UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
FRANKFORT

COMMONWEALTH OF KENTUCKY, *ex rel.* MATTHEW G. BEVIN, GOVERNOR, SCOTT W. BRINKMAN, in his official capacity as Acting Secretary of the CABINET FOR HEALTH AND FAMILY SERVICES, STEPHEN P. MILLER, in his official capacity as Commissioner of the DEPARTMENT FOR MEDICAID SERVICES, Plaintiffs, v. RONNIE MAURICE STEWART, GLASSIE MAE KASEY, LAKIN BRANHAM, SHANNA BALLINGER, DAVE KOBERSMITH, WILLIAM BENNETT, SHAWNA NICOLE McCOMAS, ALEXA HATCHER, MICHAEL WOODS, SARA WOODS, KIMBERLY WITHERS, KATELYN ALLEN, AMANDA SPEARS, DAVID ROODE, SHEILA MARLENE PENNEY, and QUENTON RADFORD, Defendants.	)	Civil Action No. 3:18-00008-GFVT

DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO THE MOTION OF KENTUCKY ASSOCIATION OF HEALTH PLANS FOR LEAVE TO INTERVENE

Defendants oppose the Motion of the Kentucky Association of Health Plans, Inc. ("KAHP") to intervene as an additional plaintiff in the lawsuit initiated by Plaintiff, the Commonwealth of Kentucky, by and through the Commonwealth's Governor, Matthew G. Bevin; its Acting Secretary of the Cabinet for Health and Family Services, Scott W. Brinkman; and its Commissioner of the Department of Medicaid Services, Stephen P. Miller.

KAHP utterly fails to meet the requirements of Rule 24 of the Federal Rules of Civil Procedure for intervention in this already frivolous litigation. Most fundamentally, it fails to

identify any arguments or positions it would take that will not be exhaustively addressed by the Commonwealth. In substance, therefore, KAHP wants to file an amicus brief in support of the Commonwealth, but that is not a ground for intervention. The Court should deny the Motion.

BACKGROUND

Defendants are sixteen private individuals enrolled in Kentucky's Medicaid program. In January of this year, they filed a complaint in the United States District Court for the District of Columbia challenging the decision of the U.S. Secretary of Health and Human Services and other federal officials to grant a waiver to the Commonwealth of Kentucky of certain requirements of the Medicaid program pursuant to Section 1115 of the Social Security Act. Complaint, *Stewart v. Hargan*, 1:18-cv-00152 (D.D.C. Jan. 24, 2018), ECF No. 1. Their complaint alleges that the Secretary's decision to grant the Section 1115 waiver, which greenlights a program known as "Kentucky HEALTH," violates the Administrative Procedure Act ("APA") and the United States Constitution. *Id.* at 66-76

Shortly thereafter, rather than seeking to intervene in the District of Columbia action, the Commonwealth of Kentucky, by and through the Governor, the Acting Secretary of the Cabinet for Health and Family Services, and the Commissioner of the Department of Medicaid Services, retaliated by suing Defendants—Plaintiffs in the District of Columbia action—in this Court.[1] The Commonwealth seeks declaratory relief establishing that Defendants' District of Columbia lawsuit against the Secretary has no merit.

[1] The Commonwealth subsequently moved to intervene in the District of Columbia action, *Stewart v. Hargan*, 1:18-cv-00152 (D.D.C. Mar. 29, 2018), ECF No. 30, which the district court allowed the following day, Minute Order, *Stewart v. Hargan*, 1:18-cv-00152 (D.D.C. Mar. 30, 2018). As of the filing of this response, however, the Commonwealth has not moved to voluntarily dismiss the action it filed in this Court.

The frivolous nature of the Governor's lawsuit is addressed in more detail in Defendants' Motion to Dismiss, filed concurrently with this Opposition. Regardless of the decision on that Motion, however, KAHP's effort to intervene should be denied. By its own admission, KAHP seeks the exact same declaratory relief the Commonwealth seeks and does not identify any arguments it plans to advance that the Commonwealth would not advance in its own right. It offers only that it will provide the outside perspective of those engaged in the business of providing health care services in Kentucky.

