No. 10-1268

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Catherine Hutchinson, by her guardian Sandy Julien, et al.,

Plaintiffs-Appellees,

v.

Deval L. Patrick, Governor, et al.,

Defendants-Appellants.

Appeal from Order of the United States District Court
for the District of Massachusetts

BRIEF OF *AMICI CURIAE*,

AARP, CENTER FOR LAW AND EDUCATION, INC., LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, NATIONAL CONSUMER LAW CENTER, INC., NATIONAL HEALTH LAW PROGRAM, INC., PUBLIC CITIZEN, INC., THE JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW, NATIONAL DISABILITY RIGHTS NETWORK, INC., PUBLIC JUSTICE, P.C., WOMEN'S BAR ASSOCIATION OF MASSACHUSETTS, MASSACHUSETTS LAW REFORM INSTITUTE, INC., ARC MASSACHUSETTS, INC., AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF MASSACHUSETTS, DISABILITIES RIGHTS CENTER, INC., DISABILITY LAW CENTER, INC., DISABILITY RIGHTS CENTER, GREATER BOSTON LEGAL SERVICES, INC., LEGAL ASSISTANCE CORPORATION OF CENTRAL MASSACHUSETTS, RHODE ISLAND DISABILITY LAW CENTER, INC., SOUTH COASTAL COUNTIES LEGAL SERVICES, INC., WESTERN MASSACHUSETTS LEGAL SERVICES, INC.

In Support of Plaintiffs-Appellees and Affirmance of the District Court's Order

---

CORPORATE DISCLOSURE STATEMENTS

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, the following Amici Curiae state that they are each non-profit corporations exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, are not publicly held corporations that issue stock, and have no parent corporations:

Arc Massachusetts, Inc.
Center for Law and Education, Inc.
Disabilities Rights Center, Inc.
Disability Law Center, Inc.
Disability Rights Center
Greater Boston Legal Services, Inc.
The Judge David L. Bazelon Center for Mental Health Law
Lawyers' Committee for Civil Rights Under Law
Legal Assistance Corporation of Central Massachusetts
Massachusetts Law Reform Institute, Inc.
National Consumer Law Center, Inc.
National Disability Rights Network, Inc.
National Health Law Program, Inc.
Rhode Island Disability Law Center, Inc.
South Coastal Counties Legal Services, Inc.
Western Massachusetts Legal Services, Inc.
Women's Bar Association of Massachusetts

AARP

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Amicus Curiae AARP hereby states that it is a non-profit corporation exempt from taxation pursuant to Section 501(c)(4) of the Internal Revenue Code, is not a publicly held corporation that issues stock, and has no parent corporations.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASE LAW

INTEREST OF AMICI CURIAE

Amici Curiae ("Amici"), the groups listed in the Corporate Disclosure Statements, are organizations devoted to the cause of furthering civil rights and the legal rights of vulnerable populations. Amici join here in support of the Plaintiffs to urge affirmance of the District Court's award of attorney's fees because Amici rely on litigation to vindicate these rights. Most cases settle, and therefore it is critically important to Amici and their constituents that fees be available for settlements that are court-approved and over which the district court retains enforcement jurisdiction. Limiting the class of settlements for which fees are available only to consent decrees would undermine the purposes of the fee-shifting statutes by making the prospect of fees, even for the strongest of claims, highly speculative, thereby undermining the financial ability of Amici to undertake such cases and their constituents' ability to obtain legal redress.

Furthermore, such a limitation will make achieving settlements in civil rights cases more difficult. Amici Disability Law Center, Inc., Legal Assistance Corporation of Central Massachusetts, Greater Boston Legal Services, Inc., Massachusetts Law Reform Institute, Inc., South Coastal Counties Legal Services, Inc., and Western Massachusetts Legal Services, Inc. represent that it is the stated policy of the Massachusetts Attorney General's office not to enter into formal

promoted if the Supreme Court's standard for judicial imprimatur, as articulated in Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources, 532 U.S. 598 (2001), is applied in a flexible manner. Most Circuit Courts, including this one in Aronov v. Napolitano, 562 F.3d 84 (1st Cir. 2009) (en banc), cert. denied, 130 S. Ct. 1137 (2010), have adopted such flexibility.

