

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

TEXAS MEDICAL ASSOCIATION and §
DR. ADAM CORLEY, §

Plaintiffs, §

v. §

UNITED STATES DEPARTMENT OF §
HEALTH AND HUMAN SERVICES, §
DEPARTMENT OF LABOR, §
DEPARTMENT OF THE TREASURY, §
OFFICE OF PERSONNEL §
MANAGEMENT, §
and the CURRENT HEADS OF THOSE §
AGENCIES IN THEIR OFFICIAL §
CAPACITIES, §

Civil Action No. 6:21-CV-00425

Defendants.

**OPPOSED MOTION FOR LEAVE TO FILE BRIEF OF MEMBERS OF
CONGRESS AS AMICI CURIAE BY JANUARY 3, 2022**

Amici are members of Congress with backgrounds in healthcare who respectfully seek leave to file a brief as *amici curiae* by January 3, 2022. Although *amici* reflect a variety of healthcare backgrounds, they are united as lawmakers in their view that the interim final rule challenged in this case doesn't properly implement the legislation Congress passed in the bipartisan No Surprises Act. Plaintiffs, through their counsel, have consented to the requested leave. Defendants, through their counsel, oppose.

NATURE OF *AMICI'S* INTEREST

Amici are members of Congress, as well as healthcare providers, who are devoted to crafting policies that lower healthcare costs and improve access to quality care.¹ Although *amici* reflect a variety of healthcare backgrounds, they are united as lawmakers in their view that the challenged interim final rule in this case defies the policy choices Congress expressly made in the No Surprises Act. The rule instead adopts an approach that Congress *rejected*. *Amici* are particularly concerned about the negative repercussions on access to quality healthcare as a result of the rule.

As elected officials who are not only deeply familiar with the No Surprises Act but who also bring a wealth of healthcare experience to the table, *amici* are uniquely positioned to explain how and why Congress came to pass the No Surprises Act as written. *Amici* have a strong interest in guarding the prerogatives of the legislative branch and ensuring that administrative agencies respect the limits of their delegated authority.

DESIRABILITY AND RELEVANCE OF *AMICI'S* PARTICIPATION

Federal district courts have inherent authority to allow the participation of *amici curiae* as they deem appropriate. *See, e.g., Trahan v. Long Beach Mortg. Co.*, No. 9:05-CV-29 (TH/KFG), 2006 WL 8440677, at *1 n.1 (E.D. Tex. Feb. 9, 2006) (explaining that leave for *amici* to be heard “rests solely within the discretion of the court” (citing *United States v. Louisiana*, 751 F. Supp. 608, 620 (E.D. La. 1990)).

¹ *Amici* include Rep. Michael Burgess, M.D. (R-TX) and Rep. Andy Harris, M.D. (R-MD).

Courts typically grant leave where, as here, *amici* have “unique information or [a] perspective that can help the court beyond the help that the lawyers for the parties are able to provide,” such that “their participation is both timely and useful.” *See Trahan*, 2006 WL 8440677, at *1 n.1 (quoting in part *Cmty. Ass’n for Restoration of Env’t v. DeRuyter Bros. Dairy*, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999)); *see also Prairie Rivers Network v. Dynegy Midwest Generation, LLC*, 976 F.3d 761, 763–64 (7th Cir. 2020) (explaining that “a friend of the court interested in a particular outcome can contribute in clear and distinct ways,” including by “[h]ighlighting factual, historical, or legal nuance glossed over by the parties,” “[e]xplaining the broader regulatory or commercial context in which a question comes to the court,” and “[p]roviding practical perspectives on the consequences of potential outcomes”). *Amici* here easily meet this standard.

First, *amici* will aid the Court by providing the unique perspective of lawmakers who are also healthcare providers regarding how the No Surprises Act’s specific process for resolving payment disputes between insurers and physicians serves important public policy interests as a balanced solution that protects patients.

Second, *amici*’s participation will be timely. *Amici* respectfully request leave to file their brief on or before January 3, 2022. Defendants’ opposition to Plaintiffs’ motion for summary judgment or cross-motion for summary judgment is due January 10, 2022, and the parties will not fully brief the issues until February 2, 2022. *See* Order, ECF No. 22. As a result, *amici*’s filing of their brief on or before January 3,

2022, will not delay proceedings or prejudice defendants, as *amici's* brief will be filed at least a week before Defendants' opposition is due.

Plaintiffs consent to the requested leave. Defendants are opposed to the requested leave.

Dated: December 21, 2021

Respectfully submitted,

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***Attorneys for Members of Congress
as Amici Curiae***

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(h), I certify that I contacted counsel for the parties via e-mail on December 8, 2021 and counsel for Defendants via e-mail and telephone on December 21, 2021. Counsel for Plaintiffs indicated that Plaintiffs do not oppose this Motion. Counsel for Defendants, James Gillingham, stated that Defendants oppose this Motion. No agreement could be reached with counsel for Defendants regarding the relief requested herein and, accordingly, *amici* submit this Motion for the Court's consideration.

/s/ Paulette C. Minter

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service on December 21, 2021.

/s/ Paulette C. Minter

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Defendants.

**[PROPOSED] ORDER GRANTING OPPOSED MOTION FOR LEAVE TO
FILE BRIEF OF MEMBERS OF CONGRESS AS AMICI CURIAE BY
JANUARY 3, 2022**

Before the Court is an Opposed Motion for Leave to File Brief of Members of Congress as *Amici Curiae* by January 3, 2022 (“Motion”). Having considered the Motion, the Court is of the opinion that the Motion and relief requested therein should be **GRANTED**.

Accordingly, the Court **ORDERS** that the Motion is **GRANTED**, and the Members of Congress are granted leave to file their brief as *amici curiae* on or before January 3, 2022.