



### The Wagner Law Group

The Wagner Law Group is a nationally recognized practice in the areas of ERISA and employee benefits, labor, employment and human resources, investment management, HIPAA, privacy and security, litigation, tax-exempt organizations, trusts and estates, immigration and family law.

Established in 1996, The Wagner Law Group is dedicated to the highest standards of integrity, excellence and thought leadership and is considered to be amongst the nation's premier ERISA and employee benefits law firms. The firm has nine offices across the country, providing unparalleled legal advice to its clients, including large, small and nonprofit corporations as well as individuals and government entities worldwide. The Wagner Law Group's 35 attorneys, senior benefits consultant and seven paralegals combine many years of experience in their fields of practice with a variety of backgrounds. The firm is recognized by *U.S. News and World Report* as a Tier 1 Best Law Firm in the areas of ERISA and employee benefits. Nine of the firm's attorneys are AV-rated by *Martindale-Hubbell* and seven are Fellows of the *American College of Employee Benefits Counsel*, an invitation-only organization of nationally recognized employee benefits lawyers. Seven of the firm's attorneys have been named to the prestigious *Super Lawyers* list for 2019, which highlights outstanding lawyers based on a rigorous selection process. The Wagner Law Group is certified as a woman-owned and operated business by the Women's Business Enterprise National Council.

## The Wagner Law Group Submits Amicus Curiae Briefs in Association Health Plan Case

*Washington, D.C. July 8, 2019* - The Wagner Law Group recently submitted three amicus curiae briefs on behalf of multiple organizations in support of the Department of Labor (DOL), in *State of New York, et al. v. U.S. Department of Labor*. This case is on appeal to the United States Court of Appeals for the District of Columbia Circuit after the lower court vacated the DOL's regulation that provides flexibility for the formation of and the participation in an Association Health Plan (AHP). The briefs were prepared in cooperation with Christopher E. Condeluci, principal and sole shareholder of CC Law & Policy, in connection with his strategic affiliation with The Wagner Law Group.

The case is a challenge by New York and other States to the DOL's recently issued AHP regulation (1) permitting self-employed individuals with no employees to participate in an AHP, and (2) allowing employers in different industries to establish a geographic-based AHP (the "Final Rule"). The District Court's decision to invalidate the Final Rule was based on its conclusion that the DOL's interpretation of ERISA was unreasonable (please see the firm's [April 1, 2019 Law Alert](#) covering this case).

The firm's amicus curiae briefs (which can be read by [clicking here](#)), were filed on behalf of (1) the Oklahoma Insurance Department and the Montana State Auditor, (2) The Coalition to Protect and Promote Association Health Plans joined with AssociationHealthPlans.com (the "Coalition"), and (3) the National Association of REALTORS® and affiliates (the "REALTORS®"), and all take the position that the Final AHP Rule is a reasonable interpretation of ERISA.

The brief for the States offers reasons why the new "geographic-based" AHP criteria will create a sufficiently strong connection to establish the "commonality" needed for an AHP to be treated as a single plan, particularly because the proximity of the employers will also aid in creating the required "genuine organizational relationship," when combined with the required common "control" of the governing board that participating employers of an AHP must have.

The brief for the Coalition challenges the assumptions made by the States that oppose the Rule, about the legal and practical consequences of the



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Rule. This brief notes that those States already have existing laws that prohibit certain types of AHPs, and have broad authority to continue to regulate AHPs within their State, while many other States already have implemented laws to work with the DOL Final Rule.

The brief for the REALTORS® explains that there is a statutory basis for the DOL to deem a self-employed individual with no employees to be eligible to participate in an ERISA-covered AHP, and that deeming these self-employed individuals to be eligible to participate in an AHP is reasonable in light of changing market dynamics and a new and improved regulatory environment.

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