MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Docket Number Cum-17-494

Mabel Wadsworth Women's Health Center; Family Planning Association of Maine d/b/a Maine Family Planning and Primary Care Services; and Planned Parenthood of Northern New England,

Appellants

v.

Ricker Hamilton, Commissioner of the Department of Health and Human Services

Appellee

Appeal from the Cumberland County Superior Court

APPENDIX

February 2, 2018

Zachary L. Heiden (#9476)
Emma E. Bond (#5211)
American Civil Liberties Union of Maine Foundation
121 Middle Street, Suite 200
Portland, ME 04101
(207) 619-6224

Counsel for Appellants

Susan P. Herman (#2077)
Deputy Attorney General
Halliday Moncure (#4559)
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8800

Counsel for Appellee

Appendix Table of Contents

MABEL WADSWORTH WOMENS HEALTH CENTER - PLAINTIFF

Attorney for: MABEL WADSWORTH WOMENS HEALTH CENTER
VISITING ATTORNEY - RETAINED
VISITING ATTORNEY
-
- -

Attorney for: MABEL WADSWORTH WOMENS HEALTH CENTER
ZACHARY L HEIDEN - RETAINED
MAINE CIVIL LIBERTIES UNION FOUNDATION
121 MIDDLE ST SUITE 303
PORTLAND ME 04101

Attorney for: MABEL WADSWORTH WOMENS HEALTH CENTER
EMMA BOND - RETAINED
AMERICAN CIVIL LIBERTIES UNION OF MAINE
121 MIDDLE STREET SUITE 200
PORTLAND ME 04101

FAMILY PLANNING ASSOCIATION OF MAINE - PLAINTIFF

Attorney for: FAMILY PLANNING ASSOCIATION OF MAINE
VISITING ATTORNEY - RETAINED
VISITING ATTORNEY
-
- -

Attorney for: FAMILY PLANNING ASSOCIATION OF MAINE
ZACHARY L HEIDEN - RETAINED
MAINE CIVIL LIBERTIES UNION FOUNDATION
121 MIDDLE ST SUITE 303
PORTLAND ME 04101

Attorney for: FAMILY PLANNING ASSOCIATION OF MAINE
EMMA BOND - RETAINED
AMERICAN CIVIL LIBERTIES UNION OF MAINE
121 MIDDLE STREET SUITE 200
PORTLAND ME 04101

PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND - PLAINTIFF

Attorney for: PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
VISITING ATTORNEY - RETAINED
VISITING ATTORNEY
-
- -

Attorney for: PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
ZACHARY L HEIDEN - RETAINED
MAINE CIVIL LIBERTIES UNION FOUNDATION
121 MIDDLE ST SUITE 303
PORTLAND ME 04101

Attorney for: PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
EMMA BOND - RETAINED

SUPERIOR COURT
CUMBERLAND, ss.
Docket No PORSC-CV-2015-00527

DOCKET RECORD

AMERICAN CIVIL LIBERTIES UNION OF MAINE
121 MIDDLE STREET SUITE 200
PORTLAND ME 04101

vs
MARY MAYHEW (COMMISSIONER ME DHHS) - DEFENDANT
221 STATE STREET
AUGUSTA ME 04333
Attorney for: MARY MAYHEW (COMMISSIONER ME DHHS)
SUSAN HERMAN - RETAINED 01/11/2016
ATTORNEY GENERAL OFFICE OF AG
111 SEWALL STREET
6 STATE HOUSE STATION
AUGUSTA ME 04333-0006

Attorney for: MARY MAYHEW (COMMISSIONER ME DHHS)
WILLIAM D HAGEDORN - WITHDRAWN 11/14/2016
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA ME 04333-0006

Attorney for: MARY MAYHEW (COMMISSIONER ME DHHS)
HALLIDAY MONCURE - RETAINED 03/03/2016
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA ME 04333-0006

Filing Document: COMPLAINT Minor Case Type: CONSTITUTIONAL/CIVIL RIGHTS
Filing Date: 11/24/2015

Docket Events:

11/24/2015 FILING DOCUMENT - COMPLAINT FILED ON 11/24/2015

11/25/2015 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER
ATTORNEY - RETAINED ENTERED ON 11/24/2015
Plaintiff's Attorney: ZACHARY L HEIDEN

11/25/2015 Party(s): FAMILY PLANNING ASSOCIATION OF MAINE
ATTORNEY - RETAINED ENTERED ON 11/24/2015
Plaintiff's Attorney: ZACHARY L HEIDEN

11/25/2015 Party(s): PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
ATTORNEY - RETAINED ENTERED ON 11/24/2015
Plaintiff's Attorney: ZACHARY L HEIDEN

11/25/2015 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
MOTION - OTHER MOTION FILED ON 11/24/2015
MOTION FOR PRO HAC VICE ADMISSION OF CARRIE FLAXMAN,ESQ; JULIA KAYE,ESQ AND ALEXA KOLBI MOLINAS, ESQ WITH PROPOSED ORDER

11/25/2015 ASSIGNMENT - SINGLE JUDGE/JUSTICE ASSIGNED TO JUSTICE ON 11/25/2015
THOMAS D WARREN , JUSTICE

11/25/2015 CASE STATUS - CASE FILE LOCATION ON 11/25/2015
TO JUSTICE WARREN FOR MOTION FOR PRO HAC VICE ADMISSIONS (KD)

12/02/2015 ASSIGNMENT - SINGLE JUDGE/JUSTICE RECUSED ON 12/02/2015
THOMAS D WARREN , JUSTICE

12/07/2015 CASE STATUS - CASE FILE LOCATION ON 12/07/2015
SENT TO J HORTON FOR REVIEW (DC)

12/08/2015 ASSIGNMENT - SINGLE JUDGE/JUSTICE ASSIGNED TO JUSTICE ON 12/08/2015
ANDREW M HORTON , JUDGE

12/10/2015 CASE STATUS - CASE FILE RETURNED ON 12/09/2015

12/10/2015 CASE STATUS - CASE FILE RETURNED ON 12/08/2015

12/10/2015 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
MOTION - OTHER MOTION GRANTED ON 12/08/2015
MOTION FOR PRO HAC VICE ADMISSION OF CARRIE FLAXMAN,ESQ; JULIA KAYE,ESQ AND ALEXA KOLBI MOLINAS, ESQ WITH PROPOSED ORDER. COPIES TO PARTIES/COUNSEL 12/10/2015. (LF)

12/11/2015 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER
ATTORNEY - RETAINED ENTERED ON 12/08/2015
Plaintiff's Attorney: VISITING ATTORNEY

12/11/2015 Party(s): FAMILY PLANNING ASSOCIATION OF MAINE
ATTORNEY - RETAINED ENTERED ON 12/08/2015
Plaintiff's Attorney: VISITING ATTORNEY

Party(s): PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
ATTORNEY - RETAINED ENTERED ON 12/08/2015
Plaintiff's Attorney: VISITING ATTORNEY

12/17/2015 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 12/17/2015
OF MARY MAYHEW (DHHS) TO FILE RESPONSIVE PLEADING WITH PROPOSED ORDER (CONSENTED TO). (LF)

12/17/2015 CASE STATUS - CASE FILE LOCATION ON 12/17/2015
TO JUSTICE HORTON FOR REVIEW OF CONSENTED ORDER. (LF)

12/21/2015 CASE STATUS - CASE FILE RETURNED ON 12/21/2015

12/21/2015 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 12/21/2015
ANDREW M HORTON , JUDGE
TIME TO FILE ANSWER EXTENDED TO 1/11/16. COPIES TO PARTIES/COUNSEL 12/21/15. (LF)

12/21/2015 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
ATTORNEY - RETAINED ENTERED ON 12/17/2015

Defendant's Attorney: WILLIAM D HAGEDORN

12/28/2015 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER
OTHER FILING - OTHER DOCUMENT FILED ON 12/28/2015
RETURNED MAIL: ZACHARY L HEIDEN, ESQ/MAINE ACLU: RETURN TO SENDER, NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD. RESENT 12/28/2015.

01/05/2016 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER
OTHER FILING - OTHER DOCUMENT FILED ON 01/04/2016
RETURNED MAIL BY USPS: RETURN TO SENDER, NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD. CALLED COUNSEL, SENT TO CORRECT ADDRESS 1/5/16. INFORMED THEM THEY NEED TO CHANGE THEIR ADDRESS VIA A FORM ON MAINE.GOV. (LF)

01/12/2016 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
RESPONSIVE PLEADING - ANSWER & AFFIRMATIVE DEFENSE FILED ON 01/11/2016
OF MARY MAYHEW, COMMISSIONER OF THE MAINE DEPARTMENT OF HEALTH AND HUMAN SERVCIES, IN HER OFFICIAL CAPACITY. (LF)

01/12/2016 CASE STATUS - CASE FILE LOCATION ON 01/12/2016
TO JUSTICE HORTON FOR REVIEW OF SCHEDULING ORDER. (LF)

01/12/2016 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER
OTHER FILING - OTHER DOCUMENT FILED ON 01/12/2016
RETURNED MAIL FROM USPS FOR PLTF'S ATTY ZACHARY HEIDEN. RETURN TO SENDER, NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD. (LF)

01/13/2016 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
ATTORNEY - RETAINED ENTERED ON 01/11/2016
Defendant's Attorney: SUSAN HERMAN

01/15/2016 CASE STATUS - CASE FILE RETURNED ON 01/15/2016

01/15/2016 ORDER - SCHEDULING ORDER ENTERED ON 01/15/2016
ANDREW M HORTON , JUDGE
COPIES TO PARTIES/COUNSEL 01/15/2016 (LF)

01/15/2016 DISCOVERY FILING - DISCOVERY DEADLINE ENTERED ON 09/14/2016

01/21/2016 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
SUMMONS/SERVICE - ACK OF RECEIPT OF SUMM/COMP SERVED ON 11/30/2015
UPON COMMISSIONER MARY MAYHEW OF MAINE DHHS TO WILLIAM D. HAGEDORN AAG. (LF)

01/21/2016 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
SUMMONS/SERVICE - ACK OF RECEIPT OF SUMM/COMP FILED ON 01/21/2016

02/19/2016 CASE STATUS - CASE FILE LOCATION ON 02/03/2016
TO JUSTICE HORTON FOR REVIEW. (LF)

02/22/2016 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
MOTION - MOTION TO WAIVE ADR FILED ON 02/03/2016
OF PLTFS WITH PROPOSED ORDER. CONSENTED (LF)

02/25/2016 CASE STATUS - CASE FILE RETURNED ON 02/23/2016

02/25/2016 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
MOTION - MOTION TO WAIVE ADR GRANTED ON 02/23/2016
ANDREW M HORTON , JUDGE
COPIES SENT TO PARTIES/COUNSEL ON 02/25/16. (MC)

03/04/2016 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
ATTORNEY - RETAINED ENTERED ON 03/03/2016
Defendant's Attorney: HALLIDAY MONCURE

08/26/2016 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER
MOTION - OTHER MOTION FILED ON 08/25/2016
OF PLTF FOR PRO HAC VICE ADMISSION W/ PROPOSED ORDER

09/02/2016 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 09/02/2016
OF PLTF CONSENT MOTION TO ENLARGE DISCOVERY DEADLINES WITH PROPOSED ORDER. (LF)

09/02/2016 CASE STATUS - CASE FILE LOCATION ON 09/02/2016
TO JUSTICE HORTON FOR REVIEW OF CONSENTED MOTION TO CONTINUE. (LF)

09/12/2016 CASE STATUS - CASE FILE RETURNED ON 09/07/2016

09/12/2016 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 09/06/2016
ANDREW HORTON , JUSTICE
THE PARTIES SHALL NOTICE ALL DEPOSITIONS AND SHALL COMPLETE ALL OTHER DISCOVERY BY 9/14/16, AND SHALL COMPLETE THE TAKING OF NOTICED DEPOSITIONS BY 11/13/16. COPIES TO PARTIES/COUNSEL 9/12/16. (LF)

09/12/2016 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER
MOTION - OTHER MOTION GRANTED ON 09/06/2016
ANDREW HORTON , JUSTICE
OF PLTF FOR PRO HAC VICE ADMISSION OF MELISSA COHEN, ESQ. COPIES TO PARTIES/COUNSEL 9/16/16. (LF)

09/12/2016 Party(s): FAMILY PLANNING ASSOCIATION OF MAINE
OTHER FILING - OTHER DOCUMENT FILED ON 09/06/2016
ADMISSION OF PRO HAC VICE, MELISSA COHEN, ESQ. (LF)

09/12/2016 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
MOTION - MOTION FOR PROTECTIVE ORDER FILED ON 09/06/2016
OF PLTFS' AGREED TO PROTECTIVE ORDER. (SUBMITTED DIRECTLY TO J HORTON IN CHAMBERS CONFERENCE ON 9/6/16). (LF)

09/12/2016 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
MOTION - MOTION FOR PROTECTIVE ORDER GRANTED ON 09/06/2016

ANDREW HORTON , JUSTICE
SEE ORDER FOR DETAILS. COPIES TO PARTIES/COUNSEL 9/12/16. (LF)

09/12/2016 ORDER - SCHEDULING ORDER ENTERED ON 09/07/2016
ANDREW HORTON , JUSTICE
SECOND SCHED ORDER. COPIES TO PARTIES/COUNSEL 9/12/16. (LF)

09/12/2016 DISCOVERY FILING - DISCOVERY DEADLINE ENTERED ON 11/15/2016

10/17/2016 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
MOTION - MOTION TO ADMIT VISIT. ATTY FILED ON 10/13/2016
OF PLTFS TO ADMIT JENNIFER LEE ESQ, WITH PROPOSED ORDER. (AT)

10/24/2016 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
MOTION - MOTION TO ADMIT VISIT. ATTY GRANTED ON 10/21/2016
ANDREW HORTON , JUSTICE
JENNIFER LEE IS ADMITTED TO TEMPORARY PRACTICE IN MAINE FOR THE PURPOSES OF THIS CASE ONLY WHILE ASSOCIATED WITH AND ASSISTED BY A MEMBER OF THE MAINE BAR. COPIES TO COUNSEL/PARTIES MAILED 10/24/16.

11/09/2016 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
OTHER FILING - NOTICE WITHDRAWAL OF COUNSEL FILED ON 11/04/2016
OF JENNIFER LEE, VISITING ATTY ON BEHALF OF PLTF (AT)

11/15/2016 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
ATTORNEY - WITHDRAWN ORDERED ON 11/14/2016
Defendant's Attorney: WILLIAM D HAGEDORN

12/06/2016 HEARING - OTHER HEARING HELD ON 12/02/2016 at 01:00 p.m.
ANDREW HORTON , JUSTICE
Defendant's Attorney: HALLIDAY MONCURE
Plaintiff's Attorney: ZACHARY L HEIDEN
CONFERENCE OF COUNSEL TO DISCUSS FUTURE COURSE OF PROCEEDINGS. THIRD SCHEDULING ORDER ISSUED (AT)

12/06/2016 ORDER - SCHEDULING ORDER ENTERED ON 12/02/2016
ANDREW HORTON , JUSTICE
SEE THIRD SCHEDULING ORDER FOR NEW DEADLINES OUTLINING FUTURE COURSE OF PROCEEDINGS. THE CLERK IS HEREBY DIRECTED TO INCORPORATE THIS ORDER BY REFERENCE IN THE DOCKET. COPIES TO PARTIES/COUNSEL 12/6/16 (AT)

02/06/2017 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 02/06/2017
CONSENT MOTION TO ENLARGE ALL PENDING DEADLINES, WITH PROPOSED ORDER (AT)

02/06/2017 CASE STATUS - CASE FILE LOCATION ON 02/06/2017
SENT TO J HORTON FOR REVIEW (AT)

02/07/2017 CASE STATUS - CASE FILE RETURNED ON 02/07/2017

02/07/2017 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 02/06/2017
ANDREW HORTON , JUSTICE
ALL PENDING DEADLINES ARE ENLARGED. SEE ORDER FOR DETAILS. COPIES TO PARTIES/COUNSEL 2/7/17 (AT)

03/28/2017 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 03/28/2017
CONSENT MOTION TO ENLARGE ALL PENDING DEADLINES, WITH PROPOSED ORDER (AT)

03/28/2017 CASE STATUS - CASE FILE LOCATION ON 03/28/2017
SENT TO J HORTON FOR REVIEW (AT)

03/29/2017 CASE STATUS - CASE FILE RETURNED ON 03/29/2017

03/29/2017 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 03/29/2017
ANDREW HORTON , JUSTICE
SEE ORDER FOR DETAILS. COPIES TO PARTIES/COUNSEL 3/29/17 (AT)

05/04/2017 CASE STATUS - CASE FILE LOCATION ON 05/04/2017
SENT TO J HORTON FOR REVIEW (AT)

05/11/2017 ORDER - PRETRIAL/STATUS ENTERED ON 05/09/2017
ANDREW HORTON , JUSTICE
RULE 16(B) PRETRIAL ORDER ENTERED. COPIES TO PARTIES/COUNSEL WITH TRIAL LIST AND COVER LETTER 5/11/17 (AT)

05/11/2017 HEARING - TRIAL MANAGEMENT CONFERENCE SCHEDULED FOR 07/03/2017 at 02:45 p.m.
NOTICE TO PARTIES/COUNSEL

05/23/2017 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
MOTION - OTHER MOTION FILED ON 05/22/2017
CONSENT MOTION TO ENLARGE PAGE LIMITS FOR SUMMARY JUDGMENT MOTION(S), WITH PROPOSED ORDER (AT)

05/23/2017 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
LETTER - FROM PARTY FILED ON 05/22/2017
FROM DEF COUNSEL ON BEHALF OF BOTH PARTIES, REQUESTING REMOVAL FROM TRIAL MANAGMENT LIST (AT)

05/23/2017 CASE STATUS - CASE FILE LOCATION ON 05/23/2017
SENT TO J HORTON FOR REVIEW (AT)

05/23/2017 CASE STATUS - CASE FILE RETURNED ON 05/23/2017

05/23/2017 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
MOTION - OTHER MOTION GRANTED ON 05/23/2017
ANDREW HORTON , JUSTICE
THE NEW PAGE LIMITS SHALL BE 40 PAGES FOR MSJS, 40 PAGES FOR OPPOSITIONS, AND 14 PAGES FOR REPLY MEMORANDA. COPIES TO PARTIES/COUNSEL 5/23/17 (AT)

05/23/2017 ORDER - COURT ORDER ENTERED ON 05/23/2017
ANDREW HORTON , JUSTICE
REGARDING DEF'S LETTER REQUESTING REMOVAL FROM TRIAL MANAGMENT LIST, CASE WILL BE REMOVED FROM THE JULY/AUGUST LIST. COPIES TO PARTIES/COUNSEL 5/23/17 (AT)

05/23/2017 CASE STATUS - CASE FILE RETURNED ON 05/06/2017

05/23/2017 HEARING - TRIAL MANAGEMENT CONFERENCE NOT HELD ON 05/23/2017
REMOVED FROM JULY/AUGUST 2017 TRIAL LIST AS PER 5/23/17 ORDER IN RESPONSE TO DEF'S LETTER (AT)

06/16/2017 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
MOTION - MOTION SUMMARY JUDGMENT FILED WITH AFFIDAVIT ON 06/15/2017
DEFS MSJ, WITH MEMORANDUM IN SUPPORT PLUS EXHIBITS 1-3, PROPOSED ORDER, THE PARTIES' CONSOLIDATED STATEMENT OF MATERIAL FACTS, MATERIALS SUPPORTING DEF'S CITATIONS TO CONSOLIDATED STATEMENT OF MATERIAL FACTS, AND THE PARTIES' STIPULATION (AT)

06/28/2017 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
MOTION - MOTION ALTER/AMEND ORDER/JUDG FILED ON 06/27/2017
CONSENT MOTION TO AMEND THE SCHEDULING ORDER AND TO ENLARGE THE PAGE LIMITS, WITH PROPOSED ORDER (AT)

06/28/2017 CASE STATUS - CASE FILE LOCATION ON 06/28/2017
SENT TO J HORTON FOR REVIEW (AT)

06/30/2017 CASE STATUS - CASE FILE RETURNED ON 06/29/2017

06/30/2017 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
MOTION - MOTION ALTER/AMEND ORDER/JUDG GRANTED ON 06/29/2017
ANDREW HORTON , JUSTICE
SEE ORDER FOR DETAILS. COPIES TO PARTIES/COUNSEL 6/30/17 (AT)

07/21/2017 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
MOTION - MOTION TO ADMIT VISIT. ATTY FILED ON 07/20/2017
WITH PROPOSED ORDER (AT)

07/21/2017 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
MOTION - MOTION SUMMARY JUDGMENT FILED ON 07/20/2017
PTLF'S CROSS-MOTION FOR SUMMARY JUDGMENT, WITH PLTFS' MEMORANDUM OF LAW IN SUPPORT OF PLTFS' CROSS-MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO DEF'S MOTION FOR SUMMARY JUDGMENT; PROPOSED ORDER ON SUMMARY JUDGMENT, AND ADDITIONAL RECORD MATERIALS SUPPORTING CITATIONS TO THE PARTIES' CONSOLIDATED STATEMENT OF MATERIAL FACTS INCLUDED IN PLTFS' CROSS MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO DEF'S MOTION FOR SUMMARY JUDGMENT (AT)

08/15/2017 CASE STATUS - CASE FILE LOCATION ON 08/15/2017
SENT TO J HORTON FOR REVIEW (AT)

08/15/2017 CASE STATUS - CASE FILE RETURNED ON 08/15/2017

08/15/2017 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
MOTION - MOTION TO ADMIT VISIT. ATTY GRANTED ON 08/15/2017
ANDREW HORTON , JUSTICE
MEAGAN BURROWS IS ADMITTED TO TEMPORARY PRACTICE IN ME FOR PURPOSES OF THIS CASE. COPIES TO PARTIES/COUNSEL 8/15/17 (AT)

08/15/2017 CASE STATUS - CASE FILE LOCATION ON 08/15/2017
SENT TO J HORTON FOR REVIEW (AT)

08/24/2017 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
OTHER FILING - OPPOSING MEMORANDUM FILED ON 08/24/2017
OF DEF, TO PLTFS' CROSS-MOTION FOR SUMMARY JUDGMENT AND REPLY IN SUPPORT OF DEF' MOTION FOR SUMMARY JUDGMENT, WITH EXHIBITS A THRU G (AT)

08/24/2017 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
OTHER FILING - REPLY MEMORANDUM FILED ON 08/24/2017
OF DEF, IN SUPPORT OF DEF'S MOTION FOR SUMMARY JUDGMENT (CONTAINED WITHIN DEF'S MEMORANDUM IN OPPOSITION TO PLTFS' CROSS-MOTION FOR SUMMARY JUDGMENT), WITH EXHIBIS A THRU G (AT)

08/25/2017 HEARING - MOTION SUMMARY JUDGMENT SCHEDULED FOR 09/28/2017 at 09:00 a.m.

08/25/2017 HEARING - MOTION SUMMARY JUDGMENT NOTICE SENT ON 08/25/2017

09/08/2017 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
OTHER FILING - REPLY MEMORANDUM FILED ON 09/07/2017
OF PLTFS, IN SUPPORT OF THEIR CROSS-MOTION FOR SUMMARY JUDGMENT, WITH A THRU C (AT)

09/22/2017 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
LETTER - FROM PARTY FILED ON 09/22/2017
COPY OF LETTER FROM PLTF TO DEF. SEE LETTER FOR DETAILS (AT)

09/22/2017 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
LETTER - FROM PARTY FILED ON 09/22/2017
FROM DEF, REGARDING UPCOMING HEARING (AT)

09/27/2017 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
LETTER - FROM PARTY FILED ON 09/26/2017
FROM DEF, RESPONDING TO PLTFS' RESPONSE TO DEF'S LETTER (AT)

09/27/2017 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
OTHER FILING - ENTRY OF APPEARANCE FILED ON 09/25/2017
OF EMMA E. BOND ESQ. ON BEHALF OF PLTFS (AT)

10/24/2017 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER
ATTORNEY - RETAINED ENTERED ON 09/25/2017
Plaintiff's Attorney: EMMA BOND

Party(s): FAMILY PLANNING ASSOCIATION OF MAINE

ATTORNEY - RETAINED ENTERED ON 09/25/2017
Plaintiff's Attorney: EMMA BOND

Party(s): PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
ATTORNEY - RETAINED ENTERED ON 09/25/2017
Plaintiff's Attorney: EMMA BOND

10/25/2017 CASE STATUS - CASE FILE RETURNED ON 10/24/2017

10/25/2017 HEARING - MOTION SUMMARY JUDGMENT HELD ON 09/28/2017 at 09:10 a.m. in Room No. 12
ANDREW HORTON , JUSTICE
Defendant's Attorney: SUSAN HERMAN
Plaintiff's Attorney: ZACHARY L HEIDEN
MONCURE HALLIDAY, AAG ALSO PRESENT FOR DEF, AND EMMA BOND, ESQ ALSO PRESENT FOR PLTF. ORAL ARGUMENTS TAKEN ON 2 MOTIONS FOR SUMMARY JUDGMENT. DIGITALLY RECORDED FROM 9:10:50 A.M. TO 10:16:15 A.M. TAKEN UNDER ADVISEMENT (AT)

10/25/2017 Party(s): MARY MAYHEW (COMMISSIONER ME DHHS)
MOTION - MOTION SUMMARY JUDGMENT GRANTED ON 10/24/2017
ANDREW HORTON , JUSTICE
SEE DECISION AND JUDGMENT (AT)

10/25/2017 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
MOTION - MOTION SUMMARY JUDGMENT DENIED ON 10/24/2017
ANDREW HORTON , JUSTICE
SEE DECISION AND JUDGMENT (AT)

10/25/2017 FINDING - JUDGMENT DETERMINATION ENTERED ON 10/24/2017
ANDREW HORTON , JUSTICE
DECISION AND JUDGMENT. DEF'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. PLTFS' CROSS-MOTION FOR SUMMARY JUDGMENT IS DENIED. JUDGMENT ON THE COMPLAINT IS GRANTED TO DEF ALONG WITH ANY RECOVERABLE COSTS OF COURT AS THE PREVAILING PARTY. THE CLERK IS DIRECTED TO INCORPORATE THIS DECISION AND JUDGMENT BY REFERENCE IN THE DOCKET. COPIES TO PARTIES/COUNSEL 10/25/17 (AT)

ORDER - SUMMARY JUDGMENT ENTERED ON 10/24/2017
ANDREW HORTON , JUSTICE
DECISION AND JUDGMENT. DEF'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. PLTFS' CROSS-MOTION FOR SUMMARY JUDGMENT IS DENIED. JUDGMENT ON THE COMPLAINT IS GRANTED TO DEF ALONG WITH ANY RECOVERABLE COSTS OF COURT AS THE PREVAILING PARTY. THE CLERK IS DIRECTED TO INCORPORATE THIS DECISION AND JUDGMENT BY REFERENCE IN THE DOCKET. COPIES TO PARTIES/COUNSEL 10/25/17 (AT)
Judgment entered for MARY MAYHEW (COMMISSIONER ME DHHS) and against MABEL WADSWORTH WOMENS HEALTH CENTER, FAMILY PLANNING ASSOCIATION OF MAINE, PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND.

10/25/2017 FINDING - FINAL JUDGMENT CASE CLOSED ON 10/25/2017

11/14/2017 Party(s): MABEL WADSWORTH WOMENS HEALTH CENTER,FAMILY PLANNING ASSOCIATION OF MAINE,PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND
APPEAL - NOTICE OF APPEAL FILED ON 11/08/2017

OF PLTFS, NO TRANSCRIPT ORDERED (AT)

11/22/2017 OTHER FILING - OTHER DOCUMENT FILED ON 11/22/2017
NOTICE OF DOCKETING IN THE LAW COURT SHOWING RECORD DUE BY 12/13/17 (AT)

12/08/2017 APPEAL - RECORD ON APPEAL SENT TO LAW COURT ON 12/08/2017

12/08/2017 OTHER FILING - OTHER DOCUMENT FILED ON 12/08/2017
COURT ACKNOWLEDGMENT FROM LAW COURT (AT)

A TRUE COPY
ATTEST: _____
Clerk

STATE OF MAINE **SUPERIOR COURT**

Cumberland, ss. **Civil Action**

Mabel Wadsworth Women's Health Center;
Family Planning Association of Maine
d/b/a Maine Family Planning and
Primary Care Services; and
Planned Parenthood of Northern New England,

Plaintiffs

v. **Docket No. PORSC-CV-15-527**

Ricker Hamilton, Acting Commissioner
of the Maine Department of Health and Human Services,
in his official capacity,

Defendant

DECISION AND JUDGMENT

Defendant's Motion for Summary Judgment and Plaintiffs' Cross-Motion for Summary Judgment came before the court for oral argument September 28, 2017, at which point the case came under advisement.

For the following reasons, Plaintiffs' Cross-Motion For Summary Judgment is denied and Defendant's Motion for Summary Judgment is granted.

Background

A. The Medicaid/MaineCare Framework

The joint state-federal program known as Medicaid, codified as Title XIX of the Social Security Act, provides federal funds to enable states to extend subsidized medical care to needy persons. *See* 42 U.S.C. §§ 1396-1396v (2017); 42 C.F.R. § 430.0

(2017). *See also Biewald v. State*, 451 A.2d 98, 99 (Me. 1982).

State participation in Medicaid is voluntary. However, once a state chooses to participate, it must comply with the requirements of federal law and regulations thereunder. A participating state must have a plan that is approved by the federal government and that provides, at minimum, certain mandatory services. *See* 42 C.F.R. §§ 430.0 et seq. These mandatory services include pregnancy related services, and family planning services. *See* 42 U.S.C § 1396a(a)(10).

On the other hand, federal law prohibits federal Medicaid funds from being used to fund abortions, except in cases of rape or incest, or when the life of the mother is in danger. The prohibition is codified in the Hyde Amendment, an appropriations measure that Congress has enacted every year since 1976, most recently through Pub. L. 115-31, div. H. tit. V § 507 (2017). In operation, the Hyde Amendment precludes federal reimbursement to states for any abortion services other than those within the exceptions Congress has deemed appropriate.

The State of Maine participates in the Medicaid program voluntarily through a program known as "MaineCare". *See Biewald*, 451 A.2d at 99. *See also* 22 M.R.S.A. §§ 3172-3184 (2016). The MaineCare program is administered by the Maine Department of Health and Human Services (DHHS). Defendant Hamilton is acting Commissioner of DHHS.

The specific healthcare services covered by MaineCare are defined in rules promulgated by DHHS rather than by the MaineCare statute. Regarding pregnancy related care, MaineCare covers "antepartum care, delivery, postpartum care, and other

services normally provided in uncomplicated maternity care." 10-144 C.M.R ch. 101(II), § 90.04-4(B) (2016). A child born to a mother covered by MaineCare will also be covered under MaineCare for one year following birth. 10-144 C.M.R. ch. 332, pt. 2, § 13.1(I) (2016). This coverage will continue even if the child's mother does not remain eligible for MaineCare throughout the year. *Id.* So long as family income eligibility requirements are met, MaineCare will provide coverage for children and teenagers through age twenty. 10-144 C.M.R. ch. 332, pt. 3, § 2.1 (2016).

In contrast to its broad coverage of pregnancy and child-related services, MaineCare covers abortion services only in the case of rape or incest, or if the pregnancy is life-threatening. The limitation on coverage is defined in a DHHS rule, codified at 10-144 C.M.R. ch. 101(II), § 90.05-2(A) ["Rule 90.05-2(A)"].[1] Rule 90.05-2(A) in one form or another has been in effect almost as long as the federal Hyde Amendment has been in effect.

In other words, MaineCare covers abortion services only to the extent the services are eligible for reimbursement with federal Medicaid funds, and this has been the case for decades.

Between 2014 and 2016 Maine spent more than one billion dollars per year covering optional benefits under its MaineCare program. (JSMF ¶94.) DHHS is not aware of any data showing that MaineCare's lack of coverage for abortions, except

[1] The rule reads, in pertinent part: "In compliance with PL 103-112, the Health and Human Services Appropriations bill, reimbursement for abortion services will be made only if necessary to save the life of the mother, or if the pregnancy is the result of an act of rape or incest." 10-144 C.M.R. ch. 101(II), § 90.05-2(A). *See http://www.maine.gov/sos/cec/rules/10/ch101.htm*

when federal reimbursement is available, provides any fiscal benefit to the State. (JSMF ¶95.)

B. Plaintiffs' Status as MaineCare Providers

The three Plaintiffs are enrolled MaineCare providers of family planning and abortion services. (JSMF ¶¶1, 5, 15.) As enrolled MaineCare providers, the Plaintiffs are paid directly by the State, through DHHS, when they provide a patient with a service covered by the MaineCare program.

When a patient of Plaintiffs decides to terminate her pregnancy through abortion, the decision may be for a variety of reasons (J.S.M.F ¶¶35-46.) These reasons include: the inability to provide financial support for a child, the belief that having a child would interfere with educational or career goals, the exacerbation of an existing physical or mental health condition, and the desire to escape an abusive relationship, and abnormal fetal development. (J.S.M.F ¶¶37-40, 43, 45).

No individual woman is a plaintiff in this matter. (JSMF ¶2.)

Plaintiffs charge between $500 to $600 for abortion services performed up to 14 weeks from a patient's last menstrual period. (JSMF ¶20.) After 14 weeks, the cost of an abortion increases to between $725 and $1000. (JSMF ¶20.) However, Plaintiffs always try to enable any woman who wishes to terminate her pregnancy to obtain an abortion regardless of her ability to pay. (JSMF ¶23.) Plaintiffs offer eligible women financial assistance to obtain an abortion. (JSMF ¶21.) One of the Plaintiffs writes off up to $12,000 a year for abortion services provided to needy women. (JSMF 22.) Plaintiffs have no record of any woman being denied access to abortion services due

to her inability to pay. (JSMF ¶24.)

In appropriate circumstances, Plaintiffs provide abortions and then seek reimbursement from the Maine Department of Health and Human Services. (JSMF ¶25.) Between 2010 and 2015, Plaintiff Mabel Wadsworth Women's Health Center submitted three claims for reimbursement for abortion services. (JSMF ¶29.) Two of those claims were denied. (JSMF ¶29.)

Analysis

In this case, the parties have presented the court with all of the facts that are material to the court's decision on the pending Motions.[2] There are no disputed issues of fact that could justify denying both of the pending Motions. Accordingly, the question before the court is: Which side is entitled to judgment based on the law and the record before the court?

Plaintiffs' Complaint in this case presents four counts, designated as "causes of action":

- First, Plaintiffs contend that the DHHS rule limiting MaineCare funding for abortions, 10-144 C.M.R. ch. 101(II), § 90.05-2(A) ["Rule 90.05-2(A)"] is invalid because it exceeds DHHS's rulemaking authority and is contrary to Maine statute
- Second, Plaintiffs contend that Rule 90.05-2(A) violates their patients' right to

[2] It has taken time for the parties to generate a comprehensive documentary record on which to base the determination of the legal issues. The court is appreciative of the extensive effort by both sides to develop and present a full record for judicial review.

liberty and safety guaranteed by the Maine Constitution. ME. CONST., art. I, §1.

- Third, Plaintiffs assert that Rule 90.05-2(A) violates their patients' right to equal protection of the laws, as guaranteed by sections 1 and 6-A of article I of the Maine Constitution. ME. CONST., art. I, §§1, 6-A.
- Fourth, Plaintiffs assert that Rule 90.05-2(A) violates their patients' right to substantive due process, also as guaranteed by sections 1 and 6-A of article I of the Maine Constitution. ME. CONST., art. I, §§1, 6-A.

In the prayer for relief, Plaintiffs' Complaint seeks a declaratory judgment invalidating Rule 90.05-2(A) on the grounds that it exceeds DHHS's statutory authority and violates the Maine Constitution provisions just cited. The Complaint asks that Defendant be enjoined from enforcing the rule.

The Plaintiffs' Cross-Motion for Summary Judgment seeks judgment in their favor on all of the grounds set forth in the Complaint.

The Defendant's Motion for Summary Judgment seeks judgment on all counts of the Complaint, but also raises several threshold issues as to standing and jurisdiction that merit discussion before the questions that the Plaintiffs raise are addressed.

A. Threshold Issues of Standing, Ripeness, Justiciability and Jurisdiction

Specifically, Defendant claims that (1) Plaintiffs lack standing as aggrieved parties for purposes of obtaining judicial review under the Maine Administrative

Procedure Act, 5 M.R.S. § 8058; (2) Plaintiffs lack standing to challenge Rule 90.05-2; (3) Plaintiffs' claims are not ripe for review; (4) Plaintiffs cannot bring claims directly under the Maine Constitution; and (5) Maine's Declaratory Judgment Act does not provide an independent jurisdictional basis for seeking relief.

Plaintiffs' first count is brought pursuant to section 8058 of Maine's Administrative Procedure Act (APA) which allows for judicial review of administrative agency rules. 5 M.R.S. § 8058 (2016).

Section 8058 allows any aggrieved party to bring an action for declaratory judgment in the Superior Court for the "review of an agency rule, or of any agency's refusal or failure to adopt a rule where the adoption of a rule is required by law." 5 M.R.S. § 8058. Plaintiffs' APA challenge contends that Rule 90.05-2(A) is contrary to the Maine statutory mandate for coverage of abortions and hence is invalid because it exceeds DHHS's rulemaking authority.

Defendant argues that Plaintiffs are not "aggrieved" parties because their claims are speculative and not ripe for review.

A person is aggrieved within the meaning of 5 M.R.S. § 8058 "if he has suffered a particularized injury, i.e., agency action operating directly and prejudicially on a party's personal rights." *Gross v. Secretary of State*, 562 A.2d 667, 670 (Me. 1989) (*citing Hammond Lumber Co. v. Finance Authority*, 521 A.2d 283, 286 (Me. 1987)).

Here, Plaintiffs are enrolled MaineCare providers who provide abortion services to MaineCare eligible patients. Because MaineCare covers abortion services only in limited circumstances, Plaintiffs cover some or all of the cost of abortion

services they provide to MaineCare eligible patients. (JSUMF ¶115.) Furthermore, because MaineCare does not cover abortions except in limited circumstances, Plaintiffs spend their own resources to provided financial counseling to patients in an effort to help them raise funds for an abortion. See (JSUMF ¶117.) Finally, and perhaps most importantly, Plaintiffs are engaged in the business of performing abortions (JSMF ¶¶1, 5, 15.) and would be reimbursed directly under MaineCare if abortions were fully covered to the same extent pregnancy services are covered. If Plaintiffs prevail in this litigation, they will directly benefit by receiving payment for abortions provided to MaineCare eligible women.

Because Rule 90.05-2(A) operates to diminish the Plaintiffs' opportunity to earn income through MaineCare reimbursement for abortion services, Plaintiffs suffer a particularized injury sufficient to confer standing as aggrieved parties, at least for purposes of their APA challenge. *See Singleton v. Wulff*, 428 U.S. 106, 112-13 (1976) (holding that abortion-provider physicians suffer a concrete injury from the operation of a state statute excluding abortions from Medicaid coverage).

Accordingly, the court concludes that Plaintiffs have standing, as aggrieved parties, to challenge the validity of Rule 90.05-2, at least on the ground that it exceeds DHHS's rulemaking authority.

However, as the Law Court has noted in a seminal opinion on standing, *Common Cause v. State*, 455 A.2d 1 (Me. 1983), a party may have standing for some purposes and not for others. With respect to the Plaintiffs' constitutional challenges to Rule 90.05-2, Defendant argues that the Plaintiffs lack standing to litigate their patients'

liberty, safety, due process and equal protection rights under the Maine Constitution.

Defendant points out that no women have been joined as plaintiffs, and also that Plaintiffs have not produced any admissible evidence establishing that Rule 90.05-2(A) has resulted in the denial of an abortion to or otherwise harmed any MaineCare beneficiary.

Plaintiffs respond by contending that they have third-party standing to assert the rights of their patients.

In Maine, there is no set formula for determining whether a party has standing. *See Roop v. City of Belfast*, 2007 ME 32, ¶7, 915 A.2d 966. "The gist of the question of standing' is whether the party seeking review has a sufficient personal stake in a justiciable controversy . . . that facilitates diligent development of the legal issues presented." *Halfway House v. City of Portland*, 670 A.2d 1377, 1380 (Me. 1996). In other words, the question is whether the particular plaintiff in the case is appropriately suited to assert and litigate the cause of action presented in the case.

Generally, a litigant may not assert the constitutional rights of third parties. *Common Cause v. State*, 455 A.2d 1, 6 (Me. 1983) (*citing Singleton v. Wulff*, 428 U.S. 106, 113-14 (1976)). However, this general rule is not absolute and will yield to a number of exceptions where: (1) the constitutional claims of the non-litigants would otherwise be denied a judicial forum; (2) the rights of non-litigants would be impaired were they forced to assert those rights themselves, and (3) the litigant is in a special relationship with those whose rights are being asserted. *See id.*

Here, Plaintiffs claim that, as the sole abortion clinics in the State, they have

third-party standing to assert the constitutional rights of their patients. In *Singleton v. Wulff*, the United States Supreme Court held that physicians had standing to challenge the constitutionality of a state statute excluding state Medicaid reimbursement for abortions that were not "medically indicated." 428 U.S. at 108-09. Writing for a four-justice plurality of the Court, Justice Brennan concluded that the close, intimate relationship between physician and patient, the obstacles placed in front of a woman's assertion of her own rights, and the ability of the physician to advocate effectively rendered it appropriate for the physician to assert their patient's constitutional rights to be free from government interference with the abortion decision. *Id.* at 117.

In *Common Cause*, the Law Court noted that third-party standing requires that the constitutional rights being asserted are "congruent with the interests of the litigant and the third-party." *Common Cause*, 455 A.2d at 7. The court concluded that third-party standing should not apply "when the interests of the in-court litigant and the third party are basically opposed." *Id.*

As abortion providers, Plaintiffs are intimately involved in their patients' constitutionally protected decision to terminate a pregnancy. *See Singleton*, 428 U.S. at 117; *Roe v. Wade*, 410 U.S. 113,153-556 (1973). Furthermore, the rights being asserted by Plaintiffs are those of indigent woman who rely on MaineCare to obtain healthcare services, and who must obtain the services through MaineCare enrolled providers, such as Plaintiffs.

The fact that Plaintiffs have extended financial and other forms of support to

MaineCare eligible women to assure that no woman is denied access to abortion services shows how closely the interests of the Plaintiffs correspond to the interests of MaineCare eligible women. Far from undermining Plaintiffs' standing argument as the Defendant asserts, the fact that Plaintiffs have seen to it that no woman has been denied access to abortion services due to her inability to pay shows the complete congruity between the interests of Plaintiffs and those of the women they serve.

For these reasons, the court finds that Plaintiffs have standing to assert the state constitutional challenges to the validity of Rule 90.05-2(A) that are set forth in the second, third and fourth counts or causes of action in the Plaintiffs' Complaint.

Defendant also contends that the Plaintiffs' claims are not "ripe" for judicial review. "To determine if an issue is ripe for review, the court focuses on 'the fitness of the issue for judicial decision and the hardship to the parties of withholding court consideration.'" *Maine Public Serv. Co. v. Public Util. Comm'n*, 490 A.2d 1218, 1221 (Me. 1985) (*quoting Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967)). "An issue is fit for review if the agency's action 'presents a concrete and specific legal issue' that has a 'direct, immediate and continuing impact' on the appealing party. *Maine Public Serv. Co. v. Public Util. Comm'n*, 524 A.2d 1222, 1226 (1987).