ARGUMENT

I. KAHP Does Not Satisfy Rule 24(a)(2)'s Requirements For Intervention As Of Right.

KAHP claims it is seeking to intervene "to assert and protect [its members'] substantial interest in the administration of the Medicaid Expansion in Kentucky" and "the regulatory requirements at issue." Mem. in Supp. of Mot. of Kentucky Ass'n of Health Plans, Inc. to Intervene as Pl. ("Mem.") at 3. It nonetheless falls far short of what Rule 24(a) asks of would-be as-of-right intervenors. The Sixth Circuit "has construed Rule 24(a) to require a party attempting to intervene to establish: (1) the timeliness of the application to intervene; (2) the applicant's substantial legal interest in the case; (3) the impairment of the applicant's ability to protect that interest in the absence of intervention; and (4) the inadequate representation of that interest by parties already before the court." *Meeks v. Schofield*, 625 F. App'x 697, 703 (6th Cir. 2015). Here, KAHP cannot carry its burden of proving that it has a "substantial legal interest" in this case or that the Commonwealth will not adequately represent its interests.[2] As a result, its motion should be denied.

[2] KAHP's motion also likely fails because, as KAHP all but concedes, it lacks Article III standing to proceed against these Defendants as a plaintiff. The Supreme Court in *Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1652 (2017), recently held that "*at the least*, an intervenor as of right must demonstrate Article III standing when it seeks additional relief beyond that which the plaintiff

A. KAHP Does Not Have An Interest In This Litigation Sufficient To Justify Intervention As Of Right.

To establish intervention as of right, a proposed intervenor must demonstrate "a direct, significant legally protectable interest" in the subject matter of the litigation. *United States v. Detroit Int'l Bridge Co.*, 7 F.3d 497, 501 (6th Cir. 1993). That means it must be a "real party in interest in the transaction which is the subject of the proceeding." *Providence Baptist Church v. Hillandale Comm., Ltd.*, 425 F.3d 309, 317 (6th Cir. 2005) (quotation marks omitted). Not "any articulated interest will do." *Coal. To Defend Affirmative Action v. Granholm*, 501 F.3d 775, 780 (6th Cir. 2007). Rather, the movant must show a "substantial interest *in the subject matter of this litigation*." *Id.* (quoting *Grutter v. Bollinger*, 188 F.3d 394, 398 (6th Cir. 1999) (emphasis added)).

To support intervention. KAHP contends that its members are spending money to comply with Kentucky HEALTH and that the denial of a declaratory judgment in this case "would dramatically increase uncertainty" for its members. Mem. 5. But KAHP's uncertainty regarding its future economic interests do not support intervention. The Sixth Circuit has twice held that economic interests, like those KAHP alleges, do not constitute the "substantial interest" in the subject matter of the litigation required under Rule 24(a)(2). First, in *United States v. Tennessee*, the Sixth Circuit rejected an association of mental health services providers' motion to intervene based on their economic interest in how their services were funded. 260 F.3d 587 (6th Cir. 2001). As the Sixth Circuit explained, that interest stemmed not from "the constitutional and statutory

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requests." *Id.* at 1651 (emphasis added). The Court's use of the phrase "at the least" strongly suggests that Article III standing also is required of a proposed intervenor seeking the same relief as the existing plaintiff. *See also DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352-53 (2006) (explaining that Article III standing is not "'dispensed in gross'" and is not "commutative" (citation omitted)); *Donaldson v. United States*, 400 U.S. 517, 531-32 (1971) (holding that much like standing for a plaintiff under Article III, an intervenor must have a "significantly protectable interest"), *superseded by statute as stated in Tiffany Fine Arts, Inc. v. United States*, 469 U.S. 310 (1985).

violations alleged in the litigation, but rather how much its members get paid for providing services." *Id.* at 593, 595. The Sixth Circuit reaffirmed this rule in *Blount-Hill v. Board of Education*, 195 F. App'x 482, 485 (6th Cir. 2006). There, the Court of Appeals rejected an educational management firm's efforts to intervene in a lawsuit regarding the constitutionality of the school's funding scheme. 195 F. App'x at 485. As the Court of Appeals explained, the education firm sought "to preserve the constitutionality of the community school's funding structure so that it might continue to contract with community schools." *Id*. at 486. Relying on *United States v. Tennessee*, the Sixth Circuit concluded that this purely economic interest was insufficient to support intervention, even at the early stages of litigation. *Id.*

