Supreme Court Hears Health Care Reform Law Challenge

A number of legal challenges to the health care reform law were filed in federal court almost immediately after the law was passