

**Written by: Sam Leineweber**  
**Researched by: Laura Horton**  
**Edited by: Kira O'Connor**  
**Managing Editor: Adam Shelton**

## **Life, Liberty, and the Pursuit of Healthiness**

In case you haven't heard, there has been a big to-do about the law and health care in the US since spring of last year. Legal challenges to the Patient Protection and Affordable Care Act ("PPACA"), colloquially known as Health Care Reform or "ObamaCare" (depending on one's political leaning), were filed [mere months](#) after its passage. Recently, the PPACA was ruled unconstitutional in its entirety, setting the stage for an eventual Supreme Court showdown. The following article is a brief recap of what you need to know about the PPACA and the Constitution, so that the next time your legal-eagle friends try to lecture you about it, you can avoid feeling as lonely as a Clarence Thomas dissent.

### **Background**

On March 23, 2010, the PPACA became law in the United States. [Key provisions](#) of the PPACA expanded Medicaid coverage to people at 133% of the federal poverty line, closed the Medicare "donut hole", prohibited denial of coverage for people with preexisting health conditions, and mandated individual insurance for all Americans by 2014. The individual mandate portion of the PPACA has created the most controversy and debate. A recent decision by a Florida district court, holding the individual mandate to be unconstitutional, may prove to be the entire Act's undoing. Three main constitutional issues have arisen: 1) Federal power vs. State power 2) the scope of the Commerce Clause and 3) Severability.

### **Federal vs. State Powers**

When Congress wants to pass national legislation, it must do so pursuant to one of its enumerated powers in [Article 1 Section 8 of the US Constitution](#). An act deemed to be overreaching one of these powers can be held unconstitutional. On the other hand, a state has general powers from the 10th Amendment, to promote the health, safety, and welfare of its residents ("[police powers](#)"). These police powers give the state great leeway in law-making.

When a state law is challenged in federal court, a judge will generally apply a [rational review](#) standard, which determines whether a law is rationally related to advancing a police power. If a state law disproportionately affects a [suspect class](#) of persons, or infringes upon a [fundamental right](#), the federal court will apply a higher level of scrutiny. Conversely, when federal law mandates that the states adopt a law which would abrogate state police power, the federal government may be guilty of infringing upon state sovereignty.

For example, a state has the power to restrict the presence of guns in school zones through its power to promote the health, safety and welfare of its residents. In [Lopez](#), Congress tried to pass a similar law using its power to regulate interstate commerce. The Supreme Court struck the law down because Congress did not demonstrate that the presence of guns in schools zones substantially affects interstate commerce.

Congress uses its enumerated powers – such as the Commerce Clause – as the basis for passing most of our nation’s laws. In the case of the PPACA, Congress used the Commerce Clause, and [pundits](#) immediately [cried overreaching and voiced federalism](#) concerns.

### **The Commerce Clause**

Coincidentally, the second issue regarding health care reform is whether the PPACA is validly passed under Congress’ power to regulate interstate commerce. Over time, [the commerce clause](#) has been interpreted to allow Congress to regulate nearly anything that affects economic activity between the states, including activity that does not seem commercial in nature. For example, [key pieces of civil rights legislation](#), such as outlawing discrimination in public establishments, were passed using the Commerce Clause. The PPACA was passed with the idea that the health care industry and health insurance [affect interstate commerce](#). Given the [lax treatment](#) that courts have given Commerce Clause legislation over the past 80 years, this legislative theory seemed reasonable. However, the individual mandate – requiring individuals to purchase private health insurance – has become a flash point for controversy. Opponents say that the decision to *not purchase something* is a [non-economic activity](#), and therefore cannot be mandated using the Commerce Clause. Proponents argue that it doesn’t matter if one purchases or refuses to purchase health insurance, because [either action](#) would affect the health care market.

