Written by **Joe Wolverton, II, J.D.** on November 14, 2011

Supreme Court to Hear Challenge to ObamaCare

The 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. The announcement by the court indicates that the justices have set aside five and one-half hours to hear oral arguments from the parties.

Oral arguments will likely begin in March, with a decision handed down before the court recesses at the end of the Spring Term in late June.

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 that will soon be heard by the highest court in the land.

The final aspect of ObamaCare to be decided by the Supreme Court is the expansion of the Medicaid program. The court has blocked one hour of oral argument on the following question: "Does Congress exceed its enumerated powers and violate basic principles of federalism when it coerces States into accepting onerous conditions that it could not impose directly by threatening to withhold all federal funding under the single largest grant-in-aid program…?"

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 that will be under review is the case 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 United States Court of Appeals for the Eleventh 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

Several complaints against ObamaCare will not be heard by the court. Those include the challenge brought by the Thomas More Law Center. The Thomas More Law Center has appealed a decision of the Sixth Circuit Court of Appeals wherein that court held that the individual mandate was constitutional.

Regarding the importance of the question of the constitutionality of the individual mandate, the *Christian Science Monitor* reports:

> Randy Barnett, a professor at the Georgetown University Law Center in Washington, was among the first legal scholars to raise serious questions about the constitutionality of the health-care reform law. When most other legal analysts scoffed, Professor Barnett argued that the ACA's individual mandate represented a sizable expansion of federal power.
>
> "Upholding the individual mandate would end the notion that Congress is one of limited and enumerated powers, and fundamentally transform the relationship of Americans to their doctors and their government," he said in a statement Monday. "It is high time for the high court to strike down this unconstitutional, unworkable, and unpopular law."

Although the merits of the three cases cited above will be heard, the court will not now hear petitions filed by Virginia and Liberty University seeking appeal of two Fourth Circuit rulings that dismissed their challenges for lack of standing.

As reported by *The New American*, In a 2-1 decision, the U.S. Court of Appeals for the District of Columbia Circuit held that the individual mandate of ObamaCare is constitutional.

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."

The *Washington Post* quoted the following announcement made by Senate Republican leader Mitch McConnell (R-Ky.): "Senate Republicans have argued that this misguided law represents an unprecedented and unconstitutional expansion of the federal government into the daily lives of every American."

House Democratic leader and former Speaker of the House Nancy Pelosi is an outspoken ally of the law, and she expressed confidence in the ultimate outcome of the appeals. "Today's announcement places the Affordable Care Act before the highest court in our country," she said. "We are confident that the Supreme Court will find the law constitutional."

Her successor in the Speaker's chair, John Boehner (R-Ohio), predictably anticipates a different decision: "The American people did not support this law when it was rushed through Congress and they do not support it now that they've seen what's in it. This government takeover of health care is threatening jobs, increasing costs, and jeopardizing coverage for millions of Americans, and I hope the Supreme Court overturns it."

As the story published today in the *Christian Science Monitor* rightly states, the Supreme Court's eventual rulings on these cases "could establish new boundaries for federal power under the Constitution's commerce clause."

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 envelope the iron fist of absolutism within the velvet glove of the Commerce Clause, then there is nothing that 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."

Photo: Supreme Court building