IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ASSOCIATION OF AMERICAN UNIVERSITIES, *et al*. Plaintiffs, v. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al*., Defendants.	Case No. 1:25-cv-10346

PLAINTIFF AAU'S OPPOSITION TO DEFENDANTS' MOTION FOR LEAVE TO CONDUCT LIMITED DISCOVERY

INTRODUCTION

The Association of American Universities ("AAU") has established that it is eligible to receive fees under the Equal Access to Justice Act ("EAJA") because it is a 501(c)(3) organization with fewer than 500 employees. Doc No. 108-1 ¶ 2; Doc No. 109 at 5; *see* 28 U.S.C. § 2412(d)(2)(B) (stating a 501(c)(3) organization, "regardless of the net worth of such organization," is eligible for fees, so long as that organization does not have "more than 500 employees at the time the civil action was filed). Defendants do not dispute these facts.

Defendants instead seek to impose additional requirements on AAU that appear nowhere in the text of the statute. But neither their speculation about AAU's finances nor the single case on which they base their discovery request supports requiring AAU to make an additional, extra-textual showing to establish EAJA eligibility. For that reason alone, their request should be denied. In any event, AAU has submitted a supplemental declaration confirming that it alone is liable for the attorneys' fees and costs in this case, which makes Defendants' request not only misplaced, but moot. *See generally* Suppl. Decl. of Barbara R. Snyder, Ex. 1.

ARGUMENT

AAU is eligible to receive attorneys' fees and costs under the EAJA. The EAJA's text sets clear eligibility parameters: a 501(c)(3) organization, "regardless of the net worth of such organization," is eligible for fees, so long as that organization does not have "more than 500 employees at the time the civil action was filed." 28 U.S.C. § 2412(d)(2)(B). AAU, as a prevailing 501(c)(3) organization with fewer than 500 employees at the time the civil action was filed, Doc No. 108-1 ¶ 2, meets the statutory criteria, and is therefore eligible to recoup attorneys' fees and costs under the EAJA.

I. The one case Defendants rely on to support their motion for discovery makes clear that AAU is eligible to receive fees.

Defendants rely on a single out-of-circuit case—*National Association of Manufacturers v. Department of Labor* ("*NAM*"), 159 F.3d 597 (D.C. Cir. 1998) (Garland, J.)—to effectively argue that AAU is ineligible under the EAJA because it is simply a "sham" or a "front" for its members and that *NAM* requires AAU to prove that it is not a sham. As a preliminary matter, this Court is not bound by *NAM*, and the First Circuit has not adopted the framing of that case urged by Defendants (or otherwise). But even under *NAM*, it is clear AAU *is* eligible to receive EAJA fees.

The court in *NAM* held that the entity liable for attorneys' fees is the entity that matters for purposes of EAJA eligibility. *See id.* at 602–04; *see also Unification Church v. INS*, 762 F.2d 1077, 1082 (D.C. Cir. 1985) (holding that where only some plaintiffs will be liable for attorneys' fees, the court should consider only the EAJA eligibility of the parties that are themselves liable for such fees). Here, that is AAU. Doc No. 108-1 ¶ 3 ("AAU was responsible for all Plaintiffs' attorneys' fees and costs for this litigation"). AAU was liable for all fees and costs listed in Exhibits 3 and 5 of the fee motion, *see* Doc No. 108-3, Doc No. 108-5—it is, has been, and remains the only entity legally responsible for paying the attorneys representing Plaintiffs in this case. Ex. 1 ¶ 3.

For associations like AAU that collect dues from their members, the court in *NAM* specifically recognized that "payment of membership dues does not render a member liable for the costs of a litigation." 159 F.3d at 604. That makes sense. If it were otherwise, few, if any, associations could receive EAJA fees, an outcome the *NAM* court found impossible to reconcile with the statutory text—which includes a specific provision making "association[s]" with a net worth under $7 million eligible for fees, 28 U.S.C. § 2412(d)(2)(B)(ii)—and EAJA's legislative history. *See NAM*, 159 F.3d at 600–01 ("'Representational' suits by associations, including trade

associations, were well-recognized by the time the EAJA was passed in 1980. . . . [I]t would be surprising if Congress had intended to exclude such a wide swath of cases from the EAJA without mentioning that fact anywhere in the statute or legislative history."); *id.* at 602 ("We simply have no indication that Congress intended to exclude small associations representing large members from the benefits conferred by the EAJA. . . . Nothing in the words or legislative history of the statute indicates a congressional intention to draw the distinction the government would have us draw.").[1]

The *NAM* court also recognized a narrow exception to the usual framework: Where an association might be no more than a "sham" or a "front" for its members, it may then be appropriate to "pierce the associational veil." 159 F.3d at 603. The court described only two situations in which the "sham" prospect may arise, neither of which is present here: when the only entity that would benefit from a fee award is an ineligible co-plaintiff, *see Unification Church*, 762 F.2d at 1082; or when an eligible entity "merely acted as [the] puppet" of ineligible non-parties. *NAM*, 159 F.3d at 603–04.

