

NHI in South Africa

HJI Explainer: Summary of NHI Legal Cases in South Africa, 2023–2026

Although the National Health Insurance (NHI) is the most contested policy intervention since democracy, it is significant and has the potential to overhaul South Africa's dual and unequal health system.

Heath Justice Initiative (HJI) has a direct interest in the myriad of legal challenges brought against or in favour of NHI.

For this reason, we have collated an HJI NHI LEGAL CASES Explainer for public use. It summarises and simplifies each legal case and the arguments made by each litigant in its founding papers. The Explainer draws on previous media case summaries and reports, founding legal papers, and court orders and judgements. It is not a legal analysis of the merits of each argument or case.

The Explainer commences with the cases dealing with procedural challenges, followed by the cases dealing with specific substantive issues related to NHI as contained in the NHI Act. HJI has made all reasonable efforts to fact-check the Explainer and urges groups to also download the founding papers and related judgments and orders, included for ease of reference in HJI's free and easy-to-use [NHI e-Library](#)

The [NHI Act](#) is available here.

Legal Cases: Founding papers, Court Orders and Judgements is available here: [NHI Litigation Papers](#).

Background: ¹

South Africa has a largely unequal and dual healthcare system (public and private).

A [2019 survey](#) by Statistics South Africa (SSA) found that about 71.5% of South African households still relied on the public health sector and about 27.1% used the private health sector.

There are 71 registered medical schemes in South Africa. [The Council for Medical Schemes' 2024/2025 Annual Report](#) shows that only about 14% of South Africa's population are members of medical schemes (9.1 million beneficiaries). This meaning most people in South Africa depend on and already use the public health sector.

¹ Developing a policy to redesign South Africa's health system and ensure universal access has been an issue since democracy, when the first post-apartheid government established a Commission of Inquiry into National Health Insurance. At the time, the health system was deeply unequal, and this imbalance remains entrenched. The Commission investigated access to healthcare and recommended reforms to improve access and equity as part of South Africa's transition to democracy.

NHI

When the NHI Bill was released and published in 2019, the idea of transforming South Africa's dual health system had been under development for more than 2 decades and had led to the passing of several laws in support of it (including the Medical Schemes Act of 1998, the Medicines and Related Substances Amendment Act of 2002, and the National Health Act of 2003, among others).

1. The Bill was open for [public comment](#) on 30 August 2019 until 29 November 2019 and then passed by the National Assembly on 13 June 2023 and by the National Council of Provinces on 6 December 2023.
2. The Bill was officially signed into law by President Ramaphosa – the [National Health Insurance Act No. 20 of 2023](#) ("the Act") on 15 May 2024, just before the national elections on 29 May 2024. It is not yet in effect due to multiple legal challenges and other developments, described below.
3. Over [300 000 written submissions](#) were reportedly made to Parliament.
4. Despite the thousands of submissions, Parliament, in reviewing the submissions, amended the Bill in respect of only two key areas:
 - a. Emergency services for asylum seekers [see now Definitions and Section 4(2)] and;
 - b. Clarifying the regulatory ambit of the Competition Commission over the contracting of the NHI Fund [see now Section 3(5)].
5. In its current form, the Act is meant to establish a **National Health Insurance Fund** ("the Fund") that seeks to achieve sustainable and affordable universal access to quality healthcare services. While this is a commendable goal, many groups, including the HJI, have questioned whether the Act can fully and over time achieve this purpose (in addition to affordability concerns regarding its funding).

Legal cases challenging the Act and parliamentary process

1. From May 2024 to February 2026, several groups launched legal action against the process of the passage of the Act in Parliament and/or challenged the Act's substantive provisions.
2. This culminated in a hearing at the [Constitutional Court](#) on 5–7 May 2026 on whether Parliament passed the public consultation threshold for passing a new law – the Act. At this stage, parties had agreed to halt all other litigation and implementation of the Act until the Constitutional Court delivers judgement. This agreement was made an [order of the High Court](#).
 - a. The outcome of this hearing (regarding the public consultation angle) will determine whether the Act must be referred to Parliament for amendment, making substantive challenges to the Act moot; or (and if the process is held to be valid) whether the parties that have brought cases on the substantive aspects of the Act can now proceed with challenging specific provisions of the Act and/or the Act itself.
3. The cumulative outcome of these cases will naturally lead to further delays in the implementation of NHI, or significant revisions to the Act, or concessions to the private health industry and other stakeholders by government – and in all scenarios, significantly impact how people access healthcare services in South Africa.





