

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

Civil No. 17-_____

COASTAL COUNTIES WORKFORCE, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
PAUL R. LEPAGE,)	
Governor of Maine, in his official capacity,)	
and)	
JOHN BUTERA,)	
Commissioner of the Maine Department)	
of Labor, in his official capacity,)	
)	
Defendants)	

VERIFIED COMPLAINT

Plaintiff Coastal Counties Workforce, Inc. complains against Defendants Governor Paul R. LePage and Commissioner John Butera as follows:

Introduction

1. This is a case brought to enforce federal law and ensure that Maine workers continue to receive federally-funded workforce development and training services.

2. The United States government provides millions of dollars in funding to Maine every year under the Workforce Innovation and Opportunity Act (the “WIOA”). These funds are used to provide job training services for laid-off workers, low-income adults, and struggling young adults. The WIOA created a carefully constructed framework for using these funds as efficiently as possible on a local level. In Maine, the counties are divided into three regions, each of which has a dedicated workforce organization that accepts and administers these funds. These workforce organizations, including Coastal Counties Workforce, Inc., are supervised by

elected county commissioners and provide services that are tailored for each local area, ensuring that the unique needs of each region are addressed.

3. The State of Maine is required to make the federal funds available to the workforce organizations within thirty days of the funds being made available to the State. For years, under the WIOA and its predecessors, the State has complied with this requirement. Unfortunately, Governor LePage is now withholding those funds and refusing to allow them to be used to serve the people of Maine.

4. Upon information and belief, this dispute appears to be territorial. The current Commissioner of the Maine Department of Labor, John Butera, wants his office in Augusta to have control over these federal dollars designated for the entire state. Instead of the local control established under the WIOA, Governor LePage's administration wants to take control out of local hands and consolidate it in Augusta. As Governor LePage has been informed by the United States Department of Labor, this is not permissible under the WIOA.

5. Governor LePage and Commissioner Butera are violating federal law by refusing to distribute the federal funds in accordance with law. This suit asks the United States District Court for declaratory and injunctive relief directing Governor LePage and Commissioner Butera to comply with their obligations under federal law and take all steps necessary to distribute the funds to help Maine workers.

6. Governor LePage and Commissioner Butera's actions are particularly harmful towards workers who have been recently laid off from paper mills and other struggling industries in Maine. The federal government has dedicated millions of dollars to helping these workers and other deserving unemployed and underemployed citizens obtain gainful employment. These efforts not only benefit job seekers, but also directly help Maine's employers, providing them with trained workers, placement support, and a role (through the local workforce board) in

shaping the WIOA programming to best address the unique challenges of Maine's labor market. The citizens and businesses of the State of Maine are best served by putting these funds to good use and not rejecting them for capricious political reasons.

Parties and Jurisdiction

7. Plaintiff Coastal Counties Workforce, Inc. ("CCWI") is a Maine non-profit corporation with a principal place of business in Brunswick, Maine.

8. Defendant Paul R. LePage is the Governor of the State of Maine. He has an official office in Augusta, Maine.

9. Defendant John Butera is the Commissioner of the Maine Department of Labor. He has an official office in Augusta, Maine.

10. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 because this case involves federal questions arising under 29 U.S.C. § 3101 *et seq.* and sought to be enforced through 42 U.S.C. § 1983.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because all parties reside within the District of Maine.

Factual Background

12. The WIOA was passed by the United States Congress in 2014. The purposes of the WIOA include providing individuals with the resources needed to succeed in the labor market; creating a comprehensive workforce development system; providing employers with skilled workers; and to increase the prosperity of workers, employers, communities, and the Nation as a whole. 29 U.S.C. § 3101.

13. The WIOA achieves these goals by directing federal funds to statewide workforce investment systems in each state.

14. The statewide workforce investment system in Maine is comprised of three Local Workforce Investment Areas (the “**Local Areas**”), each with its own volunteer, business-led Local Workforce Development Board (the “**Local Boards**”).

15. The Local Areas consist of the Coastal Counties Region (York, Cumberland, Sagadahoc, Lincoln, Waldo, and Knox Counties); the Northeastern Region (Aroostook, Piscataquis, Penobscot, Hancock, and Washington Counties); and the Central/Western Region (Somerset, Franklin, Oxford, Androscoggin, and Kennebec Counties).

16. The Local Boards work together with the Chief Elected Officials (the “**CEOs**”), who are county commissioners from each county within each Local Area.

