

1 Jennifer Lee*
2 Brigitte Amiri*
3 Alyson Zureick*
4 American Civil Liberties Union
5 Foundation
6 125 Broad Street
7 New York, New York 10004
8 (212) 549-2633
9 jlee@aclu.org
10 bamiri@aclu.org
11 azureick@aclu.org

12 Daniel Pochoda (AZ Bar No. 021979)
13 American Civil Liberties Union
14 Foundation of Arizona
15 3707 North 7th Street, Suite 235
16 Phoenix, Arizona 85014
17 (602) 650-1854
18 dpochoda@acluaz.org

19 *Attorneys for Plaintiffs Desert Star Family
20 Planning, LLC, DeShawn Taylor, M.D.,
21 Eric Reuss, M.D., M.P.H, Jane Does #2-5*

22 **Applications for admission pro hac
23 vice forthcoming*

24 **IN THE UNITED STATES DISTRICT COURT
25 FOR THE DISTRICT OF ARIZONA**

26 Planned Parenthood Arizona, Inc.; Desert Star
27 Family Planning, LLC; Deshawn Taylor,
28 M.D.; Eric Reuss, M.D., M.P.H.; Jane Does
#1-5,

Plaintiffs,

v.

Thomas Betlach, Director, Arizona
Health Care Cost Containment System,
in his official capacity,

Defendant.

Diana Salgado*
Planned Parenthood Federation of America
434 West 33rd Street
New York, New York 10001
(212) 541-7800
diana.salgado@ppfa.org

Daniel B. Pasternak (AZ Bar No. 023751)
Laura Lawless Robertson (AZ Bar No. 023951)
Squire Patton Boggs (US) LLP
1 East Washington Street, Suite 2700
Phoenix, Arizona 85004
(602) 528-4000
daniel.pasternak@squirepb.com
laura.robertson@squirepb.com

*Attorneys for Plaintiffs Planned Parenthood
of Arizona, Inc. and Jane Doe #1*

Civil Action No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 Plaintiffs Planned Parenthood Arizona, Inc. (“PPAZ”), Desert Star Family
2 Planning, LLC (“Desert Star”), DeShawn Taylor, M.D., and Eric Reuss, M.D., M.P.H.,
3 (collectively, the “Provider Plaintiffs”), and Plaintiffs Jane Doe #1, Jane Doe #2, Jane Doe
4 #3, Jane Doe #4, and Jane Doe #5 (collectively, the “Jane Doe Plaintiffs”) (collectively,
5 with the Provider Plaintiffs, “Plaintiffs”), by and through their attorneys, bring this
6 Complaint against Defendant Thomas Betlach in his official capacity as Director of the
7 Arizona Health Care Cost Containment System (“AHCCCS”).

8 **INTRODUCTORY STATEMENT**

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

12 2. Medicaid enrollees are guaranteed the right to receive covered services
13 from the qualified provider of their choice by federal law. *See* 42 U.S.C. § 1396a(a)(23).
14 In this case, the Provider Plaintiffs’ patients, including the Jane Doe Plaintiffs, choose to
15 receive care from the Provider Plaintiffs — highly qualified medical providers that
16 provide a range of reproductive health services, including abortion.

17 3. On May 17, 2016, Arizona Governor Doug Ducey signed into law Arizona
18 H.B. 2599, 2nd Regular Session, 52nd Legislature (2016). In direct violation of federal
19 law, a provision of H.B. 2599, to be codified at ARIZ. REV. STAT. § 36-2930.02(B)(6)
20 (“H.B. 2599” or “the Act”), attached hereto as Exhibit A, threatens to prevent the Provider
21 Plaintiffs’ patients, including the Jane Doe Plaintiffs, from obtaining critical, ongoing care
22 from the qualified providers of their choice.

23 4. Specifically, the Act empowers AHCCCS, the Medicaid agency in Arizona,
24 to exclude from participation in Arizona’s Medicaid program any “individual or entity”
25 that “[f]ailed to segregate taxpayer dollars from abortions, including the use of taxpayer
26 dollars for any overhead expenses attributable to abortions.” H.B. 2599. The federal
27 Medicaid statutes do not permit Arizona to impose this requirement as a condition of
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1 participation in Medicaid. Unless enjoined, this impermissible requirement threatens to
2 exclude the Provider Plaintiffs from the Medicaid program, thereby restricting their ability
3 to provide — and their patients’, including the Jane Doe Plaintiffs’, ability to access —
4 vital women’s health services.

5 5. This is not the first time that Arizona has attempted to restrict the right of
6 Medicaid participants to obtain health care from the qualified provider of their choice,
7 simply because those providers also provide abortions. In 2012, Arizona enacted House
8 Bill 2800 (“H.B. 2800”), 2nd Regular Session, 50th Legislature, codified at ARIZ. REV.
9 STAT. § 35-196.05. H.B. 2800 prohibited any person or entity that performs abortions —
10 other than in cases of rape, incest, or threats to the woman’s health or life — from
11 participating in Arizona’s Medicaid program. Plaintiffs PPAZ, Dr. Reuss, and three Jane
12 Doe plaintiffs challenged that law and sought injunctive and declaratory relief that H.B.
13 2800 violated the Medicaid statutes and the United States Constitution.

14 6. As a result, this Court enjoined the law, finding that “Arizona lacks [the]
15 authority . . . [to] restrict a beneficiary’s right to select any qualified provider for reasons
16 wholly unrelated to the provider’s ability to deliver Medicaid Services.” *Planned*
17 *Parenthood Ariz., Inc. v. Betlach*, 922 F. Supp. 2d 858, 864 (D. Ariz. 2013). On appeal,
18 the Ninth Circuit Court of Appeals agreed with the District Court that the “Arizona law
19 violates [federal Medicaid law] by precluding Medicaid patients from using medical
20 providers concededly qualified to perform family planning services to patients in Arizona
21 generally, solely on the basis that those providers separately perform privately funded,
22 legal, abortions.” *Planned Parenthood Ariz., Inc. v. Betlach*, 727 F.3d 960, 963 (9th Cir.
23 2013), *cert. denied*, 134 S. Ct. 1283 (2014). Undeterred by these unambiguous rulings,
24 Arizona enacted the instant Act as a thinly-veiled attempt to avoid the clear holding and
25 reasoning in *Betlach*.

26 7. As in *Betlach*, the Provider Plaintiffs are qualified to provide healthcare
27 services to their Medicaid patients, including the Jane Doe Plaintiffs, who depend on them
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1 for that care. Yet once again, Arizona is attempting to bar the Provider Plaintiffs from
2 participating in the Medicaid program simply because they provide legal abortion services
3 to Arizona women.

4 8. Accordingly, Plaintiffs seek declaratory and injunctive relief. The Act
5 violates Section 1396a(a)(23) of the Medicaid Act because it threatens to prevent the
6 Provider Plaintiffs' patients, including the Jane Doe Plaintiffs, from obtaining medical
7 care from their qualified provider of choice. The Act also violates the Provider Plaintiffs'
8 due process rights under the Fourteenth Amendment because it does not give the Provider
9 Plaintiffs fair notice of what they must do to comply with the Act's terms, thus placing
10 them at risk of arbitrary enforcement, and it also disqualifies Provider Plaintiffs from
11 receiving government funds because they provide constitutionally protected abortions.
12 Finally, the Act violates the Equal Protection Clause because it singles out for unfair
13 treatment only Medicaid providers who provide constitutionally protected abortions.
14 Because there is no adequate remedy at law for these ongoing harms, Plaintiffs require
15 injunctive relief.

16 9. The Act is scheduled to take effect on August 6, 2016. An injunction is
17 required to ensure that the Act does not cause significant and irreparable harm to the
18 Provider Plaintiffs and to their patients, including the Jane Doe Plaintiffs, who are at risk
19 of losing their provider of choice, having their reproductive healthcare interrupted, and —
20 particularly in certain underserved areas — being left with few or no alternative health
21 care providers.

22 **I. JURISDICTION AND VENUE**

23 10. Subject matter jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331
24 and 1343.

