

**IN THE 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, *et al.*,

*Defendants.*

No. 1:25-cv-00364-LEW

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION  
FOR AN INJUNCTION PENDING APPEAL**

## INTRODUCTION

This Court has already rejected Plaintiff Maine Family Planning’s request for a preliminary injunction. It did so because Plaintiff’s “likelihood of success showing” was “weak,” its showing of irreparable injury did “not turn the outcome in its favor,” and because reversing a policy choice reflected in the funding decisions of the representative branches of the federal government would inflict manifest harm on the public interest. *See* ECF No. 31 at 17–19. Plaintiff’s ultimate success is no likelier today than it was on August 25, when this Court denied its original motion. *See id.* Nor has Plaintiff supplemented its showing on irreparable injury or the balance of equities. Instead, Plaintiff merely rehashes the same arguments and positions this Court already found insufficient to grant relief. Because it offers nothing to undermine this Court’s original conclusion, the motion for an injunction pending appeal should be denied.

## BACKGROUND

Enacted in 1965, Medicaid is a cooperative federal-state program in which the Federal Government supplies funding to states to assist them in providing medical assistance to specified categories of low-income individuals. 42 U.S.C. §§ 1396 *et seq.* Each state that elects to participate must submit a plan to the Secretary of Health and Human Services (“HHS”), who has delegated his authority under the Medicaid statute to the Centers for Medicare & Medicaid Services (“CMS”), for approval. *Id.* §§ 1396, 1396a; *Ark. Dep’t of Health & Hum. Servs. v. Ahlborn*, 547 U.S. 268, 275 (2006). If the plan is approved, the state is entitled to Medicaid funds from the Federal Government for a percentage of the money spent by the state in providing covered medical care to eligible individuals. 42 U.S.C. § 1396b(a)(1).

Congress reserved the “right to alter, amend, or repeal any provision” of the program. 42 U.S.C. § 1304. Since then, Congress has periodically enacted new legislation to align the Medicaid program with new priorities and to account for changes in the marketplace.

Congress once again amended the Medicaid program as part of the Reconciliation Act of 2025, which President Trump signed into law on July 4, 2025. Pub. L. No. 119-21, 139 Stat. 72 (2025). Specifically, Section 71113 directs that no Medicaid funds “shall be used to make payments to a

prohibited entity for items and services furnished during the 1-year period beginning on the date of the enactment of this Act[.]” *Id.* at 300. A “prohibited entity” is “an entity, including its affiliates, subsidiaries, successors, and clinics—

- (A) [T]hat, as of [October 1, 2025],
  - (i) is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code;
  - (ii) is an essential community provider described in section 156.235 of title 45, Code of Federal Regulations . . . , that is primarily engaged in family planning services, reproductive health, and related medical care; and
  - (iii) provides for abortions, other than an abortion—
    - (I) if the pregnancy is the result of an act of rape or incest; or
    - (II) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed; and
- (B) for which the total amount of Federal and State expenditures under the Medicaid program under title XIX of the Social Security Act for medical assistance furnished in fiscal year 2023 made directly, or by a covered organization, to the entity or to any affiliates, subsidiaries, successors, or clinics of the entity, or made to the entity or to any affiliates, subsidiaries, successors, or clinics of the entity as part of a nationwide health care provider network, exceeded \$800,000.

*Id.*

A little over two weeks after the bill was enacted, Plaintiff Maine Family Planning filed this action challenging Section 71113, which it refers to as the “Defunding Provision,” as violative of the equal protection component of the Due Process Clause of the Fifth Amendment. *See* Compl., ECF No. 1. On the same day, Maine Family Planning moved for a preliminary injunction.

This Court denied that relief. ECF No. 31. In doing so, the Court concluded that Maine Family Planning’s arguments on the merits were “weak” and that the balance of equities and the public interest favored the government. *Id.* at 17. The Court further concluded that Maine Family Planning’s “showing of irreparable injury” was not “powerful enough to warrant a sliding scale (i.e., lower

standard) in regard to the merits inquiry.” *Id.* Maine Family Planning appealed and concurrently filed the instant motion for temporary injunctive relief while that appeal remains pending.

