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ESSAY

When Public Participation Is Public Theatre: Misuse of Public Comment Opportunities by Anti-Vaccine Activists

Dorit Rubinstein Reiss & Barbara S. Romzek*

Introduction

Public health agencies and external government advisory committees are charged with making important public policy decisions, and, in the process, providing opportunities for public input to those deliberations. Public participation in agency decisionmaking can and does serve the important goals of public input, transparency, and legitimacy. In pursuit of these goals, agencies need to always weigh the benefits of oral comment against their potential harms. Agencies should enable public comment only in ways that help to achieve such goals. Recently, however, these goals have been undermined by the strategies and tactics adopted by anti-vaccine groups, who misuse public participation opportunities at meetings of the Advisory Committee on Immunization Practices (ACIP), which advises the Centers for Disease Control and Prevention (CDC) on vaccine recommendations.¹

The past few years have seen a growing incidence of anti-vaccine activists weaponizing ACIP public comment opportunities to voice criticism that is often faulty or not germane to the issues at hand. Activists record

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1. In the United States, the Food and Drug Administration (FDA) licenses vaccines, but the CDC recommends the schedule. The FDA is the main regulator of pharmaceutical companies, but the CDC and FDA share much of the responsibility for safety monitoring. A detailed review is beyond the scope of this Essay, but can be found in Frank DeStefano et al., *Vaccine Safety*, in PLOTKIN'S VACCINES 1584, 1584-86 (Stanley A. Plotkin et al. eds., 7th ed. 2018).

their comments for use in opposition videos shared on anti-vaccine internet pages. Anti-vaccine activists thus use public participation opportunities to make videos of themselves speaking in an auditorium at the CDC, cloaking themselves in the legitimacy of public hearings and repeating anti-vaccine talking points for the sake of their supporters.²

The Federal Advisory Committee Act (FACA)³ was enacted in 1972 with twin goals: to “enhance the public accountability of advisory committees established by the Executive Branch and to reduce wasteful expenditures on them.”⁴ The act’s provisions addressed committee composition as well as transparency and participation.⁵

Scholars highlight at least two ways that public participation in agency—or committee—activity is important: (1) improving the quality of administrative decisionmaking by providing additional information and facilitating implementation by reducing areas of conflict,⁶ and (2) increasing the legitimacy of agencies by providing procedural justice to participants.⁷ Scholars also point out that participation can have costs.⁸ Some participation was built into the FACA, but the provisions also build in extensive agency discretion.⁹ We argue that public participation which is misleading, inaccurate, or not germane to ACIP activity is not an intended or legitimate goal of the public-access provision of the Federal Advisory

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2. Anti-vaccine activists routinely present these as comments to or before CDC, implying (though not saying) the comments were made in a formal role. *See, e.g., Vaxxteradmin2, Nurse Gives Explosive ‘Flu Shot Speech’ Before CDC Advisory Committee, VAXXTER* (Oct. 27, 2018), <https://perma.cc/6RHU-EDNW>; *We Are Vaxxed, Public Comments @ CDC ACIP Meeting 10/23/2019, FACEBOOK* (Oct. 23, 2019), <https://perma.cc/9ZHD-6ZAW>. To people unfamiliar with public commenting before agencies, this could make the comment appear official. Anecdotally, the authors have heard comments that these videos appear to people as part of the CDC’s general deliberations, and hence more credible than an anti-vaccine activist making the same comment in a video not in that forum would be.
 3. 5 U.S.C. app. §§ 1-15 (2018).
 4. *Pub. Citizen v. Dep’t of Justice*, 491 U.S. 440, 459 (1989). For a detailed discussion of FACA, see Steven P. Croley & William F. Funk, *The Federal Advisory Committee Act and Good Government*, 14 *YALE J. REG.* 451 (1997).
 5. 5 U.S.C. app. §§ 9, 14 (2018) (addressing committee composition and structure); 5 U.S.C. app. §§ 10-12 (2018) (addressing transparency).
 6. *See* Lawrence Susskind & Gerard McMahon, *The Theory and Practice of Negotiated Rulemaking*, 3 *YALE J. REG.* 133, 136-37 (1985).
 7. Archon Fung, *Varieties of Participation in Complex Governance*, 66 *PUB. ADMIN. REV.* (SPECIAL ISSUE) 66, 70 (2006); Dorit Rubinstein Reiss, *Tailored Participation: Modernizing the APA Rulemaking Procedures*, 12 *N.Y.U. J. LEGIS. & PUB. POL’Y* 321, 330-31, 344-46 (2009); Maria Powell & Daniel Lee Kleinman, *Building Citizen Capacities for Participation in Nanotechnology Decision-Making: The Democratic Virtues of the Consensus Conference Model*, 17 *PUB. UNDERSTANDING SCI.* 329, 334 (2008).
 8. *See generally* Jim Rossi, *Participation Run Amok: The Costs of Mass Participation for Deliberative Agency Decisionmaking*, 92 *NW. U. L. REV.* 173 (1997) (laying out various costs of participation, including impairing agenda setting and collegiality).
 9. 5 U.S.C. app. § 10(a)(3).

