

Appellate Courts Weigh ObamaCare



by Hadley Heath
June 2, 2011, 11:13am

Yesterday the Sixth Circuit Court of Appeals heard oral arguments in the Thomas More Law Center case against the health care law. This circuit is the second appellate court to hear a case of this nature. Two cases came before the Fourth Circuit on May 10 (Liberty University's case and Virginia's case).

In each of these appellate courts, a three-judge panel is randomly selected to preside and rule. In the Fourth Circuit, plaintiffs got an unlucky draw, but in the Sixth Circuit they expect better chances with a panel consisting of one Bush appointee, one Reagan appointee, and one Carter appointee. Ilya Shapiro, with the Cato Institute, got to attend the hearing and he said he's "cautiously optimistic."

There have been more than 30 cases filed against this health care overhaul. While most of them center on the individual mandate (the most unpopular provision in the law, with 67% of Americans favoring repeal of this provision), there are challenges to other parts of the law including the infamous IPAB - the Independent Payment Advisory Board.

I joined Brad Jackson and Ben Domenech for the [Coffee and Markets](#) podcast today to discuss in further detail what's going on with the various cases at the appellate level, and the challenge to IPAB, filed by the Goldwater Institute in Arizona.

My interviewers asked me a question about strategy this morning that I wanted to answer in further detail here. Basically they put this question to me: Is it wise to put our faith in the courts to strike down this law?

My answer was optimistic. I do think the Patient Protection and Affordable Care Act violates the Constitution, and I've read a lot of opinions from judges - both liberal and conservative - that indicate that opponents of the law are winning the war of ideas. At the SCOTUS level, it will be close either way (some scholars speculate we'll see a 5-4 ruling.)

But I want to emphasize this: While we can be hopeful about the courts voiding this law, we can't count on it. The law will damage not only our federalist system and our individual freedoms, it will also do irreparable harm to our health care system, the doctor-patient relationship, and will cost us trillions of dollars. Americans who realize this should encourage their lawmakers to push back against this law at every level, and we should continue to make the argument that repealing the law in its entirety is the first step in saving American health care from bureaucracy, high costs, and limited access.

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