

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CHARLES GRESHAM, et al.

PLAINTIFFS

v.

No. 1:18-cv-01900JEB

ALEX M AZAR, et al.

DEFENDANTS

**THE STATE OF ARKANSAS'S UNOPPOSED MOTION TO INTERVENE
AND INCORPORATED MEMORANDUM IN SUPPORT**

Under Federal Rule of Civil Procedure 24(a) and (b), the State of Arkansas moves to intervene as a defendant to defend the defendants' approval of its Medicaid demonstration project. This motion is unopposed. The State of Arkansas's proposed answer is attached as Exhibit A.

This action is a challenge by three Arkansas residents to the Secretary of Health and Human Services' approval of Arkansas's Medicaid demonstration project, which the Arkansas General Assembly authorized by statute in 2017. *See* 2017 Arkansas Laws 1st Ex. Sess. Act 3 (H.B. 1003), 2017 Arkansas Laws 1st Ex. Sess. Act 6 (S.B. 3). Though it is in essence an attack on the design of Arkansas's Medicaid program, the plaintiffs only named federal defendants. Thus, Arkansas should be granted leave to intervene to defend its demonstration project, either as of right or permissively.

I. Arkansas is entitled to intervene as of right.

Fed. R. Civ. P. 24(a) governs intervention as of right. The D.C. Circuit has "identified four prerequisites to intervene as of right: '(1) the application to intervene must be timely; (2) the applicant must demonstrate a legally protected interest in the action; (3) the action must threaten to impair that interest; and (4) no party to the action can be an adequate representative of the

applicant's interests.” *Karsner v. Lothian*, 532 F.3d 876, 885 (D.C. Cir. 2008) (quoting *SEC v. Prudential Sec., Inc.*, 136 F.3d 153, 156 (D.C. Cir. 1998)).

a. *Arkansas's motion is timely.*

First, this motion is timely. In deciding whether a motion to intervene is timely, courts “especially weigh[] the factors of time elapsed since the inception of the suit . . . and the probability of prejudice to those already parties in the case.” *Id.* at 886 (internal quotation marks omitted) (quoting *United States v. British Am. Tobacco Australia Servs., Ltd.*, 437 F.3d 1235, 1238 (D.C. Cir. 2006)). This motion is being filed three weeks into the case, *see* ECF No. 1 (filed Aug. 14, 2018), and over a month before the defendants' answer is due. *See* Fed. R. Civ. P. 12(a)(2) (providing that federal defendants have sixty days to answer complaints). A motion to intervene filed before defendants file an answer is invariably deemed timely. *See Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (holding motion to intervene timely that was filed less than two months after plaintiffs filed their complaint and before federal defendants filed their answer); *Cayuga Nation v. Zinke*, 324 F.R.D. 277, 282 (D.D.C. 2018) (holding motion to intervene timely that was filed on the same day that federal defendants filed a partial motion to dismiss, but before they filed an answer, reasoning that “[t]he Court [could] conceive of no way in which the timing of this motion has prejudiced any of the current parties”); *Associated Dog Clubs of N.Y. State v. Vilsack*, 44 F. Supp. 3d 1, 5–6 (D.D.C. 2014) (holding a motion filed two weeks after plaintiffs filed their complaint “clearly timely”).

b. *Arkansas has a legally protected interest in this action.*

Next, Arkansas has a legally protected interest in this action. The subject matter of this action is the defendants' approval of Arkansas's Medicaid demonstration project; the relief plaintiffs seek is, in primary part, a declaration that approval was unlawful, and an injunction

against “Defendants from implementing the practices purportedly authorized by . . . the Arkansas Works Amendment,” Arkansas’s Medicaid demonstration project. ECF No. 1 at 37. To say that Arkansas has a legally protected interest in plaintiffs’ requests for relief understates matters. As things stand, it is impossible for a court to “accord complete relief among existing parties,” Fed. R. Civ. P. 19(a)(1)(A); it is Arkansas through its responsible officials, not the Secretary of Health and Human Services or the Administrator of the Centers for Medicare and Medicaid Services, who “implement[s] the practices” authorized by Arkansas’s Medicaid demonstration project. An injunction against the named defendants would be ineffective to give plaintiffs the relief they seek. Therefore, Arkansas (through its responsible officials) not only is entitled to intervene in this action as of right, but “must be joined as a party.” Fed. R. Civ. P. 19(a)(1).

