IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

AMERICAN ACADEMY OF PEDIATRICS, et al.,
Plaintiffs,

Case No. 1:25-cv-11916-BEM

v.

ROBERT F. KENNEDY, JR., et al.,
Defendants.

PROPOSED INTERVENORS' MOTION FOR LEAVE TO FILE REPLY MEMORANDUM IN SUPPORT OF EMERGENCY MOTION TO INTERVENE

Proposed Intervenors Children's Health Defense, Andrea Shaw, Shanticia Nelson, Dr. Paul Thomas, and Dr. Kenneth Stoller respectfully move for leave to file the attached Reply Memorandum in further support of their Emergency Motion to Intervene as Defendants and Counterclaim Plaintiffs (ECF No. 248).

Good cause exists for a reply. Plaintiffs' Opposition (ECF No. 268) attaches three exhibits not previously before the Court—disciplinary orders from Washington, Oregon, and California—and accuses Proposed Intervenors of "misrepresent[ing] the reasons" Drs. Thomas and Stoller lost their licenses. ECF No. 268 at 6. The Opposition also raises new arguments regarding standing, the scope of the counterclaims, and the adequacy of amicus participation that were not addressed in Defendants' earlier opposition (ECF No. 267). A reply is necessary to correct the record and respond to these new arguments.

The proposed Reply Memorandum is attached included in this motion. A proposed order is submitted herewith.

Filing the reply will not delay the proceedings. Proposed Intervenors are prepared to participate in the March 4, 2026 hearing on the existing schedule.

WHEREFORE, Proposed Intervenors respectfully request that the Court grant leave to file the attached Reply Memorandum.

CERTIFICATE OF CONFERENCE

Pursuant to L.R. 7.1(a)(2), undersigned counsel certifies that on February 27, 2026, at 8:30 a.m., he emailed counsel for all parties regarding the relief sought herein and requested a response by 10:30 a.m. Defendants' counsel does not object to the filing of a reply brief and I have not heard back from Plaintiffs' counsel.

Dated: February 27, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this date, the foregoing document was filed electronically via the Court's CM/ECF system, which will send notification to all counsel of record.

Dated: February 27, 2026

/s/ Richard Jaffe
Richard Jaffe

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMERICAN ACADEMY OF PEDIATRICS, et al.,

Plaintiffs,

v. Case No. 1:25-cv-11916-BEM

ROBERT F. KENNEDY, JR., et al.,

Defendants.

[PROPOSED] ORDER GRANTING LEAVE TO FILE REPLY IN SUPPORT OF EMERGENCY MOTION TO INTERVENE

Upon consideration of the Emergency Motion to Intervene as Defendants and Counterclaim Plaintiffs filed by Children's Health Defense, Andrea Shaw, Shanticia Nelson, Dr. Paul Thomas, and Dr. Kenneth Stoller (ECF Nos. 248, 249), the oppositions filed by Defendants (ECF No. 267) and Plaintiffs (ECF No. 268), and Proposed Intervenors' motion for leave to file a reply, it is hereby

ORDERED that Proposed Intervenors' motion for leave to file a reply memorandum in support of their Emergency Motion to Intervene is **GRANTED**; and it is further

ORDERED that the Reply Memorandum attached to the motion as Exhibit A is deemed filed as of the date of this Order.

SO ORDERED.

Dated: _____

_____
Hon. Brian E. Murphy
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

AMERICAN ACADEMY OF PEDIATRICS, et al.,
Plaintiffs,
v.
ROBERT F. KENNEDY, JR., et al.,
Defendants.

Case No. 1:25-cv-11916 (BEM)

REPLY IN SUPPORT OF EMERGENCY MOTION TO INTERVENE

INTRODUCTION

Two oppositions confirm the central premise of this motion: no existing party can or will present the substantive case that the childhood immunization schedule Plaintiffs seek to restore was never cumulatively tested for safety.

The government's opposition does not dispute a single factual assertion in Intervenors' motion—not the IOM findings, not the deaths of the Shaw twins and Sa'Niya Carter, not the enforcement infrastructure. In seven pages, Defendants argue only that they "adequately represent" Intervenors' interests—while the record of their forty-five-page preliminary injunction opposition demonstrates they cannot and will not make the arguments Intervenors seek to present.

