



Bienert | Katzman, PLC

December 27, 2018

Molly C. Dwyer
Clerk of the Court
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

In re: *United States v. Bronsozian*, No. 17-50197

Dear Ms. Dwyer:

Pursuant to Fed. R. App. P. 28(j), Appellant submits the decision in *Texas v. United States*, No. 4:18-CV-00167-O, 2018 WL 6589412 (N.D. Tex. Dec. 14, 2018) (“*Texas v. United States*”), granting partial summary judgment in favor of the plaintiffs.

Like this case, *Texas v. United States* involved a challenge to Congress’ authority to pass legislation based on its Article I, § 8, cl. 1 power to tax. The plaintiffs (a coalition of states led by Texas) alleged that the Affordable Care Act (“ACA”) was unconstitutional under the rationale set forth in *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012) (“*NFIB*”). In *NFIB*, the Supreme Court held that the Individual Mandate of the ACA was not authorized under Congress’ Commerce Clause authority, but a majority of justices construed it to be within Congress’ Article I, § 8, cl. 1 power to tax because it generated some revenue in the form of a “shared responsibility” payment imposed on those who do not purchase health insurance. *Id.* at 569.

Congress reduced the “shared responsibility payment” to zero in the Tax Cuts and Jobs Act (“TCJA”), Pub. L. No. 115-97, § 11081, 131 Stat. 2054, 2092 (2017). The plaintiffs in *Texas v. United States* argued that when that occurred, the sole constitutional authority for the Individual Mandate was eliminated. The defendants (the United States and several federal agencies and officials) agreed, and so did the Court. *See* 2018 WL 6589412 at *15 (“Under the law as it now stands, the Individual Mandate no longer “triggers a tax” beginning in 2019. So long as the shared-responsibility payment is zero, the saving construction articulated in *NFIB* is inapplicable and the Individual Mandate cannot be upheld under Congress's Tax Power.”).



The decision strongly supports Bronsozian’s argument that 26 U.S.C. § 5861(d) is unconstitutional. Just as the elimination of the “shared responsibility payment” undermined the sole constitutional justification for the Individual Mandate of the ACA, the government’s refusal to register and tax the possession of machineguns undermines the sole constitutional justification for 26 U.S.C. § 5861(d). *See* Appellant’s Opening Brief at 27-50; Reply at 2-10.

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A handwritten signature in blue ink, appearing to be 'John Littrell', written in a cursive style.

John Littrell