Even if Arkansas’s participation in the case were not necessary to grant plaintiffs the relief they seek, Arkansas would have a sufficient legally protected interest for it to be entitled to intervene as of right. Indeed, Arkansas’s interest is stronger than perhaps any state’s interest that this Court has deemed sufficient to support intervention as of right.

For example, this Court has allowed a state to intervene as of right in a challenge to federal oil and gas leases where the state merely “worked with the [responsible federal agency] in developing the regulatory framework under which the leases occurred,” *WildEarth Guardians v. Jewell*, 320 F.R.D. 1, 4 (D.D.C. 2017); the state’s collaboration with the federal government in developing the latter’s regulations, the court held, gave the state “regulatory interests in the leases.” *Id.*; see also *Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 18 (D.D.C. 2010) (finding a sufficient interest for intervention as of right where a state “participated as an advisor-member of the team charged with reviewing” a challenged application to mine on federal lands and “prepar[ing] . . . the accompanying EIS”); *WildEarth Guardians v. United States Bureau of Land*

Mgmt., No. 12-0708 (ABJ), 2012 WL 12870488, at *1 (D.D.C. June 7, 2012) (finding a sufficient interest for intervention as of right in like circumstances). Here, Arkansas did not just work with HHS in developing the “regulatory framework” that plaintiffs challenge; the regulatory framework is Arkansas’s own. Far more than pride of co-authorship of another sovereign’s regulations is on the line for Arkansas; the question in this case is whether Arkansas will be permitted to design its state Medicaid plan in the way it has seen fit.

This Court and other courts have also held that states have a sufficient interest for intervention as of right when they have an interest in the content of challenged federal regulation, or when they also regulate on the subject matter of a challenged federal regulation. For example, in *Wildearth Guardians v. Salazar*, this Court held that Wyoming’s “interest in . . . regulating environmental quality within its borders,” 272 F.R.D. at 18, and its “interest in protecting its . . . socioeconomic stake in the development of coal mining operations in Wyoming,” *id.*, would both “alone suffice to support intervention” in a challenge to federal mining approvals. *Id.*; see also *Earthworks v. United States Dep’t of Interior*, No. 09-01972 (HKK), 2010 WL 3063143, at *2 (D.D.C. Aug. 3, 2010) (holding that “Alaska’s interests in the natural resources within state borders and the economic effects on the state of mining regulation” were sufficient interests for intervention as of right in a similar suit). In another case, the Fifth Circuit held that Texas could intervene as of right in a suit demanding the United States Department of Agriculture regulate pumping from a Texas aquifer where a state commission already regulated the same aquifer; the plaintiff’s proposed federal regulation, the court reasoned, “directly interferes with the commission’s statutory authority.” *Sierra Club v. Glickman*, 82 F.3d 106, 110 (5th Cir. 1996). And fifty years ago, the D.C. Circuit held that a state’s interest in the outcome of an action concerning the interpretation of a federal banking statute that incorporated state law was

sufficient for intervention as of right, reasoning that where Congress “attach[ed] national legal force to [a] state policy . . . a state official directly concerned in effectuating the state policy has an ‘interest’ in a legal controversy . . . which concerns the nature and protection of the state policy.” *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967).

Here too, Arkansas’s interest in this action is much stronger than those previously recognized by this and other courts. Arkansas’s interest is not, as in *Nuesse*, an interest in the interpretation of its regulation, or, as in *Sierra Club*, an interest in defeating litigation that merely threatened to interfere with its regulation, or, as in *Wildearth Guardians* or *Earthworks*, a generic interest in the subject matter of the regulation at issue. Rather, Arkansas’s interest is in defending a particular state regulatory scheme from invalidation. That interest is amply sufficient for it to be entitled to intervene as of right.

c. This action threatens to impair Arkansas’s interest.

To intervene as of right in an action, the action must threaten to impair the legally protected interest that the intervenor has in it. *See Karsner*, 532 F.3d at 885. Arkansas’s legally protected interest in this action is in continuing to operate its Medicaid plan in the manner that state law provides. This action flatly threatens to impair that interest; the relief plaintiffs seek is an injunction against the implementation of Arkansas’s Medicaid demonstration project. *See* ECF No. 1 at 37.

d. Arkansas’s interests are not adequately represented by the parties.

