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15
16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF ARIZONA**

18
19 State of Arizona,

20 Plaintiff,

21 v.
22

23 Janet Yellen, in her official capacity as
24 Secretary of the Treasury, *et al.*,

25 Defendants.
26

Case No. 2:21-cv-00514-DJH

**DEFENDANTS' OPPOSITION TO
ARIZONA'S MOTION FOR
PRELIMINARY INJUNCTION**

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INTRODUCTION

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2 As part of the American Rescue Plan Act, Pub. L. No. 117-2, 135 Stat. 4 (2021)
3 (“Rescue Plan” or “Act”), Congress appropriated nearly \$200 billion in new fund-
4 ing for state governments. 42 U.S.C. § 802. Congress gave States considerable flex-
5 ibility to use these new federal funds, which may be directed to a broad variety of
6 state efforts to respond to the public health emergency created by the COVID-19
7 pandemic and to its economic effects, including by funding state-level govern-
8 ment services and by providing assistance to households, small businesses, and
9 industries. *Id.* § 802(c). To ensure that the new federal funds would be used for the
10 broad categories of state expenditures it identified, Congress specified that States
11 cannot use the federal funds to offset a reduction in net tax revenue resulting from
12 changes in state law. *Id.* § 802(c)(2)(A) (the “offset provision”). That is a straight-
13 forward exercise of Congress’s well-settled Spending Clause authority to attach
14 conditions that “preserve its control over the use of federal funds.” *Nat’l Fed’n of*
15 *Indep. Bus. v. Sebelius*, 567 U.S. 519, 579 (2012) [“*NFIB*”] (plurality opinion).

16 In seeking a preliminary injunction, Arizona argues that the offset provision
17 is unconstitutionally “ambiguous” and unconstitutionally “coercive” because it
18 would prevent the State from cutting taxes. But Arizona’s motion suffers from ju-
19 risdictional defects and rests on a fundamental misunderstanding of both the chal-
20 lenged statute and the governing law. The motion should be summarily denied.

BACKGROUND

A. Statutory Background

22 On March 11, 2021, Congress enacted the American Rescue Plan Act. *See*
23 Pub. L. No. 117-2, § 9901(a) (codified at 42 U.S.C. §§ 802–805). The Rescue Plan
24 establishes a “Coronavirus State Fiscal Recovery Fund,” allocating \$220 billion to
25 broadly “mitigate the fiscal effects” of the pandemic on States, territories, and
26 Tribal governments through 2024. 42 U.S.C. § 802(a)(1); *see id.* § 803(a) (additional
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1 \$130 billion for localities). Nearly \$200 billion is allocated for the States and the
2 District of Columbia. *Id.* § 802(b)(3)(A).

3 The Rescue Plan provides States with considerable latitude, in scope and du-
4 ration, to use the funds for pandemic-related purposes. Through 2024, a State may
5 use the funds “to cover costs incurred”:

6 (A) to respond to the public health emergency with respect to the
7 Coronavirus Disease 2019 (COVID-19) or its negative economic im-
8 pacts, including assistance to households, small businesses, and non-
9 profits, or aid to impacted industries such as tourism, travel, and
hospitality;

10 (B) to respond to workers performing essential work during the
11 COVID-19 public health emergency by providing premium pay to el-
12 igible workers of the State, territory, or Tribal government that are
13 performing such essential work, or by providing grants to eligible em-
ployers that have eligible workers who perform essential work;

14 (C) for the provision of government services to the extent of the re-
15 duction in revenue of such State, territory, or Tribal government due
16 to the COVID-19 public health emergency relative to revenues col-
17 lected in the most recent full fiscal year of the State, territory, or Tribal
government prior to the emergency; or

18 (D) to make necessary investments in water, sewer, or broadband in-
19 frastructure.

20 *Id.* § 802(c)(1). The Rescue Plan thus allows States to use the funds for “govern-
21 ment services” to the extent the pandemic has resulted in a “reduction in reve-
22 nue,” to respond broadly to the public-health emergency and its negative
23 economic effects, to support essential workers during the pandemic, and to invest
24 in certain infrastructure areas. *Id.*

25 The Rescue Plan includes two “further restriction[s]” to ensure that the
26 broad outlay of funds is used for the identified purposes while funds are available.

27 42 U.S.C. § 802(c)(2). One limitation (not challenged here) states that a State may
28 not “deposit” Rescue Plan funds “into any pension fund.” *Id.* § 802(c)(2)(B). The

1 other limitation (at issue here) provides in relevant part that a State:

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

7 *Id.* § 802(c)(2)(A).¹

8 By its terms, this funding condition applies only to reductions in “net” tax
9 revenue. *Id.* This limitation on the use of funds is not implicated at all by a State’s
10 choice to modify its tax code—including by cutting taxes—if the changes, taken
11 together, do not result in a reduction of *net* tax revenue. If a State chooses to re-
12 duce its net tax revenue, it may not use the Rescue Plan funds to “offset” that
13 reduction. If it does, the State will be required to repay (or its allocation will be
14 reduced by) only the lesser of: the amount of funds used to offset the “reduction
15 to net tax revenue” or “the amount of funds received.” 42 U.S.C. § 802(e).

