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 MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

Both houses of Congress passed a budget reconciliation bill—the One Big Beautiful Bill—and the President signed that bill into law. Among many other decisions about how to allocate limited federal funds, one provision of the bill restricts the types of entities that may receive federal Medicaid funds. In particular, that provision directs that certain tax-exempt organizations and their affiliates may not receive federal Medicaid funds for a one-year period if they continue to provide elective abortions.

All three democratically elected components of the Federal Government collaborated to enact that provision consistent with their electoral mandates from the American people as to how they want their hard-earned taxpayer dollars spent. But Plaintiff—Maine Family Planning—now wants this Court to reject that judgment and supplant duly enacted legislation with its own policy preferences. Indeed, it demands emergency injunctive relief forcing the Government to continue to support it with taxpayer funds. That request is legally groundless and must be firmly rejected.

Maine Family Planning's sole claim seeks to invalidate the so-called "Defunding Provision," asserting that the lines Congress chose to draw arbitrarily treat it differently from other providers in Maine, and therefore deny it equal protection of the laws in violation of the Fifth Amendment. That constitutional claim is utterly meritless. Plaintiff ignores that the entities Congress determined were most similarly situated are treated identically; it offers no viable theory of discrimination; and the challenged provision easily satisfies rational basis review. The core of its claim asks this Court to revive an invented constitutional right to abortion—jurisprudence that the Supreme Court decisively interred—and to do so in a dispute over federal funds. This Court should deny that request on the merits.

Beyond the futility of its claim on the merits, Maine Family Planning fails to demonstrate imminent irreparable harm to justify an injunction, asserting only classically reparable economic injury and non-cognizable potential harm to patients, who are third parties not before this Court. And the

balance of the equities and public interest firmly favor the Government's interest in enforcing a statute duly enacted by Congress and signed by the President, especially because third-party patients can always seek Medicaid-eligible services from other providers. For these reasons too, Plaintiffs' request for a preliminary injunction should be denied.

BACKGROUND

I. The Medicaid Program

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).

Medicaid provider payment occurs at the state level. Declaration of Anne Marie Costello ¶ 7 ("Costello Decl."). In general, CMS does not pay providers directly. *Id.* Rather, providers seek reimbursement from the states, or, in the case of a managed care delivery system, from a health plan the state has contracted with, and states receive federal funding from the Government. *Id.* ¶¶ 3–4, 15, 17–19. Federal funding for Medicaid, called federal financial participation (or "FFP"), is partly paid to the states in advance of any services provided through "initial grant awards" at the beginning of each quarter based on CMS-reviewed state expenditure estimates. *Id.* ¶ 3. Once the advanced funding request is approved, the state can draw down the federal advance for the allotted amount as costs are incurred. 42 C.F.R. § 430.30(d)(3). Those initial awards are later reconciled to actual state expenditures, which states provide through a quarterly statement called Form CMS-64. Costello Decl. ¶ 5. Form CMS-64 is a summary of actual expenditures. *Id.* ¶ 6. It does not include individual claims-level

expenditures. *Id.* After receiving the Form CMS-64 from the states, CMS takes up to six months to reconcile the initial grants provided to states and state draw-downs from that amount with the quarterly state submissions. *See id.* ¶¶ 5, 13.

Although states provide the Form CMS-64 on a quarterly basis, the Social Security Act allows states to claim FFP for Medicaid expenditures within two years of the date of the expenditure. *Id.* ¶ 14; *see also* 42 U.S.C. § 1320b-2(a). There are also exceptions to that two-year deadline, including for claims that result from a court-ordered retroactive payment and claims for which the Secretary determines there was good cause for the state's failure to file a claim within the two-year time period. Costello Decl. ¶ 14; 45 C.F.R. § 95.19.

II. Section 71113 of the One Big Beautiful Bill

In enacting Medicaid, 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 One Big Beautiful Bill Act, 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.

III. This Litigation

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." *See* Compl. for Declaratory & Inj. Relief, ECF No. 1. The Complaint's only claim is that the provision violates the equal protection component of the Due Process Clause of the Fifth Amendment by allegedly discriminating irrationally against Maine Family Planning. *Id.* ¶¶ 53–63. The same day it filed its Complaint, Plaintiff also moved for a temporary restraining order and/or preliminary injunction, seeking to enjoin the Government from enforcing or otherwise applying Section 71113 to Maine Family Planning. *See* Pl.'s Emergency Mot. for a TRO and/or Prelim. Inj., ECF No. 5.