Plaintiffs' opposition takes a different approach. AAP leads with seven pages arguing that Proposed Intervenors lack Article III standing — a framework that governs who may invoke federal jurisdiction, not who may intervene as a defendant. AAP then addresses *Rule 24(a)(2)* but filters every factor through the premise that this is "an APA process case, not a schedule safety case." ECF No. 268 at 4 and hence concludes that Proposed Intervenors' substantive safety evidence is "irrelevant." *Id.* Yet AAP's own Fourth Amended Complaint contains no fewer than forty paragraphs making substantive claims that the schedule is safe, that changes will kill children, and that anyone who questions the schedule is spreading misinformation. AAP cannot spend ninety

pages telling this Court that children will die and then argue that intervenors' evidence about children who did die is beside the point.

Finally, should the Court require additional time to resolve the intervention motion, Intervenors offer an alternative that would permit the Court to consider their record without delay.

I. THE GOVERNMENT'S OPPOSITION DEMONSTRATES THE INADEQUACY OF REPRESENTATION.

Defendants contend they share the "same ultimate goal" as Proposed Intervenors and therefore adequately represent their interests. ECF No. 267 at 3. This conflates the *goal* with the *basis*. Defendants defend the Secretary's legal authority to revise the schedule. Intervenors defend the substantive reasons the revision was necessary. These are categorically different positions.

In forty-five pages of preliminary injunction briefing, Defendants never cited the Institute of Medicine's 2002 or 2013 reports—the most directly relevant scientific findings on cumulative schedule safety. Never identified a single child harmed under the prior schedule. Never challenged Plaintiffs' foundational allegation in Paragraph 34 of the Fourth Amended Complaint that the childhood vaccine schedule is "rigorously tested." Never addressed the enforcement infrastructure—HEDIS quality metrics, Red Book contraindication framework, combination vaccine protocols—that converts schedule recommendations into de facto mandates.

In seven pages opposing intervention, Defendants repeated the pattern. They did not contest any of these omissions. They did not argue the IOM reports are irrelevant, the deaths immaterial, or the enforcement infrastructure beside the point. They asserted adequate representation while the record of that representation speaks for itself.

This is not a disagreement over "litigation strategy." *Pharm. Rsch. & Mfrs. of Am. v. Comm'r, Maine Dep't of Human Servs., 201 F.R.D. 12, 14–15 (D. Me. 2001)*. AAP invokes this

standard for the proposition that "only an extreme failure to present obvious arguments constitutes inadequate representation." *Id.* The government's omissions qualify. It is a structural incapacity. The government's own agencies endorsed the prior schedule for decades. Its FDA licensure decisions, CDC endorsements, and VICP adjudications all rest on the premise that the schedule was safe as administered. The government is institutionally incapable of arguing that the protocol it endorsed for a generation caused harm to identifiable children. That is not a strategic choice subject to deference—it is a disqualification from representing the interests Proposed Intervenors seek to protect.

Trbovich v. United Mine Workers, 404 U.S. 528, 538 n.10 (1972), requires only that representation "may be" inadequate. The government's own briefing removes all doubt. And the point is confirmed by the *Thomas v. Monarez* proceeding, No. 1:25-cv-02685 (D.D.C.), where the Department of Justice has moved to dismiss the claims of Proposed Intervenors Drs. Thomas and Stoller. The government is not merely failing to advance Intervenors' arguments—it is actively litigating against two of them in a parallel federal case.

Defendants' impairment argument fares no better. They contend a preliminary injunction here will not impede Intervenors' separate litigation because "district courts are not bound by other districts." ECF No. 267 at 5. *Rule 24(a)(2)* does not require stare decisis or collateral estoppel effect. It requires that disposition "may as a practical matter impair or impede" the movant's ability to protect its interest. *Fed. R. Civ. P. 24(a)(2)*. If this Court finds that the childhood immunization schedule was "rigorously tested"—as Plaintiffs allege and Defendants have not contested—that finding will be cited in the *Shaw* RICO action and in every subsequent proceeding where the schedule's safety is at issue. Practical impairment does not require binding precedent.

Notably, Defendants do not attack the timeliness of the motion, do not mention Jose Perez, do not argue that Intervenors' interests are not real. Their opposition confirms the gap and offers amicus participation as a substitute. But an amicus cannot present facts and arguments at the preliminary injunction hearing, cannot respond to the Court's questions, cannot file counterclaims, and cannot protect the *Shaw* RICO action from collateral prejudice. The government will not address the substantive safety claims underlying AAP's complaint. Someone must. The gap in representation requires party status.

