

Amicus Brief Filed in D.C. General Lawsuit

One hundred and thirty-one concerned elected officials, organizations, and individuals from all over the country on June 6 filed an *amicus curiae* brief in the case of D.C. City Councilmen Kevin Chavous and David Catania against the District of Columbia Financial Control Board. Chavous and Catania are seeking to reverse the Control Board's decision to privatize, and close, the only remaining full-service public hospital in Washington, D.C.

Two spokesmen for the *amici*, Nevada State Sen. Joe Neal (D) and civil rights leader Rev. James Bevel, announced the filing at a press conference in Washington on June 7 by the Coalition to Save D.C. General.

The *amici* are elected officials and leaders in public life who share a deep concern about the rapid deterioration of public health services in the United States, and alarm at the

implications of the recent effort to privatize public health services in the nation's capital. The brief, published below, argues that the actions of the Control Board violated the Constitutional commitment to the general welfare of all citizens of the United States, a principle which takes precedence over all other considerations.

Among the signers are 75 state legislators, three former Federal officials, Democratic Party leaders, labor leaders, prominent religious and civil rights leaders, and representatives of the legal and medical profession. Among the more prominent are: former U.S. Ambassador to the Vatican Raymond Flynn; 2004 Democratic Party Presidential pre-candidate Lyndon H. LaRouche, Jr.; the Most Rev. Thomas J. Gumbleton; Rev. Theodore M. Hesburgh; and civil rights leaders Amelia Boynton Robinson and Rev. James L. Bevel.

Reached for comment on this development, Debra Freeman, spokeswoman for Lyndon LaRouche, and one of the facilitators of the *amicus curiae* brief, hailed the strong response of public officials to this effort, and added: "It is impossible to overemphasize the importance of the fight for the general welfare principles, as expressed in this move to save D.C. General Hospital, at this time of devastating economic and social crisis nationally, and internationally."

Documentation

The following is the text of the Amicus Curiae brief filed on June 6.

United States District Court for the
District of Columbia

Kevin P. Chavous, et al.,

Plaintiffs,

vs.

District of Columbia Financial Responsibility
and Management Assistance Authority, et al.,

Defendants.

Civil Action No. 1:01CV00921 (RWR)

Amicus Brief on Behalf of Plaintiffs by Concerned Elected Officials, Organizations, and Individuals

The undersigned amici are elected officials and leaders in public life who share a deep concern about the rapid deterioration of public health services in this nation, and alarm at the implications for our nation of the recent effort to privatize public health services in our nation's capital. Like those who

crafted the Preamble to our Constitution, we believe that government's most fundamental and inherent obligation is to promote and protect the general welfare. The activities of the defendants in this case represent a repudiation of that most fundamental principle.

Factual Background

Amici adopt the Factual Background statement in Plaintiffs' First Amended Complaint, and add and emphasize the following facts which amici believe are essential to the determination of this case.

1. On April 30, 2001, the District of Columbia Financial Responsibility and Management Assistance Authority (the "Control Board"), in violation of its statutory authority, executed a five-year contract with Greater Southeast Community Hospital Corporation I, for the privatization of health care services in the District of Columbia. At the same time, the Board also enacted three versions of enabling legislation entitled the "Health Care Privatization Amendment Act of 2001."

2. The privatization contract had been rejected by a unanimous vote of the elected District of Columbia Council only three days earlier, on April 27, 2001.

3. D.C. General was the only public hospital in the District of Columbia, and was a major provider for uninsured and under-insured residents of the District of Columbia. It han-

dled the largest number of uninsured hospital admissions in the city. D.C. General treated all patients regardless of ability to pay. [See the Affidavit of Michael Barch para. 5]

4. Within hours of the execution of the contract, the Control Board and its agents assumed control of D.C. General Hospital and the Public Benefit Corporation (PBC), and began dismissing top officials and other employees of the hospital and the PBC.

