

LEGAL CHALLENGES TO HEALTH REFORM

An Alliance for Health Reform Toolkit

Text by Kevin Arts. Compiled by Kevin Arts and Bill Erwin.

Updated May 18, 2010

www.allhealth.org

Key Facts

- The Patient Protection and Affordable Care Act (PPACA) was signed into law on March 23, 2010 by President Barack Obama.
- Almost immediately after the bill was signed, the attorneys general for 13 states jointly filed a lawsuit in U.S. District Court in Pensacola, Florida. Seven other states and the National Federation of Independent Business have since joined the suit as co-plaintiffs.¹ The lawsuit contends that PPACA violates Articles I and IV of the Constitution and the 10th Amendment to the Constitution. Virginia's attorney general filed a separate suit on the same grounds.²
- Virginia's General Assembly passed legislation aimed at nullifying the federal individual mandate for citizens of that state. Idaho and Utah became the second and third states to enact nullification statutes.³ Legislatures in at least 33 other states are considering similar measures.⁴
- Many constitutional scholars believe that these challenges are mostly for political purposes⁵, unlikely to be taken up by the Supreme Court⁶, and unlikely to succeed if they were to reach there.⁷

Background

The Patient Protection and Affordable Care Act (PPACA) has, since its introduction as H.R. 3590, provoked enormous opposition from its conservative opponents. With its passage into law, part of the resistance effort has moved from Congress to the courthouse.

Indeed, only seven minutes after the health reform bill was signed into law on March 23, a collection of 13 state attorneys general filed suit in Pensacola, FL, challenging PPACA's constitutionality and demanding that their states be exempt from certain of its provisions. Seven additional states and the National Federation of Independent Business have since signed on as co-plaintiffs.⁸ Virginia's attorney general separately filed suit, and attorneys general in several other states are also considering action.⁹

Many state legislatures are mounting their own direct challenges. Virginia's General Assembly passed on March 4 the first state legislation attempting to nullify portions of the bill. Specifically, Virginia's law seeks to prevent its citizens from being "liable for any penalty, assessment, fee, or fine as a result of his failure to

procure or obtain health insurance coverage.”¹⁰ Idaho and Utah have since approved similar statutes.¹¹ Legislators in 33 states have already filed or prefiled parallel challenges, based on the American Legislative Council’s model legislation¹², and lawmakers in at least five other states have announced similar intentions.¹³ Additionally, Idaho’s governor has called for an amendment to the U.S. Constitution prohibiting Congress from mandating insurance by threat of penalty.¹⁴

Given the hurdles a repeal effort would face, the greatest of which is President Obama’s veto power, many Republicans now see the Supreme Court as their final hope. “I think there will be a lot of ongoing litigation for years to come,” says Senator Jeff Sessions (R-Ala.).¹⁵ For its part, the Department of Justice has vowed to “vigorously defend” the health reform law against such challenges.¹⁶

Many constitutional experts and health reform supporters believe the challenge movement is largely symbolic and unlikely to succeed in court.¹⁷ “I am prepared to say it’s complete nonsense,” said Charles Fried, who served as solicitor general under President Ronald Reagan.¹⁸

Furthermore, several legal experts doubt that the challenge will be taken up by the Supreme Court at all. To do so, the Court usually requires a law to be stricken first by a circuit court. Orin Kerr, a George Washington Law School professor, who served previously as a special counsel to Senator John Cornyn (R-Tx.) and clerked for Justice Anthony Kennedy, thinks the odds of this are relatively low.¹⁹

Nevertheless, critics of the health reform legislation point to several recent Supreme Court rulings as evidence of a possible shift in the Court’s philosophy. David Rivkin, who provided counsel to the 13 attorneys general filing suit, cites both *United States v. Lopez* (1995) and *United States v. Morrison* (2000) as recent jurisprudence in which the Supreme Court sought to limit congressional authority under the Commerce Clause of the Constitution, the first time it has done so since the New Deal.²⁰ “There are such significant issues that the court could very well declare the bill unconstitutional,” said Senator Saxby Chambliss (R-Ga.).²¹

Adding an element of uncertainty to the discussion is the changing composition of the Court. The *Lopez* and *Morrison* cases were decided 5-4 by the Rehnquist Court, which many consider to have been the most favorable in decades to judicial review of congressional power. However, the Roberts Court has subsequently decided a number of cases, notably *Gonzales v. Raich* (2005), embracing the more traditional, deferential view of congressional commerce power.²²

The legal challenges themselves have thus far centered on several distinct constitutional concerns: the Commerce Clause, congressional taxing and spending power, federalism, and the deprivation of individual rights.