16 The Rescue Plan further authorizes the Secretary of the Treasury “to issue
17 such regulations as may be necessary or appropriate to carry out this section.” 42
18 U.S.C. § 802(f). The Secretary has provided some initial guidance. *See* Yellen Let-
19 ter to State AGs (Mar. 23, 2021), <https://go.usa.gov/xHW65>; Treasury Statement
20 on State Fiscal Recovery Funds and Tax Conformity (Apr. 7, 2021),
21 <https://go.usa.gov/xHW6R>. And the Secretary will provide further guidance
22 imminently through an interim final rule. *See* Office of Information and Regula-
23 tory Affairs, Office of Management & Budget, Regulatory Review Status (last vis-
24 ited April 30, 2021), [https://www.reginfo.gov/public/do/eoDetails?rriid](https://www.reginfo.gov/public/do/eoDetails?rriid=166315)
25 [=166315](https://www.reginfo.gov/public/do/eoDetails?rriid=166315). Once the Treasury Department issues the regulations, a State may re-

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28 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 . . . the Secretary.” 42 U.S.C. § 802(g)(1).

1 ceive federal funds after providing a certification (in a form the agency will pro-
 2 vide) indicating that it needs the funds to carry out the activities specified in
 3 § 802(c) and that it will use the funds in compliance with that provision. 42 U.S.C.
 4 § 802(d)(1). States that receive funds must provide periodic reports and other in-
 5 formation as the Secretary may require. *Id.* § 802(d)(2).

6 **B. Factual and Procedural Background**

7 On March 25, 2021, Arizona brought this suit alleging that the offset provi-
 8 sion is unconstitutionally ambiguous and “represents an unprecedented and un-
 9 constitutional intrusion on the separate sovereignty of the States.” Compl. ¶ 1,
 10 ECF No. 1. Arizona expects to receive about \$4.7 billion under the Rescue Plan. *Id.*
 11 ¶ 40. The State requests immediate relief to “enjoin the [offset] provision’s enforce-
 12 ment as it applies to Arizona.” Mot. for Prelim. Inj. (“PI Mot.”) 3, ECF No. 11.

13 **LEGAL STANDARDS**

14 “A preliminary injunction is an extraordinary remedy that may be awarded
 15 only if the plaintiff clearly shows entitlement to such relief.” *Am. Beverage Ass'n v.*
 16 *City & Cnty. of San Francisco*, 916 F.3d 749, 754 (9th Cir. 2019). In determining
 17 whether to issue a preliminary injunction, courts consider the movant’s likelihood
 18 of success on the merits, the threat of irreparable harm, the balance of the equities,
 19 and whether an injunction is in the public interest. *Winter v. Nat. Res. Def. Council,*
 20 *Inc.*, 555 U.S. 7, 20 (2008). Where the federal government is the defendant, the last
 21 two factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Because Arizona seeks
 22 to upend the status quo by enjoining a duly enacted federal statute, it has a higher
 23 burden. *See Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc).

24 **ARGUMENT**

25 **I. ARIZONA LACKS ARTICLE III STANDING**

26 To satisfy the “irreducible constitutional minimum” of Article III standing—
 27 as is required to invoke this Court’s jurisdiction—Arizona must first demonstrate
 28 “a concrete and particularized” injury in fact that is “actual or imminent.” *Lujan v.*

1 *Def. of Wildlife*, 504 U.S. 555, 560–61 (1992). In a suit to enjoin the future enforce-
2 ment of a statute, “the injury-in-fact requirement” demands that the plaintiff “al-
3 lege[] an intention to engage in a course of conduct arguably affected with a
4 constitutional interest, but proscribed by a statute, and [that] there exists a credible
5 threat of [enforcement] thereunder.” *Susan B. Anthony List v. Driehaus*, 573 U.S.
6 149, 159 (2014) (quotation omitted).

