



June 28, 2012

HIGH COURT UPHOLDS FEDERAL HEALTH CARE MANDATE

(U.S. Dep't of Health & Human Servs. v. Florida)

U.S. Supreme Court

In a landmark case, the U.S. Supreme Court today reversed an appeals court's decision striking down a portion of the federal health care reform law. The case, *U.S. Dep't of Health & Human Servs. v. State of Florida*, arises from a constitutional challenge to the Patient Protection and Affordable Care Act (PPACA), a federal law containing an individual mandate that will require all uninsured Americans, under threat of civil penalty, to purchase health insurance for themselves and their dependents.

The decision was a setback for the Washington Legal Foundation (WLF), which filed a brief in the case on its own behalf and on behalf of its clients—eleven constitutional law scholars whose teaching, research, and published scholarship focus on constitutional law and related fields. WLF's brief was drafted with the pro bono assistance of Professor Ilya Somin of George Mason University's School of Law.

“The Framers of the Constitution sought to maintain a careful balance of power between federal and state governments as a means of reducing the risks of tyranny and abuse by governments at every level,” said WLF Senior Litigation Counsel Cory Andrews after reading the Court's opinion. “The Court upsets that crucial balance today by holding that Congress can regulate, through an undisclosed “tax,” an individual's decision *not* to purchase health insurance,” Andrews said.

WLF's brief focused exclusively on countering the Government's claim that the Necessary and Proper Clause authorizes Congress to enact the individual mandate. WLF argued that even if the individual mandate were somehow necessary, it is not “proper.” Although a majority of justices agreed with WLF's position on the limits of the Necessary and Proper Clause (and the Commerce Clause), the Court upheld the individual mandate as a valid exercise of Congress's taxing power.

As WLF's brief demonstrated, both the text and original understanding of the Necessary and Proper Clause, as well as the Supreme Court's precedents interpreting it, support the conclusion that the Clause imposes two distinct requirements. In order to prevent the Clause from becoming a back door to unconstrained federal power, WLF argued that

it is essential for the Supreme Court to enforce its precedents establishing that legislation authorized by the Necessary and Proper Clause must meet the requirements of both necessity *and* propriety. A majority of the Justices expressed agreement with WLF's position.

Since the enactment of the law, WLF filed briefs in support of other challenges to the PPACA's Individual Mandate. Last year, WLF filed briefs in *Virginia v. Sebelius* (4th Circuit), *Thomas More Law Center v. Obama* (6th Circuit), and *Florida v. U.S. Dep't of Health & Human Servs.* (11th Circuit).

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending free enterprise, individual rights, and a limited and accountable government. Among other things, WLF works to ensure a healthy balance of power between the state and federal governments.

* * *

For further information, contact WLF Senior Litigation Counsel Cory Andrews, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.