

Case No. 17-50282

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

PLANNED PARENTHOOD OF GREATER TEXAS FAMILY PLANNING AND PREVENTATIVE
HEALTH SERVICES, INC.; PLANNED PARENTHOOD SAN ANTONIO; PLANNED
PARENTHOOD CAMERON COUNTY; PLANNED PARENTHOOD GULF COAST, INC.;
PLANNED PARENTHOOD SOUTH TEXAS SURGICAL CENTER; JANE DOE #1; JANE DOE
#2; JANE DOE #4; JANE DOE #7; JANE DOE #9; JANE DOE #10; JANE DOE #11;

Plaintiffs-Appellees,

v.

DR. COURTNEY PHILLIPS, IN HER OFFICIAL CAPACITY AS EXECUTIVE COMMISSIONER
OF HHSC; SYLVIA HERNANDEZ KAUFFMAN, IN HER OFFICIAL CAPACITY AS
INSPECTOR GENERAL OF HHSC,

Defendants-Appellants.

On Appeal from the United States District Court
for the Western District of Texas, Austin Division
No. 1:15-cv-01058

**EN BANC BRIEF OF AMICUS CURIAE ALLIANCE DEFENDING
FREEDOM IN SUPPORT OF DEFENDANTS-APPELLANTS AND
SUPPORTING REVERSAL OF THE DISTRICT COURT**

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Case No. 14-50196

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

PLANNED PARENTHOOD OF GREATER TEXAS FAMILY PLANNING AND PREVENTATIVE
HEALTH SERVICES, INC.; PLANNED PARENTHOOD SAN ANTONIO; PLANNED
PARENTHOOD CAMERON COUNTY; PLANNED PARENTHOOD GULF COAST, INC.;
PLANNED PARENTHOOD SOUTH TEXAS SURGICAL CENTER; JANE DOE #1; JANE DOE
#2; JANE DOE #4; JANE DOE #7; JANE DOE #9; JANE DOE #10; JANE DOE #11;

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DR. COURTNEY PHILLIPS, IN HER OFFICIAL CAPACITY AS EXECUTIVE COMMISSIONER
OF HHSC; SYLVIA HERNANDEZ KAUFFMAN, IN HER OFFICIAL CAPACITY AS
INSPECTOR GENERAL OF HHSC,

Defendants-Appellants.

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fifth Circuit Rule 28.2.1, the undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

APPELLANTS:

- Dr. Courtney Phillips, in her official capacity as Executive Commissioner of HHSC
- Sylvia Hernandez Kauffman, in her official capacity as Inspector General of HHSC

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- Planned Parenthood Cameron County
- Planned Parenthood South Texas Surgical Center
- Planned Parenthood Gulf Coast, Inc.
- Jane Does # 1, 2, 4, 7, 9, 10, and 11

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Amicus Curiae Alliance Defending Freedom has no parent corporation or any publicly held corporation that owns 10% or more of its stock.

s/ John Bursch

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TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF AUTHORITIES	vi
IDENTITY AND INTEREST OF <i>AMICUS CURIAE</i>	1
SUMMARY OF ARGUMENT	1
ARGUMENT	2
I. States have repeatedly found Planned Parenthood affiliates operating in violation of state and federal law.....	2
A. State audits show nationwide evidence of Planned Parenthood’s improper practices.	2
B. Planned Parenthood’s Texas affiliates have previously been discovered violating Medicaid funding laws.	4
C. Planned Parenthood’s failure to adhere to Medicaid’s standards in even one state is sufficient to disqualify it in all others.	5
II. Congress has investigated Planned Parenthood and discovered extensive wrongdoing	7
III. Former Planned Parenthood employees have come forward to expose wrongdoing.	9
IV. Plaintiffs’ bad acts have a long history.....	12
A. Plaintiff PPGC previously paid \$4.3 million to settle claims that it improperly obtained reimbursements from government programs.	12
B. Plaintiff PPGC also paid an undisclosed amount to settle claims that it falsified records and violated patients’ HIPAA protections.	13
C. Another former PPGC clinic director blew the whistle on fraudulent billing practices.....	15
CONCLUSION	15

CERTIFICATE OF SERVICE17
CERTIFICATE OF COMPLIANCE.....18

TABLE OF AUTHORITIES

Cases:

<i>Gonzalez v. Planned Parenthood of Los Angeles</i> , 2011 WL 11819326 (C.D. Cal. Aug. 25, 2011)	9
<i>Gonzalez v. Planned Parenthood of Los Angeles</i> , 2012 WL 2412080 , (C.D. Cal. June 26, 2012)	10
<i>Gonzalez v. Planned Parenthood of Los Angeles</i> , 759 F.3d 1112 (9th Cir. 2014)	9, 10
<i>Planned Parenthood of Gulf Coast, Inc. v. Gee</i> , 862 F.3d 445 (5th Cir. 2017),	13
<i>United States ex rel. Carroll v. Planned Parenthood Gulf Coast</i> , No. H-12-3505, 21 F. Supp. 3d 825 (S.D. Tex. 2014)	13, 14
<i>United States v. Planned Parenthood of the Heartland</i> , 2014 WL 10625242 (S.D. Iowa Nov. 5, 2014)	10
<i>United States v. Planned Parenthood of the Heartland</i> , 765 F.3d 914 (8th Cir. 2014)	11
<i>United States v. Planned Parenthood of Houston</i> , 570 F. App'x 386 (5th Cir. 2014)	15
<i>United States v. Planned Parenthood of Houston & Southeast Texas</i> 2013 WL 9583076 (S.D. Tex. Mar. 29, 2013)	15
<i>United States ex rel. Texas v. Planned Parenthood Gulf Coast</i> , 2012 WL 13036270 (E.D. Tex. Aug. 10, 2012)	12
<i>United States v. Planned Parenthood Gulf Coast</i> , 2014 WL 2532101 (S.D. Tex. May 19, 2014)	14

Rules:

[Fed. R. App. P. 29\(a\)](#) 1
Fed R. App. P. 29(c) 1

Statutes and Public Laws :

[42 U.S.C. § 289g](#).....8
P.L. No. 111-148 § 6501 (Mar. 23, 2010), as amended by the
Health Care and Education Reconciliation Act of 2010, P.L. No. 111-152
(Mar. 30, 2010)6

Other Authorities:

Charlotte Lozier Institute & Alliance Defending Freedom,
2017 Report on Publicly Available Audits of Planned Parenthood
Affiliates and State Family Planning Programs, (January 2017),
<https://bit.ly/2SUI6OI>.....2
Department of Health & Human Services,
Office of the Inspector General, A-06-11-00016 (March 2015).....4
Department of Health & Human Services, *Providers Terminating From One
State Medicaid Program Continued Participating in Other States*, OEI-
06-12-00030 (Aug. 2015)6
Letter from Craig Francis, Director, Division of Medicaid Audit, Office of the
Medicaid Inspector General (June 9, 2009)3
Letter from former Planned Parenthood employees (Dec. 7, 2011).....11
Letter from Jan English, Chief, Audits and Investigations, Dep’t of Health Servs.
(Nov. 19, 2004).....3
Letter from Steve Wilson, Auditor, Office of Program Integrity,
Wash. Dep’t of Soc. & Health Servs. (July 20, 2009)3
Majority Staff Report of S. Comm. on Judiciary, 114th Cong.,

Human Fetal Tissue Research: Context and Controversy (Comm. Print 2016)	7, 8
Office of Inspector General, Tex. Health & Human Servs. Comm'n, <i>Report on Planned Parenthood Center of El Paso</i> (Aug. 31, 2009).....	5
Press Release, Department of Justice (Aug. 16, 2013).....	12
U.S. Government Accountability Office, <i>Medicaid Program Integrity</i> , GAO-16-402 (Apr. 2016)	6

IDENTITY AND INTEREST OF *AMICUS CURIAE*¹

Alliance Defending Freedom is an alliance-building organization that advocates for the right of people to freely live out their faith. ADF is committed to advancing legal protection for all human life and safeguarding the dignity of human life at every stage.

SUMMARY OF ARGUMENT

Planned Parenthood's Texas clinics have shown a pattern of wrongdoing, consistent with the systemic misconduct of the Planned Parenthood network nationwide. The documented evidence of waste, abuse, and fraud comes from many Planned Parenthood affiliates in many states over many years. It has been discovered through individual state audits, whistleblowing by Planned Parenthood employees, and congressional investigation. The overwhelming data point to Planned Parenthood's persistent refusal to operate with integrity. This troubling pattern confirms that Texas's decision to remove Planned Parenthood as a provider was not only reasonable but necessary to protect women, unborn children, and public funds.

