UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

MARY C. MAYHEW, in her capacity as Commissioner of Maine Department of Health and Human Services, Petitioner v. KATHLEEN SEBELIUS, Secretary, in her capacity as Secretary of the U.S. Department of Health and Human Services, et als. Respondents	Docket No.:

PETITIONER'S MOTION FOR INJUNCTIVE RELIEF

Now comes Mary C. Mayhew, in her capacity as Commissioner of Maine Department of Health and Human Services, pursuant to Fed.R. App. P. 8(2), 18(2), and seeks an order against Respondents which:

> (1) orders Respondents to approve the pending application to amend Maine's Medicaid State plan to make three eligibility changes on or before October 1, 2012. These changes would result in the Maine standards in these areas still being at or greater than the federal Medicaid minimums; or
>
> (2) orders Respondents to pay Maine's share for Medicaid coverage for these three groups over and above the amounts Maine would pay if the State plan amendments were approved on or before October 1, 2012, pending the outcome of this litigation. Respondents can later deduct these amounts from federal Medicaid matching funds should the issues be resolved by the court in their favor, but it is unlikely that the converse is permissible – Maine obtaining an order that Respondents must reimburse the State for its extra costs after October 1.

Respondents have not accepted either option. The reasons supporting this motion are set forth below.

BACKGROUND

Federal Statutes. Medicaid is a jointly funded state and federal program that provides medical services to low-income persons pursuant to Title XIX of the Social Security Act. "In order to receive that [federal] funding, States must comply with federal criteria governing matters such as who receives care and what services are provided at what cost. By 1982 every State had chosen to participate in Medicaid. Federal funds received through the Medicaid program have become a substantial part of state budgets, now constituting over 10 percent of most States' total revenue." *National Federation of Ind't Businesses v. Sebelius* ("*NFIB*"), 132 S. Ct. 2556, 2582 (2012). In Maine, for the state's fiscal year 2013 (July 1, 2012 to June 30, 2013) the Medicaid program, (which is known as "MaineCare"), comprises 33.5 percent of the total State budget, while the federal Medicaid matching funds constitute 21.97 percent of the State's budget. Exhibit 1, ¶ 8-9.

Under the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) ("ARRA"), states that chose to participate in this program were required to comply with the ARRA Medicaid Maintenance of Effort ("MOE") requirement. The ARRA MOE mandated that a state that chose to participate was required to maintain the eligibility standards it had in effect on

July 1, 2008, as a condition of securing the enhanced federal match for Medicaid (known as the Federal Medical Assistance Percentage or "FMAP")[1] provided by ARRA, § 5001(f)(1)(A). Maine did voluntarily participate in that program, expecting as stated in that statute that the ARRA Medicaid MOE would expire on December 31, 2010, along with the enhanced FMAP. ARRA, § 5001(h)(3). Subsequently, Congress extended this voluntary program to June 30, 2011. Education, Jobs and Medicaid Assistance Act, Pub. L. No. 111-226, 124 Stat. 2389 (2010) ("EJMA").

The Patient Protection and Affordable Care Act ("ACA") has its own MOE provision. Pub. L. No. 111-148, 124 Stat. 119 (2010), § 2001(b), codified at 42 U.S.C. § 1396a(a)(74) (Exhibit 2) and § 1396a(gg) (Exhibit 3). It requires states to maintain eligibility standards in effect on the date of enactment -- March 23, 2010 -- for adults in Medicaid until January 1, 2014, and for children in Medicaid and the Children's Health Insurance Program ("CHIP")[2] until October 1, 2019.

Under the ACA, if a State fails to maintain its Medicaid eligibility at the levels in effect on March 23, 2010, it risks losing *all* federal Medicaid funding. 42 U.S.C. § 1396c. The ACA MOE provision was enacted as part of the Medicaid expansion section – ACA, § 2001 ("TITLE II—ROLE OF PUBLIC PROGRAMS,

[1] 42 U.S.C. § 1396d(b).
[2] 42 U.S.C. §§ 1397aa-1397mm.

Subtitle A—Improved Access to Medicaid, Medicaid coverage for the lowest income populations"). The ACA, therefore, expands Medicaid by extending the voluntary program that ended on June 30, 2011, to the 2014 and 2019 dates for adults and children, respectively, even though the incentives associated with the ARRA ended on June 30, 2011. This retroactive change was made unilaterally by the Federal Government – states had no choice.