Here, Plaintiffs have presented undisputed evidence of impact from Rule 90.05-2(A), both to Plaintiffs themselves and to the patients they serve. As to Plaintiffs, the impact is financial—not being reimbursed by MaineCare. As to Plaintiffs' patients, the impact is being potentially denied the ability to obtain an abortion, unless one of the Plaintiffs donates or subsidizes, in effect, the cost of the service.

Even so, Defendant contends that Plaintiffs' claims are not ripe because they did not submit a claim for reimbursement and appeal the denial to the Superior Court in a Rule 80C petition for review. This contention ignores the fact that Plaintiffs' challenge is to Rule 90.05-2(A) itself, not to the application of the rule to a particular claim for reimbursement. Given the plain language of Rule 90.05-2(A) (and as the Defendant conceded at oral argument), it would have been futile for Plaintiffs to submit any claim for reimbursement for an abortion service not covered by Rule 90.05-2(A). *See Churchill v. S.A.D. # 49 Teachers Assoc.*, 380 A.2d 186, 190 (Me. 1977) (exhaustion of administrative remedies not required "[w]here the administrative agency is not empowered to grant the relief sought and it would be futile to complete the administrative appeal process.") Before DHHS could honor the claim that Defendant says the Plaintiffs should have filed, Rule 90.05-2(A) would have to be changed, which is what the Plaintiffs are asking.

The very purpose of the section 8058 declaratory judgment avenue is to create a separate avenue from the adjudicative appeal process for challenges to the validity of administrative rules. *See* 5 M.R.S. § 8058. In *Gross v. Secretary of State*, the Law Court held that a party challenging the validity of a rule is not required to exhaust administrative remedies. 562 A.2d 667, 670-71 (Me. 1989). *See also* Conservation Law Found. V. Dep't of Envtl. Prot., 2003 ME 62, ¶¶19, 21, 823 A.2d 551 (challenge to agency rule may proceed by declaratory judgment or by Rule 80C appeal from administrative action).

Lastly, the Defendant argues that the court lacks jurisdiction because the

second, third and fourth counts in the Plaintiffs' Complaint are not brought under section 8058 of the APA and the declaratory judgment statute. Defendant says that these are direct claims over which the court lacks jurisdiction even though they purport to be brought as declaratory judgment claims. Defendant is correct that the declaratory judgment statute, in and of itself, does not confer jurisdiction where jurisdiction would otherwise not exist. *See Colquhoun v. Webber*, 684 A.2d 405, 411 (Me. 1996); *see also* 14 M.R.S. §§ 5951 *et seq.* (Maine Declaratory Judgments Act).

The Defendant's argument that what the Complaint calls the Second, Third and Fourth Causes of Action are insufficient is, in substance, a motion for judgment on the pleadings that requires the Complaint to be evaluated in a light most favorable to the Plaintiffs. Viewed in that light, the court views the so-called four "causes of action" as being alternative grounds for invalidating the rule rather than as freestanding, independent causes of action. What the Complaint calls the First Cause of Action, in Plaintiff's Complaint is plainly brought under section 8058 of the APA for declaratory judgment, and the remaining counts, designated as the Second, Third and Fourth Causes of Action, all incorporate the prior allegations of the Complaint by reference.

Thus, in substance, the Complaint advances a single challenge to the validity of Rule 90.05-2, based on four distinct statutory and constitutional grounds. Defendant correctly notes that there would be no direct right of action regarding the Plaintiffs' constitutional claims. However, it is section 8058 of the Maine Administrative Procedure Act, coupled with Plaintiffs' "aggrieved party" status, that establishes jurisdiction to grant declaratory relief on any of the four statutory and constitutional

grounds for relief set forth in the Complaint.[3]

This case seems particularly appropriate for declaratory relief, given the nature of the questions raised and the significant public interest in the resolution of those questions. *See Perry v. Hartford Acci. & Indem. Co.*, 481 A.2d 133, 136 (Me. 1984). (internal citations omitted) (in determining whether the action is appropriate, court should "consider whether the adjudication will serve some useful purpose or whether the controversy presents an issue of public importance").

Based on the conclusion that Plaintiffs have standing to challenge the validity of Rule 90.05-2(A) on all of the grounds set forth in their Complaint; that their claims are ripe and justiciable, and that the court has jurisdiction, the analysis proceeds to examine Plaintiffs' challenge on its merits.

B. Plaintiffs' Statutory Challenge to Rule 90.05-2(A)

(i) Standard of Review

Section 8058(1) of the Maine Administrative Procedure Act sets the standard of review for a challenge to a DHHS rule or refusal to adopt a rule as required by law. *Conservation Law Found. v. Dep't of Envtl. Prot.*, 2003 ME 62, ¶21, 823 A.2d 551; 5 M.R.S. § 8058.

This section provides a three-tier analysis for assessing a rule's validity. First, if the rule exceeds the agency's rulemaking authority, it is invalid. 5 M.R.S. § 8058(1).

[3] In providing for substantive judicial review to determine if an agency rule is "otherwise not in accordance with law," section 8058(1) allows the court to consider statutory as well as constitutional challenges. 5 M.R.S. § 8058(1).

Second, any other procedural error will invalidate the rule only if the court "finds the error to be substantial and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if the error had not occurred." *Id.* Third, if the rule is within the agency's authority and is procedurally valid, then the court's review is limited to determining whether it "is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law." *Id.*

(ii) Validity of Rule 90.05-2(A)

The Plaintiffs' primary objection to Rule 90.05-2(A), for purposes of their statutory claim, is that it conflicts with DHHS statute and thus exceeds DHHS's rulemaking authority as a matter of law. They do not assert any procedural irregularity in its promulgation nor do they contend that the rule is subject to the deferential "arbitrary, capricious, abuse of discretion" standard.

Whether the agency exceeds its statutory authority or acts contrary to law in promulgating a rule is an issue of statutory interpretation. *See Conservation Law Found. v. Dep't of Envtl. Prot.*, 2003 ME at ¶23, 823 A.2d 551.

In *Conservation Law Foundation*, the Law Court summarized the court's task in deciding whether a challenged rule is within the agency's statutory rulemaking authority, as follows:

> Whether the [agency] exceeded its statutory authority or violated other statutes in promulgating [the rule] is an issue of statutory interpretation. When a statute or statutory scheme is unambiguous, we ascertain the intent of the Legislature from the plain language. When there is ambiguity, however, we defer to the interpretation of a statutory

> scheme by the agency charged with its implementation as long as the agency's construction is reasonable. A particular statute is not reviewed in isolation but in the context of the statutory and regulatory scheme. Furthermore, if the Legislature's intent is not expressed unambiguously and the interpretation of the statutory scheme involves issues that are within the scope of the agency's expertise, then the agency's interpretation must be given special deference.
>
> *Id.*, 2003 ME at ¶23, 823 A.2d 551.

DHHS has general rule making authority to issue rules and regulations that are "necessary and proper for the protection of life, health, welfare, and the successful operation of the health and welfare laws." 22 M.R.S. § 42 (2016). Maine's Medicaid program ("MaineCare") is one of the laws within the authority of the Department. *See* 22 M.R.S. §§ 3172, et seq. DHHS has authority to "make all necessary rules and regulations consistent with the laws of the State for the administration of [MaineCare]." 22 M.R.S. § 3173 (2016). This includes, but is not limited to, "establishing conditions of eligibility and types and amounts of aid to be provided, and defining . . . the type of medical care to be provided." *Id.*

Rule 90.05-2(A) is found within chapter 101 of the Code of Maine rules. 10-144 C.M.R. Chapter 101 is known as the "MaineCare Benefits Manual" and is the set of rules implementing Maine's Medicaid program. *Id.* Rule 90.05-2(A) defines the type of abortion services that are covered under MaineCare and establishes what criteria must be met in order to be eligible for reimbursement.

For these reasons, Rule 90.05-2(A) does not, on its face, exceed DHHS's authority under 22 M.R.S. § 3173 to establish conditions of eligibility and define the type of medical care that will be provided to MaineCare patients. DHHS clearly has

the authority to make rules defining what procedures are, and are not, covered by MaineCare.

However, Plaintiffs' statutory challenge to Rule 90.05-2(A) is based on a different part of Title 22: the statement of Maine's public policy concerning abortion as set forth in 22 M.R.S. § 1598 (2016). This section is found in a part of Title 22 that deals with public health issues.

Plaintiffs allege that Rule 90.05-2(A) is "not in accordance with law" because it conflicts with the public policy of the State of Maine regarding access to abortion, as set forth by 22 M.R.S. § 1598. (Pls. Memo 24.) Section 1598 states in relevant part that "[i]t is the public policy of the state that the state *not restrict* a woman's exercise of her private decision to terminate a pregnancy before viability except as provided in section 1597-A." 22 M.R.S. § 1598 (emphasis added).[4]

Plaintiffs contend that Rule 90.05-92, in failing to provide MaineCare coverage for abortion except in three limited circumstances, restricts a woman's ability to exercise her right to an abortion in violation of section 1598.

The Legislature's intent in enacting the declaration of public policy at 22 M.R.S. § 1598 is not ambiguous, because the word "restrict" has a commonly understood meaning—"to confine within bounds . . ., restrain, . . to place under restriction . . ." Not to restrict something thus means not to confine, limit or restrain it. There is a clear semantic difference between not restricting exercise of a right and enabling the

[4] 5 M.R.S § 1597-A sets forth certain consent requirements for the performance of an abortion on a pregnant minor.

exercise of a right. One involves forbearance and the other involves support. Thus, based on the plain meaning of the word "restrict," the Legislature's commitment in enacting section 1598 not to restrict a woman's right to choose to have an abortion is cannot be deemed a commitment to enable a woman to obtain an abortion regardless of her ability to fund it.

In *Harris v. McRae*, the Court held that the Hyde Amendment, which, like Rule 90.05-2(A) in Maine, limits Medicaid funding for abortions to specified circumstances, does not violate a woman's due process right to an abortion. 448 U.S. 297, 315-17 (1980) ("The Hyde Amendment . . . places no governmental obstacle in the path of a woman who chooses to terminate her pregnancy . . ."). The Court summarized its conclusion as follows:

> Although Congress has opted to subsidize medically necessary services generally, but not certain medically necessary abortions, the fact remains that the Hyde Amendment leaves an indigent woman with at least the same range of choice in deciding whether to obtain a medically necessary abortion as she would have had if Congress had chosen to subsidize no health care costs at all. We are thus not persuaded that the Hyde Amendment impinges on the constitutionally protected freedom of choice recognized in [Roe v. Wade, 410 U.S. 113 (1971)].

448 U.S. at 316-17.

Though the Supreme Court's focus in *Harris* was not on 22 M.R.S. § 1598, the analogy is apt. *Compare Harris*, 448 U.S. at 316 ("government may not place obstacles in the path of a woman's exercise of her freedom of choice . . .") *with* 22 M.R.S. § 1598 ("the state[may] not restrict a woman's exercise of her private decision"). The government's failure to fund abortion services is not, in itself, a restriction on the right

to choose to have an abortion. Thus, a statute barring any restriction on a woman's exercise of her right to choose does not, in itself, compel the government to fund abortion services.

Plaintiffs further argue that Rule 90.05-2(A) restricts a woman's choice by "injecting coercive financial incentives favoring childbirth into [her] decision" (Pls. Mem. 31, *citing Harris*, 448 U.S. at 333 (Brennan, J., dissenting,)). But the government can permissibly subsidize one constitutionally protected choice and not the other. In *Anderson v. Town of Durham*, a case in which the Law Court upheld Maine's tuition payment statute, the statute at issue prohibited public funds from being used to pay tuition at religiously affiliated schools, while allowing public funds to be used to fund tuition at nonsectarian private schools. 2006 ME 39, ¶ 1, 895 A.2d 944. In its decision, the Law Court held that the tuition payment statute "merely prohibits the State from funding [the parents'] school choice, and as such, it does not burden or inhibit religion in a constitutionally significant manner." *Id.* at ¶ 54.

What *Anderson* illustrates is that Maine law differentiates between restricting the exercise of a constitutional right and not funding the exercise of the right. The former is unlawful; the latter is not.

Because Rule 90.05-2(A) does not restrict the range of options that are available to MaineCare recipients, and therefore does not prevent a woman from obtaining an abortion, it is not contrary to the public policy of Maine as declared in section 1598.

(iii) *Effect of Absence of Findings to Support Rule 90.05-2*

Plaintiffs argue that DHHS has failed to explain why the rule is a "reasonable"

interpretation of its mission, duties, and guiding principles. Plaintiffs contend that the Law Court's decision in *Cumberland Farms Northern, Inc., v. Maine Milk Comm'n*, 377 A.2d, 84, 85 (Me. 1977), requires DHHS to make specific findings as to why it adopted Rule 90.05-2(A).

In *Cumberland Farms*, the Law Court reviewed a decision of the Maine Milk Commission to determine whether it had incorrectly applied the pricing standards when fixing the price of milk under 7 M.R.S. § 2954. 377 A.2d at 85. Nothing in the Law Court's decision, however, indicates that this guidance extends beyond the Maine Milk Commission and should also be followed by DHHS or that it applies more broadly to all rules adopted by an administrative agency pursuant to the APA.

The APA imposes no general requirement that an agency must always explain its rationale for the adoption of a rule. *See Conservation Law Found., supra*, 2003 ME at ¶39, 823 A.2d 551 (holding that the Department of Environmental Protection's failure to provide an explanation for its adoption of a rule does not, in itself, demonstrate unreasonableness when such an explanation is not required either by the APA or by the agency's enabling statute).

Similarly, nothing in the DHHS enabling statute requires such an explanation. 22 M.R.S. § 42; 22 M.R.S. § 3173. The absence of an explanation for Rule 90.05-2(A) does not render the rule invalid.

(iv) *Rule 90.05-2(A) In Light of DHHS' Mission and Guiding Principles*

Plaintiffs argue that Rule 90.05-2(A) violates the mission and guiding principles of the DHHS, because the rule compromises the physical health and well-being of low-

income women by compelling them to forgo the treatment necessary to terminate their pregnancy. Plaintiffs further argue that Rule 90.05-2(A) violates the department's statutory mission by failing to "respect the rights and preferences" of MaineCare beneficiaries and by undermining their ability to "achieve and maintain their full economic independence and personal development."

The department's mission and guiding principles are set forth in 22-A M.R.S § 202 which provides in relevant part:

> 1. Mission. The mission of the department is to provide health and human services to the people of Maine so that all persons may achieve and maintain their optimal level of health and their full potential for economic independence and personal development. Within available funds, the department shall provide supportive, preventive, protective, public health and intervention services . . . . The department shall endeavor to assist individuals in meeting their needs and families in provide for the developmental, health and safety needs of their children, while respecting the rights and preferences of the individual or family.
>
> 2. Guiding Principles. The following principles are adopted to guide the department. In the performance of its duties, the department shall strive to:
>
> > A. Improve the health and well-being of Maine residents, with this goal guiding all decision, programs and services of the department . . . .

22-A M.R.S. § 202 (2016) (emphasis added).

To the extent that Plaintiffs argue Rule 90.05-2(A) coerces women into compromising their health and well-being, their argument fails for the same reasons noted elsewhere in this opinion. Rule 90.05-2(A) does not force MaineCare beneficiaries to choose birth; it simply does not pay for termination of a woman's pregnancy.

Plaintiffs' argument that Rule 90.05-2(A) is not in accordance with law because beneficiaries would achieve a more optimal level of health and well-being, economic independence, and personal development if MaineCare provided reimbursement for abortion services, also fails. The department "has considerable discretion in placing appropriate limitations on services rendered under [the] State['s] Medicaid plan." *Biewald v. State*, 451 A.2d 98, 100 (Me. 1982). Also, the scope of services covered by MaineCare is a function of funds allocated; the second sentence of the mission statement reads in part: "*within available funds*, the department shall provide [certain services]." 22-A M.R.S. § 202 (emphasis added).

In fact, the mission statement is primarily aspirational and cannot fairly be construed to compel DHHS to fund any particular health service, including but not limited to abortion services. *See id.* (DHHS "shall *endeavor* to assist individuals . . . while respecting [their] rights and preferences" and "shall *strive* to improve the health and well-being of [individuals]) (emphasis added).[5]

DHHS's interpretation of its own enabling statutes is entitled to some deference, especially to the extent of any ambiguity or room for interpretation. *See Conservation Law Found. v. Dep't of Envtl. Prot.*, 2003 ME at ¶23, 823 A.2d 551. The DHHS plainly does not interpret any of the various provisions of title 22, Maine Revised Statutes, that are discussed above to require coverage of abortion services

[5] Plaintiff's argument that Rule 90.05-2(A) does not carry out the Department's mission as effectively as a rule providing for reimbursement of abortion services is actually a claim that the rule is arbitrary and capricious. Plaintiffs, however, only argue that the rule is "not in accordance with law" and do not claim that the rule is arbitrary and capricious. Even so, were the rule to be reviewed under the deferential arbitrary and capricious standard, it likely would pass muster.

beyond the limited circumstances set forth in Rule 90-05.02(A). This court cannot say that interpretation is wrong.

In conclusion, for purposes of their first count or Cause of Action, the Plaintiffs have not established that Rule 90.05-2(A) is beyond DHHS's rulemaking authority or inconsistent with any DHHS statute.

D. Plaintiffs' Equal Protection Claim

The Plaintiffs' third count or Cause of Action alleges that section 90.05-2(A) violates Article I, § 6-A of the Maine Constitution. Article I, § 6-A provides, "[n]o person shall be . . . denied the equal protection of the laws, nor be denied the enjoyment of that person's civil rights or be discriminated against in the exercise thereof." ME. CONST. Art. I, § 6-A.

The Law Court has stated that the equal protection guarantee contained in this provision is coextensive with that of the United States Constitution. *See Town of Frye Island v. State*, 2008 ME 27, ¶ 14, 940 A.2d 1065, 1069. Accordingly, Maine courts will use "similar methods of analysis" when evaluating an equal protection claim brought under the Maine Constitution. *School Admin. Dist. No. 1 v. Comm'r, Dep't of Educ.*, 659 A.2d 854, 857 (Me. 1995).

The court applies a two-step test to determine whether an equal protection violation has occurred. First, the party challenging the statute must show that similarly situated persons are not treated equally under the law. *See Mahaney v. State*, 610 A.2d 738, 742 (Me. 1992). If this step is met, the court must then determine what level of scrutiny to apply. *See School Admin. Dist. No. 1*, 659 A.2d at 857.

If the challenged action "infringes on a fundamental constitutional right, or involves an inherently suspect classification, it is subject to analysis under the strict scrutiny standard." *Id.*, 659 A.2d 854, 857 (Me. 1995). If the government action does not implicate either a fundamental right or a suspect class, then the action need only be rationally related to a legitimate state interest. *Id.*

Here, the denial of Medicaid reimbursement for abortions sought by indigent woman does not infringe upon a fundamental right. *See Harris v. McRae, supra,* 448 U.S. at 316. Similarly, the denial of reimbursement does not discriminate against a traditional suspect class, such as race or religion, which would receive heightened scrutiny. *See Sch. Admin. Dist. No. 1,* 659 A.2d at 857. Instead, the rule operates to discriminate against a class composed of indigent women who desire to obtain an abortion. *See Roe v. Maher,* 432 U.S. 464, 470-71 (1977).

The United States Supreme Court has repeatedly held that indigency is not a suspect classification for purposes of the Equal Protection Clause of the United States Constitution. *Id.* at 471; *Harris,* 448 U.S. at 322-23. The Maine Law Court has implicitly decided likewise for purposes of the Maine Constitution. *See Norris v. State,* 541 A.2d 926, 929 (Me. 1988) (applying rational basis review to an equal protection challenge under the United States and Maine Constitutions claiming discrimination against indigent criminal defendants).[6] Therefore, because Rule 90.05-2(A) neither

[6] The Law Court opinion in *Norris,* citing the *Harris* and *Roe v. Maher* decisions, notes that "the United States Supreme Court has repeatedly held that indigency, standing alone, is not a suspect classification." 541 A.2d at 929. The Law Court does not go on to specify that indigency is likewise not a suspect classification under the Maine Constitution, but that conclusion is implicit in the court's denial of the plaintiffs' equal protection claims under both the United States and Maine Constitutions, especially given

infringes upon a fundamental right nor discriminates against a suspect class, the court will apply the rational basis test.

The rational basis standard is highly deferential and an action reviewed under this standard bears a strong presumption of validity. *See Doe v. Williams*, 2013 ME 24, ¶55. The burden is on the party challenging the government action to demonstrate that "no conceivable state of facts exists to support the legislative action." *School Admin. Dist. No. 1, supra*, 659 A.2d at 857.

Here, Plaintiffs argue that no rational basis exists to support Rule 90.05-2(A) because the governmental interest identified in *Harris*—promoting childbirth over abortion—is not a legitimate state interest in Maine. Plaintiffs also contend that the regulation bears no rational relationship toward achieving the avowed interest of complying with federal law. This argument relies on the premise that states are free to offer broader Medicaid coverage for abortions that are not reimbursable with federal dollars, and the further premise that it is more costly for the state to withhold reimbursement for abortions than it would be to fully subsidize such procedures with state funds.

However, when reviewing a statute or rule under the rationale basis test, the reviewing court does not seek to determine whether the approach taken in the statute or rule is the wisest decision or the best means of achieving the desired result; such

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that the court has said the right to equal protection under the federal Constitution is "coextensive" with that under the Maine Constitution.

public policy questions are to be answered by the legislative and executive branches of government. *See Peters v. Saft*, 597 A.2d 50, 52 (Me. 1991).

DHHS's stated rationale for Rule 90.05-2(A) is to achieve consistency and compliance with federal law. As such, the proper inquiry is not whether the department could achieve compliance while also saving the state money, but whether the rule is rationally related to achieving compliance and consistency. States that participate in the Medicaid program are likely required to provide coverage for abortions, at least to the extent that such services are reimbursable with federal funds. *See Edwards v. Hope Medical Group for Women*, 512 U.S. 1301, (1994) (Scalia, Cir. J.) (noting that Courts of Appeals have "uniformly supported the premise" that "Title XIX requires states participating in the Medicaid program to fund abortions . . . unless federal funding for those procedures is proscribed by the Hyde Amendment"). *See also Dalton v. Little Rock Family Planning Servs.*, 516 U.S. 474 (1996) (modifying an injunction to enjoin enforcement of a state constitutional amendment insofar as it prohibited public funds from otherwise being used to provide coverage for abortions reimbursable under the Hyde Amendment.); *Preterm, Inc. v. Dukakis*, 591 F.2d 121, 134 (1st Cir. 1979) ("enjoining implementation of [a Massachusetts statute] insofar as it prohibits state reimbursement for abortions which would qualify for federal reimbursement under the terms of the Hyde Amendment").

To the extent federal law requires it, Rule 90.05-2(A) provides that Maine's Medicaid program will provide coverage for those abortion services that are reimbursable with federal funds. The rule thus has a rational purpose related to

achieving a legitimate state interest.

Plaintiffs contend that the Maine Constitution's equal protection provision--"[n]o person shall . . . be denied the enjoyment of that person's civil rights or be discriminated against in the exercise thereof," ME. CONST. Art. I, § 6-A—provides more expansive protections than the equal protection clause in the United States Constitution. However, the Maine Law Court has said otherwise. *See Green v. Comm'r of Mental Health & Mental Retardation*, 2000 ME 92, ¶21 n.4, 750 A.2d 1265 ("Similar to the due process clauses of the Maine and United States constitutions, the equal protection clauses found in the state and federal constitutions offer coextensive protections.") (*citing School Admin. Dist. No. 1 v. Comm'r, Dep't of Educ., supra*, 659 A.2d at 857; *Choroszy v. Tso*, 647 A.2d 803, 808 (Me. 1994)).

Plaintiffs have not shown that the equal protection provisions of the Maine Constitution compel Defendant to provide MaineCare funding for abortion services beyond those presently covered in Rule 90.05-02(2)(A).

E. Plaintiffs' Due Process and Privacy Claims

In the Third and Fourth Causes of Action set forth in their Complaint, Plaintiffs allege that Rule 90.05-2(A) violates their patients' fundamental rights to privacy and substantive due process as found in Article I, Sections 1 and 6-A of the Maine Constitution. A substantive due process analysis turns on whether the challenged state action implicates a fundamental right. *Doe v. Williams*, 2013 ME 24, ¶¶65-66, 61 A.3d 718. "If state action infringes on a fundamental right or fundamental liberty interest, the infringement must be narrowly tailored to serve a compelling state

interest." *Id.* If the challenged action does not implicate a fundamental right or liberty interest, the rational basis test applies. *Id.*; *State v. Haskell*, 2008 ME 82, ¶5, 955 A.2d 739.

The Law Court has determined that "the substantive due process rights of the United States and Maine Constitutions are coextensive," *Doe v. Williams* at ¶65, 61 A.3d 718 (*citing Green v. Comm'r of Mental Health & Mental Retardation, supra*, 2000 ME 92, ¶13 n.2, 750 A.2d 1265). As a result, the United States Supreme Court's decision in *Harris v. McRae, supra*, regarding a due process challenge to the Hyde Amendment, provides guidance on the Plaintiffs' due process challenge to Rule 90.05-2(A).

This is especially true, given that the effect of the Hyde Amendment upon federal Medicaid funding for abortion services is precisely the same as the effect of Rule 90.05-2(A) upon MaineCare funding for abortion services—each precludes funding except in specified circumstances.

In *Harris*, the Court stated that "although the liberty protected by the Due Process Clause affords protection against unwarranted government interference with freedom of choice in the context of certain personal decisions, it does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom." *Harris*, 448 U.S at 317-18. The Court then held that the limits on Medicaid funding for abortions contained in the Hyde Amendment do not interfere with a woman's fundamental liberty right to choose to terminate a pregnancy. *See id.*, 448 U.S. at 318.

In light of *Harris*, and given that the due process rights established by the United States and Maine Constitutions are coextensive, it cannot be said that Rule 90.05-2(A) infringes upon the due process rights established by article I, sections 1 and 6-A of the Maine Constitution.

Accordingly, the proper test for assessing the validity of the rule is the rational basis test and for the same reasons outlined in the analysis of Plaintiffs' equal protection challenge, the court concludes that Rule 90.05-2(A) is rationally related to a legitimate state objective.

F. Plaintiffs' Declaration of Rights Claim

In the second count or Cause of Action of their Complaint, Plaintiffs allege that Rule 90.05-2(A) violates their patients' rights of enjoying and defending life and liberty, and of pursuing safety as guaranteed by Article I, Section I of the Maine Constitution. (Compl. ¶98.) Plaintiffs assert that, by funding birth-related services but not abortion services, the State is coercing women into carrying their pregnancies to term, is delaying their access to abortion care, and is forcing them to make dangerous sacrifices in order to afford an abortion.

In effect, Plaintiffs' constitutional argument is similar to their statutory argument—that the stated public policy not to restrict the right to abortion means that the state must provide funding to enable indigent women to have an abortion.

In both instances, what the constitution and the statute guarantee is that the government will not restrict, infringe on, limit, or otherwise interfere with, a person's exercise of their constitutional rights. What these provisions do not guarantee is that

the government will provide funding to enable all to exercise their rights regardless of ability to pay. The key distinction is between respecting a right and funding the exercise of the right. That distinction is the basis for the Supreme Court's decision in *Harris v. McRae*, that the funding limitations contained in the Hyde Amendment "imposed no restriction on access to abortions that [were] not already [present]." 448 U.S. at 314.

The Plaintiffs further attempt to distinguish *Harris* by arguing that the Maine Constitutional provision at issue "accords a high priority to the preservation of health." (Pls. Mem. 52.) But the Supreme Court's decision in *Harris*, and before that in *Roe v. Wade*, have accorded the same high priority to protection and preservation of a woman's health. *Harris*, 448 U.S. at 316; *Wade*, 410 U.S. at 153. Moreover, Rule 90.05-2(A) does take risk to health into account, albeit only in extreme instances, in providing MaineCare funding for abortion services when the pregnancy is life-threatening.

For the foregoing reasons, and mindful that the Maine Law Court has "traditionally exercised great restraint when asked to interpret [the Maine Constitution] to afford greater protections than those recognized [federally]," *Bagley v. Raymond Sch. Dep't*, 1999 ME 60, ¶13, 728 A.2d 127 (internal quotations omitted), this court concludes that Rule 90.05-2(A) does not violate Article I, Section 1 of the Maine Constitution.

Conclusion

Given the wording of the statutory and constitutional provisions that the

Plaintiffs rely upon, and given the Law Court's longstanding deference to federal constitutional precedent in its interpretation of the Maine Constitution, this court cannot find a basis in the Maine Constitution or a Maine statute for compelling the State to provide the MaineCare funding that Plaintiffs seek to have made available to their patients.

The public policy questions raised in this case are valid and significant. In this court's view, however, the recourse and remedy Plaintiffs seek in this case lies with other branches of government.

For these reasons, it is hereby ORDERED AND ADJUDGED AS FOLLOWS:

1. Defendant's Motion for Summary Judgment is granted.
2. Plaintiffs' Cross-Motion for Summary Judgment is denied.
3. Judgment on the Complaint is granted to Defendant, along with any recoverable costs of court as the prevailing party.

Pursuant to M.R. Civ. P. 79(a), the Clerk is hereby directed to incorporate this Decision and Judgment by reference in the docket.

Dated 24 October 2017

A. M. Horton, Justice

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No.

MABEL WADSWORTH WOMEN'S HEALTH CENTER; FAMILY PLANNING ASSOCIATION OF MAINE d/b/a MAINE FAMILY PLANNING AND PRIMARY CARE SERVICES; and PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND,	)	
Plaintiffs,	)	**COMPLAINT**
v.	)	
MARY MAYHEW, COMMISSIONER OF THE MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES, in her official capacity,	)	
Defendant.	)	

COMPLAINT

INTRODUCTION

1. More than twenty years ago, Maine declared its express public policy not to restrict a woman's "exercise of her private decision to terminate a pregnancy." But, contrary to that policy, the Maine Department of Health and Human Services prevents women living in poverty from using their otherwise comprehensive insurance plan (MaineCare) to cover the cost of an abortion. In doing so, the Department of Health and Human Services violates both Maine statutory law and the state constitutional guarantees of liberty, safety, and equality.

2. The statutory mission of the Maine Department of Health and Human Services is to provide health and human services to Mainers "so that all persons may achieve and maintain their optimal level of health and their full potential for economic independence and personal development."

3. In furtherance of this goal, the State runs a Medicaid program, known as MaineCare, through which it provides comprehensive medical coverage for its poorest residents.

4. Yet, in violation of the State's express public policy, as well as constitutional requirements, the Department of Health and Human Services has issued a regulation withholding coverage for abortion from Medicaid-eligible women in nearly all circumstances. 10-144 C.M.R. ch. 101(II), § 90.05-2(A). By contrast, *every* Medicaid-eligible pregnant woman who continues her pregnancy is able to use MaineCare to cover all related medical care.

5. This exclusion of Medicaid coverage for abortion causes substantial negative effects on the health and well-being of women with low incomes. For example, pregnant women with a variety of serious, but common, medical conditions, such as heart disease, diabetes, chronic hypertension, and obesity, are denied coverage for the abortions they need to prevent extraordinary damage to their health, including excruciating pain, damage to major organ systems, and in some cases, even shortened life expectancy. Pregnant women who require medications that can cause harm to a growing fetus to treat or manage an underlying medical condition, such as cancer, high blood pressure, or certain mental

illnesses, are denied coverage for the abortions they need to be able to continue receiving this critical care. Women who discover that their fetuses have severe or fatal anomalies are denied coverage for abortions that are necessary to prevent mental anguish and unnecessary suffering. Women who experience intimate partner violence are denied coverage for abortions even though the pregnancies may exacerbate the abuse and the birth of a child may forever tie them to their abuser.

6. Without state assistance, these women and their families must make tremendous sacrifices to gather the money for the medical care they need. For many women, gathering the funds to pay for an abortion comes at the sacrifice of paying for other necessities, such as food, rent, heat, or transportation. For others, the effort to raise the necessary funds takes a significant amount of time, thus delaying their care and further compromising their health. And still other women are never able to raise the money they need, and are forced to continue their pregnancies to term against their will, in violation of their statutory and constitutional rights, and to the detriment of their physical and/or mental health.

7. This action challenges the exclusion of abortions from Maine's otherwise comprehensive Medicaid program. Plaintiffs bring this action under the Maine Administrative Procedures Act ("MAPA"), 5 M.R.S. § 8058, and Article 1, Sections 1 and 6-A of the Maine Constitution. The regulation should be declared unlawful and unconstitutional, and its enforcement should be permanently enjoined.

JURISDICTION AND VENUE

8. Jurisdiction is pursuant to 4 M.R.S. § 105; 5 M.R.S. § 8058; 14 M.R.S. §§ 5951-5963; and 14 M.R.S. § 6051(13).

9. Venue is proper in Cumberland County, pursuant to 14 M.R.S. § 505.

PARTIES

Plaintiffs

10. Plaintiff Mabel Wadsworth Women's Health Center ("Mabel Wadsworth Center") is a Nonprofit Corporation incorporated in Maine with its principal place of business in Bangor, Maine.

11. Since 1984, Mabel Wadsworth Center has provided women's reproductive health care, including: annual gynecological exams; screening for cervical and breast cancer; colposcopy; family planning counseling and contraceptive services; pregnancy testing and counseling regarding pregnancy options (including carrying to term and raising a child, placing it for adoption, or abortion); prenatal care; referrals for adoption and parenting classes; lesbian health care; screening, diagnosis, and treatment for urinary, vaginal, and sexually transmitted infections; consultation on menopause, menstrual concerns, and other women's health issues; hormone therapy and other services for transgender clients; and fertility awareness.

12. Mabel Wadsworth Center offers surgical abortion services generally up to 13.6 weeks (*i.e.*, 13 weeks and 6 days) as measured from the first day of the woman's last menstrual period ("LMP") (and up to 14.6 weeks LMP in rare cases),

and medication abortion services up to 10 weeks LMP.

13. Mabel Wadsworth Center is an enrolled MaineCare provider, and many of its patients are enrolled in or eligible for MaineCare. This includes MaineCare eligible women who need abortions. These women have substantial difficulty amassing the funds necessary to obtain the procedure and some are not able to get the care at all. In some cases, the Mabel Wadsworth Center offers these women discounts, sometimes performing the abortion at a financial loss to the organization.

14. The Mabel Wadsworth Center sues on behalf of its patients who seek abortions and are enrolled in or eligible for MaineCare, but are or would be denied MaineCare coverage for abortion.

15. Plaintiff Family Planning Association of Maine d/b/a Maine Family Planning and Primary Care Services ("Maine Family Planning") is a Nonprofit Corporation incorporated in Maine with its principal place of business in Augusta, Maine.

16. For more than forty years, Maine Family Planning has served the reproductive health care needs of women and men around the state. Maine Family Planning's clinical services include: annual gynecological exams; screening for cervical and breast cancer; family planning counseling and contraceptive services; pregnancy testing and counseling regarding pregnancy options (including carrying to term and raising a child, placing it for adoption, or abortion); referrals for adoption and parenting classes; prenatal consultation; colposcopy; screening,

diagnosis, and treatment of urinary, vaginal, and sexually transmitted infections; hormone therapy and other services for transgender clients; and services for mid-life women.

17. Maine Family Planning also provides surgical abortion services up to 14.0 weeks LMP, and medication abortion services up to 10 weeks LMP.

18. Maine Family Planning is an enrolled MaineCare provider and many of their clients are enrolled in or eligible for MaineCare. This includes MaineCare eligible women who need abortions. These women have substantial difficulty amassing the funds necessary to obtain the procedure and some are not able to get the care at all. In some cases, Maine Family Planning offers these women discounts, sometimes performing the abortion at a financial loss to the organization.

19. Maine Family Planning sues on behalf of its patients who seek abortions and are enrolled in or eligible for MaineCare, but are or would be denied MaineCare coverage for abortion.

20. Plaintiff Planned Parenthood of Northern New England ("PPNNE") is a Nonprofit Corporation incorporated in Vermont with established places of business in Topsham, Portland, Sanford, and Biddeford, Maine.

21. PPNNE provides reproductive health services throughout Vermont, New Hampshire, and Southern Maine. These services include: annual gynecological exams; family planning counseling; contraceptive services; pregnancy tests; counseling regarding pregnancy options (including carrying to term and raising a child, placing it for adoption, or abortion); adoption referral; prenatal consultation;

breast and cervical cancer screening; colposcopy; screening, diagnosis, and treatment of urinary, vaginal, and sexually transmitted infections; and HIV testing.

22. In Maine, PPNNE offers abortions only at its Portland health center, including surgical abortions up to 18.6 weeks LMP, and medication abortions up to 10 weeks LMP.

23. PPNNE is an enrolled MaineCare provider and many of its patients are enrolled in MaineCare. These women have substantial difficulty amassing the funds necessary to obtain the procedure and some are not able to get the care at all. In some cases, PPNNE offers these women discounts, sometimes performing the abortion at a financial loss to the organization.

24. PPNNE sues on behalf of its patients who seek abortions and are enrolled in or eligible for MaineCare, but are or would be denied MaineCare coverage for abortion.

Defendant

25. Defendant Mary Mayhew is sued in her official capacity as the Commissioner of the Maine Department of Health and Human Services ("DHHS"), which is located in Augusta, Maine.

26. Commissioner Mayhew is responsible for the control and supervision of DHHS, 22-A M.R.S. §§ 204-216, which is the Maine state agency responsible for the administration of MaineCare, 22 M.R.S. §§ 42, 3173.

27. Commissioner Mayhew is responsible for the administration and proper implementation of MaineCare's policies and procedures and is obligated to

administer the department and its programs, including MaineCare, in accordance with DHHS's authorizing statute, 22-A M.R.S. § 205(1), and all other applicable state and federal laws.

28. At all times relevant to this Complaint, Commissioner Mayhew has acted in her official capacity and under color of state law.

STATUTORY AND REGULATORY FRAMEWORK

29. It is the public policy of the State of Maine that it "not restrict a woman's exercise of her private decision to terminate a pregnancy before viability," except to the extent it permits the involvement of a parent, guardian, or adult family member in a minor's abortion decision. 22 M.R.S. § 1598(1).

30. The statutory mission of DHHS is to "to provide health and human services to the people of Maine so that all persons may achieve and maintain their optimal level of health and their full potential for economic independence and personal development." 22-A M.R.S. § 202(1).

31. Title 22-A directs that "[w]ithin available funds, [DHHS] *shall* provide supportive, preventive, protective, public health and intervention services to children, families and adults." *Id.* (emphasis added).

32. Medicaid is a joint federal-state program that provides medical assistance to the poor. 42 U.S.C. §§ 1396-1396v; 42 C.F.R. § 430.0. Medicaid is funded by a combination of state and federal dollars.

33. Like every other state in the nation, Maine participates in the Medicaid program. The Maine Medicaid program is known as "MaineCare."

34. DHHS administers the MaineCare program. 22 M.R.S. §§ 42, 3173; 10-144 C.M.R. Ch. 101(I), § 1.02-1. In order to receive matching federal funds, MaineCare must meet the minimum statutory requirements for coverage and eligibility, as set forth by federal law. *See* 42 U.S.C. § 1396a.

35. MaineCare "covers those reasonably necessary medical and remedial services that are provided in an appropriate setting and recognized as standard medical care required for the prevention and/or treatment of illness, disability, infirmity or impairment and which are necessary for health and well-being." 10-144 C.M.R. ch. 101(II), § 90.04.

36. MaineCare provides a comprehensive array of "reasonably necessary medical and remedial services" to eligible residents. *Id.* This includes physician services, in-patient and out-patient hospital services, prescription drug coverage, x-ray and laboratory tests, and mental health services. 22 M.R.S. § 3173; 10-144 C.M.R. ch. 101(II), §§ 45, 55, 65, 80, 90. MaineCare also provides reimbursement for transportation costs, and related travel expenses such as meals, lodging, and the costs related to a minor traveling with an adult member (who cannot find alternative childcare), incurred in obtaining covered medical care. 10-144 C.M.R. ch. 101(I), § 1.15; 10-144 C.M.R. ch. 101(II), § 113. If a covered service is not available in Maine, and provided other criteria are met, MaineCare will authorize payment for services provided out-of-state, including transportation costs. DHHS, MaineCare Services, Prior Authorization Manual: *Provider Guide for MIHMS Prior Authorizations*, 5.2; 10-144 C.M.R. ch. 101(II), § 113.06-7(C)(4)(E).

37. This comprehensive coverage includes services and supplies to prevent pregnancy. For example, MaineCare covers a range of family planning services, which are defined by regulation as "the informed and voluntary determination by the member of desired family size and timing of child bearing," for eligible residents. 10-144 C.M.R. ch. 101(II), § 30.01. This includes the provision of contraceptive procedures and supplies.

38. MaineCare also covers the cost of male and female sterilization procedures for eligible residents, provided that federal informed consent standards are met. 10-144 C.M.R. ch. 101(II), § 90.05-2(B).

39. Eligible pregnant women who want to continue their pregnancies to term are covered by MaineCare throughout their pregnancies and for at least sixty days of postpartum care, which extends through the last day of the month in which the sixtieth day falls. 10-144 C.M.R. ch. 332, pt. 3, § 4.3; 10-144 C.M.R. ch. 332, pt. 2, § 13.1(III). This coverage includes antepartum (prenatal) care, delivery, postpartum care, and "other services normally provided in uncomplicated maternity care." 10-144 C.M.R. ch. 101(II), § 90.04-4(B).

40. MaineCare also covers treatment for medical complications of pregnancy and any "other problems [a pregnant woman might experience] requiring additional or unusual services and requiring hospitalization." *Id.*

41. Additionally, if a woman is covered by MaineCare (or covered retroactively) on the day her baby is born, her newborn will also be covered under MaineCare for a year beginning at birth, regardless of whether the woman

maintains eligibility for Medicaid throughout the year. 10-144 C.M.R. ch. 332, pt. 2, § 13.1(III). MaineCare will continue to cover children and teenagers through age twenty, provided they meet certain family income eligibility requirements. 10-144 C.M.R. ch. 332, pt. 3, § 4.4.

42. By contrast, MaineCare will cover abortions only in three enumerated circumstances: when the pregnancy is life-threatening or results from rape or incest. 10-144 C.M.R. ch. 101(II), § 90.05-2. It does not cover abortions in other circumstances in which a medical provider determines that the care is a "reasonably necessary medical and remedial service[] . . . for the prevention and/or treatment of illness, disability, infirmity or impairment and which [is] necessary for health and well-being." *See, contra*, 10-144 C.M.R. ch. 101(II), § 90.04.

43. Thus, with the exception of abortion, MaineCare leaves the determination of what constitutes reasonably medically necessary pregnancy-related care to the provider's discretion.

44. Although federal law bars the use of federal Medicaid funds to cover the cost of abortion outside these three enumerated circumstances, federal law does not prevent states from using state funds to provide coverage for a broader range of services, and/or to broaden the eligibility requirements, beyond the minimum required by federal law.

45. Seventeen states, including Vermont, Connecticut, and Massachusetts, cover abortions in their state Medicaid programs in circumstances beyond those where the pregnancy was caused by rape or incest, or endangers the woman's life.

