



On the Pulse

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RE: CRI Amicus Brief on Health Care Law

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The Patient Protection and Affordable Care Act

On May 11, 2011, the Caesar Rodney Institute filed an *amicus curiae* or “friend of the court” brief before the U.S. Court of Appeals for the Eleventh Circuit in *State of Florida, by and through Attorney General Pam Bondi, et al. v. U.S. Department of Health and Human Services, et al.* (CV 11-11021). This case involves challenges by 26 States (not including Delaware), the National Federation of Independent Business and two individuals to the Patient Protection and Affordable Care Act (PPACA). The Caesar Rodney Institute filed its brief in support of the States, arguing that the PPACA’s individual mandate requirement should be declared unconstitutional because it exceeds Congress’ power under the Commerce Clause of the U.S. Constitution. In addition, on May 24, 2011, we filed an *amicus curiae* brief in the U.S. Court of Appeals for the District of Columbia in *Susan Seven-Sky, et al. v. Eric H. Holder, et al.* (CV 11-5047), making the same arguments in support of seven individuals challenging the constitutionality of the PPACA. The Caesar Rodney Institute was represented on the briefs by the New York law firm Lally & Misir, LLP which has an experienced federal appellate team. [We have posted the DC Circuit brief on our website for your review.](#)

The Caesar Rodney Institute focuses on promoting individual liberty, property rights, rule of law, and transparent and limited government for all Delawareans. Delaware has for many years been a leading domicile for U.S. corporations. Over 50% of all publicly traded companies in the U.S. and 63% of all fortune 500 companies are domiciled in Delaware because of the singular competence and proficiency of our courts in business law. As Delawareans, CRI and its’ members have a great interest in the PPACA because it requires all U.S. Citizens to purchase or obtain private health insurance, imposes significant new requirements on corporations and establishes new laws for the health insurance market. Non-compliance results in stiff fines and penalties. The courts permit entities, such as the Caesar Rodney Institute, who are not parties to the litigation, to file friend of the court briefs if they have a strong interest in the case. Other groups filing friend of the court briefs in these health care cases included the American Civil Liberties Union, the Cato Institute, the Chamber of Commerce and the Heritage Foundation.

Our major concern with the PPACA is that the law improperly broadens Congressional power under the Commerce Clause, and threatens the delicate balance between Federal Government and States. Our brief focused on the fact that the PPACA regulates activities outside interstate commerce. The Commerce Clause of the U.S. Constitution only empowers Congress to regulate activities within interstate commerce. This is not a novel legal position. Supreme Court Justice Thurgood Marshall explained it best in his 1971 opinion in *U.S. v. Bass*, limiting a federal gun possession statute because it did not adequately tie the covered gun possession to interstate commerce. “In traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact, faced, and intended to bring into issue, the critical matters involved in the judicial decision.” In the PPACA, Congress failed to follow the law as articulated in the *Bass* case and other subsequent Supreme Court decisions. The courts must uphold the rule of law and system of federalism that is the heart of our great Nation.

We believe it is in the best interests of all Delawareans and all U.S. Citizens that the PPACA be judged unconstitutional. Health care reform can, and should be approached in a totally non partisan manner that ensures all constituencies have a seat at the table. We believe robust solutions can be developed at the State level utilizing the best attributes of our current health care system, while developing cost effective ways to increase access.

Submitted by Robert Prybutok, Vice Chair The Caesar Rodney Institute
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