Reform opponents claim that PPACA improperly employs the Commerce Clause as the basis for the federal insurance mandate. The clause gives Congress the power “to regulate commerce...among the several states.”^{23 24} Reform supporters

contend that this view misrepresents legal precedent surrounding congressional use of this clause and ignores several recent and significant rulings.²⁵

State-level critics also maintain that several provisions outlined in the reform law constitute an unlawful infringement of the state sovereignty and solvency, and thereby violate the 10th Amendment to the Constitution.²⁶ For instance, the lawsuit brought by the state attorneys general asserts that the Medicaid expansion effectively commandeers state government workers for implementation purposes in violation of the “anti-commandeering” principle of 10th Amendment.²⁷ Reform supporters point to precedent affirming the constitutionality of conditional federal funding, and note that there is no requirement for states to participate in the Medicaid program.²⁸

A third charge levied in the lawsuits is that the tax penalty on uninsured persons violates the constitutional prohibition of “unapportioned capitation” or direct tax.²⁹ The Constitution authorizes the federal government to impose specific forms of taxation. Article I of the Constitution permits excise and capitation taxes, while the 16th Amendment created the income tax.³⁰ Although the tax penalty is structured in PPACA as an excise tax, reform critics charge that is actually a capitation tax, the revenues from which are constitutionally required to be apportioned to the states according to population. Given that PPACA does not apportion revenue this way, opponents claims the tax is illegal.

Finally, critics of the health reform law allege that it violates the Due Process and Takings Clauses of the 5th Amendment. The Due Process Clause prohibits the federal government from depriving citizens of their life, liberty, or property without due process of law. The Takings clause holds that the government cannot take a person’s property without just compensation.³¹ The Justice Foundation, a conservative organization based in Texas, is currently seeking to initiate a class-action lawsuit against PPACA on these grounds.³²

Several constitutional experts question the validity of such claims, noting that the Supreme Court has since 1937 “never invalidated a federal economic regulation as an unconstitutional deprivation of ‘liberty’ under the Fifth Amendment.”³³

Additionally, the Justice Department has questioned the legitimacy of such lawsuits, saying that they may violate the judicial principle of “ripeness.” This principle holds that a case should not be adjudicated before damage has actually occurred. Since the individual mandate will not take effect until 2014, the Justice Department claims the lawsuits are “merely speculative.”³⁴

The resources below are arranged to help readers understand the legal challenges facing the Patient Protection and Affordable Care Act. The first section provides descriptions and links to news articles with background on these challenges and their overall prospects for success. Next, you will find descriptions and links to information on the legal arguments underpinning these challenges. Finally, we present descriptions and links to articles debating the merits of the challenges. You will also find a list of experts with contact information.

Selected Resources

Please email info@allhealth.org if you find that any of the links mentioned in this toolkit no longer work.

NEWS AND BACKGROUND

State Legislation Challenging Certain Health Reforms, 2010, April 23, 2010

Richard Cauchi, *National Conference of State Legislatures*

<http://www.ncsl.org/default.aspx?tabid=18906>

This article provides an extensive listing of the current state-level challenges to the new health reform law, including state constitutional amendments, attempts to change state law and calls for a federal constitutional amendment. It includes a map of states with legislation opposing provisions in the health reform law. Additionally, it provides a state-by-state table of current legislation, including the status of filed measures, the percentage of affirmative votes required for approval, and the earliest date that a proposed constitutional amendment can appear on the statewide ballot.

Virginia first state to challenge federal health insurance mandate, March 5, 2010

Barbara Hollingsworth, *Washington Examiner*

www.washingtonexaminer.com/opinion/blogs/beltway-confidential/Virginia-first-state-to-nullify-federal-health-insurance-mandate-86632032.html

Virginia is the first state to pass legislation that would forbid the implementation of an individual insurance mandate in that state. Such a mandate, which would require virtually all Americans to have health insurance or else pay a penalty, is a core provision of health reform legislation passed by the U.S. House and Senate. Legislators in more than 30 other states are considering similar bills. A constitutional amendment forbidding implementation has passed in Arizona, and is on the November ballot for voter approval or rejection.

