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Constitutionality of the Patient Protection and Affordable Care Act

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Multiple court challenges have resulted from passage of the federal health care reform law – the Patient Protection and Affordable Care Act[1] ("PPACA"). As of today, this chart summarizes the current status of the cases and their respective progression through the federal court system.

Most of the cases challenging PPACA hinge on one major issue: Is it constitutional for the federal government to require Americans to obtain health insurance? This requirement is commonly called the "individual mandate."

So far, two U.S. Circuit Courts of Appeals have reached substantive rulings. On June 29, 2011, the Sixth Circuit Court in Thomas More Law Center v. Obama concluded the individual mandate in PPACA is constitutional.[2] It found the individual mandate is a valid use of Congress' power to regulate interstate commerce[3] – a power granted by the Commerce Clause in the U.S. Constitution.[4] The court reasoned that the act of foregoing health insurance is the practice of self-insuring because individuals without insurance, in the aggregate, do participate in the health care market.[5] Thus, engaging in self-insurance is economic activity that Congress may regulate under its Commerce Clause power.[6] The plaintiffs in Thomas More have filed a petition requesting U.S. Supreme Court review.[7] The Supreme Court has not decided whether it will hear the case.

Conversely, on August 12, 2011, the Eleventh Circuit Court in Florida v. U.S. Dept. of Health and Human Services ruled that the individual mandate is unconstitutional.[8] It found that PPACA is not authorized by the Commerce Clause power because instead of regulating commerce, PPACA requires "non-market participants to enter into commerce so that Congress may regulate them."[9] The court stated there is no precedent allowing the federal government to require all individuals to purchase a product.[10] Defendants in the case have not yet petitioned for Supreme Court review. However, because the Eleventh Circuit ruling in Florida conflicts with the Sixth Circuit in Thomas More, both cases have become more ripe for a Supreme Court decision.

Additionally, on September 8, 2011, the Fourth Circuit Court dismissed Virginia ex rel. Cuccinelli v. Sebelius and Liberty University, Inc. v. Geithner. The court ruled it lacked jurisdiction to hear the Liberty University case because the Anti-Injunction Act[11] prevents federal courts from deciding the legality of a tax or other exaction that hasn't been collected yet.[12] In Virginia ex rel. Cuccinelli, the Fourth Circuit ruled

that the State of Virginia did not have the legal right or "standing" to sue.[13] States are generally barred from suing the federal government on behalf of their citizens,[14] but the State of Virginia argued PPACA conflicts with the Virginia Health Care Freedom Act[15] (VHCFA), which declares that no Virginia resident may be compelled to obtain health insurance.

The Fourth Circuit found that because the VHCFA does not regulate anything or create any state program, PPACA does not prevent the State of Virginia from exercising any sovereign state power.[16] Thus, the court ruled Virginia has no legal grounds to claim PPACA causes any "injury" to it – a prerequisite for bringing a lawsuit.[17]

Although the ruling in Virginia ex rel. Cuccinelli might affect other cases in which a state is a plaintiff, it does not have implications for Florida v. U.S. Dept. of Health and Human Services. Although Florida and 26 other states are plaintiffs in that case, two individuals are also plaintiffs, and the defendants conceded that one of the individuals does have standing to sue.[18]

1 Pub. L. No. 111-148, 124 Stat. 119 (Mar. 23, 2010).
2 *Thomas More Law Center v. Obama*, 10-2388 (6th Cir. June 29, 2011).
3 Thomas More, slip op. at 18.
4 U.S. Const. art. I, § 8.
5 Thomas More, slip op. at 25.
6 Id at 19.
7 *Thomas More Law Center v. Obama*, No. 11-117 petition for cert. (U.S. July 26, 2011).
8 *Florida v. U.S. Dept. of Health and Human Services*, 11-11021 and 11-11067 (11th Cir. Aug. 12, 2011).
9 *Florida*, slip op. at 167 (emphasis in original).
10 *Id* at 115-16.
11 Anti-Injunction Act, I.R.C. § 7421(a).3 Thomas More, slip op. at 18.
12 *Liberty University, Inc. v. Geithner*, No. 10-2347, slip op at 15-21 (4th Cir. Sept. 8, 2011).
13 *Virginia ex rel. Cuccinelli v. Sebelius*, No. 11-1057 (4th Cir. Sept. 8, 2011).
14 Id at 22.
15 Va. Code Ann. § 38.2-3430.1:1.
16 *Virginia ex rel. Cuccinelli*, No. 11-1057, slip op. at 25-26 (“[T]he VHCFA merely declares, without legal effect, that the federal government cannot apply insurance mandates to Virginia’s citizens. This non-binding declaration does not create any genuine conflict with the individual mandate, and thus creates no sovereign interest capable of producing injury-in-fact.”)
17 *Id.*
18 v. *U.S. Dept. of Health and Human Services*, 11-11021 and 11-11067, slip op. at 8-9.

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