

# ORIGINAL

## UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Deborah Platt Majoras, Chairman**  
**Pamela Jones Harbour**  
**Jon Leibowitz**  
**William E. Kovacic**  
**J. Thomas Rosch**



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**In the matter of** )  
 )  
 ) **Docket No. 9315**  
**Evanston Northwestern Healthcare** )  
**Corporation,** )  
 ) **PUBLIC**  
 ) **a corporation, and** )  
 )  
**ENH Medical Group, Inc.,** )  
 ) **a corporation** )  
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### RESPONDENTS' OPPOSITION TO AND MOTION TO STRIKE MOTION OF ECONOMIC PROFESSORS TO FILE *AMICUS CURIAE*

Respondents Evanston Northwestern Healthcare and ENH Medical Group (“ENH”) respectfully request that the Commission deny the motion of Economic Professors to file an *amicus curiae* brief in this matter and strike the motion from the record for at least three reasons. First, the *amicus* submission of the Economic Professors is two years too late and therefore untimely. Second, the Economic Professors’ motion is improper because they claim to be “acting independently” of “any interested parties.” However, the primary signatory, Professor David Dranove, worked to analyze this merger on behalf of one of the Managed Care Organizations (“MCOs”) that testified at

trial for Complaint Counsel. Finally, the Economic Professors' brief merely advances views that have previously been offered by the MCOs and Complaint Counsel. The issue raised by the Economic Professors has been extensively briefed, argued, and has already been decided by the Commission. The public interest will therefore not be served by considering the perspectives enunciated in the Economic Professors' brief.

**I. The Economic Professors' Motion Is Untimely Because The Time For Filing *Amicus* Briefs Has Long Since Expired**

The *amicus* submission by the Economic Professors is nearly two years delinquent. The Commission rules contemplate the proper filing of *amicus* briefs when a matter is pending on appeal before the Commission – not after a decision has been issued. *See* Rule 3.52.

Pursuant to Commission Rule 3.52(j), “an amicus curiae shall file its brief within the time allowed the parties whose positions as to affirmance or reversal the amicus brief will support.” *See also* Order Denying Motion for Leave to File Brief Amicus Curiae, *In re North Texas Specialty Physicians*, No. 9312, 2005 WL 1541535 (F.T.C. June 7, 2005) (denying motion for *amicus* brief filed one month after the time period permitted).

The Economic Professors had ample opportunity to make their views known when this appeal was pending before the Commission nearly two years ago in 2005. The Administrative Law Judge's (“ALJ”) initial decision in this matter was issued on October 17, 2005. Respondents' filed a Notice of Appeal on or about October 26, 2005, and filed their Appeal Brief on December 16, 2005. This case and Respondents' appeal were well-publicized and numerous independent parties filed *amicus* briefs within the time allowed

