

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>PHYLLIS BALL, <i>et al.</i></b>	:	
	:	
<b>Plaintiffs</b>	:	<b>Case No. 2:16-cv-00282</b>
<b>v.</b>	:	
	:	<b>Chief Judge</b>
<b>JOHN KASICH, <i>et al.</i></b>	:	<b>Edmund A. Sargus, Jr.</b>
	:	
<b>Defendants,</b>	:	<b>Magistrate Judge</b>
	:	<b>Elizabeth Preston Deavers</b>
<b>and</b>	:	
	:	
<b>GUARDIANS OF HENRY LAHRMAN, <i>et al.</i>; OHIO ASSOCIATION OF COUNTY BOARDS,</b>	:	
	:	
<b>Intervenor Defendants.</b>	:	

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**MOTION OF OHIO PROVIDER RESOURCE  
ASSOCIATION TO INTERVENE AS A DEFENDANT**

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Intervenor Defendant Ohio Provider Resource Association (“OPRA”) respectfully moves this Court for an Order allowing OPRA to intervene in this action as a matter of right under Fed. R. Civ. P. 24(a)(2). Alternatively, OPRA seeks permission to intervene pursuant to Fed. R. Civ. P. 24(b)(1)(B). OPRA submits this Motion for the purpose of protecting the interests of certain constituent members – intermediate care facilities (“ICFs”) for individuals with developmental disabilities. OPRA’s ICF members and the services these ICFs provide are at the root of the allegations and claims in Plaintiffs’ Complaint, and have become the subject of unfounded scrutiny and criticism in the briefing submitted thus far in this litigation by both Plaintiffs and amici curiae. OPRA, on behalf of the ICFs it serves, seeks to protect the interests it has in Ohio’s administration, management and funding of ICFs, and seeks to protect the necessary

services it provides to thousands of Ohioans with developmental disabilities. For the reasons set forth in the attached Memorandum in Support, this Court should grant OPRA's Motion to Intervene. Pursuant to the requirements of Rule 24(c), a proposed Answer in Intervention is attached as Exhibit A hereto.

Respectfully submitted,

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## **MEMORANDUM IN SUPPORT**

### **I. PRELIMINARY STATEMENT**

The Ohio Provider Resource Association (referred to herein as “OPRA”) seeks to intervene in the above-captioned matter in its role as an association representing approximately 120 service providers serving thousands of the individuals with developmental disabilities in Ohio. Making up OPRA’s membership ranks are intermediate care facilities (“ICFs”) and community-based providers.<sup>1</sup> Both of these related constituencies are the subject of Plaintiffs’ Complaint. OPRA’s members provide the services that Plaintiffs complain of and are seeking to reallocate. Plaintiffs Complaint seeks to upset the balance of services and funding struck by the Ohio General Assembly and by Ohio stakeholders without the input of the providers of those services. Service providers in Ohio, including the ICFs that are under attack in this lawsuit, should have the ability to defend themselves. This Court should grant OPRA’s Motion to Intervene for these reasons, set forth more fully below.

### **II. FACTUAL BACKGROUND**

#### **A. Ohio Provider Resource Association (OPRA)**

OPRA is a statewide association of organizations who provide services to individuals with developmental disabilities in Ohio. (Declaration of Mark Davis (hereinafter referred to as “Davis Decl.”), attached hereto as Ex. B, at ¶ 3.) As a statewide association of service providers, OPRA is a leader in efforts to collaboratively build a statewide service system that meets the needs of its ultimate customers: individual Ohioans with developmental disabilities. (Davis Decl. at ¶ 4.) OPRA serves a vital role in advocating for system change, and informing

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<sup>1</sup> Plaintiffs’ Complaint distinguishes community-based services from ICFs. This is a false distinction. ICFs, in fact, provide community based living arrangements and services. OPRA moves to join this litigation, in part, to address this and other misconceptions about ICFs trafficked in by Plaintiffs and amicus curiae.

stakeholders and providers in areas of service delivery best practices and regulatory impact and processes. (Declaration of Diane Beastrom (hereinafter referred to as “Beastrom Decl.”), attached hereto as Ex. C, at ¶ 8.) Currently, OPRA’s Membership consists of more than 150 organizations, both for-profit and not-for-profit, providing services to more than 15,000 Ohioans with developmental disabilities. (*Id.* at ¶ 5.)

OPRA’s mission is to support and provide advocacy for service providers to ensure the availability of programs, services and funding adequate to support and assist individuals with developmental disabilities as they strive to achieve a life of increasing independence, productivity and integration. (Davis Decl. at ¶ 6.) OPRA’s core strategies include:

- working with legislators, administrative agencies and other stakeholder groups, including families and community-based organizations, to shape public policies that deeply affect people with developmental disabilities.
- protecting the right of individuals and families to choose where and how their loved ones are cared for and supported, and our highest priority is providing and sustaining high-quality services for all Ohioans with disabilities.
- promoting the creation of a statewide structure that is rational, equitable, fair and effective.

(*Id.* at ¶ 7.)

#### **B. OPRA’s Membership**

OPRA serves both community based ICFs and other community based service providers that serve individuals with developmental disabilities primarily in community-integrated settings. (Davis Decl. at ¶¶ 8, 14.) OPRA strongly believes that there is a place and a need in Ohio’s system for both community based ICFs and community based providers. (*Id.*)

Members of OPRA provide services throughout the State of Ohio. By way of example, one of OPRA’s members – Koinonia Homes – provides services in Cuyahoga, Geauga, Lake, Lorain, Medina, and Summit Counties, serving individuals with intellectual and/or

developmental disabilities who may also have physical challenges, medical issues, learning disabilities, autism, and mental illness. (Beastrom Decl. at ¶¶ 4, 5.) Among the specific services that Koinonia provides are residential services, supported living, adult day services, senior services, employment services, transportation, 24/7 care, and drop-in services. Koinonia also offers recreation and family events, such as holiday celebrations, trips, social education, music therapy, performing arts and other personalized services. (*Id.* at ¶ 6.)

