IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SOCIETY OF GENERAL INTERNAL MEDICINE & NORTH AMERICAN PRIMARY CARE RESEARCH GROUP, *Plaintiffs*, v. ROBERT F. KENNEDY, JR., *et al.*, *Defendants*.	Case No. 8:25-cv-02751-BAH

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR LEAVE TO FILE AN AMENDED AND SUPPLEMENTAL COMPLAINT

In their motion for leave to file an amended and supplemental complaint, Plaintiffs explained that the primary purpose of their request was to "add allegations and claims regarding" a new final agency action that Defendants took in July 2026, which is related to but distinct from the action challenged in the original complaint: Defendants' halt of grant review and grantmaking at the Agency for Healthcare Research and Quality (AHRQ) in the summer of 2025. *See* Mot. to Amend at 1, ECF No. 41. As Plaintiffs lay out in the proposed amended pleading, on July 15, 2026, Defendants sent a generic form notice to approximately 150 then-AHRQ grantees, informing them that their requests for continuation funding—many of which had been pending for a year or more—had been denied. *See* Proposed Am. Compl. ¶¶ 43–51, ECF No. 41-1. Plaintiffs seek to expand their existing claims to challenge this new agency action as arbitrary, capricious, and contrary to law. *See id.* ¶¶ 64–65, 77, 80–81. And they seek to add a new claim that this mass denial of continuation awards, coupled with the continued effects of Defendants' halt of AHRQ grantmaking in the summer of 2025, means that Defendants cannot and will not spend all of

AHRQ's fiscal year 2026 appropriations before funds expire in less than a month's time. *See id.* ¶¶ 69–71.

In opposing that motion, Defendants largely ignore the existence and legal gravamen of the new allegations and claims related to their mass denial of continuation funding. Instead, they primarily argue that this and other recent developments show that Plaintiffs were wrong to allege that, in the summer of 2025, Defendants halted AHRQ's grantmaking program. That argument, however, is irrelevant to whether this Court should grant leave to amend. The relevant question is whether it would be futile for Plaintiffs to add new claims that Defendants' distinct action in the summer of 2026—a mass termination of grant projects—was arbitrary, capricious, and contrary to law. Amending to add those claims would not be futile.

Defendants' arguments also fail on their own terms. In the proposed amended and supplemental complaint, Plaintiffs continue to adequately plead claims related to Defendants' ongoing failure to process new grant applications as required by law, which began in the summer of 2025 and continues to this day. Because Defendants have not established that amendment would be futile and raise no other objection to amendment, the Court should grant the motion for leave to file an amended and supplemental complaint.

I. The Court need not apply a 12(b)(6) standard in evaluating futility.

Throughout their response, Defendants maintain that the Court should deny the motion for leave to amend if Defendants can show "that Plaintiffs' proposed amendments cannot withstand a motion to dismiss." Opp. to Mot. to Amend at 3–4, ECF No. 43. But Defendants overstate Plaintiffs' burden and the weight of the Court's analysis at this juncture. True, it is "within the trial court's *discretion* to deny leave to amend when it is clear that a claim cannot withstand a Rule 12(b)(6) motion." *Ruben v. Wells Fargo Bank, N.A.*, No. 25-cv-450, 2026 WL 1140694, at *3 (D. Md. Apr. 28, 2026) (emphasis added). But "it does not follow that every plaintiff seeking leave to amend claims *must* demonstrate that the claims can withstand a Rule 12(b)(6) motion." *Sulton v. Baltimore Cnty.*, No. 18-cv-2864, 2021 WL 82925, at *3 (D. Md. Jan. 11, 2021) (emphasis added). "Such a requirement would render superfluous the Fourth Circuit's definition of a futile claim as one that is 'clearly insufficient or frivolous on its face,' and would run contrary to the Fourth Circuit's well-established 'policy to liberally allow amendment in keeping with the spirit of Federal Rule of Civil Procedure 15(a).'" *Id.* (first quoting *Johnson v. Oroweat Foods Co*., 785 F.2d 503, 510 (4th Cir. 1986), and then quoting *Galustian v. Peter*, 591 F.3d 724, 729 (4th Cir. 2010)).

