25-1698, 25-1755

In the United States Court of Appeals for the First Circuit

PLANNED PARENTHOOD FEDERATION OF AMERICA, INC.; PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS; PLANNED PARENTHOOD ASSOCIATION OF UTAH,
Plaintiffs-Appellees,

v.

ROBERT F. KENNEDY, JR., in his official capacity as Secretary of the U.S. Department of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, MEHMET OZ, in the official capacity as Administrator or the Centers for Medicare & Medicaid Services; CENTERS FOR MEDICARE & MEDICAID SERVICES,
Defendants-Appellants.

On Appeal from the United States District Court
for the District of Massachusetts
Case No. 1:25-cv-11913-IT

BRIEF OF LOUISIANA IN SUPPORT OF APPELLANTS' MOTION TO STAY AND REVERSAL

JOHN J. BURSCH
ERIN M. HAWLEY
LINCOLN DAVIS WILSON
ALLIANCE DEFENDING FREEDOM
440 First Street, NW, Suite 600
Washington, DC 20001

JAMES A. CAMPBELL
J. CALEB DALTON
ALLISON H. POPE
ALLIANCE DEFENDING FREEDOM
44180 Riverside Parkway
Lansdowne, VA 20176

ELIZABETH MURRILL
ATTORNEY GENERAL
BENJAMIN J. AGUIÑAGA
SOLICITOR GENERAL
KELSEY L. SMITH
DEPUTY SOLICITOR GENERAL
Office of the Attorney General
1885 N 3rd St
Baton Rouge, LA 70802
Tel: (225) 428-7432
smithkel@ag.louisiana.gov

Counsel for Amicus Curiae State of Louisiana

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Amicus curiae Louisiana is a sovereign state and thus has no parent corporation nor any shares that could be owned by a publicly held corporation.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Regulations

Other Authorities

IDENTITY AND INTEREST OF AMICUS CURIAE

Amicus curiae is the sovereign state of Louisiana, which participates along with the federal government in the Medicaid program. The State's Medicaid plan is subject to Section 71113 of the One Big Beautiful Bill Act (OBBB), Pub. L. No. 119-21, 139 Stat. 72 (July 4, 2025). That law prohibits for one year any payment of federal Medicaid dollars to certain organizations that provide abortion.

Planned Parenthood (through its national federation and with two local affiliates) sought and obtained a nationwide injunction barring the federal government from enforcing this provision of the OBBB as to any Planned Parenthood members. That injunction concerns the administration of the Medicaid plans of the States, which are taking divergent actions to modify their individual state policies in compliance with the OBBB. Meanwhile, other States have also sued the federal government in the same district court where they seek to declare the OBBB's funding prohibition unlawful. Compl., *California v. U.S. Dep't of Health & Human Servs.*, No. 1:25-cv-12118 (D. Mass. July 29, 2025) (*California* Compl.). Yet Planned Parenthood did not even attempt to join any state to this action.

Louisiana has an interest in clarifying the OBBB's funding prohibition and its effect on its Medicaid program to promote wise stewardship of its own resources. It also seeks to protect its sovereign interests from unlawful judicial interference as it administers its Medicaid program. Louisiana thus urges the Court to grant the federal government's motion to stay the injunction.

SUMMARY OF ARGUMENT

Louisiana concurs fully in the federal government's showing that Planned Parenthood is unlikely to succeed on its challenges to Congress's lawful denial of appropriations to certain organizations that perform abortions. Louisiana submits this brief to show that, because of the central role of States in administering the Medicaid program, the district court's injunction also exceeds its lawful authority. A stay is warranted on that ground as well.

The OBBB primarily regulates the States, which are statutorily charged with disbursing the federal and state Medicaid dollars in their custody to pay qualified claims in the first instance. The OBBB gives the States the information they need to ensure they don't pay for improper claims. It defines "prohibited entity" to include an organization and its

affiliates that received more than $800,000 in Medicaid funds in the previous fiscal year and will perform abortions as of October 1, 2025. Planned Parenthood meets those terms. OBBB 71113(b)(1).

Following that new funding prohibition, the States took different actions in administering their Medicaid plans. Some pledged to continue to pay Planned Parenthood from state coffers only. Others, without referencing the OBBB, have chosen to remove Planned Parenthood from Medicaid as a matter of their own individual policies. But all agree that the OBBB forbids further federal funds.

Planned Parenthood's complaint overlooks the States' crucial role in the funding scheme. Though the States are the ones that will decide whether claims by Planned Parenthood are paid in the first instance, Planned Parenthood has not joined *any* of the 50 States to its nationwide challenge to the OBBB. That leads to two related justiciability problems.

