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

MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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February 17, 2026

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INTRODUCTION

More than two decades ago, Congress assigned the Agency for Healthcare Research and Quality (AHRQ) the statutory mission of promoting the quality, effectiveness, and accessibility of healthcare. To ensure that the agency carries out that mission, Congress instructed AHRQ—a component of the Department of Health and Human Services (HHS)—to support research into a wide variety of healthcare topics, including by awarding grants to external researchers. For decades, Congress has appropriated hundreds of millions of dollars annually for AHRQ to do so.

In the spring of 2025, the leadership of HHS and AHRQ took a conscious step to bring AHRQ's historic grantmaking program entirely to a halt, through a targeted reduction-in-force that eliminated the agency's entire capacity to award grants. As a result of this agency action, by mid-July 2025 AHRQ grantmaking had stopped completely. Plaintiffs in this case are two associations of health researchers, including a substantial number of researchers who received or sought grant support from AHRQ. Their complaint raises claims to challenge this stoppage of the agency's grantmaking and the resulting unreasonable delay in the processing of individual grant applications.

Seeking dismissal, Defendants primarily rely on a development post-dating the case's filing: AHRQ's decision to process a limited number of awards for renewed funding for current grantees, made on the eve of the preliminary injunction hearing. But Defendants do not argue—let alone show—that, by briefly processing a subset of grant applications, they abandoned their decision to shut off AHRQ grantmaking or negated that decision's devastating effects for healthcare research. Plaintiffs have standing to challenge Defendants' halt of AHRQ grantmaking because it has prevented Plaintiffs' members (and one Plaintiff) from competing for AHRQ funding, with substantial, direct consequences for those applicants.

Further, no threshold barriers bar review under the Administrative Procedure Act (APA).

Defendants' arguments otherwise would allow administrative agencies to shield substantial developments from judicial review, merely by labeling the change as temporary and offering vague promises to "evaluate" options going forward. Finally, Plaintiffs have adequately pled their claims for relief, including those focused on the clear commands, in both statute and regulation, for AHRQ to process and make decisions on grant applications. While Defendants repeatedly point to provisions giving AHRQ discretion over what kind of research to support, AHRQ has no discretion to refuse to carry out its statutory mandate overall. Because Plaintiffs adequately allege that Defendants have engaged in such a refusal, the Court should deny the motion to dismiss.

BACKGROUND

A. AHRQ's Statutory and Regulatory Research Mandate

The Healthcare Research and Quality Act of 1999, Pub. L. No. 106-129, 113 Stat. 1653 (Dec. 6, 1999), an amendment to the Public Health Service Act, designated AHRQ as the "principal agency for health care research and quality" in the federal government, 42 U.S.C. § 299b-1(a)(1). When he signed the act into law, President Bill Clinton observed that AHRQ would "serve as a bridge between the best science in the world [and] the best health care in the world," including by "stimulat[ing] evidence-based medicine, sponsor[ing] primary care research," and serving as "a principal source of research" to improve access to affordable health care. Statement on Signing the Healthcare Research and Quality Act of 1999 (Dec. 6, 1999).[1] Over the following two decades, AHRQ served as the federal government's hub for health services research—a field focused on how the health system works, how to support patients and providers in choosing care, and how to improve health through care delivery. *See* AHRQ, *Health Services Research at AHRQ*.[2]

[1] https://www.presidency.ucsb.edu/documents/statement-signing-the-healthcare-research-and-quality-act-1999.

[2] https://www.ahrq.gov/cpi/about/health-services-research.html (last updated Mar. 2025).

The Public Health Service Act tasks AHRQ with "promot[ing] health care quality improvement by conducting and supporting" research on a variety of topics—including healthcare technology, costs, and quality—and developing ways to disseminate those findings to patients, providers, and policymakers. 42 U.S.C. § 299(b). To help AHRQ carry out that task, the statute authorizes the agency to award grants for research "on health care and on systems for the delivery of such care," including research related to "the quality, effectiveness, efficiency, appropriateness, and value of health care services." *Id.* § 299a(a). AHRQ is also "the principal source of funding for primary care practice research" within HHS. *Id.* § 299b-4(b).

The Public Health Service Act requires the agency to operate grantmaking programs focused on certain aspects of the healthcare system. For example, the statute mandates that the HHS Secretary, through AHRQ, provide grants to develop, test, and disseminate new techniques and best practices to ensure that patients understand their medical treatment and can participate in decisions about their care. *Id.* § 299b-36(e). Other parts of the statute similarly require AHRQ to support, via grants, projects focused on improving the healthcare system and patient care. *See, e.g.*, *id*. § 299b(b) (instructing agency to "employ research strategies" that link research with clinical practice, including via grants); *id.* § 299b-1(b) (mandating the funding, via grant, of at least one center on therapeutics research); *id.* § 299b-1(c) (requiring AHRQ to "conduct and support research and build private-public partnerships" to "reduc[e] errors and improv[e] patient safety"); *id.* § 299b-34(a) (mandating grants or contracts related to quality improvement); *id.* § 299b-37(e) (requiring grant program to train researchers in comparative clinical effectiveness).

AHRQ is required by law to take steps to process and evaluate any grant application it receives. The Public Health Service Act mandates that "[a]ppropriate technical and scientific peer review shall be conducted with respect to each application for a grant … under" AHRQ's purview.

Id. § 299c-1(a)(1). The Act requires the AHRQ Director to establish peer review groups made up of experts, including experts outside of government. *Id.* § 299c-1(c). And it instructs that peer review groups "shall report [their] findings and recommendations regarding" each application to the AHRQ Director. *Id.* § 299c-1(a)(2). By law, the AHRQ Director cannot approve a grant application unless it "is recommended for approval by a peer review group." *Id.* § 299c-1(b).

AHRQ has also, via regulation, adopted requirements for grantmaking. *See* 42 C.F.R. Part 67.[3] Echoing the statutory commands, those regulations mandate that "[a]ll applications" for grants, other than for certain small awards, "will be submitted … to a peer review group," and that the peer review group "shall make a written report … on each application." *Id.* § 67.15(a)(1), (4). That peer review report "shall address the scientific and technical merit of the proposed project," with a "critique of the project" based on various enumerated criteria—including the significance and originality of the proposal, the adequacy of the proposed methodology, and the applicant's qualifications and experience. *Id.* § 67.15(a)(4)(ii), (c)(1). AHRQ's regulations then state that, after that "appropriate peer review," the AHRQ Director "will evaluate applications recommended for further consideration" and make a decision as to each. *Id.* § 67.16. Ultimately, the Director may "give consideration for funding, defer for a later decision, pending receipt of additional information, or give no further consideration for funding." *Id.* For projects that the Director chooses to award, AHRQ will authorize projects that continue over a multi-year "project period." *Id.* § 67.17(b). However, grantees must still go through a non-competitive application process and receive a continuation award each year to secure funding from the agency. *Id.* § 67.17(d).

