



## Health-care mandate likely destined for command performance in front of U.S. Supreme Court: A Closer Look

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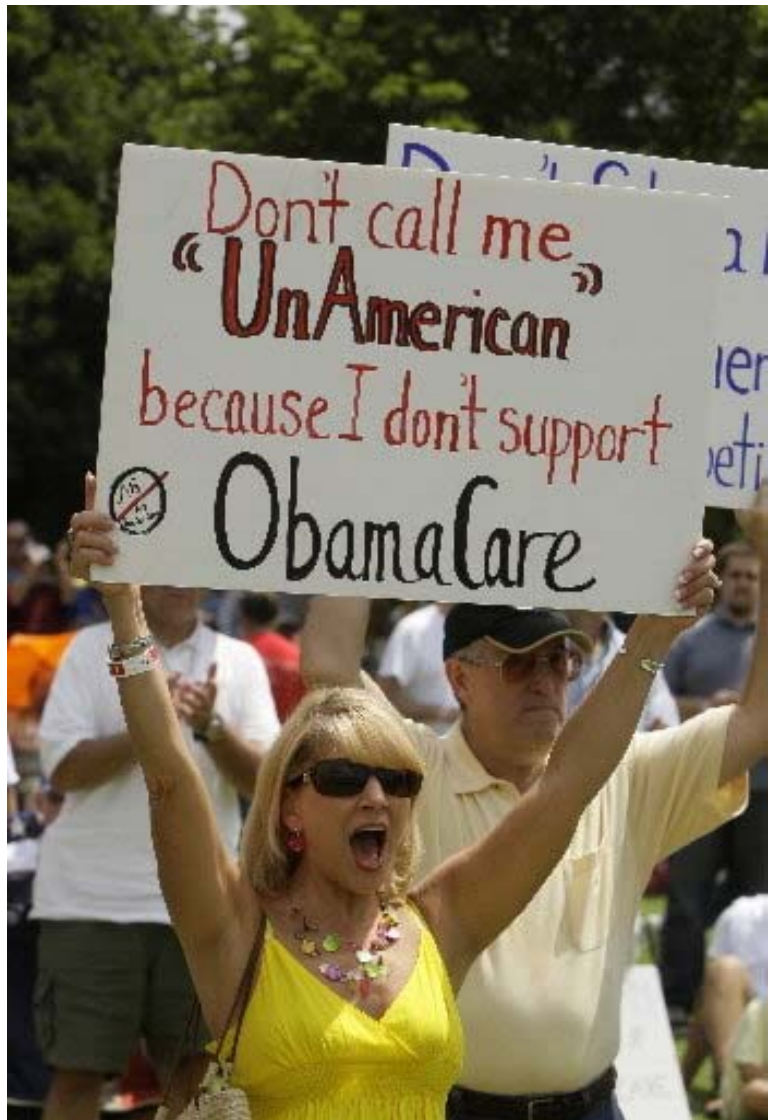
**Cliff Pinckard**  
By

When President Obama signed the **Patient Protection and Affordable Care Act** on March 23, 2010, Vice President Joe Biden caused a stir when he was overheard telling the president, "This is a big (expletive) deal."

Biden, although unpoetic, was right on the money, although not for the reasons he might have believed.

After a contentious battle in Congress to get the bill passed, its signing did nothing to end controversy. Obamacare, as it's derisively called, continues to be challenged across the nation. **Opponents have enjoyed some recent victories, including in Ohio, where the State Supreme Court last week rejected an attempt to remove a ballot measure aimed at blocking the law in Ohio (The Plain Dealer):**

The proposed amendment seeks "to preserve the freedom of Ohioans to choose their health care and health care coverage," according to the amendment's title as it appeared on petitions. Legal experts have said the amendment would not override Ohioans' responsibility to comply with federal law, which directs



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John Bazemore, AP file photo

If the U.S. Supreme Court strikes down the health-care mandate, it might set up another long, contentious battle over the remaining provisions in the bill.

states to set up an insurance marketplace where citizens can shop for health coverage and apply for financial help to pay. Tea Party activists and other critics say the law gives the government too much control over health care and takes away individuals' choice of how and when to have insurance. "We are very pleased the Ohio Supreme Court upheld the validity of the signatures and will allow voters to have a choice this fall if health care decisions should be made by patients and doctors or politicians in Washington, D.C.," Ohioans for Healthcare Freedom campaign manager Jeff Longstreth said in a statement.

