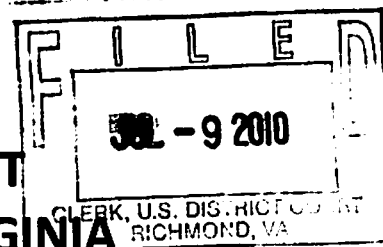


IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION



COMMONWEALTH OF VIRGINIA)
EX REL. KENNETH T. CUCCINELLI, II,)
In his official capacity as the)
Attorney General for Virginia)
Plaintiff,)

v.)

Civil Action No. 3: 10 cv 188

KATHLEEN SEBELIUS, SECRETARY,)
DEPARTMENT OF HEALTH AND)
HUMAN SERVICES)
In her official capacity as Secretary)
Defendant.)

**PETITIONER’S AMICUS CURIAE POST TRIAL MEMORANDUM IN
SUPPORT OF OPPOSITION TO DEFENDANTS MOTION TO DISMISS**

Petitioner, **RAY ELBERT PARKER**, hereby files his Opposition to the Federal Defendant’s *Motion to Dismiss* now pending before the court from its hearing on the **1st day of July, 2010**, as an *accepted amicus curiae friend of the court* who did not participate in oral argument, and said memorandum is proffered in *good faith* in support of the plaintiff (hereinafter referred to

as "*The Virginians*") and to assist the court in making its major contribution to this landmark decision in the first instance.

The ultimate success or failure of this litigation on appeal will depend largely on the legal craftsmanship of the burden of justice now carried alone on the shoulders of a single judge, who at all times relevant is encouraged to do the right thing *first* and everything else second.

Petitioner submits that a denial of defendants *Motion to Dismiss* will best serve both the letter and the spirit of the law and America by not condoning an arbitrary, capricious and alleged maliciously manipulated unconstitutional act by a one party ruling Congress and a President of suspicious origin with an agenda of applied *socialism* for what may in Virginia's future become the Commonwealth of Mexico welfare state. In rendering its decision, petitioner moves this honorable court to consider the following to be incorporated in its *final judgment*.

STATEMENT OF THE FACTS

The liberal majority of the *left* coast philosophy of politics resorted to a corrupt and *flawed* one party rule of Congress because Americans disapprove of President Barack Hussein Mohammad Obama's "reform" that massively increases and expands *centralized* government power, erodes *individual* choice and freedom, and redefines the relationship of the states and the citizenry to the federal government.

This Health Care Bill expands the power of the federal government to *regulate*, issue new rules, dictate life and death decisions and force individual and state conformity *and conformity in silence*. Under the thumb of *the Sheik of Araby's* administration, Virginian's and all Americans whatsoever will be subjected to rationing health care, exorbitant personal and business taxation, Medicare cuts, Medicaid bankruptcy, machine politics, a deficit problem that's not only an internal threat to the democratic culture and *free market* way of life, but as a debtor nation it is a threat to our national security.

President Hussein Mohammad's Congressional mafia under the surreptitious leadership of fellow Trotskyites, House Speaker Nancy Pelosi and Senator Harry Reid (D. Nevada), made all of this these alleged benefits possible by passing a Health Care Bill over 4,500 pages long with numerous 300 page amendments attached, a bill nobody received and never read 'til the clock struck midnight for the one party controlled vote that *excluded* any participation whatsoever by the Republican Party and *We the People*. House Speaker Nancy Pelosi, addressing the media after the passage of the Health Care Bill said: "Americans will love this bill once they discover what's in it!"

One of the biggest problems not addressed by the Health Care Bill was the 30 billion dollars a year that doctors in America collectively pay for malpractice insurance. Of course, if Virginian's have no objection to paying 134 million dollars, or more, a year to help support the 30 million uninsured covered in this health bill, legal or otherwise, then Virginian's will want to vote President Obama back into Office for a second term in 2012.