To intervene as of right, a proposed intervenor must also show that the existing parties do not adequately represent its interests. *See Karsner*, 532 F.3d at 885. This “‘requirement of . . . Rule [24(a)] is satisfied if the applicant shows that representation of his interest may be inadequate; and the burden of making that showing should be treated as minimal.’” *Fund for*

Animals, 322 F.3d at 735 (internal quotation marks omitted) (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)); see also *Crossroads Grassroots Policy Strategies v. Fed. Election Comm’n*, 788 F.3d 312, 321 (D.C. Cir. 2015) (“a movant ‘ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation’”) (quoting *United States v. Am. Tel & Tel. Co.*, 642 F.2d 1285, 1293 (D.C. Cir. 1980)).

Arkansas’s interests are, to be sure, largely aligned with those of the federal defendants; both seek to defend the latter’s approval of Arkansas’s Medicaid demonstration project. Nonetheless, in cases where a state seeks to intervene to defend a challenged federal regulatory action that benefits the state, this court has invariably and routinely found inadequate representation—or a possibility of it, which suffices for intervention as of right. See *Jewell*, 320 F.R.D. at 5 (reasoning in a case where states sought to intervene to defend federal oil and gas leases that “[w]hile the Federal Defendants’ duty runs to the interests of the American people as a whole, the state-intervenors will primarily consider the interests of their own citizens”); *Wildearth Guardians*, 272 F.R.D. at 19–20 (“[A]lthough there are certainly shared concerns, it is not difficult to imagine how the interests of Wyoming and the [federal] defendants ‘might diverge during the course of litigation.’” (quoting *Fund for Animals*, 322 F.3d at 736)); *Atl. Sea Island Grp. LLC v. Connaughton*, 592 F. Supp. 2d 1, 7 (D.D.C. 2008) (“While New Jersey and the current defendants, who are federal officers, both have an interest in maintaining the Administrator’s designation [of New Jersey as an adjacent coastal state to a deepwater port], the federal defendants have an obligation to represent the interests of the entire country, and it is not clear that the federal defendants’ interests will always align with the narrower interests of New Jersey.” (citations omitted)); *Akichak Native Cmty. v. United States Dep’t of Interior*, 584 F. Supp. 2d 1, 7 (D.D.C. 2008) (reasoning in a case where Alaska sought to intervene to defend the

Department of the Interior's bar against taking certain Alaskan land into trust that "[t]he existing defendants . . . have no clear interest in protecting Alaska's sovereignty . . . that would ensure adequate representation of Alaska's interests").

Here, while both the defendants and Arkansas seek to defend the defendants' approval of Arkansas's Medicaid demonstration project, only Arkansas can defend and advocate the state-specific interests that motivated it to adopt that project. And because Arkansas's interest in this action is only in defending *its* project, not the defendants' policies on Medicaid community engagement requirements generally, "it is not difficult to imagine," *Wildearth Guardians*, 272 F.R.D. at 19, that Arkansas may rely on distinctions between its project and other states' projects, or on distinctions between the defendants' approval of its project and their approval of others, that the federal defendants may decline to pursue in favor of a more global defense of their policies on Medicaid community engagement requirements. Indeed, the potential for such divergence is greater than in many of the cases where this Court has found inadequate representation before, which often involved one-off regulatory actions rather than state-specific instantiations of a broader federal regulatory policy. In sum, Arkansas's interests may not be adequately represented by the federal defendants (and will certainly not be represented by the plaintiffs), and that suffices for intervention as of right.

2. *Alternatively, permissive intervention should be granted.*

Fed. R. Civ. P. 24(b)(2) provides that, "[o]n timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on: (A) a statute or executive order administered by the officer or agency; or (B) any regulation, order, requirement, or agreement issued or made under the statute or executive order." Courts do not interpret Rule 24(b)(2)'s reference to "governmental officer[s] or agenc[ies]" literally and

permit federal or state governments themselves to intervene under Rule 24(b)(2). *See, e.g., Huff v. Comm’r*, 743 F.3d 790 (11th Cir. 2014) (holding that the government of the United States Virgin Islands could intervene in a tax dispute under Rule 24(b)(2)); *Coffey v. Comm’r*, 663 F.3d 947 (8th Cir. 2011) (same); *Appleton v. Comm’r*, 430 F. App’x 135 (3d Cir. 2011) (same); *cf. McHenry v. Comm’r*, 677 F.3d 214 (4th Cir. 2012) (holding that the Virgin Islands could not intervene, but only on the ground that the Virgin Islands did not administer the federal statute in question).

In entertaining such a motion, this Court considers “whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). As argued above, this motion is timely and granting it would not prejudice the parties. And, this action is based on (and attacks) a regulation, Arkansas’s Medicaid demonstration project, that was “issued or made under [a] statute,” the state legislation authorizing that project, that Arkansas administers. The Court should permit Arkansas to intervene.

