

Health Care Reform: Supreme Court Update

Laurie Bracelin | 717-354-4774 | lbracelin@millig.com



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Update on the Challenge to Health Care Reform Law at the Supreme Court

The United States Supreme Court heard oral arguments last week on the following questions with respect to the Affordable Care Act:

- Whether the Anti-Injunction Act will prevent the Court from hearing challenges to the individual mandate provision until the time that penalties are actually assessed;
- Whether the individual mandate is an unconstitutional exercise of Congress' power to regulate commerce;
- Whether and to what extent the remaining provisions of the Affordable Care Act can survive if the individual mandate is deemed unconstitutional; and
- Whether the expansion of Medicaid is an unconstitutional burden imposed by Congress on the States.

While the questions from a particular Justice do not always indicate his or her thinking on a matter, observers feel

there is a fair possibility that the conservative Justices will stick together and find the individual mandate to be unconstitutional. Unfortunately, there was no clear indication based on the questions posed regarding what would then happen to the remainder of the law. The Court is expected to make a decision by the end of June. In its decision, we can expect the Court to:

1. Do nothing for now and wait to hear the issues until the actual penalties are assessed in 2015;
2. Uphold the entire law, including the individual mandate;
3. Strike down the individual mandate and hold that the remainder of the law stands; or
4. Strike down the individual mandate and hold that some, but not all of the law's other features stand.

We will continue to keep you apprised of any new developments.

Below is a brief summary of the issues presented at the Court:

Anti-Injunction Act

The first question dealt with by the Court was whether the Anti-Injunction Act prevents it from hearing the case until after penalties have been assessed under the Affordable Care Act. During the oral arguments, all of the Justices seemed skeptical that the Anti-Injunction Act applied to the individual mandate. Most observers think the Court will not delay a decision based on this.

Individual Mandate

The Court also heard arguments on whether the Commerce Clause allows Congress to require individuals to purchase private health insurance. According to observers, the Justices appeared to split more along ideological lines. It is important to note that Justice Kennedy, who is often the swing vote in close decisions, appeared to have difficulty accepting the line of reasoning that the mandate is within Congress' limited power to regulate commerce. Many experts are stating that the chances of the Court finding the individual mandate unconstitutional are 50/50 or slightly better. It seems that Justice Kennedy, and possibly Chief Justice Roberts will be the key votes on this issue.

What Happens to the Remaining Provisions if the Individual Mandate is Deemed Unconstitutional?

The issue here is if the Court deems the individual mandate unconstitutional, can it be removed from the law and the rest of the law stand, or will the entire legislation fail? The questioning by the Justices was not completely along ideological lines and they seemed to struggle not only with whether the rest of the law could stand, but also whether individual provisions should be examined section by section. It is not clear what the Court will do here, and it is again likely that Justices Kennedy and Roberts will be key players in making the decision. According to observers, neither of them showed a clear inclination as to their thinking in their questioning.

Medicaid Expansion

As many experts have predicted, it seems the expansion of the Medicaid eligibility on the States by government will likely be permissible.