IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

D.D. & **J.D.,** by and through
their Next Friend, Jocelyn Durrant;
D.M., by and through his Next Friend,
Rebbeca Morris,
Petitioners,

v. CASE NO. 2026 CA 000520

FLORIDA HEALTHY KIDS CORPORATION and **FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION**,

Respondents.[1]
_____/

PETITIONERS' REPLY TO
RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

The Florida Healthy Kids Corporation and Florida Agency for Health Care Administration (Respondents) have failed to implement a law, passed by the Florida legislature and signed by the Governor, that changes the eligibility requirements for the Florida CHIP KidCare program. Petitioners have filed a complaint for a writ of mandamus, asking the Court to order Respondents to implement the law.

Rather than acknowledge and comply with this clear legal duty, Respondents seek dismissal of Petitioners' mandamus complaint on unsupported grounds. *First*, the Florida laws cited by Respondents do not bar the complaint for writ of mandamus because Petitioners are not alleging a "failure to make health services available" under these laws. *Second*, Respondents have a clear and indisputable legal duty to implement the law because the condition precedent of

[1] The Complaint for Writ of Mandamus identified the parties as "Plaintiffs" and "Defendants" under Florida Rule of Civil Procedure 1.630. In light of the Court's use of "Petitioners" and "Respondents" in its Order to Show Cause, Petitioners adopt those designations.

federal approval required by state statute has occurred. *Third*, Petitioners have no other adequate remedy at law because the administrative remedies available will not afford them the relief they seek, and exhaustion of any administrative remedy would be futile. The Court should grant Petitioners' complaint for writ of mandamus.

ARGUMENT

I. Florida Statutes Do Not Bar Petitioners' Mandamus Complaint.

Florida statutes do not bar Petitioners' complaint for writ of mandamus. Florida Statutes §§ 409.813(2) and 624.91(4) make clear that the KidCare program is not an entitlement program, and in the next sentence, state that "[n]o cause of action shall arise against" Respondents "for *failure to make health services available.*" (emphasis added). These provisions do not prohibit all causes of action related to KidCare. They only bar causes of action that assert the State has failed "to make health services available."[2]

Neither the Florida KidCare Act, Fla. Stat. §§ 409.810-409.821, nor the Florida Healthy Kids Corporation Act, Fla. Stat. § 624.91, define the term "health services."[3] When a term is

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[2] Respondents note this provision flows from a federal CHIP provision, 42 U.S.C. § 1397bb(b)(5), which states: "Nothing in this subchapter shall be construed as providing an individual with an entitlement to child health assistance under a State child health plan." *See also id*. § 1397jj(a) (defining "child health assistance" as payment for health benefits coverage). Petitioners' Complaint does not allege they are entitled to CHIP coverage. Rather, it seeks to require the State to comply with its duty to implement the current eligibility laws. And while Petitioners believe they will qualify for coverage under the implemented statute, that is not their claim here.

[3] Notably, the Florida legislature understands the difference between "health benefits coverage," which is the health insurance offered through the KidCare program, and "heath care services," which is the medical care and treatment that the CHIP insurance pays for. *See* Fla. Stat. § 409.811(14) (defining "health benefits coverage" as the "protection that provides payment of benefits for covered *health care services* or that otherwise provides, either directly or through arrangements with other persons, covered *health care services* on a prepaid per capita basis or on a prepaid aggregate fixed-sum basis.") (emphasis added).

undefined in statute, "the language should be given its plain and ordinary meaning." *Somers v. United States*, 355 So. 3d 887, 891 (Fla. 2022). Florida courts "will refer to dictionaries in order to ascertain the plain and ordinary meanings of [statutory] terms." *Id.* at 892.

The dictionary defines "health" as "the general condition of the body" and "services" as "helpful act[s]." Health, *Merriam-Webster Online Dictionary*, https://www.merriam-webster.com/dictionary/health (last visited June 12, 2026); Service, *Merriam-Webster Online Dictionary*, https://www.merriam-webster.com/dictionary/service (last visited June 12, 2026). Therefore, "health services" mean "helpful acts for the general condition of the body." Other Florida statutes define the term "health services" similarly. *See, e.g.*, Fla. Stat. § 391.021(6) ("'Health services' includes the prevention, diagnosis, and treatment of human disease, pain, injury, deformity, or disabling conditions."); Fla. Stat. § 400.462(19) ("'Home health services' means health and medical services and medical supplies furnished to an individual in the individual's home or place of residence," listing examples of health services including nursing care, therapy, home health aides, etc.); Fla. Stat. § 784.076 ("As used in this section, the term 'health services' means preventive, diagnostic, curative, or rehabilitative services . . . ."). In sum, the plain and ordinary meaning of the term "health services" is the medical care, treatment, and other services individuals receive to maintain their physical and mental well-being. Consequently, Sections 409.813(2) and 624.91(4), Florida Statutes, prohibit causes of action that allege the State has failed to make medical care and treatment available.

