

**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.

Case No.: 25-12118

**PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION FOR A STAY IN LIGHT OF
LAPSE IN APPROPRIATIONS**

Plaintiff States respectfully oppose Defendants’ motion for an undefined and indefinite stay in light of the lapse in appropriations. Defendants’ requested relief would indefinitely delay the Court from hearing Plaintiff States’ recently filed Motion for Preliminary Injunction, which describes in depth the harms the challenged provision is currently imposing on the Plaintiff States and the Public. Further, the relief requested is unnecessary given the Department of Justice’s (“DOJ”) own contingency plan, and it would be particularly inequitable given that the Department of Medicaid is continuing to implement the challenged provision during the lapse in appropriations. This Court’s discretion to grant or deny a stay of proceedings “calls for the

exercise of judgment, which must weigh competing interests.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936). Here, the balance of interests strongly counsels against granting a stay due to the significant harms a stay would impose on Plaintiff States and the public.

A stay at this stage of proceedings risks serious and irreparable harm to Plaintiff States. Plaintiff States challenge a provision (“Defund Provision”) of the recently enacted federal budget reconciliation bill that fully went into effect on October 1, 2025. The Defund Provision was designed to bar Planned Parenthood and Planned Parenthood affiliates from receiving federal Medicaid reimbursements. As detailed in Plaintiff States’ pending motion for a preliminary injunction, the Defund Provision is currently imposing unrecoverable administrative costs on Plaintiff States, disrupting established healthcare ecosystems, and causing substantial short- and long-term harms to the public. *See* Memo. in Supp. of Pls’ Mot. for a Prelim. Inj., Doc. No. 63, at 18. It has caused multiple Planned Parenthood Health Centers to close, health clinics across the country to turn away patients enrolled in Medicaid, and services to low-income patients to be drastically curtailed. *See id.* at 20-21. The risks of irreparable harms are especially high because it is unclear how long the lapse in appropriations will continue, meaning relief may not be available for months at which point numerous health centers will likely be forced to close due to a lack of funds, *see id.*

In their motion, Defendants do not claim that the lapse in appropriations will delay or otherwise interfere with their implementation and enforcement of the Defund Provision. Instead, they claim that “Department of Justice attorneys and employees of the federal Defendants are prohibited from working” during the lapse, “except in very limited circumstances.” Mot. for Stay, Doc. 67 at ¶2. Indeed, the DOJ’s own status report on the “the statutory implementation” of the Defund Provision, filed in Planned Parenthood’s sister case in the First Circuit, reveals

that despite the appropriations lapse, the Department of Health and Human Services is currently in the process of implementing the Defund Provision. *See* October 3, 2025 Status Report, *Planned Parenthood Federation of Am., Inc. v. Kennedy*, Case No. 25-1755, at 1-2 (1st Cir. Oct. 3, 2025). And, as the DOJ acknowledged in its status report, despite the lapse in annual appropriations, the Reconciliation Act of 2025 already appropriated funding to “the Administrator of the Centers for Medicare & Medicaid Services,” “[f]or the purposes of carrying out” the Defund Provision for the fiscal year 2026. *See id.*; *see also* Pub. L. No. 119-21, 139 Stat. 72, 300. As such, Defendants ask this Court to allow them to continue violating the Constitution during the lapse, causing direct and irreparable harm to Plaintiff States, while indefinitely preventing Plaintiff States from seeking an injunction to halt that unconstitutional conduct. The lapse in appropriations cannot—and should not—serve as a shield for Defendants’ unlawful conduct.

