Nos. 25-1698, 25-1755

In the United States Court of Appeals for the First Circuit

PLANNED PARENTHOOD FEDERATION OF AMERICA, INC.; PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS; PLANNED PARENTHOOD ASSOCIATION OF UTAH,
Plaintiffs-Appellees,
v.
ROBERT F. KENNEDY, JR., in the official capacity as Secretary of the U.S. Department of Health and Human Services; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; MEHMET OZ, in the official capacity as Administrator of the Centers for Medicare & Medicaid Services; CENTERS FOR MEDICARE & MEDICAID SERVICES,
Defendants-Appellants.

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

Brief *Amicus Curiae* of America's Future, U.S. Constitutional Rights Legal Defense Fund, Fitzgerald Griffin Foundation, and Conservative Legal Defense and Education Fund in Support of Defendants-Appellants and Reversal

PATRICK M. MCSWEENEY
Powhatan, VA
JAMES N. CLYMER
Lancaster, PA
J. MARK BREWER
Johnson City, TX
RICK BOYER
Lynchburg, VA

WILLIAM J. OLSON*
JEREMIAH L. MORGAN
WILLIAM J. OLSON, P.C.
370 Maple Avenue West, Suite 4
Vienna, VA 22180-5615
(703) 356-5070
*Attorney of Record
Attorneys for Amici Curiae

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amici* do not have parent corporations, they are not publicly traded companies, and no publicly held corporation owns 10% or more of their stocks.

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INTEREST OF *AMICI CURIAE*[1]

The *amici* herein, America's Future, U.S. Constitutional Rights Legal Defense Fund, Fitzgerald Griffin Foundation, and Conservative Legal Defense and Education Fund are nonprofit organizations exempt from federal income taxation under IRC sections 501(c)(3) or 501(c)(4), whose activities include filing *amicus* briefs in important constitutional and public policy cases. Some of these *amici* filed *amicus* briefs in two cases involving somewhat related issues: *see* Brief *Amicus Curiae* of America's Future, et al. (Feb. 10, 2025) in *Medina v. Planned Parenthood South Atlantic*, Supreme Court of the United States, No. 23-1275; and Brief *Amicus Curiae* of America's Future, et al. (May 30, 2025) in *Planned Parenthood of Greater New York v. U.S. Dept. of Health and Human Services*, U.S. District Court for the District of Columbia., No. 1:25-cv-1334.

STATEMENT OF THE CASE

As part of its 2025 Reconciliation Act, Congress adopted, and President Trump signed into law, Section 71113, which terminates expenditure of federal Medicaid funds on tax-exempt organizations that are "essential community providers" as described in section 156.235 of title 45, Code of Federal

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[1] The parties have consented to the filing of this brief. No party's counsel authored the brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting the brief. No person other than these *amici curiae*, their members, or their counsel contributed money that was intended to fund preparing or submitting this brief.

Regulations, if those entities provide abortions. Section 71113 creates exceptions to the no-funding rule for abortions in rape or incest cases or in which the life of the mother is threatened. Brief of Appellant at 4-5 ("Aplt. Br.").

Planned Parenthood Federation of America and its affiliates in Utah and Massachusetts filed suit against the U.S. Department of Health and Human Services ("HHS") and the Centers for Medicare and Medicaid Services ("CMS"), and their respective directors, Secretary of Health and Human Services Robert F. Kennedy, Jr., and Dr. Mehmet Oz. The Plaintiffs alleged that the removal of funding is an unconstitutional bill of attainder and a violation of First Amendment association and Fifth Amendment equal protection rights. *Id.* at 5-6.

The District Court for the District of Massachusetts initially granted a temporary restraining order against enforcement of Section 71113 against the plaintiffs, on July 7, 2025. *Planned Parenthood Fed'n of Am., Inc. v. Kennedy*, 2025 U.S. Dist. LEXIS 130668 (D. Mass. 2025) ("*Planned Parenthood I*"). Four days later, the district court modified its TRO to prevent removal of funding to any Planned Parenthood affiliate nationwide. *Planned Parenthood Fed'n of Am., Inc. v. Kennedy*, 2025 U.S. Dist. LEXIS 134856 (D. Mass. 2025) ("*Planned Parenthood II*").

