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Health Reform Alert

Second District Court Finds Individual Mandate Unconstitutional

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On January 31, 2011, federal Judge Roger Vinson of the Northern District of Florida issued his widely anticipated ruling in the litigation brought by the attorneys general or governors of 26 states, along with other plaintiffs, challenging the 2010 health care reform legislation. Judge Vinson held unconstitutional the individual mandate provision. That provision, section 1501 of the Patient Protection and Affordable Care Act, requires everyone (with limited exceptions) to purchase federally approved health insurance, or pay a monetary penalty, beginning in 2014.

Judge Vinson's ruling brings to two the number of district courts that have held the individual mandate unconstitutional. (Two other district courts have held the law constitutional). Unlike Judge Henry E. Hudson of the U.S. District Court for the Eastern District of Virginia, however, whose decision invalidating the individual mandate was issued on December 13, 2010, Judge Vinson found that the individual mandate could not be severed from the Act's remaining provisions and, thus, declared the entire health care reform law unconstitutional. Judge Vinson reasoned that there are "simply too many moving parts in the Act and too many provisions dependent (directly and indirectly) on the individual mandate ... for me to try and dissect out the proper from the improper, and the able-to-stand-alone from the unable-to-stand-alone."[1] To attempt such a task would be "tantamount to rewriting a statute in an attempt to salvage it;"[2] better to leave to "the watchmaker" the task of redesigning and reconstructing the "defectively designed watch."[3] Thus, although Judge Vinson upheld the Act's expansions of the Medicaid program against constitutional challenge by the states, in the end his opinion holds that those provisions must fall—along with the entire Act—because, in the court's view, they are not severable from the individual mandate.

In holding the individual mandate unconstitutional, the district court made two subsidiary holdings. First, Congress's power under the Commerce Clause extends only to regulating activity, not inactivity. Judge Vinson reasoned it would be a "radical departure" from existing case law to hold that Congress can regulate inactivity;[4] every Supreme Court case addressing the Commerce Clause, even the expansive ones, has involved "clear and inarguable activity."[5] Second, the district court held that the failure to purchase health insurance is not "activity." Judge Vinson in particular rejected the argument, accepted by both district courts that have upheld the law, that an uninsured's economic decision to forgo health insurance constitutes activity, because that rationale "would essentially have unlimited application."[6] In discussing whether the failure to buy health insurance is activity, Judge Vinson reasoned that "the status of being uninsured" has "absolutely no impact whatsoever" on interstate commerce.[7] But if the uninsured took the steps that the government argued amounted to an impact on interstate commerce—getting sick, seeking medical care, being unable to pay and, thereby, shifting costs onto others—then Congress "plainly has the power to regulate them ... even at the time that they initially seek medical care."[8] Until then, however, Congress may not act.

[1] Slip op., at 73-74.
[2] Slip op., at 73.
[3] Slip op., at 74.
[4] Slip op., at 42.
[5] Slip op., at 40.
[6] Slip op., at 53.
[7] Slip op., at 50.
[8] Slip op., at 51.

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The immediate impact of Judge Vinson's ruling is being hotly debated. Judge Vinson denied the plaintiffs' request for an injunction in one paragraph and, thus, did not issue an order commanding the federal government to halt enforcement or implementation of the statute. Judge Vinson reasoned, however, that a declaratory judgment directed toward the federal government was the functional equivalent of an injunction because federal officials are presumed to adhere to the law as declared by the court.[9] Judge Hudson applied the same kind of reasoning in denying an injunction in the Eastern District of Virginia case, but his ruling struck down only the individual mandate, which does not take effect until 2014. Because Judge Vinson's ruling held the entire Act to be unconstitutional, his opinion suggests that the government should halt enforcement of those provisions that are currently in effect.

The result of the decision has been dueling assertions by the state plaintiffs—many of which have said they no longer believe the law to be enforceable in any respect and that they are entitled to halt compliance—and the federal government, which has made clear its intent to continue enforcement of the law pending appellate review.

In that regard, Judge Vinson's supposition that a declaratory judgment is the same as a nationwide injunction is quite debatable. They, in fact, are different procedurally and require different legal showings to be made. Indeed, the whole point of a declaratory judgment is that it can provide anticipatory relief without the plaintiff demonstrating the exceptional need for immediate, equitable relief that an injunction requires.[10] This case illustrates the point. To obtain a declaratory judgment against the entire statute, the plaintiffs persuaded the court only that their constitutional argument with respect to **one** provision—the individual mandate—was correct and that the entirety of the law should then fall on severability grounds.

Injunctive relief, however, requires a quite different showing. A party's proof that it is correct on the merits is just one prong of the injunctive relief analysis. Even then, courts "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief."[11] "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction."[12] That same test applies to permanent injunctions at the end of a case.[13] Furthermore, if a district court intends that its declaratory judgment have the functional equivalent of an injunction, the very cases relied upon by Judge Vinson indicate that the court must then make the same findings needed to issue an injunction.[14] A declaratory judgment, in other words, is not a "get out of the heightened showing for injunctive relief free" card.

Yet, in obtaining a declaratory judgment, the plaintiffs in Florida did not have to show that immediate relief was needed nationwide, that other legal remedies would not suffice or that the competing public interests favored a nationwide injunction notwithstanding contrary rulings in other jurisdictions. Because the individual mandate provision does not take effect until 2014, it would appear hard to show that an immediate nationwide injunction against that provision is needed. Furthermore, it must be remembered that the enforceability of the balance of the Act turned, in Judge Vinson's opinion, not on constitutional injury, but on statutory severability analysis. A constitutional injury is one thing when arguing for an injunction; a hotly debated severability analysis that no other court in the country has joined is something else altogether. That is because severability is just an issue of statutory construction and discerning congressional intent; it does not identify or redress constitutional injury. That type of interest is unlikely to support the immediate issuance of nationwide injunctive relief. Beyond that, when, as here, there are conflicting district court judgments, there is no sound reason why the federal government would be compelled to comply nationwide with the one adverse declaratory judgment, rather than adhere nationwide to the two favorable declaratory judgments upholding the law.

[9] Slip op., at 75.
[10] *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671-672 (1950).
[11] *Winters v. Natural Resources Defense Council*, 129 S. Ct. 365, 376 (2008).
[12] *Id.* at 376-377.
[13] *Id.* at 381.
[14] See *Sanchez-Espinoza v. Reagan*, 770 F.2d 202, 208 n.8 (D.C. Cir. 1985) ("Such equivalence of effect dictates an equivalence of criteria for issuance").

The Justice Department has already announced plans to appeal Judge Vinson's ruling to the 11th Circuit and, if necessary, to seek a stay. The enforceability of the Act, thus, may be clarified in very short order. Currently pending at the 4th Circuit is an appeal of Judge Hudson's ruling striking down the mandate and the decision out of the U.S. District Court for the Western District of Virginia upholding the law. That case is slated for oral argument in early May 2011. A decision by the U.S. District Court for the Eastern District of Michigan upholding the law is on appeal in the 6th Circuit and being briefed.

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