Congress has appropriated funds for AHRQ to carry out its duties, including supporting

[3] These regulations refer to AHRQ's predecessor entity and its Administrator. When Congress redesignated the agency as AHRQ, the legislation clarified that "[a]ny reference[s] in law" to those predecessors are "deemed" references to AHRQ. Pub. L. No. 106-129, § 928, 113 Stat. at 1670.

health services research through grantmaking. In fiscal year 2025, Congress provided AHRQ with $369 million. *See* Full-Year Continuing Appropriations and Extensions Act, Pub. L. No. 119-4, § 1101, 139 Stat. 9, 10–11 (Mar. 15, 2025) (approving appropriation for fiscal year 2025 at unchanged levels unless otherwise noted) (FY 2025 Appropriations Act); Further Consolidated Appropriations Act, Pub. L. No. 118-47, div. D, tit. II, 138 Stat. 460, 661–62 (Mar. 23, 2024) (setting funding level for fiscal year 2024) (2024 Appropriations Act). As Congress made clear in supporting material, only a small portion of that amount—$73 million—was to be spent on program support, leaving hundreds of millions to be spent instead on grants and other projects to fund health services research. *See* S. Rep. No. 118-84 at 156 (2023); Explanatory Statement, Further Consolidated Appropriations Act 2024 – Division D – Labor, Health and Human Services, Education and Related Agencies Appropriations Act, 2024 (indicating that Senate Report 118-84 "is approved and indicates Congressional intent" unless otherwise noted). In fiscal year 2026, Congress provided AHRQ with $345 million. *See* Consolidated Appropriations Act, 2026, Pub. L. No. 119-75, Div. B, tit. II (Feb. 3, 2026). Again, Congress directed the agency to spend more than half of that appropriation, directly, on research on healthcare quality, costs, and outcomes. *See* S. Rep. No. 119-55 at 191 (2025) (instructing AHRQ to spend $214,109,000 on research).

In addition to these annual funds, AHRQ receives a mandatory appropriation from the Patient-Centered Outcomes Research (PCOR) Trust Fund—a fund created by the Affordable Care Act. *See* 26 U.S.C. § 9511(a), (b)(4), (d)(2)(C) (creating fund and designating that a portion be transferred to HHS for AHRQ functions). AHRQ must use some of these funds to "build capacity for comparative clinical effectiveness research" through "a grant program that provides for the training of researchers." 42 U.S.C. § 299b-37(e). In fiscal year 2025, AHRQ received $126 million from the PCOR Trust Fund. *See* HHS, *Agency for Healthcare Research and Quality's Fiscal Year*

2025 Justification of Estimates for Appropriations Committees at 10.[4] In fiscal year 2026, AHRQ is set to receive $133 million from the PCOR Trust Fund. *See* S. Rep. No. 119-55 at 190.

B. The Challenged Agency Actions and Inaction with Respect to Grantmaking

Shortly after his confirmation as Secretary of HHS, Defendant Kennedy announced a large-scale reorganization of HHS that would eliminate AHRQ as an independent entity, despite the lack of statutory authority to do so. Compl. ¶ 26; *see* HHS, *HHS Announces Transformation to Make America Healthy Again* (Mar. 27, 2025).[5] To begin implementing that reorganization, on April 1, 2025, Defendants Kennedy and HHS sent a reduction-in-force (RIF) notice to approximately 123 staffers across AHRQ. Compl. ¶ 26.

Defendants' mass firing at AHRQ gutted AHRQ's grantmaking staff. *Id.* ¶¶ 30–34. By cutting all grants staff, Defendants forced AHRQ's grantmaking process to a standstill. *Id.* ¶ 34. After the RIF, the agency stopped referring applications to peer review, reviewing applications' scientific and technical merit, and making decisions on whether to approve or deny applications for new funding. *Id.* ¶¶ 31–32, 34–35. Between April 1 and the time of this case's filing in mid-August 2025, the agency did not issue a single award for a new project. *Id.* ¶ 33. Defendants also destroyed AHRQ's capacity to make continuation awards for projects approved in previous years. Between July 14, 2025, and the filing of this complaint, AHRQ did not approve a single continuation award, either. *Id.* ¶ 34. Indeed, by late July, an AHRQ official had publicly conceded that Defendants' RIF had made it impossible for AHRQ to continue making grants. In an email to grantees awaiting news on their applications for continuation awards, the Director of one of AHRQ's key grantmaking offices—an office that now had no staff—stated: "As a result of recent

[4] https://www.ahrq.gov/sites/default/files/wysiwyg/cpi/about/mission/budget/2025/fy2025-cj.pdf.

[5] https://www.hhs.gov/press-room/hhs-restructuring-doge.html.

reduction in force at HHS, AHRQ's grants management staff were separated from Federal service on July 14, 2025. We are currently unable to process grant awards and are evaluating options for our grant program." *Id.* The email went on to warn that, "[w]ith the permanent separat[ion] of these staff, FY2025 funding of non-competing applications [wa]s uncertain." *Id.*

C. Procedural History

On August 21, 2025, Plaintiffs Society of General Internal Medicine (SGIM) and North American Primary Care Research Group (NAPCRG) filed suit under the APA to challenge the halt of AHRQ grantmaking and the resulting unreasonable delay in the processing of AHRQ grant applications.

That same day, Plaintiffs moved for a preliminary injunction. *See* PI Mot., ECF 4. In that motion, Plaintiffs asked the Court to order Defendants to restart the review of grant applications and the award of grants using AHRQ's appropriated funds. *Id.* at 2. Plaintiffs also asked for temporary relief to address the risk that AHRQ's appropriations for fiscal year 2025 would expire without being used for the purposes Congress intended. *Id.*

At the preliminary injunction hearing on September 11, 2025, counsel for the government announced that the previous day—for the first time since early July—AHRQ had issued a handful of continuation awards, after outsourcing grants administration work to another HHS component. *See* Tr. of PI Hearing at 29:18–20, ECF 18. Counsel added that AHRQ expected to approve several additional continuation awards in the coming weeks. *Id.* By the end of the fiscal year on September 30, AHRQ had approved another 67 continuation awards. *See* Ex. A to Defs. MTD 2–5, ECF 33-2 (Defs. Ex. A). However, the agency did not approve any *new* awards and did not restart its statutorily mandated peer review process. *See id.* (listing no awards in their first budget year); Tr. of PI Hearing at 30:18–19 (representing that no peer review would restart before September 30).

Following additional motions practice, the Court entered an order to ensure that any

disputed, unspent fiscal year 2025 appropriation would be available at the end of the litigation, to preserve the chance of meaningful relief on Plaintiffs' claims. *See* Order, ECF 27. Plaintiffs withdrew their request for a preliminary injunction. *See* Notice, ECF 22.

LEGAL STANDARDS

Federal Rule of Civil Procedure 12(b)(1) governs challenges to "a court's authority to hear the matter brought by a complaint," including "motions to dismiss for mootness and for lack of standing." *Stone v. Trump*, 400 F. Supp. 3d 317, 333–34 (D. Md. 2019). A motion under Rule 12(b)(1) "may advance a facial challenge, asserting that the allegations in the complaint are insufficient to establish subject matter jurisdiction, or a factual challenge, asserting that the jurisdictional allegations of the complaint [are] not true." *Id.* at 334 (internal quotation marks omitted, alteration in original). Where defendants raise only a facial challenge, the court must "accept as true all well-pleaded facts in a complaint and construe them in the light most favorable to the plaintiff." *Wikimedia Found. v. NSA*, 857 F.3d 193, 208 (4th Cir. 2017).