Defendants have not actually alleged that AAU is a front or sham, because it quite clearly is not. AAU was founded in 1900. Ex. 1 ¶ 2. It is an independent 501(c)(3) organization independently managed by its own staff and board of directors. *Id.* AAU provides a forum for the development and implementation of institutional and national policies promoting strong programs of academic research and scholarship and undergraduate, graduate, and professional education. *Id.* ¶ 6. Despite a reference to two time entries—totaling less than 0.14% of the attorney time on

[1] This provision alone belies Defendants' claim that the EAJA should be reserved only for "impecunious" parties. Doc No. 112 at 2. That extra-textual, purposivist reading of the EAJA is impossible to square with the best indicator of Congress's intent: the text of the statute. *See Penobscot Nation v. Frey*, 3 F.4th 484, 491 (1st Cir. 2021) ("When the text is unambiguous and the statutory scheme is coherent and consistent, we do not look to legislative history or Congressional intent."); *Republic of Hungary v. Simon*, 604 U.S. 115, 137 (2025) ("It is the statutory text . . . that best reflects Congress's intent . . . .").

this case—Defendants make no serious argument that AAU acted as the "puppet" of an ineligible party, nor do they have any basis for doing so. *See id.* ¶ 4 ("AAU—and not its individual members or affiliates—had responsibility and authority to direct the actions of its counsel throughout this litigation. AAU did this entirely with its own staff, not the staff of any of its members, which took those staff away from other duties and responsibilities.").[2]

But Defendants take issue with *how* AAU *could have* financed this litigation, suggesting that perhaps some of AAU's members, rather than AAU itself, were actually liable for the attorneys' fees and that AAU must go beyond establishing its eligibility to prove it is not a sham organization. This is both inaccurate and premised on a misreading of *NAM*: *NAM* asks which entity is liable for the fees and whether there is evidence the association is a front or a sham. It does not purport to lay out a requirement that every EAJA petitioner must prove through specific evidence they are the "real party in interest"—and in fact, called that idea "questionable." *NAM*, 159 F.3d at 604 & n.7. Nor did *NAM* suggest the specific words or level of detail in the declaration submitted by NAM in that case was required in every case going forward. AAU has already submitted a sworn declaration from its President that it is the entity responsible for legal fees in this matter. Doc No. 108-1 ¶ 3. *NAM* does not require more.

II. AAU's supplemental declaration makes clear that AAU alone is liable for the attorneys' fees and costs in this matter.

Although Defendants' inquiry into AAU's funding and members is both unnecessary and irrelevant to the question of EAJA eligibility, AAU has submitted a supplemental declaration from

[2] The other cases Defendants cite do not help them either: In *Louisiana ex rel. Guste v. Lee*, the court explicitly found that "if the ineligible party's participation is nominal or narrow, then the eligible parties should not be denied the access that Congress sought to ensure by enacting the EAJA." 853 F.2d 1219, 1225 (5th Cir. 1988). And *Sierra Club v. United States Army Corps of Engineers* does not even address control over litigation by ineligible parties. 776 F.2d 383, 393–94 (2d Cir. 1985).

its President, Barbara R. Snyder, to assure the Court that none of the aspersions cast by Defendants are warranted.

As laid out in that declaration, AAU is liable for the attorneys' fees in this matter and has ensured it has sufficient funding for such fees through supplemental dues, its usual process for funding special projects. Ex. 1 ¶¶ 3, 7, 9. AAU has 69 U.S.-based members, from which it collects annual dues that fund AAU's work. *Id.* ¶¶ 2, 5, 6. When annual dues are not sufficient to cover special projects, AAU collects supplemental dues. *Id.* ¶ 7. For example, in fiscal year 2020, when AAU started opinion polling to gain insights regarding public perception of research universities, annual dues did not provide sufficient funding to cover the cost of that work, so AAU collected supplemental dues, charged equally to all its U.S.-based members. *Id.* ¶ 8. When AAU became a plaintiff in a lawsuit for the first time in February 2025, to challenge the National Institutes of Health's indirect cost Rate Cap Policy in this case, AAU initially funded the litigation from its dues reserves. *Id.* ¶ 9. When it became clear that AAU's reserves would not be sufficient to cover the full cost of litigation, AAU, as it has in the past, collected supplemental dues from its members. *Id.* All 69 U.S.-based members, regardless of whether they were a plaintiff or a declarant in any case, paid the same amount in supplemental dues. *Id.*

As for the non-AAU-member plaintiffs, the American Council on Education ("ACE") and Association of Public and Land-grant Universities ("APLU") each informally agreed to contribute a small percentage of the litigation costs—7.2% for ACE and 19.8% for APLU. *Id.* ¶ 11. AAU does not have a legally binding or otherwise enforceable agreement with either entity. *Id.* As 501(c)(3) organizations with fewer than 500 employees, both ACE and APLU are EAJA-eligible entities. *Id.* But ACE and APLU did not join in this fee motion because, again, ACE and APLU are not liable for the attorneys' fees and costs of this litigation—only AAU is liable. *Id.* ¶¶ 3, 11.

