No. 24-02751

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED SPINAL ASSOCIATION, et al.,

Plaintiffs-Appellants,

v.

STATE OF CALIFORNIA, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
No. 2:23-cv-03107-FLA-GJS

MOTION TO INTERVENE

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No. 24-02751
United Spinal Ass'n, et al. v. State of California, et al.

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Movant Compassion & Choices Action Network ("CCAN"), pursuant to Federal Rule of Appellate Procedure 26.1, submits this Certificate of Interested Persons and Corporate Disclosure Statement. The following parties have an interest in the outcome of this case or appeal:

1. Compassion & Choices Action Network (Movant)
2. Burt Bassler (Movant)
3. Judith Coburn (Movant)
4. Peter Sussman (Movant)
5. Dr. Chandana Banerjee (Movant)
6. Dr. Catherine Sonquist Forest (Movant)
7. United Spinal Association (Plaintiff-Appellant)
8. Not Dead Yet (Plaintiff-Appellant)
9. Institute for Patients' Rights (Plaintiff-Appellant)
10. Communities Actively Living Independent and Free (Plaintiff-Appellant)
11. Lonnie VanHook (Plaintiff-Appellant)
12. Ingrid Tischer (Plaintiff-Appellant)
13. State of California (Defendant-Appellee)
14. Gavin Newsom (Defendant-Appellee)

15. Robert Bonta (Defendant-Appellee)

16. California Department of Public Health (Defendant-Appellee)

17. Tomás J. Aragón (Defendant-Appellee)

18. California Department of Health Care Services (Defendant-Appellee)

19. Michelle Baass (Defendant-Appellee)

20. Mental Health Services Oversight and Accountability Commission (Defendant-Appellee)

21. Mara Madrigal-Weiss (Defendant-Appellee)

22. Medical Board of California (Defendant-Appellee)

23. Kristina D. Lawson (Defendant-Appellee)

24. District Attorney's Office for Los Angeles County (Defendant-Appellee)

25. George Gascón (Defendant-Appellee)

26. John Kappos (Movants' counsel)

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45. Collins + Collins LLP (Defendants-Appellees' counsel's firm)

46. United States District Judge Fernando L. Aenlle-Rocha

Pursuant to Federal Rule of Appellate Procedure 26.1, Movant CCAN states that CCAN is a 501(c)(4) organization with no parent corporation, and that no publicly held corporation owns 10 percent or more of its stock.

By: /s/ *John Kappos*
John Kappos

Counsel for Movants Burt Bassler, Judith Coburn, Peter Sussman, Dr. Chandana Banerjee, Dr. Catherine Sonquist Forest, and Compassion & Choices Action Network

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INTRODUCTION

Movants Burt Bassler, Judith Coburn, Peter Sussman, Dr. Chandana Banerjee, Dr. Catherine Sonquist Forest, and Compassion & Choices Action Network ("Intervenors") are disabled patients, doctors who treat terminally ill patients, and an organization that advocates and lobbies for laws that protect and expand end-of-life options. The Compassion & Choices Action Network ("CCAN") sponsored California's End of Life Option Act ("EOLOA"), which gives qualified Californians the ability to obtain aid-in-dying medication. Burt, Judith, and Peter all intend to obtain prescriptions for aid-in-dying medication if they receive a prognosis of six months or less to live. And Dr. Banerjee and Dr. Forest consider the option of medical aid in dying a critical tool in their medical practices.

Intervenors timely moved to intervene in the litigation below, which challenges the EOLOA on constitutional and statutory grounds, because the State and County Defendants could not adequately represent Intervenors' narrower and more personal interests in protecting the law. But the district court never even considered these interests. Instead, it sat on Intervenors' motion for six months, eventually (without a hearing) denying it as moot in the same order granting Defendants' motions to dismiss. The district court subsequently denied Intervenors' motion to reconsider, which made clear that they wanted to participate

in any appeal of the dismissal as well as any proceedings on remand. The district court faulted Intervenors for not addressing the potential for mootness in their original intervention motion, which was filed months before the district court's dismissal order purportedly mooted that motion.

