IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

STATE OF MISSOURI, Plaintiff, v. JANET YELLEN, in her official capacity as Secretary of the Treasury, *et al.*, Defendants.	Case No. 4:21-cv-00376-HEA

DEFENDANTS' OPPOSITION TO MISSOURI'S
MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

As part of the American Rescue Plan Act, Pub. L. No. 117-2, 135 Stat. 4 (2021) ("Rescue Plan" or "Act"), Congress appropriated nearly $200 billion in new funding for state governments. 42 U.S.C. § 802. Congress gave States considerable flexibility to use these new federal funds, which may be directed to a broad variety of state efforts to respond to the public health emergency created by the COVID-19 pandemic and to its economic effects, including by funding state-level government services and by providing assistance to households, small businesses, and industries. *Id.* § 802(c). To ensure that the new federal funds would be used for the broad categories of state expenditures it identified, Congress specified that States cannot use the federal funds to offset a reduction in net tax revenue resulting from changes in state law. *Id.* § 802(c)(2)(A) (the "offset provision"). That is a straightforward exercise of Congress's well-settled Spending Clause authority to attach conditions that "preserve its control over the use of federal funds." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 579 (2012) [hereinafter "*NFIB*"] (plurality opinion); *see, e.g., South Dakota v. Dole*, 483 U.S. 203, 206-07 (1987).

In seeking immediate injunctive relief, Missouri proceeds from the incorrect premise that the U.S. Department of the Treasury is poised to implement an overbroad, unconstitutional interpretation of the Rescue Plan that would prohibit "*any* state tax policy that reduces tax revenue." Mem. in Supp. of Prelim. Inj. ("PI Mot.") 1, ECF No. 7. Missouri's request for judicial intervention is anomalous: the State and Defendants fundamentally agree that the Act affords considerable flexibility to States in setting their own tax policies. *See* PI Mot. 7–18. By its plain text, the offset provision addresses only a reduction in a State's "*net* tax revenues." 42 U.S.C. § 802(c)(2)(A) (emphasis added). A State is thus free to change its tax law as it believes appropriate, cutting some taxes and increasing others. And even if a State chooses to make changes that result in a reduction in net tax revenue, the Act bars a State only from using Rescue Plan funds—as opposed to other means—to offset that reduction. *Id.* The Act also makes clear that if a State chooses to use Rescue

Plan funds to offset a reduction in net tax revenue resulting from changes in state law, the only consequence would be a loss of monies commensurate with the amount of federal funding used for that offset. *See id.* § 802(e).

Missouri's motion should be denied. As an initial matter, Missouri lacks Article III standing because it has not enacted *any* tax cut, let alone alleged that any hypothetical tax cut under consideration will decrease net tax revenue or that the State plans or intends to use Rescue Plan funds to offset that theoretical reduction. Because Missouri has not alleged any intention to use the federal funds in a way not permitted under the Act, it lacks standing to challenge the offset provision. Relatedly, Missouri's challenge is not ripe. The only consequence of Missouri's using Rescue Plan funds to pay for a reduction in net tax revenue would be potential recoupment of the amount of Rescue Plan funds used for an impermissible offset. Because Missouri has not alleged conduct that could result in recoupment, and the Treasury Department has not indicated any imminent plans to recoup from Missouri, Missouri's claims are not ripe. Particularly given the extraordinary nature of Missouri's request for pre-enforcement injunctive relief based on the purported unconstitutionality of a federal statute, it is especially critical to ensure that Missouri has satisfied the jurisdictional prerequisites for this suit.

Nor is Missouri likely to succeed on the merits. Missouri does not seriously dispute that, absent its incorrect statutory reading, Treasury could lawfully implement the Rescue Plan, including the provision that prohibits States from using Rescue Plan funds to offset reductions in net tax revenue that result from changes in state laws. And for good reason: the Act is constitutional. Federal statutes that place conditions on how a State can use federal funds are commonplace and present no constitutional concern. Such provisions reflect the common-sense proposition that when Congress gives money to States for a particular purpose, it may place conditions on a State's acceptance of the funds to ensure that the funds are in fact used for the intended purpose. The Rescue Plan allows States to deploy the considerable funds provided for a broad array of purposes

related to the COVID-19 pandemic and its effects. Congress acted well within constitutional bounds by conditioning the receipt of Rescue Plan funds on the State's agreement to use funds for those purposes and not to offset a reduction in net tax revenue resulting from changes in state law.

The Supreme Court's decision in *NFIB*, 567 U.S. 519, underscores Missouri's misunderstanding of the governing law. In the controlling opinion of *NFIB*, the Chief Justice concluded that Congress could not require a State to extend Medicaid coverage to a new population on penalty of losing its whole allotment of *preexisting* Medicaid funding. *See id*. at 585. By contrast, the Chief Justice made clear that it was entirely permissible for Congress to make the *new* federal funds provided by the Affordable Care Act—totaling $100 billion per year, *see id*. at 576—contingent on a State's expansion of coverage to categories of people never previously covered by its plan, *see id*. at 585.

Unlike the condition held invalid in *NFIB*, the Rescue Plan does not threaten States with the loss of preexisting funds if they fail to undertake new services. The condition here governs only the State's use of the *new* funds provided by the Act. Indeed, the Rescue Plan's offset provision is far less restrictive than the ACA provision that *NFIB* indicated was permissible. In addition to placing only new conditions on new funds, the Rescue plan—unlike the provision at issue in *NFIB*—does not put States to an all-or-nothing choice. If a State receiving funds under the Act chooses to reduce its net tax revenue and offset that reduction with Rescue Plan funds, its federal grant would be reduced only to the extent it uses Rescue Plan funds to offset that reduction.

Missouri also cannot demonstrate likely irreparable harm, a showing that is indispensable for a preliminary injunction. *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 732–33 & n.5 (8th Cir. 2008) (en banc). Even if Missouri were able to establish a cognizable injury for purposes of standing, the State does not come close to demonstrating irreparable harm. If Missouri were to accept the conditioned funding, use that fund-

ing to offset a reduction in net tax revenue, and face potential recoupment by the Secretary, any such recoupment proceedings would present an "adequate remedy at law" where it could fully present its defenses and objections. *Gen. Motors Corp. v. Harry Brown's, LLC*, 563 F.3d 312, 319 (8th Cir. 2009). And if Missouri were unable to succeed in such hypothetical future proceedings, the result would simply be that it has to repay money—the quintessential example of harm that is *not* irreparable—demonstrating beyond doubt that the State is not entitled to the extraordinary remedy of injunction at this stage. *See id.*

By contrast, enjoining an Act of Congress would unquestionably impose irreparable harm on the federal government and contravene the public interest. *See United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 497 (2001) (emphasizing that "a court sitting in equity cannot ignore the judgment of Congress, deliberately expressed in legislation") (quotation marks omitted)); *see also Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) ("[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." (citation omitted)). Missouri's motion should be denied.

