

**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. 3:10-cv-00188-HEH |
| |) | |
| KATHLEEN SEBELIUS, Secretary of the |) | |
| Department of Health and Human Services, |) | |
| in her official capacity, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

MOTION TO DISMISS

The defendant, Kathleen Sebelius, Secretary of the United States Department of Health and Human Services, by the undersigned counsel, respectfully moves this Court for an order dismissing this action for lack of subject-matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), or, in the alternative, for failure to state a claim upon which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(6). In support of this motion, the defendant refers the Court to the accompanying Memorandum in Support of Defendant's Motion to Dismiss.

WHEREFORE, the defendant, by counsel and pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, respectfully requests that the Court issue an order dismissing the above-captioned case, and for such other relief as the Court deems just and proper.

DATED this 24th day of May, 2010.

Respectfully submitted,

TONY WEST
Assistant Attorney General

IAN HEATH GERSHENGORN (admitted *pro hac vice*)
Deputy Assistant Attorney General

NEIL H. MacBRIDE
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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of May, 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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