

***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 his official capacity as Secretary of the U.S. Department of Health
and Human Services; CENTERS FOR MEDICARE & MEDICAID SERVICES;
MEHMET OZ, in his official capacity as Administrator of the Centers for Medicare &
Medicaid Services,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MAINE (CASE NO. 1:25-cv-00364-LEW)

**BRIEF OF THE STATE OF MAINE AS AMICUS CURIAE IN SUPPORT OF
PLAINTIFF-APPELLANT AND REVERSAL**

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TABLE OF CONTENTS

Table of Authorities	ii
Introduction and Interests of Amicus.....	1
Argument.....	3
I. MFP Provides Essential Care for Thousands of Patients and is Integral to Maine’s Medicaid Program and Healthcare Infrastructure	3
II. The Defund Provision Will Force MFP to Close or Restrict Services, Cause Patients to Lose Essential Care, and Impose Long-Term Costs on Maine and Public Health	9
III. Maine Likely Cannot Replace All of the Lost Federal Funds, and Doing So Would Divert Resources and Harm Other Important Programs	11
Conclusion	14
Certificate of Compliance	16
Certificate of Service	17

TABLE OF AUTHORITIES

Cases

<i>Cook Cnty., Ill. V. Wolf</i> , 962 F.3d 208 (7th Cir. 2020)	11
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Federal Statutes and Regulations

42 U.S.C. § 1396a	6
42 U.S.C. § 1396d(a)	6
Pub. L. No. 119-21, § 71113, 139 Stat. 72, 300-01 (2025)	1, 9
45 C.F.R. § 156.235(c)	4
42 C.F.R. § 430.0	6

State Statutes

5 M.R.S. §§ 1582-1583	12
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Other Authorities

Alison Mitchell, Cong. Research Serv., R43847, <i>Medicaid’s Federal Medical Assistance Percentage (FMAP)</i> , 2, 10 (2025), available at https://www.congress.gov/crs_external_products/R/PDF/R43847/R43847.13.pdf (last visited Oct. 28, 2025)	6
D. Lipschutz & A. Bers, <i>Impact of the “Big Bill” on Medicare</i> , Center for Medicare Advocacy (July 24, 2025), https://medicareadvocacy.org/impact-of-the-big-bill-on-medicare (last visited Oct. 28, 2025)	13
Health Res. & Servs. Admin., <i>MUA Find</i> , https://data.hrsa.gov/tools/shortage-area/mua-find (last visited Oct. 28, 2025)	7

Lisa Desjardins & Andrew Corkery, Transcript, <i>States Face Hard Choices after Major Cuts to Federal Health Care Funding</i> , PBS NewsHour (Sept. 13, 2025), https://www.pbs.org/newshour/show/states-face-hard-choices-after-major-cuts-to-federal-health-care-funding (last visited Oct. 28, 2025)	13
Maine DHHS Press Release: <i>Impact of Expiring Health Insurance Tax Credits on Maine</i> (May 7, 2025), https://www.maine.gov/dhhs/news/impact-expiring-health-insurance-tax-credits-maine-wed-05072025-1200 (last visited Oct. 28, 2025)	13
Maine DHHS Press Release: <i>Maine DHHS Outlines Impacts on Public and Behavioral Health Services from Termination of Federal Health Grants</i> (Mar. 31, 2025), https://www.maine.gov/dhhs/news/maine-dhhs-outlines-impacts-public-and-behavioral-health-services-termination-federal-health-grants-mon-03312025-1200 (last visited Oct. 28, 2025)	13
Medicaid & CHIP Payment & Access Comm’n, <i>Fact Sheet: Physician Acceptance of New Medicaid Patients: Findings from the National Electronic Health Records Survey</i> (2021), https://www.macpac.gov/wp-content/uploads/2021/06/Physician-Acceptance-of-New-Medicaid-Patients-Findings-from-the-National-Electronic-Health-Records-Survey.pdf (last visited Oct. 28, 2025)	8
Me. Ctr. for Disease Control & Prevention, <i>Maine Population Data</i> , https://www.maine.gov/dhhs/mecdc/data-reports/population-health/population (last visited Oct. 28, 2025)	7
Me. Ctr. for Disease Control & Prevention, <i>Rural Health</i> , https://www.maine.gov/dhhs/mecdc/healthy-living/rural-health (last visited Oct. 28, 2025)	7
Steven B. Spivack et al., <i>Avoiding Medicaid: Characteristics of Primary Care Practices With No Medicaid Revenue</i> , 40 Health Affairs 98 (2021), https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00100 (last visited Oct. 28, 2025)	8

