

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

STATE OF CALIFORNIA, *et al.*,

*Plaintiff-Appellees,*

v.

U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, *et al.*,

*Defendants-Appellees.*

No. 25-2165

REPLY IN SUPPORT OF  
MOTION TO PUBLISH ORDER GRANTING STAY PENDING APPEAL

Publication of this Court's order granting a stay pending appeal is warranted.

Order of Court (Dec. 30, 2025) (Stay Order).

Start with four points of apparent agreement. Plaintiffs acknowledge that this Court has a strong policy in favor of publishing the legal reasoning underlying its decisions. Opp. 2; *see* 1st Cir. R. 36.0(a), (b)(1). Plaintiffs agree that the Stay Order provides reasoned grounds for its decision. Opp. 2. Plaintiffs do not dispute that without publication the reasoning underlying the Stay Order may well be forgotten or overlooked. *Cf.* Opp. 1–3 (not weighing in on this issue). And Plaintiffs accept that this

Court often publishes orders resolving stay motions. Opp. 2; *see, e.g., Victim Rts. L. Ctr. v. U.S. Dep't of Educ.*, 154 F.4th 5 (1st Cir. 2025) (granting stay pending appeal). Each of these factors counsels in favor of publication.

In response, plaintiffs offer two reasons for opposing publication. Neither is availing.

*First*, plaintiffs incorrectly assert that “[t]he Stay Order ‘does not ... apply an established rule to novel facts or serve otherwise as a significant guide to future litigants.’” Opp. 2 (quoting 1st Cir. R. 36.0(b)(1)). Plaintiffs themselves assert that Section 71113 is “unprecedented.” Opp. 2. So while the Stay Order drew upon well established Spending Clause doctrine, it must have applied that “established rule to novel facts.” 1st Cir. R. 36.0(b)(1). That concession alone requires publication under the Local Rule. *See id.* (presumption of publication unless exception applies). And the case is plainly significant: this Court issued the extraordinary remedy of a stay pending appeal after a group of States obtained a preliminary injunction against enforcement of an Act of Congress.

Plaintiffs are also wrong to assert that the Stay Order resolved no legal questions. This Court rejected plaintiffs’ argument that Congress “fail[ed] to accord the respect to which States are entitled in our federal system” when it crafted Section 71113’s

temporally contingent definition of prohibited entities, Stay Opp. 16; *see* Stay Order 4 n.4, and held that “the Federal Defendants have made a strong showing that any ambiguities in [the statutory] requirements are unlikely to render Section 71113 unconstitutional under *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1, 17 (1981).” Stay Order 3–4. Those are both legal discussions worthy of publication.

*Second*, plaintiffs fundamentally misunderstand the scope of Section 71113 in asserting that these issues are unlikely to recur because “the statute will sunset shortly.” Opp. 3. While the funding restriction applies only to services performed through July 4, its impact is likely to linger. After all, Medicaid payments are regularly adjusted and readjusted months or even years after the services are initially provided. *See, e.g., Rhode Island Hosp. v. Leavitt*, 548 F.3d 29 (1st Cir. 2008) (remanding for further proceedings in challenge to 1996 Medicaid reimbursement); *University of Chicago Med. Ctr. v. Kennedy*, No. 24-5188, 2025 WL 3183158 (D.C. Cir. Nov. 14, 2025) (affirming final judgment in favor of HHS in challenge to 2005 Medicaid reimbursement). If “judicial intervention ultimately will be needed to determine” what precisely Section 71113 requires, Stay Order 3, that intervention is likely years away. And beyond this specific statute, state efforts to challenge federal funding conditions are legion. This Court’s *Pennhurst* analysis may guide future litigants.

## CONCLUSION

For the foregoing reasons and those given in our motion, the Stay Order should be published.

Respectfully submitted,

DANIEL TENNY

*/s/ Maxwell A. Baldi*

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## CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(C) because it contains 556 words. This motion 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 EB Garamond 14-point font, a proportionally spaced typeface.

*/s/ Maxwell A. Baldi*  
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MAXWELL A. BALDI