Nos. 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 THE 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 OF 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 in Case No. 1:25-cv-11913

BRIEF OF AMICI CURIAE ADVANCING AMERICAN FREEDOM; ALABAMA POLICY INSTITUTE; AMERICA'S WOMEN; AMERICAN VALUES; ANGLICANS FOR LIFE; ASSOCIATION OF MATURE AMERICAN CITIZENS; FRAN BEVAN, PHYLLIS SCHLAFLY'S PENNSYLVANIA EAGLE FORUM; [ADDITIONAL AMICUS LISTED ON INSIDE COVER]

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October 3, 2025

CHRISTIAN MEDICAL & DENTAL ASSOCIATIONS; CONCERNED WOMEN FOR AMERICA; DEMOCRATS FOR LIFE; EAGLE FORUM; FRONTIERS OF FREEDOM; CHARLIE GEROW; INTERNATIONAL CONFERENCE OF EVANGELICAL CHAPLAIN ENDORSERS; JCCWATCH.ORG; LUTHERAN CENTER FOR RELIGIOUS LIBERTY; NATIONAL APOSTOLIC CHRISTIAN LEADERSHIP CONFERENCE; NEW YORK STATE CONSERVATIVE PARTY; NORTH CAROLINA VALUES COALITION; MELISSA ORTIZ, PRINCIPAL & FOUNDER, CAPABILITY CONSULTING; PRO-LIFE WISCONSIN; ANN SCHOCKETT, PAST PRESIDENT, NATIONAL FEDERATION OF REPUBLICAN WOMEN, TREASURER, SAVE THE PERSECUTED CHRISTIANS; DR. GREGORY P. SELTZ, EXECUTIVE DIRECTOR, LCRL, SPEAKER EMERITUS, THE LUTHERAN HOUR; PAUL STAM, FORMER SPEAKER PRO TEM, NC HOUSE OF REPRESENTATIVES; STAND FOR GEORGIA VALUES ACTION; STUDENTS FOR LIFE OF AMERICA; THE FAMILY FOUNDATION OF VIRGINIA; RICHARD VIGUERIE, CHAIRMAN, CONSERVATIVE HQ.COM; SUZI VOYLES, PRESIDENT, EAGLE FORUM OF GEORGIA; WISCONSIN FAMILY ACTION, INC.; AND YOUNG AMERICA'S FOUNDATION IN SUPPORT OF DEFENDANTS-APPELLANTS

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

The amici curiae Advancing American Freedom, Inc.; Alabama Policy Institute; American Values; America's Women; Anglicans for Life; Association of Mature American Citizens; Fran Bevan, Phyllis Schlafly's Pennsylvania Eagle Forum; Christian Medical & Dental Associations; Concerned Women for America; Democrats for Life; Eagle Forum; Frontiers of Freedom; Charlie Gerow; International Conference of Evangelical Chaplain Endorsers; JCCWatch.org; Lutheran Center for Religious Liberty; National Apostolic Christian Leadership Conference; New York State Conservative Party; North Carolina Values Coalition; Melissa Ortiz, Principal & Founder, Capability Consulting; Pro-Life Wisconsin; Ann Schockett, Past President, National Federation of Republican Women, Treasurer, Save the Persecuted Christians; Dr. Gregory P. Seltz, Executive Director, LCRL, Speaker Emeritus, The Lutheran Hour; Paul Stam, Former Speaker Pro Tem, NC House of Representatives; Stand for Georgia Values Action; Students for Life of America; The Family Foundation of Virginia; Richard Viguerie, Chairman, ConservativeHQ.com; Suzi Voyles, President, Eagle Forum of Georgia; Wisconsin Family Action, Inc.; and Young America’s Foundation are nonprofit corporations. They do not issue stock and are neither owned by nor are the owners of any other corporate entity, in part or in whole. They have no parent companies, subsidiaries,

affiliates, or members that have issued shares or debt securities to the public. The corporations are operated by volunteer boards of directors.

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STATEMENT OF INTEREST OF AMICI CURIAE[1]

Advancing American Freedom (AAF) is a nonprofit organization that promotes and defends policies that elevate traditional American values, including the uniquely American idea that all people are created equal and endowed by their Creator with unalienable rights to life, liberty, and the pursuit of happiness. AAF "will continue to serve as a beacon for conservative ideas, a reminder to all branches of government of their responsibilities to the nation,"[2] and believes that the governmental structures established by the Constitution are necessary for the preservation of the liberty of the people. Advancing American Freedom files this brief on behalf of its 1,732 members in Massachusetts and its 3,346 members in the First Circuit.

