

Explaining Judge Vinson's ObamaCare ruling

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In an recent editorial at the *Wall Street Journal*, Randy Barnett and Elizabeth Price Foley [explained Monday's ruling by Judge Roger Vinson](#):

Judge Vinson flatly rejected the administration's attempt to escape the restrictions of the Commerce Clause by appealing to the Necessary and Proper Clause. His decision acknowledges that, while reforming an insurance market is a regulation of commerce, Congress cannot artificially create its own "free rider" crisis in the insurance market and then use that crisis to justify an otherwise unconstitutional mandate as "necessary and proper" to save the market from collapse.

This novel use of the Necessary and Proper Clause, if allowed to stand, would fundamentally transform our constitutional scheme from limited to unlimited federal power, narrowing the scope of individual liberty. In Judge Vinson's words, "the more harm the statute does, the more power Congress could assume for itself under the Necessary and Proper Clause. This result would, of course, expand the Necessary and Proper Clause far beyond its original meaning, and allow Congress to exceed the powers specifically enumerated in Article I."

One crucial difference between the Florida and Virginia decisions relates to the breadth of the remedy. While both courts agreed that the individual mandate was unconstitutional, the Virginia decision merely declared the mandate alone to be unconstitutional—the rest of ObamaCare was unaffected. But Judge Vinson concluded that the individual mandate could not be "severed" from the rest of the law, and so the entire law must be struck down.

The judge had little choice: The Obama administration itself argued that the individual mandate was inextricably intertwined with the rest of ObamaCare. So if the mandate fell, the whole scheme was doomed to collapse as a legal matter. "There are simply too many moving parts in the Act and too many provisions dependent (directly and indirectly) on the individual mandate and other health insurance provisions," he held, "for me to try and dissect out the proper from the improper, and the able-to-stand-alone from the unable-to-stand-alone.

The Obama administration attempted to cloak an unprecedented and unsupportable exercise of federal power in the guise of a run-of-the-mill Commerce Clause regulation. When the weakness of that theory was exposed, it retreated to the Necessary and Proper Clause and the taxing power. Judge Vinson's decisive rejection of all these theories is another significant victory for individual liberty—the ultimate purpose of federalism—and it lays the intellectual groundwork for every decision on the mandate yet to come.

On Wednesday, the Senate Judiciary Committee held a hearing on the constitutionality of ObamaCare, where Barnett, a law professor at Georgetown, explained that the individual

mandate is in serious trouble and that Congress and the Obama Administration may want to think of new avenues on health care reform:

Sen. [Mike Lee](#) (R-UT) also grilled [Walter Dellinger](#), a former United States Solicitor General, on the expansive view taken by the administration and supporters of the health care law:

