No. 25-2165

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

STATE OF CALIFORNIA; COMMONWEALTH OF MASSACHUSETTS; STATE OF NEW YORK; STATE OF CONNECTICUT; STATE OF DELAWARE; STATE OF COLORADO; STATE OF HAWAIʻI; STATE OF ILLINOIS; STATE OF MAINE; STATE OF MARYLAND; STATE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEW JERSEY; STATE OF NEW MEXICO; STATE OF NEVADA; STATE OF NORTH CAROLINA; STATE OF OREGON; STATE OF RHODE ISLAND; STATE OF VERMONT; STATE OF WASHINGTON; STATE OF WISCONSIN; the DISTRICT OF COLUMBIA; and JOSH SHAPIRO, in his official capacity as Governor of the Commonwealth of Pennsylvania,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants,

On Appeal from an Order of the United States District Court
for the District of Massachusetts (Talwani, J.) in No. 1:25-cv-12118-IT

OPPOSITION TO
MOTION FOR STAY PENDING APPEAL

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INTRODUCTION

Plaintiff States do not dispute the general proposition that Congress, exercising its Spending Clause authority, has "broad power" to impose "some conditions … on the receipt of federal funds." Mot. 6 (citations omitted); *see also Arlington Cent. School Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006). But the "legitimacy of Congress' power to legislate under the spending power … rests on whether the State voluntarily and knowingly accepts the terms of the 'contract.'" *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). Congress thus must provide "clear notice" of the obligations a law imposes and avoid "largely indeterminate" provisions susceptible to a range of plausible meanings. *Id*. at 24, 25.

Congress failed to satisfy those standards in enacting Section 71113 in July 2025 as part of the "One Big Beautiful Bill Act." Pub. L. No. 119-21, § 71113, 139 Stat. 72, 300-01 (July 4, 2025). Congress obviously intended to target Planned Parenthood by preventing states from providing any Medicaid funds to "prohibited entities," regardless of how those funds would be used. *See* Compl. ¶¶ 115-124. But rather than identify Planned Parenthood and its members by name, Congress identified prohibited entities through a convoluted, indeterminate, four-part definition that leaves States unclear about their obligations. As the Supreme Court has explained, "[i]n a Spending Clause case, the key is not what a majority of the

Members of both Houses intend but what the States are clearly told regarding the conditions that go along with the acceptance of those funds." *Arlington*, 548 U.S. at 304. While Congress may have evaded budget reconciliation limits by avoiding direct reference to Planned Parenthood in the law, it introduced a distinct constitutional problem through its oblique definitional approach.

The district court properly concluded that Plaintiff States were not "clearly told" what entities are prohibited from Medicaid funding under Section 71113. The term "affiliates" can have different meanings in different contexts, Order 25-28; indeed, defendants themselves have offered varying and inconsistent interpretations of that term as used in the statute here. Whether an entity is (as of October 1, 2025) "primarily engaged in family planning services, reproductive health, and related medical care" is also indeterminate. *Id.* at 28. Defendants' principal response is that the Medicaid statutes are "notoriously complex" and "often subject to dispute." Mot. 9. But statutory complexity does not excuse Congress from its obligation to provide clear notice of the conduct prohibited under Section 71113.

Because of indeterminacy, Plaintiff States face "significant financial consequences." Order 26. The federal government has demanded immediate compliance with Section 71113's restrictions, even though States must "redesign their previously approved Medicaid programs" at substantial expense to

accommodate unascertainable provisions. Order 33. In light of those harms and other equitable considerations, the district court properly exercised its discretion in provisionally enjoining the enforcement of Section 71113 and holding Congress to its obligation to "speak with a clear voice" so "States [may] exercise their choice" to accept funding "knowingly, cognizant of the consequences of their participation." *Pennhurst*, 451 U.S. at 17. The motion for a stay pending appeal should be denied.