7 Arizona cannot meet that standard because its asserted injuries are hypo-
8 thetical and speculative. Its complaint and preliminary-injunction motion are si-
9 lent as to how it intends to use Rescue Plan funds, let alone whether it plans to use
10 them in a manner inconsistent with the offset provision. Under that provision, a
11 State may not use the new federal funds to offset a reduction in net tax revenue
12 that results from changes in state law. 42 U.S.C. § 802(c)(2)(A). But Arizona does
13 not allege that it has enacted any tax cuts, let alone tax cuts that would (taken
14 together with any tax increases) reduce net tax revenue. Nor does it allege that it
15 intends to use Rescue Plan funds to offset any reduction in its net tax revenue.
16 Arizona does nothing more than guess about how it might be injured. *See, e.g.*, PI
17 Mot. 12 (“*If The Tax Mandate Unambiguously Prohibits Tax Cuts Broadly, It Is*
18 *Unconstitutional.*” (emphasis added)); *id.* at 7 (discussing “potentially broad” in-
19 terpretation of the statute); *id.* at 10 (posing a litany of hypothetical “questions”);
20 Compl. ¶¶ 6, 9, 12, 22, 39 (relying on similar contingencies or hypotheticals).

21 The Arizona Legislature’s various tax-reduction proposals do not strengthen
22 the State’s position. *See* PI Mot. 6. The State has not enacted any tax law, shown
23 that the law will decrease net tax revenue, or alleged any intent to use Rescue Plan
24 funds to offset that hypothetical reduction. In other words, merely proposing a tax
25 cut is *not* itself the “course of conduct arguably affected with a constitutional in-
26 terest” and “proscribed by a statute” required for pre-enforcement standing.
27 *Driehaus*, 573 U.S. at 159 (quoting *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979)).

28

1 The offset provision only restricts using Rescue Plan funds to offset a reduction in
2 net tax revenue resulting from a change in law, not any tax change on its own.

3 Unable to demonstrate that the Rescue Plan restricts any conduct that Ari-
4 zona intends to undertake, let alone that any recoupment is imminent, the State
5 asserts a general intrusion on its “sovereign interests.” Compl. ¶¶ 20–22; see PI
6 Mot. 17. But no State has a sovereign interest in using *federal funds* distributed un-
7 der the Rescue Plan to offset a reduction in net tax revenue. And Arizona, of
8 course, retains the freedom to decline the funds.

9 Arizona’s reliance on its sovereign taxing authority and its “power to create
10 and enforce a legal code” also cannot be reconciled with the Supreme Court’s de-
11 cision in *Massachusetts v. Mellon*, which held that Article III jurisdiction is not sat-
12 isfied by raising “abstract questions . . . of sovereignty” related to funding
13 conditions, but only by “the actual or threatened operation of the statute” – pre-
14 cisely what Arizona has failed to demonstrate here. Compare 262 U.S. 447, 478–79,
15 484–85 (1923), with Compl. ¶¶ 20–21 and PI Mot. 17. Contrary to Arizona’s cited
16 cases, no concrete manifestation of its sovereign interests are at stake here. See *Ab-*
17 *bott v. Perez*, 138 S. Ct. 2305, 2324 (2018) (concerning a federal court injunction bar-
18 ring implementation of a state statute); *Alaska v. U.S. Dep’t of Transp.*, 868 F.2d 441,
19 443 (D.C. Cir. 1989) (concerning whether a state statute had been preempted by
20 federal law). As noted, Arizona has not alleged any plan to use Rescue Plan funds
21 to offset a reduction in net tax revenue resulting from a change in state law, and
22 even then, only federal money – not state power – would be at stake.

23 Arizona’s cursory assertion that the offset provision harms the State by cre-
24 ating uncertainty over “the scope of its prohibition” and the “risk” of recoupment
25 are also unavailing. Compl. ¶ 22. Again, Arizona can alter taxes as it deems ap-
26 propriate, with no effect on the amount of its grant, if it does not offset a reduction
27 in net tax revenue with Rescue Plan funds. And the State need not certify and then
28

1 receive funds until after Treasury issues its implementing regulations. Indeed, Ar-
2 izona’s reliance on *Arlington Central* only underscores that disputes over the clar-
3 ity of grant conditions are resolved, as there, in the context of a concrete
4 controversy – not in the abstract. See PI Mot. 9–10 (citing *Arlington Cent. Sch. Dist.*
5 *Bd. of Educ. v. Murphy*, 548 U.S. 291 (2006)).