Committee. Such comments are instead public theatre intended for anti-vaccine supporters.

I. Anti-Vaccine Advocates' Recent Comments at ACIP Meetings Do Not Serve Public Participation Goals

In 1964, the Surgeon General established the ACIP to fill the “need for national immunization policy recommendations to be developed by an expert group outside the US Federal Government.”¹⁰ While the ACIP predated the FACA, it is subject to it. Today, the Committee’s charter states that it shall have fifteen members with expertise in vaccinology, immunization practices, clinical trials, and other relevant fields, and allows for a consumer representative.¹¹ The ACIP holds annual meetings in February, June, and October. The meetings are open to the public, although increased attendance has led to an attendance cap.¹² At least since 2014, the meetings have been broadcasted live and the materials—mostly PowerPoint presentations—are available online after the meeting, as are the videos and minutes of the sessions.¹³

Anti-vaccine activists’ presence in ACIP meetings has intensified since 2018. After the February 2018 meeting, anti-vaccine attendees posted a video capturing two minutes of a vote on a new Hepatitis B vaccine for adults, Heplisav-B.¹⁴ The featured vote was the culmination of a process that lasted over a year, but the video does not convey the long process leading up to the vote, which included examining the data (the result of studies covering thousands of participants, presented in committee meetings separated by months).¹⁵ It did show committee members raising questions, but voting to recommend the vaccine for adults in spite of them.¹⁶ Anti-vaccine activists responded with outrage. A larger group

10. See Jean Clare Smith, *The Structure, Role, and Procedures of the U.S. Advisory Committee on Immunization Practices (ACIP)*, 28 VACCINE A68, A68 (Supp. 2010).

11. U.S. DEP’T OF HEALTH & HUMAN SERVS., CTRS. FOR DISEASE CONTROL & PREVENTION, CHARTER OF THE ADVISORY COMMITTEE ON IMMUNIZATION PRACTICES 3 (2018).

12. See, e.g., Meeting Notice, 85 Fed. Reg. 1315 (Jan. 10, 2020), <https://perma.cc/5ML3-XZR2>.

13. Materials from each meeting can be found at *ACIP Meeting Information*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://perma.cc/LRD9-YLVU> (archived May 17, 2020). Minutes for meetings earlier than 2006 are available by emailing ACIP. See *ACIP Meeting Minutes Archive*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://perma.cc/8QAJ-4F3R> (archived May 17, 2020). The authors obtained the minutes through a FOIA request.

14. Sk8ter gurl, *ACIP Voting on a New Vaccine*, YOUTUBE (Mar. 15, 2018), <https://perma.cc/D5V4-BS2J>.

15. *Id.*

16. *Id.*

attended the June 2018 meeting, and several of them commented.¹⁷ Since then, anti-vaccine activists have encouraged members to sign up to comment and have been commenting orally regularly.

The comments have rarely been related to anything the committee discussed during the meeting in question. During the February 2020 ACIP meeting, one participant accused ACIP members of intending to harm and kill children, and warned them they are about to face Nuremberg trials.¹⁸ Another commenter accused the committee of false advertising and threatened them with a lawsuit.¹⁹ Comments calling committee members killers or threatening them with legal action are only going to shut down discussion.²⁰ Even when speaking to vaccine recommendations, commenters generally do not address issues that are even remotely on the table. For example, speakers often claim that vaccines cause autism, something the committee is not revisiting, since the expert bodies' consensus is that vaccines do not cause autism.²¹ Many comments are openly angry or threatening. Commenters film each other's comments and post them online—for example, all the videos from the public comment period on February 26, 2020 were posted online on the same day.²²