### STANDARD OF REVIEW

“To be entitled to an injunction pending appeal,” Maine Family Planning “must make a strong showing that [it is] likely to succeed on the merits, that [it] will be irreparably injured absent emergency relief, that the balance of the equities favors [it], and that an injunction is in the public interest.” *Together Emps. v. Mass Gen. Brigham Inc.*, 19 F.4th 1, 7 (1st Cir. 2021). Of these elements, the “first two factors are the most critical,” *Respect Maine PAC v. McKee*, 622 F.3d 13, 15 (1st Cir. 2010), and failure to “show a strong likelihood of success” on appeal is an independent basis for denial of an injunction pending appeal, *id.*; *Acevedo-Garcia v. Vera-Monroig*, 296 F.3d 13, 16 (1st Cir. 2002) (per curiam); *In re Elias*, 182 F. App’x 3 (1st Cir. 2006) (per curiam).

### ARGUMENT

Maine Family Planning’s request for an injunction pending appeal falters at the first step. This Court has already concluded that it is unlikely to succeed on the merits of its Equal Protection claim. ECF No. 31 at 7–15. That is sufficient to deny its motion. *Ass’n to Pres. & Protect Local Livelihoods v. Town of Bar Harbor*, No. 1:22-cv-416, 2024 WL 3088752, at \*3 (D. Me. June 21, 2024) (denying motion for injunction pending appeal solely because plaintiffs were “not likely to succeed”). But even if it were not, Maine Family Planning fails to establish irreparable injury or that the equities or the public interest favor an injunction. Instead, Maine Family Planning’s latest motion merely rehashes merits arguments this Court has already rejected. Nothing in its latest motion warrants a different decision.

#### **I. Maine Family Planning Fails to Make A Strong Showing It Is Likely to Succeed on the Merits.**

All parties and the Court agree that the rational-basis standard of review applies to Plaintiffs’ claim under the equal protection component of the Due Process Clause. *See* ECF No. 31 at 8 (noting the parties’ agreement on the standard of review). Under that standard, “a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could

provide a rational basis for the classification.” *FCC v. Beach Commc’ns, Inc.*, 508 U.S. 307, 313 (1993). And “it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature.” *Id.* at 315. Those “attacking the rationality of the legislative classification have the burden ‘to negative every conceivable basis which might support it.’” *Id.* (citation omitted).

**A. Maine Family Planning Is Unlikely to Succeed on Its Animus Argument**

Maine Family Planning’s primary argument on the merits is that the legislative and statutory history of the Defund Provision reflects animus against Planned Parenthood. *See* ECF No. 33-1 at 5. This Court has already considered—and appropriately rejected—that argument. *See* ECF No. 31 at 9–13. As the government has previously explained, Maine Family Planning offers little to support its invocation of animus against another entity—one that is not a party to the litigation—to challenge the statute’s application to itself. Even if it could proceed on that theory, the statute targets neither Maine Family Planning nor Planned Parenthood; rather, it sets out objective criteria for denying Medicaid reimbursements to certain entities that provide abortions. And if Maine Family Planning—or Planned Parenthood, for that matter—ceased providing abortions, it could receive Medicaid funds again. That is hardly “animus.” *See Smith v. City of Chi.*, 457 F.3d 643, 652–53 (7th Cir. 2006) (rejecting animus-based equal protection argument where there was no evidence of a “subjective illegitimate reason”). In all events, courts “will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive.” *Int’l Paper Co. v. Town of Jay*, 928 F.2d 480, 485 (1st Cir. 1991) (citation omitted); *see also United States v. O’Brien*, 391 U.S. 367, 383 (1968); *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, 47–48 (1986). Maine Family Planning does not even contend the law is facially invalid; it merely speculates that animus is the only explanation. That is not enough.

Maine Family Planning relies heavily on *Planned Parenthood of Minnesota v. Minnesota*, 612 F.2d 359 (8th Cir.), *sum. aff’d*, 448 U.S. 901 (1980) (*see* ECF No. 33-1 at 5–7), but that case does not require the Court to conclude that the Defund Provision is invalid due to animus. All of the reasoning Maine Family Planning seeks to apply here flows from the Eighth Circuit’s opinion, which is obviously not binding on this Court. *See* ECF No. 33-1 at 5–7. The Supreme Court’s summary affirmance in that

case did not adopt the Eighth Circuit’s opinion. *Comptroller of the Treasury of Md. v. Wynne*, 575 U.S. 542, 559–60 (2015). Moreover, a summary affirmance “is not to be read as a renunciation by [the Supreme] Court of doctrines previously announced in [its] opinions after full argument,” *id.* at 560 (citation omitted), and here the Supreme Court had already held prior to its summary affirmance of the Eighth Circuit that the government may “make a value judgment favoring childbirth over abortion and . . . implement that judgment by the allocation of public funds,” *Maher v. Roe*, 432 U.S. 464, 474 (1977). Plaintiff therefore has no basis to assert that this Court is somehow bound by the Eighth Circuit’s *reasoning*, which goes beyond the Supreme Court’s bottom-line holding in *Minnesota*.