Case 1: Procedural Aspects (re Parliament)

Premier of the Western Cape Government

V

Speaker of the National Assembly, Chairperson of the National Council of Provinces, Speakers of the respective Provincial Legislatures, and Minister of Health



The Premier, acting in his role as the head of the provincial executive, is responsible for managing provincial departments and implementing provincial and assigned national legislation. The Premier brings the [Western Cape government's](#) legal challenge under this mandate, questioning Parliament's public participation process and arguing that the National Council of Provinces (NCOP) did not meaningfully consider inputs from the province's health department before passing the Bill.

The Premier of the Western Cape Government is represented by **The State Attorney**

ISSUES:

In August 2025, the Premier of the Western Cape Government filed an application in the [Constitutional Court](#) that seeks an order declaring the NHI *invalid* on the grounds that:

1. Parliament failed to comply with its constitutional obligation to facilitate public involvement before passing the Act – and:
 - a. The *National Assembly (NA)* failed to facilitate reasonable public participation and consultation, particularly after making substantive material amendments to the Bill.
 - b. The *NCOP* disregarded substantive inputs and concerns raised by the *Western Cape Government* and provincial stakeholders and failed to properly deliberate on them.
 - c. The *NA* and *NCOP* refused to grant extensions for public comment periods and rushed to pass the Act despite widespread objections from the public and medical sectors.
2. The *NA's* and *NCOP's* failure to meaningfully engage with the public's submissions renders the public participation process *procedurally flawed*.





Case 2: Procedural Aspects (re Parliament)

Board of Healthcare Funders (BHF)

V



Speaker of the National Assembly, Chairperson of the National Council of Provinces, Minister of Health, President RSA, Director-General, National Department of Health, Minister of Finance, Speakers of the respective Provincial Legislatures, and Members of the Executive Council for the Departments of Health in the respective Provinces

The [Board of Healthcare Funders](#) (BHF) represents South African medical schemes and healthcare funders.

The BHF launched a case challenging Parliament's public participation process in adopting the Act.

BHF is represented by **Werksmans Attorneys**

ISSUES:

In August 2025, the BHF filed an application in the [Constitutional Court](#) seeking an order declaring the *NHI Bill and the NHI Act invalid* and set aside on the grounds that:

1. *Parliament failed to comply with the constitutional obligation to facilitate meaningful public involvement* before passing the Bill.
 - a. *Parliament failed to provide the public with critical information* (services covered, cost of NHI) necessary to evaluate the Bill.
 - b. *Parliament superficially engaged with the public participation process* and failed to meaningfully consider *major concerns* raised by the public and stakeholders.
2. *The Bill and the Act were adopted in a manner inconsistent with the Constitution.*
3. *The President should have had reservations about the constitutionality of the Bill and failed to refer it back to Parliament* for reconsideration in accordance with section 79(1) of the Constitution.

The BHF has also argued that a *declaration of invalidity* should:

1. Take effect from the date Parliament passed the Bill, alternatively 15 May 2023 (the date the President signed the Act into law), alternatively from the date of judgement.
2. Alternatively, such a declaration should be suspended for 24 months to enable Parliament to "*re-enact*" the *NHI Act in a manner consistent with the Constitution*, failing which the Act should be declared *invalid and of no force from the expiry of the 24-month period*.





Cases 3 and 4a: Additional Procedural Aspects (re. President Conduct)



Board of Healthcare Funders (BHF)

V

President RSA and Minister of Health

And

South African Private Practitioners Forum (SAPPF)

V

President RSA, Minister of Health, Minister of Finance, and National Treasury



In addition to their legal challenge regarding Parliament's public participation process (see above), the BHF joins the SAPPF in challenging the President's decision to assent to the Act.

