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Dissecting Judge Vinson's ObamaCare Ruling

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This past Monday [1], a federal judge in Florida ruled that President Obama's landmark healthcare overhaul is unconstitutional. As I predicted in my 8 part [2] examination of the law's constitutionality, Judge Roger Vinson stated that the individual mandate contained within the legislation is outside Congress' Commerce Clause [3] power. Vinson is the second federal judge to draw that conclusion. The first, Virginia federal Judge Henry Hudson, handed down [4] a similar ruling in December of 2010.

But what does Judge Vinson's ruling actually say and what will it mean for the fate of ObamaCare?

The thing that stands out the most when reading through Judge Vinson's 78 page court decision [5] is his ruling that the individual mandate cannot be severed from the rest of the ObamaCare law. In Vinson's view, the law is so dependent upon the mandate that it cannot function without it. Calling the mandate on health insurance the "keystone or lynchpin of the entire health reform effort," he writes:

> I must conclude that the individual mandate and the remaining provisions are all inextricably bound together in purpose and must stand or fall as a single unit. The individual mandate cannot be severed. This conclusion is reached with full appreciation for the "normal rule" that reviewing courts should ordinarily refrain from invalidating more than the unconstitutional part of a statute, but non-severability is required based on the unique facts of this case and the particular aspects of the Act.

This is no small statement. Ruling that the law's function is entirely dependent upon the individual mandate and then declaring the mandate to be unconstitutional means that the entire law must be overturned.

Furthermore, Judge Vinson's ruling that the ObamaCare legislation is unconstitutional is effectively the same as issuing an injunction against the law (a judicial command to refrain from enforcing it). As Ilya Shapiro of the Cato Institute points out [6]:

> In short, if I read the opinion (plus this final judgment) correctly... Obamacare is dead in its tracks. Now, Judge Vinson himself or the Eleventh Circuit (or even the

> Supreme Court) may issue an emergency stay of this or any other part of the ruling, but as of right now, **the federal government must stop implementing Obamacare.**

Following another Shapiro writing [7], let's see how Judge Vinson came to this conclusion.

The Judge begins his opinion by making clear that his decision (and all instances of judicial review for that matter) must not be about whether or not the law in question is a good law. It must not be about whether or not the law in question will help people. It must only be about whether or not the United States Constitution grants the federal government the authority to enforce the law. He writes:

> **This case is not about whether the Act is wise or unwise legislation**, or whether it will solve or exacerbate the myriad problems in our health care system. **In fact, it is not really about our health care system at all. It is principally about our federalist system**, and it raises very important issues regarding the Constitutional role of the federal government. (Emphasis mine)

He then examines the law through the lens of Commerce Clause case law [8]:

> **It would be a radical departure from existing case law to hold that Congress can regulate inactivity under the Commerce Clause.** If it has the power to compel an otherwise passive individual into a commercial transaction with a third party merely by asserting… that compelling the actual transaction is itself "commercial and economic in nature, and substantially affects interstate commerce" [see Act § 1501(a)(1)], **it is not hyperbolizing to suggest that Congress could do almost anything it wanted.** It is difficult to imagine that a nation which began, at least in part, as the result of opposition to a British mandate giving the East India Company a monopoly and imposing a nominal tax on all tea sold in America would have set out to create a government with the power to force people to buy tea in the first place. **If Congress can penalize a passive individual for failing to engage in commerce, the enumeration of powers in the Constitution would have been in vain** for it would be "difficult to perceive any limitation on federal power" [Lopez, supra, 514 U.S. at 564], and we would have a Constitution in name only. **Surely this is not what the Founding Fathers could have intended.** (Emphasis mine)

Judge Vinson then dismisses the flawed government argument that health care is "unique" because citizens cannot truly "opt out" of the health care market:

> **After all, there are lots of markets — especially if defined broadly enough — that people cannot "opt out" of.** For example, everyone must participate in the food market. Instead of attempting to control wheat supply by regulating the acreage and amount of wheat a farmer could grow as in Wickard, under this logic, Congress could more directly raise too low wheat prices merely by increasing demand through mandating that every adult purchase and consume wheat bread daily, rationalized on the grounds that because everyone must participate in the market for food, non-consumers of wheat bread adversely affect prices in the wheat market. Or, as was discussed during oral argument, Congress could require that people buy and consume broccoli at regular intervals, not only because the required purchases will positively impact interstate commerce, but also because people who eat healthier tend to be healthier, and are thus more productive and put less of a strain on the health care system. Similarly, because virtually no one can be divorced from the