Maine, like other states, is dealing with the most serious economic downturn since the Great Depression. Maine, unlike the Federal Government, must have a balanced budget. Me. Const., art. V, pt. 3, § 5; art IX, § 14. Maine developed a number of legislative and administrative initiatives to address its economic crisis. These initiatives include, *inter alia*, state employee pension reform,[3] unpaid state government closure days,[4] a merit increase freeze for state employees,[5] a hiring freeze for state employees[6] and elimination of a state agency.[7]

In February 2011, Secretary Sebelius sent a letter to the state governors, suggesting ways that states could achieve cost savings in their Medicaid programs, including reducing Medicaid benefits, managing care for high-cost enrollees more

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[3] P.L. 2011, ch. 380, Pts. T, U, V, W, X and MMM and P.L. 2011, ch. 480, Pt. L.
[4] P.L. 2009, ch. 213, § SSS-3.
[5] P.L. 2009, ch. 213 § SSS-4.
[6] Me. Exec. Order No. 7, FY 11/12 (Jan. 6, 2011), *An Order Amending the Special Budget and Expenditure Order of July 1, 2010.*
[7] P.L. 2011, ch. 655, § DD-22.

effectively, and purchasing drugs more efficiently. Letter from Secretary Sebelius to Governors (Feb. 3, 2011). Exhibit 4.

Since March 2010, Maine has achieved savings in MaineCare by reducing the benefits in eight MaineCare services. Exhibit 1, ¶ 12(a). Maine also has achieved savings by reducing reimbursement rates for 18 MaineCare services. Exhibit 1, ¶ 12(b).

In addition, Maine is achieving savings by managing its high-cost MaineCare members more effectively through the use of improved assessments, prior authorization, utilization review and retrospective review. Exhibit 1, ¶ 12(c). Maine is a national leader in its MaineCare drug purchasing program, and achieves cost-savings by obtaining supplemental rebates and participating in a multi-state drug purchasing pool. Exhibit 1, ¶ 12(d). Maine has contracted with an audit recovery vendor which will identify and collect overpayments to MaineCare providers. Exhibit 1, ¶ 12(e).

Maine's Request for Approval of Amendments to Its Medicaid Plan.

Despite these efforts, the Maine Legislature found it necessary to make modest reductions to MaineCare eligibility in order to balance Maine's budget. The Legislature identified three eligibility groups, as set forth in a chart contained in Exhibit 5 and described in detail below. Maine state expenditures for MaineCare in this fiscal year are projected to be $878.9 million. Exhibit 1, ¶ 9. The modest reductions Maine seeks here would save $19.93 million of state dollars. Exhibit 1, ¶ 16.

The method to change any portion of a State's Medicaid program is through the State plan amendment ("SPA") process. *See generally,* 42 U.S.C. § 1316, 42 C.F.R. §§ 430.10 – 430.25. The process normally takes some time to complete. Following the filing of a SPA by a state, the Federal Department of Health and Human Services ("DHHS") has 90 days to disapprove or to seek additional information. If more information is requested, a new 90-day review period begins. 42 U.S.C. §§ 1316(a)(1), (b); 42 C.F.R. §§ 430.12, 430.16(a). If a state disagrees with the Federal DHHS decision, the state may request reconsideration within 60 days. Notice of hearing must be issued within 30 days of the request, the hearing must be held within 20-60 days of the notice, and the decision must be issued within 60 days of final briefing. 42 U.S.C. §§ 1316(a)(2), (b); 42 C.F.R. §§ 430.18, 430.102. If dissatisfied, a State has 60 days from notification to file a

petition for review with the United States court of appeals for the circuit in which such State is located. 42 U.S.C. §§ 1316(a)(3), (b); 42 C.F.R. § 430.38.

Of note, the Secretary has the authority to pay to a state federal funds improperly withheld. 42 U.S.C. § 1316(c), (b); *see also* 42 C.F.R. § 430.18 (e)(2). Unfortunately, the present situation is not one where federal funds are at issue. Here, in its SPA application Maine seeks to change eligibility in three areas so that *Maine's costs* will decrease (albeit, federal costs will commensurately decrease as well). The federal statute does not provide a remedy of recoupment from the Federal Department of Health and Human Services ("DHHS") if a state pays out its own funds resulting from an incorrect or delayed decision. Maine has asked Federal DHHS to pay the difference pending its consideration of the SPA which it can recoup, but the Federal DHHS did not agree to this request in its August 31, 2012 letter (Exhibit 9) – thus, this filing.

