

Lawsuits to Undo Key Parts of Health-Care Law Move Forward, so Far

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President Obama signed the Patient Protection and Affordable Care Act on March 23. Within minutes, 14 state attorneys general filed lawsuits in federal courts in Virginia and Florida challenging the constitutionality of the law's "individual mandate," which will require nearly every American to buy health insurance or face annual fines.

Although the individual mandate doesn't kick in until 2014, legal challenges to the mandate have been met with some sympathy in court. As these cases move forward, it's worth taking another look at the suits.

Who is challenging the new law?

Florida Attorney General Bill McCollum and Virginia Attorney General Ken Cuccinelli are leading the states' charge against the health-care reform law.

Mr. McCollum's suit, *State of Florida v. United States Department of Health and Human Services*, was filed in federal district court in Pensacola and joined by 12 other states via their attorneys general. In May, four states via their governors and three states via their attorneys general joined Florida's suit. Also joining the suit were the National Federation of Independent Business and two individuals from Florida and Washington State.

Mr. Cuccinelli's suit was filed on behalf of Virginia alone in US district court in Richmond. Cuccinelli, a Republican, has championed conservative causes since taking office in January.

On what grounds is the health-care law being challenged?

States in both cases primarily challenge the individual mandate's validity under the Constitution's Commerce Clause and the 10th Amendment.

Historically, federal courts have interpreted the Commerce Clause to enable Congress to regulate interstate economic activity or noneconomic activity that "substantially affects" interstate commerce. However, plaintiffs assert that Congress cannot direct its Commerce Clause power at one's inactivity. To them, the individual mandate does just that by forcing Americans to spend their money on insurance they may not want.

Further, the states claim that Congress is commandeering traditional state powers under the 10th Amendment, such as regulating intrastate insurance programs.

To bolster their 10th Amendment claims, Virginia and five states in the Florida suit – Georgia, Idaho, Louisiana, Utah, and Arizona – created conflict between federal and state laws by passing laws prohibiting government from compelling their citizens to purchase health insurance.

What has happened? What's next?

On Aug. 2, Judge Henry Hudson of the Eastern District of Virginia denied the federal government's motion to dismiss Cuccinelli's lawsuit.

Judge Hudson, a Reagan appointee, found that the conflict of state and federal law created a sufficient injury to allow Virginia to sue. He rejected the federal government's argument that the case would not be ripe for adjudication until the individual mandate's 2014 implementation.

Regarding the Commerce Clause, Hudson ruled that the federal government's arguments on the law's constitutionality did not definitively overcome Virginia's arguments to the contrary. The federal government's Commerce Clause claims included the assertion that everyone falls sick and therefore will inevitably participate in the health-care market.

The judge concluded that the unprecedented issue of "whether or not Congress has the power to regulate – and tax – a citizen's decision not to participate in interstate commerce" deserved a hearing on the merits. Oral arguments on motions for summary judgment are slated for Oct. 18.

Meanwhile, Judge Roger Vinson of the Northern District of Florida – an appointee of President George W. Bush – is at work on his own opinion regarding the federal government's motion to dismiss the Florida case. At the Sept. 14 hearing, Judge Vinson reportedly indicated he was leaning toward denying the motion to dismiss on at least one count.

Vinson's opinion is expected by Oct. 14. Should the states' suit survive the motion to dismiss, oral arguments on motions for summary judgment will take place on Dec. 14.

Does the public back repeal of the law?

In a Rasmussen poll released Sept. 20, 61 percent of likely voters favored repeal. In August, the Missouri legislature placed on the state's primary ballot a proposed statute rejecting the individual mandate. The referendum passed with 71.1 percent of the vote. Arizona, Oklahoma, and Colorado will have antimandate constitutional amendments on their ballots on Nov. 2. Twenty-six states have not passed or have rejected repeal bills or resolutions.