Amici Alabama Policy Institute; American Values; America's Women; Anglicans for Life; Association of Mature American Citizens; Fran Bevan, Phyllis Schlafly's Pennsylvania Eagle Forum; Christian Medical & Dental Associations; Concerned Women for America; Democrats for Life; Eagle Forum; Frontiers of Freedom; Charlie Gerow; International Conference of Evangelical Chaplain

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[1] Plaintiffs-Appellees have consented to the filing of this amicus brief. Defendants-Appellants do not object to the filing of this amicus brief. No counsel for a party authored this brief in whole or in part. No person other than Amicus Curiae and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

[2] Edwin J. Feulner, Jr, *Conservatives Stalk the House: The Story of the Republican Study Committee* 212 (Green Hill Publishers, Inc. 1983).

Endorsers; JCCWatch.org; Lutheran Center for Religious Liberty; National Apostolic Christian Leadership Conference; New York State Conservative Party; North Carolina Values Coalition; Melissa Ortiz, Principal & Founder, Capability Consulting; Pro-Life Wisconsin; Ann Schockett, Past President, National Federation of Republican Women, Treasurer, Save the Persecuted Christians; Dr. Gregory P. Seltz, Executive Director, LCRL, Speaker Emeritus, The Lutheran Hour; Paul Stam, Former Speaker Pro Tem, NC House of Representatives; Stand for Georgia Values Action; Students for Life of America; The Family Foundation of Virginia; Richard Viguerie, Chairman, ConservativeHQ.com; Suzi Voyles, President, Eagle Forum of Georgia; Wisconsin Family Action, Inc.; and Young America's Foundation believe, as did America's Founders, that compliance with the Constitution's limits on government power is essential for the preservation of American freedom.

INTRODUCTION

At issue in this case is Congress's decision to withhold Medicaid funding from certain abortion clinics and their affiliates. The Court's consideration of this case will necessarily happen against the backdrop of nearly a century of constitutionally dubious Supreme Court precedent on the issue of federal spending. This Court is bound by Supreme Court precedent, however dubious, and so the constitutionality of federal abortion funding, though it cannot direct this Court's consideration of the issue presently, is nonetheless of great importance.

In July of this year, Congress passed and President Trump signed the One Big Beautiful Bill Act. Section 71113 of the bill withdraws for one year funding under Title XIX of the Social Security Act from certain abortion providers and their affiliated clinics. One Big Beautiful Bill Act, Pub. L. No. 119-21, § 71113, 139 Stat. 300 (2025). This legislative decision to withhold funding for many abortion clinics, including Planned Parenthood clinics, comes on the heels of decades of scandals from Planned Parenthoods around the county. Congress alone may exercise "power over the" federal "purse"[3] and can and must be able to direct taxpayer funds away from organizations that perform abortions.

As a 2016 congressional report found, "abortion clinics and Tissue Procurement Businesses (TPBs) may have violated federal law by the payments they collected from the sale of fetal tissue."[4] While federal law allows for certain costs associated with the transfer of human fetal tissue, it prohibits the transfer of that tissue for valuable consideration.[5] However, the report found that "payments made by the customer to the procurement business appear to exceed the costs incurred on

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[3] Federalist No. 58 at 303 (James Madison) (George Carey & James McClellan eds., 2001).

[4] Staff of S. Comm. on Energy and Commerce, 114th Cong., Select Investigative Panel Final Report at 31 (Comm. Print 2016) available at https://www.govinfo.gov/content/pkg/CPRT-114HPRT24553/pdf/CPRT-114HPRT24553.pdf.

