No. 25-1829

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

THE FAMILY PLANNING ASSOCIATION OF MAINE, d/b/a MAINE FAMILY PLANNING,

Plaintiff-Appellant,

v.

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

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Maine

RESPONSE TO PLAINTIFF'S MOTION FOR AN INJUNCTION PENDING APPEAL

BRETT A. SHUMATE
Assistant Attorney General
CRAIG M. WOLFF
Acting United States Attorney
ERIC D. MCARTHUR
Deputy Assistant Attorney General
DANIEL TENNY
STEVEN H. HAZEL
Attorneys, Appellate Staff
Civil Division, Room 7217
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 514-2498
Steven.H.Hazel@usdoj.gov

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases: **Page(s)**

Statutes:

Regulatory Material:

Legislative Material:

Other Authorities:

INTRODUCTION

Plaintiff Maine Family Planning urges this Court to enjoin the enforcement of an Act of Congress establishing a new limit on federal Medicaid spending. All three democratically elected parts of the government—both Houses of Congress and the President—concluded that federal Medicaid funds should no longer subsidize certain large abortion providers. Plaintiff's sole claim is that this funding restriction cannot withstand rational-basis review under the Fifth Amendment's equal-protection component. The district court correctly concluded that this claim lacks merit and that plaintiff is therefore not entitled to a preliminary injunction or an injunction pending appeal.

Plaintiff's request that this Court enter an injunction pending appeal fails on many levels. As an initial matter, this Court has already determined that the statute should remain in effect pending the Court's merits review. In related litigation, Planned Parenthood Federation of America and two of its members (collectively, Planned Parenthood) raise multiple constitutional challenges to the statute, including an equal-protection claim. Although the district court in that case entered preliminary injunctions, a unanimous panel of this Court granted the government's motion to stay those injunctions, *see* Stay Order, *Planned Parenthood v. Kennedy*, Nos. 25-1698, 25-1755 (Sept. 11, 2025), and then denied a motion for reconsideration, *see* Order, *Planned Parenthood*, Nos. 25-1698, 25-1755 (Sept. 18, 2025). Plaintiff's only argument for a

different result here depends on an almost half-century-old Supreme Court summary affirmance that has no effect outside the confines of that case.

In any event, the district court properly recognized that the statute readily satisfies rational-basis review. Under that deferential standard, "legislation is presumed to be valid and will be sustained if the classification drawn . . . is rationally related to a legitimate state interest." *González-Droz v. González-Colón*, 660 F.3d 1, 9 (1st Cir. 2011). Here, the funding restriction furthers Congress's legitimate interests in ensuring that taxpayer dollars do not indirectly subsidize abortions and in declining to support entities engaged in a practice that many Americans find abhorrent. Plaintiff's contrary arguments fail to grapple with the rational-basis standard and instead accuse Congress of animus toward Planned Parenthood, a non-party. That is not plaintiff's argument to make and is unsupported in any event.

The remaining factors confirm that plaintiff is not entitled to an injunction pending appeal. The Supreme Court has traditionally presumed that "all Acts of Congress . . . 'should remain in effect pending a final decision on the merits by th[e Supreme] Court.'" *Turner Broad. Sys., Inc. v. FCC*, 507 U.S. 1301, 1301 (1993) (Rehnquist, C.J., in chambers). That presumption applies with particular force here, where an injunction would interfere with the elected Branches' resolution of a significant and contested question of public policy. By contrast, plaintiff has no cognizable interest in obtaining federal funds to which it is not legally entitled. The motion for an injunction pending appeal should be denied.

STATEMENT

1. Under the Medicaid program, the federal government supplies federal funds to states to help them cover medical costs for certain low-income individuals. *See* 42 U.S.C. § 1396 *et seq.* The states pay healthcare providers (or health plans in a managed care delivery system) for Medicaid-covered care furnished to eligible individuals and then seek federal matching funds from the Department of Health and Human Services. *See id.* §§ 1396a, 1396b. Since its inception, the Medicaid statute has included numerous restrictions on how federal dollars are spent. *See, e.g.*, *id.* § 1396b(i). Congress expressly reserved "[t]he right to alter, amend, or repeal" any aspect of the program. *Id.* § 1304.