In considering whether a particular court-approved settlement meets the requisite standard for judicial imprimatur, the majority of Circuit Courts eschew labels and focus on the essentials: namely, whether the district court's order reflects judicial approval of the settlement agreement and continuing oversight to enforce the agreement's binding obligations. Aronov explains that this determination requires consideration of "the content of the order against the entire context before the court." Id. at 92. Viewed in the context of the underlying litigation and the CSA, the level of judicial imprimatur here is more than ample to permit an award of attorney's fees. The Defendants' argument to the contrary is at odds with Aronov and would thwart Congressional intent by discouraging civil rights enforcement actions.

ARGUMENT

I. THIS FEE AWARD FURTHERS THE CONGRESSIONAL PURPOSES OF ENSURING ACCESS TO THE JUDICIAL PROCESS AND ENCOURAGING THE ENFORCEMENT OF CIVIL RIGHTS BY PRIVATE LITIGANTS.

in most civil rights lawsuits were too low to otherwise cover the cost of a lawyer. Id. Awarding attorney's fees to prevailing civil rights plaintiffs ameliorates this market defect by allowing such plaintiffs—regardless of financial means—to find counsel who may receive payment if their clients prevail.

This Court wrote:

> [t]o hold that mootness of a case pending appeal inherently deprives plaintiffs of their status as 'prevailing parties' would detract from § 1988's purposes. Such a rule could result in disincentives for attorneys to bring civil rights actions when an event outside the parties' control might moot the case after the district court rendered a favorable judgment but before the judgment could be affirmed on appeal. Our solution is our best view of what Congress, in designing the civil rights attorney's fees scheme, would intend.

Id. at 455 (citation omitted) (second emphases added).

Although Diffenderfer interpreted 42 U.S.C. § 1988, the Congressional purposes identified by the Court in that case also are applicable to 42 U.S.C. § 12205 of the Americans with Disabilities Act of 1990 ("ADA"), the statute at issue here. The Supreme Court has held that these "prevailing party" fee-shifting statutes should be interpreted uniformly. See Buckhannon, 532 U.S. at 603 n.4; see also Bercovitch v. Baldwin Sch., Inc., 191 F.3d 8, 11 (1st Cir. 1999) ("Creating a different standard for ADA cases would break the commonly used analogy between the ADA and those other causes of action arising in the discrimination and civil rights areas.").

> of the parties. . . . A defendant's voluntary change in conduct, although perhaps accomplishing what the plaintiff sought to achieve by the lawsuit, lacks the necessary judicial imprimatur on the change. Our precedents thus counsel against holding that the term 'prevailing party' authorizes an award of attorney's fees without a corresponding alteration in the legal relationship of the parties.

Id. at 605 (emphases in original). Consequently, the rule from Buckhannon is that, "[t]o be a prevailing party, a party must show both a material alteration of the legal relationship of the parties and a judicial imprimatur on the change." Aronov, 562 F.3d at 89 (quotations and citations omitted).

Nothing in Buckhannon requires the parties to have entered into a traditional consent decree or its equivalent in order for the plaintiff to be permitted an award of fees. The Buckhannon Court listed enforceable judgments on the merits and court-ordered consent decrees merely as "examples" of relief permitting awards of attorney's fees. 532 U.S. at 605. Justice Scalia, in his concurring opinion in Buckhannon, stated that both "court-approved settlements and consent decrees" bear the sanction of judicial action in the lawsuit, even if there has been no judicial determination of the merits. Id. at 618 (Scalia, J., concurring) (emphasis added). Justice Ginsburg, in her dissent, also recognized that the majority had ruled that a plaintiff, in order to be a prevailing party, must receive "a court entry memorializing her victory. The entry need not be a judgment on the merits. Nor need there be any finding of wrongdoing. A court-approved settlement will do."

unsupported by any empirical evidence" that "rejection of the catalyst theory will deter plaintiffs with meritorious but expensive cases from bringing suit." Buckhannon, 532 U.S. at 608.

