Supreme Court health care reform ruling stuns Utah Republicans

Supreme Court’s backing of Obama’s health law stuns Utah Republicans, who say the ruling will galvanize party’s voters.

By Matt Canham
The Salt Lake Tribune
Published: June 28, 2012 10:38PM
Updated: June 29, 2012 01:06PM

Washington • The Supreme Court’s decision to uphold the Affordable Care Act left Utah Republicans stunned and disappointed, but not demoralized, as they said the ruling will help galvanize conservative voters and eventually lead to the law’s demise.

“This is going to be a temporary victory for those who want to see government bureaucrats in Washington making personal health care decisions for Americans,” said Sen. Mike Lee, R-Utah. “Americans will go to the polls this November in droves supporting Republicans.”

Sen. Orrin Hatch, R-Utah, expects no serious congressional action on the issue until after November’s election and he said health reform’s fate hinges on who wins the White House. If President Barack Obama gains a second term, his signature law is likely to stand, while if Republican Mitt Romney wins, the act is in trouble.

“The only way to repeal the law, it seems to me, is to get Mitt Romney into the White House,” Hatch said.

Hatch and Lee attended Thursday’s historic court session, describing a tense and respectful audience that had little outward reaction as Chief Justice John Roberts revealed he had joined with the court’s more liberal judges in upholding the law.
The most Lee saw was a raised eyebrow or two. Contrast that to the hundreds of boisterous protesters that gathered outside the court. The group included belly dancers and plenty of people in costumes.

"It was bizarre," Hatch said. "It showed that this is an important case, there's no question about it.'

Utah and 25 other states challenged the federal health reform law on two main issues. The first involved a requirement that most people buy insurance or pay a fine, and the second was a massive Medicaid expansion that required states to cover more lower-income Americans or lose all federal money for the program.

In a 5-4 ruling, the court found the insurance requirement is allowable under Congress' ability to levy taxes, and the justices said the federal government can expand Medicaid, but it can't penalize states that decide not to participate.

Obama and Democrats heralded the ruling as a victory for American people, particularly the uninsured, and the president argued that it's time to move on.

"We will continue to implement this law. 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 were," Obama said Thursday. "With today's announcement, it's time for us to move forward."

The president said the court upheld the principle that people who can afford insurance should buy it, and he noted that Romney supported such a mandate when he was governor of Massachusetts.

But Romney has repeatedly vowed to repeal Obama's health law, including the mandate, starting on his first day in office if he wins.

"Obamacare was bad policy yesterday. It's bad policy today," Romney said.

While Romney focused on the law, Hatch took a shot at the court, saying the justices who upheld the law "rewrote Obamacare," justifying the insurance requirement using an argument Obama and congressional Democrats had rejected.

During the health reform debate two years ago, Democrats said the penalty for not buying insurance wouldn't be a tax, which would have been far more politically toxic. Instead, they justified it as a financial penalty allowed through Congress' ability to regulate interstate commerce.

Conservatives, including Hatch, said if Congress could compel people to buy insurance, then Congress could intrude into all aspects of Americans' lives. A majority of justices bought this argument, before deciding that as a tax, the requirement could stand.

Lee and Hatch were shocked Roberts accepted the tax argument.

"He threw everyone a curve ball," said Lee, who once clerked for Justice Samuel Alito and who attended the extraordinary three days of oral arguments on the case in March.

Republicans, including Utah Rep. Rob Bishop and Jason Chaffetz, pounced on the tax issue, in a preview of what is likely to be a constant line of attack this campaign season.

Bishop said: "This massive tax is the wrong direction for this country and every aspect of this law will
continue to be reviewed, scrutinized, and reformed. Leaving the bill as it exists today is simply not an option."

Ironically, the idea of the mandate came from the conservative Heritage Foundation in 1989, which argued it would maintain a role for private insurance companies at a time when Democrats wanted complete government control of health care.

Hatch even sponsored a plan that had an insurance requirement in the early 1990s, an alternative to President Bill Clinton's ill-fated reform attempt. Hatch has said upon more careful review he found the mandate troubling and he was the first senator to call it unconstitutional during the congressional debate.

The requirement goes into effect in 2014 and the penalty is a sliding scale at $695 to $2,085, which will be collected by the IRS.

Rep. Jim Matheson, D-Utah, voted against the Affordable Care Act, but unlike Utah's Republican members of Congress, he wants some portions of the bill to survive.

One of the parts Matheson likes is a provision banning insurance companies from denying coverage to people because they had a pre-existing condition.

In the health reform debate, insurance executives argued this preexisting condition clause would send costs skyrocketing unless the government forced everyone to buy insurance, bringing in the young and healthy to balance out the risk.

Still, Matheson hoped there would be another way to pay for it.

"I had a lot of reservations about the bill and quite frankly the mandate was one of them," he said, expressing concern the mandate could force people of modest means to spend heavily to get coverage in the private market.

Matheson wanted the Supreme Court to shake up the law and spur a renewed debate on health spending. He may have gotten his wish.

The court's decision on Medicaid will force leaders in every state to decide if they want to expand the program and cover millions of childless adults. Matheson worries if some states refuse, it could result in a flood of new people getting federal subsidies to buy insurance on the open market, which could make the cost of the program rise rapidly, or many of those people may forgo insurance and face a penalty they may not be able to afford.

Utah Attorney General Mark Shurtleff, one of the named plaintiffs in the case, said the Medicaid ruling was a big victory for the states, which won their argument on the Commerce Clause as well. While not satisfied with the ruling, he calls it a partial victory.

"We won our state rights arguments in the case," Shurtleff said. "It doesn't look like that because the Affordable Care Act stands."

mcanham@sltrib.com

Twitter: @mattcanham