

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

STATE OF FLORIDA, by and through Bill
McCollum, et al.,

Plaintiffs,

v.

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

Defendants.

Case No.: 3:10-CV-91-RV-EMT

**MOTION FOR CLARIFICATION OF THE COURT'S JUNE 14, 2010 ORDER
and IN THE ALTERNATIVE FOR LEAVE TO APPEAR AS AMICUS CURIAE
and MEMORANDUM IN SUPPORT**

The Attorneys General of the States of Oregon, Iowa, and Vermont (“Amici States”) respectfully request clarification of this Court’s June 14, 2010 Order on *Amicus Curiae* Filings (Doc # 50). The Amici States seek clarification because the Court did not specifically address filings by states, and states (like the federal government) are typically given broad latitude for purposes of amicus filings. If the Court did intend its Order to limit filings by states, the Amici States request leave to file a joint¹ *amicus curiae* brief during the motion to dismiss phase of these proceedings because no party to this proceeding fairly represents the perspective and interests of the Amici States and this case may be resolved prior to the summary judgment stage.

¹ The joint *amicus* brief would be a single brief from the three moving states and a number of other state attorneys general.

I. STATES ARE GENERALLY GIVEN GREATER LATITUDE TO PARTICIPATE AS *AMICI* THAN INDIVIDUALS AND ORGANIZATIONS.

The Court's June 14, 2010 Order provides that "[a]ny organization or individual" desiring to file an *amicus curiae* brief in this matter must wait until the summary judgment phase. The use of the phrase "organization or individual" suggests that the Order does not apply to amicus filings by states. Such an interpretation of the Order would be consistent with the Federal Rules of Appellate Procedure, which this Court has called "instructive." The Rules allow a state to "file an amicus-curiae brief without the consent of the parties or leave of court." FRAP 29(a); *see also* Supreme Court Rule 37(4) ("No motion for leave to file an *amicus curiae* brief is necessary if the brief is presented on behalf of *** a State, *** when submitted by its Attorney General***."). In the experience of the Amici States, federal district courts routinely allow states to file *amicus* briefs, even though the Federal Rules of Civil Procedure do not expressly provide for such filings.

States are typically given broader latitude to participate as *amici* than private organizations and individuals, because of the states' unique role in representing the interests of their citizens. The role of the Amici States is particularly important here, where the plaintiff states are trying to block, on federalism grounds, a federal law that the Amici States believe is both constitutional and important to the health and welfare of their citizens. The Amici States thus ask the Court to clarify that its June 14, 2010 Order does not apply to states so as to allow the filing of an *amicus curiae* brief by the Amici States.

II. IN THE ALTERNATIVE, THE COURT SHOULD GRANT THE AMICI STATES LEAVE TO FILE, BECAUSE THE AMICI STATES HAVE A UNIQUE AND CRUCIALLY IMPORTANT PERSPECTIVE ON THE CONSTITUTIONAL CLAIMS ASSERTED BY THE PLAINTIFF STATES.

A. An *amicus curiae* brief from the Amici States is desirable and relevant to the disposition of this case.

Plaintiffs in this matter include twenty states that challenge a federal law that will have a profound impact on all fifty states. Because of the broad impact of the Court's ruling, it will be helpful to the Court to hear not just from those state officials who oppose the PPACA, but also from states that believe the Act is constitutional and will have a positive impact on their citizens. As discussed below, the perspective of the Amici States will assist the Court in evaluating whether the PPACA strikes an appropriate balance between national requirements that promote the goal of expanding access to health care in a cost-effective manner and state flexibility in designing programs to achieve that goal.

B. The Amici States have unique information and a unique perspective that can help the Court beyond the guidance that will be provided by the parties' counsel.

The Amici States bring a unique and crucial perspective to this case – a perspective not advanced by the parties. The Amici States have long been leaders and innovators in the health care policy arena and anticipate continuing to play that role under the PPACA. As a result, the Amici States are intimately familiar with the complex and longstanding relationship between the federal government and the states in the healthcare arena, and are similarly familiar with the strengths and limitations of a state-by-state approach to health care reform. Furthermore, the Amici States have long been involved in the day-to-day administration of the Medicaid program, wrestled on a face-to-face basis with the challenges of uncompensated care, and assume significant on-the-ground responsibility for protecting the health of their citizens—all experiences unique to state

governments. Thus, the Amici States are singularly positioned to assist the Court in evaluating the legal issues presented in this case.

Allowing the Amici States to participate at this stage of the litigation is particularly important because the states' perspectives as sovereign states are quite different from those of the federal government, particularly on questions of state sovereignty and the federal-state balance of power. The federal government has a strong interest, if not an obligation, to defend its own laws and its own broad authority to act. The Amici States have a similar, if not identical, interest in protecting their own sovereignty and proper spheres of authority. The Amici States bring a balanced perspective on principles of federalism, informed by decades of experience administering cooperative federal-state programs. Because the plaintiff states have framed this case as a dispute between states and the federal government over the bounds of federal authority, the Court should not exclude, even at the motion to dismiss stage, the perspective of states with sharply differing views from those of the plaintiffs.²

C. The Amici States have significant interests that will be affected by the decision in this case.

Despite their differing positions on the validity and impact of the PPACA, the interests of the Amici States are quite similar to the interests of the plaintiff states—they both have sovereign interests in protecting the health and welfare of their citizens. The Amici States believe that the PPACA is constitutional and that it will have a positive impact on the delivery of health care in all fifty states—and the Amici States will suffer negative consequences if the PPACA is struck down.

² The Amici States have reviewed the defendants' memorandum in support of their motion to dismiss and believe that the views and perspectives that would be voiced in the Amici States' *amicus* brief would complement and not be repetitive of the federal defendants' brief.

Without national health care reform, states will see rising numbers of uninsured citizens coupled with substantial increases in state spending for uncompensated care, Medicaid, and the State Children’s Health Insurance Program.³ These increases threaten to overwhelm already overburdened state budgets. Furthermore, absent the PPACA, these spending increases would be coupled with ever-increasing numbers of non-elderly individuals without access to health insurance.⁴ In summary, without a national solution to the health care crisis, for the foreseeable future the Amici States would be forced to spend more and more on health care and yet slide farther and farther away from their obligation to protect the health and well being of their citizens.

III. Conclusion

For the foregoing reasons, the Amici States respectfully request that this Court clarify its June 14 Order and if necessary, grant leave to the Amici States to file an *amicus curiae* brief at this time.

June 23, 2010

Respectfully submitted,

John Kroger
Oregon Attorney General

Tom Miller
Iowa Attorney General

William H. Sorrell
Vermont Attorney General

³ Bowen Garrett et. al., The Cost of Failure to Enact Health Reform: Implications for States” at 51 Robert Wood Johnson Foundation and the Urban Institute, September 2009. Available at: http://www.urban.org/uploadedpdf/411965_failure_to_enact.pdf (last viewed 5/11/2010).

⁴ *Id.*

/s/ Keith S. Dubanevich
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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2010, the foregoing document was filed with the Clerk of Court via the CM/ECF system, causing it to be served on all counsel of record.

/s/ Keith S. Dubanevich
KEITH S. DUBANEVICH