



ObamaCare overreach

By BETSY McCAUGHEY

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Federal District Court Judge Henry Hudson's ruling yesterday that Congress can't compel Americans to buy health insurance ought to be required reading for Congress members. They take an oath to uphold the US Constitution, but most members are ignorant of what the document says and routinely enact laws without giving the Constitution a moment's thought.

Hudson struck down the mandatory insurance provision of ObamaCare (Section 1501), the only portion of the law challenged by the state of Virginia. The ruling didn't address other parts of the legislation. But advocates of ObamaCare, including its authors, insist that without mandatory insurance, the scheme won't work because healthy people won't be compelled to put money into the health-insurance system to help pay the cost of caring for the sick.

Hudson's decision will likely be appealed with a final decision by the US Supreme Court before the 2012 presidential election. Hudson didn't grant an injunction to freeze parts of the law until then. Nevertheless, some states will likely delay creating insurance exchanges and avoid other costly preparations for a law that may never be implemented. ObamaCare is in legal limbo. Twenty other states, as well as rights groups and business groups, have gone to court across the nation to challenge it.

To thwart ObamaCare, the Virginia legislature passed a law that makes it illegal to require any resident to purchase health insurance. The Virginia measure passed with solid support from both Republican and Democratic state legislators. There is a fundamental principle at stake.

If the federal government can require you to buy insurance, it could force you to buy anything or do anything. Virginia Attorney General Kenneth Cuccinelli often says that the case "is not about health care, it is about liberty."

Health and Human Services Secretary Kathleen Sebelius tried to ridicule Virginia's strategy as mere politics and get the Virginia case thrown out of court. Cuccinelli told the court that, "in the view of Secretary Sebelius, federalism is so withered and near death that states lack the power and right to go to federal court" to stop excessive federal power. But federalism is not dead. Hudson's ruling emphasized the importance of upholding the US Constitution's limits on federal power and drew a clear boundary around the Commerce Clause.

The Obama administration claims that the Commerce Clause gives Congress the authority to mandate coverage. It cited *Wickard v. Filburn* (1942), in which the court ruled that the federal government could limit what a farmer can grow to feed his own animals. Similarly, in *Gonzalez*

v. Raich (2005) the court found that the federal government could bar a sick person from cultivating a mere six stalks of marijuana, even where state law allows it. Growing something for personal use doesn't seem like interstate commerce, said the justices, but individual decisions in the aggregate could have an impact on national commerce.

Sebelius stretched the meaning of commerce even farther, to include an individual's decision not to do something. Allowing people to forego insurance will raise the price of coverage for others, she said. Hudson resoundingly rejected Sebelius' artifice, warning that it could be used to give the federal government authority over people's decisions about their own nutrition, transportation and housing and "invite unbridled exercise of federal police power."

After the ruling, Cuccinelli reminded the nation that despite the "laudable goal" of improving health coverage, "there are better solutions than giving up our freedom." He chastised Congress for failing to take a "hard look" at the constitutional issues before legislating.

In 1994, the Congressional Budget Office had warned Congress that compelling Americans to buy health insurance would be an "unprecedented form of federal action." In 2009, the Congressional Research Office issued a similar warning. Yet Congress rammed the legislation through.

"Cobbled together in secret," said Cuccinelli, the law was "passed by the Senate, largely or totally unread, on a party line vote, literally in the dead of night on Christmas Eve, against the will of the people as measured by most polls; a product of such florid deal-making as to generate scornful popular terms such as 'the Louisiana Purchase' and 'the Cornhusker Kickback'."

Congress members should read Hudson's ruling and weigh Cuccinelli's words: "Even the president and Congress must act within the boundaries set by the Constitution." That principle, said Cuccinelli as he left the court, "is worth fighting for."

Betsy McCaughey is the author of "The Obama Health Law: What It Says and How To Overturn It."