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BY ACMS

Molly Dwyer, Clerk of Court
United States Court of Appeals
for the Ninth Circuit
PO Box 193939
San Francisco, California 94119

Re: *PhRMA v. Stolfi*, No. 24-1570
FRAP 28(j) Response to Notice of Supplemental Authority

Dear Ms. Dwyer:

This letter offers three points in response to the State's Notice of Supplemental Authority, Dkt. 54 (Notice).

First, *TikTok Inc. v. Garland*, No. 24-656 (U.S. Jan. 17, 2025) did *not* hold "that an 'underinclusive' law can[not] raise doubts that a legislature 'is actually pursuing' its stated purpose when it 'single[s] out' one group.'" Notice at 1. *TikTok* observed only that there is no hard-and-fast rule against underinclusive laws, and that the limited scope of the law challenged *in that case* raised no red flags—particularly given the government's "good reason for singl[ing] out TikTok." Slip op. at 15. Indeed, the Court reaffirmed the longstanding principle that "government regulation may not favor one speaker over another," *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995), and that laws singling out speakers without "persuasive," content-neutral reasons "raise[] serious [constitutional] doubts." Slip op. at 15 (citation omitted).

Second, HB 4005's "justification" is nothing like that of the *TikTok* law. Notice at 2. The law there was "decidedly content agnostic." Slip op. at 11. It banned *ownership* of TikTok by a foreign adversary, without even "referenc[ing] the content of speech on TikTok." *Id*. HB 4005, by contrast, is decidedly content specific: It forces drug manufacturers (and only them) to speak on a specified topic (drug pricing). Unlike the *TikTok* law, the *only* way judge compliance with HB 4005 is by "referenc[ing] the content" of the compelled speech. *Id.*

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Third, Justice Gorsuch's concurrence actually undermines the State's argument. *Cf.* Notice 3–4. In *TikTok*, the government had "amassed" a formidable evidentiary "record" that the challenged law was the only known means of achieving a compelling interest: preventing "a foreign adversary" from "spy[ing] on Americans." Slip op. at 3, 5 (Gorsuch, J., concurring). Here, the State "has not identified studies or evidence" to support HB 4005—it offers just "speculation." E.R.-37. Indeed, the State has failed even to coherently articulate what interest the law supposedly serves.

Respectfully submitted,

By /s/ *Allon Kedem*
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cc: Dustin Buehler, Esq. (by ACMS)
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