BHF is represented by **Werksmans Attorneys**, while SAPPF is represented by **Webber Wentzel Attorneys**.

BHF represents South African Medical Schemes and healthcare funders.

The [South African Private Practitioners Forum](#) (SAPPF) represents private sector clinicians and allied practitioners and advocates in private practice.

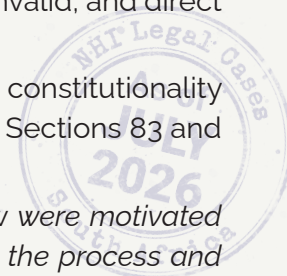
ISSUES:

In May 2024, the BHF filed an application in the Pretoria High Court seeking to review and set aside the *President's decision to assent and to sign the Bill into law* on the grounds that:

1. The President failed to satisfy himself of the *constitutionality* of the Bill; that if he had reservations, he *failed to refer the Bill back to the NA* for reconsideration in terms of Sections 84(2)(a), (b), and/or (c) read with Sections 79(1) and 83(b) and of the Constitution.

The Constitution provides that the President *must uphold, defend, and respect the supremacy of the Constitution*. If he has reservations about the constitutionality of a Bill, he must then either refer it back to the NA for reconsideration or to the Constitutional Court for a decision on the Bill's constitutionality.

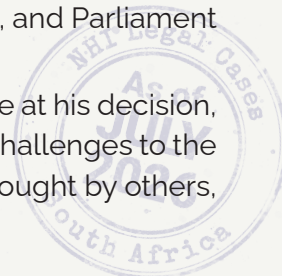
2. BHF's application was made in terms of Rule 53(1)(a) of the [Uniform Court Rules](#) calling on the President to show cause *why the President's decision should not be reviewed or set aside*. This would allow BHF to supplement its grounds of review (if necessary) once it has sight of the relevant Presidential records.
3. In October 2024, the SAPPF also filed a 2-part application in the Pretoria High Court challenging the Act: **Part 1, like the BHF, also** sought to review and set aside the President's decision to sign the Bill on procedural grounds, to seek to declare the Act invalid, and direct the President to reconsider the Bill on the grounds that, per SAPPF:
 - a. The President *failed in his constitutional duty to properly scrutinise* the constitutionality of the Act in terms of Sections 84(2)(a) to (c), read with Section 79, and Sections 83 and 7(2) of the Constitution.
 - b. The President's process and ultimate decision to sign the Bill into law *were motivated by ulterior motives or tainted by irrelevant factors, thereby making both the process and decision irrational*.



4. Part 2 of the SAPPF challenge seeks to have the Act declared *unconstitutional* on grounds that, according to SAPPF:
 - a. The Act *is vague, irrational, impermissibly delegates plenary powers and unjustifiably limits constitutional rights*.
5. In response, the Presidency and the Minister of Health filed an application in terms of Rule 6(5)(d)(iii) of the [Uniform Rules of Court](#) and argued that:
 - a. The High Court *lacked the jurisdiction to review presidential decisions*.
 - b. The decision sought to be reviewed is *incapable of review*:
 - i. But that if the Court finds that the President's decision is capable of review, *no Rule 53 record* (record of the President's decision) needs to be produced; and
 - ii. And that if the Court finds that the decision is reviewable AND that a Rule 53 Record needs to be produced, the President has *no obligation* to produce the record in this matter.

