Written by **Kelly Holt** on January 20, 2011

6 New States Make 25 Joining Fla. Lawsuit Against ObamaCare

Just one day before the House voted to repeal ObamaCare, six additional states joined a Florida lawsuit against the measure — bringing the total challenging the law to 26 — more than half the states in the Union, according to Fox News, Jan. 19.

Iowa, Kansas, Maine, Ohio, Wisconsin, and Wyoming are taking part in the suit filed by Florida's former Attorney General Bill McCollum (R), immediately after it was signed into law last March. McCollum was initially joined by the National Federal of Independent Business in protesting the 10-year, $938 billion measure.

Already part of the suit are Alabama, Alaska, Arizona, Colorado, Georgia, Indiana, Idaho, Louisiana, Michigan, Mississippi, Nebraska, Nevada, North Dakota, Pennsylvania, South Carolina, South Dakota, Texas, Utah and Washington.

Other states have also pursued suits against ObamaCare — in December a federal judge in Virginia ruled against the provision that individuals be required to purchase health insurance.

The states in the Florida suit make the same claim — the law is unconstitutional. It violates individual rights by forcing people to buy insurance or face penalties, and its mandate on the states provides no funds to pay for it. Plaintiffs maintain the states are placed in the impossible position of accepting the new costs or forfeiting federal Medicaid funding. *Sunshine News* carried this statement on January 29, founded in the Bill of Rights, from McCollum:

> This case is of pivotal importance to our constitutional rights because Congress has limited, enumerated powers under the Constitution, and beyond those powers Congress cannot pass law.

And Florida's current Attorney General Pam Bondi added,

> … [The] hearing demonstrated that the health-care law depends on a vision of limitless federal power that is completely contrary to our Constitution. As attorney general, I will continue to fight back on behalf of Florida's families and businesses against this unconstitutional and unaffordable law.

But opponents disagree. Fox News continued,

> Government attorneys have said the states do not have standing to challenge the law and want the case dismissed. Justice Department spokeswoman Tracy Schmaler said, "It is important to note that two of the three courts that have reviewed this law on the merits have found it constitutional, and those decisions — as well as two others the government prevailed on — are pending in courts of appeal. At the same time, trial courts in additional cases have dismissed numerous challenges on jurisdictional and other grounds that have not been appealed."

Others wonder if Schmaler has read the Constitution. The lawsuit speaks to the heart of the document and the legality of the Act. In *The New American*, May 12, 2010 constitutional lawyer Joe Wolverton wrote,

> The case at bar specifically impugns the so-called individual mandate. This provision of ObamaCare requires every American, regardless of income or personal preference, to purchase a qualifying health insurance policy or face tax penalties. If the power to regulate commerce or impose taxes is broad enough to justify this provision, then is there anything that would lie outside the boundaries of that power? Congress, theoretically, could compel citizens upon penalty of law to purchase any number of imaginable commodities and thus it would be "extending the sphere of its activity and drawing all power into its impetuous vortex," just as James Madison foretold.

Wolverton contends that the attorneys general are to be lauded for their resistance, but there remains another means of asserting state sovereignty against a heavy-handed government:

> Nullification is a constitutionally sound and procedurally cleaner method of checking Congress's usurpation of power. Put simply, nullification requires each state to nullify, or invalidate, any federal law that a state believes violates constitutional restrictions on federal power and/or unlawful encroachments into the sovereignty of the states in violation of the Tenth Amendment.
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> Nullification is based on the argument that as the union was formed by the consent of the several sovereign states, these states as parties to the compact and the authors thereof, retain ultimate authority as to the limits of the power of the central government to enact laws that are applicable to the states and the citizens thereof. The Ninth and Tenth Amendments validate and buttress this assertion.

John McManus, president of The John Birch Society, agreed and told *The New American:*

> This is a bad bill, and doesn't need reform, but repeal. A lawsuit is better than no remedy at all, but the real answer is for states to nullify. There is no alternative but nullification of ObamaCare.
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> Nullification has successfully occurred before. For instance, the Real ID Act — it was passed, but it died because the states said no! Nobody used that word — nullification — but that's what it was.

In an interview with *The New American*, Wolverton concluded:

> The suits are ultimately doomed as they are, in essence, asking a branch of the federal government to undo the act of a sister branch. While such decisions might be handed down by this or that federal court, there will never be an absolute jurisprudential repeal of ObamaCare, as Congress, if determined will find ways around contrary holdings of judges.
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> Nullification is accomplished when states exercise their sovereignty by setting aside laws passed by the national legislature that exceed its constitutional power. Any measure passed by Congress that doesn't conform to the express, limited, and enumerated powers granted to it therein by the people and the states, is null and has not the force of law.
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> Outside the Constitution, there is no law.

In spite of these congressional limits, Florida U.S. District Judge Roger Vinson could rule later this month whether he will grant a summary judgment in favor of the states or the Obama administration without a trial, according to Fox.

Photo: Florida's former Attorney General Bill McCollum: AP Images