



Written by [Raven Clabough](#) on June 9, 2011

Appeals Court Critically Questions ObamaCare, Individual Mandate

The Blaze reported that the three judges not only critically questioned "the contents of the health care law" when they began the proceedings but that their questions collectively "seemed to indicate that they may be ready to declare all, or at least parts, of the law [unconstitutional](#)" — very much including the individual mandate requiring Americans to have healthcare coverage by 2014. "Perhaps most damning," *The Blaze* observed, "the judges explained that they could not recall one instance in history in which a court had agreed with the government forcing citizens to purchase a product or service."



Chief Judge Joel Dubina of the 11th Circuit Court commented, "I can't find any case like this. If we uphold this, are there any limits [on the federal government]?" In agreement with Judge Dubina, Judge Stanley Marcus asserted that there is no precedent that allows the government to "[tell] a private person they are compelled to purchase a product in the open market ... Is there anything that suggest Congress can do this?"

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According to Fox News:

Judge Frank Hull [a woman] later asked whether Congress could pass a similar law which could require Americans to buy certain types of cars or solar panels to comply with federal energy policy. Her question encapsulated the fear shared by many: that if the law is upheld it will open the door to unprecedented federal intervention in people's lives.

The judges seem to be articulating concerns already proposed by a number of critics of the healthcare law. Twenty-six states, along with the National Federation of Independent Businesses, have urged the judges to overturn the controversial law. The parties are represented by Bush-era Solicitor General Paul Clement.

The appeals court is expected to rule on the case at the end of the summer, and the case is expected to move on to the Supreme Court. Judge Dubina acknowledged this when he observed, "I doubt this is the last time we'll be arguing this case."

Appearing on Fox News' Neil Cavuto show, Judge Andrew Napolitano [explained](#):

The core issue is simply this: Does the Constitution empower the Congress to force us to buy healthcare. Judge Vinson said "no." And then he said because this clause is unconstitutional, so is the rest of the bill ... That is the case in which 26 states, state Attorneys General are the plaintiffs.

Napolitano predicts that the 11th Circuit Court of Appeals will overturn Vinson's ruling, thereby



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prompting the 26 states to appeal to the Supreme Court. He contends that the Supreme Court will hear the case in 2012, and believes if the high court decides before November that the healthcare law is in fact unconstitutional, President Obama may find himself in a difficult position on Election Day.

When asked how the decision of judges and perhaps Justices may be influenced by news reports that companies plan to drop healthcare coverage if ObamaCare remains, Napolitano responded:

I can tell you, having been a life-tenured judge, that you really are isolated and insulated from the political ramifications of what you're doing, and that's the way that law was written — the law that describes what judges do — so that you rule just on the law.... You are not supposed to look at things that are not in evidence before you.

Napolitano did add, however:

But judges are human. And judges read election returns and judges vote just like everyone else. Judges have skin in the game because they personally and their families are affected by this. So look for the really scrupulous ones to say, "I'm not looking at anything else but what's before me in evidence." And look for the more big-hearted ones to say, "I can't let this happen. I can't let 70 million Americans not have health insurance. I'm chosen by history to resolve this."

As far as how the Supreme Court would vote if the healthcare law came before them, Napolitano contends the decision rests virtually on the shoulders of Justice Anthony Michael Kennedy. According to Napolitano, it can be assumed that the four conservative justices will vote to invalidate the law, while the four liberals will rule in favor of it, and "Justice Kennedy will be the deciding vote." In the end, Napolitano says he is "confident" that Justice Kennedy will find the law unconstitutional based on votes he has cast on similar actions of Congress related to similar private behavior never before regulated.



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