

Florida Federal Court Declares Health Insurance Mandate

Judge Roger Vinson of the U.S. District Court for the Northern District of Florida on January 31 released his long-awaited decision on the constitutionality of the Patient Protection and Affordable Care Act (PPACA). In *Florida v U.S. Dep't of Health & Human Servs.*, -- F.Supp.2d ----, 2011 WL 285683 (ND Fla.), he declared the individual mandate provisions of PPACA unconstitutional because they are beyond the powers of Congress under the Commerce Clause. In addition, he held that the individual mandate could not be severed from the rest of the law and declared the entire statute void.

In his 78-page opinion, Judge Vinson reviewed the origins and history of the Commerce Clause and concluded that the key question before him was whether the federal government's exercise of power pursuant to the Commerce Clause required that there be an "activity" to regulate. He noted that the Supreme Court had never addressed this question and that Congress had not previously attempted to compel individuals to engage in commerce. He held that including "inactivity" within the reach of the Commerce Clause "would be a radical departure from existing case law..." 2011 WL 285683 at*22 Throughout his opinion, he stressed that Congress requiring citizens to buy a product is not supported by the words or intent of the Commerce Clause.

It is difficult to imagine that a nation which began, at least in part, as the result of opposition to a British mandate giving the East India Company a monopoly and imposing a nominal tax on all tea sold in America would have set out to create a government with the power to force people to buy tea in the first place. [2011 WL 285683 at*22]

Judge Vinson next analyzed the question of whether the failure to buy health insurance is an "activity." The government argued that such a failure is economic "activity" because everyone is in the health care market - no one can predict when they will need medical care. Since hospitals are required to provide services to the uninsured and these costs are passed on to others if the uninsured cannot pay, the failure to buy insurance has economic implications for everyone. The government claimed that this impact makes health insurance unique. After pointing out that the inability to opt out of certain activities and cost-shifting are not in fact unique, the court held that whether PPACA addresses a unique problem does not matter because rarity is not a justification for the unconstitutional exercise of power.

The opinion further states that "the status of being without health insurance, in and of itself, has absolutely no impact whatsoever on interstate commerce (not 'slight,' 'trivial,' or 'indirect,' but no impact *whatsoever*)"... 2011 WL 285683 at*26. There is an impact only if an uninsured gets sick, cannot pay for care and the cost is shifted to others. The court refused to pile "inference upon inference" to find "activity" in the failure to purchase. It also rejected the argument that there is "activity" if a person makes the "economic decision" not to buy health insurance, or life insurance, or disability insurance, instead relying on the government or others as a "backstop." Judge Vinson further held that the Necessary and Proper Clause does not expand Congress's power under the Commerce Clause so that arguments that the individual mandate is necessary to support PPACA's requirement that insurance companies insure everyone regardless of pre-existing conditions also fails.

On the question of severability, the opinion relies heavily on the government's own arguments that the mandate is essential for the insurance market reforms of PPACA to survive. Having found the individual mandate to be unconstitutional, Judge Vinson held that it was not severable, noting that the statute had no severability clause and that both the legislative history and the government's arguments strongly suggested that the mandate alone could not be removed. He declined to go through the law's several hundred provisions trying to determine whether Congress would have passed each of them absent the individual mandate, holding that it would be unfeasible and improper for a court to do a job more properly done by Congress.

In striking down the entire statute, Judge Vinson diverged from Judge Hudson's December 13, 2010 decision in *Virginia v. Sibelius*, 728 F.Supp.2d 768 (ED Va. 2010) which severed the individual mandate and left the rest of the statute intact. The federal government appealed *Virginia v. Sibelius* to the Fourth Circuit over a month after it was decided although it announced its decision to appeal almost immediately. It has already announced that it will appeal Judge Vinson's decision to the Eleventh Circuit. Another district court decision upholding PPACA is making its way to the Sixth Circuit. With the government not interested in expediting the appeals, these cases are unlikely to reach the Supreme Court before late 2011, probably pushing the final decision on constitutionality into 2012.

Like Judge Hudson, Judge Vinson declined to enter an injunction against the federal government to prevent it from enforcing the law. Both indicated that they expected the Executive Branch to comply with their decisions without the necessity of an injunction. In the Virginia case, the issue of enforcement is not quite as important from the government's perspective as it is in the Florida case, since the individual mandate provision does not become effective until 2014. However, since some other provisions of the law are effective now, it is likely that the Justice Department will seek a stay of Judge Vinson's order.

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