CONCLUSION

For the foregoing reasons, the Court should grant Arkansas's unopposed motion to intervene as a defendant.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General

By: /s/ Nicholas J. Bronni
Nicholas J. Bronni
Solicitor General of Arkansas

Dylan L. Jacobs
Assistant Solicitor General

ARKANSAS ATTORNEY GENERAL'S OFFICE
323 Center Street, Suite 200
Little Rock, AR 72201

Ph: (501) 682-2007

Fax: (501) 682-2591

Email: Nicholas.Bronni@arkansasag.gov

Dylan.Jacobs@arkansasag.gov

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to any CM/ECF participants.

/s/ Nicholas J. Bronni

Nicholas J. Bronni

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ANSWER

Intervening Defendant the State of Arkansas, through Attorney General Leslie Rutledge, states for its Answer to Plaintiffs' Complaint as follows:

1. Defendant denies the allegations contained in paragraph 1.
2. Defendant admits that Medicaid provides health care services to qualifying individuals. As to the number of individuals to whom Medicaid provides coverage, Defendant lacks information sufficient to admit or deny Plaintiffs' allegation and therefore denies it. The second and third sentences of paragraph 2 state legal characterizations of the Social Security Act (SSA) that do not call for a response. To the extent a response is required, Defendant states that the SSA speaks for itself.
3. Defendant admits that the federal government provides matching funds for Medicaid spending. The balance of paragraph 3 states legal conclusions about the SSA to which no response is required. To the extent a response is required, Defendant states that the SSA speaks for itself.
4. Defendant admits that the "Medicaid Act," or more formally, Title XIX of the Social Security Act, is "a part" of the SSA, and that it permits the Secretary of Health and Human Services ("HHS") to waive certain Medicaid requirements. The balance of Paragraph 4

states legal conclusions on 42 U.S.C. § 1315 to which no response is required; to the extent a response is required, Defendant states that § 1315 speaks for itself.

5. Defendant admits the allegations contained in paragraph 5.

6. Defendant denies the allegations contained in the first sentence of paragraph 6 and admits the allegations contained in the second sentence of paragraph 6.

7. Defendant states that the January 11, 2018 letter from HHS to state Medicaid directors, attached as Exhibit 6 to Plaintiffs' Complaint, speaks for itself. Defendant admits that it was sent while the Arkansas Works Amendment was pending. Defendant admits the allegations contained in the third sentence of paragraph 7.

8. Defendant denies the allegations contained in paragraph 8.

9. Defendant admits that Plaintiffs purport to bring this matter as a class action seeking declaratory and injunctive relief for alleged violations of the Administrative Procedure Act (APA), the SSA, and the United States Constitution.

10. Defendant admits the allegations contained in paragraph 10.

11. Defendant admits the allegations contained in paragraph 11.

12. Defendant admits that Mr. Gresham is 37 years old, lives in Harrison, Arkansas, and is enrolled in the Arkansas Medicaid program. Defendant lacks information sufficient to admit or deny the balance of the allegations contained in paragraph 12 and therefore denies them.

13. Defendant admits that Mr. Ardon is 40 years old, lives in Siloam Springs, Arkansas, and is enrolled in the Arkansas Medicaid Program. Defendant lacks information sufficient to admit or deny the balance of the allegations contained in paragraph 13 and therefore denies them.

14. Defendant admits that Ms. Ardon is 44 years old, lives in Siloam Springs, Arkansas, and is enrolled in the Arkansas Medicaid Program. Defendant lacks information sufficient to admit or deny the balance of the allegations contained in paragraph 14 and therefore denies them.

15. Defendant admits the allegations contained in paragraph 15.

16. Defendant admits the allegations contained in paragraph 16.

17. Defendant admits the allegations contained in paragraph 17.

18. Defendant admits the allegations contained in paragraph 18.

19. Paragraph 19 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statutes cited therein speak for themselves.

20. Paragraph 20 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute cited therein speaks for itself.

21. Defendant admits the allegations contained in paragraph 21.

22. Paragraph 22 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute cited therein speaks for itself.

23. Paragraph 23 states legal conclusions that do not call for a response.

24. Paragraph 24 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statutes cited therein speak for themselves.

25. Paragraph 25 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statutes cited therein speak for themselves.

26. Paragraph 26 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute cited therein speaks for itself.

27. Paragraph 27 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statutes cited therein speak for themselves.

28. Paragraph 28 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute cited therein speaks for itself.

29. Defendant admits the allegations contained in the first sentence of paragraph 29. The second sentence of paragraph 29 makes subjective claims about the purposes of the Patient Protection and Affordable Care Act that do not call for a response.