II. PLAINTIFFS' OPPOSITION CONFLATES ARTICLE III STANDING WITH *RULE 24* INTERVENTION.

A. Defensive Intervention Does Not Require Article III Standing.

Plaintiffs arguing that Proposed Intervenors lack Article III standing does not apply to its intervention as a defendant. *Town of Chester, N.Y. v. Laroe Estates, Inc., 581 U.S. 433, 439 (2017)*, holds that "an intervenor of right must demonstrate Article III standing when it seeks additional relief beyond that which the plaintiff requests." The operative phrase is "additional relief." Proposed Intervenors seek to intervene both as defendants—to oppose the preliminary injunction—and as counterclaim plaintiffs—to assert affirmative claims. These are severable postures.

As defendants opposing the preliminary injunction, Proposed Intervenors do not invoke the Court's jurisdiction. Plaintiffs did. Proposed Intervenors resist the exercise of jurisdiction by opposing the relief Plaintiffs seek. Standing is the requirement for invoking federal jurisdiction, not for resisting its exercise. The *Rule 24(a)(2)* test—interest, impairment, inadequacy—governs whether these particular intervenors may join the defense. It is not the Article III inquiry.

Even if the Court concludes that Proposed Intervenors' counterclaims require independent standing under *Town of Chester*, that would at most warrant severing or deferring the counterclaims—not denying intervention altogether. The Court can grant defensive intervention under *Rule 24(a)(2)*, permit Intervenors to oppose the preliminary injunction, and address standing for the counterclaims separately. Plaintiffs' opposition treats standing as an all-or-nothing bar to the entire motion. It is not.

B. Plaintiffs' Standing Cases Are Inapposite to Defensive Intervention.

Every standing case Plaintiffs cite involves a party seeking to invoke federal jurisdiction as a plaintiff—not a party seeking to defend against relief already sought.[1]

FDA v. Alliance for Hippocratic Medicine, 602 U.S. 367 (2024), involved physicians who never prescribed the drug at issue and whose theory of injury required a speculative chain: someone else takes mifepristone, suffers complications, presents at their emergency room, and compels them to provide care. *Id. at 383–90*. The Court found that causal chain too attenuated. Here, the causal chain is direct: the schedule was administered to identified children, those children

[1] Plaintiffs are correct that CHD has not identified individual members with standing to sue, and CHD does not press associational standing here. CHD relies on organizational standing—the same theory this Court sustained for AAP. This Court held that organizational standing requires only "a perceptible impairment of an organization's activities" and found AAP's diversion of resources sufficient under that "not [] demanding standard." ECF No. 168 at 12–13. That holding is law of the case. *See Arizona v. California*, 460 U.S. 605, 618 (1983). CHD satisfies the same standard: it diverts resources to counter AAP's representations, suffers competitive injury as a publisher in the vaccine safety information market, and has seen direct interference with its educational mission. *See Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). The individual Counterclaim Plaintiffs—Shaw, Nelson, Thomas, and Stoller—independently establish standing through injuries that are concrete, particularized, and directly traceable to the schedule AAP seeks to restore. And this Court held that once one party establishes standing, others need not independently do so. ECF No. 168 at 17 (citing *Town of Chester, N.Y. v. Laroe Ests., Inc.*, 581 U.S. 433, 439–40 (2017)). Plaintiffs' citation of prior intervention denials (ECF No. 268 at 2 n.1) is unavailing. *Couris v. Lawson* and *McDonald v. Lawson* were a consolidated Ninth Circuit appeal of a denied preliminary injunction against California's AB 2098. CHD moved to intervene in that appeal to protect a preliminary injunction it had already obtained in the parallel case *Hoang v. Bonta*, No. 2:22-cv-02147-WBS-AC (E.D. Cal. Jan. 25, 2023). The legislature repealed AB 2098 while the appeal was pending—a direct consequence of the injunction CHD obtained—and the Ninth Circuit dismissed the consolidated appeal as moot. The summary denial of an intervention motion in a case rendered moot by the intervenor's own litigation success is hardly a standing ruling. *Cellco Partnership v. County of Monmouth*, 2024 WL 4579506 (D.N.J. Oct. 25, 2024), involved 5G cell towers with no concrete organizational injuries. None displaces the standard this Court has already adopted.

died, and Plaintiffs seek to restore the same schedule. Andrea Shaw's twins and Shanticia Nelson's daughter are not hypothetical patients in a speculative chain of events. They are dead.

