



## HEALTH CARE REFORM - STATUS OF LEGAL CHALLENGES

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A federal judge in Michigan ruled in October, 2010 that the “individual mandate” that is scheduled to take effect in 2014 is constitutional. That decision was the first relating to the constitutionality of the Patient Protection and Affordable Care Act (PPACA), but it is only one of approximately 20 pending cases.

The plaintiffs in the Michigan case objected to the mandate under the law that will require most people to either carry health insurance or pay a tax penalty beginning in 2014. They argued that Congress had no authority to regulate “inactivity” (the failure to carry health insurance) under the Commerce Clause. The judge found that, “far from ‘inactivity,’ by choosing to forgo insurance, plaintiffs are making an economic decision to try to pay for health-care services later, out of pocket, rather than now through the purchase of insurance, collectively shifting billions of dollars . . . onto other market participants.” The judge agreed with the government’s argument that guaranteed issuance of health insurance without regard to pre-existing conditions is workable only if everyone, including the young and healthy, is required to purchase coverage.

Since the Michigan ruling, four more federal district courts have ruled on the constitutionality of the individual mandate. Courts in Virginia and Washington DC sided with the Michigan court in ruling that the mandate is constitutional, while another court in Virginia and a court in Florida found the mandate unconstitutional. This results in a score of 3-2 in favor of constitutionality among the federal district courts who have addressed this issue to date. All five of these cases are on appeal to the respective United States Courts of Appeal.

The Florida ruling, issued by Judge Roger Vinson on January 31, 2011, has received the most attention. Although the judge ruled that the only the individual mandate under the massive law is unconstitutional, he also found that it is not severable from the rest of the law, with the result that the entire Act is unconstitutional. In contrast, the other federal judge who found the mandate unconstitutional ruled that only the mandate was unenforceable.

Judge Vinson’s ruling set off a wave of confusion, with many commentators concluding that implementation of the entire law could be halted. Judge Vinson stopped that

speculation by issuing a ruling in late February that stayed (delayed) the effect of his January 31 ruling until the issue is decided by the appellate courts. The 11<sup>th</sup> Circuit Court of Appeals in Atlanta, whose jurisdiction includes Florida, has granted Judge Vinson's request to expedite its consideration of the case. Hearing is now set for June 6 in that case.

The United States Supreme Court will have the final word on these issues. Even "expedited" cases do not move particularly quickly through the court system. We will continue to report on legal developments. In the meantime, individuals, businesses and states should continue to comply with provisions of the law that are already effective and to plan for implementation of the remainder of the law.

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