

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

STATE OF MISSISSIPPI; STATE OF ALABAMA; STATE OF ARKANSAS; COMMONWEALTH OF KENTUCKY; STATE OF LOUISIANA; STATE OF MISSOURI; and STATE OF MONTANA,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as Secretary of Health and Human Services; THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; CHIQUITA BROOKS-LASURE, in her official capacity as Administrator of the Centers for Medicare and Medicaid Services; THE CENTERS FOR MEDICARE AND MEDICAID SERVICES; THE UNITED STATES OF AMERICA,

Defendants.

Case No. 1:22-cv-113-HSO-RPM

Plaintiffs' Response in Opposition to Motion for Leave to Participate as *Amici Curiae* in Summary Judgment Hearing

Plaintiffs—the States of Mississippi, Alabama, Arkansas, Louisiana, Missouri, and Montana and the Commonwealth of Kentucky—respond to the Motion to for Leave to Participate as *Amici Curiae* in Summary Judgment Hearing filed by Movants the Greensboro Health Disparities Collaborative and the NAACP State Conferences for Alabama, Arizona, Arkansas, Kentucky, Louisiana, Missouri, Mississippi, and Montana (Doc. 112, 113) and state:

1. On May 5, 2022, Plaintiffs (along with certain individual plaintiffs) filed a complaint against Xavier Becerra, in his official capacity as Secretary of Health and Human Services; Chiquita Brooks-LaSure, in her official capacity as Administrator of the Centers for Medicare and Medicaid Services; the Centers for Medicare and Medicaid Services; the United States Department of Health and Human Services; and the United States of America. The complaint alleged that Defendants violated federal law by adopting an Anti-Racism Rule that encourages doctors to elevate race over medical treatment.

2. On March 28, 2023, this Court granted in part and denied in part Defendants' motion to dismiss the complaint. The Court ruled, in part, that Plaintiffs "sufficiently alleged that they have standing to sue due to injury to their sovereign interest in the enforcement of their laws" and that "judicial review of whether the Anti-Racism Rule qualifies as a clinical practice improvement activity" is not precluded by federal law. *Colville v. Becerra*, 2023 WL 2668513, at *20 (S.D. Miss. Mar. 28, 2023). Subsequently, this Court ordered Plaintiffs to file their early dispositive motion for summary judgment by June 9, 2023. *See* Doc. 73.

3. On May 11, 2023, Movants filed a Motion to Intervene as Defendants and accompanying Memorandum of Law in Support. *See* Doc. 61, 62. State Plaintiffs and the government Defendants opposed the motion. *See* Doc. 75, 76, 77.

4. On June 9, 2023, State Plaintiffs filed an early motion for summary judgment. Doc. 78, 79. On July 12, 2023, this Court denied Movants motion to

intervene. Doc. 87. This Court instead granted Movants leave to appear as amici curiae.

Id.

5. On July 28, 2023, Defendants filed their cross-motion for summary judgment and their opposition to State Plaintiffs' motion for summary judgment. Doc. 90, 91, 92.

6. On August 4, 2023, Movants filed their amicus brief. Doc. 96.

7. On September 5, 2023, State Plaintiffs filed their opposition to Defendants' cross-motion for summary judgment and rebuttal to Defendants' opposition to State Plaintiffs' motion for summary judgment. Doc. 108, 109.

8. On September 29, 2023, Movants filed their Motion for Leave to Participate as *Amici Curiae* in Summary Judgment Hearing. Doc. 112, 113.

6. This Court should deny Movant's motion. Plaintiffs' response is premised on the foregoing points and those set forth in their accompanying Memorandum of Authorities filed simultaneously with this Response.

FOR THESE REASONS, Plaintiffs request an order denying Movants' Motion to Leave to Participate as *Amici Curiae* in Summary Judgment Hearing.

Dated: October 13, 2023

Respectfully submitted,

s/ Scott G. Stewart

LYNN FITCH

Attorney General

Scott G. Stewart (MS Bar No. 106359)

Solicitor General

Justin L. Matheny (MS Bar No. 100754)

Deputy Solicitor General

MISSISSIPPI ATTORNEY

GENERAL'S OFFICE

P.O. Box 220

Jackson, MS 39205-0220

(601) 359-3680

scott.stewart@ago.ms.gov

justin.matheny@ago.ms.gov

s/ Cameron T. Norris

Cameron T. Norris*

CONSOVOY MCCARTHY PLLC

1600 Wilson Blvd., Ste. 700

Arlington, VA 22209

(703) 243-9423

cam@consovoymccarthy.com

s/ Edmund G. LaCour Jr.

STEVE MARSHALL

Attorney General

Edmund G. LaCour Jr.*

Solicitor General

OFFICE OF THE ALABAMA

ATTORNEY GENERAL

501 Washington Ave.

Montgomery, AL 36130

(334) 353-2196

Edmund.LaCour@AlabamaAG.gov

s/ Nicholas J. Bronni

LESLIE RUTLEDGE

Attorney General

Nicholas J. Bronni*

Solicitor General

OFFICE OF THE ARKANSAS

ATTORNEY GENERAL

323 Center Street, Suite 200

Little Rock, AR 72201

(501) 682-6302

nicholas.bronni@arkansasag.gov

s/ Aaron J. Silletto
DANIEL CAMERON
Attorney General
Aaron J. Silletto*
Assistant Attorney General
KENTUCKY OFFICE OF THE
ATTORNEY GENERAL
700 Capital Avenue, Suite 118
Frankfort, Kentucky
(502) 696-5439
Aaron.Silletto@ky.gov

s/ Scott St. John
JEFF LANDRY
Attorney General
Elizabeth B. Murrill*
Solicitor General
Scott St. John (MS Bar No. 102876)
Deputy Solicitor General
LOUISIANA DEPARTMENT OF JUSTICE
1885 N. Third Street
Baton Rouge, Louisiana 70804
(225) 326-6766
murrille@ag.louisiana.gov

s/ Joshua M. Divine
ANDREW BAILEY
Attorney General
Joshua M. Divine*
Solicitor General
Samuel C. Freedlund*
OFFICE OF THE MISSOURI
ATTORNEY GENERAL
815 Olive Street
Suite 200
St. Louis, MO 63101
(314) 340-4869
Josh.Divine@ago.mo.gov
Samuel.Freedlund@ago.mo.gov

s/ Christian Corrigan
AUSTIN KNUDSEN
Attorney General
Christian Corrigan***
Solicitor General
MONTANA DEPARTMENT OF JUSTICE
215 North Sanders Street
Helena, MT 59601
christian.corrigan@mt.gov

*pro hac vice

**pro hac vice pending

***pro hac vice forthcoming

CERTIFICATE OF SERVICE

I e-filed this opposition with the Court, which will email everyone requiring service.

Dated: October 13, 2023

s/ Cameron T. Norris