

STATE OF MAINE
MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. CUM-21-31

PORTLAND REGIONAL CHAMBER OF COMMERCE; ALLIANCE FOR
ADDICTION AND MENTAL HEALTH SERVICES, MAINE; SLAB, LLC;
NOSH, LLC; GRITTY MCDUFF’S; and PLAY IT AGAIN SPORTS,

Plaintiff – Appellants,

v.

CITY OF PORTLAND and JON JENNINGS, in his official capacity as City
Manager for the City of Portland,

Defendant – Appellees,

CALEB HORTON and MARIO ROBERGE-REYES,

Intervenor – Appellees.

ON APPEAL FROM THE SUPERIOR COURT (CUMBERLAND COUNTY)

BRIEF OF *AMICUS CURIAE*
MAINE ASSOCIATION FOR COMMUNITY SERVICE PROVIDERS
IN SUPPORT OF APPELLANTS

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INTRODUCTION

The Maine Association for Community Service Providers (“MACSP”) is a state-wide association of more than seventy organizations that provide services and support to thousands of children, adolescents, and adults with intellectual and developmental disabilities or autism in Maine so that they may live and thrive in Maine’s communities. MACSP’s mission is to provide leadership on behalf of its member organizations and those they serve through advocacy, education, and collaborative working partnerships at all levels of government. MACSP’s member organizations provide a range of MaineCare and Medicaid services to their clients to assist them with daily living and community integration.

MACSP supports higher wages for direct care workers. In order for those higher wages to be sustainable for service providers, however, the change must be implemented at the state level together with an increase in MaineCare funding. Absent an increase in MaineCare funding, an initiative like the Portland Emergency Wage Provision creates immense financial strain for service providers. As a result, service providers face difficult choices: Do they reduce staff hours? Layoff employees? Reduce services? Relocate services from Portland altogether? No matter the choice, the result is a loss in the quantity or quality of critical services for children and adults with intellectual and developmental disabilities.

The effect of such a loss reaches far beyond Portland’s city limits. Indeed, in creating such a result, the Portland Emergency Wage Provision contravenes the goals of the Maine Department of Health and Human Services (“DHHS”), which manages the MaineCare reimbursement system, of sustaining the financial viability of Maine providers and ensuring that MaineCare members have access to high value services. In light of its far-reaching effects, the Portland Emergency Wage Provision simply does not concern solely municipal affairs. It therefore exceeds the scope of Portland voters’ initiative and referendum power under article IV, part 3, section 21 of the Maine Constitution. In short, higher wages for direct care workers is a policy determination for the Legislature—not Portland voters.

ARGUMENT

I. THE EMERGENCY WAGE PROVISION IS STRAINING AN ALREADY OVERSTRETCHED NETWORK OF SERVICE PROVIDERS WHO SUPPORT PEOPLE WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, CREATING EFFECTS FAR BEYOND PORTLAND’S CITY LIMITS

As Plaintiffs-Appellants argue, the initiative power of municipal voters is limited to purely local affairs. *See generally* (Blue Br. 12-19); *see also* Me. Const. art. IV, pt. 3, § 21 (permitting municipalities to establish a direct initiative process for “municipal affairs”). The Emergency Wage Provision of the Portland Minimum Wage Ordinance, *see* Portland, Me., Code § 33.7(g) (Nov. 3, 2020), exceeds the scope of that power because it has effects that reach far beyond the City of Portland. This brief will focus specifically upon the impact that the Emergency

Wage Provision has had on service providers like MACSP's members and the clients they serve. MACSP's members rely on MaineCare funding and, consequently, their financial viability is tied to issues of statewide concern. In light of these extraterritorial consequences, the Emergency Wage Provision does not fall within the narrow category of purely local affairs for which Portland voters may exercise the initiative and referendum power.

A. Service providers like MACSP's members rely on MaineCare funding to provide critical services to individuals with intellectual and developmental disabilities.

