On Day 3, Justices Weigh What-Ifs of Health Ruling

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State attorneys general left the Supreme Court on Wednesday after the final day of arguments about the health care law. The court is expected to rule in June. More Photos »

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WASHINGTON — The day after the Supreme Court suggested that President Obama's health care law might be in danger of being held unconstitutional, the justices on Wednesday turned their attention to the practical consequences and political realities of such a ruling.

The justices seemed divided on both questions before them: What should happen to the rest of the law if the court strikes down its core provision? And was the law's expansion of the Medicaid program constitutional?

The two arguments, over almost three hours, were by turns grave and giddy. They were also relentlessly pragmatic. The justices considered what sort of tasks it makes sense to assign to Congress, what kinds of interaction between federal and state officials are permissible and even the political character of the lawsuits challenging the law. One justice dipped into Senate vote counting.

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The court had in other words, on the third and final day of a historic set of arguments, moved from the high theory of constitutional interpretation to the real-world consequences of what various rulings would entail.

The arguments concluded the most closely watched Supreme Court proceedings since Bush v. Gore in 2000, and it left both supporters and opponents of the health care law mapping strategies for the months until the court decides the case, probably in late June, and for the aftermath of that ruling.

In a 90-minute morning session, the justices considered the consequences of striking down the law's requirement that most Americans obtain health insurance or pay a penalty.

Lawyers and judges are used to arguing about hypothetical propositions, and the entire morning argument proceeded on the assumption that the provision, often called the individual mandate, was going to be struck down. Still, a long argument built on that proposition seemed to give the notion a further patina of plausibility after the skeptical questioning about the mandate on Tuesday.

Some justices suggested the entire law should fall, on the theory that members of Congress would not have voted for it without the mandate. Others indicated that the court should take a minimalist approach, leaving the balance of the law intact. The decision under review, from the federal appeals court in Atlanta, had taken that second approach.

But neither the Obama administration nor the challengers agreed, and the Supreme Court appointed H. Bartow Farr III, a Washington lawyer in private practice, to argue the point.

Justice Antonin Scalia said an analysis of how to proceed could not be divorced from the realities of the political process in Washington, which he said was beset by "legislative inertia."

"My approach would say if you take the heart out of the statute," he said, "the statute's gone."

He explained his reasoning: "You're not going to get 60 votes in the Senate to repeal the rest. It's not a matter of enacting a new act. You've got to get 60 votes to repeal it. So the rest of the act is going to be the law."

Justice Stephen G. Breyer at one point seemed to agree that the Supreme Court is not well suited to editing the balance of the law should the mandate fall.

"I would stay out of politics," he said. "That's for Congress, not us."

The practical question, Justice Ruth Bader Ginsburg said, was deciding between "a wrecking operation" and "a salvage job." "The more conservative approach," she said, "would be salvage rather than throwing out everything."

Striking down the whole law, Justice Sonia Sotomayor suggested, would be too broad an assertion of judicial power.

But Justice Anthony M. Kennedy said it could be judicial overreaching to leave parts of the law intact in light of the obligations it would continue to impose on insurance companies.

"We would be exercising the judicial power if one provision was stricken and the others remained to impose a risk on insurance companies that Congress had never intended," he said.

As the argument progressed, some justices wondered about their own competence to undertake a salvage job.

"You really want us to go through these 2,700 pages?" Justice Scalia asked a lawyer for the Obama administration, adding: "Is this not totally unrealistic? That we're going to go through this enormous bill item by item and decide each one?"

The lawyer, Edwin S. Kneedler, said the court should not strike down the mandate. If it does and decides to engage in judicial editing, he said, only two other provisions — one forbidding insurers from turning away applicants and the other barring them from taking account of pre-existing conditions — would also have to fall.

Justice Breyer proposed an idea: why not have the opposing lawyers sit down with the text of the law, note points of agreement, and report back to the court? He said it might be a "pipe dream," and the reaction from the other justices suggested it was.

The court reconvened for a rare afternoon argument, to consider a challenge from 26 states to the health care law's expansion of Medicaid, the joint federal-state program that provides health care to poor and disabled people.

The court's more liberal justices all expressed puzzlement about why there should be a problem with the expansion in light of the fact that it is almost entirely to be paid for by the federal government. The states say they are being coerced into participating because a decision not to may cause them to lose not only the new money but also existing funds.

Justice Elena Kagan described a hypothetical program only slightly different from the real one. "It's just a boatload of federal money for you to take and spend on poor people's health care," she said to a lawyer for the states, Paul D. Clement. "It doesn't sound coercive to me, I have to tell you."

Much of the argument concerned whether the secretary of health and human services could or would threaten states with a loss of all federal money. Solicitor General Donald B. Verrilli Jr. would not take a firm position, and that seemed to trouble several of the more conservative justices.

The discussion devolved into whether choosing between "your money or your life" was coercive. Justice Scalia asked the same question of "your life or your wife's," prompting

Justice Sotomayor to say of her colleague that “he’s not going home tonight.”

After a run of this, Chief Justice John G. Roberts Jr. declared, “That’s enough frivolity for a while.”

He said the court’s decision on the Medicaid expansion should be informed by the reality that the states have “since the New Deal” cheerfully accepted federal money.

“It seems to me that they have compromised their status as independent sovereigns because they are so dependent on what the federal government has done,” the chief justice said.

Justice Scalia addressed the political realities of the litigation itself, asking Mr. Clement whether there was “any chance that all 26 states opposing it have Republican governors, and all of the states supporting it have Democratic governors?”

Mr. Clement responded, “There’s a correlation, Justice Scalia.”

The cases heard Wednesday were National Federation of Independent Business v. Sebelius, No. 11-393, and Florida v. Department of Health and Human Services, No. 11-400.

Mr. Clement argued first in the afternoon, and Chief Justice Roberts, in an unusual move, allowed him extra time after his allotted half-hour had expired. When a red light signaled that Mr. Verrilli had hit his own half-hour deadline, the chief justice said, “You have another 15 minutes.”

“Lucky me,” said Mr. Verrilli, who had struggled in the face of vigorous questioning on Tuesday. “Lucky me.”

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