



## Federal judge rules against new healthcare law in Virginia lawsuit

By Jason Millman - 12/13/10 01:13 PM ET

A federal judge in Virginia [ruled](#) the healthcare reform law's provision requiring Americans to buy insurance is unconstitutional, marking the Obama administration's first major defeat in defense of the new law.

U.S. District Court Judge Henry E. Hudson only struck down the individual mandate and "directly dependent provisions" while upholding the rest of the reform law. The decision marks the first major step in a lawsuit destined for the Supreme Court.

Legal observers expected Hudson, a President George W. Bush appointee, to rule against the Obama administration in the lawsuit filed by Virginia Attorney General Ken Cuccinelli, a rising GOP star who some think might run for the Senate in 2012.

The individual mandate was a central part of the healthcare reform law. It requires all people to buy insurance by 2014 or face a penalty.

Hudson said the law's final language deceptively labels the penalty a tax, after it had been called a penalty in draft language just hours before the final bill was passed on Christmas Eve last year. The distinction between penalty and tax became a sticking point because the Constitution grants the federal government wide latitude to impose taxes, but a penalty could amount to regulation of commerce across state lines in violation of the Constitution.

Throughout the debates, Democrats in Congress and Obama said it wasn't a tax in part because that would have violated his pledge not to raise taxes against middle-class Americans. The administration changed its tune to back its legal arguments for the individual mandate, but the judge didn't buy it.

"This Court's analysis begins with the unequivocal denials [during the debate] by the Executive and legislative branches that the [law] was a tax," Hudson wrote.

Rep. Eric Cantor (R-Va.) called on President Obama and Attorney General Eric Holder to request the case be sent directly to the Supreme Court.

"In this challenging environment, we must not burden our states, employers, and families with the costs and uncertainty created by this unconstitutional law, and we must take all steps to resolve this issue immediately," he said in a statement.

Hudson said the reform law was formed with good intentions but overstepped constitutional powers.

"Despite the laudable intentions of Congress in enacting a comprehensive and transformative health care regime, the legislative process must will operate within constitutional bounds," Hudson wrote. "Salutatory

goals and creative drafting have never been sufficient to offset an absence of enumerated powers.”

Cuccinelli labeled the decision a victory on his website shortly after the decision was announced.

"Today, a federal judge in Richmond ruled the individual mandate of the federal health care law UNCONSTITUTIONAL!" he wrote. "In other words – we won!"

The decision comes at the beginning of an eventful week for influential healthcare reform challenges. A district court in Florida is scheduled to hear oral arguments Thursday on a 21-state lawsuit that also challenges the law's individual mandate. Both the Virginia and Florida cases are expected to wind up in the Supreme Court.

Advocates on both sides of the debate Monday morning prepared talking points ahead of the decision. The liberal Health Care for America Now downplayed the ruling's significance, writing, "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.”

Meanwhile, a number of legal challenges have already been rejected, and more will be decided later.

A federal judge in Virginia last month rejected a lawsuit that also challenged the law's mandate that people buy insurance — the second time the mandate has been upheld after a federal judge in Michigan ruled the same way in October. Both those judges were appointed by President Bill Clinton.

The White House, which last week [pointed](#) to a number of cases against the reform law that have been dismissed, said the Virginia and Michigan decisions made the case for the individual mandate. The Obama administration argues healthcare is different from other commercial markets, because — illness being both inevitable and involuntary — everyone ultimately requires some form of care.

Successful challenges to the reform law could have repercussions for Democrats in conservative districts, Robert Alt, a senior legal fellow at the Heritage Foundation, told The Hill last month.

"If you start to see a drumbeat from the courts that yes, some of these provisions are unconstitutional, that's going to create very uncomfortable circumstances for some members,” Alt said.

Most recently, a U.S. district judge in New Jersey last week rejected a reform law challenge filed by a nonprofit physicians group. The judge in that case ruled against the group's claim that the law prevents doctors from accepting direct payment from a patient.

Some conservative groups said the judge should have struck down the entire 2,700-page bill, since Democrats have long argued that every element of the law is needed to make the system work. The law does not include a so-called severability provision, so it was left up to the judge to determine if the rest of the law could stand if an unconstitutional provision is stricken.

"Anyone familiar with 'ObamaCare' knows that Congress would not have approved any of its major provisions absent the individual mandate," said Michael Cannon of the libertarian Cato Institute. "The compulsion contained in the individual mandate was the main reason that most Democrats voted in favor of the law."

The Obama administration has argued in the Florida court case that "countless ... provisions of the Act are entirely capable of being applied even if" the mandate is stricken.

However, major parts of the law — including the prohibition against rejecting people with pre-existing conditions and the requirement that everyone be offered the same rates regardless of their medical condition — "cannot be severed" from the mandate, the administration acknowledged.

Judge Hudson appeared to agree, saying that it would be "virtually impossible within the present record to determine whether Congress would have passed this bill" without the mandate. "Moreover," he added, "without the benefit of extensive expert testimony and significant supplementation of the record, this Court cannot determine what, if any, portion of the bill would not be able to survive independently."

Hudson went on to quote from a recent Supreme Court decision by Chief Justice John Roberts suggesting that the conservatives on the court would likely adopt a similar interpretation.

"Generally speaking," Roberts quoted from an earlier decision in a recent ruling on the Sarbanes-Oxley financial regulation law, "when confronting a constitutional flaw in a statute, we try to limit the solution to the problem, severing any problematic portions while leaving the remainder intact."

*Julian Pecquet contributed.*

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