Indeed, summary affirmances have “considerably less precedential value than an opinion on the merits.” *Wynne*, 575 U.S. at 559–60. Their “precedential effect . . . extends no further than the precise issues presented and necessarily decided by those actions.” *Anderson v. Celebrezze*, 460 U.S. 780, 784 n.5 (1983) (citation omitted). The First Circuit has therefore questioned whether—as a practical matter—a summary affirmance is even “binding[,] or merely persuasive.” *Cent. Me. Power Co. v. Me. Comm’n on Governmental Ethics & Election Pracs.*, 144 F.4th 9, 23 n.5 (1st Cir. 2025). And for this reason, Maine Family Planning’s argument that this Court is bound to apply Supreme Court precedent falls flat. *See* ECF No. 33-1 at 6–7 (citing *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989)). The Supreme Court’s summary affirmance prohibits—at most—adoption of a law substantively identical to Minnesota’s, and enforcement of such a law on the specific factual record involved in that case. *See* ECF No. 30. It has no preclusive application on any issue before this Court as to the Defund Provision.

The Court was manifestly correct, moreover, that *Minnesota* was decided under the since overturned “precedential landscape in which abortion was considered a constitutional right and in which, consequently, the right of abortion providers and their patients to be protected against legislative disadvantage was at its apex.” ECF No. 31 at 10. That precedential landscape is no more. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022). Maine Family Planning’s retort that the Eighth Circuit’s reasoning was not based on the constitutional status of abortion rights, *see* ECF No. 33-1 at 6, makes no difference. Unlike the government in this case, Minnesota was limited in its ability

under the prior legal regime to argue that it desired to reduce abortions. *Cf. Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (explaining that the Due Process Clause “provides heightened protection against government interference with certain fundamental rights”). After *Dobbs*, it is all the more clear that Congress is free to disfavor abortions or those who provide them in its spending decisions. And the Supreme Court’s decisions in *Rust* and *Holder*, which underscored that “the government may make a value judgment favoring childbirth over abortion, and implement that judgment by the allocation of public funds,” *Rust v. Sullivan*, 500 U.S. 173, 192–93 (1991), and specified that “[m]oney is fungible,” *Holder v. Humanitarian L. Project*, 561 U.S. 1, 31 (2010), are additional binding precedents that displace any contrary reasoning in *Minnesota*.

**B. Maine Family Planning Fails to Negate All Possible Rational Bases Supporting the Defund Provision**

Aside from its animus-based arguments, Maine Family Planning again broadly takes issue with the Court’s conclusion that the Defund Provision is rationally related to legitimate congressional purposes. *See* ECF No. 33-1 at 7–10. The Court has already rejected those arguments as insufficient to negate all possible rational bases. *See* ECF No. 31 at 11–17. Nothing Maine Family Planning offers now undermines that conclusion.

*First*, Maine Family Planning asserts that it is irrational to defund providers that receive large reimbursements through the Medicaid program because the Hyde Amendment prohibits those funds from being used to provide abortions. *See* ECF No. 33-1 at 7–8. But the Court addressed and rejected that argument, concluding that “the Hyde Amendment is not the high-water mark of funding measures that Congress can employ to disassociate federal Medicaid expenditures from abortion services.” ECF No. 31 at 15. Indeed, it is well within Congress’s discretion to make a policy decision not to contract with abortion providers to reduce the availability of those services generally. *See Ctr. for Reprod. L. & Pol’y v. Bush*, 304 F.3d 183, 188 (2d Cir. 2002) (Sotomayor, J.) (rejecting equal protection challenge to policy that required foreign non-governmental organizations that receive funds from the United States to “agree not to perform or actively promote abortion as a method of family planning”).