First, the district court exceeded its lawful authority in issuing a universal injunction as to *all* Planned Parenthood affiliates. Planned Parenthood's national federation lacks a cognizable injury in its own right, and the injunction it obtained for its affiliates gives relief to many that lack standing. In States that choose to continue paying claims from

their own funds, Planned Parenthood affiliates lack an injury. And in States that remove Planned Parenthood as a qualified provider, Planned Parenthood affiliates lack causation, since it has not shown that any of those decisions are attributable to the OBBB as opposed to independent state decision-making. And, without the States, an injunction against the federal government alone cannot redress affiliate injuries, since it does not bind the States charged with deciding whether to pay Medicaid claims. The district court's injunction exceeds these constitutional limits and should be stayed.

Second, this action should be dismissed under Federal Rule of Civil Procedure 19 because neither the States nor their officials can be joined. The States are necessary parties to any proceeding that purports to dictate how their Medicaid programs must be administered under the OBBB. But Eleventh Amendment immunity prohibits joining the States without their consent. Nor can Planned Parenthood join state officials under *Ex parte Young*, since those state officials act under their own valid state powers—not under the federal law that Planned Parenthood claims is void. And since no judgment would be adequate without joining the States, this case must be dismissed. *See State of Missouri v. Fiske*, 290

U.S. 18, 28 (1933) (collecting cases) ("[W]hen it appears that a state is an indispensable party to enable a federal court to grant relief sought by private parties, and the state has not consented to be sued, the court will refuse to take jurisdiction.").

While judicial redress is unavailable, that does not leave Planned Parenthood without recourse. As the Supreme Court recognized last term in *Medina v. Planned Parenthood South Atlantic*, Planned Parenthood can pursue administrative remedies when States remove it from Medicaid. 145 S. Ct. 2219, 2239 (2025). But it cannot ask a federal court to enjoin federal appropriations law nationwide while ignoring the role of the separate sovereigns responsible for disbursing the funds. The Court should therefore stay the district court's injunction.

STATUTORY AND REGULATORY BACKGROUND

A. Under Medicaid, the States disburse federal dollars.

"Congress created Medicaid in 1965 to subsidize state efforts to provide healthcare to families and individuals 'whose income and resources are insufficient to meet the costs of necessary medical services.'" *Medina*, 145 S. Ct. at 2226 (quoting *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 323 (2015) (quoting 42 U.S.C. § 1396-1)).

While Medicaid is jointly funded by the States and the federal government, the federal government provides the majority of the financing to the program. *Id.* Congress has authorized annual appropriations for each fiscal year in "a sum sufficient" to carry out the program's purposes. 42 U.S.C. § 1396-1. Those funds "shall be used" for making payments to participating states. *Id.*

Rather than paying providers directly, the federal government issues quarterly awards to the States to fund the federal government's appropriate share of anticipated qualified claims for each state's Medicaid program. 42 U.S.C. §§ 1396b(a), (d); 42 C.F.R. § 430.30(a). States maintain those federal funds, and they draw from them over the quarter to administer their Medicaid programs. 42 U.S.C. § 1396b(d); 42 C.F.R. §§ 430.30(d)(3)–(4). Taking their federal draw together with applicable state funds, States pay qualified Medicaid claims submitted by providers. D.C.Dkt.53-1¶ 7.

Paying qualified claims is limited by state law on the front end and by federal law on the back end. If a claim is not allowed under state law, based on states' "primary responsibility over matters of health and safety," *Medina*, 145 S. Ct. at 2227 (citation modified), the state does not

pay it. For example, Congress "let States control [the] scope" of determining qualified providers under Medicaid, *id.* at 2235, and Planned Parenthood lacks a cause of action to sue over state decisions removing it, *id.* at 2234. And if a state does pay for a claim that is not allowed under federal law, the federal government will adjust the State's next quarterly award accordingly to recoup the incorrect payment. 42 C.F.R. §§ 430.30(d)(2), 433.320(a); 42 U.S.C. § 1396b(d)(2). Thus, a state that chooses to pay claims the federal government has disallowed effectively elects to pay the entire claim via state funds.

B. The OBBB says plainly what Congress won't pay for.

The clear-notice requirement for federal spending legislation requires that any conditions on funds for federal programs like Medicaid be set out "unambiguously." *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006). Often, it is the Executive that purports to articulate such conditions—whether by regulation, guidance, or enforcement action. *See, e.g.*, *Moyle v. United States*, 603 U.S. 324, 347 (2024) (Alito, J., dissenting) (federal administrative guidance); *Dep't of Educ. v. Louisiana*, 603 U.S. 866, 867 (2024) (federal regulations). But this case concerns a spending limitation set by the Legislature via

statute, which provides the financial terms Congress offers. *See South Dakota v. Dole*, 483 U.S. 203, 208 (1987) (upholding congressional condition on state highway funding).

