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January 19, 2024

Molly C. Dwyer
Clerk of Court
James R. Browning Courthouse
95 7th Street
San Francisco, CA 94103

By Electronic Filing

RE: *State of Washington, et al. v. FDA, et al.*
Case No. 23-35294
FRAP 28(j) Citation to Supplemental Authority

Dear Ms. Dwyer:

Plaintiffs–Appellees State of Washington et al. write regarding a significant ruling entered after the briefs were filed—the January 12, 2024 order granting intervention to Idaho and other states in *Alliance for Hippocratic Medicine v. U.S. Food & Drug Administration (Alliance)*, No. 2:22-cv-223-Z (N.D. Tex.), ECF No. 175.

Idaho’s successful intervention in *Alliance* undercuts the argument for intervention by *any* of the Proposed Intervenors here. The claim Proposed Intervenors seek to advance here—an APA challenge to FDA’s removal of mifepristone’s in-person dispensing requirement—is squarely at issue in *Alliance*. Plaintiffs-Appellees’ Br. at 9-10. Denial of intervention is appropriate where a proposed intervenor has “other means” to protect its claimed interest, *id.* at 26 (quoting *United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004)), including an “alternative forum”

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to advance its arguments. *California ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006). As Plaintiff States explained, Proposed Intervenors have other means because they “could have sought to intervene in” *Alliance*, “in which the legality of the in-person dispensing requirement under the APA is currently being litigated.” Plaintiffs-Appellees’ Br. at 26. Idaho and other states have now done so. And as to permissive intervention, Plaintiff States argued that adding Idaho’s claim here would “unnecessarily intertwine” this case with *Alliance*. *Id.* at 32.

After Plaintiff States filed their brief, Idaho, joined by two other states, moved to intervene in *Alliance*, seeking to advance there the same claims they seek intervention to advance here. Mot. to Intervene at 14, *Alliance*, ECF No. 152; Complaint at 99-101, *Alliance*, ECF No. 151-1; 2-ER-88-91.¹ Intervention there was granted. Order, *Alliance*, ECF No. 175. States like Proposed Intervenors therefore have another means by which they not only can—but actively are—pursuing their claimed interest.

The body of this letter contains 350 words.

Respectfully submitted,

s/ Emma Grunberg
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¹ Although the *Alliance* case began in November 2022, and Idaho sought intervention in this litigation in March 2023 (2-ER-067), Idaho argued its November 2023 *Alliance* motion was timely because it only learned “very recently” that its interests “may be adversely affected” by the in-person dispensing requirement’s removal. Mot. to Intervene, *supra*, at 13.