To win passage of the Health Care Bill, the Trotskyites used bribery and political payoffs to accomplish indirectly what they couldn't accomplish directly within their own

Ranks. The honorable public servants of Congress and the White House struck deals with labor unions, the AARP and other profiteers of lobbying and non-profit status with desire to have the Al Sharpton seal of approval or alternatively, engage in vote fraud by groups like ACORN, who used taxpayer money to steal votes. However, the White House as an equal opportunity employer, enlisted ACORN as an official partner of the United States Census Bureau to help recruit more than a million census-takers for 2010 and to participate in the count.

This brief history of the Health Care Bill is only the tip of the iceberg to remind the court that this was not legislation made in heaven. The *Federalist Papers* warned against government control by a single party of the executive, legislative and judicial branches of government. President Obama and the Democrat Party now have control over two branches of federal government with the probability of liberal control over the judicial branch. It is therefore crucial, that this court get its ducks in order by rendering a decision that will withstand the scrutiny of the high court in the days ahead that reinforces the constitution and rewards the straight- arrow American taxpayer.

THIS COURT NOW HAS UNQUESTIONABLE JURISDICTION

The court having heard *oral argument* on the *merits* on the 1st day of July, 2010, for defendant's *Motion to Dismiss*, and the federal defendant by not having filed an objection to either *venue* or *jurisdiction*, have waived any and all rights of appeal whatsoever on this point of law, which at all times relevant is now *moot*. The court may in "good faith" rely upon the following cases for precedent: *Stjerholm v. Peterson*, 83 F. 3d 347, 349 [1] (CA 10th Cir. – 1996), cert.denied 117 S. Ct. 301, 519 U. S. 930; *International Union, U. A. v. Aluminum Co. of America*, 875 F. Supp. 430, 433 [9, 10] (U. S. Dist. Ct. N. D. Ohio – 1995).

THE VIRGINIA PLAINTIFF HAS *STANDING*

Standing is defined as the *right* of a party to make a legal claim or to seek judicial enforcement of a *duty* or *right*. To have *standing* in federal court, a plaintiff must show:

(1) That the challenged conduct has caused the plaintiff *actual injury*, and (2) that the interest sought to be protected is within the zone of interest meant to be regulated by the statutory or *constitutional guarantee*. Have the *Virginians* alleged such a *personal stake* in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult *constitutional questions* found to be present in this case? This is the gist of the question of *standing*. *Baker v. Carr*, 369 U. S. 186, 204, 72 S. Ct. 691, 703 (1962). The amicus curiae petitioner submits that the *Virginians* do have *standing* before this Honorable Court for several reasons as follow:

First, the usual rule is that one must be *personally* adversely affected

before s/he has standing to prosecute an action. However, the court may *grant standing* where matters of great *public interest* and *societal impact* are concerned.

Jenkins v. State, 585 P. 2d 442, 443 [3] (S. Ct. Utah, 1978); The *Tenth Amendment* to the Constitution of the United States.

The Supreme Court of the United States has clarified the doctrine in that *standing* is an “irreducible constitutional minimum” that has three elements:

1. A party must have experienced an *injury in fact*; that is, *invasion* of a legally protected interest which is (a) concrete and particularized and (b) *actual or imminent*, not conjecture.

2. There must be a *causal connection* between the *injury in fact* and the *defendants conduct* that is “fairly...traceable to the challenged action of the defendant, and not...the result of the independent action of some third party not before the court.

3. A *favorable decision* must be likely to redress the complained of injury.

Where the *Virginians* cannot establish *each* of the three elements, the *Virginians* do not have *standing* and the court would therefore not have *jurisdiction* over the case, and regrettably, cannot rule on the "*merits*." Petitioner submits that all three of the elements are present in this cause of action as set forth herein.

A *denial of standing* would pose, in effect, an impenetrable barrier to any judicial scrutiny whatsoever of *flawed* and allegedly *unconstitutional* action enacted by an arbitrary, capricious and misguided one rule party. The court's *duty* is to open, rather close, the door to the courthouse; that is, unless Virginia citizens "can't stand the truth." *Saratoga County Chamber of Commerce, Inc. v. Pataki*, 798 N. E. 2d 1047, 1054 [6] (Supreme Court of New York – 2003), cert. denied, 124 S. Ct. 570.

