No. 11-398

IN THE

Supreme Court of the United States

DEPT. OF HEALTH AND HUMAN SERVICES, *ET AL.*,
Petitioners,
v.
STATE OF FLORIDA, *ET AL.*, *Respondents*.

On Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

Brief *Amicus Curiae* of Virginia Delegate Bob Marshall, Virginia Senator Dick Black, Oklahoma Representative Charles Key, Institute on the Constitution, U.S. Justice Foundation, Gun Owners Foundation, The Lincoln Institute for Research and Education, The United States Constitutional Rights Legal Defense Fund, Inc., Conservative Legal Defense and Education Fund, Policy Analysis Center, Downsize DC Foundation, Gun Owners of America, Inc., The Liberty Committee, Public Advocate of the United States, American Life League, Inc., and DownsizeDC.org in Support of Respondents (Minimum Coverage Provision)

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INTEREST OF THE *AMICI CURIAE*[1]

Delegate Bob Marshall is a senior member of the Virginia House of Delegates, and was the Chief Patron of the "Virginia Health Care Freedom Act"[2] which undergirds Commonwealth of Virginia *ex rel.* Kenneth T. Cuccinelli, II v. Kathleen Sebelius, discussed *infra*. **Senator Dick Black** is a member of the Virginia State Senate. **Representative Charles Key** is a member of the Oklahoma House of Representatives. All have worked against federal usurpation of powers reserved to the states and to the people under the Tenth Amendment.

The **Institute on the Constitution** ("IOTC") is an educational organization reconnecting Americans with the history of the Republic. The **U.S. Justice Foundation** ("USJF"), **Gun Owners Foundation** ("GOF"), **The Lincoln Institute for Research and Education** ("Lincoln"), **The United States Constitutional Rights Legal Defense Fund, Inc.**, **Conservative Legal Defense and Education Fund** ("CLDEF"), **American Life League, Inc.** ("ALL"), **Policy Analysis Center** ("PAC"), and **Downsize DC Foundation** ("DDCF") are nonprofit educational organizations, exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code ("IRC").

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[1] It is hereby certified that the parties filed blanket consents with the Court, no counsel for a party authored this brief in whole or in part, and no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

[2] 2010 Acts of the Assembly Chapter 818; codified as section 38.2-2430.1:1, Code of Virginia.

Gun Owners of America, Inc. ("GOA"), **The Liberty Committee** ("TLC"), **Public Advocate of the United States** ("PA"), and **DownsizeDC.org** ("DDC") are nonprofit social welfare organizations, exempt from federal income tax under IRC section 501(c)(4). Each organization is interested in the proper construction of state and federal constitutions and statutes.

Delegate Marshall filed an *amicus curiae* brief in the U.S. Court of Appeals for the Fourth Circuit in support of the challenge to the Patient Protection and Affordable Care Act brought by the Commonwealth of Virginia — Commonwealth of Virginia *ex rel.* Kenneth T. Cuccinelli, II v. Kathleen Sebelius.[3] Co-*amici* were GOA, GOF, ALL, IOTC, Lincoln, PA, CLDEF, TLC, DDCF, DDC, and PAC. Delegate Marshall filed an *amicus curiae* brief in support of Virginia's Petition for Writ of Certiorari before this Court (No. 11-420), which is pending.[4] Co-*amici* were Senator Black, DDCF, DDC, GOA, GOF, TLC, USJF, CLDEF, and Lincoln. USJF filed an *amicus curiae* brief in the present case in support of granting certiorari in October 2011, and in the related case of National Federation of Independent Business v. Sebelius, No. 11-393, on the issue of severability on January 6, 2012.

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[3] Brief *Amicus Curiae* of Virginia Delegate Bob Marshall, *et al.*, U.S. Court of Appeals, 4th Cir., Nos. 11-1057 and 11-1058 (Apr. 4, 2011), http://lawandfreedom.com/site/health/VA_v_Sebelius_Amicus.pdf.

[4] Brief *Amicus Curiae* of Virginia Delegate Bob Marshall, *et al.* in Support of Petitioner (Nov. 3, 2011), http://lawandfreedom.com/site/health/VA_v_Sebelius_Amicus_SC.pdf.

SUMMARY OF ARGUMENT

The Patient Protection and Affordable Care Act ("PPACA") is a remarkable law, not just imposing plenary federal control over the private health insurance industry and health care practices, but also placing the federal government into that business and practice. Purporting to be an exercise of Congress' Commerce Clause power, this law goes beyond any prior Congressional exercise of the Commerce power, mandating that individuals purchase private insurance, overriding any religious, moral, or practical scruples that they may have.

The Government believes that this law is fully justified under this Court's Commerce Clause jurisprudence, particularly relying on United States v. Darby and Wickard v. Filburn. These revolutionary Supreme Court decisions cast aside settled constitutional doctrine for reasons of political expediency in the wake of President Franklin D. Roosevelt's threat to pack the Court. The time has come that they should be re-examined and overturned, lest Congress conclude that it can compel whatever behavior it believes would make us a more healthy People — leading us to a totalitarian state where everything not prohibited is mandated.

In conducting its re-examination of its Commerce Clause jurisprudence, this Court should return to the text of the Constitution as "the supreme Law of the Land" giving no deference to its own decisions, rather examining the issue afresh. Such an examination demonstrates that the individual mandate is not an

exercise of power to regulate interstate commerce. The individual mandate is not regulation of voluntary commercial intercourse; it is more akin to forcible economic rape.

The government attempts to justify its individual mandate as being a constitutionally permissible means of regulating interstate commerce, as a law which is a "Necessary and Proper" means to achieve a legitimate end. However, the Government admits the purpose of PPACA is to "expand access to health care" — making it a social welfare program designed to achieve a moral objective — a power not constitutionally authorized. The Commerce Clause does not empower Congress to adopt a national health care policy. Under the Government's theory, the combination of the Commerce Clause and the Necessary and Proper Clause becomes a pretext to confer on Congress a general police power which it was never intended to have.

PPACA is designed to put the government into the health care insurance business. The ramifications of this coercive measure are just now being felt with mandates for abortifacient contraceptives, converting the federal government into the master over the bodies and the morals of a heretofore sovereign people.

