UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ELI LILLY AND COMPANY,
Lilly Corporate Center
893 Delaware Street
Indianapolis, IN 46225, *et al.*,

Plaintiffs,

–v–

NORRIS COCHRAN,
200 Independence Avenue, SW
Washington, DC 20201, *et al.*,

Defendants.

Case No. 1:21-cv-81-SEB-MJD

AMERICAN HOSPITAL ASSOCIATION, 340B HEALTH, AMERICA'S ESSENTIAL HOSPITALS, ASSOCIATION OF AMERICAN MEDICAL COLLEGES, CHILDREN'S HOSPITAL ASSOCIATION, AND AMERICAN SOCIETY OF HEALTH-SYSTEM PHARMACISTS' REPLY IN SUPPORT OF THEIR MOTION TO INTERVENE

American Hospital Association, 340B Health, America's Essential Hospitals, Association of American Medical Colleges, National Association of Children's Hospitals d/b/a Children's Hospital Association, and American Society of Health-System Pharmacists (collectively, Hospital Associations or Proposed Intervenors) submit this reply brief in support of their motion to intervene pursuant to Federal Rule of Civil Procedure 24(a), or in the alternative, pursuant to Federal Rule of Civil Procedure 24(b). For the reasons outlined below, the Court should reject the arguments made in opposition by Plaintiffs Eli Lilly and Company and Lilly USA, LLC (collectively, Plaintiffs or Lilly) and by the government Defendants (collectively, HHS or Defendants) and grant Proposed Intervenors' motion.

I. Lilly's Conditional Opposition Demonstrates that the Hospital Associations Are Entitled to Intervene.

Last summer, Lilly upset 20 years of industry-wide compliance with the 340B statute by brazenly refusing to offer statutorily required discounts when 340B drugs are dispensed through contract pharmacies. Five other companies have followed suit. Lilly has now filed this lawsuit seeking "an order and judgment declaring that it would be entirely lawful for Lilly not to offer 340B price discounts to contract pharmacies." Am. Compl. at 84, ECF No. 17.[1] The Hospital Associations' members are thousands of hospitals that use contract pharmacies and that purchase Lilly's drugs as part of the 340B program. Each of these members would be directly impacted by the order Lilly seeks.

[1] Lilly misrepresents the nature of contract pharmacy arrangements. Contract pharmacies do not purchase 340B drugs. Rather, "the 340B provider orders and pays for the 340B drugs, which are then shipped to the contract pharmacy where the drugs are dispensed to the 340B provider's patients." Proposed Intervenors' Mem. in Supp. of Mot. to Intervene (Proposed Intervenors' Mem.) 1, ECF No. 40; *see also* HHS, *Advisory Opinion 20-06 on Contract Pharmacies Under the 340B Program* (Advisory Opinion), 6 (Dec. 30, 2020), https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/340B-AO-FINAL-12-30-2020_0.pdf ("[T]he covered entity remains the purchaser whether it chooses to have discount drugs distributed through an in-house pharmacy or a contract pharmacy.").

In its conditional opposition, Lilly's sole basis for contesting intervention is to question whether the Hospital Associations "have sufficient interest to . . . justify their participation in the case as intervenors." Pls.' Conditional Opp'n to Mot. for Intervention (Pls.' Opp'n) 1, ECF No. 70. In support of its position, Lilly questions whether the Hospital Associations' members have arrangements with contract pharmacies under which the pharmacies "truly act as agents" of the hospitals. *Id.* (alteration and citation omitted). Lilly ignores, however, that the Hospital Associations alleged the existence of such contract pharmacy arrangements in their motion to intervene. *See, e.g.*, Proposed Intervenors' Mem. at 1 ("Under such arrangements, the 340B provider orders and pays for the 340B drugs, which are then shipped to the contract pharmacy where the drugs are dispensed to the 340B provider's patients."). This is sufficient for the purposes of deciding the motion, as an intervention motion must be granted unless "it appears to a certainty that the intervenor is not entitled to relief under any set of facts which could be proved under the complaint." *State v. City of Chicago*, 912 F.3d 979, 984 (7th Cir. 2019) (citations omitted); *see also id.* (noting that a court "*must accept as true the non-conclusory allegations of the motion*") (emphasis added) (citations omitted). In any event, the existence of those contract pharmacy arrangements is publicly accessible information, *see* https://340bopais.hrsa.gov/SearchLanding (searchable by "Covered Entities" or "Contract Pharmacies"), and Lilly offers no justification to support its fishing expedition for the contracts themselves.

