

**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.)
_____)

Civil Action No. 3:10-cv-00188-HEH

**MOTION FOR LEAVE TO FILE AMICUS CURIAE
BRIEF OF CONSTITUTIONAL LAW PROFESSORS
IN SUPPORT OF THE DEFENDANT’S MOTION TO DISMISS**

Pursuant to this Court’s June 3, 2010 Order (Dkt. # 23), *amici* Jack M. Balkin, Gillian E. Metzger, and Trevor W. Morrison respectfully request leave to file an *amicus curiae* brief in support of the Defendant’s Motion to Dismiss.

Amici are constitutional law professors with substantial expertise in the text, history, and structure of the Constitution as well as constitutional law doctrine as developed by the Supreme Court, including as it relates to the legislative authority of the federal government. The proposed *amicus curiae* brief addresses whether the Minimum Coverage Fee Provision of the Patient Protection and Affordable Care Act constitutes a proper exercise of Congress’s taxation power, one of the issues before the Court in this case. *See* Mot. to Dismiss at 35-39. In cases presenting constitutional issues, it is common for courts to accept amicus briefs from legal academics with relevant expertise.

Amici's proposed brief is attached to this motion. The Commonwealth of Virginia has consented to *amici's* request for leave to file. Defendant Sebelius takes no position with respect to this motion.

Amici believe that the proposed brief may be of assistance to the Court. *See Peters v. Jenney*, 327 F.3d 307, 319 n. 13 (4th Cir. 2003) (noting that an *amicus curiae* brief was “helpful to the court”); *Bradley v. School Board of City of Richmond*, 317 F. Supp. 555, 576 (E.D. Va. 1970) (same). Accordingly, *amici* respectfully request leave to file the amicus brief.

DATED: June 17, 2010.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th 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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