U.S. Centers for Medicare & Medicaid Serv., <i>June 2025 Medicaid & CHIP Enrollment Data Highlights</i> , https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights (last visited Oct. 28, 2025)	6
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INTRODUCTION AND INTERESTS OF AMICUS

The State of Maine submits this brief in support of appellant, The Family Planning Association of Maine d/b/a Maine Family Planning (“MFP”). MFP challenges a federal statutory provision prohibiting medical providers who offer abortion care and who meet certain other criteria from receiving Medicaid reimbursement for any of their medical services. *See* Pub. L. No. 119-21, § 71113, 139 Stat. 72, 300-01 (2025) (the “Defund Provision”). Although Congress’ goal was to defund Planned Parenthood, it had to include at least one other provider to comply with Senate procedural rules. MFP, which provides all manner of essential health care services to thousands of Mainers every year, was swept in and is now prohibited from receiving Medicaid reimbursement.

The order on appeal denied MFP’s motion for a preliminary injunction and MFP appealed. Maine supports MFP on all issues in this appeal. Maine submits this brief to explain MFP’s vital importance to the provision of healthcare in Maine and to emphasize that the balance of equities and the public interest tip overwhelmingly in favor of reversing the denial of preliminary injunctive relief. Maine has strong interests in this matter because if the Defund Provision is allowed to take full effect, people in Maine will experience severe and irreparable harms, public health will be jeopardized, and Maine’s public fisc will be negatively impacted.

MFP is a critical part of Maine's healthcare infrastructure, providing essential and lifesaving care to thousands of patients. Maine relies on MFP to provide health care services to Medicaid patients, especially those living in rural and underserved areas. Last year, MFP served over 8,700 patients. MFP provides wellness and preventive care, cancer screenings, family planning services, urgent primary care, diagnosis and treatment of common and chronic conditions, screening, diagnosis and treatment of urinary tract, vaginal, and sexually transmitted infections, biopsies for gynecological issues, hormone therapy, and miscarriage and abortion care. For approximately 70 percent of its patients, MFP is the only healthcare provider they see.

The Defund Provision is an existential threat to MFP. Approximately 20-25 percent of MFP's budget comes from Medicaid funding. MFP stopped accepting new Medicaid patients seeking primary care when the Defund Provision took effect. MFP will need to close its primary care practice entirely on October 31, 2025.

Medicaid patients may be unable to find new providers due to travel distances, costs, and Maine's shortage of providers, especially those willing to accept Medicaid patients. In some rural parts of Maine, MFP is the only provider specializing in family planning care. Closure of MFP clinics will further strain Maine's already overtaxed health care system.

Faced with barriers to accessing health care, patients will suffer worse health outcomes, and Maine may incur the higher costs associated with treating severe health conditions that could have been prevented or treated at lower cost if they had been detected earlier. Maine cannot easily or immediately prevent these serious harms by using state dollars to compensate for the total loss of federal Medicaid reimbursements to MFP. Maine does not have the resources to fully make up for the lost federal Medicaid funds—particularly when it is facing unexpected and unprecedented levels of other federal funding cuts. And even if Maine can devote sufficient state funds to at least partially make up for the losses caused by the Defund Provision, it must do so by diverting resources from other important state programs—which harms the public interest. In short, Maine has strong interests in MFP’s ongoing viability. The Defund Provision starves MFP of critically important funds and should be enjoined.

ARGUMENT

Absent a preliminary injunction, the Defund Provision will severely harm Maine and the public interest.

I. MFP Provides Essential Care for Thousands of Patients and is Integral to Maine’s Medicaid Program and Healthcare Infrastructure.

