IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

FEMINIST WOMEN'S HEALTH CENTER, *et al*.,	)	
	)	CIVIL ACTION
Plaintiffs,	)	FILE NO._____
	)	
vs.	)	
	)	
TIM BURGESS, *et al*.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM OF LAW
IN SUPPORT OF PLAINTIFFS' MOTION FOR A
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

PRELIMINARY STATEMENT

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At issue in this case are the rights and health of women in Georgia who depend on Medicaid for their medical care. By virtue of the challenged policies, women eligible for Medicaid assistance are denied coverage for abortions when their pregnancies compromise their health, whether by aggravating sickle cell disease, epilepsy, or schizophrenia; their fetuses are severely or fatally impaired; or their pregnancies make departure from abusive partners impossible. In contrast, women who choose or are forced to carry to term are afforded state assistance.

This discriminatory exclusion of Medicaid coverage for women for whom abortions are medically necessary violates the broad guarantees of privacy and equal protection found in the Georgia Constitution. For almost one hundred years, the Georgia Supreme Court has proudly proclaimed the State Constitution's expansive protection for individual liberties, including the right of privacy and the right of Georgians to be free from unwarranted government intrusion into their personal lives. The exclusion of medically necessary abortions from the Medicaid program strikes at the heart of these rights: By providing medical assistance for women who continue their pregnancies, but denying such assistance to women who need to terminate their pregnancies to protect their health, the government interferes with one of the most personal and intimate decisions a woman must make. Georgia's independent and expansive constitutional guarantees cannot countenance this government intrusion into women's lives.

Relief from this unconstitutional action is urgently needed to prevent real and irreparable harm to poor women in this state. As the affidavits submitted in support of Plaintiffs' Motion attest, because of the denial of Medicaid coverage, women are forced to continue their pregnancies, often for weeks, sometimes for months, and, in some cases, all the way through to term, all to the detriment of their health. On behalf of these women, Plaintiffs request that this

Court enjoin the State from denying Medicaid coverage for medically abortions while the Court considers the merits of this case.

In enjoining the State from excluding medically necessary abortions from the Medicaid program, this Court will not stand alone. Instead, this Court would join the courts of thirteen other states that have struck down similar restrictions on Medicaid coverage for abortions under their state constitutions.[1]

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[1] Simat Corp. v. Ariz. Health Care Cost Containment Sys., 56 P.3d 28, 37 (Ariz. 2002); Alaska v. Planned Parenthood, 28 P.3d 904, 908-913 (Alaska 2001); N.M. Right to Choose/NARAL v. Johnson, 975 P.2d 841, 851-57 (N.M. 1998); Women of Minn. v. Gomez, 542 N.W.2d 17, 29-30 (Minn. 1995); Women's Health Ctr. v. Panepinto, 446 S.E.2d 658, 666-67 (W. Va. 1993); Right to Choose v. Byrne, 450 A.2d at 925, 934-37 (N.J. 1982); Comm. to Defend Reprod. Rights v. Myers, 625 P.2d 779, 789 (Cal. 1981); Moe v. Sec'y of Admin. & Fin., 417 N.E.2d 387, 400-02 (Mass. 1981); Planned Parenthood Ass'n v. Dep't of Human Res., 663 P.2d 1247, 1258-59 (Or. Ct. App. 1983), aff'd on statutory grounds, 687 P.2d 785 (Or. 1984); Doe v. Maher, 515 A.2d 134, 152 (Conn. Super. Ct. 1986); Jeannette R. v. Ellery, No. BDV-94-811, slip op. at 17-23 (Mont. Dist. Ct. May 19, 1995); Doe v. Wright, No. 91 CH 1958 (Ill. Cir. Ct. Dec. 2, 1994); Doe v. Celani, No. S81-84CnC, slip op. at 8-12 (Vt. Super. Ct. May 26, 1986). But see Bell v. Low-Income Women of Tex., Inc., 95 S.W.3d 253 (Tex. 2002); Renee B. v. Florida Agency for Health Care Admin., 790 So. 2d 1036 (Fla. 2001); Rosie J. v. North Carolina Dep't of Human Res., 491 S.E.2d 535 (N.C. 1997); Doe v. Dep't of Soc. Servs., 487 N.W.2d 166 (Mich. 1992); Fischer v. Dep't of Pub. Welfare, 502 A.2d 114 (Pa. 1985); Planned Parenthood v. Kurtz, No. CVOC0103909D (Idaho Dist. Ct. June 12, 2002); Doe v. Childers, No. 94CI02183 (Ky. Cir. Ct. Aug. 3, 1995); but see also Humphreys v. Clinic for Women, Inc., 796 N.E.2d 247 (Ind. 2003) (holding state constitution requires coverage for abortions only where "pregnancies create a serious risk of substantial and irreversible impairment of a major bodily function"). Cf. Hope v. Perales, 634 N.E.2d 183 (N.Y. 1994) (holding state medical assistance program that pays for medically necessary abortions for women eligible for its Medicaid program, but not for women with higher incomes such that they are presumptively able to afford abortion, does not violate state constitution).

THE STATUTORY AND REGULATORY FRAMEWORK FOR MEDICAID IN GEORGIA

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; O.C.G.A. § 49-4-142. Like every other state in the nation, Georgia participates in the Medicaid program. Through its Medicaid program, Georgia provides a comprehensive array of services to eligible residents, including physician services, in-patient and out-patient hospital services, prescription drug coverage, x-ray and laboratory tests, mental health services, and family planning services, among others. 42 U.S.C. §§ 1396a(a)(10)(A), 1396d; 42 C.F.R. §§ 440.10 to .50, 440.120, 440.160, 441.17, 441.20 to .22; O.C.G.A. §§ 49-4-140 to 157. In addition, the State provides reimbursement for transportation costs incurred in obtaining covered medical care. 42 C.F.R. §§ 431.53, 441.62; Div. of Med. Assistance, Ga. Dep't of Cmty. Health, Policies and Procedures for Non-Emergency Transportation Broker Services § 801 (Jan. 1, 2003) (attached to Compl. as Ex. A).

Georgia's Medicaid program covers pregnancy-related services for women with family incomes up to 235% of the federal poverty level throughout their pregnancies and for a sixty-day postpartum period (plus any days remaining in the month during which the sixty-day period ends). 42 U.S.C. § 1396a(e)(5); Div. of Med. Assistance, Ga. Dep't of Cmty. Health, Policies and Procedures for Medicaid/Peachcare for Kids [hereinafter Medicaid/Peachcare for Kids] App. B-2 (Oct. 1, 2003); Div. of Med. Assistance, Ga. Dep't of Cmty. Health, Policies and Procedures for Presumptive Eligibility 1, 20 (Oct. 1, 2003). In addition, Georgia Medicaid provides coverage for a newborn for a year, if the mother was receiving Medicaid at the time of the child's birth. 42 U.S.C. § 1396a(e)(4); 42 C.F.R. § 435.117; e.g., Div. of Med. Assistance, Ga. Dep't of Cmty. Health, Policies and Procedures for Nurse-Midwifery Services [hereinafter

Nurse-Midwifery Services] App. M–16 (Oct. 1, 2003).

Georgia's Medicaid program pays for covered services when the services are medically necessary. Medicaid/Peachcare for Kids Definition 15 and § 105(k). Abortions, however, are singled out for unique restrictions.[2] Medicaid coverage for abortion is provided only when the pregnancy is life-threatening or results from rape or incest. Women whose pregnancies threaten their health, but not their life, are denied Medicaid coverage for the care they need. See Div. of Med. Assistance, Ga. Dep't of Cmty. Health, Policies and Procedures for Physician Services § 904.2 and App. H (Oct. 1, 2003) (attached to Compl. as Ex. B); Div. of Med. Assistance, Ga. Dep't of Cmty. Health, Policies and Procedures for Advanced Nurse Practitioner Services § 904.2 (Oct. 1, 2003) (attached to Compl. as Ex. C); Div. of Med. Assistance, Ga. Dep't of Cmty. Health, Policies and Procedures for Hospital Services § 911.1 and App. J (Oct. 1, 2003) (attached to Compl. as Ex. D); Div. of Med. Assistance, Ga. Dep't of Cmty. Health, Policies and Procedures for Family Planning Clinic Services § 903 (Oct. 1, 2003) (attached to Compl. as Ex. E); Nurse-Midwifery Services § 904.2 and App. I (Oct. 1, 2003) (attached to Compl. as Ex. F); Ga. Dep't of Cmty. Health, Billing Manual § 6.5 (Oct. 1, 2003) (attached to Compl. as Ex. G).

In contrast, poor women in Georgia who carry their pregnancies to term are afforded coverage for medically necessary care. Other than abortion, Georgia Medicaid does not condition the provision of any other pregnancy-related service on a showing that the pregnancy is life-threatening or the result of rape or incest. Furthermore, Georgia Medicaid does not

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[2] Federal legislation, known as the Hyde Amendment, limits the use of federal Medicaid funds for abortions only when the pregnancy threatens the woman's life or results from rape or incest. Pub. L. No. 108-7, tit. V, § 509(a), 117 Stat. 11 (2003). States remain free, however, to cover all medically necessary abortions. See id. at § 509(b), (c); see also supra n.1.

condition the provision of covered services for eligible men on a showing that the man's life is endangered or otherwise deny reimbursement for covered services when necessary for a man's health.

ARGUMENT

This Court has broad authority to issue an injunction "'to prevent one [party] from hurting the other whilst their respective rights are under adjudication . . . .'" Outdoor Advertising Ass'n v. Garden Club, 272 Ga. 146, 147, 527 S.E.2d 856, 859 (2000) (quoting Price v. Empire Land Co., 218 Ga. 80, 126 S.E.2d 626 (1962)). "'In an application for an interlocutory injunction there should be a balancing of conveniences and a consideration of whether greater harm might be done by refusing than by granting the injunction.'" Zant v. Dick, 249 Ga. 799, 799, 294 S.E.2d 508, 509 (1982) (quoting Maddox v. Willis, 205 Ga. 596, 54 S.E.2d 632 (1947)) (citations omitted); see also Dep't of Transp. v. City of Atlanta, 259 Ga. 305, 306, 380 S.E.2d 265, 267 (1989) (holding that the "trial court should consider whether a denial of the petition for injunctive relief would work an irreparable injury . . ." (internal quotations omitted)).

This standard is more than satisfied here. As shown below, see infra Part I, absent injunctive relief, Medicaid-eligible women in need of medically necessary abortions will suffer serious and irreparable injury to their health. Moreover, absent injunctive relief, poor women's constitutional rights to reproductive choice are violated, itself a grave and irreparable harm. And, because an injunction would place no financial burden on Defendants, see infra Part II.D, greater harm would be done by refusing than by granting the injunction. Finally, although such a showing is not required in order to obtain injunctive relief, Zant, 249 Ga. at 800, 294 S.E.2d at

509, as Plaintiffs demonstrate below, they have a substantial likelihood of success on the merits. As a balancing of the equities favors the Plaintiffs, this Court should exercise its discretion to grant injunctive relief.

I. PLAINTIFFS WILL SUFFER IRREPARABLE HARM ABSENT INJUNCTIVE RELIEF.

Georgia's discriminatory funding scheme irreparably and immediately harms women throughout the state. Medicaid-eligible women who need abortions for their health are by definition poor and unable to pay for medical care. Georgia Medicaid's denial of state assistance thus delays abortions at the expense of women's health, forces some women to carry to term, and harms all women it touches by violating their fundamental rights guaranteed by the Georgia Constitution.

The State's denial of coverage for medically necessary abortions inflicts tangible and irreparable harm on poor women in Georgia. Some women are forced to carry to term, with grave consequences for their physical and mental health. In the words of Dr. Malloy, a high-risk obstetrician-gynecologist:

> I remember one recent devastating case particularly vividly. My patient – I'll call her Maria – was a twenty-two-year-old indigent woman. As with other women I have observed with sickle cell disease, the pregnancy exacerbated Maria's condition. Approximately sixteen weeks into her pregnancy, Maria was suffering a sickle cell crisis almost every forty-eight hours, and the pain was excruciating. Maria desperately wanted to end her pregnancy. She couldn't afford an abortion, however, and because her life wasn't in danger, Medicaid would not cover the procedure. Since she could not get the abortion, Maria had to be hospitalized and undergo what is known as an exchange transfusion, where we removed all of her blood and replaced it with new blood. Even after the exchange transfusion, she faced recurring crises. She had to remain in the hospital so we could administer morphine and other narcotics every three hours to relieve her pain. Eventually, after spending about three months in the hospital, Maria was far enough along in the pregnancy where we could deliver the baby and ease her crises. The baby was quite premature and remained in the hospital for several months. Medicaid paid

for all the costs associated with these hospitalizations. Malloy ¶ 17.

See also Gelberg ¶ 19. Robin Gelberg of Plaintiff Feminist Women's Health tells how the clinic's patients suffer:

> Most recently, I received a call from a young married couple from southern Georgia; I'll call them Annie and Bob. Annie, pregnant with twins, and her husband, Bob, were in their early twenties; they had a three-year-old son. They were both working low-paying jobs and had very little money. After a sonogram late in the pregnancy, Annie and Bob learned that both twins had serious heart problems and that one would die in utero within days. Their maternal fetal specialist told them that this death could cause an infection that could seriously harm Annie and the other twin. Because there was little chance that either twin would survive the pregnancy, and because Annie's health was at risk, Annie and Bob decided to terminate the pregnancy. By the time they called the clinic, it was too late for us to help them: Annie's pregnancy was close to the time limit on providing abortions. In such a short time, we simply could not raise the thousands of dollars needed, even if we wrote off most of the procedure. Annie and Bob were devastated. They couldn't understand why Medicaid would not help them. Annie did not want to suffer, waiting every day, knowing that the twins would likely die before birth and that her health was at risk. I don't know what became of them. I only know that if Medicaid had covered her medically necessary abortion, Annie would never have suffered these threats to her health. Gelberg ¶ 16.

> I am still haunted by the memory of one young woman we were unable to help. I'll call her Lisa. She was twenty-five years old and seemed to have every health problem imaginable. Lisa had a heart murmur, chronic bronchitis, kidney stones, a drug addiction, and psychological problems. She had no money whatsoever. Her health problems were so severe that we could not perform the abortion at the clinic. She was already in her twentieth week of pregnancy when we referred her to a hospital. An abortion in a hospital is far more expensive than one in a clinic or physician's office. And because she was not our patient, we were unable to raise funds for her. I do not know what happened to Lisa, but I cannot imagine that she was able to raise the thousands of dollars needed for her abortion. Gelberg ¶ 14.

See also Gelberg ¶ 15.

Still other women who suffer from health conditions caused or exacerbated by their pregnancies are delayed in obtaining the abortions they seek, at the expense of their health. Dr.

Malloy shares this example:

> One patient of mine – I'll refer to her as Michelle – is illustrative. Michelle was thrilled to be pregnant, but very early in her pregnancy, she developed hyperemesis gravidarum, a syndrome accompanied by vomiting so pernicious that it may result in 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. . . . When Michelle became pregnant, she could barely keep anything down. When I first saw her, she had lost almost thirty pounds, a development that itself threatened the health of the fetus. At around seven weeks into her pregnancy, she had to be admitted to the hospital so that we could feed her intravenously. Although this helped, Michelle was still suffering from severe nausea and vomiting, and abdominal pains. She faced an extended hospital stay if she continued her pregnancy. Michelle decided to terminate her pregnancy, but she lacked the money for the abortion. Although Medicaid would cover her hospitalization, it would not pay for the abortion, and Michelle suffered as a result. She had to stay in the hospital for four weeks, in pain and hooked up to feeding tubes, while she struggled to gather the money. She eventually raised the funds for the abortion, but only after a delay of almost a full month of intense suffering on her part. Malloy ¶ 26.

See also Gelberg ¶¶ 15, 18.

Other Medicaid-eligible women must make painful sacrifices to pay for an abortion they need to protect their health. Robin Gelberg tells one story:

> The week before Thanksgiving, we received a call from a young Medicaid-eligible woman, I'll call her Tanya. Tanya was unemployed, living in low-income housing, and supported herself and a young son on her $700 per month disability benefit. She had multiple health conditions: diabetes, schizophrenia, and anemia. When she became pregnant, Tanya stopped taking her medications for diabetes and schizophrenia for fear they would affect her pregnancy. She suffered as a result. Tanya had severe migraines and feared flying back into throes of acute schizophrenia. She worried most of all that, unmedicated, she would be unable to care for her son. When she was eighteen weeks into the pregnancy, Tanya learned from an amniocentesis that the fetus had Trisomy 21, or Down's Syndrome. She called the clinic, assuming that Medicaid would pay for her abortion because of the fetal anomaly. We told her that an abortion would cost her $770. . . . The sum she needed was more than her monthly income. Most of her family was as strapped for cash as she was. Still, they managed to raise $340 for her abortion. Tanya herself spent the last $40 of her disability check on the abortion; she would not receive another check until December 4. This meant

> that she and her son would not be able to afford food for themselves, let alone pay any bills, for two weeks. Tanya would have to depend on her already over-extended community to help her and her son meet these basic needs. . . . Without our assistance, Tanya would not have been able to pay for the abortion. Gelberg ¶ 17.

These women are not unique. For many women, pregnancy compromises their health, whether severely, permanently, or temporarily. Clinic staff recount stories of women with seizures, experiencing convulsions when pregnant, and with breast cancer, unable to continue chemotherapy if pregnant. Dudley ¶ 6; Hawkins ¶ 17; see also Malloy ¶ 24. For women who have hypertension, pregnancy can cause preeclampsia, which can result in serious damage to their vision, kidneys, and liver, and in some cases, can lead to eclampsia, a condition marked by seizures or temporary coma, Malloy ¶ 20; for women with lupus, pregnancy can cause hypertension, preeclampsia, and severe kidney damage, Malloy ¶ 23; Dudley ¶ 6; and for women with bipolar disorders and other psychopathologies, pregnancy puts them at increased risk of gravely aggravating their illnesses, Belsky ¶ 12; see also Malloy ¶ 24. Although pregnancy generally is not life-threatening for women with these conditions, continuation of pregnancy in these circumstances severely, and often permanently, undermines their health. Malloy ¶¶ 13, 15.

Even for women with no underlying illness, pregnancy can create serious health risks. Malloy ¶¶ 7, 10, 11, 26; Gelberg ¶ 16. For example, pregnancy may trigger hypertension; preeclampsia; clotting disorders including stroke; gestational diabetes; or, as described above, hyperemesis gravidarum. Malloy ¶¶ 10, 26; see also Gelberg ¶ 15. Yet Georgia denies state assistance to all women seeking medically necessary abortions, regardless of the risks their pregnancies pose to their health.

Women whose physical or mental health is compromised in myriad other ways are also

denied assistance they need to protect their health. Abused women, for example, may need an abortion to break the cycle of violence. Robin Gelberg of Feminist Women's Health Center tells this story:

> A woman in her late thirties, I'll call her Denise, was brought to our clinic by staff of a domestic violence shelter. Denise's husband had beaten her for many years. More recently, he had started beating their fifteen-year-old, who had tried to protect Denise. Abuse of her children was more than Denise could bear. She fled with her three children. She arrived at our clinic a week later, eight weeks pregnant. She had no money; she had nothing. But she was desperate for an abortion. She didn't know how she could support herself and her children with an infant. She was also scared. She feared that her husband, if he knew that she was pregnant, would pursue her. And she was terrified of being forced to return to her husband for financial support. All she wanted was to be safe and to keep her children safe. Gelberg ¶ 20.

The denial of assistance to these women sometimes has truly tragic consequences: If forced to remain with an abusive husband in order to support a new child, abused women and their children are likely to suffer serious physical and psychological harm. Hawkins ¶ 18 ; Gelberg ¶ 6.

As with Annie, whose story is recounted above, Georgia also denies coverage to women whose mental health is at risk because they are carrying severely or even fatally impaired fetuses. Medicaid-eligible women whose fetuses suffer from anencephaly (a condition where the fetus has no brain and, if born alive, will certainly die, generally within a few hours), Trisomy 18 (a chromosomal disorder that can affect every organ system and, in almost all cases, is fatal before or shortly after birth), and an array of other devastating disorders, are denied Medicaid assistance for abortions. Malloy ¶ 28. Some are forced to continue their pregnancies and go through the pain of delivery only to watch their babies die. Malloy ¶¶ 28-29; Gelberg ¶ 16. Some fetal impairments, such as fetal hydrops, also endanger the woman's physical health.

Malloy ¶ 28; Gelberg ¶ 16. These women too are denied Medicaid coverage, unless they continue their pregnancies to term.

Medicaid-eligible women struggle to pay for an abortion; many cannot afford the expense. Recognizing the difficulties women face, several clinics in the state provide a special discount rate for poor women; even at this lowered rate, the cost of a first-trimester abortion ranges from $275 to $575. Dudley ¶ 5; Gelberg ¶ 4; see also Hawkins ¶ 5. Because they require more time and skill on the part of the physician, abortion procedures increase dramatically in cost in the second trimester. The cost of an abortion can increase, for example, to at least $715 at seventeen weeks from the woman's last menstrual period ("LMP") and as much as $1500 at twenty-three weeks LMP. Hawkins ¶ 5; see also Henshaw ¶ 7; Gelberg ¶ 4. At twenty-five and twenty-six weeks, abortions – available only in the event of health concerns, fetal anomalies, rape, or incest – can cost up to $3,200, or $4,000 in cases of fetal abnormalities. Hawkins ¶¶ 5-6; see also Gelberg ¶ 4. Women with Rh-negative blood type who require a Rhogam injection must pay an additional $45 to $135, Dudley ¶ 5; Hawkins ¶ 6; Gelberg ¶ 4, and women needing general anesthesia, an additional $150 to $235, Dudley ¶ 5; Hawkins ¶ 6.

The cost of the procedure is only part of the expense. Because abortion providers in Georgia are concentrated in a few urban areas, many women must travel great distances to reach a clinic. Dudley ¶¶ 10-12; Gelberg ¶ 8; Henshaw ¶¶ 5- 6 (more than half of Georgia women of childbearing age live in counties without an abortion provider); see also Malloy ¶ 31. Women in the southern part of the state are particularly isolated, as the closest abortion clinics are located in Columbus or Savannah. Dudley ¶ 10. To obtain an abortion after sixteen weeks LMP, women must travel to Atlanta or Augusta, Dudley ¶ 11; Gelberg ¶ 8, and after twenty weeks LMP, to

Atlanta, Dudley ¶ 11; Gelberg ¶ 8.

For some women, even the transportation costs are insurmountable. Dudley ¶¶ 10-12; Gelberg ¶ 8; Swanson ¶ 5. Helen Swanson of the Atlanta Drivers Network describes the obstacles faced by one woman she calls Tina:

> Tina was a desperately poor woman who lived in a tiny town not far from Augusta. Working with the clinics and various loan funds, she had somehow scraped together the money she needed for the abortion procedure and for a bus ticket to Atlanta. But she didn't have a car and couldn't get a ride to the bus station in Augusta. Although it wasn't very far, everyone she knew who did have a car in this poverty-stricken town charged people for rides, even to go to the grocery store. She told me that it would cost her between $40 and $60 to get a ride to Augusta. And, as she explained to me, she didn't have five additional dollars, let alone $40. I talked to Tina a number of times, but we never came up with a way to get her to the bus station. It sounds unbelievable, but because she lacked $40 she was forced to continue a pregnancy and have a baby she didn't want. That wouldn't have happened if Medicaid had covered the abortion, or even just the transportation. Swanson ¶ 9.

Medicaid-eligible women who must travel, especially if they need a second-trimester abortion, must also often find money to cover the expense of lodging. See, e.g., Gelberg ¶ 17 (After thirteen weeks LMP, the procedure may take two days. Gelberg ¶ 3; see also Dudley ¶ 11; Hawkins ¶ 5.) Women who have children must pay for childcare unless they can find someone to watch their children for free. Hawkins ¶ 13; see also Palumbo ¶ 16; Gelberg ¶¶ 12, 17; Swanson ¶ 5.

These costs are well beyond the means of many Medicaid-eligible women. Many women in Georgia live at or below the poverty level.[3] Georgia also recently suffered some of the worst job loss rates in the country. Palumbo ¶ 8. At the same time, the State has sharply curtailed eligibility for state assistance and thus severely reduced the number of poor who receive welfare.

[3] Clinic staff recount families too poor even to have housing, and living in a tent. Hawkins ¶ 8.

Palumbo ¶ 9. In 2002, only two percent of families living below the poverty level received state assistance. Henshaw ¶ 8; Palumbo ¶¶ 10-11. Even if a woman gets cash assistance, the maximum amount she and her family receive each month is $235 for a family of two and $280 for a family of three.[4] Palumbo ¶ 12. The cost of the abortion alone then – at the lowest possible cost without any of the additional expenses – is more than the entire monthly grant for a woman and her child. Add to the abortion the likely travel and lodging expenses, and the total cost for some women is simply unobtainable. Hawkins ¶¶ 14-15; Henshaw ¶¶ 10-11; Palumbo ¶ 20. Indeed, studies from other states show that, where Medicaid denies assistance, anywhere from 18 to 35% of Medicaid-eligible women who want an abortion are forced to continue their pregnancies. Henshaw ¶¶ 10-11.

In an effort to pay for an abortion, poor women make enormous sacrifices. They divert funds needed for subsistence. Hawkins ¶¶ 10-11, 14; see also Dudley ¶ 7; Gelberg ¶ 7; Malloy ¶¶ 7, 27. As the affidavits attest, women sell their cars, leaving them without transportation for work and necessities, Gelberg ¶ 17; Dudley ¶ 7; they sacrifice payment for utilities, Swanson ¶ 8; and some arrive at the clinic with no money in their pockets even for food and no place to sleep overnight except their car, id. ¶ 11. Others turn to more desperate measures, including prostitution, Swanson ¶ 12, and even resort to illegal and unsafe abortions, Dudley ¶ 8. Even those who are more fortunate – those who can turn to their family and friends for assistance – suffer, as they are forced to divulge their pregnancies and plans for an abortion. Hawkins ¶ 12.

The struggle to raise the necessary funds takes time, pushing women to later and more

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[4] And even if this woman receives modest additional income from low-wage work or child support, the Temporary Assistance for Needy Families program contains set-offs that reduce her benefits in the face of this income. Palumbo ¶ 13.

risky abortions. Hawkins ¶ 10; Henshaw ¶¶ 15-16. Although abortion nonetheless remains safer than childbirth, with each week of delay from eight weeks LMP to twenty weeks LMP, the risk of major medical complications increases by twenty percent and the risk of death by thirty percent. Henshaw ¶ 17. What is more, for women for whom abortions are medically necessary, delay also means that they must live with their continuing, often worsening, health condition each day that they are delayed. Malloy ¶¶ 7, 26, 27. Some become too sick to work, Gelberg ¶ 15; their diabetes gets out of control, Gelberg ¶ 18; and they face hospitalization, Malloy ¶ 26.

Still other women never secure the money for an abortion. They are forced to carry unwanted pregnancies to term. Gelberg ¶¶ 14-16; Hawkins ¶ 15; Henshaw ¶¶ 10-11; Malloy ¶ 17; Swanson ¶ 9. The consequences are varied but severe. The health of many suffers. See, e.g., Malloy ¶ 17; Gelberg ¶¶ 15-16. Some women – particularly teenage girls – are forced to leave school and face diminished prospects of obtaining an education and escaping poverty. Henshaw ¶¶ 12-14. Women from abusive relationships are, in many cases, compelled to return to the relationship they were trying to flee, sometimes with deadly consequences. Cf. Gelberg ¶ 20; Hawkins ¶ 18.

The state restrictions on funding for abortions in Georgia are so severe and the circumstances of women so dire that many programs in and out of the state have created funds to assist women needing but unable to afford an abortion. Gelberg ¶¶ 11-12; Dudley ¶ 9. Some clinics sharply reduce fees for low-income women and, in extreme cases, waive all or part of the fee. Dudley ¶ 5; Hawkins ¶¶ 5, 15; Gelberg ¶¶ 4, 13. The Atlanta Driver's Network provides transportation for poor women seeking abortions in Atlanta. Swanson ¶¶ 6-7. The need in the state nonetheless exceeds the assistance available. Dudley ¶ 9; Hawkins ¶ 15; Gelberg ¶ 13;

Swanson ¶ 6.

In each of the many ways recounted above, Georgia's policies continually and irreparably injure poor women in this state: Women suffer harm to their health, and their fundamental right to decide whether to have a child is infringed. The frustration of women's reproductive health that flows from the restriction is itself an irreparable injury. See Siegel v. Lepore, 234 F.3d 1163, 1178 (11th Cir. 2000) (finding that "an ongoing violation [of the right of privacy] may be presumed to cause irreparable injury"). Indeed, a finding that the constitutional right of reproductive choice is threatened or in fact impaired "mandates a finding of irreparable injury." Deerfield Med. Ctr. v. City of Deerfield Beach, 661 F.2d 328, 338 (5th Cir. Unit B Nov. 1981).

The State, in contrast, will suffer no cognizable injury if an injunction is granted. Injunctive relief will not cause the State financial hardship. To the contrary, the medical costs associated with childbirth greatly exceed the costs associated with abortion. Henshaw ¶ 19. See infra Part II.D.

II. PLAINTIFFS HAVE A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS.

A. The Georgia Constitution Provides Independent and Broader Protection for the Right of Privacy and Reproductive Choice Than Does the Federal Constitution.

Georgia has a long and proud history of providing expansive protection for individual rights under its Constitution. Indeed, in innumerable contexts, the Supreme Court of this state has held that Georgia's Constitution provides protection for individual rights that is independent of and broader than the protection afforded by the Federal Constitution. In no arena has this

been more true than with respect to an individual's right to privacy, that is, the right to make intensely personal decisions free from unwarranted government interference. A woman's right to decide whether or not to bear a child lies at the core of that right.

"Federal constitutional standards represent the minimum, not the maximum, protection that this state must afford its citizens." Fleming v. Zant, 259 Ga. 687, 690, 386 S.E.2d 339, 342 (1989). Thus, a state court may "grant individuals more rights than those provided by the U.S. Constitution." Powell v. State, 270 Ga. 327, 331 n.3, 510 S.E.2d 18, 22 n.3 (1998). This is precisely what the Georgia courts have done. As our Supreme Court has explained, Georgia has "long granted more protection to its citizens than has the United States. . . ." Creamer v. State, 229 Ga. 511, 515, 192 S.E.2d 350, 353 (1972); see also Grissom v. Gleasom, 262 Ga. 374, 380-81, 418 S.E.2d 27, 32 (1992) (Sears-Collins, J., concurring specially) (explaining that Georgia's various constitutions have "developed on an independent path from that of the U.S. Constitution" and that the original language in the Georgia Bill of Rights "was created, in part, as a result of the long tradition in Georgia of granting its citizens the utmost in protection from governmental interference in their persons and property").

In myriad contexts, the Georgia Supreme Court has held that the State Constitution provides independent and broader protection for individual rights than the Federal Constitution. See, e.g., Powell, 270 Ga. at 331 n.3, 510 S.E.2d at 22 n.3 (detailing cases in which the "Georgia Constitution has been construed as providing greater protection to its citizens tha[n] does the federal constitution"); id. at 330-31, 510 S.E.2d at 22 (right to privacy); State v. Miller, 260 Ga. 669, 671, 398 S.E.2d 547, 550 (1990) (right to free speech); Green v. State, 260 Ga. 625, 627, 398 S.E.2d 360, 362 (1990) (right to be free from self-incrimination); Fleming, 259 Ga. at 690,

386 S.E.2d at 342 (right to be free from cruel and unusual punishment); Hayes v. Howell, 251 Ga. 580, 584, 308 S.E.2d 170, 175 (1983) (right against retroactive laws); Crim v. McWhorter, 242 Ga. 863, 867, 252 S.E.2d 421, 424 (1979) (right to free education).[5] In all of these cases, the Court has emphasized that the parameters of the State Constitution are neither determined nor circumscribed by the Federal Constitution. In Fleming, for example, the Court held that the execution of mentally retarded individuals violates the Georgia Constitution's right to be free from cruel and unusual punishment. 259 Ga. at 687, 689-90, 386 S.E.2d at 340, 341-42. The Court so held despite the fact that the United States Supreme Court, just a few months before, had ruled that such executions were permissible under the Federal Constitution. Id. at 690, 386 S.E.2d at 342 (refusing to follow Penry v. Lynaugh, 492 U.S. 302 (1989)).[6] In a testament to the independence of the Georgia Constitution and the Georgia judiciary, the Court proclaimed that, "although the rest of the nation might not agree, under the Georgia Constitution, the execution of the mentally retarded constitutes cruel and unusual punishment." 259 Ga. at 690, 386 S.E.2d at 342.

Nowhere is Georgia's independent and expansive protection of individual rights stronger than in the context of the right to privacy. As the Supreme Court has proudly noted, "the right of privacy was birthed by [the Georgia Supreme Court]" more than half a century ahead of the

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[5] See also Dawson v. State, 274 Ga. 327, 340, 554 S.E.2d 137, 147 (2001) (Thompson, J., dissenting) (Georgia Supreme Court was the first appellate court within any state or the federal system to hold electrocution to be cruel and unusual punishment under any State or the Federal Constitution).

[6] Last year, the United States Supreme Court overruled Penry, holding that the execution of mentally retarded individuals violates the Eighth Amendment. Atkins v. Virginia, 536 U.S. 304, 321 (2002).

United States Supreme Court's recognition of the federal right to privacy. Powell, 270 Ga. at 329, 570 S.E.2d at 21 (internal quotations omitted). In a groundbreaking opinion issued nearly one hundred years ago, the Georgia Supreme Court became the first court of last resort in the country to recognize the right to privacy as a fundamental right. Pavesich v. New England Life Ins., 122 Ga. 190, 197, 50 S.E. 68, 71 (1905); see also Powell, 270 Ga. at 329, 510 S.E.2d at 21 (noting that the Georgia Supreme Court was "a pioneer in the realm of the right of privacy"). Embracing the opportunity to break new legal ground, in Pavesich, the Court held that publishing a person's picture in an advertisement without his consent violates the individual's right to privacy, a right firmly rooted in Georgia's Constitution. 122 Ga. at 217, 50 S.E. at 79. In so holding, the Court recognized that every Georgian has a "legal right 'to be let alone,'" id. at 197, 50 S.E. at 71, when making personal decisions and is "entitled to a liberty of choice as to his manner of life, and neither an individual nor the public has a right to arbitrarily take away from him his liberty," id. at 196, 50 S.E. at 70; see also id. at 195, 50 S.E. at 70 (finding that the right to privacy "embrace[s] a person's right to a 'legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation'").

Since Pavesich was decided, our state courts have remained true to this legacy, developing "a rich appellate jurisprudence . . . which recognizes the right of privacy as a fundamental constitutional right, 'having a value so essential to individual liberty in our society that [its] infringement merits careful scrutiny by the courts.'" Powell, 270 Ga. at 329, 510 S.E.2d at 21-22 (quoting Ambles v. State, 259 Ga. 406, 408, 383 S.E.2d 555, 557 (1989))

(alteration in Powell).[7] And, continuing in Georgia's tradition of providing the utmost protection to its residents, the Georgia courts have repeatedly reaffirmed that the expansive protection afforded the right to privacy under the Georgia Constitution is independent of and broader than the protection provided under the Federal Constitution. As the Georgia Supreme Court explained in Powell, "[i]t is clear from the right of privacy appellate jurisprudence which emanates from Pavesich that the 'right to be let alone' guaranteed by the Georgia Constitution is far more extensive than the right of privacy protected by the U.S. Constitution . . . ." Powell, 270 Ga. at 330, 510 S.E.2d at 22.

The decision in Powell exemplifies Georgia's independent solicitude for the right of privacy. In that case, the Court invalidated the state's criminal ban on sodomy, holding that it "'manifestly infringes upon a constitutional provision' which guarantees to the citizens of Georgia the right of privacy." Id. at 336, 510 S.E.2d at 26 (citation omitted). The Court reasoned: "We cannot think of any other activity that reasonable persons would rank as more private and more deserving of protection from governmental interference than unforced, private, adult sexual activity. We conclude that such activity is at the heart of the Georgia Constitution's

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[7] See, e.g., Harris v. Cox Enters., Inc., 256 Ga. 299, 302, 348 S.E.2d 448, 450-51 (1986) (observing that "[w]hile this state has a strong policy of open government, . . . protecting the right of the individual to personal privacy [overrides disclosure of] matters about which the public has . . . no legitimate concern"); Athens Observer, Inc. v. Anderson, 245 Ga. 63, 65, 263 S.E.2d 128, 130 (1980) (describing right to privacy as protecting an individual from "unnecessary public scrutiny"); Gouldman-Taber Pontiac, Inc. v. Zerbst, 213 Ga. 682, 683, 100 S.E.2d 881, 882 (1957) (describing right of privacy as "the right of a person to be free from . . . the publicizing of one's private affairs with which the public has no legitimate concern") (internal quotations omitted); Ga. Power Co. v. Busbin, 149 Ga. App. 274, 277, 254 S.E.2d 146, 149 (1979) (explaining that "the right of privacy is embraced within the absolute rights of personal security and personal liberty, 'to be let alone,' . . . or to be protected from any wrongful intrusion into an individual's private life").

protection of the right of privacy." Id. at 332, 510 S.E.2d at 24 (citations omitted). Respecting the independence and breadth of the State Constitution, the Court in Powell struck the statute despite the fact that the United States Supreme Court had rejected a challenge to the very same statute and called the privacy claim "at best, facetious," Bowers v. Hardwick 478 U.S. 186, 194 (1986).[8] So irrelevant to the state constitutional analysis was the United States Supreme Court's decision that the federal decision was mentioned by the Georgia Supreme Court only in a three-sentence footnote. See Powell, 270 Ga. at 329 n.1, 510 S.E.2d at 21 n.1. Following Powell, the courts have continued to respect the expansive and independent protection for privacy and intimate decisions. See In re J.M., 276 Ga. 88, 88-90, 575 S.E.2d 441, 442-43 (2003) (holding that right to privacy encompasses private, consensual sexual conduct between minors legally capable of consenting to such conduct); see also State v. Eastwood, 243 Ga. App. 822, 823-24, 535 S.E.2d 246, 248 (2000) (holding that right to privacy prohibits prosecution of public school teacher for consensual sexual activity with student of legal age to consent).

The broad constitutional right "to be let alone" and to "liberty of choice as to [one's] manner of life" recognized in Pavesich and reaffirmed in Powell also protects one's right to make medical decisions free from unwarranted government interference. For example, the right encompasses the right to refuse medical treatment even where necessary to preserve life. See State v. McAfee, 259 Ga. 579, 580-81, 385 S.E.2d 651, 652 (1989) (patient's constitutional right of privacy includes right to terminate life support); Zant v. Prevatte, 248 Ga. 832, 834, 286 S.E.2d 715, 717 (1982) (holding prisoner on hunger strike could not be forced to accept medical

[8] Just this year, the United States Supreme Court adopted the view held by the Georgia Supreme Court and held that the federal privacy right extends to consensual, private same-sex couple sexual intimacy. Lawrence v. Texas, 123 S.Ct. 2472, 2484 (2003) (overruling Bowers).

treatment; individual "by virtue of his right of privacy, can refuse to allow intrusions on his person, even though calculated to preserve his life"); see also King v. State, 272 Ga. 788, 790, 535 S.E.2d 492, 495 (2000) (recognizing individuals' right to privacy in medical records); Karpowicz v. Hyles, 247 Ga. App. 292, 295, 543 S.E.2d 51, 54 (2000) (recognizing right to privacy of medical records extends to privileged psychiatric records).

Just as the right to privacy, so staunchly protected by the Georgia Constitution, encompasses the right to be free from governmental interference in making personal decisions about one's body, the course of one's medical treatment, and one's sexuality, so too does it embrace a woman's right to decide whether or not to carry a pregnancy to term and bear a child. A woman's right to decide whether or not to bear a child is at the very core of the right to "liberty of choice as to [one's] manner of life" and the right to "legal and uninterrupted enjoyment of [one's] life, . . . limbs, . . . body, [and] health" identified by the Court in Pavesich, 122 Ga. at 195, 196, 50 S.E. at 70. If the right to control one's own body means anything, it is the right to decide, free from governmental intrusion, whether to carry a pregnancy for nine months and give birth. Likewise, the right to direct one's medical treatment rings hollow if a woman is not free to end a pregnancy that threatens her health. And the right to make personal decisions about sexuality is inextricably linked to the right to choose whether or not to bear a child free from governmental intervention.

Indeed, a woman's decision whether or not to continue a pregnancy is among the most intimate and life-defining choices that she will make in her lifetime. See, e.g., Women of Minn. v. Gomez, 542 N.W.2d 17, 27 (Minn. 1995) ("We can think of few decisions more intimate, personal, and profound than a woman's decision between childbirth and abortion."); Comm. to

Defend Reprod. Rights v. Myers, 625 P.2d 779, 793 (Cal. 1981) (characterizing the right of reproductive choice as "clearly among the most intimate and fundamental of all constitutional rights"). This decision "is at the heart of the Georgia Constitution's protection of the right of privacy," Powell, 270 Ga. at 332, 510 S.E. 2d at 24, just as much as the right to engage in private, consensual sexual activity. As such, the right to reproductive choice is entitled to the same resolute protection that this state has historically and unwaveringly offered its citizens.

In recognizing that the Georgia Constitution provides independent and broad protection for the right of reproductive choice, this Court will not stand alone. Rather, it will be in accord with the high court of Tennessee, as well as the overwhelming authority from other states in cases like this one, challenging discriminatory Medicaid programs, in which courts have interpreted their state constitutions to recognize reproductive choice as a fundamental right and to provide it broader protection than does the Federal Constitution. See Planned Parenthood v. Sundquist, 38 S.W.3d 1, 10-17 (Tenn. 2000) (looking to broader state constitutional protections to strike state-mandated waiting period before women can obtain an abortion); see also, e.g., Alaska v. Planned Parenthood, 28 P.3d 904, 908 (Alaska 2001); Simat Corp. v. Ariz. Health Care Cost Containment Sys., 56 P.3d 28, 31-32 (Ariz. 2002); Comm. to Defend, 625 P.2d at 784, 787; Doe v. Maher, 515 A.2d 134, 148-52 (Conn. Super. Ct. 1986); Moe v. Sec'y of Admin. & Fin., 417 N.E.2d 387, 397-402 (Mass. 1981); Women of Minn. v. Gomez, 542 N.W.2d 17, 26-30 (Minn. 1995); Right to Choose v. Byrne, 450 A.2d 925, 933-37 (N.J. 1982). Georgia's fundamental right to privacy compels a similar holding.

B. The Differential Treatment of Women Who Need Medical Care To Continue Their Pregnancies and Women for Whom an Abortion Is Medically Necessary Impermissibly Interferes with the Right of Reproductive Choice.

Consistent with the guarantees of our State Constitution, the government cannot "wrongly intrude" on a women's decision whether or not to carry to term. Ga. Power Co. v. Busbin, 149 Ga. App. 274, 277, 254 S.E.2d 146, 149 (1979). But that is precisely the effect of the State's Medicaid regime: By offering medically necessary care to poor women if they carry their pregnancies to term, but denying care to women if the medically necessary service is an abortion, the State interferes with women's right to decide whether or not to continue a pregnancy. It coerces poor women's decisions by conditioning state assistance on their exercise of their right in the manner the government favors. Georgia's Constitution cannot countenance this government influence, interference, and discrimination in this most intimate, profound, and personal choice. By recognizing and condemning this discrimination, this Court will join the courts of thirteen other states that have invalidated similar Medicaid restrictions under their constitutions. See supra n.1.

At the outset, it is important to recognize the limited nature of Plaintiffs' claims. Plaintiffs do not argue that the State is required to provide medical care for poor Georgians or to subsidize the exercise of their fundamental rights. But once the government decides to offer medical assistance, it must do so in a nondiscriminatory manner. It cannot deny a state benefit to a woman based on how she exercises her fundamental rights. As Massachusetts' highest court explained:

> As an initial matter, the Legislature need not subsidize any of the costs associated with child bearing, or with health care generally. However, once it chooses to enter the constitutionally protected area of choice, it must do so with genuine indifference. It may not weigh the options open to the pregnant woman by its allocation of public funds; in this area, government is not free to "achieve with carrots what [it] is forbidden to achieve with sticks."

Moe v. Sec'y of Admin. & Fin., 417 N.E.2d 387, 402 (Mass. 1981) (quoting Laurence H. Tribe,

American Constitutional Law § 15-10, at 93 n.77 (1978)); see also, e.g., Right to Choose v. Byrne, 450 A.2d 925, 935 (N.J. 1982) ("Concededly, the Legislature need not fund any of the costs of medically necessary procedures pertaining to pregnancy . . . . Once it [does so] . . . however, government must proceed in a neutral manner." (citation omitted)); Simat Corp. v. Ariz. Health Care Cost Containment Sys., 56 P.3d 28, 32 (Ariz. 2002) (same).

Georgia law firmly recognizes that the right to be free from governmental interference includes the right to have government benefits distributed in a nondiscriminatory fashion, even when there is no entitlement to the benefit in the first instance. For example, although there is no right to use certain government property to exercise the right of free speech, once the State decides to open a forum for public use, it cannot exclude or discriminate against those who exercise their rights in a manner that the government disapproves of. Thus, the state Attorney General has opined that a prison regulation barring all demonstrations from the prison grounds would be constitutional if promulgated. Op. [Ga.] Att'y Gen. 146, No. 80-70, 1980 WL 26354, at *7 (June 3, 1980). But an attempt to prevent overnight camping by political demonstrators could survive constitutional scrutiny "only if the regulation were consistently and evenhandedly applied" to forbid all camping on prison grounds. Id. In other words, if the State decides to provide a public benefit – here the right to camp on prison grounds – it cannot selectively withhold the benefit from campers who exercise their constitutional right in a manner with which the State disagrees.

Likewise, in Union City Board of Zoning Appeals v. Justice Outdoor Displays, Inc., 266 Ga. 393, 467 S.E.2d 875 (1996), the Georgia Supreme Court held unconstitutional a Union City ordinance prohibiting the display of noncommercial signs at locations where commercial signs

were permitted. Id. at 396-97, 467 S.E.2d at 879-80. Although Union City had no obligation to permit the display of signs in designated zoning districts in the first instance, once the city did so, it could not discriminate in favor of commercial messages by excluding noncommercial messages. Id. at 396, 467 S.E.2d at 879. As the Court held, "the [government] may not restrict the message on any such sign to those subjects the [government] deems appropriate." Id. at 397, 467 S.E.2d at 880.

This principle equally applies here. Georgia's Constitution does not obligate the State to subsidize a woman's decision whether or not to continue a pregnancy. But it does require that once the State decides to provide such assistance, it must do so in an evenhanded, nondiscriminatory manner. It cannot deny a public benefit based solely on how individuals exercise their constitutional rights. It cannot selectively deny medical assistance benefits to women who exercise their right in the manner the government deems inappropriate, any more than it could bar only political protestors from camping on prison grounds, or noncommercial signs from Union City. See also Moe v. Sec'y of Admin. & Fin., 417 N.E.2d 387, 401 (Mass. 1981) (analogizing exclusion of abortion from medical assistance program to exclusion of a student group from a state college's facilities for meetings and announcements); Comm. to Defend Reprod. Rights v. Myers, 625 P.2d 779, 785-89 (Cal. 1981) (analogizing Medicaid's coverage for pregnancy-related care, except abortion, to earlier state case in which a public school made its building available to all private organizations for meetings and denied access solely to "subversive groups"). Indeed, the majority of other courts to confront this issue have recognized that with reproductive choice, no less than with speech and other protected rights, once a state decides to offer benefits, it has a constitutional obligation to provide those services

in a non-discriminatory manner. See, e.g., Alaska v. Planned Parenthood, 28 P.3d 904, 906 (Alaska 2001) ("Once the state undertakes to fund medically necessary services for poor Alaskans, it may not selectively exclude from that program women who medically require abortions."); Women's Health Ctr. v. Panepinto, 446 S.E.2d 658, 666 (W.Va. 1993) ("[O]nce a government chooses to dispense funds, it must do so in a non-discriminatory fashion, and it certainly cannot withdraw benefits for no reason other than that a woman chooses to avail herself of a federally-granted constitutional right."); Right to Choose v. Byrne, 450 A.2d 925, 935 n.5 (N.J. 1982) ("[O]nce government enters the zone of privacy surrounding a pregnant woman's right to choose, it must act impartially. In that constitutionally protected zone, the State may be an umpire, but not a contestant.").

In so holding, these courts have all rejected the reasoning of the United States Supreme Court, which upheld a similar denial of federal Medicaid benefits for abortions, on the premise that "the [Congressional restraint] leaves an indigent woman with at least the same range of choice . . . as she would have had if Congress had chosen to subsidize no health care costs at all." Harris v. McRae, 448 U.S. 297, 317 (1980). See supra n.1.

The reasoning of Harris is entirely inconsistent with Georgia law recognizing the duty of neutrality in the provision of public benefits. Although it could have just as easily been said that the government policies left political demonstrators with "the same range of choice" as they would have had if the prison grounds were never open for camping, and that individuals who wanted to post non-commercial signs would have "the same range of choice" as they would have had if Union City had not allowed any signs, that did not render these policies constitutional. Both the Georgia Supreme Court and the Attorney General recognized that even though the

government had no obligation to make the public benefit available in the first instance, once it did so, the Constitution mandates neutrality.

Moreover, it simply is not the case that the discriminatory Medicaid program leaves women with at least the same choices as they would have had if the State had not chosen to subsidize any health care costs. As courts of other states have consistently recognized, state programs providing medically necessary assistance to women choosing to continue their pregnancies to term, but not to women seeking an abortion to protect their health, interfere with a woman's choice to terminate her pregnancy. As the very adoption of a medical assistance program evidences, poor women cannot afford to pay for their own health care. See Henshaw ¶¶ 3, 9-11, 15-16; Gelberg ¶¶ 4-7, 9, 11, 13-21; Hawkins ¶¶ 4, 7-9, 11-12, 14, 16-19; Dudley ¶¶ 5, 7-9, 14; Palumbo ¶¶ 6, 18-21; Malloy ¶¶ 7, 17, 26-27, 34, 36; Swanson ¶¶ 3, 5, 8-14; Belsky ¶¶ 14, 16-17. The offer of state assistance only for those who carry to term thus pressures women to forego the choice of terminating a pregnancy, even when necessary for their health. As the Supreme Court of West Virginia explained, "This disparity in funding by the State clearly operates to coerce indigent pregnant women to bear children they would not otherwise choose to have, and just as clearly, this coercion can only operate upon the poor, who are uniquely the victims of this form of financial pressure." Women's Health Ctr., 446 S.E.2d at 666 (quoting Maher v. Roe, 432 U.S. 464, 483 (1977) (Brennan, J., dissenting)); see also Comm. to Defend, 625 P.2d at 793 (characterizing state as "utilizing its resources to ensure that women who are too poor to obtain medical care on their own will exercise their right of procreative choice only in the manner approved by the state").

The practical realities facing low-income pregnant women show why this is so. If denied

coverage for any pregnancy-related care, a poor woman with a heart condition, sickle cell anemia, diabetes, or any other condition that may make an abortion medically necessary, see Malloy ¶¶ 7, 13-17, 19-25, 27; Gelberg ¶¶ 14-21; Hawkins ¶¶ 4, 6, 16-19; Dudley ¶ 6; Belsky ¶ 2, 12-13, will have to make very difficult choices for herself and her family no matter whether she decides to have an abortion or to continue the pregnancy. In either case, to get the health care she needs, she may have to skip paying her utility bills, even if it means her power or heat is cut off; she may have to be late with the rent and risk having her family evicted; and she may have no choice but to skimp on food for herself and her family. See Gelberg ¶¶ 6-7, 15; Hawkins ¶¶ 7, 10-11; Dudley ¶¶ 7, 14; Palumbo ¶¶ 6, 18-20; Swanson ¶¶ 8; Henshaw ¶ 15. But if the State provides medical assistance if she carries to term, she will not have to make immediate sacrifices at great costs to herself and her family. If she makes that choice – and only if she makes that choice – does she have a chance to provide heat, shelter, and food for her family.

Such financial coercion impermissibly intrudes on a woman's fundamental right to decide whether or not to continue a pregnancy that threatens her health and thus violates the Georgia Constitution. This state's longstanding protection for privacy cannot abide the interference and discrimination of the Medicaid regime.

C. Denying State Assistance to Women for Abortions that Are Medically Necessary While Providing Medically Necessary Assistance to Women Carrying to Term Violates the State Constitutional Guarantee to Equal Protection.

Not only does the State Medicaid scheme infringe Georgia women's constitutional right

to privacy, it also violates their right to impartial and equal protection.[9] "'The Georgia . . . Constitution[] require[s] government to treat similarly situated individuals in a similar manner.'" Rodriguez v. State, 275 Ga. 283, 284, 565 S.E.2d 458, 460 (2002) (quoting Old South Duck Tours v. Mayor & Alderman of Savannah, 272 Ga. 869, 873, 535 S.E.2d 751, 755 (2000)); see also Hughes v. Reynolds, 223 Ga. 727, 730, 157 S.E.2d 746, 749 (1967) ("Where laws are applied differently to different persons under the same or similar circumstances, equal protection of law is denied."). By providing medically necessary care to poor women who carry their pregnancies to term, while denying such care to women for whom abortions are medically necessary, Georgia's medical assistance program violates this mandate.

The State's Medicaid program divides poor pregnant women into two classes: The first class consists of poor pregnant women who need medical care to continue their pregnancies, while the second consists of poor pregnant women for whom an abortion is medically necessary. These classes of women are similarly situated. Both consist of women who are poor and rely on the State for their medical care. Both consist of pregnant women for whom medical care relating to their pregnancy is necessary. But by selectively withholding necessary medical care for one group of women and providing it to the other, the State treats these two similarly situated classes differently: Those women who need medical care to carry their pregnancies to term receive state

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[9] In language that goes beyond that found in the Federal Constitution, the Georgia Constitution declares that "[p]rotection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws." GA. CONST. art. I, § I, ¶ II; see also art. I. § I, ¶ XXV (social status provision). Although the Georgia Supreme Court has held that the equal protection provisions of the Georgia and United States Constitutions are "coextensive," Grissom v. Gleason, 262 Ga. 374, 376, 418 S.E.2d 27, 29 (1992), the Court has reserved "the possibility that [it] may interpret the equal protection clause in the Georgia Constitution to offer greater rights than the federal equal protection clause as interpreted by the U.S. Supreme Court." Id. at 376 n.1, 418 S.E.2d at 27 n.1.

assisted care; those who need abortions do not. By treating women who carry to term more favorably than women who need an abortion, the classification discriminates in the allocation of benefits based on the exercise of the fundamental right to reproductive choice and denies women the impartial and equal protection of the laws guaranteed them by the Georgia Constitution.

Numerous other courts have recognized the denial of equal protection inherent in Medicaid programs that selectively exclude coverage for medically necessary abortions. As the Montana court held:

> The denial of equal protection is clear. The state has taken the class of indigent pregnant Medicaid eligible women and divided them. One class, who needs medically necessary treatment (an abortion) [is] not entitled to help from the state. However, another class (those women for whom child birth is a medically necessary treatment) [is] entitled to state financial help.

Jeannette R. v. Ellery, No. BDV-94-811, slip op. at 22 (Mont. Dist. Ct. May 19, 1995); see also Simat Corp. v. Ariz. Health Care Cost Containment Sys., 56 P.3d 28, 34-35 (Ariz. 2002) (same); Alaska v. Planned Parenthood, 28 P.3d 904, 908-913 (Alaska 2001) (same); Women's Health Ctr. v. Panepinto, 446 S.E.2d 658, 666-67 (W.Va. 1993) (same); Right to Choose v. Byrne, 450 A.2d 925, 934-37 (N.J. 1982) (same); Planned Parenthood Ass'n v. Dep't of Human Res., 663 P.2d 1247, 1258-61 (Or. Ct. App. 1983) (same), aff'd on statutory grounds, 687 P.2d 785 (Or. 1984); Doe v. Maher, 515 A.2d 134, 158-59, 162 (Conn. Super. Ct. 1986) (same). In Georgia, no less than in Montana, Arizona, West Virginia, Alaska, New Jersey, and these other states, the Medicaid program discriminates against women who need abortions to protect their health.

D. The Discriminatory Funding Is Not Justified by a Compelling State Interest.

Because the exclusion of medically necessary abortions from an otherwise full array of pregnancy-related care infringes on poor women's right to privacy and equal protection, the

exclusion may be upheld only if the State proves that it is necessary to serve a compelling state interest. See, e.g., Powell, 270 Ga. at 333, 510 S.E.2d at 24 (holding that government interference with the "right to privacy will pass constitutional muster if [it] is shown to serve a compelling state interest and to be narrowly tailored to effectuate only that compelling interest"); Rodriguez, 275 Ga. at 286, 565 S.E.2d at 461 ("If the classification adversely impacts a . . . fundamental right, we must test the classification under the standard of strict scrutiny."); Ambles v. State, 259 Ga. 406, 407, 383 S.E.2d 555, 557 (1989) (when assessing equal protection or privacy challenge, a statute that interferes with the exercise of a fundamental right must "be narrowly tailored to serve a compelling state interest"). This it cannot do: The State has no compelling interest to justify denying necessary medical care to poor women who need abortions to preserve their health while providing such assistance to women who carry their pregnancies to term.

In attempting to justify similar discriminatory medical assistance schemes, states have generally proffered two interests: an interest in saving money and an interest in protecting potential life. But as the courts of more than a dozen states have held, neither of these interests (nor any other) justifies trampling on a woman's fundamental right to reproductive choice and thereby putting her health in jeopardy.

The State's quite legitimate interest in preserving the public fisc provides no justification for the exclusion of medically necessary abortions from the Medicaid program. As an initial matter, the State's policy of paying for childbirth services, but not medically necessary abortions, does not save the State money. Indeed, the opposite is true. Even accounting for the partial reimbursement of maternity and infant care costs by the federal government, the State pays more

than the cost of an abortion every time a Medicaid-eligible woman is compelled to carry to term because she cannot afford an abortion on her own. Henshaw ¶¶ 19-20. For the women affected by the Medicaid restrictions, the expenses associated with continuing a pregnancy and childbirth are likely to be even greater as these women will at times need extensive, and thus expensive, medical care. See, e.g. Malloy ¶¶ 17, 19-20, 26 (detailing health indications). Because of the complications associated with their pregnancies, the children they bear may also need significant medical care. See, e.g., Malloy ¶¶ 17, 19, 29 (detailing health indications). In addition, the cost to the State will in many instances not end upon delivery: Women too poor to afford medical care will often be unable to raise their children without substantial ongoing assistance. Henshaw ¶¶ 13, 19; see also Malloy ¶ 33; Palumbo ¶¶ 12, 16, 18.

More fundamentally, even if it were factually supportable (which it is not), no fiscal interest can justify the infringement of women's fundamental right to reproductive choice or the denial of equal protection. Although the State has a legitimate interest in conserving the public fisc, financial interests cannot justify an invasion of constitutional rights. The United States Supreme Court recently reaffirmed this principle in holding that California's interest in saving almost $11 million a year could not justify the state's decision to discriminate against new residents in the provision of welfare benefits. Saenz v. Roe, 526 U.S. 489, 506-07 (1999). As the Court explained in rejecting the state's proffered interest, "the State's legitimate interest in saving money provides no justification for its decision to discriminate among equally eligible citizens." Id. at 507; see also Shapiro v. Thompson, 394 U.S. 618, 633 (1969) (holding that "[t]he saving of welfare costs cannot justify an otherwise invidious classification"). If the law were otherwise, states could justify any discrimination in the allocation of public benefits – even

a welfare program that provided benefits to white citizens, but not to black citizens – on the ground that the discrimination serves the state's interest in saving money. This, of course, is not the law. For both these factual and legal reasons, virtually every court to have considered the fiscal impact of similar discrimination in Medicaid coverage has rejected this alleged budgetary rationale. See, e.g., Alaska v. Planned Parenthood, 28 P.3d 904, 910 (Alaska 2001); N.M. Right to Choose/NARAL v. Johnson, 975 P.2d 841, 856-57 (N.M. 1998); Comm. to Defend Reprod. Rights v. Myers, 625 P.2d 779, 794 (Cal. 1981); Planned Parenthood Ass'n v. Dep't of Human Res., 663 P.2d 1247, 1259-60 (Or. Ct. App. 1983); Doe v.Maher, 515 A.2d 134, 151 n.34 (Conn. Super. Ct. 1986); but see A Choice for Women, Inc. v. Fla. Agency for Health Care Admin., __ So. 2d __, No. 3D02-3039, 2003 WL 22047700, at *2 (Fla. Dist. Ct. App. Sept. 3, 2003) (asserting, without factual analysis, that "containing cost of Medicaid program by limiting services to those which are federally reimbursable is also a legitimate state interest") petition for rehearing pending.

Nor can the discrimination be justified as a means of protecting potential life. Although the State has such an interest, see Jefferson v. Griffin Spalding County Hosp. Auth., 247 Ga. 86, 89, 274 S.E.2d 457, 460 (1981), that interest cannot justify government intrusion into a woman's decision whether or not to terminate a pregnancy prior to viability. For if it could, then the State could outlaw abortion entirely. This it may not do. See Planned Parenthood v. Casey, 505 U.S. 833, 879 (1992) (reaffirming the central holding of Roe v. Wade, 410 U.S. 113 (1973), that state may not prohibit a woman from making the decision to terminate her pregnancy before fetal viability). As the California Supreme Court explained in rejecting the identical claim:

> There is no question, of course, that phrased in general terms the state has a legitimate interest in protecting the potential life of a fetus. . . . In the instant

> case, however, the state is not merely proposing to protect a fetus from general harm, but rather is asserting an interest in protecting a fetus vis-a-vis the woman of whom the fetus is an integral part. Such a claimed interest, of course, clashes head-on with the woman's own fundamental right of procreative choice. . . . [As the United States Supreme Court has concluded,] the state may not subordinate [this right] to the state's interest in protecting a nonviable fetus.

Committee to Defend, 625 P.2d at 795; see also Simat Corp. v. Ariz. Health Care Cost Containment Sys., 56 P.3d 28, 33-35 (Ariz. 2002) (rejecting state's interest in potential life as insufficient to justify exclusion of medically necessary abortions); N.M. Right to Choose/NARAL, 975 P.2d at 857 (same); Right to Choose v. Byrne, 450 A.2d 925, 937 (N.J. 1982) (same); Moe v. Sec'y of Admin. & Fin., 417 N.E.2d 387, 403-04 (Mass. 1981) (same); Doe v. Maher, 515 A.2d at 157; Women of Minn. v. Gomez, 542 N.W.2d 17, 31 (Minn. 1995) (same).[10]

Moreover, the State's interest in protecting potential life has even less force here, where the abortions at issue are necessary to protect women's health. As the affidavits attest, the State is attempting to promote its interest against women who, if forced to continue their pregnancies, are at risk of severely damaging their heart, see Malloy ¶¶ 10, 13, 21; of seriously damaging or losing their vision, see Malloy ¶¶ 10, 13, 20; of having a stroke, see Malloy ¶ 10; and of falling

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[10] Nothing in Jefferson v. Griffin Spalding County Hosp. Auth., 247 Ga. 86, 89, 274 S.E.2d 457, 460 (1981), is to the contrary. Jefferson involved a woman in her final (39th) week of pregnancy who had a condition such that, if she gave birth vaginally, she had less than a fifty percent chance of surviving and her fetus would have had almost no chance of surviving. 247 Ga. at 86, 88, 274 S.E.2d at 458-59. Delivery by caesarean section, however, would result in an almost 100 percent chance of both the woman and her child surviving. Id. Given that the fetus was viable, indeed days away from birth, and that vaginal birth posed grave risks both to the fetus and the woman, the Court held that the interest in preserving life outweighed the woman's religious interests in refusing the surgery. As Justice Hill has noted, Jefferson presented exceptional circumstances; it has not been extended beyond its facts. See id. at 89-90, 274 S.E.2d at 460 (Hill, Presiding J., concurring). It certainly has no application to pre-viability abortions in general or to abortions necessary to preserve a woman's health.

into a temporary coma, see Malloy ¶ 20, among other harms. The question is therefore not only whether a state interest in potential life is so compelling as to outweigh a woman's right to choose, but whether the State's interest in potential life outweighs the woman's right to protect her own health. The answer is clearly no. See, e.g., Simat Corp., 56 P.3d at 33-35; Planned Parenthood, 28 P.3d at 913; N.M. Right to Choose/NARAL, 975 P.2d at 857; Right to Choose, 450 A.2d at 937; Moe, 417 N.E.2d at 403-04.[11] Moreover, any claim the State asserts in potential life is undercut by its refusal to cover abortions even in those cases where the fetus will not survive. See Malloy ¶ 28; N.M. Right to Choose/NARAL, 975 P.2d at 857.

There being no adequate justification for the exclusion of medically necessary abortions from the State's otherwise comprehensive medical assistance program, the exclusion violates the Georgia Constitution.[12]

E. Georgia's Medicaid Program Impermissibly Discriminates on the Basis of Sex.

In addition to discriminating based on how women exercise their right to reproductive

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[11] Any purported state interest in potential life is even less justified, where, as here, the Medicaid scheme funds abortions when the pregnancy results from rape or incest. See, e.g., Simat Corp., 56 P.3d at 34 (holding that protection of fetus is insufficient justification for refusing to protect health of woman, particularly where the state funds "abortion of a healthy fetus when the pregnancy results from rape or incest, even though in many cases that mother's life or physical health may not be endangered by carrying the pregnancy to term").

[12] In fact, at lease one court has held that the limitation on abortion coverage would not pass even the lowest level of scrutiny because it lacks any rational relationship to Medicaid's avowed "purpose of enabling each State . . . to . . . furnish medical assistance . . . [to eligible individuals] whose income and resources are insufficient to meet the costs of necessary medical services." 42 U.S.C. § 1396. For example, the Alaska Supreme Court recently held that an identical restriction on Medicaid funding "would fail equal protection analysis under any standard" because it "grants needed health care to some Medicaid-eligible Alaskans, but denies it to others, based on criteria entirely unrelated to the Medicaid program's purpose of granting uniform and high quality medical care to all needy persons of this state." Planned Parenthood, 28 P.3d at 911; see also Comm. to Defend, 625 P.2d at 790 (same).

choice, Georgia's Medicaid program also impermissibly discriminates on the basis of sex. The Medicaid program funds covered services for men whenever they are medically necessary, but refuses to fund abortions – a service only needed by women – unless a woman's life is in danger or her pregnancy results from rape or incest. This differential singles women out for adverse treatment, reflects and perpetuates stereotypical notions of women's proper role in society, and hinders their efforts to achieve social, political, and economic equality, all in violation of the Georgia Constitution.

Georgia's guarantee that no person shall be denied the equal protection of the laws applies to sex-based classifications. See, e.g., Franklin v. Hill, 264 Ga. 302, 303, 444 S.E.2d 778, 780 (1994). Consistent with this guarantee, the State Supreme Court has repeatedly invalidated laws that treated similarly situated men and women differently, including statutes precluding the father, but not mother, from inheriting from children born out of wedlock in specified circumstances, Rainey v. Chever, 270 Ga. 519, 510 S.E.2d 823 (1999); making only men civilly liable for seduction, Franklin, 264 Ga. 302, 444 S.E.2d 778; giving a mother, only if the father is dead, a right of action against people who give her children alcohol, Stepperson, Inc. v. Long, 256 Ga. 838, 353 S.E.2d 461 (1987); giving a conclusive presumption of dependency to widows but not widowers under workers' compensation statutes, Ins. Co. of N.A. v. Russell, 246 Ga. 269, 271 S.E.2d 178 (1980); treating men and women differently under alimony statutes, Stitt v. Stitt, 243 Ga. 301, 253 S.E.2d 764 (1979); and modifying alimony for wife but not husband with "live in lover," Sims v. Sims, 243 Ga. 275, 253 S.E.2d 762 (1979).[13]

[13] Georgia's statutory prohibitions against sex discrimination further evidence the State's commitment to women's equality. See O.C.G.A. §§ 45-19-21 (prohibiting discrimination in public employment based on sex), 34-5-1 (declaring that wage discrimination based on sex

Like these statutes that the Court has already invalidated, Georgia's Medicaid program impermissibly treats similarly situated men and women differently in violation of the state's constitutional guarantee of equal protection. Members of both sexes who rely on medical assistance are similarly situated: They are in need of health care, unable to finance it themselves, and eligible for medical assistance. Despite these similarities, Georgia's program treats men and women differently. Whenever a male recipient requires a covered service, the State pays for it when medically necessary. In contrast, when a woman requires an abortion, the State pays for it only if she would otherwise die or if the pregnancy results from rape or incest. For no service unique to men is payment limited to only those circumstances necessary to save the man's life and denied when otherwise necessary for a man's health.

Georgia's Medicaid program also rests impermissibly on stereotypes. By denying funding for medically necessary abortions, the program perpetuates the outmoded view that women's ultimate role is that of mother, and that women should even sacrifice their own health in order to become mothers. See, e.g., N.M. Right to Choose/NARAL, 975 P.2d at 854 (recounting how "[s]ince time immemorial, women's biology and ability to bear children have been used as a basis for discriminations against them") (internal quotations omitted). Georgia law, however, does not tolerate gender-based classifications that rely on stereotypes about men and women. Rainey, 270 Ga. at 520, 510 S.E.2d at 824 ("We reject the argument that mothers are less likely than fathers to abandon children born out of wedlock as reliant on stereotypes and

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"unjustly discriminates against the person receiving the lesser rate; . . . curtails employment opportunities; decreases mobility of workers and increases labor costs; impairs purchasing power and threatens the maintenance of an adequate standard of living by such workers and their families; . . . and adversely affects the general welfare").

overbroad generalizations.").

Finally, by forcing women to carry their pregnancies to term at the expense of their health, the State's Medicaid program not only reflects, but perpetuates, a limited role for women: Women denied the opportunity to terminate a pregnancy that threatens their health cannot participate as equals in society. Motherhood – particularly when unplanned, unwanted, and unaffordable – dramatically curtails a woman's educational opportunities, economic prospects, and self determination. Henshaw ¶¶ 12-14; see also Belsky ¶ 11.

Looking to their state constitutions, courts in New Mexico and Connecticut have invalidated similar restrictions on abortion coverage in their Medicaid programs as impermissible sex discrimination. See N.M. Right to Choose/NARAL, 975 P.2d at 854-56; Maher, 515 A.2d at 159. These courts reasoned "[s]ince only women become pregnant, discrimination against pregnancy by not funding abortion when it is medically necessary and when all other medical expenses are paid by the state for . . . men . . . is sex oriented discrimination." Maher, 515 A.2d at 159; see generally N.M. Right to Choose/NARAL, 975 P.2d at 856; cf. Planned Parenthood Ass'n, 663 P.2d at 1260 (stating that if program covers all medically necessary services for men but does not cover abortions, it "may well" constitute sex discrimination), aff'd on statutory grounds, 687 P.2d 785 (Or. 1984); but see A Choice for Women, Inc. v. Fla. Agency for Health Care Admin., __ So. 2d __, No. 3D02-3039, 2003 WL 22047700, at *2 (Fla. Dist. Ct. App. Sept. 3, 2003); Fischer v. Dep't of Pub. Welfare, 502 A.2d 114, 126 (Pa. 1985).[14] Georgia's Constitution does not tolerate this sort of discrimination any

[14] The decisions in New Mexico and Connecticut are in accord with a long line of state court decisions that have recognized classifications based on pregnancy or the ability to become pregnant constitute sex discrimination. See, e.g., Bankers Life & Cas. Co. v. Peterson, 866 P.2d

more than the constitutions of the other states that recognize classifications based on pregnancy constitute impermissible sex discrimination.

The State cannot meet its burden of showing that the gender-based classification here at issue "serve[s] important government interests that are substantially related to those interests." Franklin, 264 Ga. at 304, 444 S.E.2d at 781. As detailed previously, even assuming that a fiscal interest could suffice to overcome a constitutional violation, denial of funding for medically necessary abortions does not serve that interest. Nor can the State justify gender discrimination that puts women's health at risk by reference to Georgia's interest in potential life. See supra Part II.D. Moreover, discrimination bears no relationship whatsoever to the purpose of the Medicaid program, which is to help provide medical assistance to low-income individuals. There is therefore no basis for upholding the State Medicaid program's discriminatory denial of equal protection and equal funding for medically necessary abortions.

241, 243 (Mont. 1993) (holding that discrimination based on pregnancy is sex discrimination); Colo. Civil Rights Comm'n v. Travelers Ins. Co., 759 P.2d 1358, 1363-65 (Colo. 1988) (same); Frank's Shoe Store v. W. Va. Human Rights Comm'n, 365 S.E.2d 251, 257 (W. Va. 1986) (same); Minn. Mining & Mfg. Co. v. State, 289 N.W.2d 396, 400 (Minn. 1979) (same); Mass. Elec. Co. v. Mass. Comm'n Against Discrimination, 375 N.E.2d 1192, 1198 (Mass. 1978) (same); Quaker Oats Co. v. Cedar Rapids Human Rights Comm'n, 268 N.W.2d 862, 867 (Iowa 1978) (same); Lapeyronnie v. Dimitri Eye Ctr., Inc., 693 So. 2d 236, 238 (La. App. Ct. 1997) (same).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their motion for a temporary restraining order and/or preliminary injunction.

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Respectfully submitted,

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