

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

AMERICAN HOSPITAL ASSOCIATION, et
al.,

Plaintiffs-Appellees,

v.

ROBERT F. KENNEDY, JR., Secretary
of the U.S. Department of Health and Human
Services, et al.

Defendants,

ABBVIE INC. et al.,

Interested Parties-Appellants.

No. 25-2237

Appeal from the United States
District Court for the
District of Maine
(No. 2:25-cv-00600-LEW)

**MOTION TO CONTINUE ORAL ARGUMENT, OR, IN THE
ALTERNATIVE, TO DECIDE THE CASE WITHOUT ARGUMENT OR
TO AMEND DESIGNATION OF COUNSEL PRESENTING ARGUMENT**

Pursuant to Federal Rule of Appellate Procedure 34(b) and First Circuit Local Rule 34.1(d), Plaintiffs-Appellees American Hospital Association, St. Mary's Regional Medical Center, Maine Hospital Association, Nathan Littauer Hospital and Nursing Home, Unity Medical Center, and Dallas County Medical Center (collectively, "Plaintiffs-Appellees") respectfully request a continuance of oral argument from September 15, 2026, to the Court's December 2026 sitting, or another date convenient to the Court. In the alternative, Plaintiffs-Appellees respectfully request that this Court decide this case without oral argument or permit

Plaintiffs-Appellees to amend their designation of attorney presenting oral argument.

In support of this motion, Plaintiffs-Appellees state as follows:

1. The Clerk of Court gave notice, on July 22, 2026, that this matter is scheduled to be called for oral argument on September 15, 2026, in Boston, Massachusetts.

2. Pursuant to the Calendaring Notice, on August 5, 2026, Plaintiffs-Appellees designated Jenifer N. Hartley as the attorney presenting oral argument.

3. Ms. Hartley, who would be presenting her first oral argument in a Court of Appeals since graduating law school in 2021, has been diligently preparing Plaintiffs-Appellees' arguments in this case.

4. Ms. Hartley also has had a jury trial scheduled to begin on October 5, 2026 in the U.S. District Court for the District of Delaware since January 2026.

5. On August 19, 2026, the district judge in that matter ordered the parties to appear for a fixed three-day bench trial during the week of September 14, 2026, which was subsequently slated to conflict with the oral argument in this matter on September 15, 2026.

6. Appellants will not be prejudiced by this requested continuance. Because the underlying district court case in which Appellants sought to intervene has been closed since February 2026, this appeal is properly dismissed as moot. *See* Pls.-Appellees' Resp. to Citation of Suppl. Authorities (Aug. 10, 2026) (citing *Lopez*

v. NLRB, 655 F. App'x 859, 861 (D.C. Cir. 2016) (per curiam); *Energy Transp. Grp., Inc. v. Mar. Admin.*, 956 F.2d 1206, 1210 (D.C. Cir. 1992); *United States v. Ford*, 650 F.2d 1141, 1142-43 (9th Cir. 1981)); Br. of Pls.-Appellees at § I (June 5, 2026); *see also id.* at 30 (citing *Cruz v. Farquharson*, 252 F.3d 530, 535 (1st Cir. 2001)).

7. Appellants' failure to expedite this appeal, even as they knew that a new 340B Rebate Program was possible by the end of the year, similarly suggests an absence of urgency and thus no prejudice from a continuance.

8. As the Court's sitting the first week of October 2026 conflicts with Ms. Hartley's scheduled jury trial in the District of Delaware and counsel for Plaintiffs-Appellees understand that Appellants' designated counsel Matthew Owen has a trial that conflicts with this Court's November sitting, Plaintiffs-Appellees request a continuance to December 2026 or another date convenient to the Court. Appellants do not consent to any continuance.

9. Alternatively, Plaintiffs-Appellees request that this Court decide this matter without argument, as the questions presented involve straightforward issues of mootness and intervention procedure that can be resolved under this Court's existing precedents. *See* Fed. R. App. P. 34(a)(2)(C) (oral argument not required if the panel unanimously agrees that the "facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument"); *Deutsche Bank Nat'l Tr. Co. v. Moynihan*,

2018 WL 4922786, at *1 (1st Cir. Aug. 16, 2018). Appellants do not consent to waiving argument.

10. Finally, should oral argument proceed on September 15, 2026, Plaintiffs-Appellees request leave to file an amended designation of attorney presenting oral argument.

In light of the foregoing, Plaintiffs-Appellees respectfully request that the Court continue oral argument, decide this case without argument, or permit Plaintiffs-Appellees to designate alternate counsel to present oral argument.

Dated: August 27, 2026

Respectfully submitted,

/s/ Jenifer N. Hartley

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 645 words, excluding the parts of the motion exempted by Fed. R. App. P. 27(a)(2)(B).

This motion 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 it has been prepared in a proportionately spaced typeface using Microsoft Word and Times New Roman 14-point font.

/s/ Jenifer N. Hartley
Jenifer N. Hartley

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2026, I electronically filed the foregoing document with the United States Court of Appeals for the First Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Jenifer N. Hartley
Jenifer N. Hartley