### **Severability**

The final issue affecting the fate of the health care law is whether the individual mandate provision of the law is [severable](#) from the rest of the law. Severability means that if one part of a law is unconstitutional, then it can be severed from the rest of the law. A severability clause is included in most legislation. But wouldn’t you guess it: the PPACA doesn’t include a severability clause, which means that if one provision of the law is found to be unconstitutional, the entire law may also be.

### **The Judicial Opinions**

Of the lawsuits filed against the PPACA, twelve district courts have [dismissed challenges](#) on procedural grounds, and [four federal court decisions](#) have reached the constitutional merits. There is an even split between the courts reaching the merits, with two courts holding the law to be constitutional, and two courts holding it to be unconstitutional. A Virginia district court held only the individual mandate provision unconstitutional, but a Florida court invalidated the entire law.

Judge Vinson is the Florida District Court judge who ruled that the PPACA was unconstitutional in its entirety. [His opinion](#) was based on the three constitutional issues previously mentioned in this article. The first issue was whether the Medicaid provision infringed on state sovereignty. The allegation stated that the Medicaid extension coerces the states to adopt the entire PPACA, due to the high cost it would impose on a state if a state did not adopt the Act. Vinson sided with the PPACA on this issue, pointing out that because Medicaid is a voluntary program from which states are free to withdraw, the law could not be coercive.

The next challenge to the PPACA was that the individual mandate violated congressional Commerce Clause powers. For this issue, Vinson seemed to take an originalist view of the Commerce Clause, focusing on the power of Congress to regulate the movement of goods across state lines, and making a sharp distinction between economic “activity and inactivity.” He invoked a “[slippery slope](#)” argument, reasoning that if the government could force a citizen to engage in a commercial transaction and call it the regulation of commerce, then Congress could do almost anything under its Commerce Clause power.

Finally, Vinson held that the individual mandate was not severable from the rest of the PPACA. He largely based this decision on the PPACA’s lack of a severability clause, taking into consideration that the previous version of the bill included a severability clause. Vinson also acknowledged the argument made by the PPACA proponents, who claimed that the individual mandate is necessary for the functioning of the law as a whole. But as a result, most of the PPACA would be ineffectual without the individual mandate, which meant that severing it would nullify the law’s purpose. In short, Vinson held that the individual mandate exceeded the Commerce Clause power, and that without the individual mandate, the PPACA as a whole could not be upheld.

### **What Happens Next?**

The Obama administration will be [appealing](#) the Florida v. HHS decision. Ultimately, what everyone wants to know is how the Supreme Court will decide the case. Most say the Supremes will have a 4-4 [partisan split](#), with Kennedy supplying the swing vote. Although possible, there are additional factors that may come into play. First, in the past few decades, lower court precedent has had [little influence](#) on how the Supreme Court has come down on an issue. With the lower courts evenly divided on the issue, the Supreme Court may not rely heavily on any individual opinion.

Next, because the fate of the PPACA is intertwined with modern Commerce Clause jurisprudence, it is important to review how major Commerce Clause legislation has been treated. Recently, the Court has been putting the brakes on Congressional power. During the Depression, Congress was able to pass many laws through the Commerce Clause power that deviated from traditional regulation of goods in interstate commerce. However, beginning in 1995, the Supreme Court has been reigning in the Commerce Clause. With that in mind, the fate of the individual mandate looks rather tenuous.

Finally, even if the Supreme Court invalidates the individual mandate, will it determine that the provision is severable? While the PPACA does not contain a severability clause, many courts [infer that an unconstitutional provision is severable](#) even in the absence of a clause. This means that Judge Vinson's decision to invalidate the entire PPACA was not necessarily the correct one.

Now that you have an idea of what the PPACA does, the constitutional issues surrounding it, and its future, you can follow this debate with a discerning eye. If you're worried about a certain outcome, you could move to one of the roughly [thirty-two countries](#) that already provides universal healthcare. Alternatively, you could just have a [celebratory cup of tea](#).

Bonus: [click here](#) to view a lively debate between University of Oregon School of Law Prof. John Greenman and former senatorial candidate Jim Huffman about the constitutionality of the PPACA.