



Virginia Lawsuit Challenging Health Law Passes Key Hurdle

TOPICS: [HEALTH REFORM](#), [POLITICS](#)

By [JULIE ROVNER](#), NPR NEWS

AUG 02, 2010

This story comes from our partner, NPR's health blog [Shots](#).

So the first big legal test of the constitutionality of the "individual mandate" that requires just about everyone in the U.S. to have health insurance starting in 2014 is going to get out of the starting gate.

That's the result of a 32-page [opinion](#) from U.S. District Court Judge Henry Hudson, who rejected the Obama Administration's impassioned [plea](#) to dismiss the [proceeding](#) brought by Virginia Attorney General Ken Cuccinelli.

Justice Department lawyers probably smelled trouble when they read Hudson's first sentence, which called Virginia's case "a narrowly-tailored facial challenge to the constitutionality" of the health law.

That Hudson allowed the case to proceed to a full hearing (now scheduled for Oct. 18) wasn't a huge surprise. What did seem to raise some eyebrows, however, was his kind comments for allowing Virginia standing to sue by passing its own law, shortly before President Obama signed the federal one. The Virginia law seeks to exempt state residents from the exact insurance mandate the federal law prescribes.

"Despite its declaratory nature, it is a lawfully-enacted part of the laws of Virginia," Hudson wrote. "The purported transparent legislative intent" (which of course is to make Virginians immune from the federal requirement) "is irrelevant," he wrote.

That's not quite how critics see it. Speaking on a call sponsored by the left-leaning [Center for American Progress](#), constitutional scholar and former Clinton Administration Solicitor General [Walter Dellinger](#) said Virginia's law is the one that's transparently unconstitutional:

It would mean any state could pass any statute declaring any federal law... invalid in that state, and then bring a lawsuit to challenge the federal law, even though it has no federal stake or no obligation under that law. It just can't work like that.

And the Obama administration says it's [confident](#) that the federal law will be upheld as constitutional in the end. "The Affordable Care Act falls well within Congress's power to regulate under the Commerce Clause, the Necessary and Proper Clause, and the General Welfare Clause," blogged White House Special Assistant to the President Stephanie Cutter.

What's more, she pointed out, such constitutional challenges were also mounted unsuccessfully against such landmark pieces of legislation as the Social Security Act, the Civil Rights Act, and the Voting Rights Act.

Conservatives, however, were, not surprisingly, full of "I told you so's" about the ruling.

Said Cuccinelli, "This lawsuit is not about health care, it's about our freedom and about standing up and calling on the federal government to follow the ultimate law of the land – the Constitution."

Ilya Shaprio of the libertarian [CATO](#) Institute declared: "Today's ruling should finally silence those who maintain that the legal challenges to Obamacare are frivolous political ploys or sour grapes. The constitutional defects in the healthcare 'reform' are very real and quite serious."

This is one of KHN's "Short Takes" - brief items in the news. For the latest from KHN, check out our [News Section](#).



© 2010 Henry J. Kaiser Family Foundation. All rights reserved.