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Federal Judge Rules Against Feds in Virginia Suit Against Obamacare

A federal district court judge in Richmond, Virginia, denied the federal government's motion to dismiss the Commonwealth of Virginia's lawsuit challenging the insurance mandate of ObamaCare. The August 2 decision clears the way for a trial on the merits of Virginia's claim.

In a 32-page decision, Judge Henry Hudson in dictum summarized the core of the matter at bar: "While this case raises a host of complex constitutional issues, all seem to distill to the single question of whether nor not Congress has the power to regulate — and tax — a citizen's decision to not participate in interstate commerce."

This question, says Judge Hudson, has not been "squarely addressed" by the Supreme Court or any federal appellate court.

The original complaint filed by the attorney general of Virginia on behalf of the Commonwealth argues that Section 1501 of the Patient Protection and Affordable Care Act "creates an immediate, actual controversy involving antagonistic assertions of right." The controversy arises, the complaint avers, because the Obamacare requirement that all Americans purchase a qualifying health insurance policy or be penalized (Section 1501) "exceeds the enumerated powers conferred upon Congress."

The list of delegated, enumerated, and very limited powers vested to the Congress by the Constitution is set forth primarily in Article I, Section 8.

The portion of Section 1501 of Obamacare at issue reads: "An applicable individual shall for each month beginning after 2013 ensure that the individual, and any dependent of the individual who is an applicable individual, is covered under minimum essential coverage for such month." Additionally, "If an applicable individual fails to meet the requirement of subsection (a) for 1 or more months during any calendar year beginning after 2013,then, except as provided in subsection (d), there is hereby imposed a penalty with respect to the individual in the amount determined under subsection (c)." This provision of the law is scheduled to take effect in 2014.

In defense of ObamaCare, the federal government insists that the enactment of the individual mandate is "amply supported by time-honored applications of Congress's Commerce Clause powers and associated regulatory authority under the Necessary and Proper Clause." Furthermore, Secretary of the Department of Health and Human Services Kathleen Sebelius (the named defendant of the lawsuit) argues, "Section 1501 is a valid exercise of Congress's independent authority to use its taxing and spending power under the General Welfare Clause."

While Virginia Attorney General Ken Cuccinelli is an able lawyer and heretofore has crafted insightful

and narrowly tailored attacks on the constitutionality of Obamacare, he may want to call James Madison as a witness for the prosecution. Madison, recognized as the Father of the Constitution for the guiding role he played at the Constitutional Convention of 1787, spoke and wrote often of the use and misuse of the clauses relied upon in the Obama administration's defense of compulsory purchase of health insurance.

Said Madison in *The Federalist*, No. 44:

> What is to be the consequence, in case the Congress shall misconstrue this part [the necessary and proper clause] of the Constitution and exercise powers not warranted by its true meaning, I answer the same as if they should misconstrue or enlarge any other power vested in them … the success of the usurpation will depend on the executive and judiciary departments, which are to expound and give effect to the legislative acts; and in a last resort a remedy must be obtained from the people, who can by the elections of more faithful representatives, annul the acts of the usurpers.

In his Report of 1800, Madison wrote:

> Money cannot be applied to the General Welfare, otherwise than by an application of it to some particular measure conducive to the General Welfare. Whenever, therefore, money has been raised by the general Authority, and is to be applied to a particular measure, a question arises whether the particular measure be within the enumerated authorities vested in Congress. If it be, the money requisite for it may be applied to it; if it be not, no such application can be made.

And lastly, as Madison wrote in a letter to Edmund Pendleton in 1792:

> If Congress can do whatever in their discretion can be done by money, and will promote the general welfare, the Government is no longer a limited one possessing enumerated powers, but an indefinite one subject to particular exceptions.

Three specious arguments, three stern refutations. The lawyers for the United States are well-educated, and as such they are likely familiar with Madison's (and other Founders') position and understand that their answer to Virginia's complaint hasn't a constitutional leg to stand on. Accordingly, they have chosen to invoke the history of jurisprudential rewriting of the Constitution as carried out by a Supreme Court that assumed the role of promoting the modern aim of government to redistribute wealth through promulgation of a massive regulatory scheme that covers every aspect of human life.

The August 2 ruling has no bearing on the constitutionality of the underlying issues presented in Virginia's complaint. It simply clears the way for the suit to proceed along the procedural pathway toward an ultimate hearing before a federal tribunal.

Recently, an issue has arisen as to whether an inferior federal district court has jurisdiction over a lawsuit in which a state is a party. The case of *Virginia v. Kathleen Sebelius* may fall into the category of lawsuits listed in Article III, Section 2, which reads in relevant part, "In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction."

Therefore, despite the sound constitutional challenges raised by Virginia in its complaint against the federal government, the suit may be subject to removal to the Supreme Court for lack of jurisdiction in the venue in which it was filed. This would have the concomitant effect of invalidating Judge Hudson's ruling on the motion to dismiss filed by the federal government.

There are other legal challenges to Obamacare working their way through the legal process. At the time of publication of this article, no critical rulings have been handed down on these cases.

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