

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

STATE OF FLORIDA, by and)
Through Bill McCollum, et. al.,)
)
Plaintiffs,,)
)
v.)
)
UNITED STATES DEPARTMENT)
OF HEALTH AND HUMAN SERVICES,)
et. al.,)
)
Defendants.)
)
_____)

Case No. 3:10 cv 91 RV/EMT

**MOTION TO FILE AMICUS CURIAE BRIEF
IN SUPPORT OF PLAINTIFFS' OPPOSITION
TO DEFENDANTS MOTION TO DISMISS**

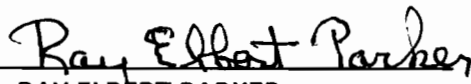
Petitioner named below hereby moves this honorable court to **grant** his *good faith* motion to file the attached amicus curiae brief in support of the plaintiffs' opposition to defendants' motion to dismiss.

Petitioner is a participant in the litigation *Virginia v. Sebelius*, Case No. 3:10 cv 188-HEH, which was filed in the United States District Court for the Eastern District of Virginia, Richmond Division, challenging federal oppression over state rights under the 10th Amendment to the Constitution of the United States.

The purpose of this motion is to encourage a precedent by the courts consistent with the Constitution of the United States, and if possible, to avoid conflicting decisions on a *public issue* affecting every state as well as effecting every citizen, not to exhaust the courts patience, resources and time in an attempt to have every citizen's opinion reviewed as part of the judicial process, or to satisfy ego extension.

Consistent with the premise, petitioner prays that this honorable court **grant** him amicus curiae status and that the court incorporate the attached brief as part of the official record, which is incorporated herein pursuant to Rule 10 (c) of the Federal Rules of Civil Procedure.

Respectfully submitted,

/s/ 
RAY ELBERT PARKER pro se

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STATE OF FLORIDA, by and)
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)
 Plaintiffs')

v.)

Case No. 3:10 cv 91 RV/EMT

UNITED STATES DEPARTMENT OF)
HEALTH AND HUMAN SERVICES,)
 et. al.,)
)
 Defendants'.)

**AMICUS CURIAE BRIEF IN OPPOSITION
 TO DEFENDANTS' MOTION TO DISMISS**

Petitioner, *RAY ELBERT PARKER*, hereby proffers the above captioned *good faith* brief in the interest of justice and a consideration for the cost efficiency and time of the court in dealing with a constitutional issue *in the first instance*, not to introduce new issues not before the court in dealing with the above captioned case, and petitioner sets forth the arguments below:

**THE TENTH AMENDMENT TO THE CONSTITUTION OF
THE UNITED STATES IS A *LIMITATION* PLACED ON THE
CONGRESS OF THE UNITED STATES OVER THE STATES**

The defendants' grounds for their motion that this court lacks *subject matter jurisdiction* over the claims asserted in Counts One and Two of the plaintiffs' Amended Complaint can be consolidated as a single issue before the court. Counts One and Two of the Amended Complaint allege the following: *Unconstitutional Mandate that all individuals have Healthcare insurance or pay a penalty. Const. Amendments V, IX, X.*

The 10th Amendment to the United States Constitution *limits* the power of Congress to exercise its power in a fashion that impairs state rights, integrity, or its ability to function in a federal system. See *New York v. United States*, 112 S. Ct. 2408, 505 U. S. 144 (1992), on remand 978 F. 2d 705; *Fry v. United States*, 95 S. Ct. 1792, 421 U. S. 542.

Any legislation of Congress, especially by a one rule party, beyond the limits of the power delegated is an *invasion* of the rights reserved to the states or to the people, *and is necessarily void*. *Baggs v. City of South Pasadena*, 974 F. Supp. 1580; *Minnesota & Eastern Railroad Corp. v. South Dakota*, 362 F. 3d 512, **518 [4 – 6]** (CA 8th Cir., 2003); *United States v. Milstein*, 401 F. 3d 53, **68 [19, 20]** (CA 2nd Cir., 2004).