Federal Rule of Civil Procedure 12(b)(6) governs challenges for failure to state a claim. To survive a 12(b)(6) motion, "a complaint must plead sufficient facts to 'state a claim to relief that is plausible on its face.'" *Finn v. Humane Soc'y of the U.S.*, 160 F.4th 92, 97 (4th Cir. 2025) (citation omitted). In conducting that review, the court "is obliged to accept the complaint's factual allegations as true and view them in the light most favorable to the plaintiff." *Barbour v. Garland*, 105 F.4th 579, 589 (4th Cir. 2024).

ARGUMENT

I. Defendants' issuance of some continuation awards in September neither undermines the allegations in the complaint nor moots the case.

Defendants start with an argument that, they say, goes to whether the complaint adequately states claims related to the halt of AHRQ grantmaking. *See* Memo in Supp. of MTD 9–11, ECF

33-1 (MTD Memo). In support, Defendants ask the Court to take judicial notice of entries in the HHS TAGGS database cataloging the spate of continuation awards that AHRQ issued between September 10 and September 30, 2025. *See id.* at 9 & Ex. A. In Defendants' telling, this information renders implausible "the allegation that AHRQ shut down its grant program" by August 2025, undermining the validity of Plaintiffs' claims for relief. *Id.* at 10–11. Defendants, however, misunderstand when facts can be subject to judicial notice on a 12(b)(6) motion, and incorrectly suggest that a factual dispute exists as to the circumstances at the time of the complaint.

A. "[W]hether information is the proper subject of judicial notice depends on the use to which it is put." *Clatterbuck v. City of Charlottesville*, 708 F.3d 549, 558 (4th Cir. 2013), *abrogated on other grounds by Reed v. Town of Gilbert*, 576 U.S. 155 (2015). While Defendants are generally correct that district courts may take judicial notice of public records when resolving a motion to dismiss, they may only do so "to test the legal feasibility of the complaint without weighing the evidence that might be offered to support or contradict it." *Id.* In addition, courts must construe any judicially noticed facts "in the light most favorable to" Plaintiffs. *Id.* Thus, a district court cannot consider the contents of a public record "as evidence contradicting the complaint" on a motion to dismiss. *Zak v. Chelsea Therapeutics Int'l, Ltd.*, 780 F.3d 597, 607 (4th Cir. 2015); *see, e.g.*, *Garnick v. Wake Forest Univ. Baptist Med. Ctr.*, 629 F. Supp. 3d 352, 363 (M.D.N.C. 2022) (refusing to notice government website for facts contradicting allegations as to purpose of disputed fees).

Defendants ask the Court to take judicial notice of the September 2025 TAGGS database entries for just such an improper purpose. In their complaint, Plaintiffs allege facts to support their claim that, as of August 21, 2025, Defendants had decided and taken steps to destroy AHRQ's ability to carry out its statutory grantmaking functions. Plaintiffs allege, among other things, that

Defendants engaged in a mass firing targeted at AHRQ's grants staff, Compl. ¶¶ 31–33; that they thereafter halted all peer review of grant applications, *id.* ¶ 31; that they had fully stopped approving both new and continuation awards by the summer of 2025, *id.* ¶¶ 33–34; and that an AHRQ official publicly confirmed that the agency was entirely "unable to process grant awards" by the end of July, *id.* ¶ 34. Defendants admit that their evidence about AHRQ grantmaking in September 2025 is relevant only because, in their view, it "belie[s]" "Plaintiffs' allegation that AHRQ shut down its grant program" earlier that summer. MTD Memo 10. But evidence showing that Defendants (temporarily) restarted (some) grantmaking in September does not "negate[]" Plaintiffs' allegations, *id.* at 10 n.6, that Defendants had shut down AHRQ's grants process a month earlier. And even if it did, the Court may not engage in that kind of weighing of evidence to resolve a motion to dismiss.

B. Because the evidence in Defendants' request for judicial notice focuses on events that took place *after* the filing of the complaint, the updated TAGGS data is at most relevant to determine whether this case is moot. Defendants do not directly argue mootness, and for good reason. Defendants could not sustain the "heavy burden of persuading the court that subsequent events make it *absolutely clear* that the allegedly wrongful behavior could not reasonably be expected to recur." *Deal v. Mercer Cnty. Bd. of Educ.*, 911 F.3d 183, 191 (4th Cir. 2018) (cleaned up). They likewise cannot demonstrate that "interim relief or events have completely and irrevocably eradicated the effects of the alleged violation." *Los Angeles Cnty. v. Davis*, 440 U.S. 625, 631 (1979) (cleaned up).

First, Defendants rely on evidence that—on the eve of a preliminary injunction hearing—they voluntarily undid their halt of AHRQ's grantmaking program and began making some limited continuation awards through the end of the fiscal year. "[I]t is well settled that a defendant's

voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *Deal*, 911 F.3d at 191. And in particular, "a defendant fails to meet its heavy burden to establish that its allegedly wrongful behavior will not recur when the defendant retains the authority and capacity to repeat an alleged harm." *Porter v. Clarke*, 852 F.3d 358, 364 (4th Cir. 2017) (internal quotation marks omitted). Here, Defendants have not presented any evidence that their brief period of grant activity—limited to continuation awards—precludes them from otherwise (or again) halting AHRQ's grantmaking altogether.

In fact, other evidence makes clear that this one-time rush of grantmaking was a blip. Plaintiffs have replicated Defendants' search of the TAGGS database for the current fiscal year—filtering for an "Issue Date FY" of 2026, "Funding FY" of 2026, and "Operating Division" of AHRQ. *See* MTD Memo 9. As of the filing of this brief, the search did not produce a single result, indicating that no grants have been awarded at all in the first four-and-a-half months of this fiscal year. The agency also has not published any notice in the Federal Register that it is holding study section meetings, as needed to peer review applications for new grants. Dismissing this case as moot would not just leave Defendants "free to return to their old ways after the threat of a lawsuit has passed." *Lyons P'ship, L.P. v. Morris Costumes, Inc.*, 243 F.3d 789, 800 (4th Cir. 2001) (cleaned up). It seems that Defendants already have done so.

Second, Defendants cannot establish that the issuance of certain continuation awards in September 2025 "completely and irrevocably eradicated the effects of" their shutdown of AHRQ grantmaking. *Davis*, 440 U.S. at 631. Defendants admit that the brief restart of grant activity was limited to 75 *continuation* grants. MTD Memo 10. That activity does nothing to address Plaintiffs' claims related to the processing of applications for *new* awards. *See* Compl. ¶¶ 31, 33, 43–44, 58–61. Defendants also state that, by the end of fiscal year 2025, AHRQ had spent only about $94

million on grants. *See* MTD Memo 10. Based on the allegations in the complaint, that would leave a potential shortfall of nearly $50 million in spending for that fiscal year, leaving unresolved Plaintiffs' claims related to impoundment. *See* Compl. ¶¶ 4, 22, 36, 46–54. The facts before the Court thus fall well short of the high bar required to show that Plaintiffs' claims are moot.