STATEMENT

A. Legal and Factual Background

1. Enacted in 1965, Medicaid "offers federal funding to States to assist pregnant women, children, needy families, the blind, the elderly, and the disabled in obtaining medical care." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 541 (2012) (citing 42 U.S.C. § 1396a(a)(10)) (*NFIB*). Medicaid was conceived as a "cooperative endeavor," *Harris v. McRae*, 448 U.S. 297, 308 (1980), in which the federal government provides financial assistance to States that comply with certain "federal criteria governing matters such as who receives care and what services are provided at what cost," *NFIB*, 567 U.S. at 541-542. "Subject to its basic requirements, the Medicaid Act empowers States to 'select dramatically different levels of funding and coverage, alter and experiment with different financing and delivery modes, and opt to cover (or not to cover) a range of

particular procedures and therapies." *Id.* at 629 (Ginsburg, J., concurring in part, concurring in the judgment in part, and dissenting in part). Today, all 50 States participate in Medicaid. *NFIB*, 567 U.S. at 542.

To participate in Medicaid, a State devises a "plan for medical assistance" that is subject to federal review and approval. 42 U.S.C. § 1396a(a); *see also id.* § 1396–1. Once a plan is approved, "federal funds begin flowing to help the State execute it." *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 363 (2025). The Centers for Medicare and Medicaid Services (CMS) disburses funds in advance to States on a quarterly basis, based on state expenditure estimates. 42 C.F.R. § 430.30(a)(1). States then use those federal funds (along with state funds) to pay out reimbursement requests from providers or managed care plans, which must typically be processed and paid within thirty days. *See* 42 C.F.R. §§ 447.45(d)(2), 447.46(c).

Because States are responsible for reimbursing providers and managed care plans, it is the States that determine whether a particular claim qualifies for payment from Medicaid funds. D.Ct. Dkt. 73-1 ¶ 7; *see also* 42 C.F.R. § 447.45(f). At the end of each quarter, States report actual expenditures to CMS and engage in a review and reconciliation process through which States either return overpayments or CMS provides additional funds for underpayments. D.Ct. Dkt. 73-1 ¶ 5. Reconciliation typically occurs over a period of months. *Id.* ¶ 9.

Although Congress has previously restricted Medicaid funds from paying for certain services, such as abortion care, *see* Pub. L. 94-439, § 209, it has never before required the exclusion of a particular provider based on the services they provide *outside* of the Medicaid program.

2. Section 71113(a) provides that no federal Medicaid funds "shall be used to make payments to a prohibited entity for items and services furnished during the 1-year period beginning on the date of the enactment of" the Act. Pub. L. 119-21, § 71113(a), 139 Stat. 72, 300-01 (July 4, 2025). A "prohibited entity" is defined in Section 71113(b) as "an entity, including its affiliates, subsidiaries, successors, and clinics":

> (A) that, as of [October 1, 2025]–
>
> > (i) is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code;
> >
> > (ii) is an essential community provider described in section 156.235 of title 45, Code of Federal Regulations (as in effect on the date of enactment of this Act), that is primarily engaged in family planning services, reproductive health, and related medical care; and
> >
> > (iii) provides for abortions, other than an abortion [permitted under the Hyde Amendment]; and
>
> (B) for which the total amount of Federal and State expenditures under the Medicaid program under title XIX of the Social Security Act for medical assistance furnished in fiscal year 2023 made directly, or by a covered organization, to the entity or to any affiliates, subsidiaries, successors, or clinics of the entity, or made to the entity or to any affiliates, subsidiaries,

> successors, or clinics of the entity as part of a nationwide health care provider network, exceeded $800,000.

Id. § 71113(b)(1). The Act does not provide a definition of "affiliates, subsidiaries, successors, or clinics," or otherwise explain how to determine when an entity is "primarily engaged in family planning services, reproductive health, and related medical care."