The Commonwealth of Virginia Office of the Attorney General has both *standing* and the *paramount legal obligation* to pursue this litigation, as both the *protector of public rights* as the enforcer of public authority, rather than by individual citizens filing

their individual law suits with a negative result to create litigation that could bury the Virginia courts with *ongoing* multiple law suits 'til infinity. See *Channel 10, Inc. v. Independent School District No. 709, St. Louis County*, 215 N. W. 2d 814, 820 [1] (Supreme Court of Minnesota-1974); *People ex rel. Lee v. Kennedy, Inc.*, 370 N. E. 2d 78, 81 [5] (Supreme Court of Illinois – 1977).

Standing may be found under a *public interest standing test* if (1) *the matter is of great public importance*, (2) *the plaintiff, although lacking a distinct injury is in as good position to challenge the alleged illegality as any other plaintiff*, (3) *the issue is unlikely to ever be raised if the government plaintiff is denied standing to sue*. This court was chosen by fate not to let this happen at a time in American history that calls for a judicial profile in courage.

II

THE FUTURE IS NOW FOR THE RIPENESS ISSUE

The case now before this court presents *definite* and *concrete* issues, that a real

and substantial controversy exists, and that there is a *present need* for problems that are real and present or imminent, and being *implemented* in an *ongoing* piecemeal manner as set forth by the Machiavellian Trotskyite members of Congress and the draconian President, who champions *unlimited* entitlements in Virginia and the other 49 states at taxpayer expense and *class* taxation or alternatively, "*From each according to his abilities, to each according to his needs.*" This health care legislation not only affects every citizen of Virginia, but every man, woman and child in America, legal or otherwise.

The court is moved to recognize that the Commonwealth of Virginia has a compelling interest, under constitutional and state rights to insure the proper operation of democratic government, not the one rule Democrat Party socialist agenda, and deterring corruption as well as the appearance of corruption, which made the health bill possible in the first instance by the architects of the new *golden rule*; that is, "*those who have the gold and the power – RULE!*"

Petitioner submits that the *ripeness* issue is not relevant for two reasons: *First*

the issue before the court under the *Tenth Amendment* to the Constitution of the United States are sufficiently focused to permit adjudication without further factual development; and *second*, the Virginian litigants and the citizenry they represent will suffer hardship by postponement of *timely* action by this court.

The ripeness requirement *does not* prevent a federal court from resolving a concrete dispute if the consequences of a *deferred decision* will be *lingering uncertainty* in the law and state responsibility for its implementation and financial support, especially when there is *widespread public interest* in the answer to a particular question by both the health industry, medical services and the citizens of the Old Dominion. *Jenkins v. State, supra*.

III

**THE TENTH AMENDMENT TO THE CONSTITUTION OF
THE UNITED STATES IS A *LIMITATION* PLACED ON THE
CONGRESS OF THE UNITED STATES OVER STATES**

The 10th Amendment to the United States Constitution *limits* the power of Congress to exercise its power in a fashion that impairs state rights, integrity or its ability to function in a federal system. See *New York v. United States*, 112 S. Ct. 2408, 505 U. S. 144 (1992), on remand 978 F. 2d 705; *Fry v. United States*, 95 Ct. 1792, 421 U.S 542.

Any legislation of Congress *beyond* the limits of the power delegated is an *invasion* of the rights *reserved* to the states or to the people, *and is necessarily void.* *Baggs v. City of South Pasadena*, 947 F. Supp. 1580; *Minnesota & Eastern Railroad Corp. v. South Dakota*, 362 F. 3d 512, 518 [4-6] (CA 8th Cir.-2003); *United States v. Milstein*, 401 F. 3d 53, 68 [19, 20] (CA 2nd Cir.- 2004).


