

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

COMMONWEALTH OF
MASSACHUSETTS, ATTORNEY
GENERAL DANA NESSEL ON BEHALF
OF THE PEOPLE OF THE STATE OF
MICHIGAN, STATE OF ILLINOIS,
STATE OF ARIZONA, STATE OF
CALIFORNIA, STATE OF
CONNECTICUT, STATE OF COLORADO,
STATE OF DELAWARE, STATE OF
HAWAI'I, STATE OF MAINE, STATE OF
MARYLAND, STATE OF MINNESOTA,
STATE OF NEW JERSEY, STATE OF
NEW YORK, STATE OF NEVADA,
STATE OF NEW MEXICO, STATE OF
NORTH CAROLINA, STATE OF
OREGON, STATE OF RHODE ISLAND,
STATE OF VERMONT, STATE OF
WASHINGTON, and STATE OF
WISCONSIN,

Plaintiffs,

v.

NATIONAL INSTITUTES OF HEALTH;
MATTHEW MEMOLI, M.D., M.S., in his
official capacity as Acting Director of the
National Institutes of Health; U.S.
DEPARTMENT OF HEALTH AND
HUMAN SERVICES; and DOROTHY
FINK, in her official capacity as Acting
Secretary of the U.S. Department of Health
and Human Services,

Defendants.

Case No. 1:25-cv-10338

**PLAINTIFF STATES' *EX PARTE* EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER**

Plaintiffs Massachusetts, Attorney General Dana Nessel on behalf of the People of Michigan, Illinois, Arizona, California, Connecticut, Colorado, Delaware, Hawai'i, Maine, Maryland, Minnesota, New Jersey, New York, Nevada, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Washington, and Wisconsin (collectively, "Plaintiff States"), hereby respectfully move, pursuant to Fed. R. Civ. P. 65 and D. Mass. L.R. 7.1, for a temporary restraining order on an emergency basis to enjoin Defendants from implementing a 15% cap on "indirect costs" for all existing and future grants funded by the National Institutes of Health, including those awarded to Plaintiff States' institutes of higher education ("IHEs"). The Rate Change Notice was announced by Defendants on Friday night, February 7, to take effect today—Monday, February 10 (the "Rate Change Notice"),¹ and unquestionably violates federal law in multiple respects.

Indirect costs are the backbone of IHEs' research programs and cover everything from utilities to facilities and equipment maintenance to payroll for faculty and staff to compliance programs, hazardous waste disposal, and more. They quite literally keep the lights on. If the Rate Change Notice were to take effect, Plaintiffs States' IHEs stand to lose hundreds of millions dollars that currently support life-saving medical research and clinical trials, the effects of which will be felt immediately. It is not hyperbole to say that, absent immediate injunctive relief, Plaintiff States' IHEs will face catastrophic financial consequences, which could result in layoffs and furloughs, research program closures, financial defaults, and disruptions to clinical trials, potentially jeopardizing people's lives and health.

¹ See Notice NOT-OD-25-068, available at https://grants.nih.gov/grants/guide/notice-files/NOT-OD-25-068.html#_ftnref1.

Plaintiffs hereby incorporate by reference the Complaint and the Memorandum of Law in Support of Plaintiffs' Motion, filed contemporaneously herewith. As detailed in the accompanying Memorandum of Law, Plaintiffs are likely to succeed in showing that: (i) Defendants' Rate Change Notice violates the Administrative Procedures Act ("APA") in multiple respects, including that it is arbitrary and capricious, contrary to law, in excess of statutory authority, *ultra vires*, and issued without observing notice-and-comment requirements; (ii) without a temporary restraining order, Plaintiff States will suffer irreparable harm; (iii) the balance of harms weighs strongly in Plaintiff States' favor; and (iv) the requested temporary restraining order will serve the public interest by maintaining the status quo.

WHEREFORE, Plaintiff States respectfully requests that the Court: (i) immediately enter a temporary restraining order prohibiting Defendants and their officers, employees, and agents from taking any steps to implement, apply, or enforce the Rate Change Notice (NOT-OD-25-068) within Plaintiff States; and (ii) order Defendants to file a status report with the Court within 24 hours of entry of a temporary restraining order, and at regular intervals thereafter, confirming the regular disbursement and obligation of federal financial assistance funds and reporting all steps that NIH, HHS and their officers, employees, and agents have taken to comply with the Court's temporary restraining order.

