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Export date: Sun Nov 8 16:22:18 2026 / +0000 GMT

The Patient Protection and Affordable Care Act of 2010: Rulemaking in the Shadow of Incentive-Based Regulation

38 Rutgers L. Rec. 141 (2011) | WestLaw | LexisNexis | PDF

The federal courts are unevenly divided in their treatment of the initial constitutional challenges to the Patient Protection and Affordable Care Act of 2010 (?Affordable Care Act?). Two district judges have ruled that the individual mandate provision of the law exceeds Congress's constitutional authority and one has struck down the law in its entirety. Many more district judges have used the Twombly and Iqbal-emboldened Federal Rule of Civil Procedure 12(b)(6) to turn away similar challenges across the country. Although the question is years from final resolution, it appears that the 111th Congress internalized U.S. Supreme Court decisions limiting its power under the Commerce Clause, anticipating constitutional challenges to the individual mandate to purchase health insurance, Medicaid expansion and insurance exchange regimes and structuring the law to survive those challenges.

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