WHEREFORE, the petitioner moves this honorable court to *deny* the federal government defendant's *Motion to Dismiss* and to render a definitive decision capable

of withstanding any and all appeals on the following issue in accordance with syllogistic logic as an umbrella for any and all corollary issues raised in this case. The *issue* properly before this court: *Whether the Healthcare Bill signed by President Barack Hussein Mohammad Obama violates state rights under the 10th Amendment to the United States Constitution and the Constitution of the Commonwealth of Virginia, both on its face and as applied?*

Americans have lost faith in their government and the judicial system. It's time to restore that faith by a just and reasonable decision for the case now before this court. Just as the trip 'round the world begins with the first step, the road back to legislative sanity and credible judicial decision making can begin with this court making the right decision for the right reasons.

POINTS: As stated above.

AUTHORITIES: As stated above.

Respectfully submitted,
/s/ 
RAY ELBERT PARKER PRO SE

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**IN THE
 UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 RICHMOND DIVISION**

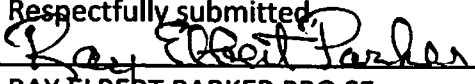
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DEPARMEN OF HEALTH AND)
HUMAN SERVICES)
 In her official capacity.)
)
 Defendant.)
)
 _____)

Civil Action No. 3: 10 cv 188

CERTIFICATE OF SERVICE

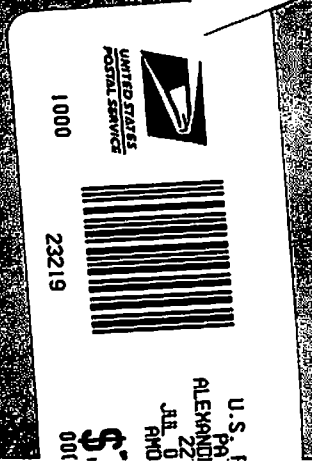
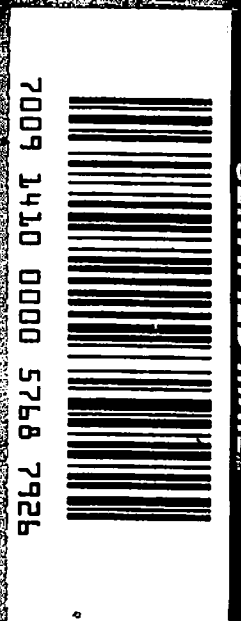
Petitioner, **RAY ELBERT PARKER PRO SE**, hereby certifies *under oath* that a true copy of the above pleadings together with the certificate of service has this 17th day of July, 2010, been served by first class mail, postage prepaid, upon **Earle Duncan Gechell, Jr., Esq.**, Solicitor General, as counsel of record for **The Honorable Kenneth T. Cuccinelli, II, Attorney General of the Commonwealth of Virginia, Charles E. James, Jr., Esq.; Stephen R. McCulloug, Esq.; and Wesly Glenn Russell, Jr., Esq.**, Assistant Attorney Generals for plaintiff, Office of the Attorney

General for the Commonwealth of Virginia, 900 Main Street,, Richmond, Virginia 23219; and upon **John H. Hanbrick**, United States Attorney, 600 East Main Street, Suite 1800, Richmond, Virginia 23219; and upon **Erika L. Myers, Esq.**, on behalf of **The Honorable Eric Holder, Attorney General of the United States, United States Department of Justice**, 950 Pennsylvania Avenue, NW, Suite 400. Washington, D. C. 20530; and **Jennifer R. Rivera, Esq.**, Director; **Sheila M. Lieber, Esq.**, Deputy Director; **Joel McElvan, Esq.**, Assistant United States Attorneys, United States Department of Justice, Civil Division Federal Programs Branch, 20 Massachusetts Avenue, NW, Room 7332, Washington, D. C. 20001.

Respectfully submitted,
/s/ 
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(Richmond Division)
Attention: Clerk of the Court
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Suite 3000
Richmond, Virginia 23219

RETURN RECEIPT
REQUESTED