

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

STATE OF CALIFORNIA; COMMONWEALTH OF MASSACHUSETTS; STATE OF NEW YORK; STATE OF CONNECTICUT; STATE OF DELAWARE; STATE OF COLORADO; STATE OF HAWAII; STATE OF ILLINOIS; STATE OF MAINE; STATE OF MARYLAND; STATE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEW JERSEY; STATE OF NEW MEXICO; STATE OF NEVADA; STATE OF NORTH CAROLINA; STATE OF OREGON; STATE OF RHODE ISLAND; STATE OF VERMONT; STATE OF WASHINGTON; STATE OF WISCONSIN; the DISTRICT OF COLUMBIA; and JOSH SHAPIRO, in his official capacity as Governor of the Commonwealth of Pennsylvania,

Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ROBERT F. KENNEDY, JR., in his official capacity as Secretary of U.S. Health and Human Services; CENTERS FOR MEDICARE AND MEDICAID SERVICES; MEHMET OZ, in his official capacity as Administrator of the Centers for Medicare and Medicaid Services,

Defendants-Appellants,

On Appeal from an Order of the United States District Court
for the District of Massachusetts (Talwani, J.) in No. 1:25-cv-12118-IT

**OPPOSITION TO MOTION TO PUBLISH ORDER GRANTING STAY
PENDING APPEAL**

ARGUMENT

On December 30, 2025, this Court stayed the district court’s order preliminarily enjoining enforcement of Section 71113, a statute intended to prevent certain reproductive healthcare providers from receiving federal Medicaid funding. *See* Stay Order (Dec. 30, 2025). In granting the stay, the Court concluded—“at this preliminary stage”—that the defendants were likely to prevail on the merits of plaintiffs’ Spending Clause challenge. *Id.* at 3. The Court observed that its merits decision in *Planned Parenthood Fed’n of Am. v. Kennedy*, 162 F.4th 155 (1st Cir. 2025) resolved one of plaintiffs’ statutory ambiguity arguments, Stay Order 3; that plaintiffs’ other asserted ambiguities “are unlikely to render Section 71113 unconstitutional,” *id.* at 4; and that plaintiffs’ other retroactivity arguments were not properly preserved or likely to succeed, *id.*

Several months after the Court’s stay order, plaintiffs dismissed the complaint in the district court. *See* Notice of Voluntary Dismissal Without Prejudice, D. Ct. Dkt. 96 (Mar. 17, 2026). In light of that dismissal, the federal defendants have moved to dismiss this preliminary injunction appeal as moot. *See Chaparro–Febus v. International Longshoremen Ass’n, Local 1575*, 983 F.2d 325, 331 n.5 (1st Cir. 1992). Plaintiffs do not oppose that request.

Defendants also request that the Court publish the Stay Order. The motion should be denied. Defendants have failed to establish that “good cause” supports

the request. 1st Cir. R. 36(b)(2)(D). While this Court has a policy of generally publishing “opinions,” 1st Cir. R. 36(b)(1), and sometimes extends that policy to “orders,” this Court’s “preliminary” evaluation of the issues in the stay posture does not warrant publication. Stay Order 3, 4. The Stay Order “does not articulate a new rule of law, modify an established rule, apply an established rule to novel facts or serve otherwise as a significant guide to future litigants.” 1st Cir. R. 36(b)(1). Indeed, the Court resolved one of the statutory ambiguity issues by reference to the published decision in *Planned Parenthood Fed’n of Am.*, 162 F.4th at 171-174; acknowledged that “judicial intervention” may ultimately “be needed to determine” the meaning of the other challenged provisions; and noted that plaintiffs’ other arguments were not properly preserved or the basis for the district court’s injunction. *See* Stay Order 3-4. Thus, the Stay Order, while reasoned, does not settle “what precisely Section 71113 requires.” Mot. to Publish Order 4.

More importantly, defendants fail to establish that these issues “may well recur in the future.” Mot. to Publish Order 4. Section 71113 represents an unprecedented effort by Congress to defund certain reproductive healthcare providers. In Medicaid’s over sixty-year history, no Congress has ever attempted to defund organizations in a similar manner, using similar terms or approaches to identifying prohibited entities. *See, e.g.*, Dist. Ct. Dkt. 84 at 32-33. The statute will also expire by its express terms in four months on July 4, 2026. *See* Pub. L.

No. 119-21, § 44126, 138 Stat. 482 (2025). Given that the statute will sunset shortly, the Stay Order should have limited practical utility to future litigants.

CONCLUSION

Defendants' request to publish the Stay Order should be denied.