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

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

2 **II. THE PARTIES**

3 **A. Plaintiffs**

4 13. Plaintiff PPAZ is a not-for-profit corporation organized under the laws of
5 Arizona. PPAZ brings this action on behalf of itself, its physicians who are Medicaid
6 providers, and its Medicaid patients. PPAZ is the largest provider of reproductive health
7 services in Arizona and operates eleven health centers throughout the state. For nearly 25
8 years, PPAZ has participated in the Medicaid program, providing medical services to low-
9 income enrollees, and has never been excluded from the Medicaid program. PPAZ
10 provides comprehensive reproductive health services to women throughout Arizona,
11 including pap smears, testing and treatment for sexually transmitted diseases, breast
12 exams, HPV immunizations, and contraceptives. PPAZ also provides abortions at four of
13 its health centers, and has received Medicaid reimbursements for certain medically
14 necessary abortion services in accordance with state and federal law. For the 12-month
15 period from June 1, 2014 through May 31, 2015, PPAZ provided services during more
16 than 45,000 family planning visits, approximately 5,000 of which were for Medicaid
17 patients.

18 14. Plaintiff Desert Star is a private physician practice located in Phoenix,
19 Arizona, which provides comprehensive family planning, well-woman care, basic men's
20 sexual health services, abortion services, and miscarriage management. Desert Star has
21 served Medicaid patients since 2013, and has never been excluded from the Medicaid
22 program. Desert Star has received Medicaid reimbursements for certain medically
23 necessary abortion services in accordance with state and federal law. Plaintiff DeShawn
24 Taylor, M.D., is Desert Star's owner and medical director, and is a board-certified
25 obstetrician-gynecologist licensed to practice medicine in Arizona. She has been a
26 Medicaid provider since 2009 and has never been excluded from the Medicaid program.

1 Desert Star and Dr. Taylor sue on their own behalves and on behalf of their Medicaid
2 patients.

3 15. Plaintiff Eric Reuss, M.D., M.P.H., is a board-certified obstetrician-
4 gynecologist licensed to practice medicine in Arizona. He has a private, solo, general
5 obstetrics and gynecology practice, Scottsdale Obstetrics & Gynecology, P.C., in
6 Scottsdale, Arizona. Dr. Reuss provides his patients with the full range of general
7 obstetrics and gynecology care, including well-woman care; prenatal care; labor and
8 delivery care; family planning services; and abortion care. Dr. Reuss has participated in
9 the Medicaid program since 2001 and has never been excluded from the Medicaid
10 program. Dr. Reuss sues on his own behalf and on behalf of his Medicaid patients.

11 16. Each of the physician Provider Plaintiffs has professional medical licenses
12 that they wish to preserve in good standing so that they may practice their profession.

13 17. Plaintiff Jane Doe #1 is an Arizona resident and Medicaid patient who has
14 been a longtime patient of PPAZ, where she has received well-woman exams, STI
15 screenings, and contraceptives. She wishes to continue to obtain her reproductive health
16 care from PPAZ, including contraceptive counseling, contraception, and her well-woman
17 exams. She sues on her own behalf.

18 18. Plaintiff Jane Doe #2 is an Arizona resident and Medicaid patient who is
19 currently pregnant and receiving prenatal care from Dr. Reuss and is due to be delivered
20 by Dr. Reuss in September 2016. Leading up to her due date she will continue to have
21 monthly, then bi-weekly, then weekly prenatal appointments. After her baby is born she
22 intends to receive postnatal care from Dr. Reuss. She sues on her own behalf.

23 19. Plaintiff Jane Doe #3 is an Arizona resident and Medicaid patient who is
24 currently pregnant and receiving prenatal care from Dr. Reuss and is due to have her baby
25 delivered by Dr. Reuss in November 2016. Leading up to her due date she will continue
26 to have monthly, then bi-weekly, then weekly prenatal appointments. After her baby is
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1 born she intends to receive postnatal and general gynecological care, including her well-
2 woman exams, from Dr. Reuss. She sues on her own behalf.

3 20. Plaintiff Jane Doe #4 is an Arizona resident and Medicaid patient who has
4 been a longtime patient of Dr. Reuss, from whom she receives her annual well-woman
5 exams, pap smears, STI testing, and prescriptions for birth control. Her last appointment
6 with Dr. Reuss was in June 2016, and she plans to return in June 2017 for her next annual
7 exam. She sues on her own behalf.

8 21. Plaintiff Jane Doe #5 is an Arizona resident and Medicaid patient and has
9 received care from Dr. Taylor at Desert Star in the past. She is in the process of enrolling
10 in a different managed care organization so that she may obtain reproductive care from
11 Desert Star in the future. She plans to obtain a well-woman exam at Desert Star this fall.
12 She sues on her own behalf.

13 22. Each of the Jane Doe Plaintiffs appears pseudonymously because of the
14 private and personal nature of the medical care she receives, and she desires to assert her
15 legal rights without having to disclose private medical information.

