

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

UNITED STATES HOUSE OF REPRESENTATIVES,
Plaintiff,

v.

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

SYLVIA MATHEWS BURWELL,
in her official capacity as Secretary
of the United States Department of
Health and Human Services,

**UNITED STATES DEPARTMENT
OF HEALTH AND HUMAN
SERVICES,**

**JACOB J. LEW, in his official
Capacity as Secretary of the United
States Department of the Treasury,**

**UNITED STATES DEPARTMENT
OF THE TREASURY**
Defendants.

**MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* OF THE STATES OF
WEST VIRGINIA, OKLAHOMA, AND FOUR OTHER STATES**

The States of West Virginia, Oklahoma, Arizona, Louisiana, South Carolina and Texas move for leave to file a brief as *amici curiae* on the issue of standing. The proposed brief is attached.

This Court has discretionary authority to grant *amici curiae* leave to file. *Cobell v. Norton*, 246 F.Supp.2d 59, 62 (D.D.C. 2003). This Court ordinarily will grant leave to file as when potential *amici* have an interest that is not represented in the litigation or when potential *amici* add arguments that may be helpful to the Court. *Id.* The proposed amicus filing satisfies both of these criteria, and this Court should grant leave to file as *amici curiae*.

The interest of the State *amici* is not represented in this litigation. Because the States or their citizens often have interests that are not represented by the parties, the Federal Rules of Appellate Procedure permit a State to file a brief as *amicus curiae* without permission of the parties or leave of the Court. Fed. R. App. P. 29(a). This case presents a situation in which the States and their citizens have an interest not represented by the parties. As explained in the brief of *amici curiae*, the constitutionally mandated separation of powers serves to protect both the States and the people of the States. The States have an interest in this Court hearing this case on the merits to vindicate the protection afforded to the States by the Constitution, and no party to this litigation shares that interest.

The proposed brief of the States provides a perspective that may be helpful to this Court that has not been presented by the parties. The brief explains that the Executive has violated the law in a way that harms not only the institutional interest of Congress but also harms the States and their citizens. The brief explains too that the challenged Executive actions are part of a pattern of unlawful action that undermines the Constitutional structure and the protection that the structure affords the States and their citizens.

This motion and the attached brief have been filed within seven days of the filing by the party supported in this brief consistent with this Court's pattern of acceptance of amicus briefs filed within seven days of the filing of the supported party. *See Prevor v. F.D.A.*, No. 1:11-cv-01187 (granting leave to file amicus brief submitted eleven days after supported party filed); *Adirondack Medical Ctr. v. Sebelius*, No. 1:11-cv-00313 (granting leave to file amicus brief submitted over two months after supported party filed); *Gem Cnty. Mosquito Abatement Dist. v. E.P.A.*, No. 1:03-cv-02179 (granting leave to file amicus brief submitted seven days after

supported party filed). This timeframe is also consistent with the time permitted for *amici curiae* to file under the Federal Rules of Appellate Procedure. Fed. R. App. P. 29(e).

For the foregoing reasons, this Court should grant leave to file as *amici curiae*.

Respectfully submitted,

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Dated: March 6, 2015

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CERTIFICATE OF SERVICE

I certify that on March 6, 2015, the foregoing Motion for Leave to File as *Amici Curiae* of the States of West Virginia and Oklahoma and Four Other States, attached Brief of *Amici Curiae* the States of West Virginia and Oklahoma and Four Other States, and attached Proposed Order Granting Leave to File as *Amici Curiae* were served via the CM/ECF filing system of the United States District Court for the District of Columbia on all registered parties.

s/ Elbert Lin

Elbert Lin