



Written by [Michael Tennant](#) on October 5, 2011

## Fate of ObamaCare If Individual Mandate Is Struck Down?

The Supreme Court stands a good chance of ruling on the constitutionality of all or part of ObamaCare in 2012, as The New American reported September 29. Should the court strike down the entire Affordable Care Act, the implications are obvious: Everything that has been implemented under the law thus far would have to be scuttled. But what happens if the court strikes down only the individual mandate? Would it then be compelled to invalidate other, related portions of the law?



The lawsuit being appealed to the Supreme Court was brought by 26 states and the National Federation of Independent Business. The first judge to rule on the case, [U.S. District Judge Roger K. Vinson](#), began by finding the individual mandate unconstitutional. Then, noting that Congress had not included a severability clause in the law, Vinson declared the whole act invalid. (A severability clause, which states that if one provision of a law is found unconstitutional, the rest still stands, was included in the House of Representatives' version of the legislation but left out of the Senate's version — and, as a result, from the final bill — as a political gambit by Democrats, according to [Politico](#).) The [11th Circuit Court of Appeals](#), however, upheld only Vinson's finding with regard to the individual mandate. It reversed his decision with regard to severability, arguing that most of the law is not connected to the mandate and that the court could not determine whether Congress would have enacted the law in the absence of the mandate.

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Given these rulings, it is not outside the realm of possibility that the court could agree with the 11th Circuit that the individual mandate, but not the whole of the law, is unconstitutional. Then the question becomes: What about other portions of the law that are closely tied to the mandate?



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“If the mandate is struck,” writes *Politico*, “the justices would have to decide how much of the law would have to come down with it — a complicated calculus at the intersection of law and health policy.”

The plaintiffs have argued that if the individual mandate goes, the whole law should go; and, indeed, they are requesting the Supreme Court to find the entire act unconstitutional. The Obama administration, while asking the court to uphold the whole law, has nevertheless maintained that at least a significant portion of it would have to go if the mandate is struck down. A White House fact sheet from 2010 [states](#):

If the constitutional challenge to the Affordable Care Act’s individual responsibility requirement ultimately prevails, it would mean that provisions preventing health insurance companies from discriminating against people with pre-existing conditions would also be invalidated by the court because the two are inseparably linked. If insurance companies are required to cover those with pre-existing conditions, who are potentially more expensive to cover, without requiring everyone — both sick and healthy people — to have insurance, premiums will increase rapidly. Similarly, other provisions — including banning insurers from discriminating based on health status, age and gender — would also fall.

The mandate, *Politico* observes, “is perhaps the law’s greatest boon for industry: [I]nsurers get millions of more customers, hospitals face fewer uninsured persons in their ERs and drugmakers have more patients buying their medicines.” This explains why the healthcare industry, by and large, eagerly supported ObamaCare despite the fact that it required insurers to accept patients who would make expensive claims; reduced Medicare fees to hospitals and drug manufacturers; and imposed new taxes on pharmaceutical companies, medical device manufacturers, and insurance companies.

“The quid pro quo for the health care industry’s acceptance of these provisions appeared to be the increase in sales volume that it could expect from the expansion of coverage,” averred [Bradley Herring](#), Ph.D., of Johns Hopkins University. If the court were to invalidate just the individual mandate, insurers and others in the healthcare field would be saddled with the extra costs but not the additional customers to pay for them.

Herring expects “a new round of legislative efforts” under such a scenario, which certainly seems likely. Should that occur, it will do so in the context of a presidential election and its aftermath, which could make for some scintillating political theater. As entertaining as that would be, however, a complete overturning of ObamaCare — the only possible outcome if the court were to follow the Constitution as written — would be a far better outcome for American liberty.



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