

Health-Care Debate May Derail Obama Case

By Greg Stohr on March 26, 2012

The U.S. Supreme Court opened today its historic review of President Barack Obama's health-care law, three days of arguments that might result in the president's premier legislative achievement being found unconstitutional in the middle of his re-election campaign.

The court will determine the fate of a measure designed to extend insurance to about 32 million people and revamp an industry that accounts for 18 percent of the U.S. economy.

The six hours of planned debate that began this morning is the most on a case in 44 years. The core dispute -- the law's upcoming mandate that uninsured people purchase coverage -- comes on the second day.

First, the justices today hear arguments on a seemingly arcane question: Does the penalty for failing to get insurance amount to a tax?

"There is at least some doubt about it," Justice Antonin Scalia told attorney Robert Long, who argued that the court should not decide the case. "I find it hard to think this is clear."

A 145-year-old law, the Anti-Injunction Act, says courts can't rule on the legality of federal taxes until they are imposed. For the no-insurance penalty in the 2010 health care law, which takes effect in stages, that comes in 2015. The justices may decide it's too soon to rule on the health law's constitutionality.

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It's "the sleeper issue of the health-care case," said Adam Winkler, a constitutional law professor at the University of California at Los Angeles School of Law. "The great

constitutional controversy over Obamacare could end with a whimper rather than a bang.”

The 90-minute debate on the 1867 law will serve as a prelude for the court’s arguments tomorrow over the marquee issue: whether the Constitution lets government require Americans to either get insurance or pay the penalty.

The mandate is a primary tool the government uses to expand insurance coverage. The question for the court is whether it falls within the scope of Congress’ constitutional authority to regulate interstate commerce.

On the third day of arguments, the justices will hear debate about what should happen to the rest of the law if the insurance requirement is voided. The court also will take up whether the law, by expanding the Medicaid program, unconstitutionally coerces the states into spending more on health care for the poor.

Political Decision Expected

The case marks the first time the high court has considered striking down a president’s signature legislative achievement in the midst of his re-election campaign. Republican candidates, including former Massachusetts Governor Mitt Romney, are campaigning against the measure, saying it should be repealed.

A Bloomberg National Poll earlier this month found that three-quarters of Americans say the Supreme Court will be influenced by politics when it rules, probably in June, less than five months before the presidential election.

The sentiment crosses party lines and is especially held by independents, 80 percent of whom said the court will not base its ruling solely on legal merits. More Republicans than Democrats, by 74 percent to 67 percent, said politics will play a role.

Debate began outside the court before the lawyers inside.

In front of the court steps, supporters of the law stood beside two men holding an American flag and another with the “Don’t Tread on Me” rattlesnake symbol of the Tea Party.

‘Super Bowl’

“This is the Super Bowl,” said Ilya Shapiro, a senior fellow at the Cato Institute in Washington, which advocates for limited government. Shapiro, who wore a black tie decorated with red images of the scales of justice, said it was “the most significant case about the relationship between the government and the governed.”

Americans “don’t want to go re-fight this battle,” Senior Obama adviser David Plouffe said yesterday that on CNN’s “State of the Union” program.