*Second*, Maine Family Planning argues that it was irrational for Congress to base its funding decisions on those entities that receive the most Medicaid reimbursements. ECF No. 33-1 at 8–9. The logic of that choice is obvious. Congress could have rationally concluded that its efforts to stop non-profits from providing abortions would be more effective if it focused on those entities that received the highest amount of Medicaid reimbursements. After all, those entities that are more reliant on federal dollars would logically be more susceptible to economic pressure to stop providing abortions. And in any case, larger providers carry out more abortions and receive more government subsidies, so they are a natural first target. See *Engquist v. Or. Dep’t of Agric.*, 553 U.S. 591, 604 (2008) (rejecting a class of one claim because many laws cannot be enforced against every violator, and there must be room for discretion).

*Third*, Maine Family Planning argues that it was irrational for Congress to defund only certain types of providers while leaving other subsidies in place. See ECF No. 33-1 at 8–10. This Court’s initial decision correctly rejected that argument as well. ECF No. 31 at 11–14. The elected branches of government are charged with making policy decisions about how to spend federal dollars, and the judicial branch has no occasion to overturn such decisions merely because Congress approached a “perceived problem incrementally.” *Beach Commc’ns, Inc.*, 508 U.S. at 316; *Free Speech Coal., Inc. v. Paxton*, 606 U.S. ---, 145 S. Ct. 2291, 2318 (2025) (Congress “need not address all aspects of a problem in one fell swoop.”). Indeed, given that the Supreme Court has rejected “underinclusivity” arguments “even under strict scrutiny,” such arguments plainly have no purchase where rational-basis review applies, as here. *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 449 (2015).

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In sum, Maine Family Planning provides no reason for the Court to deviate from its conclusion that Plaintiff failed to make a strong showing that it is likely to succeed on the merits of its claim. This Court should deny the motion for an injunction pending appeal on this basis alone.

## **II. Maine Family Planning Fails to Demonstrate Irreparable Injury**

Plaintiff's motion should also be independently denied because it fails to demonstrate irreparable injury. Although this Court previously concluded that it "would not withhold preliminary injunctive relief based on reservations about the existence of irreparable injury" if "Plaintiff's prospect of success on the merits of its equal protection claim was strong," ECF No. 31 at 17, Maine Family Planning is wrong to assert this factor "is not in dispute," ECF No. 33-1 at 10. Indeed, this Court observed that it was "not convinced" that Plaintiff's interest in providing comprehensive care was "unassailable in the context of a federal legislative initiative to withdraw one tranche of federal funding." ECF No. 31 at 17. And the government maintains that Plaintiff has failed to allege irreparable injury at all.

The Court's concerns about Maine Family Planning's showing of irreparable injury were correct. The injuries Plaintiffs assert would flow from this Court denying relief amount to lost government funding. But "economic loss does not, in and of itself, constitute irreparable harm." *Wis. Gas Co. v. Fed. Energy Regul. Comm'n*, 758 F.2d 669, 674 (D.C. Cir. 1985); *see also, e.g., Akebia Therapeutics, Inc. v. Azar*, 443 F. Supp. 3d 219, 230 (D. Mass. 2020), *aff'd*, 976 F.3d 86 (1st Cir. 2020); *Seafreeze Shoreside, Inc v. U.S. Dep't of Interior*, No. 1:22-cv-11091, 2023 WL 3660689, at \*7 (D. Mass. May 25, 2023), *appeal dismissed*, 2023 WL 8259107 (1st Cir. Oct. 20, 2023). And here, any injury from lost funds is reparable, as Plaintiff could likely seek reimbursement for covered services from Maine at the conclusion of this litigation if it were to prevail. *See* 42 U.S.C. § 1320b-2(a) (providing states up to two years to submit claims for services rendered to state Medicaid agencies or designated contractors); 45 C.F.R. § 95.19 (providing exception to the two-year deadline when payments are made pursuant to a court order).

Maine Family Planning also fails to establish that its feared service cuts and staff reductions threaten the very "survival" of Plaintiff's business, as they must to qualify as irreparable. *Coastal Cty's Workforce, Inc. v. LePage*, 284 F. Supp. 3d 32, 59 (D. Me. 2018); *see also Dr. Jose S. Belaval, Inc. v. Perez-Perdomo*, 465 F.3d 33, 36 n.2 (1st Cir. 2006) (explaining that the plaintiff had "filed

