



AMC 2025

Opening Plenary

Multistate Litigation Against the Federal Government

Presented By:

*Joseph S. Diedrich, Husch Blackwell, Madison
Attorney General Josh Kaul, Wisconsin Department of Justice, Madison*

About the Presenters...

Joseph (Joe) S. Diedrich has briefed appeals in the U.S. Supreme Court; the U.S. Courts of Appeals for the D.C., Federal, Seventh, Eighth, Ninth, and Tenth Circuits; the supreme courts of Wisconsin and Georgia; and the appellate courts of Wisconsin, Illinois, and Missouri. He has orally argued appeals in the Seventh Circuit (including en banc), the Eighth Circuit, the Federal Circuit, and the Wisconsin Court of Appeals. Joe also litigates administrative appeals and high-stakes disputes in trial courts across the country. No matter the forum, Joe draws on a unique background in music composition to bring unmatched creativity to analyzing and writing about complex legal issues. Joe specializes in challenges to government action, including judicial review of decisions issued by federal agencies, state agencies, and local governments. He also has significant experience defending class actions and litigating cases involving issues of constitutional and administrative law; land use, zoning, and permitting; and international trade law. He serves clients in various industries, including telecommunications, traditional and renewable energy, food and agribusiness, real estate, and healthcare, among others. In addition to writing as an advocate for his clients, Joe has published several scholarly and popular articles on constitutional law and appellate practice. His work has appeared in the SMU Law Review, the Villanova Law Review, the University of Cincinnati Law Review, the Fordham Urban Law Journal, the Yale Journal on Regulation Notice & Comment, Law360, Wisconsin Lawyer (where he serves on the editorial board), and elsewhere. Joe's articles have been cited in state and federal judicial opinions.

Josh Kaul was sworn in as Wisconsin's 45th Attorney General on January 7, 2019. Josh's top priority is public safety. Under his leadership, the Wisconsin Department of Justice has worked to combat the opioid epidemic and the increasing use of meth in Wisconsin, to make our schools and communities safer from gun violence, and to pass legislation designed to prevent Wisconsin from having another backlog of untested sexual assault kits. Josh is also committed to fighting for clean and safe drinking water and against climate change and to protecting the rights of Wisconsinites. Josh served as a federal prosecutor in Baltimore, where he prosecuted murderers, gang members, and drug traffickers. After moving back home to Wisconsin, he worked to protect our right to vote, going to court to challenge restrictions on voting. Josh grew up in Oshkosh and Fond du Lac. He went to college at Yale, majoring in history and economics and graduating with honors. He then attended Stanford Law School, where he served as President of the Stanford Law Review. Josh lives in Madison with his wife, Lindsey, and their two sons, Simon and Henry.

New Jersey v. Trump (D. Mass.) (25-cv-10139) (filed January 21, 2025)

This is a challenge to the Trump administration’s executive order titled “Protecting the Meaning and Value of American Citizenship,” which declares that birthright citizenship does not extend to any child born in the United States to a mother who is unlawfully present or lawfully present on a temporary basis and a father who is neither a U.S. citizen nor a lawful permanent resident.

The states assert claims under the Citizenship Clause of the Fourteenth Amendment, separation of powers, the Immigration and Nationality Act, and the Administrative Procedure Act.

The district court granted a preliminary injunction, and the First Circuit denied the federal government’s motion for a stay. The case is now with the U.S. Supreme Court, and oral argument was held on May 15.

New York v. Trump (D. R.I.) (25-cv-00039) (filed January 28, 2025)

This is a challenge to the Office of Management and Budget’s directive to executive departments and agencies for a “Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs.”

The states assert claims under the Administrative Procedure Act, separation of powers, *ultra vires* doctrine, and the Spending, Presentment, Appropriations, and Take Care Clauses.

The district court granted a preliminary injunction and a motion to enforce the injunction. The case is on appeal to the First Circuit.

New York v. Trump (S.D.N.Y.) (25-cv-01144) (filed February 7, 2025)

This is a challenge to the Trump administration’s allowing DOGE associates access to the U.S. Department of Treasury’s Bureau of Fiscal Services payment systems.

The states assert claims under the Administrative Procedure Act, separation of powers, and the Take Care Clause.

A partial preliminary injunction is in effect, which permits access only to DOGE employees that meet certain training and disclosure requirements.

Massachusetts v. NIH (D. Mass.) (25-cv-10338) (filed February 10, 2025)

This is a challenge to the National Institutes of Health reduction of the “indirect cost rate” to 15 percent for research funding.

The states assert claims under the Administrative Procedure Act.

The district court has entered a permanent injunction, which is on appeal to the First Circuit.

California v. U.S. Dep’t of Education (D. Mass.) (25-cv-10548) (filed March 6, 2025)

This is a challenge to the U.S. Department of Education’s termination of approximately \$600 million in grants to address teacher shortages and training.

The states assert claims under the Administrative Procedure Act, the Spending Clause, separation of powers, and *ultra vires* doctrine.

The district court entered a TRO, which was later stayed by the U.S. Supreme Court. The states filed an amended complaint on June 2.

Maryland v. USDA (D. Md.) (25-cv-00748) (filed March 6, 2025)

This is a challenge to the Trump Administration’s termination of approximately two million federal probationary workers.

