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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION, *Petitioner*, v. UTAH DEPARTMENT OF COMMERCE and UTAH DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING, *Respondents*.	Case No. 2:16-cv-611-DN **REPLY MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE** **Oral Argument Requested** Chief Judge David Nuffer Magistrate Judge Dustin B. Pead

UNITED STATES DEPARTMENT OF JUSTICE, DRUG ENFORCEMENT ADMINISTRATION,

Petitioner,

v.

IAFF LOCAL 1696, EQUALITY UTAH, AMERICAN CIVIL LIBERTIES UNION OF UTAH, JOHN DOE 1, and JOHN DOE 2,

Respondents–Intervenors.

TABLE OF CONTENTS

Table of Authorities iv

Introduction 1

Argument 2

I. Movants are entitled to intervene as of right. 2

II. Movants are entitled to permissive intervention. 7

III. Movants' standing is irrelevant to their motion for intervention. 10

IV. Movants' Fourth Amendment argument should be considered on the merits. 13

Conclusion 13

TABLE OF AUTHORITIES

Cases

Aid for Women v. Foulston, 441 F.3d 1101 (10th Cir. 2006) ... 11, 12

City of Herriman v. Bell, 590 F.3d 1176 (10th Cir. 2010) ... 8

Coal. of Ariz./N.M. Ctys. for Stable Econ. Growth v. Dep't of Interior, 100 F.3d 837 (10th Cir. 1996) ... 2, 4, 5

Donaldson v. United States, 400 U.S. 517 (1971) ... 3, 4

Douglas v. Dobbs, 419 F.3d 1097 (10th Cir. 2005) ... 4

Elliott Indus. Ltd. P'ship v. BP Am. Prod. Co., 407 F.3d 1091 (10th Cir. 2005) ... 2, 7

Fed. Deposit Ins. Corp. v. Jennings, 816 F.2d 1488 (10th Cir. 1987) ... 5

In re Search Warrant, 810 F.2d 67 (3d Cir. 1987) ... 12

Kootenai Tribe of Idaho v. Veneman, 313 F.3d 1094 (9th Cir. 2002) ... 8

Nat. Res. Def. Council, Inc. v. U.S. Nuclear Regulatory Comm'n, 578 F.2d 1341 (10th Cir. 1978) ... 5

Nuese v. Camp, 385 F.2d 694 (D.C. Cir. 1967) ... 5

Oregon Prescription Drug Monitoring Program v. U.S. Drug Enforcement Admin., 998 F. Supp. 2d 957 (D. Or. 2014) ... 8, 13

Pyle v. Woods, No. 2:15–CV–143–TC, 2015 WL 5794345 (D. Utah Oct. 2, 2015) ... 6

Rosebud Coal Sales Co. v. Andrus, 644 F.2d 849 (10th Cir. 1981) ... 5

S.E.C. v. Mgmt. Sols., Inc., No. 2:11-CV-01165, 2013 WL 820340 (D. Utah Mar. 5, 2013) ... 10

S.E.C. v. U.S. Realty & Improvement Co., 310 U.S. 434 (1940) ... 8

San Juan Cty. v. United States, 503 F.3d 1163 (10th Cir. 2007) ... 3, 4, 7, 11

See v. City of Seattle, 387 U.S. 541 (1967) ... 9

Sevier Cty. v. United States, No. 2:11-CV-1045, 2013 WL 2643608 (D. Utah June 12, 2013) ... 8, 10

Singleton v. Wulff, 428 U.S. 106 (1976) ... 12

State v. Pyle, No. 131910379, slip op. (3d Judicial Dist. Ct. Salt Lake Cty. July 31, 2014) 7

Sterner v. U.S. Drug Enforcement Agency, 467 F. Supp. 2d 1017 (S.D. Cal. 2006).......... 12

United States v. Golden Valley Elec. Ass'n, 689 F.3d 1108 (9th Cir. 2012) 11

United States v. Michigan Department of Community Health, No. 10-mc-109, WL 2412602 (W.D. Mich. June 9, 2011) 4, 8, 9

United States v. Sturm, Ruger & Co., Inc., 84 F.3d 1 (1st Cir. 1996) 9

United States v. Westinghouse Elec. Corp., 638 F.2d 570 (3d Cir. 1980).......... 9, 11, 12

Utah Ass'n of Ctys. v. Clinton, 255 F.3d 1246 (10th Cir. 2001) 4, 5

Utahns For Better Transp. v. DOT, 295 F.3d 1111 (10th Cir. 2002).......... 5

Vetter v. Keate, No. 2:09-CV-137, 2009 WL 3226395 (D. Utah Oct. 2, 2009) 10

WildEarth Guardians v. Nat'l Park Serv., 604 F.3d 1192 (10th Cir. 2010).......... 5

Statutes and Rules

Fed. R. Civ. P. 24(a) .... passim

Fed. R. Civ. P. 24(b) 7

Utah Code Ann. § 58-37f-301 11

Utah Code Ann. § 58-37f-302 11

Utah Code Ann. § 58-37f-601 12

Other Authorities

7C Charles Alan Wright et al., Fed. Prac. & Proc. Civ. § 1911 (3d ed. 2016) 8

INTRODUCTION

In their motion to intervene, Movants demonstrated their well-established reasonable expectation of privacy in their prescription records, including those records held in the Utah Controlled Substances Database ("UCSD"), under the Constitution and under Utah law. *See* Mot. to Intervene 10–12 (July 28, 2016), ECF No. 19; *see also* Respondents–Intervenors' [Proposed] Opp. (Aug 5, 2016), ECF No. 25 ("Proposed Opp."). Those records—like those belonging to the unknown number of patients whose records are the specific subject of the Drug Enforcement Administration ("DEA") subpoena at issue in this case—contain extraordinarily sensitive information about medical conditions, sexuality, mental health, substance abuse, and more. *See, e.g.*, Proposed Opp. 18–19. For that reason, the confidentiality of such records is protected by millennia-old medical ethical rules that were firmly established throughout this country well before the founding. *See id.* at 16–18.

In opposing Movants' intervention in this case, the DEA does not contest the sensitivity of these records, nor the longstanding rules of confidentiality under which they were created. Rather, the DEA maintains that Movants have stake in this fight because this proceeding is a narrow one involving only the rights of others. The DEA is wrong: this case is not merely about accessing a limited set of sensitive medical records now, but about the DEA's future access to millions of them. Worse yet, under the DEA's view, no one—not the Movants, not the State of Utah, not even those people whose records *are* at issue in this proceeding—may assert their Fourth Amendment interests here or in response to any future petitions to enforce subpoenas for this extremely sensitive medical information.

In effect, the DEA argues that this Court should grant its imprimatur on a subpoena for private, confidential prescription records without ever considering the implications of the Fourth

Amendment on that subpoena or any similar ones that will follow it. Respectfully, this Court should not accept the DEA's extreme position. Rather, it should find that Movants are entitled as of right to intervene in this lawsuit or allow them to intervene permissively, ensuring that Movants' constitutional rights and those of all Utahns whose prescription records are stored in the UCSD receive a fair hearing from an independent court.

ARGUMENT

I. Movants are entitled to intervene as of right.

Contesting Movants' interest in this lawsuit, the government puts forth an insupportably cramped understanding of the "interest" required by Federal Rule of Civil Procedure 24(a). But the government's attempts to narrow this Circuit's "liberal view in allowing intervention under Rule 24(a)," *Elliott Indus. Ltd. P'ship v. BP Am. Prod. Co.*, 407 F.3d 1091, 1103 (10th Cir. 2005), should fail.[1]

First, the DEA's attempt to draw a categorical rule heightening the requirements for intervention as of right in cases arising in the administrative-subpoena context is unpersuasive. As Movants have explained, the Tenth Circuit has been clear in stating that the "central concern" of its test for intervention is the "practical effect of the litigation on the applicant for intervention," and it has instructed courts to "avoid[] formulations that only encourage

[1] The DEA does not dispute that Intervenors meet the first prong of the Tenth Circuit's four-pronged test for intervention, *see Coal. of Ariz./N.M. Ctys. for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837, 840 (10th Cir. 1996)—that the motion was timely. *See* DEA Opp. 14 n.4. As to the fourth prong—that the existing parties may not adequately represent Intervenors' interests—the government declines to respond to Intervenors' briefing, asserting only in passing that "Proposed Intervenors . . . have failed to demonstrate that Respondents' representation of [their Fourth Amendment] interests would be inadequate." *Id.* By failing to address Intervenors' specific arguments that they have satisfied the Tenth Circuit's fourth prong, *see* Mot. to Intervene 13–16, the DEA has forfeited any challenge to Intervenors' motion on these grounds.

manipulation or wooden logic," *San Juan Cty. v. United States*, 503 F.3d 1163, 1193 (10th Cir. 2007) (en banc). Yet this is exactly what the DEA seeks to do here.

