

September 22, 2026

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Re: American Academy of Pediatrics v. Kennedy, No. 26-1503 – Response to
Appellants’ Rule 28(j) Citation of Supplemental Authority (Dkt.
00118506790)

Dear Ms. Dubrovsky,

Plaintiffs-Appellees respond to Defendants-Appellants’ supplemental authorities.

The facts supporting Appellees’ standing here were not raised by the States in *Arizona v. Kennedy*, No. 26-cv-01609-VC (N.D. Cal. Sep. 8, 2026), or considered by that court.

First, Appellees include organizations named as liaison members in ACIP’s charter, whose participation in ACIP working groups was terminated by the Secretary. Appellee Br.14. They therefore have “a direct interest in [ACIP’s] purpose” that supports standing when FACA’s “fairly balanced” requirement is violated. Dist. Ct. Dkt. 291 at 25-26; Appellee Br.31-32.

Second, ACIP’s reconstitution was specifically designed to install members with anti-vaccine views aligned with the Secretary’s—a deliberate effort to stack ACIP against Appellees’ views. That viewpoint discrimination supports standing (Appellee Br.30 (citing cases)); a similar discriminatory standard was the basis for this Court’s decision in *Wheeler*.

Third, unlike in *Alliance for Hippocratic Medicine v. FDA*, 602 U.S. 367, 394 (2024), Appellees do not assert injury “based on their incurring costs to oppose FDA’s actions.” Appellees’ routine activities include informing members about changes in ACIP recommendations. ACIP’s actions therefore impose costs indistinguishable from those borne by an organization forced to change disclosures by government action. Dist. Ct. Dkt. 168 at 10-13.

Plaintiffs cannot argue that the changed recommendations are unrelated to their violation of the fair balance requirement: the district court held that outcome was the very reason for their changes in ACIP’s composition. *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100, 121 (2025).

Separately, unlike the chain the *Arizona* court found too attenuated, ACIP's recommendation decisions directly impact Appellees' members because they govern obligations under state law, for example school vaccination requirements. Compl. ¶¶ 262-72, *Arizona*. Changes in ACIP recommendations injure Appellees' members by imposing the burdens of the SCDM standard. Appellee Br. 26-27; Dist. Ct. Dkt. 168 at 14 (Appellees' reliance on state law cannot be characterized as self-imposed, because private parties like Appellees' members are bound by state law).

Finally, Appellants point to two Supreme Court decisions, but cite them only for general legal principles. They are irrelevant because the facts the Court relied on are entirely different from those here.

Respectfully submitted,

/s/ Andrew J. Pincus
Andrew J. Pincus

Counsel for Plaintiffs-Appellees

cc: All counsel for record (via CM/ECF)