Experience shows, however, that Buckhannon can create disincentives to civil rights enforcement actions, and that an overly restrictive reading of that case, such as the Defendants urge here, would further discourage public-interest organizations like Amici from litigating civil rights cases. Following Buckhannon and its rejection of the catalyst theory, many public-interest organizations have reported difficulty in settling cases because out-of-court settlements alone are insufficient to permit an award of attorney's fees. See Catherine R. Albiston & Laura Beth Nielsen, The Procedural Attack on Civil Rights: The Empirical Reality of *Buckhannon* for the Private Attorney General, 54 U.C.L.A. L. Rev. 1087, 1128-29 (2007). "[P]laintiffs must be very careful to structure settlement agreements in a way that preserves their right to recover fees, assuming defendants will agree to such a settlement after Buckhannon." Id. at 1114-15. Many public-interest organizations, and the outside co-counsel who may assist them, are less willing to take on cases after Buckhannon because the possibility of obtaining attorney's fees is more doubtful. Id. at 1129-30.

Indeed, in Amici's experience, State Attorneys General are generally unwilling to enter into agreements resembling formal consent decrees in settling

Although their precise formulations differ, most Circuits that have applied Buckhannon to settlement agreements have clarified that the "judicial imprimatur" requirement involves two elements: (1) court approval of the settlement; and (2) judicial oversight to enforce the terms of the settlement, which is fulfilled if a district court expressly retains jurisdiction over the settlement. The Order here clearly satisfies both requirements and the Court should not require more. As demonstrated below, the Order here would permit Plaintiffs to receive fees in multiple Circuits which this Court cited with approval and relied upon in Aronov. See 562 F.3d at 90 n.7.

A. *The Eleventh Circuit*

In American Disability Association, Inc. v. Chmielarz, 289 F.3d 1315, 1317 (11th Cir. 2002), the Eleventh Circuit considered whether a plaintiff that entered into a settlement agreement "which was 'approved, adopted and ratified' by the district court in a final order of dismissal, and over which the district court expressly retained jurisdiction to enforce its terms" was a prevailing party entitled to attorney's fees under 42 U.S.C. § 12205. The court ruled the plaintiff was a prevailing party, id. at 1321, and that a formal consent decree was not necessary because "the district court's explicit approval of the settlement and express retention of jurisdiction to enforce its terms are the functional equivalent of a consent decree," id. at 1319 n.2.

Consequently, the district court's retention of jurisdiction provided both judicial approval of, and oversight over, the settlement agreement. See id.

The Roberson court further noted that the settlement agreement included a clause "conditioning its effectiveness on the district court's retention of jurisdiction." Id. The district court's order therefore "effectuated the obligations of the parties under the Agreement because until the district court signed the dismissal Order retaining jurisdiction, the Agreement was not yet in effect." Id. (emphasis in original). Thus, "[i]n a very literal sense, it was the court's order that created the change in the legal relationship between plaintiffs and City defendants." Id.

The court in Roberson also concluded that it was inconsequential whether the district court could, in the first instance, enforce a settlement agreement over which it retains enforcement jurisdiction with an order of contempt. See id. If the district court initially could not enforce the settlement agreement with a contempt order, "the court at most would need to take an extra step by first ordering specific performance and then, if a party does not comply, finding that party in contempt. We doubt that the definition of 'prevailing party' should turn on such a difference." Id.

The District Court in this case "effectuated" the obligations of the parties through the Order because, under the CSA and Federal Rules of Civil Procedure,

The Second Circuit's subsequent decision in Perez v. Westchester County Department of Corrections, 587 F.3d 143 (2d Cir. 2009), further supports the conclusion that the District Court in this case "effectuated" the change in the legal relationship between the parties by "stamp[ing]" the CSA with judicial imprimatur. Roberson, 346 F.3d at 83 (quotation omitted) (emphasis omitted). In Perez, the court held that the district court intended to place its judicial imprimatur on a settlement agreement that explicitly was "not a consent decree." 587 F.3d at 148 (quotation omitted). The district court entered an "Order of Settlement" that "provided that Plaintiffs' lawsuits would only be dismissed upon the Court's approval and entry of this Stipulation and Order." Id. at 152 (quotation and brackets omitted). This was "not a case where dismissal was effectuated by stipulation, or mutual agreement of the parties, and did not require any judicial action; rather, the settlement was only made operative by the Court's review and approval." Id. (quotation, brackets, and citation omitted). Indeed, "[i]n a quite literal sense, it was the District Court's imprimatur that made the settlement valid." Id. (footnote omitted).

