Written by **Raven Clabough** on April 26, 2011

Supreme Court Rejects Fast-Track Request for Obamacare Challenge

According to the *New York Times*, "The court's one line order offered no reasoning, and there were no noted dissenting votes. Nor was there any indication that any justices had disqualified themselves from the case."

Of particular interest is newly appointed Justice Elena Kagan's role in the decision.

The *Associated Press* explains, "There had been questions about whether she would participate because she served as Obama's solicitor general when the law was passed. Kagan indicated in Senate testimony last year that she played no role in the administration's planning and handling of challenges to the law."

The *New York Times* adds that documents released under the Freedom of Information Act reveal Kagan's painstaking efforts to avoid involvement in meetings concerning challenges to the healthcare law prior to her official nomination to the Supreme Court.

The request to fast-track the Virginia lawsuit against ObamaCare was put forth by Virginia Attorney General Ken Cuccinelli, with the hopes that the high court would quickly decide on the constitutionality of the healthcare law.

Cuccinelli filed the request in February, indicating that an exception to the regular practice of considering cases only after an appeals court has ruled on the case was necessary in the state's challenge to the healthcare law given the complexity and importance of the decision. In the request, Cuccinelli wrote, "This case is of imperative national importance requiring immediate determination in this court."

According to Cuccinelli, the delay to fast-track the cases imposes a "crippling uncertainty" on the states.

"Virginia and other states are already spending huge sums to implement their portions of the health care act, businesses are already making decisions about whether to cut or keep employee health plans, and citizens are in limbo until the Supreme Court rules," Cuccinelli remarked. "Asking the court to expedite our lawsuit was about removing this crippling and costly uncertainty as quickly as possible."

The Obama administration is pleased with the Supreme Court's decision, after having voiced its opposition to Cuccinelli's request in March. Acting Solicitor General Neal K. Katyal said of Cuccinelli's request, "The constitutionality of the minimum coverage provision is undoubtedly an issue of great public importance." He added, however, "Especially given the Court of Appeals' imminent consideration of this case, there is no basis for short-circuiting the normal course of appellate review."

The request seemed unlikely to be approved. The *Associated Press* notes, "Only rarely, in wartime or a constitutional crisis, does the court step into a legal fight before the issues are aired in appellate courts." Maureen Martin of the Heartland Institute indicates that cases only bypass the normal process when a case is "of such imperative public importance as to justify deviation from normal appellate practice."

The first appeals hearing is scheduled in the United States Court of Appeals for the Fourth Circuit, in Richmond, Virginia, which is set to hear arguments in both the Virginia challenge and corresponding case on May 10.

The possibility remains that the case may reach the Supreme Court by mid-2012.

Provisions of the law have already begun to take effect, including changes in payment rates under the Medicare system for older and disabled Americans, and allowing children up to age 26 to remain on their parent's health insurance policies.

Virginia's challenge to the law is separate from the suit filed jointly in Florida by 26 states to challenge the law on the grounds that the U.S. Congress far exceeded its constitutional powers by requiring citizens to purchase health insurance.

Five federal judges have ruled on challenges to the healthcare law thus far, including two Republican appointees both of whom ruled it least part of the law unconstitutional. U.S. District Judge Henry Hudson in Virginia declared that the individual mandate, which he asserts to be the heart of the legislation, is unconstitutional. Likewise, U.S. District Judge Roger Vinson of Florida made the same decision in January, while also saying that the individual mandate is so integral to ObamaCare that it makes the entire law unconstitutional. In both cases, the rulings have been put on hold while they are pending appeals.

Meanwhile, three Democratic appointees have decided in favor of the law, thus far.

Photo: U.S. Supreme Court