In enacting the OBBB, Congress restricted Medicaid funds. The OBBB provides that no federal funds may be used to pay a "prohibited entity for items and services furnished during the 1-year period" following its effective date. OBBB § 71113(a). The OBBB defines "a prohibited entity" as "an entity, including its affiliates, subsidiaries, successors, and clinics," that, as of October 1, 2025, meets certain conditions. *Id.* § 71113(b)(1). Relevant here, those criteria include that the entity "provides for abortions" and received more than $800,000 in Medicaid funds in fiscal year 2023. *Id.*

While the federal government has shown that this definition applies to several different entities, *see* D.C.Dkt.85 at 8, it covers, at a minimum, Planned Parenthood. Aggregating the funds received by individual Planned Parenthood affiliates, as directed by the OBBB, shows that the organization as a whole vastly exceeded the $800,000 threshold. Indeed, that amount is met just by Planned Parenthood League of Massachusetts, the lead affiliate Plaintiff here, which alone

"received approximately $4.7 million in Medicaid payments during fiscal year 2023." Massachusetts Office of the Attorney General, *AG Campbell Sues Trump Administration For Blocking Planned Parenthood From Receiving Medicaid Funding* (July 29, 2025), http://bit.ly/4683tET. Plus, Planned Parenthood's filings in this case show that its affiliates intend to continue providing abortions on October 1, 2025. D.C.Dkt.5 at 3 n.1. It fits the bill.

Planned Parenthood's own attestations thus make clear that it will meet the "prohibited entity" definition on October 1. And the OBBB forbids States from paying federal dollars to Planned Parenthood at any time after its July 4 effective date. OBBB § 71113(a). So the OBBB gives States the information they need—with three months' notice—to formulate their Medicaid policies as desired.

C. States adopt different policies around the OBBB.

The States have taken different approaches to paying Medicaid claims by Planned Parenthood, both before and after the OBBB.

First, some States have declined to provide any further Medicaid funds to abortion-affiliated providers as a matter of policy, and not necessarily because of the OBBB. For example, following the Supreme

Court's decision in *Medina* that Planned Parenthood lacks a cause of action to challenge such decisions, 145 S. Ct. at 2234, Oklahoma removed Planned Parenthood from its Medicaid program because Oklahoma refused "to indirectly subsidize ... the abortion industry under the guise of women's health," Oklahoma Governor J. Kevin Stitt, *Governor Stitt Issues Sweeping Order Directing Agencies to Enforce Pro-Life Standards Across State Government* (July 31, 2025), http://bit.ly/41MByI7. And just days before the OBBB was enacted, Indiana filed a motion to vacate a prior court injunction contrary to *Medina* so Indiana could implement its policy against funding Planned Parenthood. *See* Br. Supp. Mot. to Vacate Inj., *Planned Parenthood of Ind., Inc. v. Comm'r of the Ind. State Dep't of Health*, No. 1:11-cv-630-TWP-TAB, Dkt.117 (S.D. Ind. July 3, 2025) (Indiana Mot.). In either case, Planned Parenthood lacks a federal cause of action to redress these decisions to remove it as a qualified provider. *Medina*, 145 S. Ct. at 2234.

Second, other States have decided that, notwithstanding that federal funds are unavailable, they will continue allowing claims from these providers and will pay them through state funds alone. *See California* Compl. ¶¶ 142, 157. After the OBBB was enacted, Washington

announced it "will cover the gap caused by the federal government's defunding of Planned Parenthood." Washington Governor Bob Ferguson, *Governor Ferguson: Washington Will Cover Gap Caused by Federal Attempt to Defund Planned Parenthood* (July 9, 2025), http://bit.ly/45o3oN7. Likewise, Massachusetts announced that it will provide $2 million to Planned Parenthood League of Massachusetts—a named plaintiff and the basis for venue in this case, *see California* Compl. ¶ 18—which Planned Parenthood confirmed will "ensure access to care is uninterrupted." Governor Maura Healey & Lt. Governor Kim Driscoll, *Press Release: As President Trump Defunds Planned Parenthood, Massachusetts Delivers $2 Million to Protect Access to Reproductive Health Care* (July 24, 2025), http://bit.ly/4fLGnaD. Connecticut and Vermont are contemplating doing the same, *California* Compl. ¶¶ 137–38, 156, and states like California, Delaware, and Oregon already cover abortion using just state funds, *id.* ¶¶ 58, 66, 95; Further Consolidated Appropriations Act, Pub. L. No. 118-47, §§ 506, 507(a), 138 Stat. 662, 703 (2024).

Third, if there were any doubt whether a provider falls within the OBBB's funding prohibition (as other States allege, *see California* Compl.

¶¶ 141, 143, 225–26), States may reserve decision on payment and request additional information to inform the process. For example, States can ask whether the entity submitting the claims intends to continue providing elective abortions as of October 1, 2025. But here, there is no need for any clarification about how the OBBB applies. Again, Planned Parenthood's declarations are explicit that various of its affiliates covered by the OBBB's definition will continue offering those abortions on October 1 and that it meets the other conditions. D.C.Dkt.5 at 3 n.1.

