

PENNSYLVANIA DEPARTMENT OF :
HUMAN SERVICES, TERESA :
MILLER, in her official capacity as :
Secretary of the Pennsylvania Department :
of Human Services, LEESA ALLEN, in :
her official capacity as Executive Deputy :
Secretary for the Pennsylvania :
Department of Human Service's Office of :
Medical Assistance Programs, and :
SALLY KOZAK, in her official capacity :
as Deputy Secretary for the Pennsylvania :
Department of Human Service's Office of :
Medical Assistance Programs, :
:
Respondents. :

NOTICE TO PLEAD

YOU ARE HEREBY NOTIFIED to file a written response to the enclosed Petition for Review in the Nature of a Complaint Seeking Declaratory Judgment and Injunctive Relief within twenty (20) days from service hereof, or a judgment may be entered against you.

By: _____

Date:

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ALLEGHENY REPRODUCTIVE
HEALTH CENTER, ALLENTOWN
WOMEN'S CENTER, BERGER &
BENJAMIN LLP, DELAWARE
COUNTY WOMEN'S CENTER,
PHILADELPHIA WOMEN'S CENTER,
PLANNED PARENTHOOD
KEYSTONE, PLANNED
PARENTHOOD SOUTHEASTERN
PENNSYLVANIA, and PLANNED
PARENTHOOD OF WESTERN
PENNSYLVANIA,

Petitioners,

v.

PENNSYLVANIA DEPARTMENT OF
HUMAN SERVICES, TERESA
MILLER, in her official capacity as
Secretary of the Pennsylvania Department
of Human Services, LEESA ALLEN, in
her official capacity as Executive Deputy
Secretary for the Pennsylvania
Department of Human Service's Office of
Medical Assistance Programs, and
SALLY KOZAK, in her official capacity
as Deputy Secretary for the Pennsylvania
Department of Human Service's Office of
Medical Assistance Programs,

Respondents.

No. _____

**PETITION FOR REVIEW IN THE
NATURE OF A
COMPLAINT SEEKING
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

**PETITION FOR REVIEW IN THE NATURE OF A
COMPLAINT SEEKING DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

INTRODUCTION

A woman's ability to determine whether and when to have children is essential to her health, equal citizenship, and liberty. For more than three decades, low-income women in Pennsylvania who choose to terminate their pregnancy and who would otherwise have their medical care covered by Medical Assistance have been forced to choose: continue their pregnancy to term against their will or use money that they would have used for shelter, food, clothing, or childcare to pay for the procedure. This is exactly the choice -- between health care and basic essentials -- that Medicaid was created to avoid. Yet low-income women in Pennsylvania, and women alone, routinely face this choice.

Pennsylvania's Medicaid program, known as Medical Assistance, provides health care coverage for low-income Pennsylvanians. Medical Assistance covers medical procedures to preserve and protect the health of both male and female low-income Pennsylvanians, with one glaring exception: it does not cover abortions, unless the pregnancy is caused by rape or incest, or where the abortion is necessary to avert the death of the pregnant woman. The denial of Medical Assistance coverage for low-income women seeking to terminate a pregnancy contravenes fundamental guarantees of equality and poses a dire threat to their

health and well-being. This denial pursuant to 18 Pa. C.S. § 3215(c) & (j) (the “Pennsylvania coverage ban”) violates the Pennsylvania Constitution’s Equal Rights Amendment and equal protection guarantees.

The Pennsylvania coverage ban was upheld by the Pennsylvania Supreme Court in 1985 in *Fischer v. Dep’t of Public Welfare*, 502 A.2d 114 (Pa. 1985). That case was incorrectly reasoned at the time, goes against recent developments in Pennsylvania law with respect to independent interpretations of our state constitution, and is contrary to a modern understanding of the ways in which the denial of women’s reproductive autonomy is a form of sex discrimination that perpetuates invidious gender and racial stereotypes. Petitioners seek reconsideration of *Fischer* and ultimately a court order requiring the Department of Human Services to comply with the Constitution by covering abortion through Medical Assistance.

JURISDICTION

1. This Court has original jurisdiction over this action pursuant to 42 Pa. C.S. § 761(a), because this action is brought against the Commonwealth government and agents of the Commonwealth government acting in their official capacities.

PARTIES

PETITIONERS

Allegheny Reproductive Health Center

2. Petitioner Allegheny Reproductive Health Center (“Allegheny Reproductive”) is a for-profit corporation incorporated in Pennsylvania. Its principal place of business is Pittsburgh, Pennsylvania.

