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Health-Law Guessing Game Grips the Capital

By JANET ADAMY and JESS BRAVIN



A wave of anxious preparation has spread across Washington and beyond as both sides of the debate wait for the Supreme Court to decide its biggest case in years. Janet Adamy reports on Mean Street. Photo: AP.

Richard Mourdock, the Republican Senate hopeful from Indiana, didn't want to be caught flat-footed when the Supreme Court announced its highly anticipated decision on the fate of the health overhaul law.

So he taped one-minute videos responding to four different scenarios: the court upholds the law; it knocks down part of the law; it invalidates the entire law; or it declines to rule on the case's merits.



Getty Images

People waited outside the Supreme Court Monday to listen to rulings.

His planning backfired when the videos surfaced online last week before the court had released its opinion. In one premature breath, the Indiana state treasurer touts the "brief moment of celebration" over the court's decision to knock down the law. In the next, he laments that the court "has done what none of us really thought could happen: They've ruled ObamaCare constitutional."

A wave of anxious preparation has spread across Washington and beyond as both sides of the debate wait for the court to decide its biggest case in years. Some have taken to monitoring the justices' body language at public appearances for clues on the decision and tracking the odds of particular outcomes on

online trading markets.

"As the Boy Scouts say, 'be prepared,'" said Christopher Conner, a spokesman for the campaign of Mr. Mourdock, who opposes the law.

This month, court watchers dissected an appearance by Justice Ruth Bader Ginsburg, who usually votes with the court's liberal wing and gave a quip-filled summary of current cases at the convention of the American Constitution Society, a liberal legal group.

"If you watch Justice Ginsburg speaking about the Affordable Care Act case starting at the 27:40 mark of the video, she seems to be having fun talking about the case," Orin Kerr, a George Washington University law professor, wrote on the blog Volokh Conspiracy. Some believe "her tone [is] a modest but not-entirely-useless barometer of how her side is doing," and may reflect "some satisfaction with how the case came out," said Mr. Kerr, a former law clerk to Justice Anthony Kennedy.

Others have taken to obsessively checking the prediction market Intrade, which as of Sunday put the odds that the court rules the law's individual mandate unconstitutional at 79.9%.

Families USA, an insurance coverage advocacy that supports the law, initially drafted press released based on seven outcomes from the court. Then its executive director, Ron Pollack, got nervous they'd missed one scenario and told his staff to write up an eighth release.

Even predicting the day the decision will be released has become a game, with false alarms triggered by tips that the opinion was coming on a given day. The date of the court's decision remains uncertain, but most expect it before the end of the week.

The Manhattan Institute, a conservative think tank in New York, sent invitations to a "What the Obamacare Decision Means" event for Tuesday evening with cocktails and panelists, betting on a Monday ruling. If the court doesn't issue its decision then, the panel will be rescheduled since it "wouldn't be very interesting," said James R. Copland, a senior fellow at the institute.

Drew Altman, president of the nonprofit Kaiser Family Foundation, a health-care group, is struggling over whether to cancel a long-planned family trip to Croatia and Slovenia set to start Tuesday.

"I have been reminded that we skipped a honeymoon because of a long forgotten health-policy event," he said. "I think I will be directing Kaiser's response from a Slovenian cave. It better have Wi-Fi."

—Louise Radnofsky and Jie Jenny Zou contributed to this article.

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