[5] *Id*.

the procurement business by a factor of 300 to 400 percent."[6] Among the entities that the report found may have violated federal law were "four Planned Parenthood clinics."[7] Evidence also suggests that Planned Parenthood clinics have repeatedly failed to intervene to protect minors who were the victims of sexual abuse.[8]

For decades, Congress has repeatedly sought to prevent federal tax dollars from being used to fund abortions, for example, through the Hyde Amendment.[9] But prohibiting direct funding of abortions does not mean that taxpayer dollars are not helping to pay for abortions. For example, the congressional report noted that "while abortion providers are not permitted to receive reimbursement *for abortion* from Medicaid . . . Planned Parenthood would separate out charges for services and products rendered in connection with abortions . . . and submit those 'fragmented' or 'unbundled' charges as claims for Medicaid reimbursement."[10] In other words,

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[6] *Id*.
[7] *Id*. at 34.
[8] Carole Novielli, *Planned Parenthood's repeated failure to report child sexual abuse has impacted countless lives*, Live Action (Jan. 15, 2025 5:41 PM) https://www.liveaction.org/news/planned-parenthoods-repeated-failure-reporting-sexual-abuse.
[9] *The Hyde Amendment: An Overview*, Congressional Research Service (July 20, 2022) https://www.congress.gov/crs-product/IF12167.
[10] Staff of S. Comm. on Energy and Commerce, 114th Cong., Select Investigative Panel Final Report at 25 (Comm. Print 2016) available at https://www.govinfo.gov/content/pkg/CPRT-114HPRT24553/pdf/CPRT-114HPRT24553.pdf.

when Medicaid funds Planned Parenthood and other abortion clinics, it is funding abortion.

Congress's authority to fund abortions in general is constitutionally dubious. Despite the Supreme Court's rulings over the last 90 years, Article I of the Constitution does not grant Congress an independent spending power. As such, spending must be necessary and proper to the execution of one of the federal government's constitutionally enumerated powers. Since no such power justifies the funding of abortions, the funds Plaintiffs-Appellees demand here would be unconstitutional if granted.

The Supreme Court's precedents are binding on this Court, but these issues deserve consideration and further development by the Supreme Court, which can and should correct erroneous precedent.

ARGUMENT

I. The Funding Plaintiffs-Appellees Demand Would be Beyond the Power of Congress if Enacted.

A. The General Welfare Clause of Article I, Section 8, Clause 1 does not grant Congress an independent spending power.

Article I, Section 8, Clause 1 does not grant Congress an independent spending power. *See, Health and Hospital Corp. of Marion County v. Talevski*, No. 21-806, slip op. at 12 (June 8, 2023) (Thomas, J., dissenting) ("[W]hile Congress undoubtedly possesses the power to direct the expenditure of federal funds, it is

important to note that the Constitution contains no "spending clause." From the beginning, some have located the spending power in the General Welfare Clause, and that view has generally been accepted by this Court's modern doctrine . . . Yet, there are serious problems with that view."). *But see*, *Nat'l Fed'n of Indep. Bus.* v. *Sebelius*, 567 U.S. 519, 576 (2012) (Opinion of Roberts, C.J.) ("The Spending Clause grants Congress the power 'to pay the Debts and provide for the . . . general Welfare of the United States.'"). The federal government is "one of enumerated powers," *McCulloch v. Maryland*, 4 Wheat. 316, 405 (1819), and that "enumeration of powers is also a limitation of powers, because '[t]he enumeration presupposes something not enumerated." *Sebelius*, 567 U.S. at 534 (Opinion of Roberts, C.J.) (*Gibbons v. Ogden*, 9 Wheat. 1, 195 (1824)). Article I grants Congress the power "[t]o lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States." U.S. Const. art. I § 8 cl. 1.

The Supreme Court has referred to the phrase, "to pay the Debts and provide for the common Defense and general welfare of the United States," as the "Spending Clause," *South Dakota v. Dole*, 483 U.S. 203, 206 (1987), and has interpreted it as a grant of spending power to Congress that is "not limited by direct grants of legislative power found in the Constitution." *Id*. (internal quotation marks omitted)

(quoting *United States v. Butler*, 297 U.S. 1, 66 (1936)). This expansive reading was first advanced by Alexander Hamilton and later Joseph Story, before being adopted by the Court. Although the Court explained in *Butler* that the power conveyed by the "Spending Clause" is not unlimited, it made any supposed limitations largely meaningless by "requir[ing] a showing that by no reasonable possibility can the challenged legislation fall within the wide range of discretion permitted to Congress." *Butler*, 297 U.S. at 67. "The real-life result of this interpretation is that Congress can, and does, spend money on pretty much whatever it wants."[11]

The Hamilton-Story interpretation of Article I, Section 8, Clause 1, however, is not supported by the text of the Constitution or its history. "The General Welfare Clause is simply part of the Taxing Clause" and is "most natural read as a qualification on the substantive taxing power." *Talevski*, No. 21-806, slip op. at 12 (Thomas, J., dissenting).

