

## AMICUS CURIAE BRIEFS POUR IN TO THE SUPREME COURT; ORAL ARGUMENT DATES SET FOR LATE MARCH 2012

*This installment of Hall Render's Health Law Broadcast series on health care reform is designed to provide you with the insight, analysis and practical suggestions with respect to the various reform initiatives that will affect your organization.*

### AMICUS CURIAE BRIEFS

In a seven-day period ending January 13, the United States Supreme Court received over two dozen amicus curiae, or "friend-of-the-court," briefs urging it to overrule a decision holding unconstitutional a provision of the Affordable Care Act ("ACA") that would create an individual mandate that requires all nonexempt citizens to purchase health care insurance or pay a penalty effective 2014. The government argued in its first merits brief in the case that Congress acted well within its powers, as set forth in the commerce clause, necessary and proper clause and the taxing and spending clause when it enacted the individual mandate.





In support of the government's position, several groups, including the American Hospital Association, the Association of American Medical Colleges, the Catholic Association of the United States and the Federation of American Hospitals have filed amicus curiae briefs to support the government's argument, largely citing that the mandate is a tool to eliminate the massive cost-shifting that occurs due to the amount of uncompensated care provided by hospitals to uninsured individuals. A group of 11 state attorneys general filed an amicus curiae brief, which stated that given the health care industry makes up one-sixth of the national economy and given that the current health care crisis demands a federal solution, Congress was acting within its constitutional bounds under the commerce clause when it enacted the individual health insurance mandate provisions of the ACA.

### SUPREME COURT ORAL ARGUMENT DATES SET

On January 16, 2012, the Supreme Court announced that it will hear more than five hours of arguments on the health care reform over a three-day period beginning on March 26, 2012. The last time the Supreme Court set aside this much time for an argument dates back to 2003 for the McCain-Feingold campaign finance overhaul. The Supreme Court will hear arguments on whether court action is premature because no one yet has paid a fine for not participating in the mandate, whether Congress overstepped its authority by requiring Americans to purchase health insurance starting in 2014, whether the rest of the law can take effect even if the mandate is unconstitutional and whether the law goes too far in coercing states to participate in the health care reform by threatening to cut off federal money.

### PUBLIC OPINION

A recent health tracking poll found that the individual mandate that most Americans purchase health insurance by 2014 or pay a fine remains unpopular with 67% of Americans having an unfavorable view of the provision and only 30% of Americans supporting it. With the Supreme Court's oral argument dates set for late March to decide the constitutionality of the individual mandate, the same poll found that nearly 60% of the public expects the Supreme Court justices will depend more on personal ideology than a legal analysis of the individual mandate to base their decision. Of the 1,206 adults surveyed, only 28% believe the justices will base their decision on the mandate without regard to politics and ideology.

If you have any questions or would like additional information about this topic, please contact Jennifer P. Viegas at 317.977.1485   or [jviegas@hallrender.com](mailto:jviegas@hallrender.com), Brian C. Betner at 317.977.1466   or [bbetner@hallrender.com](mailto:bbetner@hallrender.com) or your regular Hall Render attorney.