STANDARD OF REVIEW

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). A "plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Id.* at 20. The third and fourth factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). The plaintiff bears the burden of demonstrating those requirements. *Nieves-Marquez v. Puerto Rico*, 353 F.3d 108, 120 (1st Cir. 2003).

"To demonstrate likelihood of success on the merits, plaintiffs must show 'more than mere possibility' of success—rather, they must establish a 'strong likelihood' that they will ultimately prevail." *Sindicato Puertorriqueño de Trabajadores v. Fortuño*, 699 F.3d 1, 10 (1st Cir. 2012) (per curiam) (citation omitted). The Supreme Court has also instructed that a preliminary injunction cannot issue on the basis of speculative or possible injury. Rather, the moving party must establish that irreparable harm is "*likely* in the absence of an injunction." *Winter*, 555 U.S. at 22.

ARGUMENT

Maine Family Planning's request for a preliminary injunction fails at every step of the analysis. Its baseless equal protection claim identifies no similarly situated entity that is treated differently under the law and ignores obvious, rational reasons for Congress's choice not to fund Big Abortion. On the equities, it fails to demonstrate irreparable harm—while requesting an injunction that would irreparably harm the Government's ability to enforce democratically enacted legislation. At bottom, Plaintiff asks this Court to force the American taxpayer to fund certain entities that engage in abortion—conduct that the elected branches determined should disqualify those entities from receiving federal Medicaid funds—because it wants to continue engaging in that unprotected conduct. As the Supreme Court has made clear, the era of invented constitutional protection for abortion is over. This Court should deny the requested relief.

I. Section 71113 Does Not Violate Equal Protection.

Plaintiff's equal protection claim lacks merit. Congress has "broad discretion to tax and spend for the 'general Welfare,' including by funding particular state or private programs or activities." *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 213 (2013) ("*AID*"). And any "review of distinctions that Congress draws in order to make allocations from a finite pool of resources must be deferential, for the discretion about how best to spend money to improve the general welfare is lodged in Congress rather than the courts." *Lyng v. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am., UAW*, 485 U.S. 360, 373 (1988).

Thus, if a classification "'neither proceeds along suspect lines nor infringes fundamental constitutional rights,' it must 'be upheld against equal protection challenge if there is any reasonable state of facts that could provide a rational basis for the classification.'" *Ctr. for Reprod. L. & Pol'y v. Bush*, 304 F.3d 183, 197–98 (2d Cir. 2002) (Sotomayor, J.) (quoting *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993)); *see also Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (explaining that the same analysis applies to a "class of one" Plaintiff who alleges that he has been "intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment").

The classification here is set by the statute: Section 71113 applies to certain non-profit abortion providers that received more than $800,000 in Medicaid payments in 2023. Plaintiff rightly concedes that the law is subject to rational basis review because it does not proceed along suspect lines or infringe any constitutional rights. Pl. Maine Fam. Planning's Mem. of Law in Supp. of its Mot. for a TRO and/or Prelim. Inj. at 9, ECF No. 5-3 ("Pl.'s Br."). Instead, Maine Family Planning argues that Section 71113 "violates equal protection by arbitrarily and irrationally treating [it] differently than other similarly situated Medicaid providers." *Id.* Rational-basis review thus applies, and the law is entitled to a "strong presumption of rationality," *Hodel v. Indiana*, 452 U.S. 314, 331–32 (1981).

Moreover, because "the Equal Protection Clause does not demand for purposes of rational-basis review that a legislature or governing decisionmaker actually articulate at any time the purpose or rationale supporting its classification," *Nordlinger v. Hahn*, 505 U.S. 1, 15 (1992), Plaintiff bears the burden to "negat[e] every conceivable basis which might support it," *Beach Commc'ns, Inc.*, 508 U.S. at 315 (citation omitted); *see also Lindsley v. Nat. Carbonic Gas Co.*, 220 U.S. 61, 78–79 (1911) ("One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."). Plaintiff has not met that burden here.

