Reactions mixed, volatile on health care reform

By Lois M. Collins  Deseret News
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Ruling

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LAKE CITY — Judi Hilman got up at 4 a.m. Thursday to figure out her response to the then-pending health care reform decision from The U.S. Supreme Court. The director of Utah's Health Policy Project planned for two possibilities: that the mandate requiring most Americans to purchase insurance would be stricken or that the entire Patient Protection and Affordable Care Act would fall.
Instead, in a 5-4 ruling, the court largely affirmed the controversial health care reform act, with Chief Justice John Roberts writing the majority opinion.

"This is historic — and frankly unexpected," said Hilman during a press conference that the bipartisan UHPP hastily renamed a "celebration" three hours after the ruling. The organization has supported health reform efforts.

Responses were varied, but uniformly volatile. Whether the Supreme Court decision is to be approached with the gravity and fear of the unknown that was seen in planning for Y2K with its expectation of a horrifying computer glitch or with the festivity of a Superbowl party depends entirely on who was responding, one observer noted.

The ruling

The court upheld the requirement

that most people purchase insurance or face penalties, called the individual mandate, on the grounds that is the equivalent of a tax, which Congress has a right to levy. The court struck down part of the expansion of the Medicaid program, ruling only expansion money could be withheld from states that choose not to participate with the measure, which expands Medicaid coverage to parents and childless adults up to 133 percent of poverty. The federal government will not be allowed to force compliance by withholding other Medicaid money.

"It takes away the stick with which to beat the states" if they don't comply, said Robert Bennett, former U.S. Senator from Utah and now a fellow at George Washington University's School of Media and Public Affairs. "It leaves the carrot."

The ruling surprised some watchers, who'd predicted that the chief justice and Associate Justice Anthony Kennedy would side together on ACA. Instead, Roberts sided with the more liberal wing of the court. In voting that way, he said, Roberts countered critics of the court who have said the justices are too political and would not set aside personal beliefs to decide cases on the basis of the law. The ruling "drove a major stake in that argument," Bennett told the Deseret News.

But he believes the decision, while upholding the individual mandate, also weakens it. People may choose to ignore the mandate and pay the tax penalty instead, he noted. That would change the depth of the risk pool,
which has to be big enough to afford the costs associated with all the coverage that the ACA provides.

The ruling changes the act from a legal question — it's now officially constitutional — to a political one, said Rich McKeown, CEO of Leavitt Partners, which he founded with former Secretary of Health and Human Services Mike Leavitt.

"A few things are going to happen that are diametrically opposite," said McKeown. "I think the administration, emboldened, will move forward to implement (health care reform) with even greater acceleration." And Republicans will plan their response. "This issue will begin to become a litmus test issue" in the upcoming elections, not only for president, but for Congress and for gubernatorial races, he predicted.

Not set in stone

Experts on both sides agree that the health care reform law itself will change some, driven in large part by its costs and the ongoing economic challenges facing America.

America's compassion, reflected in programs like Social Security and safety-net programs that care for the poor "all add expense to the system and we don't have much more tolerance for expense in the system," McKeown said. "We're running out of compassion."

In discussions following the ruling Thursday, health care providers, legislators, consumers and others agreed that the act provided what McKeown called a "shock wave to the system," but the economy will drive change. Experts already point to a healthcare system that's moving away from paying for every medical service toward one based on keeping a population as healthy as possible. Electronic medical records, transparency in terms of outcomes and costs, quality measures and other efficiencies will all contribute, several people told the Deseret News.

Lawmakers will have to contend with other emerging economic issues before they sunset at the end of the year, including the Bush tax cuts, payroll tax cuts that were part of the Obama administration stimulus package, the alternative minimum tax patch, sequestration that would take billions out primarily from defense, pending cuts
to Medicare to fund sustainable growth and the debt ceiling. "Day one after an election, both candidates have to be ready to deal with a lame-duck Congress and those issues," he said. Along with unemployment numbers and the economy.

Battling visions
In hailing the decision, President Obama noted the court "affirmed a fundamental principle that here in America — in the wealthiest nation on earth — no illness or accident should lead to any family’s financial ruin. "The highest court in the land has now spoken. We will continue to implement this law," the president said. "And we'll work together to improve on it where we can. But what we won't do — what the country can't afford to do — is

refight the political battles of two years ago, or go back to the way things are. With today's announcement, it's time for us to move forward — to implement it and, where necessary, improve on this law."

