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Supreme Court Denies Virginia's Request to Expedite Health Care Reform Review

By **Lisa S. Miller**

On Monday, the United States Supreme Court denied the Virginia Attorney General's attempt to fast track the review of the Patient Protection and Affordable Care Act (the "Act"). The Virginia Attorney General, Kenneth T. Cuccinelli II (R), filed the petition on February 8, 2011, asking the Supreme Court to hear by direct appeal an appeal of the decision made by the U.S. District Court for the Eastern District of Virginia, declaring the individual mandate provision of the Act unconstitutional.

In a highly publicized decision, on December 13, 2010, Judge Henry Hudson of the U.S. District Court for the Eastern District of Virginia declared the individual mandate of the Act unconstitutional but still allowed implementation of the law, becoming the first federal judge to rule against the Act. The United States government has appealed Judge Hudson's ruling to the 4th Circuit, and the appeal is scheduled to be heard between May 10 and May 13, 2011.

Attorney General Cuccinelli had argued that it was "necessary to seek resolution of the issue as quickly as possible" and thus he asked for expedited review because states and businesses were spending huge sums to carry out their obligations under the Act, and early resolution of the constitutionality of the law is necessary to prevent expenditures to implement a law that "in the end, may be declared unconstitutional." The United States government opposed high court review at this time and noted that the individual mandate requirement does not take effect until 2014. It was further noted that several of the cases pending in the courts of appeals should be decided in time for review in the next Supreme Court term, which begins in October.

So far, five federal judges have ruled on challenges to the Act. Two judges appointed by Republican Presidents in Florida and Virginia have declared it unconstitutional in whole or in part, and three judges appointed by Democratic Presidents in Michigan, Virginia and Washington, D.C., have upheld it.

Today's decision by the Supreme Court was not unexpected, as the Supreme Court rarely steps in to hear a case before an intermediate appellate court has considered the issues. The Supreme Court is not obligated to hear a case on the Act, but it is widely expected that the court eventually will do so.

If you have any questions regarding this e-Alert, please contact **Jed Morrison** at 210.978.7780 or jmorrison@jw.com or **Lisa Miller** at 210.978.7781 or ismiller@jw.com.

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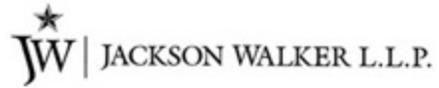
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