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BACKGROUND ON VIRGINIA POLICY

Introduction

When Ken Cuccinelli was elected Attorney General of Virginia, many weren't at all sure how he would handle the state's top legal job. He was considered by some as inexperienced, unqualified, a fluke, an ideologue who didn't understand his role, someone elected only because Bob McDonnell won by a landslide, and as an Attorney General who would embarrass our state.

Well, that has all been proven inaccurate. Indeed, Attorney General Cuccinelli has made some pretty big headlines, but he is proving to be a focused and well-versed defender of the U.S. Constitution and someone who has gained a great deal of respect as a legal scholar. He has taken center stage in one of the most important legal debates of the generation if not in the history of our nation. The Cuccinelli challenge to the national health care bill – called Obamacare by those in the debate – has made him a nationally recognized leader within the Republican Party and someone who has also achieved wide support within the “independent voter” community.

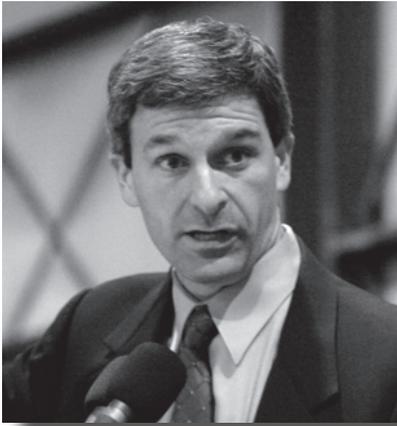
It is important to understand the basis for Attorney General Cuccinelli's focused dedication to defending what he sees as the very clear limitations placed on the national government by our Constitution.

The Thomas Jefferson Institute is reprinting a speech by our Attorney General that he gave to the annual Heritage Foundation Resource Bank meeting in the spring of 2010. He made these remarks without notes, and it clearly details the philosophy behind the actions our Attorney General is taking in his high profile actions.

Michael W. Thompson, Chairman & President
Thomas Jefferson Institute for Public Policy
December 2010

Remarks by Attorney General Ken Cuccinelli

Heritage Foundation Resource Bank Meeting
April 23, 2010 – Miami, Florida



I appreciate the opportunity to speak with you just a bit about two lawsuits that we have filed in the Virginia Attorney General's office, and want to talk, not about the nitty-gritty of the lawsuits, but to focus on the sovereignty and liberty aspects of these suits.

This is litigation for a purpose. We have first filed a suit attempting to overturn the health care legislation passed by Congress that requires all Americans to purchase health insurance. Secondly, we have filed a motion to compel the federal Environmental Protection Agency to reconsider its carbon dioxide regulation.

But, at heart, our actions have nothing to do with health care or environmental protection. There is much more at stake.

We are at an educational moment in this country. We are fighting once again the battle for first principles initially fought by America's Founders 234 years ago, and it is happening all across this country at different levels of government and in different ways.

There are three principle ways government increases its power: More taxes, more spending (whether it's by borrowing or by taxing), and more regulation. Speaking to the NAACP in 1981, Ronald Reagan declared, "It's time we found ways to make the economic pie bigger instead of just cutting smaller slices." He then went on to point out that the pie can shrink depending on certain conditions that government has a role in establishing.

But there's another pie that I talk about. It's what I call the "Liberty Pie." It doesn't grow and it doesn't shrink and there are only two slices: Government power and citizen liberty. How big those slices might be is a zero-sum game. For every increase in regulation, taxes or spending, power is taken from the people of this country, shifted to the government, and the liberty of every citizen in America is reduced.

That's true whether the regulation targets you or not. And it's part of why we all have an interest at some level in every regulatory expansion of the federal government, because it does reduce freedom for everyone in this country. And the question needs to be, "Is the sacrifice of liberty taking place here worth the benefit of the new regulatory power?"

Policymakers talk about economic analyses of regulations all the time – whether they actually conduct that analysis is certainly debatable. But the sad truth is that "a freedom analysis" is never done. That perspective is not taken, and it needs to be taken. The founders expected it to be taken. They knew that the principles that they enunciated in 1776 were timeless, and that they apply as much in 2010 as they did in 1776.

