UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ABBVIE INC., *Plaintiff*, v. ROBERT F. KENNEDY JR., *et al.*, *Defendants*.	§ § § § § § § § § § § § §	Case No. 1:26-cv-1190-RDM

PROPOSED INTERVENOR-DEFENDANTS 340B HEALTH, UMASS MEMORIAL MEDICAL CENTER, AND GENESIS HEALTHCARE SYSTEM'S
REPLY IN SUPPORT OF MOTION TO INTERVENE

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340B Health, UMass Memorial Medical Center (UMMC), and Genesis HealthCare System (Genesis) (Proposed Intervenors) respectfully submit this Reply in support of their Motion to Intervene. Plaintiff AbbVie Inc.'s (AbbVie's) opposition to Proposed Intervenors' Motion fails to demonstrate that Proposed Intervenors have not met each of the standards for intervention. Instead, AbbVie's principal contention relies on two inconsistent arguments—first, that Proposed Intervenors filed their Motion too *late* (more than two months after the Complaint was filed), and second, that Proposed Intervenors filed their motion too *early* (and should have waited until Defendants filed their merits brief, when the parties will learn Defendants' position in this case). Opp. 6–7. Because AbbVie never identifies any prejudice that it will suffer from Proposed Intervenors' intervention and Proposed Intervenors easily satisfy all the factors for mandatory and permissive intervention in this case, the Court should grant Proposed Intervenors' Motion.

ARGUMENT

I. PROPOSED INTERVENORS' MOTION IS TIMELY.

At the outset, AbbVie argues that Proposed Intervenors' Motion is untimely because Proposed Intervenors filed their Motion more than two months after AbbVie filed its Complaint in this case. Opp. 5–7. Tellingly, AbbVie ignores "the most important consideration," in determining whether a motion to intervene is timely: prejudice to the existing parties in the case. *Roane v. Leonhart*, 741 F.3d 147, 152 (D.C. Cir. 2014). AbbVie does not even try to argue that it would suffer prejudice or that Proposed Intervenors would "unduly disrupt[] litigation" if they were permitted to intervene. *Id.* The absence of prejudice is particularly clear here because the Court has recently extended the briefing schedule for the motion to dismiss on jurisdictional issues such that the Court is unlikely to reach the merits of the case for months. *See* July 31, 2026 Minute Order (extending deadline for Defendants to file reply in support of motion to dismiss until August

27, 2026). Indeed, AbbVie also sought—and received—an extension of three weeks to respond to Proposed Intervenors' Motion, *see* June 30, 2026 Minute Order, which undercuts any possible claim of prejudice caused by the Motion.

None of AbbVie's specific arguments with respect to timeliness are availing. *See* Opp. 5–7. AbbVie highlights that Proposed Intervenors filed their Motion two and a half months after AbbVie filed its Complaint, but that was only one week after Defendants filed their motion to dismiss the Complaint. *See* Mot. Dismiss, ECF No. 13 (June 16, 2026). AbbVie cites no authority to support its bald assertion that this timeframe alone renders Proposed Intervenors' Motion untimely, and in any event, other courts in this District have granted motions to intervene filed with similar timing. *See, e.g.*, *Ass'n of Washington Bus. v. EPA*, No. 23-cv-3605 (DLF), 2024 WL 3225937, at *11 (D.D.C. June 28, 2024) (deeming motion to intervene filed "approximately two months after this suit was filed" timely). Further, in connection with their Motion, Proposed Intervenors filed three detailed declarations describing the harms of AbbVie's proposed "patient" definition to their members. ECF Nos. 19-1, 19-2, 19-3. Gathering this information to present to the Court in connection with their Motion required significant time.

Finally, AbbVie's citation to *Campaign Legal Center v. FEC* is inapposite. Opp. 6 (citing No. 20-cv-0809, 2022 WL 2111560, at *2 (D.D.C. May 13, 2022)). In that case, the court denied leave to intervene where the movant had previously sought and received leave to file a brief as *amicus curiae* and did not seek to intervene in the case until final judgment had been entered and the case was already closed. *Campaign Legal Ctr. v. FEC*, 2022 WL 2111560, at *1–2 (explaining that "[c]ourts are generally reluctant to permit intervention after a suit has proceeded to final judgment, particularly where the applicant had the opportunity to intervene prior to judgment") (internal citation omitted). Here, Proposed Intervenors moved to intervene shortly after Defendants

filed their motion to dismiss, long before either party had filed a brief on the merits, which is the only phase of the case in which Proposed Intervenors seek to participate.

II. PROPOSED INTERVENORS HAVE SATISFIED THE REMAINING STANDARDS FOR INTERVENING AS OF RIGHT.

AbbVie's arguments that Proposed Intervenors do not satisfy the remaining mandatory intervention factors are also unpersuasive.[1] Proposed Intervenors have showed that they (1) "claim[] an interest relating to the property or transaction that is the subject of the action," (2) are "so situated that disposing of the action may as a practical matter impair or impede the movant[s'] ability to protect [their] interest," and (3) that no "existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2).

