Written by **Michael Tennant** on March 6, 2011

Federal Judge Stays Own Ruling Against ObamaCare

The initial ruling was the result of a lawsuit brought by 26 states and the National Federation of Independent Business, which argued that the individual mandate — the portion of the law that requires individuals to purchase health insurance or face penalties — is outside the scope of Congress's enumerated powers under the Constitution. Vinson, a Ronald Reagan appointee, agreed that the Commerce Clause does not empower Congress to force individuals to engage in commerce (e.g., to buy health insurance).

Going even further than a Virginia federal judge who had found only the individual mandate unconstitutional, Vinson declared the entire law unconstitutional on the basis that Congress had failed to include a so-called severability clause in the law. Severability clauses, writes Talking Points Memo's Brian Beutler, "are meant to protect the bulk of a law in the event that a small portion of it is determined to be unconstitutional. That small portion must go, or be changed, but pretty much everything else is allowed to stand." The *New York Times* says that "without such language, the Supreme Court, through its prior rulings, essentially requires judges to try to determine whether Congress would have enacted the rest of a law without the unconstitutional provisions." Given that, among other things, the "law explicitly refers to the insurance requirement as 'an essential part' of the act's regulatory scheme, and that Justice Department lawyers … have called it the 'linchpin,'" in the words of the *Times*, Vinson believes that Congress would not have passed ObamaCare in the absence of the individual mandate, and he therefore invalidated the entire law.

Vinson did not specifically enjoin the law in his initial ruling, but he wrote that his ruling was "the practical equivalent of … an injunction," thereby, he thought, preventing the government from moving forward with implementing the law. However, the Obama administration more or less ignored Vinson's ruling, asking the judge on February 17 "to clarify whether his recent ruling against the new health care law was meant to block its implementation pending appeals," as the *Times* puts it. "States were unsure how to proceed," the paper explains, "with some stopping all planning and others acting as if nothing had changed."

Finally, obviously miffed that the administration was dawdling, Vinson issued a stay of his ruling, saying: "The sooner this issue is finally decided by the Supreme Court, the better off the entire nation will be. And yet, it has been more than one month from the entry of my order and judgment and still the defendants have not filed their notice of appeal." Vinson gave the Justice Department seven days to file an expedited appeal, which Florida Attorney General Pam Bondi, the lead plaintiff in the case, recognized would ensure "that there will be no more stalling from the federal government."

The judge wrote that he believed the stay would be beneficial for two reasons. First, "the defendants do have some … likelihood of success on appeal." ("And so do the plaintiffs," he added.) Second, halting implementation of the law pending appeal "would be extremely disruptive and cause significant

uncertainty." He did point out, however, that the injury to the plaintiffs if the act continues to be implemented is far from negligible:

> Reversing what is presently in effect (and what will be put into effect in the future) may prove enormously difficult. Indeed, one could argue that was the entire point in front-loading certain of the Act's provisions in the first place. It could also be argued that the Executive Branch seeks to continue the implementation, in part, for the very reason that the implemented provisions will be hard to undo once they are fully in place.

"I strongly believe," Vinson stated, "that expanding the commerce power to permit Congress to regulate and mandate mental decisions not to purchase health insurance (or any other product or service) would emasculate much of the rest of the Constitution and effectively remove all limitations on the power of the federal government." In that he is entirely correct. At the same time, he noted, "members of Congress, law professors and several federal district courts have already reached varying conclusions on whether the individual mandate is Constitutional. It is likely that the Courts of Appeal will also reach divergent results and that, as most court-watchers predict, the Supreme Court may eventually be split on this issue as well."

While Vinson's stay is somewhat disappointing for those who wish to see ObamaCare overturned, it seems a reasonably prudent and limited measure designed to force the case to move forward and reach the Supreme Court — and a definitive ruling — more quickly. Meanwhile, efforts to repeal and nullify the law are still as necessary as ever because the outcome of court cases is highly uncertain and because, as Vinson pointed out, even if the entire law is declared unconstitutional by the Supreme Court, reversing its effects will be "enormously difficult." The sooner this monstrosity is put to rest, the better.