Further, the Hamilton-Story interpretation makes a mess of the "elegantly drawn"[12] Constitution by rendering surplusage the enumeration of several of Congress's powers[13] and by reading a subordinate clause as a grant of independent

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[11] Robert G. Natelson, *The General Welfare Clause and the Public Trust: An Essay in Original Understanding*, 52 U. Kan. L. Rev. 1, 9 (2003).
[12] *Id*. at 14.
[13] Powers rendered surplusage by the Hamilton-Story reading include the powers to "support Armies," "maintain a Navy," "purchase 'forts, Magazines, [and] Arsenals," "establish Post Offices and Post Roads," "constitute Tribunals inferior to the supreme Court," and "purchase 'dock-Yards and other needful Buildings.'" *Id*, at

power when no other provision of Article I, section 8 is structured in that way.[14] Another of the Hamilton-Story reading's "serious textual defects"[15] is that it anachronistically assumes that "pay" and "provide for" are synonyms when, in fact, the Constitution's use of the word "provide" "embodies an element of futurity inconsistent with immediate spending or appropriation."[16]

The history of the text of Article I, Section 8, Clause 1, too, shows that it does not grant Congress a general spending power. As Professor Phillip Hamburger has explained, the constitutional convention replaced an errant semicolon after the word "Excises" with a comma, making it "abundantly clear that the phrase about 'providing for . . . general welfare' was merely a limitation on the taxing power, not a spending power."[17] Further, the phrase "general welfare" was used in drafts and the final versions of both the Articles of Confederation and the Constitution.[18] The phrase "seems to have been shorthand for 'the benefit of the interests we have in common rather than the benefit of particular localities or parties," and thus "was essentially not a phrase of power, but of *limitation*."[19]

12-13 (alteration in original).

[14] Unlike ever other enumerated power, the Hamilton-Story reading of Article I, Section 8, Clause 1 is that it "grants an authority to tax, then grants authority to spend, then doubles back to restrict the authority to tax." *Id*. at 14.

[15] *Id*. at 12.

[16] *Id*. at 15-16.

[17] *Id*.

[18] *Id*. at 29.

[19] *Id*. (emphasis in original).

In practice, the Hamilton-Story view has converted the national government from one of limited enumerated powers to be used to advance national and general ends to one that has wide-ranging powers that can reach local concerns. Hamilton and Story themselves rejected this outcome. For example, Hamilton argued that appropriations must be for a purpose that is "general, and not local." *Butler*, 297 U.S. at 67. James Monroe, "an advocate of Hamilton's doctrine," wrote that Congress "certainly" does not have the power "to raise and appropriate the money to any and every purpose according to their will and pleasure." *Id*. That reading is consistent with Hamilton's assurance in the Federalist Papers that such matters as "the supervision of agriculture and of other concerns of a similar nature, all those things, in short, which are proper to be provided for by local legislation, can never be desirable cares of a general jurisdiction."[20] Story, too, "ma[d]e it clear that the powers of taxation and appropriation extend only to matters of national, as distinguished from local, welfare." *Butler*, 297 U.S. at 67.

The Court's adoption of the Hamilton-Story view is inconsistent with the text and history of the Constitution and has played a significant role in turning the limited national government created by the Constitution into a government of general powers to address even local concerns.

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[20] Federalist No. 17 at 81 (Alexander Hamilton) (George Carey & James McClellan eds., 2001).

Congress's power to appropriate funds, then, is not a legitimate exercise of power under Article I, Section 8, Clause 1. Instead, Congress may spend federal funds when doing so is "necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by [the] Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. Const. art. I § 8 cl. 18.

B. Laws enacted by Congress that are not a direct exercise of one of its enumerated powers must be necessary and proper exercises of one of the government's enumerated powers.