¹ This brief is filed with the consent of all parties, pursuant to [Federal Rule of Appellate Procedure 29\(a\)](#). No party or party's counsel authored this brief in whole or in part or financially supported this brief, and no one other than amicus curiae, its members, or its counsel contributed money intended to fund preparing or submitting this brief. *See* [Fed. R. App. P. 29\(c\)\(5\)](#).

ARGUMENT

I. States have repeatedly found Planned Parenthood affiliates operating in violation of state and federal law.

Across the nation, states have caught Planned Parenthood clinics engaging in unethical and illegal practices.² Planned Parenthood's Texas clinics are no exception.

A. State audits show nationwide evidence of Planned Parenthood's improper practices.

Individual state audits have repeatedly found Planned Parenthood affiliates operating in violation of state and federal law. These violations involve extensive fiscal mismanagement. The 51 known external audits of Planned Parenthood affiliates' financial data have identified practices leading to substantial over-billing.³ In total, as of 2017, government audits documented that Planned Parenthood's improper practices resulted in losses of roughly \$132 million to taxpayers, through abuse of Title XIX-Medicaid and other healthcare funding programs.⁴ A few examples illustrate the widespread pattern of noncompliance:

A 2004 audit report by the State of California's Department of Health Services concluded that Planned Parenthood of San Diego and Riverside Counties

² Charlotte Lozier Institute & Alliance Defending Freedom, 2017 Report on Publicly Available Audits of Planned Parenthood Affiliates and State Family Planning Programs, at 4–5, 8 (January 2017), <https://bit.ly/2SUI6OI>.

³ *Id.* at 8, 34–37.

⁴ *See id.* at 5, 34–37.

did not comply with the published billing requirements, resulting in Planned Parenthood being overpaid by the state to the tune of \$5.2 million during the two-year audit period.⁵ The audit found that 16 Planned Parenthood centers in Southern California had engaged in overbilling and obtained improper reimbursement.

A 2007 audit by the State of Washington concluded that Planned Parenthood of the Inland Northwest's billing irregularities totaled roughly \$630,000 over the audit period.⁶ The audit report further concluded that PPINW dispensed prescription drugs without authorization, billed services without authorization, used incorrect billing codes, failed to document and substantiate patient visits, billed a higher fee than the fee schedule allows, billed for services that were not medically necessary, and billed for services not within the Medicaid program.

A 2009 audit by the Office of the Medicaid Inspector General of New York found that one Planned Parenthood center overbilled Medicaid by roughly \$1.5 million during the two-year audit period.⁷ The audit uncovered a host of problems: missing documentation, failure to document services in medical records, incomplete justification for the services billed, billing Medicaid for patients

⁵ Letter from Jan English, Chief, Audits and Investigations, Dep't of Health Servs. (Nov. 19, 2004), <http://www.adfmedia.org/files/PP-Audit-CA-PPSDRC.pdf>.

⁶ Letter from Steve Wilson, Auditor, Office of Program Integrity, Wash. Dep't of Soc. & Health Servs. (July 20, 2009), <https://bit.ly/2tZBmVE>.

⁷ Letter from Craig Francis, Director, Division of Medicaid Audit, Office of the Medicaid Inspector General (June 9, 2009), <http://www.adfmedia.org/files/PP-Audit-NY-PPNYC-MS-C-June-2009.pdf>.

enrolled in an HMO, failure to sign medical records, and billing with the incorrect rate code. In all instances of an incorrect billing code, the incorrect code coincidentally resulted in a higher payout to Planned Parenthood.

B. Planned Parenthood’s Texas affiliates have previously been discovered violating Medicaid funding laws.

Planned Parenthood’s Texas affiliates, including Plaintiffs, likewise have been audited and found in habitual violation of laws. A state audit of Planned Parenthood of North Texas’s services and billing in 2007–2008 showed that during the audit period, PPNT overbilled Medicaid by an estimated \$129,028.⁸ Using a random sample of patient records, the Office of Inspector General found 42% of records contained insufficient documentation to support reimbursement, 25% of records reflected incorrect billing codes, and 2.5% of records showed services billed as “family planning” when in fact they were not.⁹ The audit recommended that Planned Parenthood reimburse the government, and the State ensure providers are equipped with precise, clear guidance and education on correct billing.