ARGUMENT

I. CONGRESS EXCEEDED ITS COMMERCE CLAUSE POWERS IN ENACTING PPACA, YET FOUND SUBSTANTIAL SUPPORT FROM CERTAIN OF THIS COURT'S DECISIONS, NECESSITATING THEIR REEXAMINATION.

A. This Court's Commerce Clause Jurisprudence Has Eviscerated Textual Limits on Congressional Power.

There was a time that Members of Congress took their oath to the Constitution seriously, becoming students of the Constitution. Often, argument on complex constitutional issues in the halls of Congress rivaled the work of advocates before the Supreme Court.[5] However, during Congressional consideration of the Patient Protection and Affordable Care Act ("PPACA" or "the Act"), few, if any, Members of Congress even claimed to have read H.R. 3590 — a 1,928 page bill — before voting on it.[6]

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[5] *See generally* David Currie, The Constitution in Congress: The Federalist Period, 1978-1801 (1999) ("It was in the legislative and executive branches, not in the courts, that the original understanding of the Constitution was forged.... [T]he quality of argument remained astoundingly high...." p. 296).

[6] Speaker Pelosi said, "We have to pass the bill so you can find out what is in it...." http://www.breitbart.tv/nancy-pelosi-we-need-to-pass-health-care-bill-to-find-out-whats-in-it/. *Amicus* DownsizeDC.org has drafted a bill which would require members of Congress to read bills before voting on them, but thus far has

When then-Speaker of the House Nancy Pelosi was asked about the constitutional authority of Congress to pass PPACA, she replied: "Are you serious? Are you serious?"[7] While many viewed that statement to indicate a lack of regard for constitutional limitations generally, the Speaker's reply bespoke the common assumption that Congress' powers under the Commerce Clause are virtually unlimited. That view would have ample support in the decisions of this Court. Indeed, Chief Judge Alex Kozinski of the U.S. Court of Appeals for the Ninth Circuit characterized modern Commerce Clause decisions as follows:

> [Y]ou wonder why anyone would make the mistake of calling it the Commerce Clause instead of the "Hey, you -can-do-whatever-you-feel-like Clause?" [A. Kozinski, "Introduction to Volume Nineteen," 19 HARV. J.L. & PUB. POL'Y. 1 (1995).]

Ten years later, in Gonzales v. Raich, 545 U.S. 1 (2005), with respect to federal regulation of marijuana that had never been sold, had never crossed state lines, and had no effect on the national market, Justice Thomas observed in dissent:

> If Congress can regulate this under the

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not found a single Congressman willing to introduce it. https://secure.downsizedc.org/etp/rtba/.

[7] http://cnsnews.com/news/article/when-asked-where-constitution-authorizes-congress-order-americans-buy-health-insurance.

> Commerce Clause, then it can regulate virtually anything ... quilting bees, clothes drives, and potluck suppers throughout the 50 States. [*Id*., 545 U.S. at 57-58, 69.]

B. The Court Has Demonstrated a Willingness to Re-examine Its Constitutional Jurisprudence When Necessary.

The Government's brief adopts this virtually unlimited view of the Commerce Clause, repeatedly invoking two of this Court's most expansive statements of the commerce power — United States v. Darby, 312 U.S. 100 (1941) and Wickard v. Filburn, 317 U.S. 111 (1942) (five times each). In contrast, after quoting the text of the Commerce Clause in the first sentence of its Argument, the Government abandons any discussion of the Clause itself. Pet. Br., p. 21. Likewise, Respondents also appear content, or resigned, to argue the instant case in accordance with prior decisions of this Court.[8]

The principle of *stare decisis* should not impede a regular return to the constitutional text — particularly in a case such as this which has generated so much public opposition and controversy. As Justice Brandeis explained:

> *Stare decisis* is usually the wise policy.... [b]ut

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[8] *See* Brief for State Respondents on the Minimum Coverage Provision, pp. 16-17, 19; Brief for Private Respondents, p. 15.

> in cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions.... [Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 406-407 (1932) (Brandeis, J., dissenting).]

On many occasions, however, the Court addresses the constitutional text secondarily, if at all. In a recent case, Chief Justice Roberts engaged in some Court-deprecating humor, in stating near the end of the opinion: "Yet, as is often the case in this Court's First Amendment opinions, we have gotten this far in the analysis without quoting the Amendment itself.... The Framers' actual words put these cases in proper perspective." FEC v. Wisconsin Right to Life, Inc., 551 U.S. 449, 480-82 (2007).

These *amici* urge this Court in this historic case to opt to re-examine its Commerce Clause jurisprudence under the actual text of the Commerce Clause. Indeed, on two important recent occasions in which these *amici* have been involved, this Court has demonstrated its willingness to go beyond an inquiry into decisional "law."

In District of Columbia v. Heller, 554 U.S. 570 (2008),[9] after stating the facts and issue presented,

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[9] On February 11, 2008, *amicus curiae* herein Gun Owners of America, Inc., and a number of other organizations filed an *amicus* brief on the merits in this Court in the Heller case. http://lawandfreedom.com/site/constitutional/DCvHellerAmicus.pdf.

Justice Scalia's opinion for the Court began with the text of the Second Amendment. The Court then laboriously parsed the Amendment in a search for meaning, examining historical documents and legal scholarship. Only when that search was complete did the Court examine "how the Second Amendment was interpreted from immediately after its ratification...." *Id*. at 605. In the end, the Court's decision was guided by the constitutional text, not modern "case law":

> [T]he enshrinement of constitutional rights necessarily takes certain policy choices off the table.... Undoubtedly some think that the Second Amendment is outmoded in a society where our standing army is the pride of our Nation, where well-trained police forces provide personal security, and where gun violence is a serious problem. That is perhaps debatable, but what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct. [*Id*., p. 636.]

In United States v. Jones, __ U.S. __, 2012 U.S. Lexis 1063 (Jan. 23, 2012),[10] the Government

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[10] On May 16, 2011, *amicus curiae* herein Gun Owners of America and other organizations filed the only *amicus* brief at the Petition stage in the Jones case, urging this Court to take this case and use it to re-examine the original property-based text and purpose of the Fourth Amendment. Granting certiorari, this Court added the property issue for parties to address: "Whether the government violated respondent's Fourth Amendment rights by installing the GPS tracking device on his vehicle without a valid warrant and without his consent." http://www.supremecourt.gov/Search.aspx?FileName=/docketfil

contended that the attachment of a GPS device to Jones' Jeep Cherokee was neither a search nor a seizure, because in this technological age, Jones had no reasonable expectation of privacy from the Government tracking him on a public roadway. Opening with a citation to a 1765 English case, Entick v. Carrington, a majority of this Court stated:

> The Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a "search" within the meaning of the Fourth Amendment when it was adopted. [Jones, p. *8.]

