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Legal Groups, House Republicans Urge Appeals Court to Rule Against Health Care Law

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Three conservative-leaning organizations and 12 Republican members of Congress have filed a flurry of briefs in a challenge to the health care law now under appeal in federal court in Michigan.

The Washington Legal Foundation and 12 House members asked that the U.S. Court of Appeals for the 6th Circuit reverse a decision by a federal district court judge upholding the health care law. Also filing briefs with the appeals court were the **Cato Institute** and the Mountain States Legal Foundation.

The briefs, all filed Dec. 22, are in support of a challenge to the law filed by the Thomas More Law Center of Ann Arbor, Mich. U.S. District Judge George Caram Steeh in October denied a request for a preliminary injunction brought by the law center and dismissed claims the center made against the individual mandate included in the law and penalties for not complying (see related story, CQ HealthBeat, Oct. 7, 2010).

The Michigan challenge is among nearly two dozen filed against the law (PL 111-148, PL 111-152). While it has not drawn as much national attention as others in Virginia and Florida, legal experts say it is the first to reach the appellate level in which a lower court decision was on the merits of the law.

Steeh, who was appointed by President Bill Clinton in 1998, said that Congress had the power under the Commerce Clause of the Constitution to enact the health care law. His was the first district court decision upholding the law. The law center appealed the decision Dec. 15 and asked for oral arguments. The Justice Department is required to respond by Jan. 14.

Since Steeh's ruling, a second federal district court judge has upheld the health care law, and a third in a Virginia case ruled that the individual mandate is unconstitutional while allowing the remainder of the law to stand (see related story, CQ HealthBeat, Dec. 13, 2010). The Supreme Court is expected to ultimately decide on whether the law will stand.

The Washington Legal Foundation brief asking for a reversal of the lower court decision was filed on its own behalf and that of House members Michele Bachmann of Minnesota, Dan Burton of Indiana, K. Michael Conaway, Ted Poe and Ron Paul of Texas, Lynn Jenkins and Todd Tiahrt of Kansas, Dan Lungren, Gary G. Miller and Tom McClintock of California, Cathy McMorris Rodgers of Washington and Jean Schmidt of Ohio.

The requirement in the law that all Americans have health insurance threatens to upset the balance of power between state and federal governments by seeking to

regulate an individual's decision to forgo health insurance, said Cory Andrews, chief litigation counsel for the foundation.

The brief says the members of Congress who filed believe that the individual mandate is "far afield from the enumerated powers assigned to the federal government under Article I of the Constitution. . . . Because the district court's order upholding the individual mandate under the Commerce Clause amounts to a declaration of virtually unlimited congressional power, it must be reversed."

A separate brief also asking that the lower court decision be reversed was filed by the **Cato Institute**, a libertarian think tank in Washington, and Randy E. Barnett, a professor of legal theory at the Georgetown University Law Center.

"For the first time in American history, the federal government has attempted to commandeer the people" by imposing on them an "economic mandate," that brief states. "Such economic mandates cannot be justified by existing Supreme Court doctrines defining and limiting the powers of Congress."

A third brief supporting the challenge was filed by the Mountain States Legal Foundation of Lakewood, Colo. The foundation says on its website that it is a "nonprofit, public interest law firm dedicated to individual liberty, the right to own and use property, limited and ethical government and free enterprise system."

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