

LAWSUITS CHALLENGING THE 2010 HEALTHCARE REFORM LEGISLATION

LESS THAN ONE YEAR AFTER PASSAGE, the Patient Protection and Affordable Care Act (“PPACA”; “Act”)<sup>1</sup> — part of the Obama Administration’s healthcare reform legislation signed into law on March 23, 2010<sup>2</sup> — already is the subject of numerous legal challenges. The following is a summary of the pending cases.

As of this writing,<sup>3</sup> twenty-one lawsuits<sup>4</sup> have been filed challenging the constitutionality of the PPACA. With some variation, the lawsuits generally challenge the Act on one or more of the following bases: (i) the Act is an unlawful expansion of Congress’s power to regulate interstate commerce in violation of the Commerce Clause, Art. I, § 8; (ii) the individual health insurance mandate is an unapportioned direct tax on the people, in violation of the Direct Tax prohibition, Art. I, § 9; (iii) certain aspects of the passage of the legislation violated the Constitution’s

guarantee of a republican form of government, Art. IV, § 4; (iv) the Act infringes upon individuals’ religious beliefs in violation of the First Amendment; (v) the Act’s individual insurance mandate constitutes an unreasonable seizure in violation of the Fourth Amendment; (vi) the Act takes private property for public use and deprives individuals of property without due process of law, in violation of the Fifth Amendment Takings Clause and the Due Process Clause; (vii) the Act infringes upon the unenumerated rights retained in the people in violation of the Ninth Amendment; (viii) the Act commandeers state government, mandates compensation that states must pay to elected officials, and forces the states to impose a tax increase in violation of the Tenth Amendment; and (ix) the Act violates the Fourteenth Amendment guarantees of due process and equal protection.

THE CASES

*Florida v. United States Department of Health & Human Services*, pending in the Northern District of Florida, Cause No. 3:10cv00091, before Judge Roger Vinson. Among the Plaintiffs are the Attorneys General of 26 states.

ALLEGATION: The Act’s mandate that individuals pay a penalty if they do not have health insurance is unconstitutional under the First, Fifth, Ninth, and Tenth Amendments.

STATUS: In a significant ruling, on January 31, 2011, Judge Vinson granted summary judgment for the Plaintiffs, holding that the individual mandate is an unconstitutional expansion of Congress’s Commerce Clause and Necessary and Proper Clause powers. Judge Vinson went further and held that because the individual mandate is not severable from the operation of the rest of the reform legislation, the entire Act is unconstitutional.

*Virginia v. Sebelius*, pending in the Eastern District of Virginia, Cause No. 3:10cv00188, before Judge Henry E. Hudson.

ALLEGATION: The Act’s individual health insurance mandate is an unconstitutional exercise of Congress’s Commerce Clause power.

STATUS: On December 13, 2010, the court granted the Commonwealth’s summary judgment motion, holding that the individual insurance mandate is unconstitutional.<sup>5</sup>

*Liberty University Inc. v. Geithner*, pending in the Western District of Virginia, Cause No. 6:10cv00015, before Judge Norman Moon.

ALLEGATION: The Act favors one religion over another and violates the Constitution’s guarantee of a republican form of government. The suit also challenges the Act’s use of public funds for abortions.

STATUS: The Defendants’ motion to dismiss was granted on November 30, 2010. The Plaintiffs have appealed that ruling to the Fourth Circuit Court of Appeals.

*Thomas More Law Center v. President of the United States*, pending in the

Eastern District of Michigan, Cause No. 2:10cv11156, before Judge George Caram Steeh.

ALLEGATION: This case is essentially a preliminary injunction action to prevent enforcement of the Act. The action is based on Commerce Clause and First Amendment challenges.

STATUS: The preliminary injunction was denied, and two counts were dismissed in October. The Plaintiffs have appealed to the Sixth Circuit Court of Appeals.

