IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

State of Missouri, *Plaintiff*, v. United States Department of Health and Human Services; Xavier Becerra, in his official capacity as Secretary of the United States Department of Health and Human Services, *Defendants*.	Civil Action No. 4:25-cv-00077-JAR

REPLY IN SUPPORT OF PROPOSED INTERVENOR-DEFENDANTS' MOTION FOR LEAVE TO INTERVENE

Proposed Intervenors—the City of Columbus, Ohio ("Columbus"), the City of Madison, Wisconsin ("Madison"), and Doctors for America ("DFA") (collectively, "Proposed Intervenors")—seek to intervene to defend a regulation (the "2024 Rule" or "challenged Rule") that not only regulates them, but that is crucial to ensuring they can provide adequate care to their patients and, for the cities, promote public health. The federal government ("the government" or "Defendants") and Missouri oppose this motion. As explained in their brief in support of their Motion for Leave to Intervene, ECF No. 6, and below, Proposed Intervenors satisfy all requirements for mandatory intervention, or, in the alternative, permissive intervention. Their motion should be granted.[1]

[1] Proposed Intervenors do not address the government's contention that this Court lacks jurisdiction, *see* Defs. Opp. to Proposed Intervenor-Defs. Mot. for Leave to Intervene at 2, ECF No. 34, which is irrelevant to the motion for leave to intervene.

Proposed Intervenors also note that they sought to intervene in all four cases challenging the 2024 Rule. *See Texas v. Dep't of Health & Hum. Servs.*, No. 5:24-cv-00204 (N.D. Tex. Sept. 4, 2024);

I. Proposed Intervenors are entitled to intervene as of right.

a. Proposed Intervenors need not, but can, demonstrate standing.

Both the government and Missouri attempt to discount Supreme Court precedent, which has been followed by district courts within the Eighth Circuit, holding that parties intervening as defendants need not establish Article III standing. *See Va. House of Delegates v. Bethune-Hill*, 587 U.S. 658, 663 (2019) (no standing required for defendant-intervenor since its defense of redistricting plan did not "entail[] invoking a court's jurisdiction"); *West Virginia v. EPA*, No. 3:23-CV-32, 2023 WL 3624685, at *2 n.2 (D.N.D. Mar. 31, 2023) (no standing necessary where defendant-intervenor not invoking counterclaim); *see also Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 674 n.6 (2020) (defendant-intervenor need not demonstrate standing to invoke appellate jurisdiction when it sought the same relief as the defendant-appellant); *Town of Chester v. Laroe Ests., Inc.*, 581 U.S. 433, 440 (2017) ("[A]n intervenor of right must have Article III standing in order to pursue relief that is *different* from that which is sought by a party with standing." (emphasis added)).

Purl v. Dep't of Health & Hum. Servs., No. 2:24-cv-00228 (N.D. Tex. Oct. 21, 2024); *Tennessee v. Dep't of Health & Hum. Servs.*, No. 3:25-cv-00025 (E.D. Tenn. Jan. 17, 2025). Only one court has ruled on Proposed Intervenors' motion. *See Purl v. Dep't of Health & Hum. Servs.*, 2025 WL 1117477 (N.D. Tex. Apr. 15, 2025). That court found that the government adequately represented the Proposed Intervenors' interests, *id.* at *4-6—a proposition that Defendants do not assert in this litigation—and that Proposed Intervenors lacked a legally protectable interest under Fifth Circuit precedent, in part determining that they were not "beneficiaries" of the 2024 Rule, *id.* at *2-4. However, the text of the 2024 Rule indicates that Proposed Intervenors *are* among the intended beneficiaries of the Rule, and Proposed Intervenors' declarations make clear that the Rule benefits their practice of medicine and public health programs. Although Proposed Intervenors disagree with the conclusion of the *Purl* Court, it is notable that the court "recognize[d] the closeness of the inquiry." *Id.* at *4. In the Eighth Circuit, Rule 24 is "liberally construed," and any doubts are resolved in favor of the proposed intervenors. *United States v. Ritchie Special Credit Invs., Ltd.*, 620 F.3d 824, 831 (8th Cir. 2010). For the reasons set out in Proposed Intervenors prior brief and in this reply, this Court should grant Proposed Intervenors' motion here.