HEALTH CONDITIONS RELATED TO CONTINUED PREGNANCY

46. While a source of joy for a great many women and families, continuing a pregnancy carries with it medical risks for all women.

47. Pregnancy affects a woman's physical and psychological health in myriad ways, some of them permanent. Every organ and gland of the woman's body is affected. For example, during pregnancy a woman's blood volume increases by 30-50% and her heart rate also increases. This forces a pregnant woman's heart to work much harder throughout her pregnancy, during labor and delivery, and after giving birth. A woman's immune system is also weakened during pregnancy, making her more vulnerable to infections.

48. The risks related to continued pregnancy are particularly significant for women with certain preexisting medical conditions, such as heart disease, lupus, cancer, diabetes, obesity, hypertension, renal disease, liver disease, and other physical and mental health disorders. Pregnancy can exacerbate these conditions, causing even more severe health problems including seizures, diabetic coma, hemorrhage, heart damage, and loss of kidney function.

49. Pregnancy can also interfere with the ability to treat other medical conditions. For example, some drugs—such as those used to control hypertension, to treat cancer, or to treat certain mental illnesses like bipolar disorder—pose a risk to the developing fetus. When a woman taking one of these drugs becomes pregnant, she must decide whether to continue taking the drug and risk harm to

the developing fetus, stop taking the drug and risk harm to herself, or terminate the pregnancy.

50. Even women who begin their pregnancies with no underlying medical complications may develop serious, but not immediately life-threatening, health problems related to the pregnancy, such as gestational diabetes, hypertension, or hyperemesis gravidarum (severe vomiting that can lead to significant weight loss, dehydration, mental disturbance, damage to the fetus, and multiple hospital admissions throughout the pregnancy).

51. Pregnancy and the postpartum period are also times of increased vulnerability to mental health issues. Mental health issues may present for the first time during pregnancy, and pregnancy also poses a significant risk of relapse or worsening of symptoms across a broad range of psychiatric illnesses, including bipolar disorder, schizophrenia, and obsessive-compulsive disorder.

52. In addition, pregnancy poses a significant risk to women who have suffered mental illness during a prior pregnancy, such as postpartum depression.

53. Some women experience significant psychological and emotional distress as a result of being forced to continue an unwanted pregnancy.

54. Some women suffer severe psychological distress at the thought of continuing a pregnancy to term after they learn the fetus they are carrying has a severe anomaly or has a condition incompatible with life.

55. Some women want to avoid bringing children into families already suffering from physical, sexual, or psychological abuse.

56. Continuing a pregnancy may increase a woman's risk of intimate partner violence, and the birth of a child prevents some women from escaping an abusive partner, thus forcing the woman and her children to endure ongoing and serious threats to their physical and mental health.

57. Some women suffer significant distress because they feel that their dreams of a better life will vanish because an unwanted pregnancy will prevent them from finishing school or going to college, or result in increased financial strain on their family, or prevent them from being able to provide and care for other children and family members.

58. For some women with low incomes, trying to obtain an education or to maintain employment, being forced to carry an unwanted pregnancy to term hinders or derails these plans, and prevents some girls and women from escaping the cycle of poverty, despite their best efforts.

59. MaineCare will not cover the cost of an abortion for any woman in these or any other circumstances unless the pregnancy is the result of rape or incest, or unless and until her health deteriorates to the point where her life is at risk.

WOMEN SEEKING ABORTIONS IN MAINE

60. Legal abortion is one of the safest procedures in contemporary medical practice, in terms of both mortality (death) and morbidity (medical complications short of death).

61. The risk of death associated with childbirth is approximately fourteen times higher than that associated with abortion, and every pregnancy-related complication is more common among women having live births than among those having abortions.

62. Although abortion overall is significantly safer than continuing pregnancy through childbirth, the risks associated with abortion increase as gestation advances.

63. Approximately one in three women in this country will have an abortion by age forty-five. A majority of women having abortions (61%) already have at least one child and most (66%) also plan to have a child or additional children in the future.

64. According to the U.S. Census Bureau, Maine has the second highest poverty rate in New England. In 2013, approximately 14% of Mainers were living below the federal poverty level ("the FPL"), a frequent measure of low-income populations set by the U.S. government.

65. Current government guidelines define the FPL as a single person who makes less than $11,770 per year, with an additional $4,160 per year for each additional member of the household.

66. The highest poverty rates in Maine are in the rural "rim" counties: Washington, Somerset, and Franklin.

67. Women enrolled in MaineCare are, by definition, poor. To qualify for MaineCare, a pregnant woman must be at or below 214% of the FPL.

68. The majority of Plaintiffs' abortion patients are enrolled in or eligible for MaineCare.

69. In Maine, abortions performed up to approximately 14 weeks LMP cost $500-$600. After 14 weeks LMP, the price goes up substantially. Abortions performed at 14.0-15.6 weeks LMP cost $725, and from 16.0-18.6 weeks LMP cost $1,000.

70. In addition to the cost of the procedure itself, women incur numerous expenses associated with obtaining abortions, such as transportation, lodging, child care, and missed work.

71. Access to an abortion provider is a significant problem for many women in Maine, but the problem is especially dire for poor women.

72. There are only three publicly-accessible clinics that provide abortions in Maine. These clinics are located in Portland, Augusta, and Bangor. Women who live outside these cities—rural women, in particular—face severely limited access to abortion.

73. Over half of Maine women live in counties that have no abortion clinic. For example, there are no abortion clinics in Washington, Somerset, and Franklin counties, which are the poorest counties in the state.

74. Some women live more than 200 miles from the nearest clinic and have to travel more than four hours each way in order to obtain an abortion.

75. A recent national study found that, for more than half the women studied, the out-of-pocket costs for the procedure and related travel expenses were

equivalent to more than one-third of their monthly personal income. For women obtaining abortions later in pregnancy, such costs approached two-thirds of their monthly personal income.

76. Without MaineCare assistance, women with low incomes have great difficulty paying for abortions and are forced to draw upon money saved for food, rent, clothing, and other family essentials in an attempt to pay for an abortion.

77. Many women have to delay their procedure in order to raise the money they need.

78. Because the cost of an abortion increases the later it is performed in pregnancy, and because only one clinic in the state performs abortions beyond the fourteenth week of pregnancy, delay makes an abortion more difficult to obtain.

79. That clinic, Plaintiff PPNNE's Portland health center, is located at the southern tip of the state.

80. At Plaintiff PPNNE's Portland health center, abortions at or above 16.0 weeks LMP are two-day procedures, requiring women to stay overnight in a hotel or make two round-trip visits to the clinic, compounding the costs associated with the procedure (*i.e.*, lodging, child care, and missed work).

81. There are no clinics in Maine that perform abortions after 18.6 weeks LMP. If a woman is unable to obtain an abortion in time in Maine, she will have to go out-of-state to get the care she needs. For some women, the costs associated with traveling out-of-state for an abortion after 18.6 weeks LMP will be prohibitive.

82. Some women are forced to continue their pregnancies to term because they cannot afford or obtain an abortion.

83. Plaintiffs are able to offer limited, privately-funded financial aid to certain women, but this financial aid does not fully cover the cost of the procedure, or transportation and other related costs.

84. Rather than turn poor women away, Plaintiffs will sometimes reduce their rates for women in particularly desperate circumstances, sometimes at a loss to the clinics.

85. Even with the discounts or private financial aid that some facilities are able to offer eligible patients, it is extremely difficult, and in some instances impossible, for low-income women to pay for abortion.

IMPACT OF DENIAL OF COVERAGE FOR ABORTIONS ON PLAINTIFFS' PATIENTS

86. Denied coverage for abortions, Medicaid-eligible women receive abortions later in their pregnancies, thereby placing their health at greater risk.

87. Denied coverage for abortions, Medicaid-eligible women are forced to carry pregnancies to term, at the expense of their physical and mental health.

88. In addition to the harm to their health, research shows that two years after being denied the ability to obtain an abortion, women forced to carry unwanted pregnancies to term are three times more likely to be living below the federal poverty level than are their socioeconomic counterparts who were able to obtain abortions.

89. Denied coverage for abortions, Medicaid-eligible women and their families are forced to sell items of value, forego other necessities (*e.g.*, food, rent, heat, or other health care), borrow money from an abusive partner, or take any number of other extreme measures to collect the funds to pay for the procedure. This harms not only women, but also their children and other family members.

90. By denying Medicaid-eligible women coverage for abortions, Defendant restricts women's ability to obtain abortions, in violation of official public policy, codified at 22 M.R.S. § 1598, and in excess of DHHS's statutory authority under, *inter alia*, 22 M.R.S. §§ 42, 3173 and 22-A M.R.S. § 202.

91. The medical costs to the state associated with covering pregnancy and childbirth services for a Medicaid-eligible woman (particularly a woman with a medically complicated pregnancy) far exceed the cost of an abortion.

92. By providing necessary coverage for women who continue their pregnancies, but denying necessary assistance to women who have abortions, the government infringes on poor women's right to liberty, safety, equality, and the enjoyment of their civil rights in violation of the Maine Constitution.

FIRST CAUSE OF ACTION: THE DHHS ABORTION BAN VIOLATES THE MAINE ADMINISTRATIVE PROCEDURES ACT BECAUSE IT EXCEEDS DHHS'S RULEMAKING AUTHORITY AND IS OTHERWISE NOT IN ACCORDANCE WITH LAW

93. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 92 inclusive.

94. Under the MAPA, rules that exceed an agency's rule-making authority are invalid. 5 M.R.S. § 8058.

95. Under the MAPA, rules that are "not in accordance with law" are invalid. *Id.*

96. By singling out and excluding abortions from MaineCare, the DHHS abortion ban, 10-144 C.M.R. ch. 101(II), § 90.05-2(A), is "in excess of the agency's rule-making authority" and/or "otherwise not in accordance with law" under the MAPA, because it violates, *inter alia*, the public policy of the State of Maine, as enshrined in statute, *see* 22 M.R.S. § 1598, as well as the plain language of DHHS's statutory mission, duties, and authority, *see, e.g.*, 22-A M.R.S. § 202; 22 M.R.S. §§ 42, 3173.

SECOND CAUSE OF ACTION: THE DHHS ABORTION BAN VIOLATES THE MAINE STATE CONSTITUTIONAL RIGHTS TO LIBERTY AND SAFETY

97. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 96 inclusive.

98. By singling out and excluding abortions from MaineCare, the DHHS abortion ban, 10-144 C.M.R. ch. 101(II), § 90.05-2(A), violates Plaintiffs' patients' "natural, inherent and unalienable" rights under the Maine State Constitution to "life and liberty . . . and of pursuing . . . safety" as guaranteed by Article I, Section I (Natural Rights) of the Maine Constitution.

THIRD CAUSE OF ACTION:
THE DHHS ABORTION BAN VIOLATES THE MAINE STATE CONSTITUTIONAL RIGHT TO EQUAL PROTECTION

99. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 98 inclusive.

100. The regulation singling out and excluding abortions from MaineCare violates Plaintiffs' patients' constitutional rights to equal protection of the laws, as guaranteed by Article I, Sections 1 (Natural Rights) and 6-A (Discrimination Against Persons).

101. By singling out and excluding abortions from MaineCare, the DHHS abortion ban, 10-144 C.M.R. ch. 101(II), § 90.05-2(A), violates Plaintiffs' patients' constitutional right not to be denied "the enjoyment of [their] civil rights or be discriminated against in the exercise thereof," as guaranteed by Article I, Section 6-A (Discrimination Against Persons).

FOURTH CAUSE OF ACTION:
THE DHHS ABORTION BAN VIOLATES THE MAINE STATE CONSTITUTIONAL RIGHT TO PRIVACY (SUBSTANTIVE DUE PROCESS)

102. Plaintiffs reallege and incorporate herein by reference each and every allegation of paragraphs 1 through 101 inclusive.

103. By singling out and excluding abortions from MaineCare, the DHHS abortion ban, 10-144 C.M.R. ch. 101(II), § 90.05-2(A), violates Plaintiffs' patients' constitutional right to privacy/substantive due process, as guaranteed by Article I, Sections 1 (Natural Rights) and 6-A (Discrimination Against Persons).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

104. declare 10-144 C.M.R. ch. 101(II), § 90.05-2(A) "in excess of the agency's rule-making authority" and/or "otherwise not in accordance with law" under the MAPA, 5 M.R.S. § 8058;

105. declare 10-144 C.M.R. ch. 101(II), § 90.05-2(A) unconstitutional under Article I, Sections 1 and/or 6-A of the Maine Constitution;

106. enjoin enforcement of 10-144 C.M.R. ch. 101(II), § 90.05-2(A);

107. award Plaintiffs' costs; and

108. grant Plaintiffs such other, further, and different relief as the Court may deem just and proper.

Dated: November 24, 2015.

Respectfully submitted,

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* *motion for admission pro hac vice pending*

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
PORSC-CV-2015-527

Mabel Wadsworth Women's Health Center; Family Planning Association of Maine d/b/a Maine Family Planning and Primary Care Services; and Planned Parenthood of Northern New England,	)	
Plaintiffs,	)	
v.	)	DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
Ricker Hamilton, Acting Commissioner of the Maine Department of Health and Human Services, in his official capacity,	)	
Defendant.	)	

Pursuant to M. R. Civ. P. 56, the Defendant, Ricker Hamilton, Acting Commissioner of the Maine Department of Health and Human Services ("Commissioner"), hereby moves for summary judgment on all counts of the Complaint.[1] There is no genuine issue of material fact and the Commissioner is entitled to judgment as a matter of law:

1. Plaintiffs Mabel Wadsworth Women's Health Center ("Mabel Wadsworth"), Family Planning Association of Maine d/b/a Maine Family Planning and Primary Care Services ("Maine Family Planning") and Planned Parenthood of Northern New England ("Planned Parenthood") (collectively "Plaintiffs") cannot establish that the rule promulgated by the Maine Department of Health and Human

[1] Effective May 26, 2017, Mary Mayhew resigned as Commissioner and Ricker Hamilton was named Acting Commissioner. Pursuant to M.R. Civ. P. 25(d), Ricker Hamilton is automatically substituted as the named Defendant. For ease of reference, Mr. Hamilton will be referred to herein as Commissioner.

Services ("Department"), which limits MaineCare funding for abortions necessary to preserve the life of the mother, or if the pregnancy is the result of rape or incest, 10-144 C.M.R. ch. 101(II), § 90.05-2(A) (" § 90.05-2(A)") is invalid under the Maine Administrative Procedures Act, 5 M.R.S. § 8058.

2. Plaintiffs cannot establish that § 90.05-2(A) violates the Equal Protection clause contained in Article I, Section 6-A of the Maine Constitution and the natural rights provisions of Article I, Section I of the Maine Constitution.

3. Plaintiffs cannot establish that § 90.05-2(A) violates the "life and liberty" and pursuing "safety" provisions of Article I, Section I of the Maine Constitution.

4. Plaintiffs cannot establish that § 90.05-2(A) violates the right to privacy/substantive due process provisions of Article I, Section I and Article I, Section 6-A of the Maine Constitution.

The grounds for this motion are more fully set forth in Defendant's Memorandum of Law in Support of Motion for Summary Judgment. The Motion is supported by the parties' Consolidated Statement of Undisputed Material Facts ("CSMF"), Stipulation, and the supporting materials.

Dated: June 14, 2017

Respectfully Submitted,

Susan P. Herman

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IMPORTANT NOTICES

Pursuant to Rule 7(b)(1), notice is hereby given that any matter in opposition must be filed no later than 21 days after the filing of the enclosed motion unless another time is provided by the Maine Rules of Civil Procedure or set by the Court. Your failure to file a timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing.

Notice is further given that any opposition to the above motion must comply with the requirements of Maine Rule of Civil Procedure 56(h), including specific responses to each numbered statement in the statement of material facts being submitted in support of the above motion and with citations to points in the record or in affidavits filed to support the opposition. The failure to comply with Rule 56(h) in opposing the above motion may result in entry of judgment without hearing.

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
PORSC-CV-2015-527

MABEL WADSWORTH WOMEN'S HEALTH CENTER; FAMILY PLANNING ASSOCIATION OF MAINE d/b/a MAINE FAMILY PLANNING AND PRIMARY CARE SERVICES; and PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND,

Plaintiffs,

v.

RICKER HAMILTON, COMMISSIONER OF THE MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES, in his official capacity.

Defendant.

Plaintiffs' Cross-Motion for Summary Judgment

PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

Plaintiffs Mabel Wadsworth Women's Health Center; Family Planning Association of Maine d/b/a/ Maine Family Planning and Primary Care Services; and Planned Parenthood of Northern New England ("Plaintiffs"), pursuant to Maine Rule of Civil Procedure 56, hereby cross-move for summary judgment on all counts of the Complaint. For the following reasons, and as set forth in greater detail in Plaintiffs' Memorandum of Law in Support of Plaintiffs' Cross-Motion for Summary Judgment and Opposition to Defendant's Motion for Summary Judgment ("Plaintiffs' Memorandum"), the Court should grant Plaintiffs' Cross-Motion for Summary Judgment and should deny Defendant's Motion for Summary Judgment:

1. Summary judgment is appropriate when "review of the parties' statements of material facts and the referenced record evidence indicates no genuine issue of material fact that is

in dispute, and, accordingly, the moving party is entitled to judgment as a matter of law." *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 14, 951 A.2d 821 (internal citations omitted).

2. The undisputed facts contained in the parties' Joint Statement of Undisputed Material Facts ("JSUMF") are sufficient to support granting summary judgment in Plaintiffs' favor.

3. Because Defendant failed to properly deny or controvert the facts contained in the Plaintiffs' Statement of Material Facts ("PSMF") and to support any denials or qualifications with appropriate record citations, as required by M.R. Civ. P. 56(h), those facts should also be deemed both admitted and undisputed, for summary judgment purposes. *See Dyer*, 2008 ME 106, ¶ 17, 951 A.2d 821 ("A party's opposing statement of material facts must explicitly admit, deny, or qualify facts by reference to each numbered paragraph, and a denial or qualification must be supported by a record citation. Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted") (internal citation and quotations omitted).

4. Defendant's responses to the PSMF were, primarily, of three kinds: objections on the basis of relevance; arguments over the scope or qualifications of Plaintiffs' experts' opinions; or nonsequiturs that did not contradict the fact asserted. These are not proper responses, and the court can and should deem these facts admitted.

5. Defendant's Statement of Material Facts ("DSMF") contains largely irrelevant facts that do not have "the potential to affect the outcome of the suit." *Burdzel v. Sobus*, 2000 ME 84, ¶ 6, 750 A.2d 573.

6. Rather than rely on credible evidence supported by record citations, Defendant "rests merely upon conclusory allegations, improbable inferences, and unsupported speculation." *Dyer*, 2008 ME 106, ¶ 14, 951 A.2d 821. Therefore any "dispute" is merely "metaphysical" and thus insufficient to create a *genuine* issue for trial. *Id.* n.3. ("The test is not whether some 'metaphysical' dispute exists, but whether the record taken as a whole could lead a rational trier of fact to find for the nonmoving party, if not, 'there is no '*genuine* issue for trial.'"") (citation omitted).
7. Moreover, as set forth in Plaintiffs' Memorandum, even if these purported disputes were resolved in Defendant's favor it would not affect the outcome of this suit.
8. Therefore, applying the law, as discussed in Plaintiffs' Memorandum, to the undisputed evidence in the record, Plaintiffs are entitled to summary judgment as a matter of law.

For these reasons, the Court should grant Plaintiffs' Cross-Motion for Summary Judgment and Deny Defendant's Motion for Summary Judgment.

Dated: July 20, 2017

Respectfully submitted,

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IMPORTANT NOTICES

Pursuant to Rule 7(b)(1), notice is hereby given that any matter in opposition must be filed no later than 21 days after the filing of the enclosed motion unless another time is provided by the Maine Rules of Civil Procedure or set by the Court. Your failure to file a timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing.

Notice is further given that any opposition to the above motion must comply with the requirements of Maine Rule of Civil Procedure 56(h), including specific responses to each numbered statement in the statement of material facts being submitted in support of the above motions and with citations to points in the record or in affidavits filed to support the opposition. The failure to comply with Rule 56(h) in opposing the above motion may result in entry of judgment without hearing.

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
PORSC-CV-2015-527

Mabel Wadsworth Women's Health Center; Family Planning Association of Maine d/b/a Maine Family Planning and Primary Care Services; and Planned Parenthood of Northern New England,	)	
Plaintiffs,	)	
v.	)	**Parties' Consolidated Statement of Material Facts[1]**
Mary Mayhew, Commissioner of the Maine Department of Health and Human Services, in her official capacity,	)	
Defendant.	)	

JOINT STATEMENT OF MATERIAL FACTS

1. [1] All three Plaintiffs are enrolled MaineCare providers.[2] Complaint, ¶¶ 13, 18, 23.

2. [2] At least one Plaintiff, Mabel Wadsworth, informed its patients about the intent to file the instant lawsuit prior to the time of filing the Complaint against the Department. Deposition of Kate Waning ("Waning Depo.") at 74, ln. 1-25.

3. [3] There are no individual Maine women serving as Plaintiffs in this matter.

4. [4] Mabel Wadsworth was founded in 1984 as an educational and advocacy

[1] This Consolidated Statement of Material Facts is produced for the convenience of the Court; the Parties do not concede the materiality of all facts stated herein. All objections are preserved.
[2] The numbers in brackets represent the original numeration of the parties' proposed statements of material facts.

organization for women's reproductive rights. Waning Depo. at 9, ln 4-25.

5. [5] ln the early 1990s, Mabel Wadsworth expanded as an organization: it hired its first executive director, opened an office in Bangor and began providing clinical services, including abortion services. Id. at 9, ln 23-25; 10, ln 1-25.

6. [7] In January of 2016, Ma bel Wadsworth began providing services to men, and in May of 2016, its hours were expanded. Waning Depo. at 13, ln 4-10; 11, In 1-11.

7. [9] Mabel Wadsworth's appointment slots are generally full. Waning Depo. 11, ln. 21-23.

8. [10] Sometimes there is a waiting list for abortion services at Mabel Wadsworth, where clients must wait a week or two before an appointment is available. Id. at 11, ln. 21-25; 12, ln 1-25; 13, ln 1-3.

9. [12] Family Planning Association of Maine d/b/a Maine Family Planning and Primary Care Services ("Maine Family Planning") started providing services in 1971. Deposition of Leah Coplon ("Coplon Depo.") at 12, ln. 16-18.

10. [13] Maine Family Planning has one clinic in Augusta, and seventeen (17) other clinics located throughout Maine. Coplon Depo. at 14, ln. 22-25; 15, ln. 1-11.

11. [14] Maine Family Planning's Augusta clinic is the only site where it offers surgical abortion services. Complaint, 72; Coplon Depo. 40, ln. 2-25; 81, ln. 16-18.

12. [15] Maine Family Planning's Augusta clinic offers abortion services one day a week, and very rarely will offer abortion services two days a week. Coplon Depo. 13, ln. 2-15.

13. [16] The majority of weeks, Maine Family Planning's Augusta clinic has a wait list for abortion services, with between one and five women on the wait list, who usually

have to wait 1-2 weeks for abortion services. Coplon Depo. at 14, ln. 1-21.

14. [17] Over time, Maine Family Planning has expanded and opened more clinics throughout the state. ln addition to Augusta, Maine Family Planning now has clinics located in Bangor, Belfast, Calais, Damariscotta, Dexter, Ellsworth, Farmington, Fort Kent, Houlton, Lewiston, Machias, Norway, Presque Isle, Rockland, Rumford, Skowhegan, and Waterville. Coplon Depo. 15, ln 1-17; MFP_000098.

15. [19] In December of 2014, Maine Family Planning started a pilot program to provide medication abortions via telemedicine in Aroostook and Washington counties, including the towns of Fort Kent and Presque Isle. Coplon Depo. at 59, ln. 16-23; 70, ln. 10-14.

16. [21] Maine Family Planning has not considered opening additional clinics to provide abortion services. Coplon Depo. at 42, ln. 9-12.

17. [22] Plaintiff Planned Parenthood of Northern New England ("Planned Parenthood" or "PPNNE") is a nonprofit corporation incorporated in Vermont, with places of business in Maine located in Topsham, Portland, Sanford, and Biddeford. Complaint, ¶ 20.

18. [23] Plaintiffs' tax records reflect the following gross receipts for certain years between 2012- 2015:

a. Mabel Wadsworth: $629,538 (2014); $679,673 (2013); $644,463 (2012). MW000044; MW000022; MW000001.

b. Maine Family Planning: $8,221,968 (2014); $6,801,722 (2012). MFP000051; MFP000001.

c. Planned Parenthood: $24,162,585 (2015); $21,205,603 (2014); $20,124,589 (2013). PPNNE00l; PPNNE0061; PPNNE0115.

19. [24] About twenty-five to thirty (25-30) percent of Mabel Wadsworth's

clientele seek abortion services. Waning Depo. at 42, ln. 24-25; 43, ln. 1-2.

20. [26] Plaintiffs charge between $500-$600 for abortion services performed up to about 14 weeks LMP. Complaint, ¶ 69; Waning Depo. at 45, ln. 15-23; Coplon Depo. at 42, ln. 19- 25; 43, ln. 1-3. Abortions performed at 14.0-15.6 weeks LMP cost $725, and from 16.0-18.6 weeks LMP cost $1,000. Complaint, ¶ 69.

21. [31] All three Plaintiffs are authorized to offer eligible women up to $100 of funding from SAFE, and Mabel Wadsworth is authorized to offer up to $125 from NAF. Waning Depo. at 52, ln. 21-25; 53, ln. 1-20; Coplon Depo. at 45, ln. 1-18; PPNNE000186.

22. [39] Mabel Wadsworth estimates that it writes off about $1,000 a month, or $12,000 a year for abortion services. Waning Depo. at 50, ln. 14-23.

23. [40] Plaintiffs always seek to make it possible for women to have the abortion services they need, despite their financial difficulties. Waning Depo. at 50, ln. 5-13; Coplon Depo. at 47, ln. 6-25; PPNNE000182-000190; PPNNE0161-0169.

24. [44] Plaintiffs have no records reflecting any denials of abortion services by Plaintiffs. See, e.g., PPNNE's First Amended and Supplemental Response to Defendant's First Set of Document Requests, Response to Request #3.

25. [46] ln appropriate circumstances, abortion services are provided to women, and then Plaintiffs seek reimbursement from the Department under Sec. 90.05 following the provision of those services. Waning Depo. at 24, ln. 6-25; 25, ln. 1-10; Coplon Depo. at 24, ln. 11-24; 25, ln. 1-17; Sec. 90.05.

26. [47] The MaineCare regulations govern providers' submission of claims and the payment and appeal process. 10-144 C.M.R. ch. 101, Ch. I, §§ 1.10-1.12; 1.21.

27. [48] If a provider questions a payment, or believes it has been incorrectly

denied payment, it must request a review of payments using the MaineCare Adjustment Request Form within one hundred and twenty (120) days from the date of a Remittance Advice. 10-144 C.M.R. ch. 101, Ch. I §§ 1.12-1.13.

28. [49] The MaineCare regulations also provide for various levels of appeal - including an administrative hearing procedure and an appeal to the Superior Court and the Law Court-if a provider is not satisfied with the results after it seeks review of a claims denial. 10-144 C.M.R. ch. 101, ch. I, § 1.21-1; Maine Administrative Procedure Act, 5 M.R.S. §8001 et seq.

29. [50] Between 2010-2015, Mabel Wadsworth submitted three (3) claims for reimbursement for abortion services: one was paid in 2010, one was denied in 2010, and one was denied in 2012. See Jan. 17, 2017 Affidavit of Charles Bryant, Exhibit 1, ¶10, DHHS768-770, DHHS 775-776.

30. [51] Mabel Wadsworth did not request an administrative hearing regarding the Department's denial of claims for reimbursement for abortion services, pursuant to the Chapter I, Sec.1.21 of the MaineCare Benefits Manual. Waning Depo. at 27, ln 2-22; Jan. 11, 2017 Affidavit of James D. Bivins, Esq., Exhibit 2, at ¶¶7, 9-12, 19.

31. [54] Planned Parenthood did not request an administrative hearing regarding the Department's denial of claims for rei mbursement for abortion services, pursuant to Chapter I, Sec. 1.21 of the MaineCare Benefits Manual. Jan. 11, 2017 Affidavit of James D. Bivins, Esq., Exhibit 2, at ¶¶ 7, 16-18, 19.

32. [56] Between 2010-2015, Maine Family Planning submitted no claims for reimbursement of abortion services. Jan. 17, 2017 Affidavit of Charles Bryant, Exhibit 1, at ¶13.

33. [57] Between 2012 and 2015, Mabel Wadsworth performed the following numbers of abortions:

a. 2012: 397
b. 2013: 422
c. 2014: 408
d. 2015: 380

Waning Depo. at 68, ln. 15-25; 69, ln. 1; Waning Depo. Exh. 21 (MW_000256).

34. [58] Between 2012-2015 Maine Family Planning performed the following numbers of abortions:

a. 2012: 356
b. 2013: 425
c. 2014: 453
d. 2015: 496

Coplon Depo. at 68-69; Exh. 24 (MFP_000095).

35. [59] Between 2011 and 2015, Plaintiff Planned Parenthood Northern New England ("PPNNE") performed the following numbers of abortions:

a. 2011: 1,018
b. 2012: 1,178
c. 2013: 1,294
d. 2014: 1,333
e. 2015: 1,135

PPNNE_0171.

36. [60] The figures in ¶ 59 represent all abortion services provided at PPNNE in Portland, Maine, regardless of the patients' state of residency.

37. [61] The following are the number of Maine residents up to 100% of the FPL who were provided abortion services by PPNNE:

a. 2013: 590
b. 2014: 568
c. 2015: 490 PPNNE0172.

38. [62] Based on reports of induced abortions from the Maine Center for Disease Control, there were the following total number of abortions in the State of Maine for the various years, below:

a. 1999: 2,427
b. 2010: 2,311
c. 2011: 1,772
d. 2012: 2,046
e. 2013: 1,939
f. 2014: 2,021
g. 2015: 1,836

Waning Depo. at 69, ln. 16-25; 70, ln. 10-25; 71, ln. 1-9, Exh. 22; Waning Depo. Exh. 22; Coplon Depo. at 73, I n. 23-25; 74, ln. 1-25; 75, ln. 1-13, Exh. 27.

39. [63] The percentage of patients choosing medication abortions has increased in recent years; for example, from 2012-2013, 12 percent of Maine Family Planning's patients chose medication abortions, and from 2013-2014, 20 percent of patients chose medication abortions. Coplon Depo. at 56, ln. 13-23; Coplon Depo. Exh. 18 (MFP_000042).

40. [66] Maine Family Planning's telemedicine abortion program is growing, and the organization intends to continue building it based on capacity to do so. Coplon Depo. at 72, 18-23.

41. [69] Physicians who perform abortion services in Maine do not require admitting privileges at local hospitals. Waning Depo. at 31, ln 17-20; Coplon Depo. at 28, ln. 16-19.

42. [70] There is no mandatory waiting period for women who seek abortions in Maine. Waning Depo. at 31, ln 21-23; Coplon Depo. at 28, ln. 20-22.

43. [71] Outpatient surgical abortion facilities are not required to be licensed in

Maine. Coplon Depo. at 62, ln. 17-25.

PLAINTIFFS' RESPONSE: **Admitted** as a matter of law, although the citation to the witness's testimony is incomplete and misleading.

44. [72] Plaintiffs regularly perform legislative advocacy work before the Maine state legislature, seeking to defeat "anti-choice and anti-family planning" legislation, or Targeted Regulation of Abortion Providers ("TRAP") laws, and to advocate for bills promoting the Plaintiffs' family planning efforts. MFP_000091; Waning Depo. at 73, ln. 3-25, Exh. 23 and 24 (two sets of testimony submitted to Maine Legislature by Mabel Wadsworth on May 13, 2015); Coplon Depo. at 62, ln. 8-25; 63, ln 1-25, Exh. 21 and 22 (two sets of testimony submitted to Maine Legislature by Maine Family Planning on May 13, 2015).

45. [73] For example, in 2015 Plaintiffs helped to pass the "family planning Medicaid expansion" (LD 319) which expands eligibility to approximately 13,000 low income Mainers for family planning services. PPNNE0048-PPNNE0049; PPNNE0165; MFP000091.

46. [1] Plaintiffs, three clinics that offer abortions, operate the sole publicly accessible facilities ("clinics") providing abortions in the state of Maine. Deposition of Leah Coplon, M.P.H., M.S., C.N.M. ("Coplon Dep.") 81:16-18; Deposition of Kate M. Waning, M.S. ("Waning Dep.") 13:22-25; 14:1-8; Affidavit of Leah Coplon, M.P.H., M.S., C.N.M. ("Coplon Aff.") ¶ 13; Affidavit of Kate M. Waning, M.S. ("Waning Aff.") ¶ 7; Affidavit of Meagan Gallagher ("Gallagher Aff.") ¶ 4.

47. [2] Plaintiff Mabel Wadsworth Women's Health Center ("Mabel Wadsworth") is a non-profit corporation incorporated in Maine with its principal place of

business in Bangor, Maine. Waning Aff. ¶ 5.

48. [3] Mabel Wadsworth is an enrolled Medicaid provider. Waning Aff. ¶ 10.

49. [4] Mabel Wadsworth provides a range of health care services at its health center in Bangor, including annual gynecological exams, screening for cervical and breast cancer, colposcopy, family planning counseling and contraceptive services, pregnancy testing and options counseling (including carrying to term and raising a child, carrying to term and placing the child up for adoption, or abortion); prenatal care; abortions; referrals for adoption and parenting classes; abortions; lesbian health care (which is very similar to these other forms of reproductive health care, but with a focus on the unique needs of, and barriers to care faced by, lesbians); screening, diagnosis, and treatment for urinary, vaginal, and sexually transmitted infections; consultation on menopause, menstrual concerns, and other women's health issues; hormone therapy and other services for transgender clients; and fertility awareness. Waning Aff. ¶ 6.

50. [5] Mabel Wadsworth offers aspiration abortion services up to 13.6 weeks (i.e., 13 weeks and 6 days) as measured from the first day of the woman's last menstrual period ("LMP"). Waning Dep. 44, ln. 19-20; Waning Aff. ¶ 7.

51. [6] Aspiration abortion entails the application of a gentle suction to evacuate the contents of the uterus. Waning Aff. ¶ 7; Coplon Aff. ¶ 14.

52. [7] Mabel Wadsworth offers medication abortion services up to 10 weeks LMP. Waning Aff. ¶ 8.

53. [8] Medication abortion care as offered by plaintiffs is an early method of abortion that entails the patient taking one pill at the clinic and then using additional pills

after leaving the clinic that cause her to expel the pregnancy, similar to a miscarriage. Waning Aff. ¶ 8; Coplon Aff. ¶ 15; Gallagher Aff. ¶ 4.

54. [9] Mabel Wadsworth provides approximately 380-430 abortions every year to patients from all across Maine. MW_000256; Waning Aff. ¶ 7.

55. [10] Plaintiff Family Planning Association of Maine d/b/a Maine Family Planning and Primary Care Services ("Maine Family Planning") is a non-profit corporation incorporated in Maine with its principal place of business in Augusta, Maine. Coplon Aff. ¶ 9.

56. [11] Maine Family Planning is an enrolled MaineCare provider. Coplon Aff. ¶ 9.

57. [12] In addition to Augusta, Maine Family Planning also has smaller sites located in Bangor, Belfast, Calais, Damariscotta, Dexter, Ellsworth, Farmington, Fort Kent, Houlton, Lewiston, Machias, Norway, Presque Isle, Rockland, Rumford, Skowhegan, and Waterville. MFP_000098; Coplon Aff. ¶ 18.

58. [13] These clinics are staffed by nurse practitioners or, on rare occasions, medical assistants. Coplon Aff. ¶ 18.

59. [14] Because of competing staff resources and the relatively low patient volume of these clinics, some of Maine Family Planning's rural locations are open only two to four days per month. Coplon Aff. ¶ 21; MFP_000098; Coplon Dep. 57:21-25; 58:1-12.

60. [15] Maine Family Planning provides a range of health services at its sites, including annual gynecological exams; screening for cervical and breast cancer; family planning counseling and contraceptive services; pregnancy testing and counseling regarding pregnancy options (including carrying to term and raising a child, placing the child up for

adoption, or abortion); abortions; referrals for adoption and parenting classes; prenatal consultation; colposcopy; screening, diagnosis, and treatment of urinary, vaginal, and sexually transmitted infections; hormo ne therapy and other services for transgender clients; and services for mid-life women. Coplon Dep. 29:20-25; 30:1-12; Coplon Aff. ¶ 10.

61. [16] Maine Family Planning provides medication abortion up to 10 weeks LMP and aspiration abortions up to 14 weeks LMP in Augusta. Coplon Aff.¶ 12.

62. [17] Maine Family Planning currently provides approximately 400-500 abortions each year to patients from all across Maine. Coplon Aff.¶ 11.

63. [18] The physicians with whom Maine Family Planning contracts to provide abortions all work full-time outside of Maine Family Planning, either in their own private practices or both practicing and teaching as part of a residency program. Coplon Aff. ¶ 17.

64. [19] Due to physician availability, Maine Family Planning can only provide abortions in Augusta once a week. Coplon Aff. ¶ 17.

65. [20] Even if the physicians' schedules permitted, Maine Family Planning could not afford to hire any of their physicians to work for Maine Family Planning full-time. Coplon Aff. ¶ 17.

66. [21] Because of where Maine Family Planning's physicians live, and due to their schedules, they provide suction abortions only at Maine Family Planning's Augusta clinic. Coplon Aff. ¶ 17.

67. [22] In December 2014, Maine Family Planning began a pilot project to provide medication abortions by telemedicine at select sites located in Washington and Aroostook Counties. Coplon Dep. 70:10-12; Coplon Aff. ¶ 19.

68. [23] In February 2016, Maine Family Planning officially instituted the telemedicine program and, as of October 2016, has the option of providing telemedicine abortion care at all of its sites (although there are still some sites at which Maine Family Planning has not yet provided any medication abortions). Coplon Dep. 41:24-25; 42:1-8; Coplon Aff. ¶ 19.

69. [24] Any time Maine Family Planning performs an abortion outside of Augusta, it is done by a physician in Augusta using telemedicine. Coplon Dep. 59:7-8.

70. [25] Medication abortion is provided through Maine Family Planning's telemedicine program as follows: The patient is first evaluated by a trained nurse practitioner to ensure that her pregnancy is intrauterine and determine whether she is within the gestational limit for a medication abortion, and whether she otherwise is an appropriate candidate for medication abortion. If she is a suitable candidate for medication abortion, the patient consults by video with the physician located in Augusta. After confirming that a medication abortion is medically appropriate for the patient, confirming that she requests the medication abortion, reviewing and signing her informed consent, and reviewing her lab work and contraception plan, the physician instructs the patient to take the first pill and schedule a follow-up visit for 4–14 days later. The patient uses the additional pills as instructed at home 6–48 hours later, just as she would have if she obtained the first pill from the doctor in-person at the Augusta clinic. Coplon Aff. ¶ 20.

71. [26] Maine Family Planning's telemedicine program is limited due to constraints on staffing and infrastructure. This is principally because the program cannot operate without a physician available, which usually only happens once a week, and that physician is generally only able to provide telemedicine consultations for medication

abortion in between appointments for abortion care at the Augusta clinic. Coplon Aff. ¶ 21.

72. [27] Even on days when the physician is in the Augusta office and has the time to consult with telemedicine patients, Maine Family Planning still does not have the infrastructure or staffing to offer the service at all its sites. Coplon Aff. ¶ 21; Coplon Dep. 41:24-25; 42:1-8.

73. [28] Since December 2014, approximately 100 patients have obtained medication abortions via Maine Family Planning's telemedicine program. Coplon Aff. ¶ 21.

74. [29] Plaintiff Planned Parenthood of Northern New England ("PPNNE") is a non-profit corporation incorporated in Vermont with established places of business in Maine in Topsham, Portland, Sanford, and Biddeford. Gallagher Aff. ¶ 2.

75. [30] PPNNE is an enrolled MaineCare provider. Gallagher Aff. ¶ 5.

76. [31] PPNNE provides reproductive health services throughout Vermont, New Hampshire, and Southern Maine. These services include: annual gynecological exams; family planning counseling; contraceptive services; pregnancy tests; counseling regarding pregnancy options (including carrying to term and raising a child, placing it for adoption, or abortion); abortions; adoption referral; prenatal consultation; breast and cervical cancer screening; colposcopy; screening, diagnosis, and treatment of urinary, vaginal, and sexually transmitted infections; and HIV testing. Gallagher Aff. ¶¶ 3-4.

77. [32] In Maine, PPNNE provides abortions only at its Portland health center. Gallagher Aff. ¶ 4.

78. [33] PPNNE provides medication abortions up to 10 weeks LMP, aspiration abortions through the early second-trimester, and abortions using the dilation & evacuation method up to 18.6 weeks LMP. Gallagher Aff. ¶ 4.

79. [34] There are no publicly accessible outpatient clinics in Maine that provide aspiration abortions outside of those in Bangor, Augusta, and Portland; only one publicly accessible clinic that provides abortions between 14.0 and 18.6 weeks LMP (PPNNE in Portland); and no clinics in the state that provide abortions after 18.6 weeks LMP. Coplon Aff. ¶ 13; Waning Aff. ¶ 7; Gallagher Aff. ¶ 4.

80. [35] Some women choose abortion because they are already parents and do not feel they can take on the responsibility and cost of another child. Coplon Aff. ¶ 23; Waning Aff. ¶ 11; Gallagher Aff. ¶ 6.

81. [36] Some women choose abortion because they do not want to have any children. Coplon Aff. ¶ 23; Waning Aff. ¶ 11; Gallagher Aff. ¶ 6.

82. [37] Some women choose abortion because they do not feel that they can afford to become a parent. Coplon Aff. ¶ 23; Waning Aff. ¶ 11.

83. [38] Some women choose abortion because they believe that becoming a parent or adding to their family would interfere with their educational or career goals. Coplon Aff. ¶ 23; Waning Aff. ¶ 11; Gallagher Aff. ¶ 6.

84. [39] Some women choose abortion because the pregnancy has caused or exacerbated, or may in the future cause or exacerbate, a medical condition. Coplon Aff. ¶ 23; Waning Aff. ¶ 11; Gallagher Aff. ¶ 6; Affidavit of Steven J. Ralston, M.D. ("Ralston Aff.") ¶¶ 3, 40, 46.

85. [40] Some women choose abortion because the pregnancy has caused or exacerbated, or may in the future cause or exacerbate, a mental health condition, or because the pregnancy will make it more difficult to manage a mental health condition. Coplon Aff. ¶ 23; Waning Aff. ¶ 11; Gallagher Aff. ¶ 6; Mittal Aff. ¶¶ 3, 11, 20, 25, 32, 37-41, 44-46.

86. [41] Some women choose abortion because the pregnancy has caused or exacerbated, or may in the future cause or exacerbate, a substance abuse disorder, or because the pregnancy will make it more difficult to manage a substance abuse disorder. Coplon Aff. ¶ 23; Waning Aff. ¶ 11; Gallagher Aff. ¶ 6; Mittal Aff. ¶ 42.

87. [43] Some women choose abortion because they are in an abusive relationship. Coplon Aff. ¶ 23; Waning Aff. ¶ 11; Gallagher Aff. ¶ 6; Mittal Aff. ¶ 44.

