



Written by [Joe Wolverton, II, J.D.](#) on January 7, 2012

## Obama Admin. Lawyers Defend ObamaCare in Supreme Court Brief

In the pleading and at a briefing on the case, the lawyers for the Obama administration defended the healthcare law's requirement that all legal U.S. residents purchase a qualifying health insurance plan by 2014 or face severe penalties. This key component of ObamaCare is the much maligned individual mandate.



Those challenging the legality of the statute insist that in passing the Patient Protection and Affordable Care Act, Congress exceeded the scope of its constitutional authority. Furthermore, if the federal government can force Americans to buy healthcare, they posit, are there any limits on what it could demand of citizens?

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Recently, the Supreme Court granted certiorari (a petition submitted requesting that the court hear an appeal from a lower appeals court) in three of the several cases currently filed against the U.S. government and the agencies charged with enforcing ObamaCare. The announcement by the court indicates that the justices have set aside five and one-half hours to hear oral arguments from the parties.

The court divided the allotted time into the following partitions: First, the justices will hear two hours of argument on the issue of whether in enacting the individual mandate of the Patient Protection and Affordable Care Act, Congress exceeded the authority granted to it by Article I of the Constitution. Next, the court will hear one hour of argument on the issue of whether the suits challenging ObamaCare should be barred by the Anti-Injunction Act.

The third issue to be heard by the court is whether the individual mandate provision can be severed from the rest of the law. This is a critical issue, as it is that particular provision in the act that has attracted the most attention and has generated the most controversy — including the controversies which will soon be heard by the highest court in the land.

As the identical issues have been raised in more than one complaint, the court has consolidated the cases of *National Federation of Independent Business v. Sebelius* and *Florida v. Department of Health and Human Services*. The third case which will be under review is that of the *Department of Health and Human Services v. Florida, et al.*

Each of these cases comes to the Supreme Court on appeal from a decision handed down by the U.S. Court of Appeals for the 11th Circuit (based in Atlanta, Georgia), which held in August that the unconstitutionality of the individual mandate does not affect the rest of the law. That is to say, the individual mandate may be removed, leaving the other provisions of ObamaCare intact.



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Upon learning of the Supreme Court's decision to hear the appeal of one of the President's pet programs, the White House released the following statement: "We know the Affordable Care Act is constitutional and are confident the Supreme Court will agree."

In the battle to restore the constitutional balance between the states and the federal government, misinterpreting the Commerce Clause has been one of the principal weapons employed by those advocating a stronger federal authority.

Section 1, Article 8 of the Constitution grants Congress the authority to "regulate commerce with foreign nations, and among the several states." The fact that Congress passed and President Obama signed the Patient Protection and Affordable Care Act into law demonstrates that neither the legislative nor executive branch of the national government is bothered by constitutional restrictions on their power. As a matter of fact, it is imprecise to say that the Constitution restricts the power of the national government. The truth is that the Constitution empowers the national government with very specific, limited and enumerated powers, leaving all others to the "states, respectively, or to the people."

For nearly 80 years, the Commerce Clause has been wrested by a national government determined to appear to justify its unlawful behavior by donning a cloak of constitutionality. That cloak is tattered and worn, and fortunately, there are a few who refuse to be fooled by the disguise. In recent years, the Supreme Court has heard challenges to the unlimited scope of this authority, and exercising its proper role as a check on the other branches of the government, it has imposed limits on the federal power to regulate commerce.

This latest expression of legislative madness denigrates the very principle of personal liberty that is at the core of our constitutional Republic. If Congress is permitted to envelop the iron fist of absolutism within the velvet glove of the Commerce Clause, then there is nothing which will not fall within that purview.

One observer believes the Supreme Court's decision in the ObamaCare case could be historic: "The Supreme Court has set the stage for the most significant case since *Roe v. Wade*," said Ilya Shapiro of the Cato Institute, a libertarian think tank in Washington. "Indeed, this litigation implicates the future of the Republic as *Roe* never did."

Although he's busy campaigning as the anti-Obama, GOP presidential contender Mitt Romney may want to take a few minutes to read the government's brief in the ObamaCare case.

In what is sure to damage his claims of conservatism, the administration mentions that the health care bill signed into law by the former Massachusetts Governor was a model for the federal statute, including the provision assessing penalties for failure to obey the individual mandate.

Additional details of the government's filing were [provided by Reuters](#):

The administration's arguments in its brief backing the law largely mirrored those previously made in its initial appeal to the Supreme Court filed at the end of September.

The attorneys said the law was an attempt by Congress to address a crisis in the national health care market, capping nearly a century-long effort to expand access to health care by making affordable health insurance more widely available.

They cited statistics showing that healthcare accounts for 17 percent of the nation's economy and argued that the law was a valid exercise of Congress's power under the Constitution to regulate economic activity affecting interstate commerce.



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Plaintiffs in the case also submitted briefs outlining their arguments and the legal bases thereof. An excerpt from the plaintiffs' brief was [published by the Associated Press](#):

The ultimate question is whether Congress would have enacted the statute without the invalidated provision. Here, the answer is clear. Congress considered the individual mandate essential to the act's functioning, to its passage, and to its ability to achieve Congress' goal of near-universal health insurance. This Court cannot remove the hub of the individual mandate while leaving the spokes in place without violating Congress' evident intent.

Several groups submitted amicus briefs (briefs filed by interested in groups in favor of one party's position) to the Supreme Court. A summary of these additional filings was printed in the Reuters story:

The conservative American Center for Law and Justice filed a brief on behalf of 117 Republican members of the U.S. House of Representatives and 100,000 of the center's supporters urging the justices to declare the entire law unconstitutional.

Thirty-six Republican U.S. senators said in a separate brief the entire law must fall if the individual mandate is struck down.

Oral arguments in the case against ObamaCare will likely begin in March, with a decision handed down before the court recesses at the end of the spring term in late June.



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