

Wednesday, May 25, 2011

Summaries of Seven-Sky v. Holder amicus briefs

Association of American Physicians & Surgeons et al.:

Here, *amici* argue that the individual mandate is unconstitutional because (1) it violates the “Fifth Amendment’s Equal Protection Component,” and (2) it violates the Takings Clause.

Caesar Rodney Institute:

The Caesar Rodney Institute argues the following. First, that the “PPACA does not contain an express jurisdictional element, limiting regulation to individuals participating in the interstate health insurance market.” Second, that the “Congressional findings underpinning the PPACA rely on a method of reasoning to invoke the Commerce Clause that the Supreme Court has already rejected as untenable.”

Catholicvote.org:

Catholicvote.org writes that “[a]rguments made for the PPACA’s individual mandate defy well recognized liberty interests protected by the Constitution.” In support, Catholicvote.org argues that (1) the “beliefs of its citizens provide no basis for government regulation,” (2) that “Due Process prevents government from regulating based on arbitrary and irrebuttable presumptions,” and (3) “Due Process protects the liberty of citizens to avoid jurisdiction by choosing not to engage in commercial activity.”

CATO Institute et al.:

Here, *amici* argue the following. First, *amici* argue that the “explicit purpose of Article I is to limit Congress’s powers.”

Second, *amici* argue that the individual mandate “exceeds the scope of the Necessary and Proper Clause as used to execute the power to regulate interstate commerce under the “substantial effects” doctrine.” In support, *amici* argues that (1) “[t]he ‘substantial effects’ doctrine applies the Necessary and Proper Clause to the Commerce Power and allows Congress to use its regulatory authority while cabining that authority,” (2) that “[r]eglulating inactivity transcends the Necessary and Proper Clause’s limits on the Commerce Clause,” and (3) that the “Comstock factors that are the most recent articulation of the Necessary and Proper Clause’s limits weigh against the individual mandate.”

Third, *amici* argue that the individual mandate “cannot be justified as an ‘essential part of a broader regulatory scheme’ because Congress cannot regulate inactivity.” According to amici, “[i]nactivity is not a type of activity,” and this distinction “provides judicially manageable standards with a minimum of judicial policymaking.” Also, the individual mandate “constitutes a ‘commandeering of the people’ that is not ‘proper’ under the Necessary and Proper Clause.”

Chamber of Commerce of the United States:

[The Patient Protection and Affordable Care Act, P.L. 111-148](#)

[The Health Care and Education Reconciliation Act of 2010, P.L. 111-152](#)

Virginia v. Sebelius (CA4)

[CA4 order for supplemental briefing](#)

[U.S. brief for appellant](#)

[Virginia brief for appellee](#)

[U.S. reply brief](#)

[Amicus brief of AARP](#)

[Amicus brief of Am. Ass'n of People with Disabilities et al.](#)

[Amicus brief of Am. Cancer Soc'y et al.](#)

[Amicus brief of Am. Center for Law and Justice et al.](#)

[Amicus brief of Am. Hospital Ass'n](#)

[Amicus brief of Am. Nurses Ass'n et al.](#)

[Amicus brief of America's Health Insurance Plans](#)

[Amicus brief of Ass'n of Am. Physicians & Surgeons et al.](#)

[Amicus brief of California et al.](#)

[Amicus brief of CATO Institute et al.](#)

[Amicus brief of Constitutional Accountability Center](#)

[Amicus brief of Constitutional Law Professors \(corrected\)](#)

[Amicus brief of Economic Scholars](#)

[Amicus brief of Federal Jurisdiction Professors](#)

[Amicus brief of Barry Friedman et al.](#)

[Amicus brief of Gov. Gregoire](#)

[Amicus brief of Justice and Freedom Fund](#)

[Amicus brief of](#)

Florida v. HHS (CA11)

[Brief for United States](#)

[Brief for the states](#)

[Brief for NFIB, Ahlburg, and Brown](#)

[U.S. reply-response brief](#)

[States' reply brief](#)

[Amicus brief of AARP](#)

[Amicus brief of Am. Academy of Pediatrics et al.](#)

[Amicus brief of Am. Ass'n of People with Disabilities et al.](#)

[Amicus brief of Am. Ctr. for Law & Justice](#)

[Amicus brief of Am. Hosp. Ass'n et al.](#)

[Amicus brief of Am. Legislative Exchange Council](#)

[Amicus brief of Am. Nurses Ass'n et al.](#)

[Amicus brief of Am. Physicians & Surgeons et al.](#)

[Amicus brief of House Speaker John Boehner](#)

[Amicus brief of Catholic Medical Ass'n et al.](#)

[Amicus brief of CATO Institute](#)

[Amicus brief of Chamber of Commerce](#)

[Amicus brief of Constitutional Law Professors](#)

[Amicus brief of Doctors4PatientCare et al.](#)

[Amicus brief of Economic Scholars](#)

[Amicus brief of Family Research Council](#)

[Amicus brief of Heritage Foundation](#)

[Amicus brief of](#)

Just as it has in the other ACA cases, the Chamber of Commerce's brief in *Seven-Sky* concentrates on the severability issue. You can find our most summary of the Chamber's position [here](#).