In deciding the motion here, there is good reason not to evaluate Plaintiffs' new claims and their supporting allegations under a 12(b)(6) standard. As this Court has recognized, applying that standard may be "premature" where "[t]he arguments in support of 12(b)(6) analysis at this stage are not robust," in light of "significant difference in detail between the motions to dismiss the existing complaint and the opposition to efforts to amend the complaint." *Abuarqob v. Castro*, No. 24-cv-3467, 2025 WL 3539203, at *7 (D. Md. Dec. 10, 2025). Here, Defendants offer only a short response to the arguments in favor of the motion for leave to amend and supplement the complaint. And, as explained in more detail below, *infra* at 4–9, much of that brief focuses on the continued viability of Plaintiffs' preexisting claims—*not* whether Plaintiffs have stated claims that Defendants' July 2026 mass denial of continuation awards was contrary to law and arbitrary and capricious.

To ensure a clean record and a full presentation of the relevant issues, then, the Court should grant the motion for leave to amend and supplement the complaint and should allow the parties to re-brief any remaining 12(b)(6) issues based on that updated set of allegations and claims. *See Abuarqob*, 2025 WL 3539203, at *7 (granting motion for leave to amend and ordering parties to renew motion to dismiss briefing). Because the parties are familiar with the issues in the case, Plaintiffs would be amenable to an expedited briefing schedule to ensure that this Court can efficiently consider the validity of all of Plaintiffs' claims.

II. Plaintiffs have sufficiently pleaded new claims related to Defendants' July 2026 mass denial of continuation funding.

In their proposed amended and supplemental complaint, Plaintiffs seek to raise three claims arising out of Defendants' July 15, 2026, blanket denial of continuation funding. First, Plaintiffs claim that this agency action was contrary to law because Defendants did not rely on or consider any of the factors laid out in AHRQ's governing regulations, 42 C.F.R. § 67.17, when deciding to formally cut off dozens of stalled AHRQ projects. *See* Proposed Am. Compl. ¶¶ 46, 64–65. That agency action has additionally left at least one clear AHRQ statutory mandate unfulfilled. *Id.* ¶¶ 50, 62 (cataloging denial of funding for comparative clinical effectiveness training programs, a grant initiative required by 42 U.S.C. § 299b-37(e)). Second, Plaintiffs claim that this mass denial of funding, when coupled with the still-stalled review process for new grant applications, means Defendants will not spend all of AHRQ's fiscal year 2026 appropriations before they expire on September 30, 2026. *See id.* ¶¶ 69–71; *see also id.* ¶ 77 (adding allegations about fiscal year 2026 funds to claim that Defendants have acted contrary to the Impoundment Control Act). Third, Plaintiffs claim that the mass denial of continuation funding was arbitrary and capricious because Defendants did not "act reasonably or reasonably explain their decision." *Id.* ¶ 80. As relief, Plaintiffs add a request that this Court "[d]eclare unlawful and set aside" that "mass denial of continuation awards" as "arbitrary, capricious, an abuse of discretion, or otherwise contrary to law." *Id.*, Prayer for Relief ¶ (c). The Court should allow Plaintiffs to supplement their complaint to add these claims and supporting allegations.

Defendants' opposition says little about the validity of these new claims for relief. With respect to the additions to Plaintiffs' claims that Defendants have acted contrary to the PHS Act and AHRQ regulations, as well as arbitrarily and capriciously, Defendants say essentially nothing. They do not address the applicability or requirements of the regulations governing AHRQ continuation-funding decisions set out in 42 C.F.R. § 67.17. They do not assert that AHRQ is otherwise supporting grants for comparative clinical effectiveness training, as required by 42 U.S.C. § 299b-37(e). And they do not explain how the agency could have acted reasonably or offered a reasonable explanation when it used a boilerplate rationale that was facially inapplicable to a broad swath of the projects denied funding. Defendants have thus forfeited the opportunity to argue that it would be futile to add allegations to the new Counts I and V in the proposed amended and supplemental complaint. *See United States v. Smith*, 75 F.4th 459, 468 (4th Cir. 2023) (recognizing that "a party forfeits an argument by failing to develop it in" a brief, "even if its brief takes a passing shot at the issue" (citation omitted)).

