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Federal Court in Florida Finds the Patient Protection and Affordable Care Act Unconstitutional

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On January 31, 2011, Federal Court Judge Roger Vinson in the U.S. District Court for the Northern District of Florida declared the Patient Protection and Affordable Care Act (the "Act") to be unconstitutional.

The case, *Florida v. HHS*, N.D. Fla., No. 10-91, brought by 26 different states and a few interest groups and individuals, is the latest of the leading cases to be decided. While there have been conflicting decisions regarding the constitutionality of the Act's individual mandate (the part of the Act that will require all U.S. citizens to pay a penalty if they do not obtain health care insurance by 2014), this is the first case to find the entire Act unconstitutional.

In short, Judge Vinson held that Congress exceeded its authority under the Commerce Clause of the U.S. Constitution in enacting the individual mandate. Further, and more importantly, because the individual mandate is "inextricably bound" to the remainder of the Act, he ruled it cannot be severed. In fact, for political reasons, the Senate did not include a "severability clause" in the Act. (A severability clause is often included in legislation and provides that if a court finds any part of a law to be invalid, the remainder of the law will remain in place.) Therefore, the judge found the entire health care reform law to be unconstitutional.

Notably, Judge Vinson's conclusion is not shared by the other federal judge, Henry Hudson of Richmond, Virginia, who determined the individual mandate to be unconstitutional. Judge Hudson held that most of the Act could stand even if the individual mandate was held unconstitutional. Interestingly, before finding the Act unconstitutional, Judge Vinson analyzed the Act's expansion of the Medicaid program and state requirements under that program and found these consistent with the U.S. Constitution's Spending Clause.

CONSTITUTIONALITY OF THE INDIVIDUAL MANDATE

The main issue in this case is whether the federal government has the authority to require individuals to purchase insurance. Among other things, the federal government argues that its authority to impose individual mandates to purchase insurance is found in the Commerce Clause of the U.S. Constitution. The Commerce Clause grants to Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Over the many years of Commerce Clause jurisprudence, the U.S. Supreme Court has found that Congress could properly act to regulate individual activity, even if not directly involved with interstate commerce, if the activity may have an impact on interstate commerce.

In this case, however, the judge found that the individual mandate is unconstitutional because the concept of mandating individuals to buy a private product exceeds the limits of the authority granted to Congress under the Commerce Clause. The federal government's argument on this point was that inactivity (that is, not buying insurance) was the same as activity, thereby allowing for government regulation under the Commerce Clause. However, Judge Vinson rejected this argument.

Instead, the Court found that the Administration's "economic inactivity" argument can only be said to have a substantial effect on interstate commerce if uninsured individuals are still uninsured at the time they need care and are unable to make arrangements to pay after receiving care, thus shifting the cost to others. In rejecting this argument, the Court found that the assumption that an uninsured individual will receive uncompensated care in the future would require it "to pile inference upon inference," an approach rejected by other courts and considered to be inconsistent with the Constitution's enumeration of powers.

While the judge's decision declared the Act unconstitutional in its entirety, it does not enjoin or restrict the government from enforcing the Act. Rather, Judge Vinson simply declared that he expects the Obama Administration to "follow the law," and not enforce the Act.

FUTURE OF HEALTH CARE REFORM

Here is where it gets tricky: Judge Vinson's decision is law only in this particular case and is not binding on other federal judges, just as the decisions of federal judges finding the law to be constitutional were not binding in his case. Thus, it is unclear exactly what the judge's ruling means and how the Obama Administration will react. It is a virtual certainty that the Administration will appeal the decision, but whether the government will attempt to seek an immediate stay of the decision or expedited review is as yet unclear. Until one or more federal appeals courts rule on the Act, most observers anticipate that the legal landscape will not be clarified, and if those courts reach conflicting results, the issue may well be before the Supreme Court some time in 2012 or 2013.

However, despite the "hoopla" of the media, what it likely does not mean is that the law is unenforceable now; in other words, for now, we believe that nothing changes for employers or providers. They should continue to implement the Act's rules and continue to prepare for the changes required by it. This case, though significant (and fascinating from a historical and jurisprudence perspective), is somewhat meaningless to the U.S. business community for the time being.

Thus, given the uncertainly as to how the Vinson decision will affect health care reform in the future, employers should consult with qualified benefits counsel before making any changes to group health plans based on the judge's decision. We will continue to monitor this situation and will provide you with timely updates as they develop. In the end, the decision of the U.S. Supreme Court will likely be the only one that matters.

In the meantime, please feel free to contact your Proskauer attorney or any member of our Health Care Reform Task Force should you have questions regarding any aspect of health care reform.

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