This funding prohibition "could not be more clearly stated by Congress." *Dole*, 483 U.S. at 208. The OBBB gives States all the information needed to make an informed policy decision as to how they will administer their Medicaid plans. States are already choosing to fund Planned Parenthood on their own dime based on the OBBB's plain meaning, which refutes the charge that it does not put the States on "clear notice." *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 25 (1981). And as set forth below, it also shows that the district court lacked authority to issue its nationwide injunction.

ARGUMENT

The role of the States in Medicaid administration leads to two problems of justiciability. Because of the independent decision-making of the States, many of the Planned Parenthood affiliates covered by the district court's universal injunction do not have standing. And because the States are necessary parties who cannot be joined without their consent, this case cannot proceed under Rule 19. The Court should therefore stay the injunction.

I. The district court's nationwide injunction is unlawful.

The district court's injunction purports to prohibit the federal government from enforcing the OBBB—not just against the named Plaintiffs, but nationwide against "all other members of Planned Parenthood Federation of America, Inc." Order, Dkt.69 at 58. Yet the role of the States as co-sovereign participants in the Medicaid program means that many of Planned Parenthood's member affiliates lack any injury that is caused by the federal government and redressable with an injunction against it. The district court's grant of universal relief flouts both constitutional and statutory limits of the federal judicial power.

First, the Constitution limits the judicial power to "cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process." *Vt. Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 774 (2000). The "irreducible constitutional minimum" for those cases and controversies requires "an injury in fact" that (1) is "concrete and particularized" and "actual or imminent"; (2) is "fairly traceable to the challenged action of the defendant"; and (3) can be "redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (citation modified). And constitutional standing "is not dispensed in gross," but must be shown "for each claim that [plaintiffs] press and for each form of relief that they seek." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021).

Second, as a matter of statutory law, the Judiciary Act of 1789 confines the general federal equitable power to "party-specific" injunctions to "'restrain the actions of particular officers against particular plaintiffs.'" *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2551 (2025) (quoting Samuel Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 Harv. L. Rev. 417, 425 (2017)). An injunction cannot "interfere with enforcement of contested statutes or ordinances except

with respect to the particular federal plaintiffs." *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975). So while injunctions may "administer complete relief between the parties," they may favor non-parties "only incidentally." *CASA*, 145 S. Ct. at 2557. The Supreme Court has thus "consistently rebuffed requests for relief that extended beyond the parties." *Id.* at 2552.

"The district court's universal injunction defied these foundational principles." *Labrador v. Poe*, 144 S. Ct. 921, 923 (2024) (Gorsuch, J., concurring). It enjoined the OBBB as to a national federation that lacks its own injury. Its injunction covers both party and non-party affiliates that have no injury. It also covers affiliates that cannot show causation. And it purports to enjoin enforcement in ways that cannot provide redress. This relief grossly exceeds the district court's authority. It cannot stand.

A. The national federation's harm is entirely derivative.

Planned Parenthood brought this action through its national federation and two individual affiliates (one in Massachusetts and one in Utah) that claim to be injured by the OBBB. But as much as the national organization—Planned Parenthood Federation of America, Inc.—alleges

any cognizable harm, that harm is solely "on behalf of its Members who participate in the Medicaid program." Compl. ¶ 24.

The national organization lacks standing in its own right. It admits it "does not itself provide any health care," *id.* ¶ 19, and it does not receive (and thus cannot lose) Medicaid funds, D.C.Dkt.5 at 32 n.17. The only injury the national federation asserts on its own behalf is that the OBBB harms "the Planned Parenthood name and reputation" and "strikes at PPFA's and its Members' shared mission." Compl. ¶ 23. But the Supreme Court has been quite clear that alleging government action prevents plaintiffs from "achiev[ing] their organizational missions … does not work to demonstrate standing." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 394 (2024) (quotation omitted). "A plaintiff must show 'far more than simply a setback to the organization's abstract social interests.'" *Id.* (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)).

Thus, the district court's nationwide injunction for the national federation could be sustained only on a showing of harm to Planned Parenthood affiliates. But as explained below, the crucial role of the States in the Medicaid program means that the injunction covers

affiliates that cannot show injury, causation, or redressability. The district court thus transgressed these limits in enjoining the federal government on behalf of all Planned Parenthood affiliates.

B. Affiliates have no injury if States fund on their own.

The States' role in administering the Medicaid program means many Planned Parenthood affiliates covered by the district court's nationwide injunction cannot show an injury. The OBBB does not "require or forbid" any action by Planned Parenthood. *All. for Hippocratic Med.*, 602 U.S. at 382. Instead, the OBBB regulates the States. It declares that "[n]o Federal funds that are … provided to carry out a State plan" under Medicaid "shall be used to make payments to a prohibited entity." OBBB § 71113(a). And since the States hold those federal funds, they have primary responsibility to decide whether to use those federal funds to pay a particular claim. The actions of the States, then, dictate whether Planned Parenthood affiliates may experience any harm.

