

**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-188-HEH  
(Electronically Filed)

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**MOTION OF AMERICAN CIVIL RIGHTS UNION  
FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF  
PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT AND  
IN OPPOSITION TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

The American Civil Rights Union (ACRU) moves for leave to file the accompanying *amicus curiae* brief in support of Plaintiff’s motion for summary judgment and in opposition to Defendant’s motion for summary judgment.

**I. INTEREST OF MOVANTS**

The American Civil Rights Union (ACRU) is a non-partisan, non-profit 501(c)(3), legal/educational policy organization dedicated to defending all constitutional rights, not just those that might be politically correct or fit a particular ideology. It was founded in 1998 by long time policy advisor to President Reagan, and the architect of modern welfare reform, Robert B. Carleson, and since then has filed *amicus curiae* briefs on constitutional law issues in cases nationwide.

Those setting the organization's policy as members of the Policy Board are former U.S. Attorney General, Edwin Meese III; former Assistant Attorney General for Civil Rights, William Bradford Reynolds; John M. Olin Distinguished Professor of Economics at George Mason University, Walter E. Williams; former Harvard University Professor, Dr. James Q. Wilson; former Ambassador Curtin Winsor, Jr.; and Dean Emeritus of the UCLA Anderson School of Management, J. Clayburn LaForce.

This case is of interest to the ACRU because we seek to ensure that the Constitutional limits to federal power are fully recognized and enforced. That includes in regard to this case in particular that the scope and boundaries of the Commerce Clause be fully respected and maintained, and properly applied to analysis of the constitutionality of the Patient Protection and Affordable Care Act.

**II. AN *AMICUS CURIAE* BRIEF IS DESIRABLE AND THE MATTERS ASSERTED ARE RELEVANT TO THE DISPOSITION OF THE CASE.**

The ACRU has long experience and developed expertise in addressing issues of constitutional law, having filed numerous *Amicus Curiae* briefs addressing such issues nationwide. *See, e.g., McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010); *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010); *Free Enterprise Fund v. Pub. Co. Accounting Oversight Bd.*, 130 S. Ct. 3138 (2010); *Ricci v. DeStefano*, 129 S. Ct. 2658 (2009); *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008); *Boy Scouts of America v. Dale*, 530 U.S. 640, 120 S. Ct. 2446 (2000).

In addition to the expertise of our Policy Board, ACRU's General Counsel Peter Ferrara has taken the lead in producing the organization's *amicus curiae* briefs, including the attached brief for this case. A graduate of Harvard Law School and Harvard College, Mr. Ferrara served in the White House Office of Policy Development under President

Reagan, where his responsibilities included health policy. He also served as Associate Deputy Attorney General of the United States under President George H. W. Bush, and as an Associate Professor of Law at the George Mason University School of Law. He has also practiced with law firms in New York and Washington.

The attached brief includes an original and unique discussion of the economic aspects of the legal issues raised by the Commerce Clause analysis of the Patient Protection and Affordable Health Care Act. It demonstrates, moreover, that alternative policies were available to the Congress that would have achieved its policy goals, yet would not transgress Constitutional bounds, as the Act the Congress passed does. Not only does the Act impose an individual mandate on individuals not participating in interstate commerce. What the mandate compels them to participate in is not interstate commerce, as the attached brief demonstrates. Therefore, the Commerce Clause provides no authorization for the individual mandate, nor does any other delegated power under the Constitution. The individual mandate, therefore, is unconstitutional. Failing to so rule would fundamentally transform the Constitution from providing for a limited government of delegated powers, to an unlimited government of unlimited powers.

The ACRU submits the attached brief because of its demonstrated legal policy and public policy interest in the issues presented by this case. But the ACRU has no direct interest, financial or otherwise, in the outcome of this lawsuit. Because of this lack of direct interest, the ACRU believes it can assist the Court by providing a perspective that is distinct from that of any party.

Counsel for the ACRU contacted each party in an effort to obtain consent for leave to file the attached *amicus curiae* brief. Counsel for Plaintiff consented to the filing

of that brief. Counsel for Defendant took no position on the filing of the brief. In any event, this motion obviates the issue of any such consents.

### **III. CORPORATE AND FINANCIAL DISCLOSURE STATEMENT**

Pursuant to Fed. R. Civ. P. 7.1 and Local Rule 7.1 of the Eastern District of Virginia, the ACRU states that it is a non-profit, non-stock corporation organized under Section 501(c)(3) of the Internal Revenue Code. The ACRU further states that it issues no stock, and that it has no parents, trusts, subsidiaries, or affiliates that have issued shares of stock or debt securities to the public. Moreover, no publicly held corporation has an interest in the outcome of this litigation due to the ACRU's participation.

WHEREFORE, the ACRU respectfully requests that its motion for leave to file the attached *amicus curiae* brief be granted. A proposed order is attached.

Date: October 4, 2010

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of October, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically send a notification of such filing (NEF) to the following persons who are registered users of this Court's CM/ECF system:

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