In addition to being irrelevant to whether the Hospital Associations have a sufficient interest to intervene in this matter, the details of the contracts Lilly seeks are irrelevant to whether Lilly is entitled to the relief it requests, which includes a declaration that it is lawful to refuse to offer 340B discounts whenever a covered entity uses a contract pharmacy to dispense its 340B

drugs. Lilly seeks relief that would cover *all* contract pharmacy arrangements; nowhere has Lilly limited the relief it seeks to only certain such arrangements.

The contents of the contracts are also irrelevant to Lilly's request to invalidate HHS's December 30, 2020 Advisory Opinion and to enjoin its implementation and enforcement. HHS's then General Counsel concluded in the Advisory Opinion "that to the extent contract pharmacies are acting as agents of a covered entity, a drug manufacturer in the 340B Program is obligated to deliver its covered outpatient drugs to those contract pharmacies and to charge the covered entity no more than the 340B ceiling price for those drugs." Advisory Opinion at 1. Insofar as the Advisory Opinion discusses the agency relationship between 340B covered entities and contract pharmacies, it in no way relies on (or even refers to) specific contractual arrangements. Rather, the Advisory Opinion states:

> The notion that the legitimate transfer of drugs to contract pharmacies so that they can be dispensed to patients of the covered entity constitutes diversion not only ignores the realities of accounting, but also that the covered entity and contract pharmacy are not distinct, but function as principal-agent. As explained, the covered entity remains the purchaser whether it chooses to have discount drugs distributed through an in-house pharmacy or a contract pharmacy.

Id. at 6; *see also id.* at 1 ("Many covered entities enter into written agreements with pharmacies ('contract pharmacies') to distribute their covered outpatient drugs to the entities' patients. Under those agreements, the covered entity orders and pays for the 340B drugs, which are then shipped from the manufacturer to the contract pharmacy. Although the contact [sic] pharmacy has physical possession of the drug, it has been purchased by the covered entity."). This is precisely the nature of the relationships between the Hospital Associations' members and the contract pharmacies with which they have entered into arrangements, regardless of the specific language contained in their agreements.

Lilly notes that the Hospital Associations did not provide the survey responses in which 340B Health hospital members reported that "discounts for drugs dispensed through a contract pharmacy provided over half of the total 340B benefit from the 340B discounts for [critical access hospitals] (51%) and about a quarter of the total such benefit for all 340B hospital types (27%)," and that "the reduction or elimination of the discounts for drugs dispensed through contract pharmacies would lead to cuts in programs and services for people with low income and/or living in rural areas." Ex. A (Decl. of Maureen Testoni) ¶¶ 6–7, ECF No. 39-1; *see also* Pls.' Opp'n at 2. But Lilly never argues that including the survey responses themselves would be relevant or required, and in fact does not even argue that they should be provided. In any case, the survey responses are unnecessary to show that the Hospital Associations' members have an interest in this case. The benefits the Hospital Associations' members receive when using contract pharmacies are the reason Lilly adopted the policy at issue in this case: to curtail those very benefits.

Finally, Plaintiffs' one-page response to two points actually raised in Proposed Intervenors' memorandum should be rejected. *See* Pls.' Opp'n at 3–4. First, it is astounding that Lilly argues that it is "simply not true" the Hospital Associations' members' interest in "receiving the discounts to which they are entitled" would be impaired by a ruling in Plaintiffs' favor. *Id.* at 3 (quoting Proposed Intervenors' Mem. at 3). The whole purpose of Lilly's policy is to charge more for 340B drugs dispensed to the hospitals' patients at contract pharmacies and thus to deny the discounts that had previously benefited the hospitals. In order to preserve its policy, Lilly seeks an order in this lawsuit declaring that the company can refuse to offer 340B discounts whenever a covered entity uses a contract pharmacy. The Hospital Associations' members are covered entities that dispense Lilly's drugs using contract pharmacies and so would plainly be affected.

Lilly next attempts to deny that the ruling Lilly seeks "would significantly, adversely impact the services of all 340B covered entities provide" by insisting that the company's "policy ensures that each and every covered entity receives each and every discount the statute requires." *Id.* (quoting Proposed Intervenors' Mem. at 9). But this claim merely begs the questions at the center of this case—what does the statute require, and does Lilly's policy comply?—and is directly undermined by the declaration filed in support of Proposed Intervenors' motion. *See* Decl. of Maureen Testoni.