Then, in a remarkably frank admission as to how far from the text the Court has strayed, Justice Scalia explained that:

> our Fourth Amendment jurisprudence was tied to common-law trespass, at least until the latter half of the 20th century [but] [o]ur later cases … have deviated from that exclusively property-based approach [in favor of a more flexible, modernist analysis based upon the court's perceptions of a] "reasonable expectation of privacy." [*Id*., pp. *9-*10.]

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es/10-1259.htm. On October 3, 2011, *amici* herein Gun Owners of America was joined by another, ideologically diverse group in filing an *amicus curiae* brief addressing the original property bases of the Fourth Amendment. http://lawandfreedom.com/site/constitutional/USvJones Amicus_Merits.pdf.

It is this type of candid and transparent analysis which gives the Court credibility with the bar and the public, and which is needed now with respect to the Commerce Clause.

C. The Court's United States v. Darby and Wickard v. Filburn Decisions Were Politicized and Should Be Re-Examined.

It is no secret that this Court's Commerce Clause jurisprudence undertook a sharp turn after President Franklin Roosevelt's proposal of the Judicial Procedures Reform Bill of 1937 — the court-packing plan. The Court's decisions that many of the President's early New Deal initiatives were unconstitutional evoked a highly political attack on the Court. While these cases involved a variety of constitutional provisions, the Court's decisions in Schecter Poultry Corp. v. United States, 295 U.S. 495 (1935) invalidating the National Industrial Recovery Act, and in Carter v. Carter Coal Co., 298 U.S. 238 (1936), invalidating the Bituminous Coal Conservation Act, were Commerce Clause cases.

President Roosevelt's March 1937 Fireside chat[11] and his proposal to add up to six additional justices to the U.S. Supreme Court was closely followed by Judge Owen Robert's April 1937 Commerce Clause reversal in National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937), rejecting well-established precedents to uphold the constitutionality

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[11] *See, e.g.*, F.D. Roosevelt, Fireside Chat on Reorganization of the Judiciary (Mar. 9, 1937), http://www.hpol.org/fdr/chat/.

of the National Labor Relations Act, signaling the Court's lack of will for a political showdown.

By the time some of the Court's most extreme Commerce Clause cases — Darby and Wickard — were decided in 1941 and 1942, respectively, the tide had firmly turned. The effect of the court-packing plan on Supreme Court jurisprudence has been the grist for law review articles and books.[12] There are many reasons to believe that, in cases like Darby and Wickard, political expediency overrode constitutional fidelity, justifying re-examination of these two revolutionary Commerce Clause cases.

In United States v. Darby, the Court found that the Commerce Clause vested in Congress the plenary power to regulate interstate commerce for any purpose. *Id.*, 312 U.S. 100, 115-16 (1941). Purporting to rely upon Chief Justice Marshall's opinion in Gibbons v. Ogden, 22 U.S. (9 Wheat) 1 (1824), the Darby Court stated that the "purpose of a regulation of interstate commerce are matters for legislative judgment upon the exercise of which the Constitution places no restriction and over which the courts are given no control." 312 U.S. at 115. In support of this constitutional proposition, the Darby Court quoted the Gibbons statement that the power of Congress over interstate commerce "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the constitution." Gibbons, 22 U.S. at 196.

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[12] *See e.g.*, J. Shesol, Supreme Power: Franklin Roosevelt vs. the Supreme Court, Norton (2010).

Omitted entirely from the Darby opinion was Chief Justice Marshall's follow-up statement that "the sovereignty of Congress, though limited to specified **objects**, is plenary as to those **objects**." Gibbons, 22 U.S. at 197 (emphasis added). Contrary to the Darby Court's misinterpretation of Gibbons, the true Marshall legacy is that the Commerce Clause does not vest in Congress complete discretion as to the permissible "object" or "end" of the exercise of power over the subject of interstate commerce. Rather, the permissible "object" or "end" of the exercise of that power, or any other enumerated power, was determined by the constitutional text.

Wickard v. Filburn is considered by many to be among the least principled Supreme Court cases. Although the Constitution grants Congress the power to regulate "commerce ... among the several States..." the Court allowed the Department of Agriculture the power to regulate home grown and consumed wheat that never traveled in interstate commerce. The Court reached its decision based on a completely utilitarian analysis:

> This record leaves us in no doubt that Congress may properly have considered that wheat consumed on the farm where grown, if wholly outside the scheme of regulation, would have a substantial effect in defeating and obstructing its purpose to stimulate trade therein at increased prices. [*Id*., 317 U.S. at 128-29.]

The Court did not even tip its cap to the constitutional

text, removing altogether the last textual restraint on the Commerce power.

The day has come for these relics of a politicized era to be reconsidered and overturned.

II. THE CONSTITUTIONALITY OF PPACA SHOULD BE DECIDED BY THE TEXT OF THE CONSTITUTION, NOT BY CASE PRECEDENT.

Bound by this Court's case precedents applying the Commerce Clause and the Necessary and Proper Clause, the court of appeals measured the constitutionality of the individual mandate in PPACA solely by " existing Commerce Clause doctrines that [it] as an inferior Article III court, must apply." Florida v. Department of Health and Human Services ("Florida"), 648 F.3d 1235, 1269 (11th Cir. 2011). The question in this Court, however, is not whether PPACA complies with Supreme Court "doctrine," but, as stated by the Government in its opening brief, "whether the minimum coverage provision is a valid exercise of Congress's powers under Article I of the Constitution." Pet. Br., p. 1. After all, it is "this Constitution, and the Laws of the United States ... made in Pursuance thereof [that is] the supreme Law of the Land,"[13] **not** this Court's opinions and Congress' laws made in pursuance of those opinions. As Chief Justice John Marshall recognized in Marbury v. Madison, "the

[13] United States Constitution, Article VI, Clause 2.

framers of the constitution contemplated that instrument, as a rule for the government of courts, as well as of the legislature." *Id.*, 5 U.S. (1 Cranch.) 137, 179-80 (1803). Otherwise, as Chief Justice Marshall observed, why does the Constitution "direct the judges to take an oath to support" the Constitution, and "[w]hy does a judge swear to discharge his duties agreeably to the Constitution of the United States if that Constitution forms no rule for his government"? *Id.*, 5 U.S. at 189.