At issue here is a recent Act of Congress establishing a new limit on federal Medicaid spending. Section 71113 of the 2025 Reconciliation Act generally forbids the use of federal Medicaid funds "to make payments to a prohibited entity." Act of July 4, 2025, Pub. L. No. 119-21, § 71113, 139 Stat. 72, 300-01. Congress defined a "prohibited entity" as an entity that, "as of [October 1, 2025]," provides elective abortions; "is an organization described in section 501(c)(3) of the Internal Revenue Code"; is an "essential community provider" primarily engaged in specified functions; and received over $800,000 in federal and state Medicaid funds in 2023. *Id.* at 300. A "prohibited entity" is "an entity, including its affiliates, subsidiaries, successors, and clinics," that meets these criteria. *Id.*

2. Plaintiff Maine Family Planning operates or supports more than 60 clinics that serve tens of thousands of patients each year. Dkt. No. 1, at 6-7. Plaintiff alleges that it falls within Section 71113's prohibited-entity definition but contends that the statute cannot withstand rational-basis review under the Fifth Amendment's equal-protection component. *Id.* at 18, 23-24. On the same day that plaintiff initiated this suit, it moved for a preliminary injunction. Dkt. No. 5.

Following a hearing, the district court denied plaintiff's motion. With respect to the merits, the court explained that under rational-basis review, plaintiff bears the burden of "convincingly negat[ing] any reasonable state of facts that would rationalize the prohibition against its receipt of federal Medicaid funds." Dkt. No. 31, at 13 (Aug. 25 Order). Applying that standard, the court rejected plaintiff's claim that Section 71113 reflects animus and instead recognized that "the more plausible likelihood" is that the statute embodies "a rational desire to withhold a Medicaid subsidy from the primary providers of non-qualifying abortions." *Id.* at 11. On the equities, the court observed that plaintiff's asserted interest in continued access to Medicaid reimbursements is not "unassailable in the context of a federal legislative initiative to withdraw one tranche of federal funding." *Id.* at 17. It further observed that because Section 71113 is a product of the democratic process, "[i]t would be a special kind of judicial hubris to declare that the public interest has been undermined by the public." *Id.* at 19.

The district court also denied plaintiffs' motion for an injunction pending appeal. It explained that "[w]ith Section 71113 . . . Congress appears to be doing with Medicaid spending what it routinely does in any number of other pieces of legislation, *i.e.*, drawing lines between preferred and disfavored conduct." Dkt. No. 38, at 4 (Sept. 8 Order). Because the court found that plaintiff "is not likely to succeed on the merits," it recognized "that an injunction pending appeal is not warranted." *Id.* at 8.

ARGUMENT

An injunction pending appeal is an "extraordinary remedy that may only be awarded upon a clear showing that the [movant] is entitled to such relief." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). To be eligible for an injunction pending appeal, a movant "must make a strong showing that they are likely to succeed on the merits, that they will be irreparably harmed absent emergency relief, that the balance of the equities favors them, and that an injunction is in the public interest." *Together Emps. v. Mass Gen. Brigham Inc.*, 19 F.4th 1, 7 (1st Cir. 2021). Where the plaintiff seeks injunctive relief against the government, the third and fourth factors merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). Plaintiff satisfies none of these requirements.

I. This Court Has Already Determined That Section 71113 Should Remain In Effect

As plaintiff admits (Mot. 3), this Court recently considered a parallel challenge to Section 71113 and concluded that the government should be permitted to enforce

the statute while the Court's merits review is underway. Planned Parenthood brought a suit raising various constitutional challenges to Section 71113, including a claim that the statute is inconsistent with the Fifth Amendment's equal-protection component. *See* Compl. 42, *Planned Parenthood v. Kennedy*, No. 25-cv-11913 (D. Mass. July 7, 2025). After a district court preliminarily enjoined the statute's enforcement, the government appealed and requested a stay. This Court granted that request, explaining that "defendants have met their burden to show their entitlement to a stay of the preliminary injunctions pending the disposition of the appeals of the same." Stay Order 2, *Planned Parenthood v. Kennedy*, Nos. 25-1698, 25-1755 (1st Cir. Sept. 11, 2025). This Court subsequently denied reconsideration of that order but expedited the briefing in the *Planned Parenthood* case. Order, *Planned Parenthood*, Nos. 25-1698, 25-1755 (Sept. 18, 2025).

