Supreme Court brings up Utah’s health care exchange

Health care • Arguments revolve around whether law can stand if individual mandate for insurance is thrown out.

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Washington • Utah’s health care exchange was touted as a solution for individuals to purchase coverage without a mandate during Wednesday’s final day of Supreme Court arguments over the sweeping federal health care law.

The high court was weighing whether the two-year-old law could stand if justices were to reject a key part of the act: a provision called the individual mandate that forces all Americans to purchase health care coverage.

In questioning a lawyer challenging the law, Justice Elena Kagan said it appeared the act and its benefits to consumers could operate outside of the requirement that everyone buy coverage.

“Although the exchanges function perfectly well in Utah, where there is no mandate,” Kagan said. “They function differently, but they function.”

Kagan, whom observers expect to support the Barack Obama administration in upholding the Affordable Care Act, hinted in her line of questioning this week that the individual mandate should stand. But she seemed to suggest Wednesday that if the court strikes that mandate, it doesn’t have to throw out the rest of the law.

“Is half a loaf better than no loaf?” Kagan said, referring to a loaf of bread as a metaphor for the health care law. “And on something like the exchanges, it seems to me a perfect example where half a loaf is better than no loaf. The exchanges will do something.”

Jonathan Neal, a senior at Howard University, plays his trumpet in support of health care reform in front of the Supreme Court in Washington, Wednesday, March 28, 2012, on the final day of arguments regarding the health care law signed by President Barack Obama. (AP Photo/Charles Dharapak)
Paul Clement, a lawyer representing 26 states challenging the law often referred to as Obamacare, argued that leaving parts of the law in place could create a situation where judges and juries across the country would be defining the aftermath versus allowing Congress to come up with a new law.

“I think there are situations where half a loaf is actually worse,” Clement said.

Half a loaf is precisely how consumer advocates in Utah characterize the state’s exchange.

It has worthwhile elements, allowing employees to shop on a web site for the cheapest and best coverage with their own cash plus contributions from their employer, said Judi Hilman, Executive Director of the Utah Health Policy Project. “But it’s not enough to put all of the insurance products on display on a slick, Travelocity-like interface.”

The exchange is only open to workers at small businesses and, to date, only 247 of the state’s 65,000 small companies shop there.

“We’ve surveyed small businesses to death and what they want is to share risk with other businesses,” said Hilman, noting that that can’t happen without a mandate to bring young people into the pool. Without the mandate and subsidies to make coverage affordable, all Utah’s exchange does is allow employers to pass more of the costs onto their employees, she said.

Utah Attorney General Mark Shurtleff, who attended the hearings this week and is one of the petitioners against the law, said outside the court that the whole law needs to fall and the justices need to give Congress “a clean slate.”

“I keep going back to what the act is called: the Patient Protection and Affordable Care,” Shurtleff said. “You can’t have one without the other. You toss out the mandate, that’s what made it affordable, it fails in and of itself.”

Sen. Mike Lee, a Utah Republican and former Supreme Court clerk, also watched the arguments from inside the court and said afterward that he believes the law will be tossed out on a 5-4 vote.

The senator said he saw even more concern Wednesday from the high court about leaving in place only parts of the law than he heard the day before about the individual mandate.

“I sensed here again strong skepticism on the part of the five members of the court who are often referred to as conservatives,” Lee said, adding that he, too, believes the law cannot be split up and still work.

“Without the heart the rest of it can’t function and it’s done,” Lee said.

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