The State of Maine, through its Department of Health and Human Services, filed on August 1, 2012, its request for approval of State plan amendments through the attached proposed SPA (Transmittal Number 12-010), (Exhibit 6, ¶ 5; and Exhibit 6a) which would make the eligibility changes described below on October 1, 2012.[8] With these SPA amendments, Maine's Medicaid eligibility would

[8] The Department filed a revised SPA – also entitled Transmittal Number 12-010 – on August 7, 2012. Exhibit 6, ¶ 6 and Exhibit 6b.

remain well above the mandated federal standards. The State of Maine requested expeditious review and approval of this SPA, so that Maine can achieve its budget savings as directed by the Legislature and achieve a balanced budget as required by the Maine Constitution. Maine asked Respondents to approve these SPA amendments by September 1, 2012, or, in the alternative, agree that the federal Department will pay Maine for its costs while this SPA or any litigation is pending past October 1, 2012. On August 31, 2012, Maine received a letter from the Department advising it has "90 days for review of a state plan amendment," provided no assurances it would make a decision by October 1, and did not agree to the payment option. Exhibit 1, ¶ 18; Exhibit 9.

The specific changes sought by Maine, as required by its Legislature,[9] are:

Parents and Caretakers. The Federal Medicaid minimum for parents and caretaker relatives under Sections 1902(r)(2), 1902(a)(A)(10)(ii)(I) and 1905(a)(ii) of the Social Security Act is a state's 1996 eligibility requirement for the Aid for Families with Dependent Children ("AFDC"). Maine's current State plan covers parents and other caretaker relatives up to 200% of FPL.

The amendment will reduce this MaineCare coverage to 100% of FPL. The 100% FPL standard is greater than the Maine 1996 AFDC standard. Even at the

[9] P.L. 2011, ch. 477, Pt. Z, § Z-1; P.L. 2011, ch. 657, Pt. GG, § GG-1; Pt. HH, § HH-2; and Pt. Z, § Z-1.

100% FPL level, Maine will be far above the national average for this coverage group. "On average States cover only those unemployed who make less than 37 percent of the [FPL], and only those employed parents who make less than 63 percent of the poverty line." *NFIB,* 132 S. Ct at 2601.

19 and 20 Year Olds. Covering 19 and 20 year olds as children under federal Medicaid is an option, pursuant to Sections 1902(a)(10)(A)(ii) and 1905(a)(i) of the Social Security Act. Maine is requesting to decrease coverage of 19 and 20 year old individuals, so that only 19 and 20 year old independent foster care adolescents and state adoption children are covered.

Medicare Savings Program ("MSP"). The Social Security Act requires states to cover as a Medicaid group the following individuals who are also eligible for Medicare, at these income levels:

Qualified Medicare Beneficiaries ("QMB") at 100% FPL,
Section 1902a(10)(E)(i),
Specified Low Income Medicare Beneficiaries ("SLMB") at 120% FPL,
Section 1902a(10)(E)(iii),
Qualified Individuals ("QI") at 135% FPL, Section 1902a(10)(E)(iv) .

Maine's coverage has been much more generous;[10] it has covered:

*QMB a*t 150%;
SLMB between 150% and 170%; and

[10] Only Maine, Connecticut and the District of Columbia cover *QMB*, *SLMB* and *QI above* the federal minimum. Kaiser Comm'n on Medicaid and the Uninsured, *Medicaid Financial Eligibility: Primary Pathways for the Elderly and People with Disabilities*, February 2010 p. 3-4.

QI between 170% and 185%.

Maine now requests to reduce the eligibility for these groups as follows:

QMB at 140% of FPL;
SLMB at between 140% and 160%; and
QI at between 160% and 175%.

As the chart found in Exhibit 5 makes clear, even after these changes are made, MaineCare eligibility will remain well above the federal minimum Medicaid requirements. These modest changes will save Maine $19.93 million in state dollars. The savings are budgeted to go into effect on October 1, 2012 – therefore, time is of the essence. Failure to grant this State plan amendment immediately will prevent Maine from using the commensurate savings to balance its budget, and thus other state services and responsibilities will suffer.