Further, the DOJ’s own guidance authorizes the DOJ to continue work on this matter despite the lapse in appropriations. On September 29, 2025, the DOJ issued a contingency plan setting forth its planned operations during a lapse in appropriations. *See* U.S. Dep’t of Justice, FY 2026 Contingency Plan (Sept. 29, 2025) (“Contingency Plan”), <https://www.justice.gov/jmd/media/1377216/dl>. For civil litigation, the DOJ instructs its attorneys to approach the courts and request that active cases be postponed until funding is resumed. *Id.* But if a court denies a stay, “the Government will comply with the court’s order, which would constitute express legal authorization for the activity to continue” within the meaning of 31 U.S.C. § 1342. *Id.*; *see also Order Denying Mot. to Stay, State of Rhode Island v. Trump, et al.*, No. 25-00128 at Doc. No. 84 (D. R.I. filed Oct. 3, 2025) (noting that “[t]he Court is required to continue its constitutional functions”); *Kornitzky Grp., LLC v. Elwell*, 912 F.3d

637, 638 (D.C. Cir. 2019) (J. Srinivasan concurring) (discussing the DOJ’s largely similar 2019 Contingency Plan). In other words, “[i]f a court denies a litigator’s request to postpone a case and orders it to continue, the litigation will become an excepted activity that can continue during the lapse.” *See* Contingency Plan at 7. Separately, both 31 U.S.C. § 1342 and the DOJ’s Contingency Plan establish that DOJ activities associated with “emergencies involving the safety of human life” may continue as “excepted” activities during a lapse of appropriations. *See* Contingency Plan at 1 (quoting 31 U.S.C. § 1342). Because federal law authorizes the payment of wages for “excepted activities” during a lapse in appropriations, any harm to Defendants’ counsel would be mitigated should this Court deny a stay. *See* 31 U.S.C. § 1341(c)(2); *see also* Contingency Plan at 3 (DOJ is required to maintain civil litigation staffing at the level necessary to continue activities in proceedings that are not stayed.). A stay risks irreparable harm to the health and safety of Plaintiff States’ residents. Considering the lack of harm to Defendants or their counsel, the balance of interests weighs heavily in favor of denying a stay.

Federal courts have often declined requests by the DOJ to stay proceedings due to a lapse of appropriations. For instance, “when federal appropriations lapsed in 2013, resulting in a ‘shutdown’ from October 1 to October 17, 2013, [the D.C. Circuit] received Government motions to stay oral argument in at least sixteen cases.” *Kornitzky Grp.*, 912 F.3d at 638. In “every one of those motions,” the government counsel cited the same statute that Defendants cite here, 31 U.S.C. § 1342, claiming that it prohibited them from working. *Id.* But the D.C. Circuit denied “every one of these motions,” even when a stay was unopposed, “and every time, the Government then participated in oral argument.” *Id.* This practice of denying motions to stay due to lapses of appropriations continued during the most recent government shutdown from December 22, 2018 to January 25, 2019. *Id.*

Multiple federal courts have already denied requests by the DOJ to stay proceedings during this current lapse of appropriations. For instance, in Planned Parenthood’s sister case challenging the Defund Provision, the First Circuit denied the DOJ’s motion to stay the status report deadline. *See Order, Planned Parenthood Federation of America v. Kennedy et al.*, No. 25-1755 (1st Cir. 2025 filed October 2, 2025). And the Ninth Circuit has ordered all DOJ attorneys to appear at every oral argument as scheduled, despite the lapse in appropriations. *See* Oct. 1, 2025 Supplemental Administrative Order, J. Murguia, <https://cdn.ca9.uscourts.gov/datastore/announcements/Final-Order.pdf>.

District courts have also repeatedly denied the DOJ’s motions for stays due to the current lapse of appropriations. *See Order Denying Mot. to Stay, Guerrero Orellana v. Moniz, et al.*, No. 25-12664 at Doc. No. 51 (D. Mass filed Oct. 2, 2025); Order Granting in Part and Denying in Part Mot. to Stay, *California et al v. United States Department of Agriculture et al*, No. 25-06310 at Doc. 97 (N.D. Cal. filed Oct. 3, 2025) (refusing to stay briefing on plaintiffs’ motion for preliminary injunction); Order Denying Mot. to Stay, *State of Rhode Island v. Trump, et al.*, No. 25-00128 at Doc. No. 84 (D. R.I. filed Oct. 3, 2025) (denying motion to stay and citing DOJ’s Contingency Plan); Order Denying Mot. to Stay, *New York, et al. v. Kennedy et. al.*, No. 25-00196 at Doc. No. 2 (D. R.I. filed Oct. 3, 2025); Order Denying Mot. to Stay, *United States v. State of Rhode Island, et. al.*, No. 14-00175 at Doc. No. 212 (D. R.I. filed Oct. 2, 2025); Order Denying Mot. to Stay, *J.P. Morgan Chase Bank v. Carver et al.*, No. 24-00478 at Doc. No. 17 (D. R.I. filed Oct. 3, 2025).

