Judicial 'death panel' for Obamacare

By BETSY McCAUGHEY February 1, 2011

Fourteen months ago, a reporter asked then-Speaker Nancy Pelosi if the Constitution allows the federal government to force people to have health insurance. Amazed, she answered, "Are you serious?"

It's looking more serious all the time: Yesterday, federal Judge Roger Vinson ruled the entire Obama health law unenforceable.

Vinson's decision won't take effect until a higher court rules. Indeed, the case will surely go all the way to the Supreme Court, with a final word likely before the 2012 presidential election.

But there's a solid chance that the whole ObamaCare law may be null and void.
Just minutes after the president signed the law on March 23, 2010, Florida filed a lawsuit challenging its constitutionality. Now 26 states have joined that challenge, with more coming on weekly.

Vinson ruled yesterday that Congress can't compel people to buy health insurance. More important, he found that -- in clear keeping with the intent of Congress -- that makes the whole law void.

Typically, complex laws contain a "severability clause," saying that if a court strikes down one part, all other parts remain enforceable. But ObamaCare's authors insisted that without mandatory insurance, the law's other provisions wouldn't work -- and removed the severability clause before the law was passed.

Vinson relied on what Congress members and the administration said in defense of the mandate to reason that without it, the rest of the law won't work. He compared the 2,600-page law to a precision watch whose many parts operate in tandem: If one part can't work, none can. Another metaphor would be a house of cards.

Judge Henry Hudson, a federal judge in Virginia, had ruled on Dec. 13 that Congress lacked the authority to compel Americans to have health insurance, but had stopped short

of declaring the entire law unenforceable. Both decisions turned on the meaning of the Constitution's interstate-commerce clause.

The Obama administration claims that Congress' power to regulate interstate commerce is so broad as to include the power to compel an individual to buy insurance. The administration cites a long trail of Supreme Court rulings, from Wickard v. Filburn (1942) to Gonzalez v. Raich (2005), where the justices stretched the meaning of interstate commerce to include even the apparently small activities of individuals that can effect interstate commerce when considered in the aggregate.

But the administration is trying to extend the meaning of "interstate commerce" to include a person's decision *not* to buy something. Allowing people to forgo insurance will raise the price of coverage for others, the administration argues. It will have an impact on commerce.

That's a "bridge too far," said Vinson. His decision is laced with references to the struggle between the American colonists and British crown two centuries ago, and founding documents such as the Federalist Papers and the Bill of Rights. Surely the Tea Party patriots who battled the British in 1773 didn't think that government should have the power to compel you to buy tea, Vinson argued.

Turning to the present, Vinson said that if government can force you to buy health insurance, there is no logical limit to what government can do to the individual.
When challenges were filed against this law almost a year ago, the administration depicted the lawsuits as mere partisan puffery. But its attempts to get the cases thrown out of court failed. Now, more than half the states are on their way to a Supreme Court showdown over ObamaCare. The nation is getting serious about the Constitution and the meaning of liberty.

Meanwhile, state governments and companies will think twice about making costly preparations for a law that may never go into effect.