

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

TEXAS, WISCONSIN, ALABAMA,
ARKANSAS, ARIZONA, FLORIDA,
GEORGIA, INDIANA, KANSAS,
LOUISIANA, PAUL LePAGE, Governor of
Maine, MISSISSIPPI, by and through
Governor Phil Bryant, MISSOURI,
NEBRASKA, NORTH DAKOTA, SOUTH
CAROLINA, SOUTH DAKOTA,
TENNESSEE, UTAH, WEST VIRGINIA,
NEILL HURLEY, and JOHN NANTZ,

Plaintiffs,

Civil Action No. 4:18-CV-00167-O

v.

UNITED STATES OF AMERICA, UNITED
STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES, ALEX AZAR, in
his Official Capacity as SECRETARY OF
HEALTH AND HUMAN SERVICES,
UNITED STATES INTERNAL REVENUE
SERVICE, and DAVID J. KAUTTER, in his
Official Capacity as Acting
COMMISSIONER OF INTERNAL
REVENUE

Defendants.

**UNOPPOSED MOTION FOR LEAVE TO
APPEAR WITHOUT LOCAL COUNSEL**

TO THE HONORABLE REED O'CONNOR:

Individual Plaintiffs Neill Hurley and John Nantz respectfully move for leave to appear without local counsel as required under N.D. Tex. R. 83.10(a).

EXECUTIVE SUMMARY

1. Individual Plaintiffs seek declaratory and injunctive relief from the Patient Protection and Affordable Care Act ("ACA"), as amended by the Tax Cuts and Jobs

Act of 2017, which set the tax penalty associated with the individual mandate to purchase minimum essential coverage to \$0.00. Plaintiffs are faced with the choice of continuing to comply with the unconstitutional individual mandate or violating federal law by foregoing the required minimal essential coverage.

2. Individual Plaintiffs are represented by the Texas Public Policy Foundation - a non-profit, public interest litigation organization in Austin, Texas – and by a former Texas Solicitor General. Their counsel are available to travel to Fort Worth on short notice. Because all other parties to this case are exempt from the requirement of local counsel, extending the same treatment to Plaintiffs will not detract from the Local Rules’ purpose of facilitating the scheduling of hearings on short notice. Accordingly, Individual Plaintiffs respectfully seek leave to proceed without local counsel.

ARGUMENT AND AUTHORITIES

3. The circumstances of this case present a unique situation. All other anticipated parties to this case are exempted from the local counsel requirement, so no additional delay will be caused by Individual Plaintiffs’ counsel’s need to travel to Fort Worth. Also, Plaintiffs’ lead counsel has been admitted to practice before the Northern District of Texas for more than a decade and is deeply familiar with its rules and practices.

4. **No Delay Will Result From Granting Leave To Proceed Without Local Counsel.** No other party is likely to be represented by local counsel. Defendants will be exempt from the local counsel requirement because they will be represented by the United States Department of Justice, and the Plaintiff States will be exempt because

of their representation by their respective Attorneys General. *See* N.D. Tex. R. 83.11. Because any hearing held on short notice will require the other parties' counsel to travel to Fort Worth, no additional delay will result from Plaintiffs' counsel's short trip from Austin. Thus, granting leave will comport with Rule 83.10's purpose of ensuring that each party has the ability to "be present and argue a party's position at any hearing called by the presiding judge on short notice." N.D. Tex. R. 83.10(b).

5. Individual Plaintiffs' Counsels Have Extensive Experience In This District. Individual Plaintiffs' counsel Robert Henneke has been admitted to the Northern District of Texas since 2004. In the twelve cases he has been involved with in the Northern District, he has become intimately familiar with its rules and procedures.

Additionally, this Court recently granted this same motion for Mr. Henneke to appear without local counsel, in civil action number 7:15-cv-00162-O, styled *Aderholt et al. v. Bureau of Land Management et al.* Mr. Henneke has litigated that case in this Court since 2015, and has traveled to Fort Worth on short notice for hearings, fulfilled all local counsel requirements, and abided by the local rules of this Court.

Plaintiffs' counsel Jonathan Mitchell is the former Solicitor General of Texas. During his tenure, Mr. Mitchell represented the State of Texas in matters before the Texas federal district courts, Fifth Circuit Court of Appeals, and the United States Supreme Court.

6. Individual Plaintiffs Are Represented By A Non-Profit, Public Interest Law Firm. Finally, Individual Plaintiffs are represented by a public interest law

firm – The Texas Public Policy Foundation’s Center for the American Future. Requiring Individual Plaintiffs to hire local counsel would unnecessarily increase the cost of defending their constitutional rights. Especially given the other parties’ exemption to the requirement of local counsel and the distance that must be traveled by all parties’ anticipated counsel, such an additional financial burden would not be in the interest of justice.

PRAYER AND CONCLUSION

THEREFORE, Individual Plaintiffs respectfully request that the Court enter an order allowing them to appear without local counsel as required by N.D. Tex. R. 83.10(a).

Respectfully submitted,

/s/ Robert Henneke

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Attorneys for Individual-Plaintiffs

CERTIFICATE OF CONFERENCE

I certify that I conferred with counsel of record, as required by N.D. Tex. R. 7.1(a), who are unopposed to the relief sought in this motion.

/s/ Robert Henneke
ROBERT HENNEKE

CERTIFICATE OF SERVICE

I certify that the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record registered as CM/ECF users.

/s/ Robert Henneke
ROBERT HENNEKE