STATE OF FLORIDA et al v. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES et al Doc. 78

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

STATE OF FLORIDA, by and through BILL McCOLLUM, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 3:10-cv-00091-RV-EMT
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*,	)	
Defendants.	)	

DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

On October 7, 2010, the United States District Court for the Eastern District of Michigan issued an opinion sustaining the constitutionality of the minimum coverage provision of the Patient Protection and Affordable Care Act ("ACA"), the same provision that is at issue in Counts I, II, and III before this Court. *Thomas More Law Center v. Obama*, No. 10-CV-11156 (E.D. Mich. Oct. 7, 2010). A copy of the opinion is filed herewith.

Contrary to defendants' arguments, the court found that the individual plaintiffs and an association representing them have standing today to challenge the minimum coverage provision that will go into effect in 2014. Slip op. at 4-9. However, *Thomas More*'s standing analysis hinges on allegations not present here. The individual plaintiffs in *Thomas More* presented evidence that they were being compelled to "reorganize their affairs," and "forego certain spending today, so they will have the funds to pay for health insurance when the Individual Mandate takes effect in 2014." *Id.* at 6, 7. The individual plaintiffs here make no comparable

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assertion. *Compare id. with* Am. Compl. ¶¶ 27, 28.[1]

The court also found that, because the minimum coverage requirement will not go into effect until 2014, the Anti-Injunction Act did not bar plaintiffs' claim. Slip op. at 9-11.

On the merits, the plaintiffs in *Thomas More*, like the plaintiffs here, argued that Congress exceeded its Article I powers in enacting the minimum coverage provision of the ACA. The district court rejected this claim, finding a rational basis for Congress's conclusion that the regulated activities, "'taken in the aggregate, substantially affect interstate commerce.'" Slip op. at 12 (quoting *Gonzales v. Raich*, 545 U.S. 1, 22 (2005)). The court noted that the decision whether to purchase health insurance or to attempt to pay for health care out of pocket "is plainly economic," and that these decisions in the aggregate affect interstate commerce, because other participants in the health care market bear the cost when the uninsured receive care but cannot pay for it. *Id*. at 16. This cost-shifting had a "clear and direct" effect on other market participants, the court found, *id*., rendering this case unlike *United States v. Lopez*, 514 U.S. 549 (1995), in which Congress could only link its regulated activity to interstate commerce by "pil[ing] inference upon inference." *Id.* at 14, 17. With regard to the plaintiffs' claims that they were categorically beyond the commerce power because they "choose not to engage in commerce," the court noted the Supreme Court's rejection of similar claims in *Raich*; *Wickard v. Filburn*, 317 U.S. 111 (1942); and *Heart of Atlanta Motel v. United States*, 379 U.S. 241 (1964). Slip op. at 17. Moreover, the court noted, the health care market was different from other markets in that the plaintiffs could not "opt out." *Id*. No person, the court found, could "ensure

[1] The associational plaintiff in *Thomas More* was held to have standing only because its members had standing. Slip op. at 8.

that he or she will never participate in the health care market," and the relevant question was only whether the plaintiffs would fund that participation through insurance or through "an attempt to pay out of pocket with a backstop of uncompensated care funded by third parties." *Id*. at 16.

The court sustained Congress's Article I authority to enact the minimum coverage provision for the additional reason that it is "'an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated.'" *Id.* at 18 (quoting *Raich*, 545 U.S. at 24-25 (internal quotation omitted)). It noted that Section 1201 of the ACA bars insurers from refusing to cover persons with pre-existing medical conditions. Without the minimum coverage provision, the court found, these reforms would create an incentive for individuals to wait to buy insurance until they needed care, which, in turn, would "aggravate current problems with cost-shifting and lead to even higher premiums," threatening to "driv[e] the insurance market into extinction." *Id*. at 18. The court thus held that Congress had appropriately found the minimum coverage provision to be essential to the success of the Act's insurance industry reforms. *Id*.

Because the court sustained the provision under the commerce power, it found it unnecessary to decide whether the provision was also valid under the General Welfare Clause. *Id.* at 19. Finally, the court also ruled that "plaintiffs' challenge to the constitutionality of the penalty as an improperly apportioned direct tax is without merit." *Id*. at 20.

Dated: October 8, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2010, the foregoing document was filed with the Clerk of Court via the CM/ECF system, causing it to be served on Plaintiffs' counsel of record.

/s/ *Eric B. Beckenhauer*
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