Clapper v. Amnesty International USA, 568 U.S. 398 (2013), involved organizations that feared future government surveillance under FISA *Section 702*. The Court found the injury "highly speculative" because it depended on the government choosing to target them. *Id. at 410–14*. Here, the injury is retrospective and documented: children received the schedule, children died. If the PI restores that schedule, children in the vaccination window—like Jose Perez—face the same protocol with no cumulative safety data supporting it.

Summers v. Earth Island Institute, 555 U.S. 488 (2009), denied standing where the organization could not identify any member who would be affected by the specific agency action at issue. Here, CHD identifies Andrea Shaw, Shanticia Nelson, and Jose Perez—named individuals whose children were harmed by or are currently subject to the schedule Plaintiffs seek to restore.

C. Plaintiffs' Perez Analysis Ignores the Categorical Differences.

Plaintiffs invoke the prior judge's denial of Jose Perez's intervention motion. ECF No. 268 at 14–15. That motion was filed pro se by a single individual who sought to intervene based on a generalized interest in vaccine safety. This motion is filed by experienced counsel on behalf of five proposed intervenors—an organization, two mothers whose children died after receiving the schedule at issue, and two physicians whose licenses were revoked or suspended for deviating from it. The comparison is inapt.

In particular, CHD's organizational standing—its diversion of resources, its competitive injury under the Lanham Act, and its role as a publisher whose market is directly affected by AAP's representations—was not before the Court in the Perez motion. Neither were the physician intervenors' injuries: Dr. Thomas's suspension shortly after publishing research on modified

schedules, and Dr. Stoller's license revocation for issuing medical exemptions beyond the ACIP contraindications and precautions is a matter of public recor. These injuries arise directly from the enforcement infrastructure that converts the schedule into a de facto mandate—the very infrastructure Plaintiffs' own declarants describe.

D. AAP's Exhibits Confirm the Enforcement Infrastructure.

Plaintiffs attach disciplinary records to argue that Intervenors "misrepresent" why Drs. Thomas and Stoller lost their licenses. ECF No. 268 at 5–7; Exs. A–C. The records confirm Intervenors' central claim: that the ACIP schedule functions as a legally enforceable standard of care, and that physicians who deviate from it face professional destruction.

The Oregon Medical Board emergency-suspended Dr. Thomas's license shortly after he published a peer-reviewed vaccinated-versus-unvaccinated study—the type of comparative analysis the Institute of Medicine had recommended since 2002. He contested the charges before entering a stipulated order surrendering his license, in which he "neither admits nor denies" the Board's allegations. Ex. B at 2. Plaintiffs present the surrender as a concession of wrongdoing. It was the resolution of a fight that began with discipline for publishing research.

Dr. Stoller's California revocation is more revealing still. The Administrative Law Judge found that "the standard of care for medical exemptions, as set forth in the ACIP guidelines adopted by CDPH, requires that exemptions be based on recognized contraindications or precautions." *In re Stoller*, Cal. Med. Bd. Decision at 32 (2021). Dr. Stoller's clinical judgment—genetic testing to identify children at heightened risk—had "no medical basis" only because genetic predisposition is not an ACIP-recognized contraindication. The New Mexico Medical Board was equally explicit: "the standard of care is to follow the ACIP Guidelines and AAP Red

Book." *In re Stoller*, N.M. Med. Bd. Case No. 2021-025. These findings do not refute the enforcement infrastructure claim. They document it in the boards' own words.

Plaintiffs' causation argument fares no better. They contend that Dr. Thomas's agreement never to reapply in Oregon and Dr. Stoller's revocation in California "break the chain of causation" because neither physician can currently practice. ECF No. 268 at 6–7. This assumes Oregon and California are the only jurisdictions in the United States. Both physicians are board-certified. If the counterclaims succeed and the ACIP enforcement framework is declared unlawful, both can seek licensure in any state without a disciplinary regime that treats individualized clinical judgment as per se misconduct.

And the comparison to *Alliance for Hippocratic Medicine* fails for the same reason AAP's other standing arguments fail: the doctors in *Hippocratic Medicine* never prescribed the drug at issue and relied on a speculative chain of third-party conduct. *602 U.S. at 383–90*. Drs. Thomas and Stoller practiced the medicine for which they were disciplined. Their injuries are concrete, documented, and directly traceable to the enforcement framework AAP seeks to restore.

