

Federal Appeals Court Upholds Health Care Law

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The first appeals court to rule on President Obama's health care overhaul has upheld the law.

The Cincinnati-based 6th Circuit Court of Appeals said Wednesday that the health care mandate requiring everyone to have health insurance or pay a penalty does not violate the Constitution.

Though other federal appeals courts are expected to rule on the law soon, Wednesday's decision took on a special importance because one of the judges upholding the law, Jeffrey Sutton, is a prominent conservative.

Appointed to the appeals court by President George W. Bush in 2003, Judge Sutton is no ordinary conservative. He served as a law clerk for Justice Antonin Scalia, an icon of the conservative movement. And, as a litigator, he was at the forefront of making modern states' rights arguments in the U.S. Supreme Court. But in this case, he rejected similar arguments in the context of the national health care law.

Judge's Views

"This has to be terrible news for opponents of the statute," said Supreme Court advocate Tom Goldstein, an astute court observer, noting that Judge Sutton is among the most respected appeals court judges in the country.

"He is also incredibly well-known to the Supreme Court, as a former Supreme Court law clerk, who argued a lot of the most important states' rights cases on the side of the states," Goldstein added. "So his view that the statute is constitutional overwhelmingly likely represents the view of the center and center-right of the Supreme Court — and, so, of a majority."

Indeed, the importance of Wednesday's ruling could be seen in how the opposing forces reacted. There was a deafening silence from most opponents of the law for much of the day, though the Cato Institute's Ilya Shapiro posted a blog entry calling Sutton's opinion "shocking."

In contrast, supporters of the health law were jubilant and talkative.

"Judge Jeffrey Sutton ate, slept, walked and breathed that idea [of states' rights] for more than a decade and even he rejected the utterly meritless argument against the Affordable Care Act," said Ian Millhiser of the Center for American Progress, a liberal think tank. And "he rejected these arguments in the strongest terms."

Commerce Clause

In his 27-page opinion, Judge Sutton said that the health care law meets the classic tests that the Supreme

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Court has imposed in deciding whether Congress has acted within its authority under the Constitution's Commerce Clause, the provision that empowers Congress to regulate interstate commerce or matters that otherwise "substantially affect" interstate commerce.

Noting that health care is a \$2.5 trillion industry, Sutton said that "no matter how you slice the relevant market," virtually all of it affects interstate commerce, and Congress may constitutionally regulate such interstate economic activity. "Few people escape the need to obtain health care at some point in their lives, and most need it regularly," he observed. Everyone will eventually have some sort of big emergency bill that, left to their own devices, most individuals would be unable to pay. The health care mandate, he concluded, is little more than a requirement that everyone have insurance now so taxpayers and hospitals will not be left holding the bag later. Indeed, as he observed, federal law actually requires hospitals to accept many patients without regard to their capacity to pay.

Furthermore, wrote Sutton, "No one is inactive when deciding how to pay for health care, as self-insurance and private insurance are two forms of action for addressing the same risk. Each requires affirmative choices; one is no less active than the other; and both affect commerce."

Those opposed to the health care law raise good questions, he said, based on an intuition that this law cannot be constitutional. But "[n]ot every intrusive law is an unconstitutionally intrusive law," wrote Sutton.

Sutton was part of a three-judge appellate panel that upheld the law by a 2-to-1 split. Judge Boyce Martin, appointed by President Carter, wrote a separate opinion also upholding the law.

District Judge James Graham, appointed by President Reagan, dissented.

In his dissent, Graham said, "Congress may of course provide incentives ... to steer behavior," referring to tax incentives to promote various public policy goals, but "[i]t is a different matter entirely to force an individual to engage in commercial activity that he would not otherwise undertake of his own volition." Graham closed by noting that such a "structural shift" in the understanding of the Commerce Clause "can be accomplished only through constitutional amendment."

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