UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

CATHOLIC MEDICAL ASSOCIATION,
on behalf of itself and its members,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; **ROBERT F. KENNEDY JR.**, in his official capacity as Secretary of Health and Human Services; **CENTERS FOR MEDICARE & MEDICAID SERVICES (CMS)**; **MEHMET OZ**, in his official capacity as Administrator of the Centers for Medicare & Medicaid Services of the United States Department of Health and Human Services,

Defendants.

Civil Action No. 3:25-cv-00048

Judge Campbell
Magistrate Judge Frensley

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT-INTERVENOR DOCTORS FOR AMERICA'S MOTION TO INTERVENE

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INTRODUCTION[1]

Proposed Intervenor-Defendant Doctors for America ("DFA") moves to intervene as of right as a defendant under Rule 24(a) of the Federal Rules of Civil Procedure. DFA moves to protect its members' legal interests in affirming that, for nearly four decades, the federal Emergency Medical Treatment and Labor Act ("EMTALA"), 42 U.S.C. § 1395dd, has—in text and in practice—protected the right of pregnant patients to receive, and for physicians to provide, health- and life-saving emergency abortion care, regardless of state law. In the alternative, DFA seeks permissive intervention under Rule 24(b) of the Federal Rules of Civil Procedure.

EMTALA requires the provision of necessary stabilizing care or an appropriate transfer to "*any* individual" experiencing an emergency medical condition, 42 U.S.C. § 1395dd(b)(1), without exception, and expressly preempts any state or local law that "directly conflicts" with this requirement, *id.* § 1395dd(f). Accordingly, in those narrow but critical situations where abortion is the necessary stabilizing treatment, EMTALA's plain text requires covered hospitals to provide it, just as it requires any other stabilizing treatment, and preempts any state law to the contrary.

The Plaintiff in this case, the Catholic Medical Association ("CMA"), on behalf of its members, challenges guidance issued by the Centers for Medicare and Medicaid ("CMS") nearly three years ago, re-affirming this longstanding right to receive and provide such emergency care to pregnant patients. Notwithstanding that CMA has not identified a single member who has ever been required, or even asked by their employer, to provide emergency abortion care over their religious or moral objections, CMA seeks broad relief that would dramatically re-interpret EMTALA to, at a minimum, remove any right of patients to receive, and willing physicians to

[1] Unless otherwise indicated, all internal quotations and citations are omitted and all emphases added.

provide, this care. CMA has also argued that EMTALA imposes a statutory obligation on physicians to "stabilize" the "unborn child," that would effectively *prohibit* hospital-based abortion care, even in states where abortion is legal and even statutorily and constitutionally protected.

As set forth below, DFA is entitled to intervene as of right, on behalf of its members who not only willingly provide, but feel ethically obligated to provide, this essential care to their patients. This motion is timely, as it is filed while the case is still in its "infancy." *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 579 (6th Cir. 2018). DFA's significant interests in this case will be impaired by the relief Plaintiff seeks, and DFA cannot rely on the federal government to adequately defend those interests. In the alternative, DFA should be permitted to intervene.

As the Sixth Circuit has recognized, "a lawsuit often is not merely a private fight and will have implications on those not named as parties." *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997) (citing 7C Charles A. Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1901 (1986)). That is especially true here, where Plaintiff seeks to rewrite federal law to fundamentally alter whether and how emergency care is provided to pregnant patients nationwide. Accordingly, this Court should grant DFA's motion to intervene.

PROPOSED INTERVENOR

Proposed Intervenor-Defendant DFA is a nonpartisan, nonprofit organization comprising more than 27,000 physicians, medical students, and other health professionals across the country, representing all medical specialties. Declaration of Dr. Christine Petrin ("Petrin Decl.") ¶ 6, attached hereto as Ex. 1. DFA members include hospital-based physicians who specialize in emergency medicine, obstetrics and gynecology ("OB/GYN"), and maternal-fetal medicine ("MFM") and who provide emergency abortion care, when necessary, to stabilize pregnant patients experiencing severe complications. *Id*. ¶¶ 6, 9–11, 16. These members and the hospitals where

they work are subject to EMTALA. *Id*. ¶ 9. And some of these members work in states where, if not for EMTALA, they risk criminal prosecution for providing this essential health- and life-saving care to their patients. *Id*. ¶¶ 13–14.