3. Since 1975, Allegheny Reproductive has provided women in greater western Pennsylvania with a broad range of reproductive health care services, including: comprehensive gynecological care; screening and treatment for sexually transmitted infections; breast exams and mammogram referrals; and contraceptive counseling and medical services. Allegheny Reproductive performs surgical abortion through 23.6 weeks of pregnancy, measured from the first day of the woman’s last menstrual period (“LMP”). Allegheny Reproductive provides medication abortion through 10 weeks LMP. Allegheny Reproductive is enrolled as a Medicaid provider.

4. Many of Allegheny Reproductive’s patients are enrolled in or eligible for Medical Assistance benefits. These patients include women who seek abortions but who, due to the Pennsylvania coverage ban, cannot use their insurance to cover the procedure.

Allentown Women's Center

5. Petitioner Allentown Women's Center ("AWC") is a for-profit corporation incorporated in Pennsylvania. Its principal place of business is Bethlehem, Pennsylvania.

6. Since 1978, AWC has served patients from Berks, Bucks, Carbon, Lackawanna, Lehigh, Luzerne, Montgomery, Monroe, Northampton, and Schuylkill counties. AWC offers its patients comprehensive reproductive health care, including: comprehensive gynecological care; therapeutic and trauma-informed counseling services, such as pregnancy loss counseling and miscarriage management; contraceptive counseling and medical services; and LGBTQ-affirming services.

7. AWC performs surgical abortion through 22.6 weeks LMP. AWC provides medication abortion services up to 10 weeks LMP.

8. Many of AWC's patients are enrolled in or eligible for Medical Assistance benefits. These patients include pregnant people who seek abortions but who, due to the Pennsylvania coverage ban, cannot use their insurance to cover the procedure.

Berger & Benjamin

9. Petitioner Berger & Benjamin is a for-profit corporation incorporated in Pennsylvania. Its principal place of business is Philadelphia, Pennsylvania.

10. Since 1974, Berger & Benjamin has provided women in greater southeastern Pennsylvania with a complete range of reproductive health services, ranging from routine women's reproductive health services to treatment for complex and high-risk reproductive health issues.

11. Berger & Benjamin performs surgical abortion up to 20.6 weeks LMP, and provides medication abortion through 10 weeks LMP.

12. Many of Berger & Benjamin's patients are enrolled in or eligible for Medical Assistance. These patients include women who seek abortions but who, due to the Pennsylvania coverage ban, cannot use their insurance to cover the procedure.

Delaware County Women's Center

13. Petitioner Delaware County Women's Center ("DCWC") is a for-profit corporation incorporated in Pennsylvania. Its principal place of business is Chester, Pennsylvania.

14. Since 2013, DCWC has provided women in the greater Delaware County area with essential reproductive health and family planning

services. DCWC previously operated as the Reproductive Health and Counseling Center, which commenced its operations in 1973.

15. DCWC provides medication abortion care through 10 weeks LMP.

16. Many of DCWC's patients are enrolled in or eligible for Medical Assistance benefits. These patients include women who seek abortions but who, due to the Pennsylvania coverage ban, cannot use their insurance to cover the procedure.

Philadelphia Women's Center

17. Petitioner Philadelphia Women's Center ("PWC") is a for-profit corporation incorporated in Pennsylvania. Its principal place of business is Philadelphia, Pennsylvania.

18. Since 1972, PWC has provided women in the greater Philadelphia area with quality reproductive health and family planning services, and today serves as a training site for many nationally recognized medical institutions.

19. PWC performs surgical abortion up to 24 weeks LMP, and provides medication abortion through 10 weeks LMP.

20. Many of PWC's patients are enrolled in or eligible for Medical Assistance benefits. These patients include women who seek abortions but who,

due to the Pennsylvania coverage ban, cannot use their insurance to cover the procedure.

Planned Parenthood Keystone

21. Petitioner Planned Parenthood Keystone (“PPKeystone”) is a non-profit corporation incorporated in Pennsylvania. PPKeystone maintains administrative offices in Harrisburg, the Lehigh Valley, Warminster, and York, and operates nine health centers in Allentown, Bensalem, Harrisburg, Lancaster, Quakertown, Reading, Warminster, Wilkes-Barre, and York. PPKeystone serves thirty-seven counties throughout the Commonwealth, home to over half of Pennsylvanians.