Date: March 30, 2026

Respectfully Submitted,

ANDREA JOY CAMPBELL
Attorney General
Commonwealth of Massachusetts

ROB BONTA
Attorney General
State of California

/s/ Allyson Slater
ALLYSON SLATER
Director, Reproductive Justice Unit
MORGAN CARMEN
Assistant Attorney General
Office of the Attorney General
One Ashburton Place, 20th Floor
Boston, MA 02108
(617) 963-2811
Allyson.slater@mass.gov
Attorneys for Plaintiff Commonwealth of Massachusetts

By: /s/ Cara M. Newlon
SAMUEL T. HARBOURT
Solicitor General
HELEN H. HONG
Principal Deputy Solicitor General
CARA M. NEWLON (1221191)
Deputy Solicitor General
NELI PALMA
Senior Assistant Attorney General
KARLI EISENBERG (1219318)
Supervising Deputy Attorney General
ERICA CONNOLLY (1220259)
GILLIAN HANNAHS (1220331)
Deputy Attorneys General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1230
(213) 269-6529
cara.newlon@doj.ca.gov
Attorneys for Plaintiff State of California

LETITIA JAMES

Attorney General
State of New York

/s/ Judith N. Vale

BARBARA D. UNDERWOOD

Solicitor General

JUDITH N. VALE (1216034)

Deputy Solicitor General

GALEN SHERWIN

Special Counsel for Reproductive Justice

RABIA MUQADDAM (1190169)

Chief Counsel for Federal Initiatives

BLAIR J. GREENWALD (1220378)

Assistant Solicitor General

ANDRES IVAN NAVEDO

Assistant Attorney General

28 Liberty Street

New York, NY 10005

(212) 416-8020

Attorneys for Plaintiff State of New York

WILLIAM TONG

Attorney General
State of Connecticut

/s/ Alma Nunley

ALMA NUNLEY (1220038)

Special Counsel for Reproductive Rights

JANELLE R. MEDEIROS (1215681)

Special Counsel for Civil Rights

165 Capitol Ave

Hartford, CT 06106

(860) 808-5020

Alma.Nunley@ct.gov

Janelle.Medeiros@ct.gov

Attorneys for Plaintiff State of Connecticut

KATHLEEN JENNINGS

Attorney General
State of Delaware

By: */s/ Vanessa L. Kassab*

IAN R. LISTON

Director of Impact Litigation

JENNIFER KATE AARONSON

VANESSA L. KASSAB

Deputy Attorneys General

Delaware Department of Justice

820 N. French Street

Wilmington, DE 19801

302-683-8803

vanessa.kassab@delaware.gov

Attorneys for Plaintiff State of Delaware

PHILIP J. WEISER

Attorney General
State of Colorado

/s/ David Moskowitz

DAVID MOSKOWITZ (1216053)

Deputy Solicitor General

Colorado Department of Law

Ralph L. Carr Judicial Center

1300 Broadway, 10th Floor

Denver, CO 80203

Phone: (720) 508-6000

David.Moskowitz@coag.gov

Attorneys for Plaintiff State of Colorado

BRIAN L. SCHWALB

Attorney General
District of Columbia

/s/ Caroline S. Van Zile

CAROLINE S. VAN ZILE

Solicitor General

Office of the Attorney General

400 6th Street, NW

Washington, D.C. 20001

(202) 724-6609

caroline.vanzile@dc.gov

*Attorneys for Plaintiff District of
Columbia*

KWAME RAOUL

Attorney General
State of Illinois

/s/ Sarah A. Hunger

SARAH A. HUNGER (1195404)

Deputy Solicitor General

Office of the Illinois Attorney General

115 S. LaSalle Street

Chicago, IL 60603

312-814-3000

Sarah.hunger@ilag.gov

Attorneys for Plaintiff State of Illinois

ANNE E. LOPEZ

Attorney General
State of Hawai‘i

/s/ Kaliko ‘onālani D. Fernandes

KALIKO‘ONĀLANI D. FERNANDES

Solicitor General

425 Queen Street

Honolulu, HI 96813

(808) 586-1360

kaliko.d.fernandes@hawaii.gov

Attorneys for Plaintiff State of Hawai‘i

AARON M. FREY

Attorney General
State of Maine

/s/ Thomas A. Knowlton

THOMAS A. KNOWLTON

Deputy Attorney General

6 State House Station

Augusta, Maine 04333-0006

(207) 626-8800

thomas.a.knowlton@maine.gov

Attorneys for Plaintiff State of Maine

ANTHONY G. BROWN

Attorney General
State of Maryland

/s/ James C. Luh

JULIA DOYLE

Solicitor General

JAMES C. LUH

Senior Assistant Attorney General

Office of the Attorney General

200 Saint Paul Place, 20th Floor

Baltimore, Maryland 21202

410-576-6411

jluh@oag.maryland.gov

Attorneys for Plaintiff State of Maryland

DANA NESSEL

Attorney General
State of Michigan

/s/ Kyla Barranco

KYLA BARRANCO

NEIL GIOVANATTI (1215368)

