

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
CHATTANOOGA DIVISION

ANTHONY SHREEVE, et al.,)
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 Plaintiffs,)
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 v.) Civil Action No. 1:10-cv-00071
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 BARACK OBAMA, et al.,)
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 Defendants.)
 _____)

DEFENDANTS’ NOTICE OF SUPPLEMENTAL AUTHORITY

Pursuant to Local Rule 7.1(d), defendants hereby submit a Notice of Supplemental Authority to advise the Court of a recent decision upholding the constitutionality of the minimum coverage provision of the Patient Protection and Affordable Care Act (“ACA”). *Thomas More Law Center v. Obama*, No. 10-CV-11156 (E.D. Mich. Oct. 7, 2010). Plaintiffs here challenge the ACA in its entirety, including the minimum coverage provision at issue in *Thomas More*. A copy of the *Thomas More* opinion is filed herewith.

Contrary to defendants’ arguments, the court in *Thomas More* found that the individual plaintiffs and an association representing them have standing today to challenge the ACA’s minimum coverage provision that will go into effect in 2014. Slip op. at 4-9. The court’s standing analysis, however, hinged 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 plaintiffs here make no comparable assertion. *Compare id. with* Am. Compl. ¶¶ 25, 27, 29, and Pls.’ Opp’n at 2-3.¹

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. 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 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.

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

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.

The court's decision in *Thomas More* is additional authority in support of defendants' motion to dismiss and defendants' opposition to plaintiff's motion for a preliminary injunction.

Dated: October 14, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2010, a true and correct copy of Defendants' Notice of Supplemental Authority, with attachment, was served, by electronic case filing, upon the following:

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