

## Florida Federal Court Finds Affordable Care Act Unconstitutional

February 4, 2011

A judge in Florida recently determined that health care reform legislation passed in 2010 is unconstitutional due to its individual insurance mandate. This marks the second time in as many months the Affordable Care Act has come under fire: in December 2010, a Virginia judge also struck down the mandate.

On Monday, January 31, 2011, the U.S. District Court for the Northern District of Florida held that the individual insurance mandate in the Patient Protection and Affordable Care Act (ACA) is unconstitutional. Beginning in 2014, the mandate will require most uninsured people to either obtain government-approved health insurance or pay a financial penalty. In December 2010, a Virginia court also struck down the insurance mandate (see [Virginia Federal Judge Rules on Constitutionality of U.S. Health Care Law Reform](#)). Unlike the Virginia decision, however, the Florida decision found the ACA *in its entirety* to be unconstitutional, concluding that the insurance mandate is so substantively “essential” to the ACA that the law could not be implemented without it. The court also noted that, in enacting ACA, the U.S. Congress omitted severability language that is commonly included in most legislation.

Because relatively few powers in the U.S. Constitution are granted to Congress with specificity, the question of whether or not the federal government has the authority to pass particular laws historically has often been a matter of judicial interpretation. Since the New Deal era, the Supreme Court of the United States has taken an increasingly expansive interpretation of the Constitution’s Commerce Clause, which grants Congress the power to enact laws regulating interstate commerce.

Both Judge Vinson in the Florida case and Judge Hudson in the Virginia case found that the insurance mandate fell outside the scope of the Commerce Clause. Prior to these decisions, two other federal district judges (one in a different Virginia district and one in Michigan) had ruled the opposite way, determining that it was within Congress’ power to enact legislation containing the mandate.

Under Judge Vinson’s analysis, if Congress is constitutionally authorized to compel an uninsured individual to purchase government-approved health insurance then Congress could also regulate “inactivity,” and the interpretation of the Commerce Clause’s scope would be so broad that there would be virtually no limit to the areas in which Congress could enact federal laws.

At the same time, Judge Vinson ruled against the plaintiffs in their claim that the ACA violates state sovereignty rights by requiring states to pay for a fractional share of the planned expansion of Medicaid. While there are some 20 other cases pending which challenge the ACA, the Florida litigation has been the most prominent and closely watched because the plaintiffs were from 26 states.

In other developments, the Virginia Attorney General announced on February 3, 2011, that he prefers to skip an intermediate review by the U.S. Court of Appeals for the Fourth Circuit and instead will request expedited review by the U.S. Supreme Court. On the legislative front, Senate Republicans proposal to repeal the ACA was defeated 51-47 in a party line vote February 2.

Judge Vinson's decision only has material impact on the ACA in Florida, which for the time being will cease implementation of the ACA in that state. Some other states have said they will curtail spending on implementation efforts given the uncertainty over the future of the legislation. Generally, however, health care providers and industry stakeholders, such as insurance companies, cannot take a "wait and see" approach because the U.S. Centers for Medicare & Medicaid Services and the U.S. Department of Health and Human Services are continuing to implement the ACA, including issuing regulations under the ACA during the period that the legal process plays out. In addition, it is expected that many ACA reforms unrelated to the insurance mandate, such as the reforms applicable to Medicare, including accountable care organizations, will proceed with almost any scenario.

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