Written by **Michael Tennant** on October 15, 2010

Federal Judge Allows States' Lawsuit Against ObamaCare to Proceed

Judge Roger Vinson of the U.S. District Court for the Northern District of Florida ruled on October 14 that a lawsuit brought by 20 states and the National Federation of Independent Business challenging the constitutionality of ObamaCare can proceed. "His ruling," says the Washington Post, "is limited to the plaintiffs' standing to mount the case, as opposed to its merits — which will be discussed at a summary judgment hearing scheduled for Dec. 16."

The *New York Times* notes that in rejecting the Obama administration's motion to dismiss the case, Vinson "warned that he would have to be persuaded that its keystone provision — a requirement that most Americans obtain insurance — is constitutional." Vinson, an appointee of President Ronald Reagan, wrote, "At this stage in the litigation, this is not even a close call."

It shouldn't be a close call. There simply is no basis in the Constitution for Congress to mandate that individuals purchase (or not purchase) any particular good or service. It is absurd to argue, as the administration does, that the Interstate Commerce Clause grants Congress such authority because those who fail to purchase health insurance have a "substantial economic effect on interstate commerce" when they make use of the healthcare system at others' expense — a situation that only occurs because the federal government has forced it on hospitals. Nevertheless, the courts have been swallowing this line of reasoning whole since the New Deal era, accepting even the notion that growing wheat on one's own property for one's own consumption has an effect on interstate commerce and therefore can be regulated by Congress. In fact, a federal judge in Michigan just last week bought the administration's argument lock, stock, and barrel, ruling that the ObamaCare individual mandate is constitutional on that basis.

Vinson, however, "described the question as far from settled," according to the *Post*, "because the relevant clauses of the Constitution 'have never been applied in such a manner before'" and because "the power that the individual mandate seeks to harness is simply without prior precedent." At the same time, he left open the possibility that he could be persuaded to accept the administration's position, writing: "Of course, to say that something is 'novel' and 'unprecedented' does not necessarily mean that it is 'unconstitutional' and 'improper.' There may be a first time for anything. But, at this stage of the case, the plaintiffs have most definitely stated a plausible claim."

Besides his statements on the individual mandate, Vinson, says the *Times*, "also used strong language to reject the government's courtroom characterization of the penalty imposed on the uninsured as a tax. Government lawyers have argued it is a tax because Congress is given broad authority under the Constitution to levy taxes." Vinson pointed out that "congressional supporters had characterized it as a 'penalty' during the debate over the health-care law" (*Post*), "that Congress referred to the fines in the legislation as a penalty, and that Mr. Obama denied it was a tax increase" (*Times*). Adds the *Post*:

> "Congress should not be permitted to secure and cast politically difficult votes on controversial legislation by deliberately calling something one thing, after which the defenders of that legislation take an 'Alice-in-Wonderland' tack and argue in court that Congress really meant something else entirely," Vinson wrote, "thereby circumventing the safeguard that exists to keep their broad power in check."

In addition, Vinson will "permit the states to present arguments on whether the law's expansion of Medicaid to cover not just the very poor but also people who are low-income impinges on state sovereignty because it could require states to spend billions more on the program," writes the *Post*. States, however, are not forced to participate in Medicaid, though not to participate would, they say, "force them to give up a huge cash infusion from the federal government and leave millions of their poorest citizens without insurance," the paper reports, thus leaving them little choice but to remain in the program. According to the *Times*, Vinson accepted the fact that states can choose to opt out of the program, as painful as it may be to do so, writing that "the law currently 'provides very little support' for the argument" that ObamaCare's expansion of Medicaid" impinges on their sovereignty, especially since these same states were perfectly happy to cede some sovereignty to Washington under the program as long as Uncle Sam was footing most of the bill.

Florida Attorney General Bill McCollum (R), the first to file a suit against ObamaCare, hailed the ruling as a victory in the fight "against the federal health care act's intrusions on individual liberty and limited government." Justice Department spokeswoman Tracy Schmaler, naturally enough, expressed the administration's disappointment in the ruling but said that they "remain confident that the law ultimately will be upheld."

It is, of course, impossible to say how things will turn out at this point. There are presently over 15 lawsuits against ObamaCare in the works, one of which (the Michigan case) received a ruling in the administration's favor and another of which (in Virginia) is proceeding like the Florida case, with the judge saying that "the law 'extends Commerce Clause powers beyond its current high watermark," according to the *Times*. That newspaper also noted that the variety of cases and rulings on ObamaCare means that when the cases are appealed, as they almost certainly will be, "the appellate courts will wind up contemplating conflicting opinions from below." Odds are that ObamaCare will end up before the Supreme Court, where the outcome is, unfortunately, a crapshoot.

Fasten your seatbelts, constitutionalists. It's going to be a wild, bumpy ride.