The government is correct that Eighth Circuit cases remain the law of this circuit until that court, sitting en banc, or the Supreme Court dictates a different result—but that is exactly what the Supreme Court did in *Virginia House of Delegates* in the context of defensive intervention. When the Eighth Circuit has holistically considered the standards for defensive intervention since that decision, it has examined only the four Rule 24 factors, not Article III's standing requirements. *See Entergy Ark., LLC v. Thomas*, 76 F.4th 1069, 1071 (8th Cir. 2023). And the case Missouri relies on to argue otherwise is inapposite. *See* Missouri Opp. to Proposed Intervenor-Defs. Mot. for Leave to Intervene at 8–9, ECF No. 33 (citing *United States v. Reilly Tar & Chem. Corp.*, 43 F.4th 849, 854–55 (8th Cir. 2022)). In *Reilly Tar*, a company sought limited intervention in the unique posture of opposing the amendment of a consent decree. *See* 43 F.4th at 854–55. In so doing, it asked for different relief (a substantially different consent decree) from the parties invoking the court's jurisdiction (the United States and other plaintiffs). *See id.* By contrast, here, Proposed Intervenors seek merely to step into the shoes of Defendants, and, as such, need not demonstrate standing. Neither the government nor Missouri cites a relevant case providing otherwise.

Should Proposed Intervenors need to demonstrate standing, however, they could easily do so. Defendants label Proposed Intervenors' injuries "hypothetical" and "nebulous." Defs. Opp. at 4. But the harms they would face if the 2024 Rule were blocked are anything but. *See* Mem. in Supp. of Mot. for Leave to Intervene at 9–12, ECF No. 6.

If this Court were to block the challenged Rule, it would work a change in the regulatory scheme to which Columbus, Madison, and DFA's provider members are subject. Columbus, for example, has already undertaken steps to ensure its HIPAA program complies with the challenged Rule. Appx. 021 (Johnson Decl. ¶ 25). If the challenged Rule is vacated, it will have to undo that

work and expend resources to do so. This injury clearly "belong[s]" to Proposed Intervenors, Missouri Opp. at 10, and it is sufficient for standing, *see Nat'l Parks Conservation Ass'n v. EPA,* 759 F.3d 969, 975 (8th Cir. 2014) ("[The r]isk of direct financial harm establishes injury in fact." (citing *Eckles v. City of Corydon*, 341 F.3d 762, 768 (8th Cir. 2003)). DFA would likewise be required to expend "significant resources" to ensure that its members are equipped to deal with the policy change. Appx. 009 (Petrin Decl. ¶ 17).

Missouri's argument that Madison and Columbus cannot intervene to defend a rule "on the ground that it saves them from complying" with their state laws, *see* Missouri Opp. at 12 (citing *City of Olmstead Falls v. F.A.A.*, 292 F.3d 261, 268 (D.C. Cir. 2002)), is incorrect and ignores the facts of this case. The cities' support for the 2024 Rule is not about avoiding requirements imposed by their states' laws but is rather about defending a rule that is crucial to their ability to provide care and vindicate their public health mandates. And should the 2024 Rule be blocked, the cities will not only need to comply with their own state's laws regarding disclosure of reproductive health information, but they will also need to respond to inquiries from other states. The case to which Missouri cites does not indicate that intervention is impermissible here. It concerns a city's ability to assert *parens patriae* standing, *Omstead Falls*, 292 F.3d at 268, which Madison and Columbus do not allege (should standing even be necessary), and Missouri's comment about cities being creatures of their parent states is irrelevant.[2]

The existing parties' efforts to downplay the other harms that Proposed Intervenors will face are similarly unconvincing. First, that the 2024 Rule places obligations on Proposed

[2] Wisconsin and Ohio are not parties in this litigation, and cities may, even as state creatures, contest the laws of their parent states in court in certain circumstances. *See, e.g.*, Compl., *City of Columbus v. Ohio*, No. 24-cv-002865 (Ohio Ct. App. Apr. 9, 2024) (suit by fourteen Ohio cities against the state of Ohio).

Intervenors and their members that would be altered if the Rule is blocked, *see* Defs. Opp. at 4; Missouri Opp. at 10, is of no moment. The 2024 Rule (obligations or not) works to Proposed Intervenors' benefit. The existing parties cite no cases for the proposition that parties may not have interests sufficient for Rule 24 in such circumstances.[3] Second, Missouri's assertion that the Proposed Intervenor cities can minimize their injuries by enacting more protective policies, *see* Missouri Opp. at 9, is a red herring. While Columbus and Madison may adopt the policies of the challenged Rule, those policies will not have the force of federal law and will not (as federal law would) preempt state laws less protective than their policies. Moreover, Proposed Intervenors have explained the special importance of federal law (as opposed to state law or local regulation) in facilitating trust between patients and providers. *See, e.g.*, Appx. 014 (Oller Decl. ¶ 15) ("[M]y patients understand their information is protected by federal law. If . . . the 2024 Rule were to be overturned, it would deeply harm the level of trust my patients have in me, threatening my relationships with them and inhibiting my ability to provide care for them."). The loss of the 2024 Rule will lead to a loss in patient trust—which is essential to providing health care—even if Proposed Intervenors are able, themselves, to protect some health information. *See, e.g.*, Appx. 021–22 (Johnson Decl. ¶ 26); Appx 028–30 (Heinrich Decl. ¶¶ 21, 28).