OPRA offers members such as Koinonia advocacy and representation with governmental bodies relating to the provision of the above services. (Davis Decl. at ¶ 9.) It has been the trusted voice for Ohio providers serving individuals with developmental disabilities for more than 40 years. (*Id.*) OPRA provides timely news and information to its members. It connects its members with up-to-date legislative and administrative changes and helps manage this information through committees and listserv communications. (*Id.* at ¶ 10.) Additionally, ***OPRA is the leading Ohio association providing training and professional development to its member ICFs and community based providers.*** (*Id.* at ¶ 11.) OPRA gives its members the tools and support they need to provide the highest level of care to individuals with developmental disabilities in the State of Ohio. (*Id.*)

### **C. Plaintiffs' Complaint Targets OPRA's Members**

The instant litigation was filed on March 31, 2016, by Disability Rights Ohio and the Center for Public Representation on behalf of Plaintiffs Phyllis Ball, Antonio Butler, Caryl Mason, Richard Walters, Ross Hamilton, Nathan Narowitz,<sup>2</sup> and the Ability Center of Greater Toledo ("Plaintiffs"). (Compl., ECF No. 1.) Plaintiffs allege that Ohio's administration, management, and funding of its service system for people with intellectual and developmental

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<sup>2</sup> Plaintiff Nathan Narowitz was originally named as a party in the Complaint and this Motion. He has since withdrawn as plaintiff without prejudice to his rights to recover as a general member of the putative class.

disabilities such as themselves puts them at serious risk of segregation and institutionalization in violation of Title II of the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act as interpreted by the Supreme Court’s decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), and the Social Security Act, 42 U.S.C. § 1396n(c)(2)(B) & (C). (*See generally*, *id.*)

Specifically, Plaintiffs arbitrarily target certain OPRA members – Ohio ICFs with eight or more beds (referred to in Plaintiffs’ Complaint as “large ICFs”). In their Complaint, Plaintiffs allege:

The six Individual Plaintiffs are part of a class of approximately 27,800 similarly-situated adults with intellectual and developmental disabilities throughout Ohio (“Ohio” or “the State”) who are needlessly institutionalized in publicly- and privately-operated large ICFs or are at serious risk of institutionalization because of systemic limitations on access to integrated, home and community-based services. By virtue of where they live and spend their day, they are isolated from their communities and denied meaningful opportunities to interact with their nondisabled peers.

(*Id.* at ¶ 2.) Plaintiffs go on to generalize:

Large ICFs, which are facilities with eight or more beds, share a common design, funding stream, and operational model that reflects their institutional character and perpetuates ongoing segregation. Once admitted to a large ICF, people quickly become isolated from their families, friends, and communities. Most have little or no contact with their non-disabled peers. Their lives are highly regimented and controlled, with little privacy, independence, or personal autonomy.

(*Id.* at ¶ 4.) The above excerpts are but two examples of the allegations in Plaintiffs’ Complaint that target and mischaracterize ICFs. Indeed, Plaintiffs’ claims are dependent on these mischaracterizations, making intervention necessary to protect OPRA’s interests and the interests of its members.

#### **D. The ARC Amicus Curiae Brief Advocates for the Complete Closure of All Ohio ICFs**

ARC’s amicus brief, filed on November 21, 2017, calls for large-scale structural changes and “systemic shifts from institutional to community-based services for even those with the most significant disabilities and complex needs.” (ARC Amicus Br., ECF No. 289, at p. 19.) ARC

accuses ICFs of “institutionalizing” thousands of Ohioans with disabilities. (*Id.* at p. 4.) ARC even makes the bold statement – without any affidavits or citation to legal authority or secondary source materials specific to Ohio– that it knows better than Ohio consumers and their families who choose ICF services because “residents and families [in other states are allegedly] more satisfied with integrated community alternatives.” (*Id.* at p. 5.) ARC’s brief signifies a departure from the tenure of the lawsuit thus far. Initial filings in the Lawsuit had simply advocated for more funding for community based providers so that individuals with developmental disabilities would have access to more choices with regard to their care. (Davis Decl. at ¶ 19.) Now, the plaintiffs and amicus curiae are calling for the defunding of ICFs all together in favor of a system centered entirely on community based care. (*Id.* at ¶ 20.)

**E. OPRA Seeks to Intervene to Protect the Interests of Its Members, Interests That Will Be Directly Affected by This Lawsuit.**

As mentioned above, OPRA is an association who represents providers of community based services, which OPRA consider to be both ICFs and what have traditionally been referred to as community based providers. In the Lawsuit, OPRA members are accused of providing individuals with developmental disabilities in Ohio with inadequate care and care that marginalizes and institutionalizes them. (Davis Decl. at ¶ 15.) The plaintiffs and amicus curiae in the Lawsuit have cast aspersions on OPRA’s members without naming them as parties or giving them the opportunity to respond to the serious allegations levied against them. (*Id.*)

Additionally, the plaintiffs in the Lawsuit propose a resolution of the Lawsuit that directly impacts each and every OPRA member – a complete restructuring of the administration, management, and funding of ICF and community based services. (Davis Decl. at ¶ 16.) Plaintiffs do so without giving OPRA members a seat at the table. (*Id.*) OPRA is in the best position to represent the interests of its members and speak to the invaluable services that ICF

and community based providers offer to thousands of individuals with developmental disabilities in Ohio. (*Id.* at ¶ 17.)

OPRA and its members advocate for and support many of the same community based services and choices that the plaintiffs in the lawsuit claim are needed in Ohio. (Davis Decl. at ¶ 24.) Rather than working with providers, however, plaintiffs are advocating in the Litigation for wholesale changes to Ohio's service array that threaten the goals and mission of OPRA, which is to preserve consumer choice – including the choice to receive ICF services. (*Id.*) OPRA and its members take great exception to the allegations ICFs contribute to the isolation and marginalization of individuals with developmental disabilities. (*Id.* at ¶ 25; *see also* Beastrom Decl. at ¶ 11.) OPRA and its members deny these allegations. (Davis Decl. at ¶ 25; Beastrom Decl. at ¶ 10.) Upon receipt of the allegations and the suggestion that there is no place in Ohio's service system for ICFs, OPRA took prompt steps to authorize its intervention in the Litigation to protect OPRA's interests and the interests of its members. (Davis Decl. at ¶ 25.)

### **III. LAW AND ARGUMENT**

#### **A. Standard of Review**

Motions to intervene such as this one are governed by Rule 24 of the Federal Rules of Civil Procedure. As a general matter, "Rule 24 should be broadly construed in favor of potential intervenors." *Stupak-Thrall v. Glickman*, 226 F.3d 467, 472 (6th Cir. 2000) (citing *Purnell v. Akron*, 925 F.2d 941, 950 (6th Cir. 1991)). With regard to intervention as a matter of right, Rule 24(a)(2) provides:

On timely motion, the court must permit anyone to intervene who:

....

(2) 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).

Even if a party is not entitled to intervention as a matter of right, the trial court has discretion to allow for permissive intervention. *Wiley v. Triad Hunter LLC*, No. 2:12-cv-605, 2013 U.S. Dist. LEXIS 112066, at \*18 (S.D. Ohio Aug. 8, 2013) (citing *Comtide Holdings, LLC v. Booth Creek Mgmt. Corp.*, No. 2:07-cv-1190, 2010 U.S. Dist. LEXIS 81511, 2010 WL 2670853, at \*3 (S.D. Ohio June 29, 2010) (explaining that the Court is not bound to consider only one subsection of Rule 24, and is free to consider permissive intervention)). “Under Rule 24(b), the Court may allow ‘[o]n timely motion’ a party to intervene who ‘has a claim or defense that shares with the main action a common question of law or fact.’ *Id.* (quoting Fed. R. Civ. P. 24(b)(1)(B)). “The Court should also balance the factors of undue delay prejudice to the original parties, and any other relevant factors . . . .” *Id.* at \*18-19 (citing *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1248 (6th Cir. 1997)).

