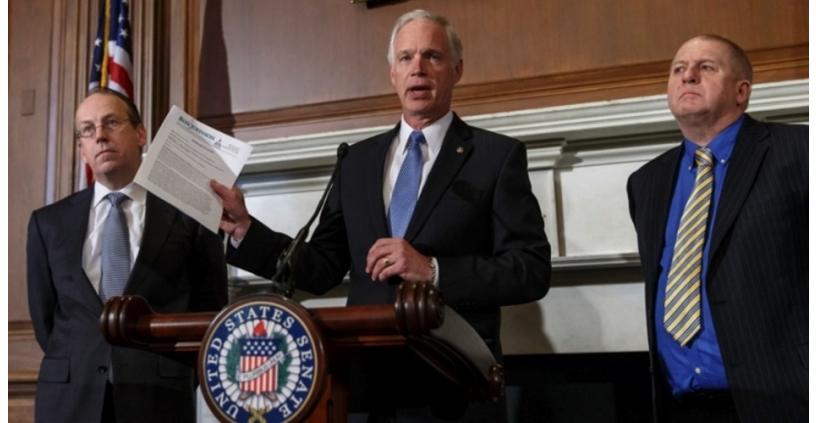




Written by [Michael Tennant](#) on January 7, 2014

Senator Ron Johnson Sues to Overturn Congress' ObamaCare Exemption

Battling what he called “unlawful executive overreach,” Senator Ron Johnson (R-Wis., shown at center) filed suit in federal court Monday to overturn the Obama administration’s finding that Congress, despite clear statutory language to the contrary, is exempt from a significant portion of ObamaCare.



Under an amendment to the Affordable Care Act (ACA) sponsored by Sen. Charles Grassley (R-Iowa), members of Congress and their staffs are required to purchase health insurance “created” by the ACA or “offered through an exchange” established under the law. “This was the confidence-building covenant supporters of the law made to reassure skeptics that ObamaCare would live up to its billing,” Johnson wrote in a [Wall Street Journal op-ed](#) explaining why he was suing. “They wanted to appear eager to avail themselves of the law’s benefits and be more than willing to subject themselves to the exact same rules, regulations and requirements as their constituents.”

Indeed, when the Senate Finance Committee unanimously adopted the Grassley amendment in 2009, chairman Max Baucus (D-Mont.) declared, “I’m very gratified that you have so much confidence in our program that you’re going to be able to purchase the new program yourself, and I’m confident too that the system will work very well.” (Four years later, Baucus was to reverse himself on this last point, warning that he foresaw a “train wreck” ahead and wisely choosing to retire rather than to face voters’ wrath in the aftermath of the disaster.)

After passing the law, however, lawmakers realized what they had done to themselves. Because the existing Federal Employee Health Plan, under which the government picks up 75 percent of the tab for employees’ coverage, is not a qualified plan under the Grassley amendment, members of Congress and their staffs would have been forced to buy insurance on an exchange. That meant they would have to pay for coverage out of their own after-tax income — and often at full price given the inflated salaries of many Capitol employees, which make them ineligible for ObamaCare’s income-based subsidies.

Panicking that they might have to retire or at least face the loss of senior staffers, members of Congress, Democrat and Republican alike, persuaded their leaders to pressure the Office of Personnel Management (OPM) to rule that Congress could continue to receive taxpayer-subsidized insurance.



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When that failed, the leaders got President Barack Obama — who, according to the [Wall Street Journal](#), had “rejected a legislative fix because Republicans might insist on other changes, and ... feared that Democrats would go along because they’re looking out for number one” — to coerce OPM into doing their bidding. In a finding that Johnson says “ignores the clear intent and language of the law,” OPM decreed that members of Congress and their staffs are now eligible to buy insurance on a small-business exchange, where their employer, Uncle Sam, can continue subsidizing their coverage.

“The federal government has millions of employees, and even Congress itself has more than 11,000 employees,” Johnson’s lawsuit reads. “Obviously, neither the federal government nor the Congress could possibly qualify as a small business under the [ACA].”

According to the [Milwaukee Journal Sentinel](#), “The suit contends the personnel office passed a rule beyond its legal authority. Further, the rule violates the equal protection clause of the U.S. Constitution, the suit says, because it treats members of Congress and their staffs differently than employees of small businesses who buy insurance through the exchange. That’s because private-sector employees cannot buy insurance through the exchanges using tax-exempt payments from their employers.”

In his op-ed, Johnson stated that he (along with his legislative counsel, Brooke Ericson) is suing because “the OPM ruling forces me, as a member of Congress, to engage in activity that I believe violates the law. It also potentially alienates members of Congress from their constituents, since those constituents are witnessing members of Congress blatantly giving themselves and their staff special treatment.”

Johnson further noted that Republicans have attempted to overturn the OPM ruling via legislation but have been stymied in the Senate. According to [Politico](#), opposition came from both sides of the aisle; behind the scenes, Republicans worked with Democrats to make certain that an amendment overturning the exemption would go “down in flames.” The amendment was introduced by Sen. David Vitter (R-La.), with Johnson as a co-sponsor.

Even now, some Republicans are unhappy with what Johnson is trying to do. Another Wisconsin Republican, Rep. James Sensenbrenner, issued a [statement](#) calling Johnson’s lawsuit “an unfortunate political stunt” that “is likely frivolous and will not achieve the result he’s seeking.”

“I am committed to repealing Obamacare,” Sensenbrenner said, “but the employer contribution he’s attacking is nothing more than a standard benefit that most private and all federal employees receive — including the President.”

This, however, ignores the fact that, as Johnson put it in his op-ed, “allowing the federal government to make an employer contribution to help pay for insurance coverage [for Congress] was explicitly considered, debated and rejected” when the ACA was under consideration. Moreover, he argued, “OPM exceeded its statutory jurisdiction and legal authority” when it “essentially declared the federal government to be a small employer” so that Congress could continue to receive subsidized health insurance.

“I have always respected Congressman Sensenbrenner,” Johnson said in a [statement](#), “but I am disappointed and puzzled by his disagreement with me on an issue that all but two congressional Republicans (including Congressman Sensenbrenner) have voted in favor of — ending the special treatment for members of Congress and their staffs under Obamacare.”

“Americans are justifiably outraged when members of Congress exempt themselves from the very laws they impose on everyone else,” he continued. “With the help of President Obama, that is exactly what Democrats have done once again.” Sadly — but hardly surprisingly — they’re doing so with the assent



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of many Republicans.

Johnson's case, filed in federal court in the eastern district of Wisconsin, has been assigned to a judge in Green Bay, but "it could take months or years to resolve as it works its way through the legal system," the *Journal Sentinel* observed. The senator apparently thinks the wait is worth it.

"I believe," he wrote, "that I have not only legal standing but an obligation to go to court to overturn this unlawful executive overreach, end the injustice, and provide a long overdue check on an executive that recognizes fewer and fewer constitutional restraints."

Photo of Senator Ron Johnson (R-Wis.) with two lawyers announcing his lawsuit: AP Images



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