

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

LIBERTY UNIVERSITY INC., et al.,

No. 10-2347

Plaintiffs/Appellants,

v.

TIMOTHY GEITHNER, Secretary of the
Treasury, et al.,

Defendants-Appellees.

**Joint Motion to Schedule Oral Argument for May 2011
on the Same Date and Before the Same Panel as
Commonwealth of Virginia v. Sebelius, Nos. 11-1057 & 11-1058**

For the reasons set out below, Defendants-Appellees and Plaintiffs-Appellants respectfully request that this appeal be scheduled for oral argument in May 2011 on the same date and before the same panel as oral argument for *Commonwealth of Virginia v. Sebelius*, Nos. 11-057 & 11-058. The parties in *Commonwealth of Virginia* 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 this case.

1. This case presents a constitutional challenge 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. Plaintiffs are

various individuals and Liberty University, a non-profit organization and employer. The district court granted the federal defendants' motion to dismiss the 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.

2. The appeals in *Commonwealth of Virginia v. Sebelius*, Nos. 11-1057 & 11-1058, also present a challenge to the constitutionality of the minimum coverage provision of the Affordable Care Act. The plaintiff is the Commonwealth of Virginia, which alleges that the minimum coverage 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 to challenge the minimum coverage provision. 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.

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 plaintiffs-appellants in this case, the federal government, and the Commonwealth of Virginia ask that this Court hear oral argument in both cases in May, in separate arguments before the same panel. The current schedule in *Liberty University* is already consistent with a May argument date. To permit this Court to hear argument in *Commonwealth of Virginia* in May, the parties in *Commonwealth of Virginia* have jointly moved the Court to set an expedited briefing schedule.

CONCLUSION

The parties jointly ask that this appeal be calendared for oral argument during the Court's May 2011 sitting and be heard on the same day and before the same panel as the separate oral argument for *Commonwealth of Virginia v. Sebelius*, Nos. 11-1057 & 11-1058.

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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