For these reasons, DFA vehemently opposes Plaintiff's efforts to rewrite EMTALA to interfere with, if not altogether preclude, the ability of their members who *want* to provide emergency abortion care to their patients from being able to do so. *Id*. ¶ 20.

BACKGROUND

EMTALA and Prior Litigation

Nearly 40 years ago, Congress enacted EMTALA, 42 U.S.C. § 1395dd, to "fill a lacuna in traditional state tort law by imposing on hospitals a legal duty (that the common law did not recognize) to provide emergency care *to all*." *Hardy v. N.Y.C. Health & Hosp. Corp.*, 164 F.3d 789, 792–93 (2d. Cir. 1999); *see also Cleland v. Bronson Health Care Grp., Inc.*, 917 F.2d 266, 269–71 (6th Cir. 1990) (explaining EMTALA's broad mandate). As relevant here, EMTALA requires all hospitals with emergency departments that participate in the Medicare program to provide "[n]ecessary stabilizing treatment for emergency medical conditions and labor" or an appropriate transfer, 42 U.S.C. § 1395dd(b), to "*any* individual" experiencing an emergency medical condition, *id.* § 1395dd(b)(1).[2] EMTALA contains no exceptions for particular individuals, stabilizing treatments, or conditions. *Cf. Moses v. Providence Hosp. & Medical Ctrs., Inc.*, 561 F.3d 573, 582 (6th Cir. 2009) (rejecting implied limitation of EMTALA's text because "Congress wrote a statute

[2] An emergency medical condition is defined as, "a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in-- (i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, (ii) serious impairment to bodily functions, or (iii) serious dysfunction of any bodily organ or part." 42 U.S.C. § 1395dd(e)(1)(A); *see also id.* § 1395dd(e)(1)(B) (defining emergency medical condition in the context of labor and delivery).

that plainly has no such limitation on its coverage") (quoting *Cleland*, 917 F.2d at 269). Importantly, EMTALA expressly preempts any state or local law that "directly conflicts" with its requirements, 42 U.S.C. § 1395dd(f), including the stabilization requirement, *see Matter of Baby K*, 16 F.3d 590, 595–98 (4th Cir. 1994).

EMTALA does not seek to identify what particular stabilizing treatments are required for each and every particular emergency medical condition.[3] Instead, it requires *whatever* treatment is necessary to stabilize an emergency condition. *See* 42 U.S.C. § 1395dd(e)(3)(A) ("The term 'to stabilize' means . . . to provide *such* medical treatment as may be necessary to assure, within reasonable medical probability, [] no material deterioration of the condition") (emphasis added). Accordingly, and as virtually every major medical organization—from the American Medical Association to the American College of Emergency Physicians—confirms, abortion is sometimes the treatment necessary to stabilize a pregnant person's emergency condition under EMTALA. *See* Petrin Decl. ¶ 11.[4]

After the Supreme Court's decision in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022), CMS, which administers EMTALA, issued guidance re-affirming that EMTALA's stabilization mandate requires abortion, where appropriate, and applies regardless of state law. *See Reinforcement of EMTALA Obligations specific to Patients who are Pregnant or are Experiencing Pregnancy Loss*, CMS (July 11, 2022), https://www.cms.gov/files/document/qso-22-22-hospitals.pdf ("the Guidance"). In July 2022, the State of Texas, along with the American

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[3] That would be an impossible task. *See, e.g.*, Brief for Am. Hosp. Assoc., et al. as Amici Curiae Supporting Respondents at 19–20, *Moyle, et al. v. Idaho, et al.*, 603 U.S. 324 (2024) (Nos. 23-726, 23-727) ("Congress recognized that untrained legislators never could have specified *every* form of care that might be needed for *every* type of medical emergency").

[4] *See also* Brief for Am. Coll. of Obstetricians & Gynecologists, et al., as Amici Curiae in Support of Respondents, *Moyle*, 603 U.S. 324 (Nos. 23-726, 23-727).

