

# Healthcare Reform Bulletin

## Appeals Court Upholds Health-Care Law's Individual Mandate

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A federal appeals court on Wednesday upheld the most contentious provision of the health-care overhaul law, ruling that Congress can require Americans to carry insurance coverage.

In backing the individual mandate, the U.S. Court of Appeals for the 6th Circuit in Cincinnati became the first appellate court to rule on President Obama's signature domestic initiative. The decision also marked the first time a Republican-appointed judge has sided with the administration in evaluating the law's constitutionality.

"We find that the minimum coverage provision is a valid exercise of legislative power by Congress under the Commerce Clause," Judge Boyce F. Martin Jr., a Democratic appointee, wrote for the majority. He was joined by Republican appointee Jeffrey Sutton.

The 2 to 1 ruling was hailed by the Justice Department and administration allies, who called it an important bipartisan test of the law's ability to withstand numerous legal challenges. Opponents of the health-care act disputed the ruling's significance, calling it one incremental step in a legal struggle widely expected to wind up at the Supreme Court.

"It's an unfortunate decision," said David Rivkin, a lawyer representing 26 states in a Florida-based lawsuit that also challenges the law. "By the time this gets to the Supreme Court, it's not going to matter which decision was first or second," added Rivkin, who predicted that the law will be overturned.

The differing interpretations reflected the deep divisions over a measure that has provoked vehement opposition and equally strong support among the public and politicians alike. More than 30 lawsuits have been filed since the Patient Protection and Affordable Care Act was pushed through Congress by Democrats in March 2010, resulting in several rulings by lower-court judges that, until now, have cleaved along partisan lines.

As a result, the ultimate fate of the statute, which aims to bring about the broadest changes to the nation's health-care system in several decades, may not be known for a year or more. Lawyers for the plaintiffs in the 6th Circuit case said they will appeal directly to the Supreme Court but acknowledged that the justices probably will not take the case right away.

### MOST CONTESTED PROVISION

The health-care law seeks to extend medical coverage to 30 million uninsured Americans and make major changes in public and private health insurance. By far the most contested provision is the individual mandate, which requires most Americans to purchase at least a minimum level of health insurance starting in 2014 and imposes a tax penalty if they don't.

Like other legal challenges, the lawsuit filed by the Thomas More Law Center - a Christian-oriented law firm in Michigan - says Congress overstepped its constitutional authority to regulate commerce.

A three-judge panel of the 6th Circuit disagreed. The mandate is constitutional, Martin wrote, because "Congress had a rational basis to believe" that the provision would affect interstate commerce and that it was "essential" to the law's broader goals of reforming the health-care market.

Judge James Graham, a Republican appointee, dissented, but it was the concurrence of Sutton - a George W. Bush appointee and former law clerk for conservative Supreme Court Justice Antonin Scalia - that was most noteworthy.

Sutton wrote that "the government has the better of the arguments" and that "Congress did not exceed its power" in passing the individual mandate. But he also appeared to acknowledge that his word would not be final, writing, "The Supreme Court has considerable discretion in resolving this dispute."

And in a phrase that heartened conservative opponents of the law, Sutton questioned whether the legislation will have other, perhaps unintended, consequences. "That brings me to the lingering intuition - shared by most Americans, I suspect - that Congress should not be able to compel citizens to buy products they do not want," he wrote.

"If Congress can require Americans to buy medical insurance today, what of tomorrow? Could it compel individuals to buy health care itself in the form of an annual check-up or for that matter a health-club membership?"

Tracy Schmalzer, a Justice Department spokeswoman, said that the government welcomed the ruling "and its finding that Congress acted within its authority in passing this landmark health-care reform law."

She vowed that the department will continue to "vigorously defend" the law and said department officials believe that efforts to challenge it will fail.

Her words were echoed by a variety of Democrats and supporters of the law.

"Congress clearly has the authority to regulate the health insurance market, including protecting consumers from insurance industry abuses," said Ethan Rome, executive director of Health Care for America Now. "Every step of the way, the health-care debate has been polluted by partisan politics. Today's decision, made by judges appointed by both Republican and Democratic presidents, is immune to that criticism."

#### **NO 'RINGING ENDORSEMENT'**

But Rivkin, citing some of the wording in Sutton's concurrence, said the decision is "not at all a ringing endorsement of the constitutionality of the individual mandate." And David Yerushalmi, a lawyer for the Thomas More Law Center, said that while the ruling was "disappointing," Sutton "essentially kicked this thing upstairs to the Supreme Court."

Yerushalmi said he is already drafting a petition asking the high court to hear the case, though he acknowledged that the justices will probably "put it aside" until other appellate court decisions are issued.

Two other federal appellate courts - the Richmond-based 4th Circuit and the 11th Circuit, based in Atlanta - recently heard oral arguments in lawsuits challenging various aspects of the health-care law's constitutionality, and they are expected to issue decisions in the coming weeks or months. The U.S. Court of Appeals for the District of Columbia Circuit has scheduled oral arguments for September.

Three U.S. district judges have ruled in favor of the administration on the constitutionality of the individual mandate, while two district court judges have said it is unconstitutional. Those decisions were all along partisan lines, with Democratic-appointed judges supporting the administration and Republican appointees opposing it.

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