The DEA incorrectly argues that the Tenth Circuit in *San Juan County* "distinguished the narrow context of" intervention in a subpoena-enforcement action in its discussion of *Donaldson v. United States*, 400 U.S. 517 (1971), a case addressing a taxpayer's intervention in connection with a summons issued to his former employer by the Internal Revenue Service ("IRS"). *See* DEA Opp. 9. But to the *en banc* Tenth Circuit in *San Juan County*, *Donaldson* was not an aberration from the general mandate of Rule 24(a)—it was an illustration of it. The Tenth Circuit explained that the teaching of *Donaldson* was that "the factors mentioned in" Rule 24(a)(2) "are intended to capture the circumstances in which the practical effect on the prospective intervenor justifies its participation in the litigation." 503 F.3d at 1195. Indeed, the *San Juan County* court repeatedly made clear that Rule 24(a) "is not a mechanical rule," and that applying it "requires courts to exercise judgment based on the specific circumstances of the case" to "determin[e] whether the strength of the interest and the potential risk of injury to that interest justify intervention." *Id.* at 1199. Under that rubric, the taxpayer in *Donaldson* simply had a bad case: "The specific circumstances of the taxpayer in [*Donaldson*]"—not the generalized "context of an administrative subpoena enforcement proceeding," as the DEA would have it, DEA Opp. 10—plainly militated against intervention as of right. *See* 503 F.3d at 1191. As the Tenth Circuit wrote, the *Donaldson* Court "was not impressed" with the taxpayer's asserted interest—his mere "'desire . . . to counter and overcome [the employer's and its accountant's] willingness, under summons, to comply and produce records,'" *id.* at 1192 (alteration in original) (quoting

Donaldson, 400 U.S. at 531)—and therefore held he was not entitled to intervention.[2] *San Juan County* makes clear that the proper focus of Rule 24(a) is not the *kind of proceeding* in play, but the *strength of the interest* at stake.[3]

Second, the DEA fails to note several critical observations in *San Juan County* about Rule 24(a) that support granting intervention here. For example, the DEA asserts that intervention of right should be denied "when the proposed intervenor lacks a direct interest in the requested records at issue." DEA Opp. 10. This assertion cannot be squared with the Tenth Circuit's emphasis that "Rule 24(a)(2) does not speak of 'an interest in the property'; rather, it requires only that the applicant for intervention 'claim[ ] an interest *relating* to the property or transaction which is the subject of the action.'" 503 F.3d at 1200 (quoting Fed. R. Civ. P. 24(a)(2)). Movants' Fourth Amendment interest in their prescription records held in the UCSD meet that test. Moreover, *San Juan County* followed the Tenth Circuit's established "practice" of *relaxing* the requirements for intervention in cases (like this one) "raising significant public interests," 503 F.3d at 1201; *see Utah Ass'n of Ctys. v. Clinton*, 255 F.3d 1246, 1251–53 (10th Cir. 2001); *Coal. of Ariz./N.M. Ctys. for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837,

[2] In sharp contrast to this case, the taxpayer in *Donaldson* abandoned any argument that the summons at issue violated the Fourth Amendment, and was seeking intervention based solely on his view that the IRS was engaged in a "bad faith" investigation whose subpoenas were issued for invalid purposes under a federal statute. 400 U.S. at 521.

[3] Nothing in *United States v. Michigan Department of Community Health*, No. 10-mc-109, 2011 WL 2412602 (W.D. Mich. June 9, 2011), changes this conclusion. In that unpublished case (which was not appealed), the court denied intervention to 42 placeholder "John/Jane Does unknown to the court" in part because it found that "[s]ince these hypothetical people do not exist, and therefore cannot have a true 'legal interest' in a case, they cannot intervene." *Id.*, at *5. That is far cry from this case, in which Movants are identifiable individuals (and organizations representing individuals) with medical conditions and prescriptions that give them a true stake in this lawsuit. The court in *Community Health* further concluded that "[e]ven assuming" the John and Jane Does were "real people," they lacked any reasonable expectation of privacy—as a matter of federal law—in marijuana, a federally criminalized drug. *See* 2011 WL 2412602, at *7. But here, Movants maintain their reasonable expectation of privacy in legal, prescribed medications. *See Douglas v. Dobbs*, 419 F.3d 1097, 1102 (10th Cir. 2005).