III. AAP'S OWN COMPLAINT DEMONSTRATES THIS IS A SUBSTANTIVE SAFETY CASE.

AAP argues that Proposed Intervenors' substantive safety evidence is irrelevant because this is "an APA process case, not a schedule safety case." ECF No. 268 at 4. AAP's own Fourth Amended Complaint refutes this characterization. The complaint contains dozens of paragraphs making substantive claims about vaccine safety, predicting substantive harms from schedule changes, and attacking as "misinformation" the very scientific questions Intervenors seek to raise. These are not process arguments. They are the merits—and they demand a substantive response that no existing party has provided.

A. AAP's Complaint Makes Extensive Substantive Safety Claims.

Paragraph 34 of the Fourth Amended Complaint asserts that "[t]he safety of a vaccine is rigorously tested before receiving FDA authorization" and that "Work Groups of the ACIP thoroughly examine the safety data." 4AC ¶34. Paragraphs 36–37 describe Phase I–IV clinical trials "typically span[ning] 5–10 years with thousands to tens of thousands of participants." 4AC ¶¶36–37. These are representations about the scientific adequacy of the testing regime—not about APA procedures.

Intervenors' Proposed Answer directly denies this factual premise. The IOM found in 2002 that "there is no study that compares an unvaccinated control group with children exposed to the complete immunization schedule." In 2013, the IOM found that "studies designed to examine the long-term effects of the cumulative number of vaccines or other aspects of the immunization schedule have not been conducted." The distinction between individual vaccine licensure and cumulative schedule safety is one the IOM explicitly drew—and one that no party in this case has raised. Paragraph 34 is the foundation of AAP's case. It is false. And no one in this courtroom has said so.

B. AAP Predicts Substantive Harm to Children From Schedule Changes.

AAP's complaint is built on predictions of death and serious illness. Paragraph 2 alleges the January 5 Action is "the most egregious, reckless, and dangerous" because Defendants failed to consider whether changes "would lead to increases in serious illness and death due to vaccine-preventable illnesses." 4AC ¶2. Paragraph 67 catalogs eight categories of substantive harm the Assessment and Decision Memo allegedly failed to consider, including "the impact that the schedule changes would have on illnesses, hospitalizations, deaths, and disabilities." 4AC ¶67(a).

The complaint goes further. Paragraph 86(e) presents a modeling study predicting that delaying hepatitis B vaccination by two months would cause "additional 90 acute infections, 75 chronic infections, 29 HBV-related deaths," and that delaying to age twelve for infants of unknown maternal status would cause "additional 2,351 acute infections, 744 deaths, and $368 million in excess costs." 4AC ¶86(e). Paragraph 98 recounts a CDC epidemiologist's finding that "at least 7,000 children were hospitalized with Covid" and "152 had died." 4AC ¶98. Paragraph 116 warns that missed rotavirus doses "cannot be recovered, permanently increasing the risk of dehydration-related hospitalizations," and that meningococcal disease "progresses rapidly and carries a high fatality rate." 4AC ¶116.

Paragraph 125 predicts the challenged actions "will result in decreased rates of vaccination, increased rates of transmission, long-lasting illness, and ultimately preventable deaths." 4AC ¶125. Paragraph 128 calls denial of COVID vaccines to infants "medically dangerous and ethically indefensible." 4AC ¶128. Paragraph 112 describes the public health system as "a house on fire" on which the challenged actions "pour gasoline." 4AC ¶112.

These are not arguments about notice-and-comment procedures. They are arguments about whether children will live or die. AAP has placed the substantive safety of the immunization schedule squarely at issue.

C. AAP Attacks Substantive Safety Questions as "Misinformation."

The Fourth Amended Complaint devotes multiple paragraphs to a table purporting to identify "inaccurate, misleading, or not supported" statements made at ACIP meetings. 4AC ¶¶84–85, 87, 89. AAP labels as "false" the claim that pre-licensure Hepatitis B trials had "no control groups and only days of safety follow-up." 4AC ¶85. AAP labels as "false" claims linking the

Hepatitis B vaccine to SIDS. *Id.* AAP labels as "misleading" emphasis on myocarditis risk from COVID vaccination. 4AC ¶89.

These are substantive scientific disputes—and AAP's characterization of them as settled "misinformation" is itself contested. The IOM's 2002 report found evidence "inadequate to accept or reject a causal relationship" between multiple immunizations and several chronic conditions. Individual vaccine studies with follow-up periods of 21 days to 24 months do not resolve questions about cumulative schedule effects—the very gap the IOM identified. Intervenors' Proposed Answer addresses these disputes directly. No existing party does.

