UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

THE FAMILY PLANNING ASSOCIATION OF MAINE D/B/A MAINE FAMILY PLANNING; Plaintiff, v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ROBERT F. KENNEDY, JR., in his official capacity as Secretary of Health and Human Services; CENTERS FOR MEDICARE & MEDICAID SERVICES and MEHMET OZ, in his official capacity as the Administrator of the Centers for Medicare & Medicaid Services, Defendants.	)	Case No. 1:25-cv-00364

REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

Defendants' Opposition underscores how far the Defunding Provision strays from advancing any legitimate governmental interest and how irrational and arbitrary the Provision's line-drawing is to achieving its asserted post-hoc ends. Although Defendants justify the law as "Congress's choice not to fund Big Abortion" because "[t]he United States wants to reduce abortions" and "does not want taxpayer dollars paid to entities that engage in abortion," Defs.' Opp'n to Pl.'s Mot. For Prelim. Inj., ECF No. 24 at 5-7 ("Defs.' Opp'n"), the Provision's gerrymandered limitations ensure that only a tiny subset of Medicaid-receiving abortion providers, including Maine Family Planning ("MFP"), are barred from receiving federal Medicaid funds. The reason for this is plain: Congress meant to target Planned Parenthood, but swept up MFP to get the measure through reconciliation.

Absent injunctive relief, MFP will be forced to discharge primary care patients, lay off staff, and end its primary care practice. MFP's ability to continue serving family planning patients also remains at risk.[1] Put differently, the Defunding Provision jeopardizes MFP's reputation and undercuts its mission to provide healthcare to *all* its patients—nearly 93% of whom do not seek abortion services—solely because of Congress's impermissible desire to harm another entity.

I. MFP Is Likely to Succeed on Its Equal Protection Claim.

Defendants agree that the Defunding Provision cannot survive if the lines it draws between providers cut off from Medicaid funds and those who get to keep them are "'essentially arbitrary.'" Defs.' Opp'n at 6 (quoting *Lindsley v. Nat. Carbonic Gas Co.*, 220 U.S. 61, 78–79 (1911)); *see also Rinaldi v. Yeager*, 384 U.S. 305, 308-09 (1966) (equal protection demands "some rationality

[1] Since filing this lawsuit, MFP has learned that its funding through the Title X family planning program—which had been withheld since March 31, 2025—has been largely restored. Suppl. Decl. of Evelyn Kieltyka in Supp. Pl.'s Mot. for a TRO and/or Prelim. Inj. ¶¶ 3, 5 ("Kieltyka Suppl. Decl."). To comply with Title X's requirements to prioritize serving low-income patients, MFP will continue serving Medicaid patients seeking family planning services while Title X funds are available but will not be able to continue to provide primary care services unrelated to sexual and reproductive health. *Id.* at ¶¶ 6-7.

in the nature of the class singled out"). Here, there is no purpose advanced by the Provision's arbitrary classification, which cuts off Medicaid funding ***only*** to an entity that (1) is organized as a 501(c)(3), (2) is an essential community provider under 45 C.F.R. § 156.235, (3) is "primarily engaged in family planning services, reproductive health, and related medical care," (4) provides abortions for reasons other than to terminate pregnancies caused by rape or incest or where the patient is at risk of death without an abortion, and (5) received more than $800,000 in federal and state expenditures under Medicaid in fiscal year 2023. H.R. 1, § 71113. The asserted interests behind this classification are to reduce abortions and taxpayer funding for abortion, but the Provision's criteria bear no "rational relationship" to either of those goals, even incrementally.