The more than seventy organizations that comprise MACSP's membership provide a broad range of services to support thousands of children, adolescents, and adults with intellectual and developmental disabilities or autism throughout the State of Maine. *See Community Service Providers Directory*, Me. Ass'n for Cmty. Serv. Providers, <https://meacsp.org/community-service-providers> (last visited Mar. 22, 2021).¹ These services range from residential support to community

¹ Throughout this brief, MACSP draws upon sources of information about current events and social science data to provide "legislative facts" that may assist the Court. *See* Ellie Margolis, *Beyond Brandeis: Exploring the Uses of Non-Legal Materials in Appellate Briefs*, 34 U.S.F. L. REV. 197, 198 (2000) (defining "legislative facts" as including sources regarding "science, empirical studies, social and psychological theory, history, and current events"). Scholars have recognized that appellate courts can turn to legislative facts as a source of authority, particularly when considering policy arguments. *See id.* at 198-99.

integration, medication management, and career planning.² *Id.* The DHHS, Office of MaineCare Services (“OMS”), manages approval of the services, and once they are approved, families choose community service providers to care for their loved ones. *Id.* OMS then reimburses the service providers for the approved services with MaineCare funds. MaineCare is Maine’s Medicaid program, “a joint federal-state program that pays for medical assistance provided to individuals of limited income.” *H.D. Goodall Hosp. v. Dep’t of Health & Human Servs.*, 2008 ME 105, ¶¶ 2, 951 A.2d 828 (citing 22 M.R.S. §§ 10, 12, 3173 (2007)). MaineCare providers are reimbursed under a “fee for service system” pursuant to which the provider is paid a certain fee for each service that is provided to a MaineCare-eligible client.

See, e.g., 10-144 C.M.R. ch. 101, ch. III, § 21.

² The types of services available under MaineCare are enumerated in the MaineCare Benefits Manual, with each section encompassing certain services. *See Community Service Providers Directory, supra.* MACSP’s members provide services under the following provisions of the MaineCare Benefits Manual: Section 13 (targeted case management services for both children and adults); Section 19 (home and community-based services for the elderly and adults with disabilities); Section 20 (home and community-based services for adults with “other related conditions,” *i.e.*, Cerebral Palsy, Epilepsy, or any other condition found to be closely related to Intellectual Disabilities.); Section 21 (home and community-based services for adults with Intellectual Disabilities or Autism Spectrum Disorder); Section 29 (support services for adults with Intellectual Disabilities or Autism Spectrum Disorder); Section 50 (services provided in an Intermediate Care Facility for adults with Intellectual Disabilities and Autism Spectrum Disorder); Section 97-F (services provided in a Private Non-Medical Institution for adults with Intellectual Disabilities and Autism Spectrum Disorder); Section 28 (rehabilitative and community support services for children with cognitive impairments and functional limitations); and Section 65 (behavioral health services, which include home and community-based support for children with behavioral health disabilities and support for adults with behavioral health needs and medication management.). *Id.* MACSP members also provide Child Development Services, which are developmental support services for children ages birth to five that may be provided in conjunction with MaineCare services and/or special education services at home and/or a school-based setting.

The in-home and community-based services provided to these individuals are crucial to their well-being and, in many cases, enable individuals to remain outside of an institutional setting. Indeed, “[t]o maximize inclusion in the community, persons with [Intellectual disability and Autism Spectrum disorder] may need support with a variety of self-care activities, such as bathing, eating, and dressing, as well as with employment, social activities, decision-making, money management, and other aspects of independent living.” Kimberly I. Snow, *et al.*, *Adults with Intellectual Disability or Autism Spectrum Disorder: Population and Service Use Trends in Maine* 8 (2014 ed.), available at <http://muskie.usm.maine.edu/Publications/DA/Adults-with-Intellectual-Disability-or-Autism-Maine-2014.pdf>.

