

**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 AMICI CURIAE OF
 THE AMERICAN CENTER FOR LAW & JUSTICE, U. S. REPS. PAUL
 BROUN, TODD AKIN, ROB BISHOP, JOHN BOEHNER, MICHAEL
 BURGESS, DAN BURTON, ERIC CANTOR, MIKE CONAWAY, MARY
 FALLIN, JOHN FLEMING, VIRGINIA FOXX, TRENT FRANKS, SCOTT
 GARRETT, LOUIE GOHMERT, BOB GOODLATTE, JEB HENSARLING,
 WALTER JONES, STEVE KING, DOUG LAMBORN, ROBERT LATTA,
 MICHAEL MCCAUL, CATHY MCMORRIS RODGERS, JERRY MORAN,
 MIKE PENCE, JEAN SCHMIDT, LAMAR SMITH, TODD TIAHRT, ZACH
 WAMP, AND THE CONSTITUTIONAL COMMITTEE TO CHALLENGE
 THE PRESIDENT & CONGRESS ON HEALTH CARE IN SUPPORT OF
 PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO DISMISS***

Pursuant to Rule 29(a) and (b) of the Federal Rules of Appellate Procedure,
 movants, the American Center for Law and Justice (ACLJ), United States

Representatives Paul Broun, Todd Akin, Rob Bishop, John Boehner, Michael Burgess, Dan Burton, Eric Cantor, Mike Conaway, Mary Fallin, John Fleming, Virginia Foxx, Trent Franks, Scott Garrett, Louie Gohmert, Bob Goodlatte, Jeb Hensarling, Walter Jones, Steve King, Doug Lamborn, Robert Latta, Michael McCaul, Cathy McMorris Rodgers, Jerry Moran, Mike Pence, Jean Schmidt, Lamar Smith, Todd Tiahrt, and Zach Wamp, and the Constitutional Committee to Challenge the President and Congress on Health Care respectfully move the court for leave to participate as *amici curiae* and file the accompanying *amici* brief in support of the Plaintiff's Opposition to the Defendant's Motion to Dismiss.¹

I. CORPORATE & 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 the ACLJ, various members of Congress, and the Constitutional Committee to Challenge the President & Congress on Health Care in the above captioned action, certifies that there are no parents, trusts, subsidiaries, and/or affiliates of the ACLJ that have issued shares or debt securities to the public.

¹ The Plaintiff has consented to the participation of movants as *amici* in this case. The Defendant, when contacted, stated that it takes no position on movants' motion for leave.

Pursuant to Fourth Circuit Local Rule 26.1, the ACLJ declares it is a non-profit legal corporation dedicated to the defense of constitutional liberties secured by law. The ACLJ 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 the ACLJ's participation.

II. INTEREST OF MOVANTS

Movant ACLJ is a legal organization committed to insuring the ongoing viability of constitutional freedoms in accordance with principles of justice. ACLJ attorneys have argued or participated as *amicus curiae* in numerous cases involving constitutional issues before the Supreme Court of the United States and lower federal courts. It is this commitment to the integrity of the United States Constitution that compels the ACLJ to support Plaintiff's Opposition to Defendant's Motion to Dismiss.

Movants United States Representatives Paul Broun, Todd Akin, Rob Bishop, John Boehner, Michael Burgess, Dan Burton, Eric Cantor, Mike Conaway, Mary Fallin, John Fleming, Virginia Foxx, Trent Franks, Scott Garrett, Louie Gohmert, Bob Goodlatte, Jeb Hensarling, Walter Jones, Steve King, Doug Lamborn, Robert Latta, Michael McCaul, Cathy McMorris Rodgers, Jerry Moran, Mike Pence, Jean Schmidt, Lamar Smith, Todd Tiahrt, and Zach Wamp are members of the United

States House of Representatives in the One Hundred Eleventh Congress. These movants voted against the Patient Protection and Affordable Care Act of 2010 (“PPACA”) in Congress.

Movant, the Constitutional Committee to Challenge the President and Congress on Health Care, consists of over 70,000 Americans from across the country who oppose the individual mandate and do not want to be forced to buy insurance coverage.

Movants are dedicated to the founding principles of limited government and to the corollary precept that the Commerce Clause contains boundaries which Congress may not trespass no matter how serious the nation’s healthcare problems. Movants believe that the individual insurance mandate provision of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, § 1501, 124 Stat. 119 (2010) exceeds any power granted under the Commerce Clause. Moreover, movants believe that because of the costs states must incur now or in the near future to prepare to implement the PPACA, no jurisdictional impediment exists to deciding this case now.

III. AN *AMICI* BRIEF IS DESIRABLE AND THE MATTERS ASSERTED ARE RELEVANT TO THE DISPOSITION OF THE CASE.

Movant ACLJ possesses experience in Constitutional law cases and seeks to analyze the relevant case law to demonstrate that the Court should resolve the

constitutional issues in this case in favor of the Plaintiffs. Additional movants individual Members of Congress (listed above) and the Constitutional Committee to Challenge the President and Congress on Health Care represent a diverse group of elected officials and citizens who oppose the individual mandate in the PPACA. Movants Members of Congress voted against the PPACA in Congress and believe the law to be unconstitutional and burdensome to states. Therefore, the movants respectfully submit that their participation as *amici* would assist the Court in its consideration of this case.

Movants contend that the individual insurance mandate provision of the PPACA exceeds any power granted under the Commerce Clause. In its brief, movants argue that the Commerce Clause does not empower Congress to coerce individual purchases merely because decisions not to purchase affect interstate commerce. Movants argue that such an expansive reading of the Commerce Clause could make the universe of commercial transactions that Congress could compel limitless.

Movants also argue that the absence of a severability clause in the PPACA increases the likelihood of immediate harm to states. Although the individual mandate provision of the PPACA becomes effective in 2014, states must nevertheless incur immediate and significant legislative, administrative, and other costs to prepare to fully implement the PPACA. Thus, the burdens imposed on the

states by the PPACA include not only inevitable future requirements, but also present significant expenditures and alterations to their existing regulatory schemes.

IV. CONCLUSION

WHEREFORE, we request this court to grant the present motion and allow the Movants to participate as *amici curiae*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of June, 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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