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BREAKING: 11th Circuit Rules against Individual Mandate in Obamacare

Fri, 08/12/2011 - 1:48pm | posted by George Scoville

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It's a great day for liberty — the 11th Circuit Court in Atlanta has [ruled against the government](#) in *Florida v. U.S. Department of Health and Human Services*:

*WASHINGTON - An appeals court ruled on Friday that **President Barack Obama's healthcare law requiring Americans to buy healthcare insurance or face a penalty was unconstitutional, a blow to the White House.***

*The Appeals Court for the 11th Circuit, based in Atlanta, found that **Congress exceeded its authority** by requiring Americans to buy coverage, but also ruled that **the rest of the wide-ranging law could remain in effect.***

*The legality of the so-called individual mandate, a cornerstone of the healthcare law, is widely expected to be decided by the U.S. Supreme Court. **The Obama administration has defended the provision as constitutional.***

There are a couple of things of important note packed into this ruling:

- **Federalists won today.** This is another victory for constitutionalism and those who believe that government is best which governs least — that the U.S. Constitution created a limited government with specific enumerated powers.
- **It is now more likely that the U.S. Supreme Court will hear the case.** While the high court's docket has become hugely more selective in years past, the fact that the 11th Circuit and 6th Circuit are at odds with each other in their respective rulings increases the likelihood that SCOTUS will decide this issue.
- **The Court disappointed in its treatment of the non-severability issue.** In fact, [it overturned the lower court's ruling](#), which held that, because the law lacked a severability clause, overturning any of the law's provisions means necessarily an overturning of the entire law.

The Court's opinion is over 300 pages long — so it'll take me time I'm not even sure I have to sort out their reasoning on this last part. For now, I'll simply note that this is a deeply troubling development, and certainly a little rain on the liberty parade. In the meantime, check out [this amicus brief in the case](#), filed by my former Cato Institute colleagues Ilya Shapiro (Counsel of Record), Trevor Burrus, David Rittgers, Robert A. Levy, and Roger Pilon, for additional background on the issues at stake.

Update:

Megan McArdle weighs in on the political and policy implications of a [mandate-less-but-otherwise-functioning Obamacare](#):

*Presumably, the insurance market across the United States ends up looking a lot like [New York's market](#), where during the debate over health care reform it was reported that **the cost of the average family policy in the individual market was over \$4,000 a month.** That's because New York has the other features of ObamaCare—community rating and guaranteed issue—without the mandate. The result was that **all the healthy people dropped out of the pool, leaving a few very sick people to buy insurance.** There's a slight difference though: the government is going to subsidize individuals in the private market. If the subsidies keep pace with the cost, **Obamacare's nominal deficit***

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reduction is going to turn into a gaping hole in the federal budget.

*Under those conditions, the real question is political: **will anyone have the guts** to repeal community rating and guaranteed issue? Or the subsidies? And if not, how do we absorb the financial blow?*

Who and how, indeed.

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