

**UNITED STATES DISTRICT COURT**

**Northern District of Florida**

*Pensacola Division*

Case No.: 3:10-cv-91-RV/EMT

**State of Florida, et al.,**  
*Plaintiffs,*

v.

**U.S. Department of Health and  
Human Services, et al.**  
*Defendants.*

**MOTION TO INTERVENE PURSUANT TO RULE 24(a)(2) AS A MATTER OF  
RIGHT, INTERVENORS' MOTION TO ALTER JUDGMENT PURSUANT TO  
RULE 59 (e) and INTERVENORS' MOTION FOR A PRELIMINARY  
INJUNCTION PURSUANT TO RULE 65, FED. RULES. CIV. P.**

Beatrice M. Heghmann and Robert A. Heghmann ("Intervenors") hereby move to intervene pursuant to Rule 24 (a)(2) as a matter of right to alter the Decision of this Court dated January 31, 2011 and move for a Preliminary Injunction pursuant to Rule 65, Fed. Rules Civ. P.

There are allegedly some twenty (20) law suits challenging the constitutionality of the new health reform legislation, the Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 1029 (2010) and the Health Care and Education Reconciliation Act of 2010, Pub L. 111-152, 124 Stat. 1029 (2010). ("PPACA"). All but two of those lawsuits center upon the individual mandate. Two of the suits, however, present a broader constitutional challenge to PPACA. One of these is a lawsuit filed in the United States District Court for the Southern District of New York is *Heghmann v. Sebelius*, 09 cv

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5880 (BSJ)(GWG)(June 25, 2009) brought by the Intervenors. The second suit was filed by the Goldwater Institute in the U.S. District Court in Arizona, *Coons v. Geithner*, cv-10-1714-PHX-GMS (August 12, 2010). The coons case does challenge the individual mandate but continues to challenge PPACA on a much broader range of constitutional issues.

Since the Intervenors are covered by an employer based health care plan the litigation did not include allegations concerning Medicare/Medicaid reform or the individual mandate which is the subject of this litigation. The *Hegmann* suit alleges that the Health Information Technology for Economic and Clinical Health Act (“HITECH”) contained in the American Recovery and Reimbursement Act, Pub. L. 111 – 5 (2009) (“ARRA”) violated their Fundamental Right to Privacy.

The original suit was dismissed before allegations concerning the PPACA could be added. That dismissal has been appealed to the Circuit Court of Appeals for the Second Circuit, No. 10 – 2877. The Appellants’ Brief has been filed but to date the Government has not filed an Appellee Brief. In the Appellants’ Brief the Intervenors ask the court to expand the issues on appeal under *Schlagenhauf v. Holder*, 379 U.S. 104, 110-112 (1964) to include the following issues:

1. Did the District Court err in Not Allowing the Appellants’ to Amend their Complaint to Include Allegations Challenging the Constitutionality of the Patient Protection and Affordable Care Act, Pub. L. 111-148 and the Health Care and Education Reconciliation Act, Pub. L. 111-152?
2. Do the Patient Protection and Affordable Care Act, Pub. L. 111-148 and the Health Care and Education Reconciliation Act, Pub. L. 111-152 Enjoy the Usual Deference Given by this Court to Acts of Congress?

3. Do the Appellants Enjoy a Fundamental Right to Personal Security which Includes the Right to Control Their Own Health Care?
4. Is the Right to Purchase Health Insurance a Corollary of the Appellants' Fundamental Right to Control their Own Health Care?
5. Do the Changes in the Tax Code Combined with Mandates, Fees and Taxes Imposed Upon Health Care Providers, Health Insurers, Medical Device Manufacturers, Drug Companies and Employers Offering a Health Care Benefit to their Employees Unduly Burden the Appellants' Right Control their Own Health Care?

The unspoken goal of PPACA is the destruction of the employer based (sometimes called private payer) health insurance system. Only when private health insurance is eliminated (as it was until recently in Canada) can the Government achieve what it really wants, a single payer government controlled system. The New York litigation was designed to protect and preserve employer based health care. Although the litigation in this Court as well as similar litigation in Virginia, New Jersey and Michigan did not directly impact our law suit in New York, the Intervenor has followed these cases including review of the pleadings and the briefs. There was no conflict between this case and our case until this Court issued its Order Granting Summary Judgment on January 31, 2011. In that Order the Court ruled the entire PPACA to be unconstitutional. Order at 74. But the Court refused to issue injunctive relief. *Id.* at 75.

The denial of injunctive relief has little impact in this case since the provision in contention, the individual mandate, does not become effective until January 1, 2014. The Supreme Court should resolve this matter in late 2013 or 2014. The decision will have a devastating impact upon the ability of the Intervenor to have other sections of the PPACA, specifically the cost increasing provisions that will drive the cost of insurance

up and employers out of the insurance market, ruled unconstitutional and enjoined. What the Government will now do is ask the appellate court in New York to strike that portion of their appeal dealing with PPACA as moot and the Intervenors can readily anticipate a New York court ruling that their PPACA allegations are moot in light of this Court's decision or, more likely, should be dismissed without prejudice to renew should the decision of this Court be reversed. The problem is that by 2013 or 2014 private payer insurance will be extinct and neither this Court nor any other court can will bring it back. The Intervenors will be effectively prevented from protecting their interest in employer based health insurance and seeking injunctive relief to prevent the destruction of employer based, private insurance and their loss of insurance under their employer's health benefit. They must be allowed to intervene as a matter of right because none of the existing parties are representing their interest.

The Intervenors agree that PPACA as amended by HCERA is unconstitutional. The Intervenors seek to intervene solely to challenge the determination by this Court that injunctive relief is not necessary. The Intervenors will ask this Court to impose injunctive relief preventing:

1. President Obama from implementing PPACA by Executive Order;
2. Secretary Sebelius from using any part of the budget of the Department of Health and Human Services to implement PPACA or make any of the determinations, rules or procedures she is empowered to make under PPACA;
3. The Center for Medicare and Medicaid Services from using either its budget or its power of the purse to implement directly or indirectly PPACA;

4. The Department of the Treasury from collecting any of the fees or taxes specified under the PPACA or hire any Internal Revenue Service employees to implement or enforce PPACA and
5. The states who are parties to this litigation, and each of them, from approving any premium increase for health care insurance based upon the costs of implementation of the provisions of PPACA as amended by HCERA and, to the extent that premium increases have already been approved based upon the costs of implementation, that those premium increases be rolled back forthwith.

Pursuant to Local Rule 7.1 (A) a Memo of Law is attached. Further, pursuant to Local Rule 7.1 (B), the Intervenors conferred with counsel for both the States and the Government concerning this motion. No resolution could be reached. Since the Intervenor is not seeking to introduce additional liability claims or to disturb the decision as to constitutionality, they have not filed a third-party complaint although they are prepared to do so if the Court deems it necessary.

Dated: February 7, 2011

Respectfully submitted,



Robert A. Heghmann



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CERTIFICATION

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*Defendants.*

February 8, 2011

I hereby certify that on the 8<sup>th</sup> day of February, year of Our Lord 2011 I served a copy of the Motion to Intervene and the Memorandum of Law in Support of the Motion to Intervene, Motion to Alter Judgment and Motion for Preliminary Injunction with attachments upon the other parties via the U.S. Post Office, postage pre-paid, at the following addresses:

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