

## Deal, Olens deride health ruling, seek its repeal in Congress

Governor Nathan Deal and Attorney General Sam Olens are calling on Congress to overturn President Barack Obama's health care law after the U.S. Supreme Court dealt Georgia and other opposing states a blow by upholding the individual mandate and other provisions of the law.

The governor and AG issued a statement Thursday saying the law will place "crippling mandates on the taxpayers of Georgia."

Olens was absent from Thursday's press conference because he was in Washington with Republican presidential candidate Mitt Romney and his campaign team.

Olens said in a written statement that he disagrees with the opinion.

"Congress explicitly said this was not a tax," said Olens. "I call on Congress to act swiftly to repeal the law and replace it with real reform that respects the Constitution as written."

Deal said during a news conference at the Capitol Thursday afternoon that he was surprised the high court found the individual mandate constitutional because he felt "the court had sent strong signals that it had a problem with that."

"It's ironic to me that it was held as constitutional not because it's a proper exercise of the federal government under the Commerce Clause and only because of federal taxation authority over states and citizens," Deal said.

Deal said he doesn't know if Georgia will comply with the part of the law that expands the pool of residents covered by Medicaid. The court's opinion said the federal government can't withhold funding to states that don't participate in the program, thus rendering it unenforceable.

"We are in a holding pattern until we see what the events of November bring us," he said, referring to the 2012 presidential election.

If Georgia were to expand its Medicaid program to include residents who fall within 138 percent of the federal poverty limit, it would see an additional 620,000 enrollees in 2014, representing a 34 percent increase, Deal said. The increase would cost the state about \$76.3 million during the last six months of fiscal year 2014, Deal said, citing projections from the state Department of Community Health and the Office of Planning and Budget.

Georgia's involvement in the fight against the federal health care law began in the spring of 2010, when then-Governor Sonny Perdue, a Republican, asked then-Attorney General Thurbert Baker, a Democrat, to file suit

to block the law. Baker declined, writing in a letter to the governor's office that a suit would have "little or no chance of success" and would "undoubtedly consume significant state resources in a time of severe budgetary crisis."

While Baker wouldn't agree to represent the state in its fight, he said he wouldn't stand in the way of the governor. Perdue then tapped a team of pro bono special assistant attorneys general to challenge Obama's health plan. They were led by Frank Jones, a former King & Spalding partner who's now of counsel at Jones, Cork & Miller. The team included Michael Russ, retired partner at King & Spalding; **Jason Alloy** and **Joshua Belinfante** of **Robbins Ross Alloy Belinfante Littlefield**; Pitts Carr of Carr & Palmer; John Parker Jr. of Parker, Hudson, Rainer & Dobbs; Court of Appeals Judge Keith Blackwell, who Deal recently elevated to the Georgia Supreme Court and who was a partner at Parker, Hudson, Rainer & Dobbs at the time; and Mercer University law professor David Oedel.

Olens picked up the mantle after being elected AG in 2010. During his campaign, he promised to join the litigation filed against the health care law.

Soon after Olens took office in January 2011, Georgia joined a multi-state lawsuit challenging the law. Georgia later filed briefs jointly with 25 other states in both the U.S. Court of Appeals for the Eleventh Circuit and in the U.S. Supreme Court. Olens also attended two of the three days of oral arguments in Washington in late March.

Despite Baker's prediction that fighting the health care law would be costly for Georgia, the Law Department estimated Thursday that it spent less than \$15,000 — a figure that includes paying \$10,000 to Washington-based lawyer Paul Clement, who represented the states, and about \$1,000 in travel expenses for Olens to attend Supreme Court arguments.

What's more, Olens said he had a fiscal and policy-based obligation to fight the health care law.

"Obamacare is ruinously expensive for taxpayers, the state, and the nation," he said in a statement.

"Moreover, the Obama Administration was claiming unprecedented authority for the bill under the Commerce Clause and the Spending Clause, which stretched the Constitution beyond all recognition. I felt it was vital both to defend our Constitutional system of federalism and defend the state and its taxpayers against the fiscal crisis Obamacare would cause."

Deal, who was in Congress when the health care reform act passed, said Thursday, "my battle with Obamacare didn't start when I was elected as governor of Georgia [in 2010]. I wear with pride my bruises and scars from the fight against its passage in the U.S. House."

Parker said he feels the Supreme Court decision relating to the Commerce Clause is important because it draws a "clear line on how far the federal government can use the clause to justify its actions." Just as important, Parker said, is the ruling on Medicaid expansion, which essentially holds that penalizing states for opting out of the expansion is coercion.

"As a lawyer, why it's so huge is it's the first time the Supreme Court has gone that far to apply the spending clause to limit the powers of the federal government," he said. Belinfante, who is now running as a Republican challenger to incumbent state Senator Doug Stoner, D-Smyrna, said he believes the 5-4 decision undermines federalism. However, he said Georgia did realize some legal successes in its arguments against

the health care mandates.

The majority opinion on the tax issue also may lead to further legal questions about what extent the federal government can impose taxes to penalize or encourage certain actions, Belinfante said.

"That door remains open for interpretation down the road as the court's opinion was not particularly consistent or clear," he said. "Using the court's own analogy to nutritious food and given what cities across the country are doing, it leaves open what Congress' role could be to compel Americans to buy healthier food products."

While Republican lawmakers in Georgia are echoing calls for Congress to repeal the health care laws, Belinfante said there may be future legal battles against the law.

"I would never say that attorneys will prove unsuccessful in finding new and creative ways of challenging the act," he said.

For instance, challenges to mandatory contraceptive coverage for religiously affiliated employees would have been made moot if the health care reform law were struck down, but now those cases may proceed through the federal court system.