22. Since 1926, health centers affiliated with PPKeystone have provided and promoted access to essential reproductive health care and family planning services, including: comprehensive gynecological care; cancer screenings; testing and treatment of sexually transmitted diseases; pregnancy testing; and contraceptive counseling and medical services. PPKeystone serves over 35,000 patients annually.

23. PPKeystone offers abortion services at its health centers in Allentown, Harrisburg, Reading, Warminster, and York. Each of these centers provides medication abortion through 10 weeks LMP and, with the exception of the Harrisburg location, performs surgical abortion up to 14 weeks LMP.

24. Many of PPKeystone's patients are enrolled in or eligible for Medical Assistance benefits. These patients include women who seek abortions but who, due to the Pennsylvania coverage ban, cannot use their insurance to cover the procedure.

Planned Parenthood Southeastern Pennsylvania

25. Petitioner Planned Parenthood Southeastern Pennsylvania ("PPSP") is a non-profit corporation incorporated in Pennsylvania. PPSP's administrative office is located in Philadelphia, Pennsylvania, and it operates ten health centers throughout Philadelphia, Coatesville, Media, Pottstown, Norristown, Upper Darby, and West Chester.

26. Since 1929, health centers affiliated with PPSP have provided and promoted access to essential reproductive health care and family planning services. Its services include comprehensive gynecological care, cancer screenings, testing and treatment of sexually transmitted infections, vaccinations, pregnancy testing, childbirth classes, adoption referrals, and contraceptive counseling and medical services.

27. PPSP offers abortion services at its health centers in Center City Philadelphia, Norristown, Northeast Philadelphia, and West Chester. Each of these centers provides medication abortion through 10 weeks LMP and, with the

exception of the Norristown location, performs surgical abortion up to varying gestational ages.

28. Many of PPSP's patients are enrolled in or eligible for Medical Assistance benefits. These patients include women who seek abortions but who, due to the Pennsylvania coverage ban, cannot use their insurance to cover the procedure.

Planned Parenthood of Western Pennsylvania

29. Petitioner Planned Parenthood of Western Pennsylvania ("PPWP") is a non-profit corporation incorporated in Pennsylvania. PPWP's administrative office is located in Pittsburgh, Pennsylvania, and it operates health centers located in Bridgeville, Greensburg, Johnstown, Moon Township, Pittsburgh and Somerset.

30. Since 1930, health centers affiliated with PPWP have provided and promoted access to essential reproductive health care and family planning services, including quality comprehensive gynecological care, contraceptive counseling, pregnancy testing and counseling, colposcopies and cryotherapy, pelvic and breast exams, and testing and treatment of sexually transmitted infections. PPWP's health care, education, and advocacy efforts reach people in 27 northwestern and southwestern counties of Pennsylvania.

31. PPWP offers abortion services at its health center in Pittsburgh, performing surgical abortion up to 18 weeks LMP, and providing medication abortion through 10 weeks LMP.

32. Many of PPWP's patients are enrolled in or eligible for Medical Assistance benefits. These patients include women who seek abortions but who, due to the Pennsylvania coverage ban, cannot use their insurance to cover the procedure.

Petitioners' Standing

33. Collectively, Petitioners provide about 95% of all abortions performed in the Commonwealth of Pennsylvania.

34. All Petitioners are enrolled Medical Assistance providers.

35. Due to the Pennsylvania coverage ban, the vast majority of Petitioners' Medical Assistance-eligible patients who need abortions cannot use their insurance to cover the procedure. As a result, Petitioners' low-income patients face substantial difficulty amassing the funds necessary to obtain the procedure.

36. Petitioners frequently offer these Medical Assistance-eligible women financial assistance, performing abortions at a financial loss to the organization. Petitioners also invest their own time and resources to identify and secure private funding sources to assist low-income women to pay for their abortion, resulting in a loss of time and productivity for Petitioners' staff.

37. In some cases, Medical Assistance-eligible women are forced to delay their abortion procedures while they attempt to gather funds. This results in women prolonging their pregnancies before getting an abortion, which for some women results in delay past the gestational age at which they can obtain a medical abortion, thus requiring a different type of procedure. For other women, the delay causes an increase in the risk and cost of the procedure.

38. For some low-income women, the coverage ban means that they ultimately must forgo obtaining an abortion altogether and are forced to carry the pregnancy to term, either having never secured the funds necessary to afford the procedure, or having faced such lengthy delays that they become ineligible for the procedure.

