No. 25-162

In the Supreme Court of the United States

STATE OF TENNESSEE, PETITIONER

v.

ROBERT F. KENNEDY, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENTS

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QUESTIONS PRESENTED

In 2023, the Department of Health and Human Services (HHS) determined that it would not continue an award of federal funds to the Tennessee Department of Health due to a failure to comply with regulations promulgated under Title X of the Public Health Service Act, 42 U.S.C. 300 *et seq.* The district court denied Tennessee's request for a preliminary injunction to reinstate its funding, and the Sixth Circuit affirmed in a divided decision. In 2025, HHS restored Tennessee's funding and declined to enforce the challenged regulation against the State. The parties agree that Tennessee has now received all of the relief that it sought in its appeal from the denial of a preliminary injunction. The questions presented are as follows:

1. Whether, pursuant to *United States* v. *Munsingwear, Inc.*, 340 U.S. 36 (1950), this Court should grant the petition, vacate the court of appeals' judgment, and remand with instructions to dismiss the appeal as moot.

2. In the alternative, whether the Court should grant the petition, vacate the court of appeals' judgment, and remand for further consideration in light of this Court's decision in *Medina* v. *Planned Parenthood South Atlantic*, 606 U.S. 357 (2025).

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BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The order of the court of appeals denying rehearing en banc (Pet. App. 152a-153a) is available at 2025 WL 1409052. The amended opinion of the court of appeals (Pet. App. 1a-48a) is reported at 131 F.4th 350. The prior opinion of the court of appeals (Pet. App. 49a-95a) is reported at 117 F.4th 348. The opinion of the district court (Pet. App. 96a-151a) is reported at 720 F. Supp. 3d 564.

JURISDICTION

The judgment of the court of appeals was entered on August 26, 2024. An amended judgment of the court of appeals was entered on March 10, 2025. A petition for rehearing was denied on May 9, 2025 (Pet. App. 152a-153a). The petition for a writ of certiorari was filed on

August 7, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. In 1970, Congress enacted Title X of the Public Health Service Act, ch. 373, 58 Stat. 682, to make "comprehensive voluntary family planning services readily available to all persons desiring such services." Family Planning Services and Population Research Act of 1970, Pub. L. No. 91-572, § 2(1), 84 Stat. 1504 (42 U.S.C. 300 *et seq.*). Title X authorizes the Department of Health and Human Services (HHS) to "make grants to and enter into contracts with public or nonprofit private entities to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services." 42 U.S.C. 300(a). Congress provided that Title X grants "shall be made in accordance with such regulations as the [HHS] Secretary may promulgate," 42 U.S.C. 300a-4(a), and "shall be payable * * * subject to such conditions as the Secretary may determine to be appropriate to assure that such grants will be effectively utilized for the purposes for which made," 42 U.S.C. 300a-4(b).

Congress gave HHS discretion to allocate Title X funds among competing applicants based on factors such as "the number of patients to be served" and "the extent to which family planning services are needed locally." 42 U.S.C. 300(b). A Title X grant will generally be awarded for one year, followed by "subsequent continuation awards" provided "for one year at a time." 42 C.F.R. 59.8(b). "A recipient must submit a separate application to have the support continued for each subsequent year," and "continuation awards require a determination by HHS that continued funding is in the best

interest of the government." *Ibid.* The total "anticipated period" for a grant award "will usually be for three to five years," after which the grantee must "recompete for funds." 42 C.F.R. 59.8(a). Once Title X funds are granted, the recipient must spend those funds "in accordance with" applicable "regulations" and "the terms and conditions of the award." 42 C.F.R. 59.9; see 42 U.S.C. 300a-4(a) and (b).

b. Section 1008 of Title X provides that the funds made available under the statute may not be "used in programs where abortion is a method of family planning." 42 U.S.C. 300a-6. At various points during the Title X program's history, HHS has interpreted that language in different ways and imposed different rules governing the type of counseling and referrals that Title X projects provide with respect to abortion.

