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**THE BROCCOLI CASE: OBAMA ADMINISTRATION, PPACA OPPONENTS
ASK SUPREME COURT TO RULE**

LifeHealthPRO

Sept. 29, 2011: The U.S. Department of Justice and groups that want to block implementation of the Patient Protection and Affordable Care Act of 2010 are calling for the U.S. Supreme Court to decide whether the act is constitutional.

The [National Federation of Independent Business \(NFIB\)](#), Nashville, Tenn., has asked in a petition filed in response to *Florida et al. vs. the U.S. Department of Health and Human Services et al.* -- an 11th U.S. Circuit Court of Appeals case -- whether Congress has the right to make individuals buy health coverage.

[Florida and 25 other states that oppose PPACA](#) bring up the question about the PPACA individual health insurance ownership mandate provision, which is also called the minimum essential coverage provision, in their petition asking for Supreme Court review of the *Florida* case. The states also are asking whether Congress can make states take a specific action by threatening to take away funding for a major program, and whether there are any limits on the ability of Congress to impose mandates on benefits programs for states' own employees.

The [Obama administration](#), which is also filing its petition in response to the *Florida* case, says that the individual mandate is necessary and constitutional.

"It directly addresses the consequences of economic conduct that distorts the interstate markets for health care and health insurance--namely the attempt by millions of Americans to self-insure or rely on the back-stop of free care, and the billions of dollars in cost-shifting that conduct produces each year when the uninsured do not pay for the care they inevitably need and receive," administration officials argue in their petition.

Obama administration officials note that the 6th U.S. Circuit Court of Appeals and the 4th Circuit have ruled in favor of PPACA being constitutional.

NFIB says in its petition that the 11th Circuit is a better vehicle than the other appellate court cases for Supreme Court action because the standing of the plaintiffs in the 6th Circuit case is unclear, and the 4th Circuit did not consider the merits of the case in one of the two major PPACA suits it reviewed.

The Supreme Court should review PPACA quickly, NFIB says.

Otherwise, "individuals, employers, and states will lack a firm understanding of their rights and duties when planning their affairs," the NFIB says. "Providers of health insurance will have no idea what rules will govern their industry".

U.S. District Judge Roger Vinson, a federal judge in Pensacola, Fla., argued in an opinion issued in January that the Commerce Clause of the U.S. Constitution gives Congress no more right to order residents to own health coverage than it does to require them to buy broccoli.

U.S. Circuit Judge Andre Davis, a 4th Circuit judge, wrote in a dissenting opinion on one 4th Circuit PPACA case - in which the appeals court found that it is too early to decide whether PPACA is constitutional or not - that health care is different from broccoli, and that a ruling declaring PPACA to be constitutional would help respond to the health care "free rider" problem and would not give



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Congress the ability to make U.S. residents buy broccoli.

The petitioners refer directly to broccoli only in appendices giving the text of lower-court opinions on PPACA.

The states cite the 11th Circuit opinion, in which the majority states that the "federal government's assertion of power, under the Commerce Clause, to issue an economic mandate for Americans to purchase insurance from a private company for the entire duration of their lives is unprecedented, lacks cognizable limits, and imperils our federalist structure."