

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

10 JUN 25 PM 2:42

BY RONALD R. CARPENTER

CLERK

NO. 84483-6

SUPREME COURT OF THE STATE OF WASHINGTON

THE CITY OF SEATTLE,
a municipal corporation,

Petitioner,

v.

ROBERT M. MCKENNA, Attorney
General, Washington State,

Respondent.

ATTORNEY
GENERAL'S RESPONSE
TO PETITIONER'S
SUPPLEMENTAL
INFORMATION

The Attorney General's Office received Petitioner's Supplemental Information shortly after 5:00 p.m., yesterday afternoon, June 24, 2010. It asserts that the "Attorney General has joined with the other Plaintiffs in opposing the filing of an amicus brief by the Governor of the State of Washington" in the Florida case. More specifically, Petitioner asserts that "the State of Washington represented by Attorney General McKenna, ha(s) opposed the filing of any amicus briefs." Supplemental Information at 1. The Attorney General does not oppose the filing of an amicus brief by the Governor of Washington in the Florida litigation. The following additional information makes that evident.

ORIGINAL

FILED AS
ATTACHMENT TO EMAIL

On June 14, 2010, the United States District Court for the Northern District of Florida *sua sponte* entered an Order On *Amicus Curiae* Filings. The Order is Exhibit A to the June 24, 2010 Declaration of Laura Wishik. The Order provides that “(1) *Amicus curiae* briefs will *not* be allowed in support of, or in opposition to, the defendants’ [United States] anticipated motion to dismiss, as it is expected that motion will raise discrete legal or procedural issues for which *amici* involvement would not be helpful or beneficial. Rather, an *amicus* may only seek to file a brief on the merits, which for purposes of this litigation will be at the summary judgment stage. If the case survives dismissal, the plaintiffs have already indicated an intent to promptly seek summary judgment, but either side may move for summary judgment within the time frame to be set. I will consider allowing *amicus* briefs (in support of, or in opposition to, either side) at that point in the proceedings.” Order at 3. (Emphasis in original.) The case is presently at the motion to dismiss stage.

On June 23, 2010, the Attorneys General of Oregon, Iowa, and Vermont filed a Motion For Clarification Of The Court’s June 14, 2010 Order and In The Alternative For Leave To Appear As *Amicus Curiae* and Memorandum in Support. This Motion is Exhibit B to the June 24, 2010 Declaration of Laura Wishik. The pleading upon which Petitioner relies for the assertion that Attorney General McKenna has opposed the filing of

an amicus brief by the Governor is the Plaintiffs' response to this motion by the Attorneys General of Oregon, Iowa, and Vermont. Hence, its title, 'Plaintiffs' Response to Motion for Clarification of the Court's June 14, 2010 Order And In The Alternative For Leave To Appear As Amicus Curiae' and its first line: 'Plaintiffs hereby respond to the "Motion for Clarification of the Court's June 14, 2010 Order and in the Alternative for Leave to Appear as Amicus Curiae, filed today on behalf of the Attorney General of the States of Oregon, Iowa, and Vermont."

Also on June 23, 2010, the Governors of Colorado, Michigan, Pennsylvania, and Washington filed a "Motion of Governors of Colorado, Michigan, Pennsylvania and Washington for Leave to File Amicus Brief and Memorandum in Support Thereof." The Governors' Motion is Exhibit C to the June 24, 2010 Declaration of Laura Wishik. The Governors' Motion attached and referenced the May 12, 2010, letter of Attorney General McKenna to Governor Gregoire stating "I [Attorney General McKenna] would also fully agree to your appearance in this matter."

Petitioner, City of Seattle, asserts that by the second line of the Plaintiffs' Response to the June 23, 2010, motion of the Attorney's General of Oregon, Iowa, and Vermont, Attorney General McKenna has opposed the Governors' motion for leave to file an amicus brief. The second line of the Plaintiffs' response to the motion of the Attorneys General states,

“Plaintiffs do not believe that the relief now requested is consistent with the Court’s June 14, 2010, Order, and consequently, Plaintiffs oppose the motion and any other such motions at this stage of the proceedings.”

Yesterday afternoon, June 24, 2010, at 3:59 p.m., by email, Chief Deputy Attorney General Brian T. Moran sent a letter to the Chief of Staff of the Florida Attorney General’s Office expressing concern that the Plaintiffs’ response to the motion of the Attorneys General of Oregon, Iowa, and Vermont could be read to also oppose amicus participation by the Governors of Colorado, Michigan, Pennsylvania, and Washington. Mr. Moran’s email includes a letter from Attorney General McKenna for filing in the federal district court in the Florida case to clarify that Washington does not oppose the pending motion of the governors of Colorado, Michigan, Pennsylvania, and Washington. Declaration of Brian T. Moran ¶ 4.

