

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

STATE OF FLORIDA, by and)	
through BILL McCOLLUM, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 3:10-cv-91-RV/EMT
)	
UNITED STATES DEPARTMENT)	
OF HEALTH AND HUMAN)	
SERVICES, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**MOTION AND MEMORANDUM IN SUPPORT THEREOF FOR LEAVE TO
FILE BRIEF OF AMICUS CURIAE AMERICAN NURSES ASSOCIATION**

Pursuant to the Court’s Order of June 14, 2010, *amicus curiae* American Nurses Association (“ANA”) respectfully moves this Court for leave to file an *amicus* brief in support of Defendant’s Motion for Summary Judgment on the constitutionality of the provisions of Section 1501 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010) (collectively “Affordable Care Act” or “ACA”).

Corporate Disclosure Statement

The American Nurses Association is a District of Columbia non-profit, non-stock corporation. As such, it is not a publicly held corporation. The American Nurses Association does not have a parent organization, and it is not related to any publicly held corporation or entity with a financial interest in this litigation.

Interests of the *Amicus Curiae*

Amicus Curiae is the only full-service professional organization representing the nation's entire registered nurse population of 3.1 million nurses. Founded over a century ago and with members in every state across the nation, ANA is comprised of state nurses associations and individual nurses. In addition to its own membership of over 170,000 registered nurses, ANA's 25 organizational affiliates represent over 300,000 RNs. ANA believes that the Affordable Care Act is a significant achievement for the patients it serves because it ensures greater protection against losing or being denied health insurance coverage and it provides better access to primary care and to wellness and prevention programs through such aspects as minimum coverage requirements and expanded Medicaid coverage. ANA has stated that a health care system focused on primary care, prevention and chronic disease management can alleviate much of the expensive acute care that currently takes its toll in human suffering, as well as dollars. Nursing's strengths as a profession -- in providing holistic care that contemplates the individual, his or her family and community -- is exactly the emphasis sought in a reformed health care system. The ACA provides a balanced approach to ensuring maximum insurance coverage and access to quality care.

By ensuring that nearly all Americans are insured and thus able to afford care, the Affordable Care Act will reduce economic pressure on nurses and other health providers and enable them to focus more exclusively on helping patients get better and stay well. Increasing the number of insured patients will, over time, create a healthier population, which will permit registered nurses to provide health care services in a variety of settings with fewer economic and practical constraints. Accordingly, ANA has a significant interest in assisting the Court in understanding that the minimum coverage provision

challenged by plaintiffs is essential to the Affordable Care Act's provisions ensuring that health insurance is both universally available and affordable.

Because nurses work on the front lines of the health care system, they know from experience that patients who put off needed care due to lack of insurance often end up sicker and require much costlier emergency room care. Moreover, because nurses work in all areas of the health care industry—from direct care to hospital administration—ANA has a uniquely broad perspective on the impact of the Affordable Care Act and the capacity to offer information that can guide the court's understanding of the consequences of removing the minimum coverage provision to the health provider and insurance markets as a whole.

***Amicus* Has Unique Information That Is Desirable and Relevant to the Disposition of This Case**

Plaintiffs allege that the Necessary and Proper Clause cannot sustain the minimum coverage provision because upholding that provision would “allow Congress to exceed its legitimate authority by purposefully adopting schemes dependent for their success on the exercise of authority otherwise denied to the federal government.”

Memorandum in Support of Plaintiffs' Motion For Summary Judgment at 22. But this claim misunderstands the Necessary and Proper power, which specifically authorizes Congress to “choose the means reasonably adapted to the attainment of the permitted end” even if such means could not be enacted independently. *United States v. Darby*, 312 U.S. 100, 121 (1941); see *United States v. Comstock*, 130 S.Ct. 1949, 1957 (2010).

ANA's brief will present unique information demonstrating that, in enacting the minimum coverage provision, Congress chose a means that was reasonably adapted to

ensuring that the ACA's insurance industry regulations and tax subsidies are effective, non-wasteful and not counterproductive.

ANA's brief will present unique information demonstrating the degree to which uninsured patients are less likely to receive preventive care or early treatment for conditions that can deteriorate into more severe illnesses that are far more expensive to treat. One study determined that children enrolled in a public health insurance plan were 15 percentage points more likely to receive preventive care. Institute of Medicine, *America's Uninsured Crisis: Consequences for Health and Health Care* 64 (February 2009). Likewise, routine preventive care such as "mammography, Pap testing, cholesterol testing, and influenza vaccination" is far less common among adults who experience frequent periods of uninsurance. *Id.* While women who are consistently insured have a 76.7 percent chance of receiving mammographies, that chance declines to 34.7 percent for women who experience frequent periods of uninsurance. *Id.* "Uninsured adults with chronic illnesses were much more likely than their insured peers to go without any medical visits during the year—even when they were diagnosed with serious conditions" *Id.*

The uninsured's diminished likelihood of receiving preventive or routine care exacerbates the problem of cost shifting. As a condition of their hospital's participation in Medicare, hospital emergency departments must stabilize any patient who seeks treatment for an emergency medical condition regardless of the patient's ability to pay. *See* Emergency Medical Treatment and Labor Act, 42 U.S.C. § 1395dd. Thus, an uninsured patient whose condition deteriorates because he or she is unable to afford preventive or early care will nonetheless receive expensive emergency treatment for that condition. The cost of this uncompensated care must either be distributed to other patients—including those who will receive subsidies under the ACA—or to government health programs such as Medicare or

Medicaid, or it must be diverted from funds the hospital could use to build additional infrastructure or hire additional health professionals.

Because ANA's constituents work at all levels of the health care industry, *amicus* is uniquely situated to advise the court on the minimum coverage provision's impact upon health providers and the patients who those providers serve. Moreover, ANA can provide this court with relevant information demonstrating why the minimum coverage provision was validly enacted under Congress' Necessary and Proper power.

CONCLUSION

For these reasons, *amicus* respectfully submits that the Court should grant this Motion for Leave to File an *Amicus* Brief.

Dated: November 12, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2010, the foregoing document was filed with the clerk of the court via the CM/ECF system, causing it to be served on all counsel of record.

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CERTIFICATE OF LOCAL RULE 7.1(B) COMPLIANCE

I contacted counsel for both plaintiffs and defendants seeking consent to the filing of *amicus*' brief. Plaintiffs' counsel indicated that plaintiffs reserve the right to respond to this motion. Counsel for the defendants stated that defendants neither consent nor object to the filing of *amicus* briefs.

DATED: November 12, 2010

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