BACKGROUND

A. Statutory Background

In March 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). *See* Pub. L. No. 116-137, § 5001, 134 Stat. 281, 501 (2020) (codified at 42 U.S.C. § 801). The CARES Act established a $150 billion "Coronavirus Relief Fund" for States, tribal governments, and localities for 2020. *See* 42 U.S.C. § 801(a). That fund covers costs that are "necessary expenditures incurred due to the public health emergency" that "were not accounted for in the budget[s]" of those governments. *Id.* § 801(d). If recipients do not use the funds for the permitted purposes, the Act permits the Treasury Department to recoup the amount of any misused funds. *Id.* § 801(e).

On March 11, 2021, Congress enacted the American Rescue Plan Act. *See* Pub. L. No. 117-2, § 9901(a) (codified at 42 U.S.C. §§ 802–805). The Rescue Plan establishes an additional "Coronavirus State Fiscal Recovery Fund," allocating another $220 billion to broadly "mitigate the fiscal effects" of the pandemic on States, territories, and Tribal governments through 2024. 42 U.S.C. § 802(a)(1); *see id.* § 803(a) (additional $130 billion for localities). Nearly $200 billion is allocated for the States and the District of Columbia. *Id.* § 802(b)(2)(A).

The Rescue Plan provides States with considerable latitude, in scope and duration, to use the funds for pandemic-related purposes. Through 2024, a State may use the funds "to cover costs incurred":

> (A) to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
>
> (B) to respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers of the State, territory, or Tribal government that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
>
> (C) for the provision of government services to the extent of the reduction in revenue of such State, territory, or Tribal government due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year of the State, territory, or Tribal government prior to the emergency; or
>
> (D) to make necessary investments in water, sewer, or broadband infrastructure.

Id. § 802(c)(1). While CARES Act funds were limited to covering previously unbudgeted costs of necessary expenditures incurred due to the public health emergency, the Rescue Plan allows States to use the funds for "government services" to the extent the pandemic has resulted in a "reduction in revenue." *Id.* § 802(c)(1)(C). The Rescue Plan also permits recipients to use the funds to respond broadly to the public-health emergency and its

negative economic effects, to support essential workers during the pandemic, and to invest in certain infrastructure areas. *Id.* § 802(c)(1)(A), (B), (D).

The Rescue Plan includes two "further restrictions" to ensure that the broad outlay of funds is used for the identified purposes while funds are available. 42 U.S.C. § 802(c)(2). One limitation (not challenged here) provides that a State may not "deposit" Rescue Plan funds "into any pension fund." *Id.* § 802(c)(2)(B). The other limitation (at issue here) provides in relevant part that a State:

> shall not use the funds provided under [§ 802] . . . to either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.

Id. § 802(c)(2)(A).[1]

By its terms, this funding condition applies only to reductions in "net" tax revenue. *Id.* This limitation on the use of federal funds is not implicated at all by a State's choice to modify its tax code—including by cutting taxes—if the changes, taken together, do not result in a reduction of *net* tax revenue. If a State chooses to reduce its net tax revenue, it may not use the Rescue Plan funds to "offset" that reduction. If a State chooses to do so, the State will be required to repay only the amount of funds used to offset the "reduction to net tax revenue" or "the amount of funds received," whichever is less. 42 U.S.C. § 802(e).

The Rescue Plan further authorizes the Secretary of the Treasury "to issue such regulations as may be necessary or appropriate to carry out this section." 42 U.S.C. § 802(f). Although the Secretary has provided some initial guidance, the Treasury De-

[1] The "covered period" began on March 3, 2021 and "ends on the last day of the fiscal year of such State . . . in which all funds received by the State . . . have been expended or returned to, or recovered by, the Secretary." 42 U.S.C. § 802(g)(1).

partment has not yet issued its implementing regulations. *See* Yellen Ltr. to State Attorneys General (Mar. 23, 2021), https://go.usa.gov/xHW65; Treasury Statement on State Fiscal Recovery Funds and Tax Conformity (Apr. 7, 2021), https://go.usa.gov/xHW6R. Once the Treasury Department issues the regulations, a State may receive federal funds after providing a certification (in a form the agency will provide) indicating that it needs the funds to carry out the activities specified in § 802(c) and that it will use the funds in compliance with that provision. 42 U.S.C. § 802(d)(1). States that receive funds must then provide periodic reports and other information as the Secretary may require to administer the Act. *Id.* § 802(d)(2).

B. Factual and Procedural Background

On March 29, 2021, Missouri brought this suit alleging that the offset provision in § 802(c)(2)(A) should be interpreted narrowly or should otherwise be declared unconstitutional. Compl. ¶¶ 6, 10–12, ECF No. 1. Missouri expects to receive approximately $2.7 billion under the Rescue Plan. *Id.* ¶ 29. The State nowhere alleges that it intends to enact changes in state law that would reduce net tax revenue, or that it intends to use Rescue Plan funds to offset any hypothetical reduction in net tax revenue. *See generally id.* ¶¶ 1–80. Missouri nonetheless requests immediate relief to enjoin Defendants from "enforcing any interpretation" of the offset provision other than the State's "narrow interpretation," and, alternatively, enjoin any "broader interpretation" of the offset provision so that Missouri can receive Rescue Plan funds free of Congress's desired restriction. *See* PI Mot. 30.

LEGAL STANDARDS

"A preliminary injunction is an extraordinary remedy, and the burden of establishing the propriety of an injunction is on the movant." *Turtle Island Foods, SPC v. Thompson*, --- F.3d ---, 2021 WL 1165406, at *3 (8th Cir. Mar. 29, 2021) (citations omitted). In determining whether to issue a preliminary injunction, courts consider "the movant's

likelihood of success on the merits, the threat of irreparable harm to the movant, the balance of the equities between the parties, and whether an injunction is in the public interest." *Sessler v. City of Davenport*, 990 F.3d 1150, 1154 (8th Cir. 2021) (citation omitted). Where, as here, the federal government is the defendant, the last two factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). And while analysis of these factors "is to be flexible and pragmatic," the key question "is whether the balance of equities so favors the movant that justice requires the court to intervene to preserve the status quo until the merits are determined." *K. L. v. Mo. State High Sch. Activities Ass'n*, 178 F. Supp. 3d 792, 798 (E.D. Mo. 2016) (Autrey, J.).

ARGUMENT

I. MISSOURI LACKS ARTICLE III STANDING.

In assessing Missouri's request for preliminary relief, this Court must determine whether the State has established jurisdiction, including Article III standing. *Munaf v. Geren*, 553 U.S. 674, 691 (2008). To satisfy the "irreducible constitutional minimum" of standing, Missouri must first demonstrate "a concrete and particularized" injury in fact that is "actual or imminent." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). When a plaintiff (like Missouri) seeks to enjoin the future enforcement of a statute, "the injury-in-fact requirement" demands that the plaintiff "allege[] 'an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and [that] there exists a credible threat of [enforcement] thereunder.'" *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979)); *see id.* at 161–67 (analyzing the three elements separately). The prospect of enforcement must be "sufficiently imminent" to create a concrete injury. *Id.* at 159.

