
United States Court of Appeals
for the
First Circuit

Case No. 25-1829

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 Health
& Human Services; MEHMET OZ, in the official capacity as the Administrator
of the Centers for Medicare & Medicaid Services; CENTERS FOR MEDICARE
& MEDICAID SERVICES,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MAINE BEFORE THE HONORABLE LANCE E. WALKER,
U.S. DISTRICT JUDGE IN CASE NO. 1:25-CV-00364-LEW

**BRIEF OF AMICUS CURIAE PROFESSOR WILLIAM D.
ARAIZA IN SUPPORT OF PLAINTIFF-APPELLANT
AND REVERSAL**

SARAH LAHLOU-AMINE, ESQ.
1032 15th Street NW, #407
Washington, DC 20005-1502
(202) 729-6983
slahlou@probonoinst.org

*Counsel for Amicus Curiae,
Professor William D. Araiza*



TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF AMICUS	1
SUMMARY OF ARGUMENT	1
ARGUMENT	3
I. The Doctrinal Structure of Equal Protection Animus	3
A. Laws Reflecting Animus Are Unconstitutional	3
B. The <i>Arlington Heights</i> Factors Help Reveal the Possibility of Animus	7
C. <i>Arlington Heights</i> ’ Burden-Shifting Structure Reveals Whether Animus Infected the Challenged Government Action	10
II. The District Court Erred in Applying the Court’s Animus Doctrine	14
III. Properly Analyzed, Section 71113 Raises an Inference of Animus Justifying a Level of Scrutiny It Cannot Withstand	19
A. Section 71113 Raises an Inference of Animus	19
B. Section 71113 Fails the Scrutiny Required of Laws that Raise an Inference of Animus	22
CONCLUSION	28

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976)	6
<i>Church of the Lukumi Babalu-Aye v. City of Hialeah</i> , 508 U.S. 520 (1993)	16
<i>City of Cleburne v. Cleburne Living Ctr.</i> , 473 U.S. 432 (1985)	<i>passim</i>
<i>City of Richmond v. J.A. Croson Co.</i> , 488 U.S. 469 (1989)	5, 13, 14
<i>Craig v. Boren</i> , 429 U.S. 190 (1976)	13, 14
<i>Dep't of Homeland Sec. v. Regents of the Univ. of California</i> , 591 U.S. 1 (2020)	<i>passim</i>
<i>FCC v. Beach Communications</i> , 508 U.S. 307 (1993)	6, 17
<i>Lawrence v. Texas</i> , 539 U.S. 558 (2003)	7, 12
<i>North Carolina State Conf. of the NAACP v. McCrory</i> , 831 F.3d 204 (4th Cir. 2016).....	8, 19, 24, 26
<i>Personnel Adm'r v. Feeney</i> , 442 U.S. 256 (1979)	10
<i>Planned Parenthood Fed. of America v. Kennedy</i> , 2025 WL 2101940 (D. Mass. 2025)	<i>passim</i>
<i>R.R. Retirement Bd. v. Fritz</i> , 449 U.S. 166 (1980)	17
<i>Romer v. Evans</i> , 517 U.S. 620 (1996)	<i>passim</i>
<i>U.S. Dep't of Agriculture v. Moreno</i> , 413 U.S. 528 (1973)	<i>passim</i>

<i>United States v. Windsor</i> , 570 U.S. 744 (2013)	<i>passim</i>
<i>Vance v. Bradley</i> , 440 U.S. 93 (1979)	6, 7
<i>Village of Arlington Heights v. Metro. Hous. Dev. Corp.</i> , 429 U.S. 252 (1977)	<i>passim</i>

Statutes & Other Authorities:

U.S. Const. amend. V	6
U.S. Const. amend. XIV	6
Dale Carpenter, <i>Windsor Products: Equal Protection from Animus</i> , 2013 <i>Supreme Ct. Rev.</i> 183	4
Daniel Conkle, <i>Animus and Its Alternatives: Constitutional Principle and Judicial Prudence</i> , 48 <i>Stetson L. Rev.</i> 195 (2019)	26
Fed. R. App. P. 29(a)(4)(E)	1
H. Jefferson Powell, <i>Reasoning About the Irrational: The Roberts Court and the Future of Constitutional Law</i> , 86 <i>Wash. L. Rev.</i> 217 (2011)	4
Jessica A. Clarke, <i>Explicit Bias</i> , 113 <i>Nw. U. L. Rev.</i> 505 (2018)	19
William D. Araiza, <i>Objectively Correct</i> , 69 <i>Fla. L. Rev. F.</i> 68 (2020)	24
William D. Araiza, <i>Regents: Resurrecting Animus/Renewing Discriminatory Intent</i> , 51 <i>Seton Hall L. Rev.</i> 983 (2021)	16

INTEREST OF AMICUS

Amicus William D. Araiza, Stanley A. August Professor of Law at Brooklyn Law School, is a scholar with research and teaching interests encompassing the constitutional questions this case presents. Amicus has written extensively about how “animus” informs equal protection jurisprudence. He is the author of *Animus: A Short Introduction to Bias in the Law* (NYU Press 2017) and many scholarly articles examining that concept. Amicus has an interest in the sound application and development of constitutional jurisprudence in this field. Amicus focuses solely on the likelihood of success on the merits of Plaintiff-Appellant, the Family Planning Association of Maine, d/b/a Maine Family Planning, in its equal protection animus claim in support of reversal of the denial of the preliminary injunction in this matter.¹