In short, this Court should exercise its discretion to deny Defendants’ motion to stay proceedings, due to the harms such a stay would cause. *See Landis*, 299 U.S. at 254–55.

Date: October 6, 2025

Respectfully Submitted,

ANDREA JOY CAMPBELL
Attorney General
Commonwealth of Massachusetts

ROB BONTA
Attorney General
State of California

/s/ Allyson Slater
ALLYSON SLATER (BBO No. 704545)
Director, Reproductive Justice Unit
MORGAN CARMEN (BBO No. Pending)
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

/s/ Erica Connolly
ERICA CONNOLLY*
Deputy Attorney General
NELI PALMA*
Senior Assistant Attorney General
KARLI EISENBERG*
Supervising Deputy Attorney General
1300 I Street
Sacramento, CA 95814
(916) 210-7755
Erica.Connolly@doj.ca.gov
Attorneys for Plaintiff State of California

LETITIA JAMES
Attorney General
State of New York

WILLIAM TONG
Attorney General
State of Connecticut

/s/ Galen Sherwin
GALEN SHERWIN*
Special Counsel for Reproductive Justice
RABIA MUQADDAM*
Chief Counsel for Federal Initiatives
COLLEEN K. FAHERTY*
Special Trial Counsel
IVAN NEVADO*
Assistant Attorney General
28 Liberty Street
New York, NY 10005
(212) 416-8059
Galen.Sherwin@ag.ny.gov;
Attorneys for Plaintiff State of New York

/s/ Alma Nunley
ALMA NUNLEY*
Special Counsel for Reproductive Rights
JANELLE R. MEDEIROS*
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

