

United States District Court

Northern District of TEXAS

FORT WORTH DIVISION

RICHARD W. DEOTTE et al.,

Plaintiffs,

v.

ALEX M. AZAR II et al.,

Defendants.

Case No. 4:18-CV-00825-O

Hon. Reed O'Connor

MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO APPEAR AS *AMICI CURIAE* AND TO FILE AN *AMICUS* BRIEF IN SUPPORT OF NEVADA'S MOTION TO INTERVENE AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Jamie A. Levitt
Rhiannon N. Batchelder
MORRISON & FOERSTER LLP
250 West 55th Street
New York, New York 10019-9601
Telephone: (212) 468-8000

*Attorneys for Amici Curiae,
American Association of University
Women; Service Employees
International Union; and
10 Additional Professional, Labor,
and Student Associations*

INTRODUCTION

The American Association Of University Women (“AAUW”); Service Employees International Union (“SEIU”); and 10 Additional Professional, Labor, and Student Associations¹ (“Amici Curiae”)² respectfully move this Court for leave to file the *amicus curiae* brief attached hereto as Exhibit A in support of Nevada’s motion to intervene and in opposition to Plaintiffs’ motion for summary judgment.³

BACKGROUND

The Patient Protection and Affordable Care Act (the “ACA”)⁴ requires employer-sponsored health insurance plans to cover all FDA-approved methods of contraception without burdening insured women with out-of-pocket costs (the “Contraceptive Coverage Benefit”). Plaintiffs allege that they should be exempted from the Contraceptive Coverage Benefit due to their religious beliefs (the “Coverage Exemption”). Amici Curiae seek leave to file a brief in support of Nevada’s motion to intervene in this matter and in opposition to Plaintiffs’ motion for summary judgment to provide this Court with helpful, non-duplicative information and the perspective of professional, labor and student organizations on the potential effects of the Coverage Exemption.

¹ For a full list of Amici Curiae and their statements of interest, see Appendix to Exhibit A.

² No party’s counsel authored this brief in whole or in part. No party, party’s counsel, or other person contributed any money to fund the preparation or submission of this brief other than amici curiae and its counsel.

³ Pursuant to Local Rule 7.1(b), counsel for Amici Curiae conferred with counsel for Plaintiffs and Defendants on May 22, 23, and 24 2019. Defendants consent to the filing of this *amicus* brief, while Plaintiffs oppose the filing of all *amicus* briefs in this matter.

⁴ 42 U.S.C. § 18001, *et seq.* (2010).

INTEREST OF *AMICUS CURIAE*

Amicus curiae AAUW was founded in 1881 by like-minded women who had challenged society's conventions by earning college degrees. Since then it has worked to increase women's access to higher education and equal employment opportunities. Today, AAUW has more than 170,000 members and supporters, 1,000 branches, and 800 college and university partners nationwide. AAUW plays a major role in mobilizing advocates nationwide on AAUW's priority issues to advance gender equity. In adherence with its member-adopted Public Policy Priorities, AAUW supports choice in the determination of one's reproductive life and increased access to health care and family planning services.

Amicus curiae SEIU is a union of two million women and men who work in health care, property services, and public services throughout the United States. More than half of SEIU's members are women and more than half its members work in health care. SEIU is deeply committed to ensuring that all working people, men and women alike, have access to affordable health care, including contraceptive coverage as intended by the Affordable Care Act. SEIU has a particular interest in this Rule because its members know, both personally and in their capacity as health care workers, how vital it is for women to have seamless contraceptive coverage in order to be able to protect their health and their ability to work, which in turn are necessary for the economic security of families across America.

The 10 Additional Professional, Labor, and Student Associations and their statements of interest are outlined in the Appendix to Exhibit A.

**THE PROPOSED *AMICUS* BRIEF WILL PROVIDE
SPECIALIZED PERSPECTIVES AND EXPERTISE**

Amici Curiae have many years of experience advocating for the educational and professional rights of women. As a result, Amici Curiae offer this Court uniquely specialized

perspectives and expertise on the issues in this case. Amici Curiae's *amicus* brief provides additional insight into the likely real-world impacts of the loss of contraceptive coverage that may occur under the Coverage Exemption on women's educational and professional success and on the overall wellbeing of women and their families. Amici Curiae submit that their brief offers "timely, useful" information meriting "[t]he privilege of being heard *amicus*." *See Cnty. Ass'n for Restoration of Env't (CARE) v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999) (citing *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982)).

The proposed *amicus* brief is not duplicative of Plaintiffs' moving briefs and offers the Court unique information. Amici Curiae's *amicus* brief offers the perspective of organizations that focus on the advancement of employees and students that would be useful to this Court in resolving the pending motion for preliminary injunction. *See CARE*, 54 F. Supp. 2d at 975 (explaining that leave to file *amicus* brief should be granted "when the *amicus* has an interest in some other case that may be affected by the decision in the present case, or when the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide") (citing *Miller-Wohl Co. v. Comm'r of Labor & Indus.*, 694 F.2d 203, 204 (9th Cir. 1982)); *see also Corrosion Proof Fittings v. EPA*, 947 F.2d 1201, 1208 (5th Cir. 1991) (noting that an *amicus curiae* should "bridge gaps" in issues on appeal); *Amoco Oil Co. v. United States*, 234 F.3d 1374, 1377-78 (Fed. Cir. 2000) (noting that an *amicus curiae* should "provid[e] a broader perspective than the [supported party]").

CONCLUSION

For the reasons set forth above, Amici Curiae respectfully request this Court's leave to file the accompanying *amicus* brief in support of Nevada's motion to intervene and in opposition to Plaintiffs' motion for summary judgment.

Dated: May 24, 2019

Respectfully submitted,

By: /s/ Jamie A. Levitt
Jamie A. Levitt

Jamie A. Levitt
Rhiannon N. Batchelder
MORRISON & FOERSTER LLP
250 West 55th Street
New York, New York 10019-9601
Telephone: (212) 468-8000

*Attorneys for Amici Curiae, American Association
of University Women; Service Employees
International Union; and 10 Additional
Professional, Labor, and Student Associations*

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

/s/ Jamie A. Levitt