Planned Parenthood did not dispute it had improperly obtained reimbursement. Faced with the audit’s findings, president and CEO of Planned Parenthood

⁸ Department of Health & Human Servs., Office of the Inspector General, A-06-11-00016 (March 2015), <https://oig.hhs.gov/oas/reports/region6/61100016.pdf>.

⁹ *Id.* at ii.

of Greater Texas conceded that PPGT “analyzed the report in detail as well as the detailed documentation sent and agrees in general with the recommendations.”¹⁰

In 2009, another report by the Texas Office of Inspector General’s independent auditor found that Planned Parenthood Center of El Paso¹¹ did not maintain complete or accurate accounting records and — to the extent it could be determined from Planned Parenthood’s deficient records — failed to pay out more than \$500,000 in subcontractor fees during the time period reviewed.¹²

Incorrect overbilling of public programs and failure to maintain proper accounting records for state funds are eminently reasonable causes for Texas to be concerned and take appropriate action.

C. Planned Parenthood’s failure to adhere to Medicaid’s standards in even one state is sufficient to disqualify it in all others.

Planned Parenthood’s widespread organizational noncompliance with Medicaid quality and integrity standards is reason enough for Texas to terminate Plaintiffs’ provider agreements. Medicaid is a program at high risk for abuse because of the inherent weaknesses in oversight and vulnerability to overbilling by

¹⁰ *Id.* at 13.

¹¹ Planned Parenthood Center of El Paso is operated by Plaintiff Planned Parenthood of Greater Texas. <https://www.plannedparenthood.org/health-center/texas/el-paso/79902/el-paso-health-center-4524-91620>.

¹² Office of Inspector General, Tex. Health & Human Servs. Comm’n, *Report on Planned Parenthood Center of El Paso* (Aug. 31, 2009), <http://www.adfmedia.org/files/PP-Audit-TX-PPCEP.pdf>.

providers.¹³ For two decades, the U.S. Government Accountability Office has worked to equip states to screen for potentially fraudulent providers, identify providers receiving improper Medicaid payments, and remove ineligible providers.¹⁴ GAO analysis has shown that protecting against fraudulent billing is far more effective than attempting to recover funds from wayward providers.¹⁵

For this very reason, the Patient Protection and Affordable Care Act requires states to terminate a provider’s participation in their state Medicaid programs if that provider is terminated for cause — for reasons of quality, integrity, or fraud — from another state Medicaid program.¹⁶ P.L. No. 111-148 § 6501 (Mar. 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, P.L. No. 111-152 (Mar. 30, 2010). This provision “strengthens Medicaid program integrity across States” by ensuring that problematic providers earning disqualification in one state do not continue taking advantage of patients and taxpayer dollars elsewhere.¹⁷

¹³ U.S. Government Accountability Office, *Medicaid Program Integrity*, GAO-16-402 at 1 (Apr. 2016), <https://www.gao.gov/assets/680/676768.pdf>.

¹⁴ *Id.* at 2.

¹⁵ *Id.*

¹⁶ Indeed, Texas initially relied on Louisiana’s disqualification of Planned Parenthood. This Court’s reversal of *Gee* would reinstate that sound basis.

¹⁷ Dep’t of Health & Human Servs., *Providers Terminating From One State Medicaid Program Continued Participating in Other States*, OEI-06-12-00030 at 1 (Aug. 2015), <https://oig.hhs.gov/oei/reports/oei-06-12-00030.pdf>.

Plaintiffs here, along with their broader organization, have demonstrated lack of quality and lack of integrity in their services — if not outright fraud.

Prudence required Plaintiffs' disqualification.

II. Congress investigated Planned Parenthood and discovered extensive wrongdoing.

Recent congressional investigation uncovered extensive evidence that Planned Parenthood has broken multiple federal laws. In response to the same undercover videos that prompted Texas's investigation at issue in this case, the U.S. House of Representatives began looking into Planned Parenthood's practices. In December 2016, after 15 months of investigation, a House Select Investigative Panel issued its final report, detailing evidence that Planned Parenthood and its affiliates violated a federal statute prohibiting the acquisition, reception, or transfer of fetal tissue for money.¹⁸ The report showed that the organization consistently engaged in this kind of prohibited fetal-tissue trafficking.