Beginning in 1981, HHS required that Title X projects "[o]ffer pregnant clients the opportunity to be provided information" and "nondirective counseling" regarding "[p]renatal care and delivery," "[i]nfant care, foster care, or adoption," and "[p]regnancy termination," followed by "referral upon request." 86 Fed. Reg. 56,144, 56,150, 56,178-56,179 (Oct. 7, 2021). In 1988, the agency took a different approach through a rule prohibiting projects from "provid[ing] counseling concerning the use of abortion as a method of family planning or provid[ing] referral for abortion as a method of family planning." 53 Fed. Reg. 2922, 2945 (Feb. 2, 1988). In *Rust* v. *Sullivan*, 500 U.S. 173 (1991), this Court upheld that rule. Applying *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the Court found Section 1008's language "ambiguous" and was "unable to say that the Secretary's construction of the prohibition in § 1008 to require a ban on counseling"

or "referral" was "impermissible." *Rust*, 500 U.S. at 184. In 1993, HHS suspended the 1988 rule and reverted to its pre-1988 standards, 58 Fed. Reg. 7462 (Feb. 5, 1993), which were eventually codified in a final rule in 2000, 65 Fed. Reg. 41,270, 41,278-41,279 (July 3, 2000).

In 2019, HHS issued a rule that, as relevant here, reinstated much of the 1988 rule, including the general prohibition on referrals for abortion. See 84 Fed. Reg. 7714, 7747 (Mar. 4, 2019). The 2019 rule differed from the 1988 rule by allowing projects to "provide nondirective counseling on abortion" by physicians or advanced practice providers "generally as a part of nondirective pregnancy counseling." *Id.* at 7730. The agency permitted nondirective counseling based on its reading of an annual Title X appropriations rider that Congress began including in 1996, which specifies that "all pregnancy counseling shall be nondirective," Department of Health and Human Services Appropriations Act, 1996, Pub. L. No. 104-134, Tit. I, § 101(d), 110 Stat. 1321-221. See 84 Fed. Reg. at 7789. The Ninth Circuit upheld the 2019 rule, *California ex rel. Becerra* v. *Azar*, 950 F.3d 1067, 1074 (2020) (en banc), while the Fourth Circuit affirmed a district court decision enjoining the rule's enforcement throughout the state of Maryland, *Mayor of Baltimore* v. *Azar*, 973 F.3d 258, 266 (2020) (en banc).

This Court granted petitions for writs of certiorari to resolve that conflict regarding the 2019 rule. See *Cochran* v. *Mayor & City Council of Baltimore*, 141 S. Ct. 1369 (2021) (No. 20-454); *Oregon* v. *Cochran*, 141 S. Ct. 1369 (2021) (No. 20-539); *American Med. Ass'n* v. *Cochran*, 141 S. Ct. 1368 (2021) (No. 20-429). Shortly after this Court granted plenary review, HHS an-

nounced its intention to engage in further rulemaking. See *Becerra* v. *Mayor & City Council of Baltimore*, 141 S. Ct. 2618 (2021). This Court thereafter granted the parties' stipulation to dismiss the cases. *Ibid.*; *Oregon* v. *Becerra*, 141 S. Ct. 2621 (2021); *American Med. Ass'n* v. *Becerra*, 141 S. Ct. 2170 (2021). Subsequently, in October 2021, HHS promulgated a rule restoring the pre-2019 counseling and referral requirements. See 86 Fed. Reg. at 56,150.

2. In 2022, HHS awarded a Title X grant to the Tennessee Department of Health for the budget period from April 2022 through March 2023. Pet. App. 4a. The grant's period of performance was anticipated to run for five years through March 2027. *Id.* at 102a. The grant's terms provided that the Tennessee Department of Health's compliance with applicable regulations was a condition of the grant. *Ibid.*; see *id.* at 9a.

