

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

RICHARD W. DEOTTE et al.,	)	
	)	
Plaintiffs,	)	Case No. 4:18-CV-00825-O
	)	
v.	)	
	)	
ALEX M. AZAR II, in his official	)	
capacity as Secretary of Health and	)	
Human Services et al.,	)	
	)	
Defendants.	)	

**MOTION OF MASSACHUSETTS, CALIFORNIA, COLORADO,  
CONNECTICUT, DELAWARE, THE DISTRICT OF COLUMBIA, HAWAII,  
ILLINOIS, MAINE, MARYLAND, MICHIGAN, MINNESOTA, NEW JERSEY,  
NEW MEXICO, NEW YORK, NORTH CAROLINA, OREGON, PENNSYLVANIA,  
RHODE ISLAND, VERMONT, VIRGINIA, AND WASHINGTON FOR LEAVE TO  
FILE BRIEF AS *AMICI CURIAE* OPPOSING PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT AND PERMANENT INJUNCTION AND  
SUPPORTING NEVADA'S MOTION TO INTERVENE**

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**MOTION FOR LEAVE TO FILE**

The Commonwealth of Massachusetts, together with California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington, hereby respectfully move the Court for leave to file the attached *amici curiae* opposing Plaintiffs' motion for summary judgment and a permanent injunction and supporting Nevada's motion to intervene.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF LEAVE TO FILE**

The Commonwealth of Massachusetts, together with California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington, hereby respectfully move the Court pursuant to Local Rules 7.1 and 7.2(b) for leave to file the attached brief as *amici curiae* in opposition to Plaintiffs' motion for summary judgment and a permanent injunction and supporting Nevada's motion to intervene in this action. In support of their motion, the proposed *Amici* States respectfully submit that they have "sufficient interest in the outcome of the litigation to warrant leave to file th[is] amicus brief[]." *In re Allied Pilots Class Action Litig.*, No. 3:99-cv-0480P, 2000 WL 1405235, at \*1 n.1 (N.D. Tex. Sept. 26, 2000). The proposed *Amici* States further respectfully submit that their brief will provide information that is "timely and useful or otherwise necessary to the administration of justice." *United States ex rel. Long v. GSD & M Idea City LLC*, No. 3:11-CV-1154-O, 2014 WL 11321670, at \*4 (N.D. Tex. Aug. 8, 2014) (quoting *Does 1–7 v. Round Rock Indep. Sch. Dist.*, 540 F. Supp. 2d 735, 738 n.2 (W.D. Tex. 2007)).

First, as set forth in greater detail in the amicus brief, the proposed *Amici* States, like Nevada, have a significant interest in the outcome of this litigation, in which nationwide classes have been certified. The proposed *Amici* States have a compelling interest in protecting the health, well-being, and economic security of their residents. In furtherance of this interest, the proposed *Amici* States are committed to ensuring that contraception is as widely available and affordable as possible. Access to contraception advances educational opportunity, workplace equality, and financial empowerment for women; improves the health and well-being of children; and reduces health-care-related costs for States. Many States have laws requiring health

insurance plans to cover contraception. This mandate is mirrored in the Affordable Care Act, which applies to most employer-sponsored plans, including self-insured plans that are not subject to state regulation. For this and other reasons, the proposed *Amici* States have an interest in upholding the Act's contraceptive mandate, as implemented with an exemption for religious organizations as well as the accommodation for objecting non-profit and closely-held for-profit employers.

Second, the proposed *Amici* States' brief will be useful to the administration of justice because it defends on the merits the claim brought by the plaintiffs here under the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. §§ 2000bb *et seq.* In this case, the defendants have heretofore declined to defend this RFRA claim on the merits in response to the plaintiffs' pending motion for summary judgment. *See* Defts. Resp., Dkt. 38 at 3 ("Defendants are not raising a substantive defense of the Mandate or the accommodation process with respect to Plaintiffs' [RFRA] challenge."). Therefore, the proposed *Amici* States respectfully submit, their brief will be useful to the Court in considering the issues by presenting an opposing view of the merits.

The proposed *Amici* States respectfully submit their brief as an attachment to this filing, together with a proposed order, and request that the Court permit the brief's filing and deem it filed with any grant of this motion.

Respectfully submitted,

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**CERTIFICATE OF CONFERENCE**

Pursuant to Local Rule 7.1, I hereby certify that I have conferred with counsel for the parties regarding the foregoing motion for leave to file a brief as *amici curiae*. Counsel for the United States Defendants do not oppose this motion. Counsel for Plaintiffs do oppose the motion.

/s/ Elizabeth N. Dewar

Elizabeth N. Dewar

**CERTIFICATE OF SERVICE**

I hereby certify that on May 24, 2019, I electronically filed the foregoing motion seeking leave to file an *amicus* brief using the Court's electronic filing system. Notice of this filing therefore will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system, and Parties may access this filing through the Court's system.

/s/ Elizabeth N. Dewar

Elizabeth N. Dewar