigations of PPGC’s practices since at least 2013, with no findings of any wrongdoing.

72. Since receiving the letter, Plaintiffs have received no further communication from LDH related to the licensing application. LDH has not requested any information from Plaintiffs related to the “investigation” that LDH is purportedly conducting.

73. The basis for the continued “investigation” of PPGC is LDH’s express animus toward abortion or Plaintiffs and its corresponding desire to prevent Plaintiffs from providing abortions at the New Orleans Health Center.

74. By indicating that LDH will not rule on PPCfC’s application until this sham “investigation” is complete, LDH has constructively denied PPCfC’s abortion license application. Indeed, the June 2017 letter and the ensuing eight months of silence show that LDH intends to never schedule an inspection of the New Orleans Health Center and to never act on PPCfC’s application.

THE IMPACT OF DEFENDANT’S ACTIONS ON PPGC, PPCfC, AND THEIR PATIENTS

75. Both the Act and the denial of PPCfC’s license application impose significant burdens on Plaintiffs and their patients.

76. If PPCfC is unable to provide abortions at the New Orleans Health Center, the consequences for Louisiana women will be dire. And if PPGC is unable to continue participating in the Louisiana Medicaid Program, PPGC's Medicaid patients will be irretrievably harmed.

I. Impact if Plaintiffs Cannot Provide Abortions at the New Orleans Health Center

77. The number of abortion clinics in Louisiana is drastically declining. In 2010, there were seven abortion clinics in the state. Currently, just three clinics remain—one in Shreveport, one in Baton Rouge, and one in New Orleans—for the 940,000 women of reproductive age in the state. This ranks Louisiana among the worst states for abortion access in the country, with over 310,000 women of reproductive age per clinic in the state.

78. Moreover, because of the myriad of restrictions on abortion in Louisiana, these remaining clinics' ability to continue operating in such a hostile climate for abortion access is far from clear. *See, e.g., June Med. Servs. LLC v. Kliebert*, 250 F. Supp. 3d 27 (M.D. La. 2017) (permanently enjoining Louisiana law requiring physicians providing abortions to have admitting privileges), *appeal filed* May, 12, 2017; *June Med. Servs. LLC v. Gee*, No. CV 16-00444-BAJ-RLB, 2017 WL 5505536 (M.D. La. Nov. 16, 2017) (challenging, *inter alia*, ban on a method of second trimester abortion, 72-hour waiting period, and requirement that physicians who perform abortions be board certified in family medicine, obstetrics, or gynecology); Complaint, *June Med. Servs. LLC v. Gee*, No. 3:17-cv-00404-JJB-RLB (M.D. La. June 27, 2017) (challenging Louisiana's targeted regulation of abortion providers "with a series of onerous regulations that do little or nothing to promote women's health and serve only to impede access to abortion care").

79. If any one of the three remaining clinics were to shut down, the situation would become even more dire.

80. The New Orleans area itself used to be served by four abortion clinics as recently as 2010. LDH revoked the license of one New Orleans abortion clinic in 2010 and that of a second New Orleans abortion clinic in 2012. Since that time, two abortion clinics had continued to serve the women of New Orleans until Causeway Medical Clinic was forced to shut down in February 2016 after a requirement that its physicians obtain admitting privileges at a nearby hospital came briefly into effect. (It was ultimately declared unconstitutional.)

81. Thus, since February 2016, only *one* abortion clinic remains in New Orleans serving the entire southeastern portion of the State. That means that the approximately 250,000 women of reproductive age in the New Orleans metropolitan area must now rely on a single abortion clinic.

82. If PPCfC were permitted to provide abortion care at the New Orleans Health Center, current barriers to abortion access in New Orleans would be alleviated, allowing more women to access early and safe abortion care from their trusted health care provider.

83. Currently, abortion care is only reliably available in New Orleans during weekday business hours. No regular evening, early morning, or weekend appointments are offered. This poses a significant barrier to patients with inflexible work schedules, child care responsibilities, and other scheduling difficulties that make it impossible, or exceedingly difficult, to attend weekday medical appointments. Moreover, because Louisiana requires patients to make two separate trips to obtain an abortion—one visit to receive state-mandated (and biased) counseling and a scripted ultrasound, and a second visit for the actual abortion, La. Rev. Stat.

§ 40:1061.17(B)(3)—patients must find a way to attend two separate weekday appointments.¹²

¹² The 72-hour waiting period between appointments required by statute is not currently being enforced due to a stipulation of non-enforcement entered in *June Med. Servs. LLC v. Gee*, No.

84. Needing to take time off from work or find alternative child care arrangements for two separate weekday appointments delays some women in accessing abortion care, decreases the likelihood they can keep the abortion confidential, and may prevent some women from accessing abortion altogether.

85. Delay in accessing abortion care is problematic because while abortion is an incredibly safe procedure, its risks increase with gestational age.

86. In addition, on information and belief, poor and low-income women seeking abortion in New Orleans currently have access to very limited financial assistance to help cover the cost of the procedure.

87. A significant number of women needing abortions in New Orleans are poor or low-income. On a national level, approximately 49% of women having abortions in 2014 were below the federal poverty line, and 75% of women having abortions were below 200% of the federal poverty level. Thus, the vast majority of women seeking abortions are poor or low-income. Given that Louisiana is the third poorest state in the country, these statistics likely underestimate the need for abortions among the state's poor and low-income population.

88. The cost for a surgical abortion in New Orleans begins at approximately \$500, and increases with gestational age. This is a significant amount of money for a poor or low-income woman to come up with on short notice. And this amount does not include the indirect costs of an abortion that many women must pay in the form of lost wages, childcare costs, and transportation costs.

3:16-cv-00444-BAJ-RLB (M.D. La. July 1, 2016), ECF No. 14-1. Instead, state law currently requires women to wait at least 24 hours between the appointments.

89. Poor and low-income women currently have few sources they can rely on to assist them in covering the cost of the procedure. Medicaid funding for abortion in Louisiana is not available, except for very limited exceptions (life endangerment, rape, or incest). La. Rev. Stat. § 40:1299.34.5. In addition, in Louisiana, all private insurance companies participating in the Affordable Care Act-created marketplaces are prohibited from providing coverage for abortion services in any circumstance. La. Rev. Stat. § 22:1014. Thus, most women must pay for the abortion out-of-pocket.

90. Upon information and belief, the only significant charitable organization providing financial assistance for abortions to women in New Orleans is the New Orleans Abortion Fund. But the New Orleans Abortion Fund can provide only limited financial assistance. In 2013, for example, it was able to provide financial assistance to 103 women, with an average pledge of \$64.¹³ While this assistance is important, it covers just a small fraction of the overall cost of the abortion and is provided to just a small fraction of the women who need financial assistance in order to access an abortion.

91. As a result, poor and low-income women seeking abortions in New Orleans must struggle to put together the necessary funds by attempting to borrow money from friends or family members or by sacrificing payments for bills, food, or other necessities.

92. The time spent gathering together these various sources of funding delays women in accessing care. In a vicious cycle, this delay in turn increases the cost of the abortion, making it even more difficult for poor women to access abortion and increasing the related health risks.

93. The New Orleans Health Center will alleviate these burdens.

¹³ New Orleans Abortion Fund, Inc., *Breaking Barriers, Providing Access, Funding Her Choice* (Feb. 2014), <http://media.virbcdn.com/files/ff/9648fc904a506042-February2014Vol3Issue2.pdf>.

94. First, PPCfC will offer abortion appointments on Saturdays and will offer evening and early morning hours. These flexible hours are critical to ensuring that women with inflexible schedules can access abortion as early in a pregnancy as possible and can maintain the abortion's confidentiality.

95. Second, PPCfC can offer substantial financial assistance for abortion services to poor and low-income women. This funding will allow PPCfC to offer financial assistance to all women with incomes below 110% of the federal poverty level. This financial assistance, which is more expansive than the financial assistance currently available to women seeking abortions in New Orleans, will allow some women to access abortions earlier in pregnancy and will permit others to obtain abortions that they otherwise could not have obtained.

96. Moreover, while there is currently one abortion clinic in New Orleans, as noted above, the ability of the remaining abortion clinics in Louisiana to continue operating is far from clear. If the sole remaining provider in New Orleans were to shut down, which could happen at any time, New Orleans would be left without *any* abortion providers.

97. PPCfC's provision of abortion will significantly improve access in the New Orleans region. Patients already routinely visit the New Orleans Health Center seeking abortion care. In fact, this happens nearly every single day. Once PPCfC obtains its abortion license, Planned Parenthood will no longer have to refer patients elsewhere. Instead, Planned Parenthood's patients in New Orleans will finally be able to obtain abortion care from their trusted, comprehensive reproductive health care provider, without the additional delays and hurdles that accompany seeking care from another provider.

