

December 13, 2010

Judge Voids Key Element of Obama Health Care Law

By **KEVIN SACK**

A federal judge in Virginia ruled on Monday that the keystone provision in the Obama health care law is unconstitutional, becoming the first judge to invalidate any part of the sprawling act and ensuring that appellate courts will receive contradictory opinions from below.

The judge, Henry E. Hudson of Federal District Court in Richmond, said the law's requirement that most Americans obtain insurance exceeded the regulatory authority granted to Congress under the Commerce Clause.

Judge Hudson, who was appointed by President [George W. Bush](#), declined the plaintiff's request to suspend the act's implementation pending appeal, meaning there should be no immediate effect on its rollout.

But the ruling seemed likely to create confusion among the public and to further destabilize political support for a law that is under fierce attack from Republicans in Congress and in many statehouses. Party leaders, including the incoming House speaker, Representative [John A. Boehner](#) of Ohio, quickly used the opinion to reiterate their call for repealing the law.

In a 42-page opinion, Judge Hudson wrote: "Neither the [Supreme Court](#) nor any federal circuit court of appeals has extended Commerce Clause powers to compel an individual to involuntarily enter the stream of commerce by purchasing a commodity in the private market."

Allowing Congress to exert such authority, he said, "would invite unbridled exercise of federal police powers."

Compelling vehicle owners to carry accident insurance, as states do, is considered a different matter because the Constitution gives the states broad police powers that have been interpreted to encompass that. Furthermore, there is no statutory requirement that people possess cars, only a requirement that they have insurance as a condition of doing so. By contrast, the plaintiffs in the health care case argue that the new law requires people to obtain [health insurance](#) simply because they exist.

The insurance mandate is central to the law's mission of covering more than 30 million people who are uninsured. Insurers argue that only by requiring healthy people to have policies can they afford to pay for those with expensive conditions. But Judge Hudson ruled that many of the law's other provisions could be severed legally and would survive even if the mandate is invalidated.

Judge Hudson is the third district court judge to reach a determination on the merits in one of the two dozen lawsuits challenging the health care law. The other judges, in Detroit and Lynchburg, Va., have upheld the law. Lawyers say the appellate process could last another two years before the Supreme Court settles the dispute.

The opinion by Judge Hudson, who has a long history in Republican politics in Northern Virginia, continued a partisan pattern in the health care cases. Thus far, judges appointed by Republican presidents have ruled consistently against the Obama administration, while Democratic appointees have found for it.

That has reinforced the notion — fueled by the White House — that the lawsuits are as much a political assault as a constitutional one. The Richmond case was filed by Virginia's attorney general, Kenneth T. Cuccinelli II, a Republican, and all but one of the 20 attorneys general and governors who filed a similar case in Pensacola, Fla., are Republicans.

The two cases previously decided by district courts are already before the midlevel courts of appeal, with the Detroit case in the Sixth Circuit in Cincinnati and the Lynchburg case in the Fourth Circuit in Richmond.

The Justice Department, which is defending the statute, is considering whether to appeal Judge Hudson's ruling to the Fourth Circuit, which hears cases from Virginia and four other states. That would leave that court to consider opposite rulings handed down over two weeks in courthouses situated only 116 miles apart.

Administration officials emphasized that Judge Hudson's opinion was just one among several and said they were pleased he had not stopped the law from going into effect.

"We are disappointed in today's ruling," said Tracy Schmalzer, a Justice Department spokeswoman, "but continue to believe — as other federal courts in Virginia and Michigan have found — that the Affordable Care Act is constitutional."

Ms. Schmalzer added, "We are confident that we will ultimately prevail."

The administration acknowledges that if the insurance requirement falls before taking effect in 2014, related changes would necessarily collapse with it, most notably provisions that would prevent insurers from denying coverage to those with pre-existing conditions or charging them discriminatory rates.

But officials said other innovations, including a vast expansion of [Medicaid](#) eligibility and the sale of subsidized insurance policies through state-based exchanges, would withstand even a Supreme Court ruling against the insurance mandate.

Some state officials said Monday's ruling would reinforce calls by many Republican governors and lawmakers to slow down its implementation.

"I think you might see some air taken out of the balloon nationwide," said Jason A. Helgerson, the Medicaid director in Wisconsin, where Republicans are about to take control of both the executive and legislative branches.

Judge Hudson, who was previously best known for sentencing the [N.F.L.](#) quarterback [Michael Vick](#) to 23 months for his involvement in a [dog fighting](#) ring, had telegraphed his leanings in a series of hearings and preliminary opinions. But the ruling was nonetheless striking given that only nine months ago, prominent law professors were dismissing the constitutional claims as just north of frivolous.

The case centers on whether Congress can use its powers under the Commerce Clause to compel citizens to buy a commercial product — namely health insurance — for the purpose of regulating an interstate economic market. Absent that authority, the administration argued, Congress could use the taxation powers granted by the Constitution to justify the insurance requirement, because the fine for not obtaining coverage will be assessed as an income tax penalty.

While commending Congress's "laudable intentions," Judge Hudson shot down both arguments.

"At its core," he wrote, "this dispute is not simply about regulating the business of insurance — or crafting a scheme of universal health insurance coverage — it's about an individual's right to choose to participate."

The ruling is a political score for Mr. Cuccinelli, who filed the lawsuit on his own rather than joining the *Pensacola* case. It upstages a major hearing in Florida scheduled for Thursday.

"This case is not about health insurance, it is not about health care," Mr. Cuccinelli said at a news conference in Richmond. "It is about liberty."

Mr. Cuccinelli, who was elected in 2009, said he had filed on his own because Virginia passed a law this year aimed at nullifying the federal insurance requirement, giving the commonwealth a distinct constitutional claim. Others attribute the strategy to political ambition, suggesting that Mr. Cuccinelli did not want to share the spotlight and knew he could exploit the accelerated pace of judging in Richmond's so-called "rocket docket" to raise his profile.

Mr. Cuccinelli filed the lawsuit minutes after [President Obama](#) signed the law on March 23 and has been discussing the case on cable television ever since. By late afternoon Monday, he had already posted campaign fund-raising advertisements online that cited his victory.

Even before Monday's ruling, Mr. Cuccinelli and Gov. [Bob McDonnell](#) of Virginia, also a Republican, were seeking an agreement with the Justice Department to bypass the United States Circuit Court of Appeals and file for expedited review by the Supreme Court. That would have the effect of further marginalizing the *Pensacola* case. The Supreme Court rarely takes such requests, and the Justice Department has not publicly expressed an opinion.