Section 71113 easily passes rational-basis review. Indeed, one rational basis for its classification is obvious: The United States does not want taxpayer dollars paid to entities that engage in abortion.

So is another: The United States wants to reduce abortions. There are any number of reasons for those objectives: moral, economic, health- and safety-related, and more. And abortion is not constitutionally protected. *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022). So Congress is free to decline to provide taxpayer funds to entities that provide abortions. In fact, then-Judge Sotomayor rejected a similar equal protection challenge to a Mexico City Policy, which requires 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." *Ctr. for Reprod. L. & Pol'y*, 304 F.3d at 188 (Sotomayor, J.). As she explained, the "Supreme Court has made clear that the government is free to favor the anti-abortion position over the pro-choice position, and can do so with public funds." *Id.* at 198 (citing *Rust v. Sullivan*, 500 U.S. 173, 192–94 (1991)). Congress has done just that here. To promote its goal of reducing abortion, it will no longer fund abortion providers who have received substantial sums of government money.

Maine Family Planning nonetheless claims the precise lines drawn by the statute are irrational, walking through a handful of other entities that may not be "prohibited entities" under Section 71113. Pl.'s Br. at 9–12. As a preliminary matter, its analysis necessarily reveals a fatal flaw: None of the other entities is similarly situated. Pl.'s Br. at 9–12. *See Cordi-Allen v. Conlon*, 494 F.3d 245, 251 (1st Cir. 2007) (substantial similarity requires "an extremely high degree of similarity" between the plaintiff and its asserted comparators). Plaintiff must admit that each comparator is meaningfully different in some way—Mabel's is substantially smaller, Greater Portland Health does not provide abortions, and MMC is not primarily engaged in family planning. And for these purposes, Maine Family Planning ignores comparators that are similar in *all* material respects—like Planned Parenthood of Northern New England or Health Imperatives, based in Massachusetts—perhaps because those organizations are treated identically under the law. *See Planned Parenthood Fed'n of America v. Kennedy*, No. 1:25-cv-11913 (D. Mass.), Decl. of Drew Snyder ¶ 6, ECF No. 53-2.

But even if Maine Family Planning had identified a sufficiently similar comparator that is treated differently, its arguments that the law discriminates arbitrarily are nowhere close to persuasive. A law passes rational-basis review "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. . . . Where there are 'plausible reasons' for Congress' action, 'our inquiry is at an end.'" *Beach Commc'ns, Inc.*, 508 U.S. at 313–14. "This standard of review is a paradigm of judicial restraint." *Id.* at 314. All the more so where Congress is exercising its core and discretionary power of the purse, which requires that any "review of distinctions that Congress draws in order to make allocations from a finite pool of resources must be deferential." *Lyng*, 485 U.S. at 373. If Plaintiff's challenge had merit, then every entity that lost out on an appropriation or an earmark when arguably similar groups received funds would have an equal protection claim. That is not the law. *See Am. Bus Ass'n v. Rogoff*, 649 F.3d 734, 742 (D.C. Cir. 2011) (upholding subsidization of one competitor but not another under rational-basis review). And the lines drawn here by Section 71113 were rational and well within Congress' broad discretion.

First, Maine Family Planning questions why the provision only applies to abortion providers, Pl.'s Br. at 10. The obvious reason is Congress's desire to reduce abortions and government subsidization of entities that provide abortions. Congress may make a policy choice not to contract with abortion providers, even for covered medical care. *Cf. Ctr. for Reprod. L. & Pol'y*, 304 F.3d at 198 (Sotomayor, J.).

Second, Maine Family Planning takes issue with the law's application to providers "primarily engaged in family planning services, reproductive health, and related medical care." Pl.'s Br. at 11. But that distinction is rational too. Those facilities are likely to perform a higher proportion of abortions. And Congress could reasonably conclude they are more likely to engage with pregnant women seeking family-planning advice who are susceptible to efforts to push them towards abortion. A permissible rationale for the provision is to reduce abortions and government subsidization in a targeted manner,

and these criteria rationally further that goal. *See Beach Commc'ns, Inc.*, 508 U.S. at 315 ("[W]e never require a legislature to articulate its reasons for enacting a statute").

