



COMMONWEALTH OF VIRGINIA

HOUSE OF DELEGATES
RICHMOND

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FINANCE
COUNTIES, CITIES AND TOWNS
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October 16, 2014

Governor Terry McAuliffe
Office of the Governor
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, Virginia 23219

Dear Governor McAuliffe:

We are writing to you to urge you as Governor to act promptly and decisively to protect the people of the Commonwealth of Virginia from unnecessary risk of exposure to the Ebola virus.

It is increasingly clear to the American people that the Obama Administration has failed to properly respond to the Ebola crisis. This failure includes the refusal to ban flights into the United States from West Africa and impose an embargo on the issuance of visas for travel from persons in these countries.

The Obama Administration appears to view these steps as unwarranted, even though such restrictions have been successfully employed by a number of African nations in stopping the spread of Ebola. Nigeria and Senegal imposed travel bans from Ebola-affected countries and appear to be Ebola free. USA Today (9/30/14) reports: "The Ebola outbreak may be over in two countries -- Nigeria and Senegal ... No new Ebola cases have been diagnosed in Nigeria since Aug. 31, suggesting that the outbreak has been contained, according to a report Tuesday from the Centers for Disease Control and Prevention. The only case confirmed in Senegal was reported Aug. 28 in a man who survived."

The CDC is fully aware of what these countries have done, but still opposes bans on travelers from Ebola affected countries, relying only on fever screening at selected airports, including at Dulles Airport, to detect active Ebola carriers. Of course, fever screening will not detect active Ebola carriers who are successfully masking their fever with drugs. Moreover, *there is no reason to trust such measures, as Thomas Duncan was asymptomatic when he passed through Dulles Airport on his way to Dallas where he died.*

International SOS, a prominent medical and travel security services company with more than 700 locations in 76 countries, reports that African countries have imposed total air, land and water travel bans by persons from countries where Ebola is prevalent. The countries include: Kenya, Cape Verde, Cameroon, Mauritius, South Sudan, Namibia, Gambia, Gabon, Côte d'Ivoire, Rwanda, Senegal, Chad and Kenya. Southern African Development Community members (14 countries) only allows highly restricted entry from Ebola-affected regions with monitoring for 21 days and travel to public gatherings discouraged.

https://www.internationalsos.com/ebola/index.cfm?content_id=435&language_id=ENG

International SOS also reports the following foreign Airlines have suspended flights to countries where Ebola is prevalent: Air France, Asky Airlines (Togo), Arik Air (Nigeria), Gambia Bird and Kenya Airways, British Airways (thru 12/31/14), Emirates Airlines, Korean Air, and Senegal Airlines.

With the failure of the federal government to act, it is our belief that Virginia should do no less than being done by other countries. Indeed, the Commonwealth of Virginia has a solemn duty to protect its citizens from infectious and contagious diseases. In carrying out this duty Virginia may act on the mere supposition of a threat to public safety. See, *Smith v. Wm. Turner of the Port of New York*, 48 U.S. 283 (1849) and *Norris v. The City of Boston*, 48 U.S. 283 (1849).

In the recent Arizona case, the U.S. Supreme Court held that even when courts are conducting a preemption analysis, the courts should assume that the 'historic police powers of the States' are not superseded "unless that was the clear and manifest purpose of Congress." *Arizona v. The United States*, 567 U.S. ____ (2012) (U.S. Supreme Court Docket No. 11-182); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *Wyeth v. Levine*, 555 U.S. 555, 565 (2009).

Health laws and quarantine laws have been passed by the legislatures of the States for the protection and welfare of their citizens. It follows that the Chief Executives of these States may act, in fact, have a solemn duty to act, to enforce these protective laws. See, *Smith v. Wm. Turner*, *supra*; *Norris v. The City of Boston*, *supra*. Indeed, in *Smith v. Turner* the U.S. Supreme Court held: "They (the States) may guard against anything which may ... endanger the health or lives of its citizens." *Smith v. Wm. Turner*, *supra*, at 400).

Supreme Court Justice James Wayne, posed and answered the question regarding the retention of police powers by the states. "How much of it have the States retained? I answer, unhesitatingly, all necessary to their internal government . . . all not yielded by them under the Constitution of the United States. *Norris v. The City of Boston*, *supra*.

Justice Wayne also noted, "Among them, qualified rights to protect their inhabitants by quarantine from disease. ... But, further, by the police power in the States they have reserved the right to be informed of the name and quality of every foreigner that arrives in the State." *Norris v. The City of Boston*, *supra*, at 425; see also *Smith v. Wm. Turner*, *supra*, at 404).

We strongly urge you to use the police powers of Virginia to protect our citizens and residents from exposure to Ebola even if it means a timely court challenge against passenger airlines or the federal government if they continue to permit entry into Virginia of passengers flying from Ebola affected areas. We also ask you to take similar measures to protect our seaports. Indeed, ***Government travel restrictions were used to limit Severe Acute Respiratory Syndrome (SARS)***.

African nations which have effected Ebola travel prohibitions have seen the number of persons infected by Ebola drop precipitously or vanish altogether. While we support vigorous contact tracing of exposed individuals, even highly accurate contact tracing merely identifies Ebola carriers, it does not prevent the introduction of new Ebola carriers into Virginia. Ebola has NO practical cure. Avoiding exposure is the only way to protect the health and lives of Virginians.

The Director of the CDC claimed recently that a Texas nurse who recently was identified as infected with Ebola must have violated CDC infectious disease protocols. Yet, that CDC Director noted (10/14/14) that the CDC will

have to revisit all Ebola infection protocols. In essence, he said health care workers will be safe if they follow CDC rules, but CDC rules now need to be tightened to protect health care workers.

The actions of the CDC have fueled a lack of public confidence in the Obama Administration's policy to permit travel to the US from Ebola affected countries as long as a single symptom body temperature is monitored for passengers arriving at airports.

New Jersey officials issued a mandatory quarantine order Friday night for an entire NBC news crew that was exposed to a cameraman with Ebola because a voluntary 21-day isolation agreement was violated.

Please advise us of what you intend to do to protect Virginians. With the World Health Organization announcing that Ebola has a 70 percent death rate, clearly, first priority must be on prevention. Should you as Governor of the Commonwealth of Virginia chose not to act in the face of such a crisis, you will be without excuse.

Thank you for your timely attention to this request. If you have any questions please contact me at 703-853-4213.

Sincerely,



Delegate Bob Marshall



Senator Dick Black



Delegate Mark Berg, M.D.

RGM/ccg