> transportation market, Congress could require that everyone above a certain income threshold buy a General Motors automobile — now partially government-owned — because those who do not buy GM cars (or those who buy foreign cars) are adversely impacting commerce and a taxpayer-subsidized business.
>
> **Uniqueness is not an adequate limiting principle as every market problem is, at some level and in some respects, unique.** (Emphasis mine)

After successfully refuting that argument, Judge Vinson takes on the government's assertion that choosing not to purchase health insurance is an "economic decision" that has a substantial impact on interstate commerce:

> **The problem with this legal rationale, however, is it would essentially have unlimited application. There is quite literally no decision that, in the natural course of events, does not have an economic impact of some sort.** The decisions of whether and when (or not) to buy a house, a car, a television, a dinner, or even a morning cup of coffee also have a financial impact that — when aggregated with similar economic decisions — affect the price of that particular product or service and have a substantial effect on interstate commerce. To be sure, it is not difficult to identify an economic decision that has a cumulatively substantial effect on interstate commerce; rather, the difficult task is to find a decision that does not.
>
> **The important distinction is that "economic decisions" are a much broader and far-reaching category than are "activities that substantially affect interstate commerce."** While the latter necessarily encompasses the first, the reverse is not true. "Economic" cannot be equated to "commerce." And "decisions" cannot be equated to "activities." Every person throughout the course of his or her life makes hundreds or even thousands of life decisions that involve the same general sort of thought process that the defendants maintain is "economic activity." There will be no stopping point if that should be deemed the equivalent of activity for Commerce Clause purposes. (Emphasis mine)

After showing that Congress is not granted the authority to force individuals to purchase health insurance under the Commerce Clause, Judge Vinson turns his attention to the Necessary and Proper Clause:

> **The Necessary and Proper Clause cannot be utilized to "pass laws for the accomplishment of objects" that are not within Congress' enumerated powers. As the previous analysis of the defendants' Commerce Clause argument reveals, the individual mandate is neither within the letter nor the spirit of the Constitution.** To uphold that provision via application of the Necessary and Proper Clause would authorize Congress to reach and regulate far beyond the currently established "outer limits" of the Commerce Clause and effectively remove all limits on federal power. (Emphasis mine)

Judge Vinson then asserts his opinion that, in the absence of the individual mandate, the entire health care law would be unable to function:

> In the final analysis, this Act has been analogized to a finely crafted watch, and that seems to fit. It has approximately 450 separate pieces, but one essential piece (the

> individual mandate) is defective and must be removed... **The Act, like a defectively designed watch, needs to be redesigned and reconstructed by the watchmaker.**
>
> In sum, notwithstanding the fact that many of the provisions in the Act can stand independently without the individual mandate (as a technical and practical matter), **it is reasonably "evident," as I have discussed above, that the individual mandate was an essential and indispensable part of the health reform efforts**, and that Congress did not believe other parts of the Act could (or it would want them to) survive independently. **I must conclude that the individual mandate and the remaining provisions are all inextricably bound together in purpose and must stand or fall as a single unit.** (Emphasis mine)

Judge Vinson concludes with this important distinction:

> **Regardless of how laudable its attempts may have been to accomplish these goals in passing the Act, Congress must operate within the bounds established by the Constitution.** Again, this case is not about whether the Act is wise or unwise legislation. It is about the Constitutional role of the federal government.
>
> **On this point, it should be emphasized that while the individual mandate was clearly "necessary and essential" to the Act as drafted, it is not "necessary and essential" to health care reform in general.** It is undisputed that there are various other (Constitutional) ways to accomplish what Congress wanted to do. (Emphasis mine)

Judge Vinson's opinion in this case is brilliantly thought out and written. It clearly comes from a man who truly understands the importance of the constitutionally limited federal system that our founders handed down to us. In the future months and years, this case will be heard again and it will eventually make its way to the Supreme Court. When it does, we can only hope that the 9 Justices take Judge Vinson's words and more importantly his message into consideration when deciding the outcome of the far reaching and intrusive ObamaCare law.

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