Next, Plaintiff takes issue with the provision's applicability only to those who received more than $800,000 from Medicaid in 2023. But even under intermediate scrutiny, Congress "need not address all aspects of a problem in one fell swoop." *Free Speech Coal., Inc. v. Paxton*, 606 U.S. ---, 145 S. Ct. 2291, 2318 (2025) (quoting *TikTok Inc. v. Garland*, 604 U.S.---, 145 S. Ct. 57, 70 (2025)). 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). Even if the lines that Congress drew were to some extent underinclusive, overinclusive, or both, "perfection is by no means required." *N.Y.C. Transit Auth. v. Beazer*, 440 U.S. 568, 592 n.39 (1979) (citation omitted).

Finally, Maine Family Planning questions the provision's applicability to non-profits as opposed to for-profit entities, and further questions the provision's applicability to non-profits that are not on the Department of Health and Human Services' Essential Community Provider ("ECP") List. As for Section 71113's applicability to non-profits, Congress could have rationally concluded that if an abortion group was already receiving such an implicit government subsidy (in the form of tax-exempt status), it should not also receive federal funds. *Bob Jones Univ. v. United States*, 461 U.S. 574, 588 (1983) (explaining that 501(c)(3) status "provide[s] tax benefits to charitable organizations"); *Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 546 (1983) (noting that tax-exempt status has "much the same effect as a cash grant to the organization").

With respect to the ECP list, by its terms, Section 71113 applies to essential community providers as defined in 45 C.F.R. § 156.235(c); it does not reference the list. In any event, Plaintiff speculates that another non-profit—Mabel's—is not impacted by Section 71113 because it does not appear on the list, *see* Decl. of Evelyn Kieltyka ¶ 14, ECF No. 5-2 ("Kieltyka Decl."), but Plaintiff

offers no basis for that speculation. Indeed, Plaintiff asserts that Mabel's bills for fewer Medicaid-covered services than Maine Family Planning, Pl.'s Br. at 10. Of course, if Mabel's did not receive more than $800,000 in Medicaid funds in 2023, it would not be subject to Section 71113, independently of the ECP List.

Ignoring these rational reasons for the classification, Maine Family Planning insists that the law evinces a "bare congressional desire to harm a politically unpopular group," Pl.'s Br. at 11 (quoting *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973)). According to Maine Family Planning, "the legislation was drafted with the goal of ensnaring [it] . . . to avoid the Byrd Rule[1] and thus allow Congress to 'defund' Planned Parenthood." *Id.* Maine Family Planning thus invokes alleged animus against Planned Parenthood as a way of challenging the provision's application to it. *See id.* (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 450 (1985); *Romer v. Evans*, 517 U.S. 620, 632 (1996)). That is not credible.

To be sure, Maine Family Planning has not provided an evidentiary basis for this accusation. And even if Plaintiff were correct that Congress crafted the legislation to avoid the Byrd Rule, there is nothing improper about compliance with procedural legislative requirements or about drafting legislation to subject it to a lower voting threshold than would otherwise apply. Plaintiff's allegation of animus also falls flat. At the outset, 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

[1] Under a parliamentary rule known as the "Byrd Rule," a reconciliation bill may not include provisions "extraneous" to reconciliation's basic purpose of implementing budget changes. *See* 2 U.S.C. § 644. The Senate may waive the Byrd Rule with the affirmative vote of three-fifths of the membership (60 Senators if no seats are vacant). Ordinary budget reconciliation legislation requires only a majority vote (51 Senators). *See* Bill Heniff, Jr., Cong. Rsch. Serv., RL30862, *The Budget Reconciliation Process: The Senate's "Byrd Rule"* (Updated 2022), https://perma.cc/UN4F-QDTR.

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.

