

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
Tyler Division**

Physician Hospitals of America,)	
et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 6:10-cv-277-MHS
)	
Secretary Sebelius,)	
)	
Defendant.)	

PLAINTIFFS’ NOTICE OF SUPPLEMENTAL AUTHORITY

Pursuant to Federal Rule of Civil Procedure 15(d), Plaintiffs Physician Hospitals of America (“PHA”) and Texas Spine & Joint Hospital, Ltd. (“TSJH”), by counsel, submit this notice of supplemental authority – the attached opinion in *Florida v. United States Department of Health and Human Services*, No. 3:10-cv-91-RV/EMT (N.D. Fla. Jan 31, 2011). The Hon. Roger Vinson’s opinion is relevant to this case because the Florida suit also challenges the constitutionality of a federal healthcare reform law, the Patient Protection and Affordable Care Act, Pub. L. No. 11-148, 124 Stat. 119 (2010), amended by Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (2010) (“PPACA”).

In granting summary judgment in his case, Judge Vinson ruled that § 1501 of the PPACA (the individual mandate to purchase insurance) was unconstitutional. The court concluded that Congress had exceeded its authority under Article I § 8 of the Constitution in requiring virtually all Americans to purchase health insurance or pay a penalty. Slip Opinion at 63. The Court went on to conclude that § 1501 was not severable from the rest of the PPACA. Applying the test from *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 685 (1987), the court observed that, “the

record seems to strongly indicate that Congress would not have passed the Act in its present form if it had not included the individual mandate.” Slip Opinion at 66-67. The court observed that the PPACA is a vast, complex statute, analogous to a “finely crafted watch,” and that it would be inappropriate and unworkable for the court to attempt to determine which, if any, provisions of the Act Congress might have intended to remain in force despite the invalidity of the individual mandate provision. Slip Opinion at 72-74. Moreover, the court noted that the Supreme Court of the United States did not give lower courts the option of re-writing federal statutes in a way Congress did not intend. The court could not discern from the PPACA the intent of Congress as to which provisions were severable, and which were not. The court further concluded: “Because the individual mandate is unconstitutional and not severable, the entire Act must be declared void.” Slip Opinion at 76.

In light of Judge Vinson’s opinion, Secretary Sebelius is incapable, as an executive branch official, of enforcing § 6001. Pursuant to principles of collateral estoppel, comity, judicial restraint and nonmutual offensive collateral estoppel, this Court should vacate the Secretary’s request to seek constitutional validity of an Act in this Court that has been previously determined in another court to be unconstitutional in its entirety.¹ The PPACA, including § 6001, is facially unconstitutional, and thus Plaintiffs are entitled to prevail on Defendants’ Motion for Summary Judgment.

¹ Plaintiffs will seek leave to file a Motion for Summary Judgment on the ground that the unconstitutionality of the PPACA has been determined as a matter of law. Plaintiffs will observe this Court’s meet-and-confer requirements prior to the filing this motion. Pursuant to the rules of this Court, no certificate of conference is required for a notice of supplemental authority.

Respectfully submitted,

PHYSICIAN HOSPITALS OF AMERICA

TEXAS SPINE & JOINT HOSPITAL, LTD.

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CERTIFICATE OF SERVICE

I certify that on February 1, 2011, I served a copy of Plaintiffs' Notice of Supplemental Authority on the following via CM/ECF:

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