Even with these cuts, Maine will continue to offer health coverage for its low-income citizens that is more generous than most states. It is important to note that fewer than one-half of the states now cover the ACA-mandated Medicaid expansion group (the non-categorical childless adults).[11] Maine is one of them. Currently, the MaineCare non-categorical group covers approximately 13,000 individuals. For the Maine state fiscal year 2012, the total MaineCare expenditure for the non-categorical group was $67.4 million. Exhibit 1, ¶ 15.

[11] Kaiser Family Foundation, *Medicaid Income Eligibility Limits for Adults as a Percent of Federal Poverty Level, July 2012,* (July 2012).

The Maine Legislature struggled with what to do with the non-categorical group and other MaineCare eligibility groups in light of the dire economic situation. The Maine Legislature, as part of its supplemental balanced budget for state fiscal year 2013, directed that the Department maintain the non-categorical group (but at a frozen enrollment and decreased budget), [12] and to make smaller cuts to the three eligibility groups in this SPA request. Exhibit 1, ¶ 14.

ARGUMENT

The Petitioner must demonstrate:

> (1) it will likely succeed on the merits;
>
> (2) it will suffer irreparable harm if the injunction is denied;
>
> (3) the harm it will suffer outweighs any harm to [the respondents] that would be caused by injunctive relief; and
>
> (4) the effect on the public interest weighs in its favor.

Esso Standard Oil Co. v. Monroig-Zayas, 445 F.3d 13, 18 (1st Cir. 2006); *New Comm Wireless Services, Inc. v. Sprintcom, Inc.*, 287 F.3d 1, 8-9 (1st Cir. 2002); *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 15 (1st Cir. 1996); *Kelly Servs., Inc. v. Greene*, 535 F. Supp. 2d 180, 183 (D. Me. 2008). In addition, Petitioner must show that further action before the Respondents is impracticable or futile. F.R. App. P. 18(2).

[12] P.L. 2011, ch. 477, Pt. AA, § AA-1.

1. Maine Will Likely Succeed on the Merits.

a. Exhaustion of administrative remedies would be futile and impracticable.

At the outset, Respondents may argue that the Court should not address the Petitioner's arguments at all based upon the exhaustion of administrative remedies obstacle. However, "[t]he law should not be construed idly to require parties to perform futile acts or to engage in empty rituals." *Northern Heel Corp. v. Compo Indus., Inc.,* 851 F.2d 456, 461 (1st Cir.1988).

> [T]here are circumstances in which a party, on grounds of futility, might bypass a permit process and go directly to court.... [R]ecognizing a stringently cabined futility exception is consistent with familiar doctrine suggesting that exhaustion of administrative remedies will not ordinarily be required where the hierarchs have made it quite plain that the relief in question will be denied....

Gilbert v. City of Cambridge, 932 F.2d 51, 60-61 (1st Cir. 1991). We have just such a situation here. Respondent Sebelius has stated her view that *NFIB* does not affect any provision of the ACA than those mentioned therein, and the MOE was not specifically referenced. Letter from Secretary Sebelius (July 10, 2012) ("The Court's decision did not affect other provisions of the law.") (Exhibit 7). The potentially lengthy SPA process, to which the Respondents appear wedded, would take us well past October 1 – indeed, potentially well into 2013. While the Respondents can recoup any funds it pays out after October 1 that later might prove to have been incorrect, the converse is not true. If Maine pays out additional

funds under the ACA MOE, there is no way Maine can force recoupment from Respondents. 42 U.S.C. §§ 1316(b), (c); 42 C.F.R. § 430.18 (e)(2). In other words, delay would render any victory by Maine futile. For these same reasons, a motion before the Respondents would be impracticable and, in any event, they have failed to afford the timely relief Maine expressly sought. Fed.R. App. P. 18(2).

b. The ACA MOE is unconstitutional.

First, in *NFIB* the Supreme Court held that the Medicaid expansion of the ACA could not constitutionally be pressed upon the states. The MOE is part and parcel of that Medicaid expansion. One need only look at the ACA itself. The particular portions of the expansion in dispute in *NFIB* are contained in the very same provision of the ACA as the MOE, entitled "MEDICAID COVERAGE FOR THE LOWEST INCOME POPULATIONS." ACA, § 2001(a) & (b). While the ACA provides incentives of 100 percent federal coverage for the costs of the required expansion to all individuals under the age of 65 with incomes below 133 percent of the federal poverty line, the ACA does not pay for its extension of the previously voluntary MOE. *Id.* This provision clearly "is a gun to the head" of Maine. *NFIB,* 132 S. Ct. at 2604. "Section 1396c of the Medicaid Act provides that if a State's Medicaid plan does not comply with the *Act's requirements*, the Secretary of Health and Human Services may declare that 'further payments will

not be made to the State.'" *Id.* (emphasis added). The United States Supreme Court held that it is unconstitutional to apply Section 1396c to withhold all federal Medicaid matching funds if a state fails "to comply with the requirements set out in the [Medicaid] expansion." *NFIB,* 132 S. Ct. at 2607.