PHILIP J. WEISER
Attorney General
State of Colorado

By: /s/ Vanessa L. Kassab

/s/ Nora Q.E. Passamaneck

VANESSA L. KASSAB*

Deputy Attorney General

IAN R. LISTON*

Director of Impact Litigation

JENNIFER KATE AARONSON*

Deputy Attorney General

Delaware Department of Justice

820 N. French Street

Wilmington, DE 19801

302-683-8803

Jennifer.Aaronson@delaware.gov

Attorneys for Plaintiff State of Delaware

NORA Q.E. PASSAMANECK*

Senior Assistant Attorney General

Colorado Department of Law

1300 Broadway, 10th Floor

Denver, CO 80203

Phone: (720) 508-6000

nora.passamaneck@coag.gov

Attorneys for Plaintiff State of Colorado

BRIAN L. SCHWALB

Attorney General

District of Columbia

/s/ Nicole S. Hill

NICOLE S. HILL*

Assistant Attorney General

Office of the Attorney General for the District
of Columbia

400 Sixth Street, NW

Washington, D.C. 20001

(202) 727-4171

nicole.hill@dc.gov

Attorneys for Plaintiff District of Columbia

ANNE E. LOPEZ

Attorney General

State of Hawai‘i

/s/ Kaliko ‘onālani D. Fernandes

KALIKO‘ONĀLANI D. FERNANDES*

Solicitor General

DAVID D. DAY*

Special Assistant to the Attorney General

425 Queen Street

Honolulu, HI 96813

(808) 586-1360

kaliko.d.fernandes@hawaii.gov

Attorneys for Plaintiff State of Hawai‘i

KWAME RAOUL

Attorney General
State of Illinois

/s/ Caitlyn G. McEllis

CAITLYN G. MCELLIS*

Senior Policy Counsel

ELIZABETH MORRIS*

Deputy Bureau Chief, Special Litigation
Bureau

SARAH J. GALLO*

Assistant Attorney General

Office of the Illinois Attorney General

115 S. Lasalle Street

Chicago, IL 60603

312-814-3000

Caitlyn.McEllis@ilag.gov

Elizabeth.Morris@ilag.gov

Sarah.Gallo@ilag.gov

Attorneys for Plaintiff State of Illinois

AARON M. FREY

Attorney General
State of Maine

/s/ Halliday Moncure

HALLIDAY MONCURE*

Assistant Attorney General

Office of the Attorney General

6 State House Station

Augusta, ME 04333-0006

Tel.: 207-626-8800

halliday.moncure@maine.gov

Attorneys for Plaintiff State of Maine

ANTHONY G. BROWN

Attorney General
State of Maryland

/s/ James C. Luh

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.state.md.us

Attorneys for Plaintiff State of Maryland

DANA NESSEL

Attorney General
State of Michigan

/s/ Kyla Barranco

KYLA BARRANCO*

NEIL GIOVANATTI*

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/ Katherine J. Bies

KATHERINE J. BIES*
Special Counsel, Rule of Law
445 Minnesota Street, Suite 600
St. Paul, Minnesota, 55101
(651) 300-0917
Katherine.Bies@ag.state.mn.us
Attorneys for Plaintiff State of Minnesota

MATTHEW J. PLATKIN

Attorney General
State of New Jersey

/s/ Jessica L. Palmer

JESSICA L. PALMER*
ELIZABETH R. WALSH*
Deputy Attorneys General
Office of the Attorney General
124 Halsey Street, 5th Floor
Newark, NJ 07101
(609) 696-5279
Jessica.Palmer@law.njoag.gov
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
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

AARON D. FORD

Attorney General
State of Nevada

/s/ Heidi Parry Stern

HEIDI PARRY STERN* (Bar. No. 8873)
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

JEFF JACKSON

Attorney General
State of North Carolina

/s/ Marc D. Brunton

MARC D. BRUNTON*
Assistant Deputy Attorney General
North Carolina Department of Justice
PO Box 629
Raleigh, NC 27602
(919) 716-0151
mbrunton@ncdoj.gov
Attorneys for Plaintiff State of North Carolina

DAN RAYFIELD

Attorney General
State of Oregon

/s/ Christina L. Beatty-Walters

CHRISTINA L. BEATTY-WALTERS*
Senior Assistant Attorney General
KATE E. MORROW
Assistant Attorney General
100 SW Market Street
Portland, OR 97201
(971) 673-1880
Tina.BeattyWalters@doj.oregon.gov
Kate.E.Morrow@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*

Executive Deputy General Counsel

JENNIFER SELBER*

General Counsel

JONATHAN D. KOLTASH*

Deputy General Counsel for Healthcare

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

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

PETER F. NERONHA

Attorney General

State of Rhode Island

/s/ Dorothea R. Lindquist

DOROTHEA R. LINDQUIST*

(RI Bar No. 6661)

Special Assistant Attorney General

150 South Main Street

Providence, RI 02903

(401) 274-4400, Ext. 2098

dlindquist@riag.ri.gov

*Attorneys for the Plaintiff State of Rhode
Island*

NICHOLAS W. BROWN

Attorney General

State of Washington

/s/ Lauryn K. Fraas

LAURYN K. FRAAS* WSBA #53238

WILLIAM MCGINTY* WSBA #41868

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

**Admitted Pro Hac Vice*

**Application for pro hac vice admission
forthcoming*

CERTIFICATE OF SERVICE

I, Erica Connolly, certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

By: /s/ Erica Connolly
ERICA CONNOLLY*
Deputy Attorney General
California Department of Justice
1300 I Street, Suite 125
Sacramento, CA 95814
Telephone: (916) 210-7755
Email: Erica.Connolly@doj.ca.gov

Counsel for State of California