There is no basis for a different result here. Planned Parenthood raised an equal-protection claim, argued that Section 71113 cannot withstand rational-basis review, and included that argument in their opposition to the government's request for a stay in this Court. *See* Stay Opp'n. 14, *Planned Parenthood*, Nos. 25-1698, 25-1755 (Sept. 3, 2025). Yet this Court entered a stay permitting the government to enforce Section 71113. If anything, the government's position here is even stronger than in the *Planned Parenthood* case given that plaintiff bears the burden of justifying its request for an injunction pending appeal and given that one of plaintiff's primary arguments is that the government has animus toward Planned Parenthood and not them. That a

panel of this Court recently (and unanimously) entered a stay in *Planned Parenthood* therefore provides a sufficient basis for denying the motion for an injunction pending appeal here.

Plaintiff acknowledges that "this Court stayed preliminary injunctions in another challenge to" Section 71113. Mot. 3. Plaintiff contends, however, that a different result is warranted because "the applicability of" a 1980 Supreme Court summary affirmance "was not briefed in that case and not discussed in the Court's order." *Id.* (citing *Minnesota v. Planned Parenthood of Minn.*, 448 U.S. 901 (1980)). It is unsurprising that Planned Parenthood—which is presumably aware of the *Minnesota* litigation given that one of its members was a plaintiff—has not relied on a summary affirmance entered nearly 50 years ago. Although plaintiff repeatedly depicts (Mot. 11, 13) that order as "precedent," the Supreme Court has cautioned that "the precedential effect of a summary affirmance can extend no farther than 'the precise issues presented and necessarily decided by those actions.'" *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 182-83 (1979). Because this case involves a different statute that reflects different legislative objectives, *Minnesota* has no bearing here.

The particulars of the *Minnesota* case confirm that the Supreme Court's summary affirmance provides no support for plaintiff. That case involved a state law withholding certain funding from non-profits that provided abortions. *See Planned Parenthood of Minn. v. Minnesota*, 612 F.2d 359, 360 (8th Cir. 1980). In determining that

the statute did not survive rational-basis review, the Eighth Circuit relied on "testimony at trial" and the statute's "legislative record." *Id.* at 361. Based on that evidence, the court of appeals concluded that "Planned Parenthood's unpopularity played a large role in [the statute's] passage." *Id.* The court of appeals further concluded that the statute could not be justified out of a concern that funds would indirectly subsidize abortions given trial evidence regarding the plaintiff's "accounting procedures" at the time. *Id.* at 362. The Supreme Court affirmed without providing any reasoning. *See Minnesota*, 448 U.S. 901. A summary affirmance of a circuit decision that relied on the particular history of a nearly-50-year-old state law has no relevance to plaintiff's challenge to a recent Act of Congress.

As the district court explained, *Minnesota* is also inapposite given that the "precedential landscape" has changed in multiple respects. Aug. 25 Order 10. First, a decade after the summary affirmance in *Minnesota*, the Supreme Court issued a precedential decision recognizing that "the government may 'make a value judgment favoring childbirth over abortion, and . . . implement that judgment by the allocation of public funds.'" *Rust v. Sullivan*, 500 U.S. 173, 192-93 (1991). That decision (which is binding outside the confines of the case in which it arose, unlike a summary affirmance) may well have dictated a different result in *Minnesota*. Second, perhaps because Supreme Court precedent at the time treated abortion as a constitutional right, the State of Minnesota did not argue that it simply did not wish to support abortion providers. *See Minnesota*, 612 F.2d at 362-63 (summarizing the State's

arguments). The Court has subsequently determined that the Constitution enshrines "no such right." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022). Finally, in the decades since the summary affirmance, the Supreme Court has repeatedly elaborated on the deferential nature of the rational-basis standard, emphasizing that it involves a "strong presumption" of constitutionality and "is a paradigm of judicial restraint." *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313-15 (1993); *see also, e.g.*, *Lyng v. Automobile Workers*, 485 U.S. 360, 370 (1988).