88. [44] Some women choose abortion because they are homeless and know that they would immediately lose custody of their newborn, as hospitals will not discharge a newborn child into homelessness. Coplon Aff. ¶ 23; Affidavit of Renee Fay-Leblanc, M.D. ("Fay-Leblanc Aff.") ¶ 24.

89. [45] Some women choose abortion because the fetus has been diagnosed with an abnormality, or there is a risk that the fetus will develop a debilitating condition. Ralston Aff. ¶ 39; Affidavit of Leena P. Mittal, M.D. ("Mittal Aff.") ¶¶ 19-20, 25, 37, 43.

90. [46] There are other, individual reasons why women choose abortion. Coplon Aff. ¶ 23; Waning Aff. ¶ 11; Gallagher Aff. ¶ 6.

91. [50] MaineCare makes it more likely that uninsured and low-income residents will access medical care than if they had to pay for medical care out-of-pocket. Nadeau Dep. 15:14-18; Affidavit of Luisa Deprez, Ph.D ("Deprez Aff.") ¶¶ 18, 31; Fay-Leblanc Aff. ¶ 8.

92. [51] MaineCare plays a critical role in the lives of poor and low-income women because it not only covers a broad range of health care services but provides travel reimbursement as well. Deprez Aff. ¶ 31.

93. [52] Access to medical care improves an individual's ability to be fully

functioning and maintain independence and fulfill his or her life's goals. Nadeau Dep. 15:8-13; *see also* Mittal Aff. ¶ 45; Deprez Aff. ¶ 40.

94. [56] Between 2014 and 2016, the state of Maine spent more than a billion dollars per year covering "optional benefits." DHHS_767.

95. [57] The Department is aware of no data showing that withholding coverage for abortions, except in the limited circumstances for which federal matching funds are available, provides any fiscal benefit to the State. Nadeau Dep. 48:6-25; 49:1-19.

96. [60] The Federal Poverty Level (FPL) is used by the U.S. government to define who is poor. It is based on a family's annual cash income, rather than its total wealth, annual consumption, or its own assessment of well-being. Deprez Aff. ¶ 9.

97. [61] For 2017, according to the U.S. Department of Health and Human Services, the federal poverty guideline is an annual income of $12,060 for a one-person family and $24,600 for a family of four; $4,180 is added for each additional person to compute the FPL for larger families. Deprez Aff. ¶ 9.

98. [62] The official poverty rate in Maine for 2015 is 13.4%, the second highest rate in New England. Deprez Aff. ¶ 9.

99. [63] The 13.4% poverty figure undercounts the number of Maine residents who are struggling to make ends meet, because the FPL—although used as the official level of poverty in the United States—is based on an outdated formula that assumes families spend approximately one-third of their budget on food, and that does not take into account the cost of child care, medical expenses, utilities, and taxes. Deprez Aff. ¶ 10.

100. [64] The amount needed to maintain a minimally self-sufficient standard of living in Maine is over twice the amount received by a worker making minimum wage and

almost three times that of the federal poverty threshold. Deprez Aff. ¶ 11.

101. [65] According to "Patchwork of Paychecks," a 2015 report by Alliance for a Just Society, the calculated living wage for a single adult with no children working full-time in Maine is $15.77 an hour, or the equivalent of $32,801.60 per year. Deprez Aff. ¶ 11.

102. [66] 5.20% of Maine residents are living in *extreme* poverty—i.e., earning half the FPL or less ($6,030 for an individual or $12,300 for a family of 4). Deprez Aff. ¶ 12.

103. [67] In recent years, poverty rates in Maine have increased and government support has decreased. Deprez Aff. ¶¶ 11, 23.

104. [68] Women head the overwhelming majority of single-parent households in Maine. Deprez Aff. ¶ 13.

105. [69] The poorest families in Maine are those headed by single mothers who have very young children. Deprez Aff. ¶ 13.

106. [70] Single mothers with young children struggle economically largely because of their caregiving responsibilities. Deprez Aff. ¶ 13.

107. [71] According to "Maine People Agree," a report by the Maine Equal Justice Partners and the Every Child Matters Education Fund that examined hardship among single parents (primarily single women), in 2014: 64% of single parents could not pay utility bills, 59% had a car that broke down and had no money to fix it, 74% had to reduce meal size, and 31% had to move due to housing costs. Deprez Aff. ¶ 23.

108. [72] Women running households alone are more likely to need government assistance to get by financially. Deprez Aff. ¶ 14.

109. [73] 65,700 women in Maine—20.5% of working women in the state—hold low-wage jobs. Deprez Aff. ¶ 14.

110. [74] Women are far more likely than men to hold low-wage jobs: in Maine, women comprise 72% of the low-wage workforce. Deprez Aff. ¶ 14.

111. [75] Low-wage workers are more likely to be "underemployed"—i.e., to work part-time involuntarily—which results in decreased employment stability and fewer accumulated monetary resources over time. Deprez Aff. ¶ 15.

112. [111] Pregnancy can be physically painful, or at least physically taxing, and that can cause additional stress. Fay-LeBlanc Aff. ¶ 25.

113. [129] Some women in Maine live more than 200 miles away from the nearest clinic providing abortions after 10 weeks of pregnancy. Coplon Aff. ¶ 13; Waning Aff. ¶ 7.

114. [132] Because of the Regulation, MaineCare-eligible and -enrolled women have to raise funds for both their abortion procedure and transportation to and from their abortion procedure. Waning Aff. ¶¶ 18, 20-21; Coplon Aff. ¶¶ 25-26, 31, 33; Gallagher Aff. ¶ 7; Maine Family Planning's First Am. and Supp. Resp. to Def's First Set of Interrogatories ¶10; MW_000089, MW_000092, MW_000105, MW_000107-08, MW_000116, MW_000120, MW_000126, MW_000133, MW_000137, MW_000141, MW_000148-49, MW_000171, MW_000179, MW_000182, MW_000191, MW_000193, MW_000200, MW_000204, MW_000210, MW_000215, MW_000218, MW_000222-23, MW_000229, MW_000237, MW_000240, MW_000243-44, MW_000247, MW_000251-54.

115. [133] Because of the Regulation, Mabel Wadsworth has had to pay for the cost of an interpreter to enable poor abortion and low-income patients to communicate with their health care providers. Waning Aff. ¶ 24.

116. [136] Nearly every type of non-abortion service that Plaintiffs provide is

covered by MaineCare. Waning Aff. ¶ 10; Coplon Aff. ¶ 24; Gallagher ¶ 5.

117. [144] When that happens, Plaintiffs provide extensive financial counseling to try to help patients find the money they need for their procedure and attendant costs. Coplon Aff. ¶¶ 26, 39-40; Waning Aff. ¶¶ 21, 25; Gallagher Aff. ¶ 7.

118. [148] The private funding sources that are available to help poor and low-income women in Maine with the cost of an abortion generally do not cover travel expenses. Waning Aff. ¶ 21; Coplon Aff. ¶¶ 26, 31.

119. [154] Although abortion is an extremely safe procedure, and virtually always safer than childbirth, the risk of medical complications increases as the pregnancy advances. Henshaw ¶ 17; Ralston Aff. ¶¶ 19, 41.

120. [179] Because of the absence of MaineCare coverage for abortion and travel to obtain an abortion, Plaintiffs' patients are sometimes forced to sacrifice their privacy and disclose the fact of their abortion to family members, sexual partners, friends, neighbors and/or acquaintances. Coplon Aff. ¶ 29; Deprez Aff. ¶ 37; Gallagher ¶ 7; MW_000082, MW_000089, MW_000094, MW_000099, MW_000100-04, MW_000107-09, MW_000125, MW_000127-30, MW_000133, MW_000136-37, MW_000147, MW_000155, MW_000165, MW_000167, MW_000176, MW_000180, MW_000183-84, MW_000190-91, MW_000200, MW_000203-05, MW_000208-09, MW_000213, MW_000215, MW_000218, MW_000220, MW_000223, MW_000225, MW_000233-35, MW_000237-38, MW_000240, MW_000244-46, MW_000248, MW_000251-54.

121. [181] Although there are no specific activity restrictions after an abortion, Maine Family Planning advises patients to avoid manual labor or physical exertion for a day or two after the procedure. Coplon Aff. ¶ 30.

122. [182] It is not uncommon for Maine Family Planning patients to head straight back to work waiting tables, taking care of small children, or cleaning hotel rooms immediately after their abortion procedure, including sometimes doing a double shift, in order to make up the money spent on the abortion. Coplon Aff. ¶ 30.

123. [193] If a pregnant woman decides to end the pregnancy, she needs abortion care. Ralston Aff. ¶ 2.

124. [194] Abortion is almost always safer for a woman than carrying a pregnancy to term. Ralston Aff. ¶¶ 19, 41.

125. [198] The MaineCare regulation that restricts coverage for abortion to three limited circumstances—when the pregnancy is the result of rape or incest or when the pregnancy is life-threatening—excludes coverage for abortions that are necessary for a woman's physical and mental health and well-being. Fay-LeBlanc Aff. ¶¶ 6-7; Mittal Aff. ¶¶ 3, 37-42, 44-46; Ralston Aff. ¶¶ 2-4.

126. [200] Pregnancy poses challenges to a woman's entire physiology. Almost all pregnant women experience conditions such as fatigue, headaches, backaches, and difficulty sleeping. Their bladders are uncomfortable and must be emptied frequently; hormones induce changes in their bowels, causing gassiness, heartburn, chronic constipation, and hemorrhoids; and varicose veins may develop on their legs, vulvas, and vaginas. Even these "minor" conditions can cause discomfort, pain, stress, and anxiety for the women involved, and can make work, child care, and other daily tasks extremely difficult. Ralston Aff. ¶ 11.

127. [201] Pregnancy stresses most major organs. For example, during pregnancy the heart rate increases in order to pump 30-50% more blood. By the second trimester, the

heart is already doing 50% more work than usual, and that heightened rate continues throughout the rest of the pregnancy. Because of the increased blood flow, a woman's kidneys become enlarged and the liver must produce more clotting factors to prevent the woman from bleeding to death. However, this latter change increases the risks of blood clots or thrombosis. Ralston Aff. ¶ 12.

128. [202] During pregnancy, a woman's lungs must also work harder to clear both the carbon dioxide produced by her own body and the carbon dioxide produced by the fetus. Yet her very ability to breathe in the first place is hampered by the fetus growing in the woman's abdomen, leaving most pregnant women feeling chronically short of breath. Ralston Aff. ¶ 13.

129. [203] Every organ in the pregnant woman's abdomen—e.g., intestines, liver, spleen—is increasingly compressed throughout pregnancy by her expanding uterus. Ralston Aff. ¶ 13.

130. [204] Sometimes the nausea and vomiting commonly associated with "morning sickness" develops into a syndrome known as hyperemesis gravidarum (HG). HG is accompanied by vomiting so severe that it may result in dangerous weight loss; dehydration; acidosis from starvation; or hypokalemia, a potentially dangerous condition caused by a lack of potassium that can trigger psychosis, delirium or hallucinations, among other things. Women with this condition may require multiple hospital admissions throughout pregnancy. Ralston Aff. ¶ 14.

131. [205] A pregnant patient's response to infections is altered by her physiology. She is at greater risk for certain infections, such as urinary tract infections. These infections tend to be more severe among pregnant women, and lead to serious

complications such as sepsis much more frequently among pregnant women. Ralston Aff. ¶ 15.

132. [206] There is a 15 to 20% risk of miscarriage present in every pregnancy. Complications from miscarriage can lead to infection, haemorrhage, surgery, and death. Ralston Aff. ¶ 16.

133. [207] Even a normal pregnancy can suddenly become life-threatening during labor and delivery, when 20% of the woman's blood flow is diverted to the uterus. This increased blood flow places a woman at risk of hemorrhage and, in turn, death; indeed, hemorrhage is the leading cause of maternal mortality worldwide. To try to protect against hemorrhage, the body again produces more clotting factors, which increases the risk of blood clots or embolisms. This heightened risk extends past delivery into the post-partum period. Ralston Aff. ¶ 17.

134. [208] One-third of pregnancies result in a caesarean section (C-section) delivery. Even though C-section deliveries are relatively common, it is still a significant abdominal surgery that carries risks of hemorrhage, infection and injury to internal organs. Ralston Aff. ¶ 18.

135. [209] Even a vaginal delivery can lead to injury, such as injury to the pelvic floor. This can have long-term consequences, including fecal or urinary incontinence. Ralston Aff. ¶ 18.

136. [211] The risks related to continued pregnancy are particularly significant for women with certain preexisting medical conditions, such as diabetes, hypertension, asthma, heart disease, lupus, Grave's disease, rheumatoid arthritis, renal disease, and other physical and mental health disorders. Pregnancy can exacerbate these conditions, causing

even more severe health problems including seizures, diabetic coma, hemorrhage, heart damage, and loss of kidney function. Ralston Aff. ¶¶ 21–38.

137. [213] In addition to physical health considerations, pregnancy can have a significant effect on a woman's mental and emotional health. Mittal Aff. ¶¶ 3, 12-36.

138. [214] Pregnancy can destabilize a woman's mental health by causing sadness, anxiety, and/or compulsions that can compromise a woman's mental health and well-being, impair her functioning, and require treatment, even if her symptoms do not meet the criteria for a formal diagnosis. Mittal Aff. ¶¶ 3, 23.

139. [215] A significant number of women will experience a mood disorder (such as depression or bipolar disorder), an anxiety disorder (such as generalized anxiety disorder or panic disorder), obsessive-compulsive disorder (OCD), or a trauma-related disorder (such as post-traumatic stress disorder (PTSD)) during pregnancy. Mittal Aff. ¶ 12.

140. [216] With respect to depression alone, the data suggest that up to 14.5% of pregnant women experience a new episode of major or minor depression during pregnancy. Mittal Aff. ¶ 12.

141. [217] Statistics on the prevalence of mental health disorders among pregnant women are likely under-representative, as many women will never seek treatment—either because they assume their symptoms are normal, because of the stigma surrounding mental illness, or because of time or financial limitations. Mittal Aff. ¶ 13.

142. [218] Pregnancy can destabilize a woman's mental health by exacerbating the symptoms or prompting a recurrence (i.e., a relapse) of a pre-existing mental health disorder. Mittal Aff. ¶¶ 3, 14.

143. [219] A relapse of a pre-existing mental health disorder during pregnancy

may be caused by the hormonal fluctuation associated with pregnancy, stress and lifestyle changes, a modification of an established medication regimen, or a combination of any of the above. Mittal Aff. ¶ 14.

144. [220] Approximately 60 to 70% of women with bipolar disorder will experience an episode during pregnancy and/or the postpartum period. Mittal Aff. ¶ 15.

145. [221] It can take weeks or months for a woman to recover from a recurrence, depending on whether and when she receives appropriate treatment and implements any therapy or lifestyle changes that may be necessary. Mittal Aff. ¶ 16.

146. [222] People who are able to maintain stability have better overall prognoses than people who relapse and remit, as each episode of a psychotic or mood disorder increases the likelihood of a subsequent episode. Mittal Aff. ¶ 17.

147. [223] Pregnancy can destabilize a woman's mental health by sparking a new mental illness, such as obsessive-compulsive disorder. Mittal Aff. ¶¶ 3, 18.

148. [224] Postpartum depression occurs in nearly 15% of women within the first three months after pregnancy. Mittal Aff. ¶ 21.

149. [225] A woman who experiences postpartum depression is at greater risk of experiencing it again after a subsequent pregnancy. Mittal Aff. ¶ 21.

150. [226] Postpartum psychosis, while rare, is considered a psychiatric emergency and can sometimes lead to homicidal behavior. Mittal Aff. ¶ 22.

151. [227] Women who have previously experienced an episode of postpartum psychosis are at an extremely high risk of recurrence—between 30 and 50% with each subsequent delivery. Mittal Aff. ¶ 22.

152. [228] Low socioeconomic status is a risk factor for certain mental illnesses

during pregnancy. Mittal Aff. ¶¶ 3, 24.

153. [229] Psycho-social risk factors such as poverty and abuse also increase the risk that a woman will experience sadness, anxiety, and/or compulsions that compromise her mental health and well-being. Mittal Aff. ¶ 23.

154. [230] Stressors relating to poverty—like a lack of food and stable housing—can make it difficult for a pregnant woman to engage in critical health care and self-care, which in turn exacerbates her mental health symptoms. Mittal Aff. ¶ 24; Fay-Leblanc Aff. ¶ 10.

155. [231] Pregnancy can destabilize a woman's mental health by presenting a barrier to effective treatment for a mental health or substance use disorder. Mittal Aff. ¶¶ 3, 25–32.

156. [232] Pregnancy can interfere with the ability to treat other physical and mental health conditions. For example, some drugs—such as those used to control hypertension or heart disease, or to treat certain mental illnesses like bipolar disorder—pose a risk to the developing fetus. When a woman taking one of these drugs becomes pregnant, she may face a difficult choice: (1) discontinue the medication and risk harm to herself, (2) continue the medication and risk harm to the embryo or fetus she is carrying, or (3) terminate the pregnancy. Mittal Aff. ¶ 25; Ralston Aff. ¶¶ 30, 35.

157. [233] Substance use disorders ("SUDs") can pose serious health risks to both a pregnant woman and the embryo or fetus she is carrying, particularly if she struggles with multiple forms of substance abuse. Mittal Aff. ¶ 34.

158. [234] According to the 2013 National Survey on Drug Use and Health, 5.4% of pregnant women ages 15 to 44 years report current (past 30 days) use of illicit drugs, 9.4%

of pregnant women report current alcohol use, and 15.4% report current cigarette use. Mittal Aff. ¶ 33.

159. [235] There are high rates of co-morbidity of SUDs and mood disorders. Mittal Aff. ¶ 35.

160. [236] In addition to the direct harms that SUDs pose for embryonic and fetal development, women with SUDs are less likely to meet other basic needs, such as nutrition, that are important for their own health and for a healthy pregnancy. Mittal Aff. ¶ 34.

161. [237] Mental health and substance abuse symptoms are often expensive to treat and expensive in terms of lost earning potential, and each episode heightens the cost of the illness and makes it more and more difficult for a woman to function in society. Mittal Aff. ¶ 45.

162. [238] A woman cannot maximize her potential for economic independence and personal development unless she has information about, and access to, a range of options for negotiating her mental health and wellness during pregnancy, including abortion. Mittal Aff. ¶ 45.

163. [240] Abortion can allow a woman to feel comfortable pursuing the most effective treatment for her mental health disorder or SUD. Mittal Aff. ¶¶ 3, 42–43.

164. [241] Abortion can relieve debilitating sadness, anxiety, or compulsions relating to a pregnancy. Mittal Aff. ¶¶ 3, 23, 37, 40-41.

165. [242] Abortion can make it easier for a woman struggling with a SUD to become sober and stable. Mittal Aff. ¶ 42.

166. [249] An unintended pregnancy can derail a woman's best-laid plans for escaping difficult circumstances—and, indeed, exacerbate those challenges. Deprez Aff. ¶

35.

167. [251] Higher education; safe, stable housing; and steady work with opportunities for growth help women escape poverty. Deprez Aff. ¶ 35.

168. [253] For a woman already struggling to get by, to keep a roof over family's head, to ensure that everyone has food to eat and proper clothes to wear, and that her children are cared for when she is at work, adding baby to the mix can add an almost unbearable amount stress and anxiety. Fay-LeBlanc. Aff. ¶ 28.

DEFENDANT'S STATEMENT OF MATERIAL FACTS

1. [6] Sometime between 2000 and 2004, Mabel Wadsworth began providing abortion services through medication. Waning Dep. 13:11-18.

PLAINTIFFS' RESPONSE: Qualified. At some point between 2000 and 2004, Mabel Wadsworth began providing a specific medication abortion protocol, but there are other abortion methods that involve the use of medication (typically at later stages of pregnancy) that are not performed at Mabel Wadsworth. Aff. of Kate M. Waning ("Waning Aff.") ¶ 8.

DEFENDANT'S REPLY: Objection. The citation to the record does not support Plaintiffs' response. This qualification should be excluded from the summary judgment record and ¶ 6 should be deemed admitted. *Doyle v. Department of Human Svcs.*, 2003 ME 61, ¶10, n. 3, 824 A.2d 48, 52 (denials and qualifications must be supported with record citations relevant to the proposition for which they were cited).

2. [8] Mabel Wadsworth is the only surgical abortion provider in Maine north of Augusta. Waning Depo. at 14, ln. 9-21.

PLAINTIFFS' RESPONSE: Qualified. Mabel Wadsworth is the only publicly

accessible, outpatient provider of surgical abortions north of Augusta. Waning Depo. at 13, ln. 22–25, 14, ln. 1–8; Waning Aff. ¶ 7.

3. [11] Given the high demand for abortion services, Mabel Wadsworth has considered opening another clinic, but has not yet done so. Waning Dep. 14:22-25; 15:1-6.

PLAINTIFFS' RESPONSE: Qualified. This deposition was not conducted pursuant to M.R. Civ. P. 30(b)(6) and the witness did not speak for Mabel Wadsworth (a corporate entity). The witness testified that she "believe[d] the previous executive director and the board of directors visit that as an option from time to time for discussion," but also testified that she did not know the nature of those discussions because, "I don't attend those board meetings so I'm not fully aware." Waning Dep. 15:1–6. **Admitted** only to the extent the testimony reflects that it was the witness's belief that others at the organization have considered opening another clinic and the fact that a second clinic has not been opened.

DEFENDANT'S REPLY: **Objection**. Since 2014, Ms. Waning has served as the Director of Finance and Operations at Mabel Wadsworth. From 2005 to 2014, Ms. Waning was the Business Manager at Mabel Wadsworth. Waning Dep. 5-7; Waning Aff., ¶2. Given these positions, Ms. Waning has knowledge regarding Mabel Wadsworth's clinical and financial operations. During her deposition, Ms. Waning was asked whether, since demand for services is so high, Mabel Wadsworth considered opening another clinic, and she responded that Mabel Wadsworth has "looked at it, yes." Waning Dep. 14:22-24. The qualification is without merit and ¶ 11 should be deemed admitted.

4. [18] Around 2000-2001, Maine Family Planning began offering abortion services via medication in its Augusta clinic. Coplon Depo. 15, ln. 18-20; 81, ln. 14-17.

PLAINTIFFS' RESPONSE: Qualified. Around 2000-2001, Maine Family Planning began offering a specific medication abortion protocol, but there are other abortion methods that involve the use of medication (typically at later stages of pregnancy) that are not performed at Maine Family Planning. Aff. of Leah Coplon ("Coplon Aff.") ¶¶ 15–16.

5. [20] In February of 2016, Maine Family Planning expanded its provision of medication abortion services through telemedicine; each of Maine Family Planning's 18 clinics located throughout Maine has the capacity to offer telemedicine abortion services. Coplon Depo. at 40, ln. 16-26; 41, ln. 1-25; 42, ln. 1-8.

PLAINTIFFS' RESPONSE: Qualified. Denied to the extent that Maine Family Planning's non-Augusta sites do not have the capacity to provide telemedicine medication abortions most days ofthe week. Coplon Depo. 41, ln. 24–25; 42, ln. 1–8; Coplon Aff. ¶¶ 21–22. Moreover, when asked if "all" of Maine Family Planning's non-Augusta clinics have provided medication abortions, Ms. Coplon replied that they have not. Coplon Depo. 57, ln. 16–18; Coplon Aff ¶ 19. **Admitted** that Maine Family Planning expanded its telemedicine program in February 2016 and that, as of October 2016, all of the sites have the potential to offer telemedicine abortion services, but only on a day when the site is open, and only at a time when there is a physician available in Augusta and a nurse-practitioner trained in ultrasound available at the site. Coplon Aff. ¶¶ 19–22.

6. [25] About fifty (50) percent of Mabel Wadsworth's annual clinic revenue comes from abortion services. Waning Depo. at 43, ln. 3-10.

PLAINTIFFS' RESPONSE: Qualified. The witness did not testify that 50% of the clinic's annual revenue comes from abortion services, but that 50% of the center's

"clinical revenue" comes from abortion services. Waning Depo. at 43, ln. 3-10. The witness clarified that they receive additional revenue from corporate foundations and individual donations. Id. at 43, ln. 11- 16.

7. [27] Plaintiffs charge the same amount for both surgical and medication abortion services, including telemedicine abortions. Waning Depo. at 46, ln. 1-2; Coplon Depo. at 43, ln. 4- 11.

PLAINTIFFS' RESPONSE: Qualified as to PPNNE. PPNNE charges the same for medication abortions and surgical abortions prior to 14 weeks LMP, but also provides abortion services beyond 14 weeks LMP and charges more for those abortions. (PPNNE also offers conscious sedation to its patients, which is an extra charge prior to 14 weeks LMP.) PPNNE000174–175. **Admitted** as to Mabel Wadsworth and Maine Family Planning.

8. [28] Rather than turn women away, Plaintiffs reduce their rates for abortions for women who are unable to pay for abortion services, including women whose health and well-being, in Plaintiffs' judgment, would be negatively affected if they were unable to obtain abortion services. Complaint ¶¶ 5, 84; Waning Dep. 46:19-25; 47:1-2; Coplon Dep. 45-48.

PLAINTIFFS' RESPONSE: Denied. Rather than turn poor women away, Plaintiffs will sometimes reduce their rates for women in particularly desperate circumstances, but they have limited capacity to do so. Coplon Aff. ¶ 34; Waning Aff. ¶¶ 14–16, 20, 24. Moreover, Maine Family Planning has turned away patients who show up for their abortion appointments without enough money to pay for the procedure. Coplon Dep. 82:22–25; 83:1–14.

DEFENDANT'S REPLY: Objection. Plaintiffs' new testimony through affidavits

infers that they only sometimes reduce rates and that they have denied abortion services to women who cannot pay. This assertion conflicts with the testimony provided through depositions, as well as the documents produced by Plaintiffs. Plaintiffs may not generate disputed facts by contradicting prior testimony through affidavits. *Blue Star Corp. v. CKF Props., LLC*, 2009 ME 101, ¶ 31, 980 A.2d 1270; *Zip Lube, Inc. v. Coastal Savings Bank*, 1998 ME 81, ¶ 10, 709 A. 2d 733, 735. Accordingly, Plaintiffs' response to ¶ 28, and the affidavits on these points should be excluded from the summary judgment record, and ¶ 28 should be deemed admitted.

During depositions, representatives of Mabel Wadsworth and Maine Family Planning testified that the following types of women (as described in paragraph 5 of the Complaint) would be considered to be in "particularly desperate circumstances" to justify a rate reduction, or at least would "possibly" or "sometimes" be considered to be in particularly desperate circumstances to justify a rate reduction:

- women who would suffer extraordinary damage to their health, including excruciating pain, damage to major organ systems, or even shortened life expectancy;
- pregnant women who require medications that can cause harm to a growing fetus to treat or manage an underlying medical condition, such as cancer, high blood pressure, or certain mental illnesses;
- women who discover that their fetuses have severe or fatal anomalies; and
- women who experience intimate partner violence.

Waning Dep. 46-49; Coplon Dep. 50:9-25; 51:1-9. There was no testimony about Plaintiffs' purported limited capacity to provide rate reductions. Furthermore, in practice, Plaintiffs always reduce rates and provide abortion services to women in these "particularly desperate circumstances," as described above and in paragraph 5 of the Complaint; indeed, the testimony reflects that Plaintiffs always try to make it possible for a woman to have abortion services, despite her financial situation. Waning Dep. 46-49; 49:25; 50:1-10; Coplon Dep.

47:6-25; 48:1-8.

Mabel Wadsworth has never denied abortion services for failure to come up with the money to pay for those services. Waning Dep. 50:11-13; 61:25; 62:1-25; 63:1-8. *See also*, Department's Replies to ¶¶ 36, 37 and 45, below, incorporated herein.

Maine Family Planning has turned women away who have arrived at the clinic without enough money for an abortion, but it only does so when there is enough time in their pregnancy where they could reschedule the appointment to take additional time to come up with funding. Coplon Dep. 47:8-25; 48:1-8; 66:24-25; 67:1-12. Maine Family Planning has never denied abortion services to women in particularly desperate circumstances who cannot pay. Coplon Dep. 64:18-25; 65:1-12; 66:24-25; 67:1-12; 82:13-25; 83:1-14.

The discovery and the testimony reflect that Mabel Wadsworth's abortion services are discounted between $25-$250 (or a reduction in cost from $500 to $250). Waning Dep. 49:14-24. The discovery and testimony reflect that Maine Family Planning's abortion services are discounted between $5-$100. Coplon Dep. 51:10-19.

9. [29] Plaintiffs work with other organizations, such as the National Abortion Federation ("NAF"), Safe Abortions for Everyone ("SAFE"), The Laura Fund, and The Consortium of Abortion Providers (CAPS) Justice Fund, to provide women in need with financial assistance for abortion services. Waning Depo. at 52, ln. 1-25; Coplon Depo. at 44, ln. 6- 24; PPNNE's First Amended and Supplemental Response to Defendant's First Set of Document Requests, Response to Request # 13.

PLAINTIFFS' RESPONSE: Qualified. The citation to Plaintiff PPNNE's First Amended and Supplemental Response to Defendant's First Set of Document Requests, Response to Request #13 seems to be in error as it is unrelated to this point; it appears

Defendants intended to refer to pages PPNNE000182–191, in which case it is admitted. **Admitted** as to the rest.

10. [30] The primary goals of organizations such as SAFE and the Justice Fund (CAPS) are to ensure access to safe abortions for women in Maine who would not otherwise be able to afford the services, and to ensure that no woman is forced to carry an unwanted pregnancy to term due to lack of funds. http://www.safemaine.org/philosophy.html; PPNNE000185.

PLAINTIFFS' RESPONSE: Qualified. Denied as to the primary goals of SAFE because an assertion of fact set forth in a statement of material facts shall be followed by a citation to the specific page or paragraph of identified record material supporting the assertion, M.R. Civ.P. 56(h)(4), and the SAFE website is not in the record. **Admitted** that the primary goal of CAPS is to ensure that no woman is forced to carry an unwanted pregnancy to term due to lack of funds.

11. [32] If women are income eligible (at or below 110% of the FPL), Planned Parenthood offers the Justice Fund (CAPS) to cover between 35-40% of the total appointment cost (between $138-$400). PPNNE000183-000184.

PLAINTIFFS' RESPONSE: Qualified. Admitted, assuming Defendant meant to include PPNNE000182.

12. [33] Maine Family Planning also works with NAF to provide extra funding for abortion services, typically in the amount of $125, except the women and NAF work together directly and then NAF submits pledges of support to Maine Family Planning. Coplon Depo. at 46, ln. 17-25.

PLAINTIFFS' RESPONSE: Qualified. Ms. Coplon never testified that NAF

"typically" pledges $125 per patient; currently, NAF's standard pledge is indeed $125, but only for *income-eligible* patients. Coplon Aff. ¶ 26. Furthermore, the suggestion that Maine Family Planning "works" with NAF is misleading. When a patient has a financial hardship, Maine Family Planning gives her the NAF hotline number so that she can contact NAF directly; if she is eligible for funding, NAF gives her a pledge towards the cost of her abortion. Coplon Depo. at 46, ln. 3–7. **Admitted** that when NAF provides funding for an individual woman it emails Plaintiff Maine Family Planning directly with a pledge of support. Coplon Depo. at 46, ln. 9–14.

13. [34] ln some situations, Mabel Wadsworth requests additional money from NAF, above the $125 pre-approved amount; when such requests are made, NAF always provides extra funds, although not necessarily at 100% of the extra amount that was requested. Waning Depo. at 53, ln. 21-25; 54 ln. 1-21; 60, ln. 1-14.

PLAINTIFFS' RESPONSE: Qualified. Admitted to the extent that, thus far, NAF has always provided extra funds when requested by Mabel Wadsworth, although not necessarily the full amount requested. Waning Aff. ¶ 21.

14. [35] For women who are eligible for MaineCare, Plaintiffs charge $375 for abortion services, because they seek reimbursement from the Department for $125 for the ultrasound service. Waning Dep. 64:8-19; 65:1-5.

PLAINTIFFS' RESPONSE: **Qualified**. **Denied** that this is the practice of PPNNE or Maine Family Planning. **Admitted** as to Mabel Wadsworth.

DEFENDANT'S REPLY: Objection. The record reflects that Maine Family Planning also charges reduced fees for abortion services for MaineCare patients. During the deposition of Leah Coplon, Director of Abortion Services for Maine Family Planning,

counsel for the Department introduced Exhibit 14. Coplon Dep. 43:19-25; 44:1-17. The information in Exhibit 14 is posted on Maine Family Planning's website, and it states, "although MaineCare does not cover abortion services, we offer a reduced fee for our patients who have MaineCare." The qualification/denial is without merit with regard to Maine Family Planning and ¶ 35 should be deemed admitted with regard to Maine Family Planning.

15. [36] Mabel Wadsworth provides women who are unable to pay the full amount with rate reductions between $25-$250. Waning Dep. 49:14-18.

PLAINTIFFS' RESPONSE: Denied. Mabel Wadsworth does not provide rate reductions every time that a woman is unable to pay the full cost of the abortion procedure, whatever the reason. Mabel Wadsworth *sometimes* reduces its rate anywhere from $25 to $250 for women "in truly desperate circumstances," which is determined "on a case-by-case basis." Waning Dep. 46:19–25; 47:1–8; 49:14–18; Waning Aff. ¶ 24.

DEFENDANT'S REPLY: Objection. Mabel Wadsworth's new testimony through affidavit infers that they only sometimes offer rate reductions to women who cannot pay. This assertion conflicts with the testimony provided through depositions, as well as the documents produced by Plaintiffs. Plaintiffs may not generate disputed facts by contradicting prior testimony through affidavits. *Blue Star Corp. v. CKF Props., LLC,* 2009 ME 101, ¶ 31, 980 A.2d 1270; *Zip Lube, Inc. v. Coastal Savings Bank,* 1998 ME 81, ¶ 10, 709 A. 2d 733, 735. Plaintiffs' response to ¶ 36 and the affidavit on these points should be excluded from the summary judgment record, and ¶ 36 should be deemed admitted.

Additionally, the Department incorporates herein its reply to ¶ 28, above. The discovery and the testimony reflect that Mabel Wadsworth's abortion services are

discounted between $25-$250 (or a reduction in cost from $500 to $250). Waning Dep. 49:14-24. While the limited portions of the transcript cited by Plaintiffs' response may reflect qualified responses (i.e., "sometimes" and "on a case by case basis"), additional deposition questioning clearly reflects that Mabel Wadsworth *always* either reduces its fees or provides abortion services for free to women in need.

Some recent examples of women in particularly desperate circumstances as described by Mabel Wadsworth include a woman in a domestic violence situation, who did not have access to funds in a joint account. Waning Dep. 47:9-16. Another case included a woman who was homeless and trying to care for her two children and was very close to the time in her pregnancy when Mabel Wadsworth could no longer provide abortion services. *Id*. at 47: 9-23. *See also*, MW_000259 (2014 email from Waning to NAF describing a woman in a domestic violence situation, with one dependent in her care, evicted from housing, on food stamps and TANF: "she is unable to come up with any cash to put toward the abortion. Due to the DV issues, we're not going to press her to push out the appointment/come up with funds."); MW_00261 (2012 Waning email to NAF describing a woman going through a divorce who does per diem work, has not worked regularly, and is unable to apply for Medicaid or other benefits until her divorce is finalized; "we will waive any amount that she is unable to come up with…"); MW_00262 (2016 Waning email to NAF describing Medicaid-eligible woman who is close to the limit in gestation; "we told her to come in even if she can't come up with $50 and are prepared to waive that if needed…Pushing her appointment further out will mean a higher procedure cost."); MW_000264 (2014 Waning email to NAF describing woman in very unstable home situation; "she is unsure if she's going to be able to come up with any money at all and we've assured her that we'll be able to

see her tomorrow regardless of money."); MW_000275-76 (2014 Waning email to NAF describing woman with several health problems that have prevented her from being able to work; "she is going to try to come up with $20 and we are willing to waive that if she is unable to bring it in tomorrow.").

Ms. Waning testified that Mabel Wadsworth has never denied abortion services for failure to come up with the money to pay for those services. Waning Dep. 50:8-10 ("We always try to find a way to make it possible for the woman to have the services that she feels she needs in terms of abortion care despite her situation."); *Id*. at 11-13; 61:25; 62:1-25; 63:1-8.

16. [37] Maine Family Planning provides women who are unable to pay the full amount with rate reductions between $5-$100. Coplon Depo. 51:2-15.

PLAINTIFFS' RESPONSE: Denied. Maine Family Planning does not provide rate reductions every time a woman is unable to pay the full cost of the abortion procedure, whatever the reason. Maine Family Planning *sometimes* reduces its rate by approximately $5-$100 for women in "particularly desperate circumstances" where there is a demonstrated financial need, subject to the approval of the Director of Abortion Services. Coplon Dep. 49:4–25; 50:1; 79:11–19; Coplon Aff. ¶¶ 2, 34.

DEFENDANT'S REPLY: Objection. Maine Family Planning's new testimony through affidavit infers that they only sometimes offer rate reductions to women who cannot pay. This assertion conflicts with the testimony provided through depositions, as well as the documents produced by Plaintiffs. Plaintiffs may not generate disputed facts by contradicting prior testimony through affidavits. *Blue Star Corp*. *v*. *CKF Props*., *LLC*, 2009 ME 101, ¶ 31, 980 A.2d 1270; *Zip Lube*, *Inc*. *v*. *Coastal Savings Bank,* 1998 ME 81, ¶ 10, 709 A. 2d 733,

735. Plaintiffs' response to ¶ 37 and the affidavit on these points should be excluded from the summary judgment record, and ¶ 37 should be deemed admitted.

Additionally, the Department incorporates herein its reply to ¶ 28, above. The discovery and testimony reflect that Maine Family Planning's abortion services are discounted between $5-$100. Coplon Dep. 51:10-19. The record further reflects that Maine Family Planning always either reduces its fees or provides abortion services for free to women in need. *See, e.g*, Coplon Dep. 47:6-10 ("We always try to help women as much as possible come up with the finances to have an abortion if that's what they want."); Coplon Dep. 66:24-25; 67:1-12 ("…we don't deny services.").

The mission of Maine Family Planning is "to ensure that all Maine people have access to high-quality, affordable reproductive health care,…and the right to control their reproductive lives." MFP_000052. One of Maine Family Planning's beliefs is that "all Maine people should have the means and information to control the number and timing of their children *regardless of their ability to pay* or place of residence." MFP_000050 (emphasis added). To implement this belief, as Maine Family Planning stated in its July 1, 2013- June 30, 2014 annual report: "Like any other non-profit, Maine Family Planning relies on the generosity of hundreds of individuals like Leslie, as well as private foundations and businesses, to help *pay for whatever our federal and state funding or patient fees cannot cover*." MFP_000047 (emphasis added). During this time period, 82% of all patients qualified for free or reduced fee services. MFP_000048. Maine Family Planning uses (or used) a sliding fee scale to serve low income Maine women. *See* MFP_000052. The organization reports that 63% of its clients received financial assistance for abortion services in 2015-2016. MFP_000113.

17. [38] When Plaintiffs reduce their rates for abortion services, they "write off" those amounts – *i.e.*, they incur a financial loss. Complaint at 13; Waning Dep. 47:3-5; 49:22-24; Coplon Dep. 67-68.

PLAINTIFFS' RESPONSE: Qualified. **Denied** as to PPNNE. **Admitted** as to the Mabel Wadsworth and Maine Family Planning.

DEFENDANT'S REPLY: **Objection**. The record does not support Plaintiffs' denial with regard to Planned Parenthood, and thus Plaintiffs' response to ¶ 38 should be excluded from the summary judgment record. *Doyle v. Department of Human Svcs.*, 2003 ME 61, ¶10, n. 3, 824 A.2d 48, 52. For example, Plaintiffs' Complaint alleges that "rather than turn poor women away, Plaintiffs will sometimes reduce their rates for women in particularly desperate circumstances, sometimes at a loss to the clinics." Complaint, ¶ 84. This paragraph refers to the "Plaintiffs" collectively, and thus includes Planned Parenthood.

In addition, similar to the other two Plaintiffs, Planned Parenthood's mission is to "provide, promote, and protect access to reproductive health care…so that all people can make voluntary choices about their reproductive and sexual health." PPNNE0062. PPNNE stated that it "continues to serve as a major safety net provider – and for many of our patients – their primary source of health care." PPNNE0046. In 2015, PPNNE "delivered $7.4 million in free/discounted health care through our sliding fee scale program." *Id*. In 2013, PPNNE "delivered over $9 million in free or discounted health care to vulnerable populations." PPNNE0149. (PPNNE includes facilities in Maine, New Hampshire and Vermont)

18. [41.] If women are unable to pay for abortion services, Plaintiffs still provide abortion services. Waning Dep. 50:13; 62:1-20; Coplon Dep. 64-68; PPNNE0161-0169.

PLAINTIFFS' RESPONSE: Qualified. This part of the record has been cited by Defendant in a way that is incomplete and thus misleading. Maine Family Planning has turned away patients who show up for their abortion appointments without enough money to pay for the procedure. In such cases, Maine Family Planning works with the woman to come up with a plan to raise the necessary funds and obtain the abortion in the future, or they may refer her to another clinic. Coplon Dep. 44:11–25; 45; 46:1–14; 47:20–25; 48:1–3; 82:22–25; 83:1–14. When a patient states that she cannot afford an abortion, all Plaintiffs engage in extensive financial counseling, including by assisting patients in accessing outside sources of private financial aid, to help the patient come up with enough money to afford the procedure. If after these efforts have been exhausted a patient still cannot afford the abortion, and that patient is in particularly desperate circumstances, and the patient has not been delayed past the clinic's gestational age limit, Plaintiffs will still provide the abortion, often at a financial loss to the clinic. Coplon Dep. 44:11–25; 45; 46:1–14; 47:20–25; 48:1–3; Coplon Aff. ¶¶ 26–27, 33, 38–39; Waning Dep. 46:25; 47; 48:1–8; 51:14–25; 52–54; 55:1–11; MW_000257–281; Waning Aff. ¶¶ 17, 21, 23–25; PPNNE000182–190; Aff. of Meagan Gallagher ("Gallagher Aff.") ¶ 8.

DEFENDANT'S REPLY: Objection. Plaintiffs' new testimony through affidavits infers that they only sometimes provide abortion services to women who cannot pay. This assertion conflicts with the testimony provided through deposition, as well as the documents produced, which support the statement that if women are unable to pay for abortion services, Plaintiffs still provide abortion services. Plaintiffs may not generate disputed facts by contradicting prior testimony through affidavits. *Blue Star Corp. v. CKF Props., LLC,* 2009 ME 101, ¶ 31, 980 A.2d 1270; *Zip Lube, Inc. v. Coastal Savings Bank,* 1998 ME 81, ¶ 10,

709 A. 2d 733, 735. Plaintiffs' response to ¶ 41and the affidavit on these points should be excluded from the summary judgment record, and ¶ 41 should be deemed admitted.

Additionally, the Department incorporates herein its replies to ¶¶ 28, 36-38.

19. [42] Women are not denied services by the Plaintiffs if they cannot come up with the money for an abortion; abortion services may be delayed, but they are not denied. Coplon Dep. 66:24-25; 67:1-12; 82:13-25; 83:1-14; PPNNE000182-000190; PPNNEO169 ("No one is turned away because of an inability to pay.")