Ten days later, the court issued a preliminary injunction against Section 71113, ruling that defunding Planned Parenthood is an "unconstitutional condition," because it infringes on the rights of Planned Parenthood affiliates to associate with Planned Parenthood to advocate for abortion. *Planned Parenthood Fed'n of Am., Inc. v. Kennedy*, 2025 U.S. Dist. LEXIS 138645 at *23-31 (D. Mass. 2025) ("*Planned Parenthood III*"). The district court also ruled that Section 71113 denies equal protection of the laws, because "[f]or-profit abortion providers may still receive Medicaid reimbursements for covered non-abortion services." *Id.* at *36. Having ruled that Section 71113 implicated advocacy and associational rights, the court then found that injury to those rights is irreparable. *Id.* at *44. It then conceded that the government likewise suffers irreparable harm when its statutes are not enforced, but characterized the harm as "minimal," and concluded that the balance of equities and public interest favored the plaintiffs. *Id.* at *49. Thus, the court granted in part Plaintiffs' motion for an injunction that HHS and CMS must continue to fund the abortion providers for which Congress had forbidden funding. *Id.* at *50-51. It denied a stay of the injunction pending appeal. *Id.* at *48-49.

A week later, the district court granted full injunctive relief on similar grounds. *Planned Parenthood Fed'n of Am., Inc. v. Kennedy*, 2025 U.S. Dist.

LEXIS 143682 (D. Mass. 2025) ("*Planned Parenthood IV*"). In addition, the court agreed with Plaintiffs' claim that Section 71113 is a "bill of attainder," because "the legislative history and context confirm that the law's purpose is to single out Planned Parenthood Federation and its Members for punishment." *Id.* at *41. The court ruled that "Section 71113 is consistent with historical notions of punishment" such as "imprisonment, banishment, and the punitive confiscation of property by the sovereign." *Id.* at *51-52 (quoting *Nixon v. Administrator of General Services*, 433 U.S. 425, 474 and n.36-38 (1977)). Again, the court denied a stay pending appeal. *Id.* at *79-81.

This Court granted a stay of the district court's injunctions pending appeal on the merits, noting that "[n]otwithstanding the contrary conclusion reached by the district court ... we conclude that defendants have met their burden to show their entitlement to a stay of the preliminary injunctions pending the disposition of their appeals...." *Planned Parenthood Fed'n of Am., Inc. v. Kennedy,* 2025 U.S. App. LEXIS 24987 at *4 (1st Cir. 2025) ("*Planned Parenthood V*").

ARGUMENT

I. THE DISTRICT COURT ERRED IN ASSUMING THE CONSTITUTION REQUIRES CONGRESS TO FUND ACTIVITIES WITH WHICH IT DISAGREES.

The district court adopts a theory unknown to American law, that cessation of government funding to which a party is not constitutionally entitled, imposes an unconstitutional condition on the exercise of a constitutional right. The district court's analysis begins by quoting the Supreme Court stating that "[t]he government 'may not deny a benefit ... on a basis that infringes [a recipient's] constitutionally protected interests — especially, [the recipient's] interest in freedom of speech.'" *Planned Parenthood III* at *25 (quoting *Perry v. Sindermann*, 408 U.S. 593, 597 (1972)).

Perry involved a very different situation, where the plaintiff alleged he was not renewed for a teaching position at a state university solely because of speech critical of the administration. *Id.* at 598. *Perry* did not establish that once government begins to fund a project or a cause that it must continue to fund it, even if it believes the purpose and policy behind the funding is wrong.

Such a theory appears preposterous on its face, but it is not the first time such a claim was advanced by the abortion industry. In *Harris v. McRae*, 448 U.S. 297 (1980), the Supreme Court soundly rejected that the supposed right to an

abortion under *Roe v. Wade* created a right to force the government (and taxpayers) to pay for the abortion:

> Although the liberty protected by the Due Process Clause affords protection against unwarranted government interference with freedom of choice in the context of certain personal decisions, **it does not confer an entitlement to such funds as may be necessary to realize all the advantages of that freedom**. To hold otherwise would mark a drastic change in our understanding of the Constitution. [*Harris* at 317-18 (emphasis added).]

The Court added that "the Hyde Amendment leaves an indigent woman with at least the same range of choice in deciding whether to obtain a medically necessary abortion as she would have had if Congress had chosen to subsidize no health care costs at all," and therefore there is no constitutional entitlement to have the abortion paid for by unwilling taxpayers. *Id.* at 317. The Court made clear that "[a] refusal to fund protected **activity**, without more, cannot be equated with the imposition of a 'penalty' on that **activity**." *Id*. at 317, n.19 (emphasis added).

