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Today's Health Care Court Ruling

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Today's narrow ruling in Virginia on the constitutionality of a provision of the Affordable Care Act is just one of many recent rulings on similar cases that have come down in recent months. Since the law passed, opponents of reform have filed more than 20 different legal challenges. Judges have already granted the Administration's motion to dismiss 12 of these cases. And in two cases, federal judges looked at the merits of the opponents' arguments, determined that the Affordable Care Act is constitutional and upheld the law.

We disagree with the ruling issued today in Virginia and the Department of Justice is considering its appeal options.

We are pleased that Judge Hudson agrees that implementation of the law will continue uninterrupted. In the nine months since the health reform law was passed, we've made tremendous progress to strengthen our health care system, including lowering costs and implementing a new patient's bill of rights to end some of the worst insurance company abuses. That work continues. And we're confident that when it's all said and done, the courts will find the Affordable Care Act constitutional.

History and the facts are on our side. Similar legal challenges to major new laws -- including the Social Security Act, the Civil Rights Act, and the Voting Rights Act -- were all filed and all failed. Contrary to what opponents argue the new law falls well within Congress' power to regulate economic activity under the Commerce Clause, the Necessary and Proper Clause, and the General Welfare Clause.

Opponents of reform claim that the individual responsibility requirement -- the requirement that all Americans carry a minimum level insurance by 2014 -- exceeds Congress' power to regulate interstate commerce because it penalizes economic "inactivity." Make no

mistake -- individuals who choose to go without health insurance are actively engaged in economic decision making – the decision to pay for health care out-of-pocket or to seek uncompensated care. Every year millions of those who have chosen to go without health insurance actively seek medical care, which is evident in the billions of dollars spent on uncompensated care every year.

The Affordable Care Act came into being precisely because of the interconnectedness of our health care costs. People who make an economic decision to forego health insurance do not opt out of the health care market, but instead shift their costs to others when they become ill or are involved in an accident and cannot pay. Those costs – \$43 billion in 2008 alone – are borne by doctors, hospitals, insured individuals, taxpayers and small businesses throughout the nation. This cost-shift added on average \$1,000 to family premiums in 2009 and roughly \$410 to an individual premium.

This concept is clearly seen in other areas of commerce. For example, in most states, drivers are required to carry a minimum level of auto insurance. Accidents happen and when they do, they need to be paid for quickly and responsibly. Requiring drivers to carry auto insurance accomplishes this goal. Similarly, the Affordable Care Act, through the individual responsibility requirement, will require everyone to carry some form of health insurance since everyone at some point in time participates in the health care system, and incur costs that must be paid for.

It's no surprise then, that President Reagan's Solicitor General Charles Fried recently wrote, "the health care law's enemies have no ally in the Constitution." Two federal judges that recently ruled on the challenge to the constitutionality of the reform law in Michigan and Virginia agreed. These lawsuits were dismissed, with the federal judge in Virginia concluding "how and when to pay for health care are activities...in the aggregate...substantially affect[s] the interstate health care market."

Two federal judges have agreed with this argument. In an earlier ruling in the Western District of Virginia, a federal judge wrote:

“ I hold that there is a rational basis for Congress to conclude that individuals’ decisions about how and when to pay for health care are activities that in the aggregate substantially affect the interstate health care market...Nearly everyone will require health care services at some point in their lifetimes, and it is not always possible to predict when one will be afflicted by illness or injury and require care...Far from ‘ inactivity,’ by choosing to forgo insurance, Plaintiffs are making an economic decision to try to pay for health care services later, out of pocket, rather than now, through the purchase of insurance. As Congress found, the total incidence of these economic decisions has a substantial impact on the national market for health care by collectively shifting billions of dollars on to other market participants and driving up the prices of insurance policies.”

The Affordable Care Act also bans insurance companies from discriminating against people with preexisting conditions. However, unless every American is required to have insurance, it would be cost prohibitive to cover people with preexisting conditions. Here’ s why: If insurance companies can no longer deny coverage to anyone who applies for insurance – especially those who have health problems and are potentially more expensive to cover – then there is nothing stopping someone from waiting until they’ re sick or injured to apply for coverage since insurance companies can’ t say no. That would lead to double digit premiums increases – up to 20% – for everyone with insurance, and would significantly increase the cost health care spending nationwide. We don’ t let people wait until after they’ ve been in a car accident to apply for auto insurance and get reimbursed, and we don’ t want to do that with healthcare. If we’ re going to outlaw discrimination based on pre-existing conditions, the only way to keep people from gaming the system and raising costs on everyone else is to ensure that everyone takes responsibility for their own health insurance.

There have been many rulings on court cases regarding health reform and we know there will be many more. In the end, the Affordable Care Act will prevail and the American people will enjoy the benefits of reform.

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