840–44 (10th Cir. 1996). The DEA's proposed requirement that the interest at issue must be limited to specific records does not conform to that practice.

Third, the DEA's casting of Movants' interest in *future* medical-records subpoenas as too remote and speculative to satisfy *San Juan County*'s "impairment" prong fails. This case will establish persuasive or binding precedent for future cases involving administrative subpoenas for UCSD records and, as the Tenth Circuit has explained, "the *stare decisis* effect of the district court's judgment is sufficient impairment for intervention under Rule 24(a)(2)." *Clinton*, 255 F.3d at 1254 (quoting *Coal. of Ariz./N.M. Ctys.*, 100 F.3d at 844); *see also WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d 1192, 1199 (10th Cir. 2010); *Utahns For Better Transp. v. DOT,* 295 F.3d 1111, 1116 (10th Cir. 2002); *Fed. Deposit Ins. Corp. v. Jennings*, 816 F.2d 1488, 1492 (10th Cir. 1987); *Rosebud Coal Sales Co. v. Andrus*, 644 F.2d 849, 850 (10th Cir. 1981). That rule is applied with particular force if "the case is of first impression," as it is here. *Nat. Res. Def. Council, Inc. v. U.S. Nuclear Regulatory Comm'n*, 578 F.2d 1341, 1345 (10th Cir. 1978); *see Nuese v. Camp*, 385 F.2d 694, 702 (D.C. Cir. 1967).[4]

The *stare decisis* effect of this proceeding looms large over Movants. A decision passing on the Fourth Amendment question raised by the State of Utah could become the law of this Circuit—all without the participation of Movants *or any other Utahn* whose sensitive

[4] The DEA argues that Movants "cannot plausibly claim to have Fourth Amendment interests 'at stake' in this administrative subpoena enforcement proceeding when they assert no reasonable expectation of privacy *in the subpoenaed CSD prescription records*." DEA Opp. 10 (emphasis added). To be clear, the only reason Movants do not know for sure whether their records are directly at issue is because the subpoena is directed at an unidentified medical provider. If the DEA did not prefer secrecy, Movants would be able to confirm whether their records are directly at issue. In any event, Movant have not claimed an interest in the particular records the DEA seeks here, nor need they do so. They assert their Fourth Amendment interest in *their own* prescription records residing in the UCSD, regardless of whether those records are subject to disclosure under this particular request. As Movants have shown, that interest is sufficient for intervention of right.

prescription records reside in the USCD. The DEA argues that Movants' "asserted impairment relies on a chain of possibilities . . . that is purely speculative." DEA Opp. 14. This argument is simply wrong: the decision here will certainly set some precedent, either persuasive or controlling. If a decision favorable to the DEA here becomes controlling law, Movants will know with certainty that the DEA can circumvent the state's warrant requirement to access their UCSD prescription records. Indeed, the DEA has brought this case in part to establish its own favorable precedent, and to force Utah into compliance with administrative subpoenas for USCD records now and in the future.

Moreover, the impairment worked by *stare decisis* adverse to Movants' interests in this case is compounded by the fact that it is highly unlikely that Movants will have an opportunity to address the critical Fourth Amendment question in this case before another court. Indeed, Movants will likely be stymied at every theoretically available turn in litigating whether DEA subpoenas for USCD records comply with the Fourth Amendment. Before even getting to court, it would be difficult for Movants to learn that the DEA obtained their prescription records given that the DEA includes secrecy directives in subpoenas and believes that it need not give notice to individuals whose records it collects. *See* ECF No. 24-3 (DEA's administrative subpoena, requesting that Respondents "do not disclose the existence of this request or investigation"). The DEA half-heartedly suggests that Movants "could seek declaratory or injunctive relief through a separate lawsuit." DEA Opp. 14. Yet the DEA's own footnote unabashedly undercuts that "suggestion," arguing that Movants would lack standing to pursue such claims. *Id.* at 14 n.3. In any affirmative civil action, Movants would face not only opposition to their standing (for injunctive claims), but qualified-immunity arguments (for damages actions). *See, e.g.*, *Pyle v. Woods*, No. 2:15–CV–143–TC, 2015 WL 5794345, at *2–3 (D. Utah Oct. 2, 2015) (granting