On November 20 and 21, 2025, approximately four months after the bill's effective date, CMS sent an email (and then a corrected version of the email) to State Medicaid Directors concerning Section 71113. D.Ct. Dkt. 82-1. The email asserted that "State Medicaid agencies are responsible for identifying the prohibited entities enrolled in their Medicaid program for purposes of ensuring compliance with Section 71113." *Id.* at 3. The email further instructed States to review "readily available" information "including claims data," when determining whether an entity is prohibited under Section 71113, and to "contact the entity directly to obtain any additional information necessary[.]" *Id.* The email notified States that CMS interprets Section 71113's term "affiliate," to mean "a corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, a parent, or a sibling corporation." *Id.* CMS defined "'control' as: 'the direct or indirect power to govern the management and policies of a person or entity, whether through ownership of voting securities, by contract, or otherwise; the power or authority to manage, direct, or oversee.'" *Id.*

CMS notified States that "at any time, CMS may require a State to provide its list of prohibited entities to validate the State's claims." D.Ct. Dkt. 82-1, Ex. A, at 3. CMS also announced a new certification process to verify compliance with Section 71113. *Id.* The email directed each State that if it "has already claimed or has drawn down" federal funds "on or after July 4, 2025[,] for payments to entities identified as prohibited entities as of October 1, 2025, it should promptly withdraw or correct the claim," or return the funds, "as required by applicable statutory and regulatory requirements." *Id.*

B. Proceedings Below

A coalition of 22 States and the District of Columbia (collectively "Plaintiff States") filed a lawsuit in July 2025, challenging Section 71113 on constitutional grounds. D.Ct. Dkt. 1. The Plaintiff States moved for a preliminary injunction, primarily on the ground that Section 71113 violates the Spending Clause by attaching conditions to federal funding without clear notice to the States and in contravention of the respect for state sovereignty commanded by our federal constitutional system. D.Ct. Dkt. 60.[1]

[1] Planned Parenthood Federation of America filed a separate lawsuit challenging the provision on distinct constitutional grounds. Order 9-10. The district court preliminarily enjoined enforcement of the law. *Planned Parenthood Fed'n of Am., Inc. v. Kennedy*, 792 F. Supp. 3d 227, 240 (D. Mass. July 28, 2025). This Court issued an order on September 11, 2025, staying the injunction pending appeal. Order 10.

On December 2, 2025, the district court entered an order granting a preliminary injunction that bars enforcement of Section 71113 against the Plaintiff States while litigation proceeds. The district court concluded that Section 71113 fails to furnish States with "clear notice" about the "criteria for designating 'prohibited entities.'" Order 32. The district court also concluded that the law impermissibly intruded on state authority by imposing onerous compliance conditions that could not have been anticipated at the time States opted to accept Medicaid funds. *Id.* at 32-35. Considering the balance of the equities and plaintiffs' likelihood of success, the district court issued an order preliminarily enjoining enforcement of Section 71113.

The district court denied the federal government's request for a stay pending appeal, but issued an administrative stay of seven days to allow defendants to seek a stay from this Court. Order 44. The administrative stay was set to expire on December 9. This Court extended the administrative stay pending resolution of this motion for a stay.

ARGUMENT

A stay applicant must "ma[ke] a strong showing" that (1) it "will be irreparably injured absent a stay"; (2) its appeal will "likely . . . succeed on the merits"; (3) "issuance of the stay will [not] substantially injure the other parties interested in the proceeding"; and (4) the stay would be in "the public interest."

Does 1-3 v. Mills, 39 F.4th 20, 24 (1st Cir. 2022). "[T]he burden is on the Government as applicant to show" these factors "favor a stay." *Dep't of Educ. v. Louisiana,* 603 U.S. 866, 868 (2024). Defendants cannot satisfy any of the stay factors here.

