



Federal Court of Appeals Finds “Personal Health Insurance Mandate” Constitutional

By: Jack A. Janov

On June 29, 2011, the Sixth Circuit Court of Appeals upheld¹ the constitutionality of the “personal insurance mandate²” of The Patient Protection and Affordable Care Act (“ACA”) which requires most adults to purchase a minimum level of health care insurance by 2014. This is the first appellate court ruling on the validity of the minimum coverage provision³ of the ACA.

In a plurality decision, the Court affirmed the decision of the district court by finding that the health insurance mandate is proper under the Commerce Clause of the Constitution. This three-judge panel, comprised of one Democratic and two Republican nominees, upheld the mandate 2-1 with one GOP-nominated judge voting to uphold the mandate and the other dissenting. Justice Martin was appointed by President Jimmy Carter, Justice Sutton was appointed by President George W. Bush, and Justice Graham by President Ronald Reagan.

The Court’s opinion states that the “minimum coverage provision” is a valid exercise of Congressional authority under the Commerce Clause because the mandate satisfies the “substantial effects on interstate commerce” test. This opinion explains that Congress had a rational basis to conclude that in the aggregate, the practice of self-insuring for the cost of health care substantially affects interstate commerce. This opinion further explains that Congress also had a rational basis to conclude that the minimum coverage provision is essential to the ACA’s larger purpose — to reform the national health care delivery and health insurance markets.

One of the main issues facing the various courts reviewing the ACA has been whether a person’s decision not to buy insurance is the type of economic activity that constitutes interstate commerce, or, if it is a kind of inactivity beyond the reach of Congress. Justice Sutton’s concurring opinion explains that the easily satisfied “any rational basis test” for “facial” constitutional challenges is satisfied in this instance, because it has not been shown that the individual mandate exceeds Congress’ power in all scenarios. This concurring opinion notes for example, that the mandate is constitutional as applied to individuals who presently have health insurance but who may want to drop coverage in the future, or to individuals who have health coverage, but at levels below what is required by the minimum coverage provision.



Justice Graham's partial dissent finds the personal insurance mandate to be an invalid exercise of congressional power under the commerce clause. Reciting notions of federalism, this dissent indicates that if the decision not to purchase health insurance at the level required by the minimum coverage provision is allowed as a valid exercise of Congressional authority, then no "aspect of human activity" will escape federal legislative power.

This Sixth Circuit decision is the first of several anticipated decisions this summer or fall to rule on the validity of the minimum coverage provision. The other federal district court decisions addressing the constitutionality of the minimum coverage provision of the ACA include: *Florida v. H.H.S.* (Northern District, Florida) also before the Sixth Circuit, in which the district court invalidated the personal mandate provision; and two Fourth Circuit Court of Appeals cases — *Liberty University v. Geithner* (Western District, Virginia), in which the district court upheld the personal mandate provision, and *Virginia v. Sebelius* (Eastern District, Virginia), in which the district court invalidated the provision.

Media reports now indicate that attorneys for Thomas More Law Center have stated they will either file an appeal to the U.S. Supreme Court, or first seek an *en banc* review with the entire Sixth Circuit Court of Appeal.

Endnotes

- 1 *Thomas More Law Center v. Barack Obama; HHS. (Michigan)*, Docket No. No. 10-2388, decision dated 6/29/11.
- 2 Section 1501, the "minimum essential coverage" provision of the ACA, Pub. L. No. 111-148, 124 Stat. 119 (2010), As amended, Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029; codified as 26 U.S.C. § 5000A
- 3 The phrases "personal insurance mandate" and "minimum coverage provision" are synonymous with the "minimum essential coverage" statutory provision of the ACA.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the author:

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