



# MEMORANDUM

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**RE: FLORIDA RULING OF OBAMACARE UNCONSTITUTIONAL**

**DATE: February 2, 2011**

Judge Roger Vinson, a Senior United States District Judge for the Northern District of Florida, has determined that “The Patient Protection and Affordable Care Act” (“the Act”) is unconstitutional.<sup>1</sup> Judge Vinson begins his opinion by reiterating the importance of the federalist system. In framing the question before the court, Vinson emphasized that this question is not necessarily about the health care system, but about the *federalist* system and the “very important issues regarding the Constitutional role of the Federal government.”<sup>2</sup> Supporting this thesis, Vinson quotes Federalist 51 and the 10th Amendment, articulating the Framers intent of a limited federal government.<sup>3</sup> Vinson states: “Rather than being the mere historic relic of a bygone era, the principle behind a central government with limited power has ‘never been more relevant than in this day, when accretion, if not actual accession, of power to the federal government seems not only unavoidable, but even expedient.’”<sup>4</sup> After motions to dismiss, two issues remained: (1) whether the individual mandate violates the Commerce Clause (Count I) and (2) “[whether] [t]he expansion of Medicaid violates the Spending Clause and principles of federalism protected under the 9th and 10th Amendments” (Count IV).<sup>5</sup>

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<sup>1</sup>*Florida v. United States Dept. of Health & Human Services*, No. 3:10-cv-91-RV/EMT, 2011 U.S. Dist LEXIS 8822 (N.D. Fla. Jan. 31, 2011).

<sup>2</sup>*Id.* at 2.

<sup>3</sup>*Id.* at 3.

<sup>4</sup>*Id.* (quoting *Brzonkala v. Virginia Polytechnic Institute*, 169 F.3d 820, 826 (4th Cir. 1999)).

<sup>5</sup>*Id.* at 4–5. Although the State plaintiffs alleged that the Medicaid provision violated the 9th and 10th Amendments, they did not raise those claims “except in a single passing sentence.” *Id.* at 6 n.5.

**I. Count IV: Medicaid Expansion**

The State plaintiffs contended that the Act violated the Spending Clause because it “significantly expands and alters the Medicaid program to such an extent they cannot afford the newly-imposed costs and burdens.”<sup>6</sup> Plaintiffs argued that the Act violated the Constitutional principles set forth in *South Dakota v. Dole*.<sup>7</sup> Plaintiffs also alleged that the spending condition violated the “coercive” restriction in *Dole* (Dicta asserting that “in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which ‘pressure turns into compulsion.’”<sup>8</sup>). According to Judge Vinson, the plaintiffs did not argue that the Act violated the four general restrictions in *Dole*, but relied solely on the “coercion theory.”<sup>9</sup> Therefore, Judge Vinson only considered whether “the Medicaid provisions [were] impermissibly coercive and effectively commandeered the states.”<sup>10</sup> The State plaintiffs primarily argued that participation in Medicaid is “involuntary” due to the financial restrictions it imposed on the States.<sup>11</sup> Judge Vinson determined that there was not enough case law to support the plaintiffs’ claims,<sup>12</sup> and concluded that the coercion claim “cannot succeed and that the defendants [were] entitled to a judgment as a matter of law.”<sup>13</sup> However, in so ruling, Judge Vinson wrote:

I appreciate the difficult situation in which the states find themselves. It is a matter

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<sup>6</sup>*Id.* at 6.

<sup>7</sup>*South Dakota v. Dole*, 483 U.S. 203 (1987). *Dole* held that there are four restrictions on Congress’ spending power: (1) the spending must be for the general welfare; (2) the conditions must be stated clearly and unambiguously; (3) the conditions must bear a relationship to the purpose of the program; and (4) the conditions imposed may not require states “to engage in activities that would themselves be unconstitutional.” “In addition, a spending condition cannot be ‘coercive.’” *Florida*, *supra* note 1 at 6 (quoting *Dole*, 483 U.S. at 207–210).

<sup>8</sup>*Florida*, *supra* note 1 at 6–7 (citation omitted).

<sup>9</sup>*Id.* at 7.

<sup>10</sup>*Id.*

<sup>11</sup>*Id.* at 7–9. The states claimed that they were faced with an “untenable Hobson’s Choice,” and that “[t]hey must either (1) accept the Act’s transformed Medicaid program with its new costs and obligations, which they cannot afford, or (2) exit the program altogether and lose the federal matching funds that are necessary and essential to provide health care coverage to their neediest citizens (along with other Medicaid-linked funds). Either way . . . their state Medicaid systems will eventually collapse . . .” *Id.* at 7.

<sup>12</sup>“Indeed, a survey of the legal landscape revealed that there was ‘very little support for the plaintiffs’ coercion theory argument’ as every single federal Court of Appeals called upon to consider the issue has rejected the coercion theory as a viable claim.” *Id.* at 10 (citations omitted).