SUMMARY OF ARGUMENT

While the Supreme Court has not explicitly laid out a doctrinal structure governing equal protection animus claims, a careful reading of its animus caselaw

¹ In accordance with Federal Rule of Appellate Procedure 29(a)(4)(E), Amicus states that none of the parties or their counsel authored this brief in whole or in part or contributed money that was intended to fund preparing or submitting the brief. No person other than Amicus or its counsel contributed money that was intended to fund preparing or submitting the brief. The parties consent to the filing of this brief.

reveals a structure based on its analogous jurisprudence governing discriminatory intent. That jurisprudence utilizes the factors identified in *Village of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252 (1977), and the burden-shifting framework set forth in that same case. The Court explicitly recognized *Arlington Heights*' relevance to animus claims in 2020.

Applying that structure reveals the errors in the district court's analysis of the plaintiff's animus claim. Most fundamentally, the court ignored the possibility that the plaintiff's evidence of animus justifies applying the same heightened rationality review the Court has applied in its animus cases. Instead, it insisted that the plaintiff overcome the deferential version of rational basis review appropriately applied in the absence of any plausible animus claim. That insistence was error: as the court itself conceded, the plaintiff demonstrated that its animus claim was plausible. That fact should have triggered the same heightened rationality review the Court applied in its animus cases after confronting equally plausible evidence of animus. The heightened rationality review this case requires seeks to ensure that the government's asserted justifications for enacting Section 71113 were indeed Congress's real reasons.

Applying that review in this case reveals that those reasons were not real. Rather, the evidence shows that Congress enacted Section 71113 to defund one particular entity—Planned Parenthood, including its affiliates. While Section

71113 swept very slightly more widely, ensnaring the plaintiff and perhaps only one other entity in addition to its intended target, the evidence reveals that its marginally wider scope was intended merely as a fig leaf to hide Section 71113's lack of neutrality and general applicability. That evidence exposes Section 71113 for what it is: a law targeting Planned Parenthood, and thus reflecting "a bare congressional desire to harm a politically unpopular group." *U.S. Dep't of Agriculture v. Moreno*, 413 U.S. 528, 534 (1973). But as *Moreno* then immediately noted, such a desire "cannot constitute a legitimate governmental interest." *Id.* Rather, as the Court acknowledged in another animus case, such "irrational prejudice" is unconstitutional. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 450 (1985).

ARGUMENT

I. The Doctrinal Structure of Equal Protection Animus

A. Laws Reflecting Animus Are Unconstitutional

In a series of cases decided between 1973 and 2020, the Supreme Court has recognized the unconstitutionality of laws resting on animus against the burdened group. The foundational statement of this constitutional rule appears in *U.S. Department of Agriculture v. Moreno*, which held that "a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest" sufficient to uphold a challenged law. 413 U.S. 528, 534 (1973); *see also*

Dep't of Homeland Sec. v. Regents of the Univ. of California, 591 U.S. 1, 34 (2020) (four-Justice plurality opinion) (stating and applying some of the factors that are probative of animus); *id.* at 36-39 (Sotomayor, J., concurring in part, concurring in the judgment in part, and dissenting in part) (applying those same factors). Since *Moreno*, the Court has relied on this rule several times to strike down state and federal legislation. See *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985); *Romer v. Evans*, 517 U.S. 620 (1996); *United States v. Windsor*, 570 U.S. 744 (2013); see also Dale Carpenter, *Windsor Products: Equal Protection from Animus*, 2013 *Supreme Ct. Rev.* 183, 183 (identifying these four cases as the Supreme Court's "animus quadrilogy").

The rule reflected in *Moreno's* statement should be uncontroversial, given the foundational principle that all government action must at least rationally further a legitimate public-regarding purpose, rather than, for example, aiming simply "to harm a politically unpopular group." See H. Jefferson Powell, *Reasoning About the Irrational: The Roberts Court and the Future of Constitutional Law*, 86 *Wash. L. Rev.* 217, 228-229 (2011) ("Rational-basis scrutiny, as traditionally understood, flows from a presupposition of American constitutionalism so basic and pervasive that it is easy to overlook: in its dealings with persons, the American government is under a constitutional obligation to act rationally. Rationality in turn requires both

that public actions make sense and that they make good sense, that they have some legitimate purpose.”).

The challenge lies in determining whether animus in fact motivated any given law. Invidious intent can be inferred if the law is subjected to, and then fails, heightened scrutiny. For example, Justice O’Connor famously explained that application of strict scrutiny to any and all race classifications was appropriate in order to “smoke out” such invidious intent. *See City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989) (plurality opinion). Heightened scrutiny performs that function by ensuring both that the government is pursuing a particularly important interest, and uses the suspect characteristic (for example, in *Croson*, race) in as tailored a way as possible. *See id.* (stating “[t]he purpose of strict scrutiny is to ‘smoke out’ illegitimate uses of race by assuring that the legislative body is pursuing a goal important enough to warrant use of a highly suspect tool. The test also ensures that the means chosen ‘fit’ this compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype”).