After this Court's decision in *Dobbs* v. *Jackson Women's Health Organization*, 597 U.S. 215 (2022), the Tennessee Department of Health notified HHS of a change in the counseling and referral policies for its Title X project in light of a newly effective state law generally making it unlawful to "perform[] or attempt[] to perform an abortion," Tenn. Code Ann. § 39-15-213(b); see Pet. App. 5a. In discussions with HHS, the Tennessee Department of Health maintained that HHS's regulations required that projects provide information and counseling about only family-planning options that are legal in the State. Pet. App. 5a-6a. HHS "disagreed with Tennessee's assertion that it was in compliance" and declined to issue a Title X continuation award to the Tennessee Department of Health. *Id.* at 6a.

Tennessee challenged HHS's discontinuation decision in the United States District Court for the Eastern

District of Tennessee and moved for a preliminary injunction seeking to reinstate its Title X funding. Pet. App. 6a. As relevant here, Tennessee argued that HHS's decision not to grant a continuation award violated Section 1008's requirement that funds may not be "used in programs where abortion is a method of family planning," 42 U.S.C. 300a-6, as well as the Spending Clause. Pet. App. 8a-9a, 18a-19a.

The district court denied a preliminary injunction, concluding that Tennessee had not shown a likelihood of success on its claims. Pet. App. 96a-151a. The court rejected the State's argument under Section 1008 based on a prior Sixth Circuit decision in *Ohio* v. *Becerra*, 87 F.4th 759 (2023), which had upheld the 2021 rule against a similar challenge. Pet. App. 120a. And the court rejected Tennessee's Spending Clause arguments, reasoning that "Congress made compliance with HHS regulations a clear and unambiguous condition of receiving a Title X grant." *Id.* at 112a.

3. The court of appeals affirmed in a divided opinion. Pet. App. 49a-95a.

a. The panel majority noted that the Sixth Circuit's prior decision in *Ohio* had applied this Court's decision in *Rust* to conclude that the 2021 rule was within HHS's authority under the *Chevron* doctrine. See Pet. App. 67a-68a. The majority affirmed the district court's "tentative conclusion" that *Rust* and *Ohio* remained precedential following this Court's decision in *Loper Bright Enterprises* v. *Raimondo*, 603 U.S. 369 (2024). Pet. App. 70a-71a. The majority observed that *Loper Bright* did not "'call into question prior cases that relied on *Chevron*,'" and that its "own circuit precedent" had already upheld the 2021 rule, which the majority concluded was the "specific agency action" at issue. *Ibid.*

(quoting *Loper Bright*, 603 U.S. at 412). In the alternative, the majority concluded that the 2021 rule's approach to counseling and referrals reflected "the best reading of" the statute. *Id.* at 71a-72a. The majority also found no Spending Clause problem because "Congress unambiguously authorized HHS to regulate Title X eligibility; the conditions of the grant were unambiguous; and Tennessee knowingly and voluntarily accepted the grant's terms." *Id.* at 57a.

b. Judge Kethledge concurred in part and dissented in part. Pet. App. 84a-95a. He concluded that *Rust*'s precedential effect extended only to "the 1988 Rule" and that the 2021 rule's referral requirement "likely violates" Section 1008. *Id.* at 87a, 90a. But he did not address Tennessee's Spending Clause challenge to the referral requirement. *Id.* at 94a. And he agreed with the majority that HHS's requirement of nondirective counseling "likely does not violate [Section] 1008," *id.* at 92a, and likely satisfies the Spending Clause, *id.* at 94a-95a.

4. Tennessee filed a petition for rehearing en banc. The panel subsequently issued an amended opinion reaching the same result as the original opinion. The panel revised some of its discussion about the import of *Loper Bright* but did not make any changes to its analysis of Spending Clause issues. See Pet. App. 8a-26a. Judge Kethledge did not make any changes to his partial dissent. See *id.* at 37a-48a. At the panel's direction, Tennessee filed a supplemental brief, in which it argued that rehearing en banc was still warranted. The court of appeals denied en banc review. *Id.* at 153a.