Missouri cannot meet that standard because its asserted injury is hypothetical and speculative. Its complaint and preliminary-injunction motion are silent as to how it intends to use Rescue Plan funds, nowhere even suggesting that it plans to use them in a manner inconsistent with the offset provision. Under that provision, a State may not use

the new federal funds to offset a reduction in net tax revenue that results from changes in state law. 42 U.S.C. § 802(c)(2)(A). But Missouri does not allege that it has enacted any tax cuts, let alone tax cuts that would (taken together with any tax increases) reduce net tax revenue. Although Missouri states a list of tax changes that are under consideration, PI Mot. 6, it does not allege or even hint that it intends to use Rescue Plan funds to offset any reductions in its net tax revenue that might result from any changes the State ultimately chooses to adopt. The State "is the master of [its] complaint" and must take responsibility for the allegations included—or not included—therein. *Davis v. Hall*, 375 F.3d 703, 717 (8th Cir. 2004).

Indeed, the State's allegations about injury demonstrate the hypothetical and speculative nature of its suit. *See, e.g.*, Compl. ¶ 5 ("*If* States so use the funds, the Secretary . . . *may* recoup them . . . ." (emphases added)), ¶¶ 10, 62, 65, 66 (relying on similar contingencies or "theor[izing]" to allege harm); PI Mot. 2 (discussing "the possibility" of injury). In short, "a number of things must occur before [Missouri] will suffer an actual or even an imminent injury," precluding standing at this time. *Johnson v. Missouri*, 142 F.3d 1087, 1089–90 (8th Cir. 1998).

The Missouri Legislature's various tax-reduction proposals do not strengthen the State's position. *See* PI Mot. 6. Missouri itself asserts that the mere adoption of those proposals would not violate the offset provision, and the State does not contend either that those tax-law changes will decrease net tax revenue or that it intends to use Rescue Plan funds to offset that hypothetical reduction. *See id.* ("None of those tax-reduction proposals purports to deliberately counterbalance or offset any reduction in tax revenues with [Rescue Plan] funds . . . ."). Merely proposing a tax cut is *not* itself the "course of conduct arguably affected with a constitutional interest" and "proscribed by a statute" required for pre-enforcement standing. *Driehaus*, 573 U.S. at 159 (quoting *Babbitt*, 442 U.S. at 298). And proposing a tax cut is plainly not prohibited by the Rescue Plan Act. The offset provision restricts only a State's using Rescue Plan funds to offset a reduction in

net tax revenue resulting from a change in state law; it does not prohibit the adoption of any tax change on its own.

Unable to demonstrate that the Rescue Plan restricts any conduct that Missouri intends to undertake, let alone that any recoupment is imminent, the State asserts a general intrusion on its "sovereign interests." Compl. ¶ 16; *see* PI Mot. 27–29. In doing so, Missouri fundamentally misunderstands the Rescue Plan. The Act provides States with a broad outlay of federal funds and considerable flexibility in how to use those funds to address needs related to the pandemic and its effects. But to ensure that the new federal funds are used for those purposes and not others Congress chose not to support, the Act requires a State to agree that it will not use the federal funds to offset a reduction in net tax revenue resulting from changes to state law. The Rescue Plan does not prohibit a State from cutting taxes; it merely restricts a State's ability to use *federal funds* distributed under the Rescue Plan to offset a reduction in net tax revenue. No State has a sovereign interest in using federal funds for that purpose. And Missouri, of course, remains free to decline the funds.

Missouri's reliance on its sovereign taxation authority also cannot be reconciled with the Supreme Court's decision in *Massachusetts v. Mellon*, which made clear that Article III jurisdiction is not satisfied by raising "abstract questions . . . of sovereignty." 262 U.S. 447, 485 (1923). There, Congress had enacted through the Spending Clause a maternity program that permitted States to accept funding to protect the health of mothers and infants and provided that violating the program's conditions could result in the withholding of funds. *Id.* at 478–79, 484-85. Massachusetts brought suit, alleging that the statute "imposed upon the [S]tates an illegal and unconstitutional option either to yield to the federal government a part of their reserved rights or lose their share of the moneys appropriated." *Id.* at 482. The Supreme Court held that the State's "naked contention that Congress has usurped the reserved powers of the several States by the mere enactment of the statute" was insufficient to establish an Article III case or controversy. *Id.* at

483. Instead, the Court held that Massachusetts was required to allege that a sovereign interest was "actually invaded or threatened" by "the actual or threatened operation of the statute," *id.* at 485—precisely what Missouri has failed to demonstrate here. Missouri relatedly claims injury to its "'power to create and enforce a legal code'" and "quasi-sovereign interests." Compl. ¶¶ 16–17 (quoting *Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 601 (1982)); *see* PI Mot. 27–28 (citing *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018); *Maryland v. King*, 567 U.S. 1301 (2012) (Roberts, C.J., in chambers)). But, as noted, Missouri has not alleged any plan to use Rescue Plan funds to offset a reduction in net tax revenue resulting from a change in state law, and even then, only federal money—not state power—would be at stake.

The other authorities that Missouri cites to establish a cognizable injury only underscore its absence here. *See* PI Mot. 27. Those decisions addressed whether a defined state statute had been preempted by federal law, *see Barnes v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1304 (1991) (Scalia, J., in chambers), or whether Congress could prescribe the form of currency by which a State's citizens could pay the State taxes, *Lane Cnty. v. Oregon*, 74 U.S. 71, 76–77 (1868). As discussed, though, no similar potential invasion of a state legislative prerogative is implicated here. *See Lujan*, 504 U.S. at 566 ("Standing is not an ingenious academic exercise in the conceivable," but rather requires "a factual showing of perceptible harm." (citation omitted)).

For similar reasons, even if Missouri had Article III standing, its challenge to the offset provision would not be ripe. "Ripeness is a justiciability doctrine designed 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies," and "also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.'" *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 807–08 (2003) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148–149 (1967)).

Missouri's claimed harm here rests on the potential recoupment of some Rescue Plan funds from the State. *See* PI Mot. 5, 25. But that contention only demonstrates that Missouri's suit "involves 'contingent future events that may not occur as anticipated, or indeed may not occur at all." *Mo. Roundtable for Life v. Carnahan*, 676 F.3d 665, 674 (8th Cir. 2012) (quoting *281 Care Comm. v. Arneson*, 638 F.3d 621, 631 (8th Cir. 2011)) (affirming denial of a pre-enforcement preliminary injunction); *accord Trump v. New York*, 141 S. Ct. 530, 535 (2020) (per curiam). Congress has authorized the Treasury Department "to issue such regulations as may be necessary or appropriate to carry out this section." 42 U.S.C. § 802(f). Once the agency issues those regulations, Missouri would need to submit a certification that it plans to accept Rescue Plan funds, receive those funds from the Treasury Department, and enact changes in state tax laws that might implicate the offset provision. Even then, only if Missouri's net tax revenues fell, and only if Missouri decided to use Rescue Plan funds to offset that reduction, would recoupment even be possible.

