

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

COMMONWEALTH OF VIRGINIA, EX REL.
KENNETH T. CUCCINELLI, II, in his official
capacity as Attorney General of Virginia,

Nos. 11-1057 &
11-1058

Plaintiff-Appellee/Cross-Appellant,

v.

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

Defendant-Appellant/Cross-Appellee.

**Joint Motion to Expedite Briefing and to Schedule
Oral Argument for May 2011**

For the reasons set out below, Defendant-Appellant/Cross-Appellee and
Plaintiff-Appellee/Cross-Appellant respectfully request that the Court vacate the
briefing order issued on January 21, 2011, and set the following expedited schedule:

Defendant's Opening Brief: due 2/28/2011

Plaintiff's Opening/Response Brief: due 3/28/2011

Defendant's Response/Reply Brief: due 4/11/2011

Plaintiff's Reply Brief: due 4/18/2011

The parties also respectfully ask that the case be calendared for argument during this Court's May 2011 sitting and be heard on the same date and before the same panel as the oral argument in *Liberty University v. Geithner*, No. 10-2347 (4th Cir.). The parties in *Liberty University* are today filing a motion asking that the case be heard during the May sitting on the same date and before the same panel as the oral argument in this case.

1. This case presents a constitutional challenge brought by the Commonwealth of Virginia to the minimum coverage provision of the Patient Protection and Affordable Care Act ("Affordable Care Act"), 26 U.S.C.A. § 5000A, which requires non-exempted individuals to maintain a minimum level of health insurance coverage or pay a penalty. The Commonwealth alleges that this provision exceeds the scope of Congress's Article I powers.

The district court issued a threshold ruling denying a motion to dismiss and holding that the Commonwealth has standing. In a second ruling, the court granted summary judgment for the Commonwealth and held the minimum coverage provision unconstitutional. The court further held that the minimum coverage provision is severable from other provisions of the Affordable Care Act and denied the Commonwealth's motion for injunctive relief. Both parties have appealed.

2. The appeal in *Liberty University v. Geithner*, No. 10-2347, also presents a challenge to the constitutionality of the minimum coverage provision of the Affordable Care Act. The *Liberty University* case was brought by various individuals and by Liberty University, a non-profit organization and employer. The district court granted the federal defendants' motion to dismiss that case, holding that two individual plaintiffs without insurance have standing to raise the challenge, but rejecting the challenge on the merits and ruling that the minimum coverage provision is a valid exercise of Congress's Commerce Clause power. The district court also held that the University has standing to challenge the employer coverage provision of the Act, but again upheld the provision under the Commerce Clause. The court rejected challenges under the Tenth Amendment, the Free Speech Clause, the Free Exercise Clause, the Religious Freedom Restoration Act, and the Direct Tax Clause. The court also held that certain exemptions from the minimum coverage provision do not violate the Establishment Clause or the Equal Protection Clause. Plaintiffs appealed and filed their opening brief on January 18, 2011. The government's response brief is due February 18, 2011, and the plaintiffs' reply brief is due within 14 days of service of the response brief.

3. The constitutionality of the Affordable Care Act has public policy implications of the highest magnitude. Because of the importance of the issues

presented, the federal government, the Commonwealth, and the plaintiffs-appellants in *Liberty University* ask that the same panel of this Court hear oral arguments in both cases on the same date in May. The current schedule in *Liberty University* is already consistent with such an argument date. To permit this Court to hear argument in these appeals as well in May, we ask that the Court vacate the briefing schedule established on January 21, and establish the briefing schedule proposed above, pursuant to which briefing will be completed by April 18.

CONCLUSION

The federal government and the Commonwealth of Virginia jointly move the Court to vacate the existing briefing schedule and institute the schedule proposed above. We also ask that these appeals be calendared for oral argument during the Court's May 2011 sitting and be heard on the same date and before the same panel as the oral argument in *Liberty University v. Geithner*, No. 10-2347.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2011, I caused the foregoing motion to be filed and served through the Court's CM/ECF system. All counsel of record are registered CM/ECF users.

/s/ Alisa B. Klein
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Cross-Appellee