

NewsMax

Obamacare Gets Taken to Court

By BETSY MCCAUGHEY

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The cause of freedom won the first round in the legal battle against the Obama health law. This August 1st, U.S. District Judge Henry Hudson denied the Obama administration's motion to dismiss Virginia's lawsuit. Hudson said that it is far from certain Congress has the authority to compel Americans to buy insurance and penalize those who don't.

Virginia's Attorney General Ken Cuccinelli explained that "this case is about liberty, not health care." Citing the Federalist Papers and 200 years of Supreme Court history, Cuccinelli argued that Obama health law dismantles the constitutional structure created by the framers to protect Americans from excessive government power.

Judge Hudson's decision paves the way for a trial to begin in Virginia on October 18, with appeals expected all the way to the U.S. Supreme Court. Florida and nineteen other states are also suing to overturn the health law. That's substantial firepower - 40% of all the states in the U.S. Judge Roger Vinson will decide in October whether that 20-state challenge will proceed to trial. The final word - a high court ruling - is expected in 2012, before the November presidential election. David Rivkin, the lead attorney for the twenty other states, says "this case is the most important of my lifetime."

If mandatory health insurance is ruled unconstitutional, the entire health law could fall apart. Most complex legislation states that if one part of the law is struck down, other parts remain enforceable. But the authors of the Obama health law removed that clause, suggesting that the scheme won't work without compulsion. Cuccinelli predicts that if its found to be unconstitutional, "the whole bill falls. The whole thing."

Virginia went one step further than challenging the Obama law in court by enacting a state law that makes it illegal to require any resident to purchase health insurance. Cuccinelli credits Tea Party activists with getting the Virginia law passed, but it won 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 any product to solve a national problem: a new Chevrolet to bolster Detroit or stocks to prop up Wall Street.

Rivkin warns "if the federal government can do this, there is no limit to what the federal government can do." Rivkin cautions that the future of constitutional government is at stake.

The Obama administration claims that the Commerce Clause gives the federal government the authority to mandate coverage. They cite two cases in which the Supreme Court stretched the meaning of interstate commerce like a rubber band. In *Wickard v. Filburn* (1942), the Court ruled that the federal government could limit how much wheat a farmer can grow to feed his own animals. Similarly, in *Gonzalez v. Raich* (2005) the Court decided 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 decision in the aggregate could have an impact on national markets.

The Obama health law stretches the definition of interstate commerce even further, to include an individual's decision NOT to do something - in this case not to buy insurance. Judge Hudson ruled that "never before has the commerce clause and associated necessary and proper clause been extended so far."

The Obama administration says the requirement that everyone purchase health insurance will solve a national problem by reducing the number of uninsured and spreading the cost of care over a larger insurance pool. In short, the ends justifies the means. Critics of the health law raise constitutional objections.

So do impartial experts. In 1993, the Congressional Budget Office warned Congress that the mandatory insurance provision in President Clinton's health insurance plan would be "an unprecedented form of federal action." In 2009, the Congressional Research Office again raised doubts about it. But that November, when a reporter asked House Speaker Nancy Pelosi if Congress had the authority to require Americans to buy health insurance, she responded "Are you serious?"

Each member of Congress swears an oath to defend the U.S. Constitution. But most of them know little about it. Cuccinelli says Congress is "blissfully unaware that if the Constitution doesn't say the federal government can do something, then it can't do it." The twenty-eight beautiful words of the Tenth Amendment prohibit it.

The one benefit of this unconstitutional health law, Cuccinelli says, is that it is igniting a national conversation on first principles. "People are figuring out that the way to stop the abuses of power which seem to be crippling our economy and eating away at our liberty is by using the Constitution against those who violate it."

A national conversation is one thing, but only nine opinions matter in the coming legal showdown. Nevertheless, Rivkind is "extremely optimistic that we have an excellent chance of prevailing."

Overturing the health law does not hinge on successfully challenging compulsory insurance. The states are also challenging the way the Obama health law commandeers state employees and resources to implement whatever Congress dictates. That violates one of the fundamental safeguards against tyranny in the Constitution. The founders divided the power to govern between the federal government and states, and each is sovereign. States don't have to do Congress's bidding.

Yet the Obama health law commands states to regulate insurance premiums, set up insurance exchanges, and enact regulations that conform to new federal standards. Virginia "is overwhelmed with the speed and volume of changes that we have to make to comply with this law," reported Cuccinelli. He could have added, the expense to state taxpayers.

The U.S. Constitution permits none of this. In *Printz v. United States* (1997), the Supreme Court struck down a provision of the Brady Handgun Violence Prevention Act that would have compelled state officials to perform background checks on people buying firearms. The Court ruled that "allowing the federal government to commandeer state officers in the implementation of federal law would . . . dilute the Constitution's structure of dual sovereignty."

That is a principle that the Obama administration articulates only when it's convenient, for example to protect illegal aliens. The administration tells Arizona state officials not to enforce immigration laws - that's for the federal government to handle. But states are burdened with implementing new federal insurance regulations.

Citing federalism, the twenty states are also challenging a third aspect of the Obama health law, its "massive expansion of Medicaid" that state taxpayers cannot afford.

President Obama promised to solve the problem of the uninsured by making insurance affordable. That's not what the law does. The chief way the law increases coverage is by adding 18 million more people to the Medicaid, nearly doubling it. . State taxpayers eventually will have to pay that tab.

States always have decided who is eligible for Medicaid and what benefits they can get,, depending on what state budgets can handle. The federal government has reimbursed states for roughly half the cost.

The Obama health law strips the states of control over Medicaid. It imposes a one-size fits all Medicaid benefit package (the same benefits people paying for private plans will get) , raises the income ceiling to be eligible for Medicaid and makes all states open up their programs , and bars states from using an asset test to limit eligibility. Yet the federal government pays the full tab for only the first two years. After 2016 states will have to raise taxes or cut other government services such as education to come up with billions of dollars extra needed for Medicaid.

The twenty suing states claim the Obama health law shifts "costs, mandates, and responsibilities to the states, coerces and commandeers their resources, and renders them arms of the federal government in violation of the Constitution's . . . federalist structure."

Federal judges are likely to see it that way too. The U.S. Supreme Court has ruled that Medicaid is a "cooperative endeavor" between two sovereigns, the federal government and the states. (Harris v. McRae, 1980). That means neither partner can unilaterally dictate the terms. The Obama health law says "do it this way or drop out of Medicaid." That's "an unpalatable choice," explains Rivkin. Hospitals and nursing homes are so dependent on federal Medicaid revenues that if a state dropped out, it would mean no less than "the collapse of healthcare delivery" in that state. The high court has ruled that Congress can use federal funding as a tool to motivate states to do certain things, but not to the "point at which pressure turns into coercion." In other words, no arm-twisting Chicago style. That is what the new Medicaid terms seem to do.

The last word on the constitutionality of Obamacare is many months off. If the states prevail at trial later this fall, they will ask the federal government to declare the health law unenforceable until the Supreme Court rules. That will stop the clock and relieve the states, small businesses and individuals from having to spend huge sums of money preparing for a law that tramples the U.S. Constitution and may never be put into effect.

Betsy McCaughey, Ph.D., is a former Lt. Governor of New York State and author of the Obama Health Law: What it Says and How to Overturn It (Encounter Books)