Patient Protection and Affordable Care Act

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U.S. Supreme Court Verbal Arguments Concerning PPACA

The following are the U.S. Supreme Court verbal arguments of three court cases concerning the Patient Protection and Affordable Care Act (PPACA), otherwise known as Obamacare. The verbal arguments also contain two Court-appointed amicus curiae (friend of the court) verbal arguments.

On Monday, March 26, 2012 the U.S. Supreme Court heard *DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.,* Petitioners *v. FLORIDA, ET AL.* (Docket No. 11-398). This case deals with whether the respondents (referred to as the plaintiffs in the argument) have standing to have their case heard by the court. This issue is based upon the notion that the act is a tax act and therefore the tax anti-injunction act must apply before the respondents have standing to be heard by the court.

In the Senate of the United States,

December 24, 2009.

Resolved, That the bill from the House of Representatives (H.R. 3590) entitled "An Act 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, and for other purposes.", do pass with the following

AMENDMENTS:

Strike all after the enacting clause and insert the following:

2

1 ***SECTION 1. SHORT TITLE; TABLE OF CONTENTS.***

2 *(a) SHORT TITLE.—This Act may be cited as the "Pa-*

3 *tient Protection and Affordable Care Act".*

Observation: After hearing the verbal arguments it appears the court will recognize standing based on the constitutional challenge to the act as a whole (by 26 states), which although includes a tax provision (the penalty), and the collection of a penalty, the case is not limited only to the tax provision or restraining the collection of a penalty.

On Tuesday, March 27, 2012 the U.S. Supreme Court continued hearing *DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.,* Petitioners *v. FLORIDA, ET AL.* (Docket No. 11-398). This portion of the case deals with the constitutionality of the individual mandate as used in the PPACA.

Observation: After hearing the verbal arguments it appears the court will strongly recognize the unconstitutionality of the individual mandate as it stands in the PPACA.

On Wednesday, March 28, 2012 the U.S. Supreme Court heard *NATIONAL FEDERATION OF INDEPENDENT BUSINESS, ET AL.,* Petitioners *v. KATHLEEN SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.* (Docket No. 11-393). This case deals with the severability or non-severability of the PPACA (which has no explicit severability clause). If the PPACA is considered non-severable, the act as a whole could be found unconstitutional by the court if one section is found unconstitutional. If the PPACA is considered severable, then only those parts that are recognized as unconstitutional by the U.S. Supreme Court and their germane parts would most likely be found specifically unconstitutional.

Observation: After hearing the verbal arguments it appears the court may recognize, minus any legislative history to the contrary, that the lack of a severability clause is in itself an implication by congress that the act was intended to stand as a whole and should not be severed. I believe the court will recognize that the situation is not one of a person who had no legal insight of severability at the time of executing a contract, but rather that congress has legal understanding of severability and has historically used the severability clause. The fact that it was not included can only lead to two conclusions:

1. Congress is providing an indication that they did not want the bill to be severable; or

2. Congress did not include the clause due to the fact that the PPACA was not widely considered by Congress but rather forced upon them where they acted quickly rather than reflectively.

It appears that the court may either declare the whole act as void if they recognize a part as unconstitutional, or they may sever the portions that are explicitly and implicitly connected with the portions they recognize as unconstitutional and leaving only those amendments that had nothing to do with the heart of the bill.

On Wednesday, March 28, 2012 the U.S. Supreme Court continued to hear *FLORIDA, ET AL.,* Petitioners *v. DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.* (Docket No. 11-400). This case deals with the Medicaid provisions that are attached to the individual mandate and whether they are coercive, and undermine state (and individual) rights and liberty, or whether they are a permitted limitation of Congress' spending power.

Observation: After hearing the verbal arguments it appears the court may recognize the Medicaid provisions of the PPACA as attached with the individual mandate, and that the discretion of the HHS secretary has already shown a coercive use that would undermine states powers as well as the principles of federalism (limited federal government). If this is so, the court may recognize the Medicaid provisions as necessary to the PPACA, and therefore coercive to the states and that the spending power is being used to regulate rather than provide limitations that are legitimately germane to the PPACA on the states.

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- *DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.,* Petitioners *v. FLORIDA, ET AL.*
  Docket No. 11-398 on 03/26/2012 click here

- *DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.,* Petitioners *v. FLORIDA, ET AL.*
  Docket No. 11-398 on 03/27/2012 click here

- *NATIONAL FEDERATION OF INDEPENDENT BUSINESS, ET AL.,* Petitioners *v. KATHLEEN SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.*
  Docket No. 11-393 on 3/28/2012 click here

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