



Written by [Raven Clabough](#) on October 11, 2012

Supreme Court Could Hear Another ObamaCare Challenge

Though the U.S. Supreme Court handed down a rather surprising [ruling](#) on ObamaCare this summer, the legal challenges to President Obama's signature healthcare law are far from over.

According to CNSNews.com:

In a surprise move, the U.S. Supreme Court has given the Obama Justice Department just 30 days to answer why the Court shouldn't approve a [request](#) filed by Liberty Counsel to re-hear its challenge to Obamacare.



In a [5-4 decision](#) (*National Federation of Independent Business v Sebelius*), the Supreme Court upheld the constitutionality of President Obama's signature law. In his opinion for the majority, Chief Justice Roberts wrote:

The Federal Government does not have the power to order people to buy health insurance. Section 5000A would therefore be unconstitutional if read as a command. The Federal Government does have the power to impose a tax on those without health insurance. Section 5000A is therefore constitutional, because it can reasonably be read as a tax.

Justice Roberts continued that while the "individual mandate is not a valid exercise of Congress's power under the Commerce Clause and the Necessary and Proper Clause," it is valid as an exercise of the taxing power granted the federal government by the Constitution.

But according to Mathew Staver, president of Liberty Counsel law firm, the Supreme Court's June decision did not put an end to all the legal challenges against ObamaCare that remain. CNS News explains, "Back in June, Staver said, the justices actually sided with him in arguments he made to permit legal challenges to proceed against the Patient Protection and Affordable Care Act."

However, the Supreme Court did not address all the issues that Liberty Counsel presented in its challenge to the law. Staver told CNSNews.com:

We have petitioned the U.S. Supreme Court to reconsider our case because we actually prevailed on the issue we petitioned the Court on, namely the Anti-Injunction Act. We've asked the Supreme Court to send our case back down to the court of appeals so it can actually address the challenge we made to the Employer Mandate — which has never been ruled on — and the Free Exercise of Religion challenge, which has never been ruled on either — both of which were part of our case.

Liberty Counsel filed suit against ObamaCare on behalf of Rev. Jerry Falwell's Liberty University on the same day it was signed into law in 2010. The suit focused specifically on Section 1501, the individual mandate, and Section 1513, which mandates that employers purchase insurance for their employees, lest they face penalties. Liberty Counsel's case also asserted that the act violates freedom of religion, and that it discriminately provides exemptions from participating, creating an unconstitutional "entanglement" between government and religion.



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Staver commented:

We argued that among other things that Congress lacked the authority to pass the employer mandate, and even if they had the authority, it collides with the free exercise of religion, both under the individual mandate and the employer mandate, because of the forced funding of abortion that applies to both.

Staver's case had been ruled against by the lower court, but Staver appealed to the Fourth Circuit Court of Appeals. In September 2011, a federal appeals court ruled that ObamaCare amounts to a tax, and that the Anti-Injunction Act of 1867 bars federal courts from preventing the government from collecting taxes.

"The court of appeals refused to even consider the merits of the issue, but instead said that it didn't have jurisdiction because the Anti-Injunction Act prohibited it from reaching the merits until a tax is paid and refund sought — which would be sometime after 2014," Staver said.

That is when Staver appealed directly to the Supreme Court, asking them to determine that the Anti-Injunction Act does not in fact apply to this case.

"The Supreme Court, if you remember, dedicated the first day of oral argument to our issue — coming out of the *Liberty University v. Geithner* case on the Anti-Injunction Act," Staver said, adding,

When the Court ultimately issued its ruling at the end of June, it ruled that the Anti-Injunction Act does not bar the courts from reaching the merits, and the Court ultimately did reach [a decision on] the merits, at least on the individual mandate.

Staver contends that as his suit's two main issues — the employer mandate and the requirement that insurance cover abortion — were not addressed in the Supreme Court's final decision, the opportunity remains to challenge ObamaCare once again. "I believe what the Court will do is ultimately send the case back to the Court of Appeals, allow us to address the merits of the employer mandate and the Free Exercise challenge, and then we're back on a fast-track to the United States Supreme Court," he told CNSNews.com.

If permission to re-challenge the law is granted, the case returns to the Fourth Circuit Court of Appeals, "putting it on the fast track back to Washington, D.C.," writes Fox News.

Some experts believe that there is a good possibility that the Supreme Court will be ruling on the health care law once again. Former senior Justice Department official Thomas Dupree, Jr. commented of Liberty Counsel, "I think they've got very good arguments that they're entitled to their day in court."

And Judge Andrew Napolitano [believes](#) the case could lead to a different Supreme Court decision from its June ruling:

Just a guess — knowing the justices and having studied this more years than I'd like to think — that perhaps the Supreme Court is going to come up with a different outcome this time around.

Remember, it only upheld three or four parts of the statute. There are many, many other parts of the statute that it could still look at.

Meanwhile, the healthcare law is also facing legal challenges elsewhere. Two Texas schools have [filed](#) the latest legal challenge to the preventative services mandate in the healthcare law. Texas Baptist University and Houston Baptist University filed the 32nd legal challenge to the Health and Human Services mandate of the Affordable Care Act on October 9 in the U.S. District Court for the Southern District of Texas. The lawsuit states, "Having to pay a fine to the taxing authorities for the privilege of



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practicing one's religion or controlling one's own speech is un-American, unprecedented and flagrantly unconstitutional."



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