Health Care Overhaul and Mandatory Coverage Stir States' Rights Claims, Sept. 28,

2009 Monica Davey, *New York Times*

www.nytimes.com/2009/09/29/us/29states.html?_r=2

This article notes that discussion about state constitutional amendments forbidding an individual mandate began in 2006, after Massachusetts enacted a mandate as part of that state's comprehensive health reform law. Clint Bolick, litigation director of the Goldwater Institute, is quoted as saying that federal law doesn't always trump conflicting state law, and that states can prevail in challenging a federal individual insurance mandate.

Experts say states' health care lawsuits don't stand a chance, March 23, 2010

James Rosen, *McClatchy Newspapers*

www.mcclatchydc.com/2010/03/23/90934/states-lawsuits-not-likely-to.html

Quotes several legal experts who say that "there are significant legal hurdles in establishing the states' standing to challenge the health-care law and in persuading federal judges that it violates the Constitution."

In Partisan Battle, Clashes over Health Lawsuits, March 27, 2010

<http://www.nytimes.com/2010/03/28/us/politics/28govs.html>

Kevin Sack, *New York Times*

Discusses the legal battles being waged at the state level over the health reform legislation. In several states, conflict has erupted between governors and attorneys general on opposing sides of the aisle.

Could SCOTUS Be The Death Panel For Health-Care Reform? March 23, 2010

Zachary Roth, *Talking Points Memo*

http://tpmmuckraker.talkingpointsmemo.com/2010/03/could_scotus_be_the_death_panel_for_health-care_reform.php

This article provides an overview of expert opinion on the challenges to the health reform law, including their basis and likelihood of success. It discusses the issue of “ripeness,” which pertains to the judicial reluctance to hear challenges to a law until it has gone into effect. For PPACA, many significant provisions do not go into effect until 2014, by which time the composition of the Supreme Court may have changed.

Is there a legal case against the health-care bill?, March 23, 2010

Ezra Klein, *Washington Post*

http://voices.washingtonpost.com/ezra-klein/2010/03/is_there_a_legal_case_against.html?hpid=topnews

The author notes that approving the Senate reform plan in the House through the “deem and pass” technique might have given conservatives something to work with in a court challenge, but the House leadership chose not to use that approach. Challenging the individual mandate is less promising. “So is this -- or any of the other challenges being contemplated by conservatives -- likely to work? The basic answer is that the Supreme Court does not like to invalidate important laws passed by Congress....To put it very simply: This is good politics for conservatives but an unlikely legal strategy.”

Justice Department Files Response to Suit on Health Law’s Constitutionality, May 12, 2010 Jane Norman, *CQ HealthBeat*

<http://www.commonwealthfund.org/Content/Newsletters/Washington-Health-Policy-in-Review/2010/May/May-17-2010/Justice-Department-Files-Response-to-Suit-on-Health-Laws-Constitutionality.aspx>

This article analyzes the Justice Department’s first response to the lawsuits filed against the health reform legislation. Specifically, the Justice Department addressed the claims made by the Thomas More Law Center, a faith-based conservative organization, on behalf of four Michigan residents without private health insurance. It contains a good description of the judicial principal known as “ripeness.”

13 attorneys general sue on health bill, March 24, 2010

Boston Globe

www.boston.com/news/health/articles/2010/03/24/13_attorneys_general_sue_on_health_care_bill/?rss_id=Boston.com+--+Health+news

Discusses the lawsuit filed minutes after President Obama signed the new health reform law, noting the filers’ contention that the law violates the 10th Amendment, which says the federal government has no authority beyond the powers granted to it under the Constitution.

Georgia joins health-care reform lawsuit, May 14, 2010

Atlanta Business Chronicle

<http://atlanta.bizjournals.com/atlanta/stories/2010/05/10/daily56.html>

Reports that officials from Georgia and 6 other state have joined the lawsuit filed in a Florida-based U.S. District Court by the 13 state attorneys general. It also mentions that the National Federation of Independent Business (NFIB) has joined the suit as a co-plaintiff on behalf of its members.