Merging of the hearing of BHF, SAPPF Cases

1. In early 2025, the Deputy Judge President of the Pretoria High Court directed that both the BHF and SAPPF cases be heard together, since the President and the Minister of Health *both raised the legal issue of jurisdiction in both cases* (BHF and SAPPF).
2. The matter was subsequently heard in March 2025.
3. By May 2025, the Pretoria High Court found that the High Court does have *jurisdiction to hear the matter*. It also found that:
 - a. The President's decision is *reviewable*, and the President was ordered to *furnish his record of decision* (Rule 53) to the BHF and SAPPF within 10 days of the [judgement](#).
4. The President then sought leave to appeal the judgement – both in the High Court and directly to the Constitutional Court.
 - a. The President argued that *allowing lower courts to review presidential decisions violates the principle of separation of powers*, as the power to assent to an Act of law lies exclusively with his office (the Presidency).
 - b. The Constitutional Court granted the President direct leave to appeal the High Court's judgement in June 2025.
5. If the Constitutional Court upholds the appeal by the President and finds that the High Court does not have the jurisdiction to review the President's decision, the BHF and SAPPF's review cases will become moot.
6. However, if the Constitutional Court finds that the High Court does have the necessary jurisdiction, the President will have to abide and provide the record of his decision. Then, the BHF and SAPPF could use the record to supplement their grounds for review (if necessary) and continue their review application/s in the High Court. In other words, the matter will return to the High Court.
 - a. If the High Court finds that the President's process to arrive at his decision to sign the Act into law is procedurally flawed or unlawful, the Act will no longer stand, and Parliament will have to reconsider the matter, in the form of a Bill again.
 - b. If the High Court finds no fatal defects in the President's process to arrive at his decision, the Act will not fall away, but the legal cases that focus on substantive challenges to the Act, such as **Part 2** of the SAPPF's application (see above) and those brought by others, will then continue.





Case 4b continued: Substantive Aspects

South African Private Practitioners Forum (SAPPF)

V

President RSA, Minister of Health, Minister of Finance,
and National Treasury

(Part 2 of Case 4 above)

1. If the SAPPF's Part 1 case (procedural aspects) is successful, then the Act will be set aside.
 - a. The President would have to reconsider the Bill, and until then, substantive challenges to the Act (including Part 2) will be stayed.
2. If SAPPF's Part 1 challenge (or the other cases dealing with procedural aspects of the Act) succeeds, then Part 2 of SAPPF's application in the Pretoria High Court – which focuses on substantive challenges to the Act – will continue (and so will any other cases involving substantive challenges summarised below).

ISSUES:

Part 2 of the SAPPF application seeks an order declaring the Act *unconstitutional* on grounds that:

1. It is *impermissibly vague*. Here, SAPPF have argued that:
 - a. Many of the Act's provisions, such as its *accreditation requirements*, remain *undefined and uncertain*; it is unclear what the position of healthcare providers not contracted by the NHI will be under the new system.
 - b. The Act fails to stipulate *which services will be covered by the NHI* and how *reimbursement* to healthcare providers will work.
2. It *impermissibly delegates plenary powers*. SAPPF have argued that:
 - a. The Minister of Health and the various NHI Advisory Committees under the Act have been *wholly delegated* with the powers to determine the *core attributes* of the NHI Fund and Scheme without due *parliamentary oversight*.
3. It is *irrational*. SAPPF have argued that:
 - a. The Act does not establish that the *NHI Fund* is financially feasible and sustainable.
 - b. The Act fails to provide *adequate measures to combat corruption* and ensure *efficiency and effectiveness*.
 - c. The Act does not include any *mechanism to ensure equitable and fair distribution* of healthcare services.
4. And, the Act *unjustifiably limits the rights to dignity, life, freedom and security of person, freedom of trade, occupation, and profession, property, and access to healthcare services*. The provisions *negatively impact doctors and patients* in various ways, including *limitations on where a patient can go to access care*.
5. It is unclear if doctors can also offer care to unregistered or excluded users and whether that care can be different from the NHI's recommended level of care.





Case 5: Substantive Aspects

Hospital Association of South Africa (HASA)

v

Minister of Health, Minister of Finance, and President of RSA



The [Hospital Association of South Africa](#) (HASA) represents most of South Africa's private hospitals and focuses on *industry advocacy, quality and safety standards*.

