UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAMPAIGN LEGAL CENTER
1101 14TH St., NW, Ste. 400
Washington, D.C. 20005

CATHERINE HINCKLEY KELLEY
1101 14TH St., NW, Ste. 400
Washington, D.C. 20005

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION
1050 First St., NE
Washington, D.C. 20463,

Defendant

and

HILLARY FOR AMERICA
P.O. Box 5256
New York, NY 10185-5256

CORRECT THE RECORD
455 Massachusetts Ave., NW
Ste. 600
Washington, D.C. 20001

Proposed
Defendant-Intervenors.

Civil Action No. 1:19-cv-02336-JEB

MOTION TO INTERVENE AS DEFENDANTS

For the reasons stated in the attached memorandum of points and authorities, Hillary for America ("HFA") and Correct the Record ("CTR") respectfully request that the Court permit their intervention as a matter of right in this action under Federal Rule of Civil Procedure 24(a)(2) or, in the alternative, permit them to intervene under Rule 24(b). If granted permission to intervene under either provision, HFA and CTR have attached a proposed motion to dismiss for filing.

Counsel for HFA and CTR have conferred with counsel to Plaintiffs Campaign Legal Center and Ms. Kelley (collectively "CLC"), who indicated that, at this time, CLC neither opposes

nor consents to the motion to intervene. Counsel for HFA and CTR have attempted to confer with counsel to Defendant Federal Election Commission ("FEC"). As of the filing of this motion, counsel for HFA and CTR have been unable to determine the FEC's position.

October 1, 2019

Respectfully submitted,

PERKINS COIE LLP

By: /s/ *Marc Erik Elias*

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Attorneys for Proposed Defendant-Intervenor

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2019, I caused a true and correct copy of the foregoing document to be served upon all counsel of record registered with the Court's ECF system, by electronic service via the Court's ECF transmission facilities.

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF HILLARY FOR AMERICA'S AND CORRECT THE RECORD'S MOTION TO INTERVENE

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INTRODUCTION

Hillary for America ("HFA") and Correct the Record ("CTR") seek to participate as intervening defendants in the above-captioned lawsuit challenging as contrary to law the Federal Election Commission's ("FEC") decision to dismiss the administrative complaint filed by Plaintiffs Campaign Legal Center and Ms. Catherine Hinckley Kelley (collectively, "CLC") against CTR and HFA. HFA and CFR are entitled to intervene in this case as a matter of right under Federal Rule of Civil Procedure 24(a)(2). Intervention is particularly necessary given that the Federal Election Commission's Office of General Counsel ("OGC"), who typically serve as counsel to the Defendant in similar actions, previously sided with the Plaintiffs in the underlying administrative complaint alleging that HFA and CTR violated various provisions of federal campaign finance law.[1] The named Defendant plainly does not adequately represent the interests of either HFA or CTR, and circuit precedent is clear that allowing intervention is necessary under these circumstances. In the alternative, HFA and CTR request permissive intervention pursuant to Rule 24(b).

Counsel for HFA and CTR have conferred with counsel to CLC, who indicated that, at this time, CLC neither opposes nor consents to the motion to intervene. Counsel for HFA and CTR have attempted to confer with counsel to Defendant FEC. As of the filing of this motion, counsel for HFA and CTR have been unable to determine the FEC's position.

FACTUAL AND PROCEDURAL BACKGROUND

HFA is the principal campaign committee of former United States Secretary of State Hillary Clinton, who was the nominee of the Democratic Party for the office of President in the 2016 election. CTR is a strategic research and rapid response team that was designed to defend Hillary Clinton from baseless attacks. CTR is a nonprofit corporation registered in Washington D.C. and has registered with the FEC as a "hybrid" political action committee permitted under

[1] In addition, it appears that the FEC may not defend this action at all. Federal law requires four commissioners to vote affirmatively for the FEC to defend itself in any civil case brought against the FEC pursuant to 52 U.S.C. § 30109(a)(8). *See* 52 U.S.C. §§ 30106(c), 30107(a)(6). As of August 30, 2019, the FEC no longer has four Commissioners.