Mr. Moran's email was sent prior to the Attorney General's receipt of the City of Seattle's Supplemental Information filing. Declaration of Maureen Hart ¶ 2. The City of Seattle could not have been aware of this additional information. Attorney General McKenna's letter was filed with the federal district court today. Declaration of Brian T. Moran ¶ 5.

RESPECTFULLY SUBMITTED this 25th day of June, 2010.

ROBERT M. MCKENNA
Attorney General



MAUREEN HART, WSBA #7831
Solicitor General

JEFFREY T. EVEN, WSBA #20367
Deputy Solicitor General

PO Box 40100
Olympia, WA 98504-0100
360-753-2536

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

10 JUN 25 PM 2:43

BY RONALD R. CARPENTER

NO. 84483-6

SUPREME COURT OF THE STATE OF WASHINGTON
CLERK

THE CITY OF SEATTLE,
a municipal corporation,

Petitioner,

v.

ROBERT M. MCKENNA, Attorney
General, Washington State,

Respondent.

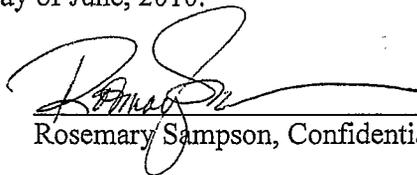
CERTIFICATE OF
SERVICE

I certify, under penalty of perjury under the laws of the state of Washington, that on this date I have caused a true and correct copy of Attorney General's Response to Petitioner's Supplemental Information, Declaration of Moran, Declaration of Hart, and this Certificate to be served on the following via electronic transmittal and First Class United States Mail, postage prepaid:

PETER S. HOLMES
LAURA WISHIK
SEATTLE CITY ATTORNEY'S OFFICE
PO BOX 94769
SEATTLE, WA 98124-4769

peter.holmes@seattle.gov
laura.wishik@seattle.gov

DATED this 25th day of June, 2010.



Rosemary Sampson, Confidential Secretary

ORIGINAL

FILED AS
ATTACHMENT TO EMAIL

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

10 JUN 25 PM 2:43

BY RONALD R. CARPENTER

NO. 84483-6

CLERK

SUPREME COURT OF THE STATE OF WASHINGTON

THE CITY OF SEATTLE,
a municipal corporation,

Petitioner,

v.

ROBERT M. MCKENNA, Attorney
General, Washington State,

Respondent.

DECLARATION OF
MAUREEN HART
IN SUPPORT OF
ATTORNEY
GENERAL'S
RESPONSE TO
PETITIONER'S
SUPPLEMENTAL
INFORMATION

I Maureen Hart, declare as follows:

1. I represent the Respondent Attorney General McKenna in this matter.
2. On June 24, 2010 at 5:04 p.m., the Attorney General's Office received an email from counsel for Petitioner City of Seattle, attaching Petitioner's Supplemental Information and Declaration of Laura Wishik Re Authenticity of Exhibits dated June 24, 2010. A true copy of the email is attached to this declaration as Attachment A.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and of my own knowledge, and that I executed this declaration at Olympia, Washington, in the County of Thurston this 25th day of June, 2010.


MAUREEN HART

FILED AS
ATTACHMENT TO EMAIL

ORIGINAL

ATTACHMENT A

Hart, Marnie (ATG)

From: Worthy, Michele [Michele.Worthy@seattle.gov]
Sent: Thursday, June 24, 2010 5:04 PM
To: Hart, Marnie (ATG); Even, Jeff (ATG)
Subject: City of Seattle v. Robert M. McKenna, case no. 84483-6
Attachments: 6-24-10 Petitioner's Suppl. Information.pdf; 6-24-10 Decl. of L. Wishik re Authenticity of Exhibits.pdf

The following was filed with the Supreme Court of the State of Washington on June 24, 2010.

1. Petitioner's Supplemental Information.
2. Declaration of Laura Wishik Re Authenticity of Exhibits.

Thank you,



MICHELE WORTHY
Legal Assistant

Seattle City Attorney's Office
600 4th Avenue, 4th floor
P.O. Box 94769
Seattle, WA 98124-4769
Phone: 206-684-8646
FAX: 206-684-8284
michele.worthy@seattle.gov

CONFIDENTIALITY STATEMENT: This message may contain information that is protected by the attorney-client privilege, the attorney work product doctrine, or by other confidentiality provisions. If this message was sent to you in error, any use, disclosure, or distribution of its contents is prohibited. If you receive this message in error, please contact me at the telephone number or e-mail address listed above and delete this message without printing, copying, or forwarding it. Thank you.