17. Governor LePage has repeatedly sought to eliminate the Local Areas and Local Boards in favor of a single state-wide system.

18. In a letter dated July 11, 2017, Governor LePage wrote to R. Alexander Acosta, United States Secretary of Labor, requesting that Maine be granted “single State local area designation.”

19. Upon information and belief, this was at least the second time Governor LePage had made a similar request.

20. By letter sent on August 31, 2017, the U.S. Department of Labor rejected Governor LePage’s request because it was not permissible under the WIOA.

21. Pursuant to federal law, Governor LePage may not eliminate local control.

22. Under the current system, the Local Boards and the CEOs delegate the administration and oversight of WIOA Funds (as defined below) to an entity created for that purpose for each of the three Local Areas (the “**Workforce Groups**”).

23. The Workforce Groups are largely or entirely funded by funds allocated by the United States Congress under the WIOA (the “**WIOA Funds**”).

24. The WIOA Funds are made available on a “Program Year” basis, running from July 1 to June 30 of each year.

25. Each year, the WIOA Funds are made available to Governor LePage who then must make them available to the Workforce Groups.

26. Under the WIOA, the State may retain up to 25% of program year funding to fund statewide workforce training initiatives, rapid response programs, and administrative costs. *See* 29 U.S.C. §§ 3173(a), 3174(a)(3). Upon information and belief, in Program Year 2016, the State of Maine retained \$2,288,356 of funding for these purposes.

27. The entity created by the Local Board and the CEOs to oversee the use of the WIOA Funds for the Coastal Counties Region is CCWI.

28. CCWI uses the regional allocation of approximately \$3 million each year in WIOA Funds to fund programs designed to help dislocated workers, low income adults, and young adults with barriers to employment throughout the Coastal Counties Region.

29. By letter dated June 6, 2016, the former Commissioner of the Maine Department of Labor, writing as the designee for Governor LePage, confirmed that CCWI had been granted local area designation for the Coastal Counties Region.

30. By letter dated September 12, 2016, the former Commissioner of the Maine Department of Labor granted conditional approval of the Coastal Counties Workforce Board’s 2016-2020 WIOA Regional Plan (the “**Local Plan**”). This conditional approval remains in effect today. CCWI has satisfied the conditions imposed by the Maine Department of Labor.

31. Part of the process for making the WIOA Funds available to the Workforce Groups is the execution of a contract for each Program Year between the State of Maine and each Workforce Group (the “**Workforce Groups Contracts**”).

32. For all previous years in which WIOA Funds were distributed, the Workforce Groups Contracts covered the entire Program Year.

33. The WIOA requires that the distribution of funds be for an entire Program Year. 29 U.S.C. § 3249(g)(1)(A).

34. The Workforce Groups require contracts for full Program Years in order to effectively plan and operate their programs.

35. For Program Year 2016 (“**PY16**”), \$9,372,636 in WIOA Funds (the “**PY16 WIOA Funds**”) were made available to Governor LePage and the State of Maine. *Notice Regarding PY 2016 WIOA Allotments*, 81 Fed. Reg. 22640 (April 18, 2016).

36. Upon information and belief, the PY16 WIOA Funds were made available to Governor LePage in June, 2016.

37. The State of Maine entered into a contract with CCWI for the full 2016 Program Year for CCWI’s share of the PY16 WIOA Funds.

38. For Program Year 2017 (“**PY17**”), \$8,393,050 in WIOA Funds (the “**PY17 WIOA Funds**”) has been made available to Governor LePage and the State of Maine. *Notice Regarding PY 2017 WIOA Allotments*, 825 Fed. Reg. 27529 (June 15, 2017).

39. Upon information and belief, the PY17 WIOA Funds were made available to Governor in July or August, 2017.

40. Under federal law, funds “shall be made available . . . for a local area not later than 30 days after the date the funds are made available to the Governor involved, . . . or 7 days after the date the local plan for the area is approved, whichever is later.” 29 U.S.C. § 3242(e).

41. By letter dated October 23, 2017, the Maine Department of Labor purported to terminate CCWI’s contract for remaining PY16 WIOA Funds. That letter indicated that only costs incurred by November 30, 2017 would be reimbursed.

42. Upon information and belief, Governor LePage, either personally in his official capacity, or through his designees, including Commissioner Butera, has refused or otherwise failed to make the PY17 WIOA Funds available in their entirety to the three Workforce Groups.