Association of Pro-Life Obstetricians & Gynecologists ("AAPLOG") and the Christian Medical & Dental Associations ("CMDA"), challenged the Guidance under, *inter alia*, the Administrative Procedure Act, ultimately obtaining a permanent injunction against enforcing the Guidance, or its interpretation of EMTALA as to when an abortion is required or its effect on state laws governing abortion, within Texas or as to AAPLOG's and CMDA's members. *Texas v. Becerra*, 623 F. Supp. 3d 696, 739 (N.D. Tex. 2022), *judgment entered,* No. 5:22-CV-185, 2023 WL 2467217 (N.D. Tex. Jan. 13, 2023), *and aff'd,* 89 F.4th 529 (5th Cir. 2024), *cert. denied,* 145 S. Ct. 139 (2024); *see also Emergency Medical Treatment & Labor Act (EMTALA)*, CMS (Dec. 6, 2024, 2:50 PM), https://www.cms.gov/medicare/regulations-guidance/legislation/emergency-medical-treatment-labor-act.

Separately, and independent of the Guidance, less than two months after *Dobbs*, the federal government sued the State of Idaho, challenging Idaho's abortion ban on the grounds that it criminalized certain emergency abortion care required under EMTALA and therefore was preempted to the extent the laws directly conflicted. Compl. at 15–16, *United States v. Idaho*, 623 F. Supp. 3d 1096 (D. Idaho 2022) (No. 1:22-cv-329), *cert. dismissed as improvidently granted sub nom., Moyle v. United States*, 603 U.S. 324 (2024), *appeal dismissed per stipulation,* 131 F.4th 798 (9th Cir. 2025), ECF No. 1. The district court entered a preliminary injunction to this effect, 623 F. Supp. 3d at 1117, which was temporarily stayed by the Supreme Court in January 2024, *Idaho v. United States*, 144 S. Ct. 541 (2024), and then re-instated after a majority of the Court dismissed certiorari as improvidently granted, *Moyle*, 603 U.S. at 325, remanding the case to the Court of Appeals. After the change in presidential administration, the federal government

voluntarily dismissed the Idaho case on March 5, 2025. Stipulation of Dismissal, *Idaho*, 623 F. Supp. 3d 1096 (No. 1:22-cv-329), ECF No. 182.[5]

Plaintiff's Challenge to the Guidance

On January 10, 2025, nearly two years (to the day) after the U.S. District Court for the Northern District of Texas granted a permanent injunction in the Texas case, and shortly before the new presidential administration took office, Plaintiff CMA filed this suit alleging the Guidance creates an unlawful abortion "mandate" and raising nearly identical claims as the Texas plaintiffs.[6] Compl., ECF No. 1. Although Plaintiff did not identify a single member of its association who has ever been required, or even expected, to provide emergency abortion care pursuant to EMTALA, including since the Guidance was issued in July 2022, Plaintiff seeks not only a permanent injunction, but also that this Court "[h]old the [Guidance] unlawful, set it aside, and vacate it." *Id.* at 27; *cf. Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 374 (2024) ("But the plaintiffs do not prescribe or use mifepristone. And FDA is not requiring them to do or refrain from doing anything. . . . Under Article III of the Constitution, a plaintiff's desire to make a drug less available for others does not establish standing to sue.").

Defendants entered an appearance on March 21, 2025. ECF No. 19. The same day, the parties jointly moved for a 30-day extension of Defendants' time to answer or move to dismiss,

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[5] St. Luke's Health Systems, the largest hospital system in Idaho, has since filed an independent challenge to Idaho's abortion ban under EMTALA and obtained a temporary restraining order and, then, a preliminary injunction thereby restoring the protections lost when the federal government dismissed *United States v. Idaho*. *See St. Luke's Health Sys., Ltd. v. Labrador*, No. 25-CV-15, 2025 WL 888840, at *3, *23 (D. Idaho Mar. 20, 2025). St. Luke's lawsuit has also been supported by the American Hospital Association. Brief from *Amicus* Am. Hosp. Assoc., et al., *St. Luke's Health Sys.*, 2025 WL 888840 (No. 25-CV-15), ECF. No. 19.

[6] The Texas suit raised two additional constitutional claims (unconstitutional delegation, violation of the Tenth Amendment) not raised here. *See* Compl. at 17–18, *Texas v. Becerra*, No. 5:22-cv-185 (N.D. Tex. Jul. 14, 2022).

