

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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STATE OF NEW YORK, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 1:19-cv-4676 (PAE)
	:	No. 1:19-cv-5433 (PAE)
	:	No. 1:19-cv-5435 (PAE)
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, et al.,	:	
	:	
Defendants.	:	
	:	
	x	

**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR LEAVE TO SUBMIT  
OVER-LENGTH BRIEF OF PROPOSED INTERVENORS DR. REGINA FROST AND  
THE CHRISTIAN MEDICAL AND DENTAL ASSOCIATIONS AS *AMICI CURIAE* IN  
OPPOSITION TO PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION**

Proposed Intervenors Dr. Regina Renee Frost and the Christian Medical and Dental Associations (“CMDA”) respectfully move for leave to file the accompanying *amicus* brief and declarations in opposition to Plaintiffs’ motion for a preliminary injunction. On June 26, 2019, Dr. Frost and the CMDA filed a motion to intervene as defendants in No. 19-cv-4676. Proposed Intervenors explained that they were prepared to file an opposition brief on June 28, 2019, the deadline established by the Court for Defendants to respond to Plaintiffs’ motion for preliminary injunction. *See* No. 19-cv-4676, ECF No. 65 at 13. On June 26, 2019, the Court issued an order setting a briefing schedule for the motion to intervene and inviting Proposed Intervenors to file a brief as *amici curiae*. *Id.*, ECF No. 73. Pursuant to the Court’s invitation, Proposed Intervenors have submitted an *amici curiae* brief and accompanying declarations. They also seek the Court’s permission to file an over-length brief consistent with the briefing order issued for the parties. *Id.*, ECF No. 27.

Proposed Intervenor (and currently *amici curiae*) include the largest association of Christian healthcare professionals in the country, CMDA, and one of its members, Dr. Frost. CMDA was founded in 1931, and currently has nearly 20,000 members. CMDA publishes position papers on a range of healthcare-related topics, including on the right of conscience. CMDA's official position on Healthcare Right of Conscience states: "Respect for conscientiously held beliefs of individuals and for individual differences is an essential part of our free society. The right of choice is foundational in our healthcare process, and it applies to both healthcare professionals and patients alike." See Declaration of Dr. David Stevens in Support of Opposition to Motion for Preliminary Injunction ("Stevens Decl.") ¶ 9. CMDA's official statement on the Healthcare Professionals Right of Conscience states that "[a]ll healthcare professionals have the right to refuse to participate in situations and procedures that they believe to be morally wrong and/or harmful to the patient or others. In such circumstances, healthcare professionals have an obligation to ensure that the patient's records are transferred to the healthcare professional of the patient's choice." *Id.* ¶ 10. Dr. Frost is an OBGYN doctor who agrees with CMDA's statements on conscience rights. Declaration of Dr. Frost in Support of Opposition to Motion for Preliminary Injunction ¶ 12-13.

Proposed Intervenor (currently *amici curiae*) are direct beneficiaries of the regulation challenged in this proceeding, *Protecting Statutory Conscience Rights In Health Care*, 84 Fed. Reg. 23,170 (May 21, 2019) ("Conscience Rule"). CMDA also has unique insight into the Conscience Rule, as it has filed comments in the past three rulemaking proceedings involving conscience rights and conducted scientific surveys in 2009 and 2011 that the Department relied upon when issuing the Conscience Rule. "An *amicus* brief should normally be allowed when . . . the *amicus* has unique information or perspective that can help the court beyond the help that the

lawyers for the parties are able to provide.” *Auto. Club of N.Y. v. Port. Auth. of N.Y. and N.J.*, No. 11-6747, 2011 WL 5865296, at \*1 (S.D.N.Y. Nov. 22, 2011). Here, CMDA and Dr. Frost represent the perspective of those health care entities protected by the Conscience Rule. As set forth more fully, in Proposed Intervenors’ motion to intervene, No. 19-cv-4676, ECF No. 65, they have unique insight into the role that religion plays in the lives of healthcare professionals and the importance of having robust (and enforceable) conscience protections in place.

Because Dr. Frost and CMDA have sought to intervene as Defendants, they have prepared a thorough brief responding to all the arguments presented in Plaintiffs’ 55-page motion for preliminary injunction, which was issued pursuant to this Court’s Order granting Plaintiffs’ motion for leave to file excess pages. No. 19-cv-4676, ECF No. 27. Because Proposed Intervenors bring a valuable perspective to this case, they respectfully ask the Court to grant permission to file an over-length brief consistent with the page limits afforded the parties. Proposed Intervenors also respectfully ask to be given leave to present oral argument upon the Plaintiffs’ motion for preliminary injunction.

Dated: June 28, 2019

New York, New York

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