



## Florida Federal District Court Joins Virginia Federal District Court In Declaring the Health Care Reform “Individual Mandate” Unconstitutional

On January 31, 2011, Judge Roger Vinson of the Federal District Court for the Northern District of Florida entered his ruling in *Florida, et al. v. United State Department of Health and Human Services, et al.*, (“*Florida v. DHHS*”) declaring that Section 1501 (“Individual Mandate”) of the Patient Protection and Affordable Care Act (“Health Care Reform” or “PPACA”) to be unconstitutional as the legislation exceeds the powers granted to the Congress pursuant to the Commerce Clause in the United States Constitution. The state of Washington was also a plaintiff in this action along with 24 other states. The decision in *Florida v. DHHS* joins the prior decision issued December 13, 2010, in *Virginia v. Sebelius* declaring the Individual Mandate unconstitutional. Where the two decisions differ is that the decision in *Virginia v. Sebelius* only declared the Individual Mandate unconstitutional. The decision in *Florida v. DHHS* declared the Individual Mandate unconstitutional and then went further and declared all of PPACA to be “void.”

The court’s ruling in *Florida v. DHHS* focused on two particular issues raised by the Plaintiffs. First, the court addressed the argument that Congress exceeded its powers under Commerce Clause of the U.S. Constitution when it enacted the Individual Mandate. Second, the court addressed the argument that Congress exceeded its powers under the Spending Clause of the U.S. Constitution when it greatly expanded eligibility rules under the Medicaid program which will lead to much higher costs and burdens for the States. The second issue is also called the “Medicaid Mandate” issue.

### **The Medicaid Mandate**

Plaintiffs argued that the Medicaid Mandate, the significant expansion of Medicaid eligibility rules applicable to all states, created an unfair choice for the States. According to Plaintiffs, the Medicaid Mandate would force States to either continue in the Medicaid program and agree to shoulder increased costs they could never reasonably expect to shoulder, or withdraw from the Medicaid program. Either choice would result in the end of the Medicaid program in each State and lead to withdrawal of essential health care services from the most vulnerable of the State’s citizens.

The court rejected the Plaintiffs’ arguments noting that while the States argued that PPACA would increase Medicaid costs for States, the federal government contended State governments would benefit financially under PPACA. Further, the court noted that the claim, as presented by the States, was not the type recognized under the Spending Clause and dismissed the States’ Medicaid Mandate challenge.



### **The Individual Mandate**

The Commerce Clause allows Congress to regulate “Commerce . . . among the several States. . . .” In *Florida v. DHHS* the judge noted that the Commerce Clause allowed Congress to regulate those *activities* that substantially affect interstate commerce. Here, the judge opined, the Individual Mandate did not seek to regulate an activity, but rather, sought to regulate a citizen’s *inactivity*. In other words, the Individual Mandate would force citizens who had chosen not to participate in commerce by refusing to buy healthcare insurance and would force those citizens to engage in commerce by mandating that they purchase healthcare insurance or receive a financial penalty for failing to purchase healthcare insurance. The judge stated that the issue to be decided was whether the refusal to purchase healthcare insurance was an “activity” that could be regulated pursuant to the Commerce Clause and whether Congress could fine individuals who refused to purchase healthcare insurance.

The federal government argued that every citizen at some point in their life would need and have to receive healthcare services. Since needing and receiving healthcare services is inevitable, all citizens have to pay for their healthcare privately, through insurance, or shift those costs to the general public (government) if they do not have insurance and do not have sufficient funds to pay for the healthcare services they receive. According to the federal government argument the decision to not purchase healthcare insurance by thousands of individuals is an “economic activity” because their decision to refuse to buy healthcare insurance ultimately shifts costs to others in the healthcare system when those uninsured individuals are unable to pay for needed healthcare services.

The court concluded that the Individual Mandate imposed a penalty on any citizen who failed to purchase healthcare insurance, i.e., failed to act as required by PPACA. The court concluded that penalizing a citizen for their refusal to act by purchasing healthcare insurance would expand Congress’ powers beyond the limits of the Commerce Clause since the Commerce Clause could only be used to regulate a citizen’s *activity* that substantially affected interstate commerce. Therefore, according to the court, the Individual Mandate was unconstitutional.

### **Severability**

Legislation adopted by Congress inevitably has a clause that states that if any part of the legislation is determined to be unconstitutional the unconstitutional portion of the law is severed so that what remains is constitutional and can be enforced. PPACA lacks the “severability clause” contained in virtually every piece of legislation passed by Congress. In *Florida v. DHHS* the court recognized the usual rule that severability is favored where a portion of a legislation is determined to be unconstitutional. Nevertheless, the court found that “[t]he individual mandate and the remaining provisions are . . . inexplicably bound together.” Therefore, the court determined that “the individual mandate is unconstitutional and not severable” . . . so the entire [Health Care Reform] Act must be declared void.”



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### **Conclusion**

Even though two federal district courts have declared the Individual Mandate unconstitutional this legal fight is not over. As the court stated in *Virginia v. Sebelius*:

This case, however, turns on atypical and unchartered applications of constitutional law interwoven with subtle political undercurrents. The outcome of this case has significant public policy implications. And the final word will undoubtedly reside with a higher court.