ECF No. 20, which was granted, ECF No. 22. On April 23, the parties sought another 30-day extension, which was also granted. ECF Nos. 23, 24. DFA filed the present motion to intervene on May 30, 2025.

LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 24(a)(2), "district courts must permit anyone to intervene who, (1) in a timely motion, shows that (2) they have a substantial legal interest in the case, (3) their absence from the case would impair that interest, and (4) their interest is inadequately represented by the parties." *Wineries of the Old Mission Peninsula Ass'n v. Twp. of Peninsula*, 41 F.4th 767, 771 (6th Cir. 2022). The Sixth Circuit construes Rule 24 "broadly . . . in favor of potential intervenors." *Purnell v. City of Akron*, 925 F.2d 941, 950 (6th Cir. 1991) (citing *Jansen v. City of Cincinnati*, 904 F.2d 336, 340 (6th Cir. 1990)).

Alternatively, Federal Rule of Civil Procedure 24(b) provides that a court may permit intervention where the movant makes a timely motion and "has a claim or defense that shares with the main action a common question of law or fact," Fed. R. Civ. P. 24(b)(1)(B), taking into consideration "whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights," Fed. R. Civ. P. 24(b)(3); *see Pub. Interest Legal Found., Inc. v. Winfrey*, 463 F. Supp. 3d 795, 798 (E.D. Mich. 2020) (Rule 24(b) "allows for permissive intervention under more relaxed conditions").

ARGUMENT

DFA satisfies all requirements for intervention as of right and, accordingly, is entitled to intervene. Alternatively, DFA should be permitted to intervene, as their motion is timely, their defense of the Guidance shares common questions of law and fact with this case, and their intervention will not delay or prejudice the existing parties' rights.

I. DFA IS ENTITLED TO INTERVENTION AS OF RIGHT.

A. DFA's Motion is Timely.

The determination of whether a motion to intervene is timely should be evaluated in the context of all relevant circumstances. *See, e.g.*, *Bradley v. Milliken,* 828 F.2d 1186, 1191 (6th Cir. 1987). To evaluate timeliness, the Sixth Circuit has identified the following factors:

> (1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenors knew or should have known of their interest in the case; (4) the prejudice to the original parties due to the proposed intervenors' failure to promptly intervene after they knew or reasonably should have known of their interest in the case; and (5) the existence of unusual circumstances militating against or in favor of intervention.

Jansen, 904 F.2d at 340. A court "considers the totality of the circumstances related to the timeliness of intervention, with no one factor being dispositive." *United States ex rel. Liebman v. Methodist Le Bonheur Healthcare*, No. 3:17-CV-00902, 2021 WL 5804356, at *2 (M.D. Tenn. Dec. 6, 2021) (citing *Salem Pointe Cap., LLC v. Rarity Ray Partners*, 854 F. App'x 688, 695 (6th Cir. 2021)). On all counts relevant here, and in light of the totality of the circumstances, the motion is timely.

First, this case is still in its "infancy," *League of Women Voters*, 902 F.3d at 579, as Defendants have not even responded to Plaintiff's Complaint. *See, e.g.*, *Nutrien AG Sols., Inc. v. Anderson*, No. 2:24-CV-93, 2024 WL 4843967, at *2 (E.D. Tenn. Nov. 20, 2024) (holding intervention motion timely when "filed while the case was in its infancy, i.e., before it had progressed beyond the pleading stage and prior to any discovery being conducted"); *EEOC v. Dolgencorp, LLC*, No. 3:14-CV-441, 2014 WL 7237911, at *2 (E.D. Tenn. Dec. 17, 2014) (holding intervention motion timely when filed four days after Defendant filed Answer, and prior to Rule

26(f) report); *cf. Clarke v. Baptist Mem'l Healthcare Corp.*, 427 F. App'x 431, 437 (6th Cir. 2011) (upholding untimeliness ruling where "several important litigation milestones have passed").