Defendants raise no concerns about redressability and causation; Missouri contends that Proposed Intervenors' injuries are not traceable to vacatur of the challenged Rule. *See* Missouri Opp. at 13. Missouri's arguments are flatly wrong. Vacatur of the challenged Rule would, in fact, cause the injuries Proposed Intervenors face. *See ACLU of Minn. v. Tarek ibn Ziyad Acad.*, 643

[3] Missouri's arguments regarding DFA's associational standing likewise fail on this point. *See* Missouri Opp. at 14.

F.3d 1088, 1093 (8th Cir. 2011) (court order compelling defendant to cause alleged injury satisfies traceability).

b. Proposed Intervenors satisfy the requirements for intervention as of right.

Defendants contest Proposed Intervenors' ability to satisfy only one requirement for intervention: that they demonstrate a direct, substantial, and legally protectable interest. *See* Defs. Opp. at 5–8. Missouri argues the same, and that Proposed Intervenors have not demonstrated that Defendants' representation of their interests will be inadequate. *See* Missouri Opp. at 15–16. The existing parties are wrong.

Interest. Missouri argues that Proposed Intervenors lack sufficient interests for intervention for the same reason they lack standing. *See id.* at 15. As explained above, such is not the case. Defendants more fully address Proposed Intervenors' interests, *see* Defs. Opp. at 5–8, but reach the wrong conclusion. To get there, they minimize the facts and ignore that interest, as with all requirements of Rule 24, should be liberally construed. *See Tweedle v. State Farm Fire & Cas. Co.*, 527 F.3d 664, 671 (8th Cir. 2008) ("Rule 24 should be liberally construed with all doubts resolved in favor of the proposed intervenor." (quoting *South Dakota ex rel. Barnett v. Dep't of Interior*, 317 F.3d 783, 785 (8th Cir. 2003)); *Ritchie, Ltd.*, 620 F.3d at 831 (same).

To begin, Proposed Intervenors have an interest in a scheme that regulates them. Defendants assert that Proposed Intervenors "cite no case supporting" that proposition, Defs. Opp. at 5, yet Defendants themselves cite no cases in asserting the opposite is true. As explained at length in their opening brief and above, Proposed Intervenors have numerous interests in ensuring the 2024 Rule remains in place. That's not only because, should the challenged Rule be overturned, Proposed Intervenors will need to expend resources to reassess their obligations and allay the confusion that is likely to result, whether by training staff and updating policies (Columbus and

Madison), *see, e.g.*, Appx. 029-30 (Heinrich Decl. ¶ 28), or educating their members (DFA), *see, e.g.*, Appx. 009 (Petrin Decl. ¶ 16-17), but also because the 2024 Rule is a key tool in promoting the provider-patient relationship that ensures that Proposed Intervenors and their members can provide quality care and carry out their public health missions. The 2024 Rule itself recognizes its value for these interests. *See* 89 Fed. Reg. 32976, 32991 (Apr. 26, 2024) (describing how the 2024 Rule will improve health care providers' provision of care and improve health outcomes at "both the individual and population level"); *id.* at 32993 (the 2024 Rule "will eliminate some of the burdens health care providers face in providing high-quality health care").

Defendants argue that Proposed Intervenors offer "no clear explanation" as to how the outcome of this lawsuit, should Missouri prevail, would impact their ability to promote trust between providers and patients or, for the cities, the public health. Defs. Opp. at 7. This assertion ignores the detailed affidavits that Proposed Intervenors have provided—from representatives and members who interact with patients and who help run public health departments—which clearly articulate how the 2024 Rule facilitates patient-provider trust, a critical tool for the provision of care and overall health. *See, e.g.*, Appx. 009 (Petrin Decl.¶¶ 16–17) (describing how DFA members rely on the 2024 Rule to build patient trust post-*Dobbs*, and how an end to the 2024 Rule would frustrate the provider-patient relationship); Appx. 013 (Oller Decl. ¶ 12) (same); Appx. 020 (Johnson Decl. ¶ 19) (explaining how "[t]he delivery of quality health care depends on individuals being willing to share the most intimate details of their lives with their health care providers" and HIPAA and its regulations, including the challenged Rule, are key to "increase[ing] patient trust"); Appx. 028 (Heinrich Decl. ¶¶ 21–24) (describing how HIPAA is a "key tool" for assuring patients their medical information will be protected and how, that, in turn, "increases patient trust," particularly in "communities of color and other communities" impacted by health care disparities).