NEVER in this country's history has any governmental entity been empowered to *oppressively command* every citizen *solely because of their status as a citizen by accident of birth* to purchase, buy, or otherwise acquire any good or service from another private citizen or

entity or to face a fine or imprisonment for not doing so. The Department of Justice carries the *burden* in this court to present a federal or state constitutional provision, statute, or ordinance so commanding other than the delusional frame of mind of House Speaker Nancy Pelosi and Senator Harry Reid (D. Nevada), the culprits leading the Capitol Hill piracy on the Potomac River; further, the court should duly note that no example heretofore exists in this nation when any governmental body whatsoever even attempted such an *abuse of authority* before the rise to power of President Obama's liberalized administration with *solutions lookin' for a problem*.

It is *well settled law* that's supported by this nation's history that's replete with government efforts to influence the *free market* by incentives and disincentives. Taxes, surtaxes, excise taxes, tax credits, deductions, tax abatements, etc. –all designed to influence commerce while legitimately funding government operations. Myriad federal and state regulations, county and municipal zoning ordinances, and a variety of other government influences affect private market decisions the citizenry make literally millions of times a day without mandating that *private* citizens be *forced or compelled* to enter into *legally binding contracts* to purchase goods or services from private citizens or entities or the federal government itself.

Where the federal government has required citizens to pay a portion of their earnings into government run benefit programs (e.g., social security, Medicare, etc.), the payments have been in the form of *direct* and clearly defined *taxes*, not legislative subterfuge to do *indirectly* what is clearly illegal to do *directly*. *Helvering v. Davis*, 301 U. S. 619, 635 (1937).

A cursory review of the law cited here will clearly demonstrate beyond a *reasonable*

doubt that the *radical extremism* evidenced by this Democrat administration is everything but democratic, and unless this court provides the *checks and balances* as a remedy that was denied the Republican Party in passing this legislation *nobody read or understood*, then success in this court by defendants' will establish a precedent that's a departure from the long history of the laws of this nation and the rights granted to every legal citizen in the Constitution of the United States.

II

THIS CLASS ACTION IS ABOUT STATE SOVEREIGNTY, INDIVIDUAL LIBERTY AND OPPRESSIVE FEDERALISM

1. Plaintiffs' have *Standing* to challenge The PPACA, which Infringes On The Sovereignty of the Several States Rights

The general and *sweeping police power* seized by a federal government controlled exclusively by the Obama administration has resulted in the passing of the PPACA, both broadly and respecting the *individual mandate in particular*, is exactly the kind of federal authority the Framers of the Constitution of the United States sought to quarantine.

The plaintiffs' have standing and this honorable court may *grant* standing where matters of great *public interest* and *societal impact* are concerned. *Jenkins v. State*, 585 P. 2d 442, 443 [3] (S. Ct. Utah, 1978); 10th Amend. U. S. Const. Alexander Hamilton in Federalist 32 vigorously defended the Constitution's intended structural protection of *state sovereignty*:

“An entire consolidation of the states into *one complete National sovereignty*, should imply an *entire subordination* of the parts; and whatever powers might remain in them, would be altogether *dependent* on the general will. But as the plan of the convention aims only at a partial union or consolidation, the state governments would clearly retain all the rights of sovereignty which they had before, and which were not, by that act, *exclusively* delegated to the United States.

The exclusive delegation, or rather the alienation of state sovereignty, would only exist in three cases: **(1)** Where the constitution in express terms granted an exclusive authority to the union; **(2)** Where it granted, in one instance, an authority to the union, and in another, prohibited the states from exercising the like authority; and **(3)** Where it granted an authority to the union, to which a similar authority in the states would be absolutely and totally *contrary* and *repugnant*.

The necessity of a concurrent jurisdiction in certain Case, results from the division of the sovereign power, and the rule that all authorities, of which the states are not explicitly divested in favor of the union, *remain with them* in full vigor, is not only a theoretical consequence of that division, but is clearly admitted by the whole tenor of the instrument which contains the articles of the proposed constitution.”