MFP has provided medical care to Mainers for decades. Kieltyka Decl., ¶ 23 (App. 48-49). It operates eighteen family planning clinics, with at least one site in

twelve of Maine's sixteen counties. *Id.*, ¶ 8. (App. 41). Eleven of the counties where MFP operates clinics are more than 50 percent rural, as defined by the U.S. Census Bureau, and eight of them are more than 80 percent rural. *Id.*, ¶ 10. (App. 42). MFP's services include screening for cervical and breast cancer; family planning counseling; annual gynecological exams; birth control/contraception services; preconception consultation; screening, diagnosis and treatment of urinary tract, vaginal and sexually transmitted infections; hormone therapy; and miscarriage and abortion care. *Id.*, ¶ 7 (App. 41). MFP is also Maine's sole Title X grantee, and subcontracts with several other entities that provide access to sexual and reproductive health care in fifteen out of Maine's sixteen counties via forty-four additional health care clinics. *Id.*, ¶¶ 8; 11; 25 (App. 41, 43, 49).¹

MFP operates primary care clinics in Ellsworth, Houlton, and Presque Isle. *Id.*, ¶ 18 (App. 46-47). These clinics offer a range of primary care services including wellness and preventive care, diagnosis and treatment of common acute and chronic conditions like strep throat, asthma, and diabetes, and geriatric health services. *Id.* There is a significant shortage of health care providers in the two counties in which these clinics are located. Kieltyka Supp. Decl., ¶ 9 (App. 65). Patients in these

¹ MFP is an "essential community provider" in the family planning category on the HHS Rolling Draft Essential Community Provider List for the federally facilitated marketplace. Essential community providers serve predominantly low-income, medically underserved individuals, per 45 C.F.R. § 156.235(c).

counties rely on MFP for their primary care. *Id.* If MFP is forced to discharge patients, there may be no other providers in the area to care for them. *Id.*

MFP also operates a mobile clinic providing care to populations that have difficulty accessing health care, such as the unhoused, people with substance use disorder, and migrant farm workers. Kieltyka Decl., ¶ 20 (App. 47). The mobile clinic provides urgent primary care, wound care, and family planning and reproductive health services, including birth control, Pap smears, and STI testing. *Id.* The mobile clinic identifies potential chronic illnesses that, without proper diagnosis and treatment, could lead to serious or even life-threatening illnesses. *Id.* For many of the patients served by the mobile clinic, they would otherwise not be able to access medical care. *Id.*

For approximately 70 percent of MFP's patients, MFP is the only health care provider that they see in a given year. *Id.*, ¶ 19 (App. 47). Even if patients are not seen for primary care, MFP's providers will discuss a patient's overall health and identify potential chronic illnesses. *Id.*

MFP has accepted Medicaid since 1998, and today all eighteen of MFP's clinics, along with the mobile clinic, accept Medicaid. *Id.*, ¶ 23 (App. 48-49). Medicaid is essential to MFP—approximately 20-25 percent of MFP's budget comes from Medicaid. *Id.*, ¶ 24 (App. 49).

Conversely, MFP is critical to Maine’s Medicaid program.² Medicaid is a jointly funded federal-state program administered by the States to furnish medical assistance to low-income individuals, including more than 75 million children, pregnant individuals, families, adults without children, seniors, and people with disabilities. *See* 42 U.S.C. § 1396a; 42 C.F.R. § 430.0.³ Medicaid covers several broad categories of benefits and services, including family planning services, physician services, nurse-midwife services, nurse-practitioner services, and laboratory and x-ray services. 42 U.S.C. §§ 1396a(a)(10), 1396d(a)(3)-(5), (17), (21). The federal government reimburses state Medicaid programs between fifty and ninety percent of the cost of covered services for Medicaid patients.⁴ In Maine, the standard federal matching rate (or “FMAP”) is currently about 62% for most covered services, while the FMAP is 90% for qualified family planning services.

At the end of state fiscal year (SFY) 2025, approximately 30% of Maine’s population was covered under the state’s Medicaid program. Decl. of Michelle Probert, ¶ 4 (filed in *California v. United States Dep’t of Health & Human Servs.*,

² Maine’s Medicaid program is called “MaineCare.”