39. Petitioners sue on behalf of their patients who seek abortions and who are enrolled in or eligible for Medical Assistance, but whose abortions are not covered because of the Pennsylvania coverage ban.

RESPONDENTS

40. Respondent Pennsylvania Department of Human Services (“DHS”), located in Harrisburg, Pennsylvania, is sued as the Commonwealth agency responsible for administering Pennsylvania’s Medical Assistance programs. *See* 62 P.S. § 403.

41. Respondent Teresa Miller (“Secretary Miller”) is sued in her official capacity as the Secretary of DHS, located in Harrisburg, Pennsylvania. Secretary Miller is responsible for the control and supervision of the Office of Medical Assistance Programs, the medical insurance program for Pennsylvanians living in poverty, and is responsible for implementing Pennsylvania’s Medical Assistance program in accordance with federal and state law. *See* 62 P.S. §§ 403, 403.1.

42. Respondent Leesa Allen (“Deputy Secretary Allen”) is sued in her official capacity as the Executive Deputy Secretary for Medical Assistance Programs, located in Harrisburg, Pennsylvania. Deputy Secretary Allen plans, coordinates, and directs the provision of Medical Assistance benefits and services in Pennsylvania and is responsible for ensuring that the program is in compliance with federal and state law.

43. Respondent Sally Kozak (“Deputy Secretary Kozak”) is sued in her official capacity as the Deputy Secretary for the Office of Medical Assistance Programs, located in Harrisburg, Pennsylvania. Deputy Secretary Kozak assists in planning, coordinating, and directing the provision of Medical Assistance benefits and services in Pennsylvania and is responsible for ensuring that the program is in compliance with federal and state law.

STATEMENT OF FACTS

STATUTORY AND REGULATORY FRAMEWORK

44. Medicaid is a joint federal-state program that provides medical assistance to the poor. 42 U.S.C. §§ 1396 to 1396w-5. Medical Assistance is Pennsylvania's Medicaid program. 62. P.S. §§ 431-437.

45. Medical Assistance is a public insurance system that provides eligible Pennsylvanians with medical insurance for covered medical services that fall within the scope of benefits as set forth at 55 Pa. C.S. § 1101.31.

46. Pennsylvania operates two different Medical Assistance programs -- Fee-for-service and HealthChoices. The Fee-for-service program reimburses providers directly for covered medical services provided to enrollees. HealthChoices is a managed care program, meaning DHS pays a per enrollee amount to managed care organizations that agree to reimburse health care providers that provide care for enrollees.

47. With some exceptions, Medical Assistance enrollees are required to enroll with a managed care organization participating in HealthChoices rather than the Fee-for-service program. As of July 1, 2018, 84.6% of Pennsylvania Medical Assistance enrollees were in a HealthChoices managed care plan, and 15.4% were in the Fee-for-service program.

48. Medical Assistance covers comprehensive medical care for its enrollees. Relevant to this Petition, Medical Assistance covers inpatient hospital services, outpatient hospital services, physicians' services, clinic services at independent medical clinics and ambulatory surgical centers, and family planning services, 55 Pa. C.S. §§ 1101.31(b)(1), (3), (8), (11), (16), as well as all pregnancy-related care except abortion, including prenatal care, obstetric, childbirth, neonatal, and post-partum care.

49. The Pennsylvania coverage ban prohibits the expenditure of state funds "for the performance of an abortion." 18 Pa. C.S. § 3215(c). The law contains three exceptions: 1) abortions that are necessary to avert the death of the pregnant woman, 2) when the pregnancy is caused by rape, and 3) when the pregnancy is caused by incest.

50. Implementing the Pennsylvania coverage ban, Medical Assistance regulations likewise prohibit coverage of abortion except in those same three circumstances -- threat to the woman's life, rape, and incest. 55 Pa. Code § 1141.57 (physicians' services); *id.* at § 1163.62 (inpatient hospital services); *id.* at § 1221.57 (clinic and emergency room services). Accordingly, Medical Assistance does not cover the cost of abortion procedures for covered individuals who seek abortions that do not fit within any of the three enumerated exceptions.

51. Health care providers, like Petitioners, are prohibited by DHS regulation from billing for services inconsistent with Medical Assistance regulations and are subject to sanctions for doing so. 55 Pa. Code §§ 1141.81, 1163.491, 1221.81. Health care providers who bill HealthChoices managed care organizations are also prohibited from billing for services inconsistent with Medical Assistance regulations and are subject to sanctions for doing so. *Id.* § 1229.81.