Animus cases are different. The Court’s animus jurisprudence normally focuses on discrimination against non-suspect classifications, or classifications whose suspect status has not yet been determined. *See generally Cleburne* (involving a classification deemed non-suspect); *Moreno*; *Romer*; *Windsor* (all

involving classifications whose suspectness remains undecided). Normally, discrimination claims involving such non-suspect classes trigger a style of rational basis review that is intended to be deferential. *See, e.g., FCC v. Beach Communications*, 508 U.S. 307, 313 (1993) (holding “a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification”).² This deference reflects the understanding that the very determination that the classification is non-suspect implies that the burdened group can access the political process, triggering judicial confidence that eventually improvident decisions will be corrected by that process and thus rendering intrusive judicial review unnecessary. *See Vance v. Bradley*, 440 U.S. 93, 97 (1979) (“The Constitution presumes [in cases not involving fundamental rights or suspect classifications] that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process.”).

² While the Equal Protection Clause applies only to the states, the Court has interpreted the Fifth Amendment’s Due Process Clause, which applies to the federal government, as including an equality guarantee identical to that provided in the Equal Protection Clause. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 93 (1976) (*per curiam*) (“Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment.”).

Despite that general presumption, sometimes even non-suspect classes are subject to “antipathy,” *id.*, or the “bare ... desire to harm” *Moreno* identified as a constitutional wrong. The Court’s animus cases are noteworthy for their insistence that cases exhibiting indicia of animus, even if not subject to explicitly heightened scrutiny, nevertheless require something more than the standard, deferential style of rational basis review. *See Lawrence v. Texas*, 539 U.S. 558, 580 (2003) (O’Connor, J., concurring in the judgment) (“We have consistently held ... that some objectives, such as ‘a bare ... desire to harm a politically unpopular group,’ are not legitimate state interests. *Moreno*. See also *Cleburne*; *Romer*. When a law exhibits such a desire to harm a politically unpopular group, *we have applied a more searching form of rational basis review* to strike down such laws under the Equal Protection Clause.”) (citations omitted; emphasis added).

The difficult question becomes determining when “a law exhibits such a desire.” *Id.*

B. The *Arlington Heights* Factors Help Reveal the Possibility of Animus

To date, the Court has not fully fleshed out its approach to uncovering animus. However, a careful reading of its precedents reveals an incipient structure guiding that determination. That structure relies on applying versions of the same factors the Court identified nearly 50 years ago to determine discriminatory intent in a standard equal protection case. *See Village of Arlington Heights v. Metro. Hous.*

Dev. Corp., 429 U.S. 252 (1977). In the Court’s most recent case to engage the animus issue, a majority of five Justices applied the *Arlington Heights* factors. See *Regents*, 591 U.S. at 34 (four-Justice plurality); *id.* at 36-39 (Sotomayor, J., concurring in part, concurring in the judgment in part, and dissenting in part).

In *Arlington Heights*, the Court identified six, non-exhaustive factors relevant to the intent inquiry. See 429 U.S. at 268 (“The foregoing summary identifies, without purporting to be exhaustive, subjects of proper inquiry in determining whether [the relevant alleged] discriminatory intent existed.”). The factors the Court identified are (1) the extent of the disparate impact the challenged law created, (2) “[t]he historical background of the decision,” (3) “[t]he specific sequence of events leading up to the challenged decision,” (4) “[d]epartures from the normal procedural sequence,” (5) “[s]ubstantive departures,” and (6) the challenged action’s “legislative or administrative history.” *Id.* at 266-268. Combined, these factors allow for an objective inquiry into discriminatory intent (and, as explained below, animus), that both is “holistic,” see, e.g., *North Carolina State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 221 (4th Cir. 2016) (describing *Arlington Heights* as requiring a “holistic” approach), and obviates fruitless searches for a unitary subjective intent held by a multi-member body.

Carefully read, the Court’s animus cases reflect reliance on these factors.

Moreno relied heavily on the legislative history of the challenged statute. See 413

U.S. at 534. *Cleburne* similarly relied on the government’s stated justifications, which included responsiveness to constituents’ fear and dislike of the group (intellectually disabled persons) on whose behalf a permit for a group home was sought. *See* 473 U.S. at 448-449. *Romer* relied heavily on a version of the disparate impact factor. Its analysis focused not on the extent of that impact *simpliciter*, but rather on its intensity—*i.e.*, the fact that the challenged law singled out lesbian, gay, and bisexual (LGB) persons for across-the-board legal disabilities. *See* 517 U.S. at 633-634. It also noted the substantive unusualness of such intensive targeting. *See id.* at 633. Finally, *Windsor* relied, like *Moreno*, on the statute’s legislative history, *see* 570 U.S. at 770-771, and, like *Romer*, on both the breadth of the legal disabilities it imposed on LGB persons, *see id.* at 771-773, and the unusualness of the challenged federal law’s rejection of state-law marriage determinations, *see id.* at 768, 770.