Intervenors timely appealed the district court's denial of their motion to intervene and motion for reconsideration. *See United Spinal Ass'n, et al. v. California*, No. 24-02755 (9th Cir.), Dkt. 1, 8. They now move separately and in the alternative to intervene directly in the instant appeal. Plaintiffs-Appellants oppose this motion and Defendants-Appellees do not take a position on it. In order to represent their unique interests, Intervenors seek to participate in the briefing on this appeal—currently scheduled for June and July—along with any proceedings on remand. Because they do not wish to unnecessarily delay the appeal, they are pursuing multiple avenues to intervention and defer to the Court on the most efficient way to ensure their case for intervention is fairly evaluated in time to afford them the relief they seek.

I. Factual and Procedural Background

A. Intervenors

CCAN advocates and lobbies for laws that protect and expand end-of-life options. CCAN is entitled to intervene in this action as a matter of right because it sponsored the EOLOA, the statute being challenged in this litigation. *See* D.C.

Dkt. 45-7-45-12.[1] Dr. Chandana Banerjee and Dr. Catherine Sonquist Forest both treat terminally ill patients. D.C. Dkt. 45-4 ¶¶ 3-4; D.C. Dkt. 45-5 ¶¶ 3-4. Dr. Forest also has personal experience with medical aid in dying because her husband, Will, exercised his right under the EOLOA to obtain aid-in-dying medication when his terminal condition became unbearable. D.C. Dkt. 45-5 ¶¶ 30-34.

Burt Bassler is an 87-year-old emeritus member of the board of the Hospice of the East Bay who was diagnosed with amyloidosis, a rare progressive disease. D.C. Dkt. 45-1 ¶¶ 2, 5-8, 14. Burt is disabled as that term is defined in the Americans With Disabilities Act ("ADA")[2] because his weakness and shortness of breath are physical impairments that substantially limit his major life activities. Burt's condition is progressive and will likely result in a terminal diagnosis. *Id.* ¶¶ 3, 9, 19.

Judith Coburn is a 79-year-old California resident who was diagnosed with, and is currently in remission from, ovarian clear-cell carcinoma—a rare and aggressive form of ovarian cancer. D.C. Dkt. 45-2 ¶¶ 2, 3, 7, 23. Judith also suffers from arthritis, a progressive condition that requires her to use a walker or cane. *Id.* ¶¶ 8-10. Judith is disabled as that term is defined in the ADA. If her

[1] "D.C. Dkt." refers to the district-court docket below. "Dkt." refers to the docket on appeal.

[2] The ADA defines an individual with a disability as a person who has "a physical or mental impairment that substantially limits one or more major life activities." 42 U.S.C.A. § 12102(1)(A).

cancer returns, she would face a grim prognosis and would prefer the option of medical aid in dying. *Id.* ¶¶ 4, 16. Otherwise she will be forced to endure not only intense physical pain, but also the anxiety inherent in being forced to endure that pain until cancer takes her life. *Id.* ¶¶ 16-19.

Peter Sussman is an 83-year-old retired journalist and author who has lived with spinal problems all his life. D.C. Dkt. 45-3 ¶¶ 3, 4. In 2001, Peter learned that he faced potential paralysis and had to undergo major reconstructive surgery. *Id.* ¶ 6. That surgery was the first of a series of seven to address his spinal malformation. *Id.* ¶¶ 6-22. Peter is disabled as that term is defined in the ADA. Having watched others struggle through terminal diagnoses, it is vital for Peter to maintain a sense of agency in his own dying. *Id.* ¶¶ 35-36.

If and when Burt, Judith, and Peter receive a terminal diagnosis, they intend to obtain prescriptions for aid-in-dying medication, and they have capacity to do so. None of them fear being tricked, coerced, or compelled to pursue medical aid in dying, which is currently a lawful option for a peaceful end-of-life experience. D.C. Dkt. 45-1 ¶¶ 15-17; D.C. Dkt. 45-2 ¶¶ 17, 26; D.C. Dkt. 45-3 ¶¶ 39, 43.

B. Procedural Background

On April 25, 2023, Plaintiffs-Appellants United Spinal Association, Not Dead Yet, Institute for Patients' Rights, Communities Actively Living Independent and Free, Lonnie VanHook, and Ingrid Tischer ("United Spinal") filed a complaint

in the Central District of California challenging the EOLOA on federal constitutional and statutory grounds. D.C. Dkt. 1. On July 20, 2023, Defendants-Appellees State of California, et al. (the "State Defendants") moved to dismiss the complaint under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). D.C. Dkt. 20, 20-1. On July 21, Defendants-Appellees County of Los Angeles and George Gascón, in his official capacity as District Attorney of Los Angeles County (the "County Defendants"), moved to dismiss the complaint under Rule 12(b)(6). D.C. Dkt. 24. On July 26, at the State Defendants' request, the district court stayed discovery pending resolution of the motions to dismiss. D.C. Dkt. 26.

