

RSC Info Alert: Virginia Judge is the First to Find the Individual Mandate Unconstitutional

The below [Politico](#) article summarizes the situation surrounding U.S. District Court Judge Henry Hudson's 42-page ruling, which can be found [here](#).

The ruling is an important win for conservatives, as it states that "On careful review, this Court must conclude that Section 1501 of the Patient Protection and Affordable Care Act -- Specifically the Minimum Essential Coverage provision [individual mandate] -- exceeds the constitutional boundaries of congressional power."

This is the first key step towards the Supreme Court hearing the case against the individual mandate. While Conservatives still seek to have the courts strike down the whole bill, even if just the individual mandate provision is struck, the whole bill falls apart as costs will skyrocket. Under the new insurance market created in ObamaCare (guarantee issue, community rating, and rich benefit mandates), if individuals don't purchase insurance until they are sick, it will result in insurance "death spiral."

In a sign that liberals fear what the decision means for ObamaCare, they went on the offensive this morning to try and downplay its importance before the ruling came out.

Background on VA Lawsuit:

- On March 10, 2010, Virginia was the first state to sign into law, the Virginia Health Care Freedom Act, which essentially barred the health insurance mandate from taking effect in Virginia.
- On March 23, 2010, (the same day ObamaCare was signed into law) Virginia Attorney General Ken Cuccinelli filed the lawsuit against the individual mandate on behalf of Virginia citizens arguing that it is an unconstitutional expansion of the Commerce Clause.
- On August 2, 2010, Judge Hudson (appointed by President George W. Bush) denied the Obama Administration's motion to dismiss the lawsuit. And on October 18, 2010, the Court heard oral arguments.
- On December 13, 2010, Judge Hudson became the first judge to rule that the individual mandate is unconstitutional.
- According to the [Washington Post](#) "the Virginia suit would ordinarily next be heard by the Fourth Circuit Court of Appeals. However, Cuccinelli has indicated that he would like to bypass the appeals court and move directly to the Supreme Court." This would require the Supreme Court to decide that the case has "extreme public importance and intervene immediately." Cuccinelli has asked the White House to sign on to the request and some have argued that it would be beneficial for the White House to have this case resolved sooner than later so as not to leave it unresolved going into the 2012 election.

Details of the Ruling:

- Judge Hudson found that “Neither the Supreme Court nor any federal circuit court of appeals has extended Commerce Clause powers to compel an individual to involuntarily enter the stream of commerce by purchasing a commodity in the private market.”
- However, instead of striking down the entire law as some conservatives had hoped, Judge Hudson chose to sever the Section 1501 (relating to the individual mandate), saying “it would be virtually impossible within the present record to determine whether Congress would have passed this bill, encompassing a wide variety of topics related and unrelated to health care, without Section 1501...this Court cannot determine what, if any, portion of the bill would not be able to survive independently.”
- Finally, Judge Hudson did not employ injunctive relief, but rather punted the issue until a higher court acts as they key provisions “do not take effect until 2013 at the earliest.”

Other Pending Lawsuits and Background:

- U.S. District Court Judge Roger Vinson, will hear oral arguments this Thursday for the case brought by Florida Attorney General McCollum (on behalf of 20 states and NFIB).
- Of the 15 cases that have been dealt with (out of the 25 total cases brought to date), the Virginia suit is the first to strike down any part of the health reform law.
- Liberals, in an effort to downplay this ruling are pointing to two other lawsuits in Michigan and Lynchburg, Va., where the Judges have found that the same provision were constitutional. While the case brought by Liberty University and Thomas More Law Center were thrown out on their merits, the others cases have been thrown out on procedural motions. However, some would argue that these cases were brought in more difficult jurisdictions, with a narrower base of plaintiffs, than the cases brought by State Attorney Generals and national organizations.

POLITICO

Judge: Individual mandate is unconstitutional

By: Sarah Kliff and Carol E. Lee

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A federal judge struck down the heart of the Obama administration's [health reform law](#) Monday, ruling that the individual mandate to buy health insurance is unconstitutional.