*New Jersey Physicians Inc. v. Obama*, pending in the District of New Jersey, Cause No. 2:10cv01489, before Judge Susan Wigenton.

ALLEGATION: The Act’s individual mandate and penalty provisions exceed the federal government’s power, and the Act is not a valid exercise of Congress’s Commerce Clause power.

STATUS: A motion to dismiss is pending.

*Bellow v. United States Department of Health and Human Services*, pending in the Eastern District of Texas, Cause No. 1:10cv00165, before Judge Ron Clark.

ALLEGATION: Congress exceeded its power in passing the Act; the Act is an unconstitutional encroachment on Fourth Amendment privacy rights; and the Act is a violation of Article I’s prohibition on direct taxation.

STATUS: The *pro se* Plaintiff submitted letters to the court regarding the Defendants’ failure to answer. Otherwise, the case is stagnant.

*Association of American Physicians & Surgeons Inc. v. Sebelius*, pending in the District of Columbia, Cause No. 1:10cv00499, before Judge Richard Leon.

ALLEGATION: The Act is an unconstitutional limitation on healthcare professionals’ choices regarding Medicaid and Social Security.

STATUS: A motion to dismiss is pending.

*Walters v. Holder*, pending in the Southern District of Mississippi, Cause No. 2:10cv00076, before Judge Keith Starrett.

ALLEGATION: The Act's individual health insurance mandate provisions violate the Fifth, Tenth, and Fourteenth Amendments.

STATUS: A motion to dismiss is pending.

*Calvey v. Obama*, pending in the Western District of Oklahoma, Cause No. 5:10cv00353, before Judge David Russell.

ALLEGATION: The forced funding of abortions violates the First and Fifth Amendments.

STATUS: The court has issued summonses, but no answer to the complaint has been filed.

*Shreeve v. Obama*, pending in the Eastern District of Tennessee, Cause No. 1:10cv00071, before Judge Curtis Collier.

ALLEGATION: The Act is an unconstitutional exercise of power in violation of the Tenth Amendment.

STATUS: The court granted the Defendants' motion to dismiss, finding the 29,000 plus Plaintiffs lacked standing. The Plaintiffs plan to re-file in another court.

*Goudy-Bachman v. United States Department of Health & Human Services*, pending in the Middle District of Pennsylvania, Cause No. 1:10cv00763, before Judge Chris Conner.

ALLEGATION: The Act's individual health insurance mandate/penalty provisions violate the Takings Clause of the Fifth Amendment.

STATUS: A motion to dismiss is pending.

*Peterson v. Obama*, pending in the District of New Hampshire, Cause No. 1:10cv00170, before Judge Joseph Laplante.

ALLEGATION: The Act violates the Fifth, Ninth, and Tenth Amendments, and the passage of the Act was unconstitutional.

STATUS: A motion to dismiss is pending.

*United States Citizens Ass'n v. Obama*, pending in the Northern District of Ohio, Cause No. 5:10cv01065, before Judge David Dowd, Jr.

ALLEGATION: The Act violates the First, Third, Fourth, Fifth, and Ninth Amendments by requiring individuals to purchase a good or service.

STATUS: The Defendants' motion to dismiss was denied.

*Baldwin v. Sebelius*, pending in the Southern District of California, Cause No. 3:10cv01033, before Judge Dana Sabraw.

ALLEGATION: The Act is an unconstitutional exercise of Congress's Commerce Clause power; violates the right to privacy; is a direct tax; was passed unconstitutionally in that it originated in the Senate; unconstitutionally expands federal power; discriminates on the basis of gender; is unconstitutionally vague regarding the funding of abortions; and the Defendant Kathleen Sebelius has already failed to comply with the Act.

STATUS: The Defendants' motion to dismiss was granted. An appeal is pending in the Ninth Circuit Court of Appeals. Plaintiffs attempted an unconventional direct appeal to the United States Supreme Court, which was denied.

