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ObamaCare: Mostly Dead? All Dead? Not Dead Yet?

[Peter Suderman](#) | February 7, 2011

One week after a federal judge in Florida ruled that the whole of the Patient Protection and Affordable Care Act “must be declared void,” the legal status of the law is still very much up in the air.

Judge Roger Vinson, who decided the case, declined to issue an injunction, which would have stopped the law in its tracks. But as Reason’s Damon Root [noted last week](#), he also included a passage essentially saying that his ruling—a declaratory judgment—should have a similar effect. “Declaratory judgment,” he wrote, “is, in a context such as this where federal officers are defendants, the practical equivalent of specific relief such as an injunction...since it must be presumed that federal officers will adhere to the law as declared by the court.”



State officials were certainly listening. Officials in several states party to the suit have taken Vinson’s ruling to mean that they are no longer obligated to continue with implementation of the PPACA. Florida’s insurance commissioner, Kevin McCarty, has [said](#) that his state will forgo a \$1 million health care implementation grant. When asked about the state of the law in The Sunshine State, the state’s deputy insurance commissioner has [declared](#) that “as of right now, it doesn’t exist.” In Wisconsin, Attorney General J.B. Von Hollen has [declared](#) that, for his state, “the federal health care law is dead.” State officials in [Alaska](#) and [Utah](#) have also indicated that they believe the law is no longer binding in their states.

The federal government, however, despite being singled out by Vinson’s ruling, is essentially ignoring the judgment. As the Cato Institute’s Roger Pilon [notes](#), the Obama administration has shown no sign that it plans to cease implementation, but also no sign that it intends to seek a stay

on the ruling, or ask for clarification about what, exactly, it means.

There's legitimate uncertainty surrounding the ruling's practical effects. In part, that's because it conflicts with other rulings. So far, four federal judges have ruled on the law's constitutionality. Two have ruled in the administration's favor. One judge in Virginia ruled that the mandate was unconstitutional, but that the remainder could stand. Vinson not only ruled that the mandate was unconstitutional but that, as a result, the rest of the law should also be thrown out.



That makes for what Cato Institute legal scholar Ilya Shapiro says is “kind of a unique situation. The conflict between those rulings adds complication,” But he doesn't think the administration can simply ignore the ruling. “They're effectively taking the position that the ruling has no practical effect,” he argues. “But that can't be the case, because federal courts do not give advisory opinions.”

On a conference call earlier today, Virginia Attorney General Ken Cuccinelli, who led his state in separate suit against the law, agreed. “The statements coming out of the White House and [Health and Human Services Secretary] Sebelius's office don't suggest they have any intention of honoring the judge's ruling.” At the same time, “you have AGs and governors saying we're no longer going to implement it.” That makes for what he calls an “awkward” situation. “There's not a lot of case law on this, as you might imagine.”

According to Shapiro, “at the very least, the ruling binds the parties to the case”—meaning any state involved in the lawsuit is within its rights to opt out of further implementation.

But the situation is more complicated for the federal government. Is the federal government bound to cease implementation only in the 26 states involved in the lawsuit? Is it expected to halt all implementation, everywhere, or perhaps allowed to continue but only in those jurisdictions where judges have ruled in favor of the law? Multiple rulings in multiple districts means multiple potential meanings. “It's hard to disaggregate it geographically,” says Shapiro.

The uncertainty, though, may work in the federal government's favor. Shapiro suggests that might be why the government is both ignoring the ruling and not requesting a stay, or any kind of clarification. Doing so, he says, would be to acknowledge the ruling, and perhaps force them to act: “They don't want to give credence to the fact that the ruling has any kind of effect.” The administration also potentially benefits from drawing out the uncertainty: “The longer the implementation goes on, the more the administration can argue that the court can't stop this now because it would overturn people's settled expectations.”

When asked to speculate about the immediate effect of Vinson's ruling, Virginia AG Cuccinelli would only say that "ultimately it will be decided by the Supreme Court. I would just tell you to stay tuned." For the time being, then, it's likely to remain what Shapiro calls "a really hairy scenario."

"There's not a clear answer," he says. And the Obama administration doesn't seem eager to get one.