

**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.)
_____)

No. 3:10-cv-00188-HEH

**MOTION FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE OF THE
LANDMARK LEGAL FOUNDATION IN SUPPORT OF
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 29(a) and (b) of the Federal Rules of Appellate Procedure, movant, Landmark Legal Foundation (“Landmark”) respectfully moves the court for leave to participate as *amicus curiae* and file the accompanying brief in support of Plaintiff’s Motion for Summary Judgment.¹

I. CORPORATE & FINANCIAL DISCLOSURE STATEMENT

Pursuant to Local Rule 7.1, undersigned counsel for Landmark certify that there are no parent, subsidiary, or affiliate entities (corporate or otherwise) that have issued stock or debt securities to the public.

¹ Plaintiff Commonwealth of Virginia has consented to Landmark’s participation as *amicus curiae*. Defendant Sebelius has neither consented nor opposed Landmark’s participation.

Pursuant to Fourth Circuit Local Rule 26.1, Landmark states 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 Landmark's participation.

II. INTEREST OF MOVANT

Founded in 1976, Landmark is a public interest law firm committed to preserving the principles of limited government, separation of powers, free enterprise, federalism, strict construction of the Constitution and individual rights. Specializing in Constitutional litigation, Landmark maintains offices in Kansas City, Missouri and Leesburg, Virginia. The case before the Court presents an important question pertaining to the scope of the Constitution's Commerce Clause. Movant believes the individual mandate portion of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, § 501, 124 Stat. 119 (2010) (PPACA) eviscerates 230 years of constitutional understanding and Supreme Court Commerce Clause jurisprudence, fundamentally misapprehends the Necessary and Proper Clause, cannot be justified under Congress's taxation authority, and is not a proper application of the federal power that advances the General Welfare of the People.

III. LANDMARK'S PARTICIPATION IS DESIRABLE AND THE MATTERS RAISED IN ITS BRIEF ARE RELEVANT.

Landmark argues that the PPACA's individual insurance mandate is an unprecedented and unconstitutional police power that is impermissible under either the Constitution's Commerce Clause or the Necessary and Proper Clause. Movant also presents a thorough and important discussion of the historical context in which the Framers drafted the Commerce Clause and demonstrates how the meaning of the term "commerce" could never have been envisioned as permitting government compelled marketplace activity.

Movant demonstrates that there is no historical support for the proposition that Congress may compel private individuals to engage in commerce with other private individuals. The individual mandate is an unprecedented expansion of the federal government's power.

Moreover, Landmark shows how the individual mandate does not satisfy the Constitution's Necessary and Proper Clause. In short, the federal government cannot show how the individual mandate is "reasonably adapted" to the attainment of a legitimate end. The Necessary and Proper Clause contains restraints that limit its application. Such restraints compel the invalidation of the individual mandate.

Finally, Landmark notes that the PPACA does not constitute a constitutionally permissible "tax."

IV. CONCLUSION

WHEREFORE, we request this court grant the present motion and allow Landmark Legal Foundation to participate as amicus curiae.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of October, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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I hereby certify that on the 4th day of October, 2010, I mailed via first class mail, postage prepaid, a copy of the foregoing to the following:

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