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June 21, 2021

BY CM/ECF

Judges Siler, Thapar and Murphy
United States Court of Appeals for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 E. Fifth Street
Cincinnati, Ohio 45202-3988

Re: *Ass'n of Am. Phys. & Surgs. v. FDA, et al.*, No. 20-1784 (6th Cir.)

Dear Judges Siler, Thapar and Murphy,

Pursuant to FED. R. APP. P. 28(j), Plaintiff-Appellant Association of American Physicians & Surgeons (“AAPS”), alerts this Court to the recent decision in *Florida v. Becerra*, No. 8:21-cv-839-SDM-AAS, 2021 U.S. Dist. LEXIS 114297 (M.D. Fla. June 18, 2021). The Department of Health and Human Services (HHS) is a defendant there also.

United States District Judge Steven Merryday rejected arguments against standing similar to those made by HHS here, and rejected its claims of unfettered agency authority. *Id.* *16 - *30, *87 - *88. He did not defer to HHS coronavirus policy which does not withstand scrutiny. He thoroughly rejected HHS’s position that it could act “athwart” the president without judicial review. *Id.* at *89. This ruling is consistent with arguments made by AAPS here in its opening brief (pp. 37-39, 42-45, 46-47) and its reply brief (pp. 5-8, 9-17).

Judge Merryday rejected the broad deference demanded by HHS. As to standing, he expressly found that causation exists “if a third party’s compliance with an agency order necessarily injures the plaintiff.” *Id.* at *26. HHS neither operates cruise shops nor holds a medical license, and yet exceeded its authority in both domains by intermeddling in the name of public health.

The federal infringement on liberty has been unsuccessful in addressing the coronavirus pandemic. The widely cited worldometers.info website confirms that the United States continues to have one of the highest rates of COVID-19 mortality among large countries.¹ “Florida shows that thousands of passengers, including Floridians, have sailed on cruise ships abroad,” *id.* at *25, without harm to public health. Banning cruise ships here has not reduced the high U.S. COVID-19 mortality rate.

HHS withholds more than 60 million donated doses of hydroxychloroquine as they waste away in government warehouses, and its misleading statements impede access to it elsewhere. Defendants should not be allowed to interfere with physicians’ use of this approved, repurposed drug. Americans will no longer need to travel to a foreign country to embark on a cruise ship, and this same reasoning should end the interference by defendants with timely American access to hydroxychloroquine.

Respectfully submitted,

s/ Andrew L. Schlafly

Andrew L. Schlafly
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¹ <https://www.worldometers.info/coronavirus/?%23countries#countries> (viewed June 21, 2021).

CERTIFICATE OF COMPLIANCE

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/s/ Andrew L. Schlafly
Andrew L. Schlafly

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2021, I electronically filed the foregoing letter with the Clerk of this Court by using the appellate CM/ECF system, and understand that service on all parties of record will be accomplished through the appellate CM/ECF system.

/s/ Andrew L. Schlafly
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