

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 09-62034-Civ-Dimitrouleas

<hr/>	
AMERICAN COLLEGE OF)
CARDIOLOGY, <u>et al.</u> ,)
)
Plaintiffs,)
)
v.)
)
KATHLEEN SEBELIUS, SECRETARY OF)
THE U.S. DEPARTMENT OF HEALTH)
AND HUMAN SERVICES,)
)
Defendant.)
<hr/>	

**DEFENDANTS’ OPPOSITION TO PLAINTIFFS’
REQUEST FOR A FOUR-HOUR EVIDENTIARY HEARING,
AND REQUEST FOR CLARIFICATION
OF THE COURT’S DECEMBER 30, 2009 ORDER**

Defendant Kathleen Sebelius, Secretary of Health and Human Services (“the Secretary”), opposes the request of plaintiffs, the American College of Cardiology, et al., for a four-hour, “full evidentiary hearing” (see Docket Entry No. 4, at 3.) in this administrative record review case.

This Court has set a hearing on plaintiffs’ Motion for Preliminary Injunction for January 13, 2009, at 9:00 a.m., see Order dated December 30, 2009 (Docket Entry No. 7), and counsel for the Secretary stand ready to present argument in opposition to plaintiffs’ Motion. As the Secretary has set forth elsewhere, plaintiffs’ request for emergency relief fails on the merits as a matter of law for a number of reasons, each dispositive. See Defendant’s Opposition to Plaintiffs’ Motion for Preliminary Injunction (Docket Entry No. 18) at 13-32. Moreover, if plaintiffs could establish subject matter jurisdiction in this Court at all (which, again, they cannot do, see id.), then this Court’s review of plaintiffs’ claims would be limited to the administrative

record before the agency. See id. at 26-27. Plaintiffs' apparent attempt to create a new record before this Court is, therefore, wholly inappropriate and foreclosed by governing authority. See, e.g., id. (citing, inter alia, Camp v. Pitts, 411 U.S. 138, 142-43 (1973) & Preserve Endangered Areas of Cobb's History, Inc. v. U.S. Army Corps of Engineers, 87 F.3d 1242, 1246 (11th Cir. 1996)).

For all the foregoing reasons, the Secretary opposes plaintiffs' request for an evidentiary hearing in this administrative record review case. The Secretary raises this objection now via this memorandum rather than waiting to do so orally at the January 13th hearing. Should the Court intend to permit plaintiffs to supplement the documentary materials they have already submitted with live testimony at the January 13th hearing, however, the Secretary respectfully requests prior notice that such testimony will be permitted.

Dated January 8, 2009

Respectfully submitted,

TONY WEST
Assistant Attorney General

JEFFREY H. SLOMAN
United States Attorney

SHEILA M. LIEBER
Deputy Director, Federal Programs Branch

/s/ Steven Y. Bressler
STEVEN Y. BRESSLER D.C. Bar #482492
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
P.O. Box 883
Washington, D.C. 20044
Telephone: (202) 305-0167
Facsimile: (202) 318-7609
Steven.Bressler@usdoj.gov

Certificate of Service

I hereby certify that on January 8, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Steven Y. Bressler

SERVICE LIST

**American College of Cardiology, et al. v. Sebelius
Case No. 09-62034 - Civ - (Dimitrouleas/Snow)
United States District Court, Southern District of Florida**

Adam Glenn Rabinowitz
Broad and Cassel
One Financial Plaza
100 SE 3rd Avenue
Suite 2700
Fort Lauderdale, FL 33394
954-764-7060
Fax: 954-713-0981
Email: arabinowitz@broadandcassel.com

Beverly A. Pohl
Broad and Cassel
100 SE 3rd Avenue
Suite 2700 One Financial Plaza
Fort Lauderdale, FL 33394
954-764-7060
Fax: 954-713-0962
Email: bpohl@broadandcassel.com

Gabriel L. Imperato
Broad & Cassel
100 SE 3rd Avenue
Suite 2700 One Financial Plaza
Fort Lauderdale, FL 33394
954-713-7600
Fax: 761-8135
Email: gimperato@broadandcassel.com

Howard L. Sollins
Ober Kaler Grimes & Shriver PC
120 E Baltimore Street
Baltimore, MD 21202
410-685-1120
Email: hlsollins@ober.com

James P. Holloway
Ober Kaler Grimes & Shriver PC
1401 H Street NW
Suite 500
Washington, DC 20005
202-408-8400
Email: jpholloway@ober.com

Julie E. Kass
Ober Kaler Grimes & Shriver PC
120 E Baltimore Street
Baltimore, MD 21202
410-685-1120
Email: jekass@ober.com