The Court’s use of these factors in the animus context makes intuitive sense. While *Arlington Heights* provided these factors and a framework for considering them in pursuit of determining discriminatory intent, which would then trigger the appropriate review standard, those same factors intuitively help courts uncover when a government action might be fairly branded with the taint of invidious motivation more generally. In both contexts, the *Arlington Heights* factors and framework determine when reason exists to be suspicious of the government

action. In the standard discriminatory intent context, those factors and that framework seek to determine when a challenged action should be subject to heightened scrutiny because it intentionally discriminates on the basis of a constitutionally problematic characteristic. *See, e.g., Personnel Adm'r v. Feeney*, 442 U.S. 256, 273-280 (1979) (using discriminatory intent analysis to determine whether a law constitutes sex discrimination and is thereby subject to intermediate scrutiny). In the distinct but related animus context, those factors and that framework seek to determine, in a much more direct way, dispensing with the intermediating step of tiered scrutiny, whether the law is, plainly and simply, invidious. In 2020, a Court majority recognized this connection between these two inquiries when it explained that the animus inquiry incorporated the factors *Arlington Heights* identified in the discriminatory intent context. *See Regents*, 591 U.S. at 34 (four-Justice plurality opinion); *id.* at 36-39 (Sotomayor, J., concurring in part, concurring in the judgment in part, and dissenting in part).

C. Arlington Heights' Burden-Shifting Structure Reveals Whether Animus Infected the Challenged Government Action

After setting forth and applying the factors relevant to discriminatory intent, *Arlington Heights* then explained the respective burdens its discriminatory intent framework imposed on the parties. That framework first requires the plaintiff to establish, using the factors identified earlier, that the alleged intent was “a

motivating factor” in the government’s decision. 429 U.S. at 266; *id.* at 270. If the plaintiff carried that burden, the burden would shift to the government to demonstrate that it would have made the same decision even without that now-proven intent. *Id.* at 270 n.21.³

Just like the factors that allow plaintiffs to make the *prima facie* showing triggering the burden-shifting just described, so too *Arlington Heights* burden-shifting finds a close parallel in the animus cases. Each of the cases in “the animus quadrilogy” featured at least some application of ends-means review under the rational basis standard. However, the rational basis review those cases applied was more searching than that performed in standard equal protection rational basis cases. *See Lawrence*, 539 U.S. at 580 (O’Connor, J., concurring in the judgment) (recognizing that more stringent rationality review). *Moreno* rejected plausible-

³ While the *Regents* plurality did not have occasion to decide whether it was similarly incorporating *Arlington Heights*’ burden-shifting structure into animus claims, given its conclusion that the plaintiffs had failed “to raise a plausible inference that the [challenged government action] was motivated by animus,” 591 U.S. at 35, its analysis implied that further steps—presumably including some form of burden-shifting—would have followed had the plaintiffs made that initial showing of plausibility. Indeed, Justice Sotomayor, who would have found that the plaintiffs had made that initial showing, would have required further factual development, which quite likely would have included some form of burden-shifting. *See id.* at 39 (Sotomayor, J., concurring in part, concurring in the judgment in part, and dissenting in part) (“Whether [the plaintiffs’ complaints] ultimately amount to actionable discrimination should be determined only after factual development on remand.”).

sounding government concerns about reducing food stamp fraud by denying food stamps to people in living arrangements thought to be particularly conducive to fraud. *See* 413 U.S. at 535-538. *Cleburne* rejected similarly plausible-sounding government claims that the occupants of the proposed group home posed unusual public safety problems, for example, flood evacuation. *See* 473 U.S. at 449-450. *Romer* rejected the government's argument that denying legal protection to persons claiming sexual orientation discrimination preserved both private associational freedoms and government enforcement resources. *See* 517 U.S. at 635. Finally, *Windsor* summarily dismissed arguments justifying the federal law definition of marriage as an opposite-sex union, *see* 570 U.S. at 775, despite the dissent's elaborate explanation of those arguments' plausibility. *See id.* at 796-797 (Scalia, J., dissenting). Separate opinions in some of these cases remarked on the unusual stringency of the Court's rational basis review. *See Moreno*, 413 U.S. at 546-547 (Rehnquist, J., dissenting); *Cleburne*, 473 U.S. at 458-459 (Marshall, J., concurring in the judgment in part and dissenting in part); *Windsor*, 570 U.S. at 794 (Scalia, J., dissenting).

This application of stricter-than-normal rational basis review raises questions about when it—rather than its more deferential cousin—applies. Those questions are answered when one realizes that such stricter-than-normal review can be understood as a translation of the final stage of the *Arlington Heights* burden-

shifting structure. Recall that this structure first requires the plaintiff to establish that the alleged discriminatory intent was “a motivating factor,” *Arlington Heights*, 429 U.S. at 266; *id.* at 270. If the plaintiff makes that showing, the burden shifts to the government-defendant to show that it would have made the same decision even in the absence of the now-proven discriminatory intent. *See id.* at 270 n.21.

The stricter-than-normal rational basis review performed in the Court’s animus cases reflects the burden-shifting laid out in *Arlington Heights*. In those cases, once the plaintiff identified animus as a potential explanation for the challenged law, the Court then effectively shifted the burden to the government to *prove* that a rational basis motivated that action. The imposition of this burden on the government explains the Court’s more careful review of the fit between the challenged action and the claimed legitimate interest. This review does not require a tight fit between the action and the claimed justification. *Compare, e.g., Croson*, 488 U.S. at 493 (plurality opinion) (explaining the reason for requiring narrow tailoring in race classification cases); *Craig v. Boren*, 429 U.S. 190, 197 (1976) (requiring that sex classifications be “substantially related” to the asserted government interest). Nor does it require that the justification be unusually important—“compelling” in cases of full-on strict scrutiny, and “important” in cases of intermediate scrutiny. *See, e.g., Croson*, 488 U.S. at 493 (plurality opinion) (requiring a “compelling” government interest in strict scrutiny cases); *Craig*, 429 U.S. at 197 (1976)

(requiring an “important” interest in intermediate scrutiny cases). Thus, this review is not backdoor strict scrutiny. Instead, it aims at uncovering the actual motivation for the challenged government action. If that review yields a conclusion that the law reflects animus, then the law is struck down. *See, e.g., Cleburne*, 473 U.S. at 450 (holding that the defendant-city’s action “appears to us to rest on an irrational prejudice against the [intellectually disabled]”); *Romer*, 517 U.S. at 635 (“Amendment 2 classifies homosexuals not to further a proper legislative end but to make them unequal to everyone else. This Colorado cannot do.”).

