



**Joshua Matz** *Petition of the Day*

Posted Tue, May 29th, 2012 9:44 am

## Tuesday round-up

Much of the weekend's commentary on the Court focused on the Affordable Care Act, and in particular on allegations that supporters of the Act are attempting to pressure the Court to uphold it. In his column for the [Washington Post](#), George Will charges that defenders of the Act "are waging an embarrassingly obvious campaign, hoping [that the Chief Justice] will buckle beneath the pressure of their disapproval and declare Obamacare constitutional"; Doug Bandow echoes this sentiment at [Forbes](#). On the other side of the debate, Nan Aron – at [The Huffington Post](#) – disputes the idea that there is "a vast left-wing conspiracy to somehow bludgeon John Roberts into submission on the health care case," while at [Prawfsblawg](#), Sam Bagenstos takes on a Wall Street Journal op-ed by Michael McConnell (not posted here because it is behind a paywall).

In other commentary and reporting on the Court and the ACA, the editorial board of the [Philadelphia Inquirer](#) warns that the Justices' actions in the litigation "are raising questions of the Court's legitimacy." And looking ahead to the effects of the Court's decision, N.C. Aizenman of the [Washington Post](#) reports that state-based insurance marketplaces "hang in the balance" of the Court's decision.

Commentators also discussed the prospect that challenges to the federal Defense of Marriage Act could reach the Court. At this blog, Lyle [reports](#) that the Ninth Circuit has refused to hear a challenge to DOMA en banc, instead requiring that the case be heard in the first instance by a three-judge panel. Mike Eckel of the [Christian Science Monitor](#) notes that, in light of a third district court opinion invalidating DOMA, "the Supreme Court might need to step in soon to clarify its position." Finally, in his op-ed column in the [New York Times](#), Bill Keller argues that "Justice Anthony Kennedy is the likely deciding vote when this issue reaches the Supreme Court. More than anyone, he has the power to transform what is now a license bestowed by the more enlightened states into an all-American civil right."

Briefly:

- Lyle [reports](#) that "acting quickly and setting the stage for the Supreme Court to act next month, challengers of a Montana law limiting

corporations' spending to influence state elections mailed [their reply brief](#) to the Court on Friday.”

- For this blog, Ronald Mann analyzes last week’s decision in [Freeman v. Quicken Loans, Inc.](#), in which the Court held that unearned fees – fees for which lenders do not provide any services – violate federal law only if the fees are split between two companies.
- This blog also [posted](#) a Q&A with Patricia Millett, head of Akin Gump’s Supreme Court litigation practice and co-chair of the national appellate practice.
- At [Verdict](#), Vikram David Amar concurs with other commentators who have suggested that Jeffrey Toobin’s behind-the-scenes [account](#) of [Citizens United v. FEC](#) “does not fully work for me, or at least it requires a fair bit more explanation than he offers.”
- Jerry de Jaeger of the [University of Chicago Law School](#) discusses a recent visit by Justice Scalia for that school’s alumni magazine.
- The editorial board of the [New York Times](#) criticizes last week’s decision in [Blueford v. Arkansas](#), charging that “the court’s majority failed to protect the defendant’s constitutional right to be spared double jeopardy, and instead protected the trial judge’s mistake.”
- Mark Sherman of the [Associated Press](#) reports that “the justices’ summer travel schedules make it a pretty safe bet that blockbuster health care and immigration cases will be decided by the end of June.”
- Michael Kirkland of [UPI](#) discusses the Court’s recent cert. grant in the national security and surveillance case of [Clapper v. Amnesty International USA](#).
- In [New York Magazine](#), Jason Zengerle discusses the Court’s clerks, describing them as “know-it-all who say nothing” about the Court’s secrets.
- At [Verdict](#), Joanna Grossman discusses the Court’s opinion in [Astrue v. Capato](#) and argues that “the Court was right to leave the Social Security question of parentage to the states, but the burden is now clearly on the states to clarify the rules.”
- In an op-ed for the [Centre Daily Times](#), Nichola Gutgold addresses calls for Justice Ginsburg to resign so that President Obama can appoint her replacement, countering that she “would be surprised if Ginsburg retires at the end of this term” because she “remains a vital voice on the court.”