52. Thus, Petitioners are prohibited from billing or being reimbursed for abortions for both Fee-for-service and HealthChoices enrollees that do not fall within the Pennsylvania coverage ban's three enumerated exceptions.

53. Although federal law bars the use of federal Medicaid funds to cover the cost of abortion other than in cases of threat to the woman's life, rape, and incest, federal law does not prevent states from using state funds to provide coverage for a broader range of services. Sixteen states, including three of Pennsylvania's neighbors (New Jersey, New York, and Maryland) allow Medicaid to cover abortions under their state Medicaid programs beyond these three exceptions.

54. There is no parallel coverage ban for men. There is no medical condition specific to men for which Medical Assistance denies coverage. When a male recipient requires a covered service, including all services related to

reproductive health, Medical Assistance covers it. In contrast, when a woman requires an abortion, Medical Assistance covers it only if she would otherwise die or if the pregnancy results from rape or incest.

55. Medical Assistance covers medical care for pregnancy and childbirth for women who choose to continue their pregnancy to term. The medical costs to the Medical Assistance program associated with covering pregnancy and childbirth services far exceed the cost of an abortion, particularly for women with medically complicated pregnancies.

EFFECT OF THE PENNSYLVANIA COVERAGE BAN

56. In 2016, the latest year for which Pennsylvania Department of Health data are available, Pennsylvania providers performed 30,881 abortions. Petitioners account for fifteen of the seventeen freestanding abortion providers in the state and collectively provide approximately 95% of the abortions performed in Pennsylvania.

57. Many of Petitioners' patients are low income and either enrolled in or eligible for Medical Assistance. For example, an estimated 47% of PPSP's patients, 45% of AWC's patients, 50% of Allegheny Reproductive's patients, 60% of Benjamin & Berger's patients, and 46% of PPWP's patients are enrolled in or eligible for Medical Assistance.

58. Both women on Medical Assistance who seek abortions in Pennsylvania and Petitioners suffer significant harm from the Pennsylvania coverage ban and its implementing regulations.

59. The coverage ban interferes with the ability of poor women in Pennsylvania to access the abortion care they need. The Pennsylvania coverage ban forces women on Medical Assistance who seek abortions in Pennsylvania to choose between continuing their pregnancy to term against their will and using money that they would have otherwise used for daily necessities, such as shelter, food, clothing, or childcare, to pay for the procedure. *See generally* Expert Declaration of Colleen M. Heflin, attached hereto as Exhibit A; Expert Declaration of Elicia Gonzales, attached hereto as Exhibit B. This is exactly the choice -- between health care and basic essentials -- that Medicaid was created to avoid.

60. Access to a provider of abortion care is a significant problem for many women in Pennsylvania, but the problem is far worse for poor women and women living in rural areas. *See* Ex. A, Heflin Dec. Most counties in Pennsylvania do not have an abortion provider. In fact, only 16% of Pennsylvania counties have a facility that performs abortions. This means that women from the rest of the state must travel significant distances to obtain an abortion. In 2017, AWC estimated that approximately 40% of its abortion patients had to travel between 50 to 99 miles one way to get their procedure, and about 10% traveled

between 100 miles to over 200 miles for abortion care. PPWP estimates that approximately 17.5% of its patients traveled more than 50 miles one way to get their procedure, and about 8% traveled more than 100 miles for abortion care. Allegheny Reproductive estimates that around 70% to 75% of its abortion patients travel more than 50 miles one way, and that 30% of its patients travel over 100 miles for abortion care. The need to travel long distances increases the costs associated with the procedure, as bus fare, gas, tolls, lodging, time lost from work, and child care expenses come into play. These added expenses -- some of which would be covered medical transportation expenses under Medicaid if abortion were covered -- make it even more difficult for low-income women in Pennsylvania to access abortion care, if they can make the trip at all. *Id.*

61. In many cases, women on Medical Assistance who seek abortions in Pennsylvania are forced to delay abortion care in order to raise funds for their procedure. *Id.*

62. All Petitioners work with low-income patients who need funding from private charitable sources to help pay for their procedure; however, not all patients are able to obtain private financial assistance. *See Ex. B, Gonzales Dec.* For example, half of all Allegheny Reproductive abortion patients are enrolled in or eligible for Medical Assistance; only 43% of those patients are able to access private funding for their procedure. Benjamin & Berger estimates that 60

to 70% of its low-income patients receive 20 to 40% of the cost of the procedure through third-party funding grants. Accordingly, even patients who are able to secure grants must raise part of the cost of the procedure, which causes these patients significant economic hardship. *Id.*

63. For many poor women, the obstacles caused by these coverage restrictions are not merely burdensome, but insurmountable. National studies show that roughly 25% of women on Medicaid who seek an abortion in a state with a coverage ban are forced to continue their pregnancies to term against their will because they are unable to acquire the funds to pay for the procedure. *See* Expert Declaration of Terri-Ann Thompson, attached hereto as Exhibit C.