II. The District Court Erred in Applying the Court’s Animus Doctrine

This understanding of how the Court has analyzed animus cases reveals how, respectfully, the district court erred in analyzing the plaintiff’s claim.

Most fundamentally, the district court failed meaningfully to engage with the possibility that Section 71113 is properly subject to more than the deferential review normally applied to discrimination based on non-suspect characteristics. After stating that deferential standard, Order on Mot. for Prelim. Inj., ECF No. 31 (Op.), at 8-9, the court conceded that “a bare congressional desire to harm a politically unpopular group’ does not amount to a rational basis that would justify discriminatory lawmaking.” *Id.* at 10 (quoting *Moreno*, 413 U.S. at 534). However, rather than engaging meaningfully with the Court’s methodology for uncovering such animus, the court instead contented itself with describing the Court’s cases as “involv[ing] profound irrationalities that

target individuals for disfavored treatment rather than the selective treatment of entities enlisted through federal funding to carry out congressional objectives.” *Id.*

Leave aside the vagueness of the Court’s identification of “profound irrationalities” as the marker for those cases. Even if that description provided a manageable standard for lower courts’ application, the fact remains that requiring challenged laws to exhibit “profound irrationalities” would likely have doomed the animus challenges that in fact succeeded. For example, in *Moreno* the Court critiqued the statute’s fraud prevention rationale by noting that other provisions of the federal food stamp law aimed more explicitly at fraud. *See* 413 U.S. at 536-537. But traditional rational basis review does not require that a challenged law constitute the only mechanism for solving a problem; in colloquial terms, rational basis review does not require that government use a belt, or suspenders, but not both. *Moreno* also rejected the fraud-prevention rationale for the law’s requirement that three elements be satisfied before the living unit in question would be denied food stamps, observing that would-be fraudsters could simply alter their living arrangements so as to avoid satisfying one of those elements, and thus continue to receive benefits. *See id.* at 537. Again, however, a law’s failure to create a foolproof trap for alleged wrongdoers is hardly a “profound irrationality.” To provide one final example, the flood evacuation, liability risk, and neighborhood overcrowding justifications the government offered in defense of its group home

permit denial in *Cleburne*, see 473 U.S. at 449-450, were surely both legitimate and furthered by the permit denial in a way that, yet again, could hardly be described as “profoundly irrational.” See *id.* at 458-459 (Marshall, J., concurring in the judgment in part and dissenting in part) (suggesting that the permit denial would have survived traditional rational basis review). Yet that permit denial was struck down, just like the food stamp law in *Moreno*.

Thus, the district court’s description of the animus cases as involving laws exhibiting “profound irrationalities” simply does not accurately describe the laws those cases struck down.⁴ Instead, as explained earlier, those cases feature stricter-than-normal rationality review, which seeks to determine the actual reason for the government action, not a reason the court is free to hypothesize. The court’s failure to apply such review flowed from its complete failure to consider whether the *Arlington Heights* factors justified that stricter-than-normal rational basis scrutiny.

⁴ Similarly, the court’s description of these cases as involving “individuals” rather than “entities,” see Op. at 10, fails to inoculate Section 71113 from animus liability. Cf. *Church of the Lukumi Babalu-Aye v. City of Hialeah*, 508 U.S. 520, 547 (1993) (employing animus-style reasoning to hold that city ordinances targeting a particular religious organization’s practices violated the Free Exercise Clause); see also William D. Araiza, Regents: *Resurrecting Animus/Renewing Discriminatory Intent*, 51 *Seton Hall L. Rev.* 983, 993-994 (2021) (explaining how a part of *Lukumi* that spoke for two Justices employed the *Arlington Heights* factors in order to reach the Court’s animus-based conclusion); *id.* at 994-997 (explaining how in later Free Exercise cases, the full Court adopted animus reasoning informed by the *Arlington Heights* factors).

These errors surface in the district court’s analysis. Most notably, its failure to consider the possibility that Section 71113 merits heightened rational basis review led it to summarily dismiss the plaintiff’s animus claim, despite its concession that that claim was “plausible.” Op. at 13. Rather than engaging with that possibility, the court reflexively—and mistakenly—relied on Supreme Court cases applying deferential rational basis review to discrimination that both rested on non-suspect criteria and lacked any suggestion of animus. Immediately after conceding the plausibility of the plaintiff’s animus claim, the court dismissed it by citing canonical cases reflecting such deferential review. *See id.* (citing *FCC v. Beach Communications*, 508 U.S. at 313-314, for the proposition that “Where there are ‘plausible reasons’ for Congress’ action, ‘our inquiry is at an end.’” (quoting *R.R. Retirement Bd. v. Fritz*, 449 U.S. 166, 179 (1980))). It thus demanded that the plaintiff demonstrate “as a factual matter that malice was the essential cause for § 71113.” *Id.* As explained above, this requirement reflects error, as it utterly bypassed the approach the Supreme Court has taken in its animus cases—cases that both recognized the relevance of the *Arlington Heights* factors, *see Regents*, 591 U.S. at 34, and that applied those factors, either expressly, *see id.*, or implicitly, *see Part I(B), supra* (explaining how those factors appear in *Moreno*, *Cleburne*, *Romer*, and *Windsor*).