The powers delegated by the Constitution of the United States are few and well defined and those which are to remain in the state governments, are numerous and indefinite. The federal government’s attempt in its Motion to Dismiss to squelch states rights is without jurisdiction and *must* be rejected *with prejudice*. The indoctrinated *puppets* of this Democrat administration of liberalism and constitutional defiance, as well as the *puppeteer* President Obama, the self-appointed messiah of *socialism* and a taxpayer supported *society of entitlements*, must learn that a democracy requires they follow the constitutionality prescribed

procedure, and above all, respect state sovereignty in the process.

2. The Healthcare Individual Insurance Mandate is an Unprecedented and Unconstitutional exercise of Police Power by President Barack Hussein Mohammad Obama and his one party ruling Democrat Party

Congress's establishment of the "one size fits all" sweeping new federal police power to enforce the individual mandate is a dramatic example of the kind of all powerful federal government the Framers sought to avoid in the Constitution. Neither the American people nor the Congress itself ever read the bill before passage, and House Speaker Nancy Pelosi, (D. CA.) addressing a media in the hip pocket of President Obama, said: "*The American people are going to love this bill once they discover what's in it.*"

This court's decision represents America's *last chance* to rescue this nation from the clutches of alleged *Marist or fascist socialism* because the Democrat Party monopoly holds all the cards and the Republican Party is listless, worthless, gutless and burdened with obsolete personalities who provide leadership with Ostrich mentality that buries its head in the sand, but makes decisions from the wrong end of the anatomy.

A denial of *jurisdiction, standing* or any other *dilatory* tactic existing in the Department of Justice bag of tricks pursuant to Rule 12 of the Federal Rules of Civil Procedure is standard procedure they always use by "throwing the tomato to see who is going to duck." The *motive and intent* of the Obama *controlled* Department of Justice is to effectively exercise the same control over the judicial system as they did with the Congress of the United States, which in effect, will rob the citizenry and the states of any day in court whatsoever or alternatively, reinforce their self-serving demands on the American culture and traditional way of life to

Conform and to conform in silence.

Defendants' goal at all times relevant is to create an impenetrable barrier to any judicial scrutiny whatsoever of *flawed* and *unconstitutional* action enacted by an arbitrary, capricious, surreptitious and misguided *one rule party* led by an *autocrat* who worships centralized and expanding big, big federal government control over every aspect of American life, or right to life under the new healthcare bill.

The court's *duty* is to open, rather than close the door to the courthouse. *Saratoga County Chamber of Commerce, Inc. v. Pataki*, 798 N. E. 2d 1047, **1054 [6]** (Sup. Ct. of New York -2003), cert. den'd 124 S. Ct. 570. The class plaintiff's in this cause of action all have both *standing* and the *paramount legal obligation* to pursue this litigation as both the *protectors of public rights* and as *the enforcers of public authority*, rather than by individual citizens filing their individual law suits with a negative result that creates litigation that could bury the courts with *ongoing* multiple cases 'til infinity. *Channel 10, Inc. v. Independent School District No. 709, St. Louis County*, 215 N. W. 2d 814, **820 [1]** Sup. Ct. Minnesota- 1974); *People ex rel. Lee v. Kennedy, Inc.*, 370 N. E. 2d 78, **81 [5]** (Sup. Ct. of Illinois- 1977).

Standing and jurisdiction may be found under a *public interest standing test* if:

1. The matter is of great public importance;
2. The plaintiffs', although lacking a distinct injury are
In as good position to challenge the alleged illegality
As any other plaintiff;
3. The constitutional issues *in the first instance* are unlikely
to ever be raised if the class plaintiffs' are denied the right
to sue. Const. Amend. 5, 9, 10, 13, 24.

WHEREFORE, petitioner named below moves this honorable court to accept and **grant** his motion as *a friend of the court*, and for the foregoing reasons. the federal defendants' Motion to Dismiss should **denied**.