HASA is represented by **Nortons Inc.**

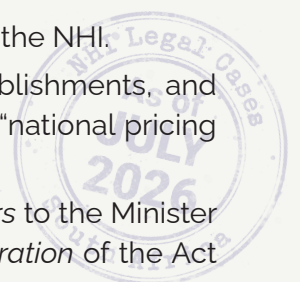
HASA argues that there are multiple deficiencies in the Act, mainly that it:

1. Undermines *private hospitals' viability, reduces patient choice, and risks retrogressively impacting existing services*.
2. *Sidelines medical schemes and imposes uncertain reimbursement and accreditation regimes*.

ISSUES:

In February 2025, HASA filed papers in the Pretoria High Court seeking an order declaring the Act *invalid for being inconsistent with the Constitution* on the grounds that:

1. The Act *is not a reasonable legislative measure and violates* the right of access to healthcare, and mainly, that:
 - a. *No proper financial feasibility assessment* of the NHI was conducted.
 - b. The government *failed to ensure that appropriate financial and human resources are available* to implement the Act.
2. *The Act limits the right of access to healthcare to beneficiaries currently on medical schemes:*
 - a. It prohibits users of NHI from purchasing healthcare services that are covered by the Fund through medical schemes.
 - b. It relegates medical schemes to a limited complementary role, only covering healthcare services not covered by NHI.
3. It is materially vague and violates the rule of law – and the Act does not clarify:
 - a. Which services will be covered by NHI, and which will be available outside the NHI by unduly delegating the determination of the *scope of services* to a Benefits Advisory Committee (BAC), but without guidance.
 - b. How registered users will access healthcare services within or outside the NHI.
 - c. How and when the NHI will accredit healthcare providers and establishments, and what the consequences for healthcare providers not adhering to the “national pricing regimen for services delivered” will be.
 - d. The limits of the Minister of Health's powers. It grants *unfettered powers* to the Minister without proper guidance, enabling them to *extend the scope and operation* of the Act through Regulations.



4. The Act *infringes on the constitutional competence of the provinces* by stripping them of the power to regulate their provincial health services.
 - a. The Act's *procurement provisions and its exclusion from the provisions of the Competition Act* (Note: now partially remedied) are unconstitutional and that the Act's requirement that the NHI as the single buyer of NHI services must "negotiate the lowest possible price for goods and health care services..." in terms of section 11(2)(e) violates section 217 of the Constitution which requires public procurement to be "fair, equitable, transparent, competitive, and cost-effective."
5. *The Act violates the principle of separation of powers* by compelling the Minister of Finance to pass a money bill for the benefit of the NHI.
6. The Act *unconstitutionally excludes asylum seekers* from receiving healthcare services beyond those provided for emergencies and notifiable conditions of public health concern.
7. HASA has also sought to have the following sections of the NHI declared invalid and unconstitutional:
 - a. NHI's purpose, coverage for users and medical schemes (Sections 2, 4, 5, 6(o), and 33).
 - b. NHI governance and oversight (Sections 13(3), 26, 27, 55).
 - c. Powers of the NHI Fund and regulating healthcare service providers (Sections 3(5), 7, 10(1)(g), 11(1)(m), 11(2), 36, 39, 42).
 - d. Financial arrangements (Sections 49(1), 57, 58).





Case 6: Substantive Aspects

South African Medical Association (SAMA)

v

Minister of Health, President RSA

With the following parties cited as having an interest in the relief sought:

Speaker of the National Assembly,

Chairperson of the National Council of Provinces

The [South African Medical Association](#) (SAMA) is a voluntary professional association for public and private sector doctors.

SAMA's NHI challenge focuses on its assertion that the Act's structural and bureaucratic barriers for both patients and practitioners will *collapse the country's healthcare system rather than strengthen it*.