The court’s failure to recognize that the evidentiary factors in this case might (and indeed, do, *see infra* Part III) raise an inference of animus led it, predictably, to apply that inappropriately deferential review. Thus, the court faulted the plaintiff for allegedly “fail[ing] ... to convincingly negate any reasonable state of facts that would rationalize the prohibition against its receipt of federal Medicaid funds.” Op. at 13. As explained earlier, imposing this requirement conflicts with the Court’s application of rational basis review in the Supreme Court’s animus cases. *See, e.g., Cleburne*, 473 U.S. at 450 (faulting the government for failing to introduce into the record evidence “clarify[ing] how ... the characteristics of the intended occupants of the [proposed group] home rationally justify denying to those occupants what would be permitted to groups occupying the same site for different purposes”); *id.* at 458-459 (Marshall, J., concurring in the judgment in part and dissenting in part) (noting how this requirement of record evidence conflicts with standard rational basis scrutiny). Following the Court’s path would have required the district court to apply the *Arlington Heights* factors to determine whether, at the final stage in the analysis, it ought to have applied the more skeptical rational basis scrutiny exemplified in the Court’s animus cases.

III. Properly Analyzed, Section 71113 Raises an Inference of Animus Justifying a Level of Scrutiny It Cannot Withstand

A. Section 71113 Raises an Inference of Animus

Applying the *Arlington Heights* factors requires the conclusion that Section 71113 exhibits the risk of animus that justifies reviewing it under the same scrutiny the Court used in *Moreno*, *Cleburne*, *Romer*, and *Windsor*. As noted above, in *Arlington Heights* the Court developed a non-exhaustive, *see* 429 U.S. at 268, list of factors that courts and commentators have described as generating a “holistic” inquiry into discriminatory intent and, ultimately, animus. *See McCrory*, 831 F.3d at 221 (describing the *Arlington Heights* discriminatory intent inquiry as “holistic”); Jessica A. Clarke, *Explicit Bias*, 113 *Nw. U. L. Rev.* 505, 584 (2018) (describing that inquiry as “call[ing] for a holistic review of evidence of discriminatory intent”).

Several *Arlington Heights* factors apply directly to this case. First, Section 71113 constitutes ultra-precise targeting, which, as the legislative history made clear, was motivated by a desire to single out a single entity (Planned Parenthood) *de facto* without doing so explicitly. *See Planned Parenthood Fed. of America v. Kennedy*, 2025 WL 2101940, *9 (D. Mass. 2025) (“Over the last several legislative sessions, members of Congress have introduced legislation seeking to defund ‘Planned Parenthood,’ culminating in [Section 71113].”).

Congress’s intent to find a way to single out Planned Parenthood for harm, recognized by the district court in *Planned Parenthood*, by itself raises a strong inference of unconstitutional animus. But Section 71113’s targeting is

particularly suspicious because, after selecting its targets so narrowly, it imposes an exceptionally broad disability on them by denying them *all* Medicaid funding. Section 71113 is not a law that, in pursuit of an anti-abortion agenda, simply withdraws Medicaid funding for performing abortions. The prohibition on federal funding of abortions has existed since 1977, and the plaintiff does not challenge it.

Instead, after crafting its criteria so as to ensnare only Planned Parenthood and perhaps as few as one or two other entities among the large number that perform abortions, Section 71113 then proceeds to disqualify them from *any* Medicaid funding, including funding for medical services unrelated to abortion and, indeed, funding for services that might obviate a pregnant person's need to seek an abortion. As the Court noted in both *Romer* and *Windsor*, laws that identify a precise target and then proceed to impose broad-ranging disabilities on that target rightly trigger constitutional concern. *See Romer*, 517 U.S. at 633 (“Amendment 2 confounds th[e] normal process of judicial review. It is at once too narrow and too broad. It identifies persons by a single trait and then denies them protection across the board.”); *Windsor*, 570 U.S. at 771-773 (performing similar analysis). A law that engages in this sort of hyper-focused targeting in pursuit of imposing broad-based disabilities most certainly implicates the first *Arlington Heights* factor.

“The historical background of the decision is [also] one evidentiary source” for the intent/animus inquiry, “particularly if it reveals a series of official actions taken for invidious purposes.” *Arlington Heights*, 429 U.S. at 267. This description fits Section 71113 to a tee. Section 71113 is the culmination of Congress’s yearslong attempts to defund one particular entity—Planned Parenthood. *See Planned Parenthood*, 2025 WL 2101940 at *9-*11 (recounting this history, including consideration of bills “substantially similar,” *id.* at *9, to Section 71113). Those attempts foundered, even as Congress apparently sought to avoid formally singling out Planned Parenthood by drastically reducing the defunding provision’s financing threshold. *See id.* at *17 (finding “where reducing the funding threshold from \$350 million to \$800,000 resulted in coverage of only two entities not affiliated with Planned Parenthood Federation, the inclusion of those entities does not undercut Plaintiffs’ showing that Section 71113’s criteria were crafted to target Planned Parenthood Members”); *id.* (describing similar threshold reductions in earlier congressional sessions’ versions of what became Section 71113). Nevertheless, that “invidious purpose[],” *Arlington Heights*, 429 U.S. at 267, motivating those earlier attempts provides “[t]he historical background,” *id.*, to Congress’s decision to enact Section 71113.

