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# Tea Party Shadows Health Care Ruling

By **KEVIN SACK**

Among the legal commentariat, which blogs its instant analysis after each turn in the health care litigation, one assertion in Monday's ruling against the law by Judge Roger Vinson is receiving particular attention.

"It is difficult to imagine," Judge Vinson, of Federal District Court in Pensacola, Fla., wrote in a central passage of his 78-page opinion, "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."

Supporters of the health care act — which Judge Vinson invalidated after ruling it was unconstitutional to require citizens to buy [health insurance](#) — saw in the language a deliberate nod to the [Tea Party movement](#).

Whether that was the judge's intent cannot be known. But legal scholars who disagreed with the ruling seized on it as evidence that Judge Vinson, who was appointed by President [Ronald Reagan](#), a Republican, had infused his ruling with political bias.

"On first read, the most striking aspect of Judge Vinson's ruling today is not its remedy — striking the Affordable Care Act in its entirety — but the impression one gets that the opinion was written in part as a Tea Party manifesto," wrote Mark Hall, a law professor at [Wake Forest University](#), on the blog [Health Reform Watch](#).

Igor Volkov, a health policy analyst who writes on the blog [ThinkProgress](#), also noted the

judge's reference. "It's the kind of overreach that will do more to harm the Republican crusade against the law than help it," he offered.

Not surprisingly, those who write from the right found Judge Vinson's wording worthy of applause. Ilya Shapiro, a constitutional scholar at the [Cato Institute](#), cited the tea passage in his [review](#) of Judge Vinson's opinion, which he called "magisterial" and "breathtaking."

"The 78-page ruling," Mr. Shapiro wrote, "is well theorized and engaging (Vinson's opus is a joy to read compared to most stuff I have to wade through to understand what the courts are doing)."

### **Vegetables Cited, Again**

Given the role that green vegetables have played in the health care litigation, it would have been disappointing had Judge Vinson not given broccoli its due.

Throughout the health care proceedings in both Florida and Virginia, lawyers for the plaintiffs have argued that if Congress could force Americans to buy health insurance, it could require them to do most anything. And in each case, they have raised the specter of what this might mean — a government that can force you to buy a [General Motors](#) car, join a gym or even eat your vegetables.

Judge Vinson seized on the analogy in a hearing in December and did so again in his ruling on Monday, while batting away the Obama administration's contention that health care is a unique market because people cannot opt out of it.

"There are lots of markets — especially if defined broadly enough — that people cannot 'opt out' of," the Judge wrote in opening a discussion of the market for food. "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."

For Judge Henry E. Hudson of Federal District Court in Richmond, Va., the first judge to [invalidate](#) a portion of the health law, it was not broccoli but asparagus that he feared.

“What this really distills down to,” Judge Hudson said during a hearing in October, “is whether or not you can compel someone to make a decision when they’re not inclined to do so otherwise. And that could apply to one’s decision to buy an automobile, to join a gym, to eat asparagus.”

In California, which produces more broccoli and asparagus than any state, growers might chafe at the notion that anyone would have to be forced to consume either vegetable. But Dave Kranz, a spokesman for the California Farm Bureau Federation, declared that when it comes to green vegetables, there is no such thing as bad publicity.

“Here in California, we produce a lot of different vegetables and if somebody doesn’t like broccoli and asparagus, we’ve got Brussels sprouts and cauliflower,” Mr. Kranz said. “We’re happy to have people talking about vegetables. You’ll remember that the first President Bush was not a broccoli fan. The broccoli people weathered that, and they’ll weather this, too.”