



Battered by Ballooning Costs, Obama Team Shifts Health-Care Defense for High Court

By: [KENRIC WARD](#) | Posted: March 21, 2012 3:55 AM

Barack Obama's promise to "bend the cost curve" of health care has gone bust. Now, on the legal front, administration lawyers are shifting Obamacare's defensive lines before the U.S. Supreme Court.

The nonpartisan Congressional Budget Office forecasts that the Affordable Care Act will "significantly increase" mandatory health-care spending from \$26 billion this year to \$161 billion in 2022.

Overall, the CBO pegs the price tag at \$2.6 trillion -- a far cry from Obama's initial projections of multibillion-dollar savings.

Republicans jumped on the new estimates this week, alternately branding Obama a prevaricator or simply incompetent. That critique extended to Florida Democratic Sen. Bill Nelson, who is also running for re-election this fall.

"Bill Nelson promised that Obamacare would lower health-care costs, but due to the burdensome law he helped pass, Floridians are already paying an average of 9 percent more for health insurance," said National Republican Senatorial Committee spokesman Jahan Wilcox.

A national survey last fall found that health-insurance premiums paid by employers rose sharply in the preceding 12 months, with the average annual cost of family coverage surpassing \$15,000 for the first time,

Noting that most of the law's "job-killing provisions" haven't gone into effect, Republican National Committee Chairman Reince Priebus said, "Three years after promising lower costs and greater access to health care, the average American has seen the opposite. Premiums are up, and it's harder to make ends meet today because of it."

The National Federation of Independent Businesses has joined with Florida and 25 other states to challenge the constitutionality of Obamacare's "individual mandate," which will require all Americans to purchase health insurance.

NFIB surveys have shown that increasing numbers of companies plan to drop employee coverage and, instead, pay a fine to the federal government for not participating. Likewise, individuals would be assessed a \$2,000 fine for failing to buy insurance.

With the Supreme Court scheduled to hear three days of oral arguments on the law beginning Monday, the Obama administration is tweaking its defense.

According to the Hill newspaper, the government has shifted from its emphasis on the Commerce Clause to a new focus on the Necessary and Proper Clause. Several legal experts have expressed skepticism at the revised strategy.

"First they told us this was an easy Commerce Clause case. Then they told us it was an exercise of the tax power. Now it is the Necessary and Proper Clause. If the mandate was so obviously constitutional, the government would not be shifting its position days before oral argument," said Georgetown law professor Randy Barnett.

Ilya Somin, of George Mason Law School, added, "Despite this seeming shift, the federal government's brief almost completely fails to consider the question of whether the mandate is 'proper,' as well as 'necessary.'"

"The Supreme Court has made clear that these are two separate requirements, both of which have to be met. And a law that can only be defended by a rationale that gives Congress a blank check to enact virtually any other mandate clearly is not 'proper,'" Somin said.

Arguing for the administration, Solicitor General Donald Verrilli expects to lay out a case for the federal government's responsibility to provide for the "general welfare."

But Ilya Shapiro, of the libertarian-leaning Cato Institute, countered: "The government has not offered any better arguments than it did to the [11th Circuit] court, where it lost, as to how there can be any limits on its power -- which there must be in our federal system -- under its constitutional theory."

Health and Human Services Secretary Kathleen Sebelius, in Florida on Tuesday, defends Obamacare as a boon for women.

"The law makes sure that women in new health-care plans can get preventive care at no additional cost," she touted.

"The law prohibits insurers from charging women more just because they're women [and] beginning in 2014, all women will be protected from being locked out of the market because of a pre-existing condition such as being a breast cancer survivor, or having given birth by C-section, or being a victim of domestic violence."

But pointing to the CBO report, critics of Obamacare say the administration's promises are both pricey and questionable.

"Putting the federal government in charge of our health care was a bad idea to begin with. Now we're learning that the health-care law covers fewer people for twice the cost projected by the Obama administration," said Rep. Steve Southerland, R-Tallahassee.

"The CBO's report proves once again that we must continue working to repeal the law and replace it with common-sense reforms that empower patients and their doctors," Southerland told Sunshine State News.

George LeMieux, a Republican running for U.S. Senate and an opponent of the health care law, blasted Obama "surrogates on a PR tour" in Florida and fired a rhetorical shot at Nelson.

"As the deciding vote in passing Obamacare, Bill Nelson is responsible for the ramifications of the legislation, including it costing double what was originally projected and a potential 20 million people losing their employer coverage," LeMieux said.

Whichever way the arguments go in Washington, D.C., next week, the Naples-based Foundation for Government Accountability predicts that the high court's decision "will send shock waves through the American political system and will set legal precedent for the reach of congressional power for generations.

"This will likely be the Supreme Court ruling of the century."