None of Plaintiff's other arguments has merit. Plaintiff argues that the federal law interferes with state sovereign choices about a matter that is traditionally within state control. Pl.'s Br. at 12. Not so. As explained above, the Spending Clause affords Congress "broad discretion to tax and spend for the 'general Welfare,' including by funding particular state or private programs or activities." *AID*, 570 U.S. at 213. And "[w]hen money is spent to promote the general welfare, the concept of welfare or the opposite is shaped by Congress, not the states." *Helvering v. Davis*, 301 U.S. 619, 645 (1937). As long as the concept is not "arbitrary, the locality must yield," if providers want to continue receiving federal Medicaid funds. *Id.*

Congress is therefore not compelled to subsidize activities with which it disagrees. And it may properly choose not to subsidize non-profits that receive large payments through the Medicaid program if they perform elective abortions. *See Rust*, 500 U.S. at 193; *see also Maher v. Roe*, 432 U.S. 464, 474 (1977) (holding that states may "make a value judgment favoring childbirth over abortion, and to implement that judgment by the allocation of public funds"). If that encourages entities that want to continue receiving Medicaid funds to stop providing abortions, even better—Congress may encourage behaviors it favors through the Spending Clause. *See New York v. United States*, 505 U.S. 144, 167 (1992) (explaining that Congress may attach conditions to federal funds to influence a State's legislative choice); *South Dakota v. Dole*, 483 U.S. 203, 205–08 (1987) (upholding federal statute conditioning state

receipt of federal highway funds on state adoption of minimum drinking age of twenty-one); *Biden v. Missouri*, 595 U.S. 87, 90, 94 (2022) (per curiam) (upholding an agency-imposed condition of participation in Medicare and Medicaid). The State of Maine, like Plaintiff, is free to use non-federal dollars to advance a different objective if it wishes.

Because abortion enjoys no special constitutional protection, *see Dobbs*, 597 U.S. at 231, Plaintiff's reliance on cases like *Windsor*, Pl.'s Br. at 13, which implicated a right the courts had recognized as constitutionally protected, is misplaced. *See United States v. Windsor*, 570 U.S. 744, 772 (2013) ("The differentiation [in the Defense of Marriage Act] demeans the couple, whose moral and sexual choices the Constitution protects, *see Lawrence*[*v. Texas*, 539 U.S. 558 (2003)], and whose relationship the State has sought to dignify."). Quite obviously, Congress may disfavor conduct—like abortion—that is not constitutionally protected.

Plaintiff's remaining arguments are similarly unavailing. First, Plaintiff argues that Section 71113 is not rationally related to preventing federal Medicaid funds from being used for abortions outside of the narrow exceptions permitted under the Hyde Amendment. Pl.'s Br. at 13. As explained above, Congress may make a policy choice not to contract with abortion providers even for covered medical care. Further, because money is fungible, Congress could reasonably conclude that withholding Medicaid funding from entities that perform abortions will discourage at least some of those abortions. Plaintiff's reliance on non-binding, out-of-circuit caselaw to undermine that common sense point is inapposite. Its reliance on *Planned Parenthood of Central & Northern Arizona v. Arizona* is especially misplaced because that case was concerned with penalizing the right to abortion at a time when governing caselaw held it was constitutionally protected. *See* 718 F.2d 938, 945 n.3 (9th Cir. 1983) (analogizing to cases that "penalized the exercise of [a] constitutional right"). For the foregoing reasons, Plaintiff is also incorrect that these justifications are irrational absent evidence that Maine Family Planning has improperly used federal funds for abortion services, Pl.'s Br. at 14, and in claiming

that Section 71113 is not rationally related to furthering an interest in reducing abortions, encouraging childbirth, or respecting prenatal life, *id.*

Finally, Plaintiff's contention that Section 71113 is not rationally related to preventing wasteful spending is irrelevant. Congress is entitled to make discretionary judgments as to how—and to whom—it allocates federal funds, no matter the net. It is also entitled to use federal funding to express its *policy* views. As mentioned previously, conceivable bases for enacting Section 71113 include not just economic reasons but also moral, health- and safety-related, and more. Since those reasons are plainly sufficient to sustain the legislation under rational basis review, the Court's "inquiry is at an end." *U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 179 (1980).

In the end, it is perfectly rational for Congress to determine that taxpayers should no longer fund major abortion providers, of which Maine Family Planning is merely one example. That dooms Plaintiff's equal protection claim.