Second, the motion is timely in light of the manifest "importance of the legal interests asserted." *Davis v. Lifetime Capital, Inc.*, 560 F. App'x 477, 491 (6th Cir. 2014); *see also Salem Pointe Cap.*, 854 F. App'x at 696 ("district courts should look to the importance of the legal interests asserted" in considering purpose of intervention).[7] Here, Plaintiff is seeking a categorical holding that patients experiencing pregnancy complications are no longer entitled to life- and health-saving emergency abortion care under federal law and that EMTALA has no preemptive effect over conflicting state laws. *See, e.g.*, Compl. ¶¶ 122–42. Plaintiff has even asserted that EMTALA "mandate[s]" the stabilization of "the unborn child," which could effectively prohibit emergency abortion care in covered hospitals—even in states where abortion is not only lawful, but statutorily and constitutionally protected. *Id*. ¶ 126.[8] The requested relief would not only expose DFA's members, who are directly regulated individuals under EMTALA, to state criminal prosecution for providing essential care in certain states, but also prevent other members from providing that care in states where abortion is legal, potentially exposing their patients to severe, life-long health consequences and even death. *See also infra* Section I(B).

Third, DFA has acted promptly to protect these interests in light of indications the federal government Defendants may not adequately represent them. *See infra* Section I(C). As noted

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[7] As explained further below, *see infra* Section I(B), "an applicant [for intervention] need not have a legally enforceable right to a specific outcome in the litigation to have a substantial legal interest in the subject matter of the litigation." *Grutter v. Bollinger*, 188 F.3d 394, 399 (6th Cir. 1999); *see also Grainger v. Ottawa Cnty.*, 90 F.4th 507, 513–14 (6th Cir. 2024).

[8] What makes abortion a stabilizing treatment under EMTALA are those situations when complications arise necessitating the immediate removal of the pregnancy to stabilize the woman *at a point when* the embryo or fetus cannot survive outside the uterus. Petrin Decl. ¶ 11. Therefore, by definition, when a person is experiencing emergency complications from pre-viability pregnancy loss, abortion does not "stabilize" the embryo or fetus. *Id*.

above, rather than take a "wait and see" approach, which is disfavored, *see U.S. v. City of Detroit*, 712 F.3d 925, 932 (6th Cir. 20134), DFA has filed this motion before any responsive pleading or scheduling order has been put in place. *See generally Salem Pointe Cap.*, 854 F. App'x at 695 (holding "[t]he absolute measure of time between the filing of the complaint and the motion to intervene is one of the least importance [*sic*]" considerations for timeliness, and "what *does* matter is what steps occurred along the litigation continuum *during* this period of time" (emphases in original)).

Fourth, intervention will not prejudice the existing parties. "The only prejudice relevant to the timeliness determination is incremental prejudice from a would-be intervenor's delay in intervening, not prejudice from the intervention in and of itself." *Id*. at 699 (quoting *Davis*, 560 F. App'x at 493). Here, intervention will not cause delay as the deadline for responsive pleadings has not yet passed and there are no corresponding briefing deadlines set. *Accord McGruder v. Metro. Gov't of Nashville & Davidson Cnty.*, No. 3:17-cv-01547, 2024 WL 3446530, *1 (M.D. Tenn. Jul. 17, 2024) (finding no prejudice where intervention "will not turn back the clock or otherwise 'reboot' discovery, dispositive motions, or any other case management deadlines"). Moreover, "intervention will also serve judicial economy, should [the federal government Defendants] withdraw, because it will not require delaying the case for another motion to intervene or additional briefing." *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.*, No. 16-2424, 2017 WL 10350992, *1 (6th Cir. Mar. 27, 2017); *see also Jansen*, 904 F.2d at 341 (recognizing original parties' interests are served when intervention prevents "piecemeal litigation").

Fifth, and finally, no unusual circumstances militate against intervention here. To the contrary, and for the foregoing reasons, the "total balance of [] timeliness" weighs in favor of granting the motion. *Davis*, 560 F. App'x at 494.

B. DFA's Members Have Substantial Interests That Would Be Impaired by the Relief Plaintiff Seeks.

The Sixth Circuit has "adopted 'a rather expansive notion of the interest sufficient to invoke intervention of right.'" *Wineries*, 41 F.4th at 771–72 (quoting *Miller*, 103 F.3d at 1245). "[P]roposed intervenors need not have a specific legal or equitable interest in the litigation," *id*. at 772, nor do they need to have "the same [Article III] standing necessary to initiate a lawsuit," *Miller*, 103 F.3d at 1245. "Instead, '[t]he interest must be significantly protectable' to rise to the level of substantial." *Wineries*, 41 F.4th at 772 (quoting *Grubbs v. Norris*, 870 F.2d 343, 346 (6th Cir. 1989)). "The inquiry into the substantiality of the claimed interest is necessarily fact-specific," and "[a] close case[] should be resolved in favor of recognizing an interest." *Miller*, 103 F.3d at 1245, 1247. With respect to the impairment-of-interests prong, the burden is likewise "minimal." *Id*. "The rule is satisfied whenever disposition of the present action would put the movant at a practical disadvantage in protecting its interest." *Wineries*, 41 F.4th at 774.

