

**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. |) | Civil Action No. 3:10cv188 |
| |) | |
| KATHLEEN SEBELIUS, |) | |
| Secretary of the Department |) | |
| of Health and Human Services, |) | |
| in her official capacity, |) | |
| |) | |
| Defendant. |) | |

**MEMORANDUM OF THE COMMONWEALTH OF VIRGINIA IN
OPPOSITION TO THE MOTION TO DISMISS WITHOUT PREJUDICE
OR FOR A CHANGE OF VENUE**

Pro se amicus Ray Elbert Parker has moved this Court to dismiss the case without prejudice or to “remand” the case to a District Court in the District of Columbia. In response to this motion, the Commonwealth of Virginia says as follows:

1. First, Mr. Parker, is an amicus, not a party. As such, he may not seek this relief. *Cf. Newark Branch, NAACP v. Harrison*, 940 F.2d 792, 808 (3rd Cir. 1991) (collecting authorities on limited role of amicus and refusing to entertain request for relief filed solely by amicus). The actual party defendant has waived any objection to venue. Rule 12(h), F.R. Civ. Pro.

2. Second, venue is unquestionably proper in the Eastern District of Virginia. 28 U.S.C. § 1391(e)(2) plainly permits venue for this lawsuit in this Court.

Respectfully submitted,

KENNETH T. CUCCINELLI, II
Attorney General of Virginia

CHARLES E. JAMES, JR.
Chief Deputy Attorney General

E. DUNCAN GETCHELL, JR.
State Solicitor General

WESLEY G. RUSSELL, JR.
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/s/ E. Duncan Getchell, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd 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: Ian Gershengorn, ian.gershengorn@usdoj.gov, Joel McElvain, joel.mcelvain@usdoj.gov, Jonathan Holland Hambrick, jay.h.hambrick@usdoj.gov, Sheila M. Lieber, slieber@civ-usdoj.gov, and all counsel for Amici. A copy also has been served by first class, postage prepaid, U.S. Mail to Ray Elbert Parker, *Pro Se*, P. O. Box 320636, Alexandria, VA 22320.

/s/ E. Duncan Getchell, Jr.
Counsel