Dated: February 10, 2025

Respectfully submitted,

ANDREA JOY CAMPBELL

Attorney General of Massachusetts

By: /s/ Katherine Dirks

Katherine Dirks (BBO #673674)

Deputy Chief, Government Bureau

Amanda Hainsworth (BBO # 684417)

Senior Legal Advisor to the AG

Yael Shavit (BBO # 695333)

Chief, Consumer Protection Division

Chris Pappavaselio (BBO # 713519)

Assistant Attorney General

1 Ashburton Pl.

Boston, MA 02108

617.963.2277

katherine.dirks@mass.gov

Counsel for the Commonwealth of Massachusetts

DANA NESSEL

Attorney General of Michigan

By: /s/ Linus Banghart-Linn

Linus Banghart-Linn*

Chief Legal Counsel

Michigan Department of Attorney General

525 W. Ottawa St.

Lansing, MI 48933

(517) 281-6677

Banghart-LinnL@michigan.gov

Attorneys for the People of the State of Michigan

KWAME RAOUL

Attorney General of Illinois

By: /s/ Alex Hemmer

Alex Hemmer*

Deputy Solicitor General

Office of the Illinois Attorney General

115 S. LaSalle St.

Chicago, IL 60603

(312) 814-5526

alex.hemmer@ilag.gov

Counsel for the State of Illinois

KRIS MAYES

Attorney General of Arizona

s/ Joshua D. Bendor

Joshua D. Bendor*

Solicitor General

Office of the Arizona Attorney General

2005 N. Central Ave.

Phoenix, AZ 85004

(602) 542-3333

Joshua.Bendor@azag.gov

ACL@azag.gov

Counsel for the State of Arizona

ROB BONTA

Attorney General of California

NELI PALMA*

Senior Assistant Attorney General

/s/ Emilio Varanini

EMILIO VARANINI*

Supervising Deputy Attorney General

SOPHIA TONNU*

DANIEL AMBAR*

Deputy Attorneys General

California Attorney General's Office

455 Golden Gate Avenue

San Francisco, CA 94102

(415) 510-3541

Emilio.Varanini@doj.ca.gov

Counsel for the State of California

PHILIP J. WEISER

Attorney General of Colorado

/s/ Shannon Stevenson*

Shannon Stevenson, CO Reg. No. 35542

Solicitor General

Colorado Department of Law

Ralph L. Carr Judicial Center

1300 Broadway, 10th Floor

Denver, CO 80203

Phone: (720) 508-6749

Shannon.Stevenson@coag.gov

Counsel for the State of Colorado

WILLIAM TONG

Attorney General of Connecticut

By: /s/ Michael K. Skold

Michael K. Skold*

Solicitor General

165 Capitol Ave

Hartford, CT 06106

(860) 808-5020

Michael.skold@ct.gov

Counsel for the State of Connecticut

KATHLEEN JENNINGS

Attorney General of Delaware

By: /s/ Ian R. Liston

Ian R. Liston*

Director of Impact Litigation

Vanessa L. Kassab*

Deputy Attorney General

Delaware Department of Justice

820 N. French Street

Wilmington, DE 19801

(302) 683-8899

ian.liston@delaware.gov

Counsel for the State of Delaware

ANNE E. LOPEZ

Attorney General of Hawai'i

/s/ Kaliko 'onālani D. Fernandes

David D. Day*

Special Assistant to the Attorney General

Kaliko 'onālani D. Fernandes*

Solicitor General

Department of the Attorney General

425 Queen Street

Honolulu, HI 96813

(808) 586-1360

kaliko.d.fernandes@hawaii.gov

Counsel for the State of Hawai'i

AARON M. FREY

Attorney General for Maine

/s/ Sean D. Magenis

SEAN D. MAGENIS

Assistant Attorney General

Office of the Attorney General

6 State House Station

Augusta, ME 04333-0006

Tel.: 207-626-8800

Fax: 207-287-3145

sean.d.magenis@maine.gov

Counsel for the State of Maine

ANTHONY G. BROWN

Attorney General of Maryland

/s/ Adam D. Kirschner

Adam D. Kirschner*

Senior Assistant Attorney General

Office of the Attorney General

200 Saint Paul Place, 20th Floor

Baltimore, Maryland 21202

akirschner@oag.state.md.us

410-576-6424

Counsel for the State of Maryland

KEITH ELLISON

Attorney General of Minnesota

By: /s/ Liz Kramer*

Solicitor General

Office of the Minnesota Attorney General

445 Minnesota Street, Suite 600

St. Paul, Minnesota 55101-2131

(651) 757-1010

liz.kramer@ag.state.mn.us

Counsel for the State of Minnesota

AARON D. FORD

Attorney General of Nevada

/s/ Heidi Parry Stern

Heidi Parry Stern*

Solicitor General