II. Impact if PPGC Can No Longer Participate in Louisiana Medicaid Program

98. If PPGC were terminated from the Louisiana Medicaid Program, the impact on PPGC's patients in both New Orleans and Baton Rouge would also be devastating.

99. The need for publicly supported family planning services is great in Louisiana, as it regularly ranks among the worst states for reproductive care. In 2010, 60% of pregnancies in Louisiana were unintended.¹⁴ The state ranks fourth highest among 50 states in teen pregnancy rates.¹⁵ Nearly 80% of Louisiana's unplanned births are publicly funded, higher than the national average of 68%.¹⁶ Moreover, Louisiana has high rates of STIs: The state ranks first in congenital syphilis and gonorrhea, second in chlamydia, and third in primary and secondary syphilis.¹⁷

100. As LDH has recognized, "[i]n Louisiana, for 2002, there were an estimated 515,960 women, ages 13 to 44 years, needing contraceptive services and supplies. Of those, 59

¹⁴ Guttmacher Inst., *State Facts About Unintended Pregnancy: Louisiana* (2017), <https://www.guttmacher.org/fact-sheet/state-facts-about-unintended-pregnancy-louisiana> (hereafter "*State Facts: Louisiana*").

¹⁵ Kathryn Kost & Isaac Maddow-Zimet, Guttmacher Inst., *U.S. Teenage Pregnancies, Births and Abortions, 2011: National and State Trends by Age, Race and Ethnicity* 8 (2016), https://www.guttmacher.org/sites/default/files/report_pdf/us-teen-pregnancy-state-trends-2011_4.pdf.

¹⁶ *State Facts: Louisiana*, *supra* note 14.

¹⁷ Ctrs. for Disease Control & Prevention, *2015 Sexually Transmitted Diseases Surveillance, Table 40. Congenital Syphilis - Reported Cases and Rates of Reported Cases by State, Ranked by Rates* (2015), <https://www.cdc.gov/std/stats15/tables/40.htm>; Ctrs. for Disease Control & Prevention, *2015 Sexually Transmitted Diseases Surveillance, Table 13. Gonorrhea - Reported Cases and Rates of Reported Cases by State, Ranked by Rates* (2015), <https://www.cdc.gov/std/stats15/tables/13.htm>; Ctrs. for Disease Control & Prevention, *2015 Sexually Transmitted Diseases Surveillance, Table 2. Chlamydia - Reported Cases and Rates of Reported Cases by State, Ranked by Rates* (2015), <https://www.cdc.gov/std/stats15/tables/2.htm>; Ctrs. for Disease Control & Prevention, *2015 Sexually Transmitted Diseases Surveillance, Table 26. Primary and Secondary Syphilis - Reported Cases and Rates of Reported Cases by State, Ranked by Rates* (2015), <https://www.cdc.gov/std/stats15/tables/26.htm>.

percent needed publicly supported services.”¹⁸ In East Baton Rouge Parish alone, LDH estimated in 2005 that of the 54,980 women needing contraceptive services and supplies, 31,770 (58%) were in need of publicly supported services and supplies.¹⁹

101. In spite of the great needs, there are simply not enough providers of the critical care PPGC provides. PPGC’s New Orleans Health Center is in an area that the federal government has classified as “medically underserved” based on four variables: (1) the ratio of primary medical care physicians per 1,000 population, (2) the infant mortality rate, (3) the percentage of the population with incomes below the poverty level, and (4) the percentage of the population age 65 or over.²⁰ Both of PPGC’s health centers are in areas classified as a “Primary Care Health Professional Shortage Area,” a designation for areas with a population to full-time primary care physician ratio of 3500:1, or a ratio between 3000-3500:1 in areas with unusually high demand for primary care services and in which primary care professionals in contiguous areas are practically inaccessible.²¹

102. With these significant provider shortages, PPGC plays a key role in providing needed care to Louisiana’s low-income population, treating over 4,700 Louisiana Medicaid patients annually. In East Baton Rouge Parish alone, 6,580 female contraceptive clients were

¹⁸ La. Dep’t of Health, East Baton Rouge Parish Health Profile 30 (2005), <http://dhh.louisiana.gov/assets/docs/SurveillanceReports/php/PHP2005/PDF/EastBatonRouge/HP-EastBatonRouge.pdf> (hereinafter “LDH, *East Baton Rouge Parish Health Profile*”).