With Section 71113, Congress was not restricting speech advocating for abortion, but rather refusing to fund an activity of which it came to disapprove. Congress did not limit Planned Parenthood's advocacy of abortions in order to remain eligible for funding. It chose not to fund abortions. The district court's attempt to convert a withdrawal of funds for an activity into a punishment for

speech and association is specious. *Perry* provides no support for this proposition, and *Harris* slams the door on this theory.

II. EQUAL PROTECTION DOES NOT REQUIRE THAT ALL SIMILAR ACTIVITIES BE FUNDED EQUALLY.

The district court posited that because Section 71113 does not deny funds to (i) "[f]or-profit abortion providers," (ii) entities that are not "essential community providers," or (iii) entities that "are not primarily engaged in family planning services, such as community health centers and federally qualified health centers," the law is "not 'precisely tailored' toward denying taxpayer funds from abortion providers.'" *Planned Parenthood III* at *36-38.

One wonders how many laws emanating from the rough-and-tumble process employed in Congress would meet the test adopted by the district court. However, no speculation is needed, as the Supreme Court has expressly foreclosed this theory as well. For the district court to be right, there would need to be a suspect classification of "essential community providers that are primarily engaged in family planning efforts and perform abortions," and then find that any withdrawal of funding from healthcare providers be "precisely tailored" so as not to disadvantage this purported "class." That power is not available to the district court, as explained by the Supreme Court in 1970.

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification is not made with mathematical nicety or because in practice it results in some inequality. The problems of government are practical ones and may justify, if they do not require, rough accommodations — **illogical**, it may be, and **unscientific**. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. [*Dandridge v. Williams*, 397 U.S. 471, 485 (1970) (internal quotations omitted) (emphasis added).]

Under *Dandridge*, the choice made by Congress may even be "illogical" and "unscientific," which gives the Plaintiffs no way to make out an equal protection claim. In this case, the government has articulated a reasonable and rational basis for withdrawing funding from the "Big Abortion" providers that commit most of the nation's abortions. As the government notes, "Speaker Johnson's statement that 'this bill is going to redirect funds away from Big Abortion' is fully consistent with Congress's nonpunitive objective of halting the flow of federal taxpayer dollars to **major** abortion providers." Aplt. Br. at 18 (emphasis added). Indeed, "**by plaintiffs' own account, Planned Parenthood members serve 'millions of people,'** and 'collectively' form '**the only nationwide** abortion provider....'" *Id.* at 19 (emphasis added). Thus, "[i]t is natural that in seeking to prevent federal taxpayer funding for major abortion providers, Congress would adopt a limitation

that applies to 'the only nationwide abortion provider' ... in addition to a few other entities with similar characteristics." *Id.*

The district court's purported "class" defies anything like "precise tailoring," but any such definition is quite beside the point. Based on an understanding of the equal protection component of the Fifth Amendment, as borrowed from the Fourteenth Amendment Equal Protection Clause, there should be no balancing required. *See Williamson v. Lee Optical Co.*, 348 U.S. 483, 488-89 (1955) ("the reform may take one step at a time, addressing itself to the phase of the problem which seems most accute to the legislative mind."). However, even under flawed balancing tests, the government has clearly articulated its rational basis of defunding the primary providers of abortion. Congress' funding decision does not violate in any way Plaintiffs' equal protection rights.

III. THE DISTRICT COURT'S IRREPARABLE HARM CALCULUS IS WRONG. THE ALLEGED "HARM" IS ECONOMIC ONLY, NOT ASSOCIATIONAL.

The district court claimed that "Defendants do not contest, that injury to Planned Parenthood Federation's and Planned Parenthood Members' First Amendment rights constitutes irreparable harm." *Planned Parenthood III* at *42. But Defendants did and do properly contest the district court's notion that

withdrawal of funds for entities engaging in actions Congress does not wish to fund implicates the First Amendment at all. As the government correctly notes:

> [t]he district court appeared to recognize that the core statutory provisions, which define entities prohibited from receiving federal Medicaid funding without regard to any expressive activity, do not implicate the First Amendment. It nonetheless believed that an ancillary provision extending the funding restriction to those entities' "subsidiaries" and "affiliates" transforms the entire enactment into an intrusion on constitutionally protected association. [Aplt. Br. at 9.]