On September 21, 2023, Intervenors filed a motion to intervene as of right under Federal Rule of Civil Procedure 24(a) and, in the alternative, for permissive intervention under Rule 24(b). D.C. Dkt. 45 at 11, 17. They attached a proposed motion to dismiss. D.C. Dkt. 45-13.

Six months later, on March 27, 2024, the district court granted Defendants-Appellees' motions to dismiss and dismissed United Spinal's claims with prejudice. D.C. Dkt. 73. In a single sentence at the end of the same order, the court denied Intervenors' motion to intervene as moot. *Id.* at 16. On April 9, Intervenors moved for reconsideration of the court's denial of their motion to intervene. D.C. Dkt. 74. Intervenors argued that the motion was not moot because, if United Spinal appealed the dismissal of their claims, Intervenors would

"wish to participate in appellate proceedings—as well as any proceedings that might be required beyond that," and granting their motion would allow them to do so. *Id.* at 5.

On April 24, United Spinal filed a notice of appeal of the district court's order dismissing its claims. D.C. Dkt. 76. On April 26, Intervenors noted in their reconsideration reply brief that United Spinal's appeal was no longer hypothetical because of this filing. D.C. Dkt. 77 at 3. That same day, Intervenors filed a notice of appeal of the district court's order denying their intervention motion as moot. D.C. Dkt. 78.

On May 6, the district court denied Intervenors' motion to reconsider, stating that Intervenors should have noted their intention to participate in a potential appeal in their original intervention motion—which was filed six months before the court's order dismissing United Spinal's claims and seven months before United Spinal's appeal of that order. D.C. Dkt. 81 at 3.

On May 16, Intervenors moved to consolidate their intervention appeal with the instant appeal and to expedite briefing on the intervention issue. Dkt. 13.1.

II. Legal Standard

"Intervention should be allowed even after a final judgment where it is necessary to preserve some right which cannot otherwise be protected." *Pellegrino v. Nesbit*, 203 F.2d 463, 465 (9th Cir. 1953). "Intervention on appeal is governed

by Rule 24 of the Federal Rules of Civil Procedure." *Bates v. Jones*, 127 F.3d 870, 873 (9th Cir. 1997). Courts liberally construe Rule 24 "in favor of applicants for intervention." *Wash. State Bldg. & Constr. Trades Council, AFL-CIO v. Spellman*, 684 F.2d 627, 630 (9th Cir. 1982).

A. Intervention as of Right

Rule 24(a) provides:

> On 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). This Court has distilled this inquiry to four factors: (1) whether the motion is timely; (2) whether the applicant has a significant, protectable interest relating to the subject of the litigation; (3) whether that interest will be practically impaired if intervention is not granted; and (4) whether the applicant's interest might be inadequately represented by the parties to the action. *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 527 (9th Cir. 1983). Where different intervenors "share the same common interest insofar as the subject matter of th[e] litigation is concerned" and "sp[eak] with one voice," the Court need not address any "differing interests" and instead considers their arguments together. *Id.* at 526 & n.2.

This Court has consistently held that "[a] public interest group is entitled as

a matter of right to intervene in an action challenging the legality of a measure it has supported." *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397-98 (9th Cir. 1995); *see also Sagebrush Rebellion*, 713 F.2d at 527-28; *Spellman*, 684 F.2d at 629-30.

B. Permissive Intervention

Rule 24(b) provides that "[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). Rule 24(b) "vests 'discretion in the . . . court to determine the fairest and most efficient method of handling a case.'" *Venegas v. Skaggs*, 867 F.2d 527, 530 (9th Cir. 1989) (citation omitted). Permissive intervention in a federal-question case such as this, *see* D.C. Dkt. 1 ¶¶ 15-16, where the intervenor does not seek to bring new claims, requires a showing of timeliness and "a common question of law and fact between the movant's claim or defense and the main action." *Freedom from Religion Found., Inc. v. Geithner*, 644 F.3d 836, 843-44 (9th Cir. 2011) (quoting *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 473 (9th Cir. 1992)). The Court must also consider whether permissive intervention would "unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