While these services were crucial prior to the pandemic, they have become even more important during the pandemic. Like people all around the world, individuals with intellectual and developmental disabilities “are struggling with a loss of services that support their being included in their communities.” The Arc, *COVID-19 Impact on People with Intellectual and Developmental Disabilities, their Families, and the Direct Support Workforce: Briefing Paper 1* (May 2020), available at <http://thearc.org/wp-content/uploads/2020/05/Briefing-Paper.pdf>. Significantly, however, “[p]eople with disabilities are being further isolated under circumstances they may not fully understand or manage without necessary

physical, emotional, and behavioral support” and “[i]ncreased isolation and stress are contributing to higher risk of violence and abuse.” *Id.*; see also Kevin Miller, *Dozens Urge Lawmakers to Raise Home-Care Reimbursement Rates*, PORTLAND PRESS HERALD (Feb. 26, 2020), <https://www.pressherald.com/2020/02/26/dozens-urge-lawmakers-to-raise-home-care-reimbursement-rates> (“Miller I”) (describing a 39-year old with Down syndrome who “loses sleep and becomes anxious every time his direct care workers change”).

B. Low MaineCare reimbursement rates have been straining the resources of service providers for years and the State is grappling with how to address the problem.

Unfortunately, a “fragmented and outdated” MaineCare reimbursement system has strained the resources of providers for years. See *MaineCare’s Rate System Evaluation*, Me. Dep’t of Health & Hum. Serv.’s, <https://www.maine.gov/dhhs/oms/about-us/projects-initiatives/mainecare-rate-system-evaluation> (last visited Mar. 22, 2021) (“Over the years, MaineCare has used varying methods to determine reimbursement rates to providers, which has contributed to a rate system that is fragmented and outdated.”); Jordan Wolman, *As More People Enroll in MaineCare, They May Face Fewer Options for Care*, PENOBSCOT BAY PILOT (Feb. 27, 2021 at 1:30 PM EST), <https://www.penbaypilot.com/article/more-people-enroll-mainecare-they-may-face-fewer-options-care/144063> (explaining that the low reimbursement rates have

forced providers out of business and affected access to care). There is presently no process for regularly reviewing MaineCare's nonnegotiable, fixed fee-for-service rates. See Myers and Stauffer, LC, *MaineCare Comprehensive Rate System Evaluation Implementation Planning Report 3* (Mar. 16, 2021), available at <https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/March2021-Implementation-Planning-Report.pdf> (describing current process for changing rate methodologies as "ad hoc"). The formula for calculating MaineCare reimbursement rates for some service areas, including many of the areas in which MACSP's members provide services, has not been updated in years. See Lily Bohlke, *Portland Providers: Possible Cuts to Services Without State Help*, PUB. NEWS SERV. (Dec. 8, 2020), <https://www.publicnewsservice.org/2020-12-08/budget-policy-and-priorities/portland-providers-possible-cuts-to-services-without-state-help/a72351-1>.

The pandemic has unquestionably posed a unique challenge for service providers, but "[e]ven prior to the pandemic, Maine struggled with a shortage of direct care workers, as low MaineCare reimbursement rates often left agencies without enough funds to adequately pay their employees and afford other expenses." Cara DeRose, *Maine Seeks to Increase Pay for Caregivers but It's Unclear Who Will Actually See a Raise*, ME. BEACON (May 10, 2020), <https://mainebeacon.com/maine-seeks-to-increase-pay-for-caregivers-but-its->

unclear-who-will-actually-see-a-raise. Because of the low reimbursement rates, service providers were unable to offer more competitive wages and, thus, thousands of hours of care for people with intellectual and developmental disabilities was not happening or was being performed by overworked employees. *See An Act to Implement the Recommendations of the Commission to Study Long-term Care Workforce Issues, Written Testimony on L.D. 2109 Before the J. Standing Comm. on Health & Human Servs., 129th Legis. (2020)* (testimony of Laura Cordes, Executive Director of the Maine Association of Community Service Providers).