I. DEFENDANTS ARE UNLIKELY TO SUCCEED ON THE MERITS OF THEIR APPEAL

While "Congress has broad power to set the terms on which it disburses federal money to the States," *Arlington,* 548 U.S. at 296, that power is not without "limits," *NFIB,* 567 U.S. at 576. The Supreme Court "ha[s] repeatedly characterized . . . Spending Clause legislation as 'much in the nature of a *contract*.'" *Id.* at 576-577. Federally imposed conditions therefore must be "set out 'unambiguously,'" so "recipients of federal funds … accept them 'voluntarily and knowingly.'" *Arlington*, 548 U.S. at 296. That "limitation is critical to ensuring that Spending Clause legislation does not undermine the status of the States as independent sovereigns in our federal system." *NFIB,* 567 U.S. at 577. Indeed, the most basic and fundamental requirement under the Spending Clause—as well as our federal structure of government more generally—is that Congress give due respect to States as separate sovereigns under "our system of federalism." *Id.* at 577-578. The district court correctly held that Section 71113 offends those principles.

1. "Section 71113 fails to lay out with sufficient clarity" which providers fall within the definition of "prohibited entity." Order 23. Several aspects of the definition are "susceptible to a range of plausible meanings," in violation of the Spending Clause's clear notice requirement. *Kentucky v. Yellen*, 54 F.4th 325, 348 (6th Cir. 2022).

Take the term "affiliates" included in the definition of a prohibited entity. Pub. L. No. 119-21, § 71113(b)(1), 139 Stat. 72, 300-01 (covering "an entity, including its affiliates, subsidiaries, successors, and clinics"). Under the dictionary definition of the word, the term "affiliate" could encompass virtually any healthcare provider or medical professional that has any "close connection" or "associat[ion]" with a prohibited entity. *See, e.g.*, *Affiliate*, Merriam Webster Dictionary, https://tinyurl.com/jukk3eb2. Or, as in certain federal tax contexts, it could mean entities connected through stock ownership to a parent corporation, but only if the corporation possesses at least 80 percent of the total voting power and a value equal to at least 80 percent of the total value of the stock of such corporation. 26 U.S.C. § 1504(a)(2). Or, as CMS has recently suggested, D.Ct. Dkt. 82-1, Ex. A, at 3, an affiliate could mean a "corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent, or sibling corporation." *Affiliate*, Black's Law Dictionary 69 (10th ed. 2014); *see* Order 27-

28.[2] As courts have observed, the term "affiliates" can have one meaning in "run-of-the-mine speech," and a broader definition in other corporate contexts. *Int'l Confections Co. v. Z Capital Gp., LLC*, 2023 WL 335285, at *3 (6th Cir. 2023) (Sutton, C.J.) ("context is everything in interpretation."). Without knowing which definition Congress intended, plaintiffs do not have clear notice of the obligations that Section 71113 imposes.

Although the term may have "well-known legal meaning" in certain contexts (Mot. 15), that context is absent in Section 71113.[3] The provision does not implement tax law or corporate law, where the term "affiliate" may have some more settled meaning. And defendants themselves have refused to offer a

[2] Defendants' argument that the CMS guidance clarifies the ambiguity in the text of the statute is incorrect. Mot. 15, n.3. And even if it had, for Spending Clause purposes, "it is insufficient merely that an agency reasonably liquidated ambiguities in the relevant statute," because "Congress itself must have spoken with a clear voice." *Kentucky*, 54 F.4th at 354. While agencies are permitted to issue regulations to "resolve … possible ambiguity concerning particular applications of [a] requirement[]," *Bennett v. Kentucky Dep't of Educ.*, 470 U.S. 656, 669 (1st Cir. 1985), the funding requirement "itself must still be ascertainable on the face of the statute," *W. Va. by & through Morrisey v. U.S. Dep't of the Treasury*, 59 F.4th 1124, 1148 (11th Cir. 2023).