#### **B. OPRA's Request to Intervene is Timely**

“Regardless of whether a movant requests intervention of right or permissive intervention, the preliminary determination to make is whether the motion was ‘timely’ made.” *Id.* at \*19 (citing *Shy v. Navistar Intern. Corp.*, 291 F.R.D. 128, 2013 U.S. Dist. LEXIS 16236, at \*3 (S.D. Ohio 2013)). Timeliness is a threshold determination and is within the sound discretion of the trial court. *Bradley v. Milliken*, 828 F.2d 1186, 1191 (6th Cir. 1987) (citing *NAACP v. New York*, 413 U.S. 345, 365-66 (1973); *Michigan Ass'n for Retarded Citizens v. Smith*, 657 F.2d 102, 105 (6th Cir. 1981)).

In evaluating the timeliness of a motion to intervene, a court considers:

- 1) the point to which the suit has progressed;

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

*Blount-Hill v. Zelman*, 636 F.3d 278, 284 (6th Cir. 2011) (internal citation omitted). “No one factor is dispositive, but rather the determination of whether a motion to intervene is timely should be evaluated in the context of all relevant circumstances. *Id.* (internal quotation omitted). Considering the above factors and all relevant circumstances, and under the binding precedent of this Court and the Sixth Circuit, OPRA’s Motion to Intervene is timely.

**i. *The instant lawsuit is still in its beginning stages.***

The first factor in the Court’s analysis – the point to which the suit has progressed – weighs in favor of OPRA’s intervention. The time of intervention is not the determining factor but rather “all circumstances” must be examined to determine the substantive progress that has occurred in the litigation. *See Stupak-Thrall v. Glickman*, 226 F.3d 467, 475 (6th Cir. 2000). Here, no substantive issues have been resolved. Discovery on the merits has not even begun in this case, the Plaintiffs’ Motion for Class Certification has just been briefed and has not been ruled upon by the Court, no dispositive motions deadline has been scheduled, nor has a trial date been set. *See United States v. City of Detroit*, 712 F.3d 925, 931 (6th Cir. 2013) (“Where future progress remains and the intervenor’s interests are relevant, intervention may be the most effective way to achieve a full and fair resolution of the case.”). There would be no need to reopen discovery, delay discovery, delay trial, or cause some other prejudicial delay. These are

all important factors that this Court has previously recognized. *Shy v. Navistar Intern. Corp.*, 291 F.R.D. 128, 133 (S.D. Ohio 2013) (explaining that the progression of the suit “is most relevant when the motion arrives at a point in time that would require reopening discovery, delaying trial, or some other prejudicial delay to the parties”); *cf. Stupak—Thrall*, 226 F.3d at 475 (upholding denial of intervention where motion to intervene was filed ten weeks after the close of discovery and seven weeks before the deadline for filing of dispositive motions).

**ii. *OPRA seeks to intervene on behalf of the interests of its members—providers that are directly implicated in Plaintiffs’ Complaint and requested relief.***

As discussed more fully below, the purpose of OPRA’s request for intervention is to protect the services provided by its members to individuals with developmental disabilities in Ohio. OPRA’s members also have an interest in defending themselves against the mischaracterizations foisted upon them by Plaintiffs and certain amicus curiae. Plaintiffs assume based on the alleged experiences of six named persons that the services ICFs provide are inadequate, involuntary, and amount to forced institutionalization. OPRA denies these allegations. ICFs in fact provide community-based services in – in many instances – community integrated settings. The claims asserted by the Plaintiffs and Plaintiffs’ suggested remedies threaten to deprive ICFs of the funding they need to provide necessary services to so many and to deny this valued community-based choice of services to Ohio consumers. Accordingly, ICFs must have a seat at the table. For the reasons set forth in Part III(C)(ii)-(iii), *infra*, OPRA meets the second factor of Rule 24’s timeliness analysis.

**iii. *The need for OPRA to intervene has become apparent from the filings of the parties and intervening at this time would not prejudice the original parties.***

The third and fourth factors, the length of time preceding the application during which OPRA knew or should have known of its interest in the case, and the prejudice to the original parties due to the timing of OPRA's intervention, also weigh in favor of OPRA. OPRA filed its Motion to Intervene before any factual or legal issues have been litigated on their merits. The prejudice to the original parties due to OPRA's failure to promptly intervene until this time is minimal, if existent at all. In fact, judicial economy is better served having all relevant interests represented at this stage of the proceedings. *See Jansen v. City of Cincinnati*, 904 F.2d 336, 339-41 (6th Cir. 1990) (noting intervention serves judicial economy resulting from disposition of related issues in a single lawsuit and "the original parties' interests are better served by having all relevant interests represented prior to the summary judgment motions disposition because piecemeal litigation is likely to be avoided").

**iv. *No unusual circumstances exist that militate against granting OPRA's request for intervention.***

Regarding the fifth factor to be considered with respect to the Court's timeliness inquiry, there are no unusual circumstances at play. OPRA's Motion to Intervene is straightforward. Its interest is apparent and legally recognized. OPRA filed its Motion after briefing revealed its members were being directed targeted in this lawsuit, despite not having been named. Finally, no prejudice results to any of the parties should OPRA's Motion be granted.

Finally, OPRA notes that "[t]here is a general reluctance to dispose of a motion to intervene as of right on untimeliness grounds because the would-be intervenor actually may be seriously harmed if not allowed to intervene." *Benjamin v. Dep't of Pub. Welfare of Pa.*, 701 F.3d 938, 949 (3rd Cir. 2012) (citing omitted).

Accordingly, in weighing all of the relevant factors and circumstances set forth above, the Court should find that OPRA's Motion to Intervene was timely filed.

**C. OPRA is Entitled to Intervene as a Matter of Right Pursuant to Fed. R. 24(a)(2)**

Rule 24(a) of the Federal Rules of Civil Procedure describes the requirements for a party to intervene as of right, as follows:

Upon timely application, anyone shall be permitted to intervene in an action ... when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ. P. 24(a)(2).

In practice, this rule has been applied using a four-part test. First, the applicant's motion must be timely. (*See supra*, Part III(B).) Second, the applicant must assert an interest relating to the transaction or property that is the subject of the action. Third, the applicant must show that its interest may be impaired by the action. Fourth, the interests of the applicant must not be represented adequately by the parties already involved in the action. *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir 1997); *see also Triax Co. v. TRW, Inc.*, 724 F.2d 1224, 1227 (6th Cir. 1984). As a general rule, this intervention test should be "broadly construed in favor of proposed intervenors." *Stupak-Thrall v. Glickman*, 226 F.3d 467, 472 (6th Cir 2000).

