

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

COMMONWEALTH OF
MASSACHUSETTS, *et al.*,

Plaintiffs,

v.

ROBERT F. KENNEDY, JR., *et al.*,

Defendants.

No. 1:25-cv-10814-WGY

**STIPULATION ON INTRODUCTION OF EVIDENCE AT TRIAL,
DISCOVERY, AND ADMINISTRATIVE RECORD FOR PHASE TWO**

Plaintiff States and Defendants, by and through their counsel, hereby stipulate to the following conditions regarding introduction of evidence at trial, discovery, and the Administrative Record,¹ in anticipation of trial on the Plaintiff States' remaining pending claims:

I. Introduction of Evidence at Trial and Discovery

In light of the expedited trial schedule for Phase Two of this action, the Parties agree that:

Plaintiff States hereby withdraw their Motion for Targeted Discovery (ECF No. 171) and the discovery requests served on Defendants on June 2, 2025. Defendants hereby waive objections (or their right to object) to the Plaintiff States' introduction of evidence at trial on the basis that all evidence outside the Administrative Record is categorically inadmissible or categorically irrelevant.

Defendants maintain their rights, however, to advance any other objections available to them under the Federal Rules of Evidence to the introduction of any evidence that the Plaintiff States may proffer. Defendants reserve the right to object to any individual piece of evidence on

¹ The term "Administrative Record" refers to the record produced in this Action on July 9, 2025. ECF No. 165.

the basis that it is irrelevant to the alleged inactions or delays, but waive the right to object to any such individual piece of evidence on the basis that Plaintiffs should have moved to include that evidence in the Administrative Record or to otherwise complete the record, and Defendants waive the right to categorically object to evidence solely on the basis that the individual piece of evidence is not included in the records or certifications that Defendants' have provided in this action.

II. Phase Two Administrative Record

The Parties have agreed that Defendants will produce a Certification from an NIH official on or before September 4, 2025, attesting to the following information about a representative sample of 50 grant applications from the list that the Plaintiff States produced to Defendants on August 15, 2025 (the "Plaintiff States' Applications List"). Said sample will be selected by the Plaintiff States in their sole discretion and provided to Defendants no later than August 25, 2025, 11:59pm ET. The Parties agree that any judgment entered by this Court in Phase Two of this action will be applied to the applications in the Plaintiff States' Applications List.²

A. For Each Application on the Plaintiff States' Applications List that NIH Has

Administratively Withdrawn: Defendants will produce a Certification attesting that the applicant submitted the grant application on [DATE], and either:

1. NIH administratively withdrew the grant application pursuant to the Challenged Directives³ because the application no longer aligned with agency priorities. NIH updated eRA Commons to indicate that the application had been administratively withdrawn on [DATE];

² The Plaintiff States may supplement the Plaintiff States' Application List with additional applications on or before September 11, 2025. The Parties further stipulate that any judgment as to the Phase Two claims will also apply to the applications identified on the September 11 supplemental list.

³ The term "Challenged Directives" refers to the Directives identified in footnote 1 of the Partial Final Judgment on Phase One of this Action. ECF No. 151.

2. NIH administratively withdrew the grant application on [DATE] as a result of a Notice of Funding Opportunity (“NOFO”) that was withdrawn pursuant to the Challenged Directives because it no longer aligned with agency priorities [NIH to identify withdrawn NOFO, including the date the NOFO was posted and the date it was withdrawn]; or
3. NIH administratively withdrew the grant application for reasons other than the Challenged Directives [NIH to provide an explanation under oath]. NIH updated eRA Commons on [DATE] to indicate that the application had been administratively withdrawn.

B. For Each Application on the Plaintiff States’ Applications List that NIH Has

Denied: Defendants will produce a Certification attesting that the applicant submitted the grant application on [DATE], and either:

1. NIH decided not to fund the grant application pursuant to the Challenged Directives because the application no longer aligned with agency priorities. NIH updated eRA Commons to indicate that the application had been denied on [DATE];
2. NIH decided not to fund the grant application on [DATE] as a result of a NOFO that was withdrawn pursuant to the Challenged Directives because it no longer aligned with agency priorities [NIH to identify withdrawn NOFO, including the date the NOFO was posted and the date it was withdrawn]; or
3. NIH decided not to fund the grant application for reasons other than the Challenged Directives [NIH to provide an explanation under oath]. NIH

updated eRA Commons to indicate that the application had been denied on [DATE].

C. For Each Application on the Plaintiff States' Applications List that NIH Decided to Award, Defendants will produce a Certification attesting that: “The applicant submitted the grant application on [DATE]. NIH issued a Notice of Award on [DATE] or NIH is issuing a Notice of Award within thirty days.”