While Tennessee's petition for en banc review was pending, HHS issued a new award notice to the Tennessee Department of Health. The notice provided that

Tennessee's Title X award "is being restored," with the "amount awarded represent[ing] partial funding for the Budget Period 4/1/2025 through 3/31/202[6]." Pet. App. 166a. The initial notice erroneously stated that the award was being restored "pursuant to a settlement agreement with the recipient," *ibid.*, but HHS clarified in a subsequent letter that the agency "is declining to enforce" its regulation requiring counseling and referral for abortion "against the state," *id.* at 160a. In accordance with appropriations laws, HHS would "not award funding for previous fiscal years' budget periods." *Id.* at 159a. But "subject to appropriations," the agency indicated its intent "to restore Tennessee's grant at approximately full funding prospectively." *Ibid.*

5. In parallel litigation, Oklahoma challenged HHS's decision to terminate the Oklahoma State Department of Health's Title X grant based on a failure to comply with the 2021 rule's counseling and referral requirements. See *Oklahoma* v. *HHS*, 107 F.4th 1209, 1214 (10th Cir. 2024). The district court denied Oklahoma's request for a preliminary injunction, and the Tenth Circuit affirmed. *Ibid.* Oklahoma filed a petition for a writ of certiorari that raised, alongside other issues, a Spending Clause question that is materially identical to the one that Tennessee raises here (but not the question whether the challenged aspects of the 2021 rule are consistent with Section 1008). See Pet. at i, *Oklahoma* v. *HHS*, 145 S. Ct. 2837 (2025) (No. 24-437).

While that certiorari petition was pending, HHS issued a notice of award to Oklahoma that, like the notice to Tennessee, restored Title X funding to the state health department on a prospective basis. Gov't Letter, *Oklahoma* v. *HHS*, No. 24-437 (Apr. 15, 2025). Okla-

homa asserted, however, that its appeal was not moot because the restoration of funds was "partial." Pet. Letter, *Oklahoma* v. *HHS*, No. 24-437 (Apr. 17, 2025). This Court granted Oklahoma's petition, vacated the Tenth Circuit's judgment, and remanded the case for further consideration in light of this Court's decision in *Medina* v. *Planned Parenthood South Atlantic*, 606 U.S. 357 (2025), which held that certain Medicaid funding conditions did not create "an individually enforceable right" that would be enforceable against States through a suit under 42 U.S.C. 1983, *Medina*, 606 U.S. at 367. See *Oklahoma* v. *HHS*, 145 S. Ct. 2837, 2838 (2025).

ARGUMENT

Tennessee contends (Pet. 13-34) that this Court should vacate the court of appeals' decision under *United States* v. *Munsingwear, Inc.*, 340 U.S. 36 (1950), because HHS's reinstatement of Tennessee's grant under Title X of the Public Health Service Act, 42 U.S.C. 300 *et seq.*, has mooted the State's appeal from a denial of a preliminary injunction seeking to reinstate that same funding. In the alternative, Tennessee contends (Pet. 34-36) that this Court may grant the petition, vacate the judgment, and remand for further consideration in light of this Court's decision in *Medina* v. *Planned Parenthood South Atlantic*, 606 U.S. 357 (2025), as the Court recently did in a parallel case involving a nearly identical Spending Clause challenge, *Oklahoma* v. *HHS*, 145 S. Ct. 2837 (2025). The government agrees that this appeal from the denial of a preliminary injunction is moot and that *Munsingwear* vacatur is appropriate. And the government also agrees that, otherwise, it would be appropriate for the Court to

grant, vacate, and remand in light of *Medina*, as it did in *Oklahoma*.

1. This Court should grant certiorari, vacate the Sixth Circuit's judgment, and remand with instructions to dismiss the appeal as moot.

a. Under Article III, the jurisdiction of the federal courts is limited to the resolution of actual "Cases" or "Controversies." U.S. Const. Art. III, § 2, Cl. 1. "To qualify as a case fit for federal-court adjudication, 'an actual controversy must be extant at all stages of review.'" *Arizonans for Official English* v. *Arizona*, 520 U.S. 43, 67 (1997) (quoting *Preiser* v. *Newkirk*, 422 U.S. 395, 401 (1975)). "A case that becomes moot at any point during the proceedings is 'no longer a "Case" or "Controversy" for purposes of Article III,' and is outside the jurisdiction of the federal courts." *United States* v. *Sanchez-Gomez*, 584 U.S. 381, 385-386 (2018) (quoting *Already, LLC* v. *Nike, Inc.*, 568 U.S. 85, 91 (2013)). A case or appeal becomes moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Already*, 568 U.S. at 91 (citation omitted).

This preliminary-injunction appeal became moot when HHS restored Tennessee's Title X funding and declined to enforce the challenged regulatory provision against the State. See Pet. App. 159a-160a. "[T]he injunctive aspects" of a preliminary injunction appeal may "become moot on appeal" even if the case does not become moot. *University of Texas* v. *Camenisch*, 451 U.S. 390, 396 (1981). And here, regardless of whether the case as a whole became moot, the agency's actions obviated the need for *preliminary* relief reinstating Tennessee's Title X funding. Tennessee has been receiving that funding since March 2025, and the agency

has affirmatively indicated its intent to continue that funding to Tennessee. As Tennessee emphasizes (Pet. 15-16), Tennessee has thus received all of the relief that its preliminary injunction motion sought during the pendency of this litigation. Accordingly, "the question whether a preliminary injunction should have been issued here is moot." *Camenisch*, 451 U.S. at 398; see *id.* at 394 ("Because the only issue presently before us—the correctness of the decision to grant a preliminary injunction—is moot, the judgment of the Court of Appeals must be vacated and the case must be remanded to the District Court for trial on the merits."); accord, *e.g.*, *Animal Legal Def. Fund* v. *Shalala*, 53 F.3d 363, 366 (D.C. Cir. 1995); *Ohio* v. *EPA*, 969 F.3d 306, 309 (6th Cir. 2020).

b. When an appeal that would otherwise merit this Court's review becomes moot "while on its way [to this Court] or pending [a] decision on the merits," the Court's "established practice" is to "vacate the judgment below and remand with a direction to dismiss." *Munsingwear, Inc.*, 340 U.S. at 39. That practice ensures that no party is "prejudiced by a [lower-court] decision" and "prevent[s] a judgment, unreviewable because of mootness, from spawning any legal consequences." *Id.* at 40-41; see *U.S. Bancorp Mortg. Co.* v. *Bonner Mall P'ship*, 513 U.S. 18, 21 (1994) ("If a judgment has become moot while awaiting review, this Court may not consider its merits, but may make such disposition of the whole case as justice may require.") (brackets and citation omitted). As this Court has repeatedly observed, the determination whether to vacate the judgment when a case becomes moot while pending review ultimately "is an equitable one," *U.S. Bancorp*, 513 U.S. at 29, requiring the disposition that would be

"most consonant to justice" in light of the circumstances, *id.* at 24 (citation omitted); accord *Azar* v. *Garza*, 584 U.S. 726, 729 (2018) (per curiam).

Vacatur of a lower court's decision because of intervening mootness is generally available only to "those who have been prevented from obtaining the review to which they are entitled." *Camreta* v. *Greene*, 563 U.S. 692, 712 (2011) (quoting *Munsingwear, Inc.*, 340 U.S. at 39). It has therefore been the longstanding position of the United States that when a case becomes moot after the court of appeals enters its judgment but before this Court acts on a petition for a writ of certiorari, *Munsingwear* vacatur is appropriate only if the question presented would have merited this Court's review had the case not become moot. See, *e.g.*, Pet. at 16-17, *Biden* v. *Feds for Med. Freedom*, 144 S. Ct. 480 (2023) (No. 23-60); Pet. at 16-17, *Yellen* v. *United States House of Representatives*, 142 S. Ct. 332 (2021) (No. 20-1738); see also Stephen M. Shapiro et al., *Supreme Court Practice* § 19.4, at 19-28 to 19-29 & n.34 (11th ed. 2019).

