

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

State of California, et al.,

*Plaintiffs,*

v.

U.S. Department of Health and Human  
Services, et al.,

*Defendants.*

CA No.: 1:25-cv-12118-TI

**PLAINTIFF STATES' NOTICE OF SUPPLEMENTAL FACTS**

Plaintiff States submit this notice to advise the Court of relevant events since Plaintiff States filed their Reply in Support of Motion for Preliminary Injunction on October 29, 2025 (Doc. No. 76):

1. On November 12, 2025, the First Circuit heard oral argument in *Planned Parenthood Federation of America, Inc. v. Kennedy*, Nos. 25-1698 and 25-1755. In the course of that argument, counsel for Defendants in that case—who are identical to Defendants in this case—made several statements related to Plaintiff States’ preliminary injunction arguments.

2. Specifically, counsel for Defendants made the following statements, which bear on Plaintiff States’ arguments that the Defund Provision fails to provide clear notice (*see* Doc. No. 63 at 7-11; *see also Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 219 (2022); *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006)):

- a. Defendant Department of Health and Human Services (HHS) is “working on guidance around the affiliate provision but that guidance haven’t [sic] been issued yet” and that Defendants’ counsel was “not in a position to tell [the First Circuit] what it will say other than...that HHS has no intention to define the term affiliate in such a way that it turns on expressive activity as opposed to corporate control.” *See* First Circuit Court of Appeals, Oral Argument at 3:28, *Planned Parenthood Fed’n of Am., Inc. v. Kennedy*, Nos. 25-1698, 25-1755 (Nov. 12, 2025), [https://www.ca1.uscourts.gov/sites/ca1/files/oralargs/25-1698\\_20251112.mp3](https://www.ca1.uscourts.gov/sites/ca1/files/oralargs/25-1698_20251112.mp3).

- b. HHS “has not yet made any determination of whether they [i.e., Planned Parenthood Federation of America members] are [affiliates of each other].” *See id.* at 4:58.
- c. Defendants’ counsel could not say “what the timeline is for the agency” and had not “been given a timetable” with regard to its guidance for the Defund Provision but that the “agency is working on guidance that will be provided to the States.” *See id.* at 34:54, 35:40, 1:20:40.
- d. According to Defendants’ counsel, “there is some time lag built into this whole thing in terms of the states being the ones that provide the reimbursements to the providers with the federal funds that are provided.” Defendants’ counsel continued: “That whole process can take some time, and so the question is going to be, and it may be the states that have to make a judgment in the first instance when they’re deciding whether or not to provide funds that they’re requesting federal reimbursement for to a Planned Parenthood affiliate.” HHS’ counsel further stated that he could not “prejudge how the states are going to look at that or how ultimately the agency is going to look at that,” noting that HHS “haven’t [sic] yet issued guidance.” *See id.* at 36:11.
- e. Defendants “couldn’t even designate the class [of ‘prohibited entities’ under the Defund Provision] as of the time that this lawsuit was brought” because the prohibited entities “could only be determined as of October 1, almost three months after Congress enacted the law.” *See id.* at 1:20:20.

- f. Defendants “have not had an opportunity to develop the record through discovery, for example to look at and ask for and get their bylaws and examine what degree of control the federation exercises over the members” to determine whether, in that litigation, Planned Parenthood Federation of America members are “affiliates” under the Defund Provision. *See id.* at 1:21:23.

3. Defendants’ counsel also made the following statements, which bear on Plaintiff States’ standing and irreparable harm arguments (*see* Doc. No. 76 at 7-11; *see also* *Massachusetts v. United States Dep’t of Health & Hum. Servs.*, 923 F.3d 209, 222–225 (1st Cir. 2019); *New York v. Kennedy*, -- F.4th --, 2025 WL 2658233 (1st Cir., Sept. 17, 2025); *Doe v. Trump*, No. 25-1169, 2025 WL 2814730, at \*33 (1st Cir. Oct. 3, 2025)):

- a. In response to a question from the panel about the Commonwealth of Massachusetts’ efforts to supplement the Defund Provision’s withdrawal of federal reimbursements to “prohibited entities,” Defendants’ counsel stated that such payment “could potentially moot Planned Parenthood’s claim, maybe the State would have a claim.” *See id.* at 13:49.
- b. There was no indication in that record that “Massachusetts or any other state would fully make up the difference for the Planned Parenthood members in terms of what they were receiving from the state and what they’re losing from the federal government.” *See id.* at 14:55.

4. On November 12, 2025, Planned Parenthood Federation released a new report titled “The Harms of ‘Defunding’ Planned Parenthood,” publicly available at [https://www.plannedparenthood.org/uploads/filer\\_public/ab/cd/abcdeed1-3c3d-43f5-92ec-](https://www.plannedparenthood.org/uploads/filer_public/ab/cd/abcdeed1-3c3d-43f5-92ec-)

[0295e46b75fb/1025-defund-impact-report-english1.pdf](#). The report explains that since the Defund Provision was enacted, 20 Planned Parenthood health centers have been forced to close.

Date: October 29, 2025

Respectfully Submitted,

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