

Why This Religious Liberty Law Firm Sued Obama for Complete 'Lawlessness'

The American Freedom Law Center (AFLC) filed a federal lawsuit on July 4, 2014, in the United States District Court for the District of Columbia against President Barack Obama and several of his executive agencies for engaging in unlawful executive action that exceeds the authority of the Executive Branch and thus violates the separation of powers principles enshrined in the Constitution. The lawsuit, which is captioned *American Freedom Law Center v. Obama*, alleges that Obama has violated his constitutional duty to “faithfully execute” the Patient Protection and Affordable Care Act (Obamacare)—his signature piece of legislation which was passed by Congress and signed into law in 2010—dealing a severe blow to the Constitution’s separation of powers, which is designed to protect private individuals from the tyranny of government, and in particular, from the tyranny of a single branch of government that seeks to usurp power and authority not permitted under the Constitution. AFLC’s lawsuit alleges the following:

This civil action seeks to preserve those structural principles enshrined in our Constitution that are designed to protect private individuals from the tyranny of government, and in particular, from the tyranny of a single branch of government that seeks to usurp power and authority not permitted under the Constitution. Thus, Plaintiffs challenge here the ultra vires actions of the Executive Branch regarding its refusal to “faithfully execute” the Patient Protection and Affordable Care Act, which was passed by Congress and signed into law in 2010. By executive fiat, President Obama has licensed prohibited conduct and has engaged in a policy-based, non-enforcement of federal law for

an entire category of individuals and organizations subject to the law in direct violation of the United State Constitution.

As the U.S. Supreme Court affirmed in 2011 in *Bond v. United States*: “Separation-of-powers principles are intended, in part, to protect each branch of government from incursion by the others. Yet the dynamic between and among the branches is not the only object of the Constitution’s concern. The structural principles secured by the separation of powers protect the individual as well. . . . In the precedents of this Court, *the claims of individuals*—not of Government departments—have been the principal source of judicial decisions concerning separation of powers and checks and balances.” Robert Muise, AFLC Co-Founder and Senior Counsel and a plaintiff in the suit, commented:

“America is and must remain a ‘nation of laws, not of men,’ as John Adams put it. The lawlessness of this administration is breathtaking and dangerous. And the American people are sick and tired of this President’s flippant disregard for the Constitution and Congress’ unwillingness to do anything serious about it. So on this Independence Day, the American Freedom Law Center asserted on its behalf and on behalf of all Americans the constitutional right to challenge this President’s lawlessness in order to stop it.”

As noted in the lawsuit, in 2013 millions of Americans received notices that their health insurance was cancelled, a result that was predictable in light of the mandates imposed by the Affordable Care Act. This caused a political firestorm for the White House because Obama had promised the American people that if “you like your health care plan, you can keep it”—a promise that was contrary to the clear and unambiguous language of the Act. In fact, in October 2013, the Department of Justice filed a brief in federal court in Washington, D.C.,

stating that the administration has “estimated that a majority of group health plans will have lost their grandfather status by the end of 2013.” Consequently, as a politically expedient measure, Obama engaged in a series of executive actions that materially altered the Affordable Care Act without approval from Congress. As alleged in the lawsuit, “By executive fiat, [Obama and his executive agencies] altered the requirements of the Affordable Care Act and thus established with an unconstitutional and illegal claim of executive authority that otherwise-prohibited conduct—in particular, maintaining non-compliant health care plans—will not violate the Act, in direct violation of the separation of powers set forth in the United States Constitution.” As stated further in the lawsuit, “By altering the clear and unambiguous statutory requirements of the Affordable Care Act, including the Act’s ‘essential’ component, and thus establishing with an unconstitutional and illegal claim of executive authority that otherwise-prohibited conduct will not violate the Act, [President Obama and his executive agencies] have directly harmed law-abiding citizens, including Plaintiffs, and violated the United States Constitution.” As AFLC’s lawsuit points out, just this term (2014) the Supreme Court in *Utility Air Regulatory Group v. EPA*, made clear that “[t]he power of executing the laws necessarily includes both authority and responsibility to resolve some questions left open by Congress that arise during the law’s administration. But it does not include a power to revise clear statutory terms that turn out not to work in practice.” Relying in part upon “Congress’s explicit findings” to demonstrate the individual and particularized harm caused by Obama’s unlawful actions, AFLC’s lawsuit alleges that “as the pool of ‘applicable individuals’ who are required to purchase ‘minimum essential coverage’ pursuant to the unambiguous language of the Affordable Care Act is reduced, as President Obama has done through his unlawful executive actions, the direct effect of this action is to financially burden those who do maintain ‘minimum essential coverage’ pursuant to the Act, specifically including Plaintiffs, who

are now suffering an economic injury directly related to [Obama's] unlawful actions." David Yerushalmi, AFLC Co-Founder and Senior Counsel, commented:

"In order to keep his broken promises and clean up the political mess he made, President Obama disregarded his constitutional duty to obey the law of the land and flipped Obamacare upside down without Congressional approval."

Yerushalmi continued:

"As AFLC Advisory Board Member, bestselling author, and dear friend Andy McCarthy appropriately points out in his latest book, Faithless Execution, the Framers had in view the President's oath of allegiance to our system of government in which the President's highest duty is the faithful execution of the laws—laws that are appropriately passed by Congress pursuant to its constitutional authority. Thus, the mere attempt to subvert the Constitution and its separation of powers principles would be a breach of trust warranting impeachment and removal. In short, a free country requires the rule of law. But the rule of law is a sham if lawlessness is rampant among those who govern. This was the deep political truth that the Framers recognized and thus made provisions for the impeachment of an errant executive. It is a truth that we ignore at our peril."

CASE UPDATE (September 23, 2014): AFLC filed a motion for a preliminary injunction, seeking to enjoin Obama's unlawful executive actions. **CASE UPDATE (October 30, 2014):** AFLC filed a reply in support of its motion for preliminary injunction. **CASE UPDATE (October 30, 2014):** AFLC filed its response in opposition to the government's motion to dismiss. **CASE UPDATE:** Oral argument on AFLC's motion for preliminary injunction is scheduled for November 5, 2014, in federal court in Washington, D.C. **CASE UPDATE (January 9, 2015):** Following oral argument, AFLC filed a motion with the court requesting leave

to file a supplemental brief setting forth newly discovered evidence that supports AFLC's standing to challenge Obama's unlawful executive actions. Today, the court granted the request. **CASE UPDATE (May 15, 2015):** The district court dismissed our lawsuit for a lack of "standing," which, unfortunately, is a way for the court to avoid addressing the difficult constitutional issues. But no man is above the law.

We intend to appeal this decision. **CASE UPDATE (June 3, 2015):** AFLC filed its notice of appeal to the U.S. Court of Appeals for the D.C. Circuit, seeking review of the district court's order dismissing the case on standing grounds.

Attachments

-  Complaint–AFLC v Obama–Filed
-  AFLC v Obama–PI Motion–Filed
-  Reply in Supp of PI Mot–Filed
-  Pls' Resp to MTD–Filed
-  Motion to File Supplemental Brief and Evidence
-  Ex A–Actuarial Memorandum
-  Plaintiffs' Motion to File Surreply / Supplemental Brief
-  Court's Order Granting Surreply
-  Order Dismissing for Lack of Standing
-  Notice of Appeal–Filed