

## The Health Care Reform Battle Heats Up in the Courts

Countering decisions of two other district courts, on Monday, December 13, Judge Henry E. Hudson of the U.S. District Court for the Eastern District of Virginia ruled that the provision requiring citizens to maintain a minimum level of health insurance coverage is unconstitutional. Judge Hudson held that Section 1501 of the Patient Protection and Affordable Care Act ("PPACA"), more popularly known as the "Minimum Essential Coverage Provision," exceeds Congressional power under the Commerce Clause, and is therefore unconstitutional. A link to the ruling can be found [here](#).

The challenge to PPACA, brought by Ken Cuccinelli, the Attorney General of Virginia, argued that the Minimum Essential Coverage Provision was unconstitutional under the Commerce Clause, the Necessary and Proper Clause, and the taxing power of the General Welfare Clause. The Secretary of the U.S. Department of Health and Human Services countered with an "aggregation theory" that the collective effect of individual decisions on buying health care coverage has a significant impact on interstate commerce and therefore provides a basis for authority under the Commerce Clause. Hudson ultimately agreed that the Provision exceeds the historical boundaries of Commerce Clause power because it forces individuals to purchase a product from a private vendor. Hudson also held that, because the Provision exceeds the limits of the Commerce Clause, the Necessary and Proper Clause provides no "safe sanctuary" as the legislation was not enacted in furtherance of Congress's constitutional powers. Finally, Hudson also held that the Provision did not qualify as a tax under the General Welfare Clause despite the Provision's codification in the Internal Revenue Code. Judge Hudson agreed with Cuccinelli that the penalty for an individual who does not retain coverage lacked a revenue raising purpose and is merely a penalty, and therefore not a "tax."

The ruling is limited—only the Minimum Essential Coverage Provision was declared unconstitutional, and not the entirety of PPACA. Although this decision supports the idea that the provisions of PPACA are severable, meaning that some PPACA provisions are enforceable even if other provisions are unconstitutional, a decision eliminating the Minimum Essential Coverage Provision alone could unbalance the entirety of PPACA. Other provisions, such as the requirement that insurance companies cover pre-existing conditions and charge similar prices, are tethered to the minimum coverage requirement. As a result, while Judge Hudson's ruling was limited to the minimum coverage requirement, it could upset the mechanics of the entire PPACA.

One must also note that Judge Hudson issued only a declaratory judgment and declined to issue an injunction against the implementation of the Provision. The Provision is set to go into effect in 2014, leaving the true effects of the decision up to the appeals process. Judge Hudson's opinion marked a departure from two previous decisions, one coming out of another [Virginia district court](#) and the other out of [Michigan](#), each declaring the Minimum Essential Coverage Provision to be constitutional. The Michigan and Virginia cases have been appealed, and yet another case will be heard later this week by a federal judge in Florida. Judge Hudson's ruling intensifies the battle over constitutionality of the minimum coverage requirement provision, and greatly increases the likelihood that the Supreme Court will eventually hear these cases and determine PPACA's ultimate constitutionality.

For additional information or if you have any questions pertaining to Health Care Reform, please contact [Todd Presnell](#), [Sara Anne Thomas](#) or any member of our Health

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