

Federal Court in Virginia Declares PPACA's "Minimum Essential Coverage" Provision Unconstitutional

December 15, 2010

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On December 13, 2010, Judge Henry E. Hudson of the U.S. District Court for the Eastern District of Virginia held that a key portion of the Patient Protection and Affordable Care Act ("PPACA"), passed by Congress in late 2009 and signed into law by President Obama on March 23, 2010, was unconstitutional. The challenge to the law was made on behalf of Virginia by its Attorney General and claimed that the minimum essential coverage provision contained in the law was unconstitutional. Under Section 1501 of PPACA, every U.S. citizen, other than those falling within certain exceptions, would be required to maintain a minimum level of health insurance beginning in 2014 or pay a fine included in the taxpayer's annual tax return. Virginia's challenge sought to bar the Federal Government from enforcing PPACA's minimum essential coverage provision on the grounds that it exceeded Congress' powers under the Commerce Clause of the U.S. Constitution.

In a 42-page opinion, Judge Hudson agreed with Virginia, holding: "Neither the Supreme Court nor any federal circuit court of appeals has extended Commerce Clause powers to compel an individual to involuntarily enter the stream of commerce by purchasing a commodity in the private market." Attorneys for the Department of Health and Human Services argued that the decision of an individual not to obtain health insurance would undoubtedly affect interstate commerce at some point in the future when the individual needed medical care and was thus within the powers of Congress to regulate under the Commerce Clause. Judge Hudson disagreed, however, finding that individuals who do not purchase health insurance were actually abstaining from economic activity, rather than voluntarily participating in the stream of interstate commerce, and thus "an individual's personal decision to purchase - or decline to purchase - health insurance from a private provider is beyond the historical reach of the Commerce Clause."

Although Judge Hudson found that PPACA's minimum essential coverage provision went beyond Congress' powers, he stopped short of invalidating the law in its entirety, as requested by Virginia, and instead found that the minimum essential coverage provision was severable from the remaining provisions, leaving the law's remaining provisions in place for now. How such provisions would operate without the minimum essential coverage provision in place remains to be seen, however, as provisions such as those preventing insurers from denying coverage to those with pre-existing conditions were intended by Congress to act in tandem with the minimum essential coverage provision, in order to prevent individuals from abusing the system by refusing to obtain health insurance until after they already had a serious health problem and then forcing insurers to cover them under PPACA.

Judge Hudson's opinion is the first to find that certain provisions of PPACA are unconstitutional and is in conflict with two other opinions previously decided by federal judges in the Eastern District of Michigan and the Western District of Virginia. Appeals of those cases are currently Pending in the Sixth Circuit and Fourth Circuit Courts of Appeals, respectively. Nearly two dozen other lawsuits are also currently pending challenging portions of PPACA, including a federal case in Florida that has been joined by twenty states. Hearings in that case are scheduled to begin Thursday, December 16, but regardless of the ruling, the

ultimate decision as to the constitutionality of the PPACA is likely to rest with the United States Supreme Court.

Dinsmore & Shohl's Health Care Practice Group will continue to keep you updated as these matters further develop.