

# Appeals court rules healthcare law's individual mandate unconstitutional

By Sam Baker - 08/12/11 04:10 PM ET

A federal appeals court ruled Friday that the individual-coverage mandate in healthcare reform is unconstitutional, but said the rest of the law can stand.

The ruling from a three-judge panel of the 11th Circuit Court of Appeals comes in the highest-profile challenge to the new law's requirement that most people buy insurance. The suit was filed by 26 states.

Friday's decision moves the battle over the mandate one step closer to the Supreme Court, which is expected to rule in the summer of 2012.

The 11th Circuit's 304-page decision describes the coverage mandate as "woefully overinclusive," and it rejects the federal government's argument that the mandate is constitutional because it simply regulates how people pay for the healthcare services they will inevitably need.

"The government's position amounts to an argument that the mere fact of an individual's existence substantially affects interstate commerce, and therefore Congress may regulate them at every point of their life," the ruling states.

The Obama administration is now 1-1 in federal appeals courts in defending the healthcare law, and the rulings have defied partisan lines. Judge Frank Hull, who was appointed by President Clinton, was part of the 11th Circuit's 2-1 majority that ruled Friday against the mandate. A George W. Bush appointee on the 6th Circuit, in contrast, upheld it in an earlier ruling.

The 11th Circuit Court didn't consider the mandate along the same lines as other courts have. Generally, the two sides have clashed over whether the insurance requirement regulates "economic activity," which Congress has the power to do under the commerce clause of the Constitution, or instead compels to people to participate in an economic activity, as opponents of the law argue.

The 11th Circuit largely bypassed that distinction, though it made clear that the mandate is unprecedented.

"Even in the face of a Great Depression, a World War, a Cold War, recessions, oil shocks, inflation, and unemployment, Congress never sought to require the purchase of wheat or war bonds, force a higher savings rate or greater consumption of American goods, or require every American to purchase a more fuel efficient vehicle," the ruling says.

The 26-state suit was appealed from Florida, where a district court judge not only ruled against the mandate, but also said the entire healthcare law is unconstitutional because its other provisions can't be "severed" from the coverage requirement.

The 11th Circuit, however, said the rest of the law can stand even without the mandate.

Robert Alt, a legal fellow with the conservative Heritage Foundation, said the lower court got it right on severability. The 11th Circuit "probably cut it a little bit too thin," he said. Alt said

it's hard to envision Congress passing the healthcare reform law without a mandate, which is the test that courts use for determining whether to strike down an entire statute because of a single provision.

Without the mandate, policies requiring insurers to sell insurance to anyone who wants it — regardless of their health status — could become prohibitively expensive.

The White House downplayed Friday's decision and said the healthcare law will ultimately be upheld.

"The individual responsibility provision — the main part of the law at issue in these cases — is constitutional. Those who claim this provision exceeds Congress' power to regulate interstate commerce are incorrect," White House adviser Stephanie Cutter said in a post on the White House blog.

"Individuals who choose to go without health insurance are making an economic decision that affects all of us — when people without insurance obtain health care they cannot pay for, those with insurance and taxpayers are often left to pick up the tab."

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