Along with its enumerated powers, Article I grants Congress the power to enact laws that are "necessary and proper for carrying into execution" its other enumerated powers. U.S. Const. art. I, § 8, cl. 18. The Court has "long" read the Necessary and Proper Clause "to give Congress great latitude in exercising its powers," in part because of the Court's "general reticence to invalidate the acts of the Nation's elected leaders."[21] *Sebelius*, 567 U.S. at 537. (Opinion of Roberts, C.J.) In doing so, it has set loose the lion the Framers of the Constitution sought to cage.

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[21] Here and in the context of the "limits" of the "Spending Clause" discussed above, the Court has granted Congress wide latitude in defining the limits of its own powers. However, Alexander Hamilton in Federalist 78 explained in detail why this should not be so.

> There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant

The original meaning of the Necessary and Proper Clause is much narrower than the Court has, at times, read it. The Clause "does not license the exercise of any 'great substantive and independent power[s]' beyond those specifically enumerated." *Sebelius*, 567 U.S. at 559 (Opinion of Roberts, C.J.) (quoting *McCulloch*, 4 Wheat. at 411, 421). Rather, "the Necessary and Proper Clause is exceeded . . . when [congressional action] violates the background principle of enumerated (and hence limited) federal power." *Sebelius*, 567 U.S. at 653 (Scalia, J., dissenting). The Necessary and Proper Clause merely "ensure[s] that the Congress shall have all means at its disposal to reach the heads of power that admittedly fall within its grasp . . . Congress shall not fail because it lacks the means of

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> is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid. If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their WILL to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority.

Federalist No. 78 at 403 (Alexander Hamilton) (George Carey & James McClellan eds., The Liberty Fund 2001).

implementation."[22] The clause is not "a pretext . . . for the accomplishment of objects not entrusted to the government." *Raich*, 545 U.S. at 66 (Thomas, J., dissenting) (quoting *McCulloch*, 4 Wheat. at 423) (internal quotation marks omitted). As Hamilton explained in Federalist 33, the power granted to Congress by the Necessary and Proper Clause is only to effectuate the government's other powers.[23]

Even Chief Justice John Marshall, in his famous explication of the clause, generally taken to be an expansive reading, demanded that the "means . . . consist with the letter and spirit of the constitution." *McCulloch*, 4 Wheat. at 421. As Justice Thomas has explained, *McCulloch* created a two-part test for compliance with the Necessary and Proper Clause:

> First, the law must be directed toward a "legitimate" end, which *McCulloch* defines as one "within the scope of the [C]onstitution"—that is, the powers expressly delegated to the Federal Government by some provision in the Constitution . . . Second, there must be a necessary and proper fit between the "means" (the federal law) and the "end" (the enumerated power or powers) it is designed to serve . . . The means Congress selects will be deemed "necessary" if they are "appropriate" and "plainly adapted" to the exercise of an enumerated power, and "proper" if they are not otherwise "prohibited" by the Constitution and not "[in]consistent" with its "letter and spirit."

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[22] Richard A. Epstein, *The Proper Scope of the Commerce Power*, 73 Va. L. Rev. 1387, 1397–98 (1987).

[23] Federalist No. 33 at 159 (Alexander Hamilton) (George Carey & James McClellan eds., 2001).

United States v. Comstock, 560 U.S. 126, 160-61 (2010) (Thomas, J., dissenting) (alteration in original) (quoting *McCulloch*, 4 Wheat. at 421). Both the letter and the spirit of the Constitution require Congress to exercise its power under the clause "in a manner consistent with basic constitutional principles." *Gonzales v. Raich*, 545 U.S. 1, 52 (2005) (O'Connor, J. dissenting) (citing *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 585 (1985) (O'Connor, J., dissenting)).

II. Medicaid Funding of Abortion is Neither an Exercise of an Enumerated Power nor Necessary or Proper to Effectuating One of the Government's Powers.

Medicaid funding of abortions is not necessary or proper to carrying into any of the national government's powers, nor does it purport to be. The provision challenged in this case modifies payments made under Title XIX of the Social Security Act. One Big Beautiful Bill Act, Pub. L. No. 119-21, § 71113, 139 Stat. 300 (2025). Passed in 1935, the Social Security Act describes itself as "[a]n act to provide for the general welfare by establishing a system of Federal old-age benefits." Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 620 (1935). Challenged almost immediately, the Supreme Court upheld the law in *Helvering v. Davis* as an exercise of Congress's power to "spend money in aid of the 'general welfare.'" 301 U.S. 619, 640 (1937). As in *Butler*, the Court gave virtually unlimited deference to Congress as to the meaning of "general welfare," *Helvering*, 619 U.S. at 641, setting aside its responsibility "to say what the law is." *Loper Bright v. Raimondo*, No. 22-451, slip

op. at 7 (2023) (internal quotation marks omitted) (quoting *Marbury v. Madison*, 1 Cranch 137, 177 (1803)).