GOP views Supreme Court as last line of defense on health reform, March 29, 2010

Alexander Bolton, *The Hill*

<http://thehill.com/homenews/senate/89547-republicans-view-supreme-court-as-last-line-of-defense-on-healthcare-reform>

This article notes that part of the resistance to the health reform legislation has moved to the courts because of the significant hurdles facing a congressional repeal effort. It also contains analysis by constitutional experts on the legal prospects lawsuits might have.

LEGAL OVERVIEWS

The Constitutionality of the Individual Mandate for Health Insurance, February 11, 2010

Jack M. Balkin, J.D., Ph.D., *New England Journal of Medicine*

<http://content.nejm.org/cgi/content/full/362/6/482>

The author concludes that “constitutional challenges are unlikely to succeed.” A short, readable summary of the main arguments raised by reform opponents on constitutional grounds.

Why the Personal Mandate to Buy Health Insurance is Unprecedented and Unconstitutional, December 9, 2009

Randy Barnett, Nathaniel Stewart, and Todd Gaziano, *The Heritage Foundation*

<http://www.heritage.org/Research/Reports/2009/12/Why-the-Personal-Mandate-to-Buy-Health-Insurance-Is-Unprecedented-and-Unconstitutional>

Contends that PPACA it is unconstitutional for a range of reasons, including unlawful use of the Commerce Clause, the Takings Clause and the Tenth Amendment. Its primary argument is that, rather than regulating an economic activity with substantial impact on interstate commerce (as allowed under the Commerce Clause), the mandate seeks to regulate noneconomic “*inactivity* that is expressly designed to avoid entry into the relevant market.”

Mandatory Health Insurance: Is It Constitutional? December 16, 2009

Simon Lazarus, *American Constitution Society for Law and Policy*

http://www.nslc.org/areas/federal-rights/mandatory-health-insurance-is-it-constitutional/at_download/attachment

Discusses in detail the “mandate” provisions of the health care reform law, as well as the relevant constitutional provisions and Supreme Court precedent pertaining to the various legal challenges. The author concludes that mandatory insurance is neither legally burdensome nor unprecedented.

The Constitutionality of Mandates to Purchase Health Insurance

Mark A. Hall, *The O'Neill Institute for National and Global Health Law at Georgetown University*
http://www.law.georgetown.edu/oneillinstitute/national-health-law/legal-solutions-in-health-reform/Papers/Individual_Mandates.pdf

This article analyzes the constitutionality of health insurance mandates in general. It identifies the potential legal issues that such a mandate might encounter, including those related to the Commerce Clause, congressional taxing and spending power, the 10th Amendment, and the Due Process and Takings Clauses of the 5th Amendment. The author makes numerous suggestions on how an individual mandate should be structured in order to prove constitutionally viable.

CHALLENGES BASED ON THE COMMERCE CLAUSE

Individual Health Care Insurance Mandate Debate, November 3, 2009

Erwin Chemerinsky and David Rivkin, *The Federalist Society*
<http://www.fed-soc.org/debates/dbtid.35/default.asp>

Includes a back-and-forth debate between a strong supporter of PPACA's constitutionality and an ardent critic of the same. The authors provide different interpretations of relevant Supreme Court cases, and offer their prognoses for how PPACA will fare in court.

Illegal Health Reform, August 22, 2009

David Rivkin and Lee Casey, *The Washington Post*
<http://www.washingtonpost.com/wp-dyn/content/article/2009/08/21/AR2009082103033.html>

The authors discuss previous court cases that they believe limit Congress' regulatory power under the Commerce Clause.

The "Individual Mandate" an Intrusion on Civil Society, March 28, 2010

John Yoo, *American Enterprise Institute for Public Policy Research*
<http://www.aei.org/article/101845>

This article strongly attacks "Obamacare" as both unconstitutional and a threat to civil society. If the federal government is allowed to exercise its commerce powers as it now seeks to do, the author fears it will open a new frontier in national bureaucracy and regulation. As an alternative to the tax penalty found in PPACA, the author suggests a voucher to purchase a minimum standard of care.

Does a Federal Mandate Requiring the Purchase of Health Insurance Exceed Congress' Powers Under the Commerce Clause?, September 20, 2009

Ilya Somin, *The Volokh Conspiracy*
<http://volokh.com/2009/09/20/does-a-federal-mandate-requiring-the-purchase-of-health-insurance-exceed-congress-powers-under-the-commerce-clause/>

The author, a noted libertarian legal scholar, states that current precedent established under *Gonzales v. Raich* makes it likely that PPACA will be found constitutional by the Supreme Court.

