

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

DAVID KING, et al.,)
v.)
Plaintiffs-Appellants,)
KATHLEEN SEBELIUS, Secretary)
of Health and Human Services, et al.,)
Defendants-Appellees.)
No. 14-1158

**CONSENT MOTION BY THE
COMMONWEALTH OF VIRGINIA
TO SHARE FIVE MINUTES OF THE
GOVERNMENT'S ARGUMENT TIME**

The Commonwealth of Virginia, as *amicus curiae*, respectfully moves this Court to permit its participation at oral argument in support of affirming the decision of the District Court in favor of the United States. Counsel for the United States consents to this motion and consents to yielding five minutes of the Government's argument time. Counsel for Appellants has also consented to the Commonwealth's request to share five minutes of the Government's time.

As set forth in Virginia’s *amicus* brief (Doc. 36-1), nearly a half-million Virginians are eligible under the Affordable Care Act for federal premium tax-credit assistance worth more than \$1 billion a year. (Va. Br. 2-4.) The Commonwealth was *not* on clear notice when it elected to forego establishing its own health-insurance exchange that doing so would, as Appellants argue, deprive

low- and moderate-income Virginians of the federal assistance they need to afford the health insurance that the Affordable Care Act requires them to buy. (Va. Br. 5-21.) Appellants' interpretation of the Act would be constitutionally invalid because it would amount to Congress's coercing Virginia into building its own exchange by threatening to inflict serious financial injury directly on low- and moderate-income Virginians. (Va. Br. 21-23.) Although the United States raises that clear-notice problem in its response brief (Gov't Br. 40), the Commonwealth and its citizens will be the ones most directly and adversely affected if the Appellants' claims were accepted. Thus, the Commonwealth is uniquely situated to discuss this critical aspect of the case at oral argument.

Accordingly, the Commonwealth respectfully requests leave to participate at oral argument in support of the Government's position.

Respectfully submitted,

THE COMMONWEALTH OF VIRGINIA

By: /s/
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CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2014, I electronically filed the foregoing motion with the Clerk of this Court by using the appellate CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/

Stuart A. Raphael