There must be some "concrete action applying [Treasury's] regulation to [Missouri's] situation in a fashion that harms or threatens to harm [it]" before prematurely adjudicating its challenge. *Nat'l Park Hosp. Ass'n*, 538 U.S. at 808; *see State of Mo. ex rel. Mo. Highway & Transp. Comm'n v. Cuffley*, 112 F.3d 1332, 1338 (8th Cir. 1997) ("A federal court is neither required nor empowered to wade through a quagmire of what-ifs like the one the State placed before the District Court in this case."). Particularly given the extraordinary nature of Missouri's request for a pre-enforcement preliminary injunction based on the purported unconstitutionality of a federal statute, it is especially critical to ensure that the jurisdictional prerequisites for this suit are satisfied. *See Pub. Serv. Comm'n of Utah v. Wycoff Cnty.*, 344 U.S. 237 (1952).

II. MISSOURI IS NOT LIKELY TO SUCCEED ON THE MERITS OF ITS PRELIMINARY-INJUNCTION MOTION.

Missouri seeks to preliminarily enjoin Treasury from enforcing an overbroad, unconstitutional interpretation of the Rescue Plan. Missouri is doubly wrong. In support

of its statutory claim, the State attacks an incorrect statutory interpretation that Treasury has not adopted; and in support of its constitutional claim, the State misapplies governing Spending Clause principles.

A. Missouri Cannot Prevail on Its Statutory Challenge.

Missouri contends that there is a "possibility" that Treasury will "adopt [a] broad interpretation" of the Rescue Plan to prohibit "*any* state tax policy that reduces tax revenue," in violation of the Act. PI Mot. 1–2; *see* PI Mot. 7–18. Missouri immediately admits, however, that Treasury has never adopted that interpretation or any other interpretation that is inconsistent with the statutory text. This Court cannot enjoin a "specter," PI Mot. 7, and even assuming there is a justiciable claim here, Missouri's interpretation of the Rescue Plan is incorrect.

By its plain terms, the offset provision applies only when a State uses Rescue Plan funds to "offset" a reduction in "net" tax revenue resulting from a change in state law. 42 U.S.C. § 802(c)(2)(A). That restriction is not implicated if reductions in some taxes are balanced with increases in others because no "net" tax revenue reduction would then occur. A State also does not transgress the limitation if it does not "use" Rescue Plan funds to "offset" a reduction in net tax revenue. *Id.* And the Act specifies that even if a State uses the new federal funds to offset a reduction in net tax revenue, the consequence is proportionate to the misuse: the State will be required to repay only the portion of the federal money it used to offset the reduction in net tax revenue (not to exceed the amount of the federal grant). *Id.* § 802(e).

Missouri seemingly agrees that the Rescue Plan's prohibition is triggered only by an "offset." PI Mot. 8–9. And such an "offset" can arise only where States "use" Rescue Plan funds to "offset a reduction in net tax revenue" resulting from changes in state law. 42 U.S.C. § 802(c)(2)(A). The term "use" connotes "volitional" "active employment" of federal funds. *Voisine v. United States*, 136 S. Ct. 2272, 2278–79 (2016). And the term "offset" means "[t]o balance" or "compensate for." *Offset*, Black's Law Dictionary (11th ed.

2019). Taken together, this language simply ensures that States are not employing federal funds to finance state tax cuts. *See Citizens Bank of Md. v. Strumpf*, 516 U.S. 16, 19 (1995) (describing "offset" as balancing out a specific loss with another specific gain). But States routinely offset reductions in net tax revenue by other means. Missouri's guess that Treasury might implement a broad reading of the offset provision that bars all tax cuts is inconsistent with the Rescue Plan's text, which clearly authorizes a State to cut taxes and lower its net tax revenue as long as it does not use the federal Rescue Plan funds to offset those reductions.

Missouri also concedes that the offset provision's reference to States' "directly or indirectly" offsetting a reduction in net tax revenue does not alter the statutory meaning. *See* PI Mot. 9. Both "directly" and "indirectly" are adverbs that cannot "alter the meaning of the word" that they modify (here, "offset"). *Rimini St., Inc. v. Oracle USA, Inc.*, 139 S. Ct. 873, 878 (2019). It remains the case that the statute restricts only the use of Rescue Plan funds to offset reductions in net tax revenue resulting from changes in state law, not every form of tax reduction. If Congress had sought to prohibit *every* reduction in taxes, PI Mot. 1, it could have said so explicitly and concisely.

But the Rescue Plan includes an additional flexibility that Missouri does not acknowledge: it prohibits offsets of only "net" reductions in tax revenue. 42 U.S.C. § 802(c)(2)(A) (referencing a "reduction in net tax revenue"). Under the Act's plain terms, a State is free to alter its tax scheme as it believes appropriate, with no effect on the amount of the federal grant, as long as the changes—taken together—do not result in a reduction to the State's *net* tax revenue. *Id*. For example, a State could lower some taxes and raise others without affecting *net* tax revenue. And, as noted above, Missouri is also free to lower its net tax revenue, as long as it does not use the Rescue Plan funds to offset—*i.e.*, to pay for—that reduction.

Missouri cannot demonstrate that Treasury has adopted or will adopt an interpretation that "*any* state tax policy that reduces tax revenue" violates the offset prohibition, and

the plain text of the Rescue Plan refutes Missouri's speculation. *See* PI Mot. 1–2. The Court should reject Missouri's statutory claim.

B. Missouri Cannot Prevail on Its Constitutional Challenge.

Missouri's constitutional challenge is based entirely on the incorrect premise that the Rescue Plan bars all tax changes that reduce tax revenue. This Court can reject the State's constitutional arguments on that basis alone, as Missouri presents no argument that the Rescue Plan is unconstitutional if interpreted to mean what it says.

Properly interpreted, the Act is plainly constitutional. The Constitution empowers Congress to raise and spend revenue to "provide for the common Defence and general Welfare of the United States." U.S. Const. art. I, § 8, cl. 1. Congress "may, in the exercise of its spending power, condition its grant of funds to the States upon their taking certain actions that Congress could not require them to take, and that acceptance of the funds entails an agreement to the actions." *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 686–87 (1999); *NFIB*, 567 U.S. at 576; *Dole*, 483 U.S. at 207.