<sup>13</sup>*Id.* at 12.

of historical fact that at the time the Constitution was drafted and ratified, the Founders did not expect that the federal government would be able to provide sizeable funding to the states and, consequently, be able to exert power over the states to the extent that it currently does.<sup>14</sup>

## **II. Individual Mandate (Count I)**

Plaintiffs asserted that “the Commerce Clause can only reach individuals and entities engaged in an ‘activity’; and because . . . an individual’s failure to purchase health insurance is, almost by definition, an ‘inactivity,’ the individual mandate goes beyond the [scope] of the Commerce Clause and is unconstitutional.”<sup>15</sup> The defendants responded by (1) asserting that “activity” is not required for Congress to exercise its Commerce Clause power, but even if it is, not having insurance is an “activity”; and (2) the individual mandate falls within the Necessary and Proper Clause.<sup>16</sup>

### **A. Standing**

The following plaintiffs brought this case: the Attorneys General and/or Governors of twenty-six States, two private citizens, and the National Federation of Independent Business (“NFIB”). The first private citizen, a small business owner, alleged, *inter alia*, that (1) she did not have health insurance; (2) she is a small business owner; (3) she is not currently eligible for Medicaid, nor will she be eligible in 2014; and (4) “that both she and her business will be harmed if she is required to buy health insurance that she neither wants nor needs health insurance . . . .”<sup>17</sup> The second private citizen generally alleged the same, but without the business aspects.<sup>18</sup> Judge Vinson granted standing to both private plaintiffs.<sup>19</sup> Because the first private plaintiff was a

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<sup>14</sup>*Id.*

<sup>15</sup>*Id.* at 13.

<sup>16</sup>*Id.*

<sup>17</sup>*Id.* at 14.

<sup>18</sup>*Id.*

<sup>19</sup>*Id.*

member of the NFIB, the court determined that NFIB had associational standing.<sup>20</sup> Judge Vinson also granted standing to the States that had statutes “duly passed by their legislatures, and signed into law by their Governors” that directly contravened the individual mandate.<sup>21</sup> Judge Vinson relied heavily on Judge Henry Hudson’s analysis of this standing issue.<sup>22</sup>

## **B. Analysis**

### **1. The Commerce Clause**

Judge Vinson first articulated that Congress can only regulate three categories of activity. He then clarified that the third category—regulating “those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce—is the ‘one at issue in this case.’”<sup>23</sup> Judge Vinson commenced writing a dissertation on the history of the Commerce Clause. He generally concluded:

To acknowledge the foregoing historical facts is not necessarily to say that the power under the Commerce Clause was intended to (and must) remain limited to the trade or exchange of goods, and be confined to the task of eliminating trade barriers erected by and between the states. The drafters of the Constitution were aware that they were preparing an instrument for the ages, not one suited only for the exigencies of that particular time.

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Thus, the exercise and interpretation of the commerce power has evolved and undergone a significant change “as the needs of a dynamic and constantly expanding national economy have changed.”<sup>24</sup>

Because Judge Vinson concluded that the Constitution is a living document, he then discussed the jurisprudential evolution of the Commerce Clause from *Gibbons v. Ogden* to the most recent Commerce Clause cases of *Lopez*, *Morrison*, and *Raich*. Judge Vinson articulated that the current

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<sup>20</sup>*Id.* at 16.

<sup>21</sup>*Id.* at 17.

<sup>22</sup>*See Virginia v. Sebelius*, 702 F. Supp. 2d 598, 602–07 (E.D. Va. 2010) (declaring the Individual Mandate unconstitutional but severable).

<sup>23</sup>*Id.* at 19 (citations omitted).

<sup>24</sup>*Id.* at 27.

Commerce Clause battle-line is between *Lopez* and *Morrison* (plaintiffs) and *Wickard* and *Raich* (defendants).<sup>25</sup> The court, however, stated that not only is the case law helpful in resolving this case, but the statements by the Congressional Research Service and Congressional Budget Office that “to directly impose an individual mandate to purchase health care insurance is ‘novel’ and ‘unprecedented’” were also helpful.<sup>26</sup> In fact, Judge Vinson stated: “The mere fact that the defendants have tried to analogize the individual mandate to things like jury service, participation in the census, eminent domain proceedings, forced exchange of gold bullion for paper currency under the *Gold Clause Cases*, and required service in a ‘posse’ . . . only underscores and highlights its unprecedented nature.”<sup>27</sup>

(a) Is Activity Required Under the Commerce Clause?

Judge Vinson accurately noted that this question is a question of first impression.<sup>28</sup> Judge Vinson then determined that activity is required under the Commerce Clause:

It is difficult to imagine 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. If Congress can penalize a passive individual for failing to engage in commerce, the enumeration of powers in the Constitution would have been in vain for it would be “difficult to perceive any limitation on federal power.”<sup>29</sup>

The court further stated that it would be “a radical departure from existing case law to hold that Congress can regulate inactivity under the Commerce Clause.”<sup>30</sup>

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<sup>25</sup>*Id.* at 37–38.