NO. 84483-6

SUPREME COURT OF THE STATE OF WASHINGTON

THE CITY OF SEATTLE,
a municipal corporation,

Petitioner,

v.

ROBERT M. MCKENNA, Attorney
General, Washington State,

Respondent.

DECLARATION OF
BRIAN T. MORAN

CLERK

BY RONALD R. CARRETER

by

10 JUN 25 PM 2:43

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

I Brian T. Moran, declare as follows:

1. I am over the age of 18 and am competent to testify to the matters in this declaration.
2. I am the Chief Deputy in the Office of the Attorney General and I have personal knowledge about the matters in this declaration.
3. On or about June 23, 2010, the Governors of Colorado, Michigan, Pennsylvania, and Washington filed a motion for leave to file amicus briefing at the motion to dismiss stage.
4. During the afternoon of June 24, 2010, I directed my assistant to send to Joe Jacquot, the Chief of Staff of the Florida Office of the Attorney General, two letters regarding *Florida, by and through Bill McCollum v. United States Dep't of Health & Human Servs.*, Cause No. 3-10-cv-91-RV/EMT. Attachment 1 is a true and correct copy of that email

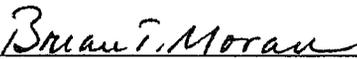
¹ FILED AS
ATTACHMENT TO EMAIL

ORIGINAL

and two letters attached to that email. The first letter is from me to Joe Jacquot and directs counsel in Florida to file with the Florida Federal District Court the second letter, which is from Attorney General McKenna to the Honorable Roger Vinson, the judge presiding over *Florida et al v. United States* Cause No. 3-10-cv-91-RV/EMT. The second of these two letters is from Attorney General McKenna and informs the Court that the State of Washington does not oppose the motion by the four Governors for leave to participate as amici.

5. Attorney General McKenna's letter has been filed with the federal district court today, as evidenced by Attachment 2.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and of my own knowledge, and that I executed this declaration at Olympia, Washington, in the County of Thurston this 25th day of June, 2010.



BRIAN T. MORAN

ATTACHMENT 1

Warren, Kimberly (ATG)

From: Warren, Kimberly (ATG)
Sent: Thursday, June 24, 2010 3:59 PM
To: 'Joe.Jacquot@myfloridalegal.com'
Cc: Hart, Marnie (ATG); Geck, Jay (ATG); Moran, Brian (ATG)
Subject: Letter from Chief Deputy Brian Moran - Washington State AGO

Dear Mr. Jacquot:

Please find attached a letter from Mr. Moran regarding *Florida, by and through Bill McCollum v. United States Dep't of Health & Human Servs.*, Cause No. 3-10-cv-91-RV/EMT. A hard copy was mailed today.

Best regards,

Kim Warren
Executive Assistant to
Brian Moran
Chief Deputy Attorney General
Washington State Attorney General's Office



Ltr to Jacquot
06-24-10.pdf



Rob McKenna
ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

June 24, 2010

Joe Jacquot
Chief of Staff
Office of the Florida Attorney General
PL 01 The Capitol
Tallahassee FL 32399

RE: *Florida, by and through Bill McCollum v. United States Dep't of Health & Human Servs.*
Cause No. 3-10-cv-91-RV/EMT

Dear Mr. ~~Jacquot~~ *Jacquot*:

As we have discussed, Attorney General McKenna remains concerned with the position taken by the plaintiff states regarding the motion to oppose the filing of an amicus brief by the Attorneys General from Iowa, Oregon and Vermont. More specifically, the concern is that the language used in the responsive pleading to the Attorneys General's leave to file an amicus, e.g. "...and any other such motions at this stage", could be read to also oppose amicus participation by the Governors of Washington, Pennsylvania, Michigan, and Colorado. We disagree with this position.

General McKenna's position is that our state's Governor should be afforded every opportunity to file an amicus brief in this matter. While I believe we left it after yesterday's call that this issue will be revisited after the motion to dismiss stage, I did want to do all I could to facilitate a process where our Governor's arguments could be heard at any stage in these proceedings.

Towards that, and because we do not have any lawyers in my office admitted to the Federal District Court in the Northern Florida District, I ask that your office file the enclosed original letter with the Court.

Thank you for your fullest assistance in this matter.

Best regards,

BRIAN T. MORAN
Chief Deputy Attorney General

BTM:kw
Attachment





Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

June 24, 2010

The Honorable Roger Vinson
Senior United States District Judge
United States District Court
Northern District of Florida
Pensacola Division
1 North Palafox Street
Pensacola, FL 32502

RE: *Florida, by and through Bill McCollum v. United States Dep't of Health & Human Servs.*
Cause No. 3-10-cv-91-RV/EMT

Dear Judge Vinson:

This letter is to clarify that the Plaintiff State of Washington does not oppose the pending motion by the governors of Colorado, Michigan, Pennsylvania, and Washington for leave to file an amicus brief.