KAHP's assertions are indistinguishable. KAHP presents concerns only about the costs its members will incur in providing services; it expresses no interest whatsoever in the underlying, substantive issues at stake in this litigation. The lack of a significant legal interest is particularly acute here where, unlike in *Tennessee* and *Blount-Hill*, the economic harm has little, if any, causal connection to the legal issues at the heart of this litigation. As KAHP explains, its members' chose to start implementing these changes nearly two years ago, well before the Kentucky HEALTH program was approved. *See* Mem. 2. These self-inflicted expenditures are costs that cannot be recovered in this action for declaratory relief; and under binding Sixth Circuit precedent even future harms that could be avoided do not constitute "a substantial legal interest for purposes of Rule 24(a) intervention." *Blount-Hill*, 195 F. App'x at 486.

The cases cited by KAHP, Mem. 5, are inapposite. In *Linton ex rel. Arnold v. Commissioner of Health & Environment*, 973 F.2d 1311 (6th Cir. 1992), the existing parties had agreed to a contract provision "which was adverse to the movants' contractual, statutory, and

financial interests." *Id.* at 1318. There is no such conflict of interest between the plaintiffs and intervenors here, since Plaintiff and proposed-intervenors seek the same declaratory relief.

As for *Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, 386 U.S. 129 (1967), "[w]ith an occasional rare exception, both the commentators and the lower courts have refused to regard *Cascade* as a significant precedent," and "it has been argued that *Cascade* must be limited to its own peculiar facts." 7C Charles Alan Wright et al., *Federal Practice & Procedure* § 1908.1, Westlaw (3d ed. database updated Apr. 2017) (footnote omitted). Courts have recognized two reasons for that. First, *Cacade* involved intervention into an antitrust divestiture action and antitrust law vested one of the intervenors—the State of California—with "substantive rights to be free of antitrust injury to its general economy." *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, 732 F.2d 452, 466 n.28 (5th Cir.1984) (en banc). Second, the Supreme Court's later decision in *Donaldson v. United States*, 400 U.S. 517, 531 (1971), *superseded by statute as stated in Tiffany Fine Arts, Inc. v. United States*, 469 U.S. 310 (1985), took a narrower view of the "interest" requirement, imposing a "significantly protectable" interest standard, which is akin to the standard the Sixth Circuit applies today, *e.g. Linton*, 973 F.2d at 1319; *see also United Financial Casualty Insurance Co. v. Wells*, No. Civ. A. 5:11-397-KKC, 2012 WL 6004150, at *2 (E.D. Ky. Nov. 30, 2012).

KAHP thus has not identified an economic interest sufficient to warrant intervention as of right, and its motion should therefore be denied.

B. The Commonwealth Will Adequately Represent KAHP's Purported Interest.

KAHP also bears the burden of showing that its interests are not adequately represented by the existing parties. *See United States v. Michigan*, 424 F.3d 438, 443-44 (6th Cir. 2005). This requires evidence that the existing representation may be inadequate. In making that showing, "[a]lthough it is true that a proposed intervenor must show only that there is a potential for

inadequate representation, a presumption of adequate representation arises when a putative intervenor shares the same ultimate objective as a party to the suit." *Reliastar Life Ins. Co. v. MKP Investments*, 565 F. App'x 369, 373 (6th Cir. 2014); *see Skyway Towers, LLC v. Lexington-Fayette Urban Cty. Gov't*, No. CV 5:15-301-KKC, 2016 WL 817133, at *4 (E.D. Ky. Feb. 29, 2016).

Here, KAHP and the Commonwealth share the same objective: upholding the Section 1115 Medicaid waiver the federal government granted to Kentucky. KAHP simply cannot rebut the resulting presumption that the Commonwealth's representation will adequately protect its supposed interest in this case.

Where the presumption applies, "[a]n applicant for intervention as of right 'fails to meet his burden of demonstrating inadequate representation' if he cannot show 'collusion … between the representatives and an opposing party,' pursuit by the representative of an interest adverse to the interests of the proposed intervenor, or a representative's failure 'in the fulfillment of his duty.'" *Reliastar*, 565 F. App'x at 373 (citation omitted). KAHP has not made any of those showings.[3] Nor could it. It goes without saying that there is no collusion between the Commonwealth and the Defendants. Further, the Commonwealth is not pursuing an outcome that would be adverse to KAHP; indeed, it seeks the same result that KAHP seeks. And there is no evidence that the Commonwealth is not or could not zealously advocate the position that KAHP seeks to promote. *See United Fin. Cas. Ins. Co.*, 2012 WL 6004150, at *2 (finding that proposed intervenor failed to prove representation inadequate based on failure to make showing under any of the above-listed factors).