documents . . . indicating that it was on the brink of financial ruin”). Indeed, the one First Circuit case Plaintiff cites involved over a million dollars in payments that were to have been paid almost two years prior. *Dr. Jose S. Belaval, Inc.*, 465 F.3d at 36. Plaintiff fails to establish anything remotely approaching that magnitude. And in any event, Plaintiff provides no evidence that the reductions it identifies will occur imminently—or that Section 71113 threatens its very existence during the single year it is in effect. Nor does Congress’s choice not to provide *taxpayer funds* constitute an action that gets in the way of Plaintiff’s “mission”; Maine Family Planning may continue to pursue its mission and provide all the services it currently offers so long as it uses a different funding stream. See *Victim Rts. L. Ctr. v. U.S. Dep’t of Educ.*, ---F. Supp. 3d---, 2025 WL 1704311, at \*17 (D. Mass. June 18, 2025) (finding that non-profit plaintiff could not pursue civil rights cases for its clients because the Office of Civil Rights where plaintiff was pursuing cases was closed), *appeal filed*, No. 25-1787 (1st Cir. Aug. 14, 2025).<sup>1</sup>

Even assuming the unavailability of one tranche of federal funding constituted irreparable harm, that harm would not be redressed by an injunction against the Defendants here. Plaintiff receives payment not from the Federal Government but from Maine (or, in the case of managed care, third-party health plan providers that receive funding from Maine). So enjoining Defendants would not ensure that Plaintiff is reimbursed. Maine—the state responsible for processing Plaintiff’s reimbursements—is independently bound to follow federal law, including Section 71113. U.S. Const. art. VI, cl. 2; *Wilder v. Va. Hosp. Ass’n*, 496 U.S. 498, 502 (1990). An injunction pending appeal against Defendants would not relieve the state, which is not a party to this litigation, of that obligation. See *Trump v. CASA, Inc.*, 606 U.S.---, 145 S. Ct. 2540, 2562–63 (2025).

Finally, even setting that redressability issue aside, an injunction pending appeal cannot give Plaintiff the certainty it appears to seek. Plaintiff seeks an injunction barring Defendants from “retroactively enforcing” the Defund Provision while the federal courts consider its claim. In other

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<sup>1</sup> Maine Family Planning has abandoned the additional argument, made in its original motion for a preliminary injunction, that it may rely on harm to its patients in establishing irreparable injury. See ECF No. 5-3 at 16–17.

words, what Plaintiff wants is a guarantee that, whether it ultimately wins or loses on the merits, it can continue to bill Medicaid for services provided in the interim. But this Court cannot provide that relief. A preliminary injunction by definition only governs conduct that occurs while it is effective. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2627, 2629–30 (2025). It cannot bind parties as to their conduct after the injunction is stayed or reversed. As a result, if and when the government prevails on the merits at the conclusion of this litigation, it may still be able to deny payment for services provided in the interim, and claw back funds that were improperly paid out while the reversed injunction was in place. *See* 42 U.S.C. § 1396b(d); 42 C.F.R. §§ 430.42, 433.304, 433.316. That, too, means that an injunction pending appeal would not avert the harms Plaintiff identifies.

Because Plaintiff has not demonstrated irreparable harm in the absence of its requested injunctive relief, its request for an injunction pending appeal should be denied.

### **III. The Balance of Equities and Public Interest Favor the Government**

The third and fourth factors—the balance of equities and public interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). As this Court recognized in its initial decision, the balance of equities and public interest strongly favor the government. ECF No. 31 at 18–19.

That conclusion was correct. The “government’s inability to ‘effectuat[e] statutes enacted by representatives of [the] people’” is irreparable injury to the government and to the people who elected those representatives. *Somerville Pub. Schs. v. McMahon*, 139 F.4th 63, 74 (1st Cir. 2025) (quoting *Dist. 4 Lodge of the Int’l Ass’n of Machinists & Aerospace Workers Loc. Lodge 207 v. Raimondo*, 18 F.4th 38, 47 (1st Cir. 2021)); *see also Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). That harm is especially acute here, where an injunction would interfere with Congress’s power over federal spending, *see Agency for Int’l Dev. v. Alliance for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 213 (2013), and “improper[ly] intru[de]” on the Executive Branch’s authority and ability to enforce the law, *CASA, Inc.*, 145 S. Ct. at 2561 (2025) (alterations in original) (citation omitted). And all the more so given

that Congress’s decision was based on its determination that taxpayer dollars should not be allocated to certain organizations that perform elective abortions—conduct that many Americans find morally abhorrent.