The states assert claims under the Administrative Procedure Act and *ultra vires* doctrine.

The district court entered a preliminary injunction, which was later stayed by the Fourth Circuit. The case is fully briefed and argued, and the parties are awaiting a decision from the Fourth Circuit.

New York v. McMahon (D. Mass.) (25-cv-10601) (filed March 13, 2025)

This is a challenge to U.S. Department of Education’s reduction by half of the agency’s workforce.

The states assert claims under the Administrative Procedure Act and *ultra vires* doctrine.

The district court granted a preliminary injunction on May 22.

Colorado v. U.S. HHS (D. R.I.) (25-cv-00121) (filed April 1, 2025)

This is a challenge to the U.S. Department of Health and Human Services' termination of \$11 billion in public health funding.

The states assert claims under the Administrative Procedure Act.

The district court entered a TRO, and a preliminary injunction was granted on May 16.

California v. Trump (D. Mass.) (25-cv-10810) (filed April 3, 2025)

This is a challenge to the Trump administration order titled "Preserving and Protecting the Integrity of American Elections," which would, among other things, impose proof of citizenship requirements for federal voter registration forms.

The states assert claims under separation of powers, the *ultra vires* doctrine, and the Bicameralism, Presentment, Elections and Electors Clauses.

The states have moved for a preliminary injunction.

Rhode Island v. Trump (D. R.I.) (25-cv-00128) (filed April 4, 2025)

This is a challenge to the Trump administration's order that three federal agencies, the Institute of Museum and Library Services, the Minority Business Development Agency, and the Federal Mediation and Conciliation Services, eliminate their programs.

The states assert claims under the Administrative Procedure Act, separation of powers, the Appropriations and Take Care Clauses, and the *ultra vires* doctrine.

The district court entered a preliminary injunction on May 6, which is on appeal before the First Circuit.

Massachusetts v. Kennedy (D. Mass.) (25-cv-10814) (filed April 4, 2025)

This is a challenge to "unreasonable and intentional" delays to NIH funding and terminations of already-issued NIH grants.

The states assert claims under the Administrative Procedure Act, separation of powers, and the Spending Clause.

There was a preliminary injunction hearing on May 8, and the court set a merits hearing for June 16.

New York v. McMahon (D. Mass.) (25-cv-11116) (filed April 25, 2025)

This is a challenge to a U.S. Department of Education directive that, to continue to receive certain federal funds, state and local education agencies must complete a certification regarding diversity, equity, and inclusion.

The states assert claims under the Administrative Procedure Act, separation of powers, the Appropriations and Spending Clauses, and the *ultra vires* doctrine.

Maryland v. Corp. for National and Community Services (D. Md.) (25-cv-01363) (filed April 29, 2025)

This is a challenge to AmeriCorps' placing 85 percent of its paid staff on administrative leave and terminating nearly \$400 million in AmeriCorps programs.

The states assert claims under the Administrative Procedure Act, separation of powers, and the *ultra vires* doctrine.

The district court entered a preliminary injunction on June 5, reinstating the terminated programs.

New York v. Kennedy (D. R.I.) (25-cv-00196) (filed May 5, 2025)

This is a challenge to the Department of Health and Human Services' termination of 10,000 agency employees.

The states assert claims under the Administrative Procedure Act, separation of powers, the Appropriations Clause, and the *ultra vires* doctrine.

The states have moved for a preliminary injunction.

Washington v. U.S. DOT (W.D. Wash.) (25-cv-00848) (filed May 7, 2025)

This is a challenge to U.S. DOT's suspension of the National Electric Vehicle Infrastructure Formula Program.

The states assert claims under the Administrative Procedure Act, separation of powers, the Take Care Clause, and the *ultra vires* doctrine.

The states have moved for a preliminary injunction, with a hearing on June 17.

Washington v. Trump (W.D. Wash.) (25-cv-00869) (filed May 9, 2025)

This is a challenge to the Trump administration order titled “Declaring a National Energy Emergency,” which directs executive department of agency heads to issue permits and other approvals necessary for energy-related projects on an expedited and emergency basis.

The states assert claims under the Administrative Procedure Act and the *ultra vires* doctrine.

Illinois v. FEMA (D. R.I.) (25-cv-00206) (filed May 13, 2025)

This is a challenge to the U.S. Department of Homeland Security’s required conditions, relating to civil immigration enforcement, for states to receive certain federal emergency preparedness grants.

The states assert claims under the Administrative Procedure Act, the Spending Clause, and the *ultra vires* doctrine.

The states have moved for a preliminary injunction, with a hearing on June 17. Following the injunction motion, the defendants agreed to remove the challenged conditions from 12 grants.

California v. U.S. DOT (D. R.I.) (25-cv-00208) (filed May 13, 2025)

This is a challenge to the U.S. DOT’s required conditions, relating to civil immigration enforcement, for states to receive certain federal transportation funding.

The states assert claims under the Administrative Procedure Act, the Spending Clause, and the *ultra vires* doctrine.

The states have moved for a preliminary injunction.

New York v. NSF (S.D.N.Y.) (25-cv-04452) (filed May 28, 2025)

This is a challenge to the Trump administration’s cuts to National Science Foundation funding.

The states assert claims under the Administrative Procedure Act, separation of powers, the Take Care Clause, and the *ultra vires* doctrine.