[3] KAHP does not even try—it cites the factors, but then does not even attempt to allege collusion, a representative failing in his duty, or adverse interests. *See* Mem. 6-7. The closest KAHP comes is stating that its interests are "different" from the state. *Id.* But "different" is not adverse and "the cases in this Circuit have generally required something more than mere differing relationship to the subject matter of the litigation." *Blount-Hill*, 195 F. App'x at 490.

Further, although other courts in the Sixth Circuit have held that "[a] proposed intervenor can overcome this presumption by showing that his requested relief differs from that of the parties, that she intends to make separate arguments unique to the intervenor, or that the parties would fail to present those separate arguments to the court," KAHP comes up short even under those metrics. *Tigrett v. Cooper*, No. 10-2724–STA–tmp, 2011 WL 5025491, at *8 (W.D. Tenn. Oct. 21, 2011), *on reconsideration in part*, 2012 WL 691906 (W.D. Tenn. Mar. 2, 2012). KAHP seeks the same relief that the Commonwealth seeks—declaratory relief upholding Kentucky's Medicaid waiver. *See Bagne v. JP Morgan Chase Bank, N.A.*, No. 08-CV-13646, 2008 WL 11355527, at *4 (E.D. Mich. Dec. 21, 2008) (finding presumption overcome where intervening plaintiff asserts additional claims against defendant). It does not identify any substantive justification for the Medicaid waiver that it alone can advance. *See Trimble v. Comair, Inc. (In re Air Crash at Lexington)*, No. 5:06-CV-316-KSF, 2007 WL 580858, *10 (E.D. Ky. Feb. 20, 2007) (finding presumption not overcome where no novel arguments identified). And it does not assert that the Commonwealth is unlikely to make an argument it would advance, let alone with the level of specificity required to affirmatively prove that the Commonwealth's representation will be inadequate.

Thus, regardless of the standard, KAHP has simply failed to rebut the presumption of adequate representation. Indeed, KAHP does not even acknowledge the presumption in its brief. That omission is all the more glaring because KAHP seeks to support a government party. Numerous courts have recognized that the presumption of adequate representation is particularly strong if "the government is acting on behalf of a constituency it represents." *Nextel West Corp. v. Twp. of Scio*, No. 07-11159, 2007 WL 2331871, at *2 (E.D. Mich. Aug. 13. 2007) (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 401-02 (9th Cir. 2002)); *see Coalition to Defend Affirmative Action v. Regents of the Univ. of Mich.*, 701 F.3d 466, 491 (6th Cir. 2012), *rev'd on*

other grounds sub nom. Schuette v. Coalition to Defend Affirmative Action, 134 S. Ct. 1623 (2014); *Michigan*, 424 F.3d at 443; *accord Stuart v. Huff*, 706 F.3d 345 (4th Cir. 2013); *Ligas ex rel. Foster v. Maram*, 478 F.3d 771 (7th Cir. 2007); *Daggett v. Comm'n on Governmental Ethics & Election Practices*, 172 F.3d 104 (1st Cir. 1999); *Ingebretsen ex rel. Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274 (5th Cir. 1996); *Mumford Cove Ass'n v. Town of Groton*, 786 F.2d 530 (2d Cir. 1986). That strengthened presumption applies here because KAHP is no different from any other constituent impacted by the outcome of this case and the first-filed case in the District of Columbia. *See Ark Encounter, LLC v. Stewart*, 311 F.R.D. 414, 423 (E.D. Ky. 2015); *State v. EPA*, 313 F.R.D. 65, 69 (S.D. Ohio 2016); *see generally* 7C Charles Alan Wright, *Federal Practice & Procedure* § 1909 (explaining that where presumption applies, intervening party must make a "concrete showing of circumstances in the particular case that make the representation inadequate").