16 **B. Defendant**

17 23. Defendant Thomas J. Betlach is the Director of AHCCCS, the agency that
18 administers Arizona's Medicaid program, and which, under the Act, is authorized to
19 terminate the Provider Plaintiffs' participation in the Medicaid program and,
20 consequently, prevent their patients, including the Jane Doe Plaintiffs, from obtaining
21 covered health care services from their willing, qualified Medicaid provider of choice.
22 Defendant Betlach is sued in his official capacity.

23 **III. FACTS**

24 **A. The Medicaid Program**

25 24. The Medicaid program, established under Title XIX of the Social Security
26 Act of 1935, 42 U.S.C. § 1396 *et seq.*, pays for medical coverage provided to eligible
27 people based upon their income. A State may elect whether to participate, but if it
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1 chooses to do so, it must comply with the requirements imposed by the Medicaid statutes,
2 the applicable regulations, and the Secretary of the U.S. Department of Health and Human
3 Services (“HHS”) in her administration of the Medicaid statute. *See generally* 42 U.S.C. §
4 1396a(a)(1)–(83).

5 25. To receive federal funding, a participating state must develop a “plan for
6 medical assistance” and submit it to the Secretary of HHS for approval. 42 U.S.C.
7 § 1396a(a).

8 26. Among other requirements, the state plan must provide that: “[A]ny
9 individual eligible for medical assistance ... may obtain such assistance from any
10 institution, agency, community pharmacy, or person, qualified to perform the service or
11 services required ... who undertakes to provide him such services.” 42
12 U.S.C. § 1396a(a)(23)(A). This is known as the free choice of provider requirement.

13 27. Congress has singled out family planning services for special additional
14 protections to ensure freedom of choice of provider, specifically providing that, with
15 respect to those services and with certain limited exceptions not applicable here, an
16 individual’s enrollment “in a primary care case-management system ... , a [M]edicaid
17 managed care organization, or a similar entity shall not restrict the choice of the qualified
18 person from whom the individual may receive [family planning] services.” 42 U.S.C.
19 § 1396a(a)(23)(B); *see also* 42 C.F.R. § 431.51(b)(2) (same).

20 28. For decades, Congress has attached a rider to HHS’s appropriations
21 blocking the use of federal Medicaid funds for abortion, except in limited circumstances.
22 *See Consolidated Appropriations Act of 2016, Pub. L. No. 114-113, §§ 506-507, 129 Stat.*
23 *2242, 2649 (2015).* However, the Medicaid statutes do not prohibit entities that provide
24 abortion services from receiving Medicaid funds to provide non-abortion services.

25 29. Moreover, neither the Medicaid statutes nor the implementing regulations
26 include an exception to the freedom of choice provision that would allow states to exclude
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1 providers from participating in the Medicaid program based on those providers' ability to
2 segregate public funds.

3 **B. Implementation of the Medicaid Statutes**

4 30. For decades, the Centers for Medicare & Medicaid Services ("CMS"), the
5 agency within HHS that administers Medicaid (and its predecessor organization), has
6 repeatedly interpreted the "qualified" language in § 1396a(a)(23) to prohibit states from
7 denying Medicaid participants access to a provider for reasons unrelated to the ability of
8 that provider to perform Medicaid-covered services or to properly bill for those services,
9 including reasons such as the scope of the medical services that the provider chooses to
10 offer.

11 31. CMS has explained that "[t]he purpose of the free choice provision is to
12 allow [Medicaid] recipients the same opportunities to choose among available providers
13 of covered health care and services as are normally offered to the general population."
14 CTRS. FOR MEDICARE & MEDICAID SERVS., CMS MANUALS PUBLICATION #45, STATE
15 MEDICAID MANUAL, § 2100.

16 32. HHS has a long history of rejecting state plans that restrict the type of
17 provider that can provide particular services. *See, e.g.*, 53 Fed. Reg. 8699 (Mar. 16, 1988)
18 (rejecting plan that would limit providers to "private nonprofit" organizations); 67 Fed.
19 Reg. 79121 (Dec. 27, 2002) (noting disapproval of a state plan amendment that would
20 have limited "beneficiary choice ... by imposing standards that are not reasonably related
21 to the qualifications of providers"). For example, in 2011, CMS rejected an Indiana plan
22 that barred state agencies from contracting with or making grants to any entities that
23 performed abortions because it violated the Medicaid freedom of choice provision. Letter
24 from Donald M. Berwick, Adm'r., CMS, to Patricia Casanova, Dir., Ind. Office of
25 Medicaid Policy and Planning (June 1, 2011),
26 http://www.politico.com/static/PPM169_110601_indiana_letter.html.