PLAINTIFFS' RESPONSE: Qualified. This part of the record has been cited by Defendant in a way that is incomplete and thus misleading. Maine Family Planning has turned away patients who show up for their abortion appointments without enough money to pay for the procedure. In such cases, MFP works with the woman to come up with a plan to raise the necessary funds and obtain the abortion in the future, or they may refer her to another clinic. Coplon Dep. 44:11–25; 45; 46:1–14; 47:20–25; 48:1–3; 82:22–25; 83:1–14. When a patient states that she cannot afford an abortion, all Plaintiffs engage in extensive financial counseling, including by assisting patients in accessing outside sources of private financial aid, to help the patient come up with enough money to afford the procedure. If after these efforts have been exhausted a patient still cannot afford the abortion, and that patient is in particularly desperate circumstances, and the patient has not been delayed past the clinic's gestational age limit, Plaintiffs will still provide the abortion, often at a financial loss to the clinic. Coplon Dep. 44:11–25; 45; 46:1–14; 47:20–25; 48:1–3; Coplon Aff. ¶¶ 26–27, 33, 38–39; Waning Dep. 46:25; 47; 48:1–8; 51:14–25; 52–54; 55:1–11; MW_000257–281; Waning Aff. ¶¶ 17, 21, 23–25; PPNNE000182–190; Gallagher Aff. ¶ 8. **Admitted** that patients delay accessing abortion services in order to try to raise enough money to afford the

procedure.

DEFENDANT'S REPLY: Objection. Plaintiffs' response to ¶ 42 conflicts with the deposition testimony, as well as the documents produced, which as a whole clearly support the statement that if women are unable to pay for abortion services, services may be delayed but they are not denied. Each of the Plaintiffs have stated that they do not deny abortion services to women due to lack of ability to pay. Coplon Dep. 47: 6-10 ("We always try to help women as much as possible come up with the finances to have an abortion if that's what they want."); Coplon Dep. 66:24-25; 67:1-12 ("…we don't deny services."); Waning Dep. 50:11-13; 61:25; 62:1-25; 63:1-8 (Mabel Wadsworth has never denied abortion services for failure to come up with the money to pay for those services); PPNNE0169 ("No one is turned away because of an inability to pay."). Plaintiffs may not generate disputed facts by contradicting prior testimony through affidavits. *Blue Star Corp. v. CKF Props., LLC,* 2009 ME 101, ¶ 31, 980 A.2d 1270; *Zip Lube, Inc. v. Coastal Savings Bank,* 1998 ME 81, ¶ 10, 709 A. 2d 733, 735. Plaintiffs' response to ¶ 42 and the affidavit on these points should be excluded from the summary judgment record and ¶ 42 should be deemed admitted.

The Department incorporates herein its replies to ¶¶ 28, 36-38, and 41.

20. [43] Plaintiffs have not identified any instance in which abortion services were denied to a woman seeking an abortion due to lack of money. See Coplon Dep. 47:6-25; 48:1-8; 66:24-25; 67:1-12; Waning Depo. 50:5-13; 62:1-25; 63:1-6.

PLAINTIFFS' RESPONSE: Denied. Plaintiff Maine Family Planning has turned away patients who show up for their abortion appointments without enough money to pay for the procedure. In such cases, Maine Family Planning usually tries to work with the woman to come up with a plan to raise the necessary funds and obtain the abortion in the future, or they

may refer her to another clinic. Coplon Dep. 82:22–25; 83:1–14. Plaintiffs also regularly get calls from patients who delayed seeking abortion care until they were already past the clinic's gestational limit because they were trying to raise funds. In such cases, as a result of the patients' lack of money, plaintiffs have to deny them abortion services. Waning Aff. ¶ 23; Coplon Aff. ¶¶ 31–32; Gallagher Aff. ¶ 9.

DEFENDANT'S REPLY: **Objection**. Plaintiffs' response to ¶ 43 conflicts with the deposition testimony, as well as the documents produced, which as a whole clearly support the statement that if women are unable to pay for abortion services, services may be delayed but they are not denied. Each of the Plaintiffs have stated that they do not deny abortion services to women due to lack of ability to pay. Coplon Dep. 47:6-10 ("We always try to help women as much as possible come up with the finances to have an abortion if that's what they want."); Coplon Dep. 66:24-25; 67:1-12 ("…we don't deny services."); Waning Dep. 50:11-13; 61:25; 62:1-25; 63:1-8 (Mabel Wadsworth has never denied abortion services for failure to come up with the money to pay for those services); PPNNE0169 ("No one is turned away because of an inability to pay."). Plaintiffs may not generate disputed facts by contradicting prior testimony through affidavits. *Blue Star Corp. v. CKF Props., LLC*, 2009 ME 101, ¶ 31, 980 A.2d 1270; *Zip Lube, Inc. v. Coastal Savings Bank,* 1998 ME 81, ¶ 10, 709 A. 2d 733, 735. Plaintiffs' response to ¶ 43 and the affidavits on these points should be excluded from the summary judgment record, and ¶ 43 should be deemed admitted.

In addition, the Department objects to the new testimony provided via affidavit: the last two sentences of Plaintiffs' response to ¶ 43 regarding the telephone calls Plaintiffs purportedly "regularly" receive from clients who were already past the clinic's gestational limit (because they were trying to raise funds), in which cases, Plaintiffs allegedly deny

services. If these allegations are true, the primary reason these women are denied services is because they are beyond the gestational limit for services that Plaintiffs are able to provide.

Furthermore, this new information – the reason that patients may have delayed calling Plaintiffs, is inadmissible hearsay and should be excluded from the summary judgment record.

Finally, the Department objects to inclusion of the new testimony provided via affidavit because it was not previously provided by Plaintiffs in response to discovery. *Longley v*. *Knapp,* 1998 ME 142, ¶ 8, 713 A.2d 939 (trial court acted within bounds of discretion by excluding evidence which had not been provided in response to discovery requests, which prejudiced adverse party). For example, Plaintiffs produced no documents to support the allegations set forth in ¶¶ 6 and 82 of the Complaint, that women are "forced to continue pregnancies against their will" because they could not obtain an abortion. *See* Plaintiffs' Response to Defendant's First Set of Document Requests, ¶¶ 9, 23.

The Department incorporates herein its replies to ¶¶ 28, 36-38, and 41-42.

21. [45] Plaintiffs, with the assistance of their private financial support, provide access to abortion services and enable low income women in Maine to make and act on their own regarding the decision whether to have an abortion. PPNNE0169.

PLAINTIFFS' RESPONSE: Qualified. Plaintiffs do assist poor and low-income patients in accessing private charitable funds for abortion care, but Mabel Wadsworth and Maine Family Planning do not have their own sources of private financial support to offer to patients. Plaintiffs are not always successful in enabling low income women in Maine "to make and act on their own regarding the decision whether to have an abortion," moreover. Coplon Aff. ¶¶ 24, 31–32, 35–36; Waning Aff. ¶ 23; Gallagher Aff. ¶¶ 7,10. Even when

Plaintiffs are successful in enabling a low-income woman to act on her decision *whether* to have an abortion, they are often unsuccessful in enabling her to act on her decision *when* to have an abortion (because of the delays caused by fundraising) and *how* to have an abortion (e.g., using medication rather than aspiration; in a one-day procedure rather than a two-day procedure). Coplon Aff. ¶¶ 31–33; Waning Aff. ¶¶ 17-19; Gallagher Aff. ¶¶ 8–9. **Admitted** that Plaintiffs provide abortion services and admitted to the extent Plaintiffs *attempt to* enable low-income women in Maine "to make and act on their own regarding the decision whether to have an abortion." Coplon Dep. 44:11–25; 45; 46:1–14; 47:20–25; 48:1–3; 82:22–25; 83:1–14; Coplon Aff. ¶¶ 26–27, 31, 34, 36, 39–40; Waning Dep. 46:25; 47; 48:1–8; 51:14–25; 52–54; 55:1–11; MW_000257–281; Waning Aff. ¶¶ 14–21, 24–25; PPNNE000182–190; Gallagher Aff. ¶ 7.

DEFENDANT'S REPLY: Objection. The record does not support Plaintiffs' claim that they are not always successful in enabling low income women in Maine "to make and act on their own regarding the decision whether to have an abortion," and thus this should not be considered on summary judgment. *Doyle v. Department of Human Svcs.*, 2003 ME 61, ¶10, n. 3, 824 A.2d 48, 52. Indeed, there is no record of instances where Plaintiffs denied services to low income Maine women. Plaintiffs may not generate disputed facts by contradicting prior testimony through affidavits. *Blue Star Corp. v. CKF Props., LLC,* 2009 ME 101, ¶ 31, 980 A.2d 1270; *Zip Lube, Inc. v. Coastal Savings Bank,* 1998 ME 81, ¶ 10, 709 A. 2d 733, 735. Plaintiffs' response to ¶ 45 and the affidavits on these points should be excluded from the summary judgment record, and ¶ 45 should be deemed admitted.

The Department incorporates herein its objections and replies to ¶¶ 28, 36-38, and 41-43.

In addition, PPNNE utilizes the Laura Fund to help make choice a reality for women who have made the decision to have an abortion, but lack the resources to carry through on their choice. PPNNE0168. There are several examples in the record of women who did not have funds to pay for their care, but used PPNNE and the Laura Fund for financial assistance:

(1) A single mother in her mid-twenties, "Marcia" already had one baby suffering from disabilities. Unable to afford having another child, Marcia turned to the Laura Fund for help. PPNNE0168.

(2) At 19 years old, "Sara" was raped by a stranger. She wanted an abortion, but was scared of telling her traditional and conservative parents. Confidentiality mattered to her. PPNNE provided Sara with an abortion and also set her up with a counselor for ongoing support. PPNNE0169.

(3) "Amy" was pregnant and getting out of an abusive relationship. She left with only the "clothes on her back" and had no income. The Laura Fund made it possible for her to have a real choice. PPNNE0169.

The record reflects numerous additional "internal Laura Fund patient stories," where PPNNE assumedly helped women in need obtain abortion services, despite their financial or other problems. PPNNE000193-000199. In 2015, the Laura Fund provided more than $41,000 to women in need. PPNNE0169. "With the help of our Laura Fund supporters, we will continue to provide assistance for all of the women who come to us for support." *Id*.

PPNNE also utilizes grants from the Consortium of Abortion Providers, the "CAPS" Justice Funds, for certain women who are financially eligible in Maine. PPNNE000182-188. While patients must be screened each time, a patient may be granted CAPS funds every time she has an abortion, no matter how often. PPNNE000184. "The primary goal of CAPS is to

ensure that no woman is forced to carry an unwanted pregnancy to term due to lack of funds. Additional funding may be available through SAFE (ME residents only) and/or Laura Fund to help patient keep an appointment." PPNNE000185.

The record reflects that in 2015, through the various funding sources, Portland's PPNNE provided over $112,000 in assistance for abortion services. PPNNE000191.

22. [52] Between 2010-2015, Planned Parenthood submitted four (4) claims for reimbursement of abortion services: one in 2010, two in 2011, and one 2013. Jan. 17, 2017 Affidavit of Charles Bryant, Exhibit 1, ¶11, DHHS773-774, DHHS779-780.

PLAINTIFFS' RESPONSE: Qualified. The claim submitted by PPNNE in 2013 was not for abortion services, but for miscarriage management services. Gallagher Aff. ¶ 11.

23. [53] Each of Planned Parenthood's claims for reimbursement for abortion services were partially paid and partially denied. The 2013 claim was denied due to a system error and will be paid once a system change has been finally completed. Jan. 17, 2017 Affidavit of Charles Bryant, Exhibit 1, ¶12, DHHS779-780.

PLAINTIFFS' RESPONSE: Qualified. The claim submitted by PPNNE in 2013 was not for abortion services, but for miscarriage management services. Gallagher Aff. ¶ 11. Despite this, the claim was partially denied. Id.

24. [55] The billing procedure codes 59812 and 59820 refer to services associated with a miscarriage; they are not equivalent to the abortion services at issue in this litigation. Jan. 17, 2017 Affidavit of Charles Bryant, Exhibit 1, at ¶ 9.

PLAINTIFFS' RESPONSE: Qualified. Admitted that those billing codes refer to services associated with treatment of a miscarriage. **Denied** that the medical procedures themselves are not "equivalent" to the procedures performed during an induced abortion.

Aff. of Steven J. Ralston, M.D. ¶ 2. Plaintiffs admit, however, that MaineCare does not cover these services equally.

25. [64] Currently, about 38 percent of Mai ne Family Planning's abortion services are provided through medication abortions. Coplon Depo. at 60, ln. 9-19. 62. Reports from the Maine Centers for Disease Control reflect that out of the total number of abortions in Maine for 2010-2015, medication (non-surgical) abortion services have increased from 20% in 2010 to almost 30% in 2015. Waning Depo. at 69, ln. 16-25; 70, ln. 10-25; 71, ln. 1-9; Waning Depo. Exh. 22; Coplon Depo. at 73, I n. 23-25; 74, ln. 1-25; 75, ln. 1-13; Exh. 27.

PLAINTIFFS' RESPONSE: Qualified. Admitted that Ms. Coplon testified that she believed that currently about 38% of Maine Family Planning abortions services are provided through medication. **Denied** that the statistics relied upon by Defendant show that medication abortion services in Maine have increased from 20% in 2010 to almost 30% in 2015. Medication abortion, as the term is used by Plaintiffs in this case, refers to abortions where the patient takes one pill in the clinic and then four additional pills after leaving the clinic that together induce a miscarriage. Coplon Aff. ¶ 14; Waning Aff. ¶ 8; Gallagher Aff. ¶ 4. Abortion via this method is only available up to 10 weeks LMP. Coplon Aff. ¶ 15; Waning Aff. ¶ 8. Prior to 2017, it was only available up to 9 weeks LMP. Coplon Aff. ¶ 15. However, the statistics cited by Defendant refer to "Medical (Nonsurgical)" abortion and encompass other nonsurgical procedures that may be performed after 10 weeks LMP. Waning Depo. Exh. 22; Coplon Depo. Exh. 27; Coplon Aff. ¶ 16; Waning Aff. ¶ 8.

26. [65] Medication abortion services are increasingly popular; if telehealth

(medication) abortion services were consistently available statewide—for example, at all eighteen separate Maine Family Planning Clinics, access to abortion services would increase. Coplon Depo. at 72, ln. 5-17.

PLAINTIFFS' RESPONSE: Qualified. The evidence in the record is unclear on this point. When asked if she expected the percentage of abortions provided through medication and telemedicine to rise, Ms. Coplon testified that "[i]t has risen a little, and I think it's probably gonna stay where it is." Coplon Depo. 60, ln. 9–13. Moreover, because of limited physician availability and other infrastructure and staffing limitations, Maine Family Planning is generally only able to offer telemedicine abortion services one day per week, and even then only on days when the rural site is open (which in some cases may be only two to four days per month), and when a nurse-practitioner trained in ultrasound is available at the site on that day. Coplon Aff. ¶¶ 21–22. **Admitted** to the extent that, hypothetically, if telemedicine abortion were available state-wide every day of the week access to abortion services would increase.

27. [67] Due to prior investments and training, Maine has a surplus of physicians trained in abortion services, but few live and work in areas of the state where access is most limited. Now that Maine Family Planning has secured funding for the web-based telehealth software which will be operational in February 2017, MFP estimates it will be able to at least quadruple the number of physicians who can provide procedures from their offices rather than having to go to Augusta. This will improve both the quantity and scheduling flexibility of available appointments for telehealth abortion. Coplon Depo. at 73, ln 2-13; Coplon Depo. Exh. 26 (MFP_000115).

PLAINTIFFS' RESPONSE: Qualified. Admitted that this language was

included in an internal programmatic evaluation report written for Maine Family Planning in the fall of 2016. Coplon Depo. Exh. 26; Coplon Aff. ¶ 22. **Denied** as to the remainder of the paragraph, because the estimated expansion has not come to pass and is unlikely to come to pass to the extent anticipated in this internal report. Coplon Aff. ¶ 22. The telemedicine software will only enable Maine Family Planning to provide additional telemedicine care if one of its busy physicians (who each typically provide abortion care at Maine Family Planning only one day per month or less) is willing to take on additional work during a rare free window, and if that free window happens to align with the patient's schedule, the schedule at the rural site (which in some cases is open only two days per month), and the schedule of one of MFP's nurse practitioners trained in ultrasound. Thus, at best, the new software will likely enable MFP only to double its telemedicine services. Id.

28. [68] The Department promulgated the rule, in part, to conform with federal laws and regulations, and to receive federal reimbursement for abortion services provided by MaineCare. Deposition of Stefanie Nadeau ("Nadeau Depo.") at 48, ln. 16-23; 50, ln. 3- 11; DHHS425-430; DHHS432-434; DHHS447-449; DHHS420-422; DHHS520-522; DHHS524-529; DHHS532; DHHS078-079; DHHSOO I ; DHHS025-026; DHHS657-659.

PLAINTIFFS' RESPONSE: Qualified. The statement is misleading to the extent it states the Department promulgated the rule "in part" because of these reasons. In fact, the record contains no evidence of any other reasons for promulgating the rule. Moreover, the rule is not necessary to conform to federal law or regulations.

29. [74] The following is a list of certain services that MaineCare does not cover, or that are covered in limited circumstances/with restrictions (this list is not

comprehensive):

a. Organ transplants - Sec. 90, Appendix A;
b. Dental - Sec. 25 (including - orthodontic services, limited to members under 21 years old, Sec. 25.04; dentures, Sec. 25.04-3);
c. Eye services, contact lenses, frames, orthotic therapy -Sec. 75.03-1;
d. Adult in-patient psychiatric, Sec. 46.03-2;
e. Sterilization and hysterectomies -Sec. 90.05-2(B);
f. Infertility treatments, Sec. 90,05-2(G);
g. Gastric bypass, Sec. 90.05-1(B)(2);
h. Chiropractic services, Sec. 15.06, 15.07-2;
i. Out of state services, Sec. 90.05-l(A)(l); Ch. I, Sec. 1.14-2;
j. Durable medical equipment, Sec. 60.05;
k. Cochlear implants, Sec. 90.05-2(D);
l. Speech and hearing services, Sec. 109.05(B), Sec. 109.04;
m. Private duty nursing services, Sec. 96.02-4, 96.03, 96.05.

PLAINTIFFS' RESPONSE: Qualified. The characterization of some of these services as only being covered "in limited circumstances/with restrictions" is misleading. For instance, sterilization and hysterectomies are fully covered under MaineCare provided the patient satisfies an informed consent procedure required by federal law. 10-144 C.M.R. ch. 101(II), § 90.05-02(B). Cochlear implants are fully covered provided that they are medically necessary and certain other medical interventions (such as hearing aids) have proven unsuccessful. *Id*. § 90.05-02(D). Chiropractic and speech therapy services are covered when a physician has documented medical necessity or rehabilitation potential. *Id*. § 90.05-03. Regardless, these are statements of law, not fact.

PLAINTIFFS' STATEMENT OF MATERIAL FACTS

1. [42] Some women choose abortion because the pregnancy was the result of rape or incest. Coplon Aff. ¶ 23; Waning Aff. ¶ 11; Gallagher Aff. ¶ 6.

DEFENDANT'S RESPONSE: Qualified. MaineCare covers abortion services when the pregnancy was the result of rape or incest. *See* 10-144 C.M.R. Ch. 101, Ch. II, Sec.

90.05. **Admitted** that some women choose abortion because the pregnancy was the result of rape or incest.

PLAINTIFFS' REPLY TO QUALIFICATION: **Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it is not supported by citations to the record, and fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. Defendant has admitted the statement, and the rest of her response should be disregarded.

2. [47] The services MaineCare covers, *see* 10-144 C.M.R. ch. 101(II), § 90.01-2, include medical procedures that prevent or reduce emotional suffering, *see* Deposition of Stefanie Nadeau ("Nadeau Dep.") 33:22-25; 34:1-4; elective procedures, *id*. 25:6-25; 26:1-2; and some cosmetic procedures, when done to correct deformities resulting from cancer, disease, trauma or birth defects, *see id*. 32:15-25; 33:1-10.

DEFENDANT'S RESPONSE: Qualified. The citations to the record do not fully support Plaintiffs' statements, and thus the Department objects to their consideration on summary judgment. *Stanley v. Hancock County Com'rs,*2004 ME 157, ¶ 18, 864 A.2d 169. In particular, Ms. Nadeau did not testify that MaineCare covers services that include medical procedures that prevent or reduce emotional suffering; she testified that she agreed that a service that prevents or treats illness, disability, infirmity or impairment could be one that prevents or reduces emotional suffering. *See* Nadeau Dep. 33:22-25; 34:1-4. In addition, there are various non-covered services, including but not limited to those set forth in Defendant's Proposed Statement of Material Facts ("Def. Prop. SMF") ¶74. See also, Dept's Resp. to PSMF ¶ 199, below, incorporated herein.

PLAINTIFFS' REPLY TO OBJECTION/QUALIFICATION: Denied. The statement is supported by the record. Ms. Nadeau testified that MaineCare defines covered services as those that "prevent[] or treat[] illness, disability, infirmity, or impairment" and then agreed that that definition could be met by medical procedures "that prevent[] or reduce[] emotional suffering." Defendant's qualification/objection should be overruled, and the statement should be considered admitted.

3. [48]. It is not one of MaineCare's objectives to promote childbirth as an alternative to abortion. Nadeau Dep. 51:19-25; 52:1-3.

DEFENDANT'S RESPONSE: Qualified. The Department admits that Ms. Nadeau testified that it is not one of MaineCare's objectives to promote childbirth as an alternative to abortion. Ms. Nadeau appeared as a Rule 30(b)(6) witness for the Office of MaineCare Services ("OMS"), and thus her testimony is limited to OMS. The history of the Maine Medical Assistance Manual[3] governing the payment for abortions using public funds indicates that the objective of the Department was to mirror the federal restrictions on the use of public funds for abortions. Stipulation, ¶¶ 1-6. Furthermore, pregnant women within the income standards are a mandatory categorically needy eligibility class under federal Medicaid law; in other words, the scope of their coverage and services under MaineCare is required by federal law. *See* 42 U.S.C. § 1396a(a)(10)(A)(i)(III); 42 C.F.R. § 435.116(b) ("The agency must provide Medicaid to pregnant women…") and (d). Thus, Congress, through its funding decisions for the Medicaid program, has arguably determined to promote childbirth.

PLAINTIFFS' REPLY TO QUALIFICATION: **Objection**. Plaintiffs object under

[3] Effective January 1, 2002, Maine's Medicaid program became known as "MaineCare," and thereafter, its Medicaid rules were included in the MaineCare Benefits Manual. See P.L. 2001, ch. 450, Part C, Sec. C-2; Stipulation, ¶ 6.

M.R.Civ. P. 56(h)(3) to Defendant's qualification that Ms. Nadeau's testimony as a 30(b)(6) witness was limited to the Office of Medical Services (OMS). The 30(b)(6) Notice was served on DHHS. *See* Plaintiff's First Notice of Deposition (Amended) Pursuant to M.R. CIV.P 30(b)(6) To The Maine Department of Health Human Services ("Please take notice that, pursuant to M.R. Civ.P. 30(b)(6), Plaintiffs in the above-captioned case will take the deposition upon oral examination of the Maine Department of Health and Human Services"). The notice designated as topic for the Department of Health and Human Services both "DHHS statutory and/or official mission and objectives" and "the state interests justifying the regulation limiting MaineCare coverage for abortion to those abortions necessary to save the woman's life or where the pregnancy is the result of rape or incest (10-144 C.M.R. ch. 101(II), § 90.05-2 or "the Regulation"), and how the Regulation furthers those interests." Notice of Deposition (Amended) Pursuant to M.R. CIV.P 30(b)(6) To The Maine Department of Health Human Services. Ms. Nadeau testified that she was appearing as the designated witness for the Department of Health and Human Services. Nadeau Dep. 7:17-20 ("Q: And do you understand that you are appearing here today as the designated representative of the Maine Department of Health and Human Services? A: Yes, I do."); *see also id*. at 7:21-8:10 (Nadeau testifying that she was appearing to testify about the specific topics contained in the deposition notice).

Defendant cannot disavow the testimony of a 30(b)(6) witness she produced. A government agency has a duty to make available witnesses who can give complete, knowledgeable, and binding answers on the agency's behalf. *Zip-O-Log Mills, Inc. v. United States*, 113 Fed. Cl. 24, 32 (2013). "The testimony on a Rule 30(b)(6) designee 'represents the knowledge of the corporation, not of the individual deponents.'" *Great Am. Ins. Co. of*

N.Y. v. Vegas Const. Co., 251 F.R.D. 534, 538 (D. Nev. 2008). "[I]f the persons designated by the corporation do not possess personal knowledge of the matters set out in the deposition notice, the corporation is obligated to prepare the designees so that they may give knowledgeable and binding answers for the corporation." *Booker v. Mass. Dep't of Pub. Health*, 246 F.R.D. 387, 389 (D. Mass. 2007) (internal citations omitted). If Defendant provided a witness who was not competent or unprepared on the topic of the state interest justifying the regulation that is the subject of this litigation, or who did not have authority to speak on the topic, this is tantamount to failing to appear for a 30(b)(6) deposition notice and Defendant should be sanctioned under M.R.Civ. P. 37(d). *See Resolution Trust Corp. v. S. Union Co.*, 985 F.2d 196, 197 (5th Cir. 1993). Defendant has admitted the statement, and the rest of her response should be disregarded.

4. [49] The statutory mission and guiding principles set forth in Me. Rev. Stat. tit. 22-A § 202 applies to the MaineCare program. Nadeau Dep. 12: 20-25; 13; 14:1-20.

DEFENDANT'S RESPONSE: Qualified. The Department admits that Ms. Nadeau testified that the mission and guiding principles set forth in 22-A M.R.S. § 202 applies to the MaineCare program. These are statements of law, not fact. The statute includes the provision that, "within available funds, the department shall provide supportive, preventive, protective, public health and intervention services…"

PLAINTIFFS' REPLY TO QUALIFICATION: Denied. Defendant's qualification should be disregarded because she has failed to support her qualification with a record citation. *City of Augusta v. Attorney Gen.*, 2008 ME 51, ¶ 21, 943 A.2d 582, 588.

5.[53] Federal law does not prevent states from using state funds to provide coverage for a broader range of services, and/or to broaden the eligibility requirements,

beyond the minimum required by federal law. *See* Def.'s March 31, 2016 Resp. Pls.' Request For Admissions ¶1.

DEFENDANT'S RESPONSE: Qualified. The Department notes that pregnant women within the income standards are a mandatory categorically needy eligibility class under federal Medicaid law; in other words, the scope of their coverage and services under MaineCare is required by federal law. *See* 42 U.S.C. § 1396a(a)(10)(A)(i)(III); 42 C.F.R. § 435.116(b) ("The agency must provide Medicaid to pregnant women…") and (d). At a minimum, therefore, the Department must provide MaineCare services to eligible pregnant women. The Department admits that federal law does not prevent states from using state funds to provide broader coverage of health services and/or broader eligibility requirements, beyond the minimum required by federal law.

PLAINTIFFS' REPLY TO QUALIFICATION: Objection. Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it is not supported by citations to the record, and fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. Defendant has admitted the statement, and the rest of her response should be disregarded.

6. [54] For example, seventeen states, including Vermont, Connecticut, and Massachusetts, cover abortions in their state Medicaid programs in circumstances beyond those where the pregnancy was caused by rape or incest, or endangers the woman's life. Compl. ¶ 45; Ans. ¶ 45.

DEFENDANT'S RESPONSE: Qualified. The Department admits that, while 17 states, including Vermont, Connecticut, and Massachusetts, may provide coverage for

abortion services in circumstances beyond those where the pregnancy was caused by rape or incest, or endangers the woman's life, Plaintiffs' statement is misleading. Those services are covered by state dollars only, not under their "state Medicaid programs." The Hyde Amendment prohibits spending federal money for broader coverage of abortion services. *See* P.L. 103-112, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1994; Complaint, ¶ 44 ("…federal law bars the use of federal Medicaid funds to cover the cost of abortion outside these three enumerated circumstances…"); Answer, ¶¶ 43-44. Furthermore, the majority of states – thirty three, do not provide coverage for abortions in circumstances beyond those where the pregnancy was caused by rape or incest, or endangers the woman's life. *See, e.g.*, Public Funding for Abortion, American Civil Liberties Union, http://www.aclu.org/other/public-funding-abortion (last visited 5/1/17) ("Most states have followed the federal government's lead in restricting public funding for abortion.").

PLAINTIFFS' REPLY TO QUALIFICATION: Qualified/Objection. Defendant has admitted that 17 states, including Vermont, Connecticut, and Massachusetts, provide coverage for abortion services in circumstances beyond those where the pregnancy was caused by rape or incest, or endangers the woman's life using "state dollars." *See supra*; *see also* Ans. ¶ 45. The rest of the qualification should be disregarded, because it is not supported by citations to the record, adds irrelevant material, and does not directly address the statement of fact. M.R. Civ.P 56(h)(2); *Stanley v. Hancock Cty Comm'rs*, 2004 ME 157, ¶ 18.

7. [55] MaineCare provides coverage for a number of "optional benefits" that are not required to be covered by federal law. DHHS_767; Nadeau Dep. 15:24-25; 16:1-18.

DEFENDANT'S RESPONSE: Qualified. Many of those so-called "optional benefits" were required to be covered by the state Legislature, and OMS requires both state and federal approval prior to implementing new MaineCare services. Nadeau Dep. 16:19-25; 17:1-25; 18:1-25. There are also various services that MaineCare does not cover. *See e.g.*, Def. Prop. SMF ¶74; Dept's Resp. to PSMF ¶ 199, below, incorporated herein. The Department admits that MaineCare provides coverage for a number of optional benefits that are not required to be covered by federal Medicaid law.

PLAINTIFFS' REPLY TO QUALIFICATION: Denied. Defendant admits "MaineCare provides coverage for a number of optional benefits that are not required to be covered by federal Medicaid law." Therefore, the qualification must be disregarded because it adds irrelevant material, and does not directly address the statement of fact. M.R. Civ.P 56(h)(2); *Stanley v. Hancock Cty Comm'rs*, 2004 ME 157, ¶ 18.

8. [58] Even with federal matching funds, the cost to the State of prenatal care, labor & delivery, postpartum and infant care for a MaineCare-eligible woman who carries a pregnancy to term exceeds the cost of an abortion. Affidavit of Stanley K. Henshaw, Ph.D ("Henshaw Aff.") ¶¶ 3, 20.

DEFENDANT'S RESPONSE: Qualified. Pregnant women within the income standards are a mandatory categorically needy eligibility class under federal Medicaid law; in other words, the scope of their coverage and services under MaineCare is required by federal law. *See* 42 U.S.C. § 1396a(a)(10)(A)(i)(III); 42 C.F.R. § 435.116(b) ("The agency must provide Medicaid to pregnant women…") and (d). As such, the federal government requires that states choosing to participate in the Medicaid program must incur the costs for these services.

PLAINTIFFS' REPLY TO QUALIFICATION: Objection. The qualification must be disregarded because it adds irrelevant material, and does not directly address the statement of fact. M.R. Civ.P 56(h)(2); *Stanley v. Hancock Cty Comm'rs*, 2004 ME 157, ¶ 18. Because Defendant does not deny or qualify, with record evidence, that it costs the State more to pay for an eligible woman's prenatal care, labor and delivery, postpartum and infant care than it would to pay for her abortion, that fact is admitted. *See City of Augusta v. Attorney Gen.*, 2008 ME 51, ¶ 21, 943 A.2d 582, 588.

9. [59] Taking into account the research establishing that a significant percentage of Medicaid-eligible and –enrolled women are prevented from having desired abortions because of Medicaid coverage bans; the substantial costs of prenatal, labor & delivery, postpartum, and newborn care (for *at least* the infant's first year of life), plus any additional costs to the state in social welfare programs; and the relatively low cost of abortion, Maine's policy of withholding Medicaid coverage for abortion provides no fiscal benefit to the state. Henshaw Aff. ¶ 20.

DEFENDANT'S RESPONSE: Denied. The premise of this statement-- that Medicaid-enrolled women in Maine are prevented from having desired abortions because of Medicaid coverage bans, is not supported by the summary judgment record. There is no individual included as a Plaintiff who alleges a denial of an abortion because of a lack of state funding. Plaintiffs have produced no evidence, either through deposition testimony or through documentation, that any individual has been denied an abortion service because of lack of state funding. As set forth through the citations to the record, below, representatives of each of Mabel Wadsworth and Maine Family Planning testified at deposition that they do not deny abortion services to women due to lack of ability to pay, and as such, the Medicaid

coverage ban does not prevent Maine women from getting abortions. Plaintiffs always reduce rates and/or provide abortion services for free for women in "particularly desperate circumstances," as described in paragraph 5 of the Complaint and elsewhere; indeed, the testimony reflects that Plaintiffs always try to make it possible for a woman to have abortion services, despite her financial situation. *See, e.g.*, Waning Dep. 46-49; 49:25; 50:1-10; Coplon Dep. 47:6-25; 48:1-8.

Mabel Wadsworth has never denied abortion services for failure to come up with the money to pay for those services. Waning Dep. 50:8-10 ("We always try to find a way to make it possible for the woman to have the services that she feels she needs in terms of abortion care despite her situation."); 50:11-13; 61:25; 62:1-25; 63:1-8.

Maine Family Planning has turned women away who have arrived at the clinic without enough money for an abortion, but it only does so when there is enough time in their pregnancy where they could reschedule the appointment to take additional time to come up with funding. Coplon Dep. 47:8-25; 48:1-8; 66:24-25; 67:1-12.

The mission of Maine Family Planning is "to ensure that all Maine people have access to high-quality, affordable reproductive health care,…and the right to control their reproductive lives." MFP_000052. One of Maine Family Planning's beliefs is that "all Maine people should have the means and information to control the number and timing of their children *regardless of their ability to pay* or place of residence." MFP_000050 (emphasis added). To implement this belief, as Maine Family Planning stated in its July 1, 2013- June 30, 2014 annual report: "Like any other non-profit, Maine Family Planning relies on the generosity of hundreds of individuals like Leslie, as well as private foundations and businesses, to help *pay for whatever our federal and state funding or patient fees cannot*

cover." MFP_000047 (emphasis added). During this time period, 82% of all patients qualified for free or reduced fee services. MFP_000048. Maine Family Planning uses (or used) a sliding fee scale to serve low income Maine women. *See* MFP_000052. The organization reports that 63% of its clients received financial assistance for abortion services in 2015-2016. MFP_000113. Maine Family Planning has never denied abortion services to women in particularly desperate circumstances who can't pay. Coplon Dep. 64, ln. 18-25; 65, ln. 1-12; 66, ln. 24-25; 67, ln. 1-12; 82, ln. 13-25; 83, ln. 1-14.

Similar to the other two Plaintiffs, PPNNE does not turn women away because of inability to pay. PPNNE0169. PPNNE's mission is to "provide, promote, and protect access to reproductive health care…so that all people can make voluntary choices about their reproductive and sexual health." PPNNE0062. PPNNE stated that it "continues to serve as a major safety net provider – and for many of our patients – their primary source of health care." PPNNE0046. In 2015, PPNNE "delivered $7.4 million in free/discounted health care through our sliding fee scale program." *Id*. In 2013, PPNNE "delivered over $9 million in free or discounted health care to vulnerable populations." PPNNE0149. (PPNNE includes facilities in Maine, New Hampshire and Vermont).

During depositions, representatives of Mabel Wadsworth and Maine Family Planning testified that the following types of women (as described in paragraph 5 of the Complaint) would be considered to be in "particularly desperate circumstances" to justify a rate reduction, or at least would "possibly" or "sometimes" be considered to be in particularly desperate circumstances to justify a rate reduction:

i. women who would suffer extraordinary damage to their health, including excruciating pain, damage to major organ systems, or even shortened life expectancy;
ii. pregnant women who require medications that can cause harm to a

growing fetus to treat or manage an underlying medical condition, such as cancer, high blood pressure, or certain mental illnesses;

iii. women who discover that their fetuses have severe or fatal anomalies; and

iv. women who experience intimate partner violence.

Waning Dep. 46-49; Coplon Dep. 50:9-25; 51:1-9. There was no testimony about Plaintiffs' purported limited capacity to provide rate reductions. Plaintiffs always reduce rates and provide abortion services to women in these "particularly desperate circumstances," as described above and in paragraph 5 of the Complaint; indeed, the testimony reflects that Plaintiffs always try to make it possible for a woman to have abortion services, despite her financial situation. Waning Dep. 46-49; 49 ln 25; 50, ln 1-10; Coplon Dep. 47:6-25; 48:1-8.

The discovery and the testimony reflect that Mabel Wadsworth's abortion services are discounted between $25-$250 (or a reduction in cost from $500 to $250). Waning Dep. 49:14-24. The discovery and testimony reflect that Maine Family Planning's abortion services are discounted between $5-$100. Coplon Dep. 51:10-19.

Finally, the Department notes that pregnant women within the income standards are a mandatory categorically needy eligibility class under federal Medicaid law; in other words, the scope of their coverage and services under MaineCare is required by federal law. *See* 42 U.S.C. § 1396a(a)(10)(A)(i)(III); 42 C.F.R. § 435.116(b) ("The agency must provide Medicaid to pregnant women…") and (d). As such, the federal government requires that states choosing to participate in the Medicaid program must incur the costs for these services.

PLAINTIFFS' REPLY TO DENIAL: Denied/Objection. Defendant's denial should be disregarded to the extent it adds irrelevant material and does not directly address the statement of fact. M.R. Civ.P 56(h)(2); *Stanley v. Hancock Cty Comm'rs*, 2004 ME 157, ¶ 18. Because Defendant did not introduce any expert evidence or depose Dr. Henshaw,

Defendant cannot cite to any evidence in the record that controverts the statement that decades of social science research concludes that a significant percentage of Medicaid-eligible and –enrolled women are prevented from having desired abortions because of Medicaid coverage bans. *See* Henshaw Aff. ¶ 20. Moreover, Defendant has already conceded that there is no evidence of any "data showing that withholding coverage for abortions, except in the limited circumstances for which federal matching funds are available, provides any fiscal benefit to the State." *See* PSMF ¶ 57 (**Admitted**) (citing Nadeau Dep. 48:6-25; 49:1-19.).

Defendant does not deny the statement itself, but rather attacks what she takes to be the "premise" of the statement. Plaintiffs' statement is, therefore, admitted.

10. [76] If a woman in Maine is working full time (40 hours/week, 52 weeks/year) at the Maine minimum wage of $9.00 per hour, her annual earnings are approximately $18,720 ($1,560 gross per month). This places her just above the federal poverty threshold if she only has one child, but under the poverty line if she has any additional children. Deprez Aff. ¶ 16.

DEFENDANT'S RESPONSE: Qualified. Pursuant to I.B. 2016, ch. 2 (effective January 7, 2017), the minimum wage will increase as follows: to $ 10.00 per hour on January 1, 2018, to $11.00 per hour on January 1, 2019, and to $12.00 per hour on January 1, 2020. On January 1, 2021 and each January 1st thereafter, the minimum hourly wage must be increased by the increase, if any, in the cost of living.

PLAINTIFFS' REPLY TO QUALIFICATION: Denied/Objection. Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it is not supported by citations to the record. *See Stanley v. Hancock County Com'rs,* 2004 ME

157, ¶ 18, 864 A.2d 169.

11. [77] Cost is a significant barrier to health care among low-income Maine residents. Deprez Aff. ¶¶ 8, 17-31; Fay-Leblanc Aff. ¶¶ 16, 31-36.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams*, 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

12. [78] One study of women enrolled in the Parents as Scholars program in Maine, all of whom currently or had recently relied on Temporary Assistance for Needy Families (TANF), which provides five years of government assistance for living expenses,

and who were pursuing two-year or four-year postsecondary degrees, made a number of concerning findings regarding women and poverty. Deprez Aff. ¶ 19.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

13. [79] Participants in the program had, on average, two children, and all participants were working an average of 38 hours per week, enrolled in postsecondary education programs to help them get ahead, or a combination of both (working and in school). They were all living very close to, or slightly below, the FPL. Deprez Aff. ¶ 19.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

14. [80] Participants in the study reported significant financial difficulties within the preceding five years, including that 35% had fallen behind on rent; 45% had received utility cut off notices; 25% skipped meals to save money; 20% fell behind on car payments; 30% had transportation problems (other than car payment); 10% were unable to get medical help for themselves; 15% were unable to get medical help for their children; 20% were unable to get dental help for themselves; and 10% were unable to get dental help for

their children. Deprez Aff. ¶ 19.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

15. [81] Many of the low-income women in the 2008 "Parents As Scholars" program study had health problems which became exacerbated because they were not able to attend to them. Deprez Aff. ¶ 20.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation

based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

16. [82] Numerous participants in the 2008 Parents as Scholars program in Maine identified cost as a barrier to health care. For example, one woman had a job in home health care but did not earn a living wage and lacked insurance coverage. She had a painful sinus infection that had lasted for months, but she had not seen a doctor. When asked why, she explained that she "did not want to rack up more bills." Deprez Aff. ¶ 21.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61

A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

17. [83] Another example of a person who had harmful and distressing health problems because of her lack of health care coverage is Sheila Scott, a Richmond woman who suffers from kidney disease. Scott had a kidney transplant when she was 32, and she depends on medication to prevent her body from rejecting the transplant. Her MaineCare was terminated for three months, then reinstated for reasons she never learned. During those three months, she depended on donated medication from the Kidney Foundation, though it was not the medication she had been taking. She had no way of knowing whether the new medication would work to keep her alive, because she could not afford a blood test, much less a visit to a kidney specialist. During those months, she experienced a mysterious swelling in her knees

as well as a general deterioration in her health. But she could not afford diagnostic testing or a visit to a specialist for those either. Deprez Aff. ¶ 22.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

18. [84] For women and families who live in rural areas, the challenges created by poverty are exacerbated. Deprez Aff. ¶ 24.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation

based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

19. [85] Maine is the least urbanized state in the country, with approximately 60% of Maine's population lives in rural areas. Deprez Aff. ¶ 25; Henshaw Aff. ¶ 19.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a

suspect class). Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

20. [86] Rural counties in Maine tend to have higher rates of poverty. Deprez Aff. ¶ 25.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of

law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

21. [87] Poverty in Maine rural communities compounds the challenges of accessing health care, including abortion care, which is often very limited in rural areas. Deprez Aff. ¶ 25; Henshaw Aff. ¶ 19.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

22. [88] Many low-income women do not own a car and/or face challenges

finding a ride or transportation to an abortion appointment. Deprez Aff. ¶ 26; MW_000089, MW_000092, MW_000105, MW_000107-08, MW_000116, MW_000120, MW_000126, MW_000133, MW_000137, MW_000141, MW_000148-49, MW_000171, MW_000179, MW_000182, MW_000191, MW_000193, MW_000200, MW_000204, MW_000210, MW_000215, MW_000218, MW_000222-23, MW_000229, MW_000237, MW_000240, MW_000243-44, MW_000247, MW_000251-54.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

23. [89] If a low-income woman does own a car, it may not be sufficiently safe and reliable for a long road trip. Most cars owned by low-income families are, on average, ten years old. As a result, even those low-income women who own cars may have to travel by public transportation, if available, or by private bus service. Deprez Aff. ¶ 27.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. The Department further objects and this statement should be excluded from the summary judgment record because the purported expert witness testimony is not based upon experience in the State of Maine. *E.M. Nason, Inc. v. Land-Ho Development,* 403 A, 2d 1173 (Me. 1979). Rather, the statements appear to be based on a twenty year old article from 1997. Without waiving these objections, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of

law rather than in their statements of material facts."). Furthermore, as a sociologist who is trained in the study of women and poverty, and as a scholar of poverty in the United States and Maine, *see* Deprez Aff. ¶¶ 1-2, Professor Deprez is qualified to give an opinion on this topic, and, therefore, the decision in *E.M. Nason Inc*., concerning the qualifications of an out-of-state expert, cited by Defendant is inapposite. At most, the objection to the age of the underlying data goes to the weight afforded the evidence, but such an argument is irrelevant for purposes of summary judgment. *See Emerson v. Sweet*, 432 A.2d 784, 784 (Me. 1981) ("Because of the form of evidence properly before a court on a motion for summary judgment, evidentiary inferences based on credibility or weight are impermissible.") (citing 10 C. Wright & A. Miller, Federal Practice & Procedure s 2726 (1973)).

