

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 19-0519

SAFEHOUSE, a Pennsylvania nonprofit
Corporation,

and

JOSE A. BENITEZ, as President and Treasurer
of Safehouse,

Defendants.

SAFEHOUSE, a Pennsylvania nonprofit
Corporation,

Counterclaim Plaintiff,

v.

UNITED STATES OF AMERICA,

Counterclaim Defendant,

and

U.S. DEPARTMENT OF JUSTICE;
WILLIAM P. BARR, in his official capacity
as Attorney General of the United States; and
WILLIAM M. McSWAIN, in his official
capacity as U.S. Attorney for the Eastern
District of Pennsylvania,

Third-Party Defendants.

**CONSENT MOTION FOR LEAVE TO FILE AN *AMICI CURIAE* BRIEF IN SUPPORT
OF DEFENDANT/COUNTERCLAIM PLAINTIFF**

The District of Columbia and the States of Colorado, Delaware, Michigan, Minnesota, New
Mexico, Oregon, and Virginia (“*Amici States*”), pursuant to the May 28, 2019 Stipulated

Scheduling Order (ECF 33), seek leave to file a *amici curiae* brief in support of defendant's opposition to the United States' motion for judgment on the pleadings (ECF 48). The parties consent to this relief.¹ Pursuant to the Court's stipulated order, the *amici curiae* brief is included as an attachment.

I. Interest Of *Amici Curiae*.

The District of Columbia and the States of Colorado, Delaware, Michigan, Minnesota, New Mexico, Oregon, and Virginia (collectively "the *Amici States*") file this brief as *amici curiae* in support of Defendant/Counterclaim-Plaintiff Safehouse. The *Amici States* are battling an unprecedented nationwide opioid crisis that claims over 130 lives every day. States are working to address this urgent epidemic, developing robust interventions to prevent opioid use disorder, and to treat those suffering from opioid dependence. But, as the data demonstrate, neither States nor the federal government have solved this crisis yet. The *Amici States* share a goal of preventing overdose deaths, but the means of achieving that important goal must vary based on the nature of the epidemic on a local level, the risk factors in individual communities, and the resources available.

Safehouse's proposed intervention—the operation of a safe injection site ("SIS")—is a critical measure designed to save lives and to fill a time-sensitive gap in medical care that many localities struggle to overcome. Other States, relying on empirical evidence of their effectiveness, are also considering implementing SISs. As laboratories of experimentation and the primary regulators of public health, States should be free to adopt cutting-edge medical interventions. The federal government's opposition and threat of criminal prosecution under the Controlled

¹ Federal Rule of Appellate Procedure 29 governs the form and content of an *amicus curiae* brief in appeals and allows States to file an *amicus curiae* brief without leave of the court. The Federal Rules of Civil Procedure do not contain an analogous rule, but the *Amici States* relied on the appellate rule as guidance on form and content.

Substances Act (“CSA”), however, promises to interfere with States’ power to implement SISs and other innovative strategies. The *Amici* States have a strong interest in preserving their traditional authority over public health and safety, and in ensuring that the federal government does not undermine their crucial work in addressing the opioid crisis.

II. *Amici* States Are Uniquely Equipped To Assist The Court.

In preparing their proposed brief, the *Amici* States have reviewed the filings of the parties and have endeavored to offer a unique perspective on the issues. The *Amici* States have broad power to protect the health and safety of their residents. The States are on the forefront testing innovative ideas to decrease opioid prescriptions, provide treatment, and prevent overdose deaths.

This litigation under the CSA presents issues of federal interference in the States’ efforts. The *Amici* States have a strong interest in preserving their traditional role and authority over public health and safety; to the *Amici* States’ knowledge, no other amicus or party will be addressing this important issue in-depth.

III. Conflict Statements.

This brief was not authored by any party to this litigation or their counsel. None of the parties to this litigation contributed funds to prepare or file this brief. No other person contributed funds to prepare or file this brief.

IV. Conclusion.

For the foregoing reasons, the motion should be granted, and the District of Columbia and the States of Colorado, Delaware, Michigan, Minnesota, New Mexico, Oregon, and Virginia should be permitted to file the *amici curiae* brief.

Respectfully submitted,

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/s/ Matthew Stiegler
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ORDER

Upon consideration of the *Amici* States' Motion For Leave To File An *Amici Curiae*

Brief, the consent of the parties hereto, and the record herein, it is by the Court this

_____ day of _____, 2019,

ORDERED: that the Amici States' Motion is GRANTED; and it is

FURTHER ORDERED: the States' *Amici Curiae* Brief is accepted for filing.

BY THE COURT:

GERALD AUSTIN McHUGH
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that, on July 10, 2019, a copy of this motion and the *Amici Curiae* brief were served through the Court's CM/ECF system to:

All counsel of record

/s/ Matthew Stiegler
MATTHEW STIEGLER