A. Proposed Intervenors' Interest Will be Impaired If Intervention Is Denied.

AbbVie first argues that Proposed Intervenors cannot show more than a "generalized" interest in the subject of the litigation because continued access to the 340B statutory discount is an "interest shared by every covered entity," Opp. 7–8, but the breadth of the impact of a ruling in AbbVie's favor makes Proposed Intervenors' interest in this litigation even more compelling. Proposed Intervenor 340B Health represents more than 1,600 covered entities, ECF No. 19-1 at ¶ 3, who will not receive the statutory discount for all eligible patients for 340B drugs if AbbVie prevails. Likewise, Proposed Intervenors UMMC and Genesis are 340B Providers that would be significantly harmed by adoption of a narrower reading of the term "patient" in the 340B statute. *See* ECF Nos. 19-2, 19-3. Proposed Intervenors' strong interest in receiving the 340B discount for all eligible patients under the federal statute is distinct from the generalized public interest that courts find insufficient to support intervention. *See Doe 1 v. FEC*, No. 17-cv-2694, 2018 WL

[1] AbbVie apparently concedes that Proposed Intervenors have standing in this case. *See generally* Opp.

2561043, at *4 (D.D.C. Jan. 31, 2018) (denying leave to intervene where the proposed intervenor's interest in the proceedings was nothing more than "the public's interest in having the FEC comply with its disclosure requirements under the law").

AbbVie also argues that any interest Proposed Intervenors have in the matter will not be impaired because "Proposed Intervenors have endorsed the same legal position as Defendants—namely, the interpretation of 'patient' in [the Health Resources and Services Administration's (HRSA's)] 1996 Guidelines[.]" Opp. 8. Aside from being based on an assumption regarding the position that Defendants will take in this case before briefing on the merits, as discussed further below, *see infra* Part II.B, this argument is also irrelevant to this factor of the mandatory intervention standard. Instead, courts look to a different consideration: whether the result of the pending litigation will have a practical impact on putative intervenors if they are denied the opportunity to defend their interests. *Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003). That inquiry does not assume that the side on behalf of which putative intervenors seek to intervene will be victorious, and AbbVie cites no caselaw to the contrary. Indeed, courts review the "'practical consequences' that could flow from a ruling in Plaintiffs' favor," and whether such consequences have "the potential to hinder the ability of the [Proposed Intervenors] to . . . conduct their businesses." *Env't Integrity Project v. Wheeler*, No. 20-cv-1734 (KBJ), 2021 WL 6844257, at *3 (D.D.C. Jan. 27, 2021) (quoting *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977)). That is exactly this case.

B. The Government Will Not Adequately Represent Proposed Intervenors' Interest.

AbbVie has not proffered any reasons why Proposed Intervenors do not meet their "'minimal burden' of showing that existing representation 'may be' inadequate to protect their interest." *See Costle*, 561 F.2d at 911. First, as explained in the Motion to Intervene at 17–18,

Defendants and Proposed Intervenors may offer different interpretations of the 340B statute. Defendants have not yet taken a position on the merits in this case, so it is unclear whether Defendants will defend the definition of "patient" in the 1996 Guidelines, as AbbVie assumes. *See* Opp. 9–10. There is also no guarantee that Defendants would appeal any adverse ruling by this Court, meaning that Proposed Intervenors would be less capable of protecting their interests if they were only permitted to file an *amicus* brief in this case.

Second, even if Defendants ultimately take the same position on the merits as Proposed Intervenors, that agreement would pose no bar to intervention in this Court. As another court in this District found in another case, although "the intervenor and the government entity involved in the litigation frequently *may agree on a legal position or course of action*, the D.C. Circuit nonetheless 'often [has] concluded that governmental entities do not adequately represent the interests of aspiring intervenors.'" *100Reporters LLC v. U.S. Dep't of Just.*, 307 F.R.D. 269, 279 (D.D.C. 2014) (quoting *Fund for Animals*, 322 F.3d at 736) (emphasis added); *see also Crossroads Grassroots Pol'y Strategies*, 788 F.3d 312, 321 (D.C. Cir. 2015) (a government entity may not adequately represent a putative intervenor even if the government and the putative intervenor "undisputedly" agree that the federal agency's actions are lawful).