Defendant's objections should be overruled, and the statement should be considered admitted.

24. [90] Even if a low-income woman has a car that she is comfortable relying on for an intercity trip, the cost of gasoline may exceed her means. Deprez Aff. ¶ 28.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health

care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

25. [91] Maine does not have an interconnected transportation system. Outside of the major cities, public transportation does not exist. Deprez Aff. ¶ 29.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be

overruled, and the statement should be considered admitted.

26. [92] Without public transportation, getting to work or going grocery shopping or to the doctor's office—all those aspects of living that are essential to one's wellbeing—is often a feat, particularly for low-income individuals and families. Deprez Aff. ¶ 29.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

27. [93] Low-wage workers often have no access to paid time off or sick days,

which presents an extra layer of difficulty for women who have to travel a number of hours to obtain abortion care. Deprez Aff. ¶ 30.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

28. [94] Even if a low-income woman is able to get time off, she is likely to forego wages. Deprez Aff. ¶ 30.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation

based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

29. [95] Lack of funds and lack of insurance coverage present tremendous barriers to meeting care for low-income populations. Fay-LeBlanc Aff. ¶ 8.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal

protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

30. [96] In primary care medicine, the focus is on treating the patient as a whole person. This philosophy of care has largely supplanted a philosophy of "treating the disease," in which negative health conditions are treated in isolation. For people living in poverty, in particular, this means understanding and treating health conditions in the context of other social determinants of health. Fay-LeBlanc Aff. ¶ 9.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a

suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

31. [97] "Social determinants of health" include the environments and conditions in which people live and work; access to healthy food; access to quality health care; types and consistency of housing and employment; family structure; addiction; exercise; and social support. Fay-LeBlanc Aff. ¶ 10.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams*, 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment). Regardless of gender, the environments and conditions in which people live and work may impact health. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56

Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

32. [98] Medical and epidemiological research has concluded that social determinants have a significant effect on an individual's health. Fay-LeBlanc Aff. ¶ 10.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams*, 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment). Regardless of gender, social determinants have an impact on health. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

33. [99] A significant body of research has concluded that chronic conditions such as sleep deprivation (e.g., as a result of working long hours and/or multiple jobs, family responsibilities, homelessness, living with untreated mental illness) and stress (which can be

caused by many of the same things) can themselves lead to other physical and mental health problems. Fay-LeBlanc Aff. ¶ 11; Mittal Aff. ¶ 24.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, chronic conditions such as sleep deprivation and stress may lead to other physical and mental health problems. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

34. [100] Stress has negative effects on both the immune system and cardiovascular system, leading to an increase in infections, diabetes, hypertension, other cardiovascular disease and depression. Fay-LeBlanc Aff. ¶ 12.

DEFENDANT'S RESPONSE: Objection. The Department objects because this

assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment). Regardless of gender, stress may have negative effects on the immune system and cardiovascular system. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

35. [101] Persistent stressful circumstances are damaging to health, and persistent stress may lead to premature death, due to the continuous adrenergic state that stress causes in the body. Fay-LeBlanc Aff. ¶12; Mittal Aff. ¶ 24.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment). Regardless of gender, persistent stressful circumstances may damage health and may lead to premature death. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

36. [102] Negative social determinants of health, especially stress, are much more common in people who are living in poverty. Fay-LeBlanc Aff. ¶ 13; Mittal Aff. ¶ 24.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the

motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

37. [103] The descriptive term for the link between poor health and low-socioeconomic status is the "socioeconomic health gradient." Fay-LeBlanc Aff. ¶ 13.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

38. [104] Research has shown that stress is a prime, if not the prime, determinant

of the "socioeconomic health gradient." Fay-LeBlanc Aff. ¶ 13.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

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39. [105] Ongoing stress associated with poverty has significant negative impacts on physical and psychological health. Fay-LeBlanc Aff. ¶ 14; Mittal Aff. ¶ 24.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61

A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

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40. [106] Many people living in poverty suffer from health conditions directly linked to stress: chronic pain syndrome, gastrointestinal distress, high blood sugar, high blood pressure, and headaches. Fay-LeBlanc Aff. ¶ 15.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal

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PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

41. [107] Poor and low-income people experience far greater health problems than do people with means, due to the stress of living in poverty and the lack of access to healthcare. Fay-LeBlanc Aff. ¶ 16; Mittal Aff. ¶ 24.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams*, 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health

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42. [108] People at the bottom of the economic ladder are at least twice as likely to develop a serious illness and at least twice as likely to die a premature death as people at the top of the economic ladder. Fay-LeBlanc Aff. ¶ 17.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56

Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

43. [109] Common medical conditions such as obesity, diabetes, hypertension, asthma, alcohol dependence, drug dependence and smoking, are all more prevalent in socially and economically disadvantaged people. Fay-LeBlanc Aff. ¶ 18; Ralston Aff. ¶¶ 22, 31.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

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motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

44. [110] Higher rates of unemployment and homelessness also correlate to higher rates of illness and premature death. Fay-LeBlanc Aff. ¶ 18.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

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45. [112] Many people living in poverty have chronic pain, from injuries, from

conditions that have gone untreated, or from life in dire circumstances. Fay-LeBlanc Aff. ¶ 25.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

46. [113] Sleeping on the street, or on the floor at a shelter, causes pain. Fay-LeBlanc Aff. ¶ 25.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation

based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

47. [114] Not having good shoes, or warm clothes, also causes pain. Fay-LeBlanc Aff. ¶ 25.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal

protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

48. [115] Living with pain every day exacts a substantial toll, separate and apart from the toll of the underlying condition that is the source of the pain. Fay-LeBlanc Aff. ¶ 26.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

49. [116] Some people living in poverty attempt to "self-medicate" their pain with alcohol or street drugs. Fay-LeBlanc Aff. ¶ 27.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be

overruled, and the statement should be considered admitted.

50. [117] Many people living in poverty in Maine have delayed or gone without medical care because the costs associated with care, such as testing or medications, are an insurmountable burden. Fay-LeBlanc Aff. ¶ 32.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

51. [118] Many people living in poverty in Maine have delayed or gone without both routine preventative care and care for the treatment and management of serious

illnesses, such as diabetes, hepatitis, AIDS, mental illnesses, and heart disease, because the costs associated with care. Fay-LeBlanc Aff. ¶ 32.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

52. [119] Foregoing or delaying care is not a choice that people living in poverty make, but rather it is a choice that is thrust upon them. Fay-LeBlanc Aff. ¶ 33.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation

based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

53. [120] Many people living in poverty in Maine simply do not have the money to pay for medical care and still pay their rent, pay the bills, or feed themselves and their families, even when the sums needed are relatively modest. Fay-LeBlanc Aff. ¶¶ 33-34.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this

Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

54. [121] A $10 co-pay or lab fee or medication cost can, and does, prevent many people from getting important health care. Fay-LeBlanc Aff. ¶ 34.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health

care. Without waiving the objection, the Department qualifies its response to ¶ 121. The Department notes that MaineCare providers are permitted to charge co-pays for many types of MaineCare services, including: Medical Supplies and Durable Medical Equipment (Sec. 60.10); Vision Services (Sec. 75.06); Speech and Hearing Services (Sec. 109.11); Rural Health Clinic Services (Sec. 103.08); Medical Imaging Services (Sec. 101.08); Private Duty Nursing and Personal Care Services (Sec. 96.09); Podiatric Services (Sec. 95.08); Physical Therapy Services (Sec. 85.11); Pharmacy Services (Sec. 80.08); Occupational Therapy Services (Sec. 68.11); Behavioral Health Services (Sec. 65.12); Laboratory Services (Sec. 55.08); Hospital Services (Sec. 45.11); Home Health Services (Sec. 40.10); Federally **Qualified** Health Center Services (Sec. 31.08); Chiropractic Services (Sec. 15.09); Consumer-Directed Attendant Services (Sec. 12.10); Ambulance Services (Sec. 5.07).[4]

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

PLAINTIFFS' REPLY TO QUALIFICATION. **Denied.** Defendant's qualification must be disregarded, because it is not supported by citations to the record, and because it does not directly address the statement of fact, that a co-pay prevents people from getting much-needed healthcare. M.R. Civ.P 56(h)(2); *Stanley v. Hancock Cty Comm'rs*,

[4] All citations in this paragraph are to sections in the 10-144 C.M.R. Ch. 101, the MaineCare Benefits Manual, Ch. II (Specific Policies by Service).

2004 ME 157, ¶ 18. Instead, the qualification addresses a completely different subject—whether MaineCare charges co-pays for services other than abortion.

55. [122] A low-income person in Maine without health insurance might be unable to afford necessary medical treatment. Fay-LeBlanc Aff. ¶ 35.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

56. [123] A low-income person in Maine without health insurance who is unable to afford necessary medical treatment will eventually land in the hospital, where she will

receive treatment that she cannot afford and cannot afford to continue on release. Fay-LeBlanc Aff. ¶ 35. As a result, she will eventually go bankrupt, lose her home, and/or die. Fay-LeBlanc Aff. ¶ 35.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams*, 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. In addition, this statement should be excluded from the summary judgment record because the purported expert witness testimony goes beyond Plaintiffs' Expert Witness Designation. *Estate of Smith v. Salvesen*, 2016 ME 100, ¶ 15, 143 A.3d 780. Without waiving this objection, the allegations are denied. Low income women who desire abortion services but cannot afford them are still able to access those services through Plaintiffs; as such, there is no evidence in the record that low income women in Maine "go bankrupt, lose [their] home, and/or die" due to the MaineCare rule at issue in this case. *See* Dept. Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts

but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Furthermore, Plaintiffs designated Dr. Fay-LeBlanc as an expert witness who was expected to testify, *inter alia*, on the "effect of lack of insurance coverage on poor and low-income individuals' ability to access health care." Expert Witness Designation for Renee Fay-LeBlanc, M.D.. This is precisely the topic of this statement, and a topic upon which Dr. Fay-LeBlanc is qualified to opine, based on her training as a physician, her years of experience serving low-incoming individuals and overseeing public health clinics, and her study of reliable research on medicine and poverty. Defendant cites no record evidence, either from Dr. Fay-LeBlanc or from another qualified expert, to contradict her statement. Defendant's objections should be overruled, and the statement should be considered admitted.

PLAINTIFFS' REPLY TO DENIAL: **Denied.** Contrary to Defendant's qualification, the statement is not abortion-specific. Therefore, Defendant's qualification must be disregarded because it is not supported by citations to the record and because it does not directly address the statement of fact—that the lack of health insurance can lead to financial ruin. M.R. Civ.P 56(h)(2); *Stanley v. Hancock Cty Comm'rs*, 2004 ME 157, ¶ 18. Plaintiffs' statement is, therefore, admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

57. [124] Even if a low-income patient is ultimately able to obtain the healthcare she needs, the time it takes to raise the money forces them to delay care to the detriment of

their health and wellbeing. Fay-LeBlanc Aff. ¶ 36.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Regardless of gender, for people living in poverty - particularly in rural Maine, cost is a significant barrier to meeting basic needs, including but not limited to health care. Without waiving this objection, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

58. [125] Due to a combination of factors, including relative lack of access to medical services and difficulty accessing and affording contraceptives, low-income women have more unintended pregnancies, and higher abortion rates, than women with higher incomes. Henshaw Aff. ¶ 8.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from

the summary judgment record because the purported expert witness testimony is not based upon experience in the State of Maine. *E.M. Nason, Inc. v. Land-Ho Development,* 403 A, 2d 1173 (Me. 1979). In addition, the statement should be excluded from the summary judgment record because it is inconsistent with the deposition testimony. Without waiving the objection, the Defendant denies this statement. PPNNE0161-0169 (If women are unable to pay for abortion services, Plaintiffs still provide abortion services.); Coplon Dep. 47:6-25; 48:1-8; 66:24-25; 67:1-12; Waning Dep. 50:5-13; 62:1-25; 63:1-6. (Plaintiffs have not identified any instance in which abortion services were denied to a woman seeking an abortion due to lack of money).

PLAINTIFFS' RESPONSE TO OBJECTION: Plaintiffs' expert is highly qualified to offer his opinion on this subject. *See* Henshaw Aff. ¶¶ 4-6. The forty-year old case cited by Defendant did not establish a *per se* rule about the inadmissibility of expert testimony when the expert does reside in Maine. Rather, in *E.M. Nason, Inc.*, the Law Court affirmed a trial court's fact-specific holding that a road construction expert, with experience solely in Massachusetts, was not qualified to give an opinion in a damages case concerning how long it should take to build a road in Maine and the reasonable cost for building such a road as he had not stated he had any knowledge of the conditions of the ground in Central Maine, or local trade practices. *E.M. Nason, Inc., v. Land-Ho Development*, 403 A.2d at 1180. Dr. Henshaw is not providing an opinion on this kind of purely local question and, by contrast, has laid out his extensive credentials to offer an opinion based on the underlying data. To the extent Defendant wishes to argue that a highly credentialed Ph.D. sociologist, who has published more than twenty articles on pregnancy, abortion, and poverty must work from an office in the State of Maine in order to be qualified to offer expert testimony on

unintended pregnancy and abortion rates in Maine, such an argument would at most go to the weight of Dr. Henshaw's testimony, not his qualifications as an expert or the admissibility of his opinion, and is therefore not an appropriately raised in the context of a summary judgment motion. *See Emerson v. Sweet*, 432 A.2d 784, 784 (Me. 1981) ("Because of the form of evidence properly before a court on a motion for summary judgment, evidentiary inferences based on credibility or weight are impermissible.") (citing 10 C. Wright & A. Miller, Federal Practice & Procedure s 2726 (1973)). Defendant's objection should be overruled and the statement should be considered admitted.

PLAINTIFFS' REPLY TO DENIAL: **Denied.** Defendant appears to misunderstand the assertion and has based her denial on this misunderstanding. The statement is that *rates of unintended pregnancy*—not rates of women denied abortions—are disproportionately higher among poor women. Whether poor and low-income women in Maine are able to afford abortions is completely unrelated to the question of whether they intended to become pregnant in the first place, and therefore Defendant's denial and record citation make no sense. Likewise, the statement also asserts that higher rates of unintended pregnancies lead to higher rates of abortion. Defendant's insistence that the record shows that no poor or low-income woman is ever denied an abortion once again makes no sense in the context of this statement, because it in no way refutes that the rate of abortion is disproportionately higher among women of lower incomes as compared with women of higher incomes.

Even if Defendant had understood the assertion, the denial is without merit. "A party's opposing statement of material facts must explicitly admit, deny, or qualify facts by reference to each numbered paragraph, and a denial or qualification must be supported by a

record citation." *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174 (quotation marks omitted). There is nothing in the record that refutes Dr. Henshaw's testimony as to the rates of unintended pregnancy and abortion among low-income women. Defendant has admitted the statement, and the rest of her response should be disregarded. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

59. [126] Consequently, a disproportionately high percentage of women who seek abortions have poverty-level incomes. Henshaw Aff. ¶ 8.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because the purported expert witness testimony is not based upon experience in the State of Maine. *E.M. Nason, Inc. v. Land-Ho Development*, 403 A, 2d 1173 (Me. 1979). In addition, the record does not support this statement that a disproportionately high percentage of women who seek abortions have poverty level incomes. *See, e.g.*, MW_000256 (reflecting only limited information about abortion funding; "prior to 2015 information regarding MaineCare enrollment is not aggregated outside individual billing records"); PPNNE000191 (reflecting abortion services provided in Portland, ME and funding assistance); MFP000095 and MFP 000097 (reflecting number of abortions provided and patients receiving grant support 2012-2015). Without waiving the objection, the Department denies these allegations.

PLAINTIFFS' RESPONSE TO OBJECTION: Plaintiffs' expert is highly qualified to offer his opinion on this subject. *See* Henshaw Aff. ¶¶ 4-6. The forty-year old case cited by Defendant did not establish a *per se* rule about the inadmissibility of expert

testimony when the expert does reside in Maine. Rather, in *E.M. Nason, Inc.*, the Law Court affirmed a trial court's fact-specific holding that a road construction expert, with experience solely in Massachusetts, was not qualified to give an opinion in a damages case concerning how long it should take to build a road in Maine and the reasonable cost for building such a road as he had not stated he had any knowledge of the conditions of the ground in Central Maine, or local trade practices. *E.M. Nason, Inc., v. Land-Ho Development*, 403 A.2d at 1180. Dr. Henshaw is not providing an opinion on this kind of purely local question and, by contrast, has laid out his extensive credentials to offer an opinion based on the data in question. To the extent Defendant wishes to argue that a highly credentialed Ph.D. sociologist, who has published more than twenty articles on pregnancy, abortion, and poverty must work from an office in the State of Maine in order to be qualified to offer expert testimony on unintended pregnancy and abortion rates in Maine, such an argument would at most go to the weight of Dr. Henshaw's testimony, not his qualifications as an expert or the admissibility of his opinion, and is therefore not an appropriately raised in the context of a summary judgment motion. *See Emerson v. Sweet*, 432 A.2d 784, 784 (Me. 1981) ("Because of the form of evidence properly before a court on a motion for summary judgment, evidentiary inferences based on credibility or weight are impermissible.") (citing 10 C. Wright & A. Miller, Federal Practice & Procedure s 2726 (1973)). Defendant's objection should be overruled and the statement deemed admitted.

PLAINTIFFS' REPLY TO DENIAL: **Denied.** Defendant has failed to support her denial with a citation to the record. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26. The record citations do not dispute the assertion that the percentage of poor women obtaining abortions is disproportionately higher than their percentage of the

population. *Cf. Doyle v. Dep't Of Human Servs*., 2003 ME 61, ¶ 10, 824 A.2d 48, 52 (holding party failed to comply with Rule 56(h)(2) when she "did not properly support many of her denials and qualifications with record citations relevant to the proposition for which they were cited."). The statement should be deemed admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

60. [127] A significant percentage of Plaintiffs' abortion patients qualify for MaineCare. Coplon Aff. ¶ 24; Waning Aff. ¶ 12; Gallagher Aff. ¶ 5.

DEFENDANT'S RESPONSE: Objection. The Department objects to the inclusion of these allegations in the summary judgment record to the extent that they were not previously produced by Mabel Wadsworth and Maine Family Planning in response to discovery. *Longley v*. *Knapp*, 1998 ME 142, ¶ 8, 713 A.2d 939 (trial court acted within bounds of discretion by excluding evidence which had not been provided in response to discovery requests, which prejudiced adverse party). *See, e.g*., Defendant's First Set of Document Requests ¶¶ 13, 14 (requested all documents reflecting the number of women who were provided with abortion services who were (a) at or below the federal poverty level; and (b) MaineCare eligible; no or limited documents produced). "A significant percentage" is vague, and nevertheless, the record does not reflect the number of Mabel Wadsworth and Maine Family Planning patients who qualify for MaineCare. *See, e.g*., MW_000256 (reflecting only limited information about abortion funding; "prior to 2015 information regarding MaineCare enrollment is not aggregated outside individual billing records"); MFP000095 and MFP 000097 (reflecting number of abortions provided and patients

receiving grant support 2012-2015). Plaintiffs may not create conflicts of fact through their new affidavits. *Doyle v*. *Department of Human Svcs*., 2003 ME 61, ¶10, n. 3, 824 A.2d 48, 52. Without waiving the objection, the Department denies these allegations. MW_000256; MFP000095 and MFP 000097.

PLAINTIFFS' RESPONSE TO OBJECTION: Maine Rule of Civil Procedure 56(a) expressly contemplates that summary judgment motions will be supported by affidavit. The affiants have sufficient knowledge of their patient population, including knowledge of the information discussed below that was produced to Defendant, to enable them to estimate that a significant percentage of their patients are MaineCare enrolled or eligible. If Defendant does not like the term "significant" then she can explain why in a memorandum of law, but there is absolutely no evidence in the record that in any way disputes the assertion.

PLAINTIFFS' REPLY TO DENIAL: Denied. With respect to Defendant's Document Request ¶ 13 (the number of patients who were at or below the poverty level), that is not the same question as whether a patient is MaineCare eligible, given that to be MaineCare eligible one can be up to 214% of the FPL. Neither Plaintiff Mabel Wadsworth nor Plaintiff Maine Family Planning collect information about the number of patients at the poverty level exactly, but whatever that number is, it would be smaller than the number of patients who are MaineCare eligible (which is the focus of this statement of fact). (Plaintiff PPNNE did provide the number of Maine patients at 0-100% of the FPL. *See* PPNNE0172.)

With respect to Defendant's Document Request ¶ 14, Plaintiff Mabel Wadsworth provided information the number of MaineCare enrolled patients for 2015, as well as the number of patients who received financial aid from 2013-15, for which there is overlap with the number who would be MaineCare eligible, *see* MW_000256; Plaintiff Maine Family

Planning provided the number of patients who received financial aid between 2013-15, for which there is overlap with the number who would be MaineCare eligible, *see* MFP000095, 97; and Plaintiff PPNNE provided the number of their Maine patients at 0-209% of the FPL, which does reflect the number of their patients who would be MaineCare eligible, *see* PPNNE0173.

61. [128] Over half of Maine women live in counties without a provider of abortion beyond 10 weeks of pregnancy. This includes Washington, Somerset and Franklin counties, the poorest counties in the state. Coplon Aff. ¶ 13.

DEFENDANT'S RESPONSE: Objection. These statements should be excluded from the summary judgment record because the purported expert witness testimony goes beyond Plaintiffs' Expert Witness Designation. *Estate of Smith v. Salvesen,* 2016 ME 100, ¶ 15, 143 A.3d 780. These facts are also immaterial to the disposition of the Defendant's motion for summary judgment. *Doe I v. Williams*, 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Without waiving the objection, the Defendant admits these statements.

PLAINTIFFS' RESPONSE TO OBJECTION: Ms. Coplon's affidavit testimony is within the scope of the expert witness designation because it addresses both the effect of the Defendant's ban on abortion coverage on poor and low-income women in Maine, as well as the experiences of poor and low-income women struggling to afford the cost of abortion services in Maine: both of the subjects identified in Ms. Coplon's Expert Witness

Designation. In *Smith v*. *Salveson*, cited by Defendant, an expert was not allowed to testify on the cause of a fall down stairs in a tort case, when he had only been designated as a liability expert to explain the stairs did not meet building code requirements. 2016 Me 100 ¶¶ 15-16, 143 A.3d 780. Ms. Coplon's testimony is not on an entirely new and different topic, as in *Salveson*.

Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

62. [130] For some of Plaintiffs' patients, the cost of an abortion and attendant costs (like travel) is more than they earn in a month. Coplon Aff. ¶ 25.

DEFENDANT'S RESPONSE: Objection. These statements should be excluded from the summary judgment record because the purported expert witness testimony goes beyond Plaintiffs' Expert Witness Designation and the statement is not the proper subject of expert testimony. *Estate of Smith v*. *Salvesen,* 2016 ME 100, ¶ 15, 143 A.3d 780. Without waiving the objection, the Defendant admits these statements.

PLAINTIFFS' RESPONSE TO OBJECTION: Ms. Coplon's affidavit testimony is within the scope of the expert witness designation because it addresses both the effect of the Defendant's ban on abortion coverage on poor and low-income women in Maine, as well as the experiences of poor and low-income women struggling to afford the cost of abortion services in Maine: both of the subjects identified in Ms. Coplon's Expert Witness

Designation. In addition, Ms. Coplon serves as a fact witness, and is qualified to testify to relevant facts of which she is personally aware. In *Smith v. Salveson*, cited by Defendant, an expert was not allowed to testify on the cause of a fall down stairs in a tort case, when he had only been designated as a liability expert to explain the stairs did not meet building code requirements. 2016 Me 100 ¶¶ 15-16, 143 A.3d 780. Ms. Coplon's testimony is not on an entirely new and different topic, as in *Salveson*. Defendant's objection should be overruled, and the statement should be considered admitted.

63. [131] Exceedingly few, if any, MaineCare-eligible or -enrolled patients have several hundred dollars in savings or "rainy day funds" with which to pay for an unexpected medical cost like abortion. Coplon Aff. ¶ 25; Deprez ¶ 17; Fay-LeBlanc Aff. ¶¶ 33-34.

DEFENDANT'S RESPONSE: Objection. These statements should be excluded from the summary judgment record because the purported expert witness testimony goes beyond Plaintiffs' Expert Witness Designation and the statement is not the proper subject of expert testimony. *Estate of Smith v. Salvesen,* 2016 ME 100, ¶ 15, 143 A.3d 780. Without waiving the objection, the Defendant admits these statements.

PLAINTIFFS' RESPONSE TO OBJECTION: The affidavit testimony of Ms. Coplon, Dr. Deprez, and Dr. Fay-LeBlanc are within the scope of their expert witness designations because it addresses both the effect of the Defendant's ban on abortion coverage on poor and low-income women in Maine, as well as the experiences of poor and low-income women struggling to afford the cost of health care, including, abortion services, in Maine: subjects identified in the Expert Witness Designations for Ms. Coplon, Dr. Deprez, and Dr. Fay-LeBlanc. Defendant's objection should be overruled, and the statement should be considered admitted.

64. [134] MaineCare will cover the medical expenses for a homeless woman who wants to continue her pregnancy and give birth to a child she will not be allowed to keep, but it will not cover the cost of an abortion for a woman who does not want to spend most of a year with that prospect looming over her. Fay-LeBlanc Aff. ¶ 24.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because: 1) the statement goes beyond Plaintiffs' Expert Witness Designation *Estate of Smith v. Salvesen,* 2016 ME 100, ¶ 15, 143 A.3d 780; and 2) the statement is not the proper subject of expert testimony. This is a hypothetical statement and not supported by the record. Low income women in Maine are able to access abortion services through Plaintiffs, regardless of their inability to pay. *See* Dept's Resp. to PSMF ¶ 59, incorporated herein. Without waiving the objection, the Department denies these statements. *Id*. Furthermore, the Department notes that pregnant women within the income standards are a mandatory categorically needy eligibility class under federal Medicaid law; in other words, the scope of their coverage and services under MaineCare is required by federal law. *See* 42 U.S.C. § 1396a(a)(10)(A)(i)(III); 42 C.F.R. § 435.116(b) ("The agency must provide Medicaid to pregnant women…") and (d).

PLAINTIFFS' RESPONSE TO OBJECTION: Dr. Fay-LeBlanc's affidavit testimony is within the scope of the expert witness designation because it addresses the effect of a lack of insurance on poor and low-income individuals' ability to access health care—one of the topics identified in Dr. Fay-LeBlanc's expert disclosure. Moreover, there is no dispute that the challenged regulation only provides coverage for abortion in cases of rape, incest, or where the abortion is necessary to save the woman's life. Therefore, statements are admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly

respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

PLAINTIFFS' REPLY TO DEFENDANT'S DENIAL: DENIED. *See* Plaintiffs' Reply to Defendant's Response to PSMF ¶ 59, incorporated herein.

65. [135] Mabel Wadsworth's MaineCare-eligible and -enrolled patients generally do not have to raise any money to pay for their prenatal care because those services are covered by MaineCare. Waning Aff. ¶¶ 3-4, 10.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because the statement goes beyond Plaintiffs' Expert Witness Designation (Ms. Waning was not designated as an expert), and the statement is not the proper subject of expert testimony. *Estate of Smith v. Salvesen*, 2016 ME 100, ¶ 15, 143 A.3d 780. In addition, these are statements of law, not fact. Without waiving the objection, the Department qualifies its response to ¶ 135. MaineCare providers are required to accept as payment in full the MaineCare reimbursement rate. *See* MaineCare Benefits Manual, Ch. I, Sec. 1.03-3(I). Also, providers are prohibited from charging any amount of co-pays for family planning services or to pregnant women. *Id*. at Sec. 1.09(A) and (D). Pregnant women within the income standards are a mandatory categorically needy eligibility class under federal Medicaid law; in other words, the scope of their coverage and services under MaineCare is required by federal law. *See* 42 U.S.C. § 1396a(a)(10)(A)(i)(III); 42 C.F.R. § 435.116(b) ("The agency must provide Medicaid to pregnant women…") and (d).

Furthermore, the Department notes that MaineCare providers are permitted to charge co-pays for many other types of MaineCare services, including: Medical Supplies and Durable Medical Equipment (Sec. 60.10); Vision Services (Sec. 75.06); Speech and Hearing

Services (Sec. 109.11); Rural Health Clinic Services (Sec. 103.08); Medical Imaging Services (Sec. 101.08); Private Duty Nursing and Personal Care Services (Sec. 96.09); Podiatric Services (Sec. 95.08); Physical Therapy Services (Sec. 85.11); Pharmacy Services (Sec. 80.08); Occupational Therapy Services (Sec. 68.11); Behavioral Health Services (Sec. 65.12); Laboratory Services (Sec. 55.08); Hospital Services (Sec. 45.11); Home Health Services (Sec. 40.10); Federally **Qualified** Health Center Services (Sec. 31.08); Chiropractic Services (Sec. 15.09); Consumer-Directed Attendant Services (Sec. 12.10); Ambulance Services (Sec. 5.07).[5]

PLAINTIFFS' RESPONSE TO OBJECTION: This is neither expert testimony nor a statement of law. Ms. Waning's affidavit testimony is based on her personal experience and observations as the Director of Finances for Mabel Wadsworth Women's Health Center, a MaineCare provider that provides prenatal care services, which includes overseeing payment for services. Defendant's objection should be overruled, and the statement should be considered admitted.

PLAINTIFFS' REPLY TO QUALIFICATION. **Denied.** Defendant's qualification must be disregarded, because it is not supported by citations to the record, adds irrelevant material, and because it does not directly address the statement of fact, that MaineCare covers the cost of prenatal care for eligible patients. The statement should be deemed admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

[5] All citations in this paragraph are to sections in the 10-144 C.M.R. Ch. 101, the MaineCare Benefits Manual, Ch. II (Specific Policies by Service).

66. [137] Plaintiffs' poor and low-income abortion patients are often in desperate circumstances. Waning Aff. ¶¶ 13-16; Gallagher ¶ 7.

DEFENDANT'S RESPONSE: Qualified. The record reflects that Plaintiffs' poor and low-income abortion patients facing desperate circumstances (as described in ¶5 of the Complaint and elsewhere) receive abortion services, regardless of their inability to pay. *See*, *e.g.*, Waning Dep. 46:1-49:25; 50:1-10; Coplon Dep. 47:6-25; 48:1-8; PPNNE0169; Dept's Resp. to PSMF ¶ 59, incorporated herein. The Department admits that Plaintiffs' poor and low-income abortion patients are sometimes in desperate circumstances.

PLAINTIFFS' REPLY TO QUALIFICATION. Denied/Objection. Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. Defendant admits that Plaintiffs' poor and low-income abortion patients are sometimes in desperate circumstances, and everything else in their response should be disregarded.

67. [138] For instance, one Mabel Wadsworth abortion patient was a single mother on MaineCare who had recently been evicted, was experiencing domestic violence, and had no income or access to cash. She found out that she was pregnant while staying in safe housing through an organization that works with victims of domestic violence. Waning Aff. ¶ 13.

DEFENDANT'S RESPONSE: Qualified. The record reflects that Plaintiffs' poor and low-income abortion patients facing desperate circumstances (as described in ¶5 of the Complaint and elsewhere) receive abortion services, regardless of their inability to pay. *See*, *e.g.*, Waning Dep. 46:1-49:25; 50:1-10; Dept's Resp. to PSMF ¶ 59, incorporated herein.

The Department admits that the example set forth in 138 could be considered desperate circumstances. The record reflects that a woman in very similar circumstances received abortion services from Mabel Wardsworth. *See* MW_000259.

PLAINTIFFS' REPLY TO QUALIFICATION. **Denied/Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. The statement should be deemed admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

68. [139] One Mabel Wadsworth abortion patient who was on MaineCare was unemployed and had recently lost her home in a house fire. Waning Aff. ¶ 13.

DEFENDANT'S RESPONSE: Qualified. The record reflects that Plaintiffs' poor and low-income abortion patients facing desperate circumstances (as described in ¶ 5 of the Complaint and elsewhere) receive abortion services, regardless of their inability to pay. *See*, *e.g.*, Waning Dep. 46:1-49:25; 50:1-10; Dept's Resp. to PSMF ¶ 59, incorporated herein. The Department admits that the example set forth in 139 could be considered desperate circumstances. The record reflects that a woman in very similar circumstances received abortion services from Mabel Wadsworth. *See* MW_000263.

PLAINTIFFS' REPLY TO QUALIFICATION. **Denied/Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant

material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. The statement should be deemed admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

69. [140] One Mabel Wadsworth abortion patient who was on MaineCare was already a parent, and she had significant disabilities, as did her husband and child. She and her husband could only find work seasonally, and neither of them was working at the time of her appointment—they had zero income. They were living out of a hotel, which had charitably allowed them to stay free of charge given their dire circumstances. Waning Aff. ¶ 14.

DEFENDANT'S RESPONSE: Qualified. The record reflects that Plaintiffs' poor and low-income abortion patients facing desperate circumstances (as described in ¶ 5 of the Complaint and elsewhere) receive abortion services, regardless of their inability to pay. *See, e.g.*, Waning Dep. 46:1-49:25; 50:1-10; Dept's Resp. to PSMF ¶ 59, incorporated herein. The Department admits that the example set forth in 140 could be considered desperate circumstances. The record reflects that a woman in very similar circumstances received abortion services from Mabel Wadsworth. *See* MW_000278.

PLAINTIFFS' REPLY TO QUALIFICATION. **Denied/Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. The statement should be deemed admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951

A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

70. [141] One Mabel Wadsworth abortion patient was participating in a jobs training program. She was desperate for the abortion so that she could stay in the program and get a job, but her income was less than $100 per month. Because of her personal circumstances she could not tell anyone about the pregnancy, so she had no hope of raising hundreds of dollars for her abortion. Waning Aff. ¶ 15.

DEFENDANT'S RESPONSE: Qualified. The record reflects that Plaintiffs' poor and low-income abortion patients facing desperate circumstances (as described in ¶ 5 of the Complaint and elsewhere) receive abortion services, regardless of their inability to pay. *See*, *e.g*., Waning Dep. 46:1-49:25; 50:1-10; Dept's Resp. to PSMF ¶ 59, incorporated herein. The Department admits that the example set forth in 141 could be considered desperate circumstances. The record reflects that women in similar circumstances receive abortion services from Mabel Wadsworth. MW_000258-MW_000281. Indeed, Mabel Wadsworth wrote off the costs of services for this patient and provided her with the abortion. Waning Aff. ¶ 15.

PLAINTIFFS' REPLY TO QUALIFICATION. **Denied/Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. The statement should be deemed admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a

court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

71. [142] Another Mabel Wadsworth abortion patient was a stay-at-home mom caring for three children. When her husband lost his job, they had no income, could no longer afford their housing and had to move in with family. She and her husband were both on MaineCare. Because of the stress, her period had been irregular, so when she came to Mabel Wadsworth, she was much farther along in the pregnancy than she'd realized. Waning Aff. ¶ 16.

DEFENDANT'S RESPONSE: Qualified. The record reflects that Plaintiffs' poor and low-income abortion patients facing desperate circumstances (as described in ¶ 5 of the Complaint and elsewhere) receive abortion services, regardless of their inability to pay. *See, e.g.*, Waning Dep. 46:1-49:25; 50:1-10; Dept's Resp. to PSMF ¶ 59, incorporated herein. The Department admits that the example set forth in ¶ 142 could be considered desperate circumstances. The record reflects that women in similar circumstances receive abortion services from Mabel Wadsworth. MW_000258-MW_000281. Indeed, Mabel Wadsworth wrote off the costs of services for this patient and provided her with the abortion. Waning Aff. ¶ 16.

PLAINTIFFS' REPLY TO QUALIFICATION. **Denied/Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. The statement should be deemed admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a

court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

72. [143] Plaintiffs' poor and low-income patients routinely tell them that they do not have and will not be able to find the money they need for the abortion procedure and attendant costs (like transportation). Coplon Aff. ¶ 26; Waning Aff. ¶¶ 13-16; Gallagher Aff. ¶ 7.

DEFENDANT'S RESPONSE: Qualified. The record reflects that Plaintiffs' poor and low-income abortion patients facing desperate circumstances (as described in ¶5 of the Complaint and elsewhere) receive abortion services, regardless of their inability to pay. *See, e.g.*, Waning Dep. 46:1-49:25; 50:1-10; Coplon Dep. 47:6-25; 48:1-8; PPNNE0169; Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' REPLY TO QUALIFICATION. **Denied/Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. The statement should be deemed admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

73. [145] While there are several private funding sources that help poor and low-income women in Maine with the cost of an abortion, none of the funds from these sources will cover the entire cost of the procedure. Plaintiff Mabel Wadsworth's Resp. to Def's First Set of Interrogatories ¶13; MW_000256; Waning Dep. 51:14-25; 52-53, 54:1-21; 59:2-25;

60:1-14; MW_000257-81; Plaintiff Maine Family Planning's Resp. to Def's First Set of Interrogatories ¶13; Coplon Dep. 44:15-24; 46:1-17; MFP_000097; Plaintiff PPNNE's Resp. to Def.'s First Set of Interrogatories ¶13; PPNNE_0168-69, 171-78, 182-91; Waning Aff. ¶ 21; Coplon Aff. ¶ 26; Gallagher Aff. ¶ 7.

DEFENDANT'S RESPONSE: Qualified. The record reflects that Plaintiffs' poor and low-income abortion patients facing desperate circumstances (as described in ¶5 of the Complaint and elsewhere) receive abortion services, regardless of their inability to pay. *See, e.g.*, Waning Dep. 46:1-49:25; 50:1-10; Coplon Dep. 47:6-25; 48:1-8; PPNNE0169; Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' REPLY TO QUALIFICATION. Denied/Objection. Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. The statement should be deemed admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

74. [146] The private funding sources that are available to help poor and low-income women in Maine with the cost of an abortion are not all available to all women. Waning Aff. ¶ 21; Coplon Aff. ¶ 26.

DEFENDANT'S RESPONSE: Qualified. The record reflects that Plaintiffs' poor and low-income abortion patients receive abortion services, regardless of their inability to pay. *See, e.g.*, Waning Dep. 46:1-49:25; 50:1-10; Coplon Dep. 47:6-25; 48:1-8; PPNNE0169;

Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' REPLY TO QUALIFICATION. **Denied/Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. The statement should be deemed admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

75. [147] For instance, one of the funds is only available to women earning less than 110% of the FPL ($13,266 per year for an individual and $22,462 per year for a family of three). Waning Aff. ¶ 21; Coplon Aff. ¶ 26.

DEFENDANT'S RESPONSE: Qualified. The record reflects that Plaintiffs' poor and low-income abortion patients receive abortion services, regardless of their inability to pay. *See, e.g.*, Waning Dep. 46:1-49:25; 50:1-10; Coplon Dep. 47:6-25; 48:1-8; PPNNE0169; Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' REPLY TO QUALIFICATION. **Denied/Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. The statement should be deemed admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*,

2004 ME 157, ¶ 13, 864 A.2d at 174).

76. [149] When Mabel Wadsworth has requested additional funding assistance for patients in extreme circumstances, the private funds have not always provided the amount requested. Waning Aff. ¶ 21.

DEFENDANT'S RESPONSE: Qualified. The record reflects that Plaintiffs' poor and low-income abortion patients receive abortion services, regardless of their inability to pay. *See, e.g.*, Waning Dep. 46:1-49:25; 50:1-10; Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' REPLY TO QUALIFICATION. **Denied/Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. The statement should be deemed admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

77. [150] The amount of private financial assistance available to patients at Mabel Wadsworth and Maine Family Planning have decreased in recent years. Waning Aff. ¶ 21; Coplon Aff. ¶ 26.

DEFENDANT'S RESPONSE: Objection. Plaintiffs' new allegation that the amount of private financial assistance available to Mabel Wadsworth and Maine Family Planning patients have "decreased in recent years" is not supported by the record, and thus the Department objects to its consideration on summary judgment. *Doyle v. Department of*

Human Svcs., 2003 ME 61, ¶10, n. 3, 824 A.2d 48, 52. In addition, Plaintiffs may not generate disputed facts by contradicting prior testimony through affidavits. *Blue Star Corp*. *v*. *CKF Props*., *LLC,* 2009 ME 101, ¶ 31, 980 A.2d 1270; *Zip Lube, Inc*. *v*. *Coastal Savings Bank,* 1998 ME 81, ¶ 10, 709 A. 2d 733, 735. Accordingly, ¶ 150 should be excluded from the summary judgment record.

In response to the Department's Interrogatory ¶13, which asked Plaintiffs to identify all available discounts, private financial aid, free care or other financial support made available to low income women for purposes of covering abortion services, each of the Plaintiffs described the amounts they typically provide in discounts/financial assistance, and also stated that they sometimes provide additional discounts for "extreme circumstances." Each Plaintiff stated that the "specific amount available has fluctuated over the years." They did not state that financial aid has decreased in recent years.

The Department also requested that Plaintiffs provide all documents concerning any available discounts, private financial assistance, free care or other financial support made available by Plaintiffs to low income women. Defendant's First Set of Document Requests ¶6. The documents produced by Plaintiffs do not support their new allegation herein that the amount of private assistance has "decreased in recent years," and, Plaintiffs did not cite their document production in support of the new contention, only their new affidavits.

Without waiving the objections, ¶ 150 is denied. The record reflects that Plaintiffs' patients are not denied abortion services due to an inability to pay. *See, e.g*., Dept's Resp. to PSMF ¶ 59, incorporated herein. Consistent with this reality, Plaintiffs produced no documents to support the allegations set forth in ¶¶ 6 and 82 of the Complaint, that women are "forced to continue pregnancies against their will" because they could not obtain an

abortion. *See* Plaintiffs' Response to Defendant's First Set of Document Requests, ¶ 9, 23.

PLAINTIFFS' RESPONSE TO OBJECTION: Plaintiffs' statement that the amount of private assistance to its patients has "decreased in recent years," does not directly contradict testimony that the amount has "fluctuated over the years" nor does it create a "dispute" because Defendant has not asserted or introduced any evidence suggesting that the amount of private assistance available to Plaintiffs' patients has *not* decreased in recent years. The cases cited by Defendant merely disallow affidavit testimony that is "clearly contradictory." *Zip Lube v. Coastal Sav. Bank*, 1998 ME 81, ¶ 10, 709 A.2d 733. Additionally, Rule 56 expressly contemplates that a plaintiff may support a motion for summary judgment with affidavit testimony alone. M.R. Civ.P. 56(a). There is no requirement that affidavit testimony be supported by discovery documents.

