



Health care law goes too far

[Freedom New Mexico](#)

2010-10-25 09:21:56

Within moments of President Barack Obama signing the landmark health care bill in March, lawsuits were filed, in Florida, Virginia and elsewhere. They challenged its constitutionality on the grounds that the U.S. Constitution does not give the central government the power to require every U.S. resident, as a condition of living in this country, to purchase a product from a private company.

As Cato Institute legal scholar Ilya Shapiro, who has filed a friend-of-the-court brief in the matter, said, a safe prediction is that the U.S. Supreme Court will eventually take up the matter and issue a 5-4 decision — probably in June 2012 — with Justice Anthony Kennedy being the swing vote.

The justices will have their choice of several cases. In a case filed by the attorney general of Virginia (which passed a law exempting Virginia residents from any federal requirement to purchase health insurance) a judge heard oral arguments Oct. 18.

Last week, U.S. District Judge Roger Vinson in Pensacola, Fla., decreed that a legal challenge from the attorneys general of Florida and 19 other states can move forward to oral argument in December.

Meanwhile a federal judge in Michigan ruled that the insurance requirement is constitutional.

All of these cases will undoubtedly be appealed, and whatever decisions the respective appellate courts make will then be appealed to the Supreme Court.

The government's case rests on an expansive interpretation of what we see as a misinterpretation of the Constitution's Commerce Clause. This clause, allowing Congress to regulate commerce among the states, was intended to prevent states from erecting tariff and regulatory barriers against other states. Since the New Deal, however, the clause has been used to authorize increasingly intrusive central government regulation of, and interference in, commerce.

Friend and foe of the health care law agree its expansion of central government power is unprecedented. Judge Vinson, a Reagan appointee, expressed skepticism about an insurance mandate "based solely on citizenship and on being alive." He also noted that, during congressional debate the administration characterized the proposed penalty on those who don't buy insurance as a fine or penalty — not a tax or a tax increase. In court, however, the government called the penalties taxes because Congress has broad authority to levy taxes.

The fact that two judges have allowed these cases to go forward makes it clear the constitutional objection to Obamacare has legal substance. We hope the Supreme Court agrees that Obamacare is a mandate too far.

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