While Defendants do address the new allegations and claims that Defendants have contravened AHRQ's fiscal year 2026 appropriations statute, *see* Proposed Am. Compl. ¶¶ 69–71, 77, Defendants largely repeat the argument raised in their motion to dismiss: that because Congress gave AHRQ a lump-sum appropriation, Defendants can allow nearly the entire appropriation to expire without being used for *any* appropriate purpose. *Compare* Opp. to Mot. to Amend at 7–8, *with* Mem. in Supp. of Mot. to Dismiss at 23–25, ECF No. 33-1. For the reasons Plaintiffs explained in opposing that motion, that theory is inconsistent with well-established principles of federal appropriations law. *See* Opp. to Mot. to Dismiss at 25–26, ECF No. 34.

Beyond that, Defendants contend only that Plaintiffs rely on "speculation[]" when they allege that Defendants have no plan or ability to spend AHRQ's fiscal year 2026 funds before they expire at the end of September 2026. *See* Opp. to Mot. to Amend at 3, 7. Defendants' argument, however, either ignores or contradicts the allegations in the proposed amended and supplemental complaint, which assert that Defendants have no viable and permissible path to spending the full AHRQ appropriation (or even a substantial part of it) before funds expire at the end of September. *See* Proposed Am. Compl. ¶¶ 41, 51, 54. Defendants cannot oppose amendment by denying the allegations in the proposed new pleading. *See Int'l Painters & Allied Trades Indus. Pension Fund v. Sixth Region Remodeling LLC*, No. 23-cv-517, 2023 WL 8934017, at *2 (D. Md. Dec. 21, 2023) (recognizing that court must "accept[] as true the allegations in the" proposed amended pleading in evaluating a Rule 15 motion).

Moreover, to contest the allegations, Defendants offer only irrelevant evidence or vague allegations of how AHRQ may spend funds going forward. The only concrete evidence to which Defendants point is an HHS press release announcing a new AHRQ partnership with the National Institutes of Health to provide funding for healthy school meals. *See* Opp. to Mot. to Amend at 3. Defendants' own material about that initiative, however, makes clear that HHS will not make information on how to apply for this new grant program available until "mid-September." *See* HHS, Real Food in Schools[1] (stating, as of September 2, 2026, that "[g]rant application details will be available soon. Please check back in mid-September for more information about how to apply"). That timeline is far too late for the agency to somehow solicit applications, review proposals, and award funds before tens of millions of dollars of appropriated funds expire just a couple of weeks later. Defendants also say that "[o]ther projects are underway." Opp. to Mot. to Amend at 3. Such a vague and barebones assertion by counsel is insufficient to establish that

[1] https://www.hhs.gov/real-food-in-schools/index.html (last visited Sept. 2, 2026).

Plaintiffs fail to state a claim that Defendants have acted contrary to AHRQ's fiscal year 2026 appropriation statute, let alone for this Court to find that claim frivolous.

III. The proposed amended and supplemental complaint continues to state viable claims with respect to AHRQ's summer 2025 actions and its ongoing failures to review new grant applications.

Defendants devote most of their opposition to explaining why, in their view, the proposed amendments "strengthen Defendants' grounds for dismissal" of the claims raised in the original complaint. Opp. to Mot. to Amend at 5. Plaintiffs, however, have continued to state viable claims for relief related to the halt of AHRQ grantmaking in the summer of 2025 and its continued effect.

Defendants primarily contend that Plaintiffs cannot raise claims about a "shut down" of AHRQ's grant program in the summer of 2025 because, after that date, AHRQ began granting some (and eventually denied many more) applications for continuation funding. *See id.* But the proposed amended and supplemental complaint accounts for these developments. With respect to continuation awards, the proposed pleading now focuses largely on the mass denial of requests from the summer of 2026—which was carried out in violation of AHRQ grantmaking regulations, was done unreasonably and without reasonable explanation, and will result in AHRQ's failure to carry out statutory mandates. *See* Proposed Am. Compl. ¶¶ 64–65, 71, 80. To the extent that allegations remain about the prior halt of continuation awards, they relate to the months of silence that grantees experienced between summer 2025 and the July 15, 2026, mass denial, as well as the halt's attendant effects. *See, e.g.*, *id.* ¶¶ 38–39 (alleging that Defendants failed to spend AHRQ's fiscal year 2025 appropriation in part because of the stalled review of requests for continuation funding). With respect to applications for new grant funding, the proposed amended and supplemental complaint continues to make the same allegations and claims because the situation remains unchanged. AHRQ has not held any peer review meetings since December 2024, and it has not approved a single request for new grant funding. *See id.* ¶¶ 34, 41, 54; *see also* Ex. A to