OPRA meets all four requirements to intervene as a matter of right as a defendant in this action.

**i. OPRA's Motion to Intervene is timely.**

As discussed above in Part III(B), OPRA's Motion to Intervene has been made in a timely manner, at the earliest practicable moment, and does not affect the case schedule or prejudice the original parties to this litigation. (*See supra*, Part III(B).)

**ii. OPRA has an interest relating to the transaction or property that is the subject of the action.**

Under Rule 24, an intervenor must have a substantial legal interest in the subject matter of the litigation. *Miller*, 103 F.3d at 1245. The Sixth Circuit has interpreted this requirement expansively, even noting that a specific legal or equitable interest is not required for intervention. *Id.* at 1246; *see also Grutter v. Bollinger*, 188 F.3d 394, 398 (6th Cir. 1999) (Sixth Circuit favors recognizing a proposed intervenor's interest in close cases). To that end, a party seeking to intervene need not possess the standing necessary to initiate a lawsuit. *Purnell v. Akron*, 925 F.2d 941, 948 (1991) (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 536-39 (1972) *See also United States Postal Serv. v. Brennan*, 579 F.2d 188, 190 (2nd Cir. 1978) (the existence of a case or controversy having been established as between plaintiff and defendant, there was no need to impose a standing requirement on the would-be intervenor). Rather, "Rule 24(a)(2) uses the words 'may have' in describing the type of interest that qualifies for intervention." *Purnell*, 925 F.2d at 948.

Here, OPRA has an interest in the administration, management and funding of service providers that is distinct from all other parties to the action. (Beastrom Decl. at ¶ 12.) As an association whose members provider the services at the heart of this case, OPRA has an interest in defending those providers and protecting the services administered to thousands of individual Ohioans with developmental disabilities. (Beastrom Decl. at ¶ 13.) Further, as this Court has already acknowledged, Plaintiffs in this action cannot dispute the fact that if more of

the designated funding is devoted to community based resources, ICF funding will be reduced and contribute to downsizing the ICF program. OPRA's members – specifically the ICFs OPRA represents – have an interest in the continued operation of their ICFs. *See, e.g., Blount-Hill v. Zelman*, 636 F.3d 278, 285 (6th Cir. 2001). Even if this were not the case and OPRA's interests were more remote – which they are not – close cases should be resolved in favor of recognizing an interest under Rule 24 (a). *Grutter v. Bollinger*, 188 F.3d 394, 399 (6th Cir. 1999).

**iii. *OPRA's interest may be impaired by the action if it is not permitted to intervene.***

Plaintiffs' allegations and requested relief necessarily impact OPRA's members and their interests in providing services through ICFs, and if not permitted to intervene would impair their interests.

OPRA's interests will be impaired by limiting the choice of Ohio consumers to self-select those quality ICF services provided by OPRA members, by requiring OPRA to divert resources away from its mission to preserve choice and to provide training programs to battle the misstatements about ICFs made by Plaintiffs and amicus curiae, and by requiring that OPRA divert resources away from its advocacy for individuals with developmental disabilities. (Davis Decl. at ¶ 26.)

The interests of OPRA's members will be impaired if OPRA is not permitted to intervene. OPRA members will not be able to advocate for the preservation of sufficient funding to ensure an adequate supply of quality ICF services in Ohio. (Beastrom Decl. at ¶ 18.) Additionally, OPRA members have an interest in ensuring that best practices and not mere budgetary or political concerns drive policy and funding decisions. (*Id.*) This interest will be impaired if OPRA is not permitted to intervene. Finally, OPRA members have an interest in

striking the proper balance and ensuring choices in Ohio’s service array for individuals with developmental disabilities—an interest that will most definitely be impaired if OPRA is not permitted to intervene. (*Id.*)

OPRA “‘need not show that substantial impairment of their [above-listed] interest[s] will result, nor, from the language of Rule 24(a), that impairment will inevitably ensue from an unfavorable disposition; the would-be intervenor[] need only show that the disposition ‘*may . . . impair or impede [its] ability to protect [it]s interest.*’” *Purnell*, 925 F.2d at 948 (citing *Nuesse v. Camp*, 385 F.2d 694, 701-02 (D.C. Cir. 1967); Fed. R. Civ. P. 24(a)(2)) (emphasis in original). This burden is minimal. The Advisory Committee Notes for Rule 24 provide that, “[i]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene.” Advisory Committee’s Notes, Fed. R. Civ. P. 24.

Here, OPRA meets its burden. There is no question that OPRA’s members will be affected by the outcome of the litigation. This Court has previously recognized that Plaintiffs’ success in this litigation may result in the cessation of funding to the ICFs operated by OPRA’s members. It will also upset the balance of services offered by the State of Ohio, and will deprive individuals with developmental disabilities in Ohio of the valuable services ICFs provides. OPRA should be permitted to intervene to protect its interest in the full array of services offered to individual Ohioans with developmental disabilities.

**iv. *OPRA’s interest is not adequately represented by the parties already involved in the action.***

Finally, OPRA is required to demonstrate that none of the existing parties will adequately represent its interests. This burden is also minimal and can be satisfied by showing merely a potential for inadequate representation. Fed. R. Civ. P. 24. *See also Trbovitch v. United Mine*



*Workers of America*, 404 U.S. 528, 538 n. 10, (1972); *Grutter*, 188 F.3d at 400. “[I]nterests need not be wholly ‘adverse’ before there is a basis for concluding that existing representation of a ‘different’ interest may be inadequate. *Nuesse v. Camp*, 385 F.2d 694, 703 (1967). A proposed intervenor may satisfy this burden by showing that the existing party, who purports to seek the same outcome, will not make all of prospective intervenor’s arguments. *Miller*, 103 F.3d at 1247-48.

Unquestionably, under the tests employed by Courts in the Sixth Circuit, OPRA’s interests are not adequately represented. Although it is true that Defendants represent some of the same interests, there are numerous issues on which OPRA’s interests are completely diverse and even antagonistic to Defendants’ positions:

The interests of OPRA are different from those of the State of Ohio and its agencies. (Davis Decl. at ¶ 21; Beastrom Decl. at ¶ 15.) The State of Ohio and its agencies act as the regulating bodies for OPRA’s ICF service providers. OPRA members, as the providers of ICF services who are being regulated, have interests that are diverse from those of the State of Ohio. (Davis Decl. at ¶ 21(a); Beastrom Decl. at ¶ 15(b).) Although the State of Ohio operates certain ICF facilities, the operation of these facilities (often referred to as developmental centers) are governed by different legal provisions and are funded through different funding sources than are OPRA member ICFs. (Davis Decl. at ¶ 21(b); Beastrom Decl. at ¶ 15(a).) Thus, the State of Ohio does not have the same interests as OPRA in protecting the funding and management of OPRA member ICFs. (*Id.*)