II. Plaintiff Has Not Established Irreparable Harm

Plaintiff's motion should also be denied because it has failed to demonstrate irreparable harm. *See Matos ex rel. Matos v. Clinton Sch. Dist.*, 367 F.3d 68, 73 (1st Cir. 2004). "A finding of irreparable harm must be grounded on something more than conjecture, surmise, or a party's unsubstantiated fears of what the future may have in store." *Charlesbank Equity Fund II v. Blinds To Go, Inc.*, 370 F.3d 151, 162 (1st Cir. 2004); *see also Winter*, 555 U.S. at 22 (a party "seeking preliminary relief [must] demonstrate that irreparable injury is *likely* in the absence of an injunction"). In other words, "speculative injury" is not enough. *Narragansett Indian Tribe v. Guilbert*, 934 F.2d 4, 6–8 (1st Cir. 1991) (cleaned up). Plaintiff does not meet that test.

A. Plaintiff Does Not Demonstrate Irreparable Harm to Itself.

There is no irreparable harm to Plaintiff because its only cognizable injuries are economic and classically remediable. The corollary to the rule requiring concrete, imminent harm is that legal remedies must be inadequate. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). That means that generally, "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*, 2023 WL 3660689, at *7 (D. Mass. May 25, 2023), *appeal dismissed*, 2023 WL 8259107 (1st Cir. Oct. 20, 2023).

At bottom, Plaintiff seeks reimbursement from the Government for Medicaid expenditures. But it does not need a preliminary injunction to ensure that it receives that relief. If, at the conclusion of this litigation, Plaintiff prevails on its claim (which it should not), it may seek reimbursement from Maine for the provision of covered services. States have up to *two years* to submit claims for services rendered to state Medicaid agencies or designated contractors for claim adjudication and payment. *See* 42 U.S.C. § 1320b–2(a). And, what is more, there is an exception to the two-year deadline when payments are made pursuant to a court order. 45 C.F.R. § 95.19. Thus, if the Court were to conclude at final judgment that Maine Family Planning's claim has merit, Plaintiff could seek, at the conclusion of this litigation, payment (through Maine) for any services provided during the pendency of the case. Plaintiff's injuries are not "irreparable" on these facts.

Nor may Plaintiff rely on speculative harms to its "goodwill." *See* Pl.'s Br. at 17 (quoting *K-Mart Corp. v. Oriental Plaza, Inc.*, 875 F.2d 907, 915 (1st Cir. 1989)). Plaintiff represents that, absent court intervention, Section 71113 jeopardizes its goodwill because patients might be confused about whether Maine Family Planning is excluded from Medicaid due to wrongdoing. *Id.* But Plaintiff offers no evidence that application of Section 71113 will imply anything more than that it provides abortions—which, presumably, it already advertised. Even if patients believed Section 71113 excluded Plaintiff from Medicaid based on wrongdoing, that type of harm is nothing like the harm at issue in *K-Mart*. In *K-Mart*, the district court found K-Mart suffered irremediable harm from the construction of additional retail space in its parking lot, which would block public view of K-Mart's building from the highway, interfere with the store's "presence", lessen available parking, and make driving and walking to the store more difficult. 875 F.2d at 915. By contrast, Plaintiff's assertions about what its

patients may think are speculative and can be mitigated by its own actions. If Maine Family Planning chooses to stop providing care to Medicaid patients, Maine Family Planning itself will be responsible for notifying those patients that it will no longer be able to serve them, *see* Kieltyka Decl. ¶ 22, and presumably can dispel any confusion about the reason why.

Maine Family Planning also argues that it will be forced to severely limit or end its services and to cut staff, which would prevent it from fulfilling its mission. Pl.'s Br. at 17. But these fundamentally economic harms do not threaten the very "survival" of Plaintiff's business, as they must to qualify as irreparable. *Coastal Ctys. 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 (1st Cir. 2006) (explaining that the plaintiff had "filed documents . . . indicating that it was on the brink of financial ruin"). 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. *Compare 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).

