

**No. 10-2388**

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**UNITED STATES COURT OF APPEALS  
FOR THE  
SIXTH CIRCUIT**

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**THOMAS MORE LAW CENTER; JANN DEMARS; JOHN CECI;  
STEVEN HYDER; SALINA HYDER,**  
*PLAINTIFFS-APPELLANTS,*

**V.**

**BARACK HUSSEIN OBAMA,** IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE  
UNITED STATES; **KATHLEEN SEBELIUS,** IN HER OFFICIAL CAPACITY AS  
SECRETARY, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES;  
**ERIC H. HOLDER, JR.,** IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF  
THE UNITED STATES; **TIMOTHY F. GEITHNER,** IN HIS OFFICIAL CAPACITY AS  
SECRETARY, UNITED STATES DEPARTMENT OF TREASURY,  
*DEFENDANTS-APPELLEES.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
HONORABLE GEORGE CARAM STEEH  
Civil Case No. 10-11156

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**APPELLANTS' UNOPPOSED MOTION TO EXPEDITE APPEAL**

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Pursuant to Sixth Circuit Rule 27(e), Plaintiffs-Appellants (hereinafter “Plaintiffs”), by and through their undersigned counsel, hereby move the court to expedite this appeal. *See* 6 Cir. R. 27(e). Because all of the briefs have been filed pursuant to the briefing schedule, Plaintiffs request that the court expedite oral argument and decision in this case.

Opposing counsel concurs in the relief requested by this motion, and the parties specifically request oral argument during the court session that runs from May 30 to June 10, 2011.

This case presents for review an important question of first impression that has national implications: whether Congress exceeded its authority under the U.S. Constitution by mandating private citizens, including Plaintiffs, purchase healthcare insurance under penalty of federal law (hereinafter “Individual Mandate”) pursuant to the recently enacted Patient Protection and Affordable Care Act (hereinafter “Health Care Reform Act”).<sup>1</sup>

As noted by the court below, “The [U.S. Supreme] Court has never needed to address the activity/inactivity distinction advanced by plaintiffs because in every Commerce Clause case presented thus far, there has been some sort of activity. In this regard, the Health Care Reform Act arguably presents *an issue of first impression.*” (R-28: Order at 15) (emphasis added).

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<sup>1</sup> Pub. L. No. 111-148, 124 Stat. 119 (2010), *amended by* Healthcare and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010).

The district court ultimately held that the Individual Mandate and its penalty provision were validly enacted by Congress pursuant to its authority under the Commerce Clause. In reaching this conclusion, the district court noted that “[w]hile plaintiffs describe the Commerce Clause power as reaching economic *activity*, the government’s characterization of the Commerce Clause reaching economic *decisions* is more accurate.” (R-28: Order at 17).

There is little doubt that the outcome of this case will not only affect the parties involved, but it will substantially affect virtually every American citizen, the healthcare insurance market, and the healthcare services market, which accounts for approximately one sixth of our Nation’s economy. Thus, the decision as to whether the Individual Mandate, which is considered to be the *essential* component of the Health Care Reform Act, is constitutional will have wide and profound effects, and the longer it takes to reach that decision, the greater is the potential that its effects will be costly and unsettling. In sum, “Nothing would be gained by postponing a decision, and the public interest would be well served by a prompt resolution of the constitutionality of [the Individual Mandate].” *Thomas v. Union Carbide Agric. Prod. Co.*, 473 U.S. 568, 582 (1985).

There are several constitutional challenges to the Health Care Reform Act making their way through the courts. While this case was the first to reach the appellate level on the merits regarding the constitutionality of the Individual Mandate,

two federal cases arising out of Virginia, *Commonwealth of Va. v. Sebelius*, No. 3:10CV188-HEH, 2010 U.S. Dist. LEXIS 130814, (E.D. Va. Dec. 13, 2010) (Fourth Circuit Case No. 11-1057) (holding the Health Care Reform Act unconstitutional) and *Liberty Univ., Inc. v. Geithner*, No. 6:10-cv-00015-nkm, 2010 U.S. Dist. LEXIS 125922, (W.D. Va. Nov. 30, 2010) (Fourth Circuit Case No. 10-2347) (upholding the constitutionality of the Health Care Reform Act), were recently expedited by the U.S. Court of Appeals for the Fourth Circuit. And while the briefing is not yet complete in these Fourth Circuit cases, the court nonetheless scheduled them for oral argument during the week of May 10-13, 2011.

Many predict, rightfully so in Plaintiffs' estimation, that the constitutionality of the Individual Mandate provision of the Health Care Reform Act will ultimately be decided by the U.S. Supreme Court because the issue is one of great significance, both from a legal perspective as well as the public perspective. In that regard, Plaintiffs contend that it would be best for the Supreme Court, as well as the American public, if the Court had the benefit of thoughtful and considered decisions from multiple appellate courts, including the Sixth Circuit.

Consequently, Plaintiffs, with the consent of opposing counsel, respectfully request that the court expedite this appeal and schedule oral argument during the May 30 to June 10, 2011, court session. Plaintiffs also respectfully request that a decision be promptly rendered thereafter so that the voice of this court will be heard on this

issue of great national import in a timely manner.

**CONCLUSION**

Plaintiffs, with the consent of opposing counsel, respectfully request that the court grant this motion to expedite the appeal.

Respectfully submitted,

THOMAS MORE LAW CENTER

/s/ Robert J. Muise

Robert J. Muise, Esq.

LAW OFFICES OF DAVID YERUSHALMI, P.C.

/s/ David Yerushalmi

David Yerushalmi, Esq.

**CERTIFICATE OF SERVICE**

I hereby certify that on January 31, 2011, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that all of the participants in this case are registered CM/ECF users.

THOMAS MORE LAW CENTER

/s/ Robert J. Muise  
Robert J. Muise (P62849)