

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division

COMMONWEALTH OF VIRGINIA )  
EX. REL. KENNETH T. CUCCINELLI, II, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
KATHLEEN SEBELIUS, )  
SECRETARY OF THE DEPARTMENT OF )  
HEALTH AND HUMAN SERVICES, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Civil Action No.: 3:10CV188

**UNOPPOSED MOTION FOR LEAVE TO EXCEED PAGE LIMITATION  
AND TO ESTABLISH BRIEFING SCHEDULE, AND BRIEF IN SUPPORT THEREOF**

Defendant Kathleen Sebelius, Secretary of the Department of Health and Human Services, by the undersigned counsel, respectfully moves the Court for leave to exceed the page limitations imposed by Local Civil Rule 7(F) and to establish a briefing schedule on her motion to dismiss. In support, Defendant states:

Defendant’s initial response to Plaintiff’s complaint is due on May 24, 2010. Defendant intends to file a motion to dismiss the complaint pursuant to Rule 12 of the Federal Rules of Civil Procedure. As the Court is aware, Plaintiff’s complaint implicates a matter of national significance – the constitutionality of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010). To properly address the relevant issues in its memorandum in support of its motion to dismiss, Defendant respectfully requests leave to file a brief up to, but not exceeding, 45 pages in length. In light of Defendant’s request, Plaintiff has requested, and Defendant has no objection to, a similar extension of the page limitation for Plaintiff’s brief in opposition to Defendant’s motion to dismiss.

In addition, the parties have discussed a proposed briefing schedule on the motion to dismiss. The parties have agreed, subject to the Court's approval, to the following deadlines: Plaintiff will file its opposition to Defendant's motion to dismiss on or before June 7, 2010; and Defendant will file her reply brief in support of her motion to dismiss on or before June 22, 2010.

Counsel for the Defendant has contacted counsel for the Plaintiff. Plaintiff's counsel has consented to the relief requested in this motion. Plaintiff has stated its intent to file a motion for summary judgment. Defendant believes that it is appropriate to defer briefing on any such motion until her motion to dismiss is decided, but does not ask the Court to rule at this time with respect to that issue. Plaintiff has communicated its disagreement with deferral.

A proposed Order is attached.

WHEREFORE, Defendant respectfully requests that the Court issue an Order granting leave to exceed the page limitations imposed by Local Civil Rule 7(F), to establish a briefing schedule on the motion to dismiss, and for such further relief as the Court deems appropriate.

Respectfully submitted,

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IAN HEATH GERSHENGORN  
Deputy Assistant Attorney General  
(Admitted *Pro Hac Vice*)

NEIL H. MACBRIDE  
United States Attorney

By: /s/  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of May, 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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/s/  
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