This first principle upon which judicial review rests is especially important in this case. As the court of appeals below observed, the individual mandate, the vortex of this case, is "so unprecedented ... that the government has been unable, either in its briefs or at oral argument, to point this Court to Supreme Court precedent that addresses [its] constitutionality." Florida, 648 F.3d at 1288. Indeed, the court of appeals acknowledged that its own "independent review [did not] reveal such a precedent." *Id.* Rather, that review yielded additional confirmation from both the Congressional Research Service and the Congressional Budget Office, each of which found it to be a completely "novel" proposition that Congress has the power to "require[] people to buy any good or service as a condition of lawful residence in the United States." *Id.*

In its opening brief, however, the Government attempts to obscure the unprecedented nature of the individual mandate with an avalanche of words distilled from this Court's Commerce, Necessary and Proper, and Tax Clause cases. *See* Pet. Br., p. 17 *et seq*. The Government's lawyers insult the intelligence

of this Court when they describe this case as run-of-the-mill, "well within the full scope of [Congress's] authority" (Pet. Br., p. 26). Not once does the Government pause to examine the mandate under the microscope of the Constitution. There is a simple reason for this. As Justice Thomas observed in his concurring opinion in United States v. Lopez, 514 U.S. 549 (1995), the "substantial effect" test (employed by the Government in its opening brief) "taken to its logical extreme, would give Congress a 'police power' over **all** aspects of American life." *Id.* at 584 (Thomas, J., concurring) (emphasis added). And, as Justice Thomas concluded, "[a]ny interpretation of the Commerce Clause that even suggests that Congress could regulate such matters [as marriage, littering, or cruelty to animals] is in need of reexamination." *Id.* at 585.

An unprecedented legislative measure, such as the individual mandate, must not be tested solely by precedent, lest the language of the judicial branch of Government become the operative language of the Constitution, contrary to the Supremacy Clause of Article VI. As Chief Justice Marshall stated in Marbury v. Madison, the language of Article VI "confirms and strengthens the principle, supposed to be essential to all written constitutions ... that courts, as well as other departments, are **bound** by that instrument." *Id.*, 5 U.S. at 180 (emphasis added). In short, Article VI of the Constitution requires judicial opinions to be subordinate to the Constitutional text, not the other way around. It is, therefore, illegitimate to elevate this Court's opinion above the law as it is written in the Constitution. Rather, it is this Court's

duty "to say what the law is" (*id.,* 5 U.S. at 177), not to make the law say what this Court wills it to be.[14]

Since a reexamination of the application of the words of the Commerce Clause and the Necessary and Proper Clause as applied to PPACA could not be undertaken below, it must now be performed by this Court. If this is not done here, then Article I, Section 1, which states that only those "legislative powers **herein granted** [are] **vested** in [the] Congress of the United States" (emphasis added), will have been declared a dead letter by this Court.

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[14] *See* Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 738, 866 (1824) ("Judicial power is never exercised for giving effect to the will of the judge," but "always for the purpose of giving effect ... to the will of the law."). *See also Exodus* 18:16 ("When they have a matter, they come unto me; and I [Moses] judge between one and another, and I do make them know the statutes of God and his laws.").

III. THE INDIVIDUAL MANDATE IS NOT AN EXERCISE OF POWER TO REGULATE COMMERCE, MUCH LESS INTERSTATE COMMERCE.

In pertinent part, Article I, Section 8, Clause 3, states that "[t]he Congress shall have the Power ... [t]o regulate Commerce ... among the several States." If the individual mandate is to be justified under this provision, the decision of an individual whether or not to purchase a health insurance product must, at the very least, be "commerce." According to the Government, the decision **not** to purchase health care insurance is "commerce" because it is "economic conduct" (Pet. Br., pp. 18-19, 26, 33) or "economic activity" (Pet. Br., p. 23), or "economic, commercial activity" (Pet. Br., p. 46). Indeed, the Government points out that Congress, itself, "expressly found [that] the minimal coverage provision 'regulates **activity** that is **commercial** and **economic** in nature: economic and financial decisions about how and when health care is paid for, and when health insurance is purchased.'" Pet. Br., p. 33. Petitioner's brief is devoid of any discussion or analysis of the question of whether the decision **not** to purchase health care insurance is "commerce" within the meaning of that term in Article I, Section 8, Clause 3. And, of course, the Government's brief assumes, *sub silentio*, that the original meaning of "commerce" is irrelevant.

However, as Justice Hugo Black acknowledged in 1944, "[o]rdinarily courts do not construe words used in the Constitution so as to give them a meaning more narrow than one which they had in the **common**

parlance of the **times in which the Constitution was written**." United States v. Southeastern Underwriters Association, 322 U.S. 533, 539 (1944) (emphasis added). Indeed, 100 years before Justice Black wrote these words, this Court had adopted a rule of construction that required the Court to unearth the original meaning of the constitutional text:

> In expounding the Constitution of the United States, every word must have its due force, and appropriate meaning; for it is evident from the whole instrument, that no word was unnecessarily used, or needlessly added. The many discussions which have taken place upon the construction of the Constitution, have proved the correctness of this proposition.... Every word appears to have been weighed with the utmost deliberation, and its force and effect to have been fully understood. No word in the instrument, therefore, can be rejected as superfluous or unmeaning.... [Holmes v. Jennison, 39 U.S. (14 Peters) 540, 570-71 (1847).]

There is, then, no room for the kind of atextual freelancing engaged in by the Government in its brief. Thus, this Court must not let the Government get away with citing Southeastern Underwriters to support its contention that "Congress understood the economic reality that health insurance and health care financing are inherently integrated, and it was **permitted to regulate on that basis.**" *See* Pet. Br., p. 41 (emphasis added). To the contrary, Article I, Section 8, Clause 3 emphatically does **not** empower

Congress to **define** what commerce means, and then to enact the minimum coverage provision pursuant to its own definition. That would undermine Article VI, which requires Congress to enact laws only in "pursuance" of the Constitution. Thus, unlike the Government's brief, Justice Black's analysis in Southeastern Underwriters began with a search for the meaning of commerce in "the dictionaries, encyclopedias, and other books of the period" to determine whether "trading in insurance," like trading in other products and services, constituted "commerce," as that term was understood by the American people in the founding era. Southeastern Underwriters, 322 U.S. at 539.