*Physician Hospitals of America v. Sebelius*, pending in the Eastern District of Texas, Cause No. 6:10cv00277, before Judge Michael Schneider.

ALLEGATION: The Act discriminates against physician-owned hospitals in favor of hospitals owned by non-physician individuals.

STATUS: A motion for summary judgment is pending, and the trial setting of December 9, 2010, was cancelled.

*Mead v. Holder*, pending in the District of Columbia, Cause No. 1:10cv00950, before Judge Gladys Kessler.

ALLEGATION: The Act's requirement for individuals to purchase health insurance violates individual religious beliefs and is a violation of the Religious Freedom Restoration Act of 1993.

STATUS: Both a motion to dismiss and a motion for summary judgment are pending.

*Kinder v. Department of Treasury*, pending in the Eastern District of Missouri, Cause No. 1:10cv00101, before Judge Rodney Sippel.

ALLEGATION: The Act violates the First, Fifth, Tenth, and Fourteenth Amendments and is an unconstitutional exercise of Congress's Commerce Clause powers.

STATUS: The Defendant's answer is due by January 15, 2011.

*Sissel v. United States Department of Health & Human Services*, pending in the District of Columbia, Cause No. 1:10cv01263, before Judge Richard Leon.

ALLEGATION: The Act violates the Commerce Clause.

STATUS: A November 15, 2010, motion to dismiss is pending.

*Coons v. Geithner*, pending in the District of Arizona, Cause No. 2:10cv01714, before Judge Murray Snow.

ALLEGATION: The Act violates the Fourth, Fifth, Ninth, and Tenth Amendments.

STATUS: A motion for preliminary injunction to stop enforcement of the Act is pending.

*Independent American Party of Nevada v. Obama*, pending in the District of Nevada, Cause No. 2:10cv01477, before Judge James Mahan.

ALLEGATION: This class action lawsuit challenges almost every aspect of the PPACA and includes a Thirteenth Amendment challenge alleging that the Act constitutes involuntary servitude.

STATUS: No answer has been filed.

*Purpura v. Sebelius*, pending in the District of New Jersey, Cause No. 3:10cv04814, before Judge Freda Wolfson.

ALLEGATION: The bill was illegally signed, and the Act itself illegally expands government.

STATUS: A motion for a temporary restraining order and preliminary injunction was denied. An answer is due to be filed soon.

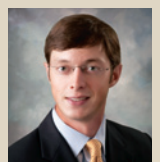
<sup>1</sup> Patient Protection and Affordable Care Act, Pub. L. No. 111-148. Available at <<http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/content-detail.html>>. March 23, 2010. Last accessed Jan. 13, 2011.

<sup>2</sup> *Id.*

<sup>3</sup> The inevitable delay in the printing of this article may have caused some information to become outdated. Please contact us if you would like more up-to-date information on these lawsuits.

<sup>4</sup> The Attorney General-elect of Oklahoma recently announced his intention to file a lawsuit challenging the PPACA. See CNN Wire Staff. "Oklahoma to Challenge Health Care Law." *CNN Politics*. Available at <[http://articles.cnn.com/2011-01-07/politics/oklahoma.health.care\\_1\\_health-care-overhaul-individual-mandate-oklahoma-voters?\\_s=PM:POLITICS](http://articles.cnn.com/2011-01-07/politics/oklahoma.health.care_1_health-care-overhaul-individual-mandate-oklahoma-voters?_s=PM:POLITICS)>. Jan. 7, 2011. Last accessed Jan. 13, 2011.

<sup>5</sup> This ruling solidifies that the individual insurance mandate will be the focus of these lawsuits going forward. See Amy Goldstein. "Mandatory Health Insurance Now Law's Central Villain." *Washington Post*. Available at <<http://www.washingtonpost.com/wp-dyn/content/article/2010/12/14/AR2010121407704.html>>. Dec. 14, 2010. Last accessed Jan. 13, 2011.



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