DFA's members, who include hospital-based physicians who provide emergency abortions, easily meet the Sixth Circuit's standard: they are directly regulated and affected by EMTALA; they have an interest in providing care consistent with clinical standards; and their patients' health and lives are jeopardized by the improper interpretation of EMTALA that Plaintiff urges this Court to adopt. *See Coal. to Defend Affirmative Action v. Granholm*, 501 F.3d 775, 781 (6th Cir. 2007) (finding that an organization could have substantial legal interest in litigation concerning a law that regulates "the organization or its members"). And as described below, if DFA is not permitted to intervene and Plaintiff's interpretation of EMTALA is adopted, it is not merely "possible" but likely that these substantial interests would be impaired. *Miller*, 103 F.3d at 1247.

First, DFA's members are both "regulated by" and "affected by" EMTALA because it impacts the emergency abortion care they seek to provide to patients in need of that care. *Northland*

Fam. Plan. Clinic, Inc. v. Cox, 487 F.3d 323, 345–46 (6th Cir. 2007) (citing *Grutter v. Bollinger*, 188 F.3d 394, 401 (6th Cir. 1999)). As noted above, DFA's members include hospital-based physicians who provide necessary, stabilizing care to patients with emergency medical conditions—including abortion, where appropriate. Petrin Decl. ¶¶ 15–17. DFA's members providing this care in states where abortion is banned are protected by EMTALA's express preemption clause, which ensures that physicians, like DFA's members, do not face conflicting legal obligations and liability: It preempts any state or local law that directly conflicts with EMTALA's requirements, including the requirement to provide stabilizing care to any individual experiencing an emergency medical condition. 42 U.S.C. § 1395dd(f); *Matter of Baby K*, 16 F.3d at 597 (holding state law that "exempts" physicians from providing certain stabilizing treatments "directly conflicts with the provisions of EMTALA that require stabilizing treatment to be provided" and is preempted); *see also St. Luke's Health Sys., Ltd. v. Labrador*, No. 1:25-CV-15, 2025 WL 888840, at *14 (D. Idaho Mar. 20, 2025) (holding Idaho's abortion ban will "deter the provision of EMTALA-mandated stabilizing care," and "is therefore preempted").[9]

As such, DFA's members therefore have an "ongoing legal interest in [EMTALA's] enforcement," and a substantial legal interest in a suit where "[t]he outcome of the litigation could have an effect on the day-to-day aspect of their [members'] duties as healthcare professionals." *Am. Civ. Liberties Union of Mich. v. Trinity Health Corp.*, No. 15-CV-12611, 2016 WL 922950, at *2–3 (E.D. Mich. Mar. 10, 2016) (holding CMA's members had substantial legal interest for purposes of intervention in suit concerning hospital abortion policies and EMTALA).

[9] DFA's members who provide emergency abortion care in states where abortion is legal and legally protected, are likewise regulated and affected by EMTALA. As such, to the extent Plaintiff seeks a holding that EMTALA requires stabilization of the embryo or fetus that would preclude emergency abortion care, these members' substantial legal interests are also implicated. Petrin Decl. ¶¶ 9–10, 19.

