Health Overhaul Is DEALT Setback

By BRENT KENDALL

A divided U.S. appeals court in Atlanta ruled that a key provision of last year’s federal health-care overhaul is unconstitutional, siding with a group of 26 states that challenged the law. Abby Jones has details.

A U.S. appeals court in Atlanta handed the Obama administration its biggest defeat to date in the battle over the health-care overhaul passed last year, ruling the law’s mandate on Americans to carry health insurance was unconstitutional.

The 2-1 ruling directly conflicts with another appellate ruling in June, making it a near certainty that the Supreme Court will eventually step in and provide the final word.

Friday’s 207-page opinion and 84-page dissent made clear that views of the Obama administration’s signature law have increasingly hardened in place as voices from each side roll out familiar arguments and precedents to buttress their opposite conclusions.

At the U.S. Court of Appeals for the 11th Circuit in Atlanta, the majority agreed with two lower courts that said Congress overreached when it required most Americans to carry insurance or pay a penalty.

The opinion, jointly written by judges Joel Dubina and Frank Hull, said Congress had broad power to deal with the problems.
of the uninsured, "but what Congress cannot do...is mandate that individuals enter into contracts with private insurance companies for the purchase of an expensive product from the time they are born until the time they die."

The Constitution gives Congress the power to regulate interstate commerce, and courts have interpreted that power broadly. But the majority said the Obama administration's defense amounted to an argument that merely by existing, individuals affect interstate commerce, "and therefore Congress may regulate them at every point of their life."

The court also raised federalism concerns, saying the mandate intruded on health-insurance matters traditionally a concern for the states.

The ruling marked the first time a Democratic-appointed judge has found part of the Patient Protection and Affordable Care Act unconstitutional. Judge Hull was appointed by Bill Clinton, while Judge Dubina was a George H.W. Bush appointee.

Several legal challenges are working their way through the nation's courts, but Friday's ruling came in the highest-profile lawsuit, brought by governors and attorneys general, almost all of them Republicans, from 26 states including Florida, Michigan and Texas. The National Federation of Independent Business and two individuals were also plaintiffs in the case.

Stephanie Cutter, an adviser to President Barack Obama, said in a statement, "We strongly disagree with this decision and we are confident it will not stand."

"Individuals who choose to go without health insurance are making an economic decision that affects all of us—when people without insurance obtain health care they cannot pay for, those with insurance and taxpayers are often left to pick up the tab," Ms. Cutter said.

The individual insurance mandate is set to go into effect in 2014. It requires most Americans to carry insurance—through the workplace, a government program such as Medicare, or individual purchase—or pay a penalty that eventually could go as high as several thousand dollars per year. The act exempts some people for religious or income reasons.

Michigan Attorney General Bill Schuette called the ruling "a huge victory in the fight to protect the freedom of American citizens from the long arm of the federal government."

The decision affirmed part of a January ruling by U.S. District Judge Roger Vinson of Florida, who ruled the health-insurance mandate unconstitutional.

The 11th Circuit, however, overruled Judge Vinson on a key point: whether the entire law must be struck down or only the individual-mandate part. Judge Vinson voided the entire law, but the Atlanta appellate judges said other provisions should remain "legally operative."

The court noted that the health-care overhaul contained hundreds of stand-alone provisions that aren't connected with the individual insurance requirement.

Should the Supreme Court adopt that reasoning on "severability"—leaving the law in place except for the mandate—it could throw the health-insurance market into turmoil. That's because other parts of the law require health insurers to accept all prospective customers, even those who are already ill. In the drafting of the
legislation, insurers were willing to accept the provision only if they were guaranteed an influx of millions of new customers through the coverage mandate.

Minus the mandate, the law could encourage people to wait until they were sick to acquire coverage, and the partisan divide in Congress could make it difficult to amend the law to fix that problem.

Two more federal appellate courts—in Virginia and the District of Columbia—have yet to rule on the health law. The Fourth Circuit Court of Appeals in Richmond, Va., is expected to rule soon.

The D.C. appellate court will hear arguments in September. The case could land at the Supreme Court as soon as its 2011-12 term, which ends in June 2012, or wait until the 2012-13 term, which would put the final resolution after the November 2012 presidential election.

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