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WHAT A HEALTHCARE RULING COULD MEAN TO THE SUPREME COURT?

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Oct. 4, 2011: If the Supreme Court rules on the constitutionality of health care reform next year, its decision will have a huge impact on the entire country but it could also have a lasting impact on the reputation of the court itself.

Justices may be weighing this when they decide whether to rule on the law at the height of an election year, court experts say. They're now under intense pressure from all sides to take one of the health reform cases and decide it quickly.

But concerns about the impact it would have on Supreme Court as an institution could steer them away from an election-year ruling. "You could see every reason why the court would not want itself caught up with a legal issue that could be intimately related to the election," said New York University law professor Barry Friedman, author of "The Will of the People," a book about how public opinion shapes the high court.

There are plenty of questions the justices might be pondering besides the obvious legal ones. Could a ruling against the health care law actually help President Barack Obama by giving him something to run against? Or, conversely, would upholding the law put the court in the Tea Party's cross hairs? Would it be a waste of the court's time, since Republicans might just scrap the law anyway if they sweep the 2012 elections?

And might it undermine the perception that the court is above politics if it rules right before the country heads to the polls? It could be hard for the court to duck the issue, now that the Obama administration has asked it to overturn an 11th Circuit ruling striking down the individual mandate. But it's not impossible, legal experts say.

The justices could wait to take the case until other challenges to the Affordable Care Act have made their way through lower courts. Or they could say it's too soon to rule on whether the mandate is constitutional because no one has yet paid the fine for lacking insurance.

One reason justices could shy away from taking the case now even if they're tempted to strike down the law, explains Harvard Law School's Noah Feldman, is that such a ruling could actually help Obama in his reelection bid. "If you [strike down the ACA] before the election, you give Obama an issue to run against: He can run against the court," Feldman said.

Louis Michael Seidman, a professor of constitutional law at Georgetown University, said the court might also wonder if it's worth getting involved on a matter that the other two branches of government might make disappear if Republicans gain power in the election.



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"If I were a conservative justice, one of the things that would be going through my mind is that this thing is likely to collapse under its own weight in any event," Seidman said. "If one were an opponent of the Affordable Care Act, one might think it's better to let it die on its own than for the court to use its political capital to kill it."

But Friedman argued that justices take a longer view than a single election, and they are concerned with bigger issues than who will win the White House or whether a policy they dislike will stand.

Friedman believes the court is likely to take the case and rule before the election but he also thinks Chief Justice John Roberts might want to avoid rushing into this case, since he believes Roberts tends to prefer making an impact through lower-profile cases.

"The chief justice seems extremely cautious and has a good nose for keeping the court out of trouble," Friedman said. This sensitivity might even make Roberts wary of striking down the mandate, he said, "because he's the one who's most sensitive to the court's institutional role."

A new Gallup poll suggests the court is vulnerable to public disapproval. Just 46 percent of respondents said they approve of the court, down 15 points since 2009. But Gallup's findings also show the court is still the most highly regarded branch of government — 63 percent of Americans say they trust the Supreme Court a "great deal" or a "fair amount."

Obama hardly has the high approval he might need to spark a popular backlash against the court. That's a key difference between the potential health care ruling and a case that stands out in the history of politically charged Supreme Court decisions: a 1935 ruling that struck down a major New Deal law not long before Franklin Delano Roosevelt faced reelection.