<sup>26</sup>*Id.* at 38 (citations omitted).

<sup>27</sup>*Id.* at 39.

<sup>28</sup>*Id.* at 40. (“The Supreme Court ‘has never needed to address the activity/inactivity distinction advanced by plaintiffs because in every Commerce Clause case presented thus far, there has been some sort of activity’”) (citations omitted).

<sup>29</sup>*Id.* at 42 (citations omitted).

<sup>30</sup>*Id.*

## (b) Is the Failure to Purchase Health Insurance “Activity?”

Secondly, the defendants argued that living without health insurance “constitutes ‘economic activity to an even greater extent than the plaintiffs in *Wickard* or *Raich*.’”<sup>31</sup> The defendants argued that (1) the health care market is “unique”<sup>32</sup> and (2) that there is an “economic decision” factor that goes into purchasing health insurance, and that this “economic decision factor” should be considered “activity” for Commerce Clause purposes.<sup>33</sup> The court determined that both

the “uniqueness” and “economic decision” arguments [were] unpersuasive, [and] conclude[d] that the individual mandate seeks to regulate economic *inactivity*, which the very opposite of economic activity. And because activity is required under the Commerce Clause, the individual mandate exceeds Congress’ commerce power, as it is understood, defined, and applied in the existing Supreme Court case law.<sup>34</sup>

2. The Necessary and Proper Clause

Generally, Judge Vinson determined that

[t]he Necessary and Proper Clause cannot be utilized to “pass laws for the accomplishments of objects” that are not within Congress’ enumerated powers. As the previous analysis of the defendants’ Commerce Clause argument reveals, the individual mandate is neither within the letter nor the spirit of the Constitution. To uphold that provision via application of the Necessary and Proper Clause would authorize Congress to reach and regulate far beyond the

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<sup>31</sup>*Id.* at 45.

<sup>32</sup>“Two things become apparent after reading these arguments attempting to justify extending Commerce Clause power to the legislation in that case, and the majority opinion (which is the controlling precedent) rejecting those same arguments. First, the contention that Commerce Clause power should be upheld merely because the government and its experts or scholars claim that it is being exercised to address a ‘particularly acute’ problem that is ‘singular[,]’ ‘special,’ and ‘rare’—that is to say ‘unique’—will not by itself win the day. Uniqueness is not an adequate limiting principle as every market problem is, at some level and in some respects, unique. If Congress asserts power that exceeds its enumerated powers, then it is unconstitutional, regardless of the purported uniqueness of the context in which it is being asserted.” *Id.* at 49.

<sup>33</sup>“The important distinction is that ‘economic decisions’ are a much broader and far-reaching category than are ‘activities that substantially affect interstate commerce.’ While the latter necessarily encompasses the first, the reverse is not true. ‘Economic’ cannot be equated to ‘commerce.’ And ‘decisions’ cannot be equated to ‘activities.’ Every person throughout the course of his or her life makes hundreds or even thousands of life decisions that involve the same general sort of thought process that the defendants maintain is ‘economic activity.’ There will be no stopping point if that should be deemed the equivalent of activity for Commerce Clause purposes.” *Id.* at 55.

<sup>34</sup>*Id.* at 56.

currently established “outer limits” of the Commerce Clause and effectively remove all limits on federal power.<sup>35</sup>

### 3. Severability

The court restated the general rule that severability is “a doctrine of judicial restraint, and [that] the Supreme court has applied and reaffirmed that doctrine . . . .”<sup>36</sup> Judge Vinson acknowledged the rule that “because the unconstitutionality of one provision of a legislative scheme ‘does not *necessarily* defeat or affect the validity of its remaining provisions,’ the ‘*normal* rule’ is that partial invalidation is proper.”<sup>37</sup> The court concluded, however, that the severability clause was intentionally left out by Congress, and because “Congress recognized that the Act[] could not operate *as intended* without the individual mandate,” the individual mandate was not severable, and thus the entire Act was void. In other words, “[s]evering the individual mandate from the Act along with the other insurance reform provisions—and in the process reconfiguring an exceedingly lengthy and comprehensive legislative scheme—cannot be done consistent with the principles set out above. Going through the 2,700 page Act line-by-line, invalidating dozens (or hundreds) of some sections while retaining dozens (or hundreds) of others, would not only take considerable time and extensive briefing, but it would, in the end, be tantamount to rewriting a statute in an attempt to salvage it, which is foreclosed by *Ayotte*.”<sup>38</sup> Therefore, while recognizing that there are existing problems in our national health care system, the court correctly concluded that “because the individual mandate is unconstitutional and not severable, the entire Act is void.”<sup>39</sup>

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<sup>35</sup>*Id.* at 62.

<sup>36</sup>*Id.* at 64 (emphasis in original).

<sup>37</sup>*Id.*

<sup>38</sup>*Id.* at 73.

<sup>39</sup>*Id.* at 76.