



Written by [Raven Clabough](#) on October 2, 2013

## **Business Owner Files Suit Against Obama Admin Over Employer Mandate Delay**

On Tuesday, Judicial Watch, a conservative watchdog group, and an orthodontist in Florida [filed](#) a lawsuit against the Obama administration for its delay of the employer mandate, asserting that the president does not have the right to determine which provisions of the law he wishes to enforce.

The employer mandate requires employers with more than 50 employees to offer health insurance to their employees, or face penalties. On July 2, the Treasury Department issued a notice extending reporting requirements for the mandate to 2015.



The decision followed mounting pressure from employers who complained that there were too many unanswered questions for businesses to comfortably comply with the mandate provision set to go into effect on January 1.

Most believe that White House Senior Adviser Valerie Jarrett was primarily responsible for the [decision](#). According to Jarrett's post on the White House's blog, not only has the employer mandate been delayed, but the administration will be drafting a simpler set of reporting rules.

"We have heard the concern that the reporting called for under the law about each worker's access to and enrollment in health insurance requires new data collection systems and coordination," Jarrett wrote. "We will convene employers, insurers, and experts to propose a smarter system and, in the interim, suspend reporting for 2014."

But for those who have been busily working to prepare for the impending mandate, the surprise announcement proved to be more than a small inconvenience. Judicial Watch filed Tuesday's suit on behalf of Dr. Larry Kawa of South Florida, who asserts he spent a substantial amount of time and money preparing for the mandate, only to learn that it was postponed until 2015.

The Daily Caller [reported](#):

Kawa employs more than 70 people and under the Affordable Care Act is required to offer health insurance to his employees. Kawa said he has been providing "top shelf" insurance to his employees for 20 years, but spent considerable time and money to make sure his business was meeting the administrative requirements of the law.

Kawa bemoans, "I have standing because I have made investments of both time and money, as a law abiding citizen and a local business owner to make sure that my businesses was in compliance with the law. As soon as I did that, this president moved the goal posts, something he was not permitted by law to do."

Kawa states that he spent \$5,000 in legal fees in efforts to comply with the employer mandate.



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The lawsuit reads: "Plaintiff would not have expended its time and resources and incurred these anticipatory costs in 2013 if the mandate had not been scheduled to take effect until 2015, but instead would have spent its time, resources, and money on other priorities." "The delaying of the 'employer mandate' until at least January 1, 2015, exceeded Defendants' statutory authority, is arbitrary, capricious, and contrary to the law."

The complaint also claims that the president violated the Administrative Procedures Act by delaying the employer mandate, and the suit contends that the president made the decision to avoid political fallout from ObamaCare in the 2014 midterm elections.

Tom Fitton, president of Judicial Watch, explained, "Politics do not trump the Constitution or the rule of law."

"If the law is to fail, let it fail now, not when its politically convenient for the president," he added.

"The president wants to avoid the consequences of the law, and there are ways to do that legally, and that's through having Congress repeal it or modify it," he said. "He's chosen not to do that and act as a one-man Congress."

"He has no more power to do that than you or I," Kawa said. "In fact, he has an affirmative duty to enforce the law, and we are here to make sure that he does that."

Both Kawa and Judicial Watch indicate that they want to see to it that the law is fairly enforced. They note that the administration has granted more than 1,200 waivers to businesses, and also arranged for Congress to be able to maintain the very generous government subsidies for their premiums. "I am tired of government picking winners and losers, victors and victims," said Kawa. "And I suggest it ends here today."

Kawa and Fitton admit that they would like to see the healthcare law repealed, but that their politics on the law come secondary to the Constitution. "We obviously object to the employer mandate and to the entire Obamacare law," Fitton said. "But we understand that under the U.S. Constitution, the law can only be changed by legislation passed by Congress and signed by the president."

"My more overarching belief is confidence in the framework of the Constitution," Kawa said. "To me, this is not about whether Obamacare is a good idea, a bad idea."

"I am not in favor of Obamacare. However, I will tell you that it is the law and I respect the law," he said. "I hope we have a president that does the same."

Kawa filed his suit in the U.S. district court for the Southern District of Florida. The suit names the U.S. Treasury, Secretary of the Treasury Jack Lew, the Internal Revenue Service, and the IRS Acting Director Daniel Werfel as defendants.

If Judicial Watch and Kawa were to win the suit, a permanent injunction would be placed against the delay.



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