Second, DFA and its members have an interest in preventing violations of the standard of care and impairment of the physician-patient relationship. Petrin Decl. ¶¶ 10–11, 16. Today, EMTALA protects those interests, but if Plaintiff's interpretation of EMTALA is adopted, there are cases where DFA's members would be forced to ignore clinical standards of care if an abortion is the indicated treatment, which not only implicates their substantial interest in providing their patients with health- and life-saving care but also severs the physician-patient relationship. *Id.* ¶ 16. Instead, they will have to stand by and withhold treatment, watching as their patients deteriorate, suffering potentially irreversible, and even fatal, health consequences or seek to transfer those patients out of state, where possible. *Id.* ¶ 17. Moreover, DFA's members' patients have a corresponding, substantial interest in EMTALA's protection of their right to receive emergency stabilizing abortions to avoid such devastating consequences. *Id.* ¶¶ 16–17; *see also Planned Parenthood Great Nw., Haw., Alaska, Ind., & Ky., Inc. v. Cameron*, No. 3:22-CV-198-RGJ, 2022 WL 1234847, at *3 (W.D. Ky. Apr. 26, 2022) (citing *Northland Family Planning Clinic*, 487 F.3d at 345) (holding abortion provider had substantial interest sufficient for intervention as of right based in part on regulatory regime's effect on provider's patients).

Denial of intervention would unmistakably impair DFA's ability to defend these substantial interests, particularly as Plaintiff does not seek relief limited to its members alone but rather seeks to fundamentally alter how EMTALA is interpreted and enforced nationwide. Compl. ¶¶ 123–42; *see also Miller*, 103 F.3d at 1245, 1247. As the Sixth Circuit has recognized, the "possibility of adverse stare decisis effects" itself "provides intervenors with sufficient interest to join an action." *Jansen,* 904 F.2d at 342. Indeed, if Plaintiff prevails, DFA's members in states where abortion is restricted would not face merely a "practical disadvantage," *Wineries*, 41 F.4th at 774, but would be placed in the impossible position of navigating between, on the one hand, providing the clinical

standard of care to stabilize their patients, and, on the other, their own criminal and civil legal exposure under state law, Petrin Decl. ¶ 17. Additionally, Plaintiff's assertion that there is a "duty under EMTALA to stabilize the unborn child," Compl. ¶ 45, *see also id*. ¶¶ 126, 163, risks barring DFA's members from providing emergency abortions to their patients even in states where abortion is both legal and legally protected. Petrin Decl. ¶ 19. This is plainly sufficient to satisfy DFA's "minimal" burden here. *Miller*, 103 F.3d at 1247.

C. Defendants Do Not Adequately Represent DFA's Interests.

Finally, DFA readily satisfies the "minimal" showing required for this factor, *see id*., as well, which demands only that there be "a *potential* for inadequate representation," *Grutter*, 188 F.3d at 400; *see also Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972) (applicant need only show that "that representation of his interest 'may be' inadequate"). A potential intervenor may shoulder its minimal burden under this factor by, for instance, demonstrating that the defendant may not "make all of the prospective intervenor's arguments," *Miller*, 103 F.3d at 1247, or that the existing defendant "has an incentive to disregard possible defenses that the applicant would like to present," *Blount-Hill v. Bd. of Educ. of Ohio*, 195 Fed. App'x 482, 489 (6th Cir. 2006) (Clay, J., concurring) (citing *Grutter*, 188 F.3d at 400).

Here, there is more than a reasonable likelihood that the federal government will not merely fail to make "all of the prospective intervenor's arguments" but that it will make *none* of those arguments. *Miller*, 103 F.3d at 1247. To start, earlier this year, the federal government voluntarily dismissed its challenge to Idaho's abortion ban under EMTALA, *see United States v. Idaho*, 131 F.4th 798 (9th Cir. 2025)—a challenge that made the same arguments necessary to defend the Guidance as here, and which flowed from the same underlying premise that EMTALA requires emergency care regardless of state law, *see* Compl. at 15–16, *Idaho*, 623 F. Supp. 3d 1096, ECF No. 1. And, in this case, Defendant has already admitted in its most recent extension motion that

it may seek to "resolve this case without litigation." *See* ECF No. 24; *see also Forcht Bank, N.A. v. Consumer Fin. Prot. Bureau*, No. 5:24-CV-304, 2025 WL 1402553, at *2 (E.D. Ky. May 14, 2025) (finding inadequate representation was "further demonstrated when the [federal agency] and the plaintiffs agreed to multiple stays of the case"). "An interest that is not represented at all is surely not adequately represented." *Grubbs*, 870 F.2d at 347 (citing 7C Charles A. Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure: Civil § 1909 (1986)). Defendants' past actions in this litigation and elsewhere alone are ample evidence that DFA's interests "potentially diverge" from the federal government and that the federal government's representation of those interests "*may* be inadequate." *Ne. Ohio Coal. for Homeless & SEIU, Loc. 1199 v. Blackwell*, 467 F.3d 999, 1008 (6th Cir. 2006); *cf. id.* (holding original party's decision not to appeal TRO "illustrative of [] underlying divergent interests").