[3] In other provisions of the Medicaid Act, for instance, Congress has defined prohibited relationships specifically. *E.g.*, 42 U.S.C. § 1320a-7b(8); *Planned Parenthood of Kansas v. Andersen*, 882 F.3d 1205, 1235 (10th Cir. 2018). And States have used broad definitions of "affiliate" to encompass any agreement that authorizes an entity to use the other entity's "brand name, trademark, services mark, or other registered identification mark." *Planned Parenthood Ass'n of Hidalgo Cnty. Tex. v. Suehs*, 692 F.3d 343, 347 (5th Cir. 2012).

definitive statement on whether certain entities fall within the meaning of the term.[4] As the district court observed, defendants "have left open the question of whether Planned Parenthood members are affiliates … despite an uncontroverted record that the members are separately incorporated and independently governed entities, each with its own CEO and board of directors." Order 25.

Indeed, what definitions defendants have offered of the term are inconsistent. In related litigation brought by Planned Parenthood itself, *see* Defendant-Appellants Br., *Planned Parenthood Fed'n of Am., Inc. v. Kennedy,* No. 25-1698, at 1-2 (1st Cir. Sept. 29, 2025), defendants first suggested that the "affiliate" determination turns on whether the prohibited entity owns or controls the affiliate. *Id.* at 23. They then suggested that any Planned Parenthood member—including "affiliates" of prohibited entities—can "avoid the law's application . . . solely . . . by ceasing to provide abortions, among other possibilities." *Id*. at 14. Later, however, defendants suggested that Section 71113 bans *all* Planned Parenthood members, regardless of whether they provide abortions, from receiving federal Medicaid funds. *Id.* at 24. Defendants have also repeatedly "maintained" that Planned Parenthood entities "are not the sole targets of Section 71113," without identifying the universe of such entities that would fall within the provision's

[4] *See, e.g.*, Oral Argument at 3:18-3:41, *Planned Parenthood v. Kennedy*, Nos. 25-1698, 1755 (1st Cir. 2025).

scope. Order 24. Plaintiff States are thus left to "wonder . . . what rules [they] must follow," *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 220 (2022), and CMS is left with a "huge range of discretion about which state behavior it would deem permissible versus impermissible," *Kentucky*, 54 F.4th at 350.

The term "prohibited entity" contains further indeterminacies about how States must assess whether a provider is entitled to federal Medicaid funds. Section 71113(b)(B) incorporates an expenditure threshold. But the provision "does not provide [S]tates with a process for calculating expenditures" for purposes of the "$800,000 Medicaid expenditure threshold." Order 28. And the statute does not specify whether in-state reimbursements alone are sufficient for calculating the relevant expenditures, or whether out-of-state reimbursements for providers must be included (which Plaintiffs do not currently track for each provider). *Id.* at 23. As the district court observed, the federal government could "effectively direct[] [S]tates to conduct their own ad hoc investigation into the out-of-state expenditures received by potential in-state "prohibited entities," *id.* at 28—all while assuming the risk of "significant financial consequences for violations of the provision," *id.* at 26. These areas of uncertainty do not present mere "operational difficulties," though such difficulties certainly exist. Rather, these

areas of uncertainty deny States notice of the core terms of the agreement offered by Congress.

Section 71113's focus on entities that are "primarily engaged in family planning services, reproductive health, and related medical care" leads to additional indeterminacies. Section 71113 does not set forth in any detail the criteria for evaluating whether a provider is "primarily engaged in family planning services, reproductive health, and related medical care." Order 28. Defendants confidently assert that "most medical providers know perfectly well what sorts of services they offer" (Mot. 16), but that is inconsistent with the record. *E.g.*, D.Ct. Dkt. 62-6 ¶ 23, 62-10 ¶ 19, 62-13 ¶ 31. And critically, the relevant question here is whether *state officials* are clear about what services are included in the definition. The provision provides no definition of "family planning services" or "reproductive health" or the broad-sweeping catch-all phrase "related medical care." As a result, it is hardly obvious whether States would be "precluded from reimbursing maternity services at a non-profit hospital's birthing center … if the hospital provides elective abortions on its main campus." Order 28-29.

