

## **Frequently Asked Questions**

### **Where can I find a copy of the motion?**

A copy of the motion papers can be found [here](#).

### **In which lawsuit was the motion filed?**

- Attorney General Frosh filed a lawsuit in September seeking declaratory judgment that the Affordable Care Act (ACA) is constitutional and directing the government to enforce the statute as written. The lawsuit followed the Trump Administration's refusal to defend the ACA in a Texas case that seeks to dismantle the law. Filed in February 2018, that lawsuit alleges that the ACA is no longer constitutional due to the passage of a tax bill that eliminated the shared responsibility payment required under the ACA's individual coverage requirement. Despite the fact that the ACA has already survived review by the United States Supreme Court twice, then-Attorney General Sessions declared that the Department of Justice would not defend the constitutionality of the challenged portion of the ACA, and that the "guaranteed issue" and "community rating" provisions—which among other things prohibit carriers from excluding coverage of pre-existing conditions—must be struck down as well.

### **Why are you bringing this Preliminary Injunction motion?**

- After demanding and receiving AG Sessions' resignation, President Trump named Whitaker Acting Attorney General via Twitter. The appointment of Whitaker, who was serving as Sessions' chief of staff, and was not confirmed to that role by the Senate, was improper constitutionally and statutorily. By law, Deputy Attorney General Rod Rosenstein is the Acting Attorney General.
- The decision by then-Attorney General Sessions not to defend the ACA's constitutionality was a significant impetus for the lawsuit that our office filed in September. A different Attorney General could reverse that unconventional determination, which would advance the interests that the State of Maryland is pursuing in this litigation.
- The identity of the Attorney General is also administratively important. The State of Maryland is asking in the underlying litigation that the court direct an order to the Attorney General. The court must be certain that any order it issues is directed to the correct official.

### **How does the appointment of Mr. Whitaker as Acting Attorney General affect the State of Maryland?**

- The questionable legality of Mr. Whitaker's appointment raises considerable uncertainty as to the validity of the ongoing litigation between Maryland and the

DOJ. If Mr. Whitaker was improperly appointed, every action he takes in the litigation is *ultra vires* and invalid.

**Doesn't President Trump have the right to appoint whoever he wants?**

- No. The president's appointment powers are broad, but they operate within statutory and constitutional limits. President Trump's appointment of Mr. Whitaker violated the Attorney General Succession Act and circumvented the Senate's advice and consent role.