6 For similar reasons, even if Arizona had Article III standing, its challenge to
7 the offset provision would not be ripe. *Nat’l Park Hosp. Ass’n v. Dep’t of Interior*,
8 538 U.S. 803, 807–08 (2003). Arizona’s claimed harm here rests on the potential
9 recoupment of some Rescue Plan funds based on the State’s speculation over how
10 the Secretary may implement the Act. See PI Mot. 2–3, 7, 10, 12 & n.2; *Alcoa, Inc. v.*
11 *Bonneville Power Admin.*, 698 F.3d 774, 793 (9th Cir. 2012). But before recoupment
12 even comes into play, the Treasury Department will issue “necessary or appropri-
13 ate” regulations. 42 U.S.C. § 802(f). Then, Arizona must: submit a certification, *id.*
14 § 802(d)(1), receive the funds from the Treasury, enact state tax law changes, show
15 a reduction in net tax revenue due to those changes, and then use Rescue Plan
16 funds to offset that reduction. So the State is nowhere close to some “concrete ac-
17 tion applying [Treasury’s] regulation to [Arizona’s] situation in a fashion that
18 harms or threatens to harm [it].” *Nat’l Park Hosp. Ass’n*, 538 U.S. at 808; see *Mont.*
19 *Env’t Info. Ctr. v. Stone-Manning*, 766 F.3d 1184, 1190 (9th Cir. 2014). Particularly
20 given the extraordinary nature of Arizona’s requested injunction, it is critical to
21 ensure that the jurisdictional prerequisites for this suit are satisfied. See *Pub. Serv.*
22 *Comm’n of Utah v. Wycoff Cnty.*, 344 U.S. 237 (1952).

23 **II. ARIZONA IS NOT LIKELY TO SUCCEED ON THE MERITS.**

24 On the merits, Arizona has not come close to demonstrating that Congress
25 exceeded the bounds of its Spending Clause authority. The Constitution empow-
26 ers Congress to raise and spend revenue to “provide for the common Defence and
27 general Welfare of the United States.” U.S. Const. art. I, § 8, cl. 1. Congress “may,
28 in the exercise of its spending power, condition its grant of funds to the States

1 upon their taking certain actions that Congress could not require them to take.”
2 *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 686–87
3 (1999); *NFIB*, 567 U.S. at 576; *Dole*, 483 U.S. at 207. But Congress’s Spending Clause
4 authority is subject to certain limitations. Congress must use its spending power
5 in pursuit of “the general welfare” and ensure that its “conditions on the receipt
6 of federal funds” are related to the federal interest. *Dole*, 483 U.S. at 206–07. Con-
7 gress’s “desire[] to condition the States’ receipt of federal funds” must be unam-
8 biguous. *Id.* at 207. And Spending Clause conditions must not violate “other
9 constitutional provisions” or, in some circumstances, be “coercive.” *Id.* at 208, 211.

10 In this case, Arizona contends that the offset provision violates the Spending
11 Clause and the Tenth Amendment. *See id.* at 207. But Arizona bears a heavy bur-
12 den to demonstrate that the offset provision is “unconstitutional in all its applica-
13 tions.” *Bucklew v. Precythe*, 139 S. Ct. 1112, 1127 (2019); *United States v. Morrison*,
14 529 U.S. 598, 607 (2000); *see also Wash. State Grange v. Wash. State Republican*
15 *Party*, 552 U.S. 442, 450 (2008). Here, Congress has validly exercised its Spending
16 Clause authority, and Arizona’s arguments fail.

17 **A. Congress Validly Exercised its Spending Clause Authority to Re-**
18 **strict the Use of Rescue Plan Funds.**

19 The Rescue Plan is a lawful exercise of Congress’s Spending Clause author-
20 ity. Designed to assist in the Nation’s economic recovery during and following a
21 pandemic, the Rescue Plan appropriates nearly \$200 billion in new federal fund-
22 ing for States and the District of Columbia. 42 U.S.C. § 802(b)(3)(A). With that
23 funding, States have considerable flexibility to “mitigate the fiscal effects” of the
24 COVID-19 pandemic as they see fit within the broad parameters specified by Con-
25 gress. *Id.* § 802(a)(1), (c)(1). Unsurprisingly, Congress sought to ensure that its
26 monetary outlay would be used as intended. To that end, it included a guardrail
27 that prohibits States that choose to accept the federal money from using those
28 funds to “directly or indirectly offset a reduction” in “net tax revenue” resulting

1 from changes in state law. 42 U.S.C. § 802(c)(2)(A).

2 The offset provision is, by any measure, a modest restriction on an otherwise
3 generous outlay of federal funds. By its plain terms, the offset provision applies
4 only when a State uses Rescue Plan funds to “offset” a reduction in “net” tax rev-
5 enue resulting from changes in state law. *Id.* That restriction is not implicated if
6 reductions in some taxes are balanced with increases in others because no “net”
7 tax revenue reduction would then occur. A State also does not transgress the lim-
8 itation if it does not “use” Rescue Plan funds to “offset” a reduction in net tax
9 revenue. *Id.* The term “use” connotes “volitional” “active employment” of federal
10 funds. *Voisine v. United States*, 136 S. Ct. 2272, 2278–79 (2016). And the term “off-
11 set” means “[t]o balance” or “compensate for.” *Offset*, Black’s Law Dictionary
12 (11th ed. 2019). Contrary to Arizona’s suggestion, PI Mot. 10, the Act’s reference
13 to States “directly or indirectly” offsetting a reduction in net tax revenue does not
14 alter the statutory meaning. Both “directly” and “indirectly” are adverbs that can-
15 not “alter the meaning of the word” that they modify (here, “offset”). *Rimini St.,*
16 *Inc. v. Oracle USA, Inc.*, 139 S. Ct. 873, 878 (2019). It remains true that the statute
17 restricts only the use of Rescue Plan funds to offset reductions in net tax revenue,
18 not every form of tax reduction. If Congress had sought to prohibit *every* reduction
19 in taxes, PI Mot. 2, it could easily have said so explicitly.

