IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

NATIONAL INFUSION CENTER ASSOCIATION *et al.*, Plaintiffs, vs. ROBERT F. KENNEDY, JR., in his official capacity as Secretary of Health and Human Services, *et al.*, Defendants.	Civil Action No. 1:23-cv-00707

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs submit *FCC v. Consumers' Research*, 606 U.S. __ (June 27, 2025) ("Op."). While the Supreme Court reversed the Fifth Circuit, it reinforced longstanding nondelegation principles that the IRA contravenes.

The Court reiterated the settled precept that, to permissibly delegate authority to an agency, "Congress [must] provide[] sufficient standards to enable both *the courts* and the public to ascertain whether the agency has followed the law." Op.11 (cleaned up) (emphasis added). In that regard, the Supreme Court reaffirmed the significance of a "reviewing court['s]" ability to "possibly invalidate any [agency] action." *Consumers' Rsch. v. FCC*, 109 F.4th 743, 767 (5th Cir. 2024). As Justice Kavanaugh noted, "concerns about expansive delegations [are] substantially mitigated by this Court's recent case law" confirming courts' primary role in "determining the limits of the statutory text." Op. (Kavanaugh, J., concurring at 7-8) (citing *Loper Bright Enterprises* v. *Raimondo*, 603 U. S. 369, 394–396, 404 (2024), and *West Virginia v. EPA*, 597 U. S. 697, 721–724 (2022)). Unlike the Communications Act provision in *Consumers' Research*, however, the IRA *precludes* judicial review. *See* Dkt.60 at 15-18; Dkt.85 at 3-9.

Accordingly, rather than favoring the IRA, if anything, *Consumers' Research* accentuates the unconstitutionality of the statute's unchecked delegation.

Similarly, the Supreme Court's reasoning in rejecting the Fifth Circuit's concerns about the "combination" of delegations in the Communications Act underscores the nondelegation problem created by the IRA's unique combination of features. The Communications Act delegates authority to an agency which then subdelegated authority to a private entity. The Supreme Court held that this "combination" does not cross "a constitutional line" because "the two layers of" delegation do not "operate[] on a single axis with the one exacerbating . . . the other." Op.35-36.

By contrast, the IRA falls on the other side of that line. The IRA does not combine two separate, independently lawful delegations to separate entities; it creates a single delegation that combines multiple features (operating on a "single axis") that together "exacerbat[e]" the structural harm. The statute grants broad discretion to set drug prices, then amplifies that discretion by foreclosing public input and judicial review. *See* Dkt.85 at 3-10. *Consumers' Research* thus emphasizes why the IRA's unprecedented combination of features creates the rare violation of the nondelegation doctrine.

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Respectfully submitted,

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