Here, Petitioners have not filed a cause of action against Respondents for failing to make health services available. Petitioners do not ask the Court to order Respondents to provide them with or arrange for any medical care or treatment. Nor do Petitioners ask the Court to order Respondents to place them in the CHIP KidCare program. Petitioners' sole request is for the

Court to order Respondents "to implement the increase in the CHIP KidCare income limit to 300% of FPL, pursuant to Fla. Stat. § 409.814 and 409.8132(6)(a), and evaluate [their] income eligibility for the CHIP KidCare program based on 300% of FPL pursuant to Fla. Stat. § 624.91[(5)](b)(6)." Compl. 20, Req. for Relief ¶ C. The Court's issuance of the requested writ would only compel application of the income standard required by law; it would not compel enrollment of Petitioners in CHIP KidCare, much less compel the availability of any health services. Indeed, Petitioners would not receive any "health services" until after all eligibility and enrollment requirements are met.[4] *See* Fla. Stat. § 409.814(5) (listing various situations where children are not eligible for CHIP KidCare).

Thus, Petitioners' claim is not within the scope of these statutory bars. But even assuming for argument's sake they were, these statutes would not prohibit Petitioners' mandamus action. A complaint for writ of mandamus is not a typical lawsuit against the government. Mandamus is not "a suit *against* the sovereign, but rather a suit *brought by* the sovereign to require *a governmental actor* – not the sovereign itself – to perform a duty the official is indisputably required to perform." *Sarasota Drs. Hosp., Inc. v. Sarasota Cnty.*, 396 So. 3d 648, 660 (Fla. 2d DCA 2024) (holding mandamus action was not barred by sovereign immunity). A writ of mandamus is not a cause of action against the state or one of its branches proscribed by Sections 409.813(2) or 624.91(4); instead, it is "a recognized remedy to require a public official, who is clothed with the authority, to discharge his duty. . . ." *Id.* at 659 (citing *Alexander v. City of Coral*

[4] In *Health First Health Plan #C, Inc. v. Florida Healthy Kids Corp.*, 21 So. 3d 137 (Fla. 5th DCA 2009), health care providers disputed Florida Healthy Kids Corporation's compliance with the eligibility standards set forth in Florida Statute as required by the parties' contract. Not surprisingly, this dispute was decided on the merits in both the trial and appellate courts, with no reference to the statutory immunity provisions in Sections 409.813(2) or 624.91(4), Florida Statutes.

Gables, 745 So. 2d 1004, 1005 (Fla. 3d DCA 1999)); *see also id.* at 665 (where gravamen of complaint is that government defendant is failing to act in defiance of legal mandate requiring action, the defendant is sued in the capacity as a "derelict governmental actor" which must be compelled to conform its conduct with the law and is not barred by sovereign immunity). Just as sovereign immunity does not bar a mandamus action against a governmental actor, neither should the statutory immunity provisions at issue here.

In sum, Petitioners seek to enforce an established legal right, not to establish that right. *See State, Dep't of Health & Rehab. Servs. v. Hartsfield*, 399 So. 2d 1019, 1020 (Fla. 1st DCA 1981) ("Mandamus is available to enforce an established legal right but not to establish that right."). Petitioners' mandamus action is not barred by the immunity provisions in Sections 409.813(2) and 624.91(4), Florida Statutes, because Petitioners have not brought a cause of action against Respondents for failing to make health services available. And in any event, immunity does not protect a derelict governmental actor from a mandamus action seeking to achieve compliance with existing laws.

II. Respondents Have a Clear Legal Duty to Implement and Apply the 300% of FPL Income Limit.

A. CMS issued the "federal approval" set forth in state law.

Respondents argue they do not have a clear legal duty to implement the CHIP expansion because "CMS has not approved AHCA's application as submitted." Response to Order to Show Cause (Resp.) at 2, 4, 7. This argument asks the Court to read words into the state law that are simply not there.

The legislature directed Respondents to increase the CHIP income eligibility limit from 200% to 300% of FPL and establish tiers of uniform premiums for enrolled children. *See* H.B. 121, 2023 H.R., Reg. Sess. (Fla. 2023) ("H.B. 121"). The following year, the legislature made

implementation of HB 121 contingent on one thing: "federal approval." S.B. 2518, 2024 Sen., Reg. Sess. (Fla. 2024) ("S.B. 2518") ("Implementation of chapter 2023-277, Laws of Florida . . . is contingent upon federal approval through a Medicaid waiver or a state plan amendment").