1 33. CMS is permitted to waive § 1396a(a)(23) in demonstration projects
2 approved under Social Security Act § 1115. However, such waivers cannot extend to the
3 free choice of provider requirement as applied to family planning services. 42 U.S.C.
4 § 1396a(a)(23)(B); *see also* 42 C.F.R. § 431.51(b)(2). Accordingly, CMS regularly rejects
5 state requests to do so for family planning services.

6 34. In just the last two years, CMS has rejected two such state requests: first in
7 Pennsylvania, *see* Letter from Marilyn Tavenner, Adm’r, CMS, to Beverly Mackereth,
8 Sec’y, Pa. Dep’t of Pub. Welfare (Aug. 28, 2014), [http://www.medicaid.gov/Medicaid-
9 CHIP-Program-Information/By-Topics/Waivers/1115/downloads/pa/pa-healthy-ca.pdf](http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/pa/pa-healthy-ca.pdf)
10 (“No waiver of freedom of choice is authorized for family planning providers.”); and more
11 recently in Iowa, *see* Letter from Vikki Wachino, Dir., CMS, to Mikki Stier, Medicaid
12 Dir., Iowa Dep’t of Human Servs. (July 31, 2015), [http://www.medicaid.gov/Medicaid-
13 CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ia/ia-marketplace-
14 choice-plan-ca.pdf](http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/ia/ia-marketplace-choice-plan-ca.pdf) (“No waiver of freedom of choice is authorized for family planning
15 providers.”).

16 35. Moreover, the federal government has repeatedly made clear to states,
17 including Arizona, that attempts to exclude abortion providers from the Medicaid program
18 are barred by the Medicaid statutes.

19 36. In *Betlach*, the federal government filed an amicus brief in the appeal of the
20 preliminary injunction barring Arizona from enforcing the 2012 defunding attempt. In its
21 brief, the government explained that Arizona’s statute violated the free choice of provider
22 requirement because it excluded qualified providers that perform abortions from the
23 Medicaid program, and that providing abortions does not render a provider otherwise
24 unqualified to provide Medicaid services. Brief for the United States, as *Amicus Curiae*
25 Supporting Appellees, *Planned Parenthood Ariz., Inc. v. Betlach*, 727 F.3d 960 (9th Cir.
26 2013) (No. 12-17558), 2013 WL 663789. The federal government filed a similar brief in
27 the Fifth Circuit in a case challenging Louisiana’s attempt to exclude abortion providers
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1 from its Medicaid program. See Brief for the United States as *Amicus Curiae*, *Planned*
2 *Parenthood Gulf Coast, Inc. v. Gee*, No. 15-30987 (5th Cir. 2016).

3 37. In April 2016, after a wave of Medicaid defunding efforts of abortion
4 providers by states across the country, CMS sent a letter to all State Medicaid Directors,
5 including Defendant. CMS again made clear that the free choice of provider requirement
6 limits a state’s authority to take action against a Medicaid provider unless the action
7 relates to a provider’s “fitness” to provide covered services, meaning the provider’s
8 “capability to perform the required services in a professionally competent, safe, legal, and
9 ethical manner — or the ability of the provider to appropriately bill for those services.”
10 Letter from Vikki Wachino, Dir. CMS to State Medicaid Directors (Apr. 19, 2016),
11 <https://www.medicaid.gov/federal-policy-guidance/downloads/smd16005.pdf>.