Defendants' scattershot response fails to offer any permissible reason why Congress would have imposed the Defunding Provision's five conditions simultaneously. In fact, Defendants' seriatim defenses of each separate requirement only demonstrate the irrationality of their combination. Most notably, Defendants insist (in their defense of the third condition, as well as the law overall) that "[t]he United States does not want taxpayer dollars paid to entities that engage in abortion." Defs.' Opp'n at 6, 8. But this explanation is completely undercut by the remainder of the conditions—which ensure that other Medicaid-receiving abortion providers are unaffected. Failure to offer any reason for the five conditions simultaneously is no mere oversight: Four days before Defendants filed their brief in this case, the Court granted a preliminary injunction against enforcement of the Defunding Provision in a different challenge and specifically noted that Defendants "offer no justification for the classification established by the criteria in conjunction." *See Planned Parenthood Fed'n of Am. v. Kennedy* ("*Planned Parenthood*"), No. 1:25-cv-11913, ECF No. 69 at 47 (D. Mass. July 28, 2025).

Defendants (mostly) attempt to defend each of the Defunding Provision's five criteria

individually—but this defense, too, fails. Most significantly, Defendants make no attempt to explain how any legitimate governmental end is served by the second requirement—which cuts off Medicaid funding only to "essential community providers" (*i.e.*, providers serving predominantly low-income or medically underserved individuals), while preserving funding for entities who meet all other criteria. *See* Defs.' Opp'n at 9-10; *see also Planned Parenthood*, ECF No. 69 at 46 (finding that "Defendants do not explain how excluding providers . . . that are not 'essential community providers' . . . relates to Congress's goal of reducing abortion"). For this reason alone, the Defunding Provision's classification runs afoul of equal protection.

Recognizing this failure, Defendants fall back on the maxim that "Congress 'need not address all aspects of a problem in one fell swoop.'" Defs.' Opp'n at 9 (citation omitted). Say Defendants: "Congress's choice not to fund Big Abortion" was "a natural first" step, to "reduc[ing] abortions and government subsidiz[ing] in a targeted manner," because "[l]arger providers carry out more abortions." *Id.* at 5, 8-9; *see also id.* at 8 (asserting that facilities engaged in family planning and reproductive health care are "likely to perform a higher proportion of abortions"). But the Provision makes no attempt to target entities that provide the most *abortions* and instead aims at entities who receive the most *Medicaid funds*—even though, by law, federal Medicaid funds cannot be used for the kind of abortions that the Defunding Provision seeks to reduce. *See* Further Consolidated Appropriations Act of 2024, Pub. L. No. 118-47, §§ 506, 507, 138 Stat. 460, 703 (2024);[2] *see also* Pl.'s Mem. Law in Supp. Plf.'s Mot. for a TRO and/or Prelim. Inj., ECF No. 5-3 at 13-14 ("Pls.' Mem. TRO/PI") (discussing rejection of "freeing-up" theory for withdrawing

[2] This same point disposes of Defendants' assertion that "Mabel's" is not "similarly situated" to MFP because it "is substantially smaller" in the amount of "Medicaid-covered services" it bills for. Defs.' Opp'n at 7, 9-10. The relevant question for equal protection purposes is not whether there is any difference between the plaintiff and a comparator, but whether the difference between them is relevant to the legislature's goal in drawing the classification at issue. And here, the fact that MFP billed for more Medicaid-covered (and hence, non-abortion) services than Mabel's says nothing about which of the two performs more abortion services.

public funding from abortion providers). Proving that the Defunding Provision does not actually target "Big Abortion" (whatever that means), the undisputed record makes clear that abortion services make up only a small fraction of MFP's overall services. *See* Decl. of Evelyn Kieltyka in Supp. Pl.'s Mot. for a TRO and/or Prelim. Inj., ECF No. 5-2 ¶ 11 ("Kieltyka Decl.") (7.38 percent of MFP patients in 2024 were abortion patients).