The MOE is one of the "Act's requirements"—Maine was not required to freeze its Medicaid eligibility standards to 2014 and 2019 before the ACA. If Maine "opts out of" that provision it "stands to lose not merely 'a relatively small percentage' of its existing Medicaid funding, but *all* of it." *Id.* at 2604 (emphasis in original). In Maine's case, that's over 20 percent of its entire budget. This "economic dragooning" is unconstitutional. *Id.* at 2605. This is exactly the type of federal action rejected by the Supreme Court in *NFIB.*

Second, the MOE provision is more problematic than other aspects of Medicaid expansion specifically mentioned in *NFIB.* The Supreme Court explained that use of the Spending Clause with the states is in the nature of a contract, whereby "The legitimacy of Congress's exercise of the spending power 'thus rests on whether the State voluntarily and knowingly accepts the terms of the 'contract.'" *NFIB,* 132 S. Ct. at 2602 (quoting *Pennhurst State School and Hospital v. Haldeman,*, 451 U. S. at 17 (1981)).

Congress had created an entirely voluntary program in response to the serious economic downturn by enacting ARRA. Under ARRA, a state could

voluntarily obtain increased FMAP for a prescribed period of time (for 27 months between October 1, 2008, and December 31, 2010) in return for maintaining its Medicaid eligibility standards that were in effect on July 1, 2008, through December 31, 2010, later expanded to June 30, 2011.[13] *See,* ARRA, § 5001(h)(3). ARRA allowed for a state to decrease its Medicaid eligibility standards after June 30, 2011, when the enhanced FMAP was no longer available. Maine did voluntarily participate in that program, relying upon and expecting that ARRA's maintenance of effort requirement would end on June 30, 2011. And, the penalty for reducing Medicaid eligibility under ARRA was a take-back only of the enhanced federal Medicaid matching funds.

Under ARRA, therefore, Maine voluntarily agreed to freeze its July 1, 2008, eligibility standards through June 30, 2011, in order to receive extra Medicaid funds until the latter date. Maine had the option of not accepting the funds and therefore not freezing its standards for that period. The ACA, however, expanded that freeze beyond June 30, 2011, until 2014 for adults and 2019 for children, and put the "gun to the head" of Maine with the loss of *all* of its federal Medicaid

[13] On August 10, 2010, the EMJA was enacted. Among other things, the legislation, in Section 201, extended the enhanced FMAP under § 5001 of ARRA for the period of January 1, 2011 through June 30, 2011. Additional funds were available to states on the condition that states maintain the Medicaid eligibility standards in effect as of July 1, 2008. Maine voluntarily participated in the programs for the extension of enhanced ARRA and EMJA FMAP rates.

funding (*i.e.*, 21.97 percent of Maine's entire budget) if Maine refused to continue these eligibility standards. Congress took a *voluntary* program and turned it into a *mandatory* one. This postacceptance, retroactive condition, therefore, is more constitutionally troublesome than those specifically identified in *NFIB*.

In *NFIB,* the Court discussed and rejected the new eligibility requirements of the ACA. Here, the preexisting "contract" was Maine's agreement to freeze its eligibility standards until June 30, 2011; the ACA specifically changed that "contract" by extending the eligibility standards for years beyond that date – and did that even though the financial incentives of the enhanced FMAP of ARRA and EMJA ended on June 30, 2011. The provisions of ARRA's "genuine choice whether to accept the offer" are what should stand, not the ACA's unilateral, postacceptance ultimatum where Maine and other states are "given no . . . choice". *NFIB,* 132 S. Ct. at 2608.

