Written by **Bob Adelmann** on October 8, 2014

Sissel Lawsuit Threatens ObamaCare

After losing an appeal before a three-judge panel of the District of Columbia Circuit Court of Appeals in *Sissel v. US Department of Health and Human Services*, the Pacific Legal Foundation (PLF) filed a petition for a full rehearing — called "en banc" — on Monday. *Sissel* claims that the Origination Clause — Article 1, Section 7 of the U.S. Constitution — was violated at the very birth of ObamaCare (also called ACA, the Affordable Care Act), and since the Supreme Court ruled in *NFIB v. Sibelius* that the ObamaCare fines are not penalties but taxes, ObamaCare itself must be ruled unconstitutional.

Nearly 100 lawsuits challenging ObamaCare have been filed since it was passed back in March 2010, but only five now present serious threats to its legal existence, the *Sissel* case being the one with the most teeth. It was originally brought by an artist, Matt Sissel, who claimed that the Commerce Clause did not permit the government to force him to buy insurance that he didn't want. The suit was put on hold until the Supreme Court was able to rule on *NFIB*. At the time Sissel said:

> I'm in this case to defend freedom and the Constitution. I strongly believe that I should be free — and all Americans should be free — to decide how to provide for our medical needs and not be forced to purchase a federally dictated health plan.
>
> I'm very concerned about Congress ignoring the constitutional roadmap for enacting taxes because those procedures are there for a purpose: to protect our freedom.

Once *NFIB* was decided, PLF proceeded on the grounds that the enactment of ObamaCare violated the Origination Clause, a fact that was not addressed in *NFIB*. Well-known investigative journalist George Will reported on the illegal machinations involved in causing the ACA to be found constitutional by the Supreme Court, though bills to raise revenue must originate in the House. Wrote Will:

> In June 2012, a Supreme Court majority accepted a, shall we say, creative reading of the ACA by Chief Justice John Roberts. The court held that the penalty, which the ACA repeatedly calls a penalty, is really just a tax on the activity — actually, the non-activity — of not purchasing insurance.
>
> The individual mandate is not, the court held, a command but merely the definition of a condition that can be taxed. The tax is mild enough to be semi-voluntary; individuals are free to choose whether or not to commit the inactivity that triggers the tax.
>
> The "exaction" — Roberts' word — "looks," he laconically said, "like a tax in many respects." It is collected by the IRS, and the proceeds go to the treasury for the general operations of the federal government, not to fund a particular program. This surely makes the ACA a revenue measure.
>
> Did it, however, originate in the House? Of course not.

The hijacking of a previously passed House Bill by Senate Majority Leader Harry Reid in order to get around the Origination Clause was explained by Michael Patrick Leahy in his book *Covenant of Liberty*:

> On September 17, 2009 Congressman Charlie Rangel introduced a bill in the House, HR 3590, the "Service Members Home Ownership Tax Act of 2009," whose purpose was to "to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees."
>
> The bill passed the House on October 8 by a 416-0 vote.
>
> On November 19, Harry Reid introduced his own version of HR 3590 in the Senate. He took the bill that had been unanimously passed by the House, renamed it the Patient Protection And Affordable Care Act, deleted all its contents after the first sentence and replaced it with totally different content.
>
> What followed was the first pass of the Senate version of Obamacare.

When the *Sissel* lawsuit was first considered by the District Court, it was immediately dismissed, with the court claiming that the Origination Clause challenge failed because the bill enacting the individual mandate was not a bill for raising revenue, and that even if the bill enacting the individual mandate *were* a bill for raising revenue, the Origination Clause challenge failed because the Senate bill was an amendment to a bill that had originated in the House. This is how judicial worthies, with a vested interest in the status quo, twist the law and dance around the intent of the Constitution in order to arrive at a foregone conclusion.

When PLF appealed, the three-judge panel claimed that the ACA was not a bill for raising revenue and was therefore not subject to the restriction that all revenue bills must originate in the House according to the Constitution. Therefore, ruled the trio, there was no reason for them even to consider whether the bill originated in the House or the Senate in the first place.

The only problem with that type of thinking, however, according to PLF's principal attorney Paul Beard, is the original decision by Roberts in *NFIB* that ObamaCare's mandate is a tax. After all, said Beard: "If the charge for not buying insurance is seen as a federal tax, then a new question must be asked. When lawmakers passed the ACA, with all its taxes, did they follow the Constitution's procedures for revenue increases? The Supreme Court wasn't asked and didn't address this question in the *NFIB* case. The question of whether the Constitution was obeyed needs to be litigated."

Assuming that Beard's appeal is also rejected by the full Appeals Court, Beard has promised to move it to the Supreme Court. This, of course, is the same court that soiled itself in the *NFIB* decision, which turned logic on its head, turning penalties into taxes and then ruling that the ACA was, after all, constitutional.

The freedom fight is not won or lost in a single issue or a single court case. Supreme Court rulings have been vacated in the past and they will be again. Freedom from unconstitutional oppression — the prize — *is* worth the candle.

A graduate of Cornell University and a former investment advisor, Bob is a regular contributor to The New American *magazine and blogs frequently at www.LightFromTheRight.com, primarily on economics and politics. He can be reached at badelmann@thenewamerican.com.*

Related article:

Legal Foundation: ObamaCare Still Unconstitutional