D. For Each Competing Application on the Plaintiff States' Applications List that Is Still Under NIH Review: Defendants will produce a Certification attesting that the applicant submitted the grant application on [DATE], and each of the following:

1. NIH has not yet made a decision to withdraw, deny, or award this application.
2. NIH delayed its consideration of this and all other grant applications because of the Notice Pause Directive, and:⁴
 - a. There were no additional delays pursuant to the Challenged Directives; or
 - b. This application was further delayed pursuant to the Challenged Directives for review of alignment with agency priorities by [identify each action of further delay]; and/or
 - c. This application was further delayed as a result of a NOFO that was withdrawn pursuant to the Challenged Directives because it no longer aligned with agency priorities [NIH to identify withdrawn

⁴ The term “Notice Pause Directive” refers to a January 21, 2025, memorandum entitled “Immediate Pause on Issuing Documents and Public Communications,” as set forth in the Plaintiff States’ amended complaint. ECF No. 75, ¶103 & Ex. 1.

NOFO, including the date the NOFO was posted and the date it was withdrawn].

3. NIH subsequently resumed consideration of this application. The actions⁵ NIH has taken to review this application since resuming consideration are [identify each action and the date it occurred]. The next action that NIH intends to take on the application is [identify next intended action and projected date]. [NIH will state whether it may apply the Challenged Directives to this application, absent further Court order or judgment].

E. For Each Non-Competing Application on the Plaintiff States' Applications List that Is Still Under NIH Review: Defendants will produce a Certification attesting that the applicant submitted the non-competing application on [DATE], and each of the following:

1. NIH has not yet made a decision to deny or award this application.
2. NIH delayed its consideration of this application pursuant to the Challenged Directives for review of alignment with agency priorities [NIH will identify the length of delay].
3. The last budget period ended on [date].
4. The next action NIH intends to take on the application [award, negotiate, or deny]. [NIH will state whether it may apply the Challenged Directives to this application, absent further Court order or judgment].

⁵ The Parties intend for the word “actions” to include, but not be limited to, (i) meetings held at which the application was considered; (ii) the removal of an application from a study section; (iii) continuing a pause in considering the application after other applications began to be considered again; (iv) withholding a decision on the application; and (v) withholding a Notice of Award.

F. For Entries on the Plaintiff States' Applications List that Cannot Be Identified

as an NIH Grant Application: Defendants will produce a Certification attesting that: "This entry was not recognizable as an NIH grant application." Prior to the certification deadline, Defendants agree to use best efforts to notify the Plaintiff States on each Friday following the filing of this joint statement if Defendants have determined that they cannot identify as an NIH grant application an entry on the Plaintiff States' Applications List.

Provided that Defendants produce a Certification consistent with the terms above, the Plaintiff States agree not to seek any further completion of the Administrative Record.

August 25, 2025

ANDREA JOY CAMPBELL

Attorney General of Massachusetts

/s/ Gerard J. Cedrone

Katherine B. Dirks (BBO No. 673674)

Chief State Trial Counsel

Gerard J. Cedrone (BBO No. 699674)

Deputy State Solicitor

Allyson Slater (BBO No. 704545)

Director, Reproductive Justice Unit

Rachel M. Brown (BBO No. 667369)

Vanessa A. Arslanian (BBO No. 688099)

Nadav S. Pearl (BBO No. 707592)

Phoebe M. Lockhart (BBO No. 709411)

Assistant Attorneys General

One Ashburton Place, 20th Floor

Boston, MA 02108

(617) 963-2282

gerard.cedrone@mass.gov

Counsel for the

Commonwealth of Massachusetts

ROB BONTA

Attorney General of California

/s/ Emilio Varanini

Neli Palma

Senior Assistant Attorney General

Emilio Varanini*

Kathleen Boergers*

Supervising Deputy Attorneys General

Nimrod Pitsker Elias*

Daniel D. Ambar*

Ketakee R. Kane*

Sophia TonNu*

Hilary Chan*

Deputy Attorneys General

455 Golden Gate Avenue

San Francisco, CA 94102

(415) 510-3541

emilio.varanini@doj.ca.gov

Counsel for the State of California

BRETT SHUMATE

Assistant Attorney General

Leah B. Foley

United States Attorney

KIRK T. MANHARDT

Director

MICHAEL QUINN

Senior Litigation Counsel

/s/ Samuel Hobbs

SAMUEL HOBBS (AL Bar No. 9776O19E)

Thomas W. Ports, Jr. (Va. Bar. No. 84321)