Finally, Section 71113’s “legislative ... history,” *Arlington Heights*, 429 U.S. at 268, also suggests the presence of animus that justifies closer review under the rational basis standard. As the district court observed in *Planned Parenthood*, “Legislative context corroborates [the] contention that Congress drafted [Section 71113’s defunding] criteria with the intent to punish Planned Parenthood Federation and its Members.” 2025 WL 2101940 at *20. Both that court and the plaintiff in this case have set forth in detail the legislative history suggesting Congress’s unconstitutional “bare ... desire to harm a politically unpopular group,” *Moreno*, 413 U.S. at 534. This brief incorporates those presentations. What it adds to those presentations is an explanation of the relevance of that legislative history, as yet another *Arlington Heights* factor justifying more careful review of Section 71113 under the rational basis standard.

B. Section 71113 Fails the Scrutiny Required of Laws that Raise an Inference of Animus

The evidence presented in the prior sub-Part does not, by itself, warrant striking down Section 71113. However, the Supreme Court’s treatment of animus claims requires that presentation of this evidence shift the burden to the government to explain how Section 71113 in fact promotes some legitimate government interest. The government cannot carry that burden.

As explained in Part I(C), *supra*, this final inquiry, despite taking place under the aegis of the rational basis standard, requires more than the deferential review performed under traditional rational basis scrutiny. Rather, as performed in *Moreno*, *Cleburne*, *Romer*, and *Windsor*, this scrutiny requires the government to show that its asserted legitimate goals were those that actually motivated Congress. For example, *Moreno* demanded that the government explain why the law challenged in that case intentionally promoted the government’s anti-fraud goal. *See* 413 U.S. at 536-537 (“The existence of [other anti-fraud] provisions necessarily casts considerable doubt upon the proposition that the [challenged law] could rationally *have been intended* to prevent those very same abuses.”) (emphasis added). *Cleburne* concluded by simply disbelieving the government’s more legitimate-sounding explanations for the permit denial, given that the city allowed land uses that posed the same regulatory problems as the group home denied a permit. *See* 473 U.S. at 450 (holding that the defendant-city’s action “appears to us *to rest on* an irrational prejudice against the [intellectually disabled]”) (emphasis added). Similarly, *Windsor* used a variety of tools to determine “the congressional purpose” motivating enactment of the law challenged in that case. *See* 570 U.S. at 771 (“The arguments put forward by [the law’s congressional defenders] are ... candid about *the congressional purpose* to influence or interfere with state

sovereign choices about who may be married.”); *id.* (“DOMA’s operation in practice confirms this [invidious] *purpose*.”); *id.* at 772 (“DOMA’s ... *principal purpose* is to impose inequality, not for other reasons.”); *id.* at 774 (DOMA’s “*principal purpose* and ... necessary effect ... are to demean those persons who are in a lawful same-sex marriage.”) (all emphases added).

The Court’s animus doctrine requires similarly scrutinizing Section 71113 to ensure that it at least rationally furthers the government’s legitimate interests, in order to determine whether those interests were in fact the ones actually motivating Congress.⁵ Again, though, that inquiry is not appropriately performed in the deferential manner the district court performed it, *i.e.*, by conceding the “plausib[ility],” Op. at 13, of the plaintiff’s explanation for the

⁵ As explained earlier, this final inquiry does not require probing the subjective mindset of the members of the congressional majority that voted for Section 71113. Instead, this inquiry, like the identical inquiry in the Court’s animus cases, and indeed the analogous inquiry undertaken as part of the final stage of discriminatory intent review under *Arlington Heights* itself, *see* 429 U.S. at 270 n. 21, requires careful examination of the objective circumstances of the government action. *See* William D. Araiza, *Objectively Correct*, 69 *Fla. L. Rev. F.* 68, 69-71 (2020) (explaining how courts can perform this inquiry in an objective way that avoids the charge that they are engaging in illegitimate mind-reading); *McCrary*, 831 F.3d at 233 (“Our conclusion [that application of the *Arlington Heights* factors revealed at least some intent to discriminate based on race] does not mean, and we do not suggest, that any member of the General Assembly harbored racial hatred or animosity toward any minority group. But the totality of the circumstances ... cumulatively and unmistakably reveal that the General Assembly used SL 2013–381 to entrench itself ... by targeting voters ... based on race”).

law but nevertheless requiring it to negate every conceivable legitimate justification for it. *See id.* That sort of rational basis review is analogous to the sort embraced by the dissents in *Moreno*, *Cleburne*, and *Windsor*, *see supra* Part I(C). As such, the district court's adoption of that latter path constitutes plain error.

