

IMPORTANT NOTE: This abridged *Amicus Curiae* brief provides a summary of the legal arguments the **Committee for Justice** (CFJ) is making in support of Oklahoma and other states, and businesses and individuals, in ROUND TWO of the epic Legal Battle to defeat **ObamaCare**, which will reach the Supreme Court of the United States later this year. The Supreme Court has ruled on parts of the Patient Protection and Affordable Care Act, more commonly known as ObamaCare, but has not yet ruled on other parts of the law that the **Committee for Justice** believes are unconstitutional. We are confident the Supreme Court will ultimately agree with CFJ if (with your help and support) we are financially able to continue pursuing all aspects of this case. Please send your best donation today to help CFJ continue the fight to overturn ObamaCare and save America as the "land of the free."

In the Supreme Court of the United States

STATE OF OKLAHOMA,

Plaintiff

v.

PRESIDENT BARACK OBAMA,
INTERNAL REVENUE SERVICE, and
U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES, et al.,

Defendants

On Writ of Certiorari

Please send your best donation today to help fund ROUND TWO of this Supreme Court battle to overturn ObamaCare!

BRIEF OF COMMITTEE FOR JUSTICE AS *AMICUS CURIAE* IN SUPPORT OF OKLAHOMA'S PLEA TO STRIKE DOWN PRESIDENT OBAMA'S PATIENT PROTECTION AND AFFORDABLE CARE ACT

The COMMITTEE FOR JUSTICE submits this brief as *Amicus Curiae* in support of the State of Oklahoma's lawsuit against President Barack Obama, his Department of Health and Human Services, and the Internal Revenue Service (hereafter referred to as "Defendants") to prevent implementation and enforcement of President Obama's Patient Protection and Affordable Care Act, more commonly known as **ObamaCare**.

INTEREST OF AMICUS CURIAE

Founded in 2002, the COMMITTEE FOR JUSTICE is America's leading conservative legal action and public policy organization dedicated to combating judicial activism, defending the freedoms of all Americans and holding politicians accountable to the Constitution of the United States.

CFJ is concerned that ObamaCare constitutes an unprecedented and unconstitutional expansion of the federal government's authority that gives the federal government near-limitless power over the lives of all Americans, threatens the First Amendment's guarantee of religious liberty and violates the Tenth Amendment's protection of the sovereignty of the States.

BACKGROUND

In its June 2012 ObamaCare decision, the United States Supreme Court ruled in a split 5-4 vote against the **Committee for Justice's** position that it is unconstitutional for the federal government to require

individuals to purchase health insurance.

Chief Justice John Roberts wrote in his ruling that the “Individual Mandate” can be considered a tax because it requires a payment to the federal government from people who decide not to buy health insurance. Therefore, he wrote, the “Individual Mandate” falls under the federal government’s taxing authority and is constitutional.

The Supreme Court, however, agreed with the **Committee for Justice** by ruling that ObamaCare violates the Tenth Amendment and the constitutional principles of federalism and dual sovereignty on which this Nation was founded. Specifically, the Court found that:

- A) Under the Tenth Amendment, Congress may not require the States to govern according to the federal government’s instructions.
- B) The Constitution does not grant the federal government the power to force the States to set up and administer vast new government programs and bureaucracies.
- C) Respecting this limitation is critical to ensuring the status of the States as independent sovereigns in our federal system.
- D) Otherwise the two-government system established by the Framers would give way to a system that vests power in one central government, and individual liberty would suffer.
- E) ObamaCare’s threat to withhold existing Medicaid funding from the States serves no purpose other than to force unwilling states to sign up for the dramatic expansion in health care coverage effected by the Act.
- F) While Congress may encourage states to go along with federal policy, the financial inducement Congress has chosen in this case is much more than mild encouragement – it is a gun to the head and is therefore unconstitutional.

SUMMARY OF ARGUMENTS

This Honorable Court has not yet ruled on many other elements in ObamaCare (hereafter referred to as “the Act”) that the **Committee for Justice** contends are also unconstitutional, including the following:

I) The Independent Payment Advisory Board that will ration health care under the Act (informally referred to as a “death panel”) violates the Constitution’s separation of powers because it is unaccountable to and untouchable by both Congress and the courts.

- 1. The Independent Payment Advisory Board (IPAB) created by the Act is a 15-member panel appointed by President Barack Obama to cut spending by rationing Medicare dollars and services. IPAB will exercise virtually unchecked power to deny seniors and other Americans healthcare coverage under Medicare.
- 2. IPAB’s “recommendations” about healthcare will be automatically enforced as law without any action by Congress or the President; indeed, Congress is specifically barred from modifying IPAB’s directives.
- 3. Moreover, IPAB is not dependent upon annual appropriations from Congress, it need not follow traditional procedures for adopting administrative rules, and its actions can’t be examined by the courts.
- 4. Never before has Congress tried to create an unaccountable and unreviewable agency like IPAB. Nothing in the Constitution supports the creation of such a body.
- 5. IPAB violates the Constitution’s separation of powers and the Supreme Court’s non-delegation doctrine and should be struck down as unconstitutional.