Congress's Spending Clause authority is subject to certain limitations. Congress must use this power in pursuit of "the general welfare" and ensure that its "conditions on the receipt of federal funds" are related to the federal interest. *Dole*, 483 U.S. at 207. Spending Clause conditions also must not violate "other constitutional provisions" or, in certain circumstances, be "coercive." *Id.* at 208, 211. Finally, Congress's "desire[] to condition the States' receipt of federal funds" must be unambiguous. *Id.* at 207.

In this case, Missouri contends that its "broad interpretation" of the offset provision is unduly coercive, unrelated to the federal interest, and unconstitutionally ambiguous and therefore is not a valid exercise of Congress's Spending Clause authority and violates the Tenth Amendment. *See Dole*, 483 U.S. at 207. As noted above, Missouri does not claim that any particular state enactment will lead to recoupment; Missouri instead challenges the condition as a facial matter. The State therefore bears a significant burden to demonstrate that the offset provision is "unconstitutional in all its applications": the

State "must show that there is no set of circumstances under which the law[] would be valid." *Bucklew v. Precythe*, 139 S. Ct. 1112, 1127 (2019); *Calzone v. Hawley*, 866 F.3d 866, 870 (8th Cir. 2017); *see also Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008). And in evaluating the Act's facial constitutionality, "[d]ue respect for the decisions of a coordinate branch of Government demands that [courts] invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds." *United States v. Morrison*, 529 U.S. 598, 607 (2000). Here, Congress has validly exercised its Spending Clause authority, and Missouri's contentions have no merit.

1. Congress validly exercised its Spending Clause authority to restrict the use of Rescue Plan funds.

The Rescue Plan is a lawful exercise of Congress's Spending Clause authority. Designed to assist in the Nation's economic recovery during and following a pandemic, the Rescue Plan appropriates nearly $200 billion in new federal funding for States and the District of Columbia. 42 U.S.C. § 802(b)(2)(A), (c)(1). With that funding, States have considerable flexibility to "mitigate the fiscal effects" of the COVID-19 pandemic as they see fit within the broad parameters specified by Congress. *Id.* § 802(a)(1), (c)(1). Unsurprisingly, Congress sought to ensure that its substantial monetary outlay would be used as intended. To that end, it included a guardrail that prohibits States that choose to accept the federal money from using those funds to "directly or indirectly offset a reduction" in "net tax revenue" resulting from changes in state law. *Id.* § 802(c)(2)(A).

The offset provision is, by any measure, a modest restriction on an otherwise generous outlay of federal funds. As explained above, and contrary to Missouri's "broad interpretation," the offset provision applies only when a State uses Rescue Plan funds to offset a reduction in "net" tax revenue. *id.*; *see* Section II.A., *supra*. That restriction is not implicated if there is no reduction in net tax revenue; for example, if a States lowers some taxes and raises others. The offset provision is also not implicated, unless a State "use[s]" its Rescue Plan funds—rather than another means—to "offset" any reduction in net tax

revenue. And the sole consequence of a State running afoul of the offset provision is Treasury's potential recoupment of only the portion of the federal money the State used to offset the reduction in net tax revenue (not to exceed the amount of the federal grant). 42 U.S.C. § 802(e).

Congress has broad leeway in establishing permissible uses of federal funds. And Congress has an overriding interest in ensuring that the new Rescue Plan funds will be used for the broad categories of state expenditures it identified and not others Congress chose not to support. *See Sabri v. United States*, 541 U.S. 600, 608 (2004) ("The power to keep a watchful eye on expenditures . . . is bound up with congressional authority to spend in the first place."); *Oklahoma v. U.S. Civ. Serv. Comm'n*, 330 U.S. 127, 143 (1947) (explaining that Congress has the "power to fix the terms upon which its money allotments to [S]tates shall be disbursed"). This is evident from the offset provision itself, which is titled "[f]urther restriction on *use of funds*" and only applies to a State's "use [of] the funds provided under this section." 42 U.S.C. § 802(c)(2) (emphasis added).

Missouri briefly contends that the Rescue Plan's conditions on the use of funds are not related to the funding program. PI Mot. 20–21. It is difficult to imagine how they could be *more* related to the funding program because they specify the uses to which a State may and may not devote the federal funds. That sort of statutory guardrail is by definition "germane[]" because it ensures that federal funds are used for the public-health and economic-recovery "federal purposes" of the spending program. *Dole*, 483 U.S. at 208. Congress acted well within its Spending Clause authority by both describing broad categories of permissible uses and proscribing certain narrow uses. The offset provision simply ensures that Rescue Plan funds "are spent according to [Congress's] view of the 'general Welfare.'" *NFIB*, 567 U.S. at 580.

Other Spending Clause legislation illustrates that the Rescue Plan and its offset provision advance a valid federal purpose: provisions that require States to maintain their existing fiscal efforts as a condition of receiving federal funds are an uncontroversial and

familiar exercise of Congress's spending power. In *Bennett v. Kentucky Department of Education*, 470 U.S. 656 (1985), for example, the Supreme Court explained that, "[i]n order to assure that federal funds would be used to support additional services that would not otherwise be available," the regulations implementing Title I of the Elementary and Secondary Education Act of 1965 "from the outset prohibited the use of federal grants merely to replace state and local expenditures." *Id*. at 659. After receiving complaints that Title I funds were nonetheless being used to replace state and local funds that otherwise would have been spent for participating children, Congress amended Title I in 1970 to require that Title I funds be used "to supplement and, to the extent practical, increase the level of funds that would, in the absence of such federal funds, be made available from non-Federal sources for the education of pupils participating in programs and projects assisted under this subchapter," and "in no case, as to supplant such funds from non-Federal sources." *Id*. at 660 (quoting 20 U.S.C. § 241e(a)(3)(B) (1970)). Federal auditors later found that certain Kentucky programs had violated that provision, and the Secretary of Education required Kentucky to repay the federal funds that had been misused. *Id*. at 661. The Supreme Court upheld that determination, explaining that the State "gave certain assurances as a condition for receiving the federal funds, and if those assurances were not complied with, the Federal Government is entitled to recover amounts spent contrary to the terms of the grant agreement." *Id*. at 663, 673–74.

In accord with the Supreme Court's decision, courts of appeals have applied and upheld similar provisions in an array of Spending Clause statutes. For example, in *Mayhew v. Burwell*, 772 F.3d 80, 82 (1st Cir. 2014), the First Circuit upheld the Affordable Care Act's requirement that States accepting Medicaid funds maintain their state-level Medicaid eligibility standards for children for a specified period. The *Mayhew* court held that this requirement "is constitutional, fitting easily within congressional spending power to condition federal Medicaid grants." *Id.*; *see also*, *e.g.*, *S.C. Dep't of Educ. v. Duncan*, 714 F.3d

249, 252 (4th Cir. 2013) (describing provision in the Individuals with Disabilities Education Act, which generally requires the Secretary to reduce a State's grant by the same amount by which the State has failed to maintain spending for special education for children with disabilities); *Kansas v. United States*, 214 F.3d 1196, 1197 (10th Cir. 2000) (noting similar requirement in the Temporary Assistance to Needy Families program).

