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# TPPF: Individual Mandate Not Severable From Main Provisions of ObamaCare Law

By Texas Public Policy Foundation

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AUSTIN, Texas, Jan. 9, 2012 -- Texas Public Policy Foundation submits its first amicus brief to U.S. Supreme Court

AUSTIN, Texas, Jan. 9, 2012 /PRNewswire-USNewswire/ -- If the U.S. Supreme Court strikes down the individual mandate in the Patient Protection & Affordable Care Act (ACA), as several lower courts have done, it should rule that the main health insurance provisions of the ACA in Titles I and II are inseparable from the mandate and must be struck down with it, according to an *amicus curiae* brief filed with the Court by the Texas Public Policy Foundation.

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In late March, the U.S. Supreme Court has set three days of oral argument in *NFIB v. Sebelius*, one of the main lawsuits challenging the constitutionality of the 2010 federal health care reform law. The Supreme Court will examine the 11th Circuit Court of Appeals ruling earlier this year that the individual mandate is unconstitutional, but the rest of the law could operate without it.

"If the individual mandate is struck down, the core provisions of the ACA must fall with it," said Mario Loyola, Director of the Foundation's Center for Tenth Amendment Studies. "If the rest of the law is left in place, an adverse selection will set in because of the ACA's guaranteed-issue provision. Without a mandate to purchase insurance, many will wait until they are sick to purchase, which will cause an escalating and unstoppable surge in premiums. This could drive private insurers out of the market altogether, and leave even more people uninsured than before the ACA was enacted."

Loyola explains that Congress clearly intended all the health insurance reforms and subsidies to depend on the individual mandate.

"If the court strikes down the individual mandate and leaves the rest of the law in place, it will have created a new law that no Congress ever passed and no President ever signed," said Loyola.

The brief submitted last Friday with the U S Supreme Court was authored by Mario Loyola and Josiah

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*Amicus curiae* is a Latin term for "friend of the court." Persons who are not a party to a particular case may submit *amicus curiae* briefs with information and analysis that may help the court resolve legal issues in that case. Today is the first time in the 22-year history of the Texas Public Policy Foundation that it has authored such a brief for the U.S. Supreme Court, and demonstrates both the Foundation's growing national profile as well as the understanding that the state policy landscape is becoming more dramatically influenced by federal decisions.

*Mario Loyola is director of the Center for Tenth Amendment Studies at the Texas Public Policy Foundation.*

*The Cato Institute is a public policy research organization dedicated to the principles of individual liberty, limited government, free markets and peace. Its scholars and analysts conduct independent, nonpartisan research on a wide range of policy issues.*

*The Texas Public Policy Foundation is a non-profit, free-market research institute based in Austin.*

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