³ *See also* U.S. Centers for Medicare & Medicaid Serv., *June 2025 Medicaid & CHIP Enrollment Data Highlights*, <https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights> (last visited Oct. 28, 2025).

⁴ *See* Alison Mitchell, Cong. Research Serv., R43847, *Medicaid’s Federal Medical Assistance Percentage (FMAP)*, 2, 10 (2025), available at https://www.congress.gov/crs_external_products/R/PDF/R43847/R43847.13.pdf (last visited Oct. 28, 2025).

No. 1:25-cv-12118 (D. Mass. Sept. 24, 2025), ECF 62-13).^{5, 6} In SFY 2025, more than 14,191 residents received family planning or reproductive health care under Medicaid through 31,121 encounters. *Id.*, ¶ 6. In SFY 2025, 4,006 Medicaid members received services through 8,453 encounters at MFP's clinics. *Id.*, ¶ 24. Without Medicaid, many of these patients could not afford to see a health care provider and might postpone or forgo care altogether. *Id.*

According to the Maine Center for Disease Control & Prevention, Maine is considered the most rural state in the nation, with 40 percent of Maine's population living in rural areas.⁷ Many people live long distances from Maine cities and have difficulty accessing health care providers. Kieltyka Decl., ¶ 9 (App. 42). Further, Maine's challenging weather conditions often cause critical roads to be impassible in the winter, especially in rural Aroostook and Washington Counties. *Id.* Many of MFP's clinics are located in regions of Maine designated by the U.S. Health Resources and Services Administration as Medically Underserved Areas. *Id.*, ¶ 10.⁸

⁵ Michelle Probert is the Director of the Office of MaineCare Services, within the Maine Department of Health and Human Services.

⁶ As of July 2024, Maine's population is about 1.4 million. Me. Ctr. for Disease Control & Prevention, *Maine Population Data*, <https://www.maine.gov/dhhs/mecdc/data-reports/population-health/population> (last visited Oct. 28, 2025).

⁷ Me. Ctr. for Disease Control & Prevention, *Rural Health*, <https://www.maine.gov/dhhs/mecdc/healthy-living/rural-health> (last visited Oct. 28, 2025).

⁸ See also Health Res. & Servs. Admin., *MUA Find*, <https://data.hrsa.gov/tools/shortage-area/mua-find> (last visited Oct. 28, 2025).

Generally, healthcare providers may choose which insurances to accept and they are not required to participate in Medicaid.⁹ Because Medicaid has a lower reimbursement rate than many other types of insurance, providers often decline to accept Medicaid patients and instead take other patients (such as those who have private insurance) to increase revenue.¹⁰ Unlike many healthcare providers, MFP accepts Medicaid patients. Indeed, in calendar year 2024, MFP reports that nearly 50 percent of its patients who received services other than abortion care at MFP were enrolled in Medicaid. Kieltyka Decl., ¶ 30 (App. 51). MFP serves areas in Maine with some of the highest Medicaid enrollment: for example, about 40 percent of the population in rural counties such as Aroostook, Washington and Somerset is enrolled in Medicaid. *Id.*

In sum, MFP's provision of services in rural and underserved areas is critical to ensuring that enrollees in Maine's Medicaid program receive timely, high-quality medical care.

⁹ Steven B. Spivack et al., *Avoiding Medicaid: Characteristics of Primary Care Practices With No Medicaid Revenue*, 40 Health Affairs 98 (2021), <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.00100> (last visited Oct. 28, 2025).

¹⁰ Medicaid & CHIP Payment & Access Comm'n, *Fact Sheet: Physician Acceptance of New Medicaid Patients: Findings from the National Electronic Health Records Survey* (2021), <https://www.macpac.gov/wp-content/uploads/2021/06/Physician-Acceptance-of-New-Medicaid-Patients-Findings-from-the-National-Electronic-Health-Records-Survey.pdf> (last visited Oct. 28, 2025).

II. The Defund Provision Will Force MFP to Close or Restrict Services, Cause Patients to Lose Essential Care, and Impose Long Term Costs on Maine and Public Health.