43. Upon information and belief, Governor LePage, either personally in his official capacity, or through his designees, including Commissioner Butera, has refused to issue Workforce Groups Contracts for all of PY17. Instead, Governor LePage and Commissioner Butera offered contracts for the first quarter of PY17 and indicated that they would not issue contracts for any other quarter of PY17.

44. On September 7, 2017, Governor LePage wrote to Secretary Acosta and stated that “Maine is no longer participating in the WIOA Title 1B program. We ask that no more of these funds be sent to the Maine Department of Labor.”

45. Because Governor LePage has already gained access to the PY16 WIOA Funds and the PY17 WIOA Funds, he is required to make those funds available to the Workforce Groups and may not unilaterally eliminate this source of funding.

46. Governor LePage and Commissioner Butera’s efforts to defund the Workforce Groups will have significant adverse effects on Maine businesses and workers.

47. Last year, CCWI received 49,213 customer visits through the local CareerCenters and affiliate offices.

48. Of those visits, 16,512 customers required additional workforce services.

49. In PY16, CCWI assisted 564 workers in obtaining employment at an average annual wage of \$29,456, adding approximately \$16.7 million to the state’s economy.

50. There are currently approximately 908 adult, youth, and dislocated workers enrolled in workforce intensive services or training.

51. A majority of these visits and services will be adversely affected or completely eliminated as a result of Governor LePage and Commissioner Butera's efforts to defund the Workforce Groups.

52. Approximately five hundred Maine employers will be adversely affected by not being able to obtain trained workers or receive business services.

53. In addition, other grants involving non-WIOA Funds that are administered by CCWI for the benefit of Maine businesses and employers will be terminated should CCWI cease operating.

54. The PY16 WIOA Funds are keeping CCWI's doors open and allowing some limited services to be offered to workers and businesses during PY17 despite Defendant's failure to make the PY17 WIOA Funds available. Elimination of these funds will result in CCWI shutting down on or around November 30, 2017.

55. WIOA Funds represent 75% of CCWI's budget for the PY17 period. The remaining 25% comes from stand-alone grants which support programs that rely on the infrastructure funded by the WIOA Funds. If the PY17 WIOA Funds are not made available, CCWI will be forced to stop operating, shut down its programs, and terminate all employees.

56. CCWI has already begun curtailing the services it is funding for workers and employers.

57. Upon information and belief, service providers for CCWI and the other Workforce Groups are beginning to lay off employees.

58. If forced to shut down its operations, CCWI anticipates that its personnel will seek other job opportunities, its other grants will be cancelled, and that it will be difficult, if not impossible, to resume operations even if the PY16 WIOA Funds and the PY17 WIOA Funds are made available at a later date.

59. The withholding of PY16 WIOA Funds and PY17 WIOA Funds is anticipated to directly result in approximately 30 workforce system jobs lost in the Coastal Counties Region and 75 jobs statewide. While traumatic on an individual level to these workers, the effect on the workforce training system will be catastrophic. Once destroyed, the workforce training system will be very difficult and expensive to rebuild.

60. Upon information and belief, Governor LePage and Commissioner Butera's attempt to reject Title 1 funds from WIOA could adversely affect the ability of Adult Education (Title 2), Employment Services (Title 3), and Vocational Rehabilitation (Title 4) to fully offer services. This could in turn place the State of Maine out of compliance with the mandates set forth by the United States Department of Labor and the WIOA.

61. The loss of Title 1 funding under the WIOA will also cause severe harm to the financial sustainability of multi-agency Career Centers, and other multi-program service delivery sites that depend on it to contribute to fixed operating expenses.

62. All of this is completely unnecessary; Governor LePage merely needs to comply with his obligations under federal law and direct Commissioner Butera to issue contracts to the Workforce Groups for the full 2017 Program Year and make the PY16 WIOA Funds and the PY17 WIOA Funds available to the Workforce Groups. This would render this lawsuit moot and, more importantly, preserve about \$8 million per year in funding for vital workforce retraining for the citizens of the State of Maine.

COUNT I
(42 U.S.C. § 1983 Liability Against All Defendants)

63. Plaintiffs repeat the allegations contained in all preceding paragraphs of this Complaint.

64. Governor LePage and Commissioner Butera are state actors and, at all times relevant to this matter, were acting under color of state law.

