

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

RICHARD W. DEOTTE et al.,)	
)	
Plaintiffs,)	Case No. 4:18-CV-00825-O
)	
v.)	
)	
ALEX M. AZAR II, in his official)	
capacity as Secretary of Health and)	
Human Services et al.,)	
)	
Defendants.)	

MOTION OF MASSACHUSETTS, CALIFORNIA, COLORADO,
CONNECTICUT, DELAWARE, THE DISTRICT OF COLUMBIA, HAWAII,
ILLINOIS, MAINE, MARYLAND, MICHIGAN, MINNESOTA, NEW JERSEY,
NEW MEXICO, NEW YORK, NORTH CAROLINA, OREGON, PENNSYLVANIA,
RHODE ISLAND, VERMONT, VIRGINIA, AND WASHINGTON FOR LEAVE TO
FILE BRIEF AS *AMICI CURIAE* OPPOSING PLAINTIFFS’ MOTION FOR
SUMMARY JUDGMENT AND PERMANENT INJUNCTION AND
SUPPORTING NEVADA’S MOTION TO INTERVENE

MAURA HEALEY
Attorney General of Massachusetts
JONATHAN B. MILLER
JON BURKE
JULIA E. KOBICK
Assistant Attorneys General

Elizabeth N. Dewar (Mass. Bar. No. 680722,
pro hac vice motion pending)
State Solicitor
One Ashburton Place
Boston, MA 02108
Phone: (617) 963-2204
Fax: (617) 727-5778
bessie.dewar@mass.gov

(Complete counsel list appears on final signature page.)

MOTION FOR LEAVE TO FILE

The Commonwealth of Massachusetts, together with California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington, hereby respectfully move the Court for leave to file the attached *amici curiae* opposing Plaintiffs' motion for summary judgment and a permanent injunction and supporting Nevada's motion to intervene.

Respectfully submitted,

MAURA HEALEY
Attorney General of Massachusetts
JONATHAN B. MILLER
JON BURKE
JULIA E. KOBICK
Assistant Attorneys General

/s/ Elizabeth N. Dewar
Elizabeth N. Dewar (Mass. Bar. No. 680722,
pro hac vice motion pending)
State Solicitor
One Ashburton Place
Boston, MA 02108
Phone: (617) 963-2204
Fax: (617) 727-5778
bessie.dewar@mass.gov

Date: May 24, 2019

(Complete counsel list appears on final signature page.)

MEMORANDUM IN SUPPORT OF LEAVE TO FILE

The Commonwealth of Massachusetts, together with California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington, hereby respectfully move the Court pursuant to Local Rules 7.1 and 7.2(b) for leave to file the attached brief as *amici curiae* in opposition to Plaintiffs' motion for summary judgment and a permanent injunction and supporting Nevada's motion to intervene in this action. In support of their motion, the proposed *Amici* States respectfully submit that they have "sufficient interest in the outcome of the litigation to warrant leave to file th[is] amicus brief[]." *In re Allied Pilots Class Action Litig.*, No. 3:99-cv-0480P, 2000 WL 1405235, at *1 n.1 (N.D. Tex. Sept. 26, 2000). The proposed *Amici* States further respectfully submit that their brief will provide information that is "timely and useful or otherwise necessary to the administration of justice." *United States ex rel. Long v. GSD & M Idea City LLC*, No. 3:11-CV-1154-O, 2014 WL 11321670, at *4 (N.D. Tex. Aug. 8, 2014) (quoting *Does 1–7 v. Round Rock Indep. Sch. Dist.*, 540 F. Supp. 2d 735, 738 n.2 (W.D. Tex. 2007)).

First, as set forth in greater detail in the amicus brief, the proposed *Amici* States, like Nevada, have a significant interest in the outcome of this litigation, in which nationwide classes have been certified. The proposed *Amici* States have a compelling interest in protecting the health, well-being, and economic security of their residents. In furtherance of this interest, the proposed *Amici* States are committed to ensuring that contraception is as widely available and affordable as possible. Access to contraception advances educational opportunity, workplace equality, and financial empowerment for women; improves the health and women of children; and reduces health-care-related costs for States. Many States have laws requiring health

insurance plans to cover contraception. This mandate is mirrored in the Affordable Care Act, which applies to most employer-sponsored plans, including self-insured plans that are not subject to state regulation. For this and other reasons, the proposed *Amici* States have an interest in upholding the Act's contraceptive mandate, as implemented with an exemption for religious organizations as well as the accommodation for objecting non-profit and closely-held for-profit employers.

