



National Federation of Independent Business v. Sebelius: Affordable Care Act Litigation

Resources

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Summary

In March 2010, Congress passed P.L. 111-148, the Patient Protection and Affordable Care Act of 2010 (PPACA), and amended it by passing P.L. 111-152, the Health Care and Education Reconciliation Act of 2010 (HCERA). Subsequently, lawsuits were filed in multiple courts challenging various aspects of the new law. Many of these cases were heard in the district courts and a few were appealed to appellate courts. In November 2011, the Supreme Court granted three petitions for certiorari in one of these cases. On June 28, 2012, the Court issued its decision in the case, *National Federation of Independent Business et al. v. Sebelius*.

This report contains resources for retrieving background information and selected legal material relevant to these cases. It also includes information on CRS experts and products to assist in understanding the legal and policy issues related to the act. This report will be updated as needed.

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In March 2010, Congress passed P.L. 111-148, the Patient Protection and Affordable Care Act of 2010 (PPACA) and amended it by passing P.L. 111-152, the Health Care and Education Reconciliation Act of 2010 (HCERA). Subsequently, lawsuits were filed in multiple courts challenging various aspects of the new law. Many of these cases made their way through the judicial system and three petitions for certiorari were ultimately granted by the United States Supreme Court in one of these cases. The Court ultimately decided in favor of the law in June 2012. This collection of resources is intended to assist in responding to a broad range of research questions and requests for assistance related to the Affordable Care Act litigation before the Supreme Court.

Supreme Court Cases

On November 14, 2011, the Supreme Court granted three petitions for certiorari to decide issues raised by the Affordable Care Act cases: (1) *National Federation of Independent Business v. Sebelius*, No. 11-393; (2) *Florida v. Department of Human Services*, No. 11-400; and (3) *Department of Health and Human Services v. Florida*, No. 11-398.¹ Please note, the Court agreed to hear four separate questions raised by the three petitions. Oral arguments for the cases took place March 26-28, 2012.² On June 28, 2012, the Court issued its decision in the case, *National Federation of Independent Business et al. v. Sebelius*.

Below are links to documents related to these cases before the Court.³ Many of the documents are available on the Supreme Court's Patient Protection and Affordable Care Act website at <http://www.supremecourt.gov/docket/PPACA.aspx>. For further information from the Court, the public information officer can be reached at [redacted].

Department of Health and Human Services et al. v. Florida et al.

The questions for the Court raised by this petition are whether Congress has the power under Article I of the Constitution to enact the minimum coverage provision of PPACA and whether the challenges to the minimum coverage provision itself are barred by the Anti-Injunction Act.

Supreme Court

- Docket No. 11-398
<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/11-398.htm>
- Petition for a Writ of Certiorari
<http://www.supremecourt.gov/docket/PDFs/11-398%20Cert%20Petition.pdf>

¹ The order granting certiorari in the Affordable Care Act cases is available at <http://www.supremecourt.gov/docket/PDFs/111411zr.pdf>.

² The calendar for the Court for the session beginning March 19, 2012, is available at http://www.supremecourt.gov/oral_arguments/argument_calendars/MonthlyArgumentCalMAR2012.pdf. The order allocating time is available on the Supreme Court's website at <http://www.supremecourt.gov/docket/PDFs/022112zor.pdf>.

³ For information on other PPACA related cases, see the Department of Justice's Defending the Affordable Care Act website at <http://www.justice.gov/healthcare/index.html>.

- Appendix to Petition
<http://www.supremecourt.gov/docket/PDFs/11-398%20appendix.pdf>
- Brief of Private Respondents
<http://www.supremecourt.gov/docket/PDFs/11-398%20BIO%20Private.pdf>
- Brief of State Respondents
<http://www.supremecourt.gov/docket/PDFs/11-398%20BIO%20States.pdf>
- Reply Brief
<http://www.supremecourt.gov/docket/PDFs/11-398%20Reply.pdf>
- Amicus Briefs (as compiled by the American Bar Association)
Anti-Injunction Act—http://www.americanbar.org/publications/preview_home/11-398_Anti-InjunctionAct.html
Minimum Coverage Provision—http://www.americanbar.org/publications/preview_home/11-398.html
- Transcript of Oral Arguments
March 26, 2012—http://www.supremecourt.gov/oral_arguments/argument_transcripts/11-398-Monday.pdf
March 27, 2012—
http://www.supremecourt.gov/oral_arguments/argument_transcripts/11-398-Tuesday.pdf
- Slip Opinion
<http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf>

Appeals Court (United States Court of Appeals for the Eleventh Circuit)

- *Florida v. United States HHS*, 648 F.3d 1235 (11th Cir. Fla. 2011)⁴
<http://www.uscourts.gov/uscourts/courts/ca11/201111021.pdf>

District Court (Northern District of Florida)

- Order Granting Summary Judgment, *Florida v. United States HHS*, 780 F. Supp. 2d 1256 (N.D. Fla. 2011)⁵
<http://www.justice.gov/healthcare/docs/fl-sj-ruling.pdf>

National Federation of Independent Business et. al. v. Kathleen Sebelius et al.