SAMA is represented by: To be confirmed

ISSUES:

In April 2025, SAMA filed an application in the Cape Town High Court seeking an order *declaring the Act unconstitutional* in its entirety on grounds that:

1. The Act *retrogressively limits* access to healthcare and social security rights. That the NHI –
 - a. *Reduces coverage* by excluding or limiting access for certain categories of *foreign persons*.
 - b. *Replaces existing* statutory healthcare entitlements under state schemes such as the Compensation for Occupational Injuries and Diseases Act (COIDA), Occupational Diseases in Mines and Works Act (ODMWA), Correctional Services Act, and the Road Accident Fund Act (RAF) with *uncertain* NHI benefits.
 - c. *Limits the role* of medical schemes to providing “complementary” cover, thereby removing healthcare protections embedded in current medical scheme membership.
 - d. *Imposes registration, referral, formulary, and provider restrictions* that make access to services more difficult, especially for poor and vulnerable patients.
2. The Act is *vague and irrational* in that:
 - a. *Benefits* under the NHI are not sufficiently defined.
 - b. There are *uncertainties* around *pricing, reimbursement, contracting, and how registration, portability, and referral pathways* will work in practice under NHI.
3. The Act is not *fiscally feasible* and that:
 - a. An *adequate feasibility study* was not conducted.
 - b. The proposed *funding model is underdeveloped* and would also require *additional tax revenue*.



4. The Act *infringes on healthcare professionals' right to freedom of trade, occupation or profession*. The Act –
 - a. *Forces healthcare professionals into a centralised accreditation and contracting regime.*
 - b. *Restricts clinical independence through NHI protocols, formularies, and referral controls.*
 - c. *Imposes certain pricing and reimbursement mechanisms that will make private practice economically non-viable.*
 - d. *Increases medico-legal exposure without corresponding protection.*
 - e. *Makes continued medical practice in South Africa less attractive, risking the loss of professionals in health services.*
5. *The Act centralises power in a manner inconsistent with the principle of separation of powers and impermissibly delegates legislative power to the Minister of Health.*

In August 2025, [Treatment Action Campaign](#) (TAC) applied to join SAMA's case as *amicus curiae* (friend of the court). TAC's papers will be uploaded as soon as they become available.

Civil Society Organisations (CSOs) like TAC have always played a key role in shaping the trajectory of legal cases in South Africa, particularly those involving public interest issues. Their interventions either through direct litigation or as *amicus* in health justice-related cases provide the courts with expert evidence, technical policy analysis, and lived experiences that help courts grapple with complex questions on health, equity, and constitutional rights, enriching the legal proceedings by ensuring that they are not only confined to narrow technicalities, but also reflect broader constitutional values and the realities faced by vulnerable communities most affected by the decisions made by the various branches of government. In doing so, civil society crucially bridges the gap between law and justice, ensuring that public interest litigation is not captured by private and business interests, and advances transparency, accountability, and systemic reform that translates to material and positive changes for all.





Case 7: Substantive Aspects

Solidarity Trade Union

V



*Minister of Health, President RSA, Minister of Finance,
National Treasury, and Director-General, National Department
of Health*

Solidarity describes itself as a trade union that “represents primarily Afrikaner workers, emphasizing merit-based labour representation, Christian unionism, and community support through the broader Solidarity Movement”.

Solidarity is represented by **Serfontein Viljoen & Swart Attorneys**

Solidarity's main argument is that the Act will erode its members' *existing medical scheme benefits, collective bargaining arrangements and access to timely and quality care.*

ISSUES:

In May 2024, in the Pretoria High Court, Solidarity applied for an order declaring the Act *invalid for being inconsistent with the Constitution*. Solidarity argued that:

1. The proposed model that places the state as the *sole buyer* of health services for NHI is *vague*. And that:
 - a. The Act's definition of key terms such as “healthcare service” and “necessary” services is *broad and creates uncertainty*.
 - b. The Act is dependent on the Minister of Finance introducing a [money bill](#) to enable the operation of the Act, despite a *Davis Tax Commission Report* indicating that the state does not have the funds necessary to implement the Act.
 - c. There is no clear guidance on the *criteria* to be satisfied before the Minister of Health declares the Act as “fully implemented” in terms of Section 33 (that would trigger the end of the current role and functions of Medical Schemes in South Africa).

Section 33 of the Act deals with the continuation of medical schemes in the country until such time that the Minister determines the Act to be “fully implemented” – thereafter, medical schemes would only be permitted to provide “complementary cover” – i.e. services and products that the NHI will not or cannot provide.