30. Paragraph 30 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute cited therein speaks for itself.

31. Paragraph 31 is a statement of law to which no answer is required, but to the extent that one is required, the Defendant states that the statute cited therein speaks for itself.

32. Paragraph 32 is a statement of law to which no answer is required, but to the extent that one is required, the Defendant states that the opinion cited therein speaks for itself.

33. Defendant admits the allegations contained in paragraph 33.

34. Paragraph 34 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute cited therein speaks for itself.

35. Paragraph 35 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statutes cited therein speak for themselves.

36. Paragraph 36 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute cited therein speaks for itself.

37. Paragraph 37 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute cited therein, assuming that the citation to the nonexistent “[42 U.S.C.] § 1396(a)(10)(A)” is a typographical error that was intended to refer to 42 U.S.C. § 1396a(a)(10)(A), speaks for itself.

38. Paragraph 38 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute discussed therein speaks for itself.

39. Defendant admits that paragraph 39 is an accurate quotation of 42 U.S.C. § 1396a(a)(19).

40. Paragraph 40 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statutes and regulations cited therein speak for themselves.

41. Paragraph 41 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statutes and regulations cited therein speak for themselves.

42. Paragraph 42 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statutes and publication cited therein speak for themselves.

43. Paragraph 43 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statutes and legislative history cited therein speak for themselves.

44. Paragraph 44 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute discussed therein speaks for itself.

45. Paragraph 45 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute discussed therein speaks for itself.

46. Paragraph 46 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute discussed therein speaks for itself.

47. Paragraph 47 states a legal conclusion that does not call for a response.

48. Paragraph 48 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute discussed therein speaks for itself.

49. Paragraph 49 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute discussed therein speaks for itself.

50. Paragraph 50 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute and regulations cited therein speak for themselves.

51. Paragraph 51 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute discussed therein speaks for itself.

52. Paragraph 52 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statutes and publication cited therein speak for themselves.

53. Defendant admits the allegations contained in paragraph 53.

54. Defendant admits the allegations contained in paragraph 54.

55. Defendant admits the allegations contained in the first sentence of paragraph 55. The second sentence of paragraph 55 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute cited therein speaks for itself.

56. Defendant admits the allegations contained in paragraph 56.

57. Paragraph 57 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the approval of the Arkansas Health Care Independence Program cited therein speaks for itself.

58. Defendant admits the allegations contained in the first sentence of paragraph 58. Defendant lacks information sufficient to admit or deny the allegations contained in the second sentence of paragraph 58 and therefore denies them.

59. Defendant admits the allegations contained in paragraph 59.

60. The letter cited and described in paragraph 60 speaks for itself.

61. The letter cited and described in paragraph 61 speaks for itself.

62. Paragraph 62 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the document cited therein speaks for itself.

63. Defendant admits the allegations contained in paragraph 63.

64. The letter cited and described in paragraph 64 and attached to Plaintiffs' Complaint as Exhibit 1 speaks for itself.

65. The letter cited and described in paragraph 65 and attached to Plaintiffs' Complaint as Exhibit 1 speaks for itself.

66. Defendant admits that paragraph 66 accurately quotes Exhibit 1 to Plaintiffs' Complaint.

67. Paragraph 67 describes the content of Exhibit 1; Defendant states that Exhibit 1 speaks for itself.

68. Defendant admits the allegations contained in paragraph 68.

69. Defendant admits the allegations contained in paragraph 69.

70. Paragraph 70 describes the content of Exhibit 2 to Plaintiffs' Complaint; Defendant states that Exhibit 2 speaks for itself.

71. Paragraph 71 describes the content of Exhibits 1 and 2; Defendant states that Exhibits 1 and 2 speak for themselves.

72. Paragraph 72 describes the content of Exhibit 2; Defendant states that Exhibit 2 speaks for itself.

73. Paragraph 73 describes the content of Exhibit 2; Defendant states that Exhibit 2 speaks for itself.

74. Paragraph 74 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute cited therein speaks for itself.

75. Paragraph 75 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute cited therein speaks for itself.

76. Paragraph 76 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant admits the allegations describing Arkansas Works' community engagement requirement and denies Plaintiffs' allegations that it "added a new condition of eligibility that is not permitted under the Medicaid Act."