FEC policy and precedent to solicit and accept unlimited contributions into one bank account, and to maintain a separate bank account subject to statutory amount limitations and source prohibitions for making contributions to Federal candidates. *See* Stipulated Order and Consent Judgment, ECF No. 28, *Carey v. FEC*, 1:11-cv-259-RMC (D.D.C. Aug. 19, 2011); Fed. Election Comm'n, FEC statement on *Carey v. FEC* (2011) (Oct. 6, 2011), https://www.fec.gov/updates/fec-statement-on-carey-v-fec/. Both HFA and CTR are subject to the Federal Election Campaign Act ("FECA" or "Act"), 52 U.S.C. § 30101 *et seq*., and FEC regulations.

Beginning in May 2015, various complainants filed administrative complaints with the FEC against HFA and CTR and other entities. On October 6, 2016, CLC filed an administrative complaint that the FEC designated as Matter Under Review ("MUR") 7146, alleging there was reason to believe that CTR and the HFA had violated FECA's contribution limits, 52 U.S.C. § 30116(a)(1), its prohibition on contributions to a candidate from union or corporate funds, *id.* § 30118(a) and (b)(2), and its requirement that candidate committees and non-connected political committees report and disclose all in-kind contributions made and accepted, *id*. § 30104(b). Compl., ECF No. 1, at ¶ 3.

In fact, and as discussed in greater detail in the proposed Motion to Dismiss attached to this motion, CLC's allegations stemmed from a fundamental misreading of the Act and its accompanying regulations, as interpreted by the FEC. Both HFA and CTR maintained an aggressive compliance program, and at all times adhered to their federal campaign finance law obligations. All of the activities discussed in CLC's administrative complaint either did not qualify as "contributions" or were paid for by HFA according to their fair market value. As a result, CTR did not make, and HFA did not receive, any prohibited in-kind contributions in the form of coordinated communications or otherwise from CTR. CTR and HFA also satisfied their reporting obligations.

The OGC recommends to the Commission whether or not there is "reason to believe" the respondent has committed or is about to commit a violation of the law. This report, called the First General Counsel's Report, is circulated to the Commissioners for a vote on whether to approve the

General Counsel's recommendation or to seek an alternate disposition of the matter. After reviewing the various administrative complaints, the OGC recommended dismissing or taking no action as to most of the allegations contained therein. However, the OGC recommended that the Commissioners should find reason to believe that CTR and HFA violated FECA by making and accepting, respectively, "unreported excessive and prohibited in-kind contributions" in the form of coordinated expenditures, and recommended that the Commissioners authorize an investigation to determine "the extent" of the unreported in-kind contributions. Compl., ECF No. 1, at ¶ 4.

However, the Commissioners did not adopt the OGC's recommendation. On June 4, 2019, OGC's recommendation failed to obtain the four affirmative votes needed to find "reason to believe" and to proceed with an investigation into the alleged violations. The Commissioners subsequently voted 4-0 to dismiss the complaint. Compl., ECF No. 1, at ¶ 5. In their Statement of Reasons, issued on August 21, 2019, several weeks after CLC filed the complaint in this action, Commissioners Petersen and Hunter explained that they correctly voted against finding reason to believe that CTR or HFA violated the law because (1) CTR's "internet communications in support of HFA were not in-kind contributions even if they were coordinated with Hillary for America" because they were not "public communications" under the law; and (2) "speculative information and materials stolen by Russian intelligence operatives and published by Wikileaks does not provide reason to believe that Correct the Record's expenditures for other activities were excessive or prohibited in-kind contributions to Hillary for America." Ex. 1, Statement of Reasons, at 2.

If a complainant disagrees with the Commission's dismissal of a complaint, or any allegations contained therein, he or she may file a petition in the U.S. District Court for the District of Columbia within 60 days after the date of the dismissal. 52 U.S.C. § 30109(a)(8). On August 2, 2019, CLC filed the Complaint against the FEC. ECF No. 1.

ARGUMENT

Circuit precedent all but compels the conclusion that HFA and CTR should be permitted to intervene as a matter of right as a defendant in this challenge of the FEC's dismissal of CLC's administrative complaint against HFA and CTR. In a case concerning a procedurally identical

appeal of a dismissal of an FEC administrative complaint to the U.S. District Court of the District of Columbia, the D.C. Circuit held that the district court erred as a matter of law when it denied a motion for intervention as a matter of right filed by the proposed intervenor-defendant against whom the FEC administrative complaint had been dismissed. *See Crossroads Grassroots Policy Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 316 (D.C. Cir. 2015). The same result should obtain here. In the alternative, HFA and CTR also meet the requirements for permissive intervention, and the Court should exercise its discretion to permit HFA and CTR to intervene to defend their interests.