64. As a result of the Pennsylvania coverage ban, there are Pennsylvania women who are forced to carry their pregnancies to term against their will. *Id.*

HARM TO WOMEN WHO ARE FORCED TO CARRY THEIR PREGNANCIES TO TERM

65. Women who are forced to carry their pregnancies to term against their will because of the Pennsylvania coverage ban are harmed in many ways. They are denied the autonomy and dignity that come with being able to control their reproductive future. When women are denied control over whether or not to have children, their plans for the future, financial status, and ability to participate equally in society are placed at risk. *See* Ex. A, Heflin Dec. For low-

income women, trying to maintain a job, obtain an education, or adequately care for family members can become close to impossible. *Id.*

66. Women who are forced to carry a pregnancy to term against their will face an increased risk of psychosocial harm. Their education may be interrupted, their job and career prospects circumscribed. *Id.* A year after unsuccessfully seeking abortion, they are more likely to be impoverished, unemployed, and depressed than women in similar circumstances who were able to obtain abortion care. *Id.*

67. While both pregnancy and childbirth are a source of joy for many women and families, carrying a pregnancy to term carries medical risks for all women. Expert Declaration of Courtney Anne Schreiber, attached hereto as Exhibit D. Indeed, the maternal mortality risks associated with childbirth are approximately fourteen times greater than the risk associated with abortion care. The risk for African-American women of carrying a pregnancy to term is even higher, as the African-American maternal mortality rate is three times that of white women.

68. In Pennsylvania in particular, according to Pennsylvania's Department of Health, almost 13 women die within 42 days of the end of pregnancy for every 100,000 live births in the state, a rate that has doubled since 1994. In cities like Philadelphia, that rate is much higher.

69. Pregnancy can affect women's physical and mental health in serious ways, some of which can result in permanent disability and even ultimately lead to life-threatening conditions. For example, pregnancy taxes every organ of the body, including the brain, the heart, and the immune system. *Id.* During pregnancy, a woman's blood volume increases by 30-50%, and her heart rate also increases. *Id.* This forces a pregnant woman's heart to work much harder throughout her pregnancy, during labor and delivery, and after giving birth. *Id.* A woman's immune system is also weakened during pregnancy, making her more vulnerable to infections. *Id.*

70. The risks associated with pregnancy and childbirth are particularly acute for women with pre-existing conditions, such as heart disease, lupus, cancer, diabetes, obesity, hypertension, renal disease, liver disease, epilepsy, sickle cell disease and numerous other conditions. *Id.* Unable to cover the cost of terminating a pregnancy, a woman with a pre-existing condition may be forced to continue a pregnancy that can exacerbate these conditions, and pose serious threats to the woman's long-term health by causing seizures, diabetic coma, hemorrhage, heart damage, and loss of kidney function. *Id.* This health damage, though serious and potentially life-threatening, is usually not imminent enough to qualify the patient for abortion coverage under the statutory exception to the coverage ban,

which requires that the abortion be necessary to “avert the death” of the woman, rather than to avoid serious long-term health consequences.

71. Pregnancy can also force a woman to alter current treatment or medication plans for the safety of the fetus, but to the detriment of her own health. *Id.* Some treatment plans, such as mental health medication or cancer treatments, are incompatible with pregnancy. Accordingly, a woman undergoing these treatments will be forced to choose between halting or compromising critical medical care or placing the fetus at risk. This can result in devastating health outcomes.

72. In addition to exacerbating pre-existing conditions, pregnancy can also harm a woman’s health in its own right; pregnancy and childbirth carry inherent health risks for all pregnant women. *Id.* Moreover, some women who were otherwise healthy at the beginning of their pregnancy may develop serious complications during the pregnancy such as gestational diabetes, hypertension, or hyperemesis gravidarum. *Id.*

73. The risks associated with pregnancy are not limited to physical health. Pregnancy and the postpartum period are times of increased vulnerability to mental health issues. Expert Declaration of Sarah C. Noble, attached hereto as Exhibit E. 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. *Id.* The weeks and months immediately following birth also pose a risk for postpartum depression, which can be severe for some women. *Id.*

74. Some women's mental health issues are directly related to not being able to terminate their pregnancy. Women may suffer severe psychological distress as a result of being forced to continue an unwanted pregnancy. *Id.* Other women who learn the fetus they are carrying has a severe anomaly or has a condition incompatible with life may also suffer severe distress from being unable to terminate the pregnancy.