12 38. The letter further stated that proper reasons for such actions “may not
13 include a desire to target a provider or set of providers for reasons unrelated to their fitness
14 to perform covered services or the adequacy of their billing practices. The failure of a
15 state to apply otherwise reasonable standards in an evenhanded manner may suggest such
16 targeting.” *Id.* In addition, if a state takes an action against a provider that affects
17 beneficiary access to the provider, this action “must be supported by evidence of fraud or
18 criminal action, material non-compliance with relevant requirements, or material issues
19 concerning the fitness of the provider to perform covered services or appropriately bill for
20 them.” *Id.* As CMS made clear, “taking such action against a provider without such
21 evidence would not be in compliance with the free choice of provider requirement.” *Id.*
22 Every federal court, including the Ninth Circuit in *Betlach*, that has heard a challenge to a
23 state’s action to bar abortion providers from their Medicaid program has held that states
24 may not bar medical providers from their state Medicaid program on grounds unrelated to
25 the providers’ willingness and ability to provide covered health services or properly bill
26 for those services. See, e.g., *Planned Parenthood of Ind., Inc. v. Comm’r of Ind. State*
27 *Dep’t of Health*, 699 F.3d 962, 977-80 (7th Cir. 2012), *Planned Parenthood of Kan. and*
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1 *Mid-Mo. v. Mosier*, No. 16-2284-JAR-GLR, 2016 WL 3597457 at *18-20 (D. Kan. July 5,
2 2016); *Planned Parenthood Gulf Coast, Inc. v. Kliebert*, 141 F. Supp. 3d 604, 637-40
3 (M.D. La. 2015); *Planned Parenthood Se., Inc. v. Bentley*, 141 F. Supp. 3d 1207, 1213-19
4 (M.D. Ala. 2015); *Planned Parenthood Ark. & E. Okla. v. Selig*, No. 4:15-cv-00566-KGB
5 (E.D. Ark. Oct. 5, 2015) (order granting plaintiff’s motion for preliminary injunction).

6 **C. The Act - H.B. 2599**

7 39. The Act requires medical providers to “segregate taxpayer dollars from
8 abortions, including the use of taxpayer dollars for any overhead expenses attributable to
9 abortions,” as a condition of participation in Arizona’s Medicaid program. ARIZ. REV.
10 STAT. § 36-2930.02(B)(6) (effective Aug. 6, 2016). If a provider fails to comply with the
11 segregation requirement, AHCCCS “in its sole discretion, may exclude [that provider]
12 from participation” in the state Medicaid program. *Id.* Arizona law does not require
13 providers of any other medical procedure to segregate public funds in this manner.

14 40. The Provider Plaintiffs have never been charged with or disciplined for
15 using Medicaid funds to pay for non-Medicaid qualified abortions.

16 41. The Act does not define the phrase “segregate taxpayer dollars from
17 abortions, including the use of taxpayer dollars for any overhead expenses attributable to
18 abortions,” nor does it explain how Medicaid providers are expected to comply with the
19 provision.

20 42. Moreover, Arizona law requires AHCCCS to reimburse Medicaid providers
21 for abortion procedures when the patient is the victim of rape or incest, the abortion is
22 necessary to save the patient’s life, or the abortion is medically necessary to preserve the
23 patient’s health. *See Simat Corp. v. AHCCCS*, 203 Ariz. 454, 56 P.3d 28 (2002); ARIZ.
24 REV. STAT. § 35-196.02(A). The Act does not explain how Medicaid providers are
25 expected to “segregate taxpayer dollars from abortions” in these cases where the law
26 requires AHCCCS to reimburse providers for abortion care.

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1 43. Because the Act’s terms are unclear, it places Provider Plaintiffs at risk of
2 arbitrary and discriminatory enforcement. This risk is particularly acute because Arizona
3 has a long history of targeting abortion providers, like the Provider Plaintiffs, for unfair
4 treatment: indeed, just since 2012, Arizona has passed no fewer than eight laws targeting
5 such providers for unjustified regulation, scrutiny, and differential treatment from other
6 medical providers.

7 44. Furthermore, AHCCCS is empowered to enforce the Act with almost no
8 notice to the Provider Plaintiffs. AHCCCS “has the right to terminate or suspend” the
9 Provider Plaintiffs’ participation in the state Medicaid program “upon twenty-four (24)
10 hours written notice when AHCCCS deems ... the Provider fails to comply ... with ...
11 State laws and regulations.” ARIZ. HEALTH CARE COST CONTAINMENT SYS., PROVIDER
12 PARTICIPATION AGREEMENT (2014), [https://www.azahcccs.gov/Plans
13 Providers/Downloads/ProviderRegistration/ProviderPartAgreementForm.pdf](https://www.azahcccs.gov/PlansProviders/Downloads/ProviderRegistration/ProviderPartAgreementForm.pdf).