The Government's approach in this case is the antithesis of that employed in Southeastern Underwriters. Instead of assessing whether the minimum coverage provision of PPACA fits within the original meaning of "commerce" in Article I, Section 8, Clause 3, the Government addresses instead the question whether the "Minimum Coverage Provision" is an integral part of a comprehensive scheme of economic regulation. *See* Pet. Br., p. 24. Thus, the Government would have this Court conform the meaning of "commerce" to fit Congress's view of "economic realities" instead of determining whether PPACA's individual mandate is a subject matter within the original meaning of "commerce." *See* Pet. Br., pp. 24-32. This approach stands the Constitution on its head, in shameless defiance of the essential nature and purpose of a written constitution, substituting the will of Congress over the will of the people, violating the principle:

> That the people have an original right to establish, for their **future** government, such **principles** as, **in their opinion**, shall most conduce to their own happiness, is the basis, on which the whole American fabric has been erected.... The **principles,** therefore, so established, are deemed **fundamental**. And as the authority, from which they proceed, is **supreme** ... they are designed to be **permanent**.... The **powers of the legislature are defined, and limited;** and that those **limits may not be mistaken, or forgotten**, the constitution is **written**. [Marbury, 5 U.S. at 176 (emphasis added).[15]]

Applying the well-established rule that the meaning of the words in the Constitution is the ordinary one, extant at the time the Constitution was written,[16] Justice Marshall got it right in Gibbons v. Ogden, stating that "commerce" is "commercial intercourse." *Id.*, 22 U.S. (9 Wheat.) 1, 189-90 (1824). Or, as elaborated upon by Justice Thomas in his Lopez concurrence, commerce is the "'exchange of one thing for another; interchange of any thing; trade; traffick.'" Lopez, 514 U.S. at 586 (Thomas, J., concurring).

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[15] The temptation to substitute the Court's opinions for the written Constitution is strong and recurrent. Indeed, it is in the very nature of mankind to attempt to conform external reality to one's reason. Such temptation must be resisted no matter what the circumstances or cost. *See Matthew* 4:1-11, especially verses 4, 7, and 10 ("It is written").

[16] *See, e.g.,* E.D. Hirsch, Jr., Validity in Interpretation, pp. 5-6, 212-213 (Yale Univ. Press: 1967).

Whether "commerce" is defined as "intercourse, exchange, or interchange," it connotes "mutuality." "Interchange" for example, meant "to give and take mutually," or "to reciprocate." N. Webster's 1828 Dictionary. Likewise, "exchange" was "the act of giving one thing or commodity for another; barter ... the act of giving and receiving reciprocally." *Id.* "Intercourse" meant a "connection by reciprocal dealings between persons or nations, either in common affairs and civilities, in trade, or correspondence by letters." *Id.*

In contrast, the individual mandate is obligatory and coercive, backed by the full force of the government, in the form of a monetary penalty. As the Government admits, the individual mandate is designed specifically to "internalize" the risks and costs of health care, which it has the temerity to call "classic economic regulation of economic conduct." *See* Pet. Br., pp. 19, 34. In fact, the mandate is classic sumptuary legislation, prohibiting personal spending choices which offend the moral or religious beliefs of Congress. *See* Pet. Br., pp. 39-40. Thus, the Government's individual mandate is not a regulation of commerce; it is a compelled societal duty. Indeed, the individual mandate is not voluntary commercial intercourse; it is forcible economic rape.

IV. THE INDIVIDUAL MANDATE IS NOT AN EXERCISE OF POWER TO MAKE ALL LAWS NECESSARY AND PROPER TO CARRY INTO EXECUTION THE COMMERCE POWER.

While the Government has erroneously assumed that the individual mandate is "commerce" within the meaning of Article I, Section 8, Clause 3, it has correctly understood that, standing alone, the mandate cannot be sustained as a Constitutional exercise of the Commerce power. *See, e.g.,* Pet. Br., p. 17. Rather, the Government contends that the mandate is constitutional because it is a constitutionally permissible means of regulating interstate commerce, as vested by Article I, Section 8, Clause 18 in Congress, namely, "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers...." In short, the Government contends that, because PPACA as a whole is a regulation of interstate commerce, the individual mandate component is a constitutional means to reach that constitutional end. *See* Pet. Br., pp. 17-19. The broad questions before this Court, then, are whether PPACA is a Constitutional exercise of power to regulate interstate commerce, and if so, whether the individual mandate qualifies as a "necessary and proper" means to that end.

As the court of appeals below stated, one must first "know[] what is in the Act," that is, what the "Act says and does." Florida, 648 F. 3d at 1241. In a nutshell, the Government has captured both the purpose of the Act and the means employed by the Act to accomplish that purpose:

> The Act in general, and the insurance reforms in particular, culminated a nearly century-long national effort to **expand access to health care** by making **affordable health insurance** more widely available. [Pet. Br., pp. 12-13 (emphasis added).]

Here, the Government admits that the purpose of the Act is to "expand access to health care," and the means chosen is "making affordable health insurance more widely available." The specific questions in this case, therefore, are whether the Commerce Clause vests in Congress the power to "expand access to health care" and, if so, whether the Necessary and Proper Clause vests in Congress the power of "making affordable health care insurance more widely available." A careful examination of the terms of the Act, and the text of both clauses, demonstrates that neither power is constitutionally authorized.

A. The Government's Claim that PPACA Is an "Economic Regulation" of "Economic Conduct" Is False.

In an effort to fit PPACA and its individual mandate under the Commerce Clause by applying the so-called "substantial effects" test, the Government contends that the Act, as a whole, and the mandate in particular, are nothing more than economic regulations of economic conduct. *See* Pet. Br., pp. 17-19, 21-37. On closer look, however, PPACA and the individual mandate only appear to implement an economic measure to achieve economic objectives. The economic claims made by the Government are little more than a

facade designed to camouflage what is really an enactment of a public morals policy governing personal and familial decisions concerning the physical, emotional, and spiritual health of individual human beings, a power not found among those enumerated in the Constitution.

