

Judge Brian E. Murphy: ELECTRONIC ORDER entered. The parties are directed to submit supplemental briefing of no more than ten pages on the applicability of the Federal Advisory Committee Act (FACA) to the Advisory Committee on Immunization Practices (ACIP) by Thursday, March 5, 2026. In *Kennedy v. Braidwood Mgmt., Inc.*, 606 U.S. 748 (2025), the Supreme Court stated that the U.S. Preventive Services Task Force (PSTF), a comparable “entity within the Department of Health and Human Services, [which] issues public recommendations about preventive healthcare services,” *id.* at 753, “ceased to be an advisory committee in 2010 when Congress enacted the Affordable Care Act [“ACA”] and empowered the Task Force to issue binding recommendations,” *id.* at 766 n.3 (internal quotation marks omitted). The ACA provisions granting authority to PSTF and ACIP are similar, see 42 U.S.C. s. 300gg-13(a)(1)-(2), and the *Braidwood* Court appeared to discount ACIP’s subsequently issued regulation, requiring adoption of its recommendations, see 45 C.F.R. s. 147.130(a)(1)(ii), as a relevant distinction, see 606 U.S. at 767 & n.4 (concluding that the ACA did not violate the Appointments Clause, in part, because “the Secretary can use his rulemaking authority... to establish a formal review process,” like the one applicable to ACIP, even though the Secretary had not done so). Given the Supreme Court’s characterization of PSTF’s authority (and, by extension, ACIP’s authority) as the power “to issue binding regulations,” *Braidwood*, 606 U.S. at 766 n.3, the Court is uncertain as to whether ACIP continues to “perform primarily... advisory [as opposed to ‘operational’] functions” for purposes of FACA. See *Nat. Res. Def. Council v. EPA*, 806 F. Supp. 275, 276 (D.D.C. 1992) (quoting 42 C.F.R. s. 101-6.1004(g) [sic] (1992), current version at 41 C.F.R. s. 102-3.40(j) (2025)). (MBM) (Entered: 02/27/2026)