

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

DAYTON AREA CHAMBER OF  
COMMERCE, *et al.*,

*Plaintiffs,*

v.

XAVIER BECERRA, *et al.*,

*Defendants.*

**Case No. 3:23-cv-000156-MJN-PBS**

**Judge Michael J. Newman**

**Magistrate Judge Peter B. Silvain, Jr.**

**MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE LAW SCHOLARS IN  
OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN  
SUPPORT OF DEFENDANT'S FORTHCOMING CROSS-MOTION FOR SUMMARY  
JUDGMENT**

## I. INTRODUCTION

This case concerns the constitutionality of the Inflation Reduction Act’s (IRA) drug-price negotiation provisions. Proposed amici are law professors and scholars who focus their scholarship and teaching on intellectual property law, property law, regulatory law, and health law. Amici write to address the plaintiff’s, Dayton Area Chamber of Commerce et al. (Chamber), overarching contention that the Medicare drug price negotiations constitute an unconstitutional price control. Amici submit this brief to provide the Court with the historical and legal background necessary to understand the constitutionality of government price negotiations and price regulations. Amici explain how Courts have historically ruled on these questions as well as the far-reaching consequences that a ruling in Chamber’s favor would have on the federal government’s ability to provide adequate healthcare across the United States.

Amici move for leave to file an amicus brief in opposition to Chamber’s motion for summary judgment, ECF No. 64, and in support of the defendant’s forthcoming cross-motion for summary judgment, which we expect to be filed on December 15, 2023.

## II. ARGUMENT

“The participation as an amicus to a brief is a privilege within ‘the sound discretion of the courts.’”<sup>1</sup> In *Sigetich v. Kroger Co.*, this Court stated that “whether to accept the submission of an amicus curiae brief [courts] consider whether the information offered by the amicus is timely, useful, or otherwise necessary to the administration of justice. Granting leave to appear as an

---

<sup>1</sup> *U.S. ex rel. Fry v. Health Alliance of Greater Cincinnati*, No. 1:03-CV-00167, 2009 WL 485501, at \*6 (S.D. Ohio Feb. 26, 2009) (quoting *United States v. State of Michigan*, 940 F.2d 143, 165 (6th Cir. 1991)).

amicus is appropriate when a party has an important interest and a valuable perspective on the issues presented.”<sup>2</sup>

The movants are scholars and professors with expertise in intellectual property law, property law, health law, and regulatory law. Their work focuses on the theory, history, and doctrine of these, often overlapping, areas of law. Some of their works also focus on the effect that various laws and judicial decisions have on health outcomes both in the United States and abroad, including patients’ access to affordable medications.

As professors of law and academic scholars in the legal, healthcare, and regulatory fields, the movants have a unique perspective on the implications of this suit on the future of property law, intellectual property law, government regulation of health and safety, and access to healthcare. The movants posit that the IRA’s Medicare drug price negotiation program is a necessary, valuable, and lawful step towards reducing the unnecessarily high cost of prescription drugs for Medicare patients. The movants are concerned that Chamber’s incorrect view regarding the constitutionality of government price negotiations, if adopted by this Court, would have far-reaching and negative implications for the federal government’s ability to implement regulations that protect the health and safety of U.S. population. The movants respectfully submit that the concepts explored in their proposed amicus brief—including the history of price negotiation and regulation in the United States—are vital to a holistic analysis of the issues raised in this action. The movants are also unaware of any other amici that would represent this perspective and champion their unique interests.

The movants are not partial to any particular outcome in this case.

---

<sup>2</sup> *Sigetich v. Kroger Co.*, No. 1:21-cv-697, 2022 WL 2900766 at \*2 (S.D. Ohio July 22, 2022) (internal quotations omitted).

If this motion is allowed, the movants will file their amicus memorandum on December 22, 2023, providing the parties ample time to address the issues raised therein, should they so choose. Summary judgment briefing in this action does not conclude until January 31, 2024.

### III. CONCLUSION

For these reasons, proposed amici respectfully request that this Court grant their motion for leave to file their amicus curiae brief in opposition to Chamber's motion for summary judgment and in support of the defendant's forthcoming cross-motion for summary judgment.

Date: December 14, 2023

Respectfully submitted,

/s/ **Hannah W. Brennan**

Hannah W. Brennan (admitted *pro hac vice*)  
HAGENS BERMAN SOBOL SHAPIRO LLP  
Rebekah Glickman-Simon (admitted *pro hac vice*)

Claudia Morera (admitted *pro hac vice*)  
One Faneuil Hall, 5th Fl.  
Boston, MA 02109

Tel.: (617) 482-3700

Fax: (617) 482-3003

[hannahb@hbsslaw.com](mailto:hannahb@hbsslaw.com)

[rebekahgs@hbsslaw.com](mailto:rebekahgs@hbsslaw.com)

[claudiam@hbsslaw.com](mailto:claudiam@hbsslaw.com)

*Attorneys for Amicus Curiae*

**CERTIFICATE OF SERVICE**

I, Hannah W. Brennan, certify that, on this date, the foregoing document was filed electronically via the Court's CM/ECF system, which will send notice of the filing to all counsel of record, and parties may access the filing through the Court's system.

Dated: December 14, 2023

/s/ Hannah W. Brennan  
Hannah W. Brennan