PLAINTIFFS' REPLY TO DENIAL: **Denied/Objection.** Plaintiffs object to Defendant's denial under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. Consistent with this reality, the statement should be deemed admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

78. [151] One of the private funds that are available to help poor and low-income women in Maine with the cost of an abortion includes a "pawn/sell" option in the financial counseling notes section of the intake form. Waning Aff. ¶ 21; MW_000257.

DEFENDANT'S RESPONSE: Qualified. The record reflects that Mabel

Wadsworth's poor and low-income abortion patients receive abortion services, regardless of their inability to pay. *See, e.g.*, Waning Dep. 46:1-49:25; 50:1-10; Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' REPLY TO QUALIFICATION. **Denied/Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. The statement should be deemed admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

79. [152] Even if a MaineCare-eligible or –enrolled patient is ultimately able to raise the money she needs for her abortion, the need to find a way to pay for her abortion causes stress that can contribute to long-term, irreversible damage to overall health. Fay-LeBlanc Aff. ¶¶ 19-21; Mittal Aff. ¶ 24.

DEFENDANT'S RESPONSE: Objection. This statement goes beyond Plaintiffs' Expert Witness Designation and should be excluded from the summary judgment record. *Estate of Smith v. Salvesen,* 2016 ME 100, ¶ 15, 143 A.3d 780. Without waiving the objection, the Department admits the allegations.

PLAINTIFFS' RESPONSE TO OBJECTION: Dr. Mittal was designated as an expert on "the impact of pregnancy on mental health" and Dr. Fay-LeBlanc was designated as an expert on "social determinants of health" (which includes stress). Their affidavit testimony does not go beyond those designations. Further, the Law Court has never required

that an expert's designation detail every minute detail of opinion. In *Smith v*. *Salveson*, cited by Defendant, an expert was not allowed to testify on the cause of a fall down stairs in a tort case, when he had only been designated as a liability expert to explain the stairs did not meet building code requirements. 2016 Me 100 ¶¶ 15-16, 143 A.3d 780. The testimony of Dr. Fay-Leblanc and Dr. Mittal are not on an entirely new and different topic, as in *Salveson*. Defendant's objection should be overruled, and the statement should be considered admitted.

80. [153] Because it takes time to raise money for an abortion and associated expenses (e.g., travel), the lack of Medicaid coverage for abortion delays abortion care for some poor and low-income women, causing them to have the procedure performed later in pregnancy. Henshaw ¶¶ 2, 9-12, 16; Deprez Aff. ¶¶ 38-39.

DEFENDANT'S RESPONSE: Qualified. The record reflects that Plaintiffs' poor and low-income abortion patients may be delayed but they receive abortion services, regardless of their inability to pay. *See, e.g*., Waning Dep. 46:1-49:25; 50:1-10; Coplon Dep. 47:6-25; 48:1-8; PPNNE0169; Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' REPLY TO QUALIFICATION. **Denied/Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. Defendant has admitted that Plaintiffs' poor and low-income patients may be delayed in accessing abortion care because of the lack of Medicaid coverage, and all additional material should be disregarded.

81. [155] Many of Plaintiffs' MaineCare-eligible or -enrolled patients experience delays in obtaining an abortion because of difficulty coming up with the money to

pay for even a portion of the procedure. MW_000257-81; Waning Aff. ¶¶ 17-20; Coplon Aff. ¶¶ 31-33; Gallagher Aff. ¶ 8.

DEFENDANT'S RESPONSE: Qualified. The record reflects that Plaintiffs' poor and low-income abortion patients may be delayed but they receive abortion services, regardless of their inability to pay. *See, e.g.*, Waning Dep. 46:1-49:25; 50:1-10; Coplon Dep. 47:6-25; 48:1-8; PPNNE0169; Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' REPLY TO QUALIFICATION. **Denied/Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. Defendant admits that Plaintiffs' poor and low-income patients may be delayed, and any additional statements should be disregarded.

82. [156] For instance, by the time one of Maine Family Planning's low-income patients was able to raise the funds for her abortion, the ultrasound showed that she was too far along in pregnancy to receive care at any of the publicly accessible clinics in Maine and she had to be referred out-of-state. She asked Maine Family Planning if they could give her money towards the cost of gas. The clinic tried to obtain additional private financial assistance towards her travel but were unsuccessful. Coplon Aff. ¶ 31.

DEFENDANT'S RESPONSE: Qualified. The primary reason this patient allegedly did not receive abortion services is because she was beyond the gestational limit for services that Maine Family Planning (or other Maine clinics) was able to provide. Plaintiffs have provided no documents to support these allegations.

Furthermore, given the standard practice of Maine Family Planning and the other

Plaintiffs, this patient should have known that – had she arrived within the clinic's gestational limit for services, she would have been provided with abortion services, regardless of her inability to pay. The record reflects that Maine Family Planning has turned women away who have arrived at the clinic without enough money for an abortion, but it only does so when there is enough time in their pregnancy where they could reschedule the appointment to take additional time to come up with funding. Coplon Dep. 47:8-25; 48:1-8; 66:24-25; 67:1-12. Maine Family Planning has never denied abortion services to women in particularly desperate circumstances who can't pay. Coplon Dep. 64:18-25; 65:1-12; 66:24-25; 67:1-12; 82:13-25; 83:1-14. *See also*, Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' REPLY TO QUALIFICATION. **Denied/Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. See *Stanley v. Hancock County Com'rs,*2004 ME 157, ¶ 18, 864 A.2d 169. Defendant has not, in fact, denied or qualified Plaintiffs' statement—indeed, Defendant admits that Plaintiffs' poor and low-income patients may be delayed in seeking abortion care. Defendant's apparent belief that all poor and low-income Maine women know or should know about the availability of limited financial aid to cover some of the cost of abortion, and that there is somehow enough private financial aid to cover every woman who might ever show up at an abortion clinic without enough (or any) money to pay for the cost of an abortion, is not supported by the record (or common sense). But, it is an argument she is free to raise in her legal memorandum if she thinks it is relevant or persuasive.

83. [157] Another Maine Family Planning patient was a young teen who came to the clinic with her mother. When the mother first called, she indicated that her daughter

would prefer to have a medication abortion. However, they had to schedule her appointment for two weeks after the initial phone call in order to raise money for the procedure, and then were forced to reschedule the appointment because they still did not have enough money. By the time they arrived at the clinic, the daughter was not only past the gestational age limit for a medication abortion—she was past the gestational age limit altogether for Maine Family Planning. Coplon Aff. ¶ 32.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because it is based upon inadmissible hearsay and is not the proper subject of expert witness testimony. Field & Murray, *Maine Evidence*, § 703.2 at399 (2007 ed.) (an expert opinion does not become the vehicle to convey inadmissible hearsay). Without waiving the objection, the Department's response to this statement is **Qualified**. The primary reason this patient allegedly did not receive abortion services is because she was beyond the gestational limit for services that Maine Family Planning was able to provide. Plaintiffs have provided no documents to support these allegations.

Furthermore, given the standard practice of Maine Family Planning and the other Plaintiffs, this patient should have known that – had she arrived within the clinic's gestational limit for services, she would have been provided with abortion services, regardless of her inability to pay. The record reflects that Maine Family Planning has turned women away who have arrived at the clinic without enough money for an abortion, but it only does so when there is enough time in their pregnancy where they could reschedule the appointment to take additional time to come up with funding. Coplon Dep. 47:8-25; 48:1-8; 66:24-25; 67:1-12. Maine Family Planning has never denied abortion services to women in particularly desperate circumstances who can't pay. Coplon Dep. 64:18-25; 65:1-12; 66: 24-

25; 67:1-12; 82:13-25; 83:1-14. *See also*, Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' RESPONSE TO OBJECTION: Expert witnesses may properly rely on hearsay in forming their opinions. Field & Murray, *Maine Evidence*, § 703.2 at 398-99 (2007 ed.); *McLellan v. Morrison*, 434 A.2d 28 (Me. 1981). Coplon's statement should therefore be considered at the stage of summary judgment, as it is offered to provide foundation and basis for her opinion. Defendant's objection should be overruled, and the statement should be considered admitted.

PLAINTIFFS' REPLY TO QUALIFICATION: **Denied.** Defendant has not, in fact, qualified Plaintiffs' statement—indeed, Defendant admits that Plaintiffs' poor and low-income patients may be delayed in seeking abortion care—and therefore Defendant's statements should be disregarded. Defendant's apparent belief that all poor and low-income Maine women know or should know about the availability of limited financial aid to cover some of the cost of abortion, and that there is somehow enough private financial aid to cover every woman who might ever show up at an abortion clinic without enough (or any) money to pay for the cost of an abortion, is not supported by the record.

84. [158] The challenges this mother faced trying to get her daughter to Maine Family Planning—raising the money, taking time off work and arranging for transportation—were exacerbated because of the delay: now, the only option for this teenager to avoid having a child she did not want to have was to somehow raise even more money to pay for a later (and thus more expensive) procedure, and hope that her mother could take an additional day off of work without losing her job and arrange round-trip transportation to a clinic an hour farther from her home. Coplon Aff. ¶ 32.

DEFENDANT'S RESPONSE: Qualified. The Department incorporates its

responses to PSMF ¶¶ 156-157 herein.

PLAINTIFFS' RESPONSE TO OBJECTION: Expert witnesses may properly rely on hearsay in forming their opinions. Field & Murray, *Maine Evidence*, § 703.2 at 398-99 (2007 ed.); *McLellan v*. *Morrison*, 434 A.2d 28 (Me. 1981). Ms. Coplon's statement should therefore be considered at the stage of summary judgment, as it is offered to provide foundation and basis for her opinion. Defendant's objection should be overruled, and the statement should be considered admitted.

PLAINTIFFS' REPLY TO QUALIFICATION: Denied. Defendant has not, in fact, qualified Plaintiffs' statement—indeed, Defendant admits that Plaintiffs' poor and low-income patients may be delayed in seeking abortion care—and therefore Defendant's statements should be disregarded. Defendant's apparent belief that all poor and low-income Maine women know or should know about the availability of limited financial aid to cover some of the cost of abortion, and that there is somehow enough private financial aid to cover every woman who might ever show up at an abortion clinic without enough (or any) money to pay for the cost of an abortion, is not supported by the record.

85. [159] One Mabel Wadsworth patient lived about three hours from the clinic. She delayed her appointment numerous times to try to come up with the $125 she needed for her abortion plus the money for travel, until she was within just a day or two of the gestational age limit at the clinic and just barely able to receive the care she needed. Waning Aff. ¶ 18.

DEFENDANT'S RESPONSE: Qualified. The Department admits that Mabel Wadsworth provided this patient with abortion services, despite her financial situation. *See* Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' REPLY TO QUALIFICATION. Denied/Objection. Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. The statement should be deemed admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

Defendant has not provided a citation to any evidence in the record concerning what Maine women know or should know about the availability of financial assistance to offset some of the costs for some of Plaintiffs' patients, and Defendant's statements should, therefore, be disregarded. Plaintiffs incorporate, by reference, their reply to Defendant's Response to PSMF ¶ 59.

86. [160] Another Mabel Wadsworth patient came to the clinic shortly before Christmas. She told the clinic staff that she had known for a while that she was pregnant and was hoping to have a medication abortion. However, she had just started a new job and was waiting to save up enough paychecks in order to pay for the procedure; she was enrolled in MaineCare but understood that abortion was not covered. By the time she got to Mabel, she was far beyond the gestational age limit for medication abortion, and outside of the clinic's gestational age limit for suction abortion as well. While she was ultimately able to get care at Planned Parenthood, she struggled to take additional time off work for the unexpected second trip and to find transportation to Portland. Moreover, her procedure was far more expensive because of the delay, and because it was a two-day procedure (given the later stage of

pregnancy), she also had to raise money to pay for a hotel in Portland. Waning Aff. ¶ 19.

DEFENDANT'S RESPONSE: Objection. The Department objects to inclusion of these allegations in the summary judgment record because they were not previously produced by Mabel Wadsworth in response to discovery requests. *Longley v*. *Knapp,* 1998 ME 142, ¶ 8, 713 A.2d 939 (trial court acted within bounds of discretion by excluding evidence which had not been provided in response to discovery requests, which prejudiced adverse party). Without waiving this objection, the Department's response to ¶ 160 is qualified. The primary reason this patient allegedly did not receive abortion services from Mabel Wadsworth because she was beyond the gestational limit for services that Mabel Wadsworth was able to provide. Mabel Wadsworth has provided no documents to support these allegations.

Given the standard practice of Mabel Wadsworth and the other Plaintiffs, this patient should have known that – had she arrived within the clinic's gestational limit for services, she would have been provided with abortion services, regardless of her inability to pay. The record reflects that Mabel Wadsworth has never denied abortion services for failure to come up with the money to pay for those services. Waning Dep. 50:8-10 ("We always try to find a way to make it possible for the woman to have the services that she feels she needs in terms of abortion care despite her situation."); 50:11-13; 61:25; 62:1-25; 63:1-8. The Department admits that this patient was, apparently, ultimately able to receive abortion services, despite her financial issues.

PLAINTIFFS' RESPONSE TO OBJECTION: Defendant fails to cite to any request for production or interrogatory requesting the information contained in Plaintiffs' SMF 160 and supporting affidavits. Plaintiffs are entitled to support their summary judgment

motion with affidavits, whether the affidavit addresses a topic that Defendant made the subject of discovery, or not. *See* M.R. Civ.P. 56(a).

PLAINTIFFS' REPLY TO QUALIFICATION: **Denied/Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. Defendant admits that Plaintiffs' patient was unable to obtain abortion services, and Defendant's additional statements should be disregarded. Defendant has not provided a citation to any evidence in the record concerning what Maine women know or should know about the availability of financial assistance to offset some of the costs for some of Plaintiffs' patients, and Defendant's statements on that topic should also be disregarded.

87. [161] One Mabel Wadsworth patient was unable to work because of extreme morning sickness and could not come up with even $20 towards her abortion. She kept rescheduling and canceling because of financial and transportation issues until she was right at the outer limit at which she could obtain an abortion at the Mabel Wadsworth clinic. There is no way she would have been able to come up with the money to travel to the clinic in southern Maine that provides abortion care at slightly later stages of pregnancy. If Mabel Wadsworth had not written off the balance of the abortion cost, she almost certainly would have ended up carrying the pregnancy to term. Even so, the delay caused her to remain ill for much longer than she would have had to if MaineCare covered the cost of her abortion. Waning Aff. ¶ 20.

DEFENDANT'S RESPONSE: Qualified. In Ms. Waning's opinion, this patient "almost certainly would have ended up carrying the pregnancy to term" if she did not receive

an abortion from Mabel Wadsworth. This statement should be excluded from the summary judgment record because the statement goes beyond Plaintiffs' Expert Witness Designation (Ms. Waning was not designated as an expert). *Estate of Smith v. Salvesen*, 2016 ME 100, ¶ 15, 143 A.3d 780. In addition, these are statements are hypothetical, and not statements of fact. The Department admits that the record reflects that Plaintiffs' poor and low-income abortion patients receive abortion services, regardless of their inability to pay. *See, e.g.*, Waning Dep. 46:1-49:25; 50:1-10; Dept's Resp. to PSMF ¶ 59, incorporated herein. Indeed, Mabel Wadsworth wrote off the costs of services for this patient and provided her with the abortion, and the record similarly reflects that a woman in very similar circumstances received abortion services. Waning Aff. ¶ 20; MW_000278.

PLAINTIFFS' RESPONSE TO OBJECTION: A lay witness, such as Ms. Waning, may give opinion testimony that is rationally based on the witness's perception. M.R. Evid. 701.

PLAINTIFFS' REPLY TO QUALIFICATION: Denied/Objection. Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. The statement should be deemed admitted. *Dyer v. Dep't of Transp.,* 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

88. [162] Because of the delays necessary to raise money for an abortion, a significant number of Plaintiffs' MaineCare-eligible patients are pushed past the gestational

age at which medication abortion is available. Waning Aff. ¶¶ 17, 19; Coplon Aff. ¶¶ 32-33; Gallagher Aff. ¶ 9; Henshaw Aff. ¶ 19.

DEFENDANT'S RESPONSE: Objection. The Department objects to inclusion of these allegations in the summary judgment record because they were not previously produced by Mabel Wadsworth in response to discovery requests. *Longley v*. *Knapp,* 1998 ME 142, ¶ 8, 713 A.2d 939 (trial court acted within bounds of discretion by excluding evidence which had not been provided in response to discovery requests, which prejudiced adverse party). Without waiving objection, the Department's response to ¶ 162 is qualified. There are no documents supporting ¶ 162. Patients' delay and alleged inability to obtain medication abortions are based at least in part on the Plaintiffs' own policies. Plaintiffs' standard practice is to provide abortion services to MaineCare eligible patients, regardless of their inability to pay. *See* Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' RESPONSE TO OBJECTION: Defendant fails to cite to any request for production or interrogatory requesting the information contained in Plaintiffs' SMF 162 and supporting affidavits. Plaintiffs are entitled to support their summary judgment motion with affidavits, whether the affidavit addresses a topic that Defendant made the subject of discovery, or not. *See* M.R. Civ.P. 56(a). Defendant's objection should be overruled, and the statement should be considered admitted.

PLAINTIFFS' REPLY TO QUALIFICATION: **Denied/Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. Moreover, Defendant has already admitted that Plaintiffs' poor and low-income patients may

be delayed in accessing abortion care because of lack of Medicaid coverage. The statement should be deemed admitted. *Dyer v. Dep't of Transp*., 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley,* 2004 ME 157, ¶ 13, 864 A.2d at 174).

89. [163] Because of the delays necessary to raise money for an abortion, some of Plaintiffs' MaineCare-eligible patients are forced to experience pregnancy-related sickness for longer than they would have to if MaineCare covered their abortion. Waning Aff. ¶ 20; Coplon Aff. ¶ 31; Gallagher Aff. ¶ 9.

DEFENDANT'S RESPONSE: Qualified. As set forth in the Department's responses to PSMF ¶¶ 156-162, incorporated herein, the delays (and thus prolonged pregnancy-related sickness) experienced by some of Plaintiffs' patients are caused, at least in part, by Plaintiffs' own policies, given that Plaintiffs do not deny abortion services regardless of inability to pay. There are no documents supporting ¶ 164. *See* Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' REPLY TO QUALIFICATION: **Denied/Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. Moreover, Defendant has already admitted that Plaintiffs' poor and low-income patients may be delayed in accessing abortion care because of lack of Medicaid coverage. The statement should be deemed admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem

admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

90. [164] Maine Family Planning has had patients who live in rural areas of the state and were forced to travel several hours to Augusta for a suction abortion—and pay for all of the attendant travel costs—because, by the time they raised enough money for the procedure, they were too far along in pregnancy to utilize Maine Family Planning's telemedicine service for medication abortion. Coplon Aff. ¶ 33.

DEFENDANT'S RESPONSE: Objection. The Department objects to inclusion of these allegations in the summary judgment record because they were not previously produced by Mabel Wadsworth in response to discovery requests. *Longley v. Knapp,* 1998 ME 142, ¶ 8, 713 A.2d 939 (trial court acted within bounds of discretion by excluding evidence which had not been provided in response to discovery requests, which prejudiced adverse party). Without waiving objection, the Department's response to ¶ 164 is qualified. There are no documents supporting ¶ 164. Patients' delay and alleged inability to obtain medication abortions are based at least in part on the Plaintiffs' own policies. Plaintiffs' standard practice is to provide abortion services to MaineCare eligible patients, regardless of their inability to pay. *See* Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' RESPONSE TO OBJECTION: Defendant fails to cite to any request for production or interrogatory requesting the information contained in Plaintiffs' SMF 164 and supporting affidavits. Plaintiffs are entitled to support their summary judgment motion with affidavits, whether the affidavit addresses a topic that Defendant made the subject of discovery, or not. *See* M.R. Civ.P. 56(a). Defendant's objection should be overruled, and the statement should be considered admitted.

PLAINTIFFS' REPLY TO QUALIFICATION: **Denied/Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. The statement should be deemed admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley,* 2004 ME 157, ¶ 13, 864 A.2d at 174).

91. [165] Because of the delays necessary to raise money for an abortion, some of Plaintiffs' MaineCare-eligible patients are pushed past the gestational age limit of the clinic nearest to their home, thereby forcing them to travel farther distances or out of state in order to obtain an abortion. Coplon Aff. ¶¶ 32-33; Waning Aff. ¶ 19; Gallagher Aff. ¶ 9.

DEENDANT'S RESPONSE: Objection. The Department objects to inclusion of these allegations in the summary judgment record because they were not previously produced by Mabel Wadsworth in response to discovery requests. *Longley v. Knapp,* 1998 ME 142, ¶ 8, 713 A.2d 939 (trial court acted within bounds of discretion by excluding evidence which had not been provided in response to discovery requests, which prejudiced adverse party). Without waiving objection, the Department's response to ¶ 165 is qualified.

The primary reason patients may not receive abortion services from clinics nearest to their homes is because they are beyond the gestational limit for services that that clinic was able to provide. Given the standard practice of Plaintiffs, patients should have known that – had they arrived within the clinic's gestational limit for services, they would have been provided with abortion services, regardless of their inability to pay. The record reflects that

Plaintiffs do not deny abortion services due to inability to pay. *See* Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' RESPONSE TO OBJECTION: Defendant fails to cite to any request for production or interrogatory requesting the information contained in Plaintiffs' SMF 165 and supporting affidavits. Plaintiffs are entitled to support their summary judgment motion with affidavits, whether the affidavit addresses a topic that Defendant made the subject of discovery, or not. *See* M.R. Civ.P. 56(a). Defendant's objection should be overruled, and the statement should be considered admitted.

PLAINTIFFS' REPLY TO QUALIFICATION: **Denied/Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. Defendant has not, in fact, qualified Plaintiffs' statement—indeed, Defendant admits that Plaintiffs' poor and low-income patients may be delayed in seeking abortion care—and therefore Defendant's statements should be disregarded. Defendant's apparent belief that all poor and low-income Maine women know or should know about the availability of limited financial aid to cover the cost of abortion, and that there is somehow enough private financial aid to cover every woman who might ever show up at an abortion clinic without enough (or any) money to pay for her abortion, is not supported by the record (or common sense). The statement should be deemed admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley*, 2004 ME 157, ¶ 13, 864 A.2d at 174).

92. [166] Because of the delays necessary to raise money for an abortion, some of PPNNE's MaineCare-eligible patients are delayed past the gestational age-limit for a one-day surgical procedure and their only option is to have a two-day procedure. Gallagher Aff. ¶ 9.

DEFENDANT'S RESPONSE: Objection. The Department objects to inclusion of these allegations in the summary judgment record because they were not previously produced by PPNNE in response to discovery requests. *Longley v*. *Knapp,* 1998 ME 142, ¶ 8, 713 A.2d 939 (trial court acted within bounds of discretion by excluding evidence which had not been provided in response to discovery requests, which prejudiced adverse party). Without waiving objection, the Department's response to ¶ 166 is qualified.

The primary reason patients may not receive a one day surgical procedure is because they delayed beyond the gestational limit for a one day procedure that that clinic was able to provide. Given the standard practice of PPNNE, patients should have known that – had they arrived within the clinic's gestational limit for a one day surgical procedure, they would have been provided with those abortion services, regardless of their inability to pay, because PPPNNE does not deny abortion services due to inability to pay. *See* PPNNE0169 ("No one is turned away because of an inability to pay."); Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' RESPONSE TO OBJECTION: Defendant fails to cite to any request for production or interrogatory requesting the information contained in Plaintiffs' SMF 166 and supporting affidavits. Plaintiffs are entitled to support their summary judgment motion with affidavits, whether the affidavit addresses a topic that Defendant made the subject of discovery, or not. *See* M.R. Civ.P. 56(a).

PLAINTIFFS' REPLY TO QUALIFICATION: **Denied/Objection.** Plaintiffs object to Defendant's qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material. *See Stanley v. Hancock County Com'rs,* 2004 ME 157, ¶ 18, 864 A.2d 169. Defendant has not, in fact, qualified Plaintiffs' statement—indeed, Defendant admits that Plaintiffs' poor and low-income patients may be delayed in seeking abortion care—and therefore Defendant's statements should be disregarded. Defendant's apparent belief that all poor and low-income Maine women know or should know about the availability of limited financial aid to cover the cost of abortion, and that there is somehow enough private financial aid to cover every woman who might ever show up at an abortion clinic without enough (or any) money to pay for her abortion, is not supported by the record (or common sense). The statement should be deemed admitted. *Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 15, 951 A.2d 821, 825–26 ("Failure to properly respond to a statement of material facts permits a court to deem admitted any statements not properly denied or controverted.") (citing *Stanley,* 2004 ME 157, ¶ 13, 864 A.2d at 174).

93. [167] MaineCare coverage for abortion would ensure that poor and low-income women are not delayed in or prevented from receiving care because of the need to raise funds for their abortion and associated travel. Deprez Aff. ¶ 40; Waning Aff. ¶ 20; Coplon Aff. ¶ 38.

DEFENDANT'S RESPONSE: Objection. The statement should be excluded from the summary judgment record because it is a hypothetical statement which is inconsistent with the deposition testimony. *Blue Star Corp. v. CKF Props., LLC,* 2009 ME 101, ¶ 31, 980 A.2d 1270; *Zip Lube, Inc. v. Coastal Savings Bank,* 1998 ME 81, ¶ 10, 709 A. 2d 733, 735.

The Department denies that poor and low-income women are prevented from receiving abortion services; the record does not support this allegation. *See* Dept's Resp. to PSMF ¶ 59, incorporated herein. Without waiving objection, the Department's response to ¶ 167 is qualified. *Id*.

PLAINTIFFS' RESPONSE TO OBJECTION: Defendant fails to cite any allegedly contradictory deposition testimony. Defendant's objection should be overruled, and the statement should be considered admitted.

PLAINTIFFS' REPLY TO DENIAL/QUALIFICATION: **Denied.** Plaintiffs object to Defendant's denial and/or qualification under Maine Rule of Civil Procedure 56(h)(3), because it fails to squarely address Plaintiffs' statement of material fact, instead adding irrelevant material, *see Stanley v. Hancock County Com'rs*, 2004 ME 157, ¶ 18, 864 A.2d 169, and because Defendant did not properly support her denial or qualification with record citations relevant to the proposition for which they were cited, *see Doyle v. Dep't Of Human Servs*., 2003 ME 61, ¶ 10, 824 A.2d 48, 52. Moreover, Defendant has already admitted that Plaintiffs' poor and low-income patients may be delayed in accessing abortion care because of the lack of Medicaid coverage. Having failed to properly explain or support her denial or qualification, Defendant has admitted to the entire statement of fact. *Stanley v*. *Hancock Cty Comm'rs*, 2004 ME 157, ¶ 18. *See also* Plaintiffs' Reply to Defendant's Response to PSMF ¶ 59, incorporated herein.

94. [168] Even if a poor or low-income woman is able to raise the money necessary to obtain an abortion in the absence of Medicaid coverage, she often has to make sacrifices to do so. Deprez Aff. ¶¶ 36, 39; Henshaw Aff. ¶ 16; Fay-LeBlanc Aff. ¶ 21; Coplon Aff. ¶¶ 27-30; Waning Aff. ¶ 22; Gallagher Aff. ¶ 7; MW_000079-000255;

MW_000257-81; Plaintiff Maine Family Planning's First Amended and Supp. Resp. to Def's First Set of Interrogatories ¶10.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Low income men and women who are not eligible for MaineCare coverage may be required to make sacrifices in order to pay for medical care. Without waiving objection, ¶ 168 is admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

95. [169] The sacrifices that a woman must make to raise the funds necessary for abortion may harm herself and her family. Deprez Aff. ¶¶ 36, 39; Henshaw Aff. ¶ 16; Fay-LeBlanc Aff. ¶ 21; Coplon Aff. ¶¶ 27-30; Waning Aff. ¶ 22; Gallagher Aff. ¶ 7; MW_000079-000255; MW_000257-81; Plaintiff Maine Family Planning's First Amended

and Supp. Resp. to Def's First Set of Interrogatories ¶10.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Low income men and women who are not eligible for MaineCare coverage may be required to make sacrifices in order to pay for medical care. Without waiving objection, the Department's response to ¶ 169 is qualified.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

PLAINTIFFS' REPLY TO QUALIFICATION. **Denied.** Defendant has not supported her qualification with any citation to record evidence. To the extent that Defendant qualifies the portion of the statement of material facts that has not been admitted, Defendant must support that qualification with citations to the record. M.R. Civ.P 56(h)(2); *Stanley v. Hancock Cty Comm'rs*, 2004 ME 157, ¶ 18. Having failed to explain or support her

qualification, Defendant has admitted to the entire statement of fact. *Stanley v. Hancock Cty Comm'rs*, 2004 ME 157, ¶ 18.

96. [170] The sacrifices Plaintiffs' patients make in order to pay for their abortion care include not paying rent or utilities, and risking eviction or living without basic necessities like heat or electricity. Deprez Aff. ¶¶ 36, 39; Coplon Aff. ¶ 27; Waning Aff. ¶ 22; Gallagher Aff. ¶ 7; Fay-LeBlanc Aff. ¶ 21; Maine Family Planning's First Am. and Supp. Resp. to Def's First Set of Interrogatories ¶10; MW_000079, MW_000081, MW_000083-84, MW_000090-91, MW_000093, MW_000096, MW_000098, MW_000100-01, MW_000104-07, MW_000112-17, MW_000120-21, MW_000124-25, MW_000127, MW_000129, MW_000131, MW_000133-35, MW_000137-38, MW_000140, MW_000144-45, MW_000148- MW_000150; MW_000154, MW_000156, MW_000159, MW_000161-64, MW_000166-67, MW_000171-74, MW_000178, MW_000178, MW_000180, MW_000182, MW_000184-87, MW_000191-93, MW_000195, MW_000197, MW_000199, MW_000200, MW_000204-05, MW_000209, MW_000211-12, MW_000214-16, MW_000218, MW_000220-22, MW_000224-25, MW_000229, MW_000232.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Low income men and women who are not eligible for MaineCare coverage

may be required to make sacrifices in order to pay for medical care. Without waiving objection, the Department's response to ¶ 170 is admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

97. [171] The sacrifices Plaintiffs' patients make in order to pay for their abortion care include not paying other bills (such as for a car, cell phone, internet, or other medical care), and/or risking defaulting on a loan. Deprez Aff. ¶¶ 36; Waning Aff. ¶ 22; MW_000090, MW_000098, MW_000100-01, MW_000120, MW_000133, MW_000139, MW_000151-54, MW_000158, MW_000162, MW_000165, MW_000168-70, MW_000175, MW_000177, MW_000179, MW_000181, MW_000183, MW_000184, MW_000187, MW_000189, MW_000194, MW_000198, MW_000201, MW_000203, MW_000213, MW_000217-18, MW_000220, MW_000228, MW_000230-31.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal

protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Low income men and women who are not eligible for MaineCare coverage may be required to make sacrifices in order to pay for medical care. Without waiving objection, the Department's response to ¶ 171 is admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

98. [172] The sacrifices Plaintiffs' patients make in order to pay for their abortion care include reducing food budgets for themselves and their families. Deprez Aff. ¶¶ 36, 39; Coplon Aff. ¶¶ 27-28; Waning Aff. ¶ 22; Gallagher Aff. ¶ 7; Fay-LeBlanc Aff. ¶ 21; MW_000079, MW_000082-84, MW_000101, MW_000103, MW_000115, MW_000123, MW_000126-27, MW_000132-33, MW_000141, MW_000155-56, MW_000160, MW_000176, MW_000182, MW_000184, MW_000188, MW_000196, MW_000202, MW_000207, MW_000209-10, MW_000215, MW_000220, MW_000222-23, MW_000227.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not

an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Low income men and women who are not eligible for MaineCare coverage may be required to make sacrifices in order to pay for medical care. Without waiving objection, the Department's response to ¶ 172 is admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

99. [173] The sacrifices Plaintiffs' patients make in order to pay for their abortion care include not buying essentials for the family, like shoes for their kids. Deprez Aff. ¶¶ 36, 39; MW_000087.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a

suspect class). Low income men and women who are not eligible for MaineCare coverage may be required to make sacrifices in order to pay for medical care. Without waiving objection, the Department's response to ¶ 173 is admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

100. [174] The sacrifices Plaintiffs' patients make in order to pay for their abortion care include not paying tuition bills or student loan payments, and thereby jeopardizing their educational goals and their prospects for escaping poverty. Deprez Aff. ¶ 35; MW_000118, MW_0000157, MW_000219.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams*, 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Low income men and women who are not eligible for MaineCare coverage may be required to make sacrifices in order to pay for medical care. Without waiving

objection, the Department's response to ¶ 174 is admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

101. [175] The sacrifices Plaintiffs' patients make in order to pay for their abortion care include selling belongings like furniture, laptops, phones, or cars. Coplon Aff. ¶¶ 27-28; Waning Aff. ¶ 22; Gallagher Aff. ¶ 7; Plaintiff Maine Family Planning's First Am. and Supp. Resp. to Def's First Set of Interrogatories ¶10; MW_000204, MW_000219, MW_000243.

DEFENDANT'S RESPONSE: Objection. The Department objects because this assertion is not material to the question of the constitutionality of the MaineCare regulation based on equal protection/due process grounds. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Low income men and women who are not eligible for MaineCare coverage may be required to make sacrifices in order to pay for medical care. Without waiving objection, the Department's response to ¶ 175 is admitted.

PLAINTIFFS' RESPONSE TO OBJECTION. Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

102. [176] The sacrifices Plaintiffs' patients make in order to pay for their abortion care include borrowing money using costly "payday" loans, which impose exorbitant interest and fees that poor people cannot afford. Deprez Aff. ¶¶ 36, 39; Fay-LeBlanc Aff. ¶ 22; Coplon Aff. ¶ 27.

DEFENDANT'S RESPONSE: Objection. The Department objects to inclusion of these allegations in the summary judgment record because they were not previously produced in response to discovery requests. *Longley v. Knapp,* 1998 ME 142, ¶ 8, 713 A.2d 939 (trial court acted within bounds of discretion by excluding evidence which had not been provided in response to discovery requests, which prejudiced adverse party). Plaintiffs provided no documents to support these allegations. This statement should also be excluded from the summary judgment record because the purported expert witness testimony goes beyond Plaintiffs' Expert Witness Designation. *Estate of Smith v. Salvesen,* 2016 ME 100, ¶ 15, 143 A.3d 780. Without waiving these objections, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION: Defendant fails to cite to any request for production or interrogatory requesting the information contained in Plaintiffs' SMF 176 and supporting affidavits. Plaintiffs are entitled to support their summary judgment

motion with affidavits, whether the affidavit addresses a topic that Defendant made the subject of discovery, or not. *See* M.R. Civ.P. 56(a). Furthermore, Plaintiffs designated Dr. Fay-LeBlanc as an expert on "the effect of lack of insurance coverage on poor and low-income individuals' ability to access health care;" designated Ms. Coplon as an expert in the "effect of ban on MaineCare coverage for abortion on poor and low-income women in Maine" and the "experiences of poor and low-income women struggling to afford the cost of abortion services in Maine;" and designated Dr. Deprez as an expert in "economic barriers to abortion access." This statement is well within each of these designations. The Law Court has never required that an expert's designation detail every minute detail of opinion. In *Smith v. Salveson*, cited by Defendant, an expert was not allowed to testify on the cause of a fall down stairs in a tort case, when he had only been designated as a liability expert to explain the stairs did not meet building code requirements. 2016 Me 100 ¶¶ 15-16, 143 A.3d 780. The testimony is not on an entirely new and different topic, as in *Salveson*. Defendant's objection should be overruled, and the statement should be considered admitted.

103. [177] Other strategies that Plaintiffs' patients employ to try to raise money for their abortion include collecting and redeeming recyclables, selling gift cards at below face value, or holding a garage sale and asking friends and family to donate items to sell. Coplon Aff. ¶¶ 27-28; Waning Aff. ¶ 22.

DEFENDANT'S RESPONSE: Objection. The Department objects to inclusion of these allegations in the summary judgment record because they were not previously produced in response to discovery requests. *Longley v. Knapp,* 1998 ME 142, ¶ 8, 713 A.2d 939 (trial court acted within bounds of discretion by excluding evidence which had not been provided in response to discovery requests, which prejudiced adverse party). Plaintiffs provided no

documents to support these allegations. This statement should also be excluded from the summary judgment record because the purported expert witness testimony goes beyond Plaintiffs' Expert Witness Designation. *Estate of Smith v. Salvesen,* 2016 ME 100, ¶ 15, 143 A.3d 780. Without waiving these objections, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION: Defendant fails to cite to any request for production or interrogatory requesting the information contained in Plaintiffs' SMF 177 and supporting affidavits. Plaintiffs are entitled to support their summary judgment motion with affidavits, whether the affidavit addresses a topic that Defendant made the subject of discovery, or not. *See* M.R. Civ.P. 56(a). Furthermore, Plaintiffs designated Dr. Fay-LeBlanc as an expert on "the effect of lack of insurance coverage on poor and low-income individuals' ability to access health care;" designated Ms. Coplon as an expert in the "effect of ban on MaineCare coverage for abortion on poor and low-income women in Maine" and the "experiences of poor and low-income women struggling to afford the cost of abortion services in Maine;" and designated Dr. Deprez as an expert in "economic barriers to abortion access." This statement is well within each of these designations. The Law Court has never required that an expert's designation detail every minute detail of opinion. In *Smith v. Salveson*, cited by Defendant, an expert was not allowed to testify on the cause of a fall down stairs in a tort case, when he had only been designated as a liability expert to explain the stairs did not meet building code requirements. 2016 Me 100 ¶¶ 15-16, 143 A.3d 780. The testimony is not on an entirely new and different topic, as in *Salveson*. Defendant's objection should be overruled, and the statement should be considered admitted.

104. [178] The stigma associated with abortion further narrows the options available to a poor or low-income woman who needs to raise money for her abortion. Deprez

Aff. ¶ 37.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because the purported expert witness testimony goes beyond Plaintiffs' Expert Witness Designation. *Estate of Smith v. Salvesen,* 2016 ME 100, ¶ 15, 143 A.3d 780. The Department objects to inclusion of these allegations in the summary judgment record because they were not previously produced in response to discovery requests. *Longley v. Knapp,* 1998 ME 142, ¶ 8, 713 A.2d 939 (trial court acted within bounds of discretion by excluding evidence which had not been provided in response to discovery requests, which prejudiced adverse party). Plaintiffs provided no documents to support these allegations. This fact is also immaterial to the disposition of the Defendant's motion for summary judgment. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Without waiving these objections, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION: Defendant fails to cite to any request for production or interrogatory requesting the information contained in Plaintiffs' SMF 178 and supporting affidavits. Plaintiffs are entitled to support their summary judgment motion with affidavits, whether the affidavit addresses a topic that Defendant made the subject of discovery, or not. *See* M.R. Civ.P. 56(a). Furthermore, Plaintiffs designated Dr. Deprez as an expert in "economic barriers to abortion access." This statement is well within this designation. The Law Court has never required that an expert's designation detail every

minute detail of opinion. In *Smith v*. *Salveson*, cited by Defendant, an expert was not allowed to testify on the cause of a fall down stairs in a tort case, when he had only been designated as a liability expert to explain the stairs did not meet building code requirements. 2016 Me 100 ¶¶ 15-16, 143 A.3d 780. The testimony is not on an entirely new and different topic, as in *Salveson*. Finally, lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). Defendant's objection should be overruled, and the statement should be considered admitted.

105. [180] When a patient is forced to disclose the fact of her abortion to a family member, sexual partner or other in order to raise funds for the procedure or obtain a ride to the abortion clinic, in some cases, it will jeopardize her safety. Fay-LeBlanc Aff. ¶ 21.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because the purported expert witness testimony goes beyond Plaintiffs' Expert Witness Designation. *Estate of Smith v*. *Salvesen,* 2016 ME 100, ¶ 15, 143 A.3d 780. The Department objects to inclusion of these allegations in the summary judgment record because they were not previously produced in response to discovery requests. *Longley v*. *Knapp,* 1998 ME 142, ¶ 8, 713 A.2d 939 (trial court acted within bounds of discretion by excluding evidence which had not been provided in response to discovery requests, which prejudiced adverse party). Plaintiffs provided no documents to support these allegations. This fact is also immaterial to the disposition of the Defendant's motion for

summary judgment. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Without waiving these objections, the allegations are admitted.

PLAINTIFFS' RESPONSE TO OBJECTION: Defendant fails to cite to any request for production or interrogatory requesting the information contained in Plaintiffs' SMF 180 and supporting affidavits. Plaintiffs are entitled to support their summary judgment motion with affidavits, whether the affidavit addresses a topic that Defendant made the subject of discovery, or not. *See* M.R. Civ.P. 56(a). Furthermore, Plaintiffs designated Dr. Fay-LeBlanc as an expert in the "effect of lack of insurance coverage on poor and low-income individuals' ability to access health care," which is precisely the subject of this statement. One of the effects of a lack of insurance coverage for abortion is that patients are, in some cases, forced to disclose the facts of their pregnancy to people who would not otherwise need to know private and personal medical information. The Law Court has never required that an expert's designation detail every minute detail of opinion. In *Smith v. Salveson*, cited by Defendant, an expert was not allowed to testify on the cause of a fall down stairs in a tort case, when he had only been designated as a liability expert to explain the stairs did not meet building code requirements. 2016 Me 100 ¶¶ 15-16, 143 A.3d 780. The testimony is not on an entirely new and different topic, as in *Salveson*. Finally, lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where

parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). The objection should be overruled, and the statement should be considered admitted.

106. [183] In addition to being harmful, and in some cases, dangerous, not paying rent, forgoing food, and borrowing money in order to raise funds to pay for an abortion are all likely to increase the woman's level of stress. Fay-LeBlanc Aff. ¶ 23.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because the purported expert witness testimony goes beyond Plaintiffs' Expert Witness Designation This fact is also immaterial to the disposition of the Defendant's motion for summary. *Doe I v. Williams*, 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). Without waiving the objections, the Defendant admits this statement.

PLAINTIFFS' RESPONSE TO OBJECTION: Plaintiffs designated Dr. Fay-LeBlanc as an expert in the "effect of lack of insurance coverage on poor and low-income individuals' ability to access health care," which is precisely the subject of this statement. The Law Court has never required that an expert's designation detail every minute detail of opinion. In *Smith v. Salveson*, cited by Defendant, an expert was not allowed to testify on the cause of a fall down stairs in a tort case, when he had only been designated as a liability expert to explain the stairs did not meet building code requirements. 2016 Me 100 ¶¶ 15-16,

143 A.3d 780. The testimony is not on an entirely new and different topic, as in *Salveson*. In addition, lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts."). The objection should be overruled, and the statement should be considered admitted.

107. [184] MaineCare coverage for abortion would mitigate the painful and dangerous sacrifices required to obtain this needed care. Deprez Aff. ¶ 40; Coplon Aff. ¶¶ 24, 27, 29, 32, 38.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because the purported expert witness testimony: 1) is not based upon experience in the State of Maine, *E.M. Nason, Inc. v. Land-Ho Development*, 403 A, 2d 1173 (Me. 1979) ; 2) the statement goes beyond Plaintiffs' Expert Witness Designation, *Estate of Smith v. Salvesen*, 2016 ME 100, ¶ 15, 143 A.3d 780; and 3) the statement is not the proper subject of expert testimony. Without waiving the objections, the Defendant admits this statement.