II. HHS's Arguments that It Will Adequately Represent Proposed Intervenors' Interests and that the Supreme Court Has Barred Intervention Should Be Rejected.

There are four factors that must be met to intervene as of right. *See Driftless Area Land Conservancy v. Huebsch*, 969 F.3d 742, 746 (7th Cir. 2020). Defendants do not contest that the Hospital Associations have met three of the elements: the motion is timely, the Hospital Associations have an interest in this action, and the disposition of this action has the potential to impair that interest. The Hospital Associations thus are "*entitled* to intervene *unless* existing parties adequately represent [their] interests." *Id.* Not only should the Court reject HHS's claim that it will adequately represent Proposed Intervenors' interests, the Court also should reject HHS's attempt to impose the additional requirement for intervention that would-be intervenors must have a cause of action against an existing party, as it exists nowhere in the case law.

A. HHS Does Not Adequately Represent the Hospital Associations' Interests.

Since Lilly first issued its unlawful policy last summer, the Hospital Associations have been at odds with HHS over how HHS should address Lilly's new policy. After numerous communications with HHS over several months, which led to no action by the government or even an acknowledgment that Lilly's policy is unlawful, the Hospital Associations filed a lawsuit in federal court over HHS's failure to take any action whatsoever to enforce the statute and to require

Lilly to comply with its obligations. *See* Compl., *Am. Hosp. Ass'n v. Azar*, No. 4:20-cv-8806 (N.D. Cal. Dec. 11, 2020), ECF No. 1. Only after that lawsuit was filed did HHS on December 30, 2020, publish the Advisory Opinion declaring, as Proposed Intervenors had argued, that pharmaceutical companies cannot eliminate 340B discounts when covered entities dispense 340B drugs using contract pharmacies. Yet, three months later, HHS *still* has taken no action, except to defend itself in that lawsuit, this one, and others. The Proposed Intervenors have no way of knowing whether and how HHS will vigorously defend the Advisory Opinion or whether it will make the strongest legal arguments available. Given this history, and as reflected in the tone of HHS's opposition brief, there is certainly a basis for finding that HHS will not adequately represent the Hospital Associations' interests in this matter.

Defendants insist that because HHS "shares the Covered Entities' goal of repelling this lawsuit," Defs.' Opp'n to Motion to Intervene (Defs.' Opp'n) at 8, ECF No. 76, Defendants' representation of the Hospital Associations' interests is presumptively adequate. It may be true that both HHS and the Hospital Associations currently agree that the 340B statute requires Lilly to offer 340B discounts for 340B drugs when they are dispensed via contract pharmacies, but "[t]o trigger the presumption of adequacy . . . it's not enough that a defense-side intervenor 'shares the same goal' as the defendant in the brute sense that they both want the case dismissed." *Driftless*, 969 F.3d at 748. Indeed, the Hospital Associations' interests lie in the correct interpretation and enforcement of the 340B statute, not just in the mere existence of the Advisory Opinion. Yet HHS "has refused to take any action to stop Lilly from denying Proposed Intervenors' members the statutory discounts to which they are entitled." Proposed Intervenors' Mem. at 3. To the extent the Court must decide issues concerning HHS's authority and obligations under the 340B statute, there can be no question that HHS will not adequately represent the Hospital Associations' interests, as

they have been at odds over those very questions for most of the past year. And to the extent there are issues the Court must decide about what the Advisory Opinion means and whether it complies with the statute—such as the agency question raised in Lilly's opposition—it is certainly possible that HHS and the Hospital Associations will disagree as to their resolution.

That "Proposed Intervenors' interest in this lawsuit relates only to Lilly's claims regarding the Advisory Opinion," *id.* at 5, does not mean, as HHS insists, that the only disagreement that may arise in this case between the Hospital Associations and HHS would be "about the minutiae of litigation strategy," Defs.' Opp'n at 10. In a recently decided case, *Driftless Area Land Conservancy v. Huebsch*, the Seventh Circuit engaged in "a more discriminating comparison of the absentee's interests and the interests of existing parties," 969 at 748, and one that is appropriate here.