AAP's own international experts confirm the substantive nature of the dispute. Danish health official Dr. Anders Hviid is quoted: "you cannot adopt the public health policies of another country unless the population, health care system and prevalence of infectious diseases match." 4AC ¶62. Germany's NITAG chair Dr. Reinhard Berner states that decisions not to include certain vaccines were "not based on safety concerns about the vaccines, but on the prevalence of diseases there." 4AC ¶64. AAP offered these experts to prove the schedule is safe. Intervenors' answer explains why they prove nothing of the kind: Denmark's universal healthcare, near-universal prenatal screening, and centralized medical records from birth to death make comparison to the United States inapt, as AAP's own Paragraph 67(h) inadvertently concedes.

D. Intervenors' Proposed Answer and Counterclaims Directly Engage AAP's Substantive Claims.

The claim that this case is "just about process" becomes untenable when AAP's specific allegations are placed beside Intervenors' specific responses:

AAP alleges the schedule is "rigorously tested." 4AC ¶34. Intervenors deny this and seek a declaration that no study has established the cumulative safety of the schedule as administered, citing the IOM's 2002 and 2013 findings. Proposed Counterclaim I.

AAP alleges schedule changes will cause "increases in serious illness and death." 4AC ¶2. Intervenors answer that the prior schedule itself caused serious illness and death: Andrea Shaw's twins died on May 1, 2025 after receiving scheduled immunizations; Shanticia Nelson's daughter Sa'Niya Carter received twelve antigens in a single visit and died less than twelve hours later. Proposed Answer ¶¶59–62.

AAP presents vaccine testing as thorough and multi-phase. 4AC ¶¶36–37. Intervenors answer that this describes individual vaccine licensure, not the cumulative 72-dose regimen, and that AAP's own leading spokesperson has argued placebo-controlled trials of the schedule would be "unethical"—ensuring the cumulative schedule can never be safety-tested by AAP's own standards.

AAP models 744 deaths from delayed Hep B vaccination. 4AC ¶86(e). Intervenors answer that the modeling study assumes no adverse events from the vaccine itself—an assumption the IOM found unsupported—and that Andrea Shaw's twins received Hep B at birth among other scheduled vaccines and died.

AAP counts 7,000 hospitalizations and 152 child deaths from COVID. 4AC ¶98. Intervenors answer that AAP counts only harms from disease while ignoring harms from the vaccine, and that the ACIP's September 2025 vote to move COVID to shared clinical decision-making was itself a recognition that the universal recommendation was not adequately supported.

AAP describes the burden of shared clinical decision-making as a "disruption." 4AC ¶¶107–111. Intervenors' Counterclaim III answers that this "disruption" is the burden of informed

consent, and that under the prior schedule, AAP's enforcement infrastructure—HEDIS quality metrics, board discipline, liability threats, combination vaccine protocols—converted recommendations into mandates without meaningful disclosure. Dr. Thomas was suspended shortly after publishing research on modified schedules. Dr. Stoller's license was revoked for genetic testing before vaccination. The "disruption" of SCDM is the disruption of a compelled-speech regime.

AAP's own declarant Dr. Galluci "consulted her malpractice coverage" upon learning of the schedule changes. 4AC ¶128. This inadvertently confirms the coercive infrastructure: physicians face liability for following *or* deviating from the schedule. Intervenors' Counterclaim IV addresses the listener's rights dimension—families systematically denied information about cumulative schedule uncertainty by physicians who were themselves denied that information through AAP's compelled-speech framework.

AAP alleges the schedule changes will result in "preventable deaths." 4AC ¶125. Intervenors answer: the prior schedule also resulted in deaths—deaths that AAP has never acknowledged in this proceeding. The Vaccine Injury Compensation Program has paid over $5 billion in awards. The question is not whether schedule changes carry risk. It is whether a court should restore a schedule whose cumulative safety has never been studied based on the representations of parties who refuse to study it.

E. The Government Has Not Made These Arguments.

In forty-five pages opposing the preliminary injunction, Defendants never cited the IOM's 2002 or 2013 reports. Never identified a single child harmed under the prior schedule. Never challenged Paragraph 34's "rigorously tested" representation. Never mentioned the Vaccine Injury Compensation Program. Never addressed the enforcement infrastructure—HEDIS metrics, Red

Book, combination vaccines—that AAP's own declarants describe. Never contested AAP's "misinformation" table or offered the other side of those scientific disputes.