1. HFA and CTR are Entitled to Intervene as a Matter of Right

Rule 24(a) of the Federal Rules of Civil Procedure governs intervention as a matter of right. That provision provides, in relevant part, that "[o]n timely motion, the court must permit anyone to intervene who ... claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). Consistent with this language, the D.C. Circuit has identified four requirements for intervention as a matter of right. First, an application to intervene in a pending action must be timely. *Karsner v. Lothian*, 532 F.3d 876, 885 (D.C. Cir. 2008). Second, the putative intervenor must have a "legally protected" interest in the action. *Id.* at 855. Third, the action must threaten to impair the putative intervenor's proffered interest in the action. *Id.* Fourth, and finally, no existing party to the action may adequately represent the putative intervenor's interests. In addition to these four requirements, which emanate from the text of Rule 24(a) itself, a putative intervenor defendant must further establish that it has standing under Article III of the Constitution. *See Crossroads*, 788 F.3d at 316.

As set forth below, HFA and CTR easily meet each of these requirements.

a. HFA and CTR Have Standing

Just like the proposed defendant-intervenor in *Crossroads*, HFA and CTR have a significant and direct interest in the favorable FEC dismissal order shielding them from further

litigation and liability, and the threatened loss of that favorable action constitutes a concrete and imminent injury sufficient to establish their standing. Although Article III standing is not a threshold determination that courts normally make before allowing a defendant to enter a case, the D.C. Circuit has required such a showing of proposed defendant-intervenors. *Crossroads*, 788 F.3d at 316. The standing inquiry for an intervening defendant is the same as for a plaintiff: the intervenor must show injury in fact, causation, and redressability. *Id.* In the specific context of an appeal of a dismissal of an FEC administrative complaint to the U.S. District Court of the District of Columbia, the D.C. Circuit has held that if the party against whom the FEC administrative complaint was dismissed can prove injury, then it can establish causation and redressability. *See id.* (citing *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233-34 (D.C. Cir. 2003)). As a result, standing turns on whether HFA and CTR can allege a sufficient injury in fact. *Id.*

HFA and CTR are indeed threatened with a sufficient injury in fact: losing the favorable FEC dismissal order. HFA and CTR will suffer the exact type of injury that the D.C. Circuit in *Crossroads* recognized as "even greater than the injuries we found sufficient in our previous cases." *See id.* at 318. Here, as in *Crossroads*, HFA and CTR currently claim a significant benefit from the FEC's dismissal order: as long as it stays in place, HFA and CTR face no further exposure to enforcement proceedings before the FEC, nor are they exposed to civil liability via private lawsuit. *See id.* Losing the favorable order would be a significant injury in fact. *See id.* at 317 (discussing cases finding sufficient injury in fact where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit). This is true even though this Court cannot command the precise enforcement route that the FEC must take on remand. "[I]nvalidating the dismissal order would extinguish the current barrier to enforcement and would limit the Commission's discretion in the future. Whatever the ultimate outcome, [the proposed defendant-intervenor] has a concrete stake in the favorable agency action currently in place." *Id.* at 319.

b. The Motion is Timely

HFA and CTR's motion to intervene, filed before the FEC filed a responsive pleading and before the Court has taken any action, is indisputably timely. Whether a given application is timely is a context-specific inquiry, and courts take into account (a) the time elapsed since the inception of the action, (b) the probability of prejudice to those already party to the proceedings, (c) the purpose for which intervention is sought, and (d) the need for intervention as a means for preserving the putative intervenor's rights. *See Forest Cty. Potawatomi Cmty. v. United States*, 317 F.R.D. 6, 10 (D.D.C. 2016) (citing *Karsner*, 532 F.3d at 886). Courts in this circuit, including the D.C. Circuit, have little trouble finding that motions to intervene are timely when they are filed before the defendant files a responsive pleading or before a court has taken any action in the matter. *See Karsner*, 532 F.3d at 886 (holding that motion to intervene filed before the district court took any action did not prejudice proceedings in that court); *Crossroads*, 788 F.3d at 320 (holding that timeliness factor could be dealt with summarily because proposed intervenor filed an intervention motion before the FEC had even entered an appearance); *Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (holding that intervention motion filed less than two months after the plaintiffs filed their complaint and before the defendants filed an answer was timely). Here too, if HFA and CTR are permitted to intervene, there can be no prejudice to the existing parties, and no current or scheduled proceedings will be disrupted. Accordingly, intervention at this point in the litigation is timely.