In that case, the court found that the would-be intervenors' interests "are independent of and different from the [government's] in several important respects," including that the would-be intervenors "own, finance, and will operate the [government-regulated construction] in question, and have obligations to their investors in connection with its construction and operation"; that "[t]hey have substantial sunk and anticipated future investments in the [construction], and a valid expectation of a return on their investment pursuant to the ratemaking regulatory regime administered by" the government agency; and that "[a]s public utilities, they have a legal obligation to maintain the power grid and provide adequate and reliable electricity services to the public." *Id.* The government party in that case, by contrast, had "interests and objectives" that "overlap[ped] in certain respects" but were "importantly different," including that the entity was "a regulatory body, and its obligations are to the general public, not to the [intervening] companies or their investors." *Id.*

Though not precisely equivalent, the Hospital Associations' and HHS's interests in this case are in line with those in *Driftless*. The Hospital Associations' members also have a vital economic interest in the outcome of the case, and for at least some members a decision that Lilly's plan is lawful would have a significant impact on their finances. The members also must protect the interests of their underserved and disadvantaged patients, which the 340B discounts enable them to do. As outlined in the motion to intervene, the Hospital Associations' members use 340B discounts to allow them to serve their vulnerable communities better and to keep their hospitals operational. Proposed Intervenors' Mem. at 8–9. HHS, by contrast, is tasked with "enhanc[ing] the health and well-being of all Americans," among many other things. *About HHS*, https://www.hhs.gov/about/index.html. The court in *Driftless* emphasized in particular that the government party "*regulates* the [intervening] companies, it does not *advocate for* them or represent their interests." 969 F.3d at 748. So too here, HHS does not advocate for Proposed Intervenors and indeed serves in a regulatory capacity. Thus, as in *Driftless*, Proposed Intervenors' "intervention request is not controlled by the line of cases involving intervention motions by individual members of the public, citizen groups, or other units of government that hold identical or closely aligned interests and objectives as existing governmental parties." *Id.* at 748–49.

Defendants' reliance on *Solid Waste Agency v. United States Army Corps of Engineers*, 101 F.3d 503 (7th Cir. 1996), and *Wisconsin Education Ass'n Council v. Walker*, 705 F.3d 640 (7th Cir. 2013), for the proposition that HHS will adequately represent the Hospital Associations' interests is misplaced. In *Solid Waste*, the court emphasized that the would-be intervenors "do not argue that the Department [of Justice] is at present failing to defend the Corps with utmost vigor. Their fear is that its zeal may slacken before the litigation runs its course and that it will be too late for them to intervene then." 101 F.3d at 504–05. In that case, a presumption of adequacy existed

because "the interests of the original party and of the intervenor" were deemed to be "identical," and the would-be intervenors argued only that the Department of Justice "has additional interests stemming from its unique status as the lawyer for the entire federal government." *Id.* at 508. Here, however, HHS has already shown its interests to be at odds with the Hospital Associations' interests, having issued the Advisory Opinion only after being sued in federal court by the Hospital Associations and having opposed the Hospital Associations' lawsuit to require it to take steps to enforce the 340B statute. Since Lilly first noticed its unlawful policy in summer 2020, Proposed Intervenors have been desperately attempting to get HHS to enforce the statute and step in to require Lilly (and the other drug companies with similar policies) to cease their practices, including by filing the lawsuit. *See* Proposed Intervenors' Mem. at 3–4.[2] Thus, in contrast with *Solid Waste*, Proposed Intervenors have shown a real risk that Defendants will fail to adequately represent their interests in this case.

Wisconsin is equally inapposite as in that case the court determined that the would-be intervenors had only a tangential interest in the action, unlike here, where the Hospital Associations' interests lie at the very heart of the case, which is about whether Lilly may lawfully deprive their members of significant discounts for drugs dispensed to their patients at thousands of pharmacies across the country. *See* 705 F.3d at 658. With respect to adequacy of representation, the would-be intervenors in *Wisconsin* admitted that if the statute at issue were declared valid, their rights would be "completely vindicated." *Id.* at 659. Moreover, the would-be intervenors

[2] Defendants' contention that they "successfully rebutted" Proposed Intervenors' "assertion that 'HHS has never taken the position that it can or will enforce the statutes as interpreted,'" Defs.' Opp'n at 11 (quoting Proposed Intervenors' Mem. at 10), is wrong and is not supported by the court's decision in *American Hospital Association v. Department of Health and Human Services.* The court rejected plaintiffs' argument that HHS had abdicated its statutory responsibilities, ruling that "an action brought against HHS on this ground is premature" and specifically dismissing the case *without prejudice* in order to leave open the option for the Hospital Associations to renew that claim if HHS continued to refuse to enforce the statute against Lilly and the other companies with similar policies. No. 4:20-cv-8806, 2021 WL 616323, at *8 (N.D. Cal. Feb. 17, 2021).