¹⁹ *Id.*

²⁰ U.S. Dep’t of Health & Hum. Servs., Health Resources & Servs. Admin., *Medically Underserved Areas and Population* (2016), <https://bhwh.hrsa.gov/shortage-designation/muap>.

²¹ See U.S. Dep’t of Health & Hum. Servs., *Find Shortage Areas*, <http://datawarehouse.hrsa.gov/GeoAdvisor/ShortageDesignationAdvisor.aspx> (enter each clinic address and click “submit”); U.S. Dep’t of Health & Hum. Servs., Health Resources & Servs. Admin., *Health Professional Shortage Areas (HPSAs)*, <https://bhwh.hrsa.gov/shortage-designation/hpsas>.

served by publicly funded health clinics in 2015, the latest year that data is available; Planned Parenthood—by far the largest provider—served two-thirds (4,380) of these women.²²

103. Many of PPGC’s patients come only to PPGC for their health care. As LDH has itself recognized, “[w]ith the high rate of people living without health insurance in Louisiana, a family planning visit may be the only time that a woman ever has a preventive health clinic visit.”²³

104. If PPGC were to be excluded from Medicaid, many of PPGC’s Medicaid patients in Baton Rouge and New Orleans, who already have few or no alternative options, would find it difficult or impossible to access the reproductive health care services they need. Those who could find other providers would often have to wait unacceptable periods of time for an appointment.

105. Other Medicaid providers in Baton Rouge and New Orleans are already stretched to the breaking point, even with PPGC providing care. It is virtually impossible to locate a private OB/GYN who will take a Medicaid patient who is not pregnant. At community health clinics, it is often difficult for low-income patients to connect with a scheduler to make an appointment. Even if a patient can obtain an appointment, she may be unable to obtain (either at all or without significant delays) the services she seeks, such as long-acting reversible contraceptives, which are the most effective forms of birth control, or lifesaving cancer screening procedures, such as colposcopies. Some other clinics abide by the Catholic health directives and do not provide birth control at all. Indeed, other Medicaid providers sometimes refer their

²² Guttmacher Inst., *Publicly Funded Contraceptive Services at U.S. Clinics, 2015 State- and County-level Family Planning Clinic Data* (2017), <https://www.guttmacher.org/report/publicly-funded-contraceptive-services-us-clinics-2015> (to download, click on orange link with the title of report on the right-hand side).

²³ LDH, *East Baton Rouge Parish Health Profile*, *supra* note 18, at 28.

patients to PPGC's health center for those services. Other clinics are difficult for PPGC's low-income patients to reach. And with cuts and closures at local public hospitals and clinics, it is difficult for low-income patients in need of medical care to obtain it.

106. As just one example, LDH's East Baton Rouge Health Unit stopped accepting *any* new patients for family planning or STI services in May 2017, and then shut down completely in September 2017, making the health care access situation in Baton Rouge even worse than it already was. Importantly, LDH itself is referring its Baton Rouge patients to PPGC as an alternative provider, and PPGC is doing its best to accommodate LDH's former patients in Baton Rouge.

107. If PPGC were terminated from the Medicaid Program, a dire situation would become a critical one. The remaining Medicaid providers in New Orleans and Baton Rouge would be simply unable to absorb PPGC's patients, leaving those patients without access to critical medical services.

108. Even if other providers were available, patients insured through Medicaid choose PPGC based on a number of factors that are generally not available at other providers. With its evidence-based practices and up-to-date technology, PPGC is known as a provider of high quality medical care. Many individuals who receive other health care through community care providers or other Medicaid providers choose to have a separate provider, such as PPGC, for their reproductive health care because they are concerned about their privacy and because they fear being judged by other providers.

109. In addition, many low-income patients have unique scheduling constraints because they are juggling inflexible work schedules, transportation challenges, and lack of childcare resources. To ensure that these patients have access to family planning services, PPGC

offers extended hours. In addition, PPGC spaces patient appointments so as to minimize wait times. PPGC also offers the birth control shot, the birth control implant, and IUDs same-day, so that patients only need to make one trip to a PPGC health center to obtain their choice of contraceptive. PPGC has, at all times, either a full-time Spanish speaker on staff or translator services available to non-English speaking patients.

110. Thus, if PPGC is eliminated from the Louisiana Medicaid Program, PPGC's Medicaid patients, including the Patient Plaintiffs, would be deprived of access to the high quality, specialized care that PPGC provides.