The defunding provision reflects Congress’s considered judgment about which entities it wishes to benefit from public funds. Maine Family Planning plainly disagrees with that policy judgment, but as this Court aptly observed, “[i]t would be a special kind of judicial hubris to declare that the public interest has been undermined by the public.” ECF No. 31 at 19.

In addition to those fundamental harms, granting the injunction Plaintiff seeks may also impose irreparable monetary harm on the government and American taxpayers if they are unable to recover improperly paid amounts. Maine Family Planning does not state it will repay any Medicaid reimbursements it wrongly receives if the government should ultimately prevail. *See Dep’t of Educ. v. California*, 604 U.S. ---, 145 S. Ct. 966, 969 (2025) (finding irreparable harm to the government because plaintiffs did not “promise[] to return” government funds if they lost on the merits and “the District Court declined to impose bond”). And its contention that it will be unable to continue providing medical services absent federal funding is inconsistent with the idea that it could make the government whole for any money improperly paid. *See Nat’l Institutes of Health v. Am. Pub. Health Ass’n*, --- S. Ct. ---, 2025 WL 2415669, at \*1 (U.S. Aug. 21, 2025). If in fact the government faces such practical difficulties in recovering those funds, the cost would be borne either by the State of Maine, which could not claim federal reimbursement for those expenditures, or the Federal Government. In either case, the public suffers from improperly spent funds.

On the other side of the ledger, Maine Family Planning substantially overstates the harm it or the public would suffer in the absence of relief. As to Maine Family Planning, Plaintiff’s argument that the equities favor its position depends on its mistaken view of the merits. *See* ECF No. 33-1 at 11–12 (arguing that there is “no public interest in unlawful government action”). Indeed, much of its argument on the equities depends on its view that prohibiting federal funds from flowing to some

providers of abortions is not a “legitimate policy choice[.]” *Id.* at 12. But this Court has already determined Plaintiff is unlikely to succeed on the merits. Barring likely permissible governmental action cannot be an equity in Plaintiff’s favor. *See Bowen v. Kendrick*, 483 U.S. 1304 (1987) (Rehnquist, C.J., in chambers) (the presumption of constitutionality “is not merely a factor to be considered in evaluating success on the merits, but an equity to be considered in favor of [the government] in balancing hardships”).

As to the public, Medicaid enrollees may, of course, receive care from any number of other providers. And Plaintiff may continue to provide services without seeking Medicaid reimbursement, or it may cease providing elective abortions and continue to receive Medicaid reimbursement. At bottom, Plaintiff simply desires to receive government subsidies on the terms that it prefers. But “the government may ‘make a value judgment favoring childbirth over abortion, and . . . implement that judgment by the allocation of public funds,’” by “declining to ‘promote or encourage abortion.’” *Rust*, 500 U.S. at 192–93 (citations omitted).

#### **IV. A Bond Should Accompany Any Injunctive Relief.**

If the Court were to grant Plaintiff’s motion, the government respectfully requests that any injunctive relief be accompanied by a bond under Fed. R. Civ. P. 62(d), which provides that an injunction pending appeal should be granted “on terms for bond or other terms that secure the opposing party’s rights.” *Cf. U.S. D.I.D. Corp. v. Windstream Commc’ns, Inc.*, 775 F.3d 128, 135 (2d Cir. 2014) (explaining that a Rule 65(c) bond’s purpose is to protect defendants who “may have already suffered harm while the TRO was in effect even if the TRO is subsequently dissolved”). “[I]njunction bonds are generally required.” *Nat’l Treasury Emps. Union v. Trump*, No. 25-5157, 2025 WL 1441563, at \*3 n.4 (D.C. Cir. May 16, 2025) (per curiam). If the Court were to enter an injunction, the government asks that the bond amount reflect the amount of funding affected by Plaintiff’s requested relief—that is, the costs and damages that would be sustained by the government, because an injunction would require the government to make specific payments it is not legally obligated to make,

and which may not be fully recoverable in practice absent a bond. *Cf. Dep't of Educ.*, 145 S. Ct. at 969 (staying district court injunction requiring payment of federal funds in part because the district court “declined to impose bond”). To protect the government’s interests, the Court should determine how much security is necessary based on Plaintiff’s estimates of the amount of Medicaid reimbursements it receives each month.

### **CONCLUSION**

For the foregoing reasons, Maine Family Planning’s Emergency Motion for an Injunction Pending Appeal should be denied.

Dated: September 5, 2025

Respectfully submitted,

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