If the legislature had intended implementation of H.B. 121 to be contingent on federal approval of the application "as submitted" or on CMS allowing the State to ignore the federal continuous eligibility requirement, it would have made that explicit. *See Brindise v. U.S. Bank Nat. Ass'n*, 183 So. 3d 1215, 1219 (Fla. 2d DCA 2016) ("The Legislature knows how to create a condition precedent. Because the Legislature declined to be more specific . . . we will not expand the statute to include language the Legislature did not enact."). Taken to its logical conclusion, AHCA's argument would mean that, regardless of what the legislation instructed it to do, AHCA had discretion to include whatever requests or conditions it wanted in its waiver application, and if CMS did not approve them, AHCA could elect not to implement the waiver. That cannot be what the legislature intended.

CMS issued the federal approval the legislature required. In its December 2, 2024, letter to AHCA, CMS stated it "is approving Florida's section 1115(a) demonstration." Complaint for Writ of Mandamus (Compl.) Ex. 10 at 1. CMS continued: "With this approval, Florida will have the authority to raise the CHIP income eligibility threshold" from 210% to 300% of FPL and "to require enrollees in the CHIP expansion population . . . to pay a monthly premium." *Id*.; *see id*. at 1-2 (stating further that CMS "is approving" premium tiers). Even assuming, for the sake of argument the CMS approval was conditional on AHCA's acceptance, *see* Resp. at 4, 8, AHCA provided its acceptance to CMS's satisfaction. *See* Compl., Ex. 12 (January 17, 2025, letter from CMS to AHCA informing the State it could "now implement the demonstration" as approved on

December 2, 2024), Ex. 13 (CMS website showing the CHIP expansion project status as "Approved").[5]

In short, CMS—the agency authorized to grant the "federal approval" required by SB 2518—has stated repeatedly that it provided its approval. The condition precedent required by SB 2518 has been met. Respondents have a clear and indisputable legal duty to implement the 300% of FPL income eligibility limit mandated by HB 121.

B. Florida's separate federal court case does not affect the outcome here.

Respondents also seek to justify their failure to implement the CHIP expansion by pointing to their federal court case challenging CMS's inclusion of STC 5.2 in the approval.[6]

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[5] Respondents attempt to frame the events as a contract negotiation, with CMS providing an offer, AHCA making a counteroffer, and CMS rejecting that offer. Resp. at 3 n.1. While federal spending clause legislation like CHIP has long been described as "much in the nature of a contract," *Pennhurst St. Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981), Respondents do not explain how that is relevant here. This case does not present a contract law issue. The contingency in SB 2518 does not require a negotiated contract, but rather a "federal approval." Fla. Stat. § 409.814 n.1; *see* Approve, *Merriam-Webster Online Dictionary*, https://www.merriam-webster.com/dictionary/approve (last visited June 12, 2026) (defining approve as "to give formal or official sanction"). The question before this Court is whether CMS provided that approval, which, as described above, it has.

[6] Florida's legal challenge to STC 5.2 is a relatively new development in Florida's ongoing legal battles with CMS in federal court. Florida's initial complaint in the federal case only alleged that CMS and HHS violated the Freedom of Information Act by failing to respond to the State's request for records related to "consideration, approval, or implementation of" the CHIP expansion. Compl., *Florida v. Ctrs. for Medicare & Medicaid Servs.*, No. 3:26-cv-915, ¶ 20 (N.D. Fla. Feb. 9, 2026); *see id.* ¶¶ 27-40 (claims for relief). Approximately two weeks after the Court issued its Order to Show Cause in the present case, Florida amended the federal complaint to challenge the approval of STC 5.2 under the Administrative Procedure Act. First Amended Compl., *Florida v. Ctrs. for Medicare & Medicaid Servs.*, No. 3:26-cv-915, ¶¶ 98-125 (N.D. Fla. May 1, 2026). Florida filed two previous federal cases challenging the continuous eligibility requirement directly, both of which were dismissed prior to Petitioners' filing this case. *See Florida v. Ctrs. for Medicare & Medicaid Servs.*, No. 8:24-cv-317, 2024 WL 2903298 (M.D. Fla. Feb. 20, 2025) (dismissing challenge to CMS guidance for lack of jurisdiction), *vacated*, No. 24-12217, 2025 WL 602785 (11th Cir. Feb. 20, 2025) (granting parties' joint motion to dismiss appeal as moot and vacate judgment below); Compl., *Florida v. Ctrs. for Medicare & Medicaid*

Resp. at 2, 10-11. That case has no bearing on the state law question before this Court. The issue here is whether state statutes give rise to a clear legal duty to implement the CHIP KidCare expansion. Whether CMS's inclusion of STC 5.2 passed muster under federal law is irrelevant to the question presented here.

Further, Respondents suggest this Court should avoid ruling because the federal court *could* vacate CMS's approval altogether, rendering this case moot. *See* Resp. at 10-11. Respondents point to *Stewart v. Azar*, 313 F. Supp. 3d 237 (D.D.C. 2018), but that decision does not mean the federal court will set aside CMS's approval of the CHIP expansion. The plaintiffs in *Stewart* challenged CMS's approval of the project as a whole and thus, asked the court to vacate approval of the entire project. *See Stewart*, 313 F. Supp. 3d at 253, 272.

