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Attorney General Cuccinelli announces he will seek
expedited review of Virginia health care lawsuit in the
Supreme Court

RICHMOND (February 3, 2011) – Virginia Attorney General Ken Cuccinelli announced today that Virginia will file a petition to ask the United States Supreme Court to take Virginia’ s health care lawsuit now, as opposed to waiting for the case to first be decided by the court of appeals. The Petition for Certiorari Before Judgment in the United States Supreme Court in the case of *Commonwealth v. Sebelius* will be filed pursuant to Rule 11 of the Rules of the United States Supreme Court.

“ Given the uncertainty caused by the divergent rulings of the various district courts on the constitutionality of the Patient Protection and Affordable Care Act, we feel that it is necessary to seek resolution of this issue as quickly as possible,” said Cuccinelli.

“ Currently, state governments and private businesses are being forced to expend enormous amounts of resources to prepare to implement a law that, in the end, may be declared unconstitutional. Regardless of whether you believe the law is constitutional or not, we should all agree that a prompt resolution of this issue is in everyone’ s best interest.”

Normally, appeals of decisions of United States district courts are first heard in the federal courts of appeals. But Rule 11 provides that an immediate review in the U.S. Supreme Court is permissible “ upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in” the Supreme Court.

Cuccinelli noted, “ Rule 11 is the exception to the general rule, but this case and the other cases challenging the constitutionality of PPACA are truly exceptional in their own right. There are a number of suits pending throughout the country challenging the constitutionality of PPACA. Presently, 28 states have filed suits challenging the authority of Congress to enact this law. That, in and of itself, is exceptional and makes the cases excellent candidates for immediate review in the Supreme Court.

“ We did not make this decision lightly. Given his unique responsibilities to fund and implement PPACA as Governor of Virginia, Governor McDonnell is particularly concerned about the possibility of wasting precious and strained taxpayer dollars preparing for a law that may well be struck down. Recognizing the tremendous amount of time and resources that are and will be expended to implement a law that two federal judges have ruled contains unconstitutional provisions, Lieutenant Governor Bolling and Speaker Howell have joined the governor in requesting that my office seek expedited review. Additionally, I have been encouraged to attempt to expedite this case by Democrats as well as Republicans in Virginia's General Assembly, and of course, the bipartisan passage of Virginia's Health Care Freedom Act last year was the very first step in this entire process here in the commonwealth.

“ Despite the fact that the Department of Justice has not agreed to join in a Rule 11 motion, in a filing with the U.S. Court of Appeals for the Fourth Circuit to set an expedited schedule for its appeal of Virginia's district court victory, the Justice Department stated, ‘ The constitutionality of [PPACA] has public policy implications of the highest magnitude.’ In other words, according to the Justice Department itself, a case *cannot have* public policy implications that are more important than this case. We agree and feel that reinforces the fitting nature of our request for immediate review in the Supreme Court,” Cuccinelli said.

The Petition for Certiorari and Appendix are currently being assembled by the legal printer for the attorney general and will be filed with the court as soon as is practicable.

A copy of this news release may be found on the website of the Attorney General of Virginia at http://www.vaag.com/PRESS_RELEASES/index.html.