As with everything AAU does, in funding this case, it relied on dues collected in equal amounts from all 69 of its U.S.-based members—regardless of whether the members were Plaintiffs or declarants in this case or any other. While Defendants' requested discovery was never relevant to the EAJA analysis, in light of AAU's supplemental declaration, the Court should deny Defendants' Motion for Leave to Conduct Limited Discovery as moot.

CONCLUSION

For the reasons outlined above, AAU respectfully requests that this Court deny Defendants' Motion for Leave to Conduct Limited Discovery.

Dated: June 15, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 2026, I caused the foregoing to be electronically filed with the clerk of the court for the U.S. District Court for the District of Massachusetts, by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record, a true and correct copy of the foregoing instrument, and all attachments.

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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ASSOCIATION OF AMERICAN UNIVERSITIES, *et al.*	)	
Plaintiffs,	)	
v.	)	Case No. 1:25-cv-10346
DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*,	)	
Defendants.	)	

SUPPLEMENTAL DECLARATION OF BARBARA R. SNYDER

I, Barbara R. Snyder, hereby state and declare as follows.

1. I am the President of the Association of American Universities ("AAU") and am deeply familiar with both the organization and this litigation. I have personal knowledge of the contents of this declaration.

2. AAU was founded in 1900. It is an independent 501(c)(3) organization independently managed by its own staff and board of directors. It currently has 71 member universities, 69 of which are based in the United States.

3. As stated in my original declaration, AAU was responsible for all Plaintiffs' attorneys' fees and costs for this litigation. For the avoidance of doubt, AAU was liable for all fees and costs listed in Exhibits 3 and 5 of the fee motion. *See* Dkt. 108-3, 108-5. There was no agreement with any of AAU's members to be liable for or otherwise pay the costs of this litigation.

4. AAU—and not its individual members or affiliates—had responsibility and authority to direct the actions of its counsel throughout this litigation. AAU did this entirely with

its own staff, not the staff of any of its members, which took those staff away from other duties and responsibilities.

5. AAU is funded almost entirely by dues from its member universities. Dues make up on average over 90% of AAU's annual funding. In FY25 dues made up 94% of our annual funding. In FY25 AAU received additional funding from interest and dividends on investments (3.2%), meeting revenue (2.4%), and grant revenue (0.4%). AAU does not have an endowment and does not receive philanthropic donations.

6. These dues fund AAU's work to provide a forum for the development and implementation of institutional and national policies promoting strong programs of academic research and scholarship and undergraduate, graduate, and professional education.

7. When annual dues are not sufficient to cover specific projects, AAU collects supplemental dues. For both annual and supplemental dues, all of AAU's U.S.-based member universities pay the same amount, regardless of size or any other factor, while AAU's two non-U.S. member universities pay lower dues.

8. As an example, in FY20, AAU decided to start public opinion polling to gain insights regarding public perception of research universities. Because annual dues did not provide sufficient finding to cover the cost of this work, AAU's U.S.-based members were assessed additional supplemental dues, charged equally to all of its members.

9. We have done the same with litigation. When AAU became a plaintiff in a lawsuit for the first time in February 2025, to challenge the National Institutes of Health's indirect cost rate cap policy, AAU initially funded the litigation from its dues reserves. Upon realizing that AAU's reserves would not be sufficient to cover the full cost of litigation, as it has in the past, AAU collected supplemental dues from its members. All 69 U.S.-based members paid the same

amount in supplemental dues, regardless of whether they were a plaintiff or a declarant in any of the cases in which AAU is responsible for legal fees.

10. AAU does not have any legally enforceable agreements with any of its members, other Plaintiffs, or any groups or individuals to cover the costs of litigation, in this or any other cases.

11. As for the non-AAU-member plaintiffs, the American Council on Education ("ACE") and Association of Public and Land-grant Universities ("APLU") each informally agreed to contribute a small percentage of the litigation costs—7.2% for ACE and 19.8% for APLU. AAU does not have a legally binding or otherwise enforceable agreement with either entity. As 501(c)(3) organizations with less than 500 employees, both ACE and APLU are EAJA-eligible entities. ACE and APLU did not join in this fee motion because ACE and APLU are not liable for the attorneys' fees and costs of this litigation—only AAU is liable for the attorneys' fees and costs.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 12, 2026, in Washington, DC.

Barbara R. Snyder