The impact on their ability to provide care would certainly be more than "tangential," Defs. Opp. at 7 (internal quotation marks and citation omitted), if the Court were to block the 2024 Rule.[4]

Inadequate representation. Missouri contends that Proposed Intervenors have not demonstrated an inadequate representation of interest. *See* Missouri Opp. at 15–16. But to satisfy this requirement, Proposed Intervenors need only make "a minimal showing" that the government's representation of their interests "*may* be inadequate." *Kan. Pub. Emps. Ret. Sys. v. Reimer & Koger Assocs., Inc.*, 60 F.3d 1304, 1308 (8th Cir. 1995) (emphasis added) (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)).

At the outset, it should be dispositive that Defendants do not claim to represent Proposed Intervenors' interests. Nor could they—their defense of the 2024 Rule has, since the new administration took office, materially changed. *Compare* Defs. Brief in Supp. of Mot. to Dismiss or, in the alternative, Summ. J., ECF No. 40, 2:24-cv-00228, *Purl v. Dep't of Health & Hum. Servs.* (Jan. 17, 2025) (moving to dismiss a challenge to the 2024 Rule and defending the rule on its merits) *with* Mem. in Supp. of Defs. Mot. to Dismiss, ECF No. 31 (moving to dismiss a challenge to the 2024 Rule solely on jurisdictional grounds) *and* Defs. Opp. to Plfs. Mot. for Summ. J. and Prelim. Relief and Cross-Mot. to Dismiss, ECF No. 65, 3:25-cv-00025, *Tennessee v. Dep't of Health & Hum. Servs.* (Mar. 13, 2025) (same). One would think that if the government expected to defend the 2024 Rule as Proposed Intervenors do—on its merits—Defendants would have also

[4] In their attempts to pick apart Proposed Intervenors' arguments, Defendants repeatedly assert that Proposed Intervenors provide no facts or evidence to support their arguments. See Defs. Mot. at 6, 7. But "[a] court ruling on a motion to intervene must accept as true all material allegations in the motion to intervene and must construe the motion in favor of the prospective intervenor." *Nat'l Parks Conservation Ass'n*, 759 F.3d at 973. Proposed Intervenors have supported their assertions with detailed declarations from Proposed Intervenors and each of their members. They needn't do more to show interest here.

argued their representation is adequate. The fact that Defendants do not alone overcomes Missouri's argument.

To the extent that any question remains, Proposed Intervenors further show inadequacy. As Missouri acknowledges, the presumption of adequacy that arises where the existing party is a government entity is avoided in two circumstances. *See* Missouri Opp. at 15. The first is where an intervenor "stands to gain or lose from the litigation in a way different from the public," *Entergy Ark., LLC v. Thomas*, 76 F.4th 1069, 1071 (8th Cir. 2023) (citing *Chiglo v. City of Preston*, 104 F.3d 185, 187–88 (8th Cir. 1997)), the second is where an intervenor's interest is narrower than that of the government, *Entergy Ark.*, 76 F.4th at 1071–72 (citing *Mille Lacs Band of Chippewa Indians v. Minnesota*, 989 F.2d 994, 1001 (8th Cir.1993)). Both apply here.

First, while Proposed Intervenors have certain interests that "coincide with the public interest" (e.g., public health and health equity), they have certain interests that are decidedly different (e.g., interests as regulated parties and financial interests). *See Chiglo*, 104 F.3d at 187–88 (citing *Mille Lacs*, 989 F.2d at 1001). Second, the government's potential interests—in balancing patient privacy with the public interest in using health information for law enforcement needs, defending the integrity of its rulemaking process, managing its relationship with the states, and implementing the agenda of a new administration—are broader than those of Proposed Intervenors. The way these interests may compete is something the government itself recognized in enacting the 2024 Rule. *See, e.g.*, 89 Fed. Reg. 32978 (Apr. 26, 2024) ("This final rule balances the interests of society in obtaining PHI for non-health care purposes with the interests of the individual, the Federal Government, and society . . . ."). Proposed Intervenors' interests are not adequately represented here.