Allowing the MOE to stand permits the Federal Government to force the states to implement a federal government program. This "threaten[s] the political accountability key to our federal system." *NFIB*, 132 S. Ct. at 2602. The MOE forces Maine to cover in its Medicaid program individuals above and beyond the original mandatory groups. This is "no longer a program to care for the neediest among us, but rather an element of a comprehensive national plan to provide universal health insurance coverage." *Id.* at 2606. As the Supreme Court noted,

"the States have developed intricate statutory and administrative regimes over the course of many decades to implement their objectives under existing Medicaid." *Id.* at 2604. Maine has the constitutional right to develop a Medicaid program carefully tailored to meet the needs of its neediest citizens. Just as the particular Medicaid expansion requirement is unconstitutional under *NFIB,* so too is the MOE requirement. Congress has done exactly that which the Constitution prevents it from doing – "surprising participating States with postacceptance or 'retroactive' conditions.'" *Id.* at 2606 (citation omitted).

Finally, the ACA punishes states – such as Maine – that have been generous in the past regarding Medicaid benefits. Simply stated, Maine will be penalized for having been more generous in the past by covering the Medicaid non-categorical group, and will receive a lower federal reimbursement rate for this group than the states which begin to cover them in 2014. 42 U.S.C. §§ 1396d(y) & 1396d(z)(2)(A). Such a notion is supported by neither common sense nor the constitutional framework in which the federal government and the states coexist and work together. As the Supreme Court reiterated in *NFIB,* 132 S. Ct. at 2606 (citations omitted), "Though Congress' power to legislate under the spending power is broad, it does not include surprising participating States with postacceptance or 'retroactive' conditions." That is exactly what the ACA does here – it attempts to turn a voluntary program that ended on June 30, 2011, into a

mandatory one extending until 2014 for adults and 2019 for children. Both as part of the mandatory expansion struck down in *NFIB* and as a "postacceptance" condition, the MOE provision fails and cannot be enforced against Maine.

c. The ACA authorizes the States to delete coverage for nondisabled, nonpregnant parents and caregivers with income above 133% FPL.

The ACA contains an exception to the MOE -- the "nonapplication provision." 42 U.S.C. § 1396a(a)(gg)(3). Under the nonapplication provision, states can eliminate Medicaid coverage for nonpregnant, nondisabled adults whose income exceeds 133% of FPL. Under federal law, two conditions must first be met before this population can be eliminated from Medicaid coverage: (1) the state must file with the DHHS Secretary a certification that the state has a budget deficit; and (2) the State plan must be amended to delete that population. Maine needed to meet a third condition: legislative approval. Maine has met two of the three prerequisites; it received legislative approval, and on December 20, 2011, Maine filed a certification of budget deficit with Secretary Sebelius (for the state fiscal year period from July 1, 2012, to June 30, 2013). Exhibit 8. CMS should promptly approve the SPA request as it relates to this population. Even if the ACA MOE is constitutional, therefore, the eligibility for this group should be decreased to 133 percent, albeit not to the 100 percent being sought in the SPA.

2. Consideration of the other factors favors granting the motion.

Maine will suffer irreparable damage if this motion is denied. It will not be able to balance its budget as the Legislature directed; therefore, it will be forced to cut other programs even more. And, it is highly doubtful Maine would ever be able to recoup from the federal government the additional amounts Maine would pay out under the ACA MOE after October 1, 2012. On the other hand, Respondents will suffer no harm. If Maine is wrong, Respondents can recoup any funds it pays out under a court order, through the normal Medicaid accounting adjustment process pursuant to 42 C.F.R. § 430.30. Finally, the effect of a stay on the public interest weighs in favor of granting it. Maine has made many difficult policy and political choices in order to balance the State's budget in these difficult economic times. Maine's modest modifications sought by the SPA will place Maine at or above the federal Medicaid minimums for these three eligibility groups. In other words, using the Respondents' own standards, Maine's neediest citizens would continue to be well-protected.

CONCLUSION

For these reasons, the Court should issue an order which:

(1) orders Respondents to approve the pending application to amend Maine's Medicaid Plan to make three eligibility changes on or before October 1, 2012; or

(2) orders Respondents to pay Maine's share for Medicaid coverage for these three groups over and above the amounts Maine would pay if the amendments were approved on or before October 1, 2012, pending the outcome of this litigation.

DATED: September 4, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2012, a copy of the foregoing Petitioner's Motion for Injunctive Relief and Petitioner's Exhibits were sent by U.S. Mail, postage prepaid and via facsimile to:

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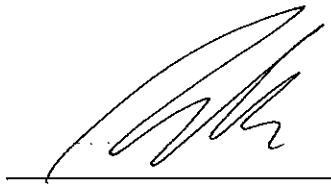

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