

**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,))	Case No.3:10-cv-91-RV/EMT
)	
v.))	
)	
UNITED STATES DEPARTMENT))	
OF HEALTH AND HUMAN SERVICES))	
<i>et al.</i> ,))	
)	
Defendants.))	
)	

**MOTION OF AMERICAN CIVIL RIGHTS UNION
FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
IN SUPPORT OF PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT AND
IN OPPOSITION TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

The American Civil Rights Union (ACRU) moves for leave to file the accompanying *amicus curiae* brief in support of Plaintiff’s motion for summary judgment and in opposition to Defendant’s motion for summary judgment.

I. INTEREST OF MOVANTS

The American Civil Rights Union is a non-partisan, non-profit, 501(c)(3), legal/educational policy organization dedicated to defending all constitutional rights, not just those that might be politically correct or fit a particular ideology. It was founded in 1998 by long time policy advisor to President Reagan, and the architect of modern welfare reform, Robert B. Carleson. Carleson served as President Reagan’s chief domestic policy advisor on federalism, and was the originator of the concept of returning responsibility for welfare programs back to the states through block grants. Since its

founding, the ACRU has filed *amicus curiae* briefs on constitutional law issues in cases nationwide.

Those setting the organization's policy as members of the Policy Board include former U.S. Attorney General, Edwin Meese III; former Assistant Attorney General for Civil Rights, William Bradford Reynolds; former Assistant Attorney General for the Office of Legal Counsel, Charles J. Cooper; former Assistant Attorney General for Justice Programs, Richard B. Abell; John M. Olin Distinguished Professor of Economics at George Mason University, Walter E. Williams; former Harvard University Professor, Dr. James Q. Wilson; and former Ambassador Curtin Winsor, Jr.

The decision in this case will affect the interest of the ACRU because our chief organizational purpose is to ensure that the Constitutional limits to federal power are fully recognized and enforced. That includes in regard to this case in particular that the scope and boundaries of the Commerce Clause be fully respected and maintained, and properly applied to analysis of the constitutionality of the Patient Protection and Affordable Care Act. The ACRU is also a leading national advocate of federalism, and health care reforms consistent with that, such as returning control over Medicaid to the states through block grants, as in the federal welfare reforms of 1996. As discussed further below, the General Counsel of the ACRU, Peter Ferrara, offers long established expertise on such health care issues, starting with his service in the White House Office of Policy Development under President Reagan, where he worked on health care policy. Consequently, this brief will provide unique, legally relevant, analysis, information and perspective, particularly in regard to the economics of health care policy reforms, that

will not be found in other briefs, as was provided in the ACRU amicus brief in *Commonwealth of Virginia v. Sebelius*.

II. AN AMICUS CURIAE BRIEF IS DESIRABLE AND THE MATTERS ASSERTED ARE RELEVANT TO THE DISPOSITION OF THE CASE.

The ACRU has long experience and developed expertise in addressing issues of constitutional law, having filed numerous *Amicus Curiae* briefs addressing such issues nationwide. *See, e.g., McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010); *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010); *Free Enterprise Fund v. Pub. Co. Accounting Oversight Bd.*, 130 S. Ct. 3138 (2010); *Ricci v. DeStefano*, 129 S. Ct. 2658 (2009); *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008); *Boy Scouts of America v. Dale*, 530 U.S. 640, 120 S. Ct. 2446 (2000).

In addition to the expertise of our Policy Board, ACRU's General Counsel Peter Ferrara will write the proposed *amicus curiae* brief for this case. A graduate of Harvard Law School and Harvard College, Mr. Ferrara served in the White House Office of Policy Development under President Reagan, where his responsibilities included health policy. He also served as Associate Deputy Attorney General of the United States under President George H. W. Bush, and as an Associate Professor of Law at the George Mason University School of Law. He has also practiced with law firms in New York and Washington. Mr. Ferrara also already has established expertise in the voluminous Patient Protection and Affordable Care Act, having already published a book length study and several articles on the Act.

As in the *amicus curiae* brief filed by the ACRU in *Commonwealth of Virginia v. Sebelius*, the brief for this case will include an original and unique discussion of the economic aspects of the legal issues raised by the Commerce Clause analysis of the

Patient Protection and Affordable Health Care Act, including the economic arguments used by the Defendants to justify the Act under the Necessary and Proper Clause. It will demonstrate, moreover, that alternative policies were available to the Congress that would have achieved its policy goals, yet would not transgress Constitutional bounds, as the Act the Congress passed does. Not only does the Act impose an individual mandate on individuals not participating in interstate commerce. What the mandate compels them to participate in is not interstate commerce, as the brief will demonstrate. Therefore, the Commerce Clause provides no authorization for the individual mandate, nor does any other delegated power under the Constitution. The individual mandate, therefore, is unconstitutional. Failing to so rule would fundamentally transform the Constitution from providing for a limited government of delegated powers, to an unlimited government of unlimited powers.

For these reasons, the ACRU *amicus curiae* brief will help the court with unique, legally relevant, analysis, information and perspective, particularly in regard to the economics of health care policy reforms, that the lawyers for the already well represented parties will not provide.

The ACRU has no institutional economic or financial interest in the outcome of this lawsuit. The ACRU consequently believes it can assist the Court in addition by providing a perspective that is distinct from that of any party.

III. CORPORATE AND FINANCIAL DISCLOSURE STATEMENT

The ACRU states that it is a non-profit, non-stock corporation organized under Section 501(c)(3) of the Internal Revenue Code. The ACRU further states that it issues no stock, and that it has no parents, trusts, subsidiaries, or affiliates that have issued

shares of stock or debt securities to the public. Moreover, no publicly held corporation has an interest in the outcome of this litigation due to the ACRU's participation.

WHEREFORE, the ACRU respectfully requests that its motion for leave to file an *amicus curiae* brief in this matter be granted. A proposed order is attached.

Dated: November 10, 2010

Respectfully Submitted,

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**ORDER GRANTING THE AMERICAN CIVIL RIGHTS UNION
LEAVE TO FILE *AMICUS CURIAE* BRIEF**

This matter is before the Court on the motion of *amicus curiae* American Civil Rights Union for leave to file an *amicus curiae* brief in support of Plaintiff’s Motion for Summary Judgment and in opposition to Defendant’s Motion for Summary Judgment.

Having fully considered the motion, IT IS ORDERED that the American Civil Rights Union motion for leave to file its *amicus curiae* brief is GRANTED. The Clerk shall cause the proposed brief to be filed and entered on the docket in the above-captioned matter.

SO ORDERED on the ___ day of _____, 2010.

Hon. Roger Vinson
United States District Court Judge

Certificate of Service

I hereby certify that, on this 10th day of November, 2010, a copy of the foregoing **MOTION OF AMERICAN CIVIL RIGHTS UNION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** was served on counsel of record for all Defendants through the Court's Notice of Electronic Filing System.

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