To better organize anti-vaccine activists' attendance following the June 2018 meeting, an activist named Lynette Barron started a page called "Inundate the CDC ACIP Meetings" and used it to call others to attend.²³ Initially, attendance was high, though the numbers appear to have

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17. American Health Coalition, *Lynette Baron*, YOUTUBE (June 24, 2018), <https://perma.cc/GLG9-URA2>; see also Peeps TV, *End of day report on the ACIP meeting at the CDC: Tia Severino reporting with Del Bigtree and Jefferey Jaxen*, FACEBOOK (June 20, 2018), <https://perma.cc/96A8-3HGC>.
 18. *Id.* ("One example was a commenter who warned the committee to expect 'Nuremberg Trials' – clearly trying to scare the committee members with an imagined death penalty.")
 19. KJ Moore, FACEBOOK (Feb. 26, 2020), <https://perma.cc/XT5Z-5FUB>.
 20. See, e.g., Dorit Rubenstein Reiss, *February 2020 ACIP Meeting Review: Ebola, Influenza, and Coronavirus*, SKEPTICAL RAPTOR (Mar. 3, 2020), <https://perma.cc/M7JA-PQCS>.
 21. E.g., *We Are Vaxxed*, FACEBOOK, at 7:10, 10:18 (June 26, 2019), <https://perma.cc/H5Q9-FMY5>. On the expert consensus that vaccines do not cause autism, see, for example, *Vaccines Do Not Cause Autism*, CTRS. FOR DISEASE CONTROL & PREVENTION (Mar. 26, 2020), <https://perma.cc/RX2E-RAS9>; *Vaccines Do Not Cause Autism*, NAT'L ACADS. OF SCI., ENG'G, & MED. (Oct. 2019), <https://perma.cc/BV59-JLPD>.
 22. VaXism Videos, *ACIP*, FACEBOOK (Feb. 26, 2020), <https://perma.cc/QV8L-AQ7H>; *Inundate the CDC ACIP Meetings, CDC ACIP Public Comments February 26, 2020*, FACEBOOK (Feb. 26, 2020), <https://perma.cc/KM6W-PN46>. For an analysis of one of the videos, see Orac, *The Annals of "I'm Not Antivaccine," Part 30: Kevin Tuttle "Drops the Mic" at ACIP*, RESPECTFUL INSOLENC (Mar. 4, 2020), <https://perma.cc/8NQG-S7HQ>.
 23. *Inundate the CDC ACIP Meetings*, FACEBOOK, <https://perma.cc/U5X2-AQYH> (archived May 17, 2020).

declined.²⁴ To prevent running out of time to cover pending matters, the CDC limited oral public comments to one part of the meeting, required advance registration, and held a lottery among those registering to comment.²⁵ Routinely, out of the eighteen people chosen to give public comment, the majority are anti-vaccine.²⁶

In addition to the oral comments, the CDC provides unlimited opportunity to comment in writing through the government's portal, Regulations.gov, from several weeks before the meeting to 24 hours after it.²⁷

II. Neither the FACA nor the First Amendment Require Oral Comments at Advisory Committee Meetings

A. The Federal Advisory Committee Act Does Not Require Oral Comments

Oral commenting is not legally required. FACA Section 10(a) states that:

(1) Each advisory committee meeting shall be open to the public.

....

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Administrator may prescribe.²⁸

The relevant part here is section 10(a)(3), which says: "Interested people shall be permitted to attend, appear before, or file statements. . . ." Looking at the language, agencies have a choice to allow people to give oral comments—"appear before"—or file statements. They do not have to do both.

The Code of Federal Regulations also leaves the question of whether to allow members of the public to speak to the Agency's discretion. It says:

(c) Any member of the public is permitted to file a written statement with the advisory committee;

24. See *Inundate the CDC ACIP Meetings*, FACEBOOK (Jan. 16, 2020), <https://perma.cc/2NCP-VFD8>; Meredith Wadman, *Vaccine Opponents Attack a U.S. Science Panel*, SCIENCE (Mar. 4, 2019, 1:10 PM), <https://perma.cc/XY4-BKUM>.