That means that many affiliates—including one of the named Plaintiffs and the basis for venue in Massachusetts—have no injury. Take affiliates in States like Washington and Massachusetts, which have announced that they will continue funding Planned Parenthood

exclusively through state funds. *See* Ferguson, *supra*; Healey, *supra*. If state Medicaid funding replaces the OBBB's denial of appropriations, then the affiliates have no injury under those Medicaid programs. That is particularly true of Plaintiff Planned Parenthood League of Massachusetts, which publicly announced Massachusetts' decision to bear all funding itself will "ensure access to care is uninterrupted." *See* Healey, *supra*. If funds and care are uninterrupted, then Planned Parenthood of Massachusetts has no injury. And the district court exceeded its lawful authority by enjoining the OBBB as to all such uninjured affiliates, whether they are parties or not.

C. Affiliates lack causation if States defund on their own.

The States' independent decision-making also forecloses Planned Parenthood's ability to prove causation. *See Lujan*, 504 U.S. at 560–61. If causation turns on independent decisions by third parties, standing is "ordinarily substantially more difficult to establish." *Id.* at 562 (citation modified). The plaintiff cannot rely on speculation about the "unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict." *Id.*; *All. for Hippocratic Med.*, 602 U.S. at

383 (citation modified). Rather, the plaintiff must show that the regulated "third parties will likely react in predictable ways that in turn will likely injure the plaintiffs." *All. for Hippocratic Med.*, 602 U.S. at 383 (citation modified). The plaintiff bears the burden "to adduce facts showing" that those third parties have made or will make choices that will injure it. *Lujan*, 504 U.S. at 562.

Planned Parenthood must therefore show that the OBBB has a "determinative or coercive effect" forcing States to deny funding. *Bennett v. Spear*, 520 U.S. 154, 169 (1997). It cannot. The States' individual responses to the OBBB can and will vary greatly in both their reasoning and their result. For one, as shown above, many States have done the opposite of what Planned Parenthood's theory presumes will occur by electing to continue to pay Medicaid claims exclusively with state funds.

Causation also fails with respect to affiliates in States that have removed Planned Parenthood from Medicaid, since they have done so for a variety of different reasons unconnected to the OBBB. The States that have chosen to remove Planned Parenthood from Medicaid have often done so for their own different policy reasons. *See* Stitt, *supra*. They have done so without citing the OBBB, and have instead referred to the

Supreme Court's decision in *Medina*. *See* Indiana Mot. Planned Parenthood lacks a cause of action to challenge those discretionary state policy judgments, *Medina*, 145 S. Ct. at 2234, and the role of those independent decisions in the causal chain forecloses standing as to any affiliates that lose such funding.

Thus, even if an affiliate's alleged injury—losing revenue and closing clinics—will ever occur, it is unclear whether it is traceable to the federal government. Compl. ¶ 8. Planned Parenthood thus cannot show ex ante that any injury any given affiliate might experience would stem from the federal government, rather than its own choices or independent decision-making by the States.

The States are "independent actors not before the court[]" who have "broad and legitimate discretion" over how they will respond to the OBBB. *Lujan*, 504 U.S. at 562; *accord California* Compl. ¶ 42 ("Medicaid affords 'substantial discretion' to participating states." (quoting *Alexander v. Choate*, 469 U.S. 287, 303 (1985))). Because Planned Parenthood has not shown that States "will likely react in predictable ways" that will harm its affiliates in the same way, *All. for Hippocratic Med.*, 602 U.S. at 383, the district court lacked authority to issue broad

equitable relief for all affiliates. The Court should stay the district court's order.

D. Harm is not redressable for funding or defunding.

The independent decision-making of the States also means that any injuries of Planned Parenthood affiliates cannot be "redressed by a favorable decision" against the federal government. *Lujan*, 504 U.S. at 561. A court may "act only to redress injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court." *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41–42 (1976). Causation and redressability thus "are often flip sides of the same coin." *All. for Hippocratic Med.*, 602 U.S. at 380 (citation modified). And they are absent here for the same reasons.

Planned Parenthood alleges that the OBBB will cause its affiliates to lose revenue and will force those affiliates to reduce services and close clinics. Compl. ¶ 8. It therefore sought and obtained an injunction against the federal government "to prevent [the OBBB] from remaining in effect." *Id.* ¶ 15. But the injunction cannot achieve that result.

Under Medicaid's cooperative federalism regime, the States are the initial decisionmakers regarding payment, even as to federal funds. As several other States allege, "the states—not the federal government—would ultimately be required to ensure that the Planned Parenthood health centers are effectively excluded from federal funding under the [OBBB]." *California* Compl. ¶¶ 3, 231. That is because each state administers its own Medicaid plan and pays both the state and federal share of providers' claims. D.C.Dkt.53-1 ¶¶ 2, 4, 7. So if federal funding is unavailable for a given claim, the States can decide either not to pay that claim or to pay it entirely with their own funds. *See id.* ¶¶ 4, 7, 10. Again, independent decisions by third-party States will therefore determine Planned Parenthood's funding.