B. Maine Family Planning Cannot Demonstrate Irreparable Harm Based on Alleged Harm to Third Parties.

Maine Family Planning attempts to bolster its claims of irreparable harm by relying on purported injuries to Medicaid patients. *Compare* Pl.'s Br. at 16 *with* Compl. ¶ 9 ("Plaintiff [Maine Family Planning] sues on its own behalf."). But it may not rely on alleged harms to third parties to demonstrate irreparable harm. The "issuance of a preliminary injunction requires a showing of irreparable harm *to the movant* rather than to one or more third parties." *CMM Cable Rep., Inc. v. Ocean Coast Props., Inc.*, 48 F.3d 618, 622 (1st Cir. 1995); *see also Winter*, 555 U.S. at 20 ("A plaintiff seeking a

preliminary injunction must establish . . . that *he* is likely to suffer irreparable harm in the absence of preliminary relief." (emphasis added)).

Although Plaintiff argues otherwise based on *Rio Grande Community Health Center, Inc. v. Rullan*, 397 F.3d 56 (1st Cir. 2005), *see* Pl.'s Br. at 16, the First Circuit there was careful to distinguish between the required demonstration of irreparable harm—which the plaintiff met with evidence it "had fallen eight or nine months behind on its mortgage and that foreclosure proceedings were about to begin"—and the discussion of the public interest, where the court considered potential harm to patients absent injunctive relief. *See Rio Grande Cmty. Health Ctr.*, 397 F.3d at 76–77. Moreover, although Plaintiff points to cases where courts have concluded that an alleged disruption or denial of services to individuals constitutes irreparable harm, Pl.'s Br. at 16–17, the individuals themselves were parties to those lawsuits. *See Planned Parenthood of Kan. & Mid-Mo. v. Andersen*, 882 F.3d 1205, 1236 (10th Cir. 2018) (concluding that the alleged disruption of care would harm the patient plaintiffs); *Mass. Ass'n of Older Ams. v. Sharp*, 700 F.2d 749, 750 (1st Cir. 1983) (Plaintiffs were families with stepchildren whose Medicaid and Aid to Families with Dependent Children had been terminated).[2] Plaintiff is not joined in its lawsuit by any patients, and thus finds no support for its request for an injunction on a theory of harm based on the alleged denial of services to those patients—who may seek care from other Medicaid providers.

In any event, Maine Family Planning may elect to continue offering the same services using different funding sources, and patients that prefer to do so could continue receiving services from Maine Family Planning without relying on Medicaid. *Cf.* Dana DiFilippo, *With federal funding at risk,*

[2] The sole exception is *Mediplex of Massachusetts v. Shalala*, 39 F. Supp. 2d 88, 98–99 (D. Mass. 1999). *See* Pl.'s Br. at 17 (citing *Mediplex*). But in *Mediplex*, the patients themselves did not have standing to appear before the court and represent their own interests, and the plaintiff was a residential care facility whose patients were residents of the facility, a distinct patient relationship. *Mediplex*, 39 F. Supp. 2d at 98–99. And in any event, the court there also found that the plaintiff demonstrated irreparable harm to itself because the facility would likely close, "which could wipe out the company." *Id.* at 100. None of those factors are present here.

abortion-rights supporters turn to state, private donors, New Jersey Monitor (July 3, 2025), https://perma.cc/5923-6XT3.

C. Plaintiff's Asserted Harms Are Not Imminent and Would Not Be Redressed by Its Requested Injunction.

Even assuming Plaintiff's claimed harm could suffice, it would not justify an injunction because that alleged harm is not imminent and would not be redressed by the requested injunction. To understand why, some background on the payment process is necessary.

As described above, CMS does not (under the circumstances relevant here) pay Medicaid providers directly. Costello Decl. ¶ 7. Rather, CMS pays upfront initial awards and later reconciles the FFP provided to the states using information from the states' quarterly Form CMS-64. *Id.* ¶ 5. In the meantime, the states (or, in the case of managed care, third-party health plan providers) pay providers for services rendered after claims are submitted by the providers. *Id.* ¶¶ 3–4, 15, 17–19. This process takes time: CMS understands that a Medicaid provider in any given state can generally expect to receive payment from the state or health plan within 30 days of submitting a claim. In the fee-for-service delivery system, only then would the state incur an expenditure to include in the state's quarterly Form CMS-64. *Id.* ¶¶ 7, 9. And, in the ordinary course, CMS takes up to six months to adjust the initial grants provided to states with the quarterly state submissions. *Id.* ¶ 13. The timeline is further extended here because, under Section 71113, states will not know whether a given provider is a prohibited entity until October 1; thus, they will not be able to definitively deny claims until that date.[3] The bottom line is that Maine Family Planning faces no *imminent* harm.