But there is still more. Secretary Kennedy, a Defendant in this case, has publicly equivocated on the question of EMTALA's applicability to patients in need of emergency abortion care. During his confirmation hearing, Secretary Kennedy was asked whether a "pregnant woman with a life-threatening bleeding from an incomplete miscarriage [who] goes to the ER . . . [and whose] doctor . . . determines that she needs an emergency abortion" would be able to obtain abortion care "in a state where abortion is banned." He responded, "I don't know."[10] And President Trump has issued Executive Orders that further distance his administration from the Guidance and its underlying premise by rescinding two previous orders that reiterated these principles. *See* Exec. Order No. 14182, 90 Fed. Reg. 8751 (2025).

[10] rev, *RFK Jr. Confirmation Hearing Day One*, at 1:31:15, https://webflow.rev.com/transcripts/rfk-jr-confiramation-hearing-day-one.

The first of those now-rescinded orders directed the Department to "identify[] steps to ensure that all patients—including pregnant women and those experiencing pregnancy loss, such as miscarriages and ectopic pregnancies—receive the full protections for emergency medical care afforded under the law, including by considering updates to current guidance on obligations specific to emergency conditions and stabilizing care under [EMTALA]." Exec. Order No. 14076, 87 Fed. Reg. 42053, 42054 (2022). The second rescinded order included in its summary of the Biden Administration's reproductive healthcare policy a description of the Administration's "clarif[ication of] the obligation of hospitals and providers under [EMTALA] to provide to patients presenting at an emergency department with an emergency medical condition stabilizing care, including an abortion, if that care is necessary to stabilize their emergency medical condition." Exec. Order. No. 14079, 87 Fed. Reg. 49505, 49505 (2022). The repudiation of those orders only underscores the "*potential* for inadequate representation" of DFA's interests, *Grutter*, 188 F.3d at 400, because it indicates the federal government no longer "share[s] the same ultimate objective" as DFA of defending EMTALA's application to emergency abortion care. *United States v. Michigan*, 424 F.3d 438, 444 (6th. Cir. 2005); s*ee also Harris Funeral Homes*, 2017 WL 10350992, at *1 ("The EEOC's recent actions imply that the new administration will less aggressively pursue transgender rights. Thus, while Stephens's fears that the EEOC will not support her case or withdraw from her case have yet to crystallize, the totality of the circumstances supports permitting her to intervene.")

In sum, while DFA is "not required to show that the representation will in fact be inadequate," *Miller*, 103 F.3d at 1247, the federal government's actions and statements in this case and others, as well as on the issue of EMTALA more broadly, have more than "established the possibility of inadequate representation." *Grutter*, 188 F.3d at 401.

II. ALTERNATIVELY, PERMISSIVE INTERVENTION IS APPROPRIATE HERE.

DFA also satisfies the requirements of Federal Rule of Civil Procedure 24(b) for permissive intervention. Specifically, DFA has made a timely motion and "has a claim or defense that shares with the main action a common question of law or fact," and its intervention will not "unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(1), (3).

First, as set out above, DFA has timely filed its motion. *See supra* Section I(A). Second, DFA seeks to advocate for the position (defending the Guidance and the plain meaning of EMTALA itself) and arguments that it believes the federal government may shortly abandon, and DFA's claims and defenses do not just share a common question of law or fact with the main action—they are practically identical. *See supra* Section I(C). Finally, because DFA seeks to enter the case before there has been any motions practice, discovery, or even a proposed settlement, there is no undue delay or prejudice to the original parties. *See supra* Section I(A).

CONCLUSION

For the foregoing reasons, DFA respectfully requests that this Court grant its motion to intervene as of right under Rule 24(a)(2), or, in the alternative, for permissive intervention under Rule 24(b).

DATE: May 30, 2025.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2025, a copy of the foregoing was filed electronically via the Court's ECF system, which effects service upon counsel of record.

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