US Supreme Court to hear challenge to Obama health care law

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The US Supreme Court announced Monday that it would take up several legal challenges to the constitutionality of the health care legislation enacted by a Democratic Congress in 2010 and signed into law by President Obama. The justices set aside an unprecedented five-and-a-half hours for oral arguments, spread over two days next spring, with the final decision expected in June of 2012, in the midst of the US presidential election campaign.

From a legal and constitutional standpoint, Supreme Court intervention has been the predictable end of the controversy over the health care law since its passage in March 2010. Five federal district courts split 3-2 in favor of the law in legal challenges brought in Florida, Michigan, Washington DC and two districts in Virginia. Four appeals courts also produced a fractured result, with two upholding the law, one striking it down as unconstitutional, and the fourth ruling that no decision was required until 2014, when the bulk of the law takes effect.

The timing of the high court's intervention was determined largely by the Obama administration, which decided to appeal an unfavorable ruling by a three-judge panel of the 11th Circuit Court of Appeals directly to the Supreme Court, instead of seeking a review by the full 11th Circuit, a move that would have delayed Supreme Court consideration until after the 2012 elections.

White House spokesmen said they were confident that the Supreme Court would find the health care law constitutional, citing the balance of opinion among the appeals court justices who have issued rulings this year.

Nine of the twelve appeals court justices who have heard the legal challenges to the health care law voted to reject them, with several conservative judges, appointed by Republican presidents, upholding the constitutionality of the individual mandate, the single most contentious provision. All twelve appeals court justices rejected the claim that scrapping the individual mandate would require striking down the entire law.

Nonetheless, the outcome at the Supreme Court is very much in question. The nine justices surprised legal observers by deciding on a very broad review of the issues raised by the health care law rather than considering only the issues that have sparked conflicting rulings by the regionally-based courts of appeal.

The most publicized issue is the individual mandate, the requirement that every adult American have health insurance, either through an employer, a government program, or by purchasing it individually. The individual mandate was the focal point of the arguments in every district and appeals court that has considered the new law.

The high court went further, however, and agreed to consider a challenge by 26 states to the health care law's expansion of Medicaid. These states, all with Republican administrations, claimed that the expanded coverage was unconstitutional because at least part of the financial burden would fall on state governments. All the appeals courts rejected this argument, but the Supreme Court agreed nonetheless to hear an appeal of those negative rulings.

Two other issues will be argued in front of the nine justices: whether all or only part of the health care law should be struck down if the individual mandate is found to be unconstitutional; and whether the case even needs to be decided now. Under the federal Anti-Injunction Act, if the financial penalty for failing to have insurance is considered to be a tax, no legal challenge can be heard until the tax is actually collected, i.e., not until after the mandate goes into effect in 2014.

The outcome at the Supreme Court will be determined not by abstract legal principles, but in the course of a bitter political struggle within the US ruling elite, in which the working people of America have no influence.

Hundreds of billions of dollars are at stake in the health care overhaul, which was crafted by White House to benefit the giant insurance and drug companies despite Obama's rhetoric about insuring the uninsured and providing greater access to medical services.

The legal and political arguments advanced by the Obama administration demonstrate the fundamentally reactionary, pro-business character of the health care law, which nonetheless provoked hysterical opposition by the ultra-right elements in the Republican Party.

Administration legal briefs have cited the 1986 Emergency Medical Treatment and Labor Act passed under the Reagan administration, which requires hospitals to provide emergency services to anyone in need of them, regardless of whether they have insurance or can afford to pay the cost. Because of this

legal obligation, one Justice Department brief argued, health care providers and insurers need to be protected against "a multibillion-dollar problem resulting from the failure of millions of uninsured patients to pay the full cost of the health care services they consume."

That the individual mandate has become the overriding constitutional issue is itself revealing, since it was first proposed by Republican congressional leaders as an alternative to the Clinton administration health care plan of 1993-94. They proposed it as a "market-based" alternative to expanding federal provision of health insurance.

Obama deliberately based his health care program not on defining access to health care as a basic social right, but on compelling working people to buy private health insurance, regardless of the financial burden.

The poorest sections of the working class were exempt from the mandate because they were covered by the federal Medicaid program. But low income workers just above the poverty line, many of them young people or the marginally employed, would face significant fines if they chose not to pay premiums to a health insurance company.

The punitive character of this policy is given voice in the public statements of Obama's aides. After the 11th Circuit decision to strike down the individual mandate, Stephanie Cutter, a top adviser to the White House on health care, responded, "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."

In other words, the uninsured are not victims of a health care system based on private profit, but deadbeats who must be forced to make a contribution to society.

The insurance companies were induced to support the Obama plan—in contrast to their ferocious opposition to the Clinton plan 15 years earlier—by the promise of a guaranteed, captive market of some 30 million new customers, compelled to buy policies or face fines.

The decision to base the health care program on an individual mandate to buy insurance was also a political boost to the ultra-right, since it has allowed the Republican Party to mask its defense of profit-driven medicine in the guise of defending "individual liberty." This is from a party that regularly sneers at civil liberties in any other context, and whose presidential hopefuls recently lined up near-unanimously in support of torture.

The main focus of the Obama health care reform was to cut the cost of health care for the federal government and corporate America, not to extend access to health care for those now uninsured or underinsured. Obama boasted—and the Congressional Budget Office confirmed—that his "expansion" of health care would actually save the federal government $210 billion over ten years.

US corporations jumped on the bandwagon, calculating that they could save money by dumping their employees from company-paid health insurance programs into the health insurance "exchanges" to be set up by the 50 states under the new law. The result will be less access to medicines and procedures for many workers, or higher premiums to maintain the same level of coverage.

Even the constitutional arguments of the White House reveal its right-wing orientation to the defense of business interests. As the *Washington Post* noted in its analysis Monday, in the 1930s the Roosevelt administration defended the constitutionality of the newly enacted Social Security program under the general power of Congress "to provide for the general welfare." The Obama administration, by contrast, sought justification under the commerce clause, treating access to health care as a question that was "inherently economic," as one appeals court judge wrote.

That judge was Laurence H. Silberman, who wrote the opinion for the US Court of Appeals for the District of Columbia upholding the Obama health care law, saying that it might be opposed as bad policy, but was clearly constitutional. Silberman cited the 2005 Supreme Court decision in *US v Raich*, written by arch-reactionary Justice Antonin Scalia, upholding federal regulatory powers under the commerce clause against a cancer patient growing marijuana on her own property to alleviate her pain.

Silberman is no incidental figure, but one of the leading reactionaries in American jurisprudence. Appointed to the top federal appeals court, in Washington DC, by Ronald Reagan, he is notorious as a protector of the military-intelligence apparatus, issuing the ruling in 1990 that suppressed the convictions of Lt. Col. Oliver North and Admiral John Poindexter in the Iran-Contra scandal.

He later backed the right-wing conspiracy to oust Democratic President Bill Clinton with a ruling upholding the actions of special prosecutor Kenneth Starr. In 2005, Silberman was chosen by President George W. Bush to head the official whitewash of the supposed US "intelligence failure" before the invasion of Iraq—that is, the lies peddled by the White House about Iraqi "weapons of mass destruction."

That such an individual should be the principal author of a 32-page ruling upholding Obama's health care program points to the reactionary character of the administration's "reform."