Second, the proposed *Amici* States' brief will be useful to the administration of justice because it defends on the merits the claim brought by the plaintiffs here under the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. §§ 2000bb *et seq.* In this case, the defendants have heretofore declined to defend this RFRA claim on the merits in response to the plaintiffs' pending motion for summary judgment. *See* Defts. Resp., Dkt. 38 at 3 ("Defendants are not raising a substantive defense of the Mandate or the accommodation process with respect to Plaintiffs' [RFRA] challenge."). Therefore, the proposed *Amici* States respectfully submit, their brief will be useful to the Court in considering the issues by presenting an opposing view of the merits.

The proposed *Amici* States respectfully submit their brief as an attachment to this filing, together with a proposed order, and request that the Court permit the brief's filing and deem it filed with any grant of this motion.

Respectfully submitted,

MAURA HEALEY
Attorney General of Massachusetts
JONATHAN B. MILLER
JON BURKE
JULIA E. KOBICK
Assistant Attorneys General

/s/ Elizabeth N. Dewar
Elizabeth N. Dewar (Mass. Bar. No.
680722, *pro hac vice* motion pending)
State Solicitor
One Ashburton Place
Boston, MA 02108
Phone: (617) 963-2204
Fax: (617) 727-5778
bessie.dewar@mass.gov

Date: May 24, 2019

XAVIER BECERRA
Attorney General of California
1300 I Street
Sacramento, CA 95814

PHILIP J. WEISER
Attorney General of Colorado
1300 Broadway, 10th Floor
Denver, CO 80203

WILLIAM TONG
Attorney General of Connecticut
55 Elm Street
Hartford, Ct 06106

KATHLEEN JENNINGS
Attorney General of Delaware
Department of Justice
Carvel State Building, 6th Floor
820 North French Street
Wilmington, DE 19801

KARL A. RACINE
*Attorney General for the
District of Columbia*
One Judiciary Square
441 4th Street, NW, Suite 630 South
Washington, D.C. 20001

CLARE E. CONNORS
Attorney General of Hawaii
425 Queen Street
Honolulu, HI 96813

KWAME RAOUL
Attorney General of Illinois
100 West Randolph Street
Chicago, IL 60601

AARON M. FREY
Attorney General of Maine
6 State House Station
Augusta, ME 04333

BRIAN E. FROSH
Attorney General of Maryland
200 Saint Paul Place
Baltimore, MD 21202

ELLEN F. ROSENBLUM
Attorney General of Oregon
1162 Court Street NE
Salem, OR 97301

DANA NESSEL
Attorney General of Michigan
P.O. Box 30212
Lansing, Michigan 48909

JOSH SHAPIRO
Attorney General of Pennsylvania
Office of Attorney General
Strawberry Square
Harrisburg, PA 17120

KEITH ELLISON
Attorney General of Minnesota
102 State Capitol
75 Rev. Dr. Martin Luther King Jr.
Boulevard
St. Paul, MN 55155

PETER F. NERONHA
Attorney General of Rhode Island
150 South Main Street
Providence, RI 02903

GURBIR S. GREWAL
Attorney General of New Jersey
25 Market Street, Box 080
Trenton, NJ 08625

THOMAS J. DONOVAN, JR.
Attorney General of Vermont
109 State Street
Montpelier, VT 05609

HECTOR BALDERAS
Attorney General of New Mexico
408 Galisteo Street
Santa Fe, NM 87501

MARK R. HERRING
Attorney General of Virginia
202 North 9th Street
Richmond, VA 23219

LETITIA JAMES
Attorney General of New York
28 Liberty Street
New York, NY 10005

ROBERT W. FERGUSON
Attorney General of Washington
P.O. Box 40100
Olympia, WA 98504

JOSHUA H. STEIN
Attorney General of North Carolina
North Carolina Department of Justice
114 W. Edenton Street
Raleigh, NC 27603

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1, I hereby certify that I have conferred with counsel for the parties regarding the foregoing motion for leave to file a brief as *amici curiae*. Counsel for the United States Defendants do not oppose this motion. Counsel for Plaintiffs do oppose the motion.

/s/ Elizabeth N. Dewar
Elizabeth N. Dewar

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2019, I electronically filed the foregoing motion seeking leave to file an *amicus* brief using the Court's electronic filing system. Notice of this filing therefore will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system, and Parties may access this filing through the Court's system.

/s/ Elizabeth N. Dewar
Elizabeth N. Dewar