

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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Zachary L. Heiden (Maine Bar No. 9476)  
American Civil Liberties Union of Maine  
Foundation  
121 Middle Street, Suite 200  
Portland, ME 04103  
(207) 619-6224

Counsel for Plaintiffs

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Alexa Kolbi-Molinas\*  
Meagan Burrows†  
American Civil Liberties Union Foundation  
125 Broad Street, 18th Floor  
New York, NY  
212-549-2633

Counsel for Plaintiffs Mabel Wadsworth  
Women's Health Center and Family Planning  
Association of Maine d/b/a Maine Family  
Planning and Primary Care Services

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Melissa Cohen\*  
Carrie Flaxman\*  
Planned Parenthood Federation of America  
1110 Vermont Avenue, N.W., Suite 300  
Washington D.C.  
202-973-4800

Counsel for Plaintiff Planned Parenthood of  
Northern New England

*\*admitted pro hac vice*

*† admission pro hac vice pending*

### **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.