Romney vowed to "repeal Obamacare. "Let's make clear that we understand what the court did and did not do," he said. "What the court did today was say that Obamacare does not violate the Constitution. What they did not do is say that Obamacare is good law or that it's good policy."

Romney also promised to replace it. A replacement, he said, will keep or put in place measures that give consumers choice, make sure those who want to keep their existing insurance can do so and protect the ability of people with pre-existing conditions to get insurance, among other things. "And something that Obamacare does not do that must be done in real reform is helping lower the cost of healthcare and health insurance. It's becoming prohibitively expensive."

Next steps?
Though the decision is out, not everyone's going to jump into line, said Brett Graham, a Leavitt Partners managing director who follows state health insurance issues and health exchanges. At least a couple of states have said they will not form health exchanges until after the election. But while Wisconsin and Florida and perhaps others wait, the vast majority will speed up efforts, he said.
Utah has had a small group exchange since 2008, but doesn't yet have an exchange that welcomes individuals. Its exchange creates a marketplace for small businesses and their employees to purchase insurance. Utah also doesn't yet have a mechanism to distribute subsidies.

To overturn ACA outright, Republicans would have to have majorities in both bodies of Congress and seat a Republican president, too, Graham said. They'd need to be veto-proof. Will it happen? "Congress and the Senate are very much in play," he said. "We will not know until the elections."

And the presidential race is "a dead heat" in the most recent poll, Graham said.

What changed Thursday is that more states will begin to discuss how the reform will work and what it should look like. And it won't be just a discussion among the legislative and executive branches, he said. Insurers and many others have an interest in it. States that have not begun work on developing mandated health exchanges need to get moving if they want a state version and not the federal exchange.

"It's going to be a crazy summer," he said.

What others say

Christine Cardamon sells insurance. But she hasn't been able to buy it for herself. She couldn't get insurance because of rheumatoid arthritis. She flirted with buying an expensive policy that would exclude that condition. She got accidental coverage, figuring at least that would be covered if she was injured somehow. When she investigated other options she found it would cost her more than $8,000 a year out of her own pocket before insurance through a high-risk insurance pool would kick in, so she decided she'd do without. Ultimately, she got married and by luck he had insurance that covers her, no questions asked. But at the press conference sponsored by Utah Health Policy Project, she wondered why people in those different situations were treated so differently when it comes to coverage.

Bobbi Mathews told of having good insurance, until they reached the lifetime cap because of a syndrome called DiGeorge that damaged her daughter's heart, parathyroid and immune system before killing her at age 15. ACA bans lifetime caps.

Some advocates of the act believe the expense will over time stabilize and even save money. Jennifer Hyvonen, external affairs...
director for the Fourth Street Clinic in Salt Lake City, which treats homeless and low income individuals, said they've had several homeless patients who needed some hospice care they couldn't access. They hoped to die in the shelter, with some medical attention, but instead had to be transferred to the hospital and more expensive care.

"There are parts of the ACA that are wildly popular and there are parts that are wildly misunderstood. No one disagrees that sick children shouldn't be denied coverage, or that an insurance company shouldn’t be able to drop an insured when they get sick. Our elected officials should be working to implement the act for the benefit of Utah's citizens and working within the law to provide substantive alternatives to make the law better, rather than continuing with their hyper-partisan attacks," said Maryann Martindale, executive director of the Alliance for a Better UTAH.

The American Academy of Pediatrics hailed the court’s ruling. Its president, Dr. Robert W. Block, said the act "invests in children's health from the ground up."

But others deplored the decision.

"The Health Care Compact Utah joined after passing legislation during the 2012 session is the best protection for Utahns against Obama overreach," said Derek Monson, Sutherland Institute director of public policy. "Utah should reject the federal expansion of Medicaid while pursuing patient-centered, free market health care reforms such as Health Savings Accounts and transparent medical pricing that will lead to free-market competition and better, more affordable health care for all Utahns."

"The Supreme Court's decision obliterates the time-honored distinction between a penalty and a tax," said Howard Stephenson, president of the Utah Taxpayers Association. "Penalties may raise revenue, but their primary purpose is to punish. By contrast, a tax's primary purpose is to raise revenue." He said "we fear this decision could impair Utah's ability to implement numerous state tax policies."

Retailers from the National Retail Federation expressed "dismay" and said the court "missed an opportunity to redress the many shortcomings of the law. As it stands, the law wrongly focuses more on penalizing employers and the private sector than reducing health costs. For these reasons, NRF has been a consistent skeptic of the Affordable Care Act."

The Tax Foundation released a statement calling the ruling flawed and said it was wrong in its definition of what a tax is.