In addition, Proposed Intervenors are the only entities that can adequately describe the impact of AbbVie's proposed "patient" definition on 340B Providers, including the financial impact. This is a significant consideration in analyzing the "best reading" of the 340B statute—which AbbVie correctly admits—requires the Court to parse "Section 340B's text, purpose, structure, and history." Opp. 12 (quoting *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024)). The purpose of the 340B Program is to help 340B Providers—many of which operate on razor-thin or even negative profit margins—stretch resources to provide services to low-income

and other underserved patients. *See, e.g.*, H.R. Rep. No. 102-384(II), at 12 (1992). As explained in Proposed Intervenors' Motion, application of AbbVie's proposed "patient" definition would deprive Proposed Intervenors UMMC and Genesis and the remaining members of 340B Health of the statutory discount for many patients they serve and would force them to incur substantial compliance costs. Mot. 11–13. If AbbVie prevailed in this suit, it would reduce the funds 340B hospitals have available to meet the goal of the 340B Program. As the D.C. Circuit has found, government representation can be inadequate *because* private parties, such as Proposed Intervenors, represent "a more narrow and 'parochial' financial interest not shared" by the general public, which the government represents. *Fund for Animals*, 322 F.3d at 737 (quoting *Dimond v. Dist. of Columbia*, 792 F.2d 179, 192–93 (D.C. Cir. 1986)).

Furthermore, the D.C. Circuit has held that government representation is inadequate when a putative intervenor has knowledge of the "impact that regulation can be expected to have upon [its] operations" that will serve "as a vigorous and helpful supplement to [the Government Defendants'] defense." *Costle*, 561 F.2d at 912–13. This is particularly true when a case involves "questions of very technical detail and data"; in such a case, "experience and expertise in their relevant fields" will contribute to a court's informed resolution of the relevant issues. *See id.* at 913. Though Proposed Intervenors agree with AbbVie that this case presents a narrow question of statutory interpretation, AbbVie has made several factual, technical assertions regarding its proposed "patient" definition, HRSA's audit findings of 340B Providers, and the integrity of the 340B Program itself. Proposed Intervenors have the "experience," "expertise," and "data" to rebut those assertions that the Government Defendants do not have, *see id.*, and Proposed Intervenors are the entities that can explain the operation of the 340B Program from the perspective of 340B Providers. Proposed Intervenors also have specific knowledge of AbbVie's proposed "patient"

definition on 340B Hospitals' operations and finances that Defendants do not have access to. Additionally, Proposed Intervenors strongly contest and can present evidence to rebut several of the assertions made by AbbVie regarding widespread 340B Program abuse and non-compliance by 340B Providers, which Defendants may not address.

Finally, as discussed in Proposed Intervenors' Motion at 17–18, the change in administration supports Proposed Intervenors' contention that the government may not represent adequately their interests since any change of administration increases the possibility the Government Defendants may change position or stop defending a lawsuit. *Env't Integrity Project*, No. 20-cv-1734 (KBJ), 2021 WL 6844257, at *3 (D.D.C. Jan. 27, 2021) ("What is more, given the recent change in administration, it is not at all clear that the Federal Defendants will continue to defend the prior administration's rule.") (granting motion to intervene).

III. ALTERNATIVELY, THE COURT SHOULD ALLOW PERMISSIVE INTERVENTION.

"In order to litigate a claim on the merits under Rule 24(b)(2), the putative intervenor must ordinarily present: (1) an independent ground for subject matter jurisdiction; (2) a timely motion; and (3) a claim or defense that has a question of law or fact in common with the main action." *EEOC v. Nat'l Children's Ctr., Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998). AbbVie does not deny that Proposed Intervenors meet the first or third requirements but claims that Proposed Intervenors' motion is not timely. As explained in Parts I and II, *supra*, Proposed Intervenors' Motion is timely and raises multiple questions of law and fact in common with AbbVie's claims.

AbbVie further argues that intervention is impermissible because Proposed Intervenors do not have a unique "claim or defense" in this case. Opp. 17. Of course, until Defendants state their position on the merits it's not possible to know whether Proposed Intervenors have a unique claim or defense, but in any event, having a unique defense is not required for intervention: the D.C.

Circuit has explicitly "eschewed strict readings of the phrase 'claim or defense,' allowing intervention even in 'situations where the existence of any nominate claim or defense is difficult to find.'" *EEOC v. Nat'l Children's Ctr.*, 146 F.3d at 1046 (quoting *Nuesse v. Camp*, 385 F.2d 694, 704 (D.C. Cir. 1967)) (cleaned up); *see also Ass'n of Washington Bus. v. EPA*, 2024 WL 3225937, at *11 (explaining that the D.C. Circuit applies a "liberal" review of the "claim or defense" element of permissive intervention).

Proposed Intervenors therefore also meet the requirements for permissive intervention.

CONCLUSION

For the foregoing reasons, the Court should grant Proposed Intervenors' Motion to Intervene.

Dated: August 11, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 11, 2026, I filed the foregoing with the Clerk of the Court using the ECF System, which will send notification of such filing to the registered participants identified on the Notice of Electronic Filing.

/s/ William B. Schultz
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