

Statement of  
**The Honorable Chuck Grassley**

United States Senator  
Iowa  
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Prepared Statement of Senator Chuck Grassley  
Senate Committee on the Judiciary  
"The Constitutionality of the Affordable Care Act"

Wednesday, February 2, 2011

Mr. Chairman, the Florida judge who ruled on the constitutionality of the new health law this Monday compared the government's arguments to Alice in Wonderland. That same reference applies equally to today's hearing. Things are getting "curioser and curioser."

Under our system of limited and enumerated powers, the sensible process would have been to have held a hearing on the law's constitutionality before the bill passed, not after. Instead, the Congress is examining the constitutionality of the health care law after the ship has already sailed.

Like Alice in Wonderland, "Sentence first, verdict afterward."

So what got us to this point?

Early in the debate, Republicans and Democrats agreed that the health care system had problems that needed to be fixed.

I was part of a bipartisan group of senators on the Finance Committee who were trying to reach an agreement on comprehensive health reform.

However, before we could address some of the key issues, some Democratic senators and the administration ended those negotiations and the majority took their discussions behind closed doors.

What emerged was a bill with major problems. Republicans argued that instead of forcing it through the Senate, Republicans and Democrats should return to the negotiating table to find common-sense solutions that both parties could support.

Of course, that plea went unanswered, and the majority passed their health care law without a single Republican vote.

In fact, when Republicans identified specific concerns, such as the constitutionality of the individual mandate, we were told our arguments were pure messaging and obstructionism.

Throughout the debate, the majority argued that the individual mandate was essential for health reform to work.

There are many constitutional questions about the individual mandate.

Is it a valid regulation of interstate commerce? Is it a tax?

The reality is that no one can say for certain. The nonpartisan Congressional Research Service notes that it is unprecedented for Congress to require all Americans to purchase a particular service or good.

The Supreme Court has stated that the Commerce Clause allows regulation of a host of economic activities that substantially affect interstate commerce. But it has never before allowed Congress to regulate inactivity by forcing people to act.

What is clear is that if this law is constitutional, Congress can make Americans buy anything that Congress wants.

The individual mandate is the heart of the bill. As my friend, Senator Baucus, said at the markup: the absence of a requirement of "a shared responsibility for individuals to buy health insurance" "guts health care reform."

If the Supreme Court should strike down the individual mandate, it is not clear that the rest of the law can survive. The individual mandate is the reason that the new law bars insurance companies from denying coverage based on pre-existing conditions and the sponsors made the mandate the basis for nearly every provision of the law.

Judge Vinson's ruling that the whole law must be stricken reflects the importance of the mandate to the overall scheme.

Then there is the Medicaid issue. Does the new law amount to impermissible coercion of the states? States do have the choice to drop out of the Medicaid program.

Some of my colleagues on the other side of the aisle may even make that case today even though I don't think they are really promoting that as a viable option for the states. If a state drops out of Medicaid, the new health law states clearly that none of that state's citizens would be eligible for tax credits because people with incomes at Medicaid eligibility levels can NEVER be eligible for tax credits.

The idea that the federal government could, through Medicaid, drive the single largest share of every state budget is not consistent with the objective of our federal system.

At this point, Mr. Chairman, I ask that a statement from Virginia Attorney General Kenneth Cucinelli be placed in the record.

Mr. Chairman, I am interested in hearing from our witnesses today. But ultimately, we all know that it will be up to the Supreme Court to resolve the question that this hearing poses.