Opp. to Mot. to Amend, ECF No. 43-1 (listing projects in "Budget Year" three or later). Defendants have not provided evidence otherwise. For the reasons laid out in Plaintiffs' opposition to Defendants' motion to dismiss, the claims related to Defendants' unlawful halt of grant review and withholding of answers on pending grant applications are viable. *See* Opp. to Mot. to Dismiss at 22–25.

Defendants' renewed argument as to Plaintiffs' standing, *see* Opp. to Mot. to Amend at 6, fails for much the same reason. Defendants are right, of course, that any of Plaintiffs' members who were denied continuation funding on July 15, 2026, are no longer among those "not receiving timely and adequate responses to their applications." *See* Compl. ¶ 40, ECF No. 1. But the proposed amended and supplemental pleading again accounts for that development. There, Plaintiffs carefully explain that each organization has members injured by Defendants because they *either* (1) "spent a year or more waiting for news on their continuation-award applications" and then "received formulaic notices of non-award from the agency," or (2) are "potential grantee[s]" who have still not "receiv[ed] adequate and timely responses to their applications" for new grant funding. Proposed Am. Compl. ¶¶ 56–58. In addition, Plaintiff NAPCRG is still awaiting a response on its pending application for AHRQ funding for a major conference on practice-based research networks, which AHRQ has long supported. *Id.* ¶ 60. Members in that first category are harmed because "los[ing] out on federal funds … is a sufficiently concrete and imminent injury to satisfy Article III." *Dep't of Com. v. New York*, 588 U.S. 752, 767 (2019). And members in that second category, as well as NAPCRG itself, are still experiencing harm from the lost "opportunity to compete for a pool of funds for which they are able and willing to compete." *Glob. Health Council v. Trump*, 153 F.4th 1, 12 (D.C. Cir. 2025). As Plaintiffs have explained, they need not show that any given applicant is likely to be awarded funding to establish standing under this theory. *See* Opp. to Mot. to Dismiss at 13–15.

Finally, Defendants are wrong that the proposed amended and supplemental complaint fails to identify a discrete final agency action capable of being challenged under the Administrative Procedure Act (APA). *See* Opp. to Mot. to Amend at 7. To the contrary, that pleading identifies two distinct but interrelated final agency actions. First, Plaintiffs challenge the halt of AHRQ's review process for grant applications, which was put into effect by at least the summer of 2025 and remains ongoing with respect to applications for new grant funding. *See* Proposed Am. Compl. ¶¶ 34, 36, 38, 40–41. As Plaintiffs explained in their opposition to the motion to dismiss, that halt is final agency action under the APA: It is an agency policy of general applicability, and it has had practical and legal effect for both Defendants and prospective grantees left with no chance to compete for AHRQ funding. *See* Opp. to Mot. to Dismiss at 15–18. Second, Plaintiffs challenge the mass denial of continuation awards in July 2026. *See* Proposed Am. Compl. ¶¶ 43–51. That, too, is final agency action. *See NAACP v. United States*, No. 8:25-cv-00965-JRR, 2026 WL 1265450, at *30–31 (D. Md. May 8, 2026) (gathering cases holding that discontinuation or termination of grant awards qualify as "final agency actions … that are subject to review under the APA"). To be sure, parts of Plaintiffs' proposed complaint describe the cumulative effect of these two related but distinct agency actions, which have substantially impaired AHRQ's grantmaking program over a now multi-year period. Those allegations, however, do not undermine the discreteness or finality of the agency actions ultimately challenged in the proposed new pleading, which are amenable to this Court's review under the APA.

CONCLUSION

The Court should grant Plaintiffs leave to file the amended and supplemental complaint.

Dated: September 2, 2026

Respectfully submitted,

/s/ Stephanie B. Garlock
Stephanie B. Garlock (D. Md. Bar No. 31594)
Allison M. Zieve (admitted *pro hac vice*)
Cormac A. Early (admitted *pro hac vice*)
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

Attorneys for Plaintiffs