20 Taken together, this language simply ensures that the federal funds are not
21 employed to finance state tax cuts that decrease net tax revenue. *See Citizens Bank*
22 *of Md. v. Strumpf*, 516 U.S. 16, 18–19 (1995) (describing “offset” as balancing out a
23 specific loss with another specific gain). But States routinely offset reductions in
24 net tax revenue by other means. And the Act specifies that even if a State uses the
25 new federal funds to offset a reduction in net tax revenue, the consequence is pro-
26 portionate to the misuse: the State must repay only the amount of federal money
27 it used to offset the reduction in net tax revenue. 42 U.S.C. § 802(e).

28

1 Congress has broad leeway in establishing permissible uses of federal funds.
2 And Congress has an overriding interest in ensuring that the new Rescue Plan
3 funds will be used for the broad categories of state expenditures it identified and
4 not others Congress chose not to support. *See Sabri v. United States*, 541 U.S. 600,
5 608 (2004) (“The power to keep a watchful eye on expenditures . . . is bound up
6 with congressional authority to spend in the first place.”). This is evident from the
7 offset provision itself, which is titled “[f]urther restriction on *use of funds*” and ap-
8 plies only to a State’s “use [of] the funds provided under this section.” 42 U.S.C. §
9 802(c)(2) (emphasis added).

10 Arizona briefly contends that the Rescue Plan’s conditions on the use of
11 funds are not *related* to the funding program. PI Mot. 12–13. But it is difficult to
12 imagine how they could be *more* related to the funding program because they
13 specify the uses to which a State may and may not devote the federal funds. That
14 sort of statutory guardrail is by definition “germane[]” because it ensures that fed-
15 eral funds are used for the public-health and economic-recovery “federal pur-
16 poses” of the spending program. *Dole*, 483 U.S. at 208. Congress acted well within
17 its Spending Clause authority by both describing broad categories of permissible
18 uses and proscribing certain narrow uses. The offset provision simply ensures that
19 Rescue Plan funds “are spent according to [Congress’s] view of the ‘general Wel-
20 fare.’” *NFIB*, 567 U.S. at 580.

21 Other Spending Clause legislation illustrates that the Rescue Plan and its off-
22 set provision advance a valid federal purpose: provisions that require States to
23 maintain their existing fiscal efforts as a condition of receiving federal funds are
24 an uncontroversial and familiar exercise of Congress’s spending power. *See, e.g.,*
25 *Bennett v. Ky. Dep’t of Educ.*, 470 U.S. 656, 663, 673–74 (1985) (upholding a funding
26 provision of Title I that required States to supplement state education spending);
27 *Mayhew v. Burwell*, 772 F.3d 80, 82 (1st Cir. 2014) (upholding the Affordable Care
28 Act’s requirement that States accepting Medicaid funds maintain their state-level

1 Medicaid eligibility standards for children for a specified period); *S.C. Dep't of*
2 *Educ. v. Duncan*, 714 F.3d 249, 252 (4th Cir. 2013) (describing provision in the Indi-
3 viduals with Disabilities Education Act, which generally requires the Secretary to
4 reduce a State's grant by the same amount by which the State has failed to main-
5 tain spending for special education for children with disabilities); *Kansas v. United*
6 *States*, 214 F.3d 1196, 1197 (10th Cir. 2000) (noting similar requirement in the Tem-
7 porary Assistance to Needy Families program).

8 As these cases reflect, statutory provisions that prevent federal funds from
9 being used to displace state efforts are both common and undoubtedly within
10 Congress's authority. And the offset provision is even less proscriptive than those
11 in the cases cited above: it does not mandate any particular spending or taxation
12 level but merely prevents States from using federal funds to offset a reduction in
13 net tax revenue. With the Rescue Plan, Congress gave States the flexibility to de-
14 termine which of the broadly defined permissible uses of the new funds are most
15 appropriate to their circumstances. *See* 42 U.S.C. § 802(c)(1). And consistent with
16 that generous, four-year outlay of funding, Congress simply sought the assurance
17 that States would not displace their own tax revenue sources with the federal
18 funds that Congress had appropriated for other purposes.