Office of the Nevada Attorney General

1 State of Nevada Way, Ste. 100

Las Vegas, NV 89119

(702) 486-5708

HStern@ag.nv.gov

Counsel for the State of Nevada

MATTHEW J. PLATKIN

Attorney General of New Jersey

By: /s/ Angela Cai

Angela Cai*

Executive Assistant Attorney General

Richard J. Hughes Justice Complex

25 Market Street

Trenton, NJ 08625

(609) 376-3377

Angela.Cai@njoag.gov

Counsel for the State of New Jersey

LETITIA JAMES

Attorney General of New York

By: /s/ Rabia Muqaddam

Rabia Muqaddam*

Special Counsel for Federal Initiatives

Molly Thomas-Jensen*

Special Counsel

28 Liberty Street

New York, NY 10005

(212) 416-8883

Rabia.Muqaddam@ag.ny.gov

Molly.Thomas-Jensen@ag.ny.gov

Counsel for the State of New York

RAÚL TORREZ

Attorney General of New Mexico

/s/ Anjana Samant

Anjana Samant*

Deputy Counsel for Impact Litigation

New Mexico Department of Justice

P.O. Drawer 1508

Santa Fe, NM 87504-1508

(505) 490-4060

asamant@nm DOJ.gov

Counsel for the State of New Mexico

JEFF JACKSON

Attorney General of North Carolina

LAURA HOWARD*

Chief Deputy Attorney General

By /s/ Daniel P. Mosteller*

Associate Deputy Attorney General

North Carolina Department of Justice

PO Box 629

Raleigh, NC 27602

919-716-6026

dmosteller@ncdoj.gov

Counsel for State of North Carolina

DAN RAYFIELD

Attorney General of Oregon

By: /s/ Christina L. Beatty-Walters

Christina L. Beatty-Walters

Senior Assistant Attorney General

100 SW Market Street

Portland, OR 97201

(971) 673-1880

Tina.BeattyWalters@doj.oregon.gov

Counsel for the State of Oregon

PETER F. NERONHA

Attorney General of Rhode Island

/s/ Jordan Broadbent

Jordan Broadbent*

Special Assistant Attorney General

Rhode Island Office of the Attorney General

150 South Main Street

Providence, RI 02903

(401) 274-4400, Ext. 2060

Jbroadbent@riag.ri.gov

Counsel for the State of Rhode Island

CHARITY R. CLARK

Attorney General of Vermont

By: /s/ Jonathan T. Rose

Jonathan T. Rose*

Solicitor General

109 State Street

Montpelier, VT 05609

(802) 828-3171

Jonathan.rose@vermont.gov

Counsel for the State of Vermont

NICHOLAS W. BROWN

Attorney General of Washington

s/ Spencer W. Coates

SPENCER W. COATES*

ELLEN RANGE*

Assistant Attorneys General

Office of the Washington State Attorney General

800 Fifth Avenue, Suite 2000

Seattle, WA 98104

(206) 464-7744

spencer.coates@atg.wa.gov

ellen.range@atg.wa.gov

Counsel for the State of Washington

JOSHUA L. KAUL

Attorney General of Wisconsin

/s/ Aaron J. Bibb

Aaron J. Bibb*

Assistant Attorney General

Wisconsin Department of Justice

17 West Main Street

Post Office Box 7857

Madison, Wisconsin 53707-7857

(608) 266-0810

bibbaj@doj.state.wi.us

Counsel for the State of Wisconsin

**pro hac vice forthcoming*

LOCAL RULE 7.1 CERTIFICATE

I, Katherine Dirks, certify that on February 10, 2025, at approximately 11:20am, I contacted the following individuals at the U.S. Department of Justice by electronic mail to provide notice of this motion:

Eric J. Hamilton
Deputy Assistant Attorney General, Federal Programs Branch
eric.hamilton@usdoj.gov

Alex Haas
Co-Director, Federal Programs Branch
alex.haas@usdoj.gov

Diane Kelleher
Co-Director, Federal Programs Branch
diane.kelleher@usdoj.gov

John Griffiths
Co-Director, Federal Programs Branch
john.griffiths@usdoj.gov

Rayford Farquhar
Chief, Defensive Litigation, Civil Division
U.S. Attorney's Office for the District of Massachusetts
rayford.farquhar@usdoj.gov

Plaintiffs have not yet had an opportunity to meet and confer with Defendants' counsel, but are proceeding with this filing given the need for prompt relief, as set forth in the accompanying memorandum of law.

/s/ Katherine Dirks
Katherine Dirks (BBO #673674)
Deputy Chief, Government Bureau
1 Ashburton Pl.
Boston, MA 02108
617.963.2277
katherine.dirks@mass.gov
Counsel for the Commonwealth of Massachusetts