111. All three Patient Plaintiffs rely on PPGC as the place they can turn to for critical medical care and for prompt, efficient, and compassionate services. If PPGC is eliminated from Medicaid, the Patient Plaintiffs would be prevented from receiving services from their provider of choice, would have their health care interrupted, and would encounter difficulties finding alternative care.

112. If PPGC is unable to provide services through the Medicaid Program, it would fundamentally defeat the core of its mission: to provide the comprehensive reproductive 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 patients' health, safety, and well-being.

113. In FY 2016, PPGC's Medicaid reimbursements for providing these critical health services to low-income patients totaled nearly \$1,400,000. If PPGC were to lose this revenue, PPGC would be unable to continue to provide services in the same manner and might be forced to lay off staff members, reduce hours, or even close the Baton Rouge health center, as Medicaid reimbursements amount to nearly 70% of the revenue at that health center. If PPGC were to close its Baton Rouge health center, it would be very expensive, if not impossible, for PPGC to

resume operations as they are today, should PPGC ever be allowed back as a Medicaid provider. Further, if PPGC closes its Baton Rouge health center, this will affect not only the Medicaid patients at the health center, but all of the patients who seek care at that health center.

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

115. In addition to the imminent loss of Medicaid reimbursement, PPGC presently faces a concrete dilemma that frustrates its mission: It is being forced to choose between abandoning its effort to provide the women of New Orleans with access to abortion services, or being prohibited from providing desperately needed Medicaid services to its Medicaid patients. This choice is not a choice because either option would have disastrous consequences for public health.

116. Plaintiffs have no adequate remedy at law.

CLAIMS FOR RELIEF

CLAIM I—FOURTEENTH AMENDMENT DUE PROCESS—UNDUE BURDEN

(Denial/The Act)

117. Plaintiffs hereby incorporate Paragraphs 1 through 116, above.

118. The denial and the Act violate PPCfC's patients' right to liberty and privacy as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution because they each have the unlawful purpose and/or effect of imposing an undue burden on women's right to choose abortion before viability.

CLAIM II—FOURTEENTH AMENDMENT EQUAL PROTECTION

(Denial/The Act)

119. Plaintiffs hereby incorporate Paragraphs 1 through 118, above.

120. The denial violates the equal protection rights of PPCfC and its patients, and the Act violates the equal protection rights of PPGC, PPCfC, and their respective patients (including the Patient Plaintiffs), by singling them out for unfavorable treatment without adequate justification.

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

(The Act)

121. Plaintiffs hereby incorporate Paragraphs 1 through 120, above.

122. The Act violates Section 1396a(a)(23) of Title 42 of the United States Code by denying PPGC's Louisiana Medicaid patients, including the Patient Plaintiffs, the right to choose any willing, qualified health care provider in the Medicaid Program.

**CLAIM IV—FIRST AMENDMENT AND FOURTEENTH AMENDMENT DUE
PROCESS—UNCONSTITUTIONAL CONDITIONS**

(The Act)

123. Plaintiffs hereby incorporate Paragraphs 1 through 122, above.

124. The Act violates the due process and/or First Amendment rights of PPGC, PPCfC, and their patients by imposing an unconstitutional condition on PPGC's eligibility to participate in Medicaid based on PPGC's and/or PPCfC's exercise, and their patients' exercise, of constitutionally protected activity.

**CLAIM V—FOURTEENTH AMENDMENT DUE PROCESS—PROCEDURAL DUE
PROCESS**

(The Denial)

125. Plaintiffs hereby incorporate Paragraphs 1 through 124, above.

126. Defendant's actions violate PPCfC's right to procedural due process by denying PPCfC's license to provide abortions without adequate procedural protections.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request that this Court:

127. Issue a declaratory judgment that the denial of PPCfC's license violates the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment and is therefore void and of no effect;

128. Issue preliminary and permanent injunctive relief, without bond:

- a. enjoining Defendant, her agents, employees, appointees delegates, or successors from withholding approval of PPCfC's application for licensure for the New Orleans Health Center; or
- b. directing Defendant to promptly rule upon PPCfC's application for licensure as an outpatient abortion facility in accordance with all applicable constitutional requirements; or
- c. directing Defendant to grant PPCfC's application for licensure as an outpatient abortion facility;

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

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

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

132. Issue a declaratory judgment that the Act violates the First Amendment and is therefore void and of no effect;

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

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

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

Respectfully submitted this 23rd day of February, 2018.

/s/ Ryan P. Delaney

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