- d. The Act is unclear on whether healthcare providers *not contracting* with the NHI Fund will be *prohibited* from providing services to the broader public.
- e. The Act's exemption of oversight by the Competition Commission *offends* Section 217 of the Constitution (NOTE: now partially addressed).



Solidarity has also argued that:

1. There is *no rational relationship* between NHI and the *legitimate governmental purpose* of "achieving sustainable and affordable universal access to quality health care services".
2. The Act unduly grants *extensive* and undue decision-making powers to the Minister of Health, including:
 - a. The power to *designate central hospitals as organs of state*.
 - b. The power to determine (with the NHI Board and Advisory committees) the *details of the implementation of the NHI without sufficient checks and balances*.
3. NHI and the Act unlawfully *encroach on the principle of separation of powers* by centralising healthcare funding and management under a national authority and *undermining the autonomy* of provincial governments.
4. The Act is *inconsistent with the right to healthcare* as it lacks the capacity to achieve the *progressive realisation* of the right to health and *does not comply* with the requirement that measures must not be retrogressive. That:
 - a. It places *limits* on those entitled to access to healthcare services, and on healthcare services available to asylum seekers.
 - b. It limits healthcare for those currently accessing services through the private sector by *forcing them* to compete for access to healthcare offered through the state.
 - c. The impact on this and other rights makes the Act *unreasonable*.
5. And finally, that the Act fails to promote the *constitutional imperative of an efficient, economic, and effective use of resources*.





Case 8: Substantive Aspects

Health Funders Association (HFA)

v

*Minister of Health, Minister of Finance, National Treasury,
President RSA*

The [Health Funders Association](#) (HFA) describes itself as a *non-profit industry body representing private healthcare funders, medical schemes, and administrators.*

The HFA's legal challenge deals with *safeguarding the healthcare system from irreparable financial and clinical harm.*

HFA is represented by **ENS Africa.**

ISSUES:

In June 2025, the HFA filed an application in the Pretoria High Court seeking an order declaring the Act *invalid for being inconsistent with the Constitution* on the grounds that:

1. The Act is *substantively irrational and incapable of achieving its intended purpose* – because the state failed to undertake a costing exercise to demonstrate how it will afford NHI.
2. The Act *unreasonably and unjustifiably infringes on existing medical scheme beneficiaries' right to access to healthcare* because there is *no rational relationship between the severe limitations imposed by the Act and the purpose of universal health coverage and less restrictive means to achieve universal health coverage* exist.
3. The Act infringes on the right to healthcare *by failing to adopt reasonable measures to achieve the progressive realisation of access to health within the state's available resources*, with measures that are not retrogressive because:
 - a. The Act is *not comprehensive and coordinated*.
 - i. It *does not clearly allocate responsibilities and tasks to the different spheres of government* and ensure that *appropriate financial and human resources* are available.
 - ii. It is *not financially and practically viable*.
 - iii. It is *not reasonable* in its conception and implementation.
 - iv. It is *retrogressive* and reduces the extent to which the right to healthcare is currently accessed.
 - b. It *violates the principle of separation of powers* by conferring *sweeping and unchecked power* to the Minister of Health when such power should be with Parliament in terms of Sections 43 and 44 of the Constitution.





Case 9: Substantive Aspects

Sakeliga
v



*Minister of Health, Minister of Finance, President RSA,
Speaker of the National Assembly, and Chairperson of the
National Council of Provinces*

Sakeliga describes itself as an *independent, non-profit company with a mission to restore economic order*. It argues that the NHI risks causing significant and lasting harm to healthcare services, the profession and the economy.

