



# Suing ObamaCare

By BETSY McCAUGHEY

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Yesterday, in a federal courtroom far from the noise of town-hall meetings, Tea Parties and talk shows, Judge Roger Vinson quietly compelled the Obama administration to show why the new health law, enacted on March 23, does not trample the Constitution.

The ruling is a victory for the cause of freedom and limited government.

Vinson reminded the nation that even in the face of a perceived crisis, such as the number of uninsured and rising health costs, it isn't enough that a law be wise or expedient. That law must also respect the limits imposed by the US Constitution. Those limits are not merely "formalistic," he said; they protect liberty.

Vinson rejected many of the administration's arguments for throwing out constitutional challenges brought by 40 percent of all the states in the nation: Florida, South Carolina, Nebraska, Texas, Utah, Louisiana, Alabama, Michigan, Colorado, Pennsylvania, Washington, Idaho, South Dakota, Indiana, North Dakota, Mississippi, Arizona, Nevada, Georgia and Alaska.

The ruling paves the way for a trial to begin in Florida in December, with appeals expected all the way to the Supreme Court. The final word from the nine justices would likely come late in 2012, before the presidential election.

This is the second legal defeat for the administration. On Aug. 2, another federal judge ruled against the administration's motion to dismiss a separate lawsuit by Virginia. That judge noted that it was far from certain that Congress had the authority to compel Americans to buy insurance or penalize those who don't.

Virginia Attorney General Ken Cuccinelli said that his state's challenge was "about liberty, not health care." David Rivkin, the lead attorney for the 20-state challenge, calls that case "the most important of my lifetime."

If ObamaCare's insurance mandate law is ruled unconstitutional, the whole law could collapse. Most complex legislation contains a boilerplate statement that if one part of the law is struck down, other parts remain enforceable. But the authors of the Obama health law removed that statement, suggesting that the whole scheme was unworkable without compulsion.

The administration's lawyers claim 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 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 impact national markets.

Yet the administration wants to stretch the definition of interstate commerce even farther, to include an individual's decision *not* to do something -- in this case not to buy insurance. Judge Vinson expressed skepticism: "The government has never required people to buy any good or service as a condition of lawful residence in the United States," he noted.

"If the federal government can do this," Rivkin cautioned, "there is no limit to what the federal government can do."

The judge also ruled that another issue must get its day in court -- ObamaCare's vast expansion of Medicaid.

Each state has always decided who is eligible for Medicaid and what benefits they get, depending on what the state budget can handle. The federal government has paid roughly half the cost.

But the ObamaCare law strips the states of control over Medicaid, imposing a one-size-fits-all benefit package and raising the income limit so high that some 85 million people are projected to be on Medicaid in 2014.

The feds would pay the full cost for those millions of new Medicaid cases only for the first two years. After 2016, states must raise taxes or cut other spending to come up with extra Medicaid funds.

Yet the Supreme Court has ruled that Medicaid is a "cooperative venture" -- and that the federal government can't coerce the states into an unaffordable deal. (*Harris v. McRae*, 1980). Judge Vinson says the states are making a "plausible claim" that ObamaCare is doing just that.

If the 20 states prevail on either challenge -- compulsory insurance or the Medicaid expansion -- Rivkin predicts that they will ask to stop the clock on ObamaCare until the Supreme Court rules. That will spare states from having to spend billions of dollars on a law that may never go into effect.

And it will give members of Congress time to read the Constitution they have sworn to uphold.

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

*betsy@defendyourhealthcare.us*