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Obama Health-Care Overhaul to Be Appealed to Supreme Court, Lawyer Says

By Andrew Harris and Greg Stohr - Jun 30, 2011

A U.S. appeals court upheld President Barack Obama's health-care reform act, setting the stage for a request that the Supreme Court review claims that the law violates the Constitution.

The Cincinnati-based Court of Appeals voted 2-1 yesterday to reject a challenge to the legislation by the Ann Arbor, Michigan-based Thomas More Law Center, a Christian-based public interest law firm, which contended Congress exceeded its power in imposing the individual mandate.

"Not every intrusive law is an unconstitutionally intrusive law," Jeffrey Sutton, the first Republican-appointed judge to back the law in litigation across the country, said in his opinion.

Yesterday's federal appeals court ruling was the first to address the constitutionality of Obama's signature legislative accomplishment. Robert Muise, who argued the case for the Thomas More center in Cincinnati, said by phone that his group will ask the high court to take the case.

"This case ultimately needs to be decided by the U.S. Supreme Court," Muise said, adding that his organization will file its petition for review as quickly as possible.

Two other appeals courts have heard arguments on challenges to the health-care overhaul and the high court may wait for their rulings before getting involved.

Republican-Appointed Judge

Sutton, an appointee of Republican President George W. Bush, joined Judge Boyce Martin, named to the bench by President Jimmy Carter, in the majority.

Sutton is a former law clerk to Antonin Scalia, the conservative U.S. Supreme Court justice who wrote this month's opinion rejecting a nationwide gender-bias suit against Wal-Mart Stores Inc. Scalia once called Sutton "one of the very best law clerks I ever had."

As a lawyer, Sutton persuaded the high court to limit Congress's power by shielding states from suits under federal age-bias and disabilities laws.

He was nominated in 2001 on the same day that Bush selected John Roberts, the future chief justice, for a seat on a federal appeals court in Washington. When the Senate approved Sutton's nomination in

2003, only two Democrats voted in favor.

The Patient Protection and Affordable Care Act, signed into law by Obama in March 2010, is intended to create the first near-universal U.S. health-care coverage program.

Ensuring Coverage

The statute bars insurers from rejecting coverage for people who are already sick, and from imposing limits on lifetime costs.

It also requires almost every American resident to have health insurance starting in 2014 or to pay a tax penalty.

Opponents of the act, including the Thomas More center's Muise, have argued the mandate exceeds the regulatory powers given to Congress under the U.S. Constitution.

U.S. District Judge George Caram Steeh in Detroit last year upheld the law.

The U.S. Justice Department said in an e-mailed statement that it welcomed the ruling and "will continue to vigorously defend the health-care reform statute in any litigation challenging it."

In separate opinions, Sutton and Martin each said Congress had power to enact the insurance mandate through its constitutional authority over interstate commerce.

'Rational Basis'

"Congress had a rational basis for concluding that the minimum coverage requirement is essential to its broader reforms to the national markets in health care delivery and health insurance," Martin wrote.

Sutton rejected the contention that Congress was improperly regulating "inactivity." He said that uninsured people pay for medical coverage by "self-insuring" -- that is, by saving money or by relying on someone else to eventually cover the costs.

"No one is inactive when deciding how to pay for health care, as self-insurance and private insurance are two forms of action for addressing the same risk," Sutton said. "Each requires affirmative choices; one is no less active than the other, and both affect commerce."

Sutton also addressed a separate constitutional provision, saying the law couldn't be upheld under Congress's power to levy taxes.

Walter E. Dellinger, a former U.S. solicitor general -- the Justice Department's top courtroom lawyer -- under President Bill Clinton, called yesterday's ruling "a complete vindication" of the constitutionality of the act.

'Obliterates' arguments

Speaking during a telephone press conference, Dellinger said Sutton's reasoning "obliterates" arguments by opponents of the act that said Congress was seeking to regulate inactivity.

Dellinger had submitted a friend of the court brief for Nevada Senator Harry Reid, the Democratic Majority Leader, and House of Representatives Minority Leader Nancy Pelosi of California.

Georgetown University law professor Randy Barnett, who filed a friend-of-the-court brief with the Cincinnati tribunal on behalf of the Cato Institute, called yesterday's decision "a bump in the road on the way to the Supreme Court."

"That's where this case will ultimately be decided," Barnett said in a phone interview. The institute is a Washington-based research group that describes itself on its website as "dedicated to the principles of individual liberty, free markets and peace."

Commercial Activity

Barnett said that while Martin and Sutton were able to agree on some points, they were unable to persuade the third member of the panel, U.S. District Judge James L. Graham.

"Simply put, the mandate does not regulate the commercial activity of obtaining health care," Graham, who ordinarily is part of the U.S. District Court in Columbus, Ohio, said in a partial dissent. "It regulates the status of being uninsured."

"If the exercise of power is allowed and the mandate is upheld, it is difficult to see what the limits on Congress's Commerce Clause authority would be," Graham said.

On appeal, the Supreme Court would have to decide "if there are any enforceable limits to Commerce Clause power and if there's anything left of federalism," Georgetown's Barnett said.

Thomas More's Muise agreed, calling the Cincinnati panel's decision "a dangerous precedent."

"If Congress has the authority to regulate inactivity, there is then no conceivable limit on Congress's commerce clause authority," Muise said.

Atlanta Court

The U.S. Court of Appeals in Atlanta heard arguments June 8 in the federal government's bid to reverse a Pensacola, Florida, federal judge's decision that the mandate is unconstitutional.

In a suit filed by then-Florida Attorney General Bill McCollum and later joined by 25 more states, U.S. District Judge Roger Vinson concluded that the insurance-purchase provision was unconstitutional and without it, the remainder of the act is unworkable and void.

A federal appeals court in Richmond, Virginia, heard argument on May 10 in the combined appeal of two lower-court rulings, one by a U.S. District Court judge in Richmond who struck down the purchase mandate, and another by a judge in Lynchburg, Virginia, who upheld the act and dismissed a challenge to it.

The Cincinnati court heard arguments on June 1.

Dellinger, the former solicitor general, predicted that if the appeals courts issue divergent rulings, one or more of those decisions would likely be reviewed by the Supreme Court during its next term, which begins in October.

The Cincinnati case is Thomas More Law Center v. Obama, 10- 2388, U.S. Court of Appeals for the Sixth Circuit (Cincinnati).

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