II. In Any Event, Plaintiff Has Failed To Demonstrate A Likelihood Of Success On The Merits

Plaintiff's sole claim in this case is that Section 71113 contravenes the Fifth Amendment's equal-protection component. As plaintiff concedes (Mot. 7), that claim implicates rational-basis review. Under that standard, "legislation is presumed to be valid and will be sustained if the classification drawn . . . is rationally related to a legitimate state interest." *González-Droz v. González-Colón*, 660 F.3d 1, 9 (1st Cir. 2011) (citation omitted). It is thus plaintiff's burden to "negate any and all conceivable bases upon which the challenged [law] might appropriately rest." *Id.* This "exceedingly deferential" standard, Aug. 25 Order 2, is even more deferential here, where plaintiff's claim implicates Congress's "broad discretion" to control federal spending, *Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc.* (*AID*), 570 U.S. 205, 213 (2013). The district court correctly recognized that plaintiff has failed to demonstrate a likelihood of success under this standard.

A. Section 71113 readily satisfies the rational-basis standard. Under Section 71113, federal Medicaid funds cannot be distributed to "prohibited entities," a term defined by reference to whether, as of October 1, 2025, an entity provides elective abortions; "is an organization described in section 501(c)(3) of the Internal Revenue Code"; is an essential community provider primarily engaged in certain functions; and received over $800,000 in federal and state Medicaid funds in 2023. 139 Stat. at 300. "[I]n combination," these requirements capture entities that "members of Congress might believe" are "major abortion providers in the United States." Aug. 25 Order 3.

There are multiple "rational bas[es]" for Congress to halt the flow of federal Medicaid funds to such entities. *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993). First, Section 71113 reflects a "rational desire to withhold a Medicaid subsidy" from abortion providers. Aug. 25 Order 15. "Money is fungible," and Congress was entitled to conclude that it does not want to contribute to abortion indirectly by allowing prohibited entities to allocate federal funds for other expenditures and use the savings to fund abortions. *Holder v. Humanitarian L. Project*, 561 U.S. 1, 31 (2010). Second, Congress was similarly entitled to conclude that it did not wish to support abortion providers. "Abortion presents a profound moral issue on which Americans hold sharply conflicting views." *Dobbs*, 597 U.S. at 223. As then-Judge Sotomayor has recognized, "the government is free to favor the anti-abortion position over the pro-choice position, and can do so with public funds." *Center for Reprod. L. & Pol'y v.*

Bush, 304 F.3d 183, 198 (2d Cir. 2002) (citing *Rust*, 500 U.S. at 192-94). Each of these rationales provides a sufficient basis for upholding Section 71113.

B. Plaintiff's principal response is to urge that Section 71113 "was motivated by unconstitutional animus" against Planned Parenthood. Mot. 7. That argument is not plaintiff's to make and is meritless in any event.

As an initial matter, plaintiff lacks third-party standing to advance this argument. Plaintiff does not contend that Section 71113 reflects animus against it. Instead, it accuses Congress of "specific animus towards Planned Parenthood." Mot. 9. But a party "generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth v. Seldin*, 422 U.S. 490, 499 (1975). Although a limited exception to this rule applies when a party can demonstrate that it has a "close relationship with the person who possesses the right," and that "there is a 'hindrance' to the possessor's ability to protect his own interests," plaintiff makes no attempt to satisfy either requirement. *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004). That those requirements are not satisfied is apparent here, where Planned Parenthood has filed a separate suit challenging Section 71113. *See Planned Parenthood v. Kennedy*, Nos. 25-1698, 25-1755 (1st Cir.).

In any event, plaintiff's attempt to ascribe "unconstitutional animus" to Congress is meritless. Mot. 7. The Supreme Court has warned that "[i]nquiries into congressional motives or purposes are a hazardous matter" not to be undertaken lightly. *United States v. O'Brien*, 391 U.S. 367, 383 (1968). Yet plaintiff does not argue

