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June 24, 2025

Molly C. Dwyer
Clerk of the Court
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: Notice of Supplemental Authority
Arizona Alliance for Retired Americans v. Mayes, No. 22-16490
En Banc Argument: June 25, 2025
Before: Murguia, Chief Judge; and Callahan, Ikuta, Bennett, R. Nelson,
Bress, VanDyke, Sung, H.A. Thomas, Desai, and Johnstone, Circuit Judges

Dear Ms. Dwyer:

Pursuant to Rule 28(j), the Attorney General notifies this Court of relevant decisions in which the Fifth and Sixth Circuits have, in recent weeks, held that *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024), clarified and narrowed the theory of organizational standing that stems from *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).

In *Deep South Center for Environmental Justice v. U.S. EPA*, 138 F.4th 310 (5th Cir. May 21, 2025), the Fifth Circuit held that *Hippocratic Medicine* “significantly clarified the doctrine of organizational standing,” *id.* at 317, and “limited *Havens* to its facts,” *id.* at 319. Thus, the plaintiffs’ diversion-of-resources theory of standing in *Deep South* did not “survive[] *Alliance for Hippocratic Medicine*.” *Id.* at 317. In the Fifth Circuit’s view, “[o]nly in the rarest cases can organizations demonstrate standing by showing a defendant’s action interferes with their activities.”¹ *Id.* at 318.

¹ A concurring judge agreed that the plaintiffs lacked standing, but wrote separately to articulate his view that the majority’s approach “overreads” *Hippocratic Medicine*. *Deep South*, 138 F.4th at 327 (Graves, J., concurring).

Meanwhile, the Sixth Circuit has recently held that *Hippocratic Medicine* overruled that circuit's prior case law on organizational standing, even while reading *Hippocratic Medicine* more cautiously than the Fifth Circuit did in *Deep South*. In *Tennessee Conference of the NAACP v. Lee*, --- F.4th ----, 2025 WL 1587965, at *7-8 (6th Cir. June 5, 2025), the Sixth Circuit held that the NAACP had failed to prove standing to challenge a Tennessee voter documentation policy as violative of the National Voter Registration Act (NVRA). In doing so, the court held that "the Supreme Court in *Alliance for Hippocratic Medicine* disavowed our diversion-of-resources theory." *See id.* at *5; *see also Tenn. Conf. of the NAACP v. Lee*, 105 F.4th 888, 907 (6th Cir. 2024) (granting stay of district court's injunction); *Fair Hous. Ctr. of Metro. Detroit v. Singh Senior Living, LLC*, 124 F.4th 990, 992-93 (6th Cir. Jan. 2, 2025) (similarly noting that the circuit's diversion-of-resources case law did not survive and remanding for the district court to apply *Hippocratic Medicine*).

Sincerely,

s/ Alexander W. Samuels

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