

# GREG KATSAS ON THE AFFORDABLE CARE ACT

## Highlights:

- Greg Katsas opposed the Affordable Care Act (ACA).
  - Katsas said the ACA was a “blueprint” for a “command-control economy.”
  - Katsas represented the National Federation of Independent Businesses (NFIB) in litigation against the ACA.
    - The NFIB challenged the individual mandate under the ACA.
    - The Supreme Court upheld the ACA.
    - Katsas said he was disappointed in the ruling.
      - Katsas said the result demonstrated that the court was susceptible to pressure from the media and the Obama administration.
  - Katsas supported Ron Johnson’s lawsuit seeking to overturn a decision to restore a health care subsidy under the ACA for members of Congress.
    - A federal judge threw out Johnson’s lawsuit.
  - Katsas called the legal challenge to the ACA’s contraception mandate “really strong.”

## Katsas Opposed The Affordable Care Act

### **KATSAS SAID THE AFFORDABLE CARE ACT WAS A “BLUEPRINT” FOR A “COMMAND-CONTROL ECONOMY”**

**Katsas Said The Affordable Care Act Was A “Blueprint For Congress Replacing A Free Market Economy With A Command-Control Economy.”** According to the Federalist Society’s Federalist Paper, “Katsas maintained that the law was a ‘blueprint for Congress replacing a free market economy with a command-control economy.’” [Federalist Society’s Federalist Paper, [2/1/12](#)]

**Katsas Said Congress Could Even Compel People To Buy Broccoli If It Could Compel Them To Buy Health Care And That It Was Significant That Congress Had Never Forced People To Buy Products.** According to the Federalist Society’s Federalist Paper, “He argued that Congress could even compel Americans to buy broccoli if it can force them to buy health care. Katsas said it was legally significant that Congress has never tried to force people to buy a product, maintaining, ‘The Supreme Court has said that if a seemingly attractive power has not been exercised in the 200 years of constitutional history . . . that is a pretty good reason to think it doesn’t exist.’” [Federalist Society’s Federalist Paper, [2/1/12](#)]

### **KATSAS REPRESENTED THE NATIONAL FEDERATION OF INDEPENDENT BUSINESSES IN LITIGATION AGAINST THE AFFORDABLE CARE ACT**

**Katsas Represented The National Federation Of Independent Businesses (NFIB) In The Business Group’s Litigation Against The Affordable Care Act.** According to Jones Day, “On March 26, 2012, Greg Katsas, an Issues & Appeals partner in Jones Day’s Washington Office, argued before the U.S. Supreme Court on behalf of the National Federation of Independent Business (NFIB) that the Anti-Injunction Act does not bar the Court from hearing a challenge to the Patient Protection and Affordable Care Act’s individual mandate requiring the purchase of health insurance. The transcript and audio file of the argument are available on the Supreme Court web site. Mr. Katsas handles complex litigation in areas including administrative law, antitrust, constitutional law, employment discrimination, international law and arbitration, and product liability. He has argued more than 40 appeals, has won more than 30 appeals, and has argued in every federal appellate court including the U.S. Supreme Court.” [Jones Day via WayBack Machine, [3/26/12](#)]

### **The NFIB Challenged The Individual Mandate Under The Affordable Care Act**

**The NFIB Challenged The Individual Mandate Under The Affordable Care Act.** According to Congressional Quarterly, “Lawyers for the National Federation of Independent Business told the U.S. Supreme Court on Monday that the health care law’s requirement that all Americans have health insurance would compel the uninsured to engage in economic activity that

harms them but benefits insurance companies. In their brief, the lawyers for the law's opponents said that the 'harmful' activity is making healthy people buy something they don't believe they need: health insurance from a commercial firm. 'Never before has Congress enacted such a regulatory mandate,' says the brief. [...] Gregory Katsas, a lawyer for the NFIB, said in a conference call with reporters that there is nothing 'hugely new' in the brief but that it lays out opponents' objections in a 'far more detailed and more rigorous' way than in previous briefs as the lawsuit has made its way through the lower courts. Katsas said the brief makes it clear that Americans' individual liberty is 'profoundly threatened' by the law (PL 111-148, PL 111-152). The law would 'force consumers to buy a product they don't want,' he said, which has 'literally never been done before in history.'" [Congressional Quarterly, 2/6/12]

### **The Supreme Court Upheld The Affordable Care Act**

**The Supreme Court Upheld The Affordable Care Act.** According to Justia, "In a 5-4 ruling, the Supreme Court has upheld the 2010 Patient Protection and Affordable Care Act. While only four Justices found its requirement that certain individuals pay a financial penalty for not obtaining health insurance (26 U.S.C. 5000A) constitutional under the Commerce Clause, Chief Justice Roberts found it constitutional by reasonably characterizing it as a tax." [Justia, accessed [6/25/24](#)]