Even if this Court were to conclude that Defendants' asserted post-hoc interests bear a rational relationship to the classifications, there is no question that if the law was motivated by "animus against Planned Parenthood," it cannot survive an equal protection challenge. Defs.' Opp'n at 10. Ultimately, this is not a case where the Court must suss out, from the law's over- or under-inclusiveness, "that the disadvantage imposed is born of animosity toward the class of persons affected" and hence runs afoul of equal protection. *Romer v. Evans*, 517 U.S. 620, 634 (1996). Congress has admitted as much directly and made plain that its purpose in enacting the Defunding Provision was to harm Planned Parenthood—including by targeting earlier versions of the Defunding Provision *only* at Planned Parenthood. *See* Pl's Mem. TRO/PI at 4-5. The public record has only grown with corroborating evidence, including statements expressly saying as much from some of the Defunding Provision's most prominent legislative supporters.[3]

The Supreme Court has repeatedly held that a law fails equal protection when it is driven by a "bare congressional desire to harm a politically unpopular group." *Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973); *see also, e.g.*, *Romer*, 517 U.S. at 633 (equal protection prohibits "classifications . . . drawn for the purpose of disadvantaging the group burdened by the law")

[3] *E.g.*, Sen. Mike Lee (@BasedMikeLee), X (July 7, 2025, at 20:18 ET), https://x.com/BasedMikeLee/status/1942377834590396612 ("A judge has just issued a temporary restraining order 'TRO' halting the implementation of an unambiguous statute . . . that defunds Planned Parenthood."); Sen. Eric Schmitt (@SenEricSchmitt), X (July 8, 2025, at 17:09 ET), https://x.com/SenEricSchmitt/status/1942692466932560188 ("Judge Indira Talwani issued a TRO enjoining portions of the OBBB that defund Planned Parenthood."); Sen. Josh Hawley (@HawleyMO), X (July 8, 2025, at 09:59 ET), https://x.com/HawleyMO/status/1942584355093897390 ("A federal judge in Massachusetts has blocked Congress from defunding Planned Parenthood.").

(citation omitted). Defendants do not seriously contend that the Defunding Provision was motivated by anything other than animus. Instead, Defendants offer only the half-hearted defense that MFP "has not provided an evidentiary basis for this accusation," Defs.' Opp'n at 10—contrary to all the evidence above.

This is thus not the usual equal protection case, in which determining whether a law was motivated by "invidious discriminatory purpose" requires "a sensitive inquiry" into "circumstantial" evidence that can shed light on whether a constitutionally permissible rationale offered in defense of a law is real or pretextual. *See, e.g*, *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). Congress has made plain that the object of the Defunding Provision was to impose "disadvantage . . . born of animosity toward the class of persons affected," *Romer*, 517 U.S. at 634; *see also Planned Parenthood*, ECF No. 69 at 36 ("Plaintiffs have demonstrated that they are substantially likely to establish that Planned Parenthood Federation and its Members are the 'easily ascertainable' target" of the Defunding Provision). For this reason, too, MFP is likely to succeed on its equal protection claim.

II. MFP Will Suffer Irreparable Injury Without Relief.

Defendants dismiss the harms that MFP faces by strawmanning them as purely "economic," which according to Defendants makes them "classically remediable." Defs.' Opp'n at 13. But the injury that MFP's motion seeks to forestall is not the unlawful deprivation of funding *per se*, but rather the real-world, irreversible harms that will flow as a consequence—in particular, the threats to MFP's reputation, primary mission, and ability to provide comprehensive care.[4]

Defendants do not dispute that "[a]n organization is harmed if the 'actions taken by the

[4] Defendants' discussion of "purported injuries to Medicaid patients" similarly misses the mark. Defs.' Opp'n at 15. It is undoubtedly true that, absent an injunction, patients will be denied essential healthcare. *See* Kieltyka Decl. ¶¶ 18-20, 27-29, 34; Kieltyka Supp. Decl. ¶¶ 8-9. But MFP is entitled to injunctive relief here based on its own harm.

