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## ObamaCare's Day in Court

[Damon W. Root](#) | May 10, 2011

The Cato Institute's Ilya Shapiro was in court today in Richmond, Virginia, where the 4th Circuit became the first federal appellate court to hear legal challenges to the Patient Protection and Affordable Care Act. Here's his take on ObamaCare's day in court:

The Fourth Circuit judges—a Clinton appointee and two Obama appointees, in a random selection unfortunate to the challengers—struggled with the idea that Congress could regulate “inactivity.” The government—which has now determined that the challenges are so serious as to send the solicitor general to argue in lower courts—claimed that Congress can do anything it wants relating to anything that in any way affects a national market such as that for health care. Given that decisions not to buy insurance, or to self-insure, or not to pay for health care until presented with a bill, clearly have a substantial effect on interstate commerce, the argument went, Congress can require people to buy health insurance. The judges seemed to agree to a certain extent but were still troubled by the textual truism that a power to “regulate” implies an active object or activity that is being regulated. And indeed, if a “decision” not to buy something or the state of not having acquired something is all that is required to invoke congressional jurisdiction, then the Constitution's enumerations of federal power mean absolutely nothing.

Read the whole thing [here](#). Watch the Reason.tv video U.S. District Judge Henry Hudson [cited in his decision](#) striking down the law's individual mandate below:

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