The questions for the Court in this petition concern the severability of the minimum coverage provision from the rest of the Affordable Care Act if the minimum coverage provision is found to be unconstitutional.

⁴ Docket Nos. 11-11021 and 11-11067.

⁵ Docket No. 10-cv-91.

Supreme Court

- Docket No. 393
<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/11-393.htm>
- Petition for Writ of Certiorari
<http://www.supremecourt.gov/docket/PDFs/11-393%20Cert%20Petition.pdf>
- Appendix to Petition
<http://www.supremecourt.gov/docket/PDFs/11-393%20Appendix.pdf>
- Brief in Opposition
<http://www.supremecourt.gov/docket/PDFs/11-393%20BIO.pdf>
- Amicus Briefs (as compiled by the American Bar Association)
Severability—
http://www.americanbar.org/publications/preview_home/11-393.html
- Transcript of Oral Arguments
March 28, 2012—
http://www.supremecourt.gov/oral_arguments/argument_transcripts/11-393.pdf
- Slip Opinion
<http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf>

Florida et al. v. Department of Health and Human Services et al.

The questions for the Court in this petition are limited to whether the individual mandate can be severed from the act, and whether the changes to Medicaid in the Affordable Care Act unconstitutionally coerce the states.

Supreme Court

- Docket No. 11-400
<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/11-400.htm>
- Petition for Writ of Certiorari
<http://www.supremecourt.gov/docket/PDFs/11-400%20Cert%20Petition.pdf>
- Brief in Opposition
<http://www.supremecourt.gov/docket/PDFs/11-400%20BIO.pdf>
- Reply Brief
<http://www.supremecourt.gov/docket/PDFs/11-400%20Reply.pdf>
- Amicus Briefs (as compiled by the American Bar Association)
Severability—
http://www.americanbar.org/publications/preview_home/11-393.html
Medicaid—
http://www.americanbar.org/publications/preview_home/11-400_Medicaid.html

- Transcript of Oral Arguments
March 28, 2012—http://www.supremecourt.gov/oral_arguments/argument_transcripts/11-400.pdf
- Slip Opinion
<http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf>

Other Supreme Court Petitions

In addition to the cases referenced above, information is provided on three other cases in which a petition for a writ of certiorari has been filed and that contain notable legal arguments related to the Affordable Care Act cases.

Thomas More Law Center et al. v. Barack H. Obama et al.

In this petition for certiorari, the petitioners present arguments on whether Congress had the power under Article I of the Constitution to enact the minimum coverage provision of PPACA.

Supreme Court

- Docket No. 11-117
<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/11-117.htm>
- Petition for Writ of Certiorari
<http://www.supremecourt.gov/docket/PDFs/11-117%20Cert%20Petition.pdf>
- Brief in Opposition
<http://www.supremecourt.gov/docket/PDFs/11-117%20BIO.pdf>
- Reply Brief
<http://www.supremecourt.gov/docket/PDFs/11-117%20%20Reply.pdf>

Appeals Court (United States Court of Appeals for the Sixth Circuit)

- Opinion, *Thomas More Law Ctr. v. Obama*, 651 F.3d 529 (6th Cir. Mich. 2011)⁶
<http://www.ca6.uscourts.gov/opinions.pdf/11a0168p-06.pdf>

District Court (Eastern District of Michigan)

- Order Denying Plaintiffs' Motion for Injunction and Dismissing Plaintiffs' First and Second Claims for Relief [Doc #7], *Thomas More Law Ctr. v. Obama*, 720 F. Supp. 2d 882 (E.D. Mich. 2010)⁷
<http://www.mied.uscourts.gov/News/Docs/09714485866.pdf>

⁶ Docket No. 10-2388.

⁷ Docket No. 10-cv-11156.

Virginia, ex rel. Kenneth T. Cuccinelli, II, v. Sebelius

In this petition for certiorari, the petitioners present arguments on whether a state has standing to challenge the minimum coverage provision, whether Congress had the power under Article I of the Constitution to enact the minimum coverage provision, and whether the minimum coverage provision is severable from the rest of the Affordable Care Act.