Concurring Opinion in *Gonzales v. Raich*, June 6, 2005

Justice Scalia, *The Supreme Court of the United States of America*

<http://www.law.cornell.edu/supct/html/03-1454.ZC.html>

This opinion, offered in concurrence with the Supreme Court's judgment in *Gonzales v. Raich*, provides clear and specific guidance as to the Court's interpretation of congressional powers under the Commerce Clause, with particular reference to the regulation of noneconomic activity.

CHALLENGES BASED ON FEDERALISM AND THE 10th AMENDMENT

States Sue Over Overhaul That Will Bust State Budgets, March 23, 2010

Pat Wechsler, *Bloomberg.com*

www.bloomberg.com/apps/news?pid=20601087&sid=ajwSWE6H1kHM

State leaders complain that they are having a hard enough time maintaining their current Medicaid programs without considering the additional costs that the new reform law will entail. This is one of the reasons states are challenging the law. Florida's attorney general says that state will have to spend an additional \$1.6 billion for Medicaid and hire 1,000 new workers to accommodate the flood of new enrollees.

The Legal Assault on Health Reforms, March 28, 2010

Editorial, *New York Times*

<http://www.nytimes.com/2010/03/29/opinion/29mon1.html?hp>

Discusses the various legal challenges facing PPACA, and concludes that they are unlikely to succeed because the bill was drafted to overcome just such issues. The article notes that there is no requirement for states to participate in the Medicaid program, despite the impracticality of dropping out.

Federalism is no bar to health care reform, November 2, 2009

Robert A. Shapiro, *Atlanta Journal-Constitution*

www.ajc.com/opinion/federalism-is-no-bar-182808.html?printArticle=y

The author states that although reform opponents use "federalism" as an argument against national reform, in fact the term favors reform. "The health care plans build on the interaction of state and federal power than is central to federalism," he writes.

Can the States Nullify Health Reform? March 11, 2010

Timothy Jost, *New England Journal of Medicine*

<http://content.nejm.org/cgi/content/full/362/10/869>

This article states flatly that "State law cannot nullify federal law." Blocking the implementation of a federally required individual insurance mandate "is constitutionally impossible," the author says, because of the supremacy clause of the U.S. Constitution.

McCulloch v. Maryland – Case Brief Summary

www.lawnix.com/cases/mcculloch-maryland.html

Briefly summarizes an 1819 case confirming that federal law trumps state actions when the federal government is within its "sphere of action."

CHALLENGES BASED ON TAKINGS AND TAXATION

Mandate insurance is unconstitutional, October 20, 2009

Ken Klukowski, *Politico*

<http://www.politico.com/news/stories/1009/28463.html>

This article provides a number of reasons the Senate bill might be considered unconstitutional, including unlawful taxation, unjustifiable use of police power by the federal government, and the improper use of the Commerce Clause.

Impermissible Ratemaking in Health-Insurance Reform: Why the Reid Bill is Unconstitutional, December 18, 2009

Richard Epstein, *PointofLaw*

<http://www.pointoflaw.com/columns/archives/2009/12/impermissible-ratemaking-in-he.php>

The author contends that PPACA violates the Fifth Amendment, which protects against the taking of property without compensation and without due process of law, because it transforms insurance companies into virtual public utilities that must operate below the competitive rate of return.

Selected Experts

Randy E. Barnett , Georgetown Law	202/662-9936
Gregg Bloche , Georgetown Law	bloche@law.georgetown.edu 202/662-9123
Clint Bolick , Goldwater Institute	602/462-5000
Randall R. Bovbjerg , Urban Institute	randyb@ui.urban.org 202/261-5685
Michael Bowman , Amer. Legislative Exchange Council	mbowman@alec.org 202/742-8523
Lawrence Friedman , New England School of Law	lfriedman@nesl.edu 617/422-7459
Mark Hall , Wake Forest University.....	hallma@wfu.edu 336/758-4476
Bruce Jacob , Stetson University College of Law	jacob@law.stetson.edu 727/562-7866
Timothy Jost , Washington & Lee University Law School.....	jostt@wlu.edu 540/463-8510
Orin S. Kerr , George Washington University	okerr@law.gwu.edu 202/994-4775
Simon Lazarus , National Senior Citizens Law Center.....	202/289-6976
Peter Leibold , American Health Lawyers Assn.....	pleibold@healthlawyers.org 202/833-0777
Ron Scheberle , Amer. Legislative Exchange Council.....	rscheberle@alec.org 202/466-3800
Ilya Somin , George Mason University	isomin@gmu.edu 703/993-8069
Thomas E. Woods Jr. , Ludwig von Mises Institute	www.thomasewoods.com/about/

