

The Honorable Roger Vinson

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
Pensacola Division

STATE OF FLORIDA, by and through  
BILL McCOLLUM, ATTORNEY  
GENERAL OF THE STATE OF  
FLORIDA, et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES, et  
al.,

Defendants.

Case No. 3:10-cv-91

**MOTION OF GOVERNOR OF WASHINGTON FOR LEAVE TO FILE  
AMICUS MEMORANDUM IN SUPPORT OF CONTINUING  
IMPLEMENTATION OF AFFORDABLE CARE ACT IN STATE OF  
WASHINGTON AND MEMORANDUM IN SUPPORT THEREOF**

## MOTION

The Governor of the State of Washington respectfully requests leave to file an *amicus curiae* memorandum in reply to Plaintiffs' Memorandum in Opposition To Defendants' Motion to Clarify" because important interests of her office and state will not be otherwise represented.

### MEMORANDUM IN SUPPORT OF MOTION

Christine O. Gregoire is Governor of Washington. The Washington Constitution Article III, § 2 provides that "[t]he supreme executive power of this state shall be vested in a governor...." The Washington Supreme Court has held that "the Governor, under our Constitution, is the highest executive authority." *State ex rel Hartley, Governor v. Clausen*, 264 P. 403, 405 (Wash. 1928). The Court went on to hold, *id.* at 406:

[T]he Attorney General may act in any matter such as this upon his own initiative or at the request of the Governor, but upon his failure or refusal to act, the Governor, because of the provisions of section 2, art. 3, of our Constitution, granting him the supreme executive power of the state, is entitled to maintain an action such as this.

The Attorney General of Washington is among the plaintiffs that have asserted to this Court that "[t]he preexisting status quo should be in effect" with respect to the parties before the Court and that the Court's declaratory judgment is the functional equivalent of an injunction returning the parties to the status before the Affordable Care Act (ACA) was enacted. *See* "Plaintiffs' Memorandum In Opposition To Defendants' Motion To Clarify" (Document 158, filed 02/23/11). The Attorney General has declined Governor Gregoire's request that he advise this Court that he does not represent the Governor of the State of Washington or any other executive offices or agencies, and that any injunctive relief should not encompass any office or agency of the State of Washington other than his own. Therefore, Governor Gregoire requests leave to file the

accompanying amicus memorandum, attached as Exhibit 1, for the purpose of setting forth the basis for her position that the Washington Attorney General's joinder in this lawsuit does not keep other state of Washington officials from implementing the ACA and receiving the current benefits of the ACA for the State of Washington, and should not constrain the benefits Washington citizens are currently receiving under the ACA.

#### **CERTIFICATE OF LOCAL RULE 7.1(B) CONFERENCE**

Counsel for the Governor of the State of Washington conferred with Plaintiffs' counsel but the parties were unable to reach an agreement as to the relief sought in this Motion.

#### **CERTIFICATE OF SERVICE**

I hereby certify, that on this 28<sup>th</sup> day of February, 2011, a copy of the foregoing was served on counsel of record for all parties through the Court's Notice of Electronic Filing system.

DATED: February 28, 2011

/s/ Guy M. Burns \_\_\_\_\_

GUY M. BURNS • Florida Bar No. 0160901  
JOHNSON, POPE, BOKOR, RUPPEL & BURNS, LLP  
Post Office Box 1100 • Tampa, FL 33601-1100  
813.225.2500 • Fax 813.223.7118 • Email: guyb@jpfirm.com

REBECCA J. ROE, WSBA #7560  
WILLIAM RUTZICK, WSBA #11533  
KRISTIN HOUSER, WSBA #7286  
ADAM J. BERGER, WSBA #20714  
SCHROETER, GOLDMARK & BENDER  
810 Third Avenue, Suite 500 • Seattle, WA 98104  
206.622.8000 • Fax 206.682.2305 • Email: roe@sgb-law.com