The Select Investigative Panel found system-wide Planned Parenthood practices in violation of the law. For example, between 2010 and 2015, nine Planned Parenthood clinics in California received a total of \$613,788 in payments from fetal-tissue procurement companies, for fetal tissue Planned Parenthood patients had donated. Report at 330. These clinics entered into contracts to be paid

¹⁸ Majority Staff Report of S. Comm. on Judiciary, 114th Cong., Human Fetal Tissue Research: Context and Controversy (2016), <https://bit.ly/2XKA1j8>.

per fetal tissue specimen. *Id.* The report also concluded that, in many instances, Planned Parenthood clinics knowingly disclosed patients’ private information to tissue-procurement organizations, “in blatant violation of the HIPAA privacy rule.” *Id.* at 18. The Select Investigative Panel found evidence that Planned Parenthood affiliates across the country committed Medicaid fraud, filing claims as “family planning services,” even when the service provided was actually abortion. *Id.* at 310. In the process of investigating, the Panel made 15 criminal or regulatory referrals, most of which involved Planned Parenthood or one of its affiliated tissue-procurement business partners. *Id.* at xxv–xxvi.

The Select Investigative Panel’s report also included specific evidence of wrongdoing by Plaintiffs in this case:¹⁹

- The director of research at Planned Parenthood Houston said that her department, which coordinates fetal-tissue procurement, “contributes so much to the bottom line of our organization here.”
- A Planned Parenthood abortion doctor at a Texas clinic, noting that she was trained by Planned Parenthood’s national senior medical advisor, described using a partial-birth abortion method to better harvest intact fetal parts.
- And the same Planned Parenthood abortion doctor in Texas admitted to using ultrasound technology to help her rotate the fetus into a different position during the abortion, to acquire more intact fetal organs.

All of these actions violate federal law. *See* [42 U.S.C. § 289g](#).

¹⁹ The Panel made these specific findings after hours of reviewing unedited footage of eleven Center for Medical Progress videos. *Id.* at 3.

Based on all the evidence of wrongdoing detailed in the 471-page report, the Panel issued several specific recommendations to protect women and infants, and to ensure good stewardship of taxpayer funds. Report at xli–xlii. Because Planned Parenthood’s violations were widespread and egregious, the report recommended stripping Planned Parenthood of all federal funding and — particularly relevant here — “[p]roviding greater flexibility to states to enact laws prohibiting abortion providers from receiving Medicaid reimbursement and giving states discretion to choose subrecipients of Title X funding consistent with state policy.” *Id.* at xlii.

III. Former Planned Parenthood employees have come forward to expose wrongdoing.

Time and again, former Planned Parenthood clinic directors and other executives have come forward to expose massive wrongdoing. In 2005, a former Chief Financial Officer at Planned Parenthood Los Angeles filed a federal lawsuit under the False Claims Act against all nine Planned Parenthood affiliates then existing in California, alleging that the affiliates engaged in a criminal plot to fleece state and federal taxpayers out of more than \$200 million over the course of at least six years. Complaint at ¶ 4, *Gonzalez v. Planned Parenthood of Los Angeles*, No. CV05-8818, [2011 WL 11819326](#) (C.D. Cal. Aug. 25, 2011).

Gonzalez’s suit alleged that he was abruptly fired for bringing illegal accounting, billing, and donations practices to the attention of his supervisors. *Gonzalez v.*

Planned Parenthood of Los Angeles, [759 F.3d 1112, 1114](#) (9th Cir. 2014), *cert. denied*, [135 S. Ct. 2313](#) (2015).

After becoming aware of the allegations, the California Department of Health Services warned Planned Parenthood that state claims under Medi-Cal and Family PACT²⁰ must be made at cost. California conducted an audit of Planned Parenthood and found that it had not complied with the billing practices outlined in the Family PACT manual. *Gonzalez v. Planned Parenthood of Los Angeles*, No. CV05-8818, [2012 WL 2412080](#), at *2 (C.D. Cal. June 26, 2012), *aff'd*, [759 F.3d 1112](#) (9th Cir. 2014). According to the audit, Planned Parenthood's noncompliance with the billing manual resulted in overcharges of \$5.2 million during the audit period alone. *Gonzalez*, [759 F.3d at 1114](#).