25. ADVISORY COMM. ON IMMUNIZATION PRACTICES, SUMMARY REPORT 15 (2019), <https://perma.cc/F6GH-4Q4K> (summarizing the new process for participation).

26. Dorit Rubenstein Reiss summarized the comment periods for October 2019 and February 2020, which both had eighteen people slotted to speak. Dorit Rubenstein Reiss, *October 2019 ACIP Public Comments—Anti-Vaccine Complaints, Part 2*, SKEPTICAL RAPTOR (Nov. 19, 2019), <https://perma.cc/2L4T-6PXD>; Dorit Rubenstein Reiss, *February 2020*, *supra* note 20.

27. *ACIP Meeting Information*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://perma.cc/FC5D-4VDH> (archived May 17, 2020).

28. 5 U.S.C. app. §§ 10(a)(1), 10(a)(3) (2018).

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(d) Any member of the public may speak to or otherwise address the advisory committee if the agency's guidelines so permit.²⁹

Most of the jurisprudence around the FACA focuses on which types of groups constitute advisory committees.³⁰ Some cases even suggested that the FACA does not provide a private right of action, though even those courts usually found a cause of action to allow the cases to go forward.³¹ However, no case suggested an agency was required to provide oral commenting.³² In the closest case on point, the American Civil Liberties Union sued President Trump seeking access to telephonic meetings of the Presidential Advisory Committee on Election Integrity and asked, among other things, that members of the public be allowed to submit oral comments.³³ In that case, the district court concluded that "section 10(a)(3) does not require that interested persons be permitted to attend *each* advisory committee meeting, nor does it even seem to require that an advisory committee provide an opportunity for in-person attendance at all, if interested persons are permitted to 'file statements' with the committee."³⁴

In short, while section 10 of the FACA requires, in our view, that people be allowed to provide input to federal advisory committees, it does not require committees to allow oral comments, and no source suggests otherwise. In many cases, oral comments can be beneficial and useful. They

29. 41 C.F.R. § 102-3.140.

30. *See, e.g.,* Byrd v. U.S. EPA, 174 F.3d 239, 241 (D.C. Cir. 1999); Food Chem. News v. Young, 900 F.2d 328, 329 (D.C. Cir. 1990). Showing the importance of that topic, Croley and Funk devoted nearly thirty pages to the creation and constitution of the committees, while spending only ten addressing managing meetings. *See* Croley & Funk, *supra* note 4, at 472-99, 503-13.

31. Elec. Privacy Info. Ctr. v. Drone Advisory Comm., 369 F. Supp. 3d 27, 38, 49 (D.D.C. 2019); Freedom Watch, Inc. v. Obama, 807 F. Supp. 2d 28, 33-34 (D.D.C. 2011); Judicial Watch, Inc. v. U.S. Dep't of Commerce, 736 F. Supp. 2d 24, 30 (D.D.C. 2010); Judicial Watch, Inc. v. Nat'l Energy Policy Advisory Grp., 219 F. Supp. 2d 20, 34, 56 (D.D.C. 2002).

32. Several cases have discussed the right of access to the committee's material. *Elec. Privacy Info. Ctr.*, 369 F. Supp. 3d at 42-43; Idaho Wool Growers Ass'n v. Schafer, 637 F. Supp. 2d 868, 879-80 (D.D.C. 2009); Nw. Forest Res. Council v. Espy, 846 F. Supp. 1009, 1013-14 (D.D.C. 1994). But right of access is not an issue here, since the CDC provides access to meeting materials and videos. One case also stated that the opportunity to comment must be contemporaneous to the meeting's process. *Ala.-Tombigbee Rivers Coal. v. Dep't of Interior*, 26 F.3d 1103, 1106-07 (11th Cir. 1994). Since the CDC provides opportunity for written comment before and during the meeting, that requirement is also not at issue here.

33. *ACLU v. Trump*, 266 F. Supp. 3d 133, 135-38 (D.D.C. 2017).

34. *Id.* at 140. The court is drawing on another district court case, *Holy Cross Neighborhood Ass'n v. Julich*, 106 F. Supp. 2d 876, 888 (E.D. La. 2000), stating "[t]he Court first notes Congress' use of the disjunctive: the Plaintiffs do not have the right to attend, appear before *and* file statements with the [committee]." The court there went as far as allowing closed meetings because of strong opposition and concerns about disruption. *Id.*

can provide new perspectives, and even new information and thoughts. But if, on balance, the comments are not helpful, committee time can probably be used better by abolishing the oral comments and focusing elsewhere, while still allowing written comments (to provide the public an opportunity to be heard).

