



Michigan Court Exceeds its Own Powers, Offers "Placeholder" Opinion

By Hadley Heath

Constitutional law scholar lyla Shapiro says Michigan judge George Steeh is wrong to throw out the Plaintiff's challenge to the individual mandate (in [Thomas More Law Center v. President of the United States](#)) and points out that Steeh doesn't adequately address the Commerce Clause arguments of the Plaintiffs (spending only seven pages on the topic that has required voluminous analyses from other legal minds). Along with Barnett and other legal scholars, Shapiro criticizes Steeh's stance on the government's power to dictate "economic decisions."

Here is his statement:

The passage of Obamacare heralded an important discussion on whether the Constitution places any effective limits on federal power and, in particular, where Congress gets the constitutional warrant to require every person to enter the private marketplace and buy a particular good or service. This is a healthy discussion to have, including in the courts.

Today's ruling in Michigan, dismissing the Thomas More Law Center's challenge to the individual mandate, while disappointing to those of us who believe that the government lacks the power to commandeer people to engage in transactions — "economic mandates," as it were — is but one of many legal decisions we can expect on the way to the Supreme Court's ultimate resolution of this important issue. Indeed, this summer we saw a ruling by a federal judge in Virginia allowing that state's legal challenge to the individual mandate and other aspects of the health care legislation to proceed. And last month, a federal judge in Florida heard arguments in a similar lawsuit brought by 20 other states — a decision on which we can expect later this fall. Other serious cases continue in Arizona, Missouri, Ohio, the District of Columbia, and elsewhere.

Perhaps most notable about the Michigan opinion, however, is the scant space spent on the serious Commerce Clause arguments on which hundreds of pages have been filed in these cases by top lawyers, legal experts, and academics (including [Cato](#) — yes, I'm heavily vested in this litigation). After granting that the plaintiffs had standing and that the case was ripe for adjudication, and rejecting the government's odd Anti-Injunction Act defense, Judge Steeh takes only seven and a half pages to reject the plaintiffs' arguments — half of which is spent reciting existing doctrine. It is as if the court merely issued a "placeholder" opinion, pending a "real" resolution on appeal.

And the novel conclusion we gain from this curt disposition is that Congress can now regulate people's "economic decisions," as well as do anything that is part of a "broader regulatory scheme." If the Supreme Court eventually upholds the kind of reasoning Judge Steeh used here, nobody would ever be able to claim plausibly that the Constitution limits federal power. Finding the individual mandate constitutional would be the first interpretation of the Commerce Clause to permit the regulation of inactivity — requiring an individual to engage in economic activity.

The federal government would then have wide authority to require Americans engage in activities

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of its choosing, from eating spinach and joining gyms (in the health care realm) to buying GM cars. Or, under Judge Steeh's "economic decisions" theory, Congress could tell people what to study in school or what job to take. That may be the unfortunate state of the law in a few years — once the Supreme Court has weighed in, and I doubt it would ever go so far in any event — but it is not up to district courts to extend constitutional doctrine on their own.

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