Instead, the type of rational basis review required at this final stage of the animus inquiry requires the more searching review the majorities performed in those cases. Such review does not demand a perfect, or even a tight, fit, as might be required under strict or intermediate scrutiny. However, it does demand a meaningful inquiry into the real reason motivating the legislature. The cases employing this review have sought to uncover that actual purpose by considering, for example, the law's legislative history, *see Moreno*, 413 U.S. at 534; *Windsor*, 570 U.S. at 770-771, and the extent to which other persons' conduct raising similar regulatory problems was allowed to continue unabated, *see Cleburne*, 473 U.S. at 449-450.

In sum, the *Arlington Heights* framework the Court has now expressly adopted for purposes of evaluating animus claims, *see Regents*, 591 U.S. at 534 (four-Justice plurality opinion); *id.* at 536-539 (Sotomayor, concurring in part, concurring in the judgment in part, and dissenting in part), requires, as a final step, that the government show that the illicit intent (be it standard

discriminatory intent or animus) was not the but-for cause of the government's action. *See, e.g.*, Daniel Conkle, *Animus and Its Alternatives: Constitutional Principle and Judicial Prudence*, 48 *Stetson L. Rev.* 195, 203 (2019) (“If the *Arlington Heights* approach is adopted [in animus cases], the ultimate question is whether animus was a determinative, but-for reason for the law’s adoption.”); *see also McCrory*, 831 F.3d at 233 (“Once the burden shifts [in an *Arlington Heights* inquiry], a court must carefully scrutinize a state’s [non-invidious] motivations to determine whether they *alone* can explain enactment of the challenged law. Judicial deference to the legislature’s stated justifications is no longer justified.”) (emphasis added; citation, bracket, and internal quotation mark omitted). This inquiry necessarily requires review of the statute’s ends and means that is more searching than that called for under traditional rational basis review. *See id.* at 233-234 (“A court [at this final stage of the *Arlington Heights* inquiry] assesses whether a law would have been enacted without [the allegedly] discriminatory motive by considering the substantiality of the state’s proffered non-racial interest and how well the law furthers that interest.”); *id.* at 233 (in applying that shifted burden, “[j]udicial deference to the legislature’s stated justifications is no longer justified”).

The government cannot make that showing. As the plaintiff explains, by defunding the plaintiff and thus crippling its ability to provide non-abortion-

related services, Section 71113 utterly fails to promote any asserted interest in reducing the incidence of abortions in the United States. *See* Opening Brief of Plaintiff-Appellant (“Ptf’s Brief”) at 24-33. Relatedly, Section 71113’s defunding criteria constitute unusually bad proxies for entities that perform relatively more abortions, the defunding of whom might somehow be thought to thereby reduce the number of abortions. *Compare Moreno*, 413 U.S. at 537 (rejecting the rationality of the criteria for satisfying the “unrelated household” ineligibility provision for federal food stamps, on the ground that the relative ease of avoiding satisfying one or more of those criteria rendered them irrational mechanisms for furthering the government’s fraud prevention interests). Some of Section 71113’s criteria—for example, limiting defunding to entities that qualify as “essential community providers”—lack even the most tenuous connection to any government interest in limiting abortion. *See* Ptf’s Brief at 29-30.

To be sure, these criteria do promote one government interest: singling out Planned Parenthood *de facto* but not expressly, and thereby imposing precisely-targeted harm while avoiding a decision by the Senate parliamentarian that such precise targeting rendered the provision ineligible for inclusion in a bill proposed for passage using the congressional reconciliation process. *See also Planned Parenthood*, 2025 WL 2101940 at *16-*21 (piercing the statute’s

vener of generality to find that Section 71113 likely constitutes a Bill of Attainder). But “a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.” *Moreno*, 413 U.S. at 534.

CONCLUSION

This is not a case about the right to abortion. *See Planned Parenthood*, 2025 WL 2101940 at *23 (Section 71113’s “criteria leave virtually all abortion providers who participate in Medicaid—other than Planned Parenthood Members—unaffected by the legislation.”). Instead, it is a case that requires the Court to decide whether a law is unconstitutional when it is simultaneously carefully gerrymandered to harm one particularly disliked entity but also expanded via irrational criteria to encompass a vanishingly small number of other entities to provide a fig leaf of neutrality and general applicability. Despite such obfuscations, the animus at Section 71113’s heart remains undeniable and is revealed through proper application of the Court’s animus jurisprudence. For this reason, this Court should hold that the plaintiff is likely to succeed on the merits of its equal protection animus claim and, based on that likelihood and the remaining arguments in the opening brief of the Plaintiff-Appellant, reverse the denial of the preliminary injunction.

Respectfully submitted,

/s/ Sarah Lahlou-Amine

Sarah Lahlou-Amine, Esq.
1032 15th Street NW
#407
Washington, DC 20005-1502
(202) 729-6983

Counsel for Amicus Curiae, Professor
William D. Araiza

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify that this document complies with the type-volume limitations set forth in Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 6,486 words.

I further certify that this document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in a 14-point Times New Roman font.

Dated: October 29, 2025

/s/ Sarah Lahlou-Amine, Esquire
Sarah Lahlou-Amine, Esquire

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2025, I electronically filed the foregoing document with the United States Court of Appeals for the First Circuit by using the CM/ECF system, which will send notifications of such filing to all CM/ECF counsel of record.

/s/ Sarah Lahlou-Amine, Esquire
Sarah Lahlou-Amine, Esquire