5. The Emergency Room at D.C. General—which includes a Level I Trauma Center—has been closed for ambulance admissions most of the time since April 30.

6. The result of the diversion of ambulances away from D.C. General has been to overload the Emergency Rooms at other hospitals in the District, often resulting in those Emergency Rooms either turning away patients, or subjecting them to long delays. This trend is expected to intensify during the summer months.

7. At least seven patients have already died needlessly, because ambulances could not take them to the nearest hospital (D.C. General), but had to take them to hospitals further away (Prince George’s Hospital Center, Howard University Hospital, and Providence Hospital), requiring longer travel time. These deaths, together with avoidable medical complications and permanent physical impairments can be expected to mount and are a direct foreseeable consequence of the defendants’ actions in closing D.C. General Hospital.

8. D.C. General provides Level III (the highest level) of neo-natal care. That care is not available under the contract with Greater Southeast. In all of Southeast Washington, which has the highest level of infant mortality in the city, there will be no Level Three neo-natal care. [See Affidavit of Michal Young, para. 9(a)] A rapid increase in avoidable deaths and permanent physical impairment of premature infants are a direct and foreseeable consequence of the defendants’ actions in closing D.C. General Hospital.

9. The dismantling of D.C. General eliminates a vital site for medical education in the District of Columbia, because Greater Southeast is not accredited as a teaching hospital, and cannot host an intern or residency program. [See Affidavit of Michael Barch para. 14]. D.C. General supported the education of approximately 60 residents and specialty fellows, and also provided clinical training through other programs. The loss of this training will have a long-term, negative effect on the ability of the District to provide medical care to its poorest citizens, and will impede the recruitment of young doctors into careers in public medicine. [See Affidavit of Michal Young, para. 9(d)]

10. There are approximately 80,000 uninsured residents in the District of Columbia, and it is projected that a majority of these will “fall through the cracks” once the safety-net provided by D.C. General is eliminated.

11. D.C. General has traditionally accepted and treated all who come through its door—rich or poor, black or white, insured or uninsured. The hospital not only provides top-

quality medical services for the poorest sections of the population of the District, but because of its central location, it also regularly treats U.S. government officials and foreign diplomats, tourists visiting the nation’s capital, and even suburbanites attending sports events.

Argument

I. The Control Board has abrogated the elected City Council’s intention and obligation to provide for the general welfare of all of the citizens of the District.

Public access to quality health care has been recognized as a critical component of government’s obligation to “promote the general welfare” throughout the post-war history of the United States. President Franklin D. Roosevelt, in his 1944 State of the Union address, spoke of “the right to adequate medical care and the opportunity to achieve and enjoy good health.” In his last State of the Union address, in January 1945, President Roosevelt again spoke of the right to “good medical care.” In 1946, the “Hill-Burton Act” (the Hospital Survey and Construction Act) was enacted, which launched a nationwide program of hospital construction, with the aim of ensuring that all citizens, regardless of their ability to pay, would have access to quality medical care, through a combination of public and private facilities.

In 1996, the Public Benefit Corporation was created by the D.C. Council. In its Declaration of Policy and Legislative Findings, the D.C. City Council, acting under the inherent right and principle of government to protect and defend the general welfare stated:

“(a) The residents of the District should have access to quality comprehensive community-centered health care and medical services regardless of their ability to pay for such services.

“(b) The provision and delivery of comprehensive community-centered health care and medical treatment for residents of the District is of vital concern and importance and is essential to the protection and promotion of the health, safety and welfare of the inhabitants of the District.” (D.C. Code 32-261.1)

On December 4, 2000, however, the defendant Control Board recommended that the Council repeal this legislation. When the Council declined to do so, the Control Board itself repealed the PBC legislation on April 30. The privatization contract executed by the Control Board specifically declares that “this Agreement does not create an *entitlement to health care* in the recipients of health services hereunder.” (Emphasis supplied). Where the City Council clearly expressed its intention to promote and defend the general welfare of all of the citizens of the District, the Control Board’s contract and actions express a different intent.

