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for purposes of identification.*

November 18, 2011

The Honorable John G. Roberts  
Supreme Court of the United States  
1 First Street NE  
Washington, D.C. 20543

Re: Request for Access to Audio and Video Recordings of Oral Arguments  
in *Nat'l Fed'n of Indep. Bus. v. Sebelius*, No. 11-393, *Florida v. Dep't  
of Health & Human Servs.*, No. 11-400, and *Dep't of Health & Human  
Servs. v. Florida*, No. 11-398

Dear Chief Justice Roberts,

The media coalition (“coalition”) comprised of the below-listed national and local news organizations, nonprofit associations representing newsgatherers, and trade groups writes to respectfully request audio and video access to the oral arguments in the three cases addressing the Patient Protection and Affordable Care Act.

Because the health care reform law deeply affects millions of Americans, there likely will be a strong interest nationwide in closely following the proceedings as, or shortly after, they occur. As such, the Court’s current policy of releasing audio recordings of arguments at the end of the week will not adequately satisfy this strong public interest in being timely informed of important developments in a matter of such overwhelming impact on such a widespread scale. The usual practice will also impede journalists’ ability to provide same-day coverage of the arguments to readers, viewers and listeners who rely on the news media for information about this crucial issue of significant public interest.

In his similar request to the Court, C-SPAN chairman and chief executive officer Brian Lamb writes that audio-only coverage of a 5 ½-hour event in which all the justices and various counsel will participate would not sufficiently serve the public interest in closely monitoring and understanding the proceedings. We agree with him.

As we are sure the Court is well aware, immediate release of audio recordings has served the Court well in the past. Specifically, the Court released within minutes of their completion audio recordings of oral arguments in the extraordinarily high-profile presidential election cases of 2000, *Bush v. Palm Beach Cnty. Canvassing Bd.*, 531 U.S. 70 (2000), and *Bush v. Gore*, 531 U.S. 98 (2000). It followed the same procedure for oral arguments in the 2003 affirmative action cases and the constitutional challenge of the McCain-Feingold campaign finance reform laws. *McConnell v. Fed. Election Comm’n*, 540 U.S. 93 (2003), *overruled by*

*Citizens United v. Fed. Election Comm'n*, 130 S. Ct. 876 (2010); *Gratz v. Bollinger*, 539 U.S. 244 (2003); *Grutter v. Bollinger*, 539 U.S. 306 (2003).

To be sure, the American public's access to affordable health care is among the most significant issues to inform public debate in this country and to come before its highest Court in many years. It is by no means any less important than the issues presented in the aforementioned prior cases where audio recordings of oral arguments were released for public and broadcast use in an expedited manner. The time has come for that valuable access to be expanded to include visual recordings.

While a Supreme Court nominee, Justice Elena Kagan indicated at the 2009 Ninth Circuit Judicial Conference that cameras in the high Court would well serve the rationale underlying this nation's strong tradition of openness in court proceedings: "[I]f cameras were in the courtroom, the American public would see an amazing and extraordinary event. . . . I think if you put the cameras in the courtroom, people would see . . . an institution of their government working at a really high level." *See* Interview with Elena Kagan, Solicitor General of the United States, in Monterey, Cal. (July 23, 2009), available at <http://www.youtube.com/watch?v=L2Ng1GNICLk>. We agree with her as well.

The coalition respectfully requests that the Court allow the American public the opportunity to observe contemporaneously or near-contemporaneously how its government will work to resolve an issue that profoundly affects millions of people nationwide.

While full camera access would be the preferable route, we urge the Court at least to make live simultaneous audio available or, at the very least, to release the audio tapes immediately after the hearing, thus ensuring the same level of public access to this event as that provided to arguments in previous historic cases that likewise significantly affected the American public.

Sincerely,

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Lucy A. Dalglish, Executive Director  
Gregg P. Leslie, Legal Defense Director  
Kristen Rasmussen, McCormick Legal Fellow

***On behalf of the following:***

**ABC News**

**A. H. Belo Corporation**

**Allbritton Communications Company on behalf of WJLA-TV and NewsChannel 8,  
Washington, D.C.**

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cc: Associate Justice Antonin Scalia  
Associate Justice Anthony M. Kennedy

Associate Justice Clarence Thomas  
Associate Justice Ruth Bader Ginsburg  
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Associate Justice Sonia Sotomayor  
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