



U.S. Department of Justice
Office of the Solicitor General

Washington, D.C. 20530

December 5, 2011

Honorable William K. Suter
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: National Federation of Independent Business v.
Sebelius, et al., No. 11-393
Department of Health and Human Services, et al. v.
Florida, et al., No. 11-398
Florida, et al. v. Department of Health and Human
Services, et al., No. 11-400

Dear Mr. Suter:

On November 14, 2011, the Court granted the petitions for a writ of certiorari in the above-captioned cases. The purpose of this letter is to propose briefing schedules for each of the four separate issues on which the Court has granted certiorari. I am authorized to represent that counsel for the parties and the Court-appointed amici agree to the proposed schedules set further below and join in this request.

The Court's grants of certiorari encompasses four separate questions concerning the Patient Protection and Affordable Care Act (PPACA), Pub. L. No. 111-148, 124 Stat. 119:

First, in No. 11-398, the Court granted review of the question whether Congress had the power under Article I of the Constitution to enact the PPACA's minimum coverage provision and allocated two hours for oral argument.

Second, the Court in No. 11-398 directed the parties to brief and argue the question whether respondents' suit challenging the Act's minimum coverage provision is barred by the Anti-Injunction Act (AIA), 26 U.S.C. 7421(a), and allocated one hour for oral argument, although we understand that the time allotted could be expanded to ninety minutes.

Third, in No. 11-400, the Court granted review of the question whether the PPCAC's expansion of Medicaid eligibility exceeds

Congress's spending power.

Finally, in Nos. 11-393 and 11-400, the Court granted review of the question whether the PPACA's minimum coverage provision is severable from the remainder of the Act, consolidated the cases with respect to that question, and allocated 90 minutes for oral argument.

On November 18, 2011, the Court appointed counsel to present briefing and argument as amicus curiae in support of the position that the AIA bars this suit challenging the PPACA's minimum coverage provision (No. 11-398), a position not advanced by any of the parties in this Court. The Court appointed another counsel to argue as amicus curiae in support of the judgment of the court of appeals that the Act's minimum coverage provision is severable from the entirety of the remainder of the PPACA (Nos. 11-393 and 11-400), a position also not advanced by any of the parties.

The parties and Court-appointed amici have agreed to the following briefing schedules, which are designed to ensure full presentation to the Court of each of the four issues encompassed by the grants of certiorari, to ensure that the parties and amici have a full opportunity to respond to the briefs of the other parties and the amici, and to build in some spacing for the parties to prepare and produce multiple briefs in the four separate rounds of briefing.

Under the proposed schedule set forth below, the briefing on the minimum coverage and Medicaid issues would proceed in the usual sequence. But in light of the appointment of amici to present arguments on the AIA and severability issues that differ from those of the parties, the parties and amici propose slightly different schedules on those two issues.

In the briefing on the Anti-Injunction Act question posed by the Court in No. 11-398, the amicus would file the opening brief and reply brief, in the manner of a petitioner challenging the judgment below on the ground that the AIA bars this suit. Petitioners and respondents would then file their bottom-side briefs. The parties and amicus have further agreed, however, that because the respondents advance arguments in support of the position that the AIA does not bar this suit that are not advanced by petitioners Department of Health and Human Services, et al., the parties should be permitted to file reply briefs so that they may respond to arguments raised in the other parties' bottom-side briefs. The amicus would then be permitted to file its reply brief on a later date in order to respond to the parties' arguments.

With respect to the briefing on the severability issue presented in Nos. 11-393 and 11-400, the parties and amicus have

agreed that the parties should each file an opening brief, but that the brief for respondents Department of Health and Human Services, et al., would be filed after that of petitioners, so that respondents may respond to petitioners' positions and arguments on severability. The amicus would then file his brief, and petitioners and respondents would in turn file their reply briefs. This sequence is designed to ensure that the parties and the amicus have a full opportunity to respond to all arguments advanced.

The proposed briefing schedules are as follows:

No. 11-398 (Minimum Coverage Provision):

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| Brief for petitioners: | January 6, 2012 |
| Briefs for respondents: | February 6, 2012 |
| Reply brief for petitioners: | March 7, 2012 |

No. 11-398 (Anti-Injunction Act):

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|---|-------------------|
| Brief for amicus curiae: | January 6, 2012 |
| Briefs for petitioners and respondents: | February 6, 2012 |
| Reply briefs for petitioners and respondents: | February 27, 2012 |
| Reply brief for amicus curiae: | March 12, 2012 |

No. 11-400 (Medicaid):

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|------------------------------|-------------------|
| Brief for petitioners: | January 10, 2012 |
| Brief for respondents: | February 10, 2012 |
| Reply brief for petitioners: | March 11, 2012 |

Nos. 11-393 and 11-400 (Severability):

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|---|-------------------|
| Briefs for petitioners: | January 6, 2012 |
| Brief for respondents: | January 27, 2012 |
| Brief for amicus curiae: | February 17, 2012 |
| Reply briefs for petitioners and respondents: | March 13, 2012 |

With respect to the briefing on the minimum coverage provision question presented in No. 11-398, the parties respectfully request that the word limits be expanded to 20,000 words for the briefs for petitioners and for respondents, and to 8000 words for the reply briefs.

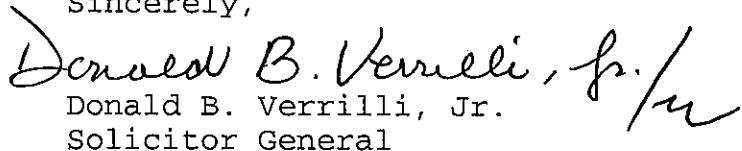
To avoid confusion and maintain a schedule consistent with the briefing schedule outlined above for each distinct issue, the parties and Court-appointed amici request that any other amicus choosing to address particular issues file separate briefs on each issue the amicus chooses to address. On the issue of severability, we propose that any such amicus brief would be due on the same date

as the brief of the party or Court-appointed amicus whose position the brief is supporting. That filing date is necessary to allow adequate time for the parties and Court-appointed amicus to respond. On the other three issues, any such amicus brief would be due seven days after the brief of the party or Court-appointed amicus the brief is supporting, in accordance with the Court's usual practice.

Likewise to avoid confusion, we suggest that the Court order that all amici and parties identify on the cover of each brief they file which issue is addressed in that particular brief. That specification would be in addition to the requirement in Rule 29(c) of the Rules of this Court that an amicus state on the cover of its brief which party it supports and whether it urges affirmance or reversal.

The parties and Court-appointed amici are now conferring on the allocation of oral argument time, and will make a submission to the Court on that issue in the near future.

Sincerely,


Donald B. Verrilli, Jr.
Solicitor General

cc: All Counsel of Record