Yet while the States are deciding whether to pay the claims at issue, they are "not parties to the case," so the district court "could accord relief only against" the federal government. *Lujan*, 504 U.S. at 568. "As a general rule, an injunction [can] not bind one who was not a party to the cause," so the States are not bound by the district court's order. *CASA*, 145 S. Ct. at 2551 (citation modified). And an injunction against the

federal government alone is not sufficient to redress any harm to Planned Parenthood affiliates.

For States that elect to keep paying Planned Parenthood out of their own coffers, there is no injury to Planned Parenthood and no missing federal funds for the federal government to reimburse. Whatever obligations the federal defendants have under the injunction, they will never even be triggered here if the States voluntarily pay the entire claim without using federal funds or if they decline to pay those claims at all. Likewise for States that have removed Planned Parenthood from Medicaid—doing so means the state will not pay the claim, and so there will be no claim for the federal government to pay its share for. In either case, there will be nothing for the federal government to reimburse, and the district court's injunction is powerless to redress any injury. That the district court purported to do so renders its action void.

II. Rule 19 compels dismissal because States can't be joined.

Even if Planned Parenthood had identified some state that has not yet made a decision about Medicaid funding was likely to deny further claims because of the OBBB, it would still run into a second problem of justiciability. This case should be dismissed under Federal Rule of Civil

Procedure 19 because the States are indispensable parties and sovereign immunity forbids joining them or their officials. This problem infects the district court's injunction across the board.

Rule 19 reflects a constitutional and common-law framework for necessary parties. It embodies "the 'general rule in Equity ... that all persons materially interested [in the suit] [were] to be made parties to it.'" *CASA*, 145 S. Ct. at 2551 (quoting Joseph Story, *Commentaries on Equity Pleadings* § 72, p. 74 (2d ed. 1840)). Joining a necessary party also "preserves the principles of due process that are inherent in Rule 19 and which long antedate the Rules of Civil Procedure." *Disabled in Action of Pa. v. Se. Pa. Transp. Auth.*, 635 F.3d 87, 101 (3d Cir. 2011) (Jordan, J., concurring in part) (citing *Torrence v. Shedd*, 144 U.S. 527, 532 (1892)); *accord Provident Tradesmens Bank & Tr. Co. v. Patterson*, 390 U.S. 102, 123 (1968) (noting the possibility that "an injustice is being, or might be, done to the ... constitutional, rights of an outsider by proceeding with a particular case"). Thus, even where a decision does "not bind absent persons," if "the nonparty's claim or defense may be impaired as a practical matter, ... [that] may be deemed a violation of due process." Wright & Miller, 7 Fed. Prac. & Proc. Civ. § 1602 (3d ed.). Proceeding in

this case without the States would violate Rule 19, the limits of equitable power, and due process.

A. The States are necessary parties.

The States are necessary parties who must be joined if feasible under Rule 19. A party is necessary under Rule 19 when, in that party's absence, the court "cannot accord complete relief among existing parties," or when the party "claims an interest relating to the subject of the action" such that deciding the case without that party may "as a practical matter impair or impede the person's ability to protect the interest." Fed. R. Civ. P. 19(a)(1). Both scenarios apply to the States here.

First, for the same reasons that this action is not redressable, the district court could not "accord complete relief" to Planned Parenthood without joining the States. Fed. R. Civ. P. 19(a)(1)(A). The district court's injunction cannot ensure that any funding will continue for Planned Parenthood since it is the States, not the federal government, that decide whether to pay those claims in the first instance. Only a decision that binds the States could accord complete relief.

Second, the States have an "interest relating to the subject of [this] action" and deciding it without them could harm them and the other

parties. Fed. R. Civ. P. 19(a)(1)(B). The States have an interest in the state funds for any Medicaid claim by Planned Parenthood, and thus they have a related interest in clarity on the conditions that federal law places on those claims. Given Medicaid's quasi-contractual nature, *see Medina*, 145 S. Ct. at 2234, the States have a "legally protected interest" relating to this action, *United States v. San Juan Bay Marina*, 239 F.3d 400, 406 (1st Cir. 2001); *Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030, 1043–44 (9th Cir. 1983) ("[A]ll parties who may be affected by a suit to set aside a contract must be present."); *accord* Wright & Miller, 7 Fed. Prac. & Proc. Civ. § 1613 (3d ed.). Deciding this case without the States would muddy the waters and make it tougher for them to make their claims-payment decisions. It would also potentially leave the federal government subject to inconsistent or conflicting obligations with respect to how these claims must be paid—for example, if an action by States concerning the OBBB leads to an outcome that contradicts the district court's injunction here.