**The health-care law suffered a bigger setback in Atlanta, where the 11th U.S. Circuit Court of Appeals on Friday ruled that Congress exceeded its authority by requiring every American to purchase a government-approved level of health insurance or face a penalty. The decision contradicts a ruling by Sixth District Court of Appeals on June 29, which upheld the mandate (Christian Science Monitor):**

Reaction to 11th Circuit ruling was swift and unequivocal. "We strongly disagree with this decision and we are confident it will not stand," said Stephanie Cutter, deputy senior adviser to Mr. Obama, in a White House blog. "The individual responsibility provision - the main part of the law at issue in these cases - is constitutional," she said. "Those who claim this provision exceeds Congress' power to regulate interstate commerce are incorrect." One of the plaintiffs in the lawsuit, the National Federation of Independent Business, issued a statement praising the court's decision. "Small-business owners across the country have been vindicated by the Eleventh Circuit's ruling," said Karen Harned, NFIB executive director. "The court reaffirmed what small businesses already knew - there are limits to Congress' power."

The Christian Science Monitor notes that the appeals court let stand the rest of the law, including provisions that prevent insurance companies from refusing coverage because of pre-existing conditions and that allows parents to insure their children into their 20s.

**It's the mandate on which opponents are focusing their energy. It appears the mandate issue is destined for the U.S. Supreme Court, but when the high court hears the case is unknown ... it could come before or after the 2012 presidential election (Wall Street Journal):**

What isn't certain is whether a high court decision would come before the end of its 2011-12 term next June. If the justices agree by January to hear an appeal, arguments likely will occur in March or April, with a decision before July. Under normal practice, any case accepted after January gets kicked into the next term. That would mean the resolution would come after voters decide whether President Barack Obama, the health-care overhaul's champion, deserves a second term. Bradley Joondeph, a Santa Clara University law professor, said an early decision on the Patient Protection and Affordable Care Act, derided by opponents as "ObamaCare," could benefit Republicans. "If the court upholds the law, the Republican base gets energized four months before the election," he said. "If it gets struck down, well, there go the guts of the centerpiece of Obama's domestic agenda."

**If the Supreme Court strikes down the mandate but leaves the rest of the law untouched, it will set up Congress for another round of fierce battles, according to Politico's Matt Dobias:**

If the Supreme Court strikes down the individual mandate at the heart of President Barack Obama's health care law, Congress may have to "fix" the rest of the law to prevent a disaster. But what if Congress isn't in the mood to "fix" anything? With all the bickering over whether the law should even exist, why wouldn't lawmakers just keep fighting as many of them try to undo the whole thing? ... The 18-month-long health reform battle on Capitol Hill left behind scars not easily healed. Now, Democrats and Republicans are so divided over the law that one of the simplest possible "fixes" -- the repeal of the widely hated 1099 reporting requirements for small businesses -- took months to accomplish. "In a rational time, what you would have is the Supreme Court upholds the decision on the individual mandate and then you have a broad negotiation," between the White House and Congress, said Paul Ginsburg, president of the Center for Studying Health System Change. "You can't expect that in these times, because people don't work on these compromises too readily anymore."

**On his bus tour this week, President Obama said he's confident the Supreme Court will uphold the mandate if it hears arguments. However, a Northwestern University law professor says he believes the Obama administration will try to stall an appeal until after the 2012 election (LegalNewsline.com):**

Stephen Presser, a professor of legal history, says Obama should plan his appeal in a way that will allow his 2012 campaign to be finished by the time the U.S. Supreme Court rules on the constitutionality of the health care law he signed in March 2010. An adverse ruling by the nation's highest court could severely hurt Obama's re-election chances, Presser said. "This may well be an agonizing decision," Presser said. "They will probably want to make a political calculation. It's going to be a good idea to push this past the election. This being a pretty political administration, that's probably what they'll decide. "If I was in his shoes, I'd want a decision sooner rather than later so I could claim to be vindicated or run against (the decision). Remember, he ran against the Citizens United decision when that came down. I would expect him to do the same if this is decided before Election Day."

**Those who want the mandate overturned are aware of this, and want the high court to rule on the issue as quickly as possible (Christian Science Monitor):**

Ilya Shapiro of the libertarian Cato Institute said the decision affirms that the Constitution places limits on federal power. "Today's decision gives hope to those who believe that there are some things beyond the government's reach and that the judiciary cannot abdicate its duty to hold Congress's feet to the constitutional fire," he said in a statement. "It's time now for the government to take this case directly to the Supreme Court; any delays would be unfortunate election-year politicking," he said.

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