III. Argument

A. Intervenors Are Entitled to Intervene as of Right

1. Intervenors' Motion Is Timely.

This Court considers "three criteria in determining whether a motion to intervene is timely: (1) the stage of the proceedings; (2) whether the parties would be prejudiced; and (3) the reason for any delay in moving to intervene." *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 836 (9th Cir. 1996). Timeliness is "to be determined from all circumstances" and "is to be construed broadly in favor of the party seeking intervention." *Sawyer v. Bill Me Later, Inc.*, 2011 WL 13217238, at *3 (C.D. Cal. Aug. 8, 2011) (citations omitted). "[T]he timeliness requirement for intervention as of right should be treated more leniently than for permissive intervention because of the likelihood of more serious harm." *Id.* (citation omitted).

Intervenors timely moved to intervene in the district court as well as this Court. Intervenors filed their intervention motion, along with a proposed motion to dismiss, in the district court on September 21, 2023, less than five months after United Spinal filed suit and the day after the district court took Defendants-Appellees' motions to dismiss under submission. D.C. Dkt. 44-45. Defendants had not answered, discovery was stayed, and the district court had not made any substantive rulings. This Court and others have found motions filed at a similar stage—and even later—to be timely. *See, e.g.*, *Babbitt*, 58 F.3d at 1397

(intervention motion timely after answer and just before hearing on preliminary injunction); *Kalbers v. U.S. Dep't of Just.*, 22 F.4th 816, 824-27 (9th Cir. 2021) (intervention motion timely nearly a year after suit, after answer, and after discovery began); *Sawyer*, 2011 WL 13217238, at *3 (intervention motion timely one year after suit and after discovery had opened); *Found. Auto Holdings v. Weber Motors, Fresno, Inc.*, 2021 WL 5822933, at *4 (E.D. Cal. Dec. 8, 2021), *r. & r. adopted*, 2022 WL 229857 (E.D. Cal. Jan. 26, 2022) (intervention motion timely where motion to dismiss pending and discovery not yet commenced).

Key to these assessments was the fact that the intervention motion was filed "before the district court had made any substantive rulings." *Glickman*, 82 F.3d at 837; *see also Babbitt*, 58 F.3d at 1397 (motion filed "before any hearings or rulings on substantive matters"); *Kalbers*, 22 F.4th at 826. This Court has held that in that circumstance, the parties are not prejudiced by intervention. *Glickman*, 82 F.3d at 837; *see also Found. Auto Holdings*, 2021 WL 5822933, at *4; *Delano Farms Co. v. Cal. Table Grape Comm'n*, 2010 WL 2942754, at *1 (E.D. Cal. July 23, 2010).

Here, Intervenors tried to intervene six months before the district court made any substantive ruling. Now that the district court has made that ruling, Intervenors seek to directly intervene in United Spinal's appeal of it. The critical timeliness question for motions to intervene during an appeal is "whether in view of all the circumstances the intervenor acted promptly after the entry of final

judgment." *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 395-96 (1977). Intervenors promptly pursued all avenues for relief after the district court (1) dismissed United Spinal's claims and denied Intervenors' motion to intervene on March 27, and (2) denied Intervenors' motion to reconsider on May 6. On April 26, Intervenors timely appealed the district court's denial of their intervention motion; on May 13, they amended their notice of appeal to incorporate the denial of their reconsideration motion. D.C. Dkt. 78, 82. On May 16, they filed a motion with this Court seeking to consolidate the intervention appeal with the merits appeal and expedite consideration of intervention. Dkt. 13.1. Now Intervenors alternatively seek to intervene directly in this appeal. They file this motion before any briefing, much less any substantive rulings.[3]

In this context, no party can plausibly claim prejudice. Defendants-

[3] The Supreme Court has held that motions to intervene on appeal are generally timely when filed "within the time period in which the named plaintiffs could have taken an appeal." *United Airlines*, 432 U.S. at 396. Intervenors did not file a direct-intervention motion before April 26, 2023—United Spinal's deadline to appeal the district court's order under Federal Rule of Appellate Procedure 4(a)(1)(A)—because its motion for reconsideration was still pending. After the district court ruled on that motion on May 6, Intervenors filed this motion "within the time period in which" they "could have taken an appeal" of the reconsideration order. *Id.*; *see* Fed. R. App. P. 4(a)(4) (motion under Federal Rules of Civil Procedure 59 or 60 resets time to appeal from "entry of the order disposing of the last such remaining motion"); *see Kapa Inv. v. Cirrus Design Corp.*, 2009 WL 10673050, at *1 (C.D. Cal. Aug. 27, 2009) ("courts generally construe a motion for reconsideration as a motion to alter or amend a judgment under Federal Rule of Civil Procedure 59(e) . . . or a motion for relief from a judgment or order under Federal Rule of Civil Procedure 60(b)").

