

US Supreme Court reveals splits on health mandate

March 27 2012, by Jim Mannion

A US Supreme Court justice seen as a key swing vote challenged landmark health care reforms Tuesday, as arguments focused on whether Americans can be forced to buy health insurance.

On the second day of hearings likely to have a huge political impact, Justice Anthony Kennedy appeared skeptical about the constitutionality of President Barack Obama's signature legislation.

"I understand that we must presume laws are constitutional, but, even so, when you are changing the relation of the individual to the government in this, what we can stipulate is, I think, a unique way, do you not have a heavy burden of justification to show authorization under the constitution?" Kennedy said.

He was quizzing Solicitor General Donald Verrilli defending the Affordable Care Act -- a main plank of which will require all Americans to buy health insurance -- raising doubts whether the key reforms would survive.

The court's conservative Chief Justice John Roberts however appeared ambivalent in a nine-member court that otherwise seemed divided along ideological lines that favor conservatives.

The exchanges came on the second of three unprecedented days of oral arguments in what is perhaps the court's biggest case since it had to decide on the Al Gore versus George W. Bush 2000 presidential

election.

The health care reform -- signed into law in 2010 -- has been touted as a Democratic dream of generations, extending health care coverage to 32 million Americans who are currently uninsured.

Republicans argue that it is an affront to the civil liberties and personal freedoms enshrined in the US Constitution.

Obama meanwhile on Tuesday accused his Republican rivals of wanting to turn back "decades of progress, particularly for women's health."

The conservative justices zeroed in on questions about the limits of whether the government can require individuals to buy health care insurance, or set penalties for failing to do so, with the chief justice making the point that the law could be "a slippery slope."

"Everybody has to buy food sooner or later, so you define the market as food, therefore, everybody is in the market; therefore, you can make people buy broccoli," said Antonin Scalia, one of the court's most conservative justices.

Verrilli argued the insurance market was unique and different from the market for cars or cellphones, saying the failure of some to buy insurance shifts the cost of their health care to others.

"This is not a purchase mandate. This is a law that regulates the method of paying for a service that the class of people to whom it applies are... consuming," he said.

Kennedy asked why Congress's power to regulate interstate commerce would not mean allowing the government to order individuals to buy other goods and services.

Verrilli said the difference was that in those cases "Congress would be moving to create commerce. Here Congress is regulating existing commerce, economic activity that is already going on."

More liberal justices insisted health care was different, and not like buying a car or broccoli.

"We all suffer from the risk of getting sick," said Justice Steven Breyer. "And we all know we can't predict when."

The justices debated the law for two hours before a packed court that included Attorney General Eric Holder and a host of political luminaries from both sides of the aisle.

Paul Clement, a former solicitor general arguing for 26 states challenging the law, claimed the so-called "individual mandate," requiring the purchase of insurance, was an assault on personal freedoms.

Tuesday's session followed oral arguments Monday in which the justices appeared to satisfy themselves they had jurisdiction to review the law even though it does not enter into full effect until 2014.

Opponents of what the law derided by critics as "Obamacare" said Tuesday they were encouraged by the proceedings so far.

"We've been in the courtroom now for two days. We feel very confident. We feel very pleased with the questions that the justices have been asking," Florida attorney general Pam Bondi said.

On Wednesday, the court will take up two other issues separately -- whether the law as a whole can survive if the "individual mandate" is found to be unconstitutional and whether the government can require the

states to extend Medicare -- a federal program for low-income Americans -- to a larger pool.

As the session got underway, protesters for and against the law held demonstrations on the steps of the court, reflecting the intense passions the law has aroused in an election year.

Abby Hoffman, 23, of North Carolina said she was there because "health care is a human right."

But acknowledged Tea Party loyalist Diana Reimer of Pennsylvania said the government should not be allowed to order people to buy health insurance.

"I was raised to deal with my own problems, solve my own problems, and never did I go to the government to solve my problems," she said.

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