In this case, the CSA, by its terms and Federal Rule of Civil Procedure 23(e), was subject to the District Court's approval and review. See App'x Vol. I at 132. The CSA was "null and void and of no force and effect" without the District

Of course, the CSA, by its terms, can only be enforced by the District Court. See id. at 132-33. It is immaterial that the District Court did not include the terms of the CSA in the Order because "the district court retained jurisdiction to enforce the Agreement. . . . [W]hen the district court retained jurisdiction, it necessarily made compliance with the terms of the agreement a part of its order so that a breach of the agreement would be a violation of the order." Roberson, 346 F.3d at 82 (quotation omitted). Thus, functionally, the CSA is enforced through a consent decree that permits an award of attorney's fees in this case. See Davy, 456 F.3d at 166.

D. *The Third Circuit*

Similar to the D.C. Circuit, the Third Circuit, in an opinion authored by now Supreme Court Justice Alito, held that a district court's order containing mandatory language, entitled an "order," bearing the signature of the judge, and giving the plaintiff the right to request judicial enforcement of the settlement was "a proper vehicle for rendering one side a 'prevailing party' under § 1988." Truesdell v. Phila. Hous. Auth., 290 F.3d 159, 165 (3d Cir. 2002).

E. *The Fourth Circuit*

The Fourth Circuit's decision in Smyth v. Rivero, 282 F.3d 268 (4th Cir. 2002), is instructive because it articulates the reasoning behind the requirements of judicial approval and oversight. The Smyth court examined whether a settlement

Here, judicial approval and oversight are involved because the District Court expressly approved the CSA and retained jurisdiction in the Order. See id.; App'x Vol. I at 281-82. The District Court had to approve the terms of the CSA in order for the CSA to become effective, including the provision that the District Court "retain jurisdiction to hear and adjudicate noncompliance motions" under the CSA. App'x Vol. I at 132; see Smyth, 282 F.3d at 282. Further, the District Court ordered that the case would not be closed and judgment would not enter "pending compliance with the terms of the Comprehensive Settlement Agreement," i.e., the District Court would oversee the implementation of these terms. App'x Vol. I at 281-82; see Smyth, 282 F.3d at 283. Clearly, the Order, when considered in combination with the CSA, makes Plaintiffs prevailing parties eligible for attorney's fees.

F. *Seventh Circuit*

In T.D. v. LaGrange School District Number 102, 349 F.3d 469 (7th Cir. 2003), the Seventh Circuit followed "the Fourth Circuit's recent conclusion that some settlement agreements, even though not explicitly labeled as a 'consent decree' may confer 'prevailing party' status, if they are sufficiently analogous to a consent decree." Id. at 478 (citing Smyth, 282 F.3d at 281). The court considered whether (1) the settlement agreement was embodied in a court order or judgment, (2) the settlement agreement bore the district court judge's signature, and (3) the

("This approach is consistent with the approach taken by the majority of the circuits that have considered the issue.").

I. *The Ninth Circuit*

The Ninth Circuit, "in agreement with the vast majority of circuits that have considered the issue since Buckhannon," recognizes that a plaintiff who "obtained relief that was not an enforceable judgment on the merits or a consent decree . . . nonetheless can qualify as a prevailing party" provided there is sufficient judicial imprimatur. Carbonell, 429 F.3d at 899. A plaintiff even "'prevails' when he or she enters into a legally enforceable settlement agreement against the defendant." Barrios v. Cal. Interscholastic Fed'n, 277 F.3d 1128, 1134 (9th Cir. 2002).

J. *Eighth Circuit: Minority Approach*

In addition to the approach discussed in the cases above, the Eighth has expressed a more restrictive minority view. See Christina A. v. Bloomberg, 315 F.3d 990, 992-94 (8th Cir. 2003) (holding a party prevails only if it receives either an enforceable judgment on the merits or a consent decree, ruling a district court's retention of jurisdiction over, and Federal Rule of Civil Procedure 23(e) approval of, a settlement agreement insufficient to create judicial imprimatur, and concluding an order not enforceable by contempt not a consent decree).