77. Paragraph 77 describes the content of Exhibit 2; Defendant states that Exhibit 2 speaks for itself.

78. Paragraph 78 describes the content of Exhibit 2; Defendant states that Exhibit 2 speaks for itself.

79. Paragraph 79 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute cited therein speaks for itself.

80. Paragraph 80 describes the content of Exhibit 2; Defendant states that Exhibit 2 speaks for itself.

81. Paragraph 81 accurately quotes Exhibit 2. Otherwise, its allegations describe Exhibit 2's content; to the extent any response to those descriptions are required, Exhibit 2 speaks for itself.

82. Paragraph 82 describes the content of Exhibit 3 to Plaintiffs' Complaint; Defendant states that Exhibit 3 speaks for itself.

83. Paragraph 83 describes the content of Exhibit 3; Defendant states that Exhibit 3 speaks for itself.

84. Paragraph 84 describes the content of an *Arkansas Times* blog post; Defendant states that the blog post speaks for itself.

85. Defendant admits the allegations contained in paragraph 85.

86. Defendant denies the allegations contained in the first sentence of paragraph 86. Defendant admits the balance of the allegations in paragraph 86.

87. Paragraph 87 describes the content of Exhibit 3; Defendant states that Exhibit 3 speaks for itself.

88. Paragraph 88 describes the content of Exhibit 4 to Plaintiffs' Complaint; Defendant states that Exhibit 4 speaks for itself.

89. Paragraph 89 describes the content of Exhibit 3; Defendant states that Exhibit 3 speaks for itself.

90. The first sentence of paragraph 90 states legal conclusions that do not call for a response, but to the extent that any response is called for, Defendant states that the statute

discussed therein speaks for itself. The second sentence of paragraph 90 accurately quotes 42 U.S.C. § 1396a.

91. Paragraph 91 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant states that the statute cited therein speaks for itself.

92. Paragraph 92 states legal conclusions that do not call for a response, but to the extent that any response is called for, the Defendant denies them.

93. Defendant admits the allegations contained in paragraph 93, except for the allegation that retroactive eligibility coverage is “required by the statute”—a legal conclusion that does not call for a response. To the extent that any response is called for, the Defendant states that the statute discussed therein speaks for itself.

94. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 94 and therefore denies them.

95. Defendant admits that paragraph 95 accurately quotes the documents cited therein.

96. Paragraph 96 describes the content of Exhibit 5 to Plaintiffs’ Complaint; Defendant states that Exhibit 5 speaks for itself.

97. Defendant denies the allegations contained in paragraph 97.

98. Paragraph 98 describes the content of Executive Order 13765; Defendant states that Executive Order 13765 speaks for itself.

99. Defendant admits the allegation contained in the first sentence of paragraph 99. Defendant denies Plaintiffs’ characterization, in the second sentence of paragraph 99, of the letter cited in that paragraph and states that the letter speaks for itself.

100. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 100 and therefore denies them; it further states that the article cited therein speaks for itself.

101. Defendant admits the allegations contained in paragraph 101.

102. Paragraph 102 describes the content of a speech given by Defendant Verma; Defendant states that the speech cited therein speaks for itself.

103. Paragraph 103 describes the content of an interview given by Defendant Verma; Defendant states that the interview cited therein speaks for itself.

104. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 104 and therefore denies them.

105. Defendant admits the allegations contained in paragraph 105.

106. Paragraph 106 describes the content of Exhibit 6 to Plaintiffs' Complaint; Defendant states that Exhibit 6 speaks for itself.

107. Paragraph 107 describes the content of Exhibit 6; Defendant states that Exhibit 6 speaks for itself.

108. Paragraph 108 describes the content of Exhibit 6; Defendant states that Exhibit 6 speaks for itself.

109. Defendant admits the allegations contained in paragraph 109.

110. Defendant lacks information sufficient to admit or deny the allegations contained in the first sentence of paragraph 110 and therefore denies them. The balance of paragraph 110 describes the content of a letter cited therein; Defendant states that the letter speaks for itself.

111. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 111 and therefore denies them.

112. Paragraph 112 describes the content of a page on the Centers for Medicare and Medicaid Services website; Defendant states that the website speaks for itself.

113. Paragraph 113 describes the content of a tweet by Defendant Verma; Defendant states that the tweet speaks for itself.

114. Paragraph 114 describes the content of Exhibit 2; Defendant states that Exhibit 2 speaks for itself.

115. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 115 and therefore denies them.

