



ACA Supreme Court Challenge Talking Points- 3/26/12

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What is happening with the federal health reform law in the Supreme Court?

The federal Patient Protection and Affordable Care Act (ACA), enacted in March 2010, has been challenged in several courts over the past two years, and rulings about its constitutionality have varied from court to court. The United States Supreme Court agreed to take the case, and many organizations submitted their arguments against or for various provisions of the ACA. From March 26 to 28, the Supreme Court will hear oral arguments, with a final decision expected in June.

The Supreme Court's decision could have significant impact on the implementation of federal healthcare reform, on the requirements imposed on states, and on the funding available to states. Many of the ACA's provisions are scheduled to begin in 2014, yet the Supreme Court could rule against specific provisions, or strike down the entire law.

What will the Supreme Court do?

The Supreme Court will review and rule on a number of disputed issues relating to the Affordable Care Act. The most important issues under review are the following:

- Is the ACA's "individual mandate" constitutional? The ACA requires individuals to buy health insurance. Everyone has to be insured, or pay a penalty (unless they are covered by a public program such as Medicare or TRICARE, or can claim a hardship exemption).
- Would the ACA as a whole become null and void if the individual mandate were struck down? The ACA includes many provisions not related to the purchase of insurance. Can these exist independent of the mandate?
- Is the ACA's expansion of the Medicaid program constitutional? Medicaid is public program administered and partially funded by the states. The ACA makes many more poor people eligible for Medicaid, especially childless adults who were previously excluded unless a state (such as Vermont) took specific action to include them.

The Supreme Court can uphold the ACA, strike it down, or select some specific provisions to uphold or strike down.

Is the Affordable Care Act important for the human right to healthcare?

No, our human rights assessment showed that the ACA fails to meet human rights standards. Rather than guaranteeing universal healthcare, the ACA will exclude many millions of people from access to coverage and care. Instead of ensuring that care is available to all who need it, the law requires individuals to buy private insurance. The ACA strengthens the private, market-based healthcare system

which treats health care as a commodity, sold by a for-profit industry that is propped up by public subsidies.

We recognize that the ACA also contains some important improvements to healthcare access for poor people. The Medicaid expansion and the additional funding for community health centers will ease many people's suffering, especially in states that have failed to expand public health care programs on their own account. But these provisions should not be linked to the ACA's insurance provisions – they can easily work as standalone measures.

What do human rights say about the “individual mandate”?

The individual mandate is the requirement for each person or family to buy private insurance (unless they are covered by a public program such as Medicaid or Medicare), or face a tax penalty (some “hardship” exemptions to this penalty are available). The human right to healthcare, by contrast, gives everyone the right to receive the care they need, regardless of payment. From a human rights perspective, people's access to care must not depend on buying private coverage, especially since a private insurance plan is sold with no other purpose than to make money for an insurance company.

But human rights do allow a state or country to set up a public or social insurance program that requires universal participation. In other words, had the ACA required everyone to take part in a public program like Medicare, it would be compatible with both human rights and the U.S. constitution. It is the treatment of individuals as consumers of market-based coverage that causes the problem for the ACA.

Many organizations are taking a vocal role in defending or opposing the ACA. Shouldn't we join them? The Healthcare Is a Human Right Campaign does not take a position on the Supreme Court case. As the ACA does not meet human rights principles, we see no compelling reason to defend it. But as the Medicaid expansion and other provisions would likely help many poor people, it's also not our role to actively fight against it. Even though the Medicaid expansion will not necessarily benefit Vermonters, as Vermont has already put in place public healthcare programs for low-income people, millions of poor people in other states could gain access to care.

We also see a danger in some arguments against the individual mandate. Some single payer supporters filed a court brief in favor of striking the individual mandate, yet in order to do this, they felt compelled to use a legal argument that concludes that Congress does not have strong powers when it comes to making rules for the 50 states. However, many of this country's most progressive laws, including civil rights and women's rights legislation, were dependent on action by Congress to move us forward. We do not want to contribute to undermining necessary federal powers by arguing against the ACA, and we urge others to be mindful of the risks this entails.

What impact will the Supreme Court's decision have in Vermont?

Vermont's universal health care law, Act 48, sets out a path to a universal, publicly financed health care system (Green Mountain Care) by first implementing the Affordable Care Act. If the ACA was struck, Vermont could pursue health care reform more freely; for example, Vermont would not have to set up a market-based exchange that's incompatible with human rights principles. We would also not have to worry about whether Vermont would receive the federal waivers it needed to replace the exchange with Green Mountain Care. On the other hand, when making cost calculations, reformers in Vermont have relied on additional funding that the state would get under the ACA. Vermont would have to change its financial calculations and fund the system in other ways in order to meet its human rights obligation of ensuring healthcare for its residents. Previous studies have shown that this is possible, and that Vermon

can implement a universal healthcare system without additional financial support from the federal level. Importantly, Act 48 clearly states that the state of Vermont recognizes that all residents must be able to access the health care they need. With this recognition, the state has finally assumed its obligation to meet Vermonters' human rights, and no federal decisions, programs or funding can nullify this obligation.

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