

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

STATE OF FLORIDA, by and)	
through Bill McCollum, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 3:10-cv-91-RV/EMT
)	
UNITED STATES DEPARTMENT OF)	
HEALTH AND HUMAN SERVICES,)	
<i>et al.</i> ,)	
_____)	

**MOTION OF SMALL BUSINESS MAJORITY FOUNDATION, INC.
FOR LEAVE TO FILE BRIEF AMICUS CURIAE
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Pursuant to the Court's Order on *Amicus Curiae* Filings entered June 14, 2010 (Doc. 50), Small Business Majority Foundation, Inc. ("SBMF") respectfully moves the Court for an order granting SBMF leave to file a brief *amicus curiae* in support of Defendants' Motion for Summary Judgment (Doc. 82) filed on November 4, 2010, as to Count I of the Complaint. In support of this Motion, SBM states as follows:

1. *Amicus* Has an Interest That May Be Affected By the Decision in this Case

SBMF is a national, nonpartisan organization, founded and run by small business owners across the United States. SBMF is a District of Columbia non-profit organization exempt from tax as an educational organization under section 501(c)(3) of the Internal Revenue Code. SBMF advocates the interests of small business owners and researches and disseminates policy proposals addressing the special interests and needs of small businesses.

Over the past few years, SBMF has been focused on the biggest single problem facing small businesses: the skyrocketing cost of health care. The enactment and successful implementation of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 199 (the “ACA”), the law that is the subject of this lawsuit, is of paramount importance to SBMF and the small business owners whose interests SBMF promotes.

2. The Proposed *Amicus* Brief Is Desirable and Relevant to the Disposition of the Case

SBMF desires to file a brief *amicus curiae* to bring to the attention of the Court information about the particular beneficial impact of the minimum coverage provisions of the ACA—the subject of Count I of the Complaint—on small business owners. Small businesses represent 99.7 percent of all employer firms; pay 44 percent of the total U.S. private payroll; and have generated 64 percent of all net new jobs over the past fifteen years. U.S. Small Business Administration, *FAQ's: Frequently Asked Questions: Advocacy Small Business Statistics and Research*, available at: <http://web.sba.gov/faqs/faqindex.cfm?areaID=24>. The impact of the new law on small business is clearly a significant part of its overall impact on interstate commerce.

Among the plaintiffs in this case are a small business owner, Mary Brown, and an organization of small businesses that opposed the enactment of the ACA, the National Federation of Independent Business (“NFIB”). In its Order and Memorandum Opinion on Defendants’ Motion to Dismiss filed October 14, 2010 (Doc. 79)(“Order and Opinion”), this Court held that Ms. Brown has standing as an actual party to the case because she had alleged ““a realistic danger of sustaining a direct injury as a result of the statute’s operation or enforcement,...”” *id.* at 35 (quoting *Babbitt v. United Farm Workers Nat’l*

Union, 442 U.S. 289, 298 (1979)) “which is not ‘merely hypothetical or conjectural’...” (quoting *Fla. State Conf. of NAACP v., Browning*, 522 F.3d 1153, 1161 (11th Cir. 2008)). Order and Opinion at 35. The Court further ruled that the NFIB has representative standing as a party to the case because its members would have standing to sue in their own right and because the interests that the NFIB “seeks to protect in challenging the individual mandate on behalf of its members...are germane to the NFIB’s purpose and mission ‘to promote the rights of its members to own, operate, and earn success in their businesses, in accordance with lawfully-imposed governmental requirements.’” Order and Opinion at 37 (citation omitted).

By the same token, SBMF is an association of small business owners who believe that the ACA’s minimum coverage provision directly *benefits* small businesses and that small businesses will be injured if and to the extent that the minimum coverage provision is held unconstitutional. The views to be expressed in the proposed *amicus* brief are germane to SBMF’s purpose of advocating for the interests of small business owners. If, as this Court ruled, Ms. Brown and NFIB have standing as actual parties defendant to this case, because of the unique and particular impact of the law on small business owners, then surely it would be helpful and desirable for the Court to receive and consider the views of an organization representing small business owners who support the ACA’s minimum coverage provision.

3. *Amicus* SBMF Has Unique Information and Perspective That Will Be Helpful to the Court

All the parties to this case are well-represented. *No* party to this case, however, represents small business owners who support the ACA and its minimum coverage provisions, and who believe they stand to suffer financially if those provisions are not

fully implemented as enacted. There is little discussion in defendants' summary judgment motion papers of the specific impact of the minimum coverage provisions on small businesses. SBMF believes that it can bring to the Court's attention unique information about the positive effects of the minimum coverage provisions on small business owners and that its perspective will also be unique precisely because no other party brings its particular point of view to bear on the issues in this case.

CONCLUSION

For the reasons set forth above, the Motion of Small Business Majority Foundation, Inc., for leave to file a brief *amicus curiae* in support of the defendants' motion for summary judgment, as to Count I, should be granted.

Respectfully submitted,

Dated: November 10, 2010

/s/ Joseph E. Sandler
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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2010, the foregoing document was filed with the Clerk of court via the CM/ECF system, causing it to be served on counsel of record for all parties.

/s/ Joseph E. Sandler

Joseph E. Sandler
Counsel for Proposed Amicus Curiae
Small Business Majority Foundation, Inc.