II) The Act’s rule that requires employers, regardless of their religious beliefs, to pay for health insurance that includes abortion-inducing drugs, sterilizations and contraception is a clear violation of the protections for

freedom of religion in the First Amendment and the 1993 Religious Freedom Restoration Act.

1. This rule, issued and administered by Barack Obama's Department of Health and Human Services, requires religious and pro-life employers to provide services and procedures they believe to be abhorrent and sinful. It is a direct attack on the religious freedom guaranteed by the U.S. Constitution.
2. Because the Defendants' rule requires Americans to provide and pay for services that offend their sincerely held religious beliefs, it is a violation of the First Amendment to the Constitution, which states that:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”

3. This rule also violates the Religious Freedom Restoration Act, which states that:

“The federal government may substantially burden a person's exercise of religion only if it demonstrates that [the burden] is in furtherance of a compelling governmental interest.”

Defendants have demonstrated no such compelling interest to justify the burden their rule imposes on American's religious freedom.

III) If the Act's mandate that individuals purchase health insurance is a tax, as the Supreme Court has now ruled, then this is a tax that was not lawfully enacted.

1. Article I, Section 7, Clause 1 of the U.S. Constitution, known as the Origination Clause, states as follows:

“All Bills for raising Revenue shall originate in the House of Representatives.”
2. But ObamaCare's "Individual Mandate" to purchase health insurance (which the Supreme Court ruled is a tax) originated in the U.S. Senate, not the House of Representatives, as the Constitution requires. Therefore, the "Individual Mandate" is unconstitutional.
3. The Supreme Court has already ruled that the "Individual Mandate" cannot be justified as Constitutional under the Constitution's Commerce Clause.
4. So the fact that this "tax" originated in the Senate, not in the House as required, removes the last remaining argument that Congress had the Constitutional authority to enact the "Individual Mandate".

IV) The Internal Revenue Service (IRS) has no legal authority to grant tax credits and subsidies for qualifying health plans, nor to force employers to provide such plans, in states that decide not to set up health insurance exchanges.

1. The Act provides tax credits and subsidies for the purchase of qualifying health insurance plans, and penalizes employers for not providing such plans, only in states that set up their own health insurance exchanges. Many states are refusing to create such exchanges.
2. So the IRS has issued a rule that purports to extend the tax credits and subsidies, and the employer mandate they trigger, to the federally-run exchanges Defendants are creating in states that refuse to set up their own exchanges.
3. But there is nothing in the text, structure, or history of the Act, or in any other federal law, that gives the IRS the power to expand the scope of ObamaCare by issuing such a rule.
4. Moreover, this new IRS rule is contrary to Congress' intent when it enacted ObamaCare.
5. Therefore, the Act's tax credits, subsidies and employer mandate — all key provisions of ObamaCare — are

unlawful as applied to states that choose not to set up their own insurance exchanges.

V) The Entire Act must be struck down because key unconstitutional provisions are not severable from the rest of the Act.

1. Congress intentionally omitted a severability clause from the Act.
 - A) Congress' own attorneys at the Congressional Research Service warned Congress that legal challenges to ObamaCare would have merit, including a warning that mandates on the States might well be ruled unconstitutional. See CRS Analysis.
 - B) Nonetheless, Congress specifically and intentionally made the decision to delete the severability clause in an earlier draft of the Act. So the lack of a severability clause in ObamaCare was clearly not an oversight, but was intended by Congress precisely because is the provisions challenged here are critical to the proper functioning of the Act.
2. It would be impossible for the Act to fulfill the will of Congress without the challenged provisions.

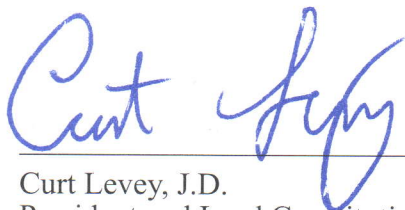
According to the Defendants' own arguments and actions, key unconstitutional provisions in ObamaCare — including the Act's mandates on the states to pay for and administer much of ObamaCare, the tax credits and subsidies for qualifying health plans, the employer mandate, and Independent Payment Advisory Board — are essential to the proper functioning of the Act.

- A) With the key unconstitutional provisions removed, almost the entire Act would need to be rewritten — with an entirely new financing and regulatory scheme — for the Act to function in accordance with the President's and Congress' stated intentions.
- B) For all these reasons, the Act and all of its challenged provisions must survive or fall together.
- C) The Act's challenged provisions, including the mandates on the States to administer and pay for much of ObamaCare, are clearly unconstitutional. Therefore, the entire Act must be declared null and void.

CONCLUSION

1. In consideration of the above arguments and facts, the Committee for Justice as Amicus Curiae joins with the State of Oklahoma to respectfully request that this Court:
 - A) Find that the Act exceeds Congress' powers under Article I of the Constitution, violates both the Constitution's separation of powers and the sovereignty of the States guaranteed by the Tenth Amendment and infringes upon Americans' religious liberty in violation of the First Amendment and the Religious Freedom Restoration Act.
 - B) Declare the entire Act to be null and void.
 - C) Order an immediate halt to the implementation and enforcement of the Act.

Respectfully Submitted,



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