that any animus is evident on Section 71113's face. Nor would any such argument be plausible given that the statute defines prohibited entities based on generally applicable criteria and concededly encompasses entities (including plaintiff itself) that are not members of Planned Parenthood. *See* 139 Stat. at 300. Instead, plaintiff relies (Mot. 7-8 n.2-3) on "the least illuminating forms" of evidence. *NLRB v. SW Gen., Inc.*, 580 U.S. 288, 307 (2017). "[F]loor statements by individual legislators" are hardly a reliable guide to the intent of a 535-member body. *Id.* Likewise, a bill introduced in 2017, *see* Mot. 8, sheds little if any light on a statute enacted years later, *cf. Abbott v. Perez*, 585 U.S. 579, 604-05 (2018) (declining to infer intent based on legislative acts two years before the relevant enactment). Regardless, the statements and bills plaintiff cites are consistent with Congress's legitimate objective of preventing federal subsidies for certain abortion providers. *See, e.g.*, Mot. 7 n.2 ("[R]econciliation legislation offers an important opportunity to stop funding abortion purveyors like Planned Parenthood." (quoting 171 Cong. Rec. E255 (daily ed. Mar. 27, 2025) (statement of Rep. Christopher H. Smith))).

At the very least, plaintiff comes nowhere near demonstrating that Section 71113 is "inexplicable by anything but animus." *Romer v. Evans*, 517 U.S. 620, 632 (1996). Plaintiff appears to believe (Mot. 9) that whenever Congress expects that a law will apply to many (or all) members of a particular organization, the law must reflect animus. But as the district court observed, "unconstitutional animus is different than the generalized disfavor members of Congress may harbor based on

deeply held views about controversial conduct coupled with a desire to reduce subsidies to or programmatic dependence on the major providers of non-qualifying abortion[s]." Sept. 8 Order 4. "[T]he more plausible likelihood" is that Section 71113 embodies "a rational desire to withhold a Medicaid subsidy from the primary providers of non-qualifying abortions." Aug. 25 Order 11. And as noted, the government need not even demonstrate that it is more plausible that Section 71113 was motivated by legitimate concerns; it is enough under the rational-basis standard that there is a conceivable legitimate basis for the law.

C. Plaintiff's remaining arguments fail to grapple with the rational-basis standard. Much of their filing is devoted to discussing each element of the statute's prohibited-entity definition "in isolation." Mot. 7; *see* Mot. 14-18. But the relevant question is whether the funding restriction, when viewed as a whole, "is rationally related to a legitimate state interest." *Gonzalez-Droz*, 660 F.3d at 9. Taken together, the elements of the prohibited-entity definition capture "major abortion providers," Aug. 25 Order 3, including Planned Parenthood, which describes itself as the "only nationwide abortion provider," Compl. ¶ 10, *Planned Parenthood*, No. 25-cv-11913, as well as similarly situated entities.[1] It is natural that in seeking to reduce federal

[1] Plaintiff's cursory assertion, included in a footnote, that it constitutes a "relatively small abortion provider," Mot. 12 n.4, is belied by statements in its own complaint alleging that it directly or indirectly operates more than 60 clinics that serve tens of thousands of patients each year, *see* Dkt. No. 1, at 6-7. Regardless, plaintiff provides no basis for this Court to second-guess Congress's threshold for what size of abortion provider should qualify as a prohibited entity.

funding for abortion providers, Congress would adopt a provision withholding federal Medicaid dollars from such entities.

Plaintiff's disregard for the governing standards is illustrated by their repeated claim (Mot. 2, 14, 18) that Section 71113 regulates a "subset" of abortion providers. The Supreme Court has warned that Congress "must be allowed leeway to approach a perceived problem incrementally." *Beach*, 508 U.S. at 316. Given that the Court has rejected underinclusivity arguments "even under strict scrutiny," such arguments plainly have no purchase when rational-basis review applies. *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 449 (2015). There is in any event nothing irrational about Congress's focus on providers that have previously received significant amounts of Medicaid funds.

Plaintiff likewise offers no persuasive response to the argument that Congress was entitled to conclude that money provided to prohibited entities may be used to indirectly subsidize abortions. Plaintiff contends (Mot. 15-16) that the "'freeing-up' argument has been repeatedly rejected as a matter of law." Unsurprisingly, none of the three opinions that plaintiff cites reflects a blanket rejection of the common-sense proposition that "[m]oney is fungible," and none supports plaintiff's position in this case. *Holder*, 561 U.S. at 31. The first opinion applied heightened scrutiny rather than rational-basis review and relied in significant part on the then-extant abortion right. *See Planned Parenthood of Cent. & N. Ariz. v. Arizona*, 718 F.2d 938, 945 (9th Cir. 1983). The second opinion is the Eighth Circuit's decision in *Minnesota*, which, as discussed

above, rejected a freeing-up argument based on trial evidence regarding the plaintiff's "accounting practices" at the time. *See* 612 F.2d at 361. And the final opinion does not reflect the view of any court or address a constitutional claim but rather is a separate writing that would have upheld an agency action against a challenge under the Administrative Procedure Act. *Ohio v. Becerra*, 87 F.4th 759, 790 (6th Cir. 2023) (Moore, J., concurring in part and dissenting in part).