c. Proposed Intervenors satisfy the Eighth Circuit's permissive requirements for Rule 24(c)

Only Missouri attempts to exclude Proposed Intervenors for failing to attach a "pleading" outlining their defense of the challenged Rule. Fed. R. Civ. P. 24(c). Yet Proposed Intervenors' motion and memorandum in support sufficiently explain how they will proceed in this litigation, which is all that is required in the Eighth Circuit. *See United States v. Metro. St. Louis Sewer Dist.*, 569 F.3d 829, 834 (8th Cir. 2009) (party's statement of interest sufficient to meet Rule 24(c)'s requirement because it "explain[ed] why it seeks intervention").

Missouri's failure to address this precedent is telling, and the Eastern District of Missouri case to which it cites—*American Contractors Indemnity Company v. Bank of Sullivan*, 2020 WL 2512208 (E.D. Mo. May 15, 2020)—does not dictate a different result. In that case, a receiver sought to intervene in a payment dispute between a company and a bank. But the receiver's four-page memorandum in support of its motion to intervene provided little information to the parties about the positions, claims, or relief that the receiver would take or request if permitted to intervene. *See generally Bank of Sullivan*, 4:19-cv-02381 (E.D. Mo.), ECF No. 17-1. Indeed, the receiver specified that it "d[id] not seek to involve itself in the disputes between the parties in this action" but only sought intervention to "protect the interest of the Receivership and the Receivership Estate." *Id.* at ¶ 8. Proposed Intervenors' motion looks markedly different here.

Missouri's statement, in a footnote, that Proposed Intervenors' "failure to file a proposed responsive pleading is . . . perplexing" in light of the "proposed answer" they filed in another case challenging the 2024 Rule, *see* Missouri Opp. at 8 n.2, is both factually incorrect and irrelevant. In *Texas*, Proposed Intervenors did not file a proposed answer; rather, Proposed Intervenors filed a proposed motion to dismiss or, in the alternative, for summary judgment to comply with a deadline for summary judgment motions already established in the case. Here, a summary

judgment motion by Proposed Intervenors would have been premature. Moreover, any alleged deficiency (with Rule 24(c) or with the Local Rules) can be cured.[5]

II. Alternatively, this Court should permit intervention under Rule 24(b).

If this Court does not find that Proposed Intervenors have met their burden under 24(a)(2), it should nonetheless grant permissive intervention under Rule 24(b) because the Proposed Intervenors "ha[ve] a claim or defense that shares with the main action a common question of law or fact," and their participation will not "unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(1), (3). Proposed Intervenors seek to advance a defense of the challenged Rule that Defendants have already effectively abandoned; namely, that the 2024 Rule is a proper exercise of the Department of Health and Human Services' lawful authority. *See Franconia Mins. (UK) LLC v. United States*, 319 F.R.D. 261, 268 (D. Minn. 2017) ("Here, [proposed intervenor] seeks to uphold, under the APA, the same actions that Plaintiffs seek to overturn. Thus, applicant['s] claims and the main action obviously share many common questions of law and perhaps of fact." (internal quotation marks and citations omitted)). The cases to which the government cites—a nonbinding concurrence and out-of-circuit cases relying on it—have little bearing on this Court and do not dictate otherwise. Proposed Intervenors have amply indicated that they plan to defend the 2024 Rule. Further, intervention here would not cause any delay or prejudice, as this litigation is in its nascent stages. Importantly, "[t]he Eighth Circuit has advised district courts to err on the side of intervention." *Henderson v. Black & Decker (U.S.) Inc.*, 2021 WL 1546139, at *3 (citing *Corby Recreation, Inc. v. Gen. Elec. Co.*, 581 F.2d 175 (8th Cir. 1978)). The Court should do so here.

[5] Missouri notes that Proposed Intervenor DFA did not file a disclosure statement as required by Federal Rule of Civil Procedure 7.1 and Local Rule 2.09(C)(1). To alleviate any concerns, Proposed Intervenors plan to file a disclosure statement concurrently with this reply.

CONCLUSION

For the foregoing reasons and those stated in their opening brief, Proposed Intervenors respectfully request that this Court grant their motion for leave to intervene.

Date: April 28, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Emma R. Leibowitz, certify that I filed the foregoing with the Clerk of Court for the United States District Court for the Eastern District of Missouri by using the CM/ECF system, which sent a notice of such filing to all registered CM/ECF users who have appeared in this case.

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