

No. 10-612

IN THE SUPREME COURT
OF THE UNITED STATES

October Term 2013

DANIEL G. ANDERSON, et al.,
Petitioners,
v.

BARACK HUSSEIN OBAMA, in his official capacity
as President of the United States,
Respondent.

PETITION FOR REHEARING OF
ORDER DENYING CERTIORARI

PETITION FOR A WRIT OF CERTIORARI

Rudolph Martin Palmer, Jr.
Law Offices of Martin Palmer
21 Summit Avenue
Hagerstown, MD 2174
301-790-0640
info@martinpalmer.com
Attorney for Petitioners

Procedural History and Statement of Facts

For the most part, the procedural history and facts of this matter are set forth in the petition for certiorari.

This Court denied Petitioners' petition for certiorari on January 10, 2011. *Anderson v. Obama*, 131 S.Ct. 940 (2011). A motion for leave to file a petition for rehearing was denied on June 4, 2012. *Anderson v. Obama*, 132 S.Ct. 2738 (2012).

Thereafter, on June 28, 2012, this Court issued its decision in *National Federation of Independent Business v. Sebelius*, 132 S.Ct. 2566 (2012). The Court rejected the Government's argument that the Affordable Care Act's individual

mandate is a valid exercise of Congress's power under the Commerce Clause and the Necessary and Proper Clause. *Id.*, at 2585-93. But the Court then proceeded to uphold the individual mandate as levying a tax on those without health insurance within the power of Congress to “lay and collect taxes,” U.S. Const. Art. I, § 8, cl. 1. *Id.*, at 2593-2601.

REASONS WHY REHEARING SHOULD BE GRANTED

In View Of This Court's Intervening Decision In *National Federation of Independent Business v. Sebelius*, the Affordable Care Act Is A Revenue-Raising Measure That Was Required To Originate In The House Of Representatives By The Origination Clause .

In view of this Court's intervening decision in *National Federation of Independent Business v.*

Sebelius, 132 S.Ct. 2566 (2012), this Court's should reverse its position and grant certiorari. In *Sebelius*, the Court upheld the ACA's individual mandate as levying a tax to raise revenue under Congress' power to "lay and collect taxes," U.S. Const. Art. I, § 8, cl. 1, rather than as a regulatory measure under either the Commerce Clause or the Necessary and Proper Clause. Given that the individual mandate is the key provision in the ACA, the Court's conclusion that it is a tax for the primary purpose of raising revenue, as opposed to an economic regulation to force individuals to acquire health insurance, means that the ACA should be characterized as a revenue-raising measure subject to the mandate of the Origination Clause. Indeed, in view of *Sebelius*, the

employer mandate is also likely to be held to be an exercise of Congress' power to tax for revenue-raising purposes.

In other words, the ACA, as construed and upheld in *Sebelius*, is a bill to “levy taxes in the strict sense of the word.” *Twin City Nat’l Bank v. Nebeker*, 167 U.S. 196, 202 (1897); *accord*, *U.S. v. Munoz-Flores*, 495 U.S. 385, 397 (1990).

Thus, in view of the purpose of the ACA to provide excess revenues designed to reduce the deficit and thereby offset general governmental expenditures (*see* Pet., p. 8), the Court's intervening decision in *Sebelius* provides critical support for Petitioners' argument that the ACA is a revenue-raising measure that was required by the

Origination Clause to originate in the House of Representatives. The Court should therefore grant Petitioners' Petition for Rehearing, vacate its order denying certiorari in this case, and grant certiorari, in order to give the Origination Clause “teeth”, *Sperry Corp. v. United States*, 925 F.2d 399, 406 (Fed. Cir.) (Mayer, C.J., dissenting), *cert. denied*, 502 U.S. 809 (1991) (“If the origination clause is to have any vitality, if . . . it is truly to 'safeguard liberty,' . . . it must have teeth[.]”) (quoting *Munoz-Flores*, 495 U.S. at 395), and thereby restore the people's grip on the Nation's purse strings.

CONCLUSION

In view of the Court's intervening decision in *Sebelius* and the arguments set forth above,

Petitioners respectfully request that the Court grant the Petition for Rehearing, vacate its Order of January 10, 2011 denying certiorari, and issue a writ of Certiorari to the Fourth Circuit Court of Appeals, and that the Court either (a) reverse the judgments of the lower courts and remand with instructions that the District Court grant Petitioners-Plaintiffs' motion for leave to file their second amended complaint and/or (b) reverse the Fourth Circuit's judgment dismissing the Petitioners' appeal and remand the matter to the Fourth Circuit for further proceedings.

Rudolph Martin Palmer, Jr.
Attorney for Petitioners