We have reached an educational moment with the population of this country because people are waking up to the fact that those principles aren't some neat little historic fact that some old white

guys threw out on a piece of paper. They matter to every single person's life in this country every single day.

Take, for instance, our EPA motion. There is a constitutional issue here.

You may be familiar with the notion that Congress can delegate to agencies rulemaking power. However, in this instance, the EPA has re-delegated its investigatory obligation and much of its discretion to entities like the United Nations Intergovernmental Panel on Climate Change, which in turn is using the East Anglia Climate Research Unit data made famous in Climategate.

EPA has re-delegated – we call it double delegation. We believe that is constitutionally on weak ground. We are going to address that in the case. But more broadly, this is such an incredible reach of federal power that it has to be resisted. It absolutely has to be resisted for the sake of liberty, and in turn, opportunity in this country.

Now, take the health care lawsuit. It was very ironic to me the health care lawsuit was signed on March 23, the 235th anniversary of Patrick Henry's "Give me liberty or give me death" speech. One of the greatest erosions of the liberty in our time was signed on the anniversary of that speech. We filed suit in Richmond in the Eastern District of Virginia about a mile from where Patrick Henry gave that speech. It drives home this point: This case is not about health care. You can substitute Chevrolets for health insurance, and it's the same case. This case is about liberty. It is about federal power.

Let's be clear about how difficult this fight is, because of how easy it is for Americans to conclude we're trying to stop good things from happening. I had a very emotional mother come to me Monday night, who went into her daughter's room the night that the health care vote was taken – a 17 year old daughter, with a bipolar condition, and struggling with it for years – and just cried because she finally believed that her daughter had a chance for a normal life, for having children, while having some ability to master this bipolar condition.

For those of you not familiar with mental health, it is an area of expertise for me and of particular concern. It is not like a broken leg; it doesn't go away. It's there for the rest of your life, and she knew that. There are a lot of parents in this room; anybody would be touched by that.

But the reality is that for all the good things people hope to accomplish with this bill, this is how liberty gets watered down most easily -- because it's all dressed up with the goodies. It wasn't a liver tree in the Garden of Eden, it was an apple tree. They taste good. They're attractive. So there are things a lot of people like in this bill.

But this lawsuit is not about those things, whether you like them or not. First and foremost, my obligation, the oath I took, was to protect the constitutions of the United States and of Virginia, and that's what we're doing in this lawsuit in the defense of liberty.

Some of you may be familiar with Professor Turley at George Washington University. Not a conservative, not a liberal. About three weeks ago in the *USA Today*, he had an op-ed which was surprising to me in the strength of his language and his conclusion. This middle-of-the-road constitutional scholar says that if we lose this case, it is the end of federalism ... and he's absolutely right. Think about that. We'll still have our three branches' checks and balances, but we will lose the vertical check and balance between the federal government and the states.

If the federal government can order you -- under the guise of regulating interstate commerce -- to buy a product, then there is nothing that they cannot do. You don't have to go to law school to figure this out. One way to think about what the federal government is doing is that it is making an end run around the taxing power by using the commerce clause. Congress didn't have the courage to vote on the taxes necessary for this abomination. They didn't have the guts to do it.

This is what is at stake: Whether we recognize and restore the dream of an American Republic that fosters liberty and freedom, or permit the ever-increasing consolidation of power into the hands of a national government fundamentally ill-equipped to exercise that power.

You and I need to take advantage of the opportunity before us: to educate our fellow citizens on the importance and value of first principles and to reform government to reflect constitutional limits. If we succeed in doing this, then we will succeed in helping to safeguard those principles so that Americans will understand why this matters.

But it will not happen unless you are engaged, unless you are outspoken, and unless you are willing to use the resources at your command -- your voice, your pen, your computer -- to help create an informed public.

Forty-six years ago, Ronald Reagan spoke on behalf of those same principles, and his final clarion call is as relevant today as it was then: "You and I have a rendezvous with destiny. We will preserve for our children this, the last best hope of man on earth, or we will sentence them to take the first step into a thousand years of darkness. If we fail, at least let our children and our children's children say of us we justified our brief moment here. We did all that could be done."

The question for you and me is: Will we be able to say that when this fight is over?