In justification of the individual mandate, Congress characterized the individual decision to take care of one's body to be an "activity that is commercial and economic in nature: economic and financial decisions about **how and when** health care is paid for, and **when** health insurance is purchased." *See* 42 U.S.C. § 18091(a)(2)(A) (emphasis added). In its brief, the Government agrees with Congress that health care decisions are just a matter of dollars and cents. *See* Pet. Br., pp. 33, 41. By requiring everyone to purchase a government-approved health insurance policy, the Government presumes everyone will have the same access to the health care that they need and want. Both Congress and the Government are mistaken. The health care system approved by PPACA is only one of several available. Yet, PPACA and the individual mandate force everyone, except the precious few who have been given a statutory exemption,[17] to pay for a service that many persons would not voluntarily choose to utilize, for a variety of reasons that have nothing to do with money.

For example, typical government-subsidized health care programs, such as Medicare, exclude from

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[17] *See* 26 U.S.C. § 5000A(d) and (e).

coverage alternative therapy, such as "homeopathy, naturopathy, acupuncture, holistic therapies, midwifery and herbal medicines."[18] According to the Government, PPACA "supplements" Medicare, so there is no reason to expect that PPACA will expand the "health care market" to include alternatives to the conventional, pharmaceutical-centered, allopathic medicine. In short, there is no monolithic health care market as represented by the Government in its brief. *See, e.g,* Pet. Br., pp. 3-5. *See* Alternative Medicine: Expanding Medical Horizons: A Report to the National Institutes of Health on Alternative Medical Systems and Practices in the United States, pp. xi-xxxi (1992) ("The Chantilly Report").[19]

In further "economic" justification of the individual mandate, the Government contends that "as [a] class, the uninsured shift tens of billions of dollars of costs for the uncompensated care they receive to other market participants annually." Pet. Br., p. 2. As the Government explains, the individual mandate is specifically designed to solve this "economic" problem:

> [T]he uninsured as a class presently externalize the risks and costs of much of their

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[18] *See* http://www.medicare.com/services-and-procedures/alternative-therapies.html?ht=.

[19] "Worldwide, only an estimated 10 percent to 30 percent of human health care is delivered by conventional, biomedically oriented practitioners. The remaining 70 percent to 90 percent ranges from self-care according to folk principles to care given in an organized health care system based on **alternative** tradition or practice." The Chantilly Report, p. xv.

> health care; the minimum coverage provision will require that they internalize them (or pay a tax penalty). This is classic economic regulation of economic conduct. [*See* Pet. Br., p. 19.]

But the unilateral economic decision of the uninsured does not externalize the cost and risk of his or her own health care. Rather, as the Government concedes, the uninsured receives health care because of "the **well-established legal duty** of health care providers to provide emergency care **regardless of ability to pay**." *See* Pet. Br., p. 20 (emphasis added). Thus, the rule mandating the near universal purchase of government-approved insurance for government-approved health services is justified, according to the Government, not because restrictions at the point of sale are said to be "infeasible" economically, but because failure to purchase health insurance is morally "inhumane." *Id.* After all, the "legal duty" to provide health care services to someone, regardless of the recipient's ability to pay, is said to arise out of "deeply rooted societal values" and "ethical duties" of health care providers, without regard for monetary considerations. *See* Pet. Br., p. 7. Thus, the individual mandate is not a "classic economic regulation of economic conduct" (Pet. Br., p. 19), but a classic public morals regulation requiring, what Congress has determined to be one's moral duty.[20]

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[20] Indeed, the individual mandate is designed to force the American people to behave like the Good Samaritan, who voluntarily spent his money to cover the medical expenses of a man lying by the wayside. But the parable of the Good Samaritan

Finally, the individual mandate, along with other PPACA provisions, are designed to (i) equalize the financial burdens borne by the healthy and the unhealthy (Pet. Br., pp. 5-6, 10, 18); and (ii) provide better health care for the poor (Pet. Br., p. 9). Indeed, the "market reforms [to] end discriminatory practices under which millions of Americans are denied coverage, or charged unaffordable rates, based on medical condition or history" (Pet. Br., p. 18), remove from consideration a major economic risk factor in setting the price for a health insurance policy. Such reforms are not based upon economic considerations, but on moral ones.

In sum, PPACA and the individual mandate are classic examples of social welfare legislation which subordinates financial concerns to humanitarian ones. Yet, the Government insists that "the Act's broad framework of economic regulations and incentives" are economic in nature and purpose, well within the scope of the Commerce Clause. *See* Pet. Br., pp. 24-30. To the contrary, PPACA, as a whole, and the individual mandate in particular, are social welfare legislation, a classic example of the exercise of the police power reserved to the States. *See* T. Cooley, A Treatise on Constitutional Limitations, p. 706 and n.1 (5th ed. Little, Brown: 1883).

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teaches what one must do to meet God's commandment to "love thy neighbor as thyself." *See Luke* 10:25-36. Coercing behavior to fulfill the law of love is, however, destructive of that very command, love necessarily being a voluntary, unconditional act. *See* H. Clark, Biblical Law, § 23, pp. 11-12 (Metro Press, Portland: 1943).

B. The Commerce Clause Does Not Vest in Congress Any Power to Adopt a National Health Care Policy.

As Chief Justice John Marshall recognized in Gibbons v. Ogden, it "has always been understood [that] the sovereignty of Congress [is] limited to specified **objects**." *Id.*, 22 U.S. at 197 (emphasis added). Among the enumerated powers in the United States Constitution, there is none that empowers Congress to enact any law, the **object** of which is health care. As Chief Justice Marshall observed in Gibbons, "**health laws** of every description ... are component parts" of the "immense mass of legislation, which embraces every thing within the territory of a State, **not** surrendered to the general government." *Id.*, 22 U.S. at 203 (emphasis added). Because "[n]o direct general power over these **objects** is granted to Congress," Chief Justice Marshall continued, "they remain subject to State legislation." *Id.*

Almost 80 years later, echoing Chief Justice Marshall, Chief Justice Melville Fuller wrote:

> The power of the State to impose restraints and burdens on persons and property in ... promotion of the **public health** ... is a power originally and always **belonging to the States, not surrendered** by them to the General Government ... and **essentially exclusive**.... [Champion v. Ames, 188 U.S. 321, 364-65 (1902) (Fuller, C.J., dissenting) (emphasis added).]