This is the gap that intervention is designed to fill. AAP has placed the substantive safety of the immunization schedule at the center of this case. It has asked this Court to find that the schedule is safe, that changes will kill children, and that questioning the schedule constitutes misinformation. The government cannot answer these claims on the merits because its own agencies endorsed the schedule for decades. Intervenors can and do answer them. That is why intervention is necessary, why the counterclaims are relevant, and why AAP's attempt to characterize this as "just a process case" fails.

IV. PROPOSED INTERVENORS SATISFY ALL REQUIREMENTS FOR INTERVENTION OF RIGHT.

A. The Motion Is Timely.

Neither opposition challenges timeliness. The motion was filed within days of the Fourth Amended Complaint and well before the March 4 hearing. No party will be prejudiced by intervention at this stage.

B. Proposed Intervenors Have a Direct and Substantial Interest.

CHD's organizational interest is threefold: diversion of resources to counter AAP's representations and competitive injury as a publisher in the vaccine safety information market, and the interests of its community of like-minded health care professionals, individuals, and families. Andrea Shaw and Shanticia Nelson have the most direct interest imaginable: their children died after receiving the schedule Plaintiffs seek to restore. Drs. Thomas and Stoller's medical practices were destroyed by the enforcement infrastructure that converts the schedule into a mandate. Jose Perez's child is currently in the vaccination window.

Plaintiffs rely on *Public Service Co. of New Hampshire v. Patch, 136 F.3d 197, 205 (1st Cir. 1998)*, where ratepayers' interest in lower electric rates was too "undifferentiated" and "generalized" to support intervention. ECF No. 268 at 8–10. The analogy fails on its own terms. The ratepayers in *Public Service Co.* shared an interest identical to every other electricity consumer in New Hampshire; their hoped-for benefit was hypothetical—"anybody's guess" whether market variables would deliver lower rates. *136 F.3d at 205–06*. Here, the injuries are neither generalized nor contingent. Andrea Shaw's twins are dead. Sa'Niya Carter is dead. Dr. Thomas's license was revoked. Dr. Stoller's license was revoked. These are individualized, documented harms inflicted by the specific schedule Plaintiffs seek to restore—not speculative benefits from regulatory restructuring.

And Plaintiffs cannot credibly invoke *Public Service Co.*'s "generalized interest" framework while their own complaint devotes dozens of paragraphs to the substantive safety of the schedule, predicts that children will die from the challenged changes (4AC ¶¶2, 86(e), 98, 125), and asks this Court to restore the schedule to save lives. If the schedule's content matters enough to justify a preliminary injunction, it matters enough to give standing to the families whose children died under it.

C. Disposition Will Impair Intervenors' Interests.

If this Court grants the preliminary injunction based on AAP's unchallenged representation that the schedule is "rigorously tested," that finding will be cited as judicial endorsement in the *Shaw v. AAP* RICO proceeding, No. 1:26-cv-00207 (D.D.C.), and in every subsequent challenge to the schedule. That is not "speculation about the unfettered choices made by independent actors not before the courts." *Hippocratic Med.*, *602 U.S. at 383*. It is a direct consequence of this Court's own findings. AAP characterizes the preliminary injunction as merely "restor[ing] the status quo."

ECF No. 268 at 12. But restoring a schedule on the basis that it is safe and "rigorously tested" is a substantive judicial determination, not a neutral procedural reset—and that determination will have consequences beyond this proceeding that no other litigation can undo. The existence of the *Shaw* RICO action in another forum does not diminish the impairment; that case cannot vacate a preliminary injunction entered here or erase the factual findings supporting it. The practical impairment is concrete and immediate.

D. No Existing Party Adequately Represents Intervenors' Interests.

As demonstrated in Section I, the government defends its authority to act but does not—and structurally cannot—make the substantive case that the prior schedule caused harm. As demonstrated in Section III, AAP's complaint raises substantive safety issues that the government has left entirely unanswered. The *Trbovich* standard requires only that representation "may be" inadequate. The record here leaves no room for doubt.

V. IN THE ALTERNATIVE, THE COURT SHOULD GRANT PERMISSIVE INTERVENTION.

Even if the Court finds that one or more elements of intervention of right are not satisfied, permissive intervention under *Rule 24(b)* is warranted. Intervenors' claims share common questions of law and fact with the main action—principally, whether the childhood immunization schedule is supported by adequate safety testing. Intervention will not delay the proceedings; Intervenors are prepared to participate in the March 4 hearing. And the contribution Intervenors offer—the IOM findings, the family declarations, the enforcement infrastructure evidence—is material that no existing party has presented and that bears directly on the Court's evaluation of irreparable harm and the public interest.

