

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

Pensacola Division

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

**MOTION OF HOUSE REPUBLICAN LEADER JOHN BOEHNER FOR LEAVE
TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS’
MOTION FOR SUMMARY JUDGMENT**

Pursuant to this Court’s Order on *Amicus Curiae* Filings (June 14, 2010) and Federal Rule of Appellate Procedure 29, House Republican Leader John Boehner respectfully moves for leave to file a brief as *amicus curiae* in support of Plaintiffs’ Motion for Summary Judgment dated November 4, 2010.

I. INTEREST OF *AMICUS*

As a member of the leadership of the United States House of Representatives, movant has a keen interest in the constitutional issues at stake in this case, as well as the long-term effects that the Court’s decision on summary judgment may have on the

legislative process, notwithstanding any opposition movant may have voiced to the Patient Protection and Affordable Care Act (hereinafter “PPACA”), Pub. L. No. 111-148 (2010), on policy grounds. All members of Congress, including movant, have taken oaths to uphold the Constitution of the United States. While our constitutional system is built on both vertical and horizontal checks and balances, members of Congress have an independent responsibility to ensure that the Legislative Branch stays within the bounds of the powers afforded it by the Constitution. Movant therefore wishes to be heard on issues that touch on serious constitutional questions. As a member of congressional leadership, movant is particularly well placed to discuss the negative effects that Defendants’ position would have on Congress’ legislative process.

II. MOVANT HAS A UNIQUE PERSPECTIVE AND HIS BRIEF WILL BE RELEVANT AND DESIRABLE TO THE DISPOSITION OF THE CASE

In particular, movant believes that his perspective as a member of congressional leadership will be helpful to the Court in determining whether or not the Individual Mandate falls within Congress’s power under the Necessary and Proper Clause. Movant would argue in his brief that the Individual Mandate is neither necessary nor proper as it does not implement or facilitate enforcement of the Act’s insurance industry reforms. Defendants acknowledge that, without the Individual Mandate, there is a gap between the goals of the PPACA’s insurance reforms and its expected real-world results,¹ and use that

¹ Defendants state that, without the Individual Mandate, these reforms would “inexorably drive [the health insurance] market into extinction.” Defendants’ Memorandum in Support of Motion to Dismiss (hereinafter “Defs. MTD”) at 46 (quoting *Health Reform in the 21st Century: Insurance Market Reforms*: Hearing Before the H. Comm. On Ways

shortcoming to argue that the Necessary and Proper Clause allows Congress to bridge that gap with an otherwise unconstitutional Individual Mandate.

In his brief, movant would argue that Defendants' interpretation of the Necessary and Proper Clause is incorrect, would cause significant long-term harm to the Constitution, and would encourage future Congresses to pass ill-conceived or poorly-drafted laws. Rather than simply giving Congress the means to "implement" one or more of its enumerated powers, *see United States v. Comstock*, 130 S. Ct. 1949, 1956 (2010) ("we look to see whether the statute constitutes a means that is rationally related to the implementation of a constitutionally enumerated power"), Defendants' interpretation would give Congress an *all-purpose* power to fill the gaps left by other legislation. Under this interpretation, a law would need only be predicated upon a Congressional finding that it is "necessary" to alleviate the supposed negative effects of other legislation, effectively doing away with the requirement that Congressional action be "legitimately predicated on an enumerated power." *Comstock*, 130 S. Ct. 1963. That would be a significant departure from settled law, eliminating one of the key limits on federal power.

Movant also would show in his brief how Defendants' logic invites poorly-conceived or poorly-drafted statutes; a consequence of their position not discussed by the parties. Congress could routinely enact statutes which, like the health insurance industry

and Means, 111th Cong. (2009), at 13 (Uwe Reinhardt, Ph.D., Princeton University)) (alteration in original). Consequently, Defendants argue that the Mandate is "essential," and that Congress may employ "any means" reasonably adapted to "achieving [the] key reforms" found elsewhere in the Act. Defs. MTD at 47-48.

reforms discussed above, are defective or otherwise insufficient to actually meet Congress's goals. By doing so, Congress could render the use of extra-constitutional fixes "essential." Thus, Congress could use the Necessary and Proper Clause to circumvent the limits on its powers. The more frequently Congress passes defective or contradictory statutes, and the more harmful or insufficient those statutes are, the greater the power that Congress could assume for itself under the Necessary and Proper Clause.

Finally, movant would address how Defendants' position, if accepted, could lead to less electoral accountability to voters. The more convoluted the legislation passed by Congress, the more likely it will be that Members of Congress will not be able to understand or articulate the full scope of the legislation that has been considered and enacted. Consequently, Members will be less able to explain the impact of the legislation to their constituents, reducing the ability of voters to hold Members accountable for voting for clearly defined policies and making not only the legislative, but also the electoral process effectively dysfunctional.

In short, if adopted by the court, Defendants' interpretation of the Necessary and Proper Clause would create incentives for Congress to pass ill-conceived or unrealistic statutes. Movant is uniquely positioned to make this argument and to explain why the Court should reject Defendants' position.

III. CONCLUSION

For all the foregoing reasons, I respectfully submit that leave to file the proposed brief as *amicus curiae* should be granted.

November 12, 2010

Respectfully submitted,

/s/ Carrie L. Severino
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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of November, 2010, a copy of the foregoing Motion for Leave to File Brief as *Amicus Curiae* was served on all counsel of record in this case through the Court's Notice of Electronic Filing system.

/s/ Carrie L. Severino
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