Federal judge rules Obama health care law unconstitutional

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3 February 2011

A federal district judge in Florida issued a sweeping ruling January 31 that the health care reform legislation pushed through Congress last year by the Obama administration was unconstitutional.

Judge Roger Vinson issued the ruling in response to a suit filed by 26 state governments (all but one Republican-controlled), two individual plaintiffs and the National Federation of Independent Business. He upheld a challenge to the constitutionality of the individual mandate, the law's requirement that every US adult buy health insurance or pay a fine, and ruled that the mandate was so fundamental to the functioning of the Obama health care plan that the entire law must be scrapped.

Vinson was the fourth federal judge to rule on a challenge to the health care law. Judges in Michigan and Virginia, both appointed by Democratic presidents, have ruled the law constitutional. A Republican-appointed judge in Virginia, and now Vinson, a Reagan appointee, have ruled against the law.

Vinson's ruling has the most political impact, since he is the first judge to strike down the entire law. The Virginia judge who ruled in December against the law, Henry Hudson, limited his decision to striking down the individual mandate.

None of the four rulings has any immediate effect, since each judge denied any injunctive relief, allowing the Obama administration to continue implementing the provisions of the new law pending appeals to higher courts. The ultimate decision is expected in the US Supreme Court well before the main provisions of the law take effect in 2014.

Despite Vinson's refusal to issue an injunction, Republican officeholders in several states said they would halt all cooperation with implementation. This raises the specter of further legal actions, with Republican-controlled state governments attempting in practice to nullify the operation of a federal law.

Congressional Republicans have sought to incite such resistance with a series of symbolic votes to repeal the entire health care law. The first major action of the new Republican-controlled House of Representatives was a vote to repeal, conducted largely along party lines. A similar measure came to a vote in the Democratic-controlled Senate Wednesday, but was defeated by a 47-51 margin. Neither house could muster the two-thirds majority that would be required to overturn an expected veto by President Obama.

Judge Vinson rejected the challenge by the 26 state plaintiffs to the expansion of Medicaid coverage under the new law. The state governments claimed that this was an unfunded mandate, because they must pay a portion of the costs of adding several million people to the Medicaid rolls. The judge ruled that since the states had the option of dropping out of Medicaid entirely, they could not claim they were being unconstitutionally coerced.

The practical impact of a state withdrawing from Medicaid—which is being openly discussed in Texas—would be to deprive millions of low-income people of their health care coverage, forcing them to go to already overburdened emergency rooms when they need medical treatment.

The bulk of Vinson's 78-page decision was devoted to an extended discussion of the Commerce Clause of the US Constitution, the basis for nearly all federal regulation of economic activity. While initially interpreted to authorize regulation of foreign and interstate trade, in a literal sense, the commerce clause was extended during the New Deal era of the 1930s and 1940s to apply to economic activities that had only an indirect effect on interstate commerce.

Among the most important Supreme Court decisions of that period was the 1941 decision in *United States v. Darby*, which upheld the authority of Congress to regulate child labor, and the 1942 decision, *Wickard v. Filburn*, which upheld federal restrictions on wheat growing.

The last decision was particularly noteworthy, because it found that even the decision of an individual wheat farmer to grow wheat for his own consumption, never selling it into the market, could be subject to the commerce clause, because the aggregate of all such individual actions would have a huge effect on interstate commerce.

Another Supreme Court decision, in 1944, found that the federal government could regulate insurance companies under the commerce clause, since they did business across state lines, although a subsequent federal law delegated primary responsibility for insurance company regulation to the states.

In the past 15 years, the Supreme Court has set limits for the first time on the scope of the commerce clause, in the 1995

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decision in *United States v. Lopez*, striking down a federal ban on possession of a gun in the vicinity of a public school, and the 2000 decision in *United States v. Morrison*, which ruled unconstitutional the Violence Against Women Act.

Both these cases involved laws passed under the Clinton administration that stretched the application of the commerce clause to social issues—gun possession and physical violence—which arguably had no economic dimension.

The health care law has a clear economic component, so the state plaintiffs opposed the application of the commerce clause by relying on a distinction that has no precedent in constitutional jurisprudence. They argued that the decision of an individual to forego buying insurance was "passive inactivity" rather than economic "activity," in the sense required for government regulation under the commerce clause.

The Obama administration argued that not buying insurance had economic consequences because the uninsured would still have access to medical care through hospital emergency rooms, which are legally obligated to treat all comers, with the costs ultimately borne by those with insurance or by the government. Vinson rejected this argument and embraced the claims of the state governments that requiring individuals to purchase insurance was unconstitutional.

The focus of the legal proceedings on the individual mandate is a byproduct of the Obama administration's overall approach to the issue of health care, which is politically reactionary. The White House drafted legislation whose main purpose was to reduce health care costs for American corporations and the federal government, while enlisting the insurance industry, the drug companies and the for-profit hospital chains in the process and ensuring their profit interests.

Instead of establishing the right of all people to medical care—a right that is essential to a decent and humane society—the Obama administration legislated the right of profit-making insurance companies to collect premiums, mandating that every individual not covered by Medicare or Medicaid must purchase a health insurance policy.

This policy in effect blames the uninsured, i.e., the victims, for the failure of the profit-driven US health care system, and seeks to punish them by forcing them to pay exorbitant premiums or a fine estimated at nearly $2,100 per capita, once the system is fully in place in 2014.

This measure is regressive in itself, placing a considerable financial burden on hard-pressed low-wage workers. And it is doubly reactionary because it allows the political right, which opposes any extension of social benefits, to posture as the defender of "individual freedom" against a new government imposition.

To the extent that the Tea Party agitation, financed by a handful of ultra-right-wing billionaires, was able to gain any popular influence, it is because of measures like the individual mandate and the Obama administration's decision to finance its supposed expansion of coverage by cuts in Medicare, rather than through taxes on the wealthy or big business. (Vinson himself made a passing reference to the Boston Tea Party of 1773 in the text of his decision, a clear political signal).

This made it possible for Republican candidates who favor drastic cuts in Medicare, Medicaid and other social programs to campaign in the 2010 elections as though they were defenders of Medicare against Obama's cuts.

The legal hairsplitting over "activity" vs. inactivity, and the cynical demagogy of the Republicans and the Tea Party, are in sharp contrast to their attitude to the bank bailout. There was no lineup of 26 states and business lobbies to challenge the diversion of trillions in federal resources to bolster the investment banks and the billionaires. When the vital interests of the ruling elite are at stake, both the Bush administration and the Obama administration moved swiftly and without any constitutional scruples.

Paradoxically, the pro-corporate character of Obama's health care "reform" is what makes the ultimate Supreme Court decision far less predictable than it might seem from the ruling by Judge Vinson. The five Republican-appointed judges certainly embrace the political rhetoric of the ultra-right—Justice Antonin Scalia made an unprecedented appearance to address a closed-door meeting of the congressional Tea Party caucus last month.

But the entire court, including the four Democratic appointees, has been assiduously pro-corporate in its ruling. Since John Roberts became chief justice in 2005, there has been a further pronounced tilt in the direction of the "rights" of corporate America, culminating in the *Citizens United* decision of January 2010, which held that corporations had the same free speech rights as individuals, entitling them to make massive campaign contributions and buy political office for their nominees.

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