IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

CORNERSTONE CREDIT UNION LEAGUE and CONSUMER DATA INDUSTRY ASSOCIATION

Plaintiffs,

v.

CONSUMER FINANCIAL PROTECTION BUREAU and RUSSELL VOUGHT in his official capacity as Acting Director of the CFPB

Defendants.

No. 4:25-cv-00016-SDJ

PROPOSED DEFENDANT-INTERVENORS' REPLY IN SUPPORT OF THEIR MOTION TO INTERVENE [ECF NO. 29]

In their Memorandum in Opposition to Putative Defendant-Intervenors' Motion to Intervene, ECF No. 29, Plaintiffs do not dispute that Proposed Defendant-Intervenors (Movants) meet the majority the factors for intervention as of right. Regarding the factors they do contest, Plaintiffs misstate both the law and the facts. Because Movants satisfy the liberal standard for intervention as of right and pursuant to this Circuit's "broad policy favoring intervention," *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 305 (5th Cir. 2022), the motion should be granted. Alternatively, permissive intervention is appropriate.

I. Movants Are Entitled to Intervene Under Rule 24(a)(2).

Plaintiffs make several concessions that narrow the scope of their opposition. They do not dispute the timeliness of the motion to intervene, or that Movants' interests will be impaired if Plaintiffs' suit succeeds, or that Harvey Coleman and David Deeds (Individual Movants) have an interest in the Rule at issue and are its intended beneficiaries. Therefore, only two issues remain: (1) whether Tzedek DC and New Mexico Center on Law and Poverty (Organizational Movants) have a legally protectable interest in the Rule and (2) whether the Consumer Financial Protection Bureau (CFPB) will adequately protect all Movants' interests.

A. Organizational Movants have a legally protectable interest in the Rule.

Plaintiffs first ask the court to impose a standard that is inconsistent with the requirements of Rule 24(a)(2) and Fifth Circuit precedent. Intervention does not require an enforceable contract or property interest, as Plaintiffs imply. *See* ECF No. 29 at 7. Nor is a protected statutory or constitutional interest required. Instead, an intervenor's interest need only be something the law "deems worthy of protection, even if the intervenor does not have an enforceable legal entitlement or would not have standing to pursue her own claim." *Texas v. United States*, 805 F.3d 653, 659 (5th Cir. 2015). Plaintiffs' reliance on *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452 (5th Cir. 1984) (*NOPSI*), is misplaced—that case related to a private dispute and not

an effort to defend a regulation that directly impacted the proposed intervenors. *See Wal-Mart Stores, Inc. v. Texas Alcoholic Beverage Comm'n*, 834 F.3d 562, 567-68 (5th Cir. 2016) (limiting *NOPSI* and holding that a trade group had an interest sufficient to intervene to defend a regulation).

The test for intervention of right is a "liberal standard." *NextEra Energy Cap. Holdings, Inc. v. D'Andrea*, No. 20-50168, 2022 WL 17492273, at *1 (5th Cir. Dec. 7, 2022). The Fifth Circuit has a "broad policy favoring intervention," and the movant has a "minimal burden." *La Union*, 29 F.4th at 305 (quoting *Miller v. Fed'n of S. Coops.*, No. 21-11271, 2022 WL 851782, at *4 (5th Cir. 2022)). Organizational Movants meet the interest requirement as they "expend significant resources" related to the issues impacted by the Rule, and the Rule "changes the legal landscape for what it takes to carry out" their missions. *See La Union*, 29 F. 4th at 306 (noting "the burden is lower for a 'public interest group' raising a 'public interest question'") (quoting *Brumfield v. Dodd,* 749 F.3d 339, 344 (2014)). Both organizations represent, advocate for, and educate those who have been harmed by the reporting of medical debt—the intended beneficiaries of the Rule. And Tzedek DC has publicly advocated for the Rule itself, *see* Comment from Tzedek DC, Aug. 8, 2024, https://www.regulations.gov/comment/CFPB-2024-0023-0760. *See Wal-Mart Stores, Inc.*, 834 F.3d at 566-569 ("'public spirited' civic organizations that successfully petition for adoption of a law may intervene to vindicate their 'particular interest' in protecting that law." (internal citation omitted)).

Reversal of the Rule through this litigation would harm the organizations' interests in protecting the benefits they will realize from the Rule, once it takes effect. *See, e.g.*, *La Union*, 29 F.4th 299; *Wal-Mart Stores, Inc.*, 834 F.3d at 566-569.[1] Organizational Movants are not "several

[1] Plaintiffs assert that an "*expectation* that the Rule will be implemented" is not a sufficient interest. ECF No. 29 at 7. To the contrary, the Fifth Circuit routinely recognizes interests in just this

degrees removed from the issues that are the backbone of the litigation," as Plaintiffs assert. ECF No. 29 at 6. Instead, there is a direct line between the organizations and the people they serve and the issues raised in this litigation.

