

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

AMERICAN PULVERIZER COMPANY, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No.: 12-CV-3459-RED
)	
UNITED STATES DEPARTMENT OF HEALTH)	
AND HUMAN SERVICES, <i>et al.</i> ,)	
)	
Defendants.)	

**MOTION OF THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION, THE
ACLU OF EASTERN MISSOURI, AND THE ACLU FOUNDATION OF KANSAS AND
WESTERN MISSOURI FOR LEAVE TO FILE BRIEF AMICI CURIAE REGARDING
PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

Come now the American Civil Liberties Union Foundation, ACLU of Eastern Missouri, and the ACLU Foundation of Kansas and Western Missouri (together “ACLU”), through undersigned counsel, and respectfully request leave of this Court to submit the attached *amici curiae* brief in opposition to the Plaintiffs’ motion for preliminary injunction. The motion for leave to file is based upon the following:

1. Proposed *amici* recently became aware of Plaintiff’s Motion for Preliminary Injunction filed November 20, 2012.
2. The ACLU respectfully requests that this Court permit it to present the arguments in favor of the constitutionality of the federal contraception rule by granting it leave to file an amicus brief. The proposed brief will not be duplicative of any party’s brief.
3. The ACLU Foundation is a nationwide, non-profit, non-partisan public interest organization of more than 500,000 members dedicated to defending the civil liberties guaranteed by the Constitution. The ACLU of Eastern Missouri, the organization’s affiliate in

Eastern Missouri, was founded to protect and advance civil rights and civil liberties in Eastern Missouri and currently has over 4,500 members in the eastern part of the state. The ACLU of Kansas & Western Missouri has about 1,500 members in Missouri. The ACLU has a long history of defending both religious liberty and reproductive freedom. Indeed, the ACLU vigorously defends individuals' constitutional rights to exercise and express religious beliefs, while at the same we have participated in almost every critical case concerning reproductive rights to reach the Supreme Court.

4. The ACLU is well-placed to submit an amicus brief in this case. It has had extensive involvement addressing the intersection between religion and reproductive rights. Specifically, and most relevant to this case, the ACLU filed amicus briefs in several cases challenging the federal contraception rule, including one in the Eastern District of Missouri. *See O'Brien v. U.S. Dep't of Health & Human Services*, 4:12-CV-476 CEJ (E.D. Mo.), Doc. # 35.

5. Moreover, the ACLU filed amicus briefs in two cases challenging, on religious grounds, state statutes requiring contraception coverage. In both cases, the statutes were upheld. *See Catholic Charities of Diocese of Albany v. Serio*, 859 N.E.2d 459 (N.Y. 2006); *Catholic Charities of Sacramento, Inc. v. Super. Ct.*, 85 P.3d 67 (Cal. 2004).

6. The proposed brief would aid this Court by providing an additional perspective on Plaintiffs' likelihood of success on the merits.

7. Counsel for the ACLU has contacted the parties to ascertain their position on this motion. The government has not yet responded, but in previous cases has advised that it takes no position. Attorneys for Plaintiffs consent to this motion.

WHEREFORE, the ACLU respectfully requests that this Court grant leave to file the attached *amici curiae* brief and such other relief as is proper under the circumstances.

December 6, 2012

Respectfully submitted,

/s/ Anthony E. Rothert

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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and a copy was made available electronically to all electronic filing participants.

/s/ Anthony E. Rothert