The Defund Provision bars federal Medicaid funds from being “used to make payments” to a “prohibited entity” “for items and services furnished” during the one-year period beginning July 4, 2025. *See* 139 Stat. 72, 300 (2025). The Defund Provision will therefore deprive MFP of the federal share of Medicaid reimbursements, which range from 50% to 90% for covered services (with family planning services typically qualifying for a 90% federal reimbursement). Because of the Defund Provision, MFP stopped billing Medicaid for all services effective July 5, 2025, and it has stopped accepting new primary care Medicaid patients. *Kieltyka Decl.*, ¶¶ 22, 24, 36 (App. 48-49, 53).

This loss of federal funding will force many MFP clinics to restrict services to Medicaid patients or to close altogether, harming both Medicaid and non-Medicaid patients and damaging Maine’s healthcare system. MFP already notified patients that it will not be able to provide primary care unrelated to family planning services after October 31, 2025. *Kieltyka Supp. Decl.*, ¶ 8 (App. 64). Additionally, ending its primary care practice requires MFP to lay off providers; without these providers, MFP may not be able to reestablish its primary care services if it prevails in this litigation, or when the Defund Provision expires. *Id.*, ¶ 9 (App. 65).

If the Defund Provision is not preliminarily enjoined, many MFP clinics will be forced to close or restrict services, thereby causing both Medicaid and non-Medicaid patients to lose the only nearby provider of sexual and reproductive healthcare services. These patients may be unable to find new providers due to provider shortages in those areas of rural Maine, in addition to far distances, high costs, and the fact that some providers are not accepting additional Medicaid patients. Kieltyka Decl., ¶¶ 17, 27, 34-35 (App. 46, 50, 52-53); Jarvis Decl., ¶¶ 4-5 (App. 36). The shortage of family planning and reproductive health care providers has recently been exacerbated by several hospitals in Maine closing their labor and delivery units and, as a result, OB/GYNs leaving the area and patients having to rely on primary care providers for family planning and reproductive health services. Kieltyka Decl., ¶ 17 (App. 46).

Because of both the restriction of services at MFP, and the improbability of alternative health centers absorbing the influx of thousands of new MFP patients, Medicaid-eligible patients in Maine are likely to face more barriers to healthcare, which predictably will result in those patients foregoing early screenings and treatments and Maine facing increased healthcare expenses. At a time when Maine is facing physician shortages and healthcare access challenges, further cutting off essential access to community-based providers will reduce access to timely care, increase wait lists, and drive up costs related to emergent care utilization for unmet

healthcare needs. The Defund Provision thus risks significant irreparable harm to the State of Maine. *See Cook Cnty., Ill. V. Wolf*, 962 F.3d 208, 233 (7th Cir. 2020) (stating that significant increase in healthcare costs, greater risk of communicable diseases, and having to “divert resources away from existing programs” qualify as irreparable harm).

III. Maine Likely Cannot Replace All of the Lost Federal Funds, and Doing So Would Divert Resources and Harm Other Important Programs.

The balance of the equities and public interest warrant reversal of the district court’s order denying a preliminary injunction for the additional reason that compliance by Maine will divert resources from other essential government programs and services. The Defund Provision forces Maine into a difficult position that will impose severe harms on public health and increased costs on Maine no matter the outcome. Specifically, under the Defund Provision, Maine must exclude MFP from receiving federal funding in its Medicaid program, resulting in the above-described harms to patients, public health, and the public fisc. To avoid those harms, Maine may attempt to reimburse MFP for Medicaid services using only state funds by diverting funds from other important programs—such as other public health programs, school programs, or emergency services.¹¹ However, Maine cannot easily

¹¹ For both scenarios—exclusion or full state funding—Maine would need to expend state resources to update claims systems, issue guidance to patients and providers,

or immediately use solely state funds to fully reimburse MFP for all Medicaid services.¹²

Using solely state funding to fully reimburse MFP for all of its Medicaid services would place enormous strain on Maine's public fisc. And because of the huge funding shortfall caused by the Defund Provision, it is unlikely that Maine could fill that enormous gap with state funds alone. Additionally, failure to incorporate the necessary process changes in Maine's Medicaid program would put Maine at risk of having to return any federal funds used to pay claims submitted by entities now prohibited per the Defund Provision, thereby placing further strains on Maine's budget.