Chief Justice Fuller continued, concluding:

> To hold that Congress has general police power would be to hold that it may accomplish **objects** not entrusted to the General Government, and to defeat the operation of the Tenth Amendment.... [*Id.*]

According to Webster's 1828 dictionary, the word "object" meant "end" or "ultimate purpose." *Id.* Five years before Chief Justice Marshall handed down his Gibbons opinion, he wrote McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819) in which he stated that it was of the very "nature" of a constitution that:

> [O]nly its great **outlines** should be marked, its important **objects** designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves. That this idea was entertained by the framers of the American constitution, is not only to be inferred from the nature of the instrument, but from the language. [*Id.* at 407 (emphasis added).]

Thus, by its very nature, the exercise of an enumerated power was limited to the "object" or "end" of the exercise of that power, as determined by the constitutional text, not by the will of Congress.

In McCulloch, Chief Justice Marshall captured this very principle in his seminal test for determining whether a statute enacted by Congress was authorized by the Necessary and Proper Clause:

> Let the **end** be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that **end**, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional. [*Id.* at 421 (emphasis added).]

While the McCulloch test is regularly repeated by this Court, and appears in the Government's opening brief in this case (Pet. Br., p. 23), it has been stripped of all meaning by the assumption that Congress has plenary power under the Commerce Clause to pursue any object, end, or purpose with respect to any subject matter that it chooses. *See* Pet. Br., pp. 21-24. If any end will do, then the Commerce Clause, enhanced by the Necessary and Proper Clause, means that Congress is no longer a government of enumerated powers. *See* Raich, 545 U.S. at 66-71 (Thomas, J., dissenting).

Such a result is inconsistent with Marshall's textual legacy, as is plainly evident from that portion of the McCulloch decision explaining its end/means test:

> [S]hould Congress, under the pretext of executing its powers, pass laws for the accomplishment of **objects not entrusted** to the government, such [acts are] not the law of the land. [*Id.*, 17 U.S. at 423 (emphasis added).]

Such a result is also inconsistent with the text and structure of the Constitution. As Justice Thomas has

most recently observed, the Necessary and Proper Clause, attached to the Commerce Clause, has been construed to "confer on Congress a general 'police power' over the Nation," thereby "subvert[ing] basic principles of federalism and dual sovereignty." Gonzales v. Raich, 545 U.S. 1, 65 (2005) (Thomas, J., dissenting). This would, Justice Thomas has further noted, "convert the Necessary and Proper Clause into precisely what" Chief Justice Marshall's test would never countenance — "a 'pretext ... for the accomplishment of **objects** not intrusted to the government.'" *Id.* at 66. Applying that test here, under the pretext of exercising its power to regulate commerce, Congress produced PPACA, and its individual mandate, as a public health care measure, the enactment of which is outside the scope of any of its enumerated powers and, thus, is an unconstitutional usurpation of the police powers reserved to the States by the Tenth Amendment to the U.S. Constitution.

C. The Means Chosen by Congress to Establish Its National Health Care Services System Was Not an Exercise of Legislative Power.

While Article I, Section 8, Clause 18 is a grant of legislative power to Congress, it is not without limits. As the text states, Congress is authorized to "make ... laws" that are "necessary and proper," not to take any action that it might deem necessary to reach a purportedly constitutional object or end. Thus, by its very language, the Necessary and Proper Clause vests in Congress only those powers that are "legislative" in

nature. *See also* Article I, Section 1. To be justified as an exercise of power under the Necessary and Proper Clause, then, PPACA must be legislative in nature, namely, "rule[s] ... prescribed by the supreme power of a state to its subjects, for regulating their actions." Webster's 1828 Dictionary. *See also* I W. Blackstone, Commentaries on the Laws of England, p. 38 (U. of Chicago, facsimile ed. 1765) ("Law ... is a rule of action, which is prescribed by some superior, and which the inferior is bound to obey...."). More particularly, the Necessary and Proper Clause only authorizes Congress to make "rule[s] of civil conduct ... commanding what its subjects are to do, and prohibiting what they are to forbear." *See* Webster's 1828 Dictionary. *See also* I Blackstone's Commentaries at 44. By definition, then, the Necessary and Proper Clause, as applied to the Commerce Clause, does **not** authorize Congress to **engage** in commerce, but "to regulate [it]; that is, to prescribe the rule by which commerce is to be governed." *See* Gibbons, 22 U.S. at 196.

According to the Government, PPACA is a "comprehensive framework of economic regulation and incentives that will improve the functioning of the national market for health care by regulating the **terms** on which insurance is offered, **controlling costs**, and **rationalizing** the timing and method of payment for health care services." Pet. Br., pp. 2-3 (emphasis added). But under PPACA, the federal government does not "regulate" the interstate health care insurance business; rather, it engages in that business by authorizing the Secretary of Health and Human Services to make business decisions, not to execute rules of conduct by which nongovernment

entities are to conduct their businesses.

First, under PPACA, the Secretary of Health and Human Services is empowered to set the Medical Loss Ratio ("MLR"), that is, the percentage of premium dollars that must be applied to health care expenses and quality improvement, rather than to sales, overhead, and profits — a quintessential business decision previously left largely to private insurance companies. *See* A. Roy, "How ObamaCare May Disrupt Your Health Plan," Forbes.com (Sept. 29, 2010). If companies fail to meet the Government's MLR, then they are required to provide a rebate to their customers. *See* "New Regulations Threaten Insurance for CAM Patients," p. 1.[21] The rebate requirement, in turn, will discriminate against health plans with high deductibles and health savings accounts used by many to help "pay for complementary and alternative medical (CAM) treatments not covered by regular insurance," because the payments made for such services will not count as payments for health care under the conventional medicine policy. *Id.* As a result, insurance companies will likely move away from plans that have high deductibles, and Health Savings Accounts will largely disappear from the marketplace.[22] *Id.*

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[21] http://www.anh-usa.org/new-regulations-threaten-insurance-for-cam-patients/print/.