The Maine State Legislature took up this issue last year. On February 18, 2020, L.D. 2109, An Act to Implement the Recommendations of the Commission to Study Long-term Care Workforce Issues, was introduced by sponsor Rep. Patricia Hymanson (D-York) pursuant to P.L. 2019, ch. 343, § BBBB-1. *See* L.D. 2109 (129th Legis. 2020). The bill, if enacted, would have established a long-term care workforce oversight advisory committee and increased reimbursement rates so that providers could support direct care worker wages at least at 125% of the minimum wage. *Id.* MACSP supported this legislation as it would have enabled its member organizations to offer and sustain competitive wages and, thus, have staff who could provide the thousands of hours of much-needed care across the State. L.D. 2109 died upon conclusion of the 129th Legislature, leaving the MaineCare

wage reimbursement rates unchanged, including at \$11.21 per hour for certain direct care services of workers who support individuals with intellectual and developmental disabilities, even though the state minimum wage is \$12.15 per hour.³ *See 129th Maine Legislature, Second Special Session: L.D. 2109, An Act to Implement the Recommendations of the Commission to Study Long-Term Care Workforce Issues, Me. Legis.* https://www.mainelegislature.org/legis/bills/display_ps.asp?LD=2109&snum=129 (last visited Mar. 25, 2021); *New Minimum Wage Increases*, Me. Dep’t of Lab. https://www.maine.gov/labor/labor_laws/minimum_wage_faq.html (last visited Mar. 25, 2021); Press Release, Northern Maine General, CEO Testifies at Budget Hearing (Jan. 26, 2021), <http://nmgeneral.org/mt-content/uploads/2021/01/ceo-testifies-at-budget-hearing-this-one.pdf>.⁴

DHHS is also taking steps to address the MaineCare funding problem.

DHHS is currently in the process of “undertaking a comprehensive evaluation of

³ Relevant here, as of January 1, 2021, in accordance with P.L. 2019, ch. 616, § A-7, DHHS implemented rate increases for four specific types of services provided under Section 21 and Section 29, but this did not impact the majority of the services provided by MACSP direct care workers under those sections. *See Attention: Section 97, PNMI Appendix C Providers –Notice of Rate Increases for Sections 21 and 29*, Me. Dep’t of Health & Hum. Servs. (Dec. 30, 2020), <https://content.govdelivery.com/accounts/MEHHS/bulletins/2b36fa7>. *See also supra* note 2.

⁴ The consequences of the low reimbursement rate are palpable. For example, in early 2020, Home Care for Maine, a nonprofit serving elderly adults and adults with disabilities, closed in part because of financial challenges arising from rising minimum wage rates and low MaineCare reimbursement rates. *See Patients Worried After Home Care for Maine Announces Upcoming Closure*, WGME 13 (Jan. 31, 2020), <https://wgme.com/news/local/patients-worried-after-home-care-for-maine-announces-upcoming-closure>.

how MaineCare sets payment rates to health providers” for their services. *DHHS Releases MaineCare Rate System Evaluation Interim Report*, Me. Dep’t of Health and Hum. Servs. (Jan. 21, 2021), <https://www.maine.gov/dhhs/blog/dhhs-releases-mainecare-rate-system-evaluation-interim-report-2021-01-21>. In 2020, DHHS engaged an independent accounting firm to perform an evaluation of the MaineCare rate system. *Id.* The accounting firm completed its review and issued reports laying out its findings and recommendations in early 2021. Following review of the reports, DHHS “will determine which recommendations to adopt and develop an implementation plan that aligns with broader priorities, initiatives in the biennial budget, and budget resources.” *Id.*

In sum, Maine faces a statewide direct service provider crisis resulting from stagnant MaineCare reimbursement rates. While efforts are underway to address the issue at the state level, where it belongs, it is only exacerbated in Portland by the Emergency Wage Provision—requiring, if valid, 1.5 times a wage rate already greater than the MaineCare wage reimbursement rate.

