

# The CHRISTIAN SCIENCE MONITOR

## Health-care reform law set back, setting stage for Supreme Court showdown

A federal appeals court rejects the individual mandate, the crux of Obama's health-care reform. With another appeals court having already upheld the law, a Supreme Court showdown is far more likely.



President Barack Obama signs the health care bill in the East Room of the White House in Washington, March 23, 2010. The bill has been rejected by a federal appeals court, and may be sent to the Supreme Court.

(J. Scott Applewhite/AP/File)

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By [Warren Richey](#), Staff writer  
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The federal appeals court decision on Friday striking down the centerpiece of [President Obama](#)'s health-care reform law, moves the country one step closer to a potential constitutional showdown at the [US Supreme Court](#) over the scope of federal power.

A panel of the Eleventh [US Circuit Court of Appeals](#), voting 2 to 1, ruled that Congress exceeded its authority in the health-care law by requiring every American to purchase a government-approved level of health insurance or face a penalty.

The decision by the [Atlanta](#)-based appeals court is in direct opposition to a 2-to-1 decision announced June 29 by the [Cincinnati](#)-based Sixth US Circuit Court of Appeals.

That appeals court panel upheld the so-called individual mandate provision of the [Affordable Care Act](#) (ACA), ruling that Congress's powers under the Constitution's commerce clause were broad enough to order individuals to purchase and maintain private insurance coverage.

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Constitutional scholars are awaiting a decision on the same issue from the [Richmond](#)-based Fourth US Circuit Court of Appeals.

But the fact that two of the three appeals courts have ruled and reached different conclusions significantly increases the likelihood that the Supreme Court will agree to examine the issue, legal analysts say.

In its ruling on Friday, the 11<sup>th</sup> Circuit panel struck down the individual mandate, but declined to follow the lead of a lower court judge in [Florida](#), who ruled the entire ACA null and void.

Instead, the appeals court said it would allow the rest of the reform law to remain undisturbed. That action preserves features of the ACA, including the directive that insurance companies may not refuse coverage because of preexisting medical conditions and a measure that allows parents to continue to insure their children into their 20s.

Friday's decision stems from a lawsuit filed on behalf of 26 states and a business group challenging the constitutionality of the ACA.

The court rejected an argument by the states that the expansion of [Medicaid](#) under the ACA, which requires the states to administer a larger program, amounts to unconstitutional coercion of the states by the federal government. The panel also rejected the Obama administration's argument that the ACA should be upheld under the government's taxing powers. The court said the punishment assessed for noncompliance with the insurance mandate was a penalty rather than a tax.

But the big ticket portion of the appeal related to the constitutionality of the individual mandate.

"The federal government's assertion of power, under the commerce clause, to issue an economic mandate for Americans to purchase insurance from a private company for the entire duration of their lives is unprecedented, lacks cognizable limits, and imperils our federalist structure," [Chief Judge Joel Dubina](#) and [Judge Frank Hull](#) wrote in the jointly-authored opinion.

"Although courts must give due consideration to the policy choices of the political branches, the judiciary owes its ultimate deference to the Constitution," they wrote.

Some analysts noted that the majority included a judge appointed by a Republican president and a judge appointed by a Democratic president. Chief Judge Dubina was appointed by [George H. W. Bush](#), and Judge Hull was appointed by [Bill Clinton](#).

In a dissent, [Judge Stanley Marcus](#), a Clinton appointee, accused the majority judges of ignoring the Supreme Court's expansive reading of commerce clause powers and the exponential growth of Congress's authority under the clause during the past two centuries.

"Although it is surely true that there is no Supreme Court decision squarely on point dictating the result that the individual mandate is within the commerce power of Congress," Judge Marcus wrote, "the rationale embodied in the [Supreme Court's] commerce clause decisions over more than 75 years makes clear that this legislation falls within Congress' interstate commerce power."

The Obama administration is expected to appeal the ruling. But it is unclear whether the government will ask the full 11<sup>th</sup> Circuit to re-hear the case or will instead appeal directly to the Supreme Court.

An appeal directly to the Supreme Court would raise the possibility that the high court would hear the case during its upcoming term and issue a ruling by June 2012 – midway through a presidential election year.

Reaction to 11<sup>th</sup> 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.”

Other analysts focused on the potential timing of appeals.

“Now that judges appointed by both Democratic and Republican presidents have found the individual insurance mandate to be unconstitutional, the nation’s interest requires the Supreme Court to hear this case next term,” said [Georgetown Law Professor Randy Barnett](#), in a statement. “Only then would the uncertainty inflicted upon the national economy by this unprecedented and unconstitutional law be lifted.”

He added: “Both the country and the Constitution cannot afford any delay.”

[Elizabeth Wydra](#), chief counsel at the liberal [Constitutional Accountability Center](#), said the 11<sup>th</sup> Circuit majority had “transformed a political disagreement into a constitutional violation.”

She said: “Letting their policy views get the better of them, the majority ignored the text and history of the Constitution, centuries of Supreme Court precedent, and the basic reality of our modern health care system.”

[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.