qualified immunity to defendant law enforcement officials in suit challenging warrantless search of UCSD records), *appeal pending* No. 15-4163 (10th Cir.). And even in criminal proceedings brought against Movants or their constituents, the defendants would be—indeed, already have been—frustrated from seeking suppression of warrantlessly acquired UCSD records by the good-faith doctrine. *See, e.g.*, *State v. Pyle*, No. 131910379, slip op. at 1 (3d Judicial Dist. Ct. Salt Lake Cty. July 31, 2014) (denying Fourth Amendment suppression challenge to the warrantless collection of Movant IAFF 1696's member Ryan Pyle's medical records "even if the search was unconstitutional" based on the good-faith exception to the exclusionary rule) (attached as Exhibit A).

In short, the DEA contends not only that Movants are not entitled to litigate their Fourth Amendment claims in *this* Court, *now*, but that Movants are not entitled to litigate their Fourth Amendment claims in *any* court, *ever*. In the face of the Tenth Circuit's liberal and practical test for intervention as of right, *see Elliott*, 407 F.3d at 1103; *San Juan Cty.*, 503 F.3d at 1193, that argument fails.

II. Movants are entitled to permissive intervention.

In the alternative, this Court should exercise its discretion in granting permissive intervention under Federal Rule of Civil Procedure 24(b). The DEA provides no sound argument to the contrary. Because proposed intervenors have "a claim or defense that shares with the main action a common question of law or fact" and intervention will not "unduly delay or prejudice the adjudication of the original parties' rights," permissive intervention should be granted. Fed. R. Civ. P. 24(b)(1)(B), (b)(3).

The DEA presents an impermissibly narrow reading of Rule 24(b) when it argues that Movants present no common question of law or fact because they are not themselves the targets

of the DEA's subpoena. As the Tenth Circuit has explained, "the words 'claim or defense,' as they appear in Rule 24(b), should not be strictly interpreted so as to preclude permissive intervention." *Sevier Cty. v. United States*, No. 2:11-CV-1045, 2013 WL 2643608, at *4 (D. Utah June 12, 2013) (quoting *City of Herriman v. Bell*, 590 F.3d 1176, 1184 (10th Cir. 2010)). "Rule 24(b) 'plainly dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation.'" *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1108 (9th Cir. 2002) (quoting *S.E.C. v. U.S. Realty & Improvement Co.*, 310 U.S. 434, 459 (1940)). As the leading treatise explains, "a permissive intervenor does not even have to be a person who would have been a proper party at the beginning of the suit." 7C Charles Alan Wright et al., Fed. Prac. & Proc. Civ. § 1911 (3d ed. 2016).

Movants' position shares a common question of law *and* fact with the defenses raised by Respondents. *See* Utah Opp. 1–7 (arguing that the DEA's subpoena for UCSD records is unenforceable because it violates the Fourth Amendment). Movants, their members, and the other Utahns whose interests they represent have sensitive and confidential prescription records in the UCSD, and (like the Respondent) challenge the constitutionality under the Fourth Amendment of the DEA's use of an administrative subpoena to search the database.

Community Health is not to the contrary. *See* DEA Opp. 15. There, the court held that, because use of marijuana is categorically illegal under federal law, *no* person could have a reasonable expectation of privacy in records concerning marijuana use, and therefore no person could have an interest sufficient to justify intervention. 2011 WL 2412602, at *7–9. Here, to the contrary, Movants *do* have a reasonable expectation of privacy in their confidential prescription records in the UCSD. *See* Mot. to Intervene; *Oregon Prescription Drug Monitoring Program v. U.S. Drug Enforcement Admin.* ("*Oregon PDMP*"), 998 F. Supp. 2d 957, 966–67 (D. Or. 2014);

see also supra note 3. The *Community Health* court, moreover, only addressed whether the DEA's subpoena complied with the four-part test for the reasonableness of subpoenas. 2011 WL 2412602, at *11–14. Here, in contrast, the issue is whether the DEA's use of an administrative subpoena violates the Fourth Amendment by seeking a class of records for which a warrant is actually required. *See* Utah Opp. 1–10, ECF No. 24. That is a substantially broader question, and one in which Movants have a significant interest.

