



Written by [Bob Adelman](#) on January 11, 2012

Family Research Council: Individual Mandate Unconstitutional, Thus Whole Law

The brief, co-authored by two attorneys, Ken Klukowski and Nelson Lund, called the hotly contested mandate the “linchpin” for the entire law and if it fails, the whole massive superstructure fails with it. Klukowski stated:



After almost two years of impassioned debate, Obamacare will finally have its day before the Supreme Court. The "individual mandate" in Obamacare that requires all Americans to have health insurance is unconstitutional. And for the reasons we explain in this brief, 135 years of Supreme Court precedent show that this is one of those rare instances where striking down the individual-mandate provision requires the Court to strike down this entire 2,700-page law.

We have high hopes that the Supreme Court will recognize that the individual mandate is unconstitutional, and will act to safeguard the freedoms of all Americans by holding the individual mandate "nonseverable," and strike down every part of Obamacare.

There is no “severability” clause in ObamaCare — it was deliberately left out during negotiations between the House and the Senate — which means that if part of the law is deemed unconstitutional, the balance cannot be enforced. The foundation of ObamaCare consists of forcing insurance companies to insure everyone regardless of their health status. This would bankrupt the insurance companies, as most individuals would put off purchasing coverage until they got sick.

The solution of Congress was to force everyone to purchase coverage immediately, including those who are healthy. This would, according to ObamaCare’s supporters, expand the coverage to 32 million people who have decided, for whatever reason, not to carry health insurance, which would expand the pool of coverage and allegedly reduce premiums for everyone.

The arguments propounded by Klukowski and Nelson were so persuasive that 27 members of the House have joined FRC in its filing. Those arguments figured importantly in Justice Roger Vinson’s [ruling](#) by the U.S. District Court in Pensacola, Florida, last January that the individual mandate was indeed unconstitutional. Vinson wrote: “Because the individual mandate is unconstitutional and not severable, the entire Act must be declared void.”

Vinson eviscerated the Obama administration’s defense of the act, which claimed that not buying insurance is in itself an “economic activity” because the cost of healthcare then falls on those who own insurance. Vinson lost no opportunity to mock this tenuous argument:



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Everyone must participate in the food market.... Under [the government's] logic, Congress could [mandate] that every adult purchase and consume wheat bread daily. If they didn't buy wheat bread they might have a bad diet which would put a strain on the health care system....

Congress could require that everyone ... buy a General Motors automobile because those who do not buy GM cars are adversely impacting commerce [as well as] a taxpayer subsidized business.

Vinson ruled against the individual mandate, saying that it "exceeds Congress' commerce power, as it is understood, defined and applied in existing Supreme Court case law."

Klukowski's optimism that the Supreme Court is likely to confirm Vinson's ruling was also expressed by Joe Wolverton, II, writing in [The New American](#): "The truth is that the Constitution empowers the national government with very specific, limited and enumerated powers, leaving all others to the 'states, respectively, or to the people.'" Two recent cases, [United States v. Alfonso Lopez, Jr.](#) and [United States v. Antonio Morrison](#) reflect the court's likely reluctance to expand further the powers of the Congress as required under ObamaCare. Wrote Wolverton:

While the Constitution explicitly authorizes Congress to regulate commerce and the Supreme Court has validated the exercise thereof in a string of decisions, *there is no precedent* in our over 200 years of constitutional jurisprudence for the ability of Congress to force citizens to buy something regardless of their own preference. [Emphasis added.]

In their brief, Klukowski and Lund explain that ObamaCare rises or falls, succeeds or fails, over the issue of the individual mandate:

The individual mandate and related new insurance regulations, which even the Government concedes must stand or fall together, constitute the linchpin of Congress's effort to restructure the market for health insurance. This is not speculation. It is what the text of the statute says.

It is unnecessary to express the hope that the Supreme Court continues to exercise restraint (as in *Lopez* and *Morrison*) and pull the linchpin and let the entire attempt to give the government complete control over healthcare services collapse into a worthless pile of deservedly historic totalitarian rubble.



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