B. The First Amendment Does Not Require Oral Comments

While the First Amendment subjects government limits on speech to strict scrutiny, with few and narrow exceptions, it does not generally require government to provide a platform for the speaker.³⁵ Unlike public streets,³⁶ government committee deliberations—or administrative agencies policies more broadly—are not traditional public forums: “The government does not create a public forum by inaction *or by permitting limited discourse*, but only by intentionally opening a nontraditional forum for public discourse.”³⁷ Such limited forums are subject to reasonable restrictions.³⁸ Traditionally, required commenting to federal administrative agencies has been limited. The Administrative Procedure Act, for example, does not require oral comments for rulemaking and provides exceptions from written comment requirements.³⁹ Nothing stops citizens from writing to agencies, but there is no general First Amendment requirement to provide commenting opportunities.

That said, by allowing oral commenting in front of the ACIP for years, it may be possible to claim the CDC did create a designated public forum, and cannot now refuse to allow public input completely without facing strict scrutiny. That requires a showing that any limit is narrowly tailored to promote a compelling state interest—a very high bar.⁴⁰ However, it is not clear that such a claim would succeed. The Supreme Court has allowed agencies to step back from other participation opportunities when the Administrative Procedures Act did not require them, with no First

35. Frederick Schauer, *Hohfeld's First Amendment*, 76 GEO. WASH. L. REV. 914, 915-17 (2008).

36. See, e.g., *Frisby v. Schultz*, 487 U.S. 474, 480-81 (1988) (citing *Hague v. CIO*, 307 U.S. 496, 515 (1939)) (“[O]ur decisions identifying public streets and sidewalks as traditional public fora are not accidental invocations of a ‘cliché,’ but recognition that they . . . ‘have immemorially been held in trust for the use of the public.’”).

37. *Cornelius v. NAACP Leg. Def. Fund*, 473 U.S. 788, 802, 806 (1985) (emphasis added).

38. *Id.* at 806 (citing *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 49 (1983)) (“Control over access to a nonpublic forum can be based on subject matter and speaker identity so long as the distinctions drawn are reasonable in light of the purpose served by the forum and are viewpoint-neutral.”).

39. 5 U.S.C. § 553 (2019).

40. *Perry Educ. Ass’n*, 460 U.S. at 45 (“The Constitution forbids a State to enforce certain exclusions from a forum generally open to the public even if [the State] was not required to create the forum in the first place.”). On the need for and meaning of strict scrutiny, see *Sable Commc’ns v. Fed. Commc’ns Comm’n*, 492 U.S. 115, 126 (1989).

Amendment concerns.⁴¹ Since the FACA does not require a specific form of commenting, the CDC may preserve discretion here. But it is possible to argue that the practice of allowing comments over decades created a designated public forum right and that the government is now limited from completely forbidding public input.⁴²

Even so, there is a strong argument that the format of commenting can be regulated. It has long been acknowledged that government can reasonably regulate time, place, and manner of speech.⁴³ The government cannot penalize speakers for the content of their speech, but can—and maybe even should—consider policy implications of the provided opportunities for this speech. When oral comments are used to create videos for distribution among the anti-vaccine community, the forum is not used to provide input to policy or reach the committee. Rather, its purpose is to impart an appearance of official status to third-party viewers by giving the comments an official forum. That is an external purpose, not a legitimate purpose of public commenting. In essence, the comment period has become an opportunity to engage in public theater, rather than an opportunity to provide input. Foregoing oral comments while continuing to allow extensive opportunity for written comments prevents the spectacle while preserving the input. This approach regulates the manner of speech but preserves the right of the commenters to be heard by committee members. There is no First Amendment barrier to doing so. Ironically, weaker measures—like requiring speakers to stay on topic, or forbidding certain content—may be more likely to run afoul of the First Amendment, since they involve direct regulation of content, raising serious First Amendment concerns.⁴⁴

III. The ACIP Should Eliminate Oral Comments Because They Do Not Further Public Participation Goals

The oral comments discussed here are of limited value for achieving the goals of participation described above. First, they are not usually on matters under discussion by the committee, but instead address vaccines generally. In fact, some of them address issues outside the committee's

41. *See, e.g.,* *Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 542-44 (1978) (holding courts cannot find opportunities for public input “inadequate” if the procedures met the standards required by Administrative Procedure Act).