Supreme Court

- Docket No. 11-420
<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/11-420.htm>
- Petition for Writ of Certiorari
<http://www.supremecourt.gov/docket/PDFs/11-420%20Cert%20Petition.pdf>
- Brief in Opposition
<http://www.supremecourt.gov/docket/PDFs/11-420%20BIO.pdf>

Appeals Court (United States Court of Appeals for the Fourth Circuit)

- Opinion, *Virginia ex rel. Cuccinelli v. Sebelius*, 656 F.3d 253 (4th Cir. Va. 2011)⁸
<http://pacer.ca4.uscourts.gov/opinion.pdf/111057.P.pdf>

District Court (Eastern District of Virginia)

- Memorandum Opinion (Cross Motions for Summary Judgment), *Commonwealth ex rel. Cuccinelli v. Sebelius*, 728 F. Supp. 2d 768 (E.D. Va. 2010)⁹
<http://www.justice.gov/healthcare/docs/cucinelli-v-sebelius-memo-opinion-summary-judgment.pdf>

Liberty University et al. v. Timothy F. Geithner et al.

In this petition for certiorari, the petitioners present arguments on whether the challenges to the minimum coverage provision itself are barred by the Anti-Injunction Act and whether Congress has the power under Article I of the Constitution to enact the minimum coverage provision of PPACA.

Supreme Court

- Docket No. 11-438
<http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/11-438.htm>
- Petition for a Writ of Certiorari
<http://www.supremecourt.gov/docket/PDFs/11-438%20Cert%20Petition.pdf>

⁸ Docket Nos. 11-1057 and 11-1058.

⁹ Docket No. 10-cv-188.

- Brief in Opposition
<http://www.supremecourt.gov/docket/PDFs/11-438%20BIO.pdf>
- Reply Brief
<http://www.supremecourt.gov/docket/PDFs/11-438%20Reply.pdf>

Appeals Court (United States Court of Appeals for the Fourth Circuit)

- Opinion, *Liberty Univ., Inc. v. Geithner*, 2011 U.S. App. LEXIS 18618, 2011 WL 3962915 (4th Cir. Va. 2011)¹⁰
<http://www.justice.gov/healthcare/docs/liberty-university-4th-circuit-opinion.pdf>

District Court (Western District of Virginia)

- Memorandum Opinion, *Liberty Univ., Inc. v. Geithner*, 753 F. Supp. 2d 611 (W.D. Va. 2010)¹¹
<http://www.vawd.uscourts.gov/OPINIONS/MOON/LIBERTYUNIVERSITYVGEITHNER.PDF>

Selected Federal Legal Resources

The following are selected links to statutes, laws, and cases that are relevant to the issues before the Court.

Constitution of the United States

- **The Constitution of the United States of America: Analysis and Interpretation**
<http://crs.gov/analysis/Pages/constitutionannotated.aspx?source=QuickLinks>

Also known as “The Constitution Annotated” or “CONAN”, this resource contains legal analysis and interpretation of the United States Constitution, based primarily on Supreme Court case law. It is especially useful when researching the constitutional implications of a specific issue or topic. Some of the commonly referenced constitutional provisions related to PPACA are below:

Constitution of the United States, Article I, Section 8, Clause 1. The “Power to Tax and Spend Clause”

The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

Constitution of the United States, Article I, Section 8, Clause 3. The “Commerce Clause”

The Congress shall have Power *** To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

¹⁰ Docket No. 10-2347.

¹¹ Docket No. 10-cv-15.

Constitution of the United States, Article I, Section 8, Clause 18. The “Necessary and Proper Clause”

The Congress shall have Power *** To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by the Constitution in the Government of the United States, or in any Department or Officer thereof.

Constitution of the United States, Article VI, Clause 2. The “Supremacy Clause”

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Statutes and U.S. Code

- **Compilation of the Patient Protection and Affordable Care Act**

<http://housedocs.house.gov/energycommerce/ppacacon.pdf>

Compiled by the Office of Legislative Counsel, this committee print contains the text of P.L. 111-148, the Patient Protection and Affordable Care Act (PPACA) consolidated with the amendments made by title X of P.L. 111-152, the Health Care and Education Reconciliation Act of 2010 (HCERA). Links to the text of the codified version of two particular PPACA provisions at issue in the litigation are provided below:

Maintenance of Minimum Essential Coverage, 26 U.S.C. §5000A.

<http://www.gpo.gov/fdsys/pkg/USCODE-2010-title26/pdf/USCODE-2010-title26-subtitleD-chap48.pdf>

Enacted and amended as part of the health care reform legislation, this section of PPACA deals with minimum coverage.

- *State Plans for Medical Assistance*, 42 U.S.C. §1396a
<http://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap7-subchapXIX-sec1396a.pdf>

PPACA amended existing laws related to the Medicaid program to require expanded coverage.

- **Anti-Injunction Act**, 26 U.S.C. §7421
<http://www.gpo.gov/fdsys/pkg/USCODE-2010-title26/pdf/USCODE-2010-title26-subtitleF-chap76-subchapB-sec7421.pdf>

Enacted in 1954, this act prohibits a court from hearing a case to prevent the assessment or collection of a tax (except in certain circumstances).

