

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, Plaintiff 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,

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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:

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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.

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