

## Legal Challenges to Obamacare, "The Patient Protection and Affordable Care Act"

by Vern Wendt

On December 14th, a federal district judge in Virginia ruled that Congress lacked authority to compel individuals to carry health coverage. If ultimately upheld, the decision would undercut a core feature of the national insurance market envisioned by the Patient Protection and Affordable Care Act. Many other states are on record suing to invalidate the law as well. In *Freedom Matters*, Vol 10 #9, we covered some of the questionable aspects of the Obamacare health care "reform" and cited its unconstitutional components. Now we have at last the first ruling to support this contention. As this suit proceeds ultimately to the United States Supreme Court, Americans are waking up to dangerous provisions in the law.

Some drawbacks were known in debates leading up to the passage of the bill; others were hidden under cover of a journalistic darkness we at *Freedom Matters* have pointed out for years. Like the courts, the mainstream press chooses to expose only things that please them and ignore things that threaten their agenda. Ignored were complaints that the bill empowered the Secretary of Health and Human Services alone to decide the operational philosophies that determined rules governing reimbursements to doctors: which treatments are supported and which are deemed "ineffective" or "economically inappropriate" or even worse "not an option."

As you read The Patient Protection and Affordable Care Act, look for the phrase "The Secretary shall determine" and you will see that the drafters of the bill gave the administrators of the law the power to decide what we the people will pay for in health care and what we will not. To some of us this is what we feared was coming, the inescapable reality that you will no longer decide with your doctor what your health care choices are; a bureaucrat with the help of an accountant and risk management specialist will decide what your choices are.

Remember when conservatives coined the term "death panels" to describe the end of life treatments and the people who would decide what they were and when they would be denied? The proponents labeled the term "hysteria" and "hype" and "reactive." Yet just days ago, practically unnoticed, we find the *New York Times* admitting: "Obama Returns to End-of-Life Plan That Caused Stir." The report, by Robert Pear, December 25, 2010, said: "When a proposal to encourage end-of-life planning touched off a political storm over 'death panels,' Democrats dropped it from legislation to overhaul the health care system. But the Obama administration will achieve the same goal by regulation, starting Jan. 1."

This article should be seen by *Freedom Matters* readers as a "tip of the iceberg" indication of what is yet to come if we do not overturn this law. Even the American Bar Association, at a conference on rule making last June, felt compelled to discuss what topics such as "Humanizing Cost-Benefit Analysis" should be. Even they know that to deny anyone even a single

digit chance at a successful treatment would be unacceptable to the patient, their family, and anyone contemplating the reality that they too might be in a similar position some day. We Americans do not grant such rights to a government accountable to us and we at *Freedom Matters* urge that we do not. How ironic that the *American Bar Association* website header says "Defending Liberty, Pursuing Justice." We at *Freedom Matters* ask them: *whose* liberty and justice for *whom*? Alas it seems if you decide that everyone should get everyone else to pay for their health care then it is a small step to equate the rights of the payer to the rights of the patient. This is the apparent conclusion reached by Secretary Kathleen Sibelius, the twenty-first Secretary of the Department of Health and Human Services. We are but a disposable member of a larger group in our socialized medicine.

But it is not over yet. U.S. District Judge Henry Hudson has shown the folly in the whole law by ruling that the decision on whether to buy health insurance "is beyond the historical reach of the Commerce Clause." Many legal scholars believe this ruling may lead to the unraveling of the financial plans of the government to fund the whole plan, since the element of force will cause millions simply not to participate.

There are other concerns emerging. How about Wiki Leaks? The Obama administration is offering physicians \$44,000.00 each to guarantee your medical records are digital and accessible to "authorized users" (i.e., medical professionals). Will such users also include a hacker whose agenda is to blackmail people, or assist another party, or even expose some perceived wrong action?

The security concerns for such confidential data are alarming. Already, in Ohio, there are suits alleging violations of the 1st, 3rd, 4th, 5th, and 9th Amendments on issues relating to divulging personal information, private medical records, and the now standard abuses of the Commerce Clause. A judge there has denied the motion of the defendants to dismiss.

Let's look at some other legal challenges underway. A Texas lawsuit commenced December 9th raises 14th Amendment violations over discrimination in the law against physicians owning hospitals. In Michigan, an appeal has been filed arguing that Obamacare violates the 1st Amendment's guarantee of freedom of religion. In Missouri a suit charges that Obamacare is forcing a tax increase on the state in violation of the 10th amendment. Defendants were ordered to respond by January 15th, 2011.

And so it goes. The law is on life-support unless judicial arrogance preserves it. At *Freedom Matters* we believe justice will eventually overturn it. Unlike our struggle to preserve property rights, which are not universally appreciated by a majority of the American public, this health care threat reaches every one of us eventually, and it takes out of our hands hard-earned money and freedom of choice in a way never done before in such an unsupported (not one Republican vote) and secretive manner. We will keep you posted.

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