Appellees did not take a position on Intervenors' motion to intervene in the district court and have indicated that they will not take a position on intervention here. *See Venegas*, 867 F.2d at 530 (no prejudice to parties who did not oppose intervention). United Spinal argued in the district court that intervention would prejudice Plaintiffs by forcing it to "relitigat[e] the same arguments already presented in the State Defendants' motion to dismiss . . . needlessly slowing down the litigation, delaying the start of discovery, and making the litigation more complex and costly." D.C. Dkt. 56 at 9. But none of these concerns are present at this stage, where Intervenors seek to file a responsive appellee brief on the same date as Defendants-Appellees' responsive brief. United Spinal could reply to both sets of arguments in its reply brief. If it finds these arguments duplicative, that shows that it will not be prejudiced by having to respond to them separately. *See Magnus Pac. Corp. v. Advanced Explosives Demolition, Inc.*, 2013 WL 6095427, at *7 (D. Idaho Nov. 20, 2013) (holding on permissive intervention that defendant "would not be unduly prejudiced because its defenses against [plaintiff] apply with equal force to [intervenor]").

Moreover, "additional time and expense to comply with briefing related to . . . intervention" are "precisely the kind of issues that do not constitute prejudice." *Defs. of Wildlife v. Johanns*, 2005 WL 3260986, at *4 (N.D. Cal. Dec. 1, 2005). And Intervenors' participation in the appeal would have no impact on discovery or

any other proceedings in the district court, which are currently stalled. Because intervention is routinely granted at similar and later phases of litigation and no plausible case of prejudice can be made out here, Intervenors' motion is timely.

2. Intervenors Have Significant, Protectable Interests in the Litigation That Will Be Practically Impaired if Intervention Is Denied.

In its opposition to Intervenors' motion to intervene in the district court, United Spinal conceded that CCAN, Burt, Judith, and Peter had significant, protectable interests in the litigation that would be practically impaired without intervention. D.C. Dkt. 56 at 19-20; D.C. Dkt. 58 at 6. While United Spinal contested Dr. Banerjee's and Dr. Forest's interests in the litigation because they are not "eligible to use EOLOA's procedures," D.C. Dkt. 56 at 19, it ignored the fact that this Court considers potential intervenors' interests together where they "share the same common interest insofar as the subject matter of th[e] litigation is concerned" and "sp[eak] with one voice." *Sagebrush Rebellion*, 713 F.2d at 526 & n.2. CCAN, Patient-Intervenors, and Doctor-Intervenors "share the same common interest" in upholding the EOLOA. *Id.* Both in the district court and in this Court, they have "joined in a single application and are represented by the same attorney[s]." *Id.* at 526. Any differences in their interests are thus irrelevant to the intervention analysis.

Regardless, it is clear that all Intervenors have significant and protectable

interests at stake, as this litigation affects legislation they sponsored as well as their personal end-of-life decisions and medical practices. United Spinal cannot dispute that CCAN has a sufficient interest given that it sponsored the law at issue. *See Babbitt*, 58 F.3d at 1397-98; *Sagebrush Rebellion*, 713 F.2d at 527-28; *Spellman*, 684 F.2d at 629-30. Nor can it credibly dispute that, as disabled Californians who want to have the option of availing themselves of the EOLOA if needed, Burt, Judith, and Peter have at least as much, if not more, of a protectable interest as the disabled plaintiffs who filed this action and do *not* intend to obtain a prescription under the Act. *See Cal. ex rel. Lockyer v. United States*, 450 F.3d 436, 441-43 (9th Cir. 2006) ("intended beneficiaries" of challenged legislation had significant protectable interest that could be practically affected by disposition of lawsuit challenging that legislation); *Kalbers*, 22 F.4th at 827 (citing "direct, antagonistic relationship between" plaintiff's and intervenor's interests).