As the facts in this case make clear, the execution of the privatization contract and the first stages of its implementation, have already resulted in a disruption of emergency medical services in the District and a diminution of access to medical services overall. People are already dying because of the disruption and delays in emergency service, with ambulances being diverted from the closest hospitals, to others that require much longer travel times. There are other cases in which patients have suffered unnecessary permanent damage, because of delays in treatment occasioned by overcrowding of emergency facilities. Those most affected by the delays and denial of treatment, especially in Southeast Washington D.C., are African-Americans.

In opposing emergency relief and the application for the temporary restraining order, defendants asserted that emergency room services would be provided at D.C. General — 24 hours a day, 7 days a week — and that trauma services would be provided by D.C. General Hospital until cessation of inpatient services at D.C. General, and that there would be “no gap in trauma services.” (Memorandum in Opposition, at 12-13, and Declaration of Ivan Walks). Events have demonstrated that these statements were known to be false at the time they were made.

There have been massive “gaps” in emergency and trauma services, resulting in loss of life, and in failure to provide timely and adequate treatment for patients with serious, but not necessarily fatal, injuries or illnesses as the D.C. General emergency services and trauma center have been closed for most of the period from April 30th forward. The “transition” which was projected to occur over a period of 90-120 days, has now been accelerated to be completed in less than 60 days, by June 25. The reasons for this were entirely foreseeable and were predicted by D.C. General staff and officials: that staff would depart for other jobs, and that the major teaching hospitals would pull their interns out at the end of the teaching year on June the 30th.

This acceleration of the “transition” is occurring at an ever greater cost to life and limb than would have otherwise been the case. We cannot believe that Congress ever intended that the “restructuring” of the District’s health care system would result in unnecessary deaths, and denial of medical treatment, to residents of the District.

II. The Control Board acted undemocratically and outside its statutory authority.

The plaintiffs in this case have demonstrated that the Control Board’s actions were undemocratic and outside its statutory authority. Amici believe that the actions of the Control Board—a Congressionally-created body—in the nation’s capital, create a dangerous precedent which could be applied in the future to other jurisdictions.

The privatization scheme proposed by the Control Board was unanimously rejected by the D.C. Council—a body of

13 representatives elected by the citizens of the District of Columbia. In so doing, the members of the Council believed—and we agree—that they were carrying out their sworn duty, and acting in the interests of their constituencies and the voters who elected them.

The Control Board took the occasion of the Council’s rejection of the contract to declare an “emergency,” and to enact legislation—both emergency and permanent legislation.

In its creation of the Control Board in 1995, and in subsequent legislation in 1997, Congress gave the Control Board broad powers to supervise the financial affairs of the District of Columbia, including matters such as budgeting, borrowing, and the delivery of services.

However, Congress did not give the Control Board the power to (1) enter into contracts of this nature, or (2) to enact legislation—both of which powers fall within the purview of the legislative branch of the District of Columbia government, not the executive branch.

Under Sec. 207 of the Financial Responsibility and Management Assistance Act, as amended, the Control Board was empowered to issue orders, rules, or regulations “to the extent that such an order, rule, or regulation is within the authority of the Mayor or the head of any department or agency of the District government.”

Congress did not give the Control Board the authority to enact laws, or to act within the authority of the Council. As it is often said, the Control Board can “stand in the shoes” of the Mayor or an agency head, but it cannot “stand in the shoes” of the elected Council.

Thus, by executing the long-term privatization contract, and by enacting legislation, the Control Board not only invaded the purview of the Council, but it set itself up as a dictatorial, extra-legal body which could override, by decree, the declared wishes of the elected legislature of the District.

Your amici regard this as a most dangerous precedent which constitutes a threat to elected government and constitutional rule in this nation, and a gross interference with the ability of elected officials to protect the health and welfare of their constituents.

