

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

RICHARD W. DEOTTE, on behalf of himself and others similarly situated; YVETTE DEOTTE; JOHN KELLEY; ALISON KELLEY; BRAIDWOOD MANAGEMENT INC., on behalf of itself and others similarly situated,

Plaintiffs,

v.

ALEX M. AZAR II, in his official capacity as Secretary of Health and Human Services; STEVEN T. MNUCHIN, in his official capacity as Secretary of the Treasury; R. ALEXANDER ACOSTA, in his official capacity as Secretary of Labor; UNITED STATES OF AMERICA,

Defendants.

MOTION BY PLANNED PARENTHOOD FEDERATION OF AMERICA; THE NATIONAL HEALTH LAW PROGRAM; AND THE NATIONAL FAMILY PLANNING AND REPRODUCTIVE HEALTH ASSOCIATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND PERMANENT INJUNCTION

Pursuant to Local Rule 7.1 and the Court's inherent authority, Planned Parenthood Federation of America, the National Health Law Program, and the National Family Planning and Reproductive Health Association (collectively, "Amici") respectfully move for leave to file a brief as amicus curiae in opposition to Plaintiffs' Motion for Summary Judgment and Permanent Injunction, for the reasons that follow. Amici's proposed brief is attached as Exhibit A. As set forth in the accompanying certificate of conference, Plaintiffs oppose this Motion, and Defendants do not.

ARGUMENT

Courts have broad discretion to permit non-party participation as *amici curiae*. *See In re Halo Wireless, Inc.*, 684 F.3d 581, 596 (5th Cir. 2012). This Court should grant the Motion because the proposed *amicus* brief is not duplicative of the parties’ briefs but instead offers the Court timely and consequential information relevant to Plaintiffs’ motion. *See id.*; *Ysleta Del Sur Pueblo v. El Paso Cnty. Water Improvement Dist. No. 1*, 222 F.3d 208, 209 (5th Cir. 2000) (per curiam). In particular, the proposed brief describes the existing federal safety net programs that provide free or subsidized contraceptives for low-income individuals, such as Medicaid and Title X, and explains why these programs are not adequate substitutes for the Affordable Care Act’s requirement that insurers cover contraception with no cost-sharing (the “Contraceptive Coverage Benefit”).

The proposed brief draws on Amici’s background and expertise as well as the evidence presented by the research literature. As organizations focused on reproductive justice and reproductive rights, Amici are uniquely situated to assist the Court in the resolution of the pending summary judgment motion by describing how the Plaintiffs’ motion and proposed injunction (the “Proposed Injunction”) would affect their constituents. Specifically, the Proposed Injunction would, if granted, deprive many women access to seamless no-cost contraceptive coverage, putting them at greater risk of unintended pregnancies and other health problems. These are the very harms that Amici seek to prevent through their direct care services and advocacy. In addition to their strong interest in the disposition of this particular case, Amici bring significant experience in other litigation concerning challenges to the Contraceptive Coverage Benefit—including serving as *amici curiae* in cases related to the interim and final versions of the Expanded Exemptions. *See, e.g.*, Amici Curiae Brief, *California v. Azar*, Nos. 19-15072, 19-15118, and 19-15150 (9th Cir. Apr. 22, 2019), ECF No. 11272666; Amici Curiae Brief, *Pennsylvania v. President of the United States*, Nos. 17-3752-18-1253, 19-1129, and 19-1189 (3d Cir. Mar. 25, 2019), ECF No. 003113193352; Amici Curiae Brief, *Massachusetts v. Dep’t of Health & Human Servs.*, No. 18-1514 (1st Cir. Oct. 4, 2018), ECF No. 00117347940;

Amici Curiae Brief, *California v. Azar*, Nos. 18-15144, 18-15166, and 18-15255 (9th Cir. May 29, 2018), ECF No. 10888766; Amici Curiae Brief, *California v. Azar*, No. 4:17-cv-5783-HSG (N.D. Cal. May 9, 2019).

CONCLUSION

For these reasons, *Amici* respectfully request this Court's leave to file the accompanying amicus brief in support of Plaintiffs' Motion for Summary Judgment and Permanent Injunction.

A proposed order granting this Motion is attached as Exhibit B and will be emailed to chambers in word-processing format.

Respectfully submitted,

Dated: May 24, 2019

By: s/ Allan J. Arffa

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CERTIFICATE OF CONFERENCE

Pursuant to LR 7.1(a), Movants' counsel conferred via telephone on May 22, 2019, with Jonathan F. Mitchell, attorney for Plaintiffs, and he indicated that Plaintiffs do not oppose this Motion. On May 24, Mr. Mitchell contacted Movants' counsel and advised that Plaintiffs do oppose this Motion.

On May 22, 2019, Movants' counsel emailed Daniel M. Riess, counsel of record for Defendants, to determine whether Defendants would oppose this motion. We understand Mr. Riess was out of the office. On May 22, 2019, Movants' counsel emailed Michelle Bennett, an attorney with the Civil Division of the Justice Department. Ms. Bennett confirmed that Defendants do not oppose this Motion.

s/ Crystal Johnson

Crystal Johnson, Counsel for Planned Parenthood Federation of America, National Health Law Program, and National Family Planning and Reproductive Health Association

CERTIFICATE OF SERVICE

I certify that on this 24th Day of May, 2019, I electronically filed the foregoing motion and the accompanying amicus brief with the Clerk of the Court using the CM/ECF system, which I understand to have caused service of the counsel for all parties.

s/ Charles S. Siegel
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