POINTS: As stated above.

AUTHORITIES: As stated above.

Respectfully submitted,

/s/ 
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CERTIFICATE OF SERVICE


I, **RAY ELBERT PARKER**, hereby certify under oath that a true copy of the above motion, brief, certificate of service and prepared order has this 27th day of August, 2010, been mailed to **The Honorable William "Bill" McCollum, Esq.**, Attorney General for the State of Florida, on behalf of his staff, namely, **Blaine A. Winship, Esq.**, Assistant Attorney General, **Joseph W. Jacquot, Esq.**, Deputy Attorney General; **Scott D. Makar, Esq.**, Solicitor General; **Louis F. Huber, Esq.**; **Timothy D. Osterhaus, Esq.**; and **Charles D. Upton, II, Esq.**, Deputy Solicitor General, Office of the Attorney General of Florida, The Capitol Plaza, Suite PI-01, Tallahassee, Florida

32399 – 1050, counsel for plaintiffs: **The Honorable Henry McMaster, Esq.**, Attorney General for South Carolina; **The Honorable Jon Bruning, Esq.**, Attorney General for Nebraska; **The Honorable Greg Abbott, Esq.**, Attorney General for Texas; **The Honorable Mark L. Shurtleff, Esq.**, Attorney General for Utah; **The Honorable James “Buddy” Caldwell, Esq.**, Attorney General for Louisiana; **The Honorable Troy King, Esq.**, Attorney General for Alabama; **The Honorable Michael Cox, Esq.**, Attorney General for Michigan; **The Honorable John W. Suthers, Esq.**, Attorney General for Colorado; **The Honorable Thomas W. Corbett, Esq.**, Attorney General for Pennsylvania; **The Honorable Robert M. McKenna, Esq.**, Attorney General for Washington; **The Honorable Marty J. Jackley, Esq.**, Attorney General for South Dakota; **The Honorable Gregory F. Zoeller, Esq.**, Attorney General for Indiana; **The Honorable Wayne Stenshjem, Esq.**, Attorney General for North Dakota; **The Honorable Haley Barbour**, Governor for the State of Mississippi; **The Honorable Janice K. Brewer**, Governor for the State of Arizona; **The Honorable Jim Gibbons**, Governor for the State of Nevada; **The Honorable Sonny Perdue**, Governor for the State of Georgia; **The Honorable Daniel S. Sullivan**, Governor for the State of Alaska; and David B. Rivkin, Esq. and Lee A. Casey, Esq., **BAKER & HOSTETLER, LLP**, 1050 Connecticut Avenue, NW, Ste. 1100, Washington, D. C. 20036, Attorneys for plaintiffs’ states, **National Federation of Independent Business, Mary Brown & Kaj Ahlburg**; and **Katherine J. Spoln, Esq.**, Special counsel for the Attorney General of Nebraska, Office of the Attorney General for Nebraska, 2115 State Capitol Building, Lincoln, Nebraska 68508; and **Karen R. Harned**, Executive Director, **National Federation of Independent Business, Small Business Legal Center**, 1201 F Street, NW, Suite 200, Washington, D. C. 20004; and **William J. Cobb III**,

Esq., Special Assistant and Senior Counsel for the Office of the Attorney General for Texas,
Post Office Box 12548 Capitol Station, Austin, Texas 78711 – 2548.

And to **Brian G. Kennedy, Esq.**, Senior Trial Counsel on behalf of **Eric B. Beckenhauer, Esq.**, trial attorney; **Troy West, Esq.**, Assistant Attorney General; **Ian Heath Gershengorn, Esq.**, Deputy Assistant Attorney General; **Thomas F. Kirwin, Esq.**, United States Attorney, **United States Department of Justice**, Civil Division, Federal Programs Branch, 20 Massachusetts Avenue, NW, Washington, D. C. 20530, counsel for defendants.

Respectfully submitted,

/s/ 
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