C. The Emergency Wage Provision does not relate to completely municipal affairs because the disparity between the emergency wage rate and the reimbursement rate under MaineCare is putting a severe strain on the financial resources of service providers with effects reaching far beyond the City of Portland.

Under the Maine Constitution, “[t]he city council of any city may establish the direct initiative and people’s veto for the electors of such city *in regard to its*

municipal affairs.” Me. Const. art. IV, pt. 3, § 21 (emphasis added). This Court has defined “municipal affairs” as those “compris[ing] the internal business of a municipality.” *Albert v. Town of Fairfield*, 597 A.2d 1353, 1354 (Me. 1991) (quoting *Burkett v. Youngs*, 135 Me. 459, 199 A. 619, 621 (1938)). Additionally, this Court has specifically distinguished between “state and local affairs,” *id.*, and has observed that “there are comparatively few governmental doings that are completely municipal,” *id.* at 1354-55 (quoting *Burkett*, 199 A. at 622). The Emergency Wage Provision enacted by Portland voters does not fall within the narrow category of “completely municipal” affairs subject to municipal voters’ direct initiative power under the Maine Constitution because its effects extend far beyond the city itself.

A dozen MACSP members are either located in Portland or provide services to clients in Portland. Those members face a sharp increase in the cost of services with no corresponding increase in funding from MaineCare. Peter McGuire, *Portland Businesses Struggle to Keep Up With New \$18 Hazard Pay*, PORTLAND PRESS HERALD (Jan. 24, 2021), <https://www.pressherald.com/2021/01/24/portland-businesses-struggle-to-keep-up-with-new-18-hazard-pay>. For each hour of care provided to a client in Portland, the service providers must make up the difference between the MaineCare wage reimbursement rate and the emergency minimum wage rate of \$18, if immediately

effective. When that amount is multiplied by 40 hours per week and several employees over the course of many months, and must be paid by organizations that could not pay competitive wages prior to the pandemic, it becomes cost prohibitive for them to provide services to the approximately 700 individuals with intellectual and developmental disabilities in need of services in Portland. *See id.*⁵

As a result of these increased costs, many service providers have made the difficult decision to cut costs elsewhere to keep operating, whether cutting back on services, stopping services, reducing staff hours, or laying off staff. Some organizations are even considering relocating services to a different town altogether if the Emergency Wage Provision remains in place, with “[m]ore than half of the dozen organizations that support residents in Portland report[ing] that they are likely or very likely to relocate or end services simply because the state

⁵ In addition to the increased costs related to the Emergency Wage Provision, service providers have incurred other significant costs as a result of the pandemic. *See, e.g.*, Kevin Miller, *Pandemic Exacerbates Crisis Levels for Maine’s Group Homes*, PORTLAND PRESS HERALD (July 5, 2020), <https://www.pressherald.com/2020/07/05/pandemic-exacerbates-crisis-levels-for-maines-group-homes> (noting that the CEO of a nonprofit that runs group homes in Maine “estimated that his organization had paid about \$420,000 for personal protective equipment, or PPE, premium pay to direct-care workers, overtime and to set up an isolation facility for infected residents”). At a national level, organizations serving individuals with intellectual and developmental disabilities are in similar situations. A survey of more than 1,600 community providers serving individuals with intellectual and developmental disabilities found, among other things, that: on average, respondents reported an additional \$28,000 in monthly expenses (e.g. PPE, cleaning supplies, etc.), an additional \$77,000 in monthly overtime expenses, and one-third had to suspend hiring. Avalere Health, *Impact of Covid-19 on Organizations Serving Individuals with Intellectual and Developmental Disabilities 2* (June 23, 2020), available at <https://www.healthmattersprogram.org/wp-content/uploads/2020/05/Impact-of-COVID-19-on-Organizations-Serving-Individuals-with-IDD.pdf>.

system which they rely on is not designed to afford emergency wage increases.” McGuire, *supra* (quoting Laura Cordes, Executive Director of MACSP); *see also* Miller I, *supra* (“We are already in a situation with inadequate funding and then you pile this on with the virus, it puts agencies in a difficult situation.” (quoting Ellis Baum, Regional Director of Residential Resources, Inc.)). The consequences of this reduction in services will undoubtedly be felt by those individuals and families in Portland most in need of services, the already strained service providers outside of Portland (to the extent individuals can access services outside of Portland), the institutions and medical providers who will be required to take care of individuals who can no longer access in-home or community-based services, and the employees who have been laid off or whose hours have been cut.