The extent of plaintiff's departure from established principles is also evident in its speculation that Section 71113 may lead to a greater number of abortions. According to plaintiff, the funding restriction "risks significantly reducing contraception access for Medicaid patients," "which is in turn likely to result in more unplanned pregnancies," and thus "potentially more abortions." Mot. 14. This chain of conjectures would not justify the invalidation of an Act of Congress under any standard, much less rational-basis review.

III. The Remaining Factors Confirm That Plaintiff Is Not Entitled To An Injunction

Because plaintiff has failed to establish a likelihood of success on the merits, it is not entitled to an injunction pending appeal. *See Doe v. Trs. of Bos. Coll.*, 942 F.3d 527, 536 (1st Cir. 2019) (stating that when a district court incorrectly identifies a likelihood of success on the merits, "the district court has abused its discretion and we are required to vacate the injunction"). The equitable factors reinforce that conclusion.

Preventing the government from enforcing Section 71113 would inflict serious harm on the government and the public. There is a 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). "Any time a [government] is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *District 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). Thus, the Supreme Court has traditionally presumed that "all Acts of Congress . . . 'should remain in effect pending a final decision on the merits by th[e Supreme] Court.'" *Turner Broad. Sys., Inc. v. FCC*, 507 U.S. 1301, 1301 (1993) (Rehnquist, C.J., in chambers).

These harms would be especially serious given Section 71113's subject matter. An injunction would trench on Congress's "broad discretion" under Article I of the Constitution to determine how taxpayer dollars are spent. *AID*, 570 U.S. at 213. And the spending determination at issue here reflects the elected Branches' adoption of a policy against allocating federal taxpayer dollars to providers of abortion—conduct that many Americans find abhorrent and do not wish to subsidize. That policy is freighted with moral and political significance, and an injunction blocking it would inflict grave injury by "prevent[ing] the Government from enforcing its policies" in this sensitive area. *Trump v. CASA, Inc.*, 606 U.S. 831, 859 (2025).

By contrast, plaintiff fails to establish any irreparable harm, much less harm sufficient to justify enjoining the enforcement of an Act of Congress. Plaintiff "seeks a judicial declaration" compelling the government "to continue to spend dollars in a way that is contrary to the will of the people as expressed by Congress." Aug. 25 Order 1. But any injury from lost funds is reparable, as plaintiff could likely seek reimbursement for covered services from Maine at the conclusion of this litigation if it were to prevail. *See* 42 U.S.C. § 1320b–2(a) (providing states up to two years to submit claims for services rendered to state Medicaid agencies or designated contractors); 45 C.F.R. § 95.19 (creating an exception to the two-year deadline when payments are made pursuant to a court order). And although plaintiff contends (Mot. 19) that an inability to access Medicaid funds may lead it to "discharge patients" or "lay off providers," it does not explain why that would entitle it to obtain taxpayer dollars to which it is not legally entitled. As the district court emphasized, because Section 71113 is a product of the democratic process, "[i]t would be a special kind of judicial hubris to declare that the public interest has been undermined by the public." Aug. 25 Order 19.

CONCLUSION

For the reasons given above, plaintiff's motion should be denied.

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General
CRAIG M. WOLFF
Acting United States Attorney
ERIC D. MCARTHUR
Deputy Assistant Attorney General
DANIEL TENNY

/s/ Steven H. Hazel
STEVEN H. HAZEL
Attorneys, Appellate Staff
Civil Division, Room 7217
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 514-2498
Steven.H.Hazel@usdoj.gov

September 2025

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing response complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 4,248 words. The response complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5)-(6) because it has been prepared using Microsoft Word 2016 in proportionally spaced 14-point Garamond typeface.

/s/ Steven H. Hazel
STEVEN H. HAZEL

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2025, I electronically filed the foregoing response with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Steven H. Hazel
STEVEN H. HAZEL