Trial Attorneys

U.S. Department of Justice

Civil Division

Corporate/Financial Section

P.O. Box 875

Ben Franklin Stations

Washington D.C. 20044-0875

Tel: (202) 616-8077

Email: samuel.hobbs@usdoj.gov

Anuj Khetarpal

Assistant United States Attorney

United States Attorney's Office

1 Courthouse Way, Suite 9200

Boston, MA 02210

Attorneys for Defendants

ANTHONY G. BROWN

Attorney General of Maryland

/s/ James C. Luh

Michael Drezner*

James C. Luh*

Senior Assistant Attorneys General

200 Saint Paul Place, 20th Floor

Baltimore, MD 21202

(410) 576-6959

mdrezner@oag.state.md.us

Counsel for the State of Maryland

NICHOLAS W. BROWN

Attorney General of Washington

/s/ Andrew Hughes

Andrew Hughes*

Tyler Roberts*

Assistant Attorneys General

800 Fifth Avenue, Suite 2000

Seattle, WA 98104-3188

(206) 464-7744

andrew.hughes@atg.wa.gov

Counsel for the State of Washington

KRISTIN K. MAYES

Attorney General of Arizona

/s/ Joshua G. Nomkin

Joshua G. Nomkin*

Assistant Attorney General

2005 N. Central Avenue

Phoenix, AZ 85004

(602) 542-3333

joshua.nomkin@azag.gov

Counsel for the State of Arizona

PHILIP J. WEISER

Attorney General of Colorado

/s/ Lauren Peach

Shannon Stevenson*

Solicitor General

Lauren Peach*

First Assistant Attorney General

1300 Broadway, 10th Floor

Denver, CO 80203

(720) 508-6000

lauren.peach@coag.gov

Counsel for the State of Colorado

KATHLEEN JENNINGS

Attorney General of Delaware

/s/ Vanessa L. Kassab

Ian R. Liston*

Director of Impact Litigation

Vanessa L. Kassab*

Deputy Attorney General

820 N. French Street

Wilmington, DE 19801

(302) 683-8899

vanessa.kassab@delaware.gov

Counsel for the State of Delaware

ANNE E. LOPEZ

Attorney General of Hawai'i

/s/ Kaliko 'onālani D. Fernandes

David D. Day*

Special Assistant to the Attorney General

Kaliko 'onālani D. Fernandes*

Solicitor General

425 Queen Street

Honolulu, HI 96813

(808) 586-1360

kaliko.d.fernandes@hawaii.gov

Counsel for the State of Hawai'i

KEITH ELLISON

Attorney General of Minnesota

/s/ Pete Farrell

Peter J. Farrell*

Deputy Solicitor General

445 Minnesota Street, Suite 600

St. Paul, Minnesota, 55101

(651) 757-1424

peter.farrell@ag.state.mn.us

Counsel for the State of Minnesota

AARON D. FORD

Attorney General of Nevada

/s/ Heidi Parry Stern

Heidi Parry Stern*

Solicitor General

1 State of Nevada Way, Suite 100

Las Vegas, NV 89119

hstern@ag.nv.gov

Counsel for the State of Nevada

MATTHEW J. PLATKIN

Attorney General of New Jersey

/s/ Nancy Trasande

Nancy Trasande*

Bryce Hurst*

Deputy Attorneys General

124 Halsey Street, 5th Floor

Newark, NJ 07101

(609) 954-2368

nancy.trasande@law.njoag.gov

Counsel for the State of New Jersey

RAÚL TORREZ

Attorney General of New Mexico

/s/ Astrid Carrete

Astrid Carrete*

Assistant Attorney General

408 Galisteo Street
Santa Fe, NM 87501
(505) 270-4332
acarrete@nmdoj.gov

Counsel for the State of New Mexico

LETITIA JAMES

Attorney General of New York

/s/ Rabia Muqaddam

Rabia Muqaddam*

Special Counsel for Federal Initiatives

Molly Thomas-Jensen*

Special Counsel

28 Liberty Street
New York, NY 10005
(929) 638-0447
rabia.muqaddam@ag.ny.gov

Counsel for the State of New York

DAN RAYFIELD

Attorney General of Oregon

/s/ Christina L. Beatty-Walters

Christina L. Beatty-Walters*

Leanne E. Hartmann (BBO No. 667852)

Senior Assistant Attorneys General

100 SW Market Street
Portland, OR 97201
(971) 673-1880
tina.beattywalters@doj.oregon.gov

Counsel for the State of Oregon

PETER F. NERONHA

Attorney General of Rhode Island

/s/ Jordan Broadbent

Jordan Broadbent*

Special Assistant Attorney General

150 South Main Street

Providence, RI 02903

(401) 274-4400, Ext. 2060

jbroadbent@riag.ri.gov

Counsel for the State of Rhode Island

JOSHUA L. KAUL

Attorney General of Wisconsin

/s/ Lynn K. Lodahl

Lynn K. Lodahl*

Assistant Attorney General

17 West Main Street

Post Office Box 7857

Madison, WI 53707

(608) 264-6219

lodahlk@doj.state.wi.us

Counsel for the State of Wisconsin

* admitted *pro hac vice*