



What happens after the Supreme Court rules on health care?

By Scott Bomboy | National Constitution Center – 26 mins ago

This week, we had six leading legal experts debating the Supreme Court's upcoming health care ruling. So what did the group say about the next steps after the court rules?

Jack Balkin and Randy Barnett

For now, the consensus in the media is that the Supreme Court will issue a decision on the Affordable Care Act on Monday, June 25, the last day before its recess. (The actual ruling has been known by the court internally but not made public.)

Our session on Wednesday at the National Constitution Center included Jack Balkin of Yale Law School and Randy Barnett of Georgetown University Law Center, moderator John Hockenberry, and expert guests Stephanos Bibas (University of Pennsylvania Law School), Jamal Greene (Columbia Law School), Ilya Shapiro (Cato Institute) and Neil Siegel (Duke University School of Law). The event was presented by the Center's [Peter Jennings Project](#) and [The Constitutional Sources Project](#) (ConSource).

Much of the discussion among the experts was on the merits of the case as it was presented in late March to the nine justices.

Full Video Replay:

[Health Care Reform's Big Test: Commerce and the Constitution](#) from [National Constitution Center](#) and [National Constitution Center on FORA.tv](#)

But the issue came up of what happens after June 25 (or another earlier day) when the court rules? The discussion yielded a lot of interesting points that extended beyond legal arguments.

Barnett of Georgetown Law said if the court rejects the Affordable Care Act and the controversial individual mandate to buy insurance, then it will have drawn a line about the growth of congressional power.

"If the mandate is struck down, it will be a very important case," Barnett said. "The court will continue to draw a line beyond which Congress cannot go and that will be very, very

important. But where they are going to draw that line is where the line existed in 2009 before this bill was passed.”

Audio: Barnett on Drawing a Line on Congressional Power

Barnett added if the court decides the entire ACA is constitutional, it would essentially give Congress unchecked powers in some cases.

Shapiro of the Cato Institute also said if the court rejects the ACA, it will take America back to the status quo on health care before President Obama and Congress passed the ACA.

Both Barnett and Shapiro thought the court’s ruling would be narrow and not applicable to other cases.

Greene of Columbia Law said if the court struck down the ACA, it would one of the most significant decisions since the Missouri Compromise and the Dred Scott case.

Balkin of Yale Law said the decision will have no effect, in the long run, on the public’s respect for the Supreme Court.

Audio: Why The Supreme Court Retains Respect

“It will have absolutely no effect on the court’s legitimacy,” Balkin said. “The military is the most admired and respected institution in American life, and the Supreme Court is next.”

Bibas of University of Pennsylvania Law said whatever the court rules against the ACA, it’s not a radical departure from recent acts to expand or contain the power of Congress. “Ours is a government of limited powers,” he said. “It’s not a radically new departure.”

[Get Images From Event](#)

He also said the long-term benefit from the health care case is a public dialogue that is needed.

Audio: Health Care Will Spark a Broader Debate

Bibas said, “That conversation is going to be continued and many more chapters are going to be written by the Congress and the president before its ever comes back to the court. Rather than being pessimistic about all the negative possibilities that come out of it, why shouldn’t we be fundamentally optimistic about spurring a debate that maybe was long past due?”

Siegel of Duke University School of Law said the court’s ruling could affect other laws, depending on how the justices craft their opinion.

No one expected health care to fade away as an issue.

Barnett said if the law is struck down, health care will be at the center of the general election and the next Congress.

“If this gets struck down, there are going to be common sense health reforms that do not try to take over and rework and re-engineer one-sixth of the economy, which this monstrosity did,” he said.

Hockenberry couldn't get a group opinion on the decision. Balkin said he had previously predicted the court would uphold the law by a 6-3 vote, but his predictions were “always wrong.” Barnett said he was sticking by a decision to not making any predictions, while the remaining four experts were split.