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Government Asks Supreme Court for More Time to Defend ObamaCare

The Patient Protection and Affordable Care Act (H.R. 3590) obligates every American to purchase a qualifying health insurance policy by 2014 or be subject to a tax penalty, with failure to pay possibly resulting in imprisonment.

The constitutionality of that requirement — known as the individual mandate — is being challenged in court by the National Federation of Independent Business and the State of Florida, among others. 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 that of the *Department of Health and Human Services v. Florida, et al*.

In November, the court granted certiorari (a petition submitted requesting that the court hear an appeal from a lower appeals court) in these three of the several cases currently filed against the U.S. government.

In its motion, the federal government is asking the court for an additional 30 minutes, increasing the total time allotted for oral arguments to six hours from the five and a half originally set aside by the court.

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 designated 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?"

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.

Several complaints against ObamaCare will not be heard by the court. Those include the challenge brought by the Thomas More Law Center. The center has appealed a decision of the 6th Circuit Court of Appeals wherein that court held that the individual mandate was constitutional.

As reported by *The New American*, in a 2-1 decision, the U.S. Court of Appeals for the District of Columbia Circuit also upheld the constitutionality of the individual mandate.

While it is the individual mandate that has drawn the most fire in this fight to define the boundaries of the powers of the federal government, many of those filing briefs in support of the challenge filed by the plaintiffs listed above have argued that the forced purchase of an insurance policy is so noxious and so inextricably interwoven with the rest of the over-2,000-page law's provisions as to prevent its severability.

"The Act was a grand bargain, with nearly every provision crucial to its success," claimed one of the briefs.

One "senior government official" was quoted, however, as saying that the brief filed by the federal government was "designed to keep the Court's focus on the mandate as part of an overall reform to change the economic marketplace for health insurance, not to inaugurate a new system of socialized, government-controlled medicine."

In support of this notion, the government's brief points to "the history of attempts to reform health care, going back to Theodore Roosevelt's time exactly a century ago, showed that it had become virtually routine for would-be reformers to work for "a system of social insurance" to protect against health hazards."

The states that filed suit against the act see an attempt by the federal authority to create "near-universal health insurance coverage…, something it believed could be achieved only if each of the Act's central provisions works in unison so that near-universal supply can meet the mandated near-universal demand."

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."

Constitutionalists greet with gladness the opportunity foreseen that 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.

Oral arguments in the case against ObamaCare are scheduled to be heard by the justices of the Supreme Court on March 26-28, 2012.