

Is Obama Worse Than Nixon?

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Judge Roger Vinson took the president to the woodshed last week for a lesson on which branch of government has the final word on the Constitution.

Twenty six states brought a lawsuit to a Florida district court challenging the constitutionality of the Obama healthcare reform law. On January 31, Vinson ruled the mandatory insurance provision unconstitutional and, going further, declared the entire law void. The White House brushed off Vinson's ruling as "extreme" and an "outlier" and told the nation "implementation would proceed apace."

Vinson clarified his ruling on March 3, warning the president's lawyers that it was "not just a bit of friendly advice." The administration suggests "that a single federal judge" cannot halt an entire regulatory scheme. Wrong, said Vinson. A court's judgment is binding.

President Obama's conduct is reminiscent of President Richard Nixon's defiance of a district court order on the grounds that he interpreted the Constitution differently. In 1974, a federal district court had ordered Nixon to surrender recordings of conversations about the Watergate break-in. The president refused.

Chief Justice Warren Burger held firm, ordering the president to surrender the tapes, and repeating the words set down by Chief Justice John Marshall in *Marbury v. Madison* (1803): "it is emphatically the province and duty of the judicial department to say what the law is," including meaning of the Constitution. Burger explained that although "each branch of government must initially interpret the Constitution" to perform its duties, the Court has the final say in any legal controversy.

Nixon waited eight hours, then announced he would comply. Obama waited two and a half weeks before even requesting a clarification.

The delay may have been calculated, Vinson said. "It could be argued that the executive branch seeks to continue the implementation, in part, for the very reason that the implemented provisions will be hard to undo once they are fully in place."

Obamacare's provisions — tax credits to businesses, grants to states, rule changes for insurers — will be hard to undo. For that reason, some state lawmakers have tried to block implementation

of the law while it is in legal limbo. “If we wait,” explained Idaho state representative Vito Barbieri, “the tentacles of federal money, federal rules, federal agencies will be impossible to eradicate.”

Last week, Vinson side stepped a confrontation with the president by issuing a “stay” to delay the practical effects of overturning the healthcare law. He allowed seven days for the administration to request an expedited appeal. “The sooner this issue is finally decided by the Supreme Court, the better off the entire nation will be,” he said, repeating what Marshall had said two centuries ago: The court is the final interpreter of the law, and Congress and the president must obey.

Presidents often wrestle with conflicting views of the Constitution and let their own views guide them, unless they are litigants subject to the court’s ruling. That is the difference between legitimate disagreement and improper defiance.

President Andrew Jackson disagreed with the Supreme Court’s 1819 ruling that Congress had the authority to create a Bank of the United States, and when Congress tried to recharter the bank in 1832, Jackson vetoed it on constitutional grounds.

With anguish, President Abraham Lincoln acquiesced in the court’s decision in *Dred Scott v. Sandford* (1857). In his first inaugural address (1861), Lincoln lamented that he could not defy the court’s ruling and free Scott. But the evil effect of the ruling applied only to the parties in court. He urged the public and Congress to dismantle slavery in the territories by political means.

Last week, President Obama said that he believes the Defense of Marriage Act is unconstitutional, and it may be within his prerogative to act accordingly. But when a president’s administration is hauled into court and loses, as the Obama administration did on January 31, it must obey the court.