Assistant Attorneys General

Michigan Department of Attorney

General

525 W. Ottawa

Lansing, MI 48909

(517) 335-7603

BarrancoK@michigan.gov

GiovanattiN@michigan.gov

Attorneys for Plaintiff State of Michigan

KEITH ELLISON

Attorney General
State of Minnesota

/s/ Elizabeth Kramer

ELIZABETH KRAMER (1215538)

Solicitor General

445 Minnesota Street, Suite 600

St. Paul, Minnesota, 55101

(651) 757-1010

liz.kramer@ag.state.mn.us

Attorneys for Plaintiff State of Minnesota

MATTHEW J. PLATKIN

Attorney General
State of New Jersey

/s/ Elizabeth R. Walsh

ELIZABETH R. WALSH (1215673)

Deputy Attorney General

Office of the Attorney General

124 Halsey Street, 5th Floor

Newark, NJ 07101

(609) 696-5279

Elizabeth.Walsh@law.njoag.gov

Attorneys for Plaintiff State of New Jersey

RAÚL TORREZ
Attorney General
State of New Mexico

/s/ Amy Senier
AMY SENIER (1134515)
Senior Counsel
New Mexico Department of Justice
P.O. Drawer 1508
Santa Fe, NM 87504-1508
(505) 490-4060
asenier@nmdoj.gov
Attorneys for Plaintiff State of New Mexico

JEFF JACKSON
Attorney General
State of North Carolina

/s/ Daniel P. Mosteller
DANIEL P. MOSTELLER (1215539)
Associate Deputy Attorney General
North Carolina Department of Justice
PO Box 629
Raleigh, NC 27602
(919) 716-6026
dmosteller@ncdoj.gov
Attorneys for Plaintiff State of North Carolina

AARON D. FORD
Attorney General
State of Nevada

/s/ Heidi Parry Stern
HEIDI PARRY STERN (1215554)
Solicitor General
Office of the Nevada Attorney
General
1 State of Nevada Way, Suite 100
Las Vegas, NV 89119
HStern@ag.nv.gov
Attorneys for Plaintiff State of Nevada

DAN RAYFIELD
Attorney General
State of Oregon

/s/ Robert Koch
ROBERT KOCH
Attorney-in-Charge of Civil & Admin.
Appeals
1162 Court Street, NE
Salem, OR 97301
(503) 378-4402
robert.a.koch@doj.oregon.gov
Attorneys for Plaintiff State of Oregon

JOSH SHAPIRO,
in his official capacity as Governor of
the Commonwealth of Pennsylvania

/s/ Michael J. Fischer
MICHAEL J. FISCHER (1185506)
Executive Deputy General Counsel
JENNIFER SELBER
General Counsel
JONATHAN D. KOLTASH
Deputy General Counsel for Healthcare
AIMEE D. THOMSON
Deputy General Counsel
Pennsylvania Office of the Governor
30 N. 3rd St., Suite 200
Harrisburg, PA 17101
(717) 831-2847
mjfischer@pa.gov
*Attorneys for Plaintiff Governor Josh
Shapiro*

CHARITY R. CLARK
Attorney General
State of Vermont

/s/ Jonathan T. Rose
JONATHAN T. ROSE
Solicitor General
109 State Street
Montpelier, VT 05609
(802) 828-3171
jonathan.rose@vermont.gov
Attorneys for Plaintiff State of Vermont

PETER F. NERONHA
Attorney General
State of Rhode Island

/s/ Sarah W. Rice
SARAH W. RICE (1205724)
Assistant Attorney General
150 South Main Street
Providence, RI 02903
(401) 274-4400, Ext. 2054
srice@riag.ri.gov
*Attorneys for the Plaintiff State of
Rhode Island*

NICHOLAS W. BROWN
Attorney General
State of Washington

/s/ Andrew R.W. Hughes
ANDREW R.W. HUGHES (1215542)
LAURYN K. FRAAS
WILLIAM MCGINTY
Assistant Attorneys General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744
Lauryn.Fraas@atg.wa.gov
William.McGinty@atg.wa.gov
*Attorneys for Plaintiff State of
Washington*

JOSHUA L. KAUL

Attorney General
State of Wisconsin

/s/ Faye B. Hipsman

FAYE B. HIPSMAN

Assistant Attorney General

Wisconsin Department of Justice

Post Office Box 7857

Madison, Wisconsin 53707-7857

608-264-9487

faye.hipsman@wisdoj.gov

Attorneys for Plaintiff State of Wisconsin

CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limit of Fed. R. App. P. 27(d)(2)(A) because it contains 512 words. The brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because the brief has been prepared in proportionally spaced typeface using Microsoft Word word-processing system in Times New Roman that is at least 14 points.

Dated: March 30, 2026

/s/ Cara M. Newlon _____

Cara M. Newlon
Deputy Solicitor General

CERTIFICATE OF SERVICE

I hereby certify that on this March 30, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the First Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

Dated: March 30, 2026

/s/ Cara. M. Newlon
Cara M. Newlon
Deputy Solicitor General