Moreover, Respondents are not precluded from challenging the subpoena on Fourth Amendment grounds. *See* DEA Opp. 16. It is well established that "the Fourth Amendment is available to the challenger as a defense against enforcement of the subpoena," *United States v. Sturm, Ruger & Co., Inc.*, 84 F.3d 1, 3 (1st Cir. 1996), and recipients of subpoenas routinely raise Fourth Amendment objections to their enforcement. *See, e.g.*, *See v. City of Seattle*, 387 U.S. 541, 544 (1967) ("[W]hen an administrative agency subpoenas corporate books or records, *the Fourth Amendment requires* that the subpoena be sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome." (emphasis added)). The DEA's citations to cases addressing whether states have special status to bring constitutional claims on behalf of their citizens are inapposite. *See* DEA Opp. 16. Respondents stand in the same position as any recipient of a subpoena in their ability to challenge either the reasonableness of the subpoena or its excessive invasion of privacy under the Fourth Amendment. *See, e.g.*, *United States v. Westinghouse Elec. Corp.*, 638 F.2d 570, 574 (3d Cir. 1980) (permitting corporation to raise employees' constitutional privacy rights in challenge to administrative subpoena for employees' medical records).

Permissive intervention also will not unduly delay or prejudice the adjudication of this case. To the extent the DEA is concerned about Movants raising cross-claims that will

complicate the litigation, DEA Opp. at 17, Movants hereby represent that they will not do so, and that they have no objection to the Court limiting intervention in that regard. *See Sevier Cty.*, 2013 WL 2643608, at *4–5 ("It is undisputed . . . that limitations may be attached to a grant of permissive intervention. . . . Accordingly, the court grants SUWA's motion for permission intervention, but its participation is subject to the following conditions. . . . SUWA is prohibited from asserting new claims, cross-claims, counterclaims, or defenses."). Moreover, intervention will cause no undue delay, as Movants have already filed their proposed opposition to the DEA's petition, in accordance with the briefing schedule applicable to the original parties. ECF No. 25.[5] In fact, "judicial economy will be served by adjudicating [all] claims in the same case," thus avoiding multiple, potentially conflicting actions addressing the constitutionality of the DEA's use of subpoenas for UCSD records. *Vetter v. Keate*, No. 2:09-CV-137, 2009 WL 3226395, at *3 (D. Utah Oct. 2, 2009). This Court should allow intervention so that it can reach a fully informed and adversarially tested opinion on the question presented. Allowing intervention will avoid "the inefficiency of relitigating the issue . . . multiple times," and will account for "the possible preclusive effect of the findings on that issue," both factors that weigh in favor of granting permissive intervention. *S.E.C. v. Mgmt. Sols., Inc.*, No. 2:11-CV-01165, 2013 WL 820340, at *3 (D. Utah Mar. 5, 2013).

III. Movants' standing is irrelevant to their motion for intervention.

The DEA contends that Movants should be denied intervention because they lack Article III standing in this lawsuit, but that argument is foreclosed by precedent. It is black-letter law in the Tenth Circuit, as in most circuits, that "parties seeking to intervene under Rule 24(a) or (b)

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[5] The DEA's professed concern about delay rings hollow given that it waited 12 months between sending the subpoena to Respondents and petitioning the Court for its enforcement. *See* ECF No. 24 at viii (explaining that Respondents received the subpoena on June 17, 2015); ECF No. 2 (filing petition to enforce subpoena on June 14, 2016).

need not establish Article III standing so long as another party with constitutional standing on the same side as the intervenor remains in the case." *San Juan Cty.*, 503 F.3d at 1172 (quotation marks omitted). This is because "the federal court has a Case or Controversy before it regardless of the standing of the intervenor." *Id.*

The DEA is wrong when it argues that the black-letter rule does not apply here because Respondents cannot raise the Fourth Amendment claim that Movants seek to raise through intervention. As explained above, Respondents, as recipients of the DEA's subpoena and custodians of the requested prescription records, have standing to contest issuance of the subpoena. In doing so, they may raise Fourth Amendment objections. *See, e.g.*, *United States v. Golden Valley Elec. Ass'n*, 689 F.3d 1108 (9th Cir. 2012); *Westinghouse Elec. Corp.*, 638 F.2d at 574; *see also supra* page 9. Having haled Respondents into court, the DEA cannot now argue that they lack standing to defend against the DEA's subpoena enforcement action.

