

Mike Cannon and Ilya Shapiro: President should heed court and stop implementing ObamaCare

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There was no ambiguity when Federal Judge Roger Vinson ruled last month that ObamaCare's individual health insurance mandate goes beyond Congress's constitutional powers, nor when he struck down the entire law because the mandate was "essential" to and inextricable from the rest of the statute.

Yet the practical effect of that well-argued decision is anything but clear. Wisconsin Atty. Gen. J.B. Van

Hollen insisted that his state now "was relieved of any obligations or duties" to carry out the statute.

Alaska's Gov. Sean Parnell asked his attorney general to advise him on whether he could implement

ObamaCare without violating his oath to uphold the Constitution.

Other state officials too, along with insurance companies, employers, and ordinary citizens, are at a loss

about what to do now that two courts have found ObamaCare unconstitutional.

In ruling as he did, Judge Vinson wrote that "it must be presumed that federal officers will adhere to the

law as declared by the court." Yet the Obama administration has thus far shown no inclination to do so.

But neither has it sought to stay the practical effects of the ruling — perhaps because it thinks that doing

so would give credence to the court's decision.

How do we sort through the confusion?

First, federal courts do not issue advisory opinions. The parties to any lawsuit are bound by any resulting judgment.

At minimum, then, the government lacks authority to implement ObamaCare where the case was

decided, in the Northern District of Florida, and the 26 state plaintiffs need take no action to do so.

Likewise, members of the National Federation of Independent Business, another plaintiff in the case,

may now be entitled to the same protection from Obamacare's requirements.

Moreover, it is not unreasonable to argue that Vinson's ruling applies to the nation as a whole. After all,

this lawsuit facially attacked the law rather than just challenging its application to particular parties. This

interpretation of Vinson's ruling would stop ObamaCare dead in its tracks. Under that reading, and absent further judicial action:

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- ObamaCare's so-called "consumer protections" — which are driving premiums higher, pushing Americans out of their health plans, and exposing patients with pre-existing conditions to medical underwriting — are now invalid.

- ObamaCare's tax hikes, including the 10-percent tax on indoor tanning services and higher taxes on consumer-directed health plans, are now void.

- The federal Department of Health and Human Services may no longer distribute grants to states to fund ObamaCare's high-risk pools, review premium increases, or set up health insurance exchanges.

- ObamaCare's political payoffs, including the \$250 checks Medicare is sending to millions of seniors, the direct subsidies to employers who offer retiree coverage, and the infamous "Louisiana Purchase," must now cease.

- HHS must stop implementing the long-term care entitlement program that Senate Budget Committee

Chairman Kent Conrad (D.-N.D.) called "a Ponzi scheme of the first order."

The government will appeal Vinson's decision to the 11th Circuit Court of Appeals, which will probably

issue a decision this summer or fall. In the meantime, the White House hopes to further entrench

ObamaCare — so it will be harder to dislodge — and to cow states into doing the same.

But if the Supreme Court eventually rules as Judge Vinson did, a huge amount of trouble and expense

will have been for nothing — and vast insurance and medical markets will have been uprooted. In so

uncertain a legal context, it is simply reckless for financially strapped federal and state governments to

pour resources into changing our health care system when those changes may not ultimately pass

constitutional muster.

With that in mind, some in Congress are trying to stop this recklessness until ObamaCare's legal status

is resolved. Sixteen Senate Republicans, led by Kay Bailey Hutchison of Texas, have introduced a bill to

halt further implementation until the Supreme Court rules. Sen. Bill Nelson (D.-Fla.) has introduced a “sense of the Congress” resolution urging the court to put the matter on a fast track. If President Obama shows contempt for court orders that go against him by pretending that ObamaCare still enjoys the full force of law, public antipathy toward the legislation will only grow. The course that shows respect for the Constitution, the courts, and the American people is for the administration to cease implementing the law’s regulations, taxes and new bureaucracies immediately. Michael F. Cannon is director of health-policy studies at the libertarian Cato Institute and co-author of “Healthy Competition: What’s Holding Back Health Care and How to Free It.” Ilya Shapiro is a senior fellow in constitutional studies at Cato.