Further, because Plaintiff receives payment not from the Federal Government but from Maine (or, in the case of managed care, third-party health plan providers), enjoining Defendants would not

[3] For example, assume a claim furnished on July 8, 2025 by a Maine Family Planning provider to a Medicaid beneficiary under the Medicaid fee-for-service delivery system. The Maine Family Planning provider could be expected to submit a claim for the services by July 22, 2025 to the state Medicaid agency. The state Medicaid agency could be expected to pay the claim by August 22, 2025. That claim would be reflected in the state's 2025 Q3 quarterly Form CMS-64. CMS's involvement—which would take the form of an adjustment to the state's FPP—would not occur until around April 2026.

redress its injuries. 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). A preliminary injunction 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, a preliminary injunction cannot give Plaintiff the certainty it appears to seek. The reason Plaintiff says it needs relief immediately is that it does not want to provide services for which it may ultimately end up not being paid. In other 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. Pl.'s Br. at 18 n.7. 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.*, ---S. Ct.---, 2025 WL 1832186, at *1 (U.S. July 3, 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 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 a preliminary injunction should be denied.

IV. The Balance of Equities and the Public Interest Favor the Government.

Plaintiff's proposed injunction threatens significant and irreparable harm to the Government and public, *see Nken*, 556 U.S. at 435, which greatly outweighs any claimed injury to Plaintiff. There is a traditionally strong "presumption of constitutionality which attaches to every Act of Congress," *Bowen v. Kendrick*, 483 U.S. 1304, 1304 (1987) (Rehnquist, C.J., in chambers) (quoting *Walters v. Nat'l Ass'n of Radiation Survivors*, 468 U.S. 1323, 1324 (1984))—and specifically, a presumption that "Acts of

Congress . . . should remain in effect pending a final decision on the merits by [the Supreme] Court," *Turner Broadcasting Sys., Inc. v. FCC*, 507 U.S. 1301, 1301 (1993) (Rehnquist, C.J., in chambers). As the First Circuit has recognized, the "government's inability to 'effectuat[e] statutes enacted by representatives of [the] people'" is irreparable injury to the Government and 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 is particularly true here, where Congress has made a judgment about which entities it wishes to benefit from public funds, in a policy context of substantial human, moral, and political significance. An order displacing Congress's assessment that it does not wish to fund certain entities unless they cease providing abortions would work grave irreparable injury on the democratically elected branches. And it would countermand the traditional rule that a congressional enactment "is in itself a declaration of public interest and policy which should be persuasive in inducing courts to give relief." *Virginian Ry. Co. v. Sys. Fed'n No. 40*, 300 U.S. 515, 552 (1937).

In addition, Plaintiff's claim of harm to patients rests on pure speculation and does not support entry of a preliminary injunction. Medicaid enrollees may, of course, receive care from any number of other providers. And Plaintiff may continue to provide services without seeking 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).

V. 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. 65(c), which provides that "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives

security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." *See also U.S. D.I.D. Corp. v. Windstream Commc'ns, Inc.*, 775 F.3d 128, 135 (2d Cir. 2014) (explaining that the 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. *Cf. Dep't of Educ. v. California*, 604 U.S.---, 145 S. Ct. 966, 969 (2025) (staying district court injunction requiring payment of federal funds in part because the district court "declined to impose bond"). To effectuate the purposes behind Rule 65(c), the Court should determine how much security is necessary based on Plaintiff's estimates of the amount of Medicaid reimbursements it receives each month.

VI. Any Injunctive Relief Should Be Stayed Pending Appeal.

To the extent the Court issues any injunctive relief, the Government respectfully requests that such relief be stayed pending the disposition of any appeal that is authorized. *See Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (setting forth the factors "regulating the issuance of a stay"). For the reasons explained above, the Government has made a strong showing that it is likely to succeed on the merits and will be irreparably injured absent a stay. *See id.* The public interest strongly favors giving effect to a provision enacted by the American people's democratically elected representatives. *See id.* Those factors outweigh any injury Plaintiffs might suffer.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' motion.

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