

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

COMMONWEALTH OF)
VIRGINIA EX REL. KENNETH)
T. CUCCINELLI, II, in his official)
capacity as Attorney General of Virginia,)
)
Plaintiff,)
)
v.)
)
KATHLEEN SEBELIUS)
Secretary of the Department of Health and)
Human Services, in her official capacity,)
)
Defendant.)
)
)

Case No. 3:10-cv-00188-HEH

**MOTION OF MOUNTAIN STATES LEGAL FOUNDATION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT**

Mountain States Legal Foundation (“MSLF”) hereby moves for leave to file the accompanying amicus curiae brief in support of Plaintiff’s Motion for Summary Judgment. The grounds for this Motion are as follows:¹

1. MSLF is a non-profit, public interest legal foundation organized under the laws of the State of Colorado. MSLF’s members include individuals who live and work in every State of the Nation. MSLF is dedicated to bringing before the courts those issues vital to the defense and preservation of private property rights, individual liberties, limited and ethical government, and the free enterprise system. To that end, MSLF has often opined on Commerce Clause issues,

¹ The Motion and the Brief in support thereof are combined in this document.

including, most recently, filing amicus curiae briefs in *San Luis & Delta-Mendota Water Authority v. Salazar*, No. 10-15192 (9th Cir.), *Rapanos v. United States*, 547 U.S. 715 (2006), *GDF Realty Investments, LTD v. Norton*, 362 F.3d 286 (D.C. Cir. 2004), and *Rancho Viejo, LLC v. Norton*, 323 F.3d 1062 (D.C. Cir. 2003).

2. Central to the notion of a limited government is the constitutional principle of enumerated powers: those powers not explicitly delegated to the federal government are reserved for the States and the people. This case falls directly within MSLF's purpose because the federal government has exceeded its constitutionally enumerated powers.

3. MSLF supports the arguments made by the Commonwealth of Virginia in its Memorandum in Support of Motion for Summary Judgment (Dkt. 89). MSLF seeks to write separately because it is uniquely qualified to assist the Court by providing it with additional background relating to the doctrine of enumerated powers, and its fundamental role in the founding of the United States.

4. Counsel for MSLF contacted each party on September 27, 2010. Counsel for Plaintiff consented to the filing of MSLF's brief. Counsel for Defendant stated that Defendant takes no position on the filing of amicus curiae briefs in this case.

WHEREFORE, MSLF respectfully requests that its Motion for Leave to File Amicus Curiae Brief in Support of Plaintiff's Motion for Summary Judgment be granted. A proposed order is attached hereto.

Respectfully submitted this 4th day of October, 2010.

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CORPORATE AND FINANCIAL DISCLOSURE STATEMENTS

Pursuant to Local Rule 7.1 of the Eastern District of Virginia, and to enable Judges and Magistrate Judges to evaluate possible disqualifications or recusal, the undersigned counsel for Amicus Curiae Mountain States Legal Foundation (“MSLF”) certifies that there are no parents, trusts, subsidiaries and/or affiliates of MSLF that have issued shares or debt securities to the public.

Pursuant to Fourth Circuit Local Rule 26.1, MSLF declares it is a non-profit, public interest, legal foundation dedicated to bringing before the courts those issues vital to the defense and preservation of private property rights, individual liberties, limited and ethical government, and the free enterprise system. MSLF declares that it has no parent corporation and issues no stock. No publicly held corporation has a direct financial interest in the outcome of this litigation due to MSLF’s participation.

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October, 2010, I electronically filed the foregoing MOTION OF MOUNTAIN STATES LEGAL FOUNDATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT with the Clerk of the Court using the CM/ECF system, which will automatically send a notification of such filing to the following counsel for the parties who are registered users of this Court's CM/ECF system:

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