Conclusion

For all the foregoing reasons, the undersigned Amici ask that this Court grant plaintiffs the relief they seek in their amended complaint.

Dated: June 5, 2001

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Counsel for Proposed Amicus Curiae

Exhibit A: Amici joining in the Amicus Brief of present and former elected officials, Democratic Party and labor officials, and political, religious and civil rights leaders in support of plaintiffs

This list is a compilation of the 131 individuals who have asked to be represented in this Amicus Curiae Brief. Affiliations are included, solely for the purpose of identification.

Former Federal officials:

Hon. Clair Callan, former U.S. Congressman, Fairbury, Nebraska
 Hon. James R. Mann, former U.S. Congressman, Greenville, South Carolina
 Ambassador Raymond L. Flynn, former U.S. Ambassador to the Vatican; former Mayor, Boston, Massachusetts

State Senators:

Sen. Billy Wayne Bailey, Pineville, West Virginia
 Sen. Walter Blevins, West Liberty, Kentucky
 Sen. Carlos Cisneros, Questa, New Mexico
 Sen. Donald Cole, Charlotte Amalie, U.S. Virgin Islands
 Sen. Bettye Davis, Anchorage, Alaska
 Sen. Lena Lee, former State Senator, Baltimore, Maryland
 Sen. Emil Jones, Jr., Chicago, Illinois
 Sen. Jerry T. Jewell, former State Senator, former President Pro Tempore, State Senate, Little Rock, Arkansas
 Sen. Ray Murphy, Detroit, Michigan
 Sen. Joe Neal, Chair, Nevada Legislative Black Caucus, Las Vegas, Nevada
 Sen. Joey Pendleton, Hopkinsville, Kentucky
 Sen. Hank Sanders, Selma, Alabama
 Sen. Nadine Thomas, Ellenwood, Georgia
 Sen. Decatur Trotter, former State Senator, Glenarden, Maryland
 Sen. Henry Wilkins IV, Pine Bluff, Arkansas
 Sen. Joe Young, Jr., Detroit, Michigan

State Representatives:

Rep. Melvoid J. Benson, North Kingstown, Rhode Island
 Rep. Floyd Breeland, Charleston, South Carolina

Rep. Henri E. Brooks, Memphis, Tennessee
 Rep. Tommie Brown, Chattanooga, Tennessee
 Rep. Kenneth Carano, Youngstown, Ohio
 Rep. Mary Cerra, Johnston, Rhode Island
 Rep. Buddy Childers, Rome, Georgia
 Rep. Mary M. Cirelli, Canton, Ohio
 Rep. William H. Cleland, Northfield, Vermont
 Rep. Barbara Cooper, Memphis, Tennessee
 Rep. Mark B. Cohen, Philadelphia, Pennsylvania
 Rep. Paul Costa, Pittsburgh, Pennsylvania
 Rep. Ken Daniels, Detroit, Michigan
 Del. Clarence Davis, Baltimore, Maryland
 Del. Tracy Dempsey, Harts, West Virginia
 Del. Michael Dobson, Baltimore, Maryland
 Rep. Jim Evans, Jackson, Mississippi
 Rep. Teresa Fedor, Toledo, Ohio
 Rep. Erik Fleming, Jackson, Mississippi
 Rep. Mary Flowers, Chicago, Illinois
 Rep. Amos Lee Gourdine, Pineville, South Carolina
 Rep. Artina Tinsley-Hardman, Chair, Michigan Legislative Black Caucus, Detroit, Michigan
 Rep. Andrew Hayden, Chair, Alabama Legislative Black Caucus, Uniontown, Alabama
 Rep. Charlie Hoffman, Georgetown, Kentucky
 Rep. Charles Hudson, Opelousas, Louisiana
 Rep. Thomas A. Jackson, Thomasville, Alabama
 Rep. Harold James, former Chair, Pennsylvania Legislative Black Caucus Special Assistant to the President, National Black Caucus

