

# US top court wrestles with final health law hearings

March 28 2012, by Jim Mannion

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Supreme Court justices battled Wednesday over the fate of US President Barack Obama's health care reforms, with liberals fighting to salvage the rest of the law if a key provision is declared unconstitutional.

The court's conservative wing questioned whether the law could survive if it is stripped of its key plank -- that all Americans must buy insurance. But they also wrestled with whether it should be struck down in its entirety.

The liberal justices argued that that was a matter for the Congress, rather than the top court, to decide.

"Why should we involve the court in making a legislative judgment?" Justice Sonia Sotomayor asked Paul Clement, the lawyer representing 26 states who said the law should be struck down in its entirety.

Sotomayor contended it might be better to let Congress fix the law.

"If we strike down one provision, we're not taking that power away from Congress. Congress could look at it without the mandatory coverage provision and say this model doesn't work, let's start from the beginning," she said.

Clement responded that the requirement to buy health care was too tightly intertwined with other core provisions of the law to be separated, and that without it, the law would become "a hollow shell."

"I mean, you can't possibly think that Congress would have passed that hollow shell without the heart of the act."

The 90-minute session came on the third and final day of blockbuster hearings into the reforms, which have huge implications for the nation and the 2012 presidential elections.

"The administration remains confident that the Affordable Care Act (ACA) is constitutional," White House deputy press secretary Josh Earnest told reporters after Wednesday's sessions wrapped up.

The justices held a separate hearing Wednesday on the reform's expansion of Medicaid, the public insurance program for the poor, which states oppose as coercive because they stand to lose all federal Medicaid funding if they refuse to go along with it.

The justices explored whether conditions the federal government attaches to money it gives the states can be so onerous as to be coercive, with the court dividing sharply along ideological lines.

Solicitor General Donald Verrilli closed the government's case with a final plea, not on Medicaid but the law as a whole: "I ask that the ACA be upheld."

"It's a very funny conception of liberty to force somebody to purchase insurance," Clement said in his rebuttal.

The issue of "severability" -- whether the whole law collapses if one provision is deemed unconstitutional -- took on added impetus amid doubts raised about the so-called "individual mandate."

The states challenging the health care law argue that the individual mandate creates a mammoth subsidy to insurance companies that make

possible other requirements of the law.

Those include requirements that companies sell insurance to anyone who applies and forbids them denying coverage to people with pre-existing conditions or raising their rates without limit.

Antonin Scalia, one of the most conservative justices, asked: "Can you see a prior case when we are asked to strike down the heart of the case and leave the rest in effect?"

But conservative chief Justice John Roberts said Congress "would have passed parts of the hollow shell," noting as did more liberal justices that many of the law's provisions were unrelated to the individual mandate.

Although the individual mandate appeared in trouble late Tuesday, some analysts said the outcome was less clear after Wednesday's session on "severability."

"The net effect may well have shored up support for the individual insurance mandate itself," wrote court-watcher Lyle Denniston in the authoritative *Scotusblog*.

The justices are not expected to rule on the law before June, meaning that the potentially explosive decision is likely to land right in the thick of the heated presidential campaign.

The health care law -- Obama's signature domestic achievement -- encompasses the most ambitious reform of the troubled US health care system in decades, seeking to extend health insurance to 32 million Americans who now lack it.

But since it was signed into law in 2010, the reform has divided public opinion and emerged as a major issue in the presidential campaign,

attacked by Republicans as an assault on individual liberties.

Polls show weak public support for the law, with one tracking poll showing that only one in three Americans currently support the individual mandate.

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