As these cases reflect, statutory provisions that limit federal funds from being used to displace state efforts are both common and undoubtedly within Congress's authority. In the cases discussed above, States were required to maintain a certain level of spending; the federal funds could not be used to displace existing State funding. Here, the Rescue Plan's offset provision is even less proscriptive: it does not mandate any particular spending or taxation level but instead merely prevents States from using federal funds to offset a reduction in net tax revenue. Although federal funding conditions are often specific to the particular state program at issue, Rescue Plan funding is not confined to any particular state program or activity—it broadly covers "government services" and "negative economic impacts," among other potential uses. 42 U.S.C. § 802(c)(1). Congress gave States the additional flexibility to determine which of the broadly defined permissible uses of the new funds are most appropriate to their circumstances. And consistent with that generous, four-year outlay of flexible funding, Congress simply sought the assurance that States would not displace their own tax-revenue sources with the federal funds that Congress had appropriated for other purposes.

2. The Rescue Plan is not coercive.

Missouri does not dispute that Congress generally can prohibit States from using federal grants to fund state tax cuts, and it does not argue that it has a constitutional right to use federal funds to make up for a shortfall caused by a State's decision to decrease net revenues through tax cuts. But it urges that, under its "broad interpretation," the offset provision is "coercive" and an intrusion on its sovereign taxing authority. PI Mot. 22–26.

As an initial matter, the State's coercion argument similarly rests on an erroneous "broad interpretation" of the offset provision. *Id.* As explained above, this provision simply limits a State's ability to "use" Rescue Plan funds to "offset" a reduction in "net tax revenue" resulting from changes in state law. *See* Section II.A., *supra*. Under the Act's plain terms, a State is free to impose taxes as it believes appropriate, as long as the changes—taken together—do not result in a reduction to the State's *net* tax revenue. And Missouri is also free to lower its net tax revenue, as long as it does not use the Rescue Plan funds to offset that reduction. Even if it does that, the only consequence under the Act would be to lower the amount of its federal grant by the amount of the offset. Missouri is thus wrong to insist that "States [a]re risking Act funds every time they reduce[] revenue even if they never use[] Act funds to offset any tax cut." PI Mot. 25.

Missouri's coercion argument is also based on a fundamental misunderstanding of the governing law. Nothing in the Constitution or Spending Clause jurisprudence gives States the broad right to do whatever they want with federal funds. *See Sabri*, 541 U.S. at 608 ("The power to keep a watchful eye on expenditures . . . is bound up with congressional authority to spend in the first place."). The Supreme Court has made clear that "Congress may attach appropriate conditions to federal taxing and spending programs to preserve its control over the use of federal funds." *NFIB*, 567 U.S. at 579; *Steward Mach. Co. v. Davis*, 301 U.S. 548, 590–91 (1937) (holding that where Congress places conditions on how federal funds are used, "[i]n such circumstances, if in no others, inducement or persuasion does not go beyond the bounds of power"). And even when the Supreme Court has applied a coercion analysis, the inquiry has never extended to funding conditions that "safeguard [the U.S.] treasury" by "govern[ing] the use of the funds" that have been newly appropriated. *NFIB*, 567 U.S. at 578–80; *Dole*, 483 U.S. at 210; *Steward Mach.*, 301 U.S. at 590–91; *see also New York v. United States*, 505 U.S. 144, 171 (1992) (not undertaking a "coercion" inquiry where "Congress has placed conditions—the

achievement of the milestones—on the receipt of federal funds"). Where, as here, Congress merely restricts how States use newly appropriated federal money, a coercion analysis is inapplicable. *See, e.g.*, *Gruver v. La. Bd. of Supervisors for La. State Univ. Agric. & Mech. Coll.*, 959 F.3d 178, 183–84 (5th Cir. 2020); *Miss. Comm'n on Env't Quality v. EPA*, 790 F.3d 138, 179 (D.C. Cir. 2015); *Religious Sisters of Mercy v. Azar*, --- F. Supp. 3d ---, 2021 WL 191009, at *25 (D.N.D. Jan. 19, 2021).

Missouri's heavy reliance on the Supreme Court's decision in *NFIB* is also misplaced. *See* PI Mot. 24–26. Unlike the statute challenged here, the Affordable Care Act provision at issue in *NFIB* threatened States with the loss of all of their *preexisting* Medicaid funding unless they agreed to take part in the ACA's expansion of Medicaid coverage to a new adult population. In the controlling opinion for the Court, the Chief Justice recognized that Congress could "make adjustments to the Medicaid program as it developed"—including by altering the conditions on existing funds—but reasoned that the adult eligibility expansion "accomplishe[d] a shift in kind, not merely degree," because it conditioned the receipt of *old* and *new* funds on a State's agreement to establish a fundamentally different program. *NFIB*, 567 U.S. at 583.[2] The Chief Justice concluded that Congress had "crossed the line distinguishing encouragement from coercion" because of "the way it ha[d] structured the funding," and identified as a critical constitutional flaw that, "[i]nstead of simply refusing to grant the new funds to States that [would] not accept the new conditions, Congress ha[d] also threatened to withhold those States' existing Medicaid funds." *Id*. at 579–80 (citation omitted).

By contrast (as particularly relevant here), the Supreme Court made clear that Congress could make the entirety of the *new* federal funds provided by the ACA—totaling

[2] Because Chief Justice Roberts, writing for a plurality, "struck down Medicaid expansion on narrower grounds than the joint dissent, the plurality opinion is binding." *Gruver*, 959 F.3d at 183 n.5; *Miss. Comm'n on Env't Quality*, 790 F.3d at 176 & n.22; *Mayhew*, 772 F.3d at 88–89; *see also Marks v. United States*, 430 U.S. 188, 193 (1977).

$100 billion per year, *see id.* at 576—contingent on a State's adoption of that *new* program, *id*. at 585. The Supreme Court emphasized that "[n]othing" in its opinion "preclude[d] Congress from offering funds under the Affordable Care Act to expand the availability of health care, and requiring that States accepting such funds comply with the conditions on their use." *Id*. The statute's fundamental constitutional flaw was the threat to cut off all *existing* Medicaid funding if a State did not agree to the Medicaid expansion. As the Court summarized, "Congress is not free" to "*penalize* States that choose not to participate in that new program by taking away their *existing* Medicaid funding." *Id*. (emphases added).

