IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel. Scott Pruitt, in his official capacity as Attorney General of Oklahoma,	)	
Plaintiff,	)	No. 6:11-cv-00030-RAW
v.	)	
KATHLEEN SEBELIUS, et al.,	)	
Defendants.	)	

NOTICE OF SUPPLEMENTAL AUTHORITY

On May 27, 2014, the U.S. Supreme Court decided *Michigan v. Bay Mills Indian Community*, No. 12-515, which bears on Defendants' arguments here.

In *Bay Mills*, Michigan argued that a statute abrogating tribal immunity for claims relating to gaming activity "on Indian lands" allowed it to sue a tribe over gaming *outside* Indian lands. Op. 7-8. "Stymied" by the plain "*on* Indian lands" language of the relevant provision, Michigan urged a "holistic method" of interpretation considering the statute's "text and structure as a whole." Op. 9-10. Michigan argued that, taken at face value, the plain language created an "anomaly" in "that it enables a State to sue a tribe for illegal gaming inside, but not outside, Indian country,"and contended that Congress "could not have intended that senseless outcome." Op. 10.

The Supreme Court rejected that argument, reasoning that the Court " does not revise legislation…just because the text as written creates an apparent anomaly as to some subject it does not address...[S]uch anomalies often arise from statutes, if for no

other reason than that Congress typically legislates by parts." Op. 10-11. "This Court has no roving license...to disregard clear language simply on the view that...Congress 'must have intended' something broader"–even if the language chose by Congress makes "not a whit of sense." Op. 11. The Court emphasized that this was especially true when the statute deals with subjects where Congress is normally required to speak "unequivocally" to the result urged. Op. 11.

Here, Defendants are similarly "stymied" by the plain language of 26 U.S.C. 36B, and like Michigan in *Bay Mills*, they thus urge a "holistic" reading of the ACA, contending that it would make "no sense" to limit subsidies to state-established Exchanges, and that the plain language of Section 36B creates "anomalies" with regard to other subjects of the ACA not addressed by Section 36B. And, as in *Bay Mills*, the statute at issue here addresses a subject (tax credits) where Congress is normally required to speak "unequivocally," so adherence to the interpretive rule described by the *Bay Mills* Court is likewise warranted here.

Respectfully Submitted,

s/PATRICK R. WYRICK
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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June, 2014, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Joel McElvain

Susan S. Brandon

s/PATRICK S. WYRICK