Those requirements are met here. This appeal became moot because, after a change in agency leadership, HHS restored Tennessee's grant funding and declined to enforce the challenged regulation against the State. At that point, Tennessee no longer had any reason to continue to pursue a preliminary injunction to reinstate its Title X funding or to bar enforcement of HHS's discontinuation decision while this litigation is pending. The mooting event in this appeal was the "unilateral action of the party who prevailed below." *U.S. Bancorp*, 513 U.S. at 25. As the "party seeking relief from the judgment below," Tennessee lost the chance to seek further review through no fault of its own. *Id.* at 24. The equities therefore favor vacatur of the court of

appeals' decision under *Munsingwear*. See *Garza*, 584 U.S. at 729 (observing that because *Munsingwear* vacatur "is rooted in equity, the decision whether to vacate turns on 'the conditions and circumstances of the particular case'") (citation omitted). Indeed, given the equities implicated by changes in position by the federal government, this Court has granted *Munsingwear* vacatur after such changes even when the government lost below and was the party seeking review. See *Mayorkas* v. *Innovation Law Lab*, 141 S. Ct. 2842 (2021) (vacating the judgment and directing vacatur of a preliminary injunction after policy change); *Yellen* v. *U.S. House of Representatives*, 142 S. Ct. 332 (2021) (same); cf. *Biden* v. *Sierra Club*, 142 S. Ct. 46 (2021) (vacating judgment due to policy change resulting in changed circumstances). *A fortiori*, *Munsingwear* vacatur is appropriate here, where the federal government has mooted Tennessee's petition for certiorari.

In addition, the court of appeals' decision regarding HHS's statutory authority as to referrals in the Title X program would have warranted this Court's review. See Pet. 13-14, 22-23. This Court has several times granted certiorari to address that question. In *Rust* v. *Sullivan*, 500 U.S. 173 (1991), this Court granted certiorari "to resolve a split among the Courts of Appeals" about the proper scope of the agency's authority with respect to regulating referrals for abortion under the Title X program. *Id.* at 178; see *id.* at 178 n.1 (noting that the First, Second, and Tenth Circuits had reached differing conclusions). The Court recently did so again after the en banc Fourth and Ninth Circuits reached squarely conflicting decisions about the types of abortion-related referral requirements that HHS has the statutory authority to impose on Title X projects. See

Cochran v. *Mayor & City Council of Baltimore*, 141 S. Ct. 1369 (2021); compare *Mayor of Baltimore* v. *Azar*, 973 F.3d 258, 266 (4th Cir. 2020) (en banc), with *California ex rel. Becerra* v. *Azar*, 950 F.3d 1067, 1074 (9th Cir. 2020) (en banc). This Court did not decide that question only because it granted the parties' stipulated dismissal after HHS determined to undertake notice-and-comment rulemaking to materially change its regulations. See *Becerra* v. *Mayor & City Council of Baltimore*, 141 S. Ct. 2618 (2021); *Oregon* v. *Becerra*, 141 S. Ct. 2621 (2021); *American Med. Ass'n* v. *Becerra*, 141 S. Ct. 2170 (2021).