Judicial Watch:

Judicial Watch argues that, "Based on a review of United States Supreme Court precedents as well as the plain meaning of the term 'activity', Congress exceeded its authority by regulating an individual who simply does not purchase health insurance."

Texas, Florida, Alabama, Indiana, Kansas, Maine, Michigan, Nebraska, North Dakota, Ohio, Pennsylvania, South Dakota, Washington, and Wisconsin (filed by Paul Clement):

Here, *amici* argue the individual mandate "exceeds Congress's authority to regulate interstate commerce" for the following reasons. First, *amici* argue that "[t]he power to regulate commerce does not include the power to compel individuals to engage in commerce," because (1) the "constitutional text and precedent are clear that the power to regulate commerce does not include the power to compel commerce," and (2) "Congress has never before attempted to use the Commerce Clause to compel private commercial activity."

Second, *amici* argue that "[t]he power to regulate commerce does not authorize the lifelong regulation of every citizen on the ground that most will, at some point, engage in commerce in the future." In support, *amici* write that (1) "[i]t is not inevitable that everyone will purchase health insurance or consume health care services," (2) that "[e]xercising regulatory authority over everyone on the theory that most people will eventually engage in an activity would impermissible give Congress an unbounded police power," and (3) that "[c]ost-shifting' is neither unique to the health care context nor a basis for departing from fundamental constitutional precepts."

Third, relying largely on *Comstock*, *amici* argue that the individual mandate is "not a necessary and proper means of executing the Commerce Power."

Finally, *amici* argue that the individual mandate "is not a valid exercise of Congress's Taxing Power."

Steven J. Willis:

Professor Willis makes the same arguments that he made in his amicus brief in *TMLC v. Obama*. You can view our summary of that brief [here](#).

Posted by Brandon Douglass at [1:13 PM](#)

[Home](#)

[Older Post](#)

[Massachusetts](#)

[Amicus brief of National Women's Law center et al.](#)

[Amicus brief of Pacific Legal Foundation et al.](#)

[Amicus brief of SEIU](#)

[Amicus brief of Virginia Organizing](#)

[Amicus brief of Kevin Walsh](#)

[Amicus brief of Washington Legal Foundation et al.](#)

[Amicus brief of Young Invincibles](#)

[Virginia's petition for a writ of certiorari before judgment](#)

[U.S. brief in opposition to cert before judgment](#)

[Virginia cert reply brief](#)

[CA4 scheduling order](#)

[CA4 order granting motion to expedite](#)

[District court opinion](#)

[Va. motion for summary judgment](#)

[U.S. motion for summary judgment](#)

[Virginia memo in opposition to U.S. motion for summary judgment](#)

[U.S. memo in opposition to Virginia motion for summary judgment](#)

[Virginia reply brief](#)

[U.S. reply brief](#)

[Amicus brief of CATO Institute et al.](#)

[Amicus brief of Washington Legal Foundation](#)

[Amicus of Constitutional Law Professors](#)

[Amicus of Americans for Free Choice in Medicine](#)

[Amicus brief of Young Invincibles](#)

[Amicus of American Civil Rights Union](#)

[Independence Institute et al.](#)

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[Amicus brief of Landmark Legal Foundation](#)

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[Amicus brief of Massachusetts](#)

[Amicus brief of Minnesota Legislators et al.](#)

[Amicus brief of Missouri Attorney General](#)

[Amicus brief of Mountain States Legal Foundation](#)

[Amicus brief of Nat'l Indina Health Bd. et al.](#)

[Amicus brief of Oregon et al.](#)

[Amicus brief of Physician Hosp. of Am.](#)

[Amicus brief of Professors of Federal Jurisdiction](#)

[Amicus brief of Senator Reid et al.](#)

[Amicus brief of Revere America Foundation](#)

[Amicus brief of South Carolina Chamber of Commerce](#)

[Amicus brief of State Legislators](#)

[Amicus brief of Texas Public Policy Foundation](#)

[Amicus brief of Kevin Walsh](#)

[Amicus brief of Washington Legal Foundation et al.](#)

[Order denying initial hearing en banc](#)

[Appellees' motion for en banc review](#)

[U.S. motion to expedite](#)

[Appellees' response to U.S. motion to expedite](#)

[Order granting stay and motion to clarify](#)

[U.S. reply in support of](#)