II. Plaintiffs have adequately pleaded standing.

At the pleading stage, "the plaintiff must clearly … allege facts demonstrating each element" of standing—injury, causation, and redressability. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (internal quotation marks omitted, omission in original). In their complaint, Plaintiffs lay out the real-world harm that SGIM and NAPCRG members, as well as Plaintiff NAPCRG itself, are suffering as a result of Defendants' actions. The complaint alleges that SGIM and NAPCRG members who are awaiting decisions on continuation awards had been left scrambling, putting at risk the work they had already invested in existing projects and forcing them to take on additional work to try to find replacement funding. Compl. ¶ 38. It additionally alleges that SGIM and NAPCRG members with pending applications for new awards—and NAPCRG itself—have been left without any way to compete for AHRQ funding, rendering entirely wasted the time and effort they had invested in their AHRQ grant applications. *Id.* ¶¶ 38–41. Declarations in support of Plaintiffs' preliminary injunction motion contain additional facts supporting the complaints' allegations of harm. *See, e.g.*, Schnipper Decl. ¶ 6, ECF 4-8 (outlining that, because of delay in response on highly rated grant application, SGIM member had spent dozens of hours searching for alternate funding and would need to either take a salary cut or reduce research work if no alternate source were secured); Dolber Decl. ¶ 6, ECF 4-11 (explaining effect of loss of useful feedback from AHRQ peer review process, which could have helped SGIM member revise and resubmit proposal to AHRQ or other funding sources); Rodriguez Decl. ¶ 7, ECF 4-9 (explaining that delay in answer on continuation funding had already led to programmatic changes).

Defendants argue that the types of harm alleged are not tangible enough to constitute concrete injuries. *See* MTD Memo 12–13. Their arguments, however, misconstrue the relevant law, the allegations in the complaint, or both.

First, Defendants attack the notion that Plaintiffs have standing because the halt of AHRQ grantmaking means the agency has failed to render a decision on SGIM and NAPCRG members', and NAPCRG's, grant applications. *See* MTD Memo 12. To begin, Defendants' contention that applicants are not entitled by law to a response on their applications is both untrue, *see infra* at 22–25, and irrelevant. For standing purposes, the court must assume that Plaintiffs are right that they are entitled to a response. *See Cooksey v. Futrell*, 721 F.3d 226, 239 (4th Cir. 2013). Defendants likewise err in characterizing Plaintiffs' allegation as a bare statutory violation. Plaintiffs have outlined a variety of ways in which they or their members have directly suffered because Defendants violated AHRQ's legal obligation to process grant applications. *See, e.g.*, Compl. ¶ 40; Schnipper Decl. ¶ 6; Dolber Decl. ¶ 6. While Defendants suggest that the harm alleged must be of a kind "that AHRQ's regulations were aimed at preventing," MTD Memo 12, the case they cite concerns informational injury and does not support a broad application of that test. *See Dreher v. Experian Info. Sols., Inc.*, 856 F.3d 337, 345 (4th Cir. 2017). Besides, Defendants do not explain how the type of harms Plaintiffs allege—chaos caused by delayed answers on pending applications—are outside of those AHRQ meant to address when it obligated itself to complete peer review and render final decisions on each application. *See* 42 C.F.R. §§ 67.15(a), 67.16.

Second, Defendants contend that Plaintiffs cannot have standing based on the lost opportunity to compete for AHRQ grant funding because the agency is not required by statute to award funds on any given notice of funding opportunity. *See* MTD Memo 12–13. Plaintiffs, though, rely on a well-established line of cases holding that a "plaintiff may be harmed by denial

of the 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). Application of that principle does not turn on whether the pool of funds is set to be awarded via grants or through a more structured contract-bidding process. *See id.* (applying law from bid-procedure context to grants context). Nor have courts found it relevant for purposes of standing whether a statute directs the defendant to specifically provide the relevant funding opportunity. Defendants point to this Court's recent opinion in *Child Trends, Inc. v. U.S. Department of Education* (*Child Trends I*), 787 F. Supp. 3d 81, 95 (D. Md. 2025). But the cited discussion does not consider whether a statutory mandate for a particular program matters for standing—let alone holds that it does so.

Third, Defendants complain that Plaintiffs' injury in the form of wasted time completing applications for AHRQ grant funding fails all three requirements for standing. *See* MTD Memo 13. Courts have repeatedly held, however, that waste of time and energy, when alleged beyond a mere boilerplate, is a sufficiently concrete injury. *See Mey v. Got Warranty, Inc.*, 193 F. Supp. 3d 641, 648 (N.D.W. Va. 2016) (gathering cases). And at least one court has specifically noted that "expenditure[]of time and effort" on wasted funding applications "suffice." *Am. Ass'n of Physics Tchrs., Inc. v. Nat'l Sci. Found.*, 804 F. Supp. 3d 45, 69 (D.D.C. 2025). Defendants' arguments on causation and redressability, meanwhile, misunderstand the nature of harm arising from wasted effort. Plaintiffs do not claim that their members are injured because they spent time and energy responding to AHRQ's notices of funding in the first place. Rather, Plaintiffs allege their members are injured because the time and effort spent is now entirely wasted, as a direct result of Defendants' destruction of AHRQ's grantmaking capacity. Were this Court to order AHRQ to restart its grant review process, those efforts would no longer be a waste because Plaintiffs' members' (and NAPCRG's) applications would again be in the running for AHRQ grant funding.

That "prospect of competing for funds" is sufficient to establish redressability. *Glob. Health Council*, 153 F.4th at 12.

III. Plaintiffs satisfy the threshold requirements for review under the APA.

A. Plaintiffs challenge discrete, final agency action.

The APA provides for judicial review of "final agency action for which there is no other adequate remedy." 5 U.S.C. § 704. Defendants wrongly contend that Plaintiffs cannot bring APA claims related to Defendants' halt of AHRQ grantmaking and failure to process grant applications because they do not target discrete, final agency actions. *See* MTD Memo 13–18.

1. Under the APA, "'agency action' includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). This definition "undoubtedly has a broad sweep," and "is meant to cover comprehensively every manner in which an agency may exercise its power." *Maryland v. Corp. for Nat'l & Cmty. Serv.*, 785 F. Supp. 3d 68, 90 (D. Md. 2025) (quoting *Indep. Equip. Dealers Ass'n v. EPA*, 372 F.3d 420, 427 (D.C. Cir. 2004) and *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 478 (2001)).

Here, Plaintiffs challenge discrete agency action and do not mount a programmatic attack. In Counts I through IV, Plaintiffs challenge Defendants' complete halt of AHRQ's statutorily required grant program and grant-review process. *See* Compl. ¶¶ 42–57. That halt constitutes a "rule" under the APA: "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." 5 U.S.C. § 551(4). The determination that the agency will not process grant applications is an agency policy of general applicability that has immediate future effect, both on AHRQ and on grant applicants like Plaintiffs' members. Defendants have memorialized that policy in writing, explaining that AHRQ does not have any grantmaking capacity and could not and would not provide an answer on

pending grant applications. *See* Compl. ¶ 34.[6]

In Count V, Plaintiffs challenge Defendants' failure to process grant applications, which has resulted in unreasonably delayed and unlawfully withheld decisions on individual grant applications. *See* Compl. ¶¶ 58–61. That claim, too, satisfies the APA's discreteness requirement. As the Fourth Circuit has recognized, "'agency action' includes a 'failure to act,'" and "agency inaction can … be judicially compelled when it is a discrete 'agency action' that the agency was required to take." *Vill. of Bald Head Island v. U.S. Army Corps of Eng'rs*, 714 F.3d 186, 196 (4th Cir. 2013). On this point, Defendants assert only that Plaintiffs cannot "combine numerous individual … failures to act." MTD Memo 16 (citing *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871 (2009)). But Defendants are wrong that plaintiffs cannot challenge multiple agency actions (or failures to act) in a single suit. *See, e.g.*, *Afghan & Iraqi Allies v. Blinken*, 103 F.4th 807, 811 (D.C. Cir. 2024). Defendants "confuse aggregation of similar, discrete purported injuries—claims that many people were injured in similar ways by the same type of agency action—for a broad programmatic attack." *Ramirez v. ICE*, 310 F. Supp. 3d 7, 21 (D.D.C. 2018).

