IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

WHOLE WOMAN'S HEALTH ALLIANCE, *et al.*, Plaintiffs, v. UNITED STATES FOOD AND DRUG ADMINISTRATION, *et al.*, Defendants.	Case No. 3:23-cv-00019-RSB

PLAINTIFFS' REPLY MEMORANDUM IN FURTHER SUPPORT OF RETAINING JURISDICTION PENDING REMAND TO FDA

Defendants do not dispute that this Court has the authority to retain jurisdiction over this case pending the completion of FDA's mifepristone review. *See* ECF Doc. 101 at 4–5 (citing cases). Nor do they dispute that it would be improper for FDA to disregard the statutory factors that should guide its mifepristone review in favor of political considerations. Instead, Defendants disparage Plaintiffs' concern about political interference with FDA's review as "unfounded speculation." ECF Doc. 102 at 4. Far from it — Plaintiffs have the receipts.

Last week, in response to a FOIA request, Plaintiffs' counsel received a production of FDA documents that included a September 3, 2025 email from an "eop.gov" email address asking FDA and HHS for "a briefing on the status of the FDA [mifepristone] study design and proposed timelines." Exhibit A. "EOP" stands for "Executive Office of the President" and "eop.gov" is the email address for the White House. An HHS employee agreed the agencies would "do our best to accommodate." *Id*. This document confirms that the threat of political interference with FDA's review of the scientific evidence is very real. This Court should exercise its authority to retain jurisdiction so that "if the need arises, further action could be taken by the Court," just as the

district court did in *American Academy of Pediatrics v. Food and Drug Administration*, 399 F. Supp. 3d 479, 487 (D. Md. 2019).

CONCLUSION

For the reasons stated here and in Plaintiffs' initial memorandum, Plaintiffs respectfully request that the Court retain jurisdiction while the 2023 REMS Decision is on remand to the FDA.

Dated: October 9, 2026

Respectfully submitted,

/s/ Linda C. Goldstein

Gail M. Deady
Virginia Bar Number: 82035
Linda C. Goldstein (*pro hac vice*)
CENTER FOR REPRODUCTIVE RIGHTS
199 Water Street, 22nd Floor
New York, New York 10038
Telephone: (917) 637-3600
Fax: (917) 637-3666
Email: gdeady@reprorights.org
Email: lgoldstein@reprorights.org

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2026, I filed the foregoing *Reply Memorandum of Law in Further Support of Retaining Jurisdiction Pending Remand to FDA* with the Clerk of Court using the CM/ECF system.

/s/ Linda C. Goldstein
Linda C. Goldstein