Respectfully submitted,

ROBERT M. MCKENNA
Attorney General of Washington

1125 Washington Street SE
Olympia, WA 98504-0100
(360) 753-6200



ATTACHMENT 2

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
Pensacola Division

STATE OF FLORIDA, by and through
Bill McCollum, et al.,

Plaintiffs,

v.

Case No.: 3:10-cv-91-RV/EMT

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
et al.,

Defendants.

**PLAINTIFF STATE OF WASHINGTON'S RESPONSE TO MOTION OF
GOVERNORS OF COLORADO, MICHIGAN, PENNSYLVANIA AND
WASHINGTON FOR LEAVE TO FILE AMICUS BRIEF**

Plaintiff State of Washington, by and through Robert M. McKenna, Attorney General of the State of Washington, hereby represents that it does not oppose the Motion of Governors of Colorado, Michigan, Pennsylvania and Washington for Leave to File Amicus Brief. Attached as Exhibit A is the letter of June 25, 2010, from Attorney General McKenna to the Court, further attesting to the State of Washington's position on the referenced motion.

Respectfully submitted,

**BILL MCCOLLUM
ATTORNEY GENERAL OF FLORIDA**

/s/ Blaine H. Winship
Blaine H. Winship (Fla. Bar No. 0356913)
Assistant Attorney General
Office of the Attorney General of Florida
The Capitol, Suite PL-01

Tallahassee, Florida 32399-1050
Telephone: (850) 414-3300
Facsimile: (850) 488-4872
Email: blaine.winship@myfloridalegal.com
Attorneys for Plaintiff States

David B. Rivkin (D.C. Bar No. 394446)
Baker & Hostetler LLP
1050 Connecticut Avenue, N.W., Ste. 1100
Washington, DC 20036
Telephone: (202) 861-1731
Facsimile: (202) 861-1783
*Attorneys for Plaintiff States, National
Federation of Independent Business, Mary
Brown, and Kaj Ahlburg*

CERTIFICATE OF SERVICE

I hereby certify that, on this 25th day of June, 2010, a copy of the foregoing Response was served on counsel of record for all Defendants through the Court's Notice of Electronic Filing system.

/s/ Blaine H. Winship
Blaine H. Winship
Assistant Attorney General
Office of the Attorney General of Florida



Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

June 25, 2010

The Honorable Roger Vinson
Senior United States District Judge
United States District Court
Northern District of Florida
Pensacola Division
1 North Palafox Street
Pensacola, FL 32502

RE: *Florida, by and through Bill McCollum v. United States Dep't of Health & Human Servs.*
Cause No. 3-10-cv-91-RV/EMT

Dear Judge Vinson:

This letter is to clarify that the Plaintiff State of Washington does not oppose the pending motion by the governors of Colorado, Michigan, Pennsylvania, and Washington for leave to file an amicus brief.

Respectfully submitted,

// s // Rob McKenna

ROB MCKENNA
Attorney General of Washington

1125 Washington Street SE
Olympia, WA 98504-0100
(360) 753-6200

EXHIBIT

A



OFFICE RECEPTIONIST, CLERK

To: Sampson, Rose (ATG)
Cc: peter.holmes@seattle.gov; laura.wishik@seattle.gov; Hart, Marnie (ATG); Even, Jeff (ATG)
Subject: RE: The City of Seattle v. McKenna; WA S. Ct. -- 84483-6

Rec. 6-25-10

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Sampson, Rose (ATG) [mailto:RoseS@ATG.WA.GOV]
Sent: Friday, June 25, 2010 2:19 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: peter.holmes@seattle.gov; laura.wishik@seattle.gov; Hart, Marnie (ATG); Even, Jeff (ATG)
Subject: The City of Seattle v. McKenna; WA S. Ct. -- 84483-6

Sent on behalf of Maureen Hart, Solicitor General

Attached for filing is the Attorney General's Response to Petitioner's Supplemental Information, Declaration of Maureen Hart, Declaration of Brian T. Moran and Certificate of Service in *The City of Seattle v. McKenna*, No. 84483-6.

Rose Sampson
Confidential Secretary to
Solicitor General Maureen Hart
(360) 586-3114
roses@atg.wa.gov

(This information is confidential only if necessary.)

CONFIDENTIALITY NOTICE: This e-mail message and all attachments transmitted with it may contain confidential information intended solely for the use of the addressee. If you are not the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying, or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by phone (360-586-3114) or by e-mail (roses@atg.wa.gov) and delete this message and all copies and backups thereof.