Had this appeal not become moot, the Sixth Circuit's decision would have presented a clean opportunity for this Court to address that same question of national importance. The panel majority concluded that HHS's approach in the later-issued 2021 rule likely "is consistent with the meaning of" the statute. See Pet. App. 25a. Meanwhile, the dissent determined that the statute likely prohibits HHS from requiring Title X projects to provide referrals upon request. *Id.* at 43a (Kethledge, J., dissenting in part and concurring in the judgment in part). Because that question would have warranted this Court's review, it is appropriate for this Court to grant the petition for a writ of certiorari, vacate the judgment below, and remand with instructions to dismiss the appeal as moot under *Munsingwear*.[1]

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[1] The remaining issues that Tennessee discusses in its certiorari petition would not have warranted this Court's review. As for Tennessee's arguments (Pet. 16-22) about the proper application of *stare decisis* under *Loper Bright Enterprises* v. *Raimondo*, 603 U.S. 369 (2024), there is no square circuit split and further percolation is warranted. Tennessee's arguments under the Spending Clause (Pet. 23-34) also do not implicate a conflict with any other court of

2. In the alternative, if this Court does not vacate under *Munsingwear*, it should grant certiorari and vacate the judgment below to allow for consideration of *Medina*, *supra*.

In *Medina*, this Court considered whether "individual Medicaid beneficiaries may sue state officials" under 42 U.S.C. 1983 "for failing to comply with [a specific Medicaid] funding condition." 606 U.S. at 363. This Court concluded that the relevant statutory provision did not "create an individually enforceable right" through "a § 1983 suit." *Id.* at 367. As part of the analysis, this Court observed that "spending-power statutes like Medicaid are especially unlikely" to confer a privately enforceable right because the usual remedy is for the federal government to "withhold some or all [federal] funds from noncompliant [recipients]." *Id.* at 369, 384.

As Tennessee observes (Pet. 36), this Court recently granted a petition, vacated the judgment, and remanded for further consideration in light of *Medina* in a case that "involv[es] identical Spending Clause issues (and nearly identical facts)" as those presented here. See *Oklahoma*, 145 S. Ct. at 2838. In *Oklahoma*, as in this case, a State brought a Spending Clause challenge after HHS denied Title X grant funds to the State based on the 2021 rule's referral requirement. See *Oklahoma* v. *HHS*, 107 F.4th 1209, 1214 (10th Cir. 2024). Because this case is similarly situated in all material respects, the disposition in *Oklahoma* would be equally applicable

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appeals. See Br. in Opp. at 12-21, *Oklahoma* v. *HHS*, 145 S. Ct. 2837 (2025) (No. 24-437).

here if the Court were to reject the parties' view that the appeal is moot.[2]

To be sure, in the government's view, the Court's decision in *Medina* does not appear to have a direct bearing on the Spending Clause issues in this case. Unlike *Medina*, this case does not involve an effort by a private party to enforce federally imposed conditions against Tennessee. Instead, this litigation stems from the familiar scenario where a federal agency decided to discontinue federal funding after finding that the recipient had failed to comply with program requirements established through federal regulations. See, *e.g.*, *Biden* v. *Missouri*, 595 U.S. 87, 90-92 (2022) (per curiam) (considering regulatory conditions on Medicare and Medicaid funding); *Bennett* v. *Kentucky Dep't of Educ.*, 470 U.S. 656, 663, 670 (1985) (upholding effort to recoup funds from State that "violated existing statutory and regulatory provisions"). The government acknowledges, however, that this Court in *Oklahoma* remanded for consideration of *Medina* in a case involving a materially indistinguishable Spending Clause question.

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[2] Unlike in this case, in *Oklahoma*, the State asserted that it was not clear that its appeal was moot. See Pet. Letter, *Oklahoma*, *supra*.

CONCLUSION

The Court should grant the petition for a writ of certiorari, vacate the judgment of the court of appeals, and remand with instructions to dismiss the appeal as moot under *United States* v. *Munsingwear, Inc.*, 340 U.S. 36 (1950). In the alternative, this Court should grant the petition for a writ of certiorari, vacate the judgment of the court of appeals, and remand in light of *Medina* v. *Planned Parenthood South Atlantic*, 606 U.S. 357 (2025).

Respectfully submitted.

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