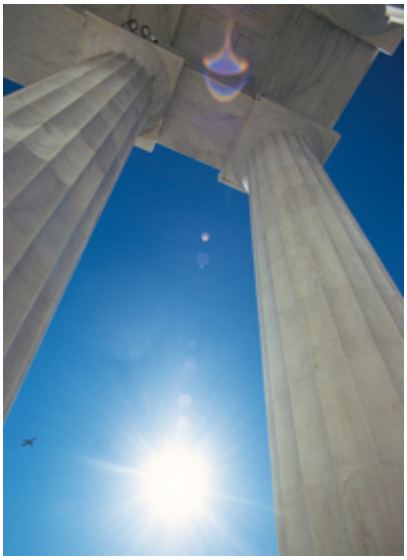
Written by **Michael Tennant** on September 29, 2011

Both Sides in ObamaCare Lawsuit Appeal to Supreme Court



The Obama administration, which (as *The New American* reported Tuesday) allowed a deadline for requesting a review of the ruling by the full circuit court to pass, appealed to the Supreme Court to uphold the entire law. U.S. Solicitor General Donald Verrilli, Jr., "said the justices should defer to 'the considered judgment of the elected branches of government on how to address a crisis in the national healthcare market,'" according to the *Los Angeles Times*.

The plaintiffs — 26 state Attorneys General plus the National Federation of Independent Business (NFIB) — are, on the other hand, asking the court to strike down the whole law, not just the individual mandate. That was the original ruling by U.S. District Judge Roger K. Vinson, which was partially overturned on appeal by the 11th Circuit — the ruling that both sides are now appealing to the Supreme Court. Florida Attorney General Pam Bondi accurately described ObamaCare as "an affront on Americans' individual liberty." The case, she added, "is paramount in our history and will define the boundaries of Congress' power as set forth in our Constitution."

Those boundaries have been greatly extended over the years by various Supreme Court rulings, to the point that very few restrictions on the powers of Congress remain. Thus, it is far from certain that the court will find in favor of the plaintiffs, especially given that the administration is basing its case largely on the much-abused Commerce Clause. In fact, retired Supreme Court Justice John Paul Stevens told the Associated Press that a 2005 opinion (that he authored) that the federal government can regulate homegrown marijuana under the Commerce Clause "seems to lend support to the administration's defense of the [healthcare] law."

Stevens agreed that the court ought to hear and rule on the case expeditiously, telling the AP: "It would be better to have that [ruling] known about than be speculated on as part of the political argument."

Indeed, uncertainty about the Supreme Court's opinion of ObamaCare seems to be the driving force behind both sides' desire to obtain a speedy ruling. A senior Justice Department official told reporters,

"We think it important to get a decision from the Supreme Court, with the finality that that brings, to get that decision sooner rather than later." Karen Harned, executive director of the NFIB's legal division, said, "When you talk to our members and other small-business owners about what is the biggest problem they're facing, they say uncertainty. When you ask what, one of first answers is the healthcare law."

The administration also recognizes that its opportunity to defend the law may very well be over in January 2013 given the increasingly likely prospect that Obama will not be reelected.

Politico views Obama's move for a quick ruling as a big gamble, saying it "could kill not just the health care reform law but the president's chances for reelection, too."

> By asking the Supreme Court to rule so quickly on the constitutionality of the Affordable Care Act, the administration is taking a huge risk that the justices will rule against the law right in the middle of the 2012 race — either striking down the whole law or just slicing out the requirement for nearly all Americans to buy health coverage.

It's also taking a huge political risk: Supreme Court arguments, and possibly a ruling in summer 2012, could generate headlines and wall-to-wall cable news coverage that would just remind millions of voters about the least popular parts of the health care law. If all voters hear about is the individual mandate — the most hated piece of the law — they may not hear about the parts they do like.

Why take the gamble instead of stalling for time? *Politico* concludes: "The administration seems convinced that proceedings before the court will play out in its favor — with a speedy vindication by the high court and a chance to settle all of the uncertainties so the law can finally move forward."

Of course, it's always possible the court might turn down the appeals or delay ruling on the case until after the election. However, because both sides have requested a decision and because the court, according to the AP, "almost always hears cases in which a lower court has struck down a federal law," it is highly likely to take the case. Whether it will issue a ruling before the election is anyone's guess.