

McCollum: Supreme Court Will End Obamacare

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By David A. Patten and Ashley Martella

The former Florida attorney general whose lawsuit laid the basis for a devastating ruling Monday calling the national healthcare law unconstitutional agreed with other conservative experts that the Supreme Court will ultimately strike it down.

“My gut tells me that the Court will declare the whole law unconstitutional, and Congress will have to start over,” former Florida Attorney General Bill McCollum told Newsmax.TV in an exclusive interview.

“They may in fact be starting over now. I’m sure that the Obama administration is going to look at this ruling and try to get something in the next two years, before their re-election effort of 2012, out of this Congress, some compromise.

“And my hope is the Republicans and those trying to repeal this law don’t give in too much to the Obama administration,” McCollum told Newsmax.TV. “Because I personally think that it will be held unconstitutional, and they can start from scratch. So they have all the leverage, and shouldn’t be giving anything up or away at this point.”

In a 78-page declaratory judgment that conservative legal scholars tell Newsmax is “devastating” to President Barack Obama’s signature piece of legislation, a federal district judge ruled Monday that the Patient Protection and Affordable Care Act -- otherwise known as Obamacare -- represents such a drastic expansion of federal power that it would mean the United States has “a Constitution in name only.”

Conservative scholars, grass-roots advocates, and GOP leaders at all levels hailed the landmark ruling by Judge Roger Vinson of the Northern District of Florida as a serious blow to the president’s hopes of instituting universal healthcare.

“I think it’s a terrific day for constitutionalists in this country,” former Minnesota Gov. Tim Pawlenty, an oft-mentioned GOP contender for 2012 who filed a “friend of the court” brief in the case against ObamaCare, told Newsmax in an exclusive interview just after the decision was announced.

Pawlenty, author of the new book “Courage to Stand: An American Story,” told Newsmax that he hopes the ruling becomes “a clarion call now for everybody to rally and take this to the next step, which is to force the federal government to recalibrate its overreach all these years and all these decades.”

McCollum said congressional Republicans should stand firm because if healthcare reform is declared unconstitutional “they can start from scratch. So they have all the leverage, and shouldn’t be giving anything up or away at this point,” he told Newsmax.

The judge’s finding Monday went far beyond the three prior judicial reviews of healthcare reform, especially in his analysis of the bill’s controversial requirement that individuals must purchase healthcare insurance.

That requirement, Vinson stated in his ruling in favor of the 26 states and the other parties that joined in the lawsuit, would use the Commerce Clause of the Constitution to compel someone not undertaking an economic transaction to do so.

Vinson said that would be a “radical departure.”

If the federal government had that much power, he wrote in his decision, “it is not hyperbolizing to suggest that Congress could do almost anything it wanted.”

“It is difficult to imagine that a nation which began, at least in part, as the result of opposition to a British mandate giving the East India Company a monopoly and imposing a nominal tax on all tea sold in America would have set out to create a government with the power to force people to buy tea in the first place,” said Vinson.

He added: “If Congress can penalize a passive individual for failing to engage in commerce, the enumeration of powers in the Constitution would have been in vain ... and we would have a Constitution in name only.”

And because the Affordable Care Act does not contain a severability clause -- the standard boilerplate language that allows the rest of a bill to go forward even if one of its provisions is found unlawful -- Vinson ruled that the loss of the individual mandate would render the entire bill null and void.

Senior administration officials blasted the judge’s ruling as a case of “judicial overreach,” and said on a conference call with reporters that it was “well out of the mainstream of judicial opinion.”

Of the four lawsuits filed so far against ObamaCare, two judges have ruled in favor of the Affordable Care Act and two others, including Vinson, have ruled against it. But Vinson’s ruling is far more detailed in its deconstruction of the legal underpinnings of the administration’s reforms.

Administration officials immediately announced that they would appeal Vinson’s ruling, and said it would not affect the implementation of healthcare reforms scheduled to take full effect by 2014.

Whether the Obama administration can now legally proceed with healthcare

implementation, to the extent it affects the 26 states or other parties that won the lawsuit, is very much open to question, however.

In his ruling, Vinson said he did not need to issue an injunction-- a legal order halting the implementation of a law -- because courts always operate on the assumption that the executive branch will not proceed with a law courts have found to be unconstitutional. A declaratory judgment against a law, in other words, is considered a de facto, or "functional," injunction.

"This particular piece of litigation essentially struck down the provisions in more than half the country," Heritage Foundation legal scholar Robert Alt told Newsmax. "So just the weight of this particular win for the opponents to Obamacare is quite a bit more substantial...."

Unless the ruling is overturned on appeal, Alt said, it could effectively create a two-tiered dilemma for the White House: 24 states where healthcare reform could proceed, and 26 where it could not.

That nightmare scenario for the administration sets the table for a bit of legal drama in the days and weeks ahead. The administration's first legal maneuver in response to Judge Vinson's order will likely be to file a request for a stay.

If the stay is granted, the administration will be free to resume its bureaucratic implementation of the bill. If the 11th Circuit Court that is ultimately expected to receive the appeal does not grant the stay, however, the healthcare reform machinery, which already faces still opposition in the GOP House that controls the purse strings, could suddenly grind to a halt.

As Cato Institute Senior Fellow Doug Bandow tells Newsmax: "If you block everything until this goes up [to the Supreme Court] and gets their ruling, then you put the government behind on everything. It certainly advantages opponents of the law, and makes it easier for Republicans and others in Congress to fight it, and defund it. They can argue, 'Look, they can't even implement it now so let's move ahead, this is a good opportunity to get rid of it.'"

Regardless the ultimate outcome of the legal battles, the political cost of the president's landmark initiative continues to be steep.

Dr. Larry Sabato of the University of Virginia's Center for Politics tells Newsmax "there is no way this can be regarded as anything but bad news for Obama."

Some believe the Supreme Court could rule on the constitutionality of the Affordable Care Act before the 2012 elections. If that happens, it would play directly into the conservative narrative that President Obama has engineered a vast, unprecedented expansion of the reach of the federal government.

Sabato says: "...then Obama will be put on the health care defensive once again. The right will be crowing and the left will be sore he didn't go with the public option."

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