

HEALTH

Ruling Hinged On Congress' Power

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by Meghan McCarthy

The debate over the legal significance of Thursday's ruling from a Michigan district court, which upheld the constitutionality of the healthcare overhaul law's insurance coverage mandate, comes down to whether Congress has the power to regulate an individual's decision not to buy something, especially if the purchase is important to a larger regulatory effort.

The nation's highest courts have often ruled on breadth of Congress' power under the "commerce clause," a constitutional right cited by Democrats to justify the mandate. But the healthcare law is the first time the courts have had to address whether Congress can regulate an individual's decision not to buy something that ultimately impacts interstate commerce.

U.S. District Court Judge George Steeh, appointed by former President Bill Clinton, found in a case brought by the conservative Thomas More Law Center that an individual's decision not to buy health insurance was within Congress' power to regulate, because not having insurance ultimately had a negative economic impact on the country. Steeh agreed with the federal government that the coverage mandate was an essential part of the healthcare law.

Santa Clara Law Professor Bradley Joondeph said it was defensible to view the decision as unprecedented, but it was equally as sound to say it is not legally significant.

"It's perfectly consistent with past precedent on the commerce clause," Joondeph said. "But it is also true that Congress has not tried to use its regulatory powers to regulate a conduct that can plausibly be described as inactivity. But just because it's the first time doesn't mean that it's an important, legally salient difference."

And whether or not someone thinks the ruling is unprecedented generally depends on how they viewed the law in the first place.

Georgetown University Law Professor Randy Barnett, an early critic of the law's constitutionality, said the decision was significant, because it established a standard that would allow the government to regulate any decision that could be construed as having an economic impact. Barnett criticized Steeh's decision for not examining the consequences of the ruling.

"A rule that allows the government to regulate all of our decisions to engage in economic activity or not is so revolutionary that it was incumbent on the judge to consider the consequences of this doctrine and he didn't," said Barnett.

Barnett warned that although Steeh's decision specifically explains how regulating the choice to buy health insurance is allowable in this circumstance because it is a key part of making the overhaul law work, future cases will not have to apply Steeh's reasoning.

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"In reality, all those considerations will go by the board in the next case," said Barnett.

Ilya Shapiro, a lawyer for the Cato Institute who has filed *amicus* briefs on behalf of plaintiffs in a Virginia case challenging the law, laid out how he believed Steeh's ruling could be interpreted.

"It is important that 'economic decisions' can now be regulated," Shapiro said. "That anything characterized economic decision, like whether to buy coffee or not, can be regulated by Congress, really is a sweeping pronouncement that the Supreme Court has not upheld."

But backers of the government's position say there was nothing significantly new in the judge's decision.

"There's nothing radical about a decision upholding a new law, simply because there is no existing precedent," said Wake Forest University Law Professor Mark Hall. "The plaintiffs were trying to convince this court to set a new limit on Congressional power that has never been recognized or set before. The judge declined to do that, reasoning that a decision to be uninsured is sufficiently economic," to fall under the commerce clause.

Regardless of Steeh's decision, many lawyers agree that the ruling will have little impact on the appeals process, which Thomas More Law Center has vowed to pursue.

"I can't imagine, in a case of this significance, how the district court resolving a pure question of law is really going to affect the court of appeals judges," said Joondeph.

The Michigan case is one of several in the nation's court system challenging the constitutionality of the insurance mandate, including cases in Virginia and Florida, but it is the first to rule on the merits of the case. A decision on the HHS motion to dismiss the Florida case, which involves 19 other states, is expected Thursday. Oral arguments on the merits of the Virginia case begin Oct. 18. Judges hearing arguments in similar cases pending throughout the country will not have to give consideration to Steeh's ruling.

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