The district court's analysis is, as the government argues, "meritless." *Id.*

Again, the Supreme Court has addressed this issue. In *Arcara v. Cloud Books, Inc*., 478 U.S. 697 (1986), the Court rejected the argument that the First Amendment prevented the closure of an adult bookstore pursuant to a law punishing prostitution, which was also being carried on at the store. The Court noted that "every civil and criminal remedy imposes some conceivable burden on First Amendment protected activities." *Id.* at 706. Yet the Court stated:

> [W]e have not traditionally subjected every criminal and civil sanction imposed through legal process to "least restrictive means" scrutiny simply because each particular remedy will have some effect on the First Amendment activities of those subject to sanction. Rather, we have subjected such restrictions to scrutiny only where it was conduct with a significant expressive element that drew the legal remedy in the first place ... or where a statute based on a nonexpressive activity has the inevitable effect of singling out those engaged in expressive activity.... [*Id*. at 706-07.]

Arcara is dispositive here. If government can impose civil and even criminal sanctions for conduct it wishes to discourage, even if it has an incidental effect on expressive activity, it can certainly simply withdraw funding for conduct it wishes to discourage, despite any incidental effect the district court might believe Section 71113 would have on any "expression."

Any "injury" here is purely economic, and as the Supreme Court and this Court have repeatedly held, economic damages are rarely irreparable. Unless "the potential economic loss is so great as to threaten the existence of the movant's business," or "absent a restraining order, [a party] would lose incalculable revenues and sustain harm to its goodwill," in this Court "[i]t has long been held that traditional economic damages can be remedied by compensatory awards, and thus do not rise to the level of being irreparable." *Vaqueria Tres Monjitas, Inc. v. Irizarry*, 587 F.3d 464, 485 (1st Cir. 2009). Likewise, the Supreme Court has stated, "the temporary loss of income, ultimately to be recovered, does not usually constitute irreparable injury." *Sampson v. Murray,* 415 U.S. 61, 90 (1974).

Any "injury" due to defunding could be remedied here by an order to restore the funding, and thus Plaintiffs have utterly failed to demonstrate irreparable harm, and the district court erred in finding that they did.

IV. THE DISTRICT COURT ERRED IN FINDING THE BALANCE OF EQUITIES AND PUBLIC INTEREST TO FAVOR PLAINTIFFS.

The district court conceded that "[t]here is a significant public interest in the implementation of duly enacted statutes" and that "[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." *Planned Parenthood III* at *45 (quoting *Dist. 4 Lodge of the Int'l Ass'n of Machinists & Aerospace Workers Loc. Lodge 207 v. Raimondo*, 18 F. 4th 38, 47 (1st Cir. 2021)). But no sooner did it concede that the public interest was "significant" than the court reversed itself and decided that the injury to the government is actually "at most minimal." *Id.* at 49.

In the *Raimondo* case, this Court noted that "[t]he plaintiffs identify no case in which we have permitted an injunction to stand against the government's authority to implement duly enacted laws...." *Raimondo* at 49. Rather, this Court ruled, "leaving the injunction in place during the course of this appeal will likely cause irreparable harm in the form of preventing a federal agency from undertaking its congressionally assigned task.... And in so requiring, **Congress has effectively declared the public interest** and weighed the equities in accord with the balance struck by the Agency." *Id.* (emphasis added).

The district court did identify one such case, *Sindicato Puertorriqueño de Trabajadores v. Fortuño,* 699 F.3d 1 (1st Cir. 2012). But the case dealt with a

Puerto Rico territorial law that applied criminal penalties for violations of campaign finance laws. *Id.* at 5. Thus, the case dealt with a law expressly designed to affect "political speech," including criminal penalties for violation, wholly inapposite to a congressional decision to merely withdraw funding on the basis of actions, as in this case. *Id*.

V. THE DISTRICT COURT ERRED IN FINDING SECTION 71113 TO BE AN UNCONSTITUTIONAL BILL OF ATTAINDER.

The district court's errors continued in *Planned Parenthood IV*. The court ruled that Section 71113 was an unconstitutional bill of attainder. The claim is utterly specious.

As Judge Stahl noted in his 2011 concurrence " in *Elgin v. United States Dep't of the Treasury,* 641 F.3d 6, 19 (1st Cir. 2011), "[h]istorically, bills of attainder were acts sentencing to death one or more specific persons, although the Supreme Court has read the clause to also outlaw what were known as bills of pains and penalties, which imposed less severe punishments.... Targeted parties were typically those who had attempted, or threatened to attempt, to overthrow the government."

