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ObamaCare Challenges Gain Steam*

December 16, 2010 by [The Legal Pulse](#)

Guest Commentary by [Ilya Shapiro](#), The Cato Institute

*[Cross-posted](#) from Cato @ Liberty

Today's hearing in Pensacola built on Monday's ruling out of Richmond: Judge Roger Vinson is likely to hold the individual mandate unconstitutional. And such a decision would be the most significant development possible at the district court level because the Florida case involved 20 states, with more joining the lawsuit when new governors and attorneys general assume office in January. It is unprecedented for this number of states — again, soon to be a majority — to sue the federal government and it shows the singular and extreme nature of the government's assertion of raw power here.

As Judge Vinson said during the hearing, the Supreme Court has held that the outer bounds of Congress's regulatory power under the Commerce Clause (as exercised via the Necessary and Proper Clause) is [activity](#) that has a substantial effect in interstate commerce. If the government were to prevail under its theory that Congress can regulate any decision with economic ramifications — as two district courts have unfortunately held — then there is no principled limit on federal power. At that point, we might as well throw the Constitution out the window and admit that Congress is the judge of its own authority.

Finally, while Judge Vinson was more skeptical of the Medicaid-related claim that is unique to the Florida lawsuit, it is similarly impossible to draw limits to federal power if we allow Congress to impose a Hobson's Choice on states of either withdrawing from Medicaid or implementing budget-crippling regulations. At a certain point the strings that Congress attaches to federal funding become coercive — particularly when the new shape of a government program (here, Medicaid) radically transforms the compact states originally joined and have inextricably relied on.

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