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## 11<sup>th</sup> Circuit Rules PPACA Mandate is Unconstitutional – Supreme Court Review Likely

On August 12, 2011, the U.S. Court of Appeals for the Eleventh Circuit ruled that the individual mandate under the Patient Protection and Affordable Care Act (PPACA) was unconstitutional because it exceeded enumerated congressional authority under the commerce clause of the Constitution, but that the mandate was severable, with the result that the remainder of PPACA is constitutional. The court's decision in [Florida v. HHS](#), creates a split between the U.S. Courts of Appeals given the decision by the Sixth Circuit in [Thomas More Law Center v. Obama](#), on June 29, 2011, that the individual mandate is constitutional under the commerce clause.

The plaintiffs in *Florida v. HHS*, which included 26 states, two individuals and the National Federation of Independent Business, had alleged that the individual mandate of PPACA and the provisions expanding Medicaid were unconstitutional and that the mandate was so integral to PPACA that the entire law was unconstitutional. The district court had granted summary judgment to the plaintiffs on all three issues, but a three-judge panel of the Eleventh Circuit, in a lengthy 2 to 1 decision, agreed only that the individual mandate is unconstitutional, finding that it was an unprecedented expansion of Congressional power, infringing on a traditional area of state regulation and was over inclusive because it requires even healthy people who are not using health care to maintain private insurance and to maintain it for their entire lives. The Court of Appeals also agreed with the lower court, and every other court that has considered the issue, that the provision of the Internal Revenue Code imposing a sanction on individuals who do not comply with the mandate is properly characterized as a penalty, and, thus, is not a valid tax.

The split between the circuits makes it almost a certainty that the U.S. Supreme Court will now review the constitutionality of PPACA, and we may know soon whether the Supreme Court will accept review since the Thomas More Law Center filed a petition for certiorari in that case in July. Several other challenges to PPACA, on these and other issues, are still pending in other courts, including the Fourth Circuit, while the Third and the Ninth Circuit Courts recently held, in [NJ Physicians, Inc. v. Obama](#) and [Baldwin v. Sebelius](#), respectively, that the plaintiffs in those cases did not have standing to challenge the constitutionality of the individual mandate.



*If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.*

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