19 **B. The Rescue Plan Provides Clear Notice of the Funding**
20 **Condition.**

21 In light of the plain text of the statute, Arizona cannot prevail on its argu-
22 ment that the offset provision is unconstitutionally ambiguous. PI Mot. 8–12. In
23 *Pennhurst State School & Hospital v. Halderman*, the Supreme Court declared that “if
24 Congress intends to impose a condition on the grant of federal moneys, it must do
25 so unambiguously.” 451 U.S. 1, 17, 24 (1981). But that is not an onerous require-
26 ment: Congress must provide only “clear notice to the States that they, by accept-
27 ing funds under the Act, would indeed be obligated to comply with” certain
28 conditions. *Id.* at 25. The idea is simply to keep Congress from “surprising

1 participating States with post-acceptance or retroactive conditions.” *NFIB*, 567
2 U.S. at 584 (quoting *Pennhurst*, 451 U.S. at 25); see *City of Los Angeles v. Barr*, 929
3 F.3d 1163, 1174–75 (9th Cir. 2019). And when Congress makes clear that a State’s
4 acceptance of federal funds requires agreement to certain conditions, the details
5 of those conditions can be set out in agency regulations that specify the parameters
6 of a condition on federal grants. *Bennett*, 470 U.S. at 669–72.

7 Here, “a state official who is engaged in the process of deciding whether the
8 State should accept [Rescue Plan] funds and the obligations that go with [them]”
9 would “understand that one of the obligations of the Act” is to not use Rescue
10 Plan funds to offset a reduction in net tax revenue resulting from changes in state
11 law. *Arlington Cent. Sch. Dist. Bd.*, 548 U.S. at 296. That distinguishes this case from
12 *Arlington Central*, which held that the text of the Individuals with Disabilities in
13 Education Act (IDEA)—allowing an award of “reasonable attorneys’ fees as part
14 of the costs” to parents prevailing in IDEA suits—was insufficiently broad to place
15 States on notice that they might need to reimburse expert fees. *Id.* at 297–99. Unlike
16 the IDEA, the Rescue Plan plainly establishes the existence of conditions on the
17 use of funds (§ 802(c)), requires States to certify that they will use the funds for the
18 intended purposes and to report those uses (§ 802(d)), informs States that the po-
19 tential consequence of non-compliance is the recoupment of no more than the por-
20 tion of the funds used to offset a net tax revenue reduction (§ 802(e)), and permits
21 the Secretary to implement these provisions by regulation (§ 802(f)). “Nothing
22 more is required under *Pennhurst*, which held that Congress need provide no
23 more than ‘clear notice’ to the [S]tates that funding is conditioned upon compli-
24 ance with certain standards.” *Cutter v. Wilkinson*, 423 F.3d 579, 586 (6th Cir. 2005)
25 (citing *Pennhurst*, 451 U.S. at 25); *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167,
26 183 (2005) (noting that “there was sufficient notice under *Pennhurst* where a statute
27 made clear that some conditions were placed on the receipt of federal funds”);
28 *Davis ex rel. Lashonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 650 (1999).

1 Arizona attempts to demonstrate unconstitutional ambiguity by posing
2 “open questions.” PIMot. 10, 12. But “Congress is not required to list every factual
3 instance in which a [S]tate will fail to comply with a condition,” which would be
4 potentially “impossible.” *Mayweathers v. Newland*, 314 F.3d 1062, 1067 (9th Cir.
5 2002); *Van Wyhe v. Reisch*, 581 F.3d 639, 650 (8th Cir. 2009) (“[S]etting forth every
6 conceivable variation in the statute is neither feasible nor required.”); *see Bennett*,
7 470 U.S. at 666 (explaining that “every improper expenditure” need not be “spe-
8 cifically identified and proscribed” in the statute); *Jackson*, 544 U.S. 167 at 183
9 (same); *Davis*, 526 U.S. at 650 (same). Congress must simply “make the existence
10 of the condition itself—in exchange for the receipt of federal funds—explicitly ob-
11 vious.” *Mayweathers*, 314 F.3d at 1067; *Benning v. Georgia*, 391 F.3d 1299, 1307 (11th
12 Cir. 2004) (distinguishing statutes where it is “unclear [] whether the [S]tates in-
13 curred any obligations ... by accepting federal funds”); *see Charles v. Verhagen*, 348
14 F.3d 601, 607 (7th Cir. 2003) (“[T]he existence of the conditions [must be] clear,
15 such that States have notice that compliance with the conditions is required.” (ci-
16 tations omitted)). The offset provision passes that bar.

