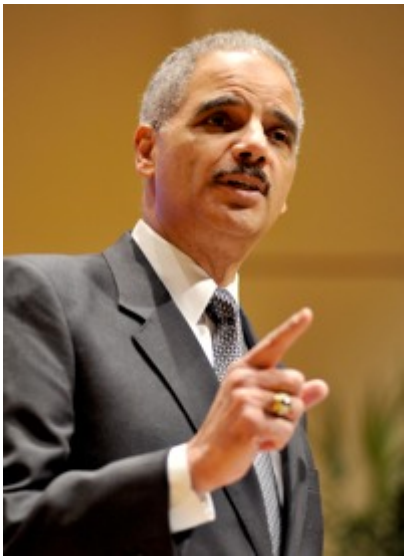
Written by **Joe Wolverton, II, J.D.** on April 9, 2012

ObamaCare Case: A.G. Holder Responds to Fed. Judge's Demand for Letter



The request was made Tuesday by U.S. Fifth Circuit Court of Appeals Judge Jerry Smith. Smith was concerned about statements made earlier by President Barack Obama. In his comments, the President seemed to indicate doubt regarding the right of the judiciary to strike down ObamaCare, a law passed by the duly elected representatives of the people. President Obama leaned on the "unelected" courts not to make the "unprecedented" move of overturning a "duly constituted and passed law."

During oral arguments made in a challenge to ObamaCare over which he is presiding, Smith revealed his disappointment with the President's meddling and announced that he wanted an explanation of whether the President and Holder believe it is "inappropriate" for federal courts to overturn congressional laws. Further, Judge Smith insisted that the letter include a statement clarifying the issue of whether the Obama administration recognized the power of federal courts to overturn laws held to violate the Constitution.

In his remarks, Judge Smith laid out the formatting requirements for the letter he requires of the government:

> The letter needs to be at least three pages, single spaced, no less and it needs to be specific. It needs to make specific reference to the president's statements.

According to a report by the Associated Press, Smith would make no further comments on the matter, as the case is pending before his court.

Jerry Edwin Smith hails from Del Rio, Texas, and is a Reagan appointee to the federal bench.

Eric Holder responded to Smith's statements while speaking at a news conference in Chicago. "I think what the president said a couple of days ago was appropriate. He indicated that we obviously respect the decisions that courts make," Holder said.

Then, echoing his boss's statements, Holder continued, saying, "Under our system of government … courts have the final say on the constitutionality of statutes. The courts are also fairly deferential when it comes to overturning statutes that the duly elected representatives of the people, Congress, pass."

In its reply, the Department of Justice argued that congressional acts have a presumption of constitutionality, but that since the decision handed down by Chief Justice John Marshall in *Marbury v. Madison*, the federal courts have exercised the authority to strike down laws, a power called judicial review. In the statement, Holder writes:

> The longstanding, historical position of the United States regarding judicial review of the constitutionality of federal legislation has not changed and was accurately stated by counsel for the government at oral argument in this case a few days ago. The Department has not in this litigation, nor in any other litigation of which I am aware, ever asked this or any other Court to reconsider or limit long-established precedent concerning judicial review of the constitutionality of federal legislation.

Recently, oral arguments concluded in the Supreme Court's review of the challenge filed against 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.

The plaintiffs 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?

The justices listened to five and one-half hours of oral arguments from the parties. The court divided the allotted time into the following partitions: First, the justices heard 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 listened to one hour of argument on the issue of whether the suits challenging ObamaCare should be barred by the Anti-Injunction Act.

The third issue considered by the court was 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.

The cases against ObamaCare arrived at the Supreme Court after an 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.

In the heady and hopeful days before the Supreme Court heard arguments made by the government defending ObamaCare, the White House displayed a now laughable optimism. "We know the Affordable Care Act is constitutional and are confident the Supreme Court will agree," the statement read.

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 that will not fall within that purview.

Despite reports indicating the likelihood that the President's pet legislation will be struck down by the Supreme Court, the ever-faithful (to the President) Attorney General lives in hope in defiance of the despair that may be looming. The AP reports that Holder is "confident" that ObamaCare will survive the Supreme Court's scrutiny.

Holder's fellow speaker at the Chicago event was co-defendant in the ObamaCare lawsuit, Kathleen Sebelius, Secretary of the Department of Health and Human Services. Sebelius insists that the little corner of the Obama Empire over which she presides will carry on implementing all the provisions of ObamaCare until she is ordered otherwise.

Although she claims not to have made any contingency plans, Sebelius said that if things don't go her way in the Supreme Court's ultimate decision, she will then "make efforts to deal with that. But at this point, to lay out the range of options and spend a lot of time and energy on what-ifs is not a very productive use of our time."

The Supreme Court's decision in the case against ObamaCare is expected to be made public within three months.

Photo of Eric Holder: AP Images