116. Defendant admits that paragraph 116 accurately quotes the article cited therein but lacks information sufficient to admit or deny paragraph 116's allegation that Defendant Azar made the comments reported in the article, and therefore denies it.

117. Defendant admits that paragraph 117 accurately quotes Article 1, Sections 1 and 8 of the Constitution.

118. Paragraph 118 states a legal conclusion that does not call for a response; to the extent a response is called for, Defendant states that the cited provision of the Constitution speaks for itself.

119. Paragraph 119 states a legal conclusion that does not call for a response; to the extent a response is called for, Defendant states that the cases cited therein speak for themselves.

120. Paragraph 120 states a legal conclusion that does not call for a response; to the extent a response is called for, Defendant states that the clause of the Constitution discussed therein speaks for itself.

121. Paragraph 121 states a legal conclusion that does not call for a response; to the extent a response is called for, Defendant states that the Constitution, which is characterized therein, speaks for itself.

122. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 122 and therefore denies them.

123. Paragraph 123 states a legal conclusion that does not call for a response; to the extent a response is called for, Defendant states that the Constitution, which is characterized therein, speaks for itself.

124. Defendant denies the allegations contained in the first sentence of paragraph 124, lacks information sufficient to admit or deny the allegations contained in the second sentence of paragraph 124 and therefore denies them, and states that the third sentence of paragraph 124 states a legal conclusion about the Constitution, which speaks for itself.

125. Defendant denies the characterizations of the Arkansas Works Amendment contained in paragraph 125.

126. Defendant denies the allegations contained in the first sentence of paragraph 126. The second sentence of paragraph 126 states an opinion about what “Plaintiffs should be able” to do to which no response is required. Defendant admits the allegations contained in the first half of the third sentence of paragraph 126, preceding the em dash, lacks information sufficient to admit or deny the allegations contained in the second half of the third sentence of paragraph 126, and therefore denies them. The Defendant denies the allegations contained in the fourth sentence of paragraph 126.

127. Defendant admits the allegations contained in the first sentence of paragraph 127 with the exception of its legal conclusion about the requirements of the Medicaid Act, to which

no response is called for; to the extent a response is called for, Defendant states that the Medicaid Act speaks for itself. Defendant admits the allegations contained in the second sentence of paragraph 127. Defendant denies the allegations contained in the third sentence of paragraph 127.

128. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 128 and therefore denies them.

129. Defendant denies the allegations contained in paragraph 129.

130. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 130 and therefore denies them.

131. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 131 and therefore denies them.

132. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 132 and therefore denies them.

133. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 133 and therefore denies them.

134. Defendant denies the allegations contained in the first sentence of paragraph 134. Defendant lacks information sufficient to admit or deny the allegations contained in the balance of paragraph 134 and therefore denies them.

135. Defendant admits the allegations contained in the first sentence of paragraph 135. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 135 and therefore denies them.

136. Defendant admits the allegations contained in the first two sentences of paragraph 136. Defendant denies the allegations contained in the third sentence of paragraph 136; Mr.

Gresham is currently exempted from Arkansas Works' community engagement requirement because he receives benefits under the Supplemental Nutrition Assistance Program (SNAP).

137. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 137 and therefore denies them.

138. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 138 and therefore denies them.

139. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 139 and therefore denies them.

140. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 140 and therefore denies them.

141. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 141 and therefore denies them.

142. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 142 and therefore denies them.

143. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 143 and therefore denies them.

144. With respect to the allegations contained in paragraph 144, Defendant states that the Department of Human Services sent the notices described in paragraph 144; Defendant lacks information sufficient to admit or deny the allegations in paragraph 144 that Mr. Ardon received those notices.

145. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 145 and therefore denies them.

146. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 146 and therefore denies them.

147. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 147 and therefore denies them.

148. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 148 and therefore denies them.

149. Defendant lacks information sufficient to admit or deny the allegations contained in the first, second, and fourth sentences of paragraph 149 and therefore denies them. Defendant denies the allegations contained in the third sentence of paragraph 149.

150. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 150 and therefore denies them.

151. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 151 and therefore denies them.

152. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 152 and therefore denies them.

153. Defendant denies the allegations contained in paragraph 153.

154. Defendant lacks information sufficient to admit or deny the allegations contained in the first three sentences of paragraph 154 and therefore denies them. Defendant admits the fourth sentence's allegation that Ms. Ardon submitted a paper to DHS about her back condition, but otherwise lacks information sufficient to admit or deny the allegations contained in the fourth sentence of paragraph 154, and therefore denies them.

155. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 155 and therefore denies them.

156. In response to paragraph 156, Defendant incorporates by reference all responses set forth above as if fully set forth herein.

157. Defendant admits that paragraph 157 accurately quotes 5 U.S.C. § 706.

158. Paragraph 158 describes the content of Exhibit 2; Defendant states that Exhibit 2 speaks for itself.

159. Paragraph 159 states a legal conclusion to which no response is called for; to the extent a response is called for, Defendant denies it.

160. Paragraph 160 describes the content of Exhibit 6; Defendant states that Exhibit 6 speaks for itself.

161. Paragraph 161 states a legal conclusion to which no response is called for; to the extent a response is called for, Defendant denies it.

162. Paragraph 162 states a legal conclusion to which no response is called for; to the extent a response is called for, Defendant denies it.

163. Paragraph 163 states a legal conclusion to which no response is called for; to the extent a response is called for, Defendant denies it.

164. In response to paragraph 164, Defendant incorporates by reference all responses set forth above as if fully set forth herein.

165. Defendant admits that paragraph 165 accurately quotes 5 U.S.C. § 706.

166. Paragraph 166 states a legal conclusion to which no response is called for; to the extent a response is called for, Defendant denies it.

167. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 167 and therefore denies them.

168. Defendant lacks information sufficient to admit or deny the factual allegations contained in paragraph 167 and therefore denies them; its legal conclusion that Plaintiffs have no adequate remedy at law does not call for a response.

169. In response to paragraph 169, Defendant incorporates by reference all responses set forth above as if fully set forth herein.

170. Paragraph 170 states a legal conclusion to which no response is called for, to the extent a response is called for, Defendant denies it.

171. Defendant admits that paragraph 171 accurately quotes Article 1, Sections 1 and 8 of the Constitution.

172. Defendant denies the allegations contained in paragraph 172.

173. Paragraph 173 states a legal conclusion to which no response is called for, to the extent a response is called for, Defendant denies it.

174. Defendant lacks information sufficient to admit or deny the allegations contained in paragraph 174 and therefore denies them.

175. Defendant lacks information sufficient to admit or deny the factual allegations contained in paragraph 175 and therefore denies them; its legal conclusion that Plaintiffs have no adequate remedy at law does not call for a response.

176. Defendant denies that Plaintiffs are entitled to any relief requested in the “WHEREFORE” clause of the Complaint.

177. Defendant denies each and every allegation in the Complaint not expressly admitted in this answer.

178. Defendant further denies all grounds for relief sought by Plaintiffs. Defendant states that Plaintiffs are entitled to no relief whatsoever.

AFFIRMATIVE DEFENSES

179. Plaintiffs lack standing.
180. The Complaint fails to state a claim upon which relief can be granted.
181. Plaintiffs' claims are not ripe.
182. Plaintiffs' claims may be barred, in whole or in part, by waiver, estoppel, or consent.
183. Plaintiffs have failed to name indispensable parties.
184. Certain of Plaintiffs' claims are not justiciable.
185. Defendant reserves the right to amend this Answer to assert any additional defenses it may have.

Respectfully submitted,

LESLIE RUTLEDGE
Attorney General

By: /s/ Nicholas J. Bronni
Nicholas J. Bronni
Solicitor General of Arkansas
Dylan L. Jacobs
Assistant Solicitor General
ARKANSAS ATTORNEY GENERAL'S OFFICE
323 Center Street, Suite 200
Little Rock, AR 72201
Ph: (501) 682-2007
Fax: (501) 682-2591
Email: Nicholas.Bronni@arkansasag.gov
Dylan.Jacobs@arkansasag.gov

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to any CM/ECF participants.

/s/ Nicholas J. Bronni

Nicholas J. Bronni

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CHARLES GRESHAM, et al.

PLAINTIFFS

v.

No. 1:18-cv-01900JEB

ALEX M AZAR, et al.

DEFENDANTS

**[PROPOSED] ORDER GRANTING ARKANSAS'S
UNOPPOSED MOTION TO INTERVENE AS A DEFENDANT**

This matter is before the Court on the unopposed motion of the State of Arkansas, through Attorney General Leslie Rutledge, to intervene as a defendant. The Court GRANTS the motion. Arkansas may fully participate as a defendant in this matter.

SO ORDERED this ____ day of _____, 2018.

HON. JAMES E. BOASBERG
UNITED STATES DISTRICT JUDGE