

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

PLANNED PARENTHOOD SOUTHEAST,  
INC., et al.

PLAINTIFFS

v.

CIVIL ACTION NO. 3:16cv454-DPJ-FKB

DAVID J. DZIELAK, Executive Director,  
Mississippi Division of Medicaid, in his official  
capacity

DEFENDANT

ORDER

In 2016, Mississippi enacted Mississippi Code section 43-13-117.4—which disqualifies from the Mississippi Medicaid program any health-care provider that offers, or is affiliated with entities that offer, nontherapeutic abortions. Essentially every court to consider similar laws has found that they violate § 1396a(a)(23) of Title 42 of the United States Code, the so-called “Free-Choice-of-Provider Provision.” And on September 14, 2016, the United States Fifth Circuit Court of Appeals reached that same conclusion in *Planned Parenthood of Gulf Coast, Inc. v. Gee*, No. 15-30987, 2016 WL 4895921 (5th Cir. Sept. 14, 2016). Defendant now “concedes that the panel’s decision in *Gee* is controlling and dispositive as to . . . Plaintiffs’ claims under the free-choice-of-provider requirement.” Def.’s Resp. [24] at 1. Therefore, the Court grants Plaintiffs’ Motion for Summary Judgment [13] requesting declaratory and permanent injunctive relief. Defendant reserves the right to later seek a change in the law. A separate judgment will be entered in accordance with Federal Rule of Civil Procedure 58.

**IT IS HEREBY ORDERED**, pursuant to Federal Rule of Civil Procedure 57, that Plaintiffs’ Motion for a Declaratory Judgment finding Mississippi Code section 43-13-117.4 void is **GRANTED**.

**IT IS FURTHER ORDERED** that Defendant, his agents, employees, appointees, delegates, and successors are hereby **PERMANENTLY ENJOINED** from enforcing, threatening to enforce, or otherwise applying the provisions of Mississippi Code section 43-13-117.4.

**SO ORDERED AND ADJUDGED** this the 20<sup>th</sup> day of October, 2016.

*s/ Daniel P. Jordan III*  
UNITED STATES DISTRICT JUDGE