Further, the ICF providers among OPRA’s ranks provide the bulk of Ohio’s ICF services (through ICFs of all sizes and not only in the larger size ICFs operated by the State of Ohio). (Davis Decl. at ¶ 21(c); Beastrom Decl. at ¶ 15(c).) These services are the subject of the

Litigation. OPRA and its members are in a better position than the State of Ohio and its agencies to understand the issues affecting the direct care of those Ohioans with developmental disabilities addressed in the Lawsuit, including but not limited to, staffing, labor pool issues, costs and above all, best practices and treatment requirements. (*Id.*)

Finally, the State of Ohio's budgetary constraints and political concerns – including the competing lobbying demands for limited state funds – often put the State of Ohio at direct odds with the needs of consumers and the providers who serve them. (Davis Decl. at ¶ 21(d); Beastron Decl. at ¶ 15(d).) Through its advocacy, OPRA members ensure that policy and funding decisions are not made in a vacuum, but instead with direct regard for consumer care and choice. (*Id.*)

OPRA's interests are different from those of the Intervening County Boards for similar reasons. (Davis Decl. at ¶ 22.) The County Boards attempt through their regulatory and financing functions to influence the level of care and types of services offered to individual consumers served by OPRA members. (*Id.*) OPRA and its members routinely disagree with the County Boards as to the type and amount of services and funding for those services that consumers require. (*Id.*) The County Boards also offer similar ICF and other services that OPRA members provide to individuals with developmental disabilities, notwithstanding the County Boards' competing regulatory and financing functions with regard to those services. (*Id.*)

Finally, OPRA's interests are different from those of the Intervening Guardians in that OPRA and its members must balance the competing demands of the Intervening Guardians, budgetary and regulatory constraints and best practices when advocating for and serving consumers. (Davis Decl. at ¶ 23 Beastron Decl. at ¶ 17.) Accordingly, while the Intervening

Guardians and OPRA agree that ICF services are an essential part of Ohio's service array for individuals with developmental disabilities, the Intervening Guardians and OPRA may disagree on the best means for advocating for and implementing the delicate policy decisions that drive the provision of services for individuals with developmental disabilities in Ohio. (*Id.*)

For these reasons, OPRA's interests are not adequately represented and OPRA's Motion to Intervene as a matter of right should be granted.

**D. OPRA Should be Permitted to Intervene Pursuant to Fed. R. 24(b)(1)(B)**

The authority and factual support presented in this Motion warrant OPRA's intervention as a matter of right. However, should this Court find otherwise, OPRA requests in the alternative that it be granted permissive intervention under Fed. R. Civ. P. 24(b)(1)(B). Rule 24(b) states in part:

(b) Permissive Intervention.

(1) In General. On timely motion, the court may permit anyone to intervene who:

....

(B) has a claim or defense that shares with the main action a common question of law or fact.

....

(3) Delay or Prejudice. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

Fed. R. Civ. P. 24(b). The Court in *Wiley v. Triad Hunter LLC* interpreted the rule as follows:

Even if a party is not entitled to intervention as a matter of right, the Court has discretion to allow for permissive intervention. . . . Under Rule 24(b), the Court may allow "[o]n timely motion" a party 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). The Court should also balance the factors of “undue delay prejudice to the original parties, and any other relevant factors . . . .”

2013 U.S. Dist. LEXIS 112066, \*17-19 (S.D. Ohio Aug. 8, 2013) (citing *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1248 (6th Cir. 1997)). OPRA meets this standard and should be permitted to intervene in this action.

**i. OPRA’s Motion is timely.**

As discussed above in Part III(B), this motion is being filed at an early stage of the proceeding, before any merits discovery or briefing has occurred, and before a dispositive motion or trial date has been set. (*See supra*, Part III(B).) This Court’s precedent dictates a finding of timeliness. *See, e.g., Wiley*, 2013 U.S. Dist. LEXIS 112066, \*20-21 (finding a motion to intervene timely and allowing permissive intervention while motions to dismiss and motions for summary judgment were pending).

**ii. OPRA has a defense that shares a common question of law or fact.**

As set forth above in Parts III(C)(ii)-(iv), OPRA’s members are necessarily implicated in this lawsuit. (*See supra*, Parts III(C)(ii)-(iv).) The legal issues raised by Plaintiffs and the resolution ultimately reached will directly impact ICFs and their ability to provide services to individuals with developmental disabilities in Ohio. Plaintiffs allege a “parade of horrors” regarding ICFs, how they function, and their treatment of Plaintiffs and proposed class members – all without naming a single ICF and giving them the ability to defend themselves. Indeed, the entirety of Plaintiffs’ claims rest on the assumption that ICFs lead to forced institutionalization, marginalization, and segregation. Without intervention, OPRA’s members will not be able to present counterarguments to the deluge of attacks Plaintiffs launch at them, under the guise of state funding and appropriation imbalances.

**iii. *Intervention by OPRA will not cause delay and there is no prejudice to any party.***

As set forth in Part III(B) above, this litigation is in its early stages. Permitting OPRA to intervene will not have an effect on merits discovery or the case schedule as it relates to dispositive motions or a trial date. As such, there is no prejudice to any party.

**IV. CONCLUSION**

For the reasons set forth above, OPRA respectfully requests that the Court grant its Motion to Intervene.

Respectfully submitted,

/s/ Peter A. Lusenhop

Peter A. Lusenhop (0069941), Trial Counsel

Suzanne J. Scrutton (0043855)

Kara M. Mundy (0091146)

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*Counsel for Intervenor Defendant*

*Ohio Provider Resource Association*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Answer was filed electronically on December 22, 2017. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the Electronic Filing Receipt. The parties may access this filing through the Court's system.

/s/ Peter A. Lusenhop  
Peter A. Lusenhop (0069941)

**Exhibit A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>PHYLLIS BALL, <i>et al.</i></b>	:	
	:	
<b>Plaintiffs</b>	:	<b>Case No. 2:16-cv-00282</b>
<b>v.</b>	:	
	:	<b>Chief Judge</b>
<b>JOHN KASICH, <i>et al.</i></b>	:	<b>Edmund A. Sargus, Jr.</b>
	:	
<b>Defendants,</b>	:	<b>Magistrate Judge</b>
	:	<b>Elizabeth Preston Deavers</b>
<b>and</b>	:	
	:	
<b>GUARDIANS OF HENRY</b>	:	
<b>LAHRMAN, <i>et al.</i>; OHIO</b>	:	
<b>ASSOCIATION OF COUNTY</b>	:	
<b>BOARDS,</b>	:	
	:	
<b>Intervenor Defendants.</b>	:	

---

**ANSWER OF INTERVENOR DEFENDANT  
OHIO PROVIDER RESOURCE ASSOCIATION**

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COMES NOW Intervenor Defendant, the Ohio Provider Resource Association (“OPRA”), and for its Answer to Plaintiffs’ Complaint, hereby states as follows:

**FIRST DEFENSE**

1. Defendant OPRA admits the allegations contained in Paragraph 79, 83, 93, and 96 of Plaintiffs’ Complaint.

2. Upon information and belief, Defendant OPRA admits the allegations contained in Paragraphs 66-69, 74, 80-82, 84-87, 88, 90-92, 94-5, 116, 131, 133, 148, 158, 180, 184 and 203 of Plaintiffs’ Complaint.