> The Supreme Court has struck down statutes on bill of attainder grounds only five times in the nation's history. See Cummings, 71 U.S. 277, 18 L. Ed. 356 (targeting Confederate sympathizers); Ex parte Garland, 71 U.S. (4 Wall.) 333, 18 L. Ed. 366 (1867) (same); Pierce v. Carskadon, 83 U.S. (16 Wall.) 234, 21 L. Ed. 276 (1873)

> (same); United States v. Lovett, 328 U.S. 303, 66 S. Ct. 1073, 90 L. Ed. 1252, 106 Ct. Cl. 856 (1946) (targeting "subversives"); Brown, 381 U.S. 437, 85 S. Ct. 1707, 14 L. Ed. 2d 484 (targeting Communist Party members). [*Id*. (internal quotations omitted).]

Judge Stahl noted that "[f]or a statute to qualify as a bill of attainder it must: (1) specify the affected person or group, (2) impose punishment by legislative decree, and (3) dispense with a judicial trial." *Id*. Section 71113 does none of these.

The Supreme Court has described the punishments historically understood as bills of attainder. These bills "commonly imposed imprisonment, banishment, and the punitive confiscation of property.... In our own country, the list of punishments forbidden by the Bill of Attainder Clause has expanded to include legislative bars to participation by individuals or groups in specific employments or professions." *Selective Service System v. Minnesota Public Interest Research Group*, 468 U.S. 841, 852 (1984). Accordingly, the Court found that the Solomon Amendment, barring federal educational assistance to men who refused to register for the draft, was not a bill of attainder. "Congress sought, not to punish anyone, but to promote compliance with the draft registration requirement and fairness in the allocation of scarce federal resources." *Id.* at 855-56.

In 2024, the D.C. Circuit upheld the Protecting Americans from Foreign Adversary Controlled Applications Act. The Act banned distribution of the

TikTok social media application in the United States due to security concerns that the company was controlled by the Communist Chinese government, and was collecting data on American citizens. *TikTok Inc. & ByteDance Ltd. v. Garland*, 122 F.4th 930, 942-44 (D.C. Cir. 2024), aff'd on other grounds, 604 U.S. 56 (2025). However, the Act provided that TikTok could continue to operate if the Chinese government divested itself of control of the company. *Id.* at 945-46.

Although the Act banned TikTok completely from the U.S. market unless China agreed to divest itself of control, the D.C. Circuit did not find it to be a bill of attainder, because it was not a punishment. Instead, "the Act is a line-of-business restriction, which does not come within the historical meaning of a legislative punishment." *Id.* at 968. The D.C. Circuit noted that "a 'statute that leaves open perpetually the possibility of [overcoming a legislative restriction] does not fall within the historical meaning of forbidden legislative punishment.'" *Id.* (quoting *Selective Serv. Sys.* at 853). Here, Planned Parenthood can simply stop performing abortions, and it is immediately eligible to begin receiving Medicaid funds again. The law is not a punishment. It is simply a refusal to fund abortion.

The Ninth Circuit is in accord that "[g]enerally, a statute that leaves open the possibility of compliance, and thus avoidance of punishment, does not fall

within the historical meaning of legislative punishment." *Gerling Global Reinsurance Corp. of Am. v. Low*, 296 F.3d 832, 850 (9th Cir. 2002) (rev'd on other grounds, *American Ins. Assn. v. Garamendi*, 539 U.S. 396 (2003).

Removing funding from a given medical procedure could scarcely be farther removed from the historical understanding of a bill of attainder. "To call such an arrangement a 'sanction' or 'punishment' is to play with words." *Alexander v. Trustees of Boston Univ*., 766 F.2d 630, 639 (1st Cir. 1985).