More recently, a former Planned Parenthood clinic director in Iowa filed a lawsuit alleging that between 2002 and 2009, Planned Parenthood of the Heartland filed a half million dollars in false Medicaid claims. Complaint at ¶ 7, *United States v. Planned Parenthood of the Heartland*, [2014 WL 10625242](#) (S.D. Iowa Nov. 5, 2014). A 17-year employee, Sue Thayer alleged that Planned Parenthood's clinics violated numerous laws by (i) using Title X funds to subsidize abortions, (ii) billing for birth control pills that were never dispensed to patients or were

²⁰ California Family Planning, Access, and Comprehensive Treatment (Family PACT) provides family planning services to eligible low-income residents.

dispensed without examinations, (iii) filing false claims with billing codes for more expensive services than were provided, and (iv) fraudulently billing Medicaid for abortions, in violation of the Hyde Amendment. *United States v. Planned Parenthood of the Heartland*, [765 F.3d 914, 915–16](#) (8th Cir. 2014).²¹

Thayer and several other former Planned Parenthood employees from around the nation came together in 2011 to urge Congress to investigate Planned Parenthood’s operations, to protect both taxpayer dollars and the best interests of women.²² The former employees’ joint letter noted that they had “personally witnessed and could testify to the validity of specific concerns” that the House had raised in a recent letter to then-president of Planned Parenthood, Cecile Richards. *Id.* at 1. In particular, the former employees offered to testify regarding their knowledge of Planned Parenthood committing the following illegal acts:

- Failing to use proper billing practices or financial controls to ensure compliance with applicable laws;
- Performing abortions in instances when young women were brought to clinics under duress, including failing to report when the young women were victims of human trafficking or other sexual violence;
- Failing to notify parents of minors seeking abortions who were victims of statutory rape;
- Failing to provide accurate information about gestational age; and

²¹ On remand, discovery is ongoing and partial summary judgment is pending.

²² Letter from former Planned Parenthood employees (Dec. 7, 2011), <https://bit.ly/2SVGt3b>.

- Commingling federal funds that may not be used for elective abortions with other general funds.

Id. at 1–2.

IV. Plaintiffs’ bad acts have a long history.

A. Plaintiff PPGC previously paid \$4.3 million to settle claims that it improperly obtained reimbursements from government programs.

In 2012, the federal government brought a False Claims Act against plaintiff Planned Parenthood Gulf Coast for a pattern of unlawful acts. *United States ex rel. Texas v. Planned Parenthood Gulf Coast*, No. 9-09-CV-124, [2012 WL 13036270](#), at *1–2 (E.D. Tex. Aug. 10, 2012). Specifically, the government alleged that between 2003 and 2009, PPGC improperly billed government programs — Texas Medicaid, Title XX, and the Texas Women’s Health Program — for services and items related to birth control counseling, STD testing, and contraceptives. *Id.* Both the United States and the State of Texas asserted claims against PPGC for fraud. *Id.* A former PPGC employee, Karen Reynolds, had blown the whistle on the improper billing, and an investigation confirmed that PPGC sought and accepted payment for various items and services that were either not medically necessary, not medically indicated, or not actually even provided.²³

Faced with the evidence of wrongdoing, PPGC declined to admit liability but chose to pay the federal government \$3,594,604 and the State of Texas

²³ Press Release, Department of Justice (Aug. 16, 2013), <https://bit.ly/2O6dF7p>.

\$705,396 to settle the claims.²⁴ The settlement agreement expressly reserved the rights of the United States and the State of Texas to maintain administrative actions to exclude PPGC from federal health care programs. *Planned Parenthood of Gulf Coast v. Gee*, 862 F.3d 445, 481 & n.50 (5th Cir. 2017), *cert. denied*, 139 S. Ct. 408 (2018). As a panel of this Court noted, “[t]he fact that PPGC settled these claims with a disclaimer that it was not admitting liability does not make the factual allegations contained in the settlement agreement disappear. If true, any one of the allegations set forth in the settlement agreement would have been grounds for [a state]’s termination of PPGC’s Medicaid provider agreements.” *Id.* at 481.