The reasoning of *NFIB* forecloses Missouri's argument that the offset provision is coercive. The only funds regulated by the offset provision are the funds that Congress appropriated as part of the Rescue Plan itself. *See* 42 U.S.C. § 802(a)–(c). And unlike *NFIB*, States do not suffer the "penalty" of losing all *preexisting* funds for an established program if they decline to accept Rescue Plan funds with their attendant conditions. The requirement in the Rescue Plan that States use funds for specified purposes and not for others (including to offset a reduction in net tax revenue that results from changes in state law) is no more "coercive" than any restriction on the receipt of federal funds that the Supreme Court has held to be a valid exercise of Congress's Spending Clause authority. *See, e.g.*, *New York*, 505 U.S. at 171; *Dole*, 483 U.S. at 211; *Bennett*, 470 U.S. at 663; *Steward Mach.*, 301 U.S. at 590–91.

Indeed, the funding condition at issue here is significantly more modest than the prospective funding condition that *NFIB* indicated was permissible. A State's receipt of funds under the Rescue Plan is not an all-or-nothing proposition dependent on compliance with the offset provision. As explained above, the Act provides that if a State were to use Rescue Plan funds to offset a reduction in net tax revenue, it could lose no more than those funds used for the offset. *See* 42 U.S.C. § 802(e)(1).

Finally, Missouri's effort to characterize the offset provision as impermissible commandeering under the Tenth Amendment should also be rejected. PI Mot. 22–23. The Supreme Court has repeatedly affirmed that "Congress can use [its Spending Clause] power to implement federal policy it could not impose directly under its enumerated powers." *NFIB*, 567 U.S. at 578; *Coll. Sav. Bank*, 527 U.S. at 686 (same); *Dole*, 483 U.S. at 207 (same). So the inquiry under both the Spending Clause and the Tenth Amendment is whether the challenged "provision is inconsistent with the federal structure of our Government established by the Constitution." *New York*, 505 U.S. at 177; *NFIB*, 567 U.S. at 578–79. And because nothing in the Act "force[s] the States to implement a federal program," *NFIB*, 567 U.S. at 578–79, Missouri's commandeering argument fails.

In cases like this one—where "a State has a legitimate choice whether to accept the federal conditions in exchange for federal funds"—the "state officials can fairly be held politically accountable for choosing to accept or refuse the federal offer." *Id.* at 578; *New York*, 505 U.S. at 168 ("Where Congress encourages state regulation rather than compelling it . . . state officials remain accountable to the people."). If Missouri dislikes the funding condition, or any other provision of the Act, it is free to decline the generous federal aid in whole or in part—Missouri's voters know where to turn if they like, or dislike, the State's choice.

3. The Rescue Plan provides clear notice of the funding condition.

Missouri fares no better in urging that the offset provision is unconstitutionally ambiguous. PI Mot. 18–20. In *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1, 17, 24 (1981), the Supreme Court declared that "if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously." But that is not an onerous requirement: Congress must provide only "clear notice to the States that they, by accepting funds under the Act, would indeed be obligated to comply with" certain conditions. *Id.* at 25. The idea is simply to keep Congress from "surprising participating States with

post-acceptance or retroactive conditions." *NFIB*, 567 U.S. at 584 (quoting *Pennhurst*, 451 U.S. at 25); *see City of Los Angeles v. Barr*, 929 F.3d 1163, 1174–75 (9th Cir. 2019).

The Supreme Court has also explained that, when Congress makes clear a State's acceptance of federal funds requires agreement to certain conditions, the details of those conditions can be set out in agency guidance or regulations that specify the parameters of a condition on federal grants. For example, in *Bennett*—where, as discussed above, the Supreme Court upheld the requirement in Title I of the Elementary and Secondary Education Act—the Court observed that, "[g]iven the structure of the grant program, the Federal Government simply could not prospectively resolve every possible ambiguity concerning particular applications of the requirements of Title I." 470 U.S. at 669. The Court emphasized that "[t]he fact that Title I was an ongoing, cooperative program meant that grant recipients had an opportunity to seek clarification of the program requirements," *id.*, and that "if the State was uncertain" as to its obligations, "it could have sought clarification from the Office of Education," *id.* at 672, which was the agency component charged with administering the federal spending program.

Here, "a state official who is engaged in the process of deciding whether the State should accept [Rescue Plan] funds and the obligations that go with those funds" would "clearly understand that one of the obligations of the Act is the obligation" not to use Rescue Plan funds to offset a reduction in net tax revenue resulting from changes in state law. *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006). The Act establishes conditions on the use of funds (§ 802(c)), requires States to certify that they will use the funds for the intended purposes and to report those uses (§ 802(d)), and informs States that the potential consequence of non-compliance is the recoupment of no more than the portion of the funds used to offset a net tax revenue reduction (§ 802(e)). The Act further permits the Secretary to implement its provisions by regulation. *Id.* § 802(f).

These provisions give a state official deciding whether to accept Rescue Plan funds clear notice that those funds are conditioned on the State's agreement not to use the funds to offset a reduction in net tax revenue resulting from changes in state law—and that the Rescue Plan will be implemented through Treasury regulations. "Nothing more is required under *Pennhurst*, which held that Congress need provide no more than 'clear notice' to the [S]tates that funding is conditioned upon compliance with certain standards." *Cutter v. Wilkinson*, 423 F.3d 579, 586 (6th Cir. 2005) (citing *Pennhurst*, 451 U.S. at 25); *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 183 (2005) (noting that the Supreme Court has held "there was sufficient notice under *Pennhurst* where a statute made clear that some conditions were placed on the receipt of federal funds"); *Davis ex rel. Lashonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 650 (1999) (same).

Missouri attempts to demonstrate ambiguity by posing hypothetical questions. PI Mot. 19. But "Congress is not required to list every factual instance in which a [S]tate will fail to comply with a condition"—a task that would be potentially "impossible." *Mayweathers v. Newland*, 314 F.3d 1062, 1067 (9th Cir. 2002); *Van Wyhe v. Reisch*, 581 F.3d 639, 650 (8th Cir. 2009) ("[S]etting forth every conceivable variation in the statute is neither feasible nor required."); *see Bennett*, 470 U.S. at 666 (explaining that "every improper expenditure" need not be "specifically identified and proscribed" in the statute); *Jackson*, 544 U.S. 167 at 183 (same); *Davis*, 526 U.S. at 650 (same). Congress must simply "make the existence of the condition itself—in exchange for the receipt of federal funds—explicitly obvious." *Mayweathers*, 314 F.3d at 1067; *Benning v. Georgia*, 391 F.3d 1299, 1307 (11th Cir. 2004) (distinguishing situations where a statute is "unclear as to whether the [S]tates incurred any obligations at all by accepting federal funds"); *see Charles v. Verhagen*, 348 F.3d 601, 607 (7th Cir. 2003) ("[T]he existence of the conditions [must be] clear, such that States have notice that compliance with the conditions is required." (citing *Mayweathers*, 314 F.3d at 1067, and *Pennhurst*, 451 U.S. at 24–25)). The offset provision easily clears that bar.

