Editorial: Obamacare closer to Supreme Court

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It's in the nation's interest that the Obamacare battle be decided quickly. Either the courts, Congress or the states must undo the health care overhaul's over-reaching excesses. The sooner accomplished, the sooner governments at all levels can reverse the trend of increasing state control and allow health care consumers, providers and insurers to voluntarily work out more equitable arrangements.

Monday's ruling by U.S. District Judge Roger Vinson that last year's landmark health care law, with its mandate that everyone must buy insurance or pay a fine, is unconstitutional accelerated an already contentious year of debate, legislation and, perhaps, even a veto, if a repeal bill reaches President Barack Obama.

Judge Vinson's ruling "should give the new Congress all the confidence it needs to rescind this provision and more," observed the libertarian Cato Institute's Roger Pilon.

Already, Democratic Sen. Richard J. Durbin planned to convene a Judiciary Committee hearing Wednesday to examine the law's constitutionality, and two Republican senators Tuesday launched an effort to enable states to opt out of Obamacare. The Republican-controlled House has passed a repeal bill, but it faces long odds in the Democratic-controlled Senate. The votes, however, at least can put lawmakers on record for the 2012 election.

This, the second court ruling against Obamacare, all but assures that the law will reach the U.S. Supreme Court, where the difficult-to-predict Justice Anthony Kennedy could cast the swing vote.

A new element was added this week. Judge Vinson not only declared unconstitutional the mandate to buy insurance, but threw out the entire law, accepting the administration's argument that, without the mandate, Obamacare's other regulations can't function properly. A previous ruling shot down only the mandate.

The high court in recent years has backed off what, in our view, had become an overly broad application of the Constitution's commerce clause. Critics called it the "elastic clause."

The issue divides Congress along party lines, as it has four lower court rulings – two Democratic judges supporting the law and two Republican judges striking it down.

There's no shortage of conflict. Plaintiff attorney David Rivkin insists Judge Vinson's ruling means the 26 states joined in that lawsuit now aren't required to implement any portion of Obamacare. The administration, however, says the law will continue to be implemented, and the Supreme Court is the final arbiter.

Meanwhile, public outrage that arose with last year's hurried congressional approval continues to fester. A Rasmussen Reports survey found voters "remain concerned" the

law will cause some employers to drop health insurance. The poll also found 60 percent of voters "think it is a bad idea for the administration to give waivers to companies" that otherwise would drop coverage. Those respondents said all companies should be granted waivers.

If voters are bothered by waivers for some, but not all, companies, how will the residents of 24 states react if the 26 states represented in Judge Vinson's case drop the law altogether?

UC Irvine law school Dean Erwin Chemerinsky believes the Supreme Court will uphold Obamacare. He said the last commerce-clause case "involved the court upholding the ability of the government to criminally prohibit and punish a woman growing marijuana for her own personal use. If Congress can regulate that, it surely can regulate a trillion-dollar industry."

At stake, whether arrived at legislatively, judicially or in the court of public opinion, is how America will regard its government. Should Washington intercede to guarantee every want and need? Or, as Vanderbilt Law School professor James Ely put it, "even laudable goals must be achieved within constitutional limits." We stand with professor Ely.

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