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Why The Patient Protection and Affordable Care Act is Constitutional

As an attorney in the Chicago area, I have been following the coverage of the Supreme Court case of Department of Health and Human Servs. v. Florida (Docket No. 11-398), as well as the media coverage of the same. Specifically, I have been following the coverage of the issue regarding the constitutionality of the individual mandate. It should initially be noted that I have my own opinions about the law from a political perspective, but that this is not meant to be a political article. Indeed, I am writing strictly from a scholarly perspective with an eye toward legal analysis. In many ways, I have found the media coverage of this case to be avoiding the biggest problem presented with overturning the individual mandate law on the basis it is unconstitutional. Specifically, that the law ***is not*** unconstitutional based on over (70) years of precedent.

In many ways, the arguments that some of the judges presented from the bench are without much support. The simplest way to explain the issue i have with the challenge to the constitutionality to this law is in two-parts:

First, Congress has long had regulations and laws on the books requiring interstate truckers to, at a minimum, prove that they carry private insurance. *See e.g.* 49 CFR 365.405. Accordingly, Congress can require a private citizen to purchase private insurance so long as it is in "interstate commerce."

Second, it has long been the law that if something "impacts" interstate commerce, it is in interstate commerce and, as such, can be regulated by Congress. In one recent Supreme Court decision, the court held that a private citizen growing marijuana in her own backyard strictly for private use in California involved interstate commerce, albeit illegal commerce.(Gonzales v. Raich). This has been the interpretation of the Constitution since the case ofWickard v. Filburn, which was decided almost seventy (70) years ago. It is hard to see how Congress can force a private person (a trucker or trucking company) to purchase private insurance because that impacts interstate commerce; argue that someone growing marijuana in her backyard for her own personal use impacts interstate commerce; but, simultaneously, hold that health insurance that impacts millions of people across the nation does not and is unconstitutional.

While I can certainly understand the political context of this law and know that it is an extremely volatile issue, it is not for the Court to make political rulings. Indeed, the Supreme Court's sole duty in this case is to determine, based on the power first discussed in the seminal case of Marbury v. Madison, whether the law is constitutional. It is also well-known among lawyers that, in deciding whether something is constitutional, a Court will follow precedent so long as there isn't a very strong reason for not doing so. If it were otherwise, attorneys, and their clients, would face chaos since they would be unable to know, without some certainty, what the law is.

It has been a source of frustration to me, and my colleagues, that the media, and even thepresident, has not pointed out the issues in overturning this law. In the author's personal opinion, the Supreme Court could be facing very real questions about it's authority if it begins to overturn laws, like the Patient Protection and Affordable Care Act, that are virtually indisputably constitutional based solely on the past seventy (70) years of precedent.
-Drake Shunneson (copyright 2012)