c. HFA and CTR Have a Legally Protected Interest in this Litigation

For the same reasons that HFA and CTR have standing, they also have a legally protected interest in the litigation for purposes of Rule 24(a). The D.C. Circuit has repeatedly held that the conclusion that the proposed intervenor has constitutional standing is alone sufficient to establish that the proposed intervenor has "an interest relating to the property or transaction which is the subject of the action[.]" *See Fund For Animals, Inc.*, 322 F.3d at 735 (citing Fed. R. Civ. P. 24(a)(2)); *accord Crossroads*, 788 F.3d at 320; *Jones v. Prince George's Cty., Maryland*, 348 F.3d

1014, 1018 (D.C. Cir. 2003). For the same reasons set forth above, HFA's and CTR's interest in preserving the favorable FEC dismissal order satisfies this factor of Rule 24(a).

d. HFA's and CTR's Interests Would be Impeded as a Practical Matter if Plaintiffs Prevail

Just like the proposed defendant-intervenor in *Crossroads*, HFA's and CTR's interest in preserving the favorable FEC dismissal order would be impeded by an adverse judgment by this Court. The inquiry is not a rigid one: consistent with the Rule's reference to dispositions that may "as a practical matter" impair the putative intervenor's interest, Fed. R. Civ. P. 24(a)(2), courts look to the "practical consequences" of denying intervention, *Forest Cty.*, 317 F.R.D. at 10-11 (citing *Fund for Animals, Inc.*, 322 F.3d at 735).

Here, as in *Crossroads*, an adverse judgment in this Court would impair HFA's and CTR's interests because a judicial pronouncement that the FEC's dismissal was contrary to law would make the task of reestablishing the status quo more difficult and burdensome. 788 F.3d at 320 (citing *Fund For Animals*, 322 F.3d at 735). CLC asks this Court to find that it was "contrary to law" for the FEC to fail to find "reason to believe" that HFA accepted excessive and prohibited in-kind contributions in violation of 52 U.S.C. §§ 30116(f) and 30118(a), and failed to report these contributions in violation of 52 U.S.C. § 30104(b). Compl., ECF No. 1, at 22. Similarly, CLC asks this Court to find that it was "contrary to law" for the FEC to fail to find that CTR made excessive and prohibited in-kind contributions in violation of 52 U.S.C. §§ 30116(a) and 30118(a), and failed to report these contributions in violation of 52 U.S.C. § 30104(b). *Id.* If the Court grants CLC's request, the Court's decision would, at minimum, have persuasive weight with both the FEC and any court that reviews a subsequent enforcement decision by the FEC. This is enough to establish a practical impairment of HFA's and CTR's interests. *See Crossroads*, 788 F.3d at 320 (citing *Roane v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014)).

e. The FEC Does Not Adequately Represent HFA's or CTR's Interests

Just as in *Crossroads*, HFA and CTR easily meet the minimal burden of showing that the nominal Defendant FEC—whose Office of General Counsel *took the same position as the*

Plaintiffs in this case regarding HFA's and CTR's alleged violations of FECA—plainly does not adequately represent their interests. The D.C. Circuit has emphasized that this last requirement for intervention is "not onerous," and that a movant "ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation," *See Crossroads*, 788 F.3d at 321 (citing *Fund For Animals*, 322 F.3d at 735; *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1293 (D.C. Cir. 1980)). In addition, the D.C. Circuit has expressed general skepticism of government entities serving as adequate advocates for private parties, and particular skepticism of the FEC serving as an adequate advocate for an entity like HFA or CTR, which the agency could seek to regulate directly and immediately after the dismissal order is revoked. *See id.* (citing *Fund For Animals*, 322 F.3d at 736; *Natural Res. Def. Council v. Costle*, 561 F.2d 904, 912–13 (D.C. Cir. 1977). In *Crossroads*, the D.C. Circuit held that the district court erred as a matter of law when it concluded that the FEC could adequately represent the proposed defendant-intervenor's interests because its interests were generally aligned with the FEC in defending the legality of the dismissal order. *See id.* ("Crossroads should not need to rely on a doubtful friend to represent its interests, when it can represent itself.").

The D.C. Circuit's reasoning in *Crossroads* applies with equal force here; indeed, it is hard to imagine a clearer case of a "doubtful friend." HFA and CTR should not be forced to rely upon the FEC to defend their interests in litigation where the Plaintiffs ask this Court to adopt the precise legal conclusions previously reached by the FEC's Office of General Counsel: that there was "reason to believe" that HFA and CTR violated certain provisions of FECA. Indeed, the Court need look no further than the Complaint's summary of the FEC OGC's First Report, and the Report itself. Not only did the FEC OGC expressly disagree with HFA and CTR on the merits of the central legal issues in dispute in this case, *see, e.g.*, Compl, ECF No. 1, ¶¶ 70-77, but also expressly disagreed with HFA's and CTR's interpretation of the FEC's past enforcement actions and their application to the facts of this case, *see* Ex. 3, Attachment 1 to OGC First General Counsel's Report (Factual and Legal Analysis - Correct the Record), at 15-16; Ex. 3, Attachment 2 to First General Counsel's Report (Factual and Legal Analysis - Hillary for America), at 14-15, 18. For example,

HFA argued that when the FEC wrote the internet rules in 2006, it reached a well-reasoned judgment that online activities were fundamentally different that television, radio, direct-mail, and other media that are specifically regulated by the current coordination rules. HFA pointed out that that CLC's administrative complaint is an attempt to reverse this judgment through the back door, through enforcement, rather than through rulemaking through notice and comment, which would provide the regulated community fair notice of the prohibitions they seek to impose. *See* Ex. 2, HFA Response to MUR 7146, at 7. But OGC rejected HFA's view of the FEC's power to reverse its prior rulemaking through enforcement, opining that certain costs incurred by CTR to engage in online activities fall outside of the applicable regulation's definition of online activities. *See* Ex. 3, Attachment 2 to First General Counsel's Report (Factual and Legal Analysis - Hillary for America), at 18.

Further highlighting the divergence of interests between the FEC and HFA, the FEC OGC—over the objection of HFA—repeatedly and approvingly cited to unauthenticated documents disseminated by Russian intelligence services in connection with its illegal hacking and theft of data from HFA and other entities affiliated with the Democratic Party. *See*, *e.g.*, Ex. 3, Attachment 2 to First General Counsel's Report (Factual and Legal Analysis - Hillary for America), at 8-9. The FEC OGC's demonstrated willingness to rely, at least in part, upon such purported evidence casts serious doubt upon whether it will now defend HFA's ongoing interest in preventing a hostile foreign intelligence service from accomplishing its goal of undermining HFA through hacking and theft.

As in *Crossroads*, these differences demonstrate the divergent interests of HFA and CTR on one hand, and the FEC on the other hand. *See* 788 F.3d at 321 ("It is apparent the Commission and Crossroads hold different interests, for they disagree about the extent of the Commission's regulatory power, the scope of the administrative record, and post-judgment strategy.").[2] One need

[2] The D.C. Circuit reached this conclusion in spite of the FEC's argument that it had a 40-year history of zealously defending dismissal orders even when the Commissioners disregarded the advice of FEC counsel to investigate, and that the proposed defendant-intervenor had not identified any past representational deficiencies from such cases. Appellee Br., at 51-52, ECF

not question the professionalism and good faith of FEC counsel to have genuine concerns about how this case will be defended.

Finally, in the event that the FEC does not to defend this action at all, allowing intervention by HFA and CTR is essential to ensure basic due process of law. Indeed, there could be no clearer instance of a named defendant failing to provide adequate representation than an agency defendant electing not to appear or mount any defense of an agency action at all. Allowing HFA and CTR to intervene in this situation would not only enable HFA and CTR to defend their own interests, but would also ensure that the Court has the benefit of a full, adversarial presentation on the issues by parties with a concrete state in the outcome of the litigation.

2. In the Alternative, HFA and CTR Request Permission to Intervene

If the Court does not grant HFA's and CTR's motion to intervene as a matter of right, they respectfully request that the Court exercise its discretion to allow them to intervene under Rule 24(b). The Court has broad discretion to grant a motion for permissive intervention when the Court determines that (1) the intervenor's claim or defense and the main action have a question of law or fact in common, and that (2) the intervention will not unduly delay or prejudice the adjudication of the original parties' rights. *See* Fed. R. Civ. P. 24(b)(1)(B).

HFA and CTR easily meet the requirements for permissive intervention. First, HFA's and CTR's proposed defenses, set forth in the attached proposed Motion to Dismiss, have questions of law and fact in common with the original complaint. Second, for the reasons set forth above, the motion is timely and, given the early stage of this litigation, intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.

CONCLUSION

For the reasons stated above, HFA and CTR respectfully request that the Court grant their motion to intervene as a matter of right under Rule 24(a)(2) or, in the alternative, permit them to

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No. 1526606, *Public Citizen et al v. Fed. Elec. Comm'n*, No. 14-5199 (D.C. Cir. Dec. 10, 2014). The D.C. Circuit also reached this conclusion in spite of the FEC's argument that judicial review of FEC dismissals is "extremely deferential" and concerns only the "limited question of the legality of an FEC dismissal decision." *See id.* at 8, 48.

intervene under Rule 24(b). If granted permission to intervene under either provision, HFA and CTR have attached a proposed motion to dismiss for filing.[3]

[3] The text of Rule 24(c) of the Federal Rules of Civil Procedure puts proposed defendant-intervenors in an anomalous situation. Rule 24(c) requires that a proposed defendant-intervenor attach a proposed "pleading" to be attached to a motion to intervene. However, a motion to dismiss under Rule 12(b) is not among the "pleadings" set forth in Rule 7(a). As a result, even though a named defendant may file a motion to dismiss under rule 12(b) prior to serving one of the pleadings set forth in Rule 7(a), it is not clear from the text of the rule whether the same opportunity is available to a defendant-intervenor. However, courts have held that a proposed motion to dismiss satisfies Rule 24(c). *See, e.g*., *Ctr. for Biological Diversity v. Jewell*, No. 15-cv-00019, 2015 WL 13037049, at *2 (D. Ariz. May 12, 2015) ("The Court finds that the stricken Motion to Dismiss would have complied with the substantive requirements of Rule 24(c); it puts the existing parties on sufficient notice of the State's claim or defense, such that the procedural requirements of Rule 24(c) would be met."); *New Century Bank v. Open Solutions, Inc*., No. 10-6537, 2011 WL 1666926, at *3 (E.D. Pa. May 2, 2011). In addition, the D.C. Circuit has held that "procedural defects in connection with intervention motions should generally be excused by a court." *Massachusetts v. Microsoft Corp*., 373 F.3d 1199, 1236 (D.C. Cir. 2004) (citing *McCarthy v. Kleindienst*, 741 F.2d 1406, 1416 (D.C. Cir. 1984); *see also Providence Baptist Church v. Hillandale Comm., Ltd*., 425 F.3d 309, 314 (6th Cir. 2005) (surveying circuits' approach to Rule 24(c) and discussing D.C. Circuit's "lenient" approach). Other members of this Court have routinely granted motions to intervene that attach motions to dismiss rather than answers. *See, e.g*., Order, ECF No. 33, *Clean Water Action v. Pruitt*, No. 1:17-cv-00817-DLF (D.D.C. Aug. 3, 2017); Minute Order, *Macon-Bibb Cty. Econ. Opportunity Council, Inc. v. U.S. Dep't of Health & Human Servs*., No. 1:15-cv-01850-RBW (D.D.C. Nov. 13, 2015); Minute Order, *Knapp Med. Ctr. v. Burwell*, No. 1:15-cv-01663 (D.D.C. Mar. 8, 2016); Order, ECF No. 29, *W. Org. of Res. Councils v. Jewell*, No. 1:14-cv-01993-RBW (D.D.C. Feb. 26, 2015). In the event that the Court decides that HFA and CTR are nonetheless required to attach a proposed answer instead of a motion to dismiss in order to comply with Rule 24(c), HFA and CTR respectfully request: a) that the Court grant HFA and CTR leave to file a proposed answer, and b) that the Proposed Motion to Dismiss under Rule 12(b)(6) be construed and docketed as a Motion for Judgment on the Pleadings under Rule 12(c).

October 1, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2019, I caused a true and correct copy of the foregoing document to be served upon all counsel of record registered with the Court's ECF system, by electronic service via the Court's ECF transmission facilities.

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