B. The CFPB will not adequately protect Movants' interests.

Plaintiffs argue that Movants must make a "strong showing" to rebut a presumption that the CFPB adequately represents their interests. ECF No. 29 at 10-12. But the Fifth Circuit has expressly rejected application of such a presumption to a governmental *agency*. *See Entergy Gulf States Louisiana, L.L.C. v. U.S. E.P.A.*, 817 F.3d 198, 203 n.2 (5th Cir. 2016) (holding "because EPA is a governmental agency and not a sovereign interest, a stronger showing of inadequacy is *not* required."); *see also Wal-Mart Stores, Inc.*, 834 F.3d at 569 n.7 (explaining "the government-representative presumption does not inherently apply whenever a state or federal agency is a party"); *Miller v. Vilsack*, No. 21-11271, 2022 WL 851782, at *2 & n.4 (5th Cir. Mar. 22, 2022) (finding that presumption of adequate representation not at play where the defendant is an agency). In rejecting the identical assertion to that made by Plaintiffs here, the Fifth Circuit explained that the case relied upon by Plaintiffs—*Hopwood v. Texas*, 21 F.3d 603 (5th Cir. 1994)—does *not* in fact create such a presumption for a governmental agency. *Entergy Gulf States Louisiana, L.L.C.*, 817 F.3d at 203 n.2. Rather, in this context an intervenor "need only show that 'the representation *may* be inadequate." *Wal-Mart Stores, Inc.*, 834 F.3d at 569 (quoting *Texas*, 805 F.3d at 662), and the burden for meeting this prong is "minimal." *Id.* (quoting *Edwards*, 78 F.3d at 1005).

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circumstance, where an organization would be impacted by the implementation or reversal of a new law or regulation. *See, e.g.*, *La Union*, 29 F.4th 299 (Republican committees entitled to intervene as of right to defend a Texas state law from challenge by other parties); *Wal-Mart Stores, Inc.*, 834 F.3d at 566-569 (trade association entitled to intervene as of right to defend regulation); *Sierra Club v. Espy*, 18 F.3d 1202 (5th Cir. 1994) (trade association entitled to intervene as of right to defend federal agency action).

The CFPB has already acted contrary to Movants' interest by—after first opposing an injunction under its prior leadership—now joining Plaintiffs' request for a preliminary injunction in this matter to stay the effective date of the Rule.[2] *See Entergy Gulf States Louisiana, L.L.C.*, 817 F.3d at 204-205 (holding EPA and intervenor had divergent interests because EPA agreed to stay opposed by intervenor). Moreover, the administration has made specific statements about its hostility to the Rule at issue, including in a press release in which the White House singled out the Medical Debt Rule as an example of (alleged) CFPB abuses. *CFPB Isn't a Wall Street Regulator, It's a Main Street Regulator,* The White House (Feb. 10, 2025), https://perma.cc/XF9N-AS7M (White House Press Release). Accusing the CFPB of "government overreach," the press release claims, "the agency . . . unilaterally buried $50 billion in medical debt." *Id*. The press release concludes, "Under the administration of President Donald J. Trump, the weaponization ends right now," *id.*, clearly indicating the administration's decision to not only fail to defend the Rule but to seek to overturn it.

Indeed, the CFPB has not taken any position on intervention, which it could have done to "communicate the vigor of its anticipated defense, but elected not to." *Mississippi Bankers Assoc. v. Consumer Fin. Prot. Bureau*, No. 3:24-CV-792-CWR-LGI, 2025 WL 694462, at *3 (S.D. Miss. Mar. 4, 2025). As another district court in this Circuit considering a similar motion to intervene found, a lack of response to a motion to intervene indicates that the CFPB will not meaningfully or vigorously defend the Rule. *Id.* The President has put the Rule (and the entire CFPB) on the chopping block. Under the controlling legal standards, Movants need not wait for the axe to fall to

[2]Contrary to Plaintiffs' argument, whether or not the delay in the Rule's effective date was lawful has no bearing on the fact that Movants were harmed by it and that the CFPB's request for the delay demonstrates a divergence of interests between Movants and the CFPB.

demonstrate that the CFPB might not adequately represent their interests. Movants have thus satisfied this element for intervention as of right.

II. Movants have a sufficient claim or defense justifying permissive intervention.

Plaintiffs also misstate the standard for permissive intervention under Rule 24(b)(1)(B). In this Circuit, "the 'claim or defense' portion of Rule 24(b) is to be construed liberally." *United States ex rel Hernandez v. Team Fin., L.L.C.,* 80 F.4th 571, 577 (5th Cir. 2023) (quoting *Newby v. Enron Corp.*, 443 F.3d 416, 422 (5th Cir. 2006)) (internal marks omitted) (reversing denial of permissive intervention). The "common question of law or fact" requirement is satisfied so long as an intervenor's arguments are "related to" the claims in the lawsuit, notwithstanding Plaintiffs' arguments to the contrary. *Trans Chem. Ltd. v. China Nat'l Mach. Imp. & Exp. Corp.*, 332 F.3d 815, 825 (5th Cir. 2003); *see Mississippi Bankers Assoc.*, 2025 WL 694462, at *2-*3 (citing cases, setting forth standards for permissive intervention, and granting intervention to consumer groups seeking to defend CFPB rule). Here, Movants' interests share a common question of law or fact with the main action—namely, whether the Rule is lawfully authorized and should be permitted to go into effect. *See Mississippi Bankers Assoc.*, 2025 WL 694462, at *3.[3] Plaintiffs do little to dispute this.

CONCLUSION

For these reasons, Proposed Intervenors ask the Court to grant their motion to intervene.

Dated: March 17, 20225

[3] Movants' interests would not be adequately served by appearing as amicus curiae. *See Mausolf v. Babbitt*, 85 F.3d 1295, 1302 (8th Cir. 1996) (reversing order that denied intervention while allowing amicus participation); *Newport News Shipbuilding & Drydock Co. v. Peninsula Shipbuilders' Ass'n*, 646 F.2d 117, 121–22 (4th Cir. 1981); *Feller v. Brock*, 802 F.2d 722, 730 (4th Cir. 1986).

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify that on March 17, 2025, the foregoing document was filed on the Court's CM/ECF system which sent notification of such filing to all counsel of record.

/s/ *Jennifer S. Wagner*