Florida's current federal lawsuit, on the other hand, only challenges the inclusion of STC 5.2 in the approval and thus, only asks the court to declare that single STC unlawful, set it aside, and enjoin its enforcement. *See* Resp. at 4, 10; First Amended Compl., *Florida v. Ctrs. for Medicare & Medicaid Servs.*, No. 3:26-cv-915, 53-54 (N.D. Fla. May 1, 2026). In any event, the possibility another court could invalidate the federal approval at some point in the future is not grounds for this Court to delay its decision as to whether Respondents are in violation of their indisputable ministerial duty to implement the CHIP expansion.

III. To Defeat Mandamus, Other Remedies at Law Must Be Adequate.

Respondents treat mandamus's third element—no other adequate remedy at law—as a box to check regardless of outcome. It is not. Instead, an alternate remedy must provide another "legal method for *obtaining* relief." *Point Conversions, LLC v. Pfeffer & Marin Holdings, LLC*,

Servs., No. 8:25-cv-36 (M.D. Fla. Jan. 1, 2025) (challenging federal regulation), *dismissed,* (Feb. 9, 2026) (dismissing case upon review of plaintiffs' notice of voluntary dismissal).

305 So. 3d 609, 610-11 (Fla. 3d DCA 2020) (cleaned up) (emphasis added). In other words, when pursuing an administrative remedy would be futile, there is no adequate remedy at law. *See Fair v. Davis*, 283 So. 2d 377, 378 (Fla. 1st DCA 1973) (where an appeal to an administrative official or agency "would be fruitless . . . the law will not require the performance of useless acts") (citing *Miami Beach v. Sunset Islands 3 & 4 Property Owners Assoc.*, 216 So.2d 509 (Fla. 3d DCA 1968)); *see also Cook v. Di Domenico*, 135 So. 2d 245, 246 (Fla. 3d DCA 1961) ("The law does not require one to pursue administrative remedies before resorting to the court where such remedy would be of no avail.") (internal quotations and citations omitted).

By Respondents' own admission, the KidCare dispute resolution process is futile. Indeed, the foundation of Respondents' entire argument rests on a concession they are not implementing the 300% FPL income limit. *See* Resp. at 4 ("AHCA is unable to fulfill the commitment to CHIP expansion provided in H.B. 121. . ."). Nowhere do Respondents represent that, had Petitioners invoked Fla. Admin. Code R. 59G-14.001, FHKC would have applied the higher limit. Nor could they, given their position that "[i]t would be premature for Respondents to implement section 409.814(1), Florida Statutes." Resp. at 7. The Court need not *presume* the inadequacy of the dispute-resolution process, *see* Resp. at 13, when, as here, Respondents concede its inadequacy.

Furthermore, the cases on which Respondents rely are inapposite. None arose in the mandamus context, and in each the administrative process was adequate to produce the relief sought. *See Cmtys. Fin. Corp. v. Fla. Dep't of Envtl. Regul.*, 416 So. 2d 813, 815-816 (Fla. 1st DCA 1982) (agency's withholding of escrow approval was resolvable through an administrative hearing); *Fla. Agency for Health Care Admin. v. MIED, Inc.*, 869 So. 2d 13, 18 (Fla. 1st DCA 2004) (party filed, then abandoned, an administrative petition in exchange for a settlement which, in turn, demonstrated the fruitfulness of the process); *Yergin v. Georgopolos*, 217 So. 3d

155, 157-58 (Fla. 3d DCA 2017) (agency had authority to release the unclaimed property sought, but claimant failed to fully pursue that process); *State Dep't of Envtl. Prot. v. PZ Constr. Co.*, 633 So. 2d 76, 78-79 (Fla. 3d DCA 1994) (petitioner invoked, then abandoned, a hearing that could have "persuade[d] the Department" to grant relief). In each of these cases, the party ignored a process that could have worked. Not so here. Exercising the dispute-resolution process would simply lead to FHKC informing Petitioners they do not apply the 300% FPL income limit. Petitioners thus have no other adequate remedy at law, and the third element of mandamus is satisfied.

CONCLUSION

For the foregoing reasons, as well as those set forth in their complaint for writ of mandamus, Petitioners meet the requirements for mandamus relief and ask the Court to grant their complaint for writ of mandamus.

Dated: June 15, 2026

Respectfully Submitted,

/s/Lynn C. Hearn

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 15, 2026, the foregoing document was served upon Nicholas Cavallaro, Complex Litigation Division, Office of the Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, Nicholas.Cavallaro@myfloridalegal.com via the Florida Courts E-Filing Portal.

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