

Virginia Court Finds Health Care Insurance Mandates Unconstitutional

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The future of health care reform became murkier on Monday after a federal district court in Virginia determined that a key section of the Patient Protection and Affordable Care Act (“PPACA”) is unconstitutional. Judge Henry E. Hudson of the U.S. District Court for the Eastern District of Virginia ruled in favor of the state’s constitutional challenge to Section 1501 of the federal health reform law, otherwise known as the “Minimum Essential Coverage Provision,” which requires that almost every U.S. citizen maintain a minimum level of health insurance coverage starting in 2014. Failure to obtain the minimum essential coverage would subject individuals to a penalty on their annual tax returns under the Internal Revenue Code.

In granting the state attorney general’s motion for summary judgment, the court agreed that enactment of Section 1501 exceeds the power of Congress under the Commerce Clause and General Welfare Clause of the U.S. Constitution, noting that the law’s requirement goes “beyond the historical reach” of Supreme Court cases that limit federal regulation of commercial activity.

The parameters of the Commerce Clause have been set out in a handful of Supreme Court cases which offer diverging interpretations. Two of these cases determined that the Commerce Clause provides broad federal powers to regulate even personal commercial decisions that, when taken collectively, may influence a larger economic outcome. See *Wickard v. Filburn*, 317 U.S. 111, 63 S. Ct. 82 (1942) and *Gonzales v. Raich*, 545 U.S. 1, 125 S. Ct. 2195 (2005). However, two other cases limited Congress’ regulatory authority to “activities that substantially affect interstate commerce.” See *United States v. Lopez*, 514 U.S. 549, 115 S. Ct. 1624 (1995) and *United States v. Morrison*, 529 U.S. 598, 120 S. Ct. 1740 (2000).

In evaluating the constitutionality of the new federal law, the court scrutinized whether an individual’s refusal to purchase health care insurance as mandated by the Minimum Essential Coverage Provision is an “activity” that falls within congressional regulatory authority or whether such failure is, in fact, an “inactivity,” as proffered by Virginia’s solicitor general, E. Duncan Getchell Jr., who argued the case for the state’s attorney general.

Getchell argued that if Congress could require the purchase of health insurance, there would in essence be no limits on federal power. In arguing that the Minimum Essential Coverage Provision falls within Congress’ reach, federal lawyers contended that the act of not obtaining insurance is an active decision to pay for health care out of pocket in the event of a medical emergency. According to Justice Department lawyers, these individual decisions, when taken in the aggregate, can shift billions of dollars in uncompensated care

costs to the rest of society, thus subjecting them to congressional regulation under the Commerce Clause.

Monday, the Virginia court found the federal government's interpretation of congressional authority too broad, noting that it "lacks logical limitation and is unsupported by Commerce Clause jurisprudence." In his decision, Hudson wrote, "The unchecked expansion of congressional power to the limits suggested by the Minimum Essential Coverage Provision would invite unbridled exercise of federal police powers." He further stated: "At its core, this dispute is not simply about regulating the business of insurance – or crafting a scheme of Universal health insurance coverage – it's about an individual's right to choose to participate." Hudson noted that "Neither the Supreme Court nor any federal circuit of appeals has extended Commerce Clause powers to compel an individual to involuntarily enter the stream of commerce by purchasing a commodity in the private market."

In its decision, the court also rejected the federal government's secondary claim that since the fine for not having insurance will be levied as an income tax penalty, Congress had the authority to enact the Minimum Essential Coverage Provision under its power to tax. In rejecting this claim, Hudson called attention to the government's "unequivocal denials" during the legislative debate that it was raising taxes. He also noted the distinction between a "tax" and a "penalty."

Monday's ruling by Hudson contradicts other federal judges in Virginia and Michigan who have dismissed constitutional challenges to the new mandate and determined that Congress acted within its authority under the Commerce Clause. Another case challenging the constitutionality of health care reform will be heard in Florida yet this week. The issue is far from settled and it appears certain that the fate of the new law will ultimately rest with the U.S. Supreme Court.

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