[22] Plans with low deductibles, with more "first dollar" coverage are relatively more expensive, as they have high administrative costs. *See, e.g.*, D. Hogberg, "ObamaCare Rule May Bar HSAs, Low-Cost Health Plans Investors," Investors.com (Dec. 7, 2011), http://news.investors.com/Article/594079/20111207

Second, under PPACA, the Secretary "**controls health care costs** by reforming the terms on which health insurance is offered...." Pet. Br., p. 17 (emphasis added). "Cost control" is the "use by management of cost analyses and their interpretation in corrective measures towards increasing efficiency and economy of operation." N. Webster, Third New International Dictionary (1964), p. 515. PPACA controls costs by vesting in Government the power to decide what kinds of health care insurance products may be made available for purchase in the marketplace. For example, no one will be able to purchase a health care product that is "based on medical condition or history." *See* Pet. Br., p. 18. Instead, PPACA ensures that there will be no health care insurance product that "discriminates" on the basis of risk, so that persons who might otherwise not be able to afford health care insurance will have such market access at a price set by the Secretary, not at a price set by the market. *See* Pet. Br., p. 17. This is another classic business decision that would be implemented under the guise of the exercise of executive power, pursuant to a rule enacted by Congress. *See* Pet. Br., pp. 17-18.

Third, under PPACA, the Secretary would "expand[] access to health care services ... by ... **rationalizing** the timing and means of payment for health care services." *See* Pet. Br., p. 17 (emphasis added). "Rationalize" is defined by Webster as "apply[ing] the principles of scientific management to

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1853/obamacare-rule-hits-hsa-high-deductible-plans.htm.

(a factory, industrial process, or industry)." Webster's 1964 Third New International Dictionary at 1885. The "rationalizing" power governs the "timing" and "means" of payment for the purchase of the insurance product offered by the Government-run health care insurance market. Again, the individual mandate "plays a critical role," requiring that everyone must buy the Government's health care insurance product at the "time" and using the "means" determined by the Government. *See* Pet. Br., pp. 17-19. Traditionally, the decision of whether to purchase a product is an individual one, based upon numerous factors, only one of which is affordability. Not so, however, under the new scientific management system implemented by PPACA. Under PPACA's collectivist health care service system, almost everyone must participate as a buyer in the market, and the Secretary is given the executive power to establish and solidify the Government's newly-established monopoly.

What appears to be modern and enlightened, however, is feudal and enslaving. Under PPACA, the Government acts as if it is a sole monopolistic proprietor, empowered to exercise virtual ownership of both sellers and buyers of health care insurance in a market in which the Government determines the demand for health care insurance, sets the terms and price, and keeps out the competition. But the Necessary and Proper Clause rests upon an entirely different political and legal foundation, wherein civil authorities are empowered to administer justice by means of democratically and constitutionally enacted rules of civil conduct governing an entrepreneurial people, not to exercise monopolistic dominion like that

employed by a feudal lord over the serfs living on a king's land. To read the Necessary and Proper Clause, as the Government has done in this case, would invert the relationship of government officials and the people, transforming the former into the role of the master, and the latter into role of the servant. Such an inversion directly contradicts the principle upon which the Necessary and Proper Clause, as well as all other enumerated powers, rests, namely, that "[t]he government of the Union ... is, emphatically, and truly, a government of the people," constituted by them to exercise only those powers "granted by them." McCulloch, 17 U.S. at 404-05. Under the American national charter, the Declaration of Independence, it is the government's role to secure the people's God-given rights to life, liberty, and the pursuit of happiness, not to displace those rights with socialistic experiments like PPACA.

VI. PPACA IS AN IMMORAL MANDATE UNWORTHY OF A FREE PEOPLE.

On January 20, 2012, the Obama administration announced that, in order to be compliant with PPACA's mandate that all health insurers cover "preventive health services," employers will be required to furnish, without charge, "the full range of contraceptive methods approved by the Food and Drug Administration"[23]:

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[23] R. Pear, "Obama Reaffirms Insurers Must Cover Contraception," *The New York Times* (Jan. 20, 2012).

> Among the drugs and devices that must be covered are emergency contraceptives including pills known as ella and Plan B. The rule also requires coverage of sterilization procedures for women without co-payments or deductibles. [*Id.*]

Amongst these drugs and devices are potions and instruments that kill the most helpless among us — unborn children.[24]

In support of this new mandate, the Secretary of Health and Human Services stated that the new rule, with only a narrow exception for churches, "strikes the appropriate balance between respecting religious freedom and increasing access to important preventive services." *Id.* Not surprisingly, the Secretary's announcement lit up a firestorm of protest, in Catholics and Protestants alike. The National Association of Evangelicals proclaimed that "[e]mployers with religious objections to contraception will be forced to pay for services and procedures they believe to be morally wrong." *Id.*

In response, President Obama announced that religious employers would be given a year to comply. The Catholic Archbishop replied: "In effect, the president is saying that we have a year to figure out how to violate our consciences." *Id.*

Throughout its brief in this case, the Government

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[24] *See* D. Harrison, M.D., Family Research Council Blog (Sept. 28, 2011), http://www.frcblog.com/2010/09/ella-vs-plan-b/.

has repeatedly referred to "health care," as if it were a self-defining, morally-benign term, governed only by economic considerations (*see* Pet. Br., pp. 18-19, 33-34) and, because "'[h]ealth care and the means of paying for it are "quintessentially economic"'" (*id.* at 46), PPACA is "well within the established scope of Congress's power." *Id.* at 23-24. The January 20 "contraceptives" mandate that extends to abortifacients, issued just two days before the 39th anniversary of Roe v. Wade, shatters the PPACA economic masquerade. The new employer mandate exposes PPACA and its individual mandate for what they really are, a stealth attack unleashing government bureaucrats to intrude into an area of life that has long been governed by the dictates of individual conscience and by a person's relationship to those closest to him — his family, his friends, and his God. *See* Cruzan v. Director, Missouri Dept. of Health, 497 U.S. 261, 269-71 (1990). Even if the current exemption for churches were extended to church-run hospitals, the Government would still be compelling Catholic and Christian businessmen to fund health care that violates their religious beliefs and moral conscience. PPACA's individual mandate is inherently coercive, intruding into areas never before violated by the federal government, which is why it should never be tolerated by a sovereign people.

CONCLUSION

For the reasons set out above, the decision of the Court of Appeals should be affirmed with respect to the individual mandate.

Respectfully submitted,

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