

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Southern Division: Montgomery County)**

AMERICAN ASSOCIATION OF
PHYSICIANS FOR HUMAN RIGHTS, INC.
d/b/a GLMA: HEALTH PROFESSIONALS
ADVANCING LGBTQ+ EQUALITY *et al.*,

Plaintiffs,

v.

NATIONAL INSTITUTES OF HEALTH
et al.,

Defendants.

Civil Action No. 8:25-cv-01620-LKG

**SECOND NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION & STAY
PENDING JUDICIAL REVIEW PURSUANT TO 5 U.S.C. § 705**

Plaintiffs respectfully submit this Second Notice of Supplemental Authority to inform the Court of the July 18, 2025, decision by the U.S. Court of Appeals for the First Circuit denying the government's request for a stay of the decision in *American Public Health Association v. National Institutes of Health*, No. 25-1611, and *Massachusetts v. Kennedy, Jr.*, No. 25-1612. Those matters involve the same Agency Directives and resulting Challenged Agency Actions as those at issue here.

While Plaintiffs are mindful of the Court's expressed preliminary view that it has doubts about its jurisdiction that would "preclude the Court from finding a likelihood of success at this time with regards to the APA claim," PI Hrg. Tr. 88:3-12, Plaintiffs believe it pertinent to inform the Court of the First Circuit's decision "before the Court rules formally on the pending motion." *Id.* at 92:5-7. In addition, the First Circuit's decision may be of assistance given that, in their supplemental brief in opposition to Plaintiffs' motion for a preliminary injunction (Doc. 85 at 10-11), Defendants rehashed their Tucker Act arguments with regard to the Plaintiffs' entitlement to

relief for their Section 1557 and equal protection claims. In its decision, the First Circuit first pointed out that “[a]s to the declaratory judgment vacating the Challenged Directives, the [government] does not develop an argument that the district court lacked jurisdiction to order such relief.” Op. at 19. The same is true here. Second, “focusing on the grant terminations in particular,” the First Circuit explained, “the district court’s orders afford[ed] the same type of relief that the Supreme Court approved in *Bowen*.” Op. at 20. Therefore, the First Circuit concluded that “the court likely had jurisdiction to enter the orders here -- which provided declaratory relief under the APA independent of any contractual language -- to ‘set[] aside an agency’s action[s]’ as arbitrary and capricious; the fact that the orders ‘may result in the disbursement of funds’ did not divest the court of its jurisdiction.” Op. 23-24.

Evaluating the likelihood of success on the merits of the APA claims, the First Circuit rejected Defendants’ argument “that the grant termination decisions were committed to agency discretion and are therefore unreviewable under the APA,” and observed “no obvious error in the district court’s conclusion that the Department’s actions bear all the hallmarks of arbitrary and capricious decision-making.” Op. at 24, 26, 27.

Furthermore, as has been the case here, “the Department fails to address any of the non-monetary harms that the plaintiffs detailed, which cannot be remedied by belated payment.” Op. at 32. The First Circuit thus found that “the Department has failed to show that the plaintiffs would not suffer substantial harm if the district court’s orders were stayed during the pendency of the litigation.” *Id.*

A copy of the decision is attached hereto.

Dated: July 22, 2025

Respectfully submitted,

/s/ Elizabeth Parr Hecker

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** Application for admission to D. Md. Bar
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