KAHP argues that because the Commonwealth regulates its members, the Commonwealth "will of necessity be less able to advocate the position of the regulated business community." Mem. 6. But KAHP relies on outdated and out of circuit precedent. *See* Mem. 6 -7 (citing *NRDC v. Nuclear Energy Regulatory Comm'n*, 578 F.2d 1341 (10th Cir. 1978); *Nat'l Wildlife Fed'n v. Hodel*, 661 F. Supp. 473, 474 (E.D. Ky. 1987)), while ignoring binding Sixth Circuit precedent. The Sixth Circuit has explained that "the mere fact that [an intervenor] is a regulated entity and Ohio is a regulator is not grounds for assuming that [the intervenor's] interests will diverge from Ohio's . . . [t]o accept this argument would render … the presumption of adequate representation … meaningless." *Blount-Hill*, 195 F. App'x at 490. Thus, in *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240 (6th Cir. 1997), which KAHP cites, Mem. 5, the Sixth Circuit held that the presumption was overcome not only because the existing party regulated the proposed intervenor, but also because there was evidence that an existing party *already* had failed to represent the

propose intervenor's interests. 103 F.3d at 1247-48 (highlighting failure to appeal preliminary injunction). KAHP has made no comparable showing here. Furthermore, the fact that two parties have nominally different motivations for seeking the same result does not mean that their positions themselves diverge so much as to make representation inadequate. *See QBE Ins. Corp. v. Green*, No. 5:14-cv-300-JMH, 2014 WL 5107409, at *2 (E.D. Ky. Sept. 30, 2014). At best, difference in perspectives warrants participation as an *amicus curiae*, not as an additional party.

Moreover, the notion that KAHP's supposedly "markedly different" interests could impact this litigation is particularly dubious. Fundamentally, the resolution of these claims turns on the validity of a particular federal executive action, which is traditionally litigated pursuant to the APA. But in an APA claim, litigation is based upon the administrative record, not based on either new evidence developed in discovery or novel policy arguments raised by one of the litigants. As a result, whatever additional perspective the KAHP wishes to offer must already appear in the certified administrative record to have any substantive bearing on this litigation. And indeed, the KAHP did make its views known, as their comments appear prominently in the administrative record before the District of Columbia court. So given the nature of the specific claims presented here, it is highly unlikely that KAHP's perspective would add anything of substance. *See Seminole Nation of Okla. v. Norton*, 206 F.R.D. 1, 10 (D.D.C. 2001) (rejecting Rule 24(a) intervention in APA case, noting "[a]s this Court's review is constrained to the administrative record, the only potential for inadequacy in the representation of the DOI is the risk that the DOI will not vigorously defend itself against Plaintiff's APA claim. There is no indication in the record that any such risk exists."); *Habitat Educ. Ctr., Inc. v. Bosworth*, 221 F.R.D. 488, 495-96 (E.D. Wis. 2004) (rejecting intervention because "[i]f the purpose of the litigation is to secure a judicial determination as to whether an agency complied with statutory requirements and the court is limited to reviewing

the administrative record, it is unlikely that a private party will be able to add much to the agency's submissions"); *Friends of the Wild Swan, Inc. v. U.S. Fish & Wildlife Serv.*, 896 F. Supp. 1025, 1027 (D. Or. 1995) (finding that proposed intervenors lacked "legally protectable interests" in APA action because proposed intervenors "merely seek to interject their interests and concerns, outside of the administrative record, in defense of the [agency's] decision");[4] *see also Alameda Water & Sanitation Dist. v. Browner*, 9 F.3d 88, 91 (10th Cir. 1993) (rejecting intervention in APA claim where proposed intervenor sought to "interject issues into this lawsuit that are not before the district court"). In any case, KAHP can certainly seek the court's permission to discuss its perspective as an *amicus curiae*.

Put simply, KAHP has not carried its burden to rebut the presumption that the Commonwealth will adequately represent its interests because it has not provided concrete evidence demonstrating that the Commonwealth will provide inadequate representation of its views. Therefore, it is not entitled to intervention as of right under Rule 24(a)(2).

II. KAHP Does Not Satisfy Rule 24(b)'s Requirements For Permissive Intervention.

[4] KAHP lacks a legally protected interest for additional reasons. Health plans have no legal right to participate in the Medicaid program, but are instead awarded contracts by the State. *Cf. Armstrong v. Exceptional Child Ctr., Inc.*, 135 S. Ct. 1378, 1387 (2015) ("We doubt, to begin with, that providers are intended beneficiaries (as opposed to mere incidental beneficiaries) of the Medicaid agreement, which was concluded for the benefit of the infirm whom the providers were to serve, rather than for the benefit of the providers themselves."); *Oakland Med. Grp., P.C. v. Sec'y of Health & Human Servs.*, 298 F.3d 507, 511 (6th Cir. 2002) ("[A]lthough the economic impact of canceling Medicare eligibility is significant, 'a provider's financial need to be subsidized for the care of its Medicare patients is only incidental to the purpose and design of the [Medicare] program.'" (citation omitted)); *see also Green v. Cashman*, 605 F.2d 945, 946 (6th Cir. 1979) ("We do not find in the statute authorizing Medicare and Medicaid any legislative intention to provide financial assistance to providers of care for their own benefit."). Accordingly, as incidental beneficiaries (at best), they lack a "legally protectable interest."

KAHP alternatively claims to meet the requirements of Rule 24(b) of the Federal Rules of Civil Procedure for permissive intervention. "To intervene permissively, a proposed intervenor must establish that the motion for intervention is timely and alleges at least one common question of law or fact." *Michigan*, 424 F.3d at 445. Here, the Defendants agree that KAHP satisfies those two elements. But that is not the end of the inquiry. Where those threshold requirements are satisfied, Rule 24(b) requires the Court to "balance undue delay and prejudice to the original parties, if any, and any other relevant factors to determine whether, in the court's discretion, intervention should be allowed." *Id*. Because those factors counsel strongly against allowing KAHP to intervene, the Court should deny the Motion.

First, allowing KAHP to intervene solely because it would be affected by a decision striking down the Medicaid waiver would allow any party affected by a challenged government action to intervene. Such a broad rule of intervention creates a dangerous precedent for this litigation and in future cases. As this Court has explained, "the potential strains on judicial economy and the inevitable delays, confusion, and prejudice to the existing parties that would result from unrestricted intervention by any number of" parties affected by the health care industry in Kentucky "weigh against allowing permissive intervention in this situation." *Ark Encounter*, 311 F.R.D. at 425.

Second, because the Commonwealth will adequately represent KAHP's interests, adding KAHP as a further litigant will only bog down this litigation. Again, much as this Court explained in *Ark Encounter*, "[w]hile [the Association's] perspective is different from that of the Commonwealth, [it has] not demonstrated [its] contribution to the litigation will add unique value such that intervention is necessary…. Allowing [it] to intervene when [its] interests and goals are so similar to that of the Commonwealth's would likely result in duplication of the Defendants'

efforts, thus resulting in undue delay." 311 F.R.D. at 426. Like the proposed intervenors in *Ark Encounter*, KAHP fails to "identify how [it] would actually present different arguments that would contribute to the litigation in a way that would require intervention," 311 F.R.D. at 426; *accord Skyway Towers, LLC*, 2016 WL 817133, at *5 (explaining that "delay" is "undue" if proposed intervenor "has the same ultimate objective" as existing party "and asserts essentially the same arguments," particularly when issue relates to review of validity of government decision).

To be sure, this Court is free to give KAHP a forum as an *amicus curiae* on issues related to the merits, just as it did in *Ark Encounter*, 311 F.R.D. at 426 (holding that "[a]llowing the proposed intervenors the opportunity to participate in the remaining proceedings as *amici curiae* will allow them to present their perspective and adequately address their concerns" (citing *Northland Family Planning, Inc. v. Cox*, 487 F.3d 323, 346 (6th Cir. 2007)); *Blount-Hill v. Zelman*, 636 F.3d 278, 287-88 (6th Cir. 2011); *Stupak-Thrall v. Glickman*, 226 F.3d 467, 474 (6th Cir. 2000); *Bradley v. Milliken*, 828 F.2d 1186, 1194 (6th Cir. 1987)). But the unique perspective that may justify participation as an *amicus* does not warrant adding KAHP as a party seeking its own affirmative relief from Defendants.

CONCLUSION

The Court should deny the Motion to Intervene as additional plaintiffs filed by the Kentucky Association of Health Plans.

Dated: April 9, 2018

Respectfully submitted,

/s/ Anne Marie Regan

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CERTIFICATE OF SERVICE

I certify that on April 9, 2018, the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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