75. Preventing access to abortion for low-income women can also increase their exposure to physical and mental abuse at the hands of their partners, as abuse can increase when a woman becomes pregnant, and the abuse may target the locus of the pregnancy. *See id.* Moreover, if forced to remain with a partner in order to support a new child, abused women and their children are likely to suffer serious physical and psychological harm, and even deadly consequences. *See id.*

HARM TO WOMEN WHO ARE ABLE TO OBTAIN AN ABORTION DESPITE THE COVERAGE BAN

76. Some women on Medical Assistance in Pennsylvania are able to obtain an abortion despite the Pennsylvania coverage ban. Nonetheless, those women are still likely to suffer because of it.

77. The cost of an abortion in Pennsylvania ranges from several hundred dollars to several thousand, depending on how far along in the pregnancy the woman is, the type of abortion she has, whether she has any underlying medical conditions, and what type of facility cares for her. Ex. B, Gonzales Dec.

78. For women on Medical Assistance, who are near or below the federal poverty line, this amount of money is often more than they have. When a woman is living paycheck to paycheck, denying coverage for an abortion can push her deeper into poverty.

79. As a result, to pay for their abortion, impoverished women on Medical Assistance are forced to make enormous financial sacrifices. Low-income women are forced to divert funds they need for basic subsistence, such as rent, utilities, food, diapers, children's clothing, and medical care. *Id.*; Ex. A, Heflin Dec. Others are forced to ask for money from relatives and friends, jeopardizing the confidentiality of their pregnancy and abortion decision. Ex. B, Gonzales Dec.

80. Raising the money through these means takes time, and the cost of an abortion procedure increases further in pregnancy. With increased price comes increased difficulty to raise funds, which results in additional delay. This is a vicious cycle that sometimes leads to women being forced into a surgical abortion even if she prefers a medication abortion or being delayed beyond the gestational limit at the closest abortion clinic or even beyond the legal limit to

obtain an abortion in Pennsylvania. And some women are not able to raise enough money at all.

81. Although abortion at all stages of pregnancy is safer than childbirth, as pregnancy advances, abortion presents additional risks. Thus, the delay that women on Medical Assistance face while trying to raise the funds to pay for their abortion causes them to face an increased risk of medical complications from their abortion. Ex. D, Schreiber Dec.

82. Delay can also cause some women to have a more invasive procedure than they would have otherwise sought. Delay can push women beyond the gestational limit for a medical abortion, requiring them to have a surgical procedure instead. Delay can also force women to have a two-day procedure when they would have otherwise been able to complete it in just one.

83. The harm imposed by the Pennsylvania coverage ban does not fall evenly upon all women. Restrictions on funding for abortion care particularly harm women of color. Ex. C, Thompson Dec. This is because women of color are more likely than white women to be poor. In Pennsylvania, 25.8% percent of Black women, 30.5% of Latinx women, and 15.5% of Asian women live in poverty, compared with 10.5% of white women. Additionally, low-income women of color are more likely to rely on Medical Assistance for health care and less likely to be

able to afford out-of-pocket costs for their abortion compared to their white counterparts.

HARM TO PETITIONERS

84. Because of the coverage ban, health care providers, like Petitioners, who provide abortions in Pennsylvania are also harmed. Petitioners' mission to provide comprehensive reproductive health care to women and to serve at-risk populations is frustrated by the coverage ban because it forces Petitioners to divert money and staff time from other mission-central work to help Pennsylvania women on Medical Assistance who do not have enough money to pay for their abortion.

85. Petitioners regularly subsidize (in part or in full) abortions for Pennsylvania women on Medical Assistance who are not able to pay the fee on their own. Petitioners lose money on the abortion procedures they subsidize.

86. Petitioners also expend valuable staff resources to assist patients in securing funding from private charitable organizations that fund abortion for women on Medical Assistance. These local, regional, and national organizations help some, but not all, low-income women pay for abortions. Petitioners devote anywhere from part of a full-time staff position to multiple full-time staff positions connecting patients with these organizations, managing the funding that comes from these organizations, and communicating with patients

about their financial situations once the funding from these organizations comes through.

