

Health care arguments: Can any portion survive?

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Susan Clark of Santa Monica, Calif., who opposes health care reform, stands with a red hand painted over her mouth to represent what she said is socialism taking away her choices and rights, in front of the Supreme Court in Washington, Wednesday, March 28, 2012, on the final day of arguments regarding the health care law signed by President Barack Obama. (AP Photo/Charles Dharapak)

(AP) -- The Supreme Court signaled Wednesday that it could throw out other key parts of President Barack Obama's health care law if it first finds the individual insurance requirement unconstitutional.

On the third and last day of arguments, the justices appeared to accept the administration's argument that at least two important insurance changes are so closely tied to the insurance requirement that they could

not survive without it.

Less clear was whether the court would conclude the entire law, with its hundreds of unrelated provisions, would have to be cast aside.

The justices also spent part of the day considering a challenge by 26 states to the expansion of the [Medicaid program](#) for low-income Americans, an important feature in the effort extending [health insurance](#) to an additional 30 million people.

The court's liberal justices made clear they will vote to uphold the [Medicaid](#) expansion, which would take in 15 million people with the federal government paying almost all the costs.

Justices Sonia Sotomayor, Elena Kagan, Ruth Bader Ginsburg and Stephen Breyer voiced strong [disagreement](#) with the states' contention that the expansion of the joint state-federal program is unconstitutionally coercive.

"Why is a big gift from the federal government a matter of [coercion](#)?" Kagan asked.

The day's earlier session was unusual in that it assumed an answer to the central question in the historic [health care](#) case: that the requirement that Americans carry health insurance or pay a penalty will be struck down. In fact, if they follow their normal practice, the justices have not even met yet to take a preliminary vote in the case.

Audio of Wednesday morning's argument can be found at: <http://apne.ws/GX1p23> .

In their questions, the liberal justices took issue with Paul Clement, the lawyer for the states seeking to have the Patient Protection and

Affordable Care Act tossed out in its entirety.

"What's wrong with leaving this in the hands of those who should be fixing this?" asked Sotomayor, referring to Congress.

Chief Justice John Roberts also spoke about parts of the law that "have nothing to do with any of the things we are" talking about.

For example, Ginsburg observed that the act deals with issues such as black lung disease.

"Why make Congress redo those?" she asked. "There are many things" that have "nothing to do with affordable health care."

But Clement said the court would be leaving "a hollow shell" if it decided to excise the several key provisions. "The rest of the law cannot stand," he contended.

Roberts and Justice Anthony Kennedy also asked hard questions of Deputy Solicitor General Edwin Kneedler that indicated they are at least considering Clement's arguments. Kneedler said that the only other provisions the court should kill in the event the mandate is stricken are revisions that require insurers to cover people regardless of existing medical problems and limit how much companies can charge in premiums based on a person's age or health.

Justice Antonin Scalia suggested many members of Congress might not have voted for the bill without the central provisions, and he said the court should not go through each and every page to sort out what stays and what goes.

"What happened to the Eighth Amendment?" Scalia asked, referring to the Constitution's ban on cruel and unusual punishment. "You really

expect us to go through 2,700 pages?"

As the arguments resumed Wednesday morning, a smaller group of demonstrators than on previous days gathered outside.

Supporters of the law held a morning news conference where speakers talked about the importance of Medicaid. And, marching on the sidewalk outside the court, supporters repeated chants they've used the past two days including "Ho, ho, hey, hey, Obamacare is here to stay." Most of their group departed not long after arguments began inside.

Opponents of the law, including Susan Clark of Santa Monica, Calif., also stood outside the court. Clark, who was wearing a three-cornered colonial-style hat, carried a sign that read "Obamacare a disaster in every way!"

"Freedom, yes. Obamacare, no," other opponents chanted.

The first two days of fast-paced and extended arguments have shown that the conservative justices have serious questions about Congress' authority to require virtually every American to carry insurance or pay a penalty.

The outcome of the case will affect nearly all Americans and the ruling, expected in June, also could play a role in the presidential election campaign. Obama and congressional Democrats pushed for the law's passage two years ago, while Republicans, including all the GOP presidential candidates, are strongly opposed.

But the topic the justices took up Wednesday only comes into play if they first find that the insurance mandate violates the Constitution.

The states and the small business group opposing the law say the

insurance requirement is central to the whole undertaking and should take the rest of the law down with it.

The federal appeals court in Atlanta that struck down the insurance requirement said the rest of the law can remain in place, a position that will be argued by a private lawyer appointed by the justices, H. Bartow Farr III.

On Tuesday, the conservative justices sharply and repeatedly questioned the validity of the insurance mandate.

If the government can force people to buy health insurance, justices wanted to know, can it require people to buy burial insurance? Cellphones? Broccoli?

Audio for Tuesday's court argument can be found at:
<http://apne.ws/Hft6z3> .

The court focused on whether the mandate for Americans to have insurance "is a step beyond what our cases allow," in the words of Justice Kennedy.

"Purchase [insurance](#) in this case, something else in the next case," Chief Justice Roberts said.

But Kennedy, who is often the swing vote on cases that divide the justices along ideological lines, also said he recognized the magnitude of the nation's health care problems and seemed to suggest they would require a comprehensive solution.

And Roberts also spoke about the uniqueness of health care, which almost everyone uses at some point.

"Everybody is in this market, so that makes it very different than the market for cars or the other hypotheticals that you came up with, and all they're regulating is how you pay for it," Roberts said, paraphrasing the government's argument.

Kennedy and Roberts emerged as the apparent pivotal votes in the court's decision.

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