65. Defendants Governor LePage and Commissioner Butera have deprived CCWI of a right secured by federal law in violation of 42 U.S.C. § 1983 by: A) threatening to withhold PY16 WIOA Funds from CCWI; B) failing to make the PY17 WIOA Funds available to CCWI within thirty days after those funds were made available to Governor LePage; and C) failing to take the necessary steps to make those funds available by failing and/or refusing to issue Workforce Group Contracts for the full 2017 Program Year.

66. The requirement that Governor LePage makes WIOA Funds available to the Workforce Groups within thirty days after those funds are made available to him, as set forth in 29 U.S.C. § 3242(e), constitutes a federal right enforceable pursuant to 42 U.S.C. § 1983.

67. Congress intended that 29 U.S.C. § 3242(e) benefit Workforce Groups, including CCWI. *See, e.g.*, 29 U.S.C. § 3242(e) (requiring funds to be made available to local workforce groups within thirty days of being made available to the governor).

68. The right to have Governor LePage make the WIOA Funds available to the Workforce Groups, including CCWI, is a right that is not so vague and amorphous that its enforcement could strain judicial competence. To the contrary, the requirement set forth in the statute is clear, unambiguous, and easily enforceable by this Court.

69. The statute in question, 29 U.S.C. § 3242(e), unambiguously imposes a binding obligation on Governor LePage and Commissioner Butera. The statute is couched in mandatory, not precatory, terms.

70. All of the foregoing establishes a rebuttable presumption that CCWI's right to receive the WIOA Funds is enforceable under 42 U.S.C. § 1983.

71. The United States Congress did not explicitly or implicitly foreclose recourse to Section 1983 for violations of the WIOA.

72. The WIOA contains no express language that forbids recourse to Section 1983.

73. The WIOA does not impliedly forbid recourse to Section 1983 because it does not create a comprehensive enforcement scheme that is incompatible with individual enforcement under Section 1983. *See, e.g., Ramos v. Consorcio de la Mont.*, 286 F. Supp. 2d 126, 128-130 (D.P.R. 2003) (concluding that identically-worded predecessor statute did not expressly or impliedly preclude § 1983 enforcement).

74. Accordingly, Defendants Governor Paul LePage and Commissioner John Butera are liable for their refusal or failure to make the PY16 WIOA Funds and the PY17 WIOA Funds available to the Workforce Groups, including CCWI, and for their refusal or failure to take the necessary steps to make those funds available, including providing Workforce Group Contracts for all of Program Year 2017. Those actions were violations of a right secured by federal law under color of state law which have caused damage to CCWI.

WHEREFORE, Plaintiff Coastal Counties Workforce, Inc. respectfully request that the Court:

- A. Enter judgment in favor of CCWI and against Defendants on all counts of this Complaint;
- B. Declare that Defendants Governor LePage and Commissioner Butera's refusal and/or failure to make the PY16 WIOA Funds available to CCWI, was a violation of a right under federal law;
- C. Declare that Defendants Governor LePage and Commissioner Butera's refusal and/or failure to make the PY17 WIOA Funds available to CCWI, was a violation of a right under federal law;
- D. Declare that Defendants Governor LePage and Commissioner Butera's refusal and/or failure to take all necessary steps to make the PY17 WIOA Funds available to CCWI,

- including the issuance of Workforce Group Contracts for the full 2017 Program Year, was a violation of a right under federal law;
- E. Preliminarily and permanently enjoin Defendants Governor LePage and Commissioner Butera to immediately make the PY16 WIOA Funds available to CCWI; and
 - F. Preliminarily and permanently enjoin Defendants Governor LePage and Commissioner Butera to issue contracts to CCWI for the full 2017 Program Year pursuant to the WIOA;
 - G. Preliminarily and permanently enjoin Defendants Governor LePage and Commissioner Butera to immediately make the PY17 WIOA Funds available to CCWI; and
 - H. Award Plaintiff its costs, including reasonable attorney's fees, pursuant to 42 U.S.C. § 1988.

Dated: October 24, 2017

/s/ Kelly W. McDonald
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VERIFICATION

I, Antoinette Mancusi, Deputy Director of Coastal Counties Workforce, Inc., have read the foregoing Verified Complaint. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this Verified Complaint are true and correct and that I believe that the statements made upon information and belief are true. 28 U.S.C. § 1746.

Dated: October 24, 2017

/s/ Antoinette Mancusi
Antoinette Mancusi
Coastal Counties Workforce, Inc.