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## **'Individual mandate' constitutional, U.S. appeals court says**

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By Editor Test      Wed, Nov 9, 2011

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In a 2 to 1 ruling, the District of Columbia U.S. Circuit Court of Appeals has ruled that the government can require Americans to purchase health insurance under the so-called "individual mandate" plank of the Patient Protection and Affordable Care Act of 2010 (PPACA).

The dispute over the individual mandate remains to be settled by the Supreme Court, so appellate court rulings are not final.

The court ruled in connection with Susan Seven-Sky et al. vs. Eric H. Holder Jr. et al. (No. 11-5047). Judge Harry Edwards concurred. Judge Brett Kavanaugh dissented, saying that the federal Anti-Injunction Act prohibits the federal courts from considering suits seeking to block implementation of new federal taxes.

The PPACA minimum essential coverage provision requires most Americans to buy major medical coverage or pay a penalty. The plaintiffs had said the commerce clause of the U.S. Constitution, which empowers Congress to regulate commercial activity, doesn't give Congress the authority to require individuals to buy commercial products, such as health insurance from for-profit companies.

Senior Judge Laurence Silberman, appointed by Ronald Reagan, conceded in an opinion for the majority that a congressional move to require most Americans to buy a product or services seems to be "an intrusive exercise of legislative power," and that "surely explains why Congress has not used this authority before."

"But that seems to us a political judgment rather than a recognition of constitutional limitations," he added. "It certainly is an encroachment on individual liberty, but it is no more so than a command that restaurants or hotels are obliged to serve all customers regardless of race..."

"The right to be free from federal regulation is not absolute, and yields to the imperative that Congress be free to forge national solutions to national problems, no matter how local-or seemingly passive-their individual origins," Silberman wrote.

Regarding Judge Kavanaugh's dissent, Silberman said Congress took care not to describe the penalty for failure to own a minimum level of health coverage as a tax, and that the federal courts have never held a payment described in a federal law as a penalty to be a tax as defined the federal Anti-Injunction Act.

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