Moreover, Maine's budget for the fiscal year was passed before enactment of the Defund Provision and did not appropriate funding to compensate for the loss of federal funds under the Defund Provision. Probert Decl., ¶ 36. Maine has not provided sufficient funding to cover the former federal share of Medicaid reimbursements for MFP clinics in Maine. *Id.* Convening a special legislative session to attempt to pass a budget amendment, or attempting to divert enough resources from already appropriated funds (if legally permissible), is likely not an

and complete other administrative steps, further diverting funds from other important programs.

¹² Even if Maine had the financial capacity to fully state fund MFP, changes in the law would be required to alter applicable authorities governing the appropriations. *See, e.g.*, 5 M.R.S. §§ 1582-1583.

option for Maine, which is already dealing with unprecedented levels of federal funding cuts across many programs and services. Indeed, recent federal legislation has cut more than a trillion dollars in funding for healthcare programs nationwide, compounding the patient and public health harms at issue for Maine.¹³

By way of one example, the Maine Center for Disease Control and Prevention (“Maine CDC”) and the Maine Department of Health and Human Services announced in March 2025 that about \$91 million in federal grants were canceled or reduced, requiring Maine to assess its public health programs and contracting. Thereafter, Maine CDC announced layoffs of at least 40 subcontracted workers as a result of these federal funding cuts in public health initiatives. The federal funding cuts included interruption of essential rural health services.¹⁴

¹³ See Lisa Desjardins & Andrew Corkery, Transcript, *States Face Hard Choices after Major Cuts to Federal Health Care Funding*, PBS NewsHour (Sept. 13, 2025), <https://www.pbs.org/newshour/show/states-face-hard-choices-after-major-cuts-to-federal-health-care-funding> (last visited Oct. 28, 2025); D. Lipschutz & A. Bers, *Impact of the “Big Bill” on Medicare*, Center for Medicare Advocacy (July 24, 2025), <https://medicareadvocacy.org/impact-of-the-big-bill-on-medicare> (last visited Oct. 28, 2025); see also Maine DHHS Press Release: *Impact of Expiring Health Insurance Tax Credits on Maine* (May 7, 2025), <https://www.maine.gov/dhhs/news/impact-expiring-health-insurance-tax-credits-maine-wed-05072025-1200> (last visited Oct. 28, 2025)(explaining how Maine’s demographics contribute to health care costs that are higher than the national average, resulting in Mainers facing some of the highest average costs of health insurance in the nation).

¹⁴ Maine DHHS Press Release: *Maine DHHS Outlines Impacts on Public and Behavioral Health Services from Termination of Federal Health Grants* (Mar. 31, 2025), <https://www.maine.gov/dhhs/news/maine-dhhs-outlines-impacts-public-and-behavioral-health-services-from-termination-of-federal-health-grants-mar-31-2025>

In sum, the exclusion of MFP from Medicaid reimbursement will not only have a negative consequence on the health and well-being of residents of Maine, but it will also have a significant impact on Maine's entire health care system and the state budget. Probert Decl., ¶ 37. MFP provides family planning, family-planning-related, primary care, and general preventive care screening services across Maine. *Id.* At a time when Maine is facing physician shortages and healthcare access challenges, further cutting off essential access to community-based providers will reduce access to timely care, increase wait lists, and drive-up costs related to emergent care utilization for unmet healthcare needs. *Id.* Maine cannot compensate for the amounts of federal Medicaid funding that MFP will lose under the Defund Provision without harming other programs important for the health and welfare of Maine residents.

CONCLUSION

The Court should reverse the district court's order denying a preliminary injunction.

Dated: October 29, 2025

Respectfully submitted.
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CERTIFICATE OF COMPLIANCE

This brief contains 3,182 words, excluding the items exempted by Federal Rule of Appellate Procedure 27(a)(2)(B), and complies with the length limit in Federal Rule of Appellate Procedure 27(d)(2). For this Certification, I relied on the word count function of the word-processing software used to prepare this brief (Microsoft Word). I further certify that all text in this brief is in proportionally spaced Times New Roman Font and is 14 points in size.

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 2025, I caused the foregoing brief to be filed electronically with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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