### **Katsas Said He Was Disappointed In The Ruling**

**Katsas Said He Was Disappointed That The Supreme Court Upheld The Individual Mandate And Said Chief Justice Roberts Upheld The Statute Only By "Turning It Into Something Very Different."** According to CNN, "The new precedent set by the Supreme Court's ruling on the individual mandate could affect future laws passed by Congress. Gregory Katsas, a former clerk for Justice Clarence Thomas who argued against the health care law, appears on Starting Point this morning to discuss the implications of the Court's decision. 'I was surprised and disappointed of course at the result,' Katsas tells Soledad. Chief Justice Roberts' swing vote on the law was an unexpected twist to the ruling, considering that he tends to lean conservative. Katsas explains that he believes Roberts upheld the statute only by 'turning it into something very different.'" [CNN, [6/29/12](#)]

*Katsas Said The Result Demonstrated That The Court Was Susceptible To Pressure From The Media And The Obama Administration*

**Katsas Said He Thought The Court Was Susceptible To Pressure From The Media And The Obama Administration Based On The Result.** According to National Review, "LOPEZ: What does this teach us about the Court? KATSAS: It has no discernible conservative majority, and it may be susceptible to pressure from the media and the administration." [National Review, [7/2/12](#)]

## **KATSAS SUPPORTED RON JOHNSON'S LAWSUIT SEEKING TO OVERTURN A DECISION TO RESTORE A HEALTH CARE SUBSIDY UNDER THE ACA FOR MEMBERS OF CONGRESS**

### **Katsas Supported Ron Johnson's Lawsuit Seeking To Overturn A Decision To Restore A Health Care Subsidy For Members Of Congress Under The ACA**

**Katsas Supported Ron Johnson's Lawsuit Seeking To Overturn A Decision To Restore A Health Care Subsidy For Members Of Congress Under The ACA.** According to Fox Business, "Republican lawmakers are taking aim at the federally-provided subsidies provided to Congress members and some staffers to purchase insurance via state and federal exchanges. Sen. Ron Johnson, (R-WI), filed a lawsuit in January to overturn the restoration of health-care subsidies for members of Congress by the Office of Personnel Management. Currently, 38 GOP lawmakers have signaled support for the lawsuit. The federal government used to subsidize health insurance for lawmakers and some of their staff, but the Affordable Care Act eliminated them. The OPM restored the subsidies in August 2013. Johnson says the move shows 'stunning disregard' for the ACA [...] Greg Katsas, partner at Jones Day which represents the Judicial Education Project, says Johnson's lawsuit has strong odds, because he is challenging a portion of his compensation. The scenario is different than most employer-employee compensation and benefits cases, however, because Johnson isn't asking for more--but less. 'If he were entitled to a

salary of \$100,000 and the government didn't pay him, he could sue to get the salary, no question whatsoever,' he says. 'But he is challenging health-care benefits instead of salary.'" [Fox Business, [4/22/14](#)]

### **A Federal Judge Threw Out Johnson's Lawsuit**

**A Federal Judge Threw Out Johnson's Lawsuit.** According to the Milwaukee Journal Sentinel, "A federal judge threw out a lawsuit Monday brought by U.S. Sen. Ron Johnson and one of his aides attempting to force members of Congress and their staffs to stop getting subsidies for their health insurance under Obamacare." [Milwaukee Journal Sentinel, [7/22/14](#)]

## **KATSAS CALLED THE LEGAL CHALLENGE TO THE ACA'S CONTRACEPTION MANDATE "REALLY STRONG"**

**Katsas Suggested The Religious Freedom And Restoration Act Conflicts With The Affordable Care Act's Contraception Mandate.** According to Congressional Quarterly, "Barnett is not directly involved in the fresh round of litigation but sponsored a Federalist Society discussion at Georgetown on Wednesday night with two leading constitutional lawyers, Catherine E. Stetson and Gregory G. Katsas. [...] Stetson, partner and director of the appellate practice group at firm Hogan Lovells, said the fate of closely held businesses owned by Catholics with religious objections to the rule will be interesting to watch. One issue will be whether the rule 'substantially' burdens those Catholics' religious rights, she said. 'One of the other interesting issues surrounding this contraception mandate is whose exercise of religion are we talking about?' she asked. 'Can a corporation exercise religion?' Katsas, who represented the law's opponents in the health care suit at the high court, said his firm, Jones Day, is handling some of the birth control suits. 'I think these are fascinating cases,' he said. 'It seems to me the challengers' cases are really strong there. The Religious Freedom Restoration Act is a very pro-religion statute.'" [Congressional Quarterly, 11/30/12]