Written by **Steve Byas** on May 13, 2016

Judge Rules for House Republicans in ObamaCare Lawsuit

U.S. District Judge Rosemary Collyer handed Republicans in the U.S. House of Representatives a victory Thursday in their lawsuit against a provision of the Affordable Care Act, better known as ObamaCare. The controversial health care financing law has generated a number of lawsuits, including *NFIB v Sebelius*, in which the U.S. Supreme Court, by a 5-4 vote, upheld the constitutionality of the law.

The issue in this particular case is the "cost sharing" provision of the law, which requires insurance companies to reduce out-of-pocket costs for policyholders who qualify under those healthcare plans covered by the law. In response, the U.S. House of Representatives sued. House lawyer Jonathan Turley summarized the basis of the suit, arguing that the healthcare law "violated the Constitution in committing billions of dollars from the United States Treasury without approval of Congress." (Article I, Section 9 of the Constitution clearly states, "No money shall be drawn from the Treasury, but in consequence of appropriations made by law.")

Judge Collyer agreed with the House's suit, declaring, "Congress is the only source for such an appropriation, and no public money can be spent without one."

Turley called the judge's opinion a "resounding victory not just for Congress but for our constitutional system as a whole." He added, "We remain a system based on the principle of the separation of powers and the guarantee that no branch or person can govern alone. It is the very touchstone of the American constitutional system and today that principle was reaffirmed in this historic decision."

Former House Speaker John Boehner, who filed the suit, was pleased, declaring, "Today's Obamacare decision is a victory for the American people, and for House Republicans, who have stood firm for the rule of law."

But President Obama's Press Secretary Josh Earnest predictably offered a different viewpoint, stating that the Obama administration would prevail on appeal. Judge Collyer stayed her ruling, allowing the administration to appeal to the U.S. Court of Appeals for the D.C. circuit. Earnest said,

> This suit represents the first time in our nation's history that Congress has been permitted to sue [the] executive branch over a disagreement about how to interpret a statute. These are the kinds of political disputes that characterize a democracy. It's unfortunate that Republicans have resorted to a taxpayer-funded lawsuit to re-fight a political fight they keep losing.

(It is certainly unfortunate that Earnest does not know that the Constitution established a *republic*, not a democracy, in the United States.)

The administration argues that the funds do not have to be appropriated by Congress, because they were permanently appropriated through the Affordable Care Act, pointing to the section that provides tax credits directly to low and middle-income Americans, helping them to pay for premiums. But Judge Collyer, an appointee of President George W. Bush, disagreed with the administration's reasoning.

The passage of ObamaCare has raised multiple constitutional questions, and has produced several lawsuits. In the case of *NFIB v. Sebelius*, the Supreme Court actually rejected the Obama administration's argument for the law's constitutionality, which was that it could act under the "commerce clause" of the Constitution. The federal government has greatly expanded its power by use of the "commerce clause," allowing it to do things no doubt never envisioned by the Founding Fathers.

But Chief Justice John Roberts did not agree that the commerce clause could apply to uphold ObamaCare. "The individual mandate cannot be upheld as an exercise of Congress' power under the Commerce Clause," he argued, adding, "That clause authorizes Congress to regulate interstate commerce, not to order individuals to engage in it."

Taking such an interpretation as decried by Roberts to its logical conclusion would create a totalitarian state, and Roberts apparently recognized that. He added, "Congress could address the diet problem by ordering everyone to buy vegetables. … Accepting the Government's theory would give Congress the same license to regulate what we do not do."

Unfortunately, Roberts preferred not to overturn an act of Congress, acting out of a concept of deference to the wisdom of the legislative branch. So, he simply saved ObamaCare by changing the statute so it would no longer be an unconstitutional mandate. He called the mandate a tax, and upheld the law, arguing that it was not the job of the judicial branch to "protect the people from the consequences of their political choices."

This latest case, however, involves a different question: separation of powers. The heart of the House Republicans' case is that Obama has usurped a legislative power of Congress — specifically the power to appropriate money. The president has tinkered with the ObamaCare law, often modifying the statute more to his liking. Such actions are clearly unconstitutional. The Constitution states that "all legislative power herein granted" is held by Congress. This established two things. One, the only legislative, or law-making powers, held by Congress are those that are herein granted — see Article I, Section 8 of the Constitution. Second, the only branch of the federal government that can constitutionally exercise legislative, or law-making power, is Congress.

Not the president.

It is uncertain if the appellate court, and ultimately the deeply-divided Supreme Court, will agree with the Republicans in the House or with the Obama administration. Obama has won some of the challenges to his signature piece of legislation, but he has also lost some battles in court. For example, following Supreme Court rulings, some companies were able to opt out of contraception coverage over Obama's objections, and states were allowed to decide whether they wanted to expand ObamaCare provisions on Medicaid to low-income residents.

This case could be decided at the appellate court level, and not by the Supreme Court. With the unfortunate death of Justice Antonin Scalia, it is a near-certainty that four members of the Supreme Court will rule for the administration, and four members will not. This resulting tie would leave in place whatever ruling the D.C. Circuit Court of Appeals makes, at least until a ninth Supreme Court justice takes his or her place on the bench.

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