Adjudicating this matter without the States impedes their ability to protect their interests. *See* Fed. R. Civ. P. 19(a)(1)(B)(i). Indeed, the government entities with the primary interest in determining Planned

Parenthood's claims are not the federal agencies, who will not review those claims for months, but the States, which are making claims-payment decisions now. D.C.Dkt.53-1 ¶¶ 7, 9, 11. Shifting legal determinations by courts—before whom the States are not represented and by whom they are not bound—creates confusion over properly applying an otherwise clear law.

Delaying resolution of this lawsuit also threatens the States with additional costs. Any misapplication of the OBBB by the States could draw future federal efforts to claw back misspent federal funds, 42 C.F.R. §§ 430.30, 433.320, or lawsuits by Planned Parenthood asserting entitlement to those funds, 42 U.S.C. § 1396a(a)(3); *Medina*, 145 S. Ct. at 2234. Deciding this controversy without the States impedes their interest in a prompt resolution that would minimize administrative and litigation expenses and prevent them from incurring double liability. *See Cal.* Compl. ¶¶ 132–60 (describing States' administrative costs and liability risks). The States are necessary parties to this dispute.

B. The States cannot be joined without their consent.

That said, joining the States cannot be accomplished because doing so would "deprive the court of subject-matter jurisdiction." Fed. R. Civ.

P. 19(a)(1). The Eleventh Amendment "largely shields states from suit in federal court without their consent" and precludes jurisdiction over such claims. *Hess v. Port Auth. Trans–Hudson Corp.*, 513 U.S. 30, 39 (1994). It forbids suit against the States here.

First, the Medicaid statute did not abrogate the States' immunity. Courts will find an abrogation of Eleventh Amendment immunity only if "Congress has unequivocally expressed its intent to abrogate the immunity" and "acted pursuant to a valid exercise of power." *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 55 (1996) (citation modified). Medicaid's "voluntary" structure for state participation shows no intent to abrogate state sovereignty, but rather to preserve it. *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 433 (2004). Indeed, as spending legislation, Medicaid's requirements are construed less like statutes and "more like treaties between two sovereignties," or "much in the nature of a contract." *See Medina*, 145 S. Ct. at 2231–32 (2025) (citation modified). Not even Congress's plenary power to regulate interstate commerce can abrogate state immunity, *Seminole Tribe*, 517 U.S. at 72, so its power to set conditions on spending certainly cannot do so.

Second, the States have not waived their Eleventh Amendment immunity. The Supreme Court will not find a state to have waived immunity unless it is "stated by the most express language or by such overwhelming implications from the text as will leave no room for any other reasonable construction." *Edelman v. Jordan*, 415 U.S. 651, 673 (1974) (citation modified). There is no evidence showing such a waiver to suit by Planned Parenthood here. To the contrary, Louisiana expressly preserves and re-asserts its immunity.

Neither can Planned Parenthood sue state officials under *Ex parte Young* to dodge immunity. "The theory of *Young* was that an unconstitutional statute is void, and therefore does not impart to the official any immunity from responsibility to the supreme authority of the United States." *Green v. Mansour*, 474 U.S. 64, 68 (1985) (citation modified). Thus, "[i]n accordance with its original rationale, *Young* applies only where the underlying authorization upon which the named official acts is asserted to be illegal." *Papasan v. Allain*, 478 U.S. 265, 277–78 (1986) (citing *Cory v. White*, 457 U.S. 85 (1982)).

That is fatal to overcoming immunity here, because state officials do not enforce the OBBB, but are rather regulated by it. Unlike *Frew*,

which allowed claims against state officials taking an action alleged to be void under the Medicaid Act, 540 U.S. at 433, Planned Parenthood does not allege that the state official action here is void under federal law. The state officials are acting under state law, responding to a challenged federal law by choosing the course they deem most appropriate under the discretion afforded by their individual Medicaid plans. *See Medina*, 145 S. Ct. at 2227 (discussing States' "primary responsibility" over such matters); 42 U.S.C. § 1396a(p)(1) (giving States broad authority to exclude providers "for any reason for which the Secretary could exclude" them "[i]n addition to any other authority" states possess under state law). They may pay Planned Parenthood with their own funds—or they may remove Planned Parenthood as a qualified provider—and Planned Parenthood may not "maintain a § 1983 suit" to challenge their state-law decision either way. *Medina*, 145 S. Ct. at 2234. And *Ex parte Young* is not available for claims that allege "a state official has violated *state* law." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984).

Plus, even after *Ex parte Young*, the Supreme Court reaffirmed that the Eleventh Amendment applies "not only where the state is actually named as a party defendant on the record, but where the proceeding,

though nominally against an officer, is really against the state, or is one to which it is an indispensable party." *Hopkins v. Clemson Agr. Coll. of S.C.*, 221 U.S. 636, 642 (1911). So "[n]o suit, therefore, can be maintained against a public officer, which seeks to compel him … to pay out its money in his possession on the state's obligations … or to do any affirmative act which affects the state's political or property rights." *Id.* But that is what the relief Planned Parenthood seeks would require: forcing reimbursement of Planned Parenthood (despite various state Medicaid plans) so that the federal government might pay its share (despite the OBBB).

