



THE AFFORDABLE CARE ACT IN THE 112TH CONGRESS:

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

*On January 31, 2011, a 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 Necessary and Proper Clause. In addition to the assertion that Congress was within its Commerce Clause authority in passing the individual mandate, the Obama Administration also put forth the argument that the individual mandate is a valid use of Congressional authority if it is analyzed under the Necessary and Proper Clause (U.S. Const., Art. I, Sec. 8, cl. 18), because this clause authorizes Congress to make laws that are necessary and proper to carry out its enumerated powers, such as regulating interstate commerce.

Citing several of the Affordable Care Act’s consumer protections, such as the law’s prohibitions on denying coverage or charging higher premiums based on pre-existing conditions, DOJ suggests that individuals may delay obtaining insurance if they are guaranteed issue at a later date, resulting in fewer healthy people in the insured pool, thereby raising premiums and costs for both insurers and individuals. Thus, the defendants argue that absent a mechanism to incentivize healthy, younger individuals to purchase insurance, which would control costs, the health insurance market would eventually collapse, and therefore the individual mandate is essential in order for the ACA to operate as intended by Congress.

While the court agrees with DOJ’s characterization of the integral role of the individual mandate to the efficacy of the ACA, it is quick to find that this does not have any impact on whether or not the requirement for most Americans to purchase insurance is within the boundary of Congress’ Commerce Clause authority. Judge Vinson states that the Necessary and Proper Clause is not an independent source of federal power, but is rather a formal declaration vesting Congress with the authority to carry out its enumerated powers, not to pass laws that are outside of this granted scope. Having previously found the individual mandate to be an improper extension of Congress’ commerce power, the court also rejects the Administration’s argument that the individual mandate can be otherwise authorized by the Necessary and Proper Clause, thereby underscoring the unconstitutionality of the Minimum Essential Coverage provision in the Affordable Care Act.