PLAINTIFFS' RESPONSE TO OBJECTION: Dr. Deprez was designated as an expert in "the importance of abortion access for poor and low-income women;" Ms. Coplon was designated as an expert in the "experiences of poor and low-income women struggling to afford the cost of abortion services in Maine." These are the subjects of this statement. The Law Court has never required that an expert's designation detail every minute detail of opinion. In *Smith v. Salveson*, cited by Defendant, an expert was not allowed to testify on the

cause of a fall down stairs in a tort case, when he had only been designated as a liability expert to explain the stairs did not meet building code requirements. 2016 Me 100 ¶¶ 15-16, 143 A.3d 780. The testimony is not on an entirely new and different topic, as in *Salveson*.

Furthermore, Plaintiffs' experts are highly qualified to give their opinions. In *E.M. Nason, Inc*., a forty-year old case cited by Defendant, the Law Court affirmed a trial court's decision that a road construction expert with experience solely in Massachusetts was not qualified to give an opinion on how long it would take to build a road in Maine, and the reasonable cost for building a road, as he had no knowledge of the conditions of the ground in Central Maine, or local trade practices. *E.M. Nason, Inc., v. Land-Ho Development*, 403 A.2d at 1180. Ms. Coplon and Dr. Deprez, the two experts cited here, both live in Maine, work in Maine, and formed their expert opinion based primarily, if not exclusively, on experiences in Maine. The objection should be overruled, and the statement should be considered admitted.

MaineCare-Eligible Patients Are Prevented From Obtaining Abortion Care

The Department objects to this sub-heading title because, as set forth in detail in various responses herein, MaineCare-eligible women are not "prevented from obtaining abortion care."

PLAINTIFFS' RESPONSE TO OBJECTION: General **Objection**s to Statements of Material Fact are not permitted. See M.R. Civ. P. 56(h)(2).

108. [185] In the absence of Medicaid coverage, the cost of an abortion is prohibitive for many poor and low-income women, preventing them from obtaining an abortion altogether. Henshaw Aff. ¶¶ 2–3, 10–13.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because the purported expert witness testimony: 1) is not based upon experience in the State of Maine, *E.M. Nason, Inc. v. Land-Ho Development*, 403 A, 2d 1173 (Me. 1979); 2) the statement goes beyond Plaintiffs' Expert Witness Designation; and it is inconsistent with prior deposition testimony. *Blue Star Corp. v. CKF Props., LLC*, 2009 ME 101, ¶ 31, 980 A.2d 1270; *Zip Lube, Inc. v. Coastal Savings Bank*, 1998 ME 81, ¶ 10, 709 A. 2d 733, 735. Without waiving the objections, the Defendant denies this statement. *See* Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' RESPONSE TO OBJECTION: Plaintiffs' experts are highly qualified to give their opinions. In *E.M. Nason, Inc.*, a forty-year old case cited by Defendant, the Law Court affirmed a trial court's decision that a road construction expert with experience solely in Massachusetts was not qualified to give an opinion on how long it would take to build a road in Maine, and the reasonable cost for building a road, as he had no knowledge of the conditions of the ground in Central Maine, or local trade practices. *E.M. Nason, Inc., v. Land-Ho Development*, 403 A.2d at 1180. Dr. Henshaw is not providing an opinion on this kind of purely local question. To the extent Defendant chooses to argue that rates of unintended pregnancies and abortions in low-income versus high-income women varies significantly from state to state, or that a highly credentialed sociologist must work from an office in the State of Maine in order to understand data relating to Maine, such an argument would at most go to the weight of Dr. Henshaw's testimony, not his qualifications as an expert or the admissibility of his opinion. Such an argument is irrelevant for purposes of summary judgment. *See Emerson v. Sweet*, 432 A.2d 784, 784 (Me. 1981) ("Because of the form of evidence properly before a court on a motion for summary judgment, evidentiary

inferences based on credibility or weight are impermissible.") (citing 10 C. Wright & A. Miller, Federal Practice & Procedure s 2726 (1973)).

Dr. Henshaw was designated as an expert in "how the denial of Medicaid coverage for abortion impacts timing and rates," which is precisely the subject of this statement. The Law Court has never required that an expert's designation detail every minute detail of opinion. In *Smith v. Salveson*, cited by Defendant, an expert was not allowed to testify on the cause of a fall down stairs in a tort case, when he had only been designated as a liability expert to explain the stairs did not meet building code requirements. 2016 Me 100 ¶¶ 15-16, 143 A.3d 780. The testimony is not on an entirely new and different topic, as in *Salveson*. Defendant does not cite any allegedly contradictory deposition testimony. Defendant's objections should be overruled, and the statement should be considered admitted.

PLAINTIFFS' REPLY TO DENIAL: Denied. Plaintiffs incorporate, by reference, their reply to Defendant's Response to PSMF ¶ 59.

109. [186] Studies show that 18–37% of Medicaid-eligible women who carried their pregnancies to term would have had an abortion instead if Medicaid coverage had been available. Henshaw Aff. ¶¶13-14.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because the purported expert witness testimony: 1) is not based upon experience in the State of Maine, *E.M. Nason, Inc. v. Land-Ho Development*, 403 A, 2d 1173 (Me. 1979); 2) the statement goes beyond Plaintiffs' Expert Witness Designation; and 3) it is inconsistent with prior deposition testimony. *Blue Star Corp. v. CKF Props., LLC*, 2009 ME 101, ¶ 31, 980 A.2d 1270; *Zip Lube, Inc. v. Coastal Savings Bank*, 1998 ME 81, ¶

10, 709 A. 2d 733, 735. Without waiving the objections, the Defendant denies this statement. *See* Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' RESPONSE TO OBJECTION: Plaintiffs' experts are highly qualified to give their opinions. In *E.M. Nason, Inc*., a forty-year old case cited by Defendant, the Law Court affirmed a trial court's decision that a road construction expert with experience solely in Massachusetts was not qualified to give an opinion on how long it would take to build a road in Maine, and the reasonable cost for building a road, as he had no knowledge of the conditions of the ground in Central Maine, or local trade practices. *E.M. Nason, Inc., v. Land-Ho Development*, 403 A.2d at 1180. Dr. Henshaw is not providing an opinion on this kind of purely local question. To the extent Defendant chooses to argue that rates of unintended pregnancies and abortions in low-income versus high-income women varies significantly from state to state, or that a highly credentialed sociologist must work from an office in the State of Maine in order to understand data relating to Maine, such an argument would at most go to the weight of Dr. Henshaw's testimony, not his qualifications as an expert or the admissibility of his opinion.

Dr. Henshaw was designated as an expert in "how the denial of Medicaid coverage for abortion impacts timing and rates," which is precisely the subject of this statement. The Law Court has never required that an expert's designation detail every minute detail of opinion. In *Smith v. Salveson*, cited by Defendant, an expert was not allowed to testify on the cause of a fall down stairs in a tort case, when he had only been designated as a liability expert to explain the stairs did not meet building code requirements. 2016 Me 100 ¶¶ 15-16, 143 A.3d 780. The testimony is not on an entirely new and different topic, as in *Salveson*.

Defendant does not cite any allegedly contradictory deposition testimony. Defendant's objections should be overruled, and the statement should be considered admitted.

PLAINTIFFS' REPLY TO DENIAL: Denied. Plaintiffs incorporate, by reference, their reply to Defendant's Response to PSMF ¶ 59.

110. [187] The absence of MaineCare coverage prevents some women in Maine from getting an abortion. Waning Aff. ¶ 23; Coplon Aff. ¶¶ 4, 24, 35-37; Gallagher Aff. ¶ 9; Deprez Aff. ¶¶ 38, 39.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because the purported expert witness testimony: 1) is not based upon experience in the State of Maine, *E.M. Nason, Inc. v. Land-Ho Development,* 403 A, 2d 1173 (Me. 1979); 2) the statement goes beyond Plaintiffs' Expert Witness Designation; and 3) it is inconsistent with prior deposition testimony. *Blue Star Corp. v. CKF Props., LLC,* 2009 ME 101, ¶ 31, 980 A.2d 1270; *Zip Lube, Inc. v. Coastal Savings Bank,* 1998 ME 81, ¶ 10, 709 A. 2d 733, 735. Without waiving the objections, the Defendant denies this statement. *See* Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' RESPONSE TO OBJECTION: Dr. Deprez was designated as an expert in "the importance of abortion access for poor and low-income women;" Ms. Coplon was designated as an expert in the "experiences of poor and low-income women struggling to afford the cost of abortion services in Maine." These are the subjects of this statement. The Law Court has never required that an expert's designation detail every minute detail of opinion. In *Smith v. Salveson*, cited by Defendant, an expert was not allowed to testify on the cause of a fall down stairs in a tort case, when he had only been designated as a liability expert to explain the stairs did not meet building code requirements. 2016 Me 100 ¶¶ 15-16,

143 A.3d 780. The testimony is not on an entirely new and different topic, as in *Salveson*.

Plaintiffs' experts are highly qualified to give their opinions. In *E.M. Nason, Inc.*, a forty-year old case cited by Defendant, the Law Court affirmed a trial court's decision that a road construction expert with experience solely in Massachusetts was not qualified to give an opinion on how long it would take to build a road in Maine, and the reasonable cost for building a road, as he had no knowledge of the conditions of the ground in Central Maine, or local trade practices. *E.M. Nason, Inc., v. Land-Ho Development*, 403 A.2d at 1180. Ms. Coplon and Dr. Deprez, the two experts cited here, both live in Maine, work in Maine, and formed their opinion based primarily, if not exclusively, on experiences in Maine.

Neither Ms. Waning's nor Ms. Gallagher's affidavit testimony is expert testimony or a statement of law. Both Ms. Waning and Ms. Gallagher testified based on their personal experience and observations as employees at Plaintiffs PPNNE and Mabel Wadsworth, respectively, and their testimony is therefore rationally based lay opinion testimony. *See* M.R. Evid. 701. The objections should be overruled, and the statement should be considered admitted.

PLAINTIFFS' REPLY TO DENIAL: Denied. Plaintiffs incorporate, by reference, their reply to Defendant's Response to PSMF ¶ 59.

111. [188] Plaintiffs regularly get calls from and perform ultrasounds for women who are past the clinic's gestational age limit but delayed calling or coming in for their appointment until they could raise funds for the procedure. Waning Aff. ¶ 23; Coplon Aff. ¶¶ 31-32; Gallagher Aff. ¶ 9.

DEFENDANT'S RESPONSE: Qualified. In these scenarios, the primary reason patients allegedly do not receive abortion services is because they are beyond the gestational

limit for services that Plaintiffs' clinics are able to provide. Plaintiffs have provided no documents to support these allegations.

Furthermore, given the Plaintiffs' standard practice, patients should have known that – had they arrived within the clinic's gestational limit for services, they would have been provided with abortion services, regardless of their inability to pay. For example, the record reflects that Maine Family Planning has turned women away who have arrived at the clinic without enough money for an abortion, but it only does so when there is enough time in their pregnancy where they could reschedule the appointment to take additional time to come up with funding. Coplon Dep. 47:8-25; 48:1-8; 66:24-25; 67:1-12. Maine Family Planning has never denied abortion services to women in particularly desperate circumstances who can't pay. Coplon Dep. 64:18-25; 65:1-12; 66:24-25; 67:1-12; 82:13-25; 83:1-14. *See also*, Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' REPLY TO QUALIFICATION: **Denied.** Defendant has not, in fact, qualified Plaintiffs' statement—indeed, Defendant admits that Plaintiffs' poor and low-income patients may be delayed in seeking abortion care—and therefore Defendant's statements should be disregarded. Defendant's apparent belief that all poor and low-income Maine women know or should know about the availability of limited financial aid to cover some of the cost of abortion, and that there is somehow enough private financial aid to cover every woman who might ever show up at an abortion clinic without enough (or any) money to pay for the cost of her abortion, is not supported by the record. The statement should be deemed admitted. *Stanley v. Hancock Cty Comm'rs*, 2004 ME 157, ¶ 18.

112. [189] Some of Plaintiffs' patients never show up for their appointments because they do not have the money for their abortion. Coplon Aff. ¶¶ 35-36.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because the purported expert witness testimony is not properly admissible pursuant to M. R. Evid. 702 because: 1) the reason patients do not show up for their appointments is not the proper subject of expert witness testimony; and 2) the statement lacks proper foundation for the proffered opinion that the reason some patients never show up for their appointments is because they do not have money for the abortion. In order for expert testimony to be admissible, it must meet a threshold level of reliability. *Tolliver v. Department of Transp*., 2008 ME 83, 948 1223, ¶ 29 (quoting *Searles v. Fleetwood Homes of Pa., Inc*., 2005 ME 94, ¶ 22, 878 A.2d 509). If the expert's methodology or science is unreliable, then the expert's opinion has no probative value. *Tolliver v. Department of Transp*. at ¶ 29. To the extent the statement suggests that women are being denied abortion services due to lack of funds, the statement should be excluded from the summary judgment record because from the summary judgment record because it is inconsistent with the deposition testimony. *Blue Star Corp. v. CKF Props., LLC,* 2009 ME 101, ¶ 31, 980 A.2d 1270; *Zip Lube, Inc. v. Coastal Savings Bank,* 1998 ME 81, ¶ 10, 709 A. 2d 733, 735.

Without waiving the objections, the Defendant denies this statement. *See, e.g.,* Coplon Dep. 47:8-25; 48:1-8; 66:24-25; 67:1-12; PPNNE0161-0169(If women are unable to pay for abortion services, Plaintiffs still provide abortion services.); Waning Dep. 47:6-25; 48:1-12; 50:5-13; 62:1-25; 63:1-6 (Plaintiffs have not identified any instance in which abortion services were denied to a woman seeking an abortion due to lack of money).

PLAINTIFFS' RESPONSE TO OBJECTION: Ms. Coplon is both an expert witness, who is qualified to testify as to her opinion on the topics in which she was designated, including "the experiences of poor and low-income women struggling to afford

the cost of abortion services in Maine, as well as a fact witness, who is qualified to testify based on personal knowledge concerning the patients at Maine Family Planning, where she serves as Director of Abortion Services. Defendant's citations to the record do not support her denial. *See Doyle v. Dep't Of Human Servs*., 2003 ME 61, ¶ 10, 824 A.2d 48, 52 (holding party failed to comply with Rule 56(h)(2) when she "did not properly support many of her denials and qualifications with record citations relevant to the proposition for which they were cited."). Defendant's objection should be overruled, and the statement should be considered admitted.

113. [190] MaineCare coverage for abortion would significantly alleviate the financial burden on poor and low-income women seeking abortion care, making it far less likely that these women will be prevented from accessing care. Deprez Aff. ¶ 40; Coplon Aff. ¶ 38.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because the purported expert witness testimony is not properly admissible pursuant to M.R.Evid.702 because: 1) the reason patients do not show up for their appointments is not the proper subject of expert witness testimony; and 2) the statement lacks proper foundation for the proffered opinion that the reason some patients never show up for their appointments is because they do not have money for the abortion In order for expert testimony to be admissible, it must meet a threshold level of reliability. *Tolliver v*. *Department of Transp*., 2008 ME 83, 948 1223, ¶ 29 (quoting *Searles v*. *Fleetwood Homes of Pa*., *Inc*., 2005 ME 94, ¶ 22, 878 A.2d 509). If the expert's methodology or science is unreliable, then the expert's opinion has no probative value. *Tolliver v*. *Department of Transp*. At ¶ 29. To the extent the statement suggests that women are being denied abortion

services due to lack of funds, the statement should be excluded from the summary judgment record because from the summary judgment record because it is inconsistent with the deposition testimony. *Blue Star Corp. v. CKF Props., LLC,* 2009 ME 101, ¶ 31, 980 A.2d 1270; *Zip Lube, Inc. v. Coastal Savings Bank,* 1998 ME 81, ¶ 10, 709 A. 2d 733, 735. Without waiving the objections, the Defendant denies this statement. *See,* Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' RESPONSE TO OBJECTION: Defendant has not cited any evidence, or produced any expert witness, that would support her challenging the methodology of Dr. Deprez or Ms. Coplon, or the reliability of their testimony. Instead, she has merely cited to cases that stand for the proposition that, had the Defendant identified any experts, and had those experts successfully undercut the basis for Plaintiffs' experts' opinions, then Plaintiffs' experts' opinions would be inadmissible.

PLAINTIFFS' REPLY TO DENIAL: Denied. Plaintiffs incorporate, by reference, their reply to Defendant's Response to PSMF ¶ 59.

THE IMPACT OF DELAYED OR DENIED ABORTIONS ON WOMEN'S LIVES

General Objection to ¶¶ 191-254 and the heading for this section. Defendant objects to ¶¶ 191-254 on the grounds that the statements are immaterial to the constitutional challenge before the Court. *Doe I v. Williams,* 2013 ME 24, ¶ 78, 61 A.3d 718 (disagreement on disputed facts that are immaterial to constitutional challenge not an impediment to summary judgment); *Maher v. Roe*, 432 U.S. 464, 471 (1977) ("…this Court has never held that financial need alone identifies a suspect class for purposes of equal protection analysis."); *Norris v. State*, 541 A.2d 926, 929 (Me. 1988) (indigency not a suspect class). There are numerous medical conditions and/or medical needs affecting men and women

which are not covered by MaineCare or other state programs which may be exacerbated if not promptly treated. Moreover, ¶¶ 191-254 and the heading for this section presume that low income women are denied access to abortions, a fact that is not supported by the summary judgment record.

PLAINTIFFS' RESPONSE TO OBJECTION: General **Objection**s to Statements of Material Fact are not permitted. See M.R. Civ. P. 56(h)(2). Lack of materiality is not a proper objection to a statement of material fact in a summary judgment pleading. M.R. Civ.P. 56 Advisory Committee Note – April 2, 2007 ("In instances where parties admit certain facts but argue that those facts are not material because they do not affect the outcome of the motion, they should raise their arguments with respect to materiality in their memoranda of law rather than in their statements of material facts.").

114. [191] All pregnant women need medical care. Ralston Aff. ¶ 2.

DEFENDANT'S RESPONSE: Admitted. The Department notes that pregnant women within the income standards are a mandatory categorically needy eligibility class under federal Medicaid law; in other words, the scope of their coverage and services under MaineCare is required by federal law. *See* 42 U.S.C. § 1396a(a)(10)(A)(i)(III); 42 C.F.R. § 435.116(b) ("The agency must provide Medicaid to pregnant women…") and (d).

PLAINTIFFS' REPLY TO ADMISSION: Objection. Additional information is not permitted with admissions. *See* M.R. Civ. P. 56(h)(2) ("Each such statement shall begin with the designation "**Admitted**," "**Denied**," or "**Qualified**" (and, in the case of an admission, shall end with such designation).").

115. [192] If a pregnant woman is continuing the pregnancy, she needs care during the pre-natal period, delivery, and post-partum period. Ralston Aff. ¶ 2.

DEFENDANT'S RESPONSE: Admitted. The Department notes that pregnant women within the income standards are a mandatory categorically needy eligibility class under federal Medicaid law; in other words, the scope of their coverage and services under MaineCare is required by federal law. *See* 42 U.S.C. § 1396a(a)(10)(A)(i)(III); 42 C.F.R. § 435.116(b) ("The agency must provide Medicaid to pregnant women…") and (d).

PLAINTIFFS' REPLY TO ADMISSION: Objection. Additional information is not permitted with admissions. *See* M.R. Civ. P. 56(h)(2) ("Each such statement shall begin with the designation "**Admitted**," "**Denied**," or "**Qualified**" (and, in the case of an admission, shall end with such designation).").

116. [195] A first-trimester abortion is about ten times safer than continuing a pregnancy to term. Ralston Aff. ¶ 41.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because the purported expert witness testimony goes beyond Plaintiffs' Expert Witness Designation. *Estate of Smith v. Salvesen,* 2016 ME 100, ¶ 15, 143 A.3d 780. Without waiving the objection, this statement is admitted.

PLAINTIFFS' RESPONSE TO OBJECTION: Dr. Ralston, a board certified obstetrician/gynecologist specializing in maternal and fetal medicine who, in addition to his medical degree, holds a Master's Degree in Public Health, was designated as an expert in "the physiological effects of pregnancy," and that subject includes the dangers of those effects as well as the relative dangers of procedures to treat those effects, including abortion. The Law Court has never required that an expert's designation detail every minute detail of opinion. In *Smith v. Salveson*, cited by Defendant, an expert was not allowed to testify on the cause of a fall down stairs in a tort case, when he had only been designated as a liability

expert to explain the stairs did not meet building code requirements. 2016 Me 100 ¶¶ 15-16, 143 A.3d 780. The testimony is not on an entirely new and different topic, as in *Salveson*. Defendant's objection should be overruled, and the statement should be considered admitted.

117. [196] Given the profound impact that even an uncomplicated pregnancy can have on a healthy woman, a woman who decides to have an abortion is necessarily making a decision that protects her health. Ralston Aff. ¶¶ 3, 10–19.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because the purported expert witness testimony goes beyond Plaintiffs' Expert Witness Designation. *Estate of Smith v. Salvesen,* 2016 ME 100, ¶ 15, 143 A.3d 780. Without waiving the objection, this statement is admitted.

PLAINTIFF'S RESPONSE TO OBJECTION: Dr. Ralston, a board certified obstetrician/gynecologist specializing in maternal and fetal medicine who, in addition to his medical degree, holds a Master's Degree in Public Health, was designated as an expert in the "availability of abortion as a necessary component of pregnancy care"—precisely the subject of this statement. The Law Court has never required that an expert's designation detail every minute detail of opinion. In *Smith v. Salveson*, cited by Defendant, an expert was not allowed to testify on the cause of a fall down stairs in a tort case, when he had only been designated as a liability expert to explain the stairs did not meet building code requirements. 2016 Me 100 ¶¶ 15-16, 143 A.3d 780. The testimony is not on an entirely new and different topic, as in *Salveson*. The objection should be overruled, and the statement should be considered admitted.

118. [197] In addition, the dangerous stress that even the most medically uncomplicated pregnancy creates is medical justification enough for a woman to decide it is

in her best medical interest to obtain an abortion. Fay-LeBlanc Aff. ¶ 30.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because the purported expert witness testimony goes beyond Plaintiffs' Expert Witness Designation. *Estate of Smith v. Salvesen,* 2016 ME 100, ¶ 15, 143 A.3d 780. Without waiving the objection, this statement is admitted.

PLAINTIFFS' RESPONSE TO OBJECTION: Dr. Fay-LeBlanc was designated as an expert in "social determinants of health" and in "the wide range of social, medical, and environmental factors physicians consider when providing medical care." Those factors include stress, which is one of the most significant social determinants of health for people living in poverty. The Law Court has never required that an expert's designation detail every minute detail of opinion. In *Smith v. Salveson*, cited by Defendant, an expert was not allowed to testify on the cause of a fall down stairs in a tort case, when he had only been designated as a liability expert to explain the stairs did not meet building code requirements. 2016 Me 100 ¶¶ 15-16, 143 A.3d 780. The testimony is not on an entirely new and different topic, as in *Salveson*. The objection should be overruled, and the statement should be considered admitted.

119. [199] There is no clinical justification for drawing a line between "elective" and "medically necessary" abortions in light of the profound health impact and stress caused by even the most medically uncomplicated pregnancy. Fay-Leblanc Aff. ¶ 30; Ralston Aff. ¶¶ 2-4, 10- 20, 43-44, 46; Mittal Aff. ¶¶ 3, 46.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because the purported expert witness testimony goes beyond Plaintiffs' Expert Witness Designation (as to witnesses Fay-Leblanc and Mittal). *Estate of*

Smith v. Salvesen, 2016 ME 100, ¶ 15, 143 A.3d 780. Moreover, not all medical services that might be viewed as "medically necessary" are covered by MaineCare or Maine's state-funded programs; indeed, there is no statute or regulation that requires states to provide all "medically necessary services." *See Alexander v. Choate*, 105 S. Ct. 712, 721 (1985) ("Medicaid programs do not guarantee that each recipient will receive that level of health care precisely tailored to his or her particular needs…The Act gives the States substantial discretion to choose the proper mix of amount, scope, and duration limitations on coverage, as long as care and services are provided in "the best interests of the recipients."); 42 C.F.R.§ 440.230 (sufficiency of amount, duration and scope of Medicaid services). The following is a list of certain services that MaineCare does not cover, or that are covered in limited circumstances/with restrictions (this list is not comprehensive)[6]:

a. Organ transplants - Sec. 90, Appendix A;
b. Dental - Sec. 25 (including - orthodontic services, limited to members under 21 years old, Sec. 25.04; dentures, Sec. 25.04-3);
c. Vision services, contact lenses, frames, orthotic therapy – Sec. 75.03-1;
d. Adult in-patient psychiatric - Sec. 46.03-2;
e. Sterilization and hysterectomies – Sec. 90.05-2(B);
f. Infertility treatments - Sec. 90.05-2(G);
g. Gastric bypass - Sec. 90.05-1(B)(2);
h. Chiropractic services - Sec. 15.06, 15.07-2;
i. Out of state services - Sec. 90.05-1(A)(1); Ch. I, Sec. 1.14-2;
j. Durable medical equipment - Sec. 60.05;
k. Cochlear implants - Sec. 90.05-2(D);
l. Speech and hearing services - Sec. 109.05(B), Sec. 109.04;
m. Private duty nursing services - Sec. 96.02-4, 96.03, 96.05;
n. Pharmacy - Sec. 80.06:
    - Non-FDA approved drugs;
    - Experimental drugs;
    - Fertility drugs;
    - Nutritional support products when the member is able to eat conventional foods;

[6] Unless otherwise noted, all citations in this paragraph are to sections in the 10-144 C.M.R. Ch. 101, the MaineCare Benefits Manual, Ch. II (Specific Policies by Service).

- Drugs to treat sexual or erectile dysfunction.

o. Restraints – Sec. 60.05-11(B);
p. Services that are primarily custodial, social/recreational, academic/educational, vocational – Ch. I, Sec. 1.05-5.

Without waiving the objections, this statement is admitted.

PLAINTIFFS' RESPONSE TO OBJECTION: Dr. Fay-LeBlanc was designated as an expert in "social determinants of health" and in "the wide range of social, medical, and environmental factors physicians consider when providing medical care." Those factors include stress, which is one of the most significant social determinants of health for people living in poverty. Dr. Mittal was designated as an expert in "the impact of pregnancy on mental health" and the "circumstances in which a desired abortion is reasonably necessary for a woman's mental health and well-being." One of the potential effects of pregnancy on mental health is that it causes dangerous levels of stress; this would in turn constitute a circumstance in which a desired abortion is reasonably necessary for a woman's mental health and well-being. The Law Court has never required that an expert's designation detail every minute detail of opinion. In *Smith v. Salveson*, cited by Defendant, an expert was not allowed to testify on the cause of a fall down stairs in a tort case, when he had only been designated as a liability expert to explain the stairs did not meet building code requirements. 2016 Me 100 ¶¶ 15-16, 143 A.3d 780. The testimony is not on an entirely new and different topic, as in *Salveson*. Defendant's supplementary material must be disregarded, because it does not directly address the statement of fact, that here is no clinical justification for drawing a line between "elective" and "medically necessary" abortions in light of the profound health impact and stress caused by even the most medically uncomplicated pregnancy. M.R. Civ.P 56(h)(2); *Stanley v. Hancock Cty Comm'rs*, 2004 ME 157, ¶ 18. Instead, the qualification addresses a completely different subject—whether and under what

circumstances MaineCare covers other medical procedures. Defendant's objection should be overruled, and the statement should be considered admitted.

120. [210] A policy that forces healthy women to carry a pregnancy to term—and thereby risk these serious complications—rather than having a wanted abortion puts women's health at risk. Ralston Aff. ¶ 20.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because the purported expert witness testimony is not properly admissible pursuant to M.R.Evid.702: 1) it is not the proper subject of expert witness testimony; and 2) the statement lacks proper foundation for the proffered opinion that Maine's policy forces healthy women to carry a pregnancy to term. In order for expert testimony to be admissible, it must meet a threshold level of reliability. *Tolliver v. Department of Transp*., 2008 ME 83, 948 1223, ¶ 29 (quoting *Searles v. Fleetwood Homes of Pa., Inc*., 2005 ME 94, ¶ 22, 878 A.2d 509). If the expert's methodology or science is unreliable, then the expert's opinion has no probative value. *Tolliver v. Department of Transp*. At ¶ 29. To the extent the statement suggests that women are forced to carry a pregnancy to term, due to lack of State funds for abortion services, the statement should be excluded from the summary judgment record because it is inconsistent with the deposition testimony. *Blue Star Corp. v. CKF Props., LLC,* 2009 ME 101, ¶ 31, 980 A.2d 1270; *Zip Lube, Inc. v. Coastal Savings Bank,* 1998 ME 81, ¶ 10, 709 A. 2d 733, 735. Furthermore, pregnant women within the income standards are a mandatory categorically needy eligibility class under federal Medicaid law; in other words, the scope of their coverage and services under MaineCare is required by federal law. *See* 42 U.S.C. § 1396a(a)(10)(A)(i)(III); 42 C.F.R. § 435.116(b) ("The agency must provide Medicaid to pregnant women…") and (d).

The Department further objects because as set forth in Dept's Resp. to PSMF ¶ 150, Plaintiffs produced no evidence reflecting their allegation that women are "forced to continue pregnancies against their will" by the MaineCare abortion restriction.

Without waiving the objections, the Defendant denies this statement. *See* Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' RESPONSE TO OBJECTION: Dr. Ralston, a board certified obstetrician/gynecologist specializing in maternal and fetal medicine who, in addition to his medical degree, holds a Master's Degree in Public Health, was designated as an expert in "the physiological effects of pregnancy"—a subject that includes the dangers of those effects as well as the relative dangers of procedures to treat those effects, including abortion—and as an expert in the "availability of abortion as a necessary component of pregnancy care." These topics cover precisely the subject matter of this statement. Defendant has not cited any evidence, or produced any expert witness, that would support her challenging the methodology of Dr. Ralston, or the reliability of his testimony. Instead, she has merely cited to cases that stand for the proposition that, had the Defendant identified any experts, and had those experts successfully undercut the basis for Plaintiffs' Expert's opinion, then Plaintiffs' expert's opinions might be inadmissible.

PLAINTIFFS' REPLY TO DENIAL: Denied. Plaintiffs incorporate, by reference, their reply to Defendant's Response to PSMF ¶ 59.

121. [212] Because certain pre-existing medical conditions may worsen during pregnancy and the disease progression may be irreversible, it is important that women have the option to terminate the pregnancy before progressing to a more severe health state. Ralston Aff. ¶¶ 21–38.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because the purported expert witness testimony goes beyond Plaintiffs' Expert Witness Designation. *Estate of Smith v. Salvesen,* 2016 ME 100, ¶ 15, 143 A.3d 780. Moreover, not all medical services that might be viewed as "medically necessary" are covered by MaineCare or Maine's state-funded programs; indeed, there is no statute or regulation that requires states to provide all "medically necessary services." *See Alexander v. Choate*, 105 S. Ct. 712, 721 (1985) ("Medicaid programs do not guarantee that each recipient will receive that level of health care precisely tailored to his or her particular needs…The Act gives the States substantial discretion to choose the proper mix of amount, scope, and duration limitations on coverage, as long as care and services are provided in "the best interests of the recipients."); 42 C.F.R.440.230 (sufficiency of amount, duration and scope of Medicaid services). Without waiving the objections, this statement is admitted.

PLAINTIFFS' RESPONSE TO OBJECTION: Dr. Ralston, a board certified obstetrician/gynecologist specializing in maternal and fetal medicine who, in addition to his medical degree, holds a Master's Degree in Public Health, was designated as an expert in the "preexisting conditions that are exacerbated by pregnancy"—precisely the subject of this statement. The Law Court has never required that an expert's designation detail every minute detail of opinion. In *Smith v. Salveson*, cited by Defendant, an expert was not allowed to testify on the cause of a fall down stairs in a tort case, when he had only been designated as a liability expert to explain the stairs did not meet building code requirements. 2016 Me 100 ¶¶ 15-16, 143 A.3d 780. The testimony is not on an entirely new and different topic, as in *Salveson*. Defendant's supplementary material must be disregarded, because it does not directly address the statement of fact, that here is no clinical justification for drawing a line

between "elective" and "medically necessary" abortions in light of the profound health impact and stress caused by even the most medically uncomplicated pregnancy. M.R. Civ.P 56(h)(2); *Stanley v. Hancock Cty Comm'rs*, 2004 ME 157, ¶ 18. Instead, the qualification addresses a completely different subject—whether and under what circumstances MaineCare covers other medical procedures. The objection should be overruled, and the statement should be considered admitted.

122. [239] Abortion can mitigate or prevent a recurrence of a mental health disorder. Mittal Aff. ¶¶ 3, 37–42, 45.

DEFENDANT'S RESPONSE: Qualified. This statement should be excluded from the summary judgment record because the purported expert witness testimony goes beyond Plaintiffs' Expert Witness Designation. *Estate of Smith v. Salvesen,* 2016 ME 100, ¶ 15, 143 A.3d 780. Without waiving objection, this statement is admitted.

PLAINTIFFS' RESPONSE TO OBJECTION: Dr. Mittal, a board certified psychiatrist specializing in the care of patients with both mental health disorders and other conditions, was designated as an expert in the "the impact of pregnancy on mental health" and

"circumstances in which a desired abortion is reasonably necessary for a woman's mental health and well-being"—precisely the subject of this statement. The Law Court has never required that an expert's designation detail every minute detail of opinion. In *Smith v. Salveson*, cited by Defendant, an expert was not allowed to testify on the cause of a fall down stairs in a tort case, when he had only been designated as a liability expert to explain the stairs did not meet building code requirements. 2016 Me 100 ¶¶ 15-16, 143 A.3d 780. The testimony is not on an entirely new and different topic, as in *Salveson*. The objection should

be overruled, and the statement should be considered admitted.

123. [243] A woman who is *prevented* from obtaining a desired abortion—regardless of whether she has a history of mental illness—will likely experience psychological and emotional distress as a result. Mittal Aff. ¶ 37.

DEFENDANT'S RESPONSE: Objection. This is a hypothetical statement and not supported by the record. Low income women in Maine are able to access abortion services through Plaintiffs, regardless of their inability to pay. Without waiving objections, this statement is admitted.

PLAINTIFFS' RESPONSE TO OBJECTION: Defendant's objection contains no citation to any evidence in the record, or any rule of law, and it should therefore be excluded. The psychological and emotional distress that the lack of abortion care coverage causes women is not hypothetical in any way. Defendant's objection should be overruled, and the statement should be considered admitted.

124. [244] A woman who is *delayed* in obtaining a desired abortion—regardless of whether she has a history of mental illness—will likely experience psychological and emotional distress as a result. Mittal Aff. ¶ 37.

DEFENDANT'S RESPONSE: Objection. This is a hypothetical statement and not supported by the record. Low income women in Maine are able to access abortion services through Plaintiffs, regardless of their inability to pay. Without waiving the objections, this statement is admitted.

PLAINTIFFS' RESPONSE TO OBJECTION: Defendant's objection contains no citation to any evidence in the record, or any rule of law, and it should therefore be excluded. The psychological and emotional distress that the lack of abortion care coverage causes

women is not hypothetical in any way. Defendant's objection should be overruled, and the statement should be considered admitted.

125. [245] A woman who decides to end her pregnancy after learning that the fetus has a developmental malformation or is at high risk of developing a debilitating condition is likely to experience particular psychological and emotional distress if she is delayed in or prevented from obtaining the abortion she seeks, regardless of whether she has a history of mental illness. Mittal Aff. ¶ 37.

DEFENDANT'S RESPONSE: Objection. This is a hypothetical statement and not supported by the record. Low income women in Maine are able to access abortion services through Plaintiffs, regardless of their inability to pay. Without waiving objection, this statement is admitted.

PLAINTIFFS' RESPONSE TO OBJECTION: Defendant's objection contains no citation to any evidence in the record, or any rule of law, and it should therefore be excluded. The psychological and emotional distress that the lack of abortion care coverage causes women is not hypothetical in any way. Defendant's objection should be overruled, and the statement should be considered admitted.

126. [246] Being forced to continue a pregnancy to term against one's wishes can have a ripple effect on the rest of the woman's life, as well as that of her family. Deprez Aff. ¶ 32.

DEFENDANT'S RESPONSE: Objection. This is a hypothetical statement and not supported by the record. Low income women in Maine are able to access abortion services through Plaintiffs, regardless of their inability to pay. Without waiving objection, the

Department's response to this statement is qualified. *See* Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' RESPONSE TO OBJECTION: Defendant's objection contains no citation to any evidence in the record, or any rule of law, and it should therefore be excluded. The psychological and emotional distress that the lack of abortion care coverage causes women is not hypothetical in any way. Defendant's objection should be overruled, and the statement should be considered admitted.

PLAINTIFFS' REPLY TO QUALIFICATION: Denied. Plaintiffs incorporate, by reference, their reply to Defendant's Response to ¶ 59.

127. [247] Women denied an abortion are more likely to fall below the poverty line and rely on public assistance, and less likely to have full-time jobs, than women who are able to obtain an abortion. Deprez Aff. ¶ 34.

DEFENDANT'S RESPONSE: Objection. This is a hypothetical statement and not supported by the record. Low income women in Maine are able to access abortion services through Plaintiffs, regardless of their inability to pay. Without waiving the objection, the Department's response to this statement is qualified. *See* Dept's Resp. to PSMF ¶ 59, incorporated herein. Furthermore, pregnant women within the income standards are a mandatory categorically needy eligibility class under federal Medicaid law; in other words, the scope of their coverage and services under MaineCare is required by federal law. *See* 42 U.S.C. § 1396a(a)(10)(A)(i)(III); 42 C.F.R. § 435.116(b) ("The agency must provide Medicaid to pregnant women…") and (d).

PLAINTIFFS' RESPONSE TO OBJECTION: Defendant's objection contains no citation to any evidence in the record, or any rule of law, and it should therefore be excluded.

That women denied an abortion are more likely to fall below the poverty line and rely on public assistance, and less likely to have full-time jobs, than women who are able to obtain an abortion is not hypothetical in any way, but is supported by Plaintiffs' affidavits. Defendant's objection should be overruled, and the statement should be considered admitted.

PLAINTIFFS' REPLY TO QUALIFICATION: Denied. Plaintiffs incorporate, by reference, their reply to Defendant's Response to PSMF ¶ 59.

128. [248] Women who are victims of intimate partner violence experience a decrease in violence if they are able to obtain an abortion, as compared to women who are denied an abortion. Deprez Aff. ¶ 34.

DEFENDANT'S RESPONSE: Objection. This statement should be excluded from the summary judgment record because the purported expert witness testimony goes beyond Plaintiffs' Expert Witness Designation. *Estate of Smith v*. *Salvesen,* 2016 ME 100, ¶ 15, 143 A.3d 780. In addition, this statement assumes that access to abortion is denied, which is not supported by the summary judgment record. Without waiving objection, the Department's response to this statement is qualified. *See* Dept's Resp. to PSMF ¶ 59, incorporated herein.

PLAINTIFFS' RESPONSE TO OBJECTION: Dr. Deprez was designated as an expert in "the importance of abortion access for poor and low-income women," and one of the reasons why abortion access is important is that it can reduce intimate partner violence—the subject of this statement. Defendant is incorrect that the statement assumes anything; rather, the statement speaks for itself. Defendant's objection should be overruled, and the statement should be considered admitted.

PLAINTIFFS' REPLY TO QUALIFICATION: Denied. Plaintiffs incorporate, by reference, their reply to Defendant's Response to PSMF ¶ 59.

129. [250] In some cases, poor and low-income women who cannot afford an abortion may be unable to adequately support themselves, their newborn child, and other children they already have—and, in most cases, will be far less likely to escape from poverty. Deprez Aff. ¶ 38.

DEFENDANT'S RESPONSE: Objection. This is a hypothetical statement based upon assumptions that are not supported by the record. Low income women in Maine are able to access abortion services through Plaintiffs, regardless of their inability to pay. Without waiving objection, the Department's response to this statement is qualified. *See* Dept's Resp. to PSMF ¶ 59, incorporated herein. Furthermore, pregnant women within the income standards are a mandatory categorically needy eligibility class under federal Medicaid law; in other words, the scope of their coverage and services under MaineCare is required by federal law. *See* 42 U.S.C. § 1396a(a)(10)(A)(i)(III); 42 C.F.R. § 435.116(b) ("The agency must provide Medicaid to pregnant women…") and (d).

PLAINTIFFS' RESPONSE TO OBJECTION: Defendant's objection contains no citation to any evidence in the record, or any rule of law. Defendant's objection should be overruled, and the statement should be considered admitted.

PLAINTIFFS' REPLY TO QUALIFICATION: Denied. Plaintiffs incorporate, by reference, their reply to Defendant's Response to PSMF ¶ 59.

130. [252] If a woman living in poverty wants but cannot get an abortion, she is subject to extraordinary stress of having a child that she did not want to have and may not have the resources to care for. Fay-LeBlanc Aff. ¶ 28.

DEFENDANT'S RESPONSE: Objection. This is a hypothetical statement based upon assumptions that are not supported by the record. Low income women in Maine are

able to access abortion services through Plaintiffs, regardless of their inability to pay. Without waiving objection, the Department's response to this statement is qualified. If women are unable to pay for abortion services, Plaintiffs still provide abortion services. Waning Dep. 50:13; 62:1-20; PPNNE0161-0169 (If women are unable to pay for abortion services, Plaintiffs still provide abortion services.); Coplon Dep. 50: 5-13; 62:1-25; 63:1-6 (Plaintiffs have not identified any instance in which abortion services were denied to a woman seeking an abortion due to lack of money). Furthermore, pregnant women within the income standards are a mandatory categorically needy eligibility class under federal Medicaid law; in other words, the scope of their coverage and services under MaineCare is required by federal law. *See* 42 U.S.C. § 1396a(a)(10)(A)(i)(III); 42 C.F.R. § 435.116(b) ("The agency must provide Medicaid to pregnant women…") and (d).

PLAINTIFFS' RESPONSE TO OBJECTION: Defendant's objection contains no citation to any evidence in the record, or any rule of law, and it should therefore be excluded. The extraordinary stress of having a child that a woman did not want to have and may not have the resources to care for is not hypothetical in any way, as Dr. Fay-LeBlanc's affidavit supports.

PLAINTIFFS' REPLY TO QUALIFICATION: Denied. Plaintiffs incorporate, by reference, their reply to Defendant's Response to PSMF ¶ 59.

131. [254] MaineCare coverage for abortion would remove a major obstacle in the path of a woman attempting to lift herself and her family out of poverty. Deprex Aff. ¶ 40.

DEFENDANT'S RESPONSE: Qualified. This statement is premised on the assumption that abortion services are denied, based upon lack of funds. This assumption is

not supported by the summary judgment record. *See* Dept's Resp. to PSMF ¶ 59, incorporated h erein.

PLAINTIFFS' RESPONSE TO OBJECTION: This statement is not premised on any assumption, but rather it speaks for itself. Defendant's objection should be overruled, and the statement should be considered admitted.

PLAINTIFFS' REPLY TO QUALIFICATION: Denied. Plaintiffs incorporate, by reference, their reply to Defendant's Response to ¶ 59.