



HEALTH CARE REFORM

STATUS OF LEGAL CHALLENGES – UPDATE

By Alice Eastman Helle / helle@brownwinick.com

Website: www.brownwinick.com

August 15, 2011

On August 12, 2011, a three-judge panel of the United States Court of Appeals for the 11th Circuit ruled that the individual mandate of the Patient Protection and Affordable Care Act (“PPACA”) is unconstitutional. The individual mandate requires most people to either carry health coverage by 2014 or pay a penalty. The Court reversed the finding of the lower court, however, which had found that the individual mandate was not severable and thus rendered the entire statute unconstitutional. The case is *Florida v. Sebelius*.

The 11th Circuit ruling was a 2-1 decision, with one dissenting judge opining that the mandate is constitutional. The decision follows closely on the heels of the July 7 ruling of the United States Court of Appeals for the 6th Circuit that the mandate is constitutional. That decision was also 2-1, with one dissenting judge concluding that the mandate is unconstitutional. The plaintiffs in that case have now filed a petition for review with the United States Supreme Court. That case is *Thomas More Law Center v. Obama*.

The government’s options in the 11th Circuit case are to either request a rehearing by all of the judges of that Court of Appeals or to petition the Supreme Court for review. The fact that there is now a split between two circuits on the issue of the constitutionality of the mandate increases the odds that the Supreme Court will grant review. Given the timing, there is a chance that the Supreme Court may decide this issue in its next session, which begins in October.

In the meantime, four other cases have been decided by federal district courts and are now pending in U.S. Courts of Appeal. The individual mandate was determined to be unconstitutional in one of those four cases. That case, *Virginia v. Sebelius*, from the Eastern District of Virginia, is on appeal to the 4th Circuit Court of Appeals, as is a case from the Western District of Virginia, *Liberty University v. Geithner*, that found the statute to be constitutional.

Other provisions of the health care law have been challenged on various constitutional grounds, but the only issue that seems to have any traction is the constitutionality of the individual mandate. We will continue to monitor these cases and keep you apprised of new developments.

Alice Eastman Helle is a member of the firm and practices primarily in the areas of pensions and employee benefits. Alice can be reached at (515) 242-2407 or helle@brownwinick.com.

This article is intended solely for general information purposes and should not be construed as, or used as a substitute for, legal advice with respect to specific transactions. Such advice requires a detailed analysis of applicable requirements and an evaluation of precise factual information. We do not undertake to keep recipients advised as to all relevant legal developments.