87. The Pennsylvania coverage ban also interferes with Petitioners' counseling of patients. The coverage ban forces Petitioners to expend their counselors' time delving into personal matters that the patient may wish not to discuss, such as whether the sex that led to conception was non-consensual or with a family member, just to assess the patient's eligibility for Medical Assistance funding. At times, exploring these personal matters can be painful, intrusive and without any medical or therapeutic purpose, and may create difficulties in the patient-counselor relationship for patients who would otherwise not want to talk about these sensitive matters.

COUNT ONE

THE PENNSYLVANIA COVERAGE BAN VIOLATES PENNSYLVANIA'S EQUAL RIGHTS AMENDMENT

88. Petitioners reallege and incorporate herein by reference each and every allegation of paragraphs 1 to 87 inclusive.

89. Pennsylvania's Equal Rights Amendment, Article I, Section 28 of the Pennsylvania Constitution, states: "Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the sex of the individual." The Equal Rights Amendment, which has no federal counterpart, prohibits all sex-based discrimination by government officials in Pennsylvania.

90. Any classification that disadvantages women based on pregnancy or reproductive capacity constitutes a sex-based distinction. The Pennsylvania coverage ban singles out and excludes abortions, a procedure sought singularly by women as a function of their sex, from Pennsylvania's Medical Assistance programs. In contrast, there is no statute or regulation that singles out or excludes any sex-based healthcare consultation or procedure for men under Medical Assistance. By singling out and excluding abortions from Medical Assistance, women throughout this Commonwealth are denied coverage for essential health care services solely on the basis of their sex.

91. The coverage ban also flows from and reinforces gender stereotypes about the primacy of women's reproductive function and maternal role, and thus offends the Pennsylvania Equal Rights Amendment's prohibition against sex discrimination.

92. Because the Pennsylvania coverage ban improperly discriminates against women based on their sex without sufficient justification, the ban, as enforced and administered by DHS, Secretary Miller, and Deputy Secretaries Allen and Kozak, violates women's constitutional right to equality of rights under the law, as guaranteed by Article I, Section 28 of the Pennsylvania Constitution.

COUNT TWO

THE PENNSYLVANIA COVERAGE BAN VIOLATES PENNSYLVANIA'S EQUAL PROTECTION PROVISIONS

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

94. Pennsylvania's Constitution protects against denials of equal protection through Article I, Sections 1 and 26, and Article III, Section 32. In particular, Article I, Section 1 guarantees that all persons within the Commonwealth "have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty . . . and of pursuing their own happiness," Article I, Section 26 states that "[n]either the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right," and Article III, Section 32 provides that the "General Assembly shall pass no local or special law in any case which has been or can be provided by general law." These provisions together guarantee equal protection of the law and prohibit discrimination based on the exercise of a fundamental right.

95. The Pennsylvania coverage ban singles out and excludes women from exercising the fundamental right to choose to terminate a pregnancy, while covering procedures and health care related to pregnancy and childbirth. By singling out and excluding abortions from Medical Assistance, women throughout

this Commonwealth who seek abortion care are being discriminated against for exercising their fundamental right to choose to terminate a pregnancy.

96. Because the Pennsylvania coverage ban operates to discriminate singularly against those women who seek abortion-related health care services by denying them coverage under Pennsylvania's Medical Assistance programs, the Pennsylvania coverage ban, as enforced and administered by DHS, Secretary Miller, and Deputy Secretaries Allen and Kozak, discriminate based on the exercise of a fundamental right under the equal protection principles of Article I, Sections 1 and 26, and Article III, Section 32 of the Pennsylvania Constitution.

WHEREFORE, Petitioners respectfully request that the Court declare the Pennsylvania coverage ban, 18 Pa. C.S. § 3215(c) & (j) and its implementing regulations, 55 Pa. Code §§ 1147.57, 1163.62, 1221.57, unconstitutional under Article I, Section 28, and/or Article I, Sections 1 and 26, and Article III, Section 32, of the Pennsylvania Constitution; declare that abortion is a fundamental right under the Pennsylvania Constitution; enjoin enforcement of the Pennsylvania coverage ban, 18 Pa. C.S. § 3215(c) & (j), and its implementing regulations, 55 Pa. Code §§ 1147.57, 1163.62, 1221.57; and grant Petitioners such other, further, and different relief as the Court may deem just and proper.

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.



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