VI. THE CONSTITUTION COMMITS THE SPENDING POWER TO CONGRESS, GIVING THE FEDERAL JUDICIARY NO ROLE.

If the district court had focused on the constitutional basis for its constitutional ruling, it would have been hard pressed to reach the conclusion it did. Article I, Section 1 states, "All legislative powers herein granted shall be vested in a Congress of the United States."[2] Article I, Section 8 vests the spending power in Congress, providing that "[t]he Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States." Article I, Section 9 provides that "[n]o money shall be drawn from the treasury, but in consequence of **appropriations** made by law." Nowhere in either Articles I or III is the judiciary

[2] *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 487 (2001) (Thomas, J., concurring).

given any authority over spending. As the Supreme Court has noted, "[t]he Constitution grants legislative power to Congress; this Court and the lower federal courts, by contrast, have only 'judicial Power.' Art. III, §1." *Hernandez v. Mesa*, 589 U.S. 93, 100 (2019).

If the district court had believed it was exercising a power delegated to the judiciary, it would have been wrong. Chief Justice John Marshall recognized that "[i]t will not be contended that Congress can delegate to the Courts, or to any other tribunals, powers which are strictly and exclusively legislative." *Wayman v. Southard*, 23 U.S. 1, 42 (1825).

There are a few constraints on the spending power, but none apply here. While there exists an "independent constitutional bar" limitation on the spending power, that has no application here, as "the 'independent constitutional bar' limitation on the spending power is not ... a prohibition on the indirect achievement of objectives which Congress is not empowered to achieve directly. Instead, [the doctrine] stands for the unexceptionable proposition that the power may not be used to induce the States to engage in activities that would themselves be unconstitutional." *S.D. v. Dole,* 483 U.S. 203, 210 (1987).

Here, the judge seized the atextual Equal Protection Component of the Fifth Amendment and claimed the power to enforce it by mandating spending.

However, "a legislature's **decision not to subsidize the exercise of a fundamental right does not infringe the right**, and thus is not subject to strict scrutiny." *Regan v. Taxation with Representation*, 461 U.S. 540, 549 (1983) (emphasis added).

To be sure, the Constitutional Convention occurred well before the ratification of the Fifth Amendment in 1791, and the Supreme Court's finding of an equal protection component hidden in the due process clause in that Amendment in 1954,[3] there is no record that anyone at the Constitutional Convention saw any role for the judiciary in the Spending Power. Indeed, "the Framers were vitally concerned about ensuring democratic control and accountability over the revenue and appropriations powers." R. Krotoszynski, "Reconsidering the Nondelegation Doctrine: Universal Service, the Power to Tax, and the Ratification Doctrine," 80 IND. L.J. 239, 243 (Spring 2005). Giving an unelected judge authority over spending would have undermined that overriding principle. As Hamilton noted in The Federalist No. 78, "[t]he judiciary ... has no influence over ... the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever."

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[3] *See Bolling v. Sharpe*, 347 U.S. 497 (1954).

VII. THE DECISION OF THE COURT BELOW IS AN IMPERMISSIBLE SEIZURE OF LEGISLATIVE POWER.

The court's orders below are such outliers that they have aroused outrage across the political spectrum. Zachary Mettler, writing in the *Washington Times*, rightly called the TRO "perhaps the most brazen act of judicial tyranny in American history."[4] Senator Mike Lee (R-UT) said, "this wasn't an honest mistake.... This was a pretty egregious judicial usurpation of legislative power."[5]

Even the *Washington Post* editorial board slammed the ruling, pointing out that "[a]llocating public money is Congress's core competency," and called it "incredibl[e]" that the judge "agreed with Planned Parenthood that the provision is an unconstitutional 'bill of attainder.'"[6] The *Post* noted, "[m]any Republican members of Congress who voted for this reconciliation bill no doubt dislike abortion and want to defund Planned Parenthood because it is the country's leading abortion provider. That doesn't make the Medicaid restrictions illegitimate. The budget process is inherently political, and Congress's tax-and-

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[4] Z. Mettler, "Rogue judge Indira Talwani issues authoritarian ruling in Planned Parenthood case," *Washington Times* (July 14, 2025).

[5] A. Oliver, "Judge torched for Planned Parenthood order: Her court looks 'like a fast food drive-through,'" *Fox News* (July 8, 2025).