While the Paycheck Protection Program loans, along with the Maine Department of Health and Human Services’ temporary 10 percent wage reimbursement rate increase from March 2020 to May 2020, enabled service providers to pay “hero” and “incentive pay” and defray some of the other additional pandemic related costs (*e.g.*, PPE, equipment and technology), those funds have long since dried up. *See, e.g.*, Miller, *supra* note 5 (“A temporary reimbursement rate increase from the state helped boost the pay of direct-care workers who provide the intimate, personal care to individuals with autism or intellectual disabilities. But the extra funding expired [May 31, 2020]”). Other

state and federal programs including the Federal Provider Relief Fund (“PFR”), Federal Emergency Management Agency (“FEMA”) Grants, and Maine’s Health Care Financial Relief Grant Program were promising when they were announced but have not provided the relief that is necessary for the Governor-declared state of emergency, let alone the emergency minimum wage instituted in a single municipality.⁶

This financial strain on service providers and the resulting cuts to services lead to broader implications for Maine’s health care system, which is already under much stress, and likely will be under stress in the event of a future declared state of emergency. For example, one of the primary impacts of MASCP’s members’ services is helping people with intellectual and developmental disabilities avoid expensive crisis services, which are often funded by local municipalities and MaineCare. *About Us*, Me. Ass’n for Cmty. Serv. Providers,

⁶ The PFR supported Medicaid providers by paying approximately two percent of their respective revenues from the prior fiscal year. *CARES Act Provider Relief Fund: Data*, HHS.gov, <https://www.hhs.gov/coronavirus/cares-act-provider-relief-fund/data/index.html> (last visited Mar. 24, 2021). None of MACSP’s members received grants from FEMA or Maine’s Health Care Financial Relief Program. *See e.g.*, Me. Dep’t of Admin. & Fin. Servs., *Maine Health Care Financial Relief Grant Program Recipients*, available at <https://www.maine.gov/budget/sites/maine.gov.budget/files/inline-files/MHCFR%20Grant%20Recipients.pdf>. To be eligible for Maine’s Health Care Financial Relief Program, providers had to demonstrate a loss of revenue greater than 20 percent. *See Me. Dept. of Econ. & Cmty. Dev. Maine Health Care Financial Relief Grant Program 1*, available at <https://www.maine.gov/decd/sites/maine.gov.decd/files/inline-files/Maine%20Health%20Care%20Financial%20Relief%20Grant%20FAQs%20v3.pdf>. (last visited Mar. 25, 2021). However, revenue loss is not indicative of a provider’s ability to pay emergency wage rates where the reimbursement rates remain below minimum wage.

<https://meacsp.org/about-us> (last visited Mar. 22, 2021). When MACSP's member organizations cannot afford to pay the emergency minimum wage and, therefore, reduce or stop providing services to clients in Portland, an increasing number of individuals in Portland who need services will not be able to access them. If clients are not receiving services, or if the services they receive are compromised due to staffing shortages or overworked providers, it is likely to lead to unnecessary and increased use of emergency services, hospitalizations, or other institutional placements, which may or may not take place inside Portland's city limits.⁷

Similarly, when Maine families with children with intellectual and developmental disabilities are not able to access community services during critical periods of development, such children are more likely to be placed away from their families in residential placements or out of state. *Id.* As a direct consequence of the Emergency Minimum Wage provision, it is cost prohibitive for service providers to continue to serve all of the children and adults in need of services in Portland. Because these children and adults must receive services somewhere, they will inevitably end up receiving them in a hospital or other institutional setting at the fiscal expense of other municipal governments, the State of Maine, or other state

⁷ Even before the current declared state of emergency, there was a lack of crisis supports and services, which resulted in adults with intellectual and developmental disabilities being inappropriately hospitalized, institutionalized, incarcerated, homeless, and sent out of state. *Id.*

governments, and at the emotional expense of the individuals in crisis and their families.

