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## Appeals court strikes down health-care law's insurance mandate

By N.C. Aizenman and [Robert Barnes](#), Published: August 12

A federal appeals court struck down a central provision of the 2010 health-care law Friday, ruling that Congress overstepped its authority by requiring virtually all Americans to obtain health insurance.

The divided three-judge panel from the U. S. Court of Appeals for the 11th Circuit in Atlanta is the first appellate court to rule against any portion of the statute. The decision marks a significant victory for the 26 Republican attorneys general and governors who challenged the health-care law on behalf of their states.

In June, a divided panel of the Court of Appeals for the 6th Circuit in Cincinnati upheld the health-care law in a separate case. A third challenge is pending in the 4th Circuit in Richmond, with a decision expected soon.

The Supreme Court will almost certainly decide the constitutionality of the act. Friday's decision seemed to seal the deal, because the most important factor in whether the court accepts a case is whether lower courts are split on a constitutional question. But when the court could hear the case was not clear.

Opponents of the health-care law, which has become a political lightning rod since its passage in March 2010, are pushing for swift Supreme Court review. The administration said Friday it is considering its legal options. One of those would be to appeal Friday's decision to the full 11th Circuit Court. That could delay any Supreme Court ruling until after the 2012 election.

Administration officials downplayed the importance of Friday's decision, noting that other judges have supported the law.

"Today's ruling is one of many decisions on the [health-care law] that we will see in the weeks and months ahead," Stephanie Cutter, a senior White House official, said in a statement. "In the end, we are confident the act will ultimately be upheld."

In its ruling, the 11th Circuit panel teed up many of the arguments likely to dominate a Supreme Court review.

The two judges in the majority called the law's insurance requirement a "wholly novel and potentially unbounded assertion of congressional authority." And they rejected the

government's contention that unique features of the health-care market justified the mandate.

The government had argued that, since nearly everyone will need health care at some point and since hospitals are legally bound to treat those who cannot pay, a person's decision about whether to buy insurance amounts to a decision about how they will pay for that care. Those with insurance pay through premiums, and those without it either pay out of pocket or by passing on the cost to hospitals, paying customers and government agencies — all actions on which Congress can legislate through its constitutional authority to regulate commerce.

The judges said that logic could apply to any number of markets, ranging from nursing home care to burials. "We are unable to conceive of *any* product whose purchase Congress could not mandate under this line of argument," wrote Chief Judge Joel Dubina and Circuit Judge Frank Hull.

However, Dubina and Hull upheld the constitutionality of the law's expansion of Medicaid to cover a greater proportion of the poor. They also stopped short of accepting the full sweep of the lower-court ruling from Florida that was before them. U.S. District Judge Roger Vinson had ruled that the insurance mandate could not be separated from the rest of the statute, and that therefore the entire law should be invalidated. By contrast, Dubina and Hull held that all other provisions in the law can remain in effect.

The third member of the panel, Judge Stanley Marcus, said his colleagues ignored years of Supreme Court precedent. "I can find nothing in logic or law that so circumscribes Congress's commerce power and yields so anomalous a result," he wrote.

Generally, the Supreme Court must accept a case by January in order to hear arguments and make a decision before adjourning at the end of June. The challengers of the law who lost at the 6th Circuit already have a petition before the court asking for review, and the case decided Friday could also make its way through the process to be heard in the court's term that starts in October. That would provide a chance to settle the law's constitutionality before the 2012 election.

"I think this fast-tracks it," said Cornell law professor Michael C. Dorf, who writes frequently about the court.

But other legal analysts thought the administration would want to ask the full 11th Circuit to review the three-judge panel's decision, a process that could take months.

Opponents of the law seemed united in demanding the administration get the issue to the Supreme Court as quickly as possible.

Typical was the comment of Ilya Shapiro of the libertarian Cato Institute. "It's time now for the government to take this case directly to the Supreme Court; any delays would be unfortunate election-year politicking," Shapiro said. "In these difficult financial times,

the country simply can't afford any more uncertainty over the fate of this economically damaging piece of legislation.”

Bradley Joondeph, a law professor at Santa Clara University who has closely followed the litigation over the act, said the decision is “a bit of a double-edged sword for the White House.”

A Supreme Court ruling validating the law before the election could energize the Republican base to elect a Congress and president that promise to repeal it, he said. And a loss “looks like a huge defeat, the gutting of the centerpiece of the administration’s domestic agenda.”

Said Joondeph: “There are just too many variables here to have a good sense which way all of this points.”

At the lower-court level, decisions have split along notably partisan lines, with judges appointed by Democratic presidents siding with the law and those appointed by Republicans ruling against it. But the appellate level has been less predictably partisan.

One of the judges in the majority Friday, Hull, was appointed by President Bill Clinton. The judge in the minority, Marcus, was originally named to the federal bench by President Ronald Reagan, then was elevated to his current post by Clinton. Dubina was named by President George W. Bush.

On the 6th Circuit panel Judge Jeffrey S. Sutton, a Bush appointee and former clerk of conservative Supreme Court Justice Antonin Scalia, sided with the Obama administration.