



THE AFFORDABLE CARE ACT IN THE 112TH CONGRESS:

THE COMMERCE CLAUSE AND *FLORIDA V. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES*

*On January 31, 2011, U.S. District Court Judge in the Northern District of Florida, Roger Vinson, released the opinion in the case of the **State of Florida, et al v. United States Department of Health and Human Services, et al** in which he ruled that the “Minimum Essential Coverage Provision,” or the individual mandate, found in Section 1501 of the **Patient Protection and Affordable Care Act (P L 111- 148)** is unconstitutional and un-severable from the rest of the law, declaring that the entire Affordable Care Act (ACA) should be struck down.*

The Commerce Clause. The question of the individual mandate’s constitutionality, as presented by 26 states in this case, turns on the interpretation of congressional authority to regulate interstate commerce as granted to it under Article I of the U.S. Constitution, known as the Commerce Clause. In approaching this analysis, Judge Vinson agreed with the plaintiff-states argument that the Commerce Clause only applies to the regulation of individuals engaged in an activity, refuting the Department of Justice’s (DOJ) assertion that the presence of an activity is not required for Congress to assert its Commerce Clause power.

Having determined that the presence of an activity is an integral part of the Commerce Clause, the court then framed the question of the individual mandate’s constitutionality on whether or not the failure to purchase health insurance constitutes an activity. According to the plaintiffs, the failure to purchase insurance is inactivity, and Congress therefore exceeded its Commerce Clause authority in embedding this requirement in the ACA, making the individual mandate unconstitutional.

The Obama Administration countered this claim by trying to establish that the failure to purchase health is indeed an activity, as the uninsured are engaged in activities impacting interstate commerce and are therefore subject to regulation under the Commerce Clause. To do so, DOJ stated that the unique nature of the health care market makes opting out of medical care impossible, and thus the uninsured are not inactive, but rather are inevitable participants whose eventual care potentially shifts the burden of their health care costs to third parties. The Administration also argued that by seeking to finance their future medical needs out-of-pocket rather than by purchasing health insurance, the uninsured have made a calculated, economic decision to engage in market timing. This economic decision, according to DOJ, when coupled with the fact that the uninsured are guaranteed access to medical care in hospital emergency rooms regardless of their ability to pay, again resulting in cost-shifting, renders the failure to purchase insurance an activity.



The Judge found the unique factors of the health care market, such as inevitable participation and cost-shifting, to be unpersuasive, ruling that the uniqueness of the health care market is not constitutionally significant, and if Congress exceeds its enumerated powers, the resulting legislation is unconstitutional, regardless of the “purported uniqueness of the context in which it is being asserted.” Nor did the court side with the defendants in their claim that the economic decision to not purchase health insurance is tantamount to an activity, because an economic activity is too overly broad of a category to reach the more narrowly-tailored threshold of Commerce Clause applicability, finding that while all activities that substantially affect interstate commerce are economic decisions, the reverse is not true. Thus, the court agreed with the plaintiff’s argument that the individual mandate regulates inactivity, and that because the Commerce Clause can only regulate activities, the individual mandate exceeds Congress’ commerce power.