As for Dr. Banerjee and Dr. Forest, they have a significant and protectable interest in (1) prescribing aid-in-dying medication to their eligible patients, and (2) providing this care without fear of prosecution. This Court has recognized that doctors have a significant and protectable interest in defending laws that "protect[] against state criminal prosecution or loss of their medical licenses." *Lockyer*, 450 F.3d at 441. It has likewise recognized (for purposes of Article III standing) that a doctor's "own interests, both financial and professional, in practicing medicine

pursuant to his best medical judgment, are . . . affected by a statutory provision that he alleges violates the federal constitutional rights of" his potential patients. *Planned Parenthood of Idaho, Inc. v. Wasden*, 376 F.3d 908, 917 (9th Cir. 2004); *see also McCormack v. Hiedeman*, 2012 WL 2049359, at *3 (D. Idaho June 6, 2012) (granting doctor's motion to intervene in suit challenging Idaho's criminal abortion sanctions and recognizing his significant and protectable interests in "the ability of women in Bannock County to obtain abortions without fear of prosecution by the state" and "his own ability to provide abortions to such women without fear of prosecution").

3. Defendants May Not Adequately Represent Intervenors' Interests.

Intervenors are also entitled to intervene because their interests in ensuring access to medical aid in dying are narrower and more personal than the State and County Defendants' general interests in defending the EOLOA. In assessing the adequacy of a party's representation, the Court considers whether that party "will undoubtedly make all of the intervenor's arguments, . . . is capable of and willing to make such arguments, and whether the intervenor offers a necessary element to the proceedings that would be neglected." *Sagebrush Rebellion*, 713 F.2d at 528. The "burden of making this showing is minimal"; it is satisfied where an intervenor "offers a perspective which differs materially from that of the present parties to this litigation." *Id.*

While "a presumption of adequate representation generally arises when the representative is a governmental body or officer charged by law with representing the interests of the absentee," the presumption can be overcome where the intervenors' interests are "more narrow[and] parochial" than the general public's, such as "when the applicant asserts a personal interest that does not belong to the general public." *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1499 (9th Cir. 1995), *abrogated on other grounds by Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011) (en banc) (citation omitted). In *Forest Conservation Council*, for example, the defendant Forest Service's interest in the long-term outcome of a challenge to its forest-management practices was sufficiently distinct from would-be intervenor Arizona's interest in whether forest-management activities in the state would be enjoined during the pendency of the litigation. 66 F.3d at 1499. Intervenors likewise understand the urgency of access to medical aid in dying in a way that the State and County Defendants do not and will thus represent a different perspective when it comes to potential remedies. *See* D.C. Dkt. 45-5 ¶ 31 (Dr. Forest explaining that her husband's terminal illness "worsened so quickly that he barely had time to request medical aid in dying and obtain the prescription before he would have lost the ability to self-ingest").

One situation in which an intervenor's interests are "more narrow and parochial than the interests of the public at large" is where a union seeks to

intervene in litigation challenging a prevailing-wage law. *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1190 (9th Cir. 1998); *Allied Concrete & Supply Co. v. Baker*, 904 F.3d 1053, 1067-68 (9th Cir. 2018) (similar). District courts have applied *Mendonca* to different situations, noting that its "logic . . . did not hinge on" the union context. *Barke v. Banks*, 2020 WL 2315857, at *4 (C.D. Cal. May 7, 2020). Instead, *Mendonca* applies so long as an intervenor has "narrower interests" in the litigation, despite sharing with state defendants "an identical ultimate goal of upholding state law." *Id.* (noting application beyond union intervention). For example, *Chandler v. California Department of Corrections & Rehabilitation*, 2023 WL 5353212 (E.D. Cal. Aug. 21, 2023), relied on *Mendonca* to hold that transgender inmates seeking to intervene in a challenge to the Transgender Respect, Agency, and Dignity Act had "a materially distinct perspective on the issues" because "they alone 'can attest to the realities of being an incarcerated TGI person.'" *Id.* at *6-7 (citation omitted). This was so despite the fact that the inmates shared with state defendants the "general goal" of "defend[ing] the constitutionality of the Act." *Id.* at *7.

Like the intervenors in *Chandler*, Intervenors here bring "a materially distinct perspective" on the EOLOA since "they alone" can "attest to the realities" of being a disabled person (or her doctor) who wants to avail herself (or her patients) of the medical option to avoid unbearable suffering at her end of life. *Id.*

Defendants notably did not attach any declarations from patients or doctors to their motion-to-dismiss briefing. Dkt. 20-1 at 1; *see also* Dkt. 24. Without these perspectives, this Court will see only the perspective of the individual Plaintiffs, who harbor concerns about the EOLOA that Intervenors vehemently do not share. In order to ensure that critical interests underlying the EOLOA are represented in this appeal, and given the "liberal construction" afforded Rule 24, *Spellman*, 684 F.2d at 630, this Court should hold that Intervenors have made the "minimal showing" that Defendants may not adequately represent their specific and personal interests in this litigation, *Forest Conservation Council*, 66 F.3d at 1499.

