



## BNA's Health Care Daily Report<sup>TM</sup>

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### **Health System Reform Arizona Group Files Latest Challenge To Federal Health Care Reform Overhaul**

PHOENIX—A conservative watchdog group filed a complaint in U.S. District Court for the District of Arizona on Aug. 12, seeking to strike down the 2010 federal health care reforms signed by President Obama on March 23 (*Coons v. Geithner*, D. Ariz., No. 2:10-cv-01714-ECV, *complaint* 8/12/10).

The complaint by the Goldwater Institute of Phoenix contends that the federal health care bill exceeds the powers of Congress, violates individual rights, interferes with the authority of states, and violates the separation of powers by establishing a new bureaucracy without meaningful congressional oversight or judicial review

The lawsuit seeks declaratory and injunctive relief, and marks a private challenge to the federal Patient Protection and Affordable Care Act of 2010. Separately, Arizona and several other states are pursuing lawsuits against the federal law (151 HCDR, 8/9/10). In addition, Virginia's attorney general has filed his own challenge to the federal reform law (147 HCDR, 8/3/10).

The new complaint stems from a Tempe, Ariz., small-business owner, Nick Coons, who pays for his medical care out of his own pocket and wishes to continue making his own health care decisions. Coons contends that under the federal health care law, he will face significant fines from the Internal Revenue Service if he does not buy a government-approved health insurance plan by 2014.

#### **Arguments Not in Other Court Challenges**

Le Templar, the Goldwater Institute's communications director, told BNA Aug. 13 that the lawsuit uses two arguments not employed in any other case against national health care.

The first concerns the establishment of the Independent Payment Advisory Board, which is designed to control health care costs primarily through Medicare and Medicaid.

The lawsuit contends that creation of the board is designed to shield it from political influence, and makes it largely unanswerable to Congress, Templar told BNA. In addition, he said, Congress cannot repeal the board except during a one-month period in 2017.

The creation of the board interferes with First Amendment rights of individual members of Congress to do their duty to provide oversight of executive agencies or agencies with executive functions, according to the complaint. It also violates the separation of powers doctrine, by essentially delegating Congress' authority to an executive agency, Templar told BNA.

The second argument concerns the members of the Arizona Legislature who signed on as co-plaintiffs. They argue they cannot make any spending reductions in state support for the state Medicaid program, or else they lose all federal Medicaid funding. This places an onerous burden on the state, which is currently experiencing a budget crisis, according to the complaint. That also is a violation of Arizona legislators' First Amendment right to cast votes without coercion, Templar told BNA.

Joining as plaintiffs in the case are three Arizona Republican congressmen, Reps. Jeff Flake, Trent Franks, and John Shadegg, and 29 state senators and representatives, all of whom are Republicans.

Flake said in a written statement issued Aug. 12, "The Democratic healthcare law infringes on our constitutional protections. The Goldwater Institute's lawsuit will reinstate some of the personal freedoms and privacy we're guaranteed under the Constitution."

#### **Professor Takes Skeptical View of Claim**

Meanwhile, in a telephone interview with BNA on Aug. 13, an expert in health care law took a skeptical

view of the lawsuit's challenge of the Independent Payment Advisory Board on First Amendment grounds, and the claimed violation of separation of powers.

James G. Hodge Jr., Lincoln Professor of Health Law and Policy at Arizona State University, told BNA that Congress "is more than positioned with the affirmative vote of its members to create an advisory board like this, and to give it the type of independence it needs so that it can conduct its functions outside of congressional review. In fact, Congress has done this with multiple advisory boards in the past."

"As far as a First Amendment violation, I don't see that happening," Hodge told BNA. In addition, he said, the separation-of-powers argument "is not going to fly." Hodge is a professor at the Sandra Day O'Connor College of Law at Arizona State.

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*By William H. Carlile*

*The complaint can be read at <http://op.bna.com/hl.nsf/r?Open=bbrk-88alyt>.*

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