3. Defendant OPRA is without information sufficient to form a belief as to the truth or accuracy of the allegations contained in Paragraphs, 6, 16-65, 75-78, 109, 136, 154, 158, and 185 of Plaintiffs' Complaint, and therefore denies same.

4. The allegations contained in Paragraphs 112-115, 117-120, 122-130, 134-135, 137-138, 141-142, 151-153, 155-157, 161-164, 176-178, 182-183, 188-189, 191, 194-195, 207, 214, and 221 of Plaintiffs' Complaint require neither admission or denial in that they purport to quote and or interpret the requirements of certain referenced documents, state or federal regulations or state or federal statutes or case law, which referenced documents, state or federal regulations or state or federal statutes or case law speak for themselves and are the best evidence of their content. Answering further, to the extent any admission or denial is required, OPRA denies the allegations contained in the identified paragraphs of Plaintiffs' Complaint.

5. Defendant OPRA denies the allegations contained in Paragraphs 1-5, 7-11, 14-15, 71-73, 97-98, 100-108, 110-111, 140, 143-147, 149, 159-160, 165-171, 173-175, 179, 181, 186-187, 190, 192-193, 196-202, 204, 206, 208-211, 215-218, and 222-223 of Plaintiff's Complaint.

6. With respect to the allegations contained in Paragraph 12 of the Plaintiffs' Complaint, Defendant OPRA denies the allegations contained in the first sentence of Paragraph 12. The second and third sentences of Paragraph 12 require neither admission nor denial in that the sentences merely state the relief Plaintiffs seek.

7. With respect to the allegations contained in Paragraph 13 of the Plaintiffs' Complaint, Defendant OPRA admits that this action is brought pursuant to Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and the Social



Security Act, but denies that these laws authorize or support the relief requested in Plaintiffs' Complaint.

8. With respect to the allegations contained in Paragraph 70 of the Plaintiffs' Complaint, upon information and belief, Defendant OPRA admits the allegations contained in the first sentence of Paragraph 70 of Plaintiffs' Complaint. Defendant OPRA denies the remaining allegations contained in Paragraph 70 of Plaintiffs' Complaint.

9. With respect to the allegations contained in Paragraph 132 of the Plaintiffs' Complaint, upon information and belief, OPRA admits the allegations contained in the first sentence of Paragraph 132 of Plaintiffs' Complaint. Answering further, OPRA denies the allegations contained in the last sentence of Paragraph 132 of Plaintiffs' Complaint to the extent Plaintiffs are alleging that ICFs do not offer community-based services, and/or that ICFs constitute institutional living *per se*.

10. With respect to the allegations contained in Paragraph 172 of the Plaintiffs' Complaint, upon information and belief, Defendant OPRA admits that participants in Ohio's home and community-based waiver programs have opportunities to select from among integrated day services and activities, and that such access enables them to participate in their communities. Defendant OPRA denies any and all other allegations contained in Paragraph 172 of Plaintiff's Complaint.

### **SECOND DEFENSE**

11. All or portions of Plaintiffs' Complaint fail to state a claim upon which relief can be granted.

**THIRD DEFENSE**

12. All or portions of Plaintiffs' Complaint are barred by the doctrine of res judicata, including doctrines of case preclusion and claim preclusion.

**FOURTH DEFENSE**

13. All or portions of Plaintiffs' Complaint are barred by the 11<sup>th</sup> Amendment to the U.S. Constitution.

**FIFTH DEFENSE**

14. All or portions of Plaintiffs' Complaint are barred because some or all of the named Plaintiffs lack standing to bring the within action.

**SIXTH DEFENSE**

15. All or portions of Plaintiffs' Complaint are barred by the doctrine of abstention.

**SEVENTH DEFENSE**

16. All or portions of Plaintiffs' Complaint are barred by the doctrine of the separation of powers.

**EIGHTH DEFENSE**

17. All or portions of Plaintiffs' Complaint are barred because Plaintiffs' claims are not ripe for adjudication.

**NINTH DEFENSE**

18. All or portions of Plaintiffs' Complaint are barred by the doctrines of waiver, acquiescence or settlement.

**TENTH DEFENSE**

19. Defendant OPRA specifically reserves the right to assert any and all additional defenses, affirmative or otherwise, that may come to light upon discovery and further proceedings in this action.

Respectfully submitted,

/s/ Peter A. Lusenhop  
Peter A. Lusenhop (0069941) (Trial Counsel)  
Suzanne J. Scrutton (0043855)  
Kara M. Mundy (0091146)  
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*Attorneys for Defendant Intervenor Ohio  
Provider Resource Association*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Answer was filed electronically on December 22, 2017. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the Electronic Filing Receipt. The parties may access this filing through the Court's system.

/s/ Peter A. Lusenhop  
Peter A. Lusenhop (0069941)

**Exhibit B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>PHYLLIS BALL, <i>et al.</i></b>	:	
	:	
<b>Plaintiffs</b>	:	<b>Case No. 2:16-cv-00282</b>
<b>v.</b>	:	
	:	<b>Chief Judge</b>
<b>JOHN KASICH, <i>et al.</i></b>	:	<b>Edmund A. Sargus, Jr.</b>
	:	
<b>Defendants,</b>	:	<b>Magistrate Judge</b>
	:	<b>Elizabeth Preston Deavers</b>
<b>and</b>	:	
	:	
<b>GUARDIANS OF HENRY</b>	:	
<b>LAHRMAN, <i>et al.</i>; OHIO</b>	:	
<b>ASSOCIATION OF COUNTY</b>	:	
<b>BOARDS,</b>	:	
	:	
<b>Intervenor Defendants.</b>	:	

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**DECLARATION OF MARK DAVIS**

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I, MARK DAVIS, hereby declare and state as follows:

1. I am over eighteen years of age and if called to testify to the matters contained herein, I could do so competently and based upon my personal knowledge.
2. For over ten years, I have been the President of the Ohio Provider Resource Association (“OPRA”).
3. OPRA is a statewide association of organizations who provide services to individuals with developmental disabilities in Ohio.
4. As a statewide association of service providers, OPRA is a leader in efforts to collaboratively build a statewide service system that meets the needs of its ultimate customers: Ohioans with developmental disabilities.
5. Currently, OPRA’s Membership consists of more than 120 organizations, both for-profit and not-for-profit, providing services to more than 15,000 Ohioans with developmental disabilities.