of State Legislators, Former Region II Chair New York and Pennsylvania NBCSL, Philadelphia, Pennsylvania
 Rep. Ulysses S. Jones, Memphis, Tennessee
 Rep. Michael Kahikina, Honolulu, Hawaii
 Rep. Howard Kenner, Chicago, Illinois
 Rep. Chris Kolb, Ann Arbor, Michigan
 Rep. LaMar Lemmons, Detroit, Michigan
 Rep. David E. Lucas, Macon, Georgia
 Rep. Bill McConico, Highland Park, Michigan
 Rep. David Mack, Charleston, South Carolina
 Rep. George Mans, Trenton, Michigan
 Rep. Reginald K. Meeks, Louisville, Kentucky
 Rep. John Myers, Philadelphia, Pennsylvania
 Rep. Ira Murphy, State Representative, former General Sessions Judge, Attorney-at-Law, Memphis, Tennessee
 Rep. Andy Neuman, Alpena, Michigan
 Rep. Ernest Newton III, Deputy Majority Leader, Bridgeport, Connecticut
 Rep. George Perdue, Birmingham, Alabama
 Rep. Harry Readshaw, Pittsburgh, Pennsylvania
 Del. Ferguson Reid, M.D., former State Delegate Richmond, Virginia
 Rep. Felipe Reinoso, Bridgeport, Connecticut
 Rep. Vera Rison, Morris, Michigan
 Rep. William R. Robinson, Pittsburgh, Pennsylvania
 Rep. George Rogers, New Bedford, Massachusetts
 Rep. John Rogers, Birmingham, Alabama
 Rep. Maxine L. Shavers, Newport, Rhode Island
 Rep. Timothy Solobay, Canonsburg, Pennsylvania
 Rep. Ben Swan, Springfield, Massachusetts
 Rep. James L. Thomas, Camden, Alabama
 Rep. Joe Towns, Jr., Memphis, Tennessee
 Rep. Fred A. Trello, Coraopolis, Pennsylvania
 Rep. Charles Quincy Troupe, St. Louis, Missouri
 Rep. Larry Turner, Chairman, Tennessee

Legislative Black Caucus
Memphis, Tennessee
Rep. Ronald Waters, Philadelphia,
Pennsylvania
Rep. J. Seth Whipper, North Charleston,
South Carolina

Mayors, City Council:

Johnny Saxton, Mayor, Fairmont
Heights, Maryland
Herbert Collins, Sr., Vice Mayor,
Norfolk, Virginia
Maryann Mahaffey, President Pro-Tem,
City Council Detroit, Michigan
Richard A. Days, President, Connecticut
Coalition of Black Trade Unions,
City Councilman, Bloomfield,
Connecticut
Bea Gaddy, City Council, Baltimore,
Maryland
Gerardo Fernandez, City Council,
Passaic, New Jersey
Ms. Johnnie Pugh, Board of Directors,
Little Rock, Arkansas
Rubin Reid, City Council, former
Mayor, Glenarden, Maryland
Edward Robinson, City Council,
Florence, South Carolina
Chuck Turner, City Councillor, Boston,
Massachusetts

Other elected officials:

Anna Marie Angolia, City
Commissioner, Cottage City,
Maryland
James MaysLee, County Commissioner,
Leslie, Georgia
John Wiley Price, Dallas County
Commissioner, Dallas, Texas
Marvin Stevenson, Marion County
Commissioner, Marion, South
Carolina

Democratic Party leaders:

Helen Alexander, Maryland Democratic
State Central Committee,
Frederick, Maryland
Steven Barbash, New York State
Democratic Committee, New York
Rural Democratic Conference,
former Chairman, Ontario County
Democratic Party
Frank Furst, New Jersey State
Democratic Committeeman;
Executive Board, New Jersey AFL-
CIO
Lyndon H. LaRouche, Jr., Democratic
pre-candidate for U.S. President in
2004, Round Hill, Virginia