"identif[ied] no conflict rendering the state's representation inadequate" and relied "on post-hoc quibbles with the state's litigation strategy." *Id.* By contrast, the Hospital Associations have spent the past eight months working to get Defendants to protect their statutory rights, to no avail. The existence of the Advisory Opinion alone is not enough to vindicate the Hospital Associations' members' rights, and there can be no question, given this prolonged history, that Proposed Intervenors' and Defendants' interests in this case diverge. *See also Gaylor v. Lew*, No. 16-cv-215, 2017 WL 222550, at *2 (W.D. Wis. Jan. 19, 2017) (contrasting with *Wisconsin* a motion to intervene where would-be intervenors "wish to raise issues of both fact and law regarding how [the statute at issue] and plaintiffs' challenge to it affects [their] interests" and citing 6 James William Moore et al., Moore's Federal Practice § 24.03[4][a] (3d ed. 2016), for proposition that government's representation "frequently" is not adequate "when one group of citizens sues the government, challenging the validity of laws or regulations, and the citizens who benefit from those laws or regulations wish to intervene and assert their own, particular interests rather than the general, public good").

Because the Hospital Associations' "interests and objectives are materially different than [Defendants'], the presumption of adequate representation does not apply. Under the lenient default standard, [Proposed Intervenors] need only show that [Defendants'] representation 'may be' inadequate, 'and the burden of making that showing should be treated as minimal.'" *Driftless*, 969 F.3d at 749 (quoting *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972)). The Hospital Associations have met that burden.

B. HHS's Argument that *Astra USA, Inc. v. Santa Clara County* Bars Intervention Has No Basis in Law.

Defendants attempt to impose an additional hurdle to intervention by insisting that *Astra USA, Inc. v. Santa Clara County*, 563 U.S. 110 (2011), bars intervention in this case, Defs.' Opp'n

at 5–7. But as Chief Judge Posner explained at length in *Solid Waste*, the test for intervention of right "is whether the outcome of the suit might impair or impede the would-be intervenor's interest." 101 F.3d at 507. There is no additional requirement that the would-be intervenor be able to bring its own lawsuit against one of the existing parties. Indeed, "[t]he strongest case for intervention is *not where the aspirant for intervention could file an independent suit*, but where the intervenor-aspirant *has no claim* against the defendant yet a legally protected interest that could be impaired by the suit. For it is here that intervention may be essential." *Id.* (emphasis added) (citation omitted). Despite Defendants' protests to the contrary, *Astra* does not undermine this clear precedent in favor of intervention.

Intervention was not at issue in *Astra*, where the Supreme Court held that "suits by 340B entities to enforce ceiling-price contracts running between drug manufacturers and the Secretary of HHS are incompatible with the statutory regime." 563 U.S. at 113. Here, by contrast and despite HHS's assertions otherwise, the Hospital Associations are not attempting to "sue . . . to enforce their statutory entitlement to 340B discounted drugs." Defs.' Opp'n at 6. Rather, the Hospital Associations are seeking to intervene to protect their interests, which might be impaired or impeded by the outcome of this case. HHS cites no authority for the application of *Astra* to this motion or for this new hurdle to intervention. The Hospital Associations have a "direct, significant, and legally protectable" interest that is the subject of this action; there is no requirement that they also have an independent claim against Plaintiffs or Defendants. *See Solid Waste*, 101 F.3d at 507 (interest required for intervention linked only to Article III standing).[3]

[3] Proposed Intervenors do not concede that there is no claim they could bring against Lilly or HHS but argue only that they need not be able to do so to intervene in this case.

HHS does not dispute that the Hospital Associations have standing in this case. The only reference to standing in Defendants' opposition comes in the context of their argument that the Court should first decide their yet-to-be-filed motion to dismiss the case for lack of jurisdiction before deciding Proposed Intervenors' motion. Defs.' Opp'n at 7–8. Because the briefing schedule stipulated to by the parties today provides that HHS may simultaneously move for dismissal for lack of jurisdiction and for failure to state a claim (or for summary judgment), and that Lilly's response to the jurisdictional and merits arguments will be contained in a single pleading, the Hospital Associations oppose HHS's request. *See* Joint Stipulation of Br. Schedule on Defs.' Forthcoming Mot. to Dismiss & Both Sides' Mots. for Summ. J., ECF No. 83. The Hospital Associations have the right to represent their interests during those proceedings on the merits, and HHS provides no basis for barring such participation.

III. Alternatively, the Court Should Grant Permissive Intervention.

"Permissive intervenors must convince a court that: (1) they share a common question of law or fact with a party, (2) are timely in their pursuit of intervention; and (3) their intervention would not cause prejudice to existing parties." *Randall v. Rolls-Royce Corp.*, No. 1:06-cv-860-SEB-JMS, 2010 WL 1948222, at *3 (S.D. Ind. May 13, 2010). HHS argues only that the Hospital Associations cannot raise any defenses in this case, and thus the Court should not permit intervention. However,

> a permissive intervenor does not even have to be a person who would have been a proper party at the beginning of the suit, since of the two tests for permissive joinder of parties, a common question of law or fact and some right to relief arising from the same transaction, only the first is stated as a limitation on intervention.

7C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1911 (3d ed. 2020) (footnote omitted); *see also id.* ("Permissive intervention may be permitted when the intervenor has an economic interest in the outcome of the suit.") (footnote omitted). The Hospital

Associations plainly have "an economic interest in the outcome of the suit," as the case turns on whether their members have a statutory right to 340B drug discounts when dispensing those drugs via contract pharmacies, and they also share "a common question of law or fact with" HHS, as the correct interpretation and enforcement of the 340B statute is central to this action. The Hospital Associations similarly share defenses with HHS, including that the Advisory Opinion Lilly challenges "is consistent with and required by the 340B statute." Ex. B (Proposed Answer in Intervention to Pls.' First Am. Compl.) at 39, ECF No. 39-2. Defendants fail to cite to any case in which permissive intervention has been denied for the reasons they put forward.

The Hospital Associations' intervention in this case is particularly appropriate now that the Court has preliminarily enjoined HHS "from implementing or enforcing against Plaintiffs the Administrative Dispute Resolution Regulations," Prelim. Inj., ECF No. 82, since a key component of HHS's opposition to intervention is its insistence that "the matter must be decided, in the first instance, in HHS's ADR process," Defs.' Opp'n at 12. Since HHS filed its opposition, the Court has recognized the likelihood that Lilly will succeed on the merits of its challenge to the ADR regulations, meaning that not only is there *currently* no ADR process of which the Hospital Associations' members can avail themselves with respect to Lilly's unlawful policy, there is unlikely to be one at all after the Court reaches the merits of this case. Thus, should this case proceed to the merits of the legality of the Advisory Opinion, the Hospital Associations should be permitted to intervene to argue critical questions that have a significant impact on the Hospital Associations' members.

Finally, Defendants' arguments that the Court should exercise its discretion to deny permissive intervention should also be rejected. HHS first decries "the potential for the addition of another party to complicate the proceedings and further burden the Court and the parties," *id.* at

13, but HHS fails to identify any prejudice that would be imposed by the Hospital Associations' participation in this case. HHS's other argument—that permitting intervention "would severely curtail the discretion and authority Congress bestowed," *id.*—is unsupported by any legal authority. Lilly has raised claims going to the heart of how to interpret and enforce the 340B statute with respect to the Hospital Associations' members, and they should be permitted to intervene to defend against those claims.

CONCLUSION

For the foregoing reasons, the Hospital Associations respectfully request that the Court grant their motion to intervene of right under Federal Rule of Civil Procedure 24(a) or, in the alternative, to permit intervention under Federal Rule of Civil Procedure 24(b).

Dated: March 19, 2021

Respectfully submitted,

s/ Alice M. Morical
Alice M. Morical
Christopher D. Wagner
HOOVER HULL TURNER LLP
111 Monument Circle, Suite 4400
P.O. Box 44989
Indianapolis, IN 46244-0989
Tel: (317) 822-4400
Fax: (317) 822-0234
amorical@hooverhullturner.com
cwagner@hooverhullturner.com

William B. Schultz (*pro hac vice*)
Margaret M. Dotzel (*pro hac vice*)
Casey Trombley-Shapiro Jonas (*pro hac vice*)
ZUCKERMAN SPAEDER LLP
1800 M Street NW, Suite 1000
Washington, DC 20036
Tel: (202) 778-1800

Fax: (202) 822-8106
wschultz@zuckerman.com
mdotzel@zuckerman.com
cjonas@zuckerman.com