Defendants' reliance on *Lujan* is unavailing. There, the plaintiff had challenged legal violations in how the Bureau of Land Management carried out its responsibilities under a variety of different statutory provisions governing public lands. 497 U.S. at 890–91. The Supreme Court held that the plaintiff could not challenge "flaws in [an] entire 'program'" under the APA. *Id.* at

[6] Even if Defendants had not put pen to paper on the halt of AHRQ's grantmaking activity, that would not preclude a finding that Plaintiffs are challenging a discrete agency action. Courts may review even unwritten agency policy where "'the record' as a whole 'leaves no doubt' that defendants in practice have consummated a decisionmaking process that resulted in the implementation of a new policy." *Escobar Molina v. DHS*, No. 25-cv-3417, 2025 WL 3465518, at *22 (D.D.C. Dec. 2, 2025) (discussing *Venetian Casino Resort LLC v. EEOC*, 530 F.3d 925, 929 (D.C. Cir. 2008)); *see also Wiley v. Kennedy*, 789 F. Supp. 3d 447, 462 (S.D.W. Va. 2025) ("Shutting down programs without … engaging in a process that results in an official written statement announcing the shutdown is no less final.").

893. At the same time, however, the Court recognized that many of the actions at issue *could* "be regarded as rules of general applicability" challengeable under the APA, where the defendants had "announc[ed]," even with respect to "vast expanses of territory," the agency's "intent" with respect to particular activities. *Id.* at 892. And the Court acknowledged that, where an agency has applied "some particular measure across the board, … it can of course be challenged under the APA by a person adversely affected." *Id.* at 890 n.2. Here, Plaintiffs challenge such a discrete measure applied across the board: Defendants' decision to cut off all AHRQ grantmaking activity.[7]

Moreover, the relief sought would not require this Court to engage in day-to-day oversight of AHRQ. Plaintiffs request an order, pursuant to 5 U.S.C. § 706(2), vacating the decision to halt and render non-functional AHRQ's grant apparatus. *See* Compl. at 20. They also ask for an order, pursuant to 5 U.S.C. § 706(1), compelling Defendants to take required steps to process pending applications. *Id.* None of this resembles the intrusive relief that courts have previously rejected. In *City of New York v. U.S. Department of Defense*, 913 F.3d 423 (4th Cir. 2019), for example, the plaintiffs wanted monthly compliance reports, until the court was "satisfied that Defendants ha[d] brought themselves into *full compliance* with" a set of broad obligations. *Id*. at 434. And in *Norton v. Southern Utah Wilderness Alliance* (*SUWA*), 542 U.S. 55 (2004), the plaintiffs had asked for a "general order compelling compliance" with the Secretary's "broad" mandate to manage millions of acres of land "in a manner so as not to impair the suitability of such areas for preservation

[7] Defendants cannot meaningfully distinguish *Child Trends, Inc. v. U.S. Department of Education* (*Child Trends II*), 795 F. Supp. 3d 700 (D. Md. 2025). *See* MTD Memo 15 n.8. It is true that, there, the agency both terminated existing grants and refused to run the program going forward. *See* 795 F. Supp. 3d at 710. But the claims related to program operation were not justiciable *because of* the terminations. To the contrary, the Court held it lacked jurisdiction over claims challenging terminations. *See id.* at 714–29. The Court instead reasoned that the program claims were viable because plaintiffs were challenging an "ongoing failure[ ] to carry out *discrete obligations*' at all," not "seeking judicial oversight of the manner in which the Department completes its required tasks." *Id.* (quoting *City of New York v. U.S. Dep't of Def.*, 913 F.3d 423, 433 (4th Cir. 2019)).

as wilderness." *Id*. at 59, 66. Here, Plaintiffs do not seek judicial oversight of *how* the agency complies with its statutory obligations. Instead, they ask the Court to undo the agency's decision *not* to carry out those duties entirely. The APA is available to address such "ongoing failures to carry out discrete obligations." *City of New York*, 913 F.3d at 433.

2. An agency action is final if it "mark[s] the consummation of the agency's decisionmaking process" and is "one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (internal quotation marks omitted). Here, the halt of AHRQ grantmaking satisfies those requirements under the "pragmatic" approach courts take to finality. *U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 599 (2016). The complaint alleges that, at least as of July 14, 2025, Defendants had definitively halted all AHRQ grantmaking. *See* Compl. ¶¶ 31–34. That halt had both legal and practical effect. It limited applicants' ability to enter into new grant agreements with the agency. *See Spirit Airlines, Inc. v. U.S. Dep't of Transp*., 997 F.3d 1247, 1252 (D.C. Cir. 2021) (holding that agency action is final where it "limits or defeats a party's ability to enter into an advantageous … arrangement"). And it prevented remaining agency staff from carrying out the process as set out by statute. *See Biden v. Texas*, 597 U.S. 785, 808 (2022) (agency action is final where it binds agency "staff by forbidding them to continue [a] program"). The result was that Plaintiffs and their members could no longer receive an answer on their applications or continue to compete for available funds, to their immediate and practical detriment. *See Corp. for Nat'l & Cmty. Serv.*, 785 F. Supp. 3d at 92 (recognizing that the closure of AmeriCorps "had 'an immediate and practical impact,'" including because "grantees" would "no longer receive funding").

Defendants counter that "Plaintiffs do not allege that the[] circumstances" described "are permanent." MTD Memo 17. But "*final* does not mean *permanent*." *Widakuswara v. Lake*, 779 F.

Supp. 3d 10, 32 (D.D.C. 2025). Although, at the time of the filing of the complaint, AHRQ "maintain[ed] the ability to reverse" its shutdown of grant operations "at some unidentified point in the future," that possibility does not affect the finality of the challenged actions under the APA. *Id*. at 32–33; *see also Sackett v. EPA*, 566 U.S. 120, 127 (2012) ("The mere possibility that an agency might reconsider … does not suffice to make an otherwise final agency action nonfinal.").

For similar reasons, Defendants cannot seek support in the vague promises in the agency's July 23, 2025, email. There, an AHRQ staffer suggested that the agency was "evaluating options" for whether or how it could operate a grant program going forward, even as it was "currently unable to process grant awards." Compl. ¶ 34. But an agency cannot defeat finality by claiming that it is "still assessing what additional actions may be necessary" and that its "deliberations surrounding the matter are ongoing." *See Nat'l Envtl. Dev. Ass'n's Clean Air Project v. EPA*, 752 F.3d 999, 1006 (D.C. Cir. 2014); *cf. Wiley v. Kennedy*, 789 F. Supp. 3d 447, 462 (S.D.W. Va. 2025) (finding that the termination of a program was final where the evidence did not show that the defendants had "any plan to provide the services that have been terminated"). Were Defendants right, an agency could entirely shield its decision to terminate a program from judicial review, so long as the agency characterized it as a suspension and promised (on an undefined timeline) to reconsider. That is not the law. And again, as to what "the record in this case" reflects about what grantmaking occurred *after* the filing of the complaint, MTD Memo 17, that evidence would go to mootness (which Defendants have not argued), not to finality. *See supra* at 10.