defendant have 'perceptibly impaired' the organization's programs.'" *League of Women Voters of United States v. Newby*, 838 F.3d 1, 8 (D.C. Cir. 2016) (citations omitted); *see* Defs.' Opp'n at 14-15. Instead, Defendants simply maintain that MFP "may continue to pursue its mission and provide all the services it currently offers so long as it uses a different funding stream." Defs.' Opp'n at 15. That blinks reality. "[A]pproximately half" of MFP's patients are Medicaid recipients. Kieltyka Decl. ¶ 5. And "20 to 25 percent of MFP's annual budget" comes from Medicaid funding. *Id.* ¶ 24. As MFP has explained—in evidence Defendants do not contest, *see* Defs.' Opp'n at 15—without Medicaid funding it will have to cut off care from existing patients. MFP has already stopped accepting new Medicaid primary care patients and will have to end its primary care practice entirely, lay off staff, and potentially discharge family planning patients. Kieltyka Supp. Decl. ¶¶ 8-9. That forced, dramatic contraction in scope is precisely the kind of threat to MFP's primary mission—"ensur[ing] that all people have access to high-quality, culturally relevant and affordable sexual and reproductive health care services, comprehensive sexual health education, and the right to control their sexual and reproductive lives," Kieltyka Decl. ¶ 6— that courts have recognized as irreparable harm. *Accord Dr. Jose S. Belaval, Inc. v. Perez-Perdomo*, 465 F.3d 33, 36 n.2 (1st Cir. 2006) (discussing "irreparable injury" to health center from government's failure to make Medicaid payments).[5]

Similarly baseless is Defendants' suggestion that MFP's harm "would not be redressed by the requested injunction," because MFP "receives payment not from the Federal Government but from Maine," who "is not a party to this litigation" and is "independently bound to follow federal law, including" the Defunding Provision. Defs.' Opp'n at 17-18. Injunctions are enforceable

[5] For similar reasons, the balance of equities and public interest continue to favor MFP, especially because Defendants and the public both have no interest in enforcement of an unconstitutional statute. *See Somerville Pub. Sch. v. McMahon*, 139 F.4th 63, 76 (1st Cir. 2025).

against parties acting in active concert or participation with enjoined parties, Fed. R. Civ. P. 65(d)(2)(C), precisely to prevent enjoined parties from nullifying a court order by carrying out prohibited acts through others. *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 13-14 (1945). If Defendants were enjoined from unlawfully withholding Medicaid funds from MFP, a state agency could not aid and abet the activity Defendants were enjoined from carrying out by withholding those same funds. This Court also has authority to ensure that such relief is complete—and to disarm Defendants' threat to punish MFP by later depriving it of reimbursements for care it lawfully provided through the Medicaid program in reliance on the Court's injunction, Defs.' Opp'n at 18—by making clear that MFP is entitled to retain payments lawfully issued under this Court's injunction. Otherwise, plaintiffs challenging government action would face "penalties for disobedience" that are "so enormous … as to intimidate" them "from resorting to the courts." *Ex parte Young*, 209 U.S. 123, 147 (1908).

III. An Injunction Should Not Be Stayed, And A Nominal Bond Is Appropriate.

This Court should grant a preliminary injunction and deny Defendants' request to stay relief pending appeal. Defs.' Opp'n at 20. MFP has made the required showing that it will suffer irreparable harm if the Defunding Provision remains in effect. *See Aberdeen & Rockfish R. Co. v. Students Challenging Regul. Agency Procs.*, 409 U.S. 1207, 1218 (1972) (denying stay of preliminary injunction because of anticipated irreparable harm and balance of harms). Defendants' suggestion that MFP should post a bond "reflect[ing] the amount of funding affected by Plaintiff's requested relief" is absurd. Defs.' Opp'n at 20. Defendants' proposition essentially suggests that, to maintain the status quo, MFP must provide those services for free—*i.e.*, exactly what would occur absent an injunction, and hence exactly what the injunction seeks to avoid.[6]

[6] Defendants' reliance on *Dep't of Educ. v. California*, 145 S. Ct. 966, 968-69 (2025), is inapposite. Unlike the plaintiffs in that case, which were recipients of federal *grants*, Medicaid reimburses MFP for actual services rendered.

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Respectfully submitted,

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