

**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

**OREGON, IOWA AND VERMONT'S RENEWED MOTION FOR LEAVE TO
FILE AMICUS CURIAE BRIEF**

I. Introduction

Pursuant to this Court's June 25, 2010 Order (Doc 62), the States of Oregon, Iowa and Vermont, by and through their respective Attorneys General, and on behalf of other states that are expected to join in their amicus brief (Amici States), renew their prior motion for leave to file amicus curiae brief (Doc 57). Any decision that the Patient Protection and Affordable Care Act ("Act") is unconstitutional and invalid would have a tremendous and deleterious effect on Amici States. Thanks to their roles as Medicaid administrators, keepers of state budgets, and as sovereigns responsible for protecting the health and well being of their citizens, Amici States have a unique and important perspective that will assist the Court in evaluating the validity of the plaintiff states' claims.

This perspective is especially relevant given the claims asserted by the plaintiff states. The plaintiff states do not represent the interests of all states and, indeed, are taking positions that are sharply disputed by other elected state officials, including the

Attorneys General submitting this motion. Plaintiffs overstate the Act's costs, disregard its substantial benefits, and minimize the obstacles to expanding health care insurance coverage through a patchwork of individual state actions. The plaintiff states also paint an exaggerated and unrealistic picture of the impact of the Act on the relationship between the states and the federal government. The views of the Amici States provide an essential counterpoint to the positions advanced by plaintiffs.

Federal Courts have traditionally been hospitable to amicus participation by states where, as here, important state interests are at stake. The Amici States respectfully request that this Court continue this longstanding tradition of comity and respect for state interests and allow them to participate as amicus curiae in this matter.¹

II. Amici states satisfy the criteria for Amicus participation set out in the Court's June 14, 2010 Order.

A. 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 Act, the interests of the Amici States are quite similar to the interests of the plaintiff states: they all have sovereign interests in protecting the health and welfare of their citizens, act as Medicaid administrators and are employers responsible for providing health insurance for their employees. There the similarities end as the Amici States believe that the Act is constitutional, 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 Act is struck down.

¹ The Amici States note that the Plaintiffs consent to the filing of an amicus curiae brief by these proposed Amici States (Doc 85).

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 (“SCIP”).² For example, the Urban Institute has estimated that, by 2019, *absent the Act*:

- Oregon’s spending on Medicaid and SCHIP will increase by between 65.8% and 110.7%.³
- The cost of uncompensated care in Oregon will increase by between 80.3% and 137.1%.⁴
- Health insurance premiums for employers in Oregon will increase by between 76.8% and 107.5%.⁵

These increases threaten to overwhelm already overburdened state budgets. Furthermore, absent the Act, these spending increases would be coupled with ever-increasing numbers of non-elderly individuals without access to health insurance.⁶ 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 would slide farther and farther away from their obligation to protect the health and well being of their citizens.

² 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 11/4/2010).

³ *Id.* at 51.

⁴ *Id.*

⁵ *Id.* at 29.

⁶ *Id.*

B. 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 Act, but also from states that believe the Act is constitutional and will have a positive impact on their citizens. As discussed below, the Amici States' perspective and unique experiences will assist the Court in evaluating whether the Act is an important and timely response to a national problem that allows states flexibility in designing programs to achieve their goal of expanding access to health care in a cost-effective manner or whether the federal government is forcing a new and onerous program on the states and in the process threatens their sovereignty.

C. The Amici States have unique information and a unique perspective that will 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 Act. 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.

Allowing the Amici States to participate is also particularly important because their 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 contrasting, 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.

The experience of the Amici States shows that our federalist system is working well. In the view of the Amici States, the federal government is not forcing a new and onerous program on the states; rather, the elected branches of the national government have recognized both the crucial role played by the states and the need for federal action to address national problems that have not and likely cannot be solved through piecemeal actions by individual states.

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 the perspective of states with sharply differing views from those of the plaintiffs, a perspective that would not be voiced if the Amici States are not allowed to participate in this case.

III. States are generally given greater latitude to participate as amici than individuals and organizations.

Because of their unique role in representing the interests of their citizens, states are typically given broader latitude to participate as amici than private organizations and individuals. Although the Federal Rules of Civil Procedure do not specifically address amicus curiae filings, the federal courts' traditional hospitality toward state amici is evident in the Federal Rules of Appellate Procedure (FRAP), which this Court has called "instructive." (Doc 50, at 2.) Although most parties may only participate as amici with the consent of the Court, the FRAP 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 in cases, like this one, where their interests are at stake.

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III. Conclusion

For the foregoing reasons, the Amici States respectfully request that this Court grant leave to the Amici States to file an amicus curiae brief in this matter.

November 10, 2010

Respectfully submitted,

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/s/ Keith S. Dubanevich
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CERTIFICATE OF SERVICE

I hereby certify that on November 10, 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
Chief of Staff and Special Counsel
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