6. OPRA's mission is to support and provide advocacy for community based service providers (which they consider ICFs to be) in order to ensure the availability of programs, services and funding adequate to support and assist individuals with developmental disabilities as they strive to achieve a life of increasing independence, productivity and integration.
7. OPRA's core strategies include:
  - a. working with legislators, administrative agencies and other stakeholder groups, including families and community-based organizations, to shape public policies that deeply affect individuals with developmental disabilities;
  - b. protecting the right of individuals and families to choose where and how their loved ones are cared for and supported, and our highest priority is providing and sustaining high-quality services for all Ohioans with disabilities; and
  - c. promoting the creation of a statewide structure that is rational, equitable, fair and effective.
8. OPRA believes ICFs are, in fact, a community based service. OPRA serves both ICFs and what are traditionally referred to as community based service providers, and strongly believes that there is a place and a need in Ohio's system for both.
9. OPRA offers its members advocacy and representation with governmental bodies. It has been the trusted voice for Ohio providers serving individuals with developmental disabilities for more than 40 years.
10. OPRA also provides timely news and information to its members. It connects its members with up-to-date legislative and administrative changes and helps manage this information through committees and listserv communications.
11. Additionally, OPRA is the leading Ohio association providing training and professional development to its member ICFs and community based providers. OPRA gives its members the tools and support they need to provide the highest level of care to individuals with developmental disabilities in the State of Ohio.
12. In my role as President of OPRA, I am the primary contact for the administrative and legislative branches of Ohio and federal government. I coordinate OPRA's involvement in administrative and legislative activities with OPRA's Director of Government Relations, board members, other OPRA members and staff. Additionally, I oversee legislative and regulatory activities and analyze their impact on provider operations and services. I am primarily responsible for being the point of contact with OPRA members, OPRA staff and other key stakeholders in the intellectual and developmental disability system in Ohio and nationally. I work closely with OPRA's Board of Trustees with regard to strategic planning for OPRA, defining OPRA's goals and policy initiatives, and implementing OPRA's strategic plan.



13. OPRA has an interest in the lawsuit captioned *Ball v. Kasich*, Case No. 2:16-cv-00282 (the “Lawsuit”), pending in the U.S. Federal Court of the Southern District of Ohio, Eastern Division. OPRA seeks to intervene in the Lawsuit to protect this interest.
14. As mentioned above, OPRA is an association who represents providers of community based services, which we consider to be both ICFs and what have traditionally been referred to as community based providers—providers who are at the center of the Lawsuit.
15. In the Lawsuit, OPRA members are accused of providing individuals with developmental disabilities in Ohio with inadequate care and care that marginalizes and institutionalizes them. The plaintiffs in the Lawsuit have cast aspersions on OPRA’s members without naming them as parties or giving them the opportunity to respond to the serious allegations levied against them.
16. The plaintiffs in the Lawsuit propose a resolution of the Lawsuit that directly impacts each and every OPRA member – a complete restructuring of the administration, management, and funding of ICF and community based services. Plaintiffs do so without giving OPRA members a seat at the table.
17. OPRA is in the best position to represent the interests of its members and speak to the invaluable services that ICF and community based providers offer to thousands of individuals with developmental disabilities in Ohio.
18. It has become clear in recent months that the interests of OPRA’s members are not adequately represented in the Lawsuit.
19. Initial filings in the Lawsuit had simply advocated for more funding for community based providers so that individuals with developmental disabilities would have access to more choices with regard to their care.
20. Recently, however, briefing submitted by the plaintiffs and amicus curiae have called for the wholesale restructuring of the service provider system and the defunding of ICFs all together in favor of a system centered entirely on community based care.
21. The interests of OPRA are different from those of the State of Ohio and its agencies.
  - a. The State of Ohio and its agencies act as the regulating bodies for OPRA’s ICF service providers. OPRA members, as the providers of ICF services who are being regulated, have interests that are diverse from those of the State of Ohio.
  - b. Although the State of Ohio operates certain ICF facilities, the operation of these facilities (often referred to as developmental centers) are governed by different legal provisions and are funded through different funding sources than are OPRA member ICFs. Thus, the State of Ohio does not have the same interests as OPRA in protecting the funding and management of OPRA member ICFs.

- c. Further, the ICF providers among OPRA's ranks provide the bulk of Ohio's ICF services (through ICFs of all sizes and not only in the larger size ICFs operated by the State of Ohio). These services are the subject of the Litigation. OPRA and its members are in a better position than the State of Ohio and its agencies to understand the issues affecting the direct care of those Ohioans with developmental disabilities addressed in the Lawsuit, including but not limited to, staffing, labor pool issues, costs and above all, best practices and treatment requirements.
  - d. The State of Ohio's budgetary constraints and political concerns – including the competing lobbying demands for limited state funds – often put the State of Ohio at direct odds with the needs of consumers and the providers who serve them. Through its advocacy, OPRA members ensure that policy and funding decisions are not made in a vacuum, but instead with direct regard for consumer care and choice.
22. OPRA's interests are different from those of the Intervening County Boards for similar reasons. The County Boards attempt through their regulatory and financing functions to influence the level of care and types of services offered to individual consumers served by OPRA members. OPRA and its members routinely disagree with the County Boards as to the type and amount of services and funding for those services that consumers require. The County Boards also offer similar ICF and other services that OPRA members provide to individuals with developmental disabilities, notwithstanding the County Boards' competing regulatory and financing functions with regard to those services.
23. OPRA's interests are different from those of the Intervening Guardians in that OPRA and its members must balance the competing demands of the Intervening Guardians, budgetary and regulatory constraints and best practices when advocating for and serving consumers. Accordingly, while the Intervening Guardians and OPRA agree that ICF services are an essential part of Ohio's service array for individuals with developmental disabilities, the Intervening Guardians and OPRA may disagree on the best means for advocating for and implementing the delicate policy decisions that drive the provision of services for individuals with developmental disabilities in Ohio.
24. OPRA seeks to intervene at the earliest practicable moment in order to protect these interests. OPRA and its members advocate for and support many of the same community based services and choices that the plaintiffs in the lawsuit claim are needed in Ohio. Accordingly, OPRA has been monitoring this Litigation. Recently, parties and amicus curiae have advocated in the Litigation for wholesale changes to Ohio's service array that threaten the goals and mission of OPRA, which is to preserve consumer choice – including the choice to receive ICF services.
25. OPRA takes great exception to the allegations that its members' ICFs are institutions that contribute to the isolation and marginalization of persons with disabilities. OPRA denies



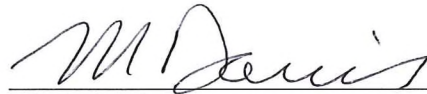
these allegations. Upon receipt of the allegations and the suggestion that there is no place in Ohio's service system for ICFs, OPRA took prompt steps to authorize its intervention in the Litigation to protect OPRA's interests and the interests of its members.