[6] "This is What Judicial Overreach Looks Like," *Washington Post* (July 29, 2025).

spending decisions almost always help some groups and hurt others." *Id.* The *Post* argued that "Congress has no obligation to subsidize any group's operation," and correctly warned that "[i]f forward-looking budgetary measures can be scrutinized as bills of attainder, Congress's fiscal function will be incapacitated." *Id.* The *Post* rightly concluded that "[j]udicial fiat cannot substitute for democratic legitimacy." *Id.*

In its recent decision in *Dobbs v. Jackson Women's Health Org*., 597 U.S. 215 (2022), the Supreme Court warned lower courts against "constitutionalizing" their policy preferences in defiance of the vested powers of the elected branches and the will of the people. The Court reversed its earlier *Roe v. Wade* decision, calling it an exercise of "raw judicial power." *Id.* at 228. The Court declared that "[t]he permissibility of abortion, and the limitations, upon it, are to be resolved like most important questions in our democracy: by citizens trying to persuade one another and then voting. That is what the Constitution and the rule of law demand." *Id.* at 232 (internal quotation omitted).

The *Dobbs* Court cautioned against "usurp[ing] authority that the Constitution entrusts to the people's elected representatives," and warned that federal courts must "exercise the utmost care ... lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences" of federal

judges. *Id.* at 239-40 (cleaned up). *Roe*, the *Dobbs* Court noted, had "usurped the power to address a question of profound moral and social importance that the Constitution unequivocally leaves for the people." *Id.* at 269.

Roe's framework, the Court said, was an illegitimate "scheme resembl[ing] the work of a legislature," not a judicial ruling on a case or controversy. *Id.* at 271. Like the decision below, "[t]he scheme *Roe* produced *looked* like legislation, and the Court provided the sort of explanation that might be expected from a legislative body." *Id.* at 274. The Court rejected judicial legislation, in which courts like the one below pursue "'unrestrained imposition of [their] own extraconstitutional value preferences.'" *Id.* at 279.

The *Dobbs* Court warned that courts "cannot exceed the scope of [their] authority under the Constitution" or go "beyond [the courts'] role in our constitutional system," as the court below has done. *Id.* at 291. The Court noted that "under the Constitution, courts cannot 'substitute their social and economic beliefs for the judgment of legislative bodies....' That respect for a legislature's judgment applies even when the laws at issue concern matters of great social significance and moral substance." *Id.* at 300. The *Dobbs* Court concluded that it was the Court's proper task to "return ... authority to the people and their elected representatives." *Id.* at 302.

In stark contrast, the court below offers "a vision of the judicial role that would make even the most ardent defender of judicial supremacy blush." *Trump v. CASA, Inc*., 606 U.S. 831, 857 (2025). The court below rejects the warnings of the Supreme Court in *Dobbs*. As the *Washington Times* put it, "Judge Talwani, in violation of the Constitution, has seized legislative power and ordered the executive branch to ignore the law."[7] The district court rejected the Supreme Court's warning that "[o]bserving the limits on judicial authority ... is required by a judge's oath to follow the law," and instead "embrac[ed] an imperial Judiciary." *Trump v. CASA* at 858.

CONCLUSION

For the foregoing reasons, this Court should vacate the district court's injunctions.

Respectfully submitted,

/s/ *William J. Olson*

WILLIAM J. OLSON*
JEREMIAH L. MORGAN
WILLIAM J. OLSON, P.C.
370 Maple Avenue West,
Suite 4
Vienna, VA 22180-5615
(703) 356-5070
*Attorney of Record
Attorneys for Amici Curiae

PATRICK M. MCSWEENEY
3358 John Tree Hill Rd.
Powhatan, VA 23139

JAMES N. CLYMER
CLYMER MUSSER & SARNO, P.C.
408 W. Chestnut St.
Lancaster, PA 17603

J. MARK BREWER

[7] Mettler, *supra*.

209 N. Nugent Ave.
Johnson City, TX 78636

October 3, 2025

RICK BOYER
INTEGRITY LAW FIRM
P.O. Box 10953
Lynchburg, VA 24506

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

IT IS HEREBY CERTIFIED:

1. That the foregoing Brief *Amicus Curiae* of America's Future, *et al*., in Support of Defendants-Appellants and Reversal contains 4,819 words, excluding the parts of the brief exempted by Rule 32(f).

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)(6) because this brief has been prepared in a proportionally spaced typeface using WordPerfect version 21.0.0.194 in 14-point Times New Roman.

/s/ *William J. Olson*
William J. Olson
Attorney for *Amici Curiae*

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing Brief *Amicus Curiae* of America's Future, *et al.*, in Support of Defendants-Appellants and Reversal, was made, this 3rd day of October, 2025, by the Court's Case Management/Electronic Case Files system upon the attorneys for the parties.

/s/ *William J. Olson*
William J. Olson
Attorney for *Amici Curiae*