Even the Eighth Circuit, however, has indicated that its rule is more flexible and has been misinterpreted by other courts. See N. Cheyenne Tribe v. Jackson,

submissions to the District Court, hearings before the District Court, and, of course, the CSA itself. Id.; see Smyth, 282 F.3d at 279.

In Aronov, this Court determined the relevant question is "whether the order contains the sort of judicial involvement and actions inherent in a 'court-ordered consent decree.'" 562 F.3d at 90. It described several characteristics of consent decrees to determine whether the order contained the requisite judicial approval and oversight, including whether, in Buckhannon's terms, there was: (1) a court-ordered change in the legal relationship of the parties; (2) judicial appraisal of the merits of the case; and (3) judicial oversight and ability to enforce obligations imposed on the parties, obligations that can only be modified by the district court after a party meets a significant burden. See id. at 90-91. The Court used these characteristics to distinguish consent decrees from settlement agreements.

The Aronov court never stated, let alone required, that each and every characteristic of a consent decree has to be present in order for a settlement agreement to satisfy Buckhannon's criteria for an award of fees. The remand order in Aronov "lacked all of the core indicia of a consent decree"; thus, the Aronov court did not deny attorney's fees because the remand order had some characteristics of a consent decree, but not others. Id. at 92 (emphasis added). Further, the Buckhannon Court listed a court-ordered consent decree only as an example of what creates the material alteration of the legal relationship of the

unlawful. . . . There must be some official judicial approval of the settlement." Id. at 91 (quotation omitted). The District Court here explicitly approved the CSA under Federal Rule of Civil Procedure 23(e), finding the settlement's terms "fair, reasonable, and adequate." App'x Vol. I at 281. Simply put, with the District Court's retention of jurisdiction, this is more than enough. See Roberson, 346 F.3d at 82-83. Nevertheless, the District Court did even more.

1. The District Court effectuated the binding obligations contained in the CSA.

Under Aronov, approval of a consent decree may be satisfied, in part, by a court-ordered change in the legal relationship of the parties. 562 F.3d at 91. The district court's remand order in Aronov "did not order USCIS to do anything," in stark contrast to the Order in this case. Id. The District Court actually effectuated the binding legal obligations contained in the CSA. Without the District Court's approval in all respects, the CSA, by its terms, was "null and void and of no force and effect." App'x Vol. I at 132. Indeed, "it was the court's order that created the change in the legal relationship between the" parties. Roberson, 346 F.3d at 83. It was the Order that "effectuated the obligations of the parties under the Agreement." Id. (emphasis in original). The District Court created the change in the legal relationship of the parties by formally approving the CSA and retaining jurisdiction to enforce it. See App'x Vol. I at 132; Perez, 346 F.3d at 152 ("The Order of Settlement provided that Plaintiffs' lawsuits would only be dismissed

sought to provide "a clear formula allowing for ready administrability and avoiding the result of a second major litigation over attorney's fees." Id. at 89 (citing Buckhannon, 532 U.S. at 609-11). If this Court were to require more for approval than the District Court's extensive review in this case, Buckhannon's purposes would be thwarted.

Furthermore, a district court may appraise the merits of a case in a variety of ways, and any rule from this Court should be flexible to account for this fact. See, e.g., Chmielarz, 289 F.3d at 1317 (settlement agreement was "approved, adopted, and ratified" by the district court in a final order of dismissal); Truesdell, 290 F.2d at 165 (order contained mandatory language, was entitled an "order," and bore the signature of the district court judge); Tri-City Cmty. Action Program v. City of Malden, 680 F. Supp. 2d 306, 312 (D. Mass. 2010) ("The Third, Fifth, Ninth, and District of Columbia Circuits have held in cases similar to the one at bar that a preliminary injunction does confer prevailing party status on a plaintiff, even post-Buckhannon. The reasoning of those cases is persuasive.").

