

ObamaCare at the bottom of the ninth

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Dorinda Bordlee & Nikolas Nikas say efforts to overturn ObamaCare are ongoing . . .



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by Dorinda C. Bordlee and Nikolas T. Nikas

In July of 1973, Yogi Berra’s New York Mets trailed the Chicago Cubs by nine games in the National League East. That’s when he uttered his most famous phrase: “It ain’t over till it’s over.” The Mets rallied to win the division title on the final day of the season.

Most are aware that the Health and Human Services “contraceptive mandate” cases are proceeding, but the legal challenges to ObamaCare as a whole are over, right? Not according to the U.S. Supreme Court. We’re writing this article to summarize the revived ObamaCare challenge — and to invite Legates to join a “friend of the court” amicus brief.

On Nov. 26, 2012, just three weeks after the presidential election, the U.S. Supreme Court issued an order reviving a 2010 lawsuit challenging the constitutionality of vital ObamaCare provisions — provisions that if struck down could prove to be fatal to the entire ObamaCare scheme.

In this revived case — *Liberty University v. Geithner* (No. 11-438) — the Supreme Court granted the Christian university’s petition for rehearing and “remanded to the United States Court of Appeals for the Fourth Circuit for further consideration in light of *National Federation of Independent Business v. Sebelius*.” *NFIB v. Sebelius* is the case issued by the Supreme Court this past summer that upheld ObamaCare’s individual mandate under Justice Roberts’ strained reasoning that the penalty on individuals could be viewed as a “tax.”



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The *NFIB* case did not raise or address many issues that will now be the subject of federal court scrutiny, including provisions regarding the employer mandate and its crippling penalties, the individual mandate in light of possible constitutional infirmities that arise from the Supreme Court’s interpretation of the penalty as a “tax,” and — as raised in our original amicus brief — conscience issues and Free Exercise violations posed by ObamaCare’s hidden “abortion premium mandate.”

The *Liberty* case will be briefed and argued by Liberty Counsel lawyers before a federal appeals court in Richmond, Va., this spring and might end up before the U.S. Supreme Court on the merits before the 2014 effective date of the ObamaCare state exchanges.

Bioethics Defense Fund — the non-profit legal organization that we founded to put law in the service of life in accord with the natural law teachings of the Catholic Church — will be counsel of record on the *amicus* (friend-of-the-court) brief designed to support Liberty University by fully addressing issues of

religious liberty and pro-life conscience.

Several Legatus members have already agreed to be named as “*amici*” (friends) in the brief to be presented to the U.S. Fourth Circuit — and later to the U.S. Supreme Court. We are looking to add as many Legatus members as possible. As *amici*, you would be on record as a Catholic businessperson who has an interest in educating the federal judges about provisions that raise serious conscience objections for Catholics. *Amici* are not parties to the lawsuit, and they are free from any legal obligations.

All that would be required to join the brief as a friend-of-the-court is your name (and that of your spouse if desired) and the location of your Legatus chapter. We will list you in your individual capacity as a Legatus member, but you may list your position and the name of your company for purposes of identification only.

Our brief will address the “abortion premium mandate,” a section that allows health plans in the state exchanges to carry abortion coverage but not to disclose it until enrollment. ObamaCare then requires that every enrollee who ends up in a health plan with abortion coverage must pay a separate itemized abortion premium of a minimum \$1 per month, with no exceptions. That separate premium, directly paid from the pockets of individual enrollees, is required to be placed by the insurer into a fund designated solely to pay claims for other people’s elective abortions.

As counsel on amicus briefs in nearly a dozen HHS mandate cases, we know that the Obama Department of Justice has its hands full defending religious liberty lawsuits across the country. But the rights of conscience lawsuits are set to explode exponentially once millions of Americans find themselves in plans that require a government-compelled abortion premium mandate in 2014 — unless ObamaCare is fatally undermined by this revived legal challenge.

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