The U.S. Attorney for the Eastern District of Texas, who prosecuted the case, noted that PPGC’s actions constituted an “abuse” of the Medicaid program.²⁵

B. Plaintiff PPGC also paid an undisclosed amount to settle claims that it falsified records and violated patients’ HIPAA protections.

In 2012, a PPGC Accounts Receivable Manager, Patricia Carroll, filed an action after noticing that one Planned Parenthood clinic increased its revenue more than 300%. *United States v. Planned Parenthood Gulf Coast*, 21 F. Supp. 3d 825, 828 (S.D. Tex. 2014). The complaint alleged that false claims were billed “for the sole purpose of generating revenue,” and that between 2002 and 2012, Planned Parenthood received improper reimbursements of approximately \$200 per patient

²⁴ *Id.*

²⁵ *Id.*

for thousands of patients. Complaint at ¶ 21, *United States v. Planned Parenthood Gulf Coast*, [2014 WL 2532101](#) (S.D. Tex. May 19, 2014). The complaint further alleged that Planned Parenthood targeted incarcerated, minority teens for STD tests performed offsite by unqualified non-medical staff and without supervision. *Id.* at ¶ 20. Because neither school nor prison services are reimbursable by Medicaid, Planned Parenthood employees used billing codes to falsely indicate the tests were performed in-clinic, then altered their scheduling records to make it appear that the patients had actually visited the clinic! *Id.* at ¶ 2. Carroll also alleged that some of the services were not medically necessary because they were duplicative, that the clinic committed HIPAA violations, and that the amalgamation of Planned Parenthood’s bad acts endangered the children’s health and safety. *Id.* at ¶¶ 20, 39.

When PPGC refused to acknowledge the false claims, Carroll contacted Planned Parenthood Federation of America corporate offices. *Id.* at ¶ 27. When even the PPFA ethics attorney failed to call her back and instead reported her complaint to the very perpetrators of the fraud, Carroll resigned. *Id.*

The district court concluded that the information provided by Carroll “allows the court to draw the reasonable inference that Planned Parenthood knowingly filed false claims.” *Id.* at 835. Carroll’s lawsuit was voluntarily dismissed after reaching an undisclosed settlement amount.²⁶

²⁶ Order, *United States ex rel. Carroll*, No. H-12-3505 (S.D. Tex. Jan. 29, 2016).

C. Another former PPGC clinic director blew the whistle on fraudulent billing practices.

In 2010, a former PPGC clinic director in Bryan, Texas came forward with allegations that between 2007 and 2009, PPGC filed more than 87,000 false, fraudulent, or ineligible claims with the Texas Women’s Health Program. *United States v. Planned Parenthood of Houston & Se. Tex.*, No. 4:10-CV-03496, [2013 WL 9583076](#) at *1 (S.D. Tex. Mar. 29, 2013). The lawsuit alleged that those improper claims resulted in PPGC wrongfully receiving \$5.7 million, in violation of the False Claims Act and the Texas Medicaid Fraud Prevention Act. *Id.* This lawsuit ended under the first-to-file rule because there was a previously-filed *qui tam* action based on PPGC’s same fraudulent scheme. *United States v. Planned Parenthood of Houston*, [570 F. App’x 386, 387](#) (5th Cir. 2014).

CONCLUSION

Planned Parenthood’s systematic scheme of illegal conduct is sufficient for Texas to remove Planned Parenthood as a qualified provider. A state has discretion to avoid compliance failures and waste in its programs; millions of taxpayer dollars are at stake. Worse yet is Planned Parenthood’s documented pattern of prioritizing profit over human life. Texas’s decision not to approve funds for such operations is a necessary step toward protecting women, teenagers, and babies from predatory practices and irreversible harm.

Respectfully submitted this the 14th day of March, 2019.

By: s/ John Bursch

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 14, 2019, all parties listed on this certificate of service will receive a copy of the foregoing Brief of *Amicus Curiae* Alliance Defending Freedom filed electronically with the United States Court of Appeals for the Fifth Circuit, with notice of case activity to be generated and ECF notices to be sent electronically by the Clerk of the Court.

Dated: March 14, 2019

s/ John Bursch

Attorney Name

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and FED. R. APP. P. 32(a)(7)(B) because this brief contains 3308 words, excluding the parts of the brief exempted by Fed.R.App.P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word 2010 Times New Roman 14 point font.

Date: March 14, 2019

s/ John Bursch

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