B. Plaintiffs can bring claims under both § 706(2) and § 706(1).

Defendants briefly assert that Plaintiffs cannot raise any claims under 5 U.S.C. § 706(2) because, in Defendants' view, the allegations focus on *inaction* with respect to grants. *See* MTD Memo 18. That argument misreads the complaint. As Plaintiffs have explained, *see supra* at 15–16, Counts I through IV challenge the halt of AHRQ's statutorily required grant program and

grant-review process. Defendants' termination of the operation of an ongoing program is an affirmative act challengeable as arbitrary, capricious, and contrary to law. *See Texas*, 597 U.S. at 807–08 (considering § 706(2) claims challenging allegedly unlawful termination of program). While Plaintiffs *also* allege that Defendants have failed to act on pending applications, those allegations of inaction go to Plaintiffs' separate claim for agency action unreasonably delayed or unlawfully withheld under § 706(1). As explained below, *see infra* at 22–25, Plaintiffs can bring that claim under § 706(1) because AHRQ is required by both statute and regulation to peer review and evaluate submitted grant applications. The allegations thus support claims under both § 706(1) and § 706(2), and the two are not mutually exclusive. *See All. To Save Mattaponi v. U.S. Army Corps of Eng'rs*, 515 F. Supp. 2d 1, 10 (D.D.C. 2007).

IV. Plaintiffs have adequately pleaded their claims for relief.

A. The complaint adequately alleges that Defendants have violated and will violate the Public Health Service Act and AHRQ grant regulations.

In Count I, Plaintiffs seek relief for Defendants' violation of AHRQ's legal requirements related to grantmaking—including statutory mandates for grantmaking on certain topics within AHRQ's remit, as well as both statutory and regulatory obligations with respect to the processing of grant applications. Defendants must follow those statutory commands because administrative agencies, as "creatures of statute," *Nat'l Fed'n of Indep. Bus. v. OSHA*, 595 U.S. 109, 117 (2022), are "not free simply to disregard statutory responsibilities," *Lincoln v. Vigil*, 508 U.S. 182, 193 (1993). And Defendants are bound by those regulatory commands because an agency has "no discretion to decide whether and when to abide by its own regulations." *Healthy Teen Network v. Azar*, 322 F. Supp. 3d 647, 656 n.11 (D. Md. 2018). Defendants do not contest that they cannot act contrary to the Public Health Service Act and AHRQ regulations. Instead, they contend that the complaint does not allege any violations of whatever requirements the statutes and regulations

contain. *See* MTD Memo 19–23. The complaint, however, adequately alleges that Defendants have violated and are continuing to violate requirements related to grants.

First, the complaint lays out a variety of different statutory obligations on AHRQ to support important healthcare research through grantmaking, including grants focused on linking medical research with clinical practice, 42 U.S.C. § 299b(b), reducing medical errors, *id.* § 299b-1(c), improving the quality of care, *id.* § 299b-34(a), and training researchers in comparative clinical effectiveness, *id.* § 299b-37(e). *See* Compl. ¶¶ 19, 43. The complaint alleges that Defendants entirely shut down AHRQ's grantmaking apparatus as of the summer of 2025, making it impossible for the agency to carry out those obligations in the future. *See id.* ¶¶ 25–34. Defendants begin by attacking the complaint on the facts, pointing out that, before the consummation of the decision to hamstring AHRQ's grant apparatus, the agency had funded some grants for fiscal year 2025. *See* MTD Memo 19. But what Defendants did *before* their actions in April through July of 2025 to cut off AHRQ grantmaking does not undermine allegations that, *after* that point, the agency could not fulfill its statutory duties. Defendants also assert that "[n]othing in the statutory or regulatory scheme" requires the agency to award grants on any particular timeline. *See* MTD Memo 20. On this point, Defendants rely only on portions of AHRQ regulations, in which the agency granted the AHRQ Director discretion over when to accept grant applications and which grants to award. *See* 42 C.F.R. §§ 67.14(a), 67.17(a). In Defendants' reading, with these regulations AHRQ essentially granted itself discretion not to operate a grant program at all. That reading, however, would conflict with the statutory scheme laid out above, and is therefore beyond AHRQ's regulatory authority to adopt. *See Doe, 1 v. FEC*, 920 F.3d 866, 874 (D.C. Cir. 2019) ("It is hornbook law that an agency cannot grant itself power via regulation that conflicts with plain statutory text."). Instead, the Court should read the statutory and regulatory regimes in harmony,

as authorizing the AHRQ Director to exercise discretion in the award of grants, but only to the extent the agency can still satisfy the obligations laid out by statute.

Second, Defendants assert that AHRQ is not required, by statute or regulation, to conduct peer review, render funding decisions, or otherwise process grant applications. *See* MTD Memo 20–23. On this point, Defendants misread the text. The Public Health Service Act mandates that the agency "shall … conduct[]" "[a]ppropriate technical and scientific peer review" and that peer review groups "shall report" their findings. 42 U.S.C. § 299c-1(a)(1), (2). AHRQ regulations further detail those requirements, stating that study sections "shall make a written report … on each application" and that the AHRQ Director "will evaluate applications" and "shall" make a decision as to each. 42 C.F.R. §§ 67.15(a)(4), 67.16(a)–(b). The word "shall" in a statute or regulation "usually connotes a requirement," creating "an obligation impervious to … discretion" on the relevant actor. *Maine Cmty. Health Options v. United States*, 590 U.S. 296, 310 (2020) (internal quotation marks omitted, alteration in original). Thus, by statute and regulation, AHRQ has no discretion over whether to put applications through peer review and decide whether to fund a given application.

Defendants contend otherwise, relying on a line of cases instructing that "the impact of seemingly mandatory or permissive language depends heavily on the context in which it appears." MTD Memo 21 (quoting *Lovo v. Miller*, 107 F.4th 199, 212 (4th Cir. 2024)). But the cases Defendants cite do not in fact grapple with "analogous" statutory or regulatory text, and the differences in the relevant texts are revealing. In *Gonzalez v. Cuccinelli*, 985 F.3d 357 (4th Cir. 2021), for instance, the Fourth Circuit considered a statute stating that an agency "may grant work authorization" to certain visa applicants. *Id.* at 366 (citing 8 U.S.C. § 1184(p)(6)). The court rejected the plaintiffs' argument that this provision required adjudication of all applications for

work authorization—despite it only mentioning discretion to grant the benefit—merely because the statute also laid out eligibility standards. *Id.* Here, by contrast, the relevant statutory and regulatory text make clear that processing of applications is mandatory. They instruct that "[a]ppropriate technical and scientific peer review *shall be conducted* with respect to each application," 42 U.S.C. § 299c-1(a)(1) (emphasis added), and that "all applications … *will be submitted*" for peer review, 42 C.F.R. § 67.15(a)(1) (emphasis added).