B. Alternatively, Intervenors Should Be Permitted to Intervene

Even if the Court concludes that Intervenors are not entitled to intervene as of right, it should exercise its discretion to permit them to intervene under Rule 24(b). Intervention will not delay this appeal, prejudice the parties, or interject new legal issues into the case. It will merely provide the Court with a fuller perspective on the EOLOA and the legal and humanitarian issues at stake as it evaluates the future of the statute.

For the reasons explained above, Intervenors' motion is timely. *See supra* at 9-13; *Geithner*, 644 F.3d at 843. Since Intervenors seek to respond to United Spinal's attack of the EOLOA under the ADA, Rehabilitation Act, and the federal constitution, D.C. Dkt. 45-13 (Intervenors' Proposed Mot. to Dismiss) at 9-21,

their intervention motion also raises "common question[s] of law and fact" with "the main action." *Geithner*, 644 F.3d at 843 (quoting *Beckman Indus.*, 966 F.2d at 473); *see Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1111 (9th Cir. 2002), *abrogated on other grounds by Wilderness Soc'y*, 630 F.3d 1173 (intervenors demonstrated common question of law or fact sufficient for permissive intervention in challenge to federal rule where they "asserted defenses" that "squarely respond[ed] to the challenges made by plaintiffs in the main action" as well as "an interest in the use and enjoyment of" the lands subject to the rule).

And again, no parties will be prejudiced by Intervenors' participation in the appellate briefing. *See supra* at 12-13; *Magnus Pac. Corp.*, 2013 WL 6095427, at *7; *Johanns*, 2005 WL 3260986, at *9. United Spinal's argument amounts to the absurd proposition that this Court should decide the appeal on an *incomplete* record because it may require more briefing to build a complete record. Every case could be simplified if courts were to arbitrarily exclude submissions by some of the interested parties. But doing so does not advance the Court's interest of reaching the proper result based on consideration of *all* arguments.

Lastly, unlike in the Rule 24(a) context, "representational adequacy is not dispositive in the permissive intervention context." *Magnus Pac. Corp.*, 2013 WL 6095427, at *7 (citing *Venegas*, 867 F.2d at 530-31); *see also Missouri v. Harris*, 2014 WL 2506606, at *7 (E.D. Cal. June 3, 2014) (granting permissive

intervention where intervenor "demonstrated it will bring a unique perspective to this action that will enable the court to make a well informed decision regarding the claims at issue," despite failing adequacy prong for intervention as of right); *County of Orange v. Great Lakes Reinsurance (UK) PLC*, 2013 WL 12136524, at *4-5 & n.2 (C.D. Cal. Mar. 7, 2013) (similar). Even if Intervenors have not made the minimal showing necessary to establish that Defendants-Appellees may not adequately represent their interests, they will certainly "bring a unique perspective to this action that will enable the court to make a well informed decision regarding" the future of the EOLOA. *Harris*, 2014 WL 2506606, at *7. Because Intervenors satisfy the mandatory prongs for permissive intervention under Rule 24(b), this discretionary factor tips the balance toward intervention.[4]

CONCLUSION

For the foregoing reasons, the motion to intervene should be granted.

[4] This Court has held that where an intervenor has not previously sought to intervene in the district court, permissive intervention on appeal is appropriate only "for imperative reasons." *Landreth Timber Co. v. Landreth*, 731 F.2d 1348, 1353 (9th Cir. 1984), *rev'd on the merits*, 469 U.S. 1016 (1984) (citation omitted). Because Intervenors here *did* seek to intervene in the district court, this heightened standard does not apply. Even if it did, the "fundamental nature of the right[s] at stake"—that is, the right of terminally ill patients to control their medical decisions—and the lack of prejudice to the parties easily satisfy it. *Bates*, 127 F.3d at 873-74.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 30th day of May, 2024, I electronically filed the foregoing with the Clerk of the Court using the appellate CM/ECF system. All participants are registered CM/ECF users, and will be served by the appellate CM/ECF system.

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