It is beyond dispute that the Portland Emergency Wage Provision has implications beyond the City borders for service providers, the clients and families they serve, and the healthcare system more broadly. Service providers strained by the Emergency Wage Provision may lobby DHHS for additional funds on an individual basis, but there is no guarantee that they will be successful.⁸ *See Myers & Stauffer, LC, MaineCare Comprehensive Rate System Evaluation Implementation Planning Report*, 3 (2021). Additionally, such requests are likely to strain DHHS’s limited administrative resources. *See id.* (“DHHS’ administrative resources are limited.”). If service providers are unsuccessful in obtaining additional funding through the legislative process, their clients will lose critical services and be forced to turn to expensive emergency services to fill the gap, thereby incurring additional costs for municipalities and the MaineCare system.⁹

⁸ Limited emergency funding has been available during the pandemic; however, as discussed *supra* at 13-14, that funding has largely dried up and/or was not accessible to MASCP’s members.

⁹ Moreover, even if DHHS ultimately approved additional funding for fixed-fee-for services contracts, there is nothing stopping another municipality’s voters from setting a higher “emergency wage” via initiative in the future, which would start the cycle all over again. Played out to its logical end, the State would be required to step in to protect community service providers and their constituents from the instability of bending to the individual and unique demands of municipal voters.

The MaineCare reimbursement system is complex and involves issues of statewide concern, including DHHS’s broader priorities and budget restrictions. DHHS’s goal in undertaking its current evaluation of the MaineCare reimbursement system, *see infra* Part I(B), “is to establish and maintain Medicaid program rates that are sufficient to sustain the financial viability of Maine providers, thereby ensuring that MaineCare members have access to high value services.” Myers and Stauffer, LC, *MaineCare Comprehensive Rate System Evaluation Interim Report* (Jan. 20, 2021), available at <https://www.maine.gov/dhhs/sites/maine.gov.dhhs/files/inline-files/MaineCare-Comprehensive-Rate-System-Evaluation-Interim-Report-2021.01.20.pdf>.

Portland’s Emergency Wage Provision has had the opposite effect, directly contravening DHHS’s goals by straining the finances of providers and creating conditions resulting in reduced services for clients, reduced jobs for direct care workers, and reduced hours for direct care workers, all of which will likely result in an exodus of providers from Maine’s largest city. The impact this will have on the State as a whole cannot be overstated.

CONCLUSION

The Emergency Wage Provision exceeds the scope of the direct initiative power reserved to municipal voters under the Maine Constitution because it does not pertain solely to Portland’s “municipal affairs.” Me. Const. art. IV, pt. 3, § 21;

Albert, 597 A.2d at 1354 (distinguishing between “state and local affairs”). Rather, the Emergency Wage Provision implicates serious issues of statewide concern. The increase in the cost of direct care services caused by the Emergency Wage Provision has dire consequences for service providers, who have resorted to reducing staff hours, reducing services, layoffs, and even relocating services altogether to manage the financial burden it imposes. As a result, their clients lose out on critically important services, turning when necessary to expensive emergency services to fill the gap. These effects impact the statewide MaineCare reimbursement system, creating additional administrative burdens for DHHS, and flouting DHHS’s goals of sustaining the financial viability of service providers and ensuring that MaineCare members have access to high value services. Ultimately, other municipal governments, the State of Maine, or other state governments will pay the costs of a decision made exclusively by Portland voters. Maine’s Constitution prohibits such a result.

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