Cases and Litigation

Below are three cases often cited in the discussion of commerce clause issues.

- *United States v. Lopez*, 514 U.S. 549 (U.S. 1995)
<http://www.supremecourt.gov/opinions/boundvolumes/514bv.pdf>

In this Supreme Court case, a conviction under the Guns Free School Zone Act was overturned. The Court held the act was beyond the power of Congress under the commerce clause.

- *United States v. Morrison*, 529 U.S. 598 (U.S. 2000)
<http://www.supremecourt.gov/opinions/boundvolumes/529bv.pdf>

In this case, the Court held Congress lacked the authority to enact a statute because it did not involve commercial activity.

- *Gonzalez v. Raich*, 545 U.S. 1 (U.S. 2005)
<http://www.supremecourt.gov/opinions/boundvolumes/545bv.pdf>

The Court examined whether Congress could prohibit the cultivation of marijuana for personal, medicinal use, and held that such regulation was permissible under the Commerce Clause because these activities, when viewed in the aggregate, had a substantial effect on the interstate market for marijuana.

Below are two cases cited in the discussion of the expansion of Medicaid coverage.

- *South Dakota v. Dole*, 483 U.S. 203 (U.S. 1987)
<http://www.law.cornell.edu/supremecourt/text/483/203>

In this case, the Court held that the general welfare provision of the Taxing and Spending Clause to the Constitution gave Congress the power to condition federal funds on a state's establishment of a minimum drinking age.

- *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (U.S. 1985)
<http://www.law.cornell.edu/supremecourt/text/469/528>

In this case, the Court held that a public mass transit authority entity was not entitled to immunity from federal wage and overtime standards.

Glossary of Common Litigation Terms

In researching these cases, those less accustomed with court proceedings may encounter unfamiliar terms. Below are definitions, taken from *Black's Law Dictionary, Ninth Edition*, for some common words used in litigation.

Brief	A written statement setting out the legal contentions of a party in litigation, esp. on appeal; a document prepared by counsel as the basis for arguing a case, consisting of legal and factual arguments and the authorities in support of them.
Amicus brief	A brief, usually at the appellate level, prepared and filed by an amicus curiae with the court's permission. Sometimes shortened to <i>amicus</i> . Also termed <i>friend-of-the-court brief</i> .
Appellate brief	A brief submitted to an appeals court; specif., a brief filed by a party to an appeal pending in a court exercising appellate jurisdiction.
Reply brief	A brief that responds to issues and arguments raised in the brief previously filed by one's opponent; esp., a movant's or appellant's brief filed to rebut a brief in opposition.

Certiorari Petition (or a Petition for a Writ of Certiorari)	A formal written request presented to a court or other official body.
Decision	A judicial or agency determination after consideration of the facts and the law; esp., a ruling, order, or judgment pronounced by a court when considering or disposing of a case.
Docket	A formal record in which a judge or court clerk briefly notes all the proceedings and filings in a court case.
Petitioner	A party who presents a petition to a court or other official body, esp. when seeking relief on appeal.
Respondent or Appellee	The party against whom an appeal is taken. In some appellate courts, the parties are designated as petitioner and respondent. In most appellate courts in the United States, the parties are designated as <i>appellant</i> and <i>appellee</i> .

Selected CRS Products

Listed below are existing CRS products on the Affordable Care Act litigation and related policy issues. Additional titles are available on the CRS.gov website, <http://www.crs.gov>, by searching or browsing the Health Care Issues Before Congress.

Affordable Care Act Litigation

CRS Report R40725, *Requiring Individuals to Obtain Health Insurance: A Constitutional Analysis*, by Jennifer Staman et al.

CRS Report R40846, *Health Care: Constitutional Rights and Legislative Powers*, by (name redacted).

CRS Report R42367, *Medicaid and Federal Grant Conditions After NFIB v. Sebelius: Constitutional Issues and Analysis*, by (name redacted).

CRS Report RL34708, *Religious Exemptions for Mandatory Health Care Programs: A Legal Analysis*, by Cynthia Brougher.

Affordable Care Act Policy Issues

CRS Report R41664, *ACA: A Brief Overview of the Law, Implementation, and Legal Challenges*, coordinated by (name redacted).

CRS Report R41331, *Individual Mandate and Related Information Requirements under ACA*, by (name redacted) and (name redacted).

CRS Report R41159, *Summary of Potential Employer Penalties Under the Patient Protection and Affordable Care Act (PPACA)*, by (name redacted).

CRS Report R41210, *Medicaid and the State Children's Health Insurance Program (CHIP) Provisions in ACA: Summary and Timeline*, by (name redacted) et al.

CRS Report R42431, *Upcoming Rules Pursuant to the Patient Protection and Affordable Care Act: Fall 2011 Unified Agenda*, by (name redacted) and (name redacted).

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