



Supreme Court Rejects Fast-Track Health Care Appeal

By Dietrich Knauth – April 25, 2011

The U.S. Supreme Court on Monday refused to hear a fast-tracked appeal of federal health care reform, rejecting a bid for early review by Virginia's attorney general.

Virginia Attorney General Ken Cuccinelli, who claims the act's individual mandate provision exceeds the powers of Congress under the commerce and general welfare clauses of the U.S. Constitution, said the decision was disappointing, but not surprising.

"This case's logical end point is the Supreme Court," Cuccinelli said. "It will simply have to make its way through the [U.S. Court of Appeals for the Fourth Circuit] first."

The case is on appeal from the U.S. District Court for the Eastern District of Virginia, which ruled in December that a provision of the Patient Protection and Affordable Care Act that requires all Americans to purchase health insurance or pay a penalty wasn't protected by the commerce clause of the U.S. Constitution.

The district judge said the commerce clause allows the federal government to regulate citizens' actions that affect interstate commerce, but not inaction, such as neglecting to purchase health insurance.

Cuccinelli asked the Supreme Court for early review in February, saying an expedited ruling would protect Virginia and other states from the "crippling and costly uncertainty" in their efforts to implement a law that may later be ruled unconstitutional.

The Supreme Court, which rejected the request for early review without comment, rarely takes up cases before they are fully litigated in the federal appeals courts.

Peter J. Marathas Jr. of Proskauer Rose LLP said the decision was unsurprising, and likely means that the Supreme Court will not hear any challenges to the health care law during its current session.

"While the court may have the ability to exercise review of a federal district court decision, it clearly believes that it is in the best interest of all stakeholders to allow the appellate courts an opportunity to review the decisions at the lower courts, not just in Virginia but also in Michigan and Florida," Marathas said. "It appears that those predicting that the Supreme Court will step in early have assumed too much."

Because the individual mandate doesn't kick in until 2014, the high court has the luxury of waiting until the Fourth Circuit makes its decision, according to J. Peter Rich of McDermott, Will & Emery LLP. The court could hear the case after that, or wait until a split develops in the circuit courts, Rich said.

"This decision does not lead to the conclusion that the court will eventually uphold the constitutionality of the individual mandate or even of the health reform law as

a whole,” Rich said. “What it does mean is that, if the court eventually decides to overturn the entire law, that decision will have an even more profound impact because the law would then be much farther down the road in its implementation.”

The Virginia lawsuit raises a legitimate constitutional question, and the law’s ultimate fate could end up in the hands of Supreme Court Justice Anthony Kennedy, who is seen as the court’s swing vote, Rich said.

The U.S. Department of Justice, which is defending the law from Cuccinelli’s suit, said there was no reason for the case to bypass the normal course of appellate review.

A separate district court judge in Florida struck down the entire health care law on similar grounds in January, finding that the individual mandate could not be severed from the law itself.

That case is also on appeal in the Fourth Circuit. The appeals court has agreed to put the two cases on a fast track at the joint request of the federal government and Cuccinelli.

The two cases will follow the same briefing schedule, and the court will hear oral arguments on the two cases together on May 10.

District courts have split in challenges to the health care law’s constitutionality, with three upholding the law and two ruling against it.

The case is Virginia ex rel. Kenneth T. Cuccinelli II v. Kathleen Sebelius, case number 10-1014, in the U.S. Supreme Court.

– Additional reporting by Carolina Bolado and Hilary Russ. Editing by John Williams.