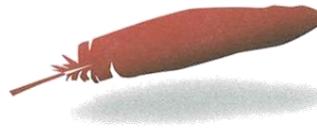


National Indian Health Board



Supreme Court Update: Health Reform Law

November 14, 2011

Today, the Supreme Court announced that it would take up portions of three separate cases concerning the constitutionality of various provisions of the Patient Protection and Affordable Care Act (ACA). The Court has set aside 5 ½ hours of oral argument for the cases to be heard next March.

The Court will hold two hours of argument on the constitutionality of the requirement that virtually every American obtain health insurance by 2014 (the individual mandate), 90 minutes on whether some or all of the overall law must fail if the mandate is struck down (severability), one hour on whether the Anti-Injunction Act bars some or all of the challenges to the insurance mandate¹, and one hour on the constitutionality of the expansion of the Medicaid program.

These questions on the law are contained in appeals filed in the cases of *Florida, et al., v. U.S. Department of Human Services, National Federation of Independent Business v. Sebelius*, and *Health & Human Services v. Florida, et al*, the last being an appeal filed by the Obama Administration.

Tribal Amicus Brief

The National Indian Health Board will continue to be the lead among hundreds of Tribes and Tribal organizations in an Amicus Brief in *State of Florida et al. vs. U.S. Department of Health and Human Services et al.* Immediately filed after the enactment of the ACA, 26 state government plaintiffs challenged the constitutionality of the individual mandate.

Judge Roger Vinson, a federal District Court judge in the Northern District of Florida, concluded that Congress overstepped its bounds with this requirement and because this provision is unseverable from the ACA, i.e., not able to be separated from rest of the law, the entire ACA must be struck down along with the individual mandate provision.

The case then went to the 11th Circuit Court of Appeals. It was at this time that the National Indian Health Board, Tribes and Tribal organizations added their voice in the case as amicus curiae – meaning “friend of the court.” (Individuals or entities that are not parties in the case but have an interest or perspective on issues of a case may seek to file

¹ This question centers on whether the financial penalty for not carrying insurance (i.e. violating the individual mandate) is, in effect, a tax. If so, under the Anti-Injunction Act, its constitutionality cannot be considered until the tax is levied when the provision goes into effect in 2014.



an amicus brief to provide input on the issues being argued.) The amicus brief effort was initiated by the Seminole Tribe of Florida, and with their backing, the National Indian Health Board served as the lead on the Tribal amicus brief.

In the brief, the Tribes expressed that the lower court's ruling on this issue was overbroad and that the Indian Health Care Improvement Act (IHCIA) and the Indian specific provisions of the ACA are independent from ACA's individual mandate provision and these provisions should not be struck down. The 11th Circuit Court of Appeals found the individual mandate unconstitutional by a 2-1 vote on Aug. 12. The court, however, found the individual mandate to be severable from the rest of the law, and found the remaining provisions "legally operative." The federal government on September 28th appealed the case to the Supreme Court. The subsequent Tribal amicus brief will continue the arguments above.

NIHB is encouraging all Tribes and Tribal organizations to sign onto the brief. A critical mass will bolster this important argument. To sign on to the brief, please contact Jennifer Cooper, NIHB Legislative Director, at: jcooper@nihb.org or 202-507-4070.