

Editorial: Insurance issue has ripple effect

Posted: Friday, February 4, 2011 3:00 pm

The score is now 2-2 on the federal health care overhaul enacted last year by a deeply split Congress.

Two federal judges have ruled it is permissible for the federal government to require everyone to carry health insurance; two have ruled it is unconstitutional.

The latest decision, from U.S. District Court Judge Roger Vinson of Florida, goes even further. He says not only is the mandate unconstitutional, but so is the rest of the sweeping measure that's designed to provide health insurance to 32 million Americans who currently have no coverage.

Ultimately, the U.S. Supreme Court will decide whether the federal government has the authority to force people to purchase insurance who don't want to. Twenty-six states, including Mississippi, have challenged the law as a massive government overreach.

This much, though, is clear. Without the insurance mandate, the whole overhaul — which has acquired the moniker “Obamacare” after its principal backer — comes tumbling down.

One of the provisions of Obamacare that most everyone likes is the prohibition on insurance companies from excluding pre-existing conditions. That exclusion presently makes it difficult for individuals who don't receive insurance benefits through their employer to find coverage they can afford, or coverage at all.

If insurance companies, though, are required to cover pre-existing conditions, they have got to be able to collect premiums from people while they're healthy. If not, consumers will wait until they're sick to purchase coverage, which would put the health insurers out of business.

The constitutional argument against the health care mandate is that it is an infringement on personal liberty. The government is saying that it can force citizens to spend their money on a service they don't want to purchase — or face a fine. It is policing not action but inaction.

Eric Thomas Weber, an assistant professor at the University of Mississippi, poses an interesting counterpoint to that argument, however. In an op-ed piece published this week in the Jackson Clarion-Ledger, Weber writes that it is long established in constitutional law that the government can limit personal freedom when the exercise of that freedom harms others. Or as the old saying goes, “Your rights end where my nose begins.”

Freedom of speech, for instance, does not allow a patron to yell “fire” in a crowded theater. Freedom of the press does not allow a newspaper to publish defamatory falsehoods. Freedom of assembly does not allow protesters to stage a rally in the middle of a busy intersection.

When people exercise their “right” not to purchase insurance, writes Weber, it doesn't occur in a vacuum either. It, too, can have negative effects on others. The uninsured show up at emergency rooms, where by law they have to be treated even if they can't pay for it. The hospitals, then, pass on the costs of that uncompensated care to their patients with insurance. That means higher premiums for private insurance and higher taxes for government-sponsored Medicare and Medicaid.

Whether that's enough harm to justify limiting individual liberty is the question the Supreme Court justices will have to decide.

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