Finally, there is no merit to any suggestion that the States are bound by the district court's injunction because it reaches the federal government defendants "and anyone acting in concert or participation" with them. Order, D.C.Dkt.69 at 57–58. On top of the fact that such an injunction could not override Eleventh Amendment immunity as to a non-party State, the district court's order did not do so here regardless. The scope of the district court's order derives from Rule 65, which provides that an injunction binds "other persons who are in active concert or participation" with parties and their various agents. Fed. R. Civ. P.

65(d)(2)(C). That language is meant to cover "those identified with [the parties] in interest, in 'privity' with them, represented by them or subject to their control." *Regal Knitwear Co. v. N.L.R.B.*, 324 U.S. 9, 14 (1945). In the Medicaid context, where the States and federal government participate by agreement as co-sovereigns, the States are not united in interest, in privity with, or controlled by the federal government. They thus remain immune to the district court's order.

C. This action cannot proceed without the States.

Because the States cannot be joined to this action without their consent, it must be dismissed. Again, "when it appears that a state is an indispensable party to enable a federal court to grant relief sought by private parties, and the state has not consented to be sued, the court will refuse to take jurisdiction." *Fiske*, 290 U.S. at 28 (collecting cases). That rule applies here. Just as courts require that actions "challenging the validity of a contract" cannot proceed without joining "all parties to the contract," Wright & Miller, 7 Fed. Prac. & Proc. Civ. § 1613 (3d ed.), an action challenging the Medicaid relationship "in the nature of a contract" cannot proceed without the States. *See Medina*, 145 S. Ct. at 2231–32.

The Rule 19(b) criteria weigh uniformly against allowing this action to proceed without the States. A judgment without the States would prejudice them by purporting to control their Medicaid programs in their absence. And as explained above, it would prejudice the federal government by subjecting it to potentially conflicting obligations regarding the same funds. Fed. R. Civ. P. 19(b)(1). That prejudice cannot be lessened by the scope of relief since, as outlined above, relief against the States is necessary to redress Planned Parenthood's alleged injuries. *Id.* 19(b)(2). Such a judgment would not be adequate to provide either finality or redress. *Id.* 19(b)(3).

Not even the last criterion—whether the plaintiff would have another remedy—favors Planned Parenthood. *Id.* 19(b)(4). Of course, "[d]ismissal under Rule 19(b) will mean, in some instances, that plaintiffs will be left without a forum for definitive resolution of their claims." *Republic of Philippines v. Pimentel*, 553 U.S. 851, 872 (2008). That is particularly the case for actions that cannot proceed without necessary parties who have sovereign immunity. *See id.* But here, States have administrative processes that allow providers to challenge their exclusion from States' Medicaid programs. *Medina*, 145 S. Ct. at 2239; 42

U.S.C. § 1396a(a)(3); 42 C.F.R. § 1002.210. This case cannot proceed without the States.

CONCLUSION

The Court should grant the motion for a stay pending appeal.

Dated: September 3, 2025

Respectfully submitted,

/s/ Kelsey L. Smith

JOHN J. BURSCH
ERIN M. HAWLEY
LINCOLN DAVIS WILSON
ALLIANCE DEFENDING FREEDOM
440 First Street, NW, Suite 600
Washington, DC 20001

JAMES A. CAMPBELL
ERIK C. BAPTIST
ALLISON H. POPE
ALLIANCE DEFENDING FREEDOM
44180 Riverside Parkway
Lansdowne, VA 20176

ELIZABETH MURRILL
ATTORNEY GENERAL
BENJAMIN J. AGUIÑAGA
SOLICITOR GENERAL
KELSEY L. SMITH
DEPUTY SOLICITOR GENERAL
Office of the Attorney General
1885 N 3rd St
Baton Rouge, LA 70802
Tel: (225) 428-7432
Smithkel@ag.louisiana.gov

Counsel for Amicus Curiae State of Louisiana

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the typeface requirements of Rule 32(a)(5) and the typestyle requirements of Rule 32(a)(6) because this brief was prepared in 14-point Century Schoolbook, a proportionally spaced typeface, using Microsoft Word. Fed. R. App. P. 29(a), 32(g)(1). There is no type-volume limitation for an amicus brief in support of an emergency motion. This brief contains 6,576 words. Louisiana has sought leave of Court to file this brief.

/s/ *Kelsey L. Smith*
Kelsey L. Smith

CERTIFICATE OF SERVICE

I hereby certify that on this date, an electronic copy of the foregoing brief was filed with the Clerk of Court for the United States Court of Appeals for the First Circuit using the ACM/ECF filing system and that service will be accomplished using the CM/ECF system.

/s/ *Kelsey L. Smith*
Kelsey L. Smith