

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

STATE OF FLORIDA, by and through
Attorney General Pam Bondi, et al.;

Plaintiffs,

v.

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

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

Defendants.

ORDER

Non-party Robert P. Smith, Jr., pro se, has filed an “appeal” in this case, which is currently pending in the Eleventh Circuit. He has since filed a motion in this court, requesting an order to “remedy” the incomplete transcript of the oral argument on the parties’ cross summary judgment motions, which was held on December 16, 2010 (doc. 176).

It is not entirely clear what Smith is alleging, or what relief he may be seeking. He apparently believes that I asked the following question of defendants’ attorney during the oral argument: “Should this Act be considered as dealing with the consequences of required health services?” He contends that defense counsel answered “Yes” to that question, without any additional elaboration. None of this alleged exchange is in the transcript. Smith appears to believe that the exchange was “stunn[ing],” and could potentially impact his pending appeal, as it illustrates “the detrimental ACTIVITY of the so-called self-pay who in consequence of [the Emergency Medical Treatment and Active Labor Act] demand and take \$43 Billion worth of medical care from the system without paying for it.” In other words, Smith maintains (and he believes that my alleged question implicitly recognizes) that the uninsured are “active” insofar as they use hospital emergency rooms for

their health care needs, and not pay for it, which he calls "bad debt." He further suggests that I realized (only after-the-fact) that my question may have raised "an alternate conception of the Act's regulatory target," which could have prevented me from granting summary judgment, so I chose to "excise the comment from the transcript." Smith "insists" (and "honor requires") that I now restore the "missing fragment [that was] redacted from the transcript."

Preliminarily, it would appear that I do not have jurisdiction to grant Smith the relief he seeks. See Shewchun v. United States, 797 F.2d 941 (11th Cir. 1986) (district court generally lacks jurisdiction over case once an appeal has been filed). But if I did have jurisdiction, his motion must be, and would be, denied. I have no independent recollection of the alleged question or answer. I have checked with the court reporter who transcribed the December 16th oral argument; she has reviewed her computerized stenographic notes; and there is no record of it. I most assuredly did not modify, edit, or redact her final transcript in any way (nor did anyone in my Chambers or anyone acting on my behalf). I have never and would never --- under any circumstances or for any reason --- do what Smith seems to suggest was done here.¹

Accordingly, Smith's motion to "remedy" the allegedly incomplete transcript (doc. 176) is DENIED for lack of jurisdiction. If I do have jurisdiction, the motion is DENIED as being totally without basis or grounds.

DONE and ORDERED this 16th day of March, 2011.

/s/ Roger Vinson
ROGER VINSON
Senior United States District Judge

¹ Nor would it have made any sense whatsoever for me to do so, since Smith's general argument (that the uninsured are engaged in an "activity" because emergency rooms are "required [to provide] health services," which resulted in \$43 billion in uncompensated care in 2008) was frequently mentioned during both oral arguments, and discussed at length in the parties' pleadings and in my prior orders.