Congress acted pursuant to a supposedly independent spending power when it enacted the Social Security Amendments of 1965 which includes Title XIX, the spending provision whose alteration is challenged here.

As noted above, Article I, Section 8, Clause 1 of the Constitution does not grant Congress an independent spending power and so the spending Plaintiffs-Appellees demand that this Court reinstate rest upon a constitutionally dubious foundation.

The Necessary and Proper Clause, not invoked by the statutes or the Supreme Court, cannot save the federal funding for abortion at issue here. First, and foremost, as already mentioned, the spending at issue is not, and does not claim to be, an exercise of one of Congress's enumerated powers other than the supposed "spending power." Because the Clause "does not license the exercise of any 'great substantive and independent power[s]' beyond those specifically enumerated." *Sebelius*, 567 U.S. at 559 (Opinion of Roberts, C.J.) (quoting *McCulloch*, 4 Wheat. at 411, 421), that fact is dispositive.

Further, though, federal funding of abortion would not be "proper" even if it were necessary to the exercise of some enumerated power. The scope of the powers vested by the Necessary and Proper Clause is limited by "the word 'proper' [which]

in this context requires executory laws to be distinctively and peculiarly within the jurisdictional competence of the national government—*that is, consistent with background principles of separation of powers, federalism, and individual rights.*"[24] An act of Congress under the clause can only be "proper" if it is "not otherwise 'prohibited' by the Constitution and not '[in]consistent' with its 'letter and spirit.'" *Comstock*, 560 U.S. at 161 (Thomas, J., dissenting) (alteration in original) (quoting *McCulloch*, 4 Wheat. at 411)).

The Tenth Amendment "reserve[s] to the States respectively, or to the people" all "powers not delegated to the United States by the Constitution, nor prohibited by it to the States." U.S. Const. amend. X. Among the powers the Federalists insisted during the ratification debates would be reserved to the states was authority over care for the poor. "Alexander Contee Hanson, Tench Coxe, and other federalists ruled this area of life out of the national sphere."[25] After all, care for the poor is naturally a matter of local concern of the type that "can never be desirable cares of a general jurisdiction."[26]

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[24] Gary S. Lawson, *The Rise and Rise of the Administrative State*, 107 Harv. L. Rev. 1231, 1234–35 (1994) (emphasis added).
[25] Robert G. Natelson, *The Enumerated Powers of the States*, 3 Nev. L.J. 469, 486 (2003).
[26] Federalist No. 17 at 81 (Alexander Hamilton) (George Carey & James McClellan eds., 2001).

Relatedly, "health and safety is 'primarily, and historically, a matter of local concern." *Gonzales v. Oregon*, 546 U.S. 243, 217 (2006) (quoting *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 719 (1985)). Federal action interfering with such a "matter of local concern," is improperly harmful to the constitutional principle of federalism when it is not a legitimate exercise of one of the federal government's enumerated powers.

For the foregoing reasons, the funding at issue in this case would be unconstitutional if Congress sought to appropriate it. The Supreme Court's precedent, binding on this Court, suggests otherwise, however. Thus, while the foregoing analysis cannot be determinative for this Court here, it demonstrates a need on the part of the Supreme Court to reverse past decisions not in accord with the original meaning of the Constitution.

CONCLUSION

This Court should rule for Defendants-Appellants.

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), I certify that This brief complies with the length limitation of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) and First Circuit Rule 32(g)(1) because this brief contains 3,813 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Times New Roman 14-point font.

/s/ J. Marc Wheat
J. MARC WHEAT

CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2025, I caused the foregoing Brief to be filed electronically using the Court's CM/ECF system. I further certify that service will be accomplished electronically on all counsel of record, who are registered CM/ECF users.

/s/ J. Marc Wheat
J. MARC WHEAT