

Federal judge in Virginia rules individual health care mandate unconstitutional

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A federal judge in Virginia ruled Monday that the provision in the Obama-backed health care legislation requiring individuals to purchase health insurance is unconstitutional. The ruling in Richmond by U.S. District Judge Henry E. Hudson, a 2002 George W. Bush appointee, marks the first time a court has struck down any aspect of the health care overhaul passed earlier this year.

The so-called individual mandate is a reactionary measure designed to buttress the profit margins of the major insurance corporations, who, unsurprisingly, are advocates of the requirement. Rather than recognizing health care as a basic social right, the Obama “reform” aims to reduce the ranks of the uninsured by forcing people, beginning in 2014, to pay for insurance policies from some of the world’s largest corporations, or else face heavy fines.

Judge Hudson’s ruling does not reject the individual mandate because of its reactionary political implications, but because it oversteps the bounds of the federal government’s powers to regulate interstate commerce as laid out in the Commerce Clause of the US Constitution.

Judge Hudson’s opinion follows two earlier rulings in favor of the health care bill by Democratic-appointed judges. It poses a challenge to the Obama administration and supporters of the legislation, which continues to be viewed with skepticism by significant layers of the population largely due to its cost-cutting and rationing components.

The Virginia case was brought by the state’s Republican attorney general, Ken Cuccinelli, who filed the case on March 23 of this year, the day President Obama signed the Affordable Care Act into law. It is one of about two dozen cases challenging many aspects of the health care bill presently before federal courts

across the country. It is widely expected that a final ruling will come from the US Supreme Court, most likely not until after the 2012 elections.

In his 42-page ruling, Judge Hudson concluded that this mandate constitutes an unprecedented expansion of federal power and cannot be justified under Congress’s authority to regulate interstate commerce. Hudson’s ruling states that “an individual’s personal decision to purchase—or decline to purchase—health insurance from a private provider is beyond the historical reach of the Commerce Clause” and that the mandate “is neither within the letter nor the spirit of the Constitution.”

Virginia argued that people who choose not to obtain health insurance are not engaging in any type of commerce, and that Congress was therefore overstepping its constitutional powers by requiring them to do so. The Justice Department countered that because everyone at some point needs health care, by choosing not to purchase coverage individuals were engaging in an active decision to pay for their health care out of pocket.

The Obama administration further argued that because the costs of caring for the uninsured would impact the insurance market, the government has a stake in regulating an individual’s decision to purchase—or decline to purchase—insurance coverage.

In the 1942 Supreme Court case *Wickard v. Filburn*, the high court unanimously ruled that congressional regulatory power extended beyond specific transactions to activities with a “substantial economic effect on interstate commerce.” The court ruled against a farmer growing wheat for his own consumption, who contended that he wasn’t participating in commerce and therefore the government could not count the wheat against production limits imposed to stabilize commodity prices.

Congress has cited the 1942 decision on its commerce power in passing measures such as the Civil Rights Act of 1964, the 1972 Clean Water Act and the 1990 Americans with Disabilities Act.

In a ruling two weeks ago on the health care legislation, Judge Norman Moon of the US District Court for the Western District of Virginia, a 1997 Clinton appointee, also drew on *Wickard v. Filburn*. He wrote that the health care bill “institutes numerous reforms to the national health care market” by removing “many barriers to insurance coverage,” including expanding Medicaid and creating insurance exchanges where individuals and families can buy coverage.

Referring to the individual mandate, Moon argued, “Far from ‘inactivity,’ by choosing to forgo insurance, plaintiffs are making an economic decision to try to pay for health-care services later.”

More to the point, the insurance mandate has been vigorously defended by private insurers, who stand to profit handsomely from a requirement that holds the general population hostage to purchasing coverage from insurance companies. This is under conditions where there are no real mechanisms in place to regulate premiums, deductibles and co-payments.

And while individuals will be charged penalties of up to .5 percent of income by 2016 for failure to obtain coverage, businesses will incur only nominal penalties if they do not provide health care coverage for their employees.

America’s Health Insurance Plans (AHIP), the main lobbying group of the private health insurers, declined direct comment on Monday’s ruling, but reiterated its support for the individual insurance mandate provision.

While siding with Virginia on the question of the individual mandate, Judge Hudson did not take two actions the state’s case had sought. He did not grant an injunction halting the government’s implementation of the law, reasoning that because most of the bill’s provisions do not go into effect until 2014, that none of them “are irreversible.” He also ruled that his finding on the unconstitutionality of the individual mandate did not cross over to the rest of the health care legislation.

A case involving a lawsuit by 20 states against the health care legislation is due to get under way in Florida on Thursday. In addition to challenging the individual mandate, that suit challenges whether the

federal government can require states to expand their Medicaid programs.

The Obama health care bill intends to provide health insurance coverage to more Americans by allowing more people to qualify for Medicaid, the low-income health care program jointly administrated by state and federal governments. Many cash-strapped states have already begun cutting back on Medicaid benefits to deal with the influx of new enrollees as a result of the recession.

The Obama administration has attempted to downplay the significance of Monday’s ruling. Justice Department spokesperson Tracy Schmalder said in a statement, “This is one of a number of cases concerning the Affordable Care Act pending before courts around the country, including four in which challenges to the law were unsuccessful that are already being heard by courts of appeals, including one by the Fourth Circuit.”

The Justice Department said Tuesday it intends to appeal Judge Hudson’s ruling on the constitutionality of the individual insurance mandate, which would proceed to the Fourth Circuit. Virginia Governor Robert F. McDonnell, a Republican, is attempting to enlist the support of other governors to press the Justice Department to skip over the federal circuit courts and take the case directly to the US Supreme Court, an unlikely scenario.



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