14 45. Because of the Act’s vague terms, counsel for the Provider Plaintiffs
15 submitted a letter to AHCCCS on May 31, 2016, shortly after the Act was signed into law,
16 seeking clarity as to the Act’s terms and AHCCCS’s interpretation of those terms. The
17 letter also sought to confirm that no action would be taken to exclude any provider under
18 the Act until additional guidance was provided. As of the date of filing this Complaint,
19 counsel for Provider Plaintiffs has not received a response to that letter.

20 **D. The Impact of the Act on the Provider Plaintiffs and Their Patients**

21 46. The Act threatens to exclude the Provider Plaintiffs from the Medicaid
22 program because of a requirement the state is prohibited by federal law from imposing.

23 47. Exclusion from the Medicaid program for cause carries potentially serious,
24 negative consequences for the Provider Plaintiffs, particularly the individual physician
25 providers who could suffer adverse actions against their professional licenses.

26 48. Moreover, the Act places the Provider Plaintiffs’ patients, including the
27 Jane Doe Plaintiffs, in a state of continual risk of being deprived of their choice of
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1 provider. Consequently, the Act undermines Medicaid patients' rights to access the
2 provider of their choice and their continuity of care, and threatens to constrict the
3 availability of critical reproductive health services in Arizona.

4 49. The need for publicly supported family planning services is great in
5 Arizona. In 2013, an estimated 458,900 women in Arizona were in need of publicly
6 supported family planning services. Guttmacher Inst., *State Facts on Publicly Funded*
7 *Family Planning Services: Arizona* (2014),
8 https://www.guttmacher.org/sites/default/files/factsheet/az_13.pdf. In 2010, 51% of
9 pregnancies in Arizona were unintended, and nearly 65% of unplanned births in Arizona
10 were publicly funded. Guttmacher Inst., *State Facts About Unintended Pregnancy:*
11 *Arizona* (2016), https://www.guttmacher.org/sites/default/files/factsheet/az_18.pdf.
12 Arizona also ranks eighteenth among fifty states in teen pregnancy rates. Kathryn Kost &
13 Stanley Henshaw, *U.S. Teenage Pregnancies, Births and Abortions, 2010: National and*
14 *State Trends by Age, Race and Ethnicity*, GUTTMACHER INSTITUTE (2014),
15 https://www.guttmacher.org/sites/default/files/report_pdf/ustptrends10.pdf.

16 50. In spite of the great needs, there are simply not enough providers of the
17 critical care that the Provider Plaintiffs provide. Three of PPAZ's eleven medical centers
18 are in areas that the federal government has classified as "medically underserved" based
19 on four variables: (1) the ratio of primary medical care physicians per 1,000 population,
20 (2) the infant mortality rate, (3) the percentage of the population with incomes below the
21 federal poverty level, and (4) the percentage of the population age 65 or older. *See* U.S.
22 DEP'T OF HEALTH & HUM. SERVS., GUIDELINES FOR MUA AND MUP DESIGNATION
23 (1995), <http://www.hrsa.gov/shortage/mua/index.html>.

24 51. In addition, Desert Star and three of PPAZ's centers are in areas classified
25 as "low provider," a designation based on similar criteria. *See* U.S. DEP'T OF HEALTH &
26 HUM. SERVS., SHORTAGE DESIGNATION: HEALTH PROFESSIONAL SHORTAGE AREAS &
27 MEDICALLY UNDERSERVED AREAS/POPULATIONS, 2015, <http://www.hrsa.gov/shortage/>.

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1 52. If the Act is enforced against the Provider Plaintiffs, many of the Medicaid
2 patients in these areas will have few or no alternative options and will find it difficult or
3 impossible to access the high-quality reproductive health care services PPAZ and Desert
4 Star provide. Medicaid patients who are unable to find an adequate alternative will not
5 receive the medical services they need, an effect that could lead to higher rates of
6 unintended pregnancies and transmission of sexual diseases.

7 53. Even if other Medicaid providers were available, patients insured through
8 Medicaid choose to receive their reproductive health care from the Provider Plaintiffs for
9 a number of reasons. For example, some patients prefer to obtain care from the Provider
10 Plaintiffs because they offer a wide range of high-quality reproductive health care services
11 in a non-judgmental setting. In addition, other patients who are low-income prefer to seek
12 care from those Provider Plaintiffs that are able to accommodate their scheduling
13 constraints due to inflexible work schedules, childcare obligations, transportation
14 challenges, and lack of childcare resources, by offering extended hours and walk-in
15 appointments. Finally, patients who do not speak English prefer to obtain care from the
16 Provider Plaintiffs that either have Spanish speaking staff or provide translator services,
17 including for less commonly encountered languages.