The indeterminacy is magnified by the confusion regarding the time period for determining whether a provider is a "prohibited entity." For instance, while the provision encompasses entities that are "primarily engaged in" specified activities as of October 1, it does not specify "what is the relevant time period for assessing

whether [a prohibited entity] was 'primarily engaged in'" such activities. *Kearney Reg'l Med. Ctr. v. U.S. Dep't of Health & Human Serv.*, 934 F.3d 812, 817 (8th Cir. 2019). Indeed, in another Medicaid context, the Eighth Circuit has recognized how difficult it can be to determine what the relevant time period is for evaluating a "primarily engaged in" requirement. *Id.*[5]

Congress' failure to provide sufficient notice in Section 71113 is all the more troubling—and contrary to the basic respect for state sovereignty commanded by our constitutional structure—because the statute makes "substantial changes" to Medicaid "without giving the States time to redesign their previously approved Medicaid programs." Order 33. Over the "sixty-year history of Medicaid, States—not the federal government" have been responsible for determining whether providers qualify for the Medicaid program. *Id.* at 32. In an unprecedented move, Section 71113 requires States to "remove[] major providers from established healthcare systems that under Medicaid plans already approved by the federal government, reliant on contracts already in place with health plans." *Id.* Worse, Section 71113 took effect in July 2025, when it was still impossible for

[5] To be sure, the phrase "primarily engaged in" can have an established meaning in other contexts. *E.g.*, *Ramirez v. Yosemite Water Co.*, 20 Cal.4th 785, 798 n.4 (1999) (explaining that in California labor law, "primarily" engaged in means more than one-half of an employee's work time). But the question here is not whether the phrase can have settled meaning in other contexts, but whether Congress spoke with sufficient clarity in the context of Section 71113.

States to ascertain which providers would be prohibited on October 1.[6] With little and insufficiently clear notice, States must change their "approved Medicaid programs … [to] meet all of the program obligations, including the federal mandate that Medicaid benefits include family planning services and supplies, without these newly prohibited providers." *Id.* at 33. Congress' dismissive approach to States' legitimate reliance interests—and cavalier disregard for the realities of administering the Medicaid program at the state level—fails to accord the respect to which States are entitled in our federal system. *Cf. Alden v. Maine*, 527 U.S. 706, 748 (1999) ("Although the Constitution grants broad powers to Congress, our federalism requires that Congress treat the States in a manner consistent with their status as residuary sovereigns and joint participants in the governance of the Nation.").

2. Defendants' contrary arguments are not persuasive. In the proceedings below, defendants took the position that the Spending Clause requires only that a statute reflect that "*some* condition [is] placed on the receipt of federal funds," even if the requirements of the condition are unclear. D.Ct. Dkt. 73 at 7 (emphasis

[6] Section 71113 also sets forth "irreconcilable timing provisions," whereby Plaintiff States were required to cease payments by July 4, 2025 to "prohibited entities" that could only be identified by their status on October 1, 2025. Order 30. A "state official 'engaged in the process of deciding whether the State should accept [the impacted] funds'" could not reasonably determine whether Medicaid reimbursements to healthcare providers—which may or may not be "prohibited entities"—were properly disbursed between July 4 to October 1. *Id.* at 32.

added). They have rightfully abandoned that argument. Mot. 6-22. No court has held that the clear notice requirement can be satisfied merely because a statute imposes some vague and indeterminate condition.

Defendants pivot to new theories, which also lack merit. First, defendants contend that *Pennhurst* established no more than "a rule of statutory construction" that courts must construe ambiguous funding conditions narrowly. Mot. 11. But Supreme Court precedent "leave[s] little doubt that the ascertainability requirement is more than a rule of construction." *W. Virginia*, 59 F.4th at 1142. The Court has repeatedly held that "'the legitimacy of Congress' power' to enact Spending Clause legislation rests not on its sovereign authority to enact laws, but on 'whether the [recipient] voluntarily and knowingly accepts the terms of th[at] 'contract.'" *Cummings*, 596 U.S. at 219 (quoting *Barnes v. Gorman*, 536 U.S. 181, 186 (2002)). Spending Clause requirements reflect basic principles of federalism and carry more force than a "canon of interpretation." Mot. 12-13.

