

# Federal appeals court rules Obama health care plan unconstitutional

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On Friday, a divided three-judge panel of the federal Eleventh Circuit Court of Appeals, which has jurisdiction in the Southeast United States, ruled that the “individual mandate” provision of the Obama health care law, which requires all Americans to purchase health insurance by 2014, is unconstitutional.

The two-judge majority found that Congress lacks the constitutional authority to compel individuals to buy certain products. “This economic mandate represents a wholly novel and potentially unbounded assertion of congressional authority: the ability to compel Americans to purchase an expensive health insurance product they have elected not to buy, and to make them re-purchase that insurance product every month for their entire lives,” they wrote.

The majority, consisting of Chief Judge Joel Dubina and Circuit Judge Frank Hull—a Bush appointee and a Clinton appointee, respectively—held that the federal government could not force all Americans to “enter into contracts with private insurance companies for the purchase of an expensive product from the time they are born until the time they die.”

The court’s decision affirms the reasoning of Florida District Judge Roger Vinson, who found the law unconstitutional on January 31. (See Federal judge rules Obama health care law unconstitutional.) At the same time, while Vinson had struck down the entire law, the Eleventh Circuit struck down only the “individual mandate” provisions, leaving the remainder of the law intact.

Circuit Judge Stanley Marcus dissented from the portion of the opinion addressing the constitutionality of the mandate, and argued that the mandate was covered by the broad power of the federal government to regulate interstate commerce.

The individual mandate provision of the Affordable

Care Act faces dozens of challenges in courts throughout the country, and its constitutionality will likely be the subject of a final determination by the Supreme Court in one of its upcoming terms. The Sixth Circuit Court of Appeals, which sits in Ohio, has upheld it as constitutional. Another challenge is pending in the Fourth Circuit Court of Appeals in Virginia.

The Affordable Care Act, signed by President Barack Obama in March 2010, was much celebrated by liberal and pseudo-left organizations as the great “progressive” achievement of the Obama administration. Promises to enact such a law were used to justify votes for the Democratic presidential candidate. The Republicans, and in particular the Tea Party elements, constitute the official opposition to the law. These forces are behind most of the legal challenges that are currently pending in the courts.

The challenge to the Affordable Care Act that was the subject of Friday’s decision was brought by a coalition of 26 states, the National Federation of Independent Businesses, and two individuals. A number of extreme right-wing personalities, including religious fundamentalist and Republican presidential candidate Michele Bachmann, have issued statements praising the ruling.

The Affordable Care Act is not structured as a right of all Americans to health care. Instead, it is structured as a right of insurance companies to receive monthly payments from every single American adult. The individual mandate provision requires all Americans to purchase health insurance from the unpopular and already immensely profitable insurance corporations or pay a fine of up to \$2,100 annually.

This purportedly “solves” the problem that an estimated 30 million Americans have no health

insurance and accordingly would be bankrupted by a medical emergency or serious illness. This is akin to “solving” the problem of hunger in the US by ordering all Americans to buy food or face a penalty, or “solving” the problem of homelessness by ordering all Americans to buy a house or go to jail.

In addition to its unprecedented mandate, the Affordable Care Act is in fact deeply regressive. Its effect is to shift the burden of rising health care costs onto the poorest sections of society: those tens of millions of people already too poor to purchase health insurance. This is exactly the opposite of a progressive health care measure, which would be funded by a levy not on the resources of the poorest sections, but on the immense profits currently generated by the health care industry and pocketed by a rich few at the top.

Finally, the individual mandate has opened up space for Republican and Tea Party elements to posture as defenders of individual liberties by opposing the law. In fact, to the extent that the quasi-fascistic Tea Party elements, funded to the hilt by the financial and corporate oligarchy, have won any following in the US, it is the Obama administration that has the lion’s share of the responsibility.

The fate of the Affordable Care Act in the Supreme Court is by no means clear. On the one hand, the right-wing faction on the court—including, in particular, Justices Antonin Scalia and Clarence Thomas—openly embraces Tea Party rhetoric. On the other hand, the Supreme Court in general, including the erstwhile liberal minority, is dedicated to the defense of the interests of big business and could favor upholding a regressive law that benefits big insurance companies.



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