



## **Individual Mandate Requirement of Healthcare Reform Ruled Unconstitutional**

On December 13, 2010, Federal District Court Judge Henry E. Hudson ruled that the Minimum Essential Coverage Provision (“the Provision”) of the Patient Protection and Affordable Care Act (“PPACA”) was unconstitutional. The Provision requires that every United States citizen, other than those falling within certain limited specified exceptions, maintain a minimum level of health insurance coverage for each month beginning in 2014. Failure to comply will result in a penalty included with the taxpayer’s annual return. As enacted, the Provision is administered and enforced as part of the Internal Revenue Code.

The Commonwealth of Virginia alleged that the Provision exceeds the power of Congress under the Commerce Clause and General Welfare Clause of the United States Constitution. In the alternative, Virginia contended that the Provision was in direct conflict with the Virginia Code thus implicating the Tenth Amendment.

The district court stated the issue to be decided:

While this case raises a host of complex constitutional issues, all seem to distill to a single question of whether or not Congress has the power to regulate—and tax—a citizen’s decision not to participate in interstate commerce. Neither the U.S. Supreme Court nor any circuit court of appeals has squarely addressed this issue.

The Commonwealth of Virginia argued that the Provision, and affiliated penalty, were beyond the outer limits of the Commerce Clause and associated Necessary and Proper Clause as measured by U.S. Supreme Court precedent. Virginia argued that requiring an otherwise unwilling individual to purchase a good or service from a private vendor was beyond the boundaries of congressional Commerce Clause power. Virginia maintained that the failure, or refusal, of its citizens to elect to purchase health insurance is not economic activity historically subject to federal regulation under the Commerce Clause.

The government argued a “large majority of the uninsured regularly migrate in and out of insurance coverage” and that “Congress may regulate these economic actions when they substantially affect interstate commerce.” Thus, the government concluded, there is ample



authority under both the Commerce Clause and the Necessary and Proper Clause of the United States Constitution to enact the Provision.

The district court ruled that prior U.S. Supreme Court decisions “constrained the boundaries of Commerce Clause jurisdiction to activities truly economic in nature and that had a demonstrable effect on interstate commerce.” The district court ruled that the enactment of the Provision was unconstitutional because “neither the Supreme Court nor any federal circuit court of appeals has extended the Commerce Clause powers to compel an individual to involuntarily enter the stream of commerce by purchasing a commodity in the private market.”

The district court declined to rule that all of PPACA was unconstitutional and limited its ruling to declaring just the Provision being unconstitutional.

In other cases, two other federal district court judges have ruled against constitutional challenges to PPACA and other cases are still before other federal district court judges. No doubt there will not be a final answer on whether PPACA will be declared constitutional or not until these various cases make their way to the United States Supreme Court.