18 54. The Act's consequences loom particularly large for many of Dr. Reuss's
19 Medicaid patients who are pregnant and receiving ongoing prenatal care and intend to be
20 delivered by Dr. Reuss and receive subsequent postnatal care. If the Act is enforced and
21 Dr. Reuss is terminated as a Medicaid provider, these women may struggle to find an
22 alternative obstetrician to accept them as a new patient, as many obstetricians will not
23 accept new patients who are late in pregnancy.

24 55. Another particularly vulnerable group would be those women in need of
25 Medicaid-funded abortions because their pregnancy either is the result of rape or incest or
26 poses certain risks to her health or life. If enforced, the Act would leave these women —
27
28

1 who are already in tragic circumstances — with no place to obtain a Medicaid-funded
2 abortion.

3 **IV. CLAIMS FOR RELIEF**

4 **CLAIM I**

5 **MEDICAID ACT (TITLE XIX OF SOCIAL SECURITY ACT)**

6 56. Plaintiffs hereby incorporate Paragraphs 1 through 55 above.

7 57. The Act violates Section 1396a(a)(23) of Title 42 of the United States Code
8 by denying the Provider Plaintiffs’ patients, including the Jane Doe Plaintiffs, the right to
9 choose any willing, qualified healthcare provider under the Medicaid program.

10 58. Therefore, pursuant to 42 U.S.C. § 1983, this Court should declare the Act
11 illegal and preliminarily and permanently enjoin enforcement of the Act.

12 **CLAIM II**

13 **FOURTEENTH AMENDMENT DUE PROCESS – VAGUENESS**

14 59. Plaintiffs hereby incorporate Paragraph 1 through 55 above.

15 60. The Act violates the Provider Plaintiffs’ Fourteenth Amendment rights to
16 due process because it is impermissibly vague, fails to give fair notice of the conduct that
17 is required, and encourages arbitrary enforcement.

18 61. Therefore, pursuant to 42 U.S.C. § 1983, this Court should declare the Act
19 to be unconstitutional and should preliminarily and permanently enjoin enforcement of the
20 Act.

21 **CLAIM III**

22 **FOURTEENTH AMENDMENT EQUAL PROTECTION**

23 62. Plaintiffs hereby incorporate Paragraph 1 through 55 above.

24 63. The Act violates the Provider Plaintiffs’ Fourteenth Amendment rights by
25 singling them out without adequate justification for unfavorable treatment because they
26 provide a constitutionally protected health service.
27
28

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

5 6. Grant Plaintiffs attorneys' fees, costs, and expenses pursuant to 42 U.S.C.
6 § 1988; and

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

8
9 DATED: July 14, 2016

10
11 Jennifer Lee*
12 Brigitte Amiri*
13 Alyson Zureick*
14 American Civil Liberties Union
15 Foundation
16 125 Broad Street, 18th Floor
17 New York, NY 10004
(212) 549-2633
jlee@aclu.org
bamiri@aclu.org
azureick@aclu.org

18 Daniel Pochoda
19 American Civil Liberties Union
20 Foundation of Arizona
21 3707 N. 7th Street, Suite 235
22 Phoenix, AZ 85014
23 (602) 650-1854
24 dpochoda@acluaz.org
*Attorneys for Plaintiffs Desert Star Family
Planning, LLC, DeShawn Taylor, M.D.,
Eric Reuss, M.D., M.P.H, Jane Does #2-5*

/s/ Laura Lawless Robertson

Daniel B. Pasternak
Laura Lawless Robertson
Squire Patton Boggs (US) LLP
1 East Washington Street, Suite 2700
Phoenix, AZ 85004
(602) 528-4000
daniel.pasternak@squirepb.com
laura.robertson@squirepb.com

Diana Salgado*
Planned Parenthood Federation of America
434 W. 33rd Street,
New York, NY 10001
(212) 541-7800
diana.salgado@ppfa.org

*Attorneys for Plaintiffs Planned
Parenthood of Arizona, Inc. and
Jane Doe #1*

** Applications for admission pro
hac vice forthcoming*