26. If not permitted to intervene, the interests of OPRA's members will be impaired

- a. by limiting the choice of Ohio consumers to self-select those quality ICF services provided by OPRA members;
- b. by requiring OPRA to divert resources away from its mission to preserve choice and to provide training programs to battle the misstatements about ICFs made by Plaintiffs and amicus curiae; and
- c. by requiring that OPRA divert resources away from its advocacy for individuals with developmental disabilities.

I declare under penalty of perjury that the foregoing is true and accurate based upon my personal knowledge.

EXECUTED this 21<sup>st</sup> day of December, 2017.

  
\_\_\_\_\_  
Mark Davis  
President, OPRA

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

## Exhibit C

PHYLLIS BALL, *et al.*

## Plaintiffs

**v.**

JOHN KASICH, *et al.*

**Defendants,**

**and**

**GUARDIANS OF HENRY  
LAHRMAN, *et al.*; OHIO  
ASSOCIATION OF COUNTY  
BOARDS,**

### **Intervenor Defendants.**

**Case No. 2:16-cv-00282**

**Chief Judge**  
**Edmund A. Sargus, Jr.**

**Magistrate Judge**  
**Elizabeth Preston Deavers**

## DECLARATION OF DIANE BEASTROM

I, DIANE BEASTROM, hereby declare and state as follows:

1. I am over eighteen years of age and if called to testify to the matters contained herein, I could do so competently and based upon my personal knowledge.
2. In 1990, I began working with Koinonia Homes (“Koinonia”) as its Executive Director. In 2010, I became Koinonia’s President and Chief Executive Officer. In that role, I oversee all aspects of the organization’s operations, I have authorization to take such action necessary to carry out my duties as President and Chief Executive Officer, and I report directly to Koinonia’s Board of Directors.
3. Koinonia is a leading non-profit 501(c)(3) organization in Northeast Ohio that provides services to adults with intellectual and developmental disabilities. Koinonia’s service portfolio includes 21 licensed group homes, over 40 supported living arrangements, transportation services, and shared living options—all provided in safe and healthy settings.
4. Koinonia provides services in Cuyahoga, Geauga, Lake, Lorain, Medina, and Summit Counties.

5. Koinonia serves individuals with intellectual and/or developmental disabilities who may also have physical challenges, medical issues, learning disabilities, autism, and mental illness.
6. Among the specific services that Koinonia provides are residential services, supported living, adult day services, senior services, employment services, transportation, 24/7 care, and drop-in services. Koinonia also offers recreation and family events, such as holiday celebrations, trips, social education, music therapy, performing arts and other personalized services.
7. Koinonia's focus is on a family atmosphere and its approach is person-centered. Koinonia sees persons with intellectual and developmental disabilities and their families as experts in their own care. Koinonia puts individuals with developmental disabilities and their families at the center of decisions and works alongside them to achieve the best possible outcomes.
8. Koinonia is a member of the Ohio Provider Resource Association ("OPRA"). Representing Koinonia as a member of OPRA, I serve on the board of directors for OPRA and co-chair OPRA's District 7 membership activities. OPRA serves a vital role in advocating for system change, and informing stakeholders and providers in areas of service delivery best practices and regulatory impact and processes.
9. Through its membership in OPRA, Koinonia became aware of the lawsuit captioned *Ball v. Kasich*, Case No. 2:16-cv-00282 (the "Lawsuit"), pending in the U.S. Federal Court of the Southern District of Ohio, Eastern Division.
10. The role that ICFs operated by Koinonia fulfill within the State of Ohio's service system and the services ICFs operated by Koinonia provide through that system are misstated and grossly mischaracterized by the plaintiffs in the Lawsuit.
11. As an ICF service provider whose mission is to partner with individuals with developmental disabilities in Northeast Ohio to achieve healthy, fulfilling, and enriched lives, Koinonia denies plaintiffs' allegations that Koinonia's ICFs, regardless of size, are "institutions" that tend to discriminate, marginalize, and segregate.
12. The plaintiffs in the Lawsuit propose a resolution of the Lawsuit that directly impacts Koinonia and other OPRA members. Koinonia has an interest in the State of Ohio's administration, maintenance, and funding of ICF and community based services. Any redistribution of funding, and any regulatory or legislative changes resulting from lawsuit will directly impact Koinonia and other organizations operating ICFs in the State of Ohio.
13. OPRA is in the best position to represent the interests of its members and speak to the invaluable services that ICF and community based providers offer to thousands of individuals with developmental disabilities in Ohio.

14. It has become clear in recent months that the interests of Koinonia as an operator and manager of ICFs in the State of Ohio are not adequately represented in the Lawsuit by other defendants.
15. Koinonia's interests are different from those of the State of Ohio and its agencies.
  - a. The ICF facilities operated by the State of Ohio are governed by different legal provisions and are funded through different funding sources than are the Koinonia ICFs.
  - b. The State of Ohio and its agencies act as the regulating bodies for Koinonia's ICFs. Koinonia, as the providers of ICF services who is being regulated, has interests that are diverse from those of the State of Ohio.
  - c. Koinonia, through its ICFs, provides the services that are at the heart of the Litigation (*i.e.*, ICF services in facilities that are up to ten beds) and thus is in a better position than the State of Ohio and its agencies to understand the issues affecting the direct care of those Ohioans with disabilities addressed in the Lawsuit, including but not limited to, staffing, labor pool issues, costs and above all, best practices and treatment requirements.
  - d. The State of Ohio's budgetary constraints and political concerns – including the competing lobbying demands for limited state funds –often put the State of Ohio at direct odds with the needs of consumers and the providers who serve them. Through OPRA, Koinonia and other similarly situated ICF providers are able to advocate for and ensure that policy and funding decisions are not made in a political vacuum, but instead with direct regard for consumer care and services.
16. Koinonia's interests are different from those of the Intervening County Boards for similar reasons.
17. Koinonia's interests are different from those of the Intervening Guardians in that Koinonia must balance the competing demands of the Intervening Guardians, budgetary and regulatory constraints and best practices when serving consumers. Accordingly, while the Intervening Guardians and Koinonia agree that ICF services are an essential part of Ohio's service array for persons with disabilities, the Intervening Guardians and OPRA may disagree on the best means for advocating for and implementing the delicate policy decisions that drive the provision of services for persons with disabilities in Ohio.
18. If not permitted to intervene, Koinonia's interests, including but not limited to the following, will be impaired:
  - a. Koinonia's interests in preserving sufficient funding to ensure an adequate supply of quality ICF services in Ohio;

- b. Koinonia's interests in ensuring that best practices and not mere budgetary or political concerns drive policy and funding decisions; and
- c. Koinonia's interests in preserving and ensuring the proper balance and choices in Ohio's service array for persons with disabilities.

I declare under penalty of perjury that the foregoing is true and accurate based upon my personal knowledge.

EXECUTED this 21<sup>st</sup> day of December, 2017.



Diane Beasom  
President and CEO  
Koinonia Homes,