

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THE AMERICAN HOSPITAL
ASSOCIATION, *et al.*,

Plaintiffs,

v.

KATHLEEN SEBELIUS, in her official
capacity as Secretary of Health and Human
Services,

Defendant.

Civil Action No. 12-cv-01770-CKK

**DEFENDANT'S MOTION TO DISMISS FOR LACK OF SUBJECT
MATTER JURISDICTION AND FAILURE TO STATE A
CLAIM UPON WHICH RELIEF CAN BE GRANTED**

Pursuant to Federal Rule of Civil Procedure 12(b)(1), Defendant respectfully moves to dismiss Plaintiffs' complaint in its entirety for lack of subject matter jurisdiction. In the alternative, pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant respectfully moves to dismiss Counts IV and V of Plaintiffs' complaint for failure to state a claim upon which relief can be granted. The basis for this motion is set forth in the accompanying Memorandum of Points and Authorities. A proposed order is also submitted herewith.

Dated: June 6, 2013

Respectfully submitted,

STUART F. DELERY
Acting Assistant Attorney General

SHEILA M. LIEBER
Deputy Director
Federal Programs Branch

/s/ Matthew J.B. Lawrence
MATTHEW J.B. LAWRENCE

Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue NW
Washington, DC 20530
Tel: (202) 305-0747
Fax: (202) 616-8470
Email: Matthew.J.Lawrence@usdoj.gov

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June 2013, I caused the foregoing document to be served on Plaintiffs' counsel of record electronically by means of the Court's CM/ECF system.

/s/ Matthew J.B. Lawrence
MATTHEW J.B. LAWRENCE