Further, Respondents not only have standing in their own right, but they also have standing to assert the Fourth Amendment privacy interests of Utahns with prescription records in the UCSD, including the physician under investigation and that physician's patients whose records will be revealed. A party "may assert the rights of others not before the court if they can . . . show that the party asserting the right has a close relationship with the person who possesses the right. . . . [and] that there is a hindrance to the possessor's ability to protect his own interests." *Aid for Women v. Foulston*, 441 F.3d 1101, 1111–12 (10th Cir. 2006) (quotation marks omitted). Respondents are custodians of sensitive medical records of physicians and patients in Utah, which Respondents collect and store under strict confidentiality protections. *See* Utah Code Ann. § 58-37f-301(2) (limiting access to UCSD); *id.* § 58-37f-302(2) (legislating that UCSD data "is not subject to discovery, subpoena, or similar compulsory process in any civil,

judicial, administrative, or legislative proceeding"); *id.* § 58-37f-601 (making it a felony to release or access information in the UCSD without authorization). Courts have held that the custodians of medical records, including physicians and employers, have a sufficiently close relationship with the people whose medical information is contained in the records to raise privacy claims on their behalf in challenging subpoenas and other forms of compulsory process. *See, e.g.*, *In re Search Warrant,* 810 F.2d 67, 70–71 (3d Cir. 1987) (physician); *Sterner v. U.S. Drug Enforcement Agency*, 467 F. Supp. 2d 1017, 1026 (S.D. Cal. 2006) (same); *Westinghouse Elec. Corp.*, 638 F.2d at 574 (employer). Respondents stand in the same position here.

The physician who is the target of the DEA's subpoena and his or her patients also face a significant hindrance to protecting their own interests. As explained above, *see supra* pages 6–7, for one, these individuals will receive no notice of the subpoena served on Respondents that seeks their prescription records. *See* Subpoena, ECF No. 24-3. "As a practical matter, the absence of any notice . . . of the subpoena means that no person other than [the Respondent] would be likely to raise the privacy claim. Indeed, this claim may be effectively lost if [the Court] do[es] not hear it now." *Westinghouse Elec. Corp.*, 638 F.2d at 574. In addition, because the rights that Respondents assert are privacy rights in sensitive and potentially embarrassing medical information, even if the affected individuals were to receive notice, they "may be chilled from [asserting their own rights] by a desire to protect the very privacy of [the care they seek] from the publicity of a court suit." *Aid for Women*, 441 F.3d at 1114 (alterations in original) (quoting *Singleton v. Wulff*, 428 U.S. 106, 117 (1976)).

Because Respondents have standing and there is a case or controversy under Article III, Movants need not demonstrate standing in their own right.

IV. Movants' Fourth Amendment argument should be considered on the merits.

As set forth in detail in Movants' proposed opposition to the DEA's petition, ECF No. 25, Movants' Fourth Amendment challenge stands on a solid legal foundation. The DEA attempts to short-circuit merits arguments over that challenge by asserting that this Court—prior to entertaining substantive briefs from the parties and Movants—simply determine that Movants' arguments are "legally futile." DEA Opp. 22. But the merit of Movants' position is highlighted by the fact that the only other federal court to squarely address the question at issue in this proceeding has concluded that the DEA's use of administrative subpoenas to request records in a state prescription drug monitoring program violates the Fourth Amendment. *Oregon PDMP*, 998 F. Supp. 2d at 967. The proper course is for this Court to grant intervention, and then consider the Fourth Amendment arguments with the benefit of full briefing and argumentation. *See* ECF Nos. 24, 25.

CONCLUSION

For the foregoing reasons and those provided in Movants' opening brief, Movants respectfully request that the Court grant their motion for intervention as of right pursuant to Federal Rule of Civil Procedure 24(a), or, in the alternative, their motion for permissive intervention pursuant to Rule 24(b).

September 14, 2016

Respectfully submitted,

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