In the closely watched suit brought by Virginia Attorney General [Ken Cuccinelli](#), District Judge Henry Hudson found that the mandate “exceeds the constitutional boundaries of congressional power.”

Hudson stopped short of blocking the law's implementation until a higher court acts, but said he expects the administration to honor his ruling.

“The final word will undoubtedly reside with a higher court,” Hudson wrote in his ruling. “In this Court’s view, the award of declaratory judgment is sufficient to stay the hand of the executive branch pending appellate review.”

Within hours of his victory, Cuccinelli called for the case to be fast-tracked up to the Supreme Court, arguing that prolonged uncertainty over the law would be detrimental to all parties involved. “The costs we would have to incur implementing... would be wasted if the bill is unconstitutional,” Cuccinelli told reporters Monday.

The Obama administration, however, doesn’t plan to push the case to the high court early. Doing so would be “premature,” one administration official said at a briefing with reporters this week. And, without the Department of Justice’s backing, Cuccinelli may back off on the issue.

“We have not decided what we would do if the [Department of Justice](#) was not agreeable to accelerating or skipping the Fourth Circuit Court of Appeals,” he said.

For its part, the Department of Justice said Monday that it’s confident the law will be upheld by higher courts.

“We are disappointed in today’s ruling but continue to believe – as other federal courts in Virginia and Michigan have found – that the [Affordable Care Act](#) is constitutional,” said DOJ spokeswoman Tracy Schmalzer. “There is clear and well-established legal precedent that Congress acted within its constitutional authority in passing this law and we are confident that we will ultimately prevail.”

The Virginia ruling is arguably the most prominent in an onslaught of legal challenges that immediately followed the law’s passage in March. In another key case in Florida, where 20 states are challenging the law, the court will hear oral arguments on Thursday.

Of the 15 cases that judges have opined on so far, the Virginia suit is the first to strike down any part of the health reform law.

The [White House](#) does not believe the decision will have any impact on the ongoing implementation of the health care law. Officials downplayed the suggestion that rulings against the law would create uncertainty in the middle of its implementation, largely because some of the key provisions don’t take effect until 2014. The White House anticipates all challenges to the law will have worked their way through the system by then.

The Virginia ruling has been a longtime in the making. The state was the first to pass a law barring the mandated purchase of health insurance, setting the stage for Cuccinelli’s lawsuit. Cuccinelli’s suit, like most of the health reform challenges, argues that the individual mandate – which means that everyone must buy health insurance — is an unconstitutional expansion of the Commerce Clause.

Administration officials concede that the lack of a mandate would cut the number of uninsured people who would get coverage in half and threaten the ban on denying coverage to people with pre-existing conditions – one of the president’s signature selling points on the law. The insurance industry has maintained that it needs the individual mandate--and the healthy people who would presumably buy insurance because of it--in order to be able to offer coverage for pre-existing conditions and to lift caps on lifetime limits.

Still, the Virginia suit focused on the individual mandate, and other parts of the law, such as the insurance exchanges and Medicaid expansion, could arguably move forward unaffected.

Health reform supporters were quick to stress that the vast majority of health reform cases have come out in their favor, with judges either ruling the law to be constitutional or tossing out the suits altogether.

“While the Virginia case is important and has drawn strong media interest, it is no more important than the many other rulings by judges of equal rank who have determined that the law is constitutional or have issued dismissals on procedural grounds,” says Ethan Rome, executive director of Health Care for America Now.

While White House officials believe the law will ultimately be ruled constitutional, they do anticipate losing some of the 20 cases out there.

The insurance industry hasn’t weighed in on any of the pending health reform legislation, but has strongly supported a requirement to buy insurance in tandem with industry reforms.

“Throughout the health care reform debate there was broad agreement that enacting guarantee issue and community rating would cause significant disruption and skyrocketing costs unless all Americans have coverage,” said America’s Health Insurance Plans spokesman Robert Zirkelbach, referring to requirements that insurance not turn down applicants and not charge more to a sick person than a healthy one.

Carol E. Lee contributed to this report