Defendants also point to cases involving other statutes in other contexts and argue that courts have upheld "far more ambiguous statutes." Mot. 18. But two of the three cases on which they rely did not even involve Spending Clause challenges. *See, e.g.*, *Rolland v. Romney*, 318 F.3d 42, 55-56 (1st Cir. 2003); *Com. of Pa. Off. of Budget v. Dep't of Health & Hum. Servs*., 996 F.2d 1505, 1510 (3d Cir. 1993). Although the third case did involve a Spending Clause challenge, the

statute considered in *Benning v. Georgia*, 391 F.3d 1299 (11th Cir. 2004) is nothing like Section 71113. The funding conditions considered there imposed a standard that had "long [been] applied to the states in disputes regarding the free exercise of religion." *Id.* at 1306. The phrases used in Section 71113 are not consistent with any similar tradition. To the contrary, it is the first time in the sixty-year history of Medicaid that Congress has attempted to impose provider prohibitions solely on the basis of the provision of certain legal medical services outside of the Medicaid program.[7]

Defendants also rely on the argument that Medicaid is inherently complex and that the statute and regulations regularly present "ambiguous applications." Mot. 10. But none of the cases cited by defendants involved a Spending Clause challenge to a statute that, as here, is susceptible to a broad "range of plausible meanings." *Kentucky*, 54 F.4th at 330. In each case, the court analyzed two conflicting interpretations of a Medicaid provision and decided which reflected the better reading. *Wos v. E.M.A. ex rel. Johnson*, 568 U.S. 627, 636-637 (2013); *Massachusetts v. Sebelius*, 638 F.3d 24, 33 (1st Cir. 2011); *Massachusetts v. Sec'y of Health & Hum. Servs.*, 749 F.2d 89, 95 (1st Cir. 1984). None of the cited cases

[7] Past CMS guidance indicated that "Medicaid programs may not exclude qualified health care providers—whether an individual provider, a physician group, an outpatient clinic, or a hospital—from providing services under the program because they separately provide abortion." *See* Ctr. for Medicaid, *Update on Medicaid/CHIP* (June 1, 2011), https://tinyurl.com/4sph9app.

construed "the imposition of a new condition on the state" that left a state's obligations indeterminate. *Massachusetts*, 749 F.2d at 95 (distinguishing a Spending Clause challenge from "the interpretation of the provisions governing [available] remedies"). Nor can any of those decisions be read to embrace the rule that complicated statutory regimes excuse Congress from its constitutional obligation to "speak with a clear voice" when imposing conditions on federal funds. *Pennhurst*, 451 U.S. at 17.

And while the Medicaid program no doubt imposes a variety of "detailed" conditions on the receipt of federal funds that govern states' conduct (Mot. 7-8), Section 71113 is unique and unprecedented. *Supra* pp. 15-16. Although defendants assert that the terms of Section 71113 are "perfectly clear," Mot. 14, the record does not bear that out. Rather, the uncontested record reflects that the administrators of Medicaid programs in Plaintiff States cannot "discern who are 'prohibited entities'" under the provision's terms. *E.g.*, D.Ct. Dkt. 62-11 ¶ 8; D.Ct. Dkt. 62-15 ¶ 19; D.Ct. Dkt. 62-20 ¶ 23.

II. EQUITABLE CONSIDERATIONS DO NOT FAVOR A STAY

Defendants have also failed to establish that the "the balance of equities and the public interest" favor a stay. *Dist. 4 Lodge v. Raimondo*, 18 F.4th 38, 47 (1st Cir. 2021). On the contrary, because a stay will "substantially injure the other parties interested in the proceeding," *Nken v. Holder*, 556 U.S. 418, 426 (2009)—

here, the Plaintiff States and their residents—the district court correctly determined that these factors support temporary relief. Order 35-41.