In *Lovo*, which Defendants also cite, the Fourth Circuit considered a pair of provisions governing certain types of immigration waiver applications—the first providing that "USCIS may adjudicate applications" for waivers, 8 C.F.R. § 212.7(e)(2)(i); and the second stating that "USCIS will adjudicate a … waiver application in accordance" with certain regulatory requirements, *id.* § 212.7 (e)(8)). *See* 107 F.4th at 212. The court concluded that the latter provision should not be read to require the adjudication of waiver application, despite its mandatory "will" language. It reasoned that § 212.7(e)(8) itself could be read to "merely instruct[] that any adjudication must conform with other statutory and regulatory requirements." *Id.* at 213. And it emphasized that this reading would avoid a conflict with § 212.7(e)(2)(i)'s statement that USCIS may—rather than must—adjudicate applications. *Id.* The text here is meaningfully distinguishable from that at issue in *Lovo*. Most notably, the court in *Lovo* needed to harmonize two provisions expressly governing adjudication—one stating that the agency "may adjudicate" and the other stating that the agency "will adjudicate" (in accordance with certain standards). Here, Plaintiffs rely on provisions that the agency "shall … conduct[]" "*peer review*" and "shall" decide whether to "*give consideration*" (i.e., approve) an application, while Defendants point only to a separate provision stating that the AHRQ Director "may *award* grants." *Compare* 42 U.S.C. § 299c-1(a)(1) *and* 42 C.F.R. § 67.16(b), *with* 42 C.F.R. § 67.17(a) (emphasis added). Reading these provisions to require the peer review

and adjudication of all applications, while simultaneously reserving to the AHRQ Director the ultimate decision of whether to say yes, easily harmonizes them.

Although there is no conflict between the provisions, Defendants urge the Court to adopt a reading that would require AHRQ to follow the mandated peer review process only when, in its discretion, the agency decides to award a grant. *See* MTD Memo 21. There are several flaws with that interpretation. First, it would render superfluous portions of the statute and regulation that mandate that AHRQ may only approve grant applications that have been recommended after peer review. *See* 42 U.S.C. § 299c-1(b); 42 C.F.R. § 67.16(b). Second, when Congress wants to craft a scheme that requires an agency to conduct peer review only on projects that the agency has decided to award, it uses words to that effect. *See, e.g.*, 42 U.S.C. § 284n(a)(3) (providing that a "grant may be made … only if the application for a grant has undergone technical and scientific peer review … or has been reviewed by an advisory council"); 42 U.S.C. § 12403(f) (limiting Secretary's funding to "proposals submitted by interested persons according to such procedures as the Secretary may require and evaluate on a competitive basis using peer review"); 16 U.S.C. § 1447d(c)(1) (providing that agency administrator "shall review the annual grant application" and issue approvals "with such conditions as are determined to be appropriate based on peer reviews").

Defendants suggest that it would be irrational to read the Public Health Service Act and AHRQ regulations to require the processing of applications even when AHRQ has the ultimate discretion whether to fund any particular project. *See* MTD Memo 22. But Defendants substantially overstate the burden that engaging in peer review places on the agency, particularly where guardrails already exist to ensure that AHRQ is not expending adjudicatory resources on projects that will never be allocated funding. *See, e.g.*, 42 C.F.R. § 67.15(c)(1)(xi) (allowing AHRQ Director to instruct peer review group to consider "the degree to which a proposed project

addresses" AHRQ priorities). Defendants also misunderstand the purpose of a competitive peer review process, which requires experts to both independently consider the scientific merits of an application and rank proposals comparatively, to ensure that agency resources are used to support the most promising and impactful research possible. *See id.* § 67.15(a)(4)(iii) (instructing peer review groups to assign "priority scores" for applications recommended for further consideration). Defendants' position thus puts the cart before the horse, allowing AHRQ to decide (based on unclear and unstated criteria) which projects to fund, and only then assess whether those projects are minimally—rather than comparatively—meritorious.

B. The complaint adequately alleges a violation of the fiscal year 2025 Appropriations Act.

In Count II, Plaintiffs claim that Defendants violated the FY 2025 Appropriations Act, Pub. L. No. 119-4, by making it impossible for AHRQ to spend its substantial appropriations on grants, and by failing to use those appropriated funds on some other purpose authorized by law. *See* Compl. ¶¶ 46–48. Defendants assert that the relevant appropriations act does not "compel AHRQ to obligate every dollar of appropriated funds." MTD Memo 23. That argument runs contrary to settled principles of appropriations law, under which the executive has no "unilateral authority to refuse to spend" appropriated funds, even if there may be "policy reasons … for wanting to spend less than the full amount appropriated by Congress for a particular project or program." *In re Aiken Cty.*, 725 F.3d 255, 261 n.1 (D.C. Cir. 2013) (Kavanaugh, J.). Defendants are right that Congress *can* "provide[] the Executive discretion over how much to spend up to a cap." *Cmty. Fin. Servs. Ass'n of Am. v. CFPB*, 601 U.S. 416, 432 (2024). But when Congress wants to create such discretion, it does so expressly. *See, e.g.*, *id.* at 432–33 (discussing 1803 statute appropriating "'a sum not exceeding fifty thousand dollars' to build 'up to fifteen gun boats'"). In fact, Congress did so elsewhere in the appropriations statute at issue here, including on the same page as its

appropriation for AHRQ. *See, e.g.*, Pub. L. No. 118-47, 138 Stat. at 662 (providing funding "not to exceed" $3.67 billion for program management). Congress did not use that kind of sums-not-to-exceed formulation for AHRQ, stating only: "For carrying out" relevant sections of the Public Health Service Act, "$369,000,000." 138 Stat. at 661–62. In *Child Trends, Inc. v. U.S. Department of Education* (*Child Trends II*), this Court rejected a similar argument that statutory language providing that money "shall be available to carry out" certain functions "evinces congressional intent to commit the question of not just *how* but also *whether* to spend the funds entirely to the Department's discretion." 795 F. Supp. 3d 700, 721 (D. Md. 2025).

Defendants also emphasize that the FY 2025 Appropriations Act provides only a lump sum for all AHRQ's functions, without a specific line-item for grants. *See* MTD Memo 23. But again, Plaintiffs allege that Defendants had effectively made it so that large portions of that lump-sum appropriation would expire without being put toward *any* appropriate use under the Public Health Service Act—including grantmaking. *See, e.g.*, Compl. ¶ 36 (alleging that, due to Defendants' action, "the agency cannot spend the remaining appropriated funds" before the end of fiscal year 2025). This case therefore does not resemble *Lincoln v. Vigil*, where plaintiffs had tried to challenge the "reallocation of agency resources" from one program permissible under the statute to another. 508 U.S. at 194. The Supreme Court reasoned that the APA gave the court "no leave to intrude" on that reprogramming decision, but only "as long as the agency allocates funds from a lump-sum appropriation to meet permissible statutory objectives." *Id.* at 193. Here, Plaintiffs allege that Defendants failed to meet that allocation obligation entirely.