¹ Atlanta Business Chronicle Staff. Georgia joins health-care reform lawsuit. Atlanta Business Chronicle. 5/14/2010. <http://atlanta.bizjournals.com/atlanta/stories/2010/05/10/daily56.html>

² Globe staff. 13 attorneys generals sue on healthcare bill. Boston Globe. 03/24/2010. http://www.boston.com/news/health/articles/2010/03/24/13_attorneys_general_sue_on_health_care_bill/?rss_id=Boston.com+--+Health+news

³ Richard Cauchi. State Legislation Challenging Certain Health Reforms, 2010. National Conference of State Legislatures. 4/23/2010. <http://www.ncsl.org/default.aspx?tabid=18906>.

⁴ State Legislators Last Line of Defense Against Obamacare. American Legislative Exchange Council. http://www.alec.org/AM/Template.cfm?Section=ALEC_s_Freedom_of_Choice_in_Health_Care_Act&Template=/CM/HTMLDisplay.cfm&ContentID=12820

-
- ⁵ Monica Davey. Health Care Overhaul and Mandatory Coverage Stir States' Rights Claims. New York Times. 09/28/2009. www.nytimes.com/2009/09/29/us/29states.html?_r=2
- ⁶ Orin Kerr. More on the Chances Courts Would Strike Down Individual Mandates. The Volokh Conspiracy. 03/23/2010. <http://volokh.com/2010/03/23/more-on-the-chances-courts-would-strike-down-the-individual-mandate/>
- ⁷ James Rosen. Experts say states' health care lawsuits don't stand a chance. McClatchy Newspapers. 03/23/2010. <http://www.mcclatchydc.com/2010/03/23/90934/states-lawsuits-not-likely-to.html>
- ⁸ Atlanta Business Chronicle Staff. Georgia joins health-care reform lawsuit. Atlanta Business Chronicle. 5/14/2010. <http://atlanta.bizjournals.com/atlanta/stories/2010/05/10/daily56.html>
- ⁹ Globe staff. 13 attorneys generals sue on healthcare bill. Boston Globe. 03/24/2010. http://www.boston.com/news/health/articles/2010/03/24/13_attorneys_general_sue_on_health_care_bill/?rss_id=Boston.com+--+Health+news
- ¹⁰ Code of Virginia. Section 38.2-3430.1:1 Accessed online: 4/27/2010. <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+HB10ER2>
- ¹¹ Richard Cauchi. State Legislation Challenging Certain Health Reforms, 2010. National Conference of State Legislatures. 4/23/2010. <http://www.ncsl.org/default.aspx?tabid=18906>
- ¹² American Legislative Exchange Council. Model Legislation: Resolution on Preserving States' Rights Regarding Federal Health Insurance Exchanges and a Public Plan. Accessed online: 4/27/2010. http://www.alec.org/AM/Template.cfm?Section=Health_and_Human_Services&CONTENTID=10835&TEMPLATE=/CM/ContentDisplay.cfm
- ¹³ State Legislators Last Line of Defense Against Obamacare. American Legislative Exchange Council. http://www.alec.org/AM/Template.cfm?Section=ALEC_s_Freedom_of_Choice_in_Health_Care_Act&Template=/CM/HTMLDisplay.cfm&ContentID=12820
- ¹⁴ Associated Press. Governor Wants Constitutional Amendment. KIVITV.com. Accessed online: 4/27/2010. <http://www.kivity.com/Global/story.asp?S=12212729>
- ¹⁵ Alexander Bolton. GOP views Supreme Court as last line of defense on health reform. The Hill. <http://thehill.com/homenews/senate/89547-republicans-view-supreme-court-as-last-line-of-defense-on-healthcare-reform>
- ¹⁶ Zachary Roth. Justice Department: 'We Will Prevail' In Health-Care Reform Lawsuit. Talking Points Memo. 3/23/2010. http://tpmmuckraker.talkingpointsmemo.com/2010/03/justice_department_we_will_prevail_in_health-care.php
- ¹⁷ Zachary Roth. Could SCOTUS Be The Death Panel For Health-Care Reform? Talking Points Memo. 3/23/2010. http://tpmmuckraker.talkingpointsmemo.com/2010/03/could_scutus_be_the_death_panel_for_health-care_reform.php
- ¹⁸ Alexander Bolton. GOP views Supreme Court as last line of defense on health reform. The Hill. <http://thehill.com/homenews/senate/89547-republicans-view-supreme-court-as-last-line-of-defense-on-healthcare-reform>
- ¹⁹ Orin Kerr. More on the Chances Courts Would Strike Down Individual Mandates. The Volokh Conspiracy. 03/23/2010. <http://volokh.com/2010/03/23/more-on-the-chances-courts-would-strike-down-the-individual-mandate/>
- ²⁰ Individual Healthcare Insurance Mandate Debate. The Federalist Society. 11/03/2009. <http://www.fed-soc.org/debates/dbtid.35/default.asp>
- ²¹ Alexander Bolton. GOP views Supreme Court as last line of defense on health reform. The Hill. <http://thehill.com/homenews/senate/89547-republicans-view-supreme-court-as-last-line-of-defense-on-healthcare-reform>
- ²² Zachary Roth. Could SCOTUS Be The Death Panel For Health-Care Reform? Talking Points Memo. 3/23/2010. http://tpmmuckraker.talkingpointsmemo.com/2010/03/could_scutus_be_the_death_panel_for_health-care_reform.php
- ²³ Individual Healthcare Insurance Mandate Debate. The Federalist Society. 11/03/2009. <http://www.fed-soc.org/debates/dbtid.35/default.asp>
- ²⁴ Ken Klukowski. Individual Mandate Insurance is Unconstitutional. The Politico. 10/20/2009. <http://www.politico.com/news/stories/1009/28463.html>
- ²⁵ Individual Healthcare Insurance Mandate Debate. The Federalist Society. 11/03/2009. <http://www.fed-soc.org/debates/dbtid.35/default.asp>