42. *See generally* *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92 (2015) (holding that agencies are not required to undergo notice-and-comment rulemaking to change longstanding interpretive rules, although agencies cannot change legislative rules without notice-and-comment under the guise of interpretation).

43. *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984); *Heffron v. Int’l Soc’y for Krishna Consciousness*, 452 U.S. 640, 654-55 (1981).

44. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382-83 (1992); *Police Dep’t of Chi. v. Mosley*, 408 U.S. 92, 95-96 (1972).

jurisdiction, like school mandates, an issue handled by states. For example, on February 2019, several of the commenters expressed their opposition to mandates, but the ACIP does not and cannot mandate vaccines; it can only recommend them, so these comments are outside its jurisdiction.⁴⁵ Public speakers can certainly make these statements, but they do not contribute to policymaking when the issue is not before the committee and not relevant to the topics that are.

Of course, comments can be of value if they address matters that are not currently under discussion at a specific hearing but are issues that the committee can consider generally. However, when none of the comments address the issues on the table, it is an indication that the committee's work is not the focus; the spectacle is. Further, the format of oral comments does not allow response to or correction of incorrect information, leaving the videos to stand as statements apparently made in an official forum, with no counter. For example, one commenter wrongly presented a report from the Institute of Medicine—now part of the National Academies of Science, Engineering, and Medicine—as saying there has never been a study comparing the vaccinated and unvaccinated. In reality, the report concluded such a study was not needed, would be either unethical or not feasible, and that existing mechanisms for getting information are robust and superior.⁴⁶ Similarly, incorrect comments claiming extensive deaths from vaccines, contrary to known data, end up in videos of people standing next to the CDC logo. With no correction, these videos are then used to promote anti-vaccine policies.⁴⁷ That is not the purpose of public comments.

Another benefit of public participation is increasing the legitimacy of the process by providing fair procedures and showing participants that they are heard, providing procedural justice.⁴⁸ This, too, is not achieved here. The explicit statements by ACIP members suggest anti-vaccine commenters do not feel heard. Commenters accuse the ACIP of dismissing parents, of not respecting them,⁴⁹ of being on the computer rather than

45. VaXism, *acip*, FACEBOOK, at 30:58-34:10 (Feb. 27, 2019), <https://perma.cc/N3QZ-GEV2>; *ACIP Charter*, CTRS. FOR DISEASE CONTROL & PREVENTION (June 5, 2018), <https://perma.cc/48YK-HXR3>.

46. INST. OF MED., *THE CHILDHOOD IMMUNIZATION SCHEDULE AND SAFETY: STAKEHOLDER CONCERNS, SCIENTIFIC EVIDENCE, AND FUTURE STUDIES* (2013), <https://perma.cc/UG3W-PD9Z>.

47. Natalie L. McCarthy et al., *Vaccination and 30-Day Mortality Risk in Children, Adolescents, and Young Adults*, PEDIATRICS, Mar. 2016, at 4-5 (finding no increased risk of death from vaccinations).

48. Tom R. Tyler, *Social Justice: Outcome and Procedure*, 35 INT'L J. PSYCHOL. 117, 119-20 (2010).

49. See PeepsTV, *Public comments ACIP meeting afternoon 10/24/2018*, FACEBOOK, at 21:40 (Oct. 24, 2018), <https://perma.cc/RSS2-SXR3>.

listening,⁵⁰ or of censoring information.⁵¹ Having participants who repeatedly express the feeling that their comments are not heard while commenting undermines procedural justice. And audience members are subjected to repeated claims that committee members are not listening, are ignoring the evidence, or are intentionally harming children, only exacerbating distrust and further undermining legitimacy.

Conclusion

We think the ACIP comments have reached the point where oral commenting is more harmful than helpful, and the practice should be reconsidered. Public input is essential to this policy process. We believe that, at present, written comments best serve that purpose.

50. We Are Vaxxed, *Public Comments @ CDC ACIP meeting 10/23/2019*, FACEBOOK, at 39:06 (Oct. 23, 2019), <https://perma.cc/NHG4-QDP3>.

51. KJ Moore, *supra* note 19.