Finally, Defendants urge the Court to hold that the Impoundment Control Act (ICA) precludes review of any APA claim premised on a violation of an appropriations statute. *See* MTD Memo 24. But the APA "sets up a basic presumption of judicial review of agency action," which

may only be overcome with "clear and convincing indications" that Congress intended to preclude review. *Bacardi & Co. Ltd. v. U.S. Pat. & Trademark Off.*, 104 F.4th 527, 531 (4th Cir. 2024) (internal quotation marks omitted). For the ICA, the evidence points in the other direction. The statute provides that "[n]othing contained in this Act … shall be construed as … affecting in any way the claims … of any party to litigation concerning any impoundment." 2 U.S.C. § 681(3). Defendants rely entirely on the unreasoned Supreme Court emergency order in *Department of State v. AIDS Vaccine Advocacy Coalition*, 146 S. Ct. 19 (2025), where the Court stated that the ICA likely precluded APA claims premised on violations of appropriations law. But as Defendants recognize, the Court was careful to note that this outcome represented only its "preliminary view," *id.*, and the dissenters emphasized that the issue was essentially "uncharted territory," for both the Supreme Court and most lower courts, *id.* at 20. *See also City of Chicago v. DHS*, No. 25-cv-5463, 2025 WL 3043528, at *21 (N.D. Ill. Oct. 31, 2025) (finding the status of APA claims for violations of appropriations law at most "unclear" after the Supreme Court's order).

C. The complaint properly raises a claim under the Impoundment Control Act.

1. The ICA does not preclude APA review.

In Count III, Plaintiffs allege that Defendants acted contrary to law by violating the ICA. Defendants argue, though, that APA suits cannot be brought to enforce the ICA. *See* MTD Memo 25–28. While Defendants correctly note that the ICA sets out roles for the Comptroller General in reviewing executive refusals to spend—including reports to Congress and suits in federal court, *see* 2 U.S.C. §§ 686(a), 687—that point does not show that the statute precludes suit by private parties under the APA. *See Bacardi*, 104 F.4th at 531 (noting that review under the APA is precluded only if there is clear and convincing evidence of congressional intent to preclude review). Rather, the ICA makes clear that Congress did *not* intend preclusion. *See* 2 U.S.C. § 681(3) ("Nothing contained in this Act … shall be construed as … affecting in any way the claims

… of any party to litigation concerning any impoundment.").

Defendants compare this case to *Block v. Community Nutrition Institute*, 467 U.S. 340 (1984), where the Supreme Court considered a statute creating a complex scheme for the issuance and review of Department of Agriculture orders governing milk. Recognizing that the statute gave a special role to milk handlers, the Court held that it precluded APA suits by milk consumers, who shared interests with the handlers but, unlike the handlers, would not need to exhaust administrative remedies. *Id.* at 346–47. The Court reasoned that suit by consumers would "severely disrupt this complex and delicate administrative scheme," "effectively nullify[ing]" Congress's choice to preserve the government's ability to enforce its orders. *Id.* at 348. Here, by contrast, APA suits by private parties do not undermine efforts by the Comptroller General, a legislative officer, to make a report to Congress under 2 U.S.C. § 686, or file suit under 2 U.S.C. § 687. Nor do they disrupt Congress's appropriate role in receiving and overseeing such efforts by the Comptroller General. Moreover, in *Block* the Court emphasized the complete "omission" of consumers from the statutory scheme, including no mention of judicial review on their behalf. 467 U.S. at 347. But here, again, the ICA expressly disavows preclusive effect on litigation. *See* 2 U.S.C. § 681(3).

Defendants also cite *Global Health Council v. Trump*, 153 F.4th 1, 19 (D.C. Cir. 2025), where a divided D.C. Circuit panel held that the plaintiffs could not bring an APA claim for an ICA violation. That opinion is unpersuasive. The D.C. Circuit relied substantially on the ICA's failure to mention review by private parties. *See id.* at 18. But "silen[ce] about whether a third party may seek judicial review" is not dispositive, particularly where the statute "includes none of the typical language foreclosing judicial review." *Bacardi*, 104 F.4th at 532. The opinion also implausibly discounted the non-preclusion provision in § 681(3) by reading it only as governing retroactivity. *See Glob. Health Council*, 153 F.3d at 20. The text does not support that cramped

reading. *See AIDS Vaccine Advoc. Coal.*, 146 S. Ct. at 22 (Kagan, J., dissenting from grant of stay). This Court has already recognized that the D.C. Circuit's view in *Global Health Council* "is not universally shared," *Child Trends II*, 795 F. Supp. 3d at 721, and the Court's reasoning applies with full force here. As in *Child Trends*, Plaintiffs allege that Defendants not only withheld funds contrary to the ICA but did so in conjunction with other statutory violations. *See* Compl. ¶¶ 42–57.

2. Plaintiffs are within the zone of interests of the ICA.

"[I]n the APA context," the zone-of-interests "test is not especially demanding." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 130 (2014) (internal quotation marks omitted). It "forecloses suit only when a plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress authorized that plaintiff to sue." *Id.* (internal quotation marks omitted). Defendants maintain that Plaintiffs' interest—in the obligation of AHRQ appropriations—fails even this undemanding test because they read the ICA as "directed at regulating the relationship between Congress and the Executive Branch." MTD Memo 28. But Plaintiffs need not show "specific congressional intent to benefit" them to be within the ICA's zone of interest. *CSL Plasma Inc. v. CBP*, 33 F.4th 584, 589 (D.C. Cir. 2022). Moreover, while regulating the relationship between Congress and the Executive was one purpose of the ICA, it was also addressed at curtailing the executive's "attempts to refuse spending as a means 'to achieve less than the full objectives and scope of programs enacted and funded by Congress.'" *City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225, 1234 n.3 (9th Cir. 2018) (quoting S. Rep. No. 93-688, *as reprinted in* 1974 U.S.C.C.A.N. 3504, 3572–75). Plaintiffs' interest in ensuring that Defendants spend funds on health services research, as Congress intended, is closely connected to the ICA's requirement that the executive make funds "available for obligation." 2 U.S.C. § 683(b).

D. None of the challenged acts are committed to agency discretion by law.

Finally, Defendants assert that any challenged action is committed to agency discretion by law and thus unreviewable under the APA. *See* MTD Memo 29–30. "This exception to judicial review is a 'very narrow one,' reserved for 'those rare instances where statutes are drawn in such broad terms that in a given case there is no law to apply.'" *Inova Alexandria Hosp. v. Shalala*, 244 F.3d 342, 346 (4th Cir. 2001) (quoting *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971)). As Plaintiffs have explained, there is substantial law to apply for all their claims. *See supra* at 20–29. Moreover, while Defendants are right that AHRQ has discretion over *which* grants to award, *see* 42 C.F.R. § 67.17(a), the agency has no discretion to decline to award grants entirely, *see* supra at 21–22. That same principle undercuts Defendants' argument about the nature of AHRQ's appropriation. While the executive has discretion over how to allocate a lump-sum appropriation, *Lincoln*, 508 U.S. at 192–93, it does not have discretion to refuse to spend funds out of that appropriation entirely, *see Corp. for Nat'l & Cmty. Serv.*, 785 F. Supp. 3d at 95–96. After all, "an agency is not free simply to disregard statutory responsibilities." *Lincoln*, 508 U.S. at 193.

CONCLUSION

For the foregoing reasons, the Court should deny Defendants' motion to dismiss.

Dated: February 17, 2026

Respectfully submitted,

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