-
- ²⁶Lawsuit filed by the 13 Attorneys Generals. 03/23/2010. <http://media.mcclatchydc.com/static/pdf/Thomma-healthcarelawsuit.pdf>
- ²⁷ Lawsuit filed by the 13 Attorneys Generals. 03/23/2010. <http://media.mcclatchydc.com/static/pdf/Thomma-healthcarelawsuit.pdf>
- ²⁸ Editorial. The Legal Assault on Health Reforms. New York Times. 03/28/2010. <http://www.nytimes.com/2010/03/29/opinion/29mon1.html?hp>
- ²⁹ Lawsuit filed by the 13 Attorneys Generals. 03/23/2010. <http://media.mcclatchydc.com/static/pdf/Thomma-healthcarelawsuit.pdf>
- ³⁰ Ken Klukowski. Individual Mandate Insurance is Unconstitutional. The Politico. 10/20/2009. <http://www.politico.com/news/stories/1009/28463.html>
- ³¹ Mark A. Hall. Legal Solutions in Health Reform. O'Neill Institute for National and Global Health Law. Accessed online: 4/27/2010. http://www.law.georgetown.edu/oneillinstitute/national-health-law/legal-solutions-in-health-reform/Papers/Individual_Mandates.pdf
- ³² The Justice Foundation. Memorandum to Concerned Conservative Citizens Rights Leaders. Accessed online: 4/27/2010. <http://www.txjf.org/pages.asp?pageid=96280>
- ³³ Simon Lazarus. Mandatory Health Insurance: Is It Constitutional? 12/2009. <http://www.acslaw.org/pdf/Lazarus%20Issue%20Brief%20Final.pdf>
- ³⁴ Jane Norman. Justice Department Files Response to Suit on Health Law's Constitutionality. The Commonwealth Fund. 5/12/2010. <http://www.commonwealthfund.org/Content/Newsletters/Washington-Health-Policy-in-Review/2010/May/May-17-2010/Justice-Department-Files-Response-to-Suit-on-Health-Laws-Constitutionality.aspx>