Ocie Williams, County Chair, Alabama
Democratic Conference, Chilton
County, Alabama
Raymond Yacuzzo, County Chairman,
Democratic Party, Genessee
County, New York

Labor leaders:

W. Pete Baron Brown, President, IBT
Local 560, Union City, New Jersey
David M. Brode, First Vice President,
Western Maryland Central Labor
Council, Cumberland, Maryland
Richard Fisette, Business Agent, United
Association of Plumbers and
Pipefitters Local #4, Worcester,
Massachusetts
John Hogue, President, Branch 35,
National Association of Letter
Carriers, Little Rock, Arkansas
Sequoia Jenkins, Chairman IAM Local
97, Norfolk, Virginia
John Johnson, President, SEIU #617,
Newark, New Jersey
Vann Joyner, State Field Rep., SEIU
Local 721, New York, New York
Levander Little, Jr., former Executive
Board member, Coalition of
Black Trade Unions, Baltimore,
Maryland
James Mosley, Vice President, UAW
Local 239 retirees, Maryland State
Commission on Aging, Baltimore,
Maryland
Larry Phillips, Executive Secretary-
Treasurer, Southeastern Carpenters
Regional Council, Augusta,
Georgia
Ken Rice, Secretary Treasurer
(emeritus), New York State
Building and Construction Trade
Council, President (emeritus),
Upper Hudson Valley CLC
Kenny Smith, Chairman, UAW CAP
Local 12, Toledo, Ohio
Frank Stephens, President, Metal Trades
Council, Portsmouth, Virginia
Norman Stover, President, Transport
Workers Union, Local 725,
President A. Philip Randolph
Institute, Birmingham, Alabama
Stephen L. Whitehead, President,
Portsmouth Central Labor Council,
Portsmouth, Virginia

Religious and civil rights leaders:

Rev. James Bevel, former Direct Action
Coordinator for Martin Luther
King, Jr.

Most Rev. Elias El-Hayek, Chor-Bishop,
Maronite Rite, Lebanon, Canada,
and U.S.

Most Rev. Thomas J. Gumbleton,
Auxiliary Bishop, Detroit,
Michigan
Rev. Theodore M. Hesburgh, C.S.C.,
President Emeritus, Notre Dame
University, Indiana Recipient,
Congressional Gold Medal
Martin Jewell, Chairman, Coalition on
Housing Crusade for Voters,
NAACP Board Member,
Richmond, Virginia
Rev. Martha Knight, Director, Social
Action, Virginia State Conference
AME Churches, Virginia Beach,
Virginia
Dr. Abdul Alim Muhammad, Minister of
Health, Nation of Islam, Medical
Director, Abundant Life Clinic
Washington, D.C.
Henry Muhammad, Minister, Nation of
Islam, Norfolk, Virginia
Lucinda Pitt, Chair, Fairwood Civic
League, Portsmouth, Virginia
Sister Helen Prejean, CSN, anti-death
penalty leader, author, *Dead Man
Walking*
Amelia Boynton Robinson, Board
Member, Martin Luther King, Jr.
Center for Non-Violent Social
Change, 1990 Martin Luther King
Freedom Medal; Vice-Chairman,
Schiller Institute, Tuskegee,
Alabama

Medical, legal, and other leaders:

Donald Burger, Life Member, National
Association, Human Rights
Workers, Waukeg, Iowa
Jacquelyn B. Garrett, M.D., Baldwin,
Missouri
Dr. Augustus O. Godette, Washington,
D.C.
Nia Hassan, Illinois Senate, Democratic
Staffer for Health and Human
Services, Springfield, Illinois
Kenton Kirby, Editor-in-Chief,
Caribbean Life, Brooklyn, New
York
William F. Pepper, Barrister, U.S.
Attorney-at-Law, attorney for the
family of Martin Luther King, Jr.,
Wolfson College, Oxford
University, England
Dr. Muriel Petroni, M.D., Friends of
Harlem Hospital Center, Inc., New
York, New York