Represented by **Kriek Wassenaar & Venter Inc.**

ISSUES:

In August 2025, Sakeliga filed an application in the Pretoria High Court for an order declaring the NHI *invalid for being inconsistent with the Constitution* on grounds similar to those of the applicants above, including that the Act:

1. *Is not rationally connected to its purpose* because:
 - a. The Act *centralises the purchasing of healthcare services* under a *single Fund* while the state lacks the resources to deliver universal healthcare.
 - b. The Act was *enacted without a credible, transparent, and up-to-date cost estimate*.
 - c. The Act's *sole purchaser design* will *deter suppliers and healthcare professionals, create shortages, and worsen the quality of care*.
2. *Breaches the right of access to healthcare* because the state's available resources are not sufficient to implement it and would require large *tax increases or reallocations of existing social spending, unjustifiably infringing other socio-economic rights*.
3. *Is not a reasonable legislative measure* as the Act is *neither coherent nor coordinated nor reasonably conceived and implemented*. It gives the Minister undue and *sweeping regulation-making powers and operational discretion, and centralises power without realistic phasing, funding, or operational plans*.
4. Is inconsistent with the Constitution's founding values and provisions on supremacy, rights, and obligations.





Case 10: Substantive Aspects

AfriForum

V



President RSA, Minister of Health, Minister of Finance

Parties cited as having an interest in the relief:

Speaker of the National Assembly, Chairperson of the National Council of Provinces.

AfriForum describes itself as a *civil rights organisation that promotes Afrikaner cultural identity and establishes community self-reliance*. It argues that the NHI is a *massive bureaucratic overreach that is economically unworkable, unconstitutional, and will destroy South Africa's healthcare sector*.

AfriForum is represented by **Hurter Spies Inc.**

ISSUES:

In February 2026, AfriForum filed papers in the Pretoria High Court seeking an order to have the Act declared *invalid for being inconsistent with the Constitution* on the grounds that:

1. *It strips provinces of the power to make decisions about healthcare services in their respective provinces.*
2. *It will adversely affect the private sector, including its patients and practitioners, by:*
 - a. *Limiting patients' choices in respect of coverage options and healthcare providers.*
 - b. *Leaving patients dependent on services and medicines provided only by the NHI (state).*
 - c. *Reducing healthcare providers' clinical independence through NHI treatment protocols, referral pathways, etc.*
 - d. *Centralising procurement and distribution of medicines for NHI.*
3. *It has an adverse effect on international human rights obligations on health because:*
 - a. *The Act conflicts with the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the African Charter on Human and People's Rights (ACHPR).*
4. *No proper feasibility assessment was conducted before it became law.*
 - a. *The Act is materially vague in respect of definitions and the form, scope, or legislative process for the prepayment tax necessary to implement the Act.*

Where things stand as of June 2026

As of June 2026, all implementation of the Act and court cases contesting its legality are on hold until the Constitutional Court delivers its judgement on the cases challenging the process that Parliament undertook in consulting the public about its inputs and concerns about the NHI Bill (as it was then). If the court finds that the process was flawed, it may order that the Act (and perhaps even the Bill itself) be declared invalid and set aside. This may lead to the Act being scrapped altogether, or the court may order Parliament to redraft the Bill and/or engage in a new public participation process that properly engages the public and meaningfully considers their comments.

Once again, HJI has a direct interest in the NHI as a scheme that proposes to overhaul the country's current system and provide universal health coverage. HJI shares some of the concerns expressed by the litigants, including the uncertainty it creates around how medicines pricing will be determined, transitional arrangements for medical schemes and healthcare service provider reimbursement, the failure to address how South Africa's intellectual property laws will be reformed to prevent patent monopolies and evergreening practices that allow pharmaceutical companies to sell their medicines at a premium and delay the entry of more affordable generic medicines into the market, and the lack of access for migrants, undocumented people, and those who cannot register as "users".

The NHI in its current form produces parallel, unequal access pathways and excludes vulnerable groups from equitable access to healthcare services and essential medicines. This is why HJI calls for a consolidated and clear pricing system as well as explicit rules on formulary decisions, procurement, enabling intellectual property strategy reforms, appeals and exemptions, and a public, accountable process for strategic purchasing to ensure the NHI advances rather than erodes affordable, timely access to quality healthcare services.

Whether the Constitutional Court orders that the Act set aside altogether and redrafted from the ground up or it orders that only certain sections ought to be reworked, what matters is that the concerns around pricing, procurement, transparency, and access for "users" are addressed in a way that ensures true universal health coverage for all.

