

# **Federal judge says insurance mandate in health reform unconstitutional**

RICHMOND, Va. - A federal judge in Virginia ruled Dec. 13 that the health reform law's requirement that all Americans obtain health insurance or face penalties is an unconstitutional expansion of government power.

The 42-page decision by U.S. District Judge Henry E. Hudson was announced at a time when three national polls showed that the country remained split in its opinions about health reform.

Hudson said the Commerce Clause of the U.S. Constitution, which allows Congress to regulate interstate commerce, does not permit it to require Americans to buy a particular product, such as health insurance.

"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," he wrote.

Hudson did not issue an immediate injunction against the Patient Protection and Affordable Care Act, however, because the individual mandate to buy health insurance does not take effect until 2014.

The ruling came in a lawsuit filed by Virginia Attorney General Ken Cuccinelli following passage of a Virginia law making it illegal to require people in the state to carry health insurance.

Cuccinelli said that although he was "gratified" at the Hudson decision, he knew it would be appealed.

"This will ultimately be decided by the Supreme Court," he said, "but today is a critical milestone in the protection of the Constitution."

The Virginia case is one of more than two dozen legal challenges of the health reform law currently before federal courts. Twenty states have joined in a challenge to the individual mandate that is being considered by a Florida judge.

In a Dec. 14 op-ed piece in The Washington Post, Attorney General Eric Holder and Department of Health and Human Services Secretary Kathleen Sebelius said the individual mandate was an essential part of the health reform law and expressed confidence that it would ultimately be upheld.

“As these lawsuits continue, Americans should be clear about what the opponents of reform are asking the courts to do,” they wrote. “Striking down the individual responsibility provision means slamming the door on millions of Americans ... who’ve been locked out of our health insurance markets, and shifting more costs onto families who’ve acted responsibly.”

But three polls released Dec. 13 found continued resistance among Americans to various aspects of the health reform law.

In its December health tracking poll, the Kaiser Family Foundation found that 42 percent of Americans said they had a generally favorable view of the law, while 41 percent had a generally unfavorable view of it. Those percentages had remained basically unchanged since the law’s enactment in March.

A Washington Post-ABC News poll found that 43 percent of Americans said they supported the health reform law, while 52 percent said they opposed it – the highest level of opposition since the question about health reform changes or proposed changes was first asked in August of 2009.

When opponents of health reform were asked what they considered “the best approach” to the law, 29 percent said the law should be repealed entirely, 30 percent said parts of it should be repealed and 38 percent said they supported an approach of “wait and see before deciding.”

A national Rasmussen Reports telephone survey found that 60 percent of Americans at least somewhat favor repeal of the health reform law, while 34 percent are opposed. Support for repeal has ranged from 50 percent to 63 percent in other

Rasmussen polling since March.

The margin of error for the Kaiser and Rasmussen polls was plus or minus 3 percentage points, while the Post-ABC poll had a margin of error of plus or minus 3.5 percentage points.