

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

AMERICAN PUBLIC HEALTH ASSOCIATION, *et al.*,

Plaintiffs-Appellees,

v.

NATIONAL INSTITUTES OF HEALTH, *et al.*,

Defendants-Appellants.

COMMONWEALTH OF MASSACHUSETTS, *et al.*,

Plaintiffs-Appellees,

v.

ROBERT F. KENNEDY, JR., in his official capacity as Secretary of Health and
Human Services, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Massachusetts

**DEFENDANTS-APPELLANTS ASSENTED-TO MOTION TO
CONSOLIDATE AND SET A COORDINATED BRIEFING SCHEDULE**

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INTRODUCTION

Defendants-Appellants respectfully move to consolidate *Am. Pub. Health Ass'n, et al., v. National Institutes of Health, et al.*, No. 25-1611 and *Commonwealth of Massachusetts, et al., v. Robert F. Kennedy, Jr. in his official capacity as Secretary of Health and Human Services, et al.*, No. 25-1612, and to adopt a modified briefing schedule to give the parties time to coordinate the collation and filing of the appendix and briefs. These cases challenged the same agency action and were informally consolidated by the district court. If these appeals are consolidated, defendants would file a single opening and reply brief while plaintiffs would file separate response briefs. Counsel for plaintiffs in both cases consent to this motion.

BACKGROUND

The cases defendants propose to consolidate both challenge the same underlying agency action: policies implemented by the National Institutes of Health (NIH) and the Department of Health and Human Services that allegedly prohibit NIH from funding scientific research grants in certain categories and the termination of research grants by NIH that allegedly flowed from these policies. *Am. Pub. Health Ass'n v. NIH*, 145 F.4th 39 (1st Cir. 2025). The district court informally consolidated these cases. *Id.* This Court did not distinguish between the two cases in ruling on the defendants' motion to stay the district court's order pending appeal. *Id.* Nor did the Supreme Court. *Nat'l Insts. of Health v. Am. Pub. Health Ass'n*, No. 25A103, 2025 U.S. LEXIS 2742, at *2 (Aug. 21, 2025).

This Court previously set a briefing schedule in both cases that differ by one day. In appeal No. 25-1611, this Court set September 16, 2025, as the deadline for defendants' brief and appendix, with plaintiffs' brief due October 16, 2025, and defendants' reply brief due November 6, 2025. In appeal No. 25-1612, this Court set those deadlines as September 15, 2025, October 15, 2025, and November 5, 2025, respectively. No date for oral argument has been set.

ARGUMENT

Defendants respectfully request this Court exercise its discretion under Fed. R. App. P. 3(b)(2) to consolidate the appeal of these cases. The Court would be able to issue a single, consistent ruling on both petitions, plaintiffs would only need to respond to one brief, and all briefs would refer to a single appendix. Consolidation would thus prevent duplication of efforts for all involved.

To allow the parties sufficient time to coordinate collation and filing of the appendix and briefing, defendants respectfully request this court adopt the following briefing schedule:

- Defendants' opening brief and appendix: September 29;
- Response briefs by plaintiffs (plaintiffs in each case would file their own brief):
November 12;
- Defendants' reply brief: December 3.

This schedule gives both the defendants and plaintiffs an additional 14 days to file their opening and response briefs, respectively.

CONCLUSION

For the foregoing reasons, defendants respectfully request that this Court consolidate the two above-captioned cases and adopt a revised briefing schedule.

Respectfully submitted,

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s/

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September 2025

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 476 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Word for Microsoft 365 in Garamond 14-point font, a proportionally spaced typeface.

s/

Benjamin C. Wei

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2025, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system. Service will be accomplished by the appellate CM/ECF system.

s/
Benjamin C. Wei