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

23 C. The Rescue Plan Is Not Coercive.

24 Arizona does not raise an independent coercion or anti-commandeering ar-
25 gument. The State only contends that a broad interpretation of the offset provision
26 that “prohibit[s] any change in tax policy whatsoever that reduces tax revenue,” —
27 which the federal government has nowhere adopted — would be “coercive” and
28 intrude on its sovereign taxing authority. PI Mot. 12–16. But as explained above,

1 the State’s argument rests entirely on an erroneous interpretation of the offset pro-
2 vision because the provision simply forbids States to “use” Rescue Plan funds to
3 “offset” a reduction in “net tax revenue” resulting from changes in state law. *See*
4 Section II.A., *supra*. And if Arizona does so, the only consequence under the Act
5 would be to lower the amount of its federal grant by the amount of the offset.

6 Arizona’s coercion argument also fundamentally misunderstands govern-
7 ing law. The Supreme Court has held that “Congress may attach appropriate con-
8 ditions to federal taxing and spending programs to preserve its control over the
9 use of federal funds.” *NFIB*, 567 U.S. at 579; *Steward Mach. Co. v. Davis*, 301 U.S.
10 548, 590–91 (1937) (holding that where Congress places conditions on how federal
11 funds are used, “[i]n such circumstances . . . inducement or persuasion does not
12 go beyond the bounds of power”). And even when the Supreme Court has applied
13 a coercion analysis, it has never extended to funding conditions that “safeguard
14 [the U.S.] treasury” by “govern[ing] the use of the funds” that have been newly
15 appropriated. *NFIB*, 567 U.S. at 578–80; *Dole*, 483 U.S. at 210; *Steward Mach. Co.*,
16 301 U.S. at 590–91; *New York v. United States*, 505 U.S. 144, 171 (1992) (not under-
17 taking a “coercion” inquiry where “Congress has placed conditions—the achieve-
18 ment of the milestones—on the receipt of federal funds”). Where, as here,
19 Congress merely restricts how States use newly appropriated federal funds, a co-
20ercion analysis is inapplicable. *See, e.g., Gruver v. La. Bd. of Supervisors for La. State*
21 *Univ. Agric. & Mech. Coll.*, 959 F.3d 178, 183–84 (5th Cir. 2020); *Miss. Comm’n on*
22 *Env’t Quality v. EPA*, 790 F.3d 138, 179 (D.C. Cir. 2015).

23 *NFIB*’s reasoning also forecloses Arizona’s argument that the offset provi-
24sion is coercive or commandeering. Unlike the statute challenged here, the Afford-
25able Care Act provision at issue in *NFIB* threatened States with the loss of their
26 *preexisting* Medicaid funding unless they agreed to take part in the ACA’s
27 expansion of Medicaid coverage. *NFIB*, 567 U.S. at 576. In the Court’s controlling
28 opinion, the Chief Justice explained that the statute’s primary constitutional flaw

1 was the threat to cut off all *existing* Medicaid funding if a State did not agree to the
 2 Medicaid expansion.² *Id.* at 579–80. As the Court summarized, “Congress is not
 3 free” to “*penalize* States that choose not to participate in that new program by tak-
 4 ing away their *existing* Medicaid funding.” *Id.* at 585 (emphases added).

5 By contrast, the only funds regulated by the offset provision are the funds
 6 that Congress appropriated as part of the Rescue Plan itself. *See* 42 U.S.C. § 802(a)–
 7 (c). Unlike *NFIB*, States do not suffer the “penalty” of losing *preexisting* funds for
 8 an established program if they decline to accept Rescue Plan funds with their at-
 9 tendant conditions. *See NFIB*, 567 U.S. at 585. Indeed, the funding condition at is-
 10 sue here is notably more modest than the prospective funding condition that *NFIB*
 11 indicated was permissible. *Id.* at 576, 585 (explaining that Congress could make
 12 the *entirety* of the new federal funds provided – totaling \$100 billion per year –
 13 contingent on a State’s adoption of that new program). A State’s receipt of Rescue
 14 Plan funds is not an all-or-nothing proposition dependent on compliance with the
 15 offset provision. The Act provides that if a State were to use Rescue Plan funds to
 16 offset a reduction in net tax revenue, it could lose no more than those funds used
 17 for the offset. *See* 42 U.S.C. § 802(e)(1). And, again, there is no threat to *preexisting*
 18 funds if States decline the Rescue Plan’s generous outlay of federal money.

19 For the same reasons, Arizona’s remaining arguments fail. PI Mot. 13–16. As
 20 Arizona admits, PI Mot. 8 n.1, the inquiry under both the Spending Clause and
 21 the Tenth Amendment are the same. *New York*, 505 U.S. at 177; *NFIB*, 567 U.S. at
 22 578–79. In cases like this one – where “a State has a legitimate choice whether to
 23 accept the federal conditions in exchange for federal funds” – the “state officials
 24 can fairly be held politically accountable for choosing to accept or refuse the fed-
 25 eral offer.” *NFIB*, 567 U.S. at 578; *New York*, 505 U.S. at 168. If Arizona dislikes the
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27
 28 ² Because Chief Justice Roberts, writing for a plurality, “struck down Med-
 icaid 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.

