**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

RICK SCOTT, in his official capacity as Governor of Florida, *et al.*,	)))	
Plaintiffs-Petitioners,	)))	
v.	))))	Nos. 3:15-cv-00193-MCR-CJK, 3:15-cv-00195-MCR-CJK
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*,	))))	
Defendants-Respondents.	))	

PLAINTIFFS-PETITIONERS' MOTION TO COMPEL MEDIATION

The State of Florida *et al.*, by and through their undersigned attorneys, hereby respectfully move this Court to compel mediation pursuant to Local Rule 16.3. "All litigants in civil cases … shall consider the use of mediation as an alternative dispute resolution process at an appropriate stage in the litigation." Loc. R. 16.3(I). For the reasons stated below, mediation is an appropriate remedy at this stage of this litigation.

DISCUSSION

More than a month ago, the State filed a complaint and petition for mandamus seeking emergency relief pursuant to the Administrative Procedure Act and the All Writs Act. *See* Doc. 1. As explained more fully in the briefing on Florida's pending motion for preliminary injunctive relief or petition for a writ of mandamus, the emergency nature of the State's requests stems from the impending end to funding for Florida's Low Income Pool ("LIP") program and the State's June 30, 2105, fiscal year-end. Both before filing

this lawsuit and since, Florida has attempted to negotiate with Defendants to achieve a resolution regarding the continued existence and funding of the LIP program in a timely manner. And, as explained in more detail in Florida's reply brief filed today, absolutely nothing stands in the way of the federal government making a decision on Florida's request for LIP funding now. Likewise, nothing precluded a decision two months ago, which would have respected Florida's legislative and budgetary time constraints, as Florida repeatedly made clear to its federal counterparts. Although Defendants have represented to this Court that "CMS would *likely* approve some extension of LIP authority," Govt. Mem. 23 (emphasis added), even now, they refuse to tell Florida whether CMS will *actually* do so, or to provide any assurance that CMS will make a decision by June 30. As soon as it appears that some agreement regarding an extension of LIP could be imminent, the Defendants raise new roadblocks in the negotiations, or cease communications altogether.

This delay and uncertainty contributed to the State's inability to pass a budget during the regular 2015 legislative session, and the Florida Legislature now finds itself in the midst of a special legislative session in which it is *still* awaiting a decision—whatever it may be—about the future of its vital LIP program. The State cannot possibly anticipate at this point whether any semblance of its LIP program will continue to exist or how it will be funded if it exists at all. Yet although Defendants are well aware that the special legislative session is set to end on June 20, and each day that passes without a resolution to this matter heightens the tension at the state Capitol, Defendants appear determined to leave the fate of the LIP program in limbo until long after that date—presumably in an

effort to coerce the State into expanding Medicaid or to punish the State for failing ultimately to do so.

Under the circumstances, court-ordered mediation would be appropriate to facilitate a decision within a timeframe that allows the Florida Legislature to pass a budget that ensures that state healthcare providers ranging from trauma centers to children's hospitals receive the funding necessary to provide critical medical services to needy residents. By introducing a neutral mediator and insulating the process from extraneous influences, court-ordered mediation could facilitate a long-overdue conclusion to these negotiations quickly, equitably, permanently, and—perhaps most importantly— constitutionally, and do so in a timeframe that respects, rather than deliberately frustrates, the State's impending budget deadline.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court order the parties to submit to mediation, pursuant to Local Rule 16.3, to negotiate in good faith to reach an agreement in principle about the future LIP funding as expeditiously as possible.

N.D. FLA. LOCAL RULE 7.1 CERTIFICATION

The State has conferred with Defendants-Respondents regarding the motion to compel mediation. The government has stated that they oppose this motion and intend to file a response to that effect.

Respectfully submitted,

s/Paul D. Clement

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CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2015, I filed the foregoing via this Court's CM/ECF system, which will result in service on all counsel of record.

s/Barbara Smith Grieco
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