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## THE HEALTH CARE REFORM STRUGGLES BEFORE THE US JUDICIARY

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On January 31, 2011, in [Florida et al. v. US Department of Health and Human Services et al.](#) (3:10-cv-91-RV/EMT) Justice Roger Vinson of the U.S. District Court for the Northern District of Florida ruled that the recent Obama Health Care Reform (passed last year) is unconstitutional because contrary to the Commerce Clause.

From a procedural perspective, the Justice Department announced an appeal, even if the Federal Government and the states will continue to apply the law pending the decision of the United State Supreme Court.

The plaintiffs in the action (26 states) challenged a specific provision (in particular Section 1501) of the ["The Patient Protection and Affordable Care Act."](#) Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the [Health Care and Education Reconciliation Act of 2010](#), Pub. L. No. 111-152, 124 Stat. 1029 (2010) signed by President Obama on March 23, 2010. The action has been brought the day after President Obama signed it.

The Health Reform introduces an "individual mandate" according to which, beginning in 2014, everyone (with limited exceptions) must purchase federally-approved health insurance, or pay a monetary penalty.

The health reform is unconstitutional because, as Justice Vinson states: *"I must reluctantly conclude that Congress exceeded the bounds of its authority in passing the Act with the individual mandate. That is not to say, of course, that Congress is without power to address the problems and inequities in our health care system. The health care market is more than one sixth of the national economy, and without doubt Congress has the power to reform and regulate this market"*. The Court added that: *"Because the individual mandate is unconstitutional and not severable, the entire Act must be declared void. This has been a difficult decision to reach, and I am aware that it will have indeterminable implications, "*.

Justice Vinson explained that the case is not about wise or unwise legislation, but it is about the Federalist system, dual sovereignty and the relation between the enumerated Federal powers and the numerous and indefinite ones in the states and people's hands (as stated in the [Tenth Amendment](#) of the Bill of Rights). Through the limiting of the powers conferred to the Federal government there would be less risk of abuse and tyranny. So for the Court, the issue was only to understand if the Health Reform was within the enumerated powers that the U.S. Constitution confers to Congress. And clearly this legislation falls outside these powers.

The rationale of the violation of the Commerce Clause is based on the fact that it can only reach individuals and entities engaged in three categories of activities: use of channels of interstate commerce; regulation and protection of interstate instrumentalities; regulation of activities substantially related to interstate commerce. The plaintiff's argument is that an individual's failure to purchase health insurance is, almost by definition, "inactivity," therefore *"the individual mandate goes beyond the Commerce Clause and is unconstitutional."*

The issue is whether the refusal to buy insurance constitutes interstate commerce. Even if in the past, as Justice Vinson says, the Commerce Clause has been used to regulate activities like growing marijuana or navigating a waterway, it has never been used to force someone to do something they weren't already doing.

It is interesting to stress that this decision created a further split among U.S. Federal Courts. The recent Florida case joined a similar decision in *Virginia v. Sebelius*, (728 F. Supp. 2d 768) confirming the violation of the Commerce Clause. On the contrary, two other Courts ruled that the legislation and the individual mandate is expression of proper exercise of the commerce power, in *Liberty Univ., Inc. v. Geithner*, (2010 WL 4860299; W.D. Va. Nov. 30, 2010); and in *Thomas More Law Center v. Obama*, (720 F. Supp. 2d 882)

From a political perspective is also interesting to note that Justice Roger Vinson has been appointed to the bench by President Ronald Reagan. Similarly, the other two decisions upholding the Health Reform have been handed by two democratic judges.

To complete the picture, other federal judges started what has been called "a legal assault on the President Obama's agenda": Justice R. Lamberth in Washington DC ruled against the President's regulation to expand federal funding for stem-cell research and Justice M. Feldman, in New Orleans, rejected the six-month moratorium on deep-water oil drilling. Story continues below

At this point the intervention of the U.S. Supreme Court seems inevitable. According to some scholar, the fate of the Health Reform will primarily be in the hands of two: Justice Kennedy and Justice Breyer. Before 2014 the outcome of the Health Reform will be determined.