1 funding condition, it is free to decline the generous federal aid in whole or in part.
2 Arizona’s voters know where to turn if they like, or dislike, the State’s choice.

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

5 1. “A preliminary injunction is an extraordinary remedy never awarded
6 as of right.” *Winter*, 555 U.S. at 24. Arizona is not entitled to this “extraordinary
7 remedy” because it cannot demonstrate that it is “likely to suffer irreparable harm
8 in the absence of preliminary relief.” *Id.* at 20. Arizona’s burden to show irrepara-
9 ble harm is higher than for standing. *See, e.g., Mazurek v. Armstrong*, 520 U.S. 968,
10 972 (1997). Even if Arizona were able to establish standing, it fails to establish ir-
11 reparable harm. The State cites no plan to reduce net tax revenue or use Rescue
12 Plan funds to offset that reduction. Accordingly, Arizona’s alleged harms are “too
13 attenuated and conjectural” to warrant the relief it seeks. *Caribbean Marine Seros.*
14 *Co. v. Baldrige*, 844 F.2d 668, 675 (9th Cir. 1988).

15 Importantly, irreparable harm means “harm for which there is no adequate
16 legal remedy, such as an award of damages.” *Ariz. Dream Act Coal. v. Brewer*, 757
17 F.3d 1053, 1068 (9th Cir. 2014). Even if Arizona were to accept the conditioned
18 funding and nonetheless use those funds to offset a reduction in net tax revenue
19 (potentially facing recoupment), the State would have an “adequate legal remedy”
20 in any recoupment proceeding. *Id.* Instead, Arizona seeks to preliminarily declare
21 the offset provision’s meaning and preempt any recoupment, PI Mot. 17, but that
22 potential recoupment action is where the State should make its arguments. With
23 such action nowhere in sight, Arizona’s challenge is premature.

24 Despite all this, Arizona argues, in a solitary paragraph, that the offset
25 provision could inflict irreparable injury *if* interpreted broadly by interfering with
26 the State’s “sovereignty.” *Id.* As discussed above, however, there is no intrusion
27 on state sovereign interests or essential functions here. *See* Sections I.–II., *supra*.
28 The two cases Arizona cites that involved allegedly depriving a state of its ability

1 to pursue its sovereign functions therefore involved harms “for which there is no
2 adequate legal remedy, such as an award of damages.” *Ariz. Dream Act Coal.*, 757
3 F.3d at 1068; *see* PI Mot. 17 (citing cases). Here, Arizona is concerned that it might
4 someday need to repay money it receives under the Act. Such future injury would
5 categorically fail to qualify as irreparable because it can be cured by the restoration
6 of any improperly recouped funds if any “harm” ever materializes. *See Ariz. Dream*
7 *Act Coal.*, 757 F.3d at 1068. Indeed, courts have routinely characterized the poten-
8 tial loss of money as a quintessential example of harm that is not irreparable. *See,*
9 *e.g., Sampson v. Murray*, 415 U.S. 61, 90 (1974).

10 **2.** Arizona is on no firmer ground in urging that an injunction against
11 enforcement of the offset provision “will not harm anyone” because “[f]ederal
12 grants can still be paid.” PI Mot. 17. In other words, Arizona asserts that an intru-
13 sion on its own alleged sovereign interests would constitute irreparable harm, but
14 that enjoining an Act of Congress would not irreparably harm Defendants.

15 The Supreme Court takes a different view. “The presumption of constitu-
16 tionality which attaches to every Act of Congress is not merely a factor to be con-
17 sidered in evaluating success on the merits, but an equity to be considered in favor
18 of [the government] in balancing hardships.” *Walters v. Nat’l Ass’n of Radiation Sur-*
19 *vivors*, 468 U.S. 1323, 1324 (1984) (Rehnquist, J., in chambers). “Any time a [gov-
20 ernment] is enjoined by a court from effectuating statutes enacted by
21 representatives of its people, it suffers a form of irreparable injury.” *Maryland v.*
22 *King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). Thus, an injunction
23 would irreparably harm the United States and undermine the public interest.

24 CONCLUSION

25 The Court should deny Arizona’s preliminary-injunction motion. If the
26 Court were to enjoin any aspect of the Rescue Plan, the injunction should be lim-
27 ited to Arizona. *See Gill v. Whitford*, 138 S. Ct. 1916, 1934 (2018); *Madsen v. Women’s*
28 *Health Ctr., Inc.*, 512 U.S. 753, 765 (1994).

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