

**FOR IMMEDIATE RELEASE**

Dec. 14, 2010

**STATEMENT OF THE NATIONAL SENIOR CITIZENS LAW CENTER**

**Virginia Ruling on Health Reform Law Focuses Solely on Mandate**

On the merits, there are no surprises in Richmond Federal District Judge Henry Hudson's ruling that Congress lacks authority to enact the minimum coverage provision, or individual mandate, in the Affordable Care Act, which requires most Americans who can afford it to carry health insurance.

Judge Hudson simply repeats what he said in his August 2 decision to deny the U.S. Department of Justice's initial motion to dismiss, in which he restated health reform opponents' canard that decisions not to insure cannot be regulated by Congress because they constitute "inactivity" – despite the fact that such decisions shift \$43 billion in costs to everyone else, and add \$1100 to the average family's annual insurance premium.

What is surprising about today's decision is the length to which Judge Hudson went to not allow his decision to slow or stonewall the implementation of the health reform law. He ruled that would only strike the minimum coverage provision itself, and nothing else. Because of its narrow scope, his decision cannot be an excuse for halting or impeding expeditious implementation of the ACA by the states, the federal government, or providers and insurers.

In particular, Judge Hudson stated that he "will sever [i.e., strike] only Section 1501 [the section of the law setting out the mandate] and directly-dependent provisions which make specific reference to Section 1501." A preliminary search of the law reveals that no provision of the Affordable Care Act meets these criteria. Judge Hudson has, in effect, blinked.

He apparently does not wish to acknowledge the potential damage that eliminating the individual mandate could do. In fact, eliminating the mandate means that the reform law may no longer ensure access to affordable insurance for persons with pre-existing conditions, along with other "Patients' Bill of Rights" reforms, such as outlawing arbitrary policy cancellations when a policyholder becomes ill or has an accident. This would ultimately raise the cost of health insurance for many, including millions of older adults who are not yet eligible for Medicare.

For reasons we and many others have explained, there is no place in the Constitution for such an arbitrary limit on Congress' options to rationally attain a lawful goal, such as ensuring access to affordable health insurance for all. Two other federal judges have already upheld the mandate and rejected precisely the same arguments that Judge Hudson accepted.

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We are confident that the Supreme Court will similarly reject the effort of health reform opponents to roll constitutional law back the “Lochner” era of a century ago, when reactionary activist judges continually found reasons to strike down social and economic regulation.

*The National Senior Citizens Law Center is a non-profit organization whose principal mission is to protect the rights of low-income older adults. Through advocacy, litigation, and the education and counseling of local advocates, we seek to ensure the health and economic security of those with limited income and resources, and access to the courts for all. For more information, visit our Web site at [www.NSCLC.org](http://www.NSCLC.org).*

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