Finally, no one disputes a formal consent decree satisfies the judicial approval requirement of Buckhannon. The standard that must be met for court approval of a consent decree is "that it is fair, adequate, and reasonable; that the proposed decree will not violate the Constitution, a statute or other authority; and that it is consistent with the objectives of Congress." Conservation Law Found. v.

order "against the entire context before the court," id., including the CSA and the Order in combination, see Smyth, 282 F.3d at 279. The terms of the CSA can only be modified by mutual agreement of the parties and approval of the District Court, a higher burden for the parties to meet than is required for relief from an order under Federal Rule of Civil Procedure 60(b), which only requires a motion and court approval. See App'x Vol. I at 134; Aronov, 562 F.3d at 91-92. The District Court retained jurisdiction over the case in the Order and ordered that judgment would not enter and the case would not be closed pending compliance with the terms of the CSA. App'x Vol. I at 281-82. Furthermore, the terms of the CSA can only be enforced by the District Court, first by an order consistent with equitable principles short of contempt, and then, if Defendants do not comply, by any equitable or remedial order, including an order of contempt. Id. at 132-33. Consequently, like parties to a consent decree, the parties in this case obtained a continuing basis of jurisdiction to enforce the terms of the CSA explicitly set forth in the District Court's Order, as well as broad oversight and enforcement authority that includes contempt powers in the CSA itself. See Aronov, 562 F.3d at 91; Roberson, 346 F.3d at 83; Chmielarz, 289 F.3d at 1319 n.2; see also Aronov, 562 F.3d at 91 (noting consent decrees ultimately enforceable by contempt); Roberson, 346 F.3d at 83 (concluding that determination of "prevailing party" should not turn on whether a court may issue an order of contempt in the first instance).

Respectfully submitted,

AARP, CENTER FOR LAW AND EDUCATION, INC., LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, NATIONAL CONSUMER LAW CENTER, INC., NATIONAL HEALTH LAW PROGRAM, INC., PUBLIC CITIZEN, INC., THE JUDGE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW, NATIONAL DISABILITY RIGHTS NETWORK, INC., PUBLIC JUSTICE, P.C., WOMEN'S BAR ASSOCIATION OF MASSACHUSETTS, MASSACHUSETTS LAW REFORM INSTITUTE, INC., ARC MASSACHUSETTS, INC., AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF MASSACHUSETTS, DISABILITIES RIGHTS CENTER, INC., DISABILITY LAW CENTER, INC., DISABILITY RIGHTS CENTER, GREATER BOSTON LEGAL SERVICES, INC., LEGAL ASSISTANCE CORPORATION OF CENTRAL MASSACHUSETTS, RHODE ISLAND DISABILITY LAW CENTER, INC., SOUTH COASTAL COUNTIES LEGAL SERVICES, INC., WESTERN MASSACHUSETTS LEGAL SERVICES, INC.,

By their attorneys,

/s/ Brian P. Bialas
Jeffrey S. Follett (First Circuit # 43270)
Brian P. Bialas (First Circuit # 1133816)
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, Massachusetts 02210-2600
(617) 832-1000

CERTIFICATE OF SERVICE

1. I hereby certify that I filed this brief through the Court's ECF system on June 1, 2010 and thus copies will be served electronically on that date on the following counsel:

Michael R. Dube
Wilmer Cutler Pickering Hale & Dorr LLP
60 State Street
Boston, MA 02109
michael.dube@wilmerhale.com

J. Paterson Rae
Center for Public Representation
22 Green Street
Northampton, MA 01060
PRae@cpr-ma.org

Jennifer Grace Miller
MA Attorney General's Office
One Ashburton Place
Boston, MA 02108
jennifer.miller@state.ma.us

Steven J. Schwartz
Center for Public Representation
22 Green Street
Northampton, MA 01060
SSchwartz@cpr-ma.org

2. I hereby certify that on June 1, 2010, I served two paper copies of this brief via U.S. Mail, postage prepaid, to counsel at each of the following addresses:

Richard Alan Johnston
Miranda Hooker
Anne M. McLaughlin
Wilmer Cutler Pickering Hale & Dorr LLP
60 State Street
Boston, MA 02109

Kathryn Rucker
Center for Public Representation
22 Green Street
Northampton, MA 01060

/s/ Brian P. Bialas
Brian P. Bialas
Attorney for Amici
Dated: June 1, 2010