

March 30, 2012

Supreme Court PPACA Oral Arguments Completed

The U.S. Supreme Court has concluded hearing oral arguments in the case to determine the constitutionality of the Patient Protection and Affordable Care Act (PPACA). The justices heard a total of six and a half hours of arguments over three days, the most time the high court has devoted to oral arguments since 1966. The Supreme Court hearing on healthcare reform is significant. It is among the most historic cases in the history of the country. The Court is expected to issue its decision in June.

The Court addressed four fundamental questions raised by two principal challenges to the law. These questions concerned:

- *Applicability of the Anti-Injunction Act:* If the individual mandate penalty is determined to be a “tax,” the Anti-Injunction Act may prohibit the court from ruling on the matter until the tax is actually owed in 2015. (An audio recording of the March 26th [arguments is available here](#) and a [transcript is available here](#)). It appears that the Justices are unlikely to hold that the AIA bars its review of the constitutionality of the individual mandate and its related penalty under PPACA.
- *Applicability of the Constitution’s Commerce Clause:* The central question the Court will determine is whether the law’s individual mandate – the requirement to purchase health insurance – is within the scope of Congress’ authority to regulate interstate economic activity under the Commerce Clause of the Constitution. (An audio recording of the March 27th arguments and a transcript [are available here](#)). The Justices appear to be divided along ideological lines. Justice Kennedy appears to be the swing vote, though it is possible that Roberts may also be swayed by a majority argument.
- *Severability of the Individual Mandate:* If, and only if, the mandate is determined to be unconstitutional, the Court must rule on whether other parts of the law (such as the individual insurance market reforms and the employer responsibility provisions) must also be invalidated. The justices are struggling with the standard that should be used in determining what provisions of PPACA must be stricken should the individual mandate be found unconstitutional. Current precedent does not provide a satisfactory answer to this question.
- *Applicability of the Constitution’s Spending Clause:* The Court will determine whether the law’s Medicaid expansion is unconstitutional – i.e., whether the federal funding for the expansion coerces or merely encourages the states to comply. An audio recording of the March 28th arguments and a transcript [are available here](#).

This healthcare reform case will be the news story of 2012 aside from the presidential election. At this point, it is difficult to determine what the justices' final decision will be. It appears that the Anti-Injunction Act argument will be disregarded, but it remains unclear from the proceedings which way the justices are leaning with regard to the individual mandate's validity. With regard to the employer requirements, if the Court rules that the individual mandate is unconstitutional, then the 'shared responsibility' provision of the law requiring employers to offer health coverage that satisfies the individual mandate might also be struck down as the various insurance market reforms of PPACA — such as "guarantee issue" requirements and prohibitions on preexisting conditions — are arguably inseparable from the individual mandate.

Employers are advised to continue to monitor healthcare reform developments. Should you have questions about this or any aspect of federal health insurance reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).

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