Plaintiff States will suffer irreparable financial injury because Section 71113 requires immediate and significant alterations to state Medicaid systems. Order 37. Plaintiff States each have established claims-processing infrastructure for Medicaid, which must be restructured to accommodate Section 71113. *See, e.g.*, D.Ct. Dkt. 62-15 ¶ 18; D.Ct. Dkt. 62-11¶ 8; D.Ct. Dkt. 62-13 ¶ 28. Those changes include reviewing state data to identify potential "prohibited entities;" "contact[ing]" entities directly" to determine if Section 71113's conditions are met; and revising "managed care programs" to ensure that prohibited entities do not receive federal funds. D.Ct. Dkt. 82-1, Ex. A, at 4. Defendants do not dispute that Section 71113 imposes those costs on Plaintiff States, instead contending that such costs are the "natural" result of legislation. Order 23. But absent injunctive relief, Plaintiff States will have to invest in the infrastructure to alter their Medicaid systems—even if it is determined upon final judgment that Section 71113 is unlawful. That "administrative upheaval" constitutes irreparable harm warranting preliminary injunctive relief. *Doe v. Trump*, 157 F.4th 36, 79 (1st Cir. 2025).

Defendants also downplay the harms to healthcare systems and patients in Plaintiff States. *See* Mot. 24. Planned Parenthood healthcare facilities provide a significant portion of Plaintiff States' publicly funded healthcare—in some States,

serving 70 to 75 percent of patients supported by Medicaid. D.Ct. Dkt. 62-5 ¶ 31; 62-24 ¶ 18. Other healthcare providers will not be able to readily absorb the inevitable influx of those patients, many of whom live in rural and underserved communities. D.Ct. Dkt. 62-6 ¶ 26. Indeed, in several Plaintiff States, "other publicly supported clinics would need to increase their caseloads by more than 100% to provide care for patients currently served by Planned Parenthood." D.Ct. Dkt. 62-5 ¶ 44. As a result, thousands of Plaintiff State residents will be unable to access essential medical care, overwhelming publicly funded healthcare systems and triggering a significant increase in the Plaintiff States' short- and long-term healthcare costs. *See, e.g.*, *Massachusetts v. U.S. Dep't of Health & Hum. Servs*., 923 F.3d 209, 226 (1st Cir. 2019) (discussing the long-term costs of the denial of reproductive care).

Defendants do not allege any comparable harm. To be sure, "[a]ny time a government is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Dist. 4 Lodge*, 18 F.4th at 47. However, "[t]here is generally no public interest in the perpetuation of unlawful agency action." *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). Section 71113 violates the Spending Clause, and the Government "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

Finally, defendants argue that this Court's stay order in *Planned Parenthood v. Kennedy*, No. 25-1698 (1st Cir. Sept. 11, 2025), dictates the outcome here. In their view, "the relative impact of Section 71113 on the States is far less significant than the impact on the provider plaintiffs in *Planned Parenthood*." Mot. 23-24. But Plaintiff States bring distinct claims and suffer distinct harms. The States are directly responsible for implementing Section 71113 and must alter their Medicaid systems and absorb the significant cost of the sudden termination of federal funds for critical healthcare. Plaintiff States are also directly responsible for paying the long-term higher healthcare costs for Medicaid patients. And this case implicates the most basic limits of federalism: "ensuring that Spending Clause legislation does not undermine the status of the States as independent sovereigns." *NFIB*, 567 U.S. at 577.

CONCLUSION

The motion for a stay pending appeal should be denied.

Date: December 10, 2025

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), I certify that:

1. This document complies with the type-volume limitations of Fed. R. App. P. 27(d)(2)(A) because, excluding parts of the document exempted by Fed. R. App. P. 32(f), the brief contains 5,179 words and thus does not exceed the 5,200-word limit.

2. This brief 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)(b) because the brief has been prepared in proportionally spaced typeface using Microsoft Word word-processing system in Times New Roman that is at least 14 points.

Dated: December 10, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on this December 10, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the First Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: December 10, 2025

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