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# Newsday

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## **U.S. HEALTH CARE LAW: THE DECIDERS; Justices to hear arguments whether law is constitutional**

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WASHINGTON - The U.S. Supreme Court today opens an extraordinary three days of arguments in a historic case about whether Congress exceeded its constitutional power in passing a sweeping health care law that requires citizens to obtain health insurance.

The outcome of the unusual proceedings will not only affect presidential and congressional elections in November, but also will touch the lives of every citizen and a sixth of the nation's economy, legal and health care experts said.

In weighing challenges to the Affordable Care Act, the nine justices must decide just how far Congress can go in requiring citizens and states to buy into a program that seeks to fill the gaps and curb skyrocketing costs in the health care system.

"The stakes in this case are huge. They're huge legally. They're huge for the ACA. They're huge for people," said Drew Altman, president of the Kaiser Family Foundation, a Washington, D.C., nonprofit that focuses on health care.

The Supreme Court scheduled a rare six hours of arguments on lawsuits by two groups: Florida with 25 other states and the National Federation of Independent Business and three individuals. A decision is expected in June.

Today, the court will hear arguments on whether it can even take up the cases, since the law does not go into full effect until 2014. Neither side contests the court's ability to do so, but a court-appointed lawyer will argue the point.

Democrats passed the health care law over Republican opposition in March 2010. The complex 2,700-page measure aims to cover almost everyone, improve care and contain costs.

The law expands Medicaid to include most of the 50 million people who are uninsured. It makes insurance firms offer coverage to all despite any pre-existing conditions. And it requires citizens to obtain insurance through their jobs, the

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government or on their own.

It's the law's "individual mandate" - the requirement that everyone obtain insurance or face a fine - that's drawing most attention.

That issue will be argued tomorrow.

Constitutional authority

Congress passed the mandate using its constitutional authority to "regulate commerce," a power it has used to write laws on everything from minimum wages to civil rights.

"The Supreme Court has not struck down a piece of legislation that really dealt with commerce since 1936," said Jeffrey Segal, a Supreme Court scholar and chairman of Stony Brook University's political science department.

In that case, the court struck down a New Deal law regulating coal mining companies.

But the brief by the 26 states says Congress exceeded its power with the health care law.

It calls the mandate a "threat to liberty," saying Congress has "never required people to buy any goods or services as a condition" of U.S. citizenship.

U.S. District Court Judge Roger Vinson of Florida, who struck down the law, said under its reasoning, "Congress could require that people buy and consume broccoli."

But Janet Dolgin, a professor of health care law at Hofstra University in Hempstead, said Congress acted within its power to regulate commerce and rejected the analogy. "It's such a silly example because it belittles the entire enterprise," she said.

The Obama administration argues that the health care economy is unique: Everyone sooner or later uses health care services, whether they can pay for them or not, and that makes them part of an economic activity Congress seeks to regulate.

Another major issue before the court is the law's expansion of Medicaid, the federal-state program for the poor.

The brief by the states says the law's requirement that they add 16 million people to Medicaid by raising the income limit to 138 percent of the poverty level or lose funds is coercive.

The Obama administration argues Congress can set conditions for states that accept federal funds.

Arguments on that issue will occur Wednesday.

The final issue, also to be argued Wednesday, is whether the entire law is invalid if the court finds the individual mandate to be unconstitutional.

Controversial issue

The arguments today come nearly two years after President Barack Obama signed the Affordable Care Act into law, his biggest legislative achievement but also his most contentious political issue.

The tea party movement arose from opposition to what it calls "Obamacare," and Republicans vow to repeal it.

More than half of those surveyed in a Washington Post/ABC poll earlier this month say they want the court to throw out the entire law.

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The issue has roiled the Republican presidential primary, as rivals of front-runner Mitt Romney attack him for signing into law a similar system in Massachusetts when he was governor.

The court's ruling could be either a setback or a boost for Obama, particularly among independent voters, experts say.

Few case observers can predict with confidence how Chief Justice John Roberts and his court will rule on the case, which will be a legacy for them as well.

A majority of experts polled by the American Bar Association said they think Roberts and Justice Anthony Kennedy will join the four Democratic-appointed justices in upholding the individual mandate.

But Segal, who studies judicial politics, predicted the five Republican-appointed justices will strike it down in a 5-4 vote.

What they'll hear

Issues and arguments in the health care cases before the Supreme Court

TODAY 10 a.m.

ISSUE

Anti-Injunction Act

QUESTION

Whether a federal law bars a legal challenge to the Affordable Care Act until it goes into effect in 2014

ARGUMENT

Neither the government nor those challenging the act argue the law bars a legal challenge. The Supreme Court appointed a lawyer to argue the point.

DURATION

90 minutes of argument

TOMORROW 10 a.m.

ISSUE

Individual Insurance Mandate

QUESTION

Whether Congress had the power to require individuals to buy health insurance or face a fine

ARGUMENT

The government argues Congress had the power, based on its constitutional authority to regulate interstate commerce and levy

DURATION

2hours of argument

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WEDNESDAY 10 a.m.

ISSUE

Severability of Individual Mandate

QUESTION

Whether the entire Affordable Care Act or just parts of it should be struck down if the Supreme Court finds the individual mandate to be unconstitutional

ARGUMENT

The government argues only the ban on insurance companies' right to reject or charge higher premiums to people with health issues should be struck down. A small-business group argues the entire law should be thrown out. A court-appointed lawyer will argue the rest of the law should survive.

DURATION

90 minutes of argument

WEDNESDAY 1 p.m.

ISSUE

Medicaid Expansion

QUESTION

Whether Congress had the authority to require states to agree to expand the number of people eligible to remain in the health-care program for the poor taxes. But states argue Congress overreached its power with an unprecedented law to make people buy a commercial product.

ARGUMENT

The government argues Congress has the power to set conditions on states that receive federal funds. States argue that the requirement is coercive and violates principles of federalism.

DURATION

1 hour of argument

COMPILED BY TOM BRUNE

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**GRAPHIC:** 1) AP PHOTO, 2010 - Sonia Sotomayor, Stephen Breyer, 3) Samuel Alito Jr., Elena Kagan, Clarence Thomas, Antonin Scalia, Chief Justice John Roberts, Anthony Kennedy, and Ruth Bader Ginsburg. 2) AP COVER PHOTO - Supreme Court; CHART / COMPILED BY TOM BRUNE - What they'll hear (SEE END OF TEXT)

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