AAP suggests that Intervenors' expertise "may be appropriately deployed through amicus briefs." ECF No. 268 at 18. That is not enough. The Court read the parties' papers and conducted a full hearing on February 13 without the benefit of the record Intervenors present. Intervenors' purpose is to assist the Court in reaching a more fully informed decision. But the facts and arguments Intervenors offer must be tested and vetted through the adversarial process—challenged by the parties and examined by the Court at oral argument. That requires party status, not amicus observation. Intervenors bring different interests and a different point of view from the existing parties. Immunization policy is a highly technical area. The Court may find useful a perspective grounded not in agency process but in the clinical and human consequences of the schedule as administered. Intervenors believe they add value to the decisional process, and that vetting their arguments through adversarial proceedings will strengthen the Court's decision—whatever it may be.

VI. THE COUNTERCLAIMS ARE COMPULSORY AND SHOULD NOT BE SEVERED.

AAP argues that Proposed Intervenors' counterclaims exceed the scope of this proceeding because this is "an APA process case, not a schedule safety case." ECF No. 268 at 4, 17–19. AAP's own Fourth Amended Complaint refutes the premise. As shown, the complaint alleges that the childhood immunization schedule has been "rigorously tested" (4AC ¶ 34), that the challenged changes will cause "serious illness and death" (4AC ¶ 2), that children will suffer "preventable deaths" (4AC ¶ 125), and that allowing the changes to stand will hurt and kill children (4AC ¶¶ 86(e), 98). Intervenors' counterclaims assert that no study has ever established that the cumulative schedule is safe or produces more benefit than harm—a direct rebuttal of the factual assertions underpinning AAP's case. AAP cannot build its entire complaint on the substantive

safety of the schedule and then argue that counterclaims addressing that same subject exceed the proceeding's scope.

Because this case is in substance about the safety and testing of the childhood immunization schedule, Counterclaims I and II are compulsory under *Rule 13(a)*. Counterclaim I seeks a declaration that no study has ever established the cumulative safety of the schedule as administered—the direct negation of AAP's central factual premise in ¶ 34. Counterclaim II alleges that AAP's "rigorously tested" representations, made in commercial publications generating over $100 million in annual revenue, constitute false advertising under the Lanham Act. Both arise from the identical factual nucleus as AAP's claims.

Under *Rule 13(a)*, a counterclaim "arising out of the same transaction or occurrence as the opposing party's claim" must be asserted or forfeited. *Southern Construction Co. v. Pickard, 371 U.S. 57, 60 (1962)* (compulsory counterclaim rule exists "to prevent multiplicity of actions and to achieve resolution in a single lawsuit of all disputes arising out of common matters"). Where a counterclaim is compulsory, the court has supplemental jurisdiction to hear it regardless of whether it would independently qualify for federal jurisdiction. *Baker v. Gold Seal Liquors, Inc., 417 U.S. 467, 469 n.1 (1974)*; *see also Global NAPs, Inc. v. Verizon New England Inc., 603 F.3d 71, 87 (1st Cir. 2010)*. A counterclaim that arises from the same transaction as the opposing party's claim does not "exceed the scope" of the proceeding. It is the proceeding.

Even as to Counterclaims III and IV, which raise First Amendment claims extending beyond the APA dispute, the Court need not deny intervention to manage the counterclaims' scope. *Rule 24(a)(2)* intervention as a defendant is independent of whether counterclaims survive scrutiny. The Court may grant intervention, accept the proposed answer, and address those

counterclaims on whatever schedule it deems appropriate. *See, e.g., Beauregard, Inc. v. Sword Servs. LLC, 107 F.3d 351, 353 (5th Cir. 1997)*.

CONCLUSION

For the foregoing reasons, Proposed Intervenors respectfully request that the Court grant the Emergency Motion to Intervene, accept the Proposed Answer and Counterclaims for filing, and permit Intervenors to participate in the March 4, 2026 preliminary injunction hearing.

In the alternative, should the Court conclude that resolution of the intervention motion requires too much additional time given the urgency of the pending preliminary injunction, Proposed Intervenors respectfully request that the Court treat the filings in support of the motion to intervene as an amicus submission for purposes of the preliminary injunction proceedings, without prejudice to the pending motion. Both Plaintiffs and Defendants have acknowledged that amicus participation would be appropriate. This would permit the Court to consider Intervenors' record in evaluating the preliminary injunction without the additional burden of resolving intervention at this time.

Respectfully submitted,

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