Even if the bar were higher, it would make no difference. The Rescue Plan provides in direct terms that States cannot use the federal funds to offset a reduction in net tax revenue resulting from changes in state law. *See* Section II.A.–B., *supra*. As the Supreme Court has repeatedly confirmed, more particularized questions that arise in the course of implementing the Act can be addressed by Treasury regulations, *see* 42 U.S.C. § 802(f), and by other formal or informal guidance.

III. THE BALANCE OF HARMS AND THE PUBLIC INTEREST PRECLUDE A PRELIMINARY INJUNCTION.

1. "A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Missouri is not entitled to this "extraordinary remedy" because it cannot establish that it is "likely to suffer irreparable harm in the absence of preliminary relief." *Id.* at 20; *see Planned Parenthood*, 530 F.3d at 732–33 & n.5 (en banc) (requiring irreparable harm showing for injunctive relief). Missouri's burden to show irreparable harm is higher than what is required to establish standing. *See, e.g.*, *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). Even if Missouri were able to establish standing, it fails to establish irreparable harm. The State cites no imminent plan to reduce net tax revenue or use Rescue Plan funds to offset that reduction. Accordingly, Missouri's alleged harms are "simply not imminent" enough to warrant the relief it seeks. *Paraquad, Inc. v. St. Louis Hous. Auth.*, 259 F.3d 956, 959 (8th Cir. 2001).

Importantly, irreparable harm only "occurs when a party has no adequate remedy at law, typically because its injuries cannot be fully compensated through an award of damages." *Gen. Motors Corp.*, 563 F.3d at 319; *Bandag, Inc. v. Jack's Tire & Oil, Inc.*, 190 F.3d 924, 926 (8th Cir. 1999) ("The basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies." (quoting *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506–07, (1959))). Even if Missouri were to accept the conditioned Rescue Plan funding and nonetheless use those funds to offset a reduction in net tax revenue (potentially facing recoupment by Treasury), the State would have an "adequate

remedy at law" in any recoupment proceeding. *Gen. Motors Corp.*, 563 F.3d at 319. Instead, Missouri seeks to preliminarily (and erroneously) declare the offset provision's meaning and preempt any recoupment premised on alternative interpretations of the offset provision. *See* PI Mot. 30. But the potential recoupment action is where the State should make its arguments. With such action nowhere in sight, Missouri's challenge is premature and no injunction should issue.

Despite all this, Missouri argues that the offset provision could inflict irreparable injury if interpreted broadly by interfering with "an essential function of government." PI Mot. 27 (quoting *Lane Cnty.*, 74 U.S. at 76). As discussed above, however, the Rescue Plan's conditions do not intrude on state sovereign interests or essential functions, and the State has not established any constitutional violation. *See* Sections I.–II., *supra*. The few cases Missouri cites that involved unconstitutionally depriving a state of its ability to pursue its sovereign functions involved harms that "cannot be fully compensated through an award of damages." *Gen. Motors Corp.*, 563 F.3d at 319; *see* PI Mot. 27–28 (citing *Abbott*, 138 S. Ct.at 2324 n.17; *King*, 567 U.S. at 1303). Here, Missouri is concerned that it might someday need to repay money it receives under the Act. Such future harm would categorically fail to qualify as irreparable because it can be cured by the restoration of any improperly recouped funds if any "injury" ever materializes. *See Gen. Motors Corp.*, 563 F.3d at 319. Indeed, courts have routinely characterized the potential loss of money as a quintessential example of harm that is not irreparable. *See, e.g.*, *Sampson v. Murray*, 415 U.S. 61, 90 (1974).

Missouri also contends that the Secretary's "failure to repudiate" the State's straw-man reading of the offset provision "inflicts another species of irreparable injury." PI Mot. 28. The State argues that it is subject to "confusion and uncertainty that is interfering with Missouri's 'orderly management of [its] fiscal affairs.'" *Id.* (quoting *Barnes*, 501 U.S.

at 1304 (Scalia, J., in chambers)).[3] This argument likewise fails. Missouri has not alleged that it will lower net tax revenues at all, let alone imminently; nor has it alleged that it will use Rescue Plan funds to offset any such reduction. The State faces no unknown penalties if it does decide to cut taxes. Instead, it can alter its taxes as it deems appropriate, with no effect on the amount of its grant, as long as it does not use Rescue Plan funds to offset a reduction in net tax revenue resulting from changes to state law. And even if Missouri chooses to use Rescue Plan funds to offset such a reduction, the only consequence under the Act is that the State's grant would be affected only up to the amount of the offset. *See* 42 U.S.C. § 802(e).

2. Missouri is on no firmer ground in urging that an injunction against enforcement of the offset provision "will not harm anyone," on the theory that "an injunction will not affect the disbursement of Act funds or any expenditure of funds." PI Mot. 29. In other words, Missouri simultaneously asserts that an intrusion on its own sovereign interests (if it existed) would constitute irreparable injury, but that enjoining an Act of Congress would not constitute irreparable injury to the federal government.

The Supreme Court takes a different view. "The presumption of constitutionality which attaches to every Act of Congress is not merely a factor to be considered in evaluating success on the merits, but an equity to be considered in favor of [the government] in balancing hardships." *Walters v. Nat'l Ass'n of Radiation Survivors*, 468 U.S. 1323, 1324 (1984) (Rehnquist, J., in chambers). "Any time a [government] is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *King*, 567 U.S. at 1303 (Roberts, C.J., in chambers). Thus, an injunction would irreparably harm the United States and undermine the public interest. That is only

[3] In *Barnes*, Justice Scalia stayed an order that enjoined enforcement of the Texas Administrative Services Tax Act and directed the State to issue refunds. Missouri identifies no immediate monetary benefit that would result from enjoining the condition on the receipt of federal funds.

more evident here, where the legislation at issue is a direct response to a national economic and public-health emergency of historic proportions.

IV. ANY INJUNCTIVE RELIEF SHOULD BE LIMITED TO MISSOURI.

If this Court were to enjoin any aspect of the Rescue Plan (and the Court should not), that injunction should apply only to Missouri. "The Court's constitutionally prescribed role is to vindicate the individual rights of the people appearing before it." *Gill v. Whitford*, 138 S. Ct. 1916, 1933 (2018). Thus, the "plaintiff's remedy must be tailored to redress the plaintiff's particular injury." *Id.* at 1934 (citing *Daimler Chrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006)). And principles of equity independently require that injunctions be no broader than "necessary to provide complete relief to the plaintiffs." *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) (citation omitted). Indeed, Missouri has no serious interest in whether other States are subject to the offset provision during the pendency of this lawsuit, and the State would be fully redressed through a preliminary injunction prohibiting the Treasury Department from "enforcing" the Rescue Plan against only Missouri.

CONCLUSION

For the reasons explained above, Missouri's motion should be denied.

DATED: April 23, 2021

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