

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES HOUSE OF	)
REPRESENTATIVES,	)
	)
Plaintiff,	)
	)
v.	)
	)
SYLIVA MATHEWS BURWELL in	)
her official capacity as Secretary of Health	)
and Human Services, <i>et al.</i> ,	)
	)
Defendants.	)
_____	)

Case No. 1:14-cv-01967-RMC

**MOTION OF MEMBERS OF CONGRESS FOR LEAVE TO FILE *AMICI  
CURIAE* BRIEF IN SUPPORT OF DEFENDANTS**

Pursuant to Local Rule 7(o), *amici curiae* members of Congress move for leave to file the attached *amici curiae* brief in support of the defendants’ motion for summary judgment. In support of this motion, *amici* state:

1. *Amici curiae* are Democratic leaders in the House of Representatives who were actively involved in the enactment of the Patient Protection and Affordable Care Act (“ACA”). They are thus particularly well-suited to provide the Court with background on the text, structure, and history of the statute, including the cost-sharing reduction payments mandated by the ACA that are at issue in this case.<sup>1</sup>

<sup>1</sup> A full list of *amici* is included in the attached proposed brief.

2. This Court has “broad discretion to permit” third-parties to file *amicus curiae* briefs. *Nat’l Ass’n of Home Builders v. U.S. Army Corps of Eng’rs*, 519 F. Supp. 2d 89, 93 (D.D.C. 2007). Thus, courts have permitted third-parties to participate as *amicus curiae* where they have “relevant expertise and a stated concern for the issues at stake in [the] case.” *District of Columbia v. Potomac Elec. Power Co.*, 826 F. Supp. 2d 227, 237 (D.D.C. 2011); *see also Northern Mariana Islands v. United States*, 2009 WL 596986, at \*1 (D.D.C. Mar. 6, 2009) (“The filing of an *amicus* brief should be permitted if it will assist the judge ‘by presenting ideas, arguments, theories, insights, facts or data that are not to be found in the parties’ briefs.’” (quoting *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003))); *Nat’l Ass’n of Home Builders*, 519 F. Supp. 2d at 93 (permitting a third-party to participate as an *amicus curiae* because the court “may benefit from [the third-party’s] input”).
3. The proposed, attached *amici curiae* brief plainly satisfies that standard because it offers the perspective of members of Congress who were actively involved in the drafting of the ACA on the question whether Congress intended to provide a permanent appropriation for the cost-sharing subsidies mandated by the Act. *Amici* can thus offer “insights” into the core question in the case that cannot be provided by the parties’ briefs. By virtue of their long service in Congress, *amici* can also provide the Court with a unique perspective on another core issue in the case, that is, whether legislative standing is appropriate in this case to defend the prerogatives of the House of

Representatives. *Amici* know that it is not, because this lawsuit presents a question of statutory interpretation, which, like all other such questions, can be resolved through the myriad tools that Congress historically uses when disputes arise between the executive branch and Congress about statutory interpretation, implementation, and policy matters.

4. This motion and the attached brief have been filed within seven days of the parties' filing of their respective motions for summary judgment. This Court has previously accepted *amicus* briefs filed within similar timeframes, as well as briefs filed more than seven days after the brief of the party being supported. *See, e.g.*, Minute Order granting Motion for Leave to File Brief as *Amici Curiae*, *U.S. House of Representatives v. Burwell*, No. 1:14-cv-01967-RMC (Sept. 9, 2015); Minute Order granting Motion for Leave to File *Amicus* Brief, *Prevor v. F.D.A.*, No. 1:11-cv-01187-RMC (Feb. 2, 2012). Moreover, acceptance of the proposed *amici curiae* brief should not delay the Court's consideration of the parties' motions because their responsive briefs are not due until January 4, 2016, more than three weeks from the date of this filing.
5. Counsel for *amici* contacted counsel for the parties to determine whether they would consent to the filing of this brief. Counsel for plaintiff opposes this motion and has indicated that plaintiff will file a brief opposition. Counsel for defendants has stated that they do not oppose the motion for leave to file this brief.

Dated: December 8, 2015

Respectfully submitted,

/s Elizabeth B. Wydra

Elizabeth B. Wydra  
(D.C. Bar No. 483298; admitted in D.D.C.)  
Brienne J. Gorod (D.C. Bar No. 982075)  
Simon Lazarus (D.C. Bar No. 90613)  
Constitutional Accountability Center  
1200 18th Street, N.W.  
Suite 501  
Washington, D.C. 20036  
(202) 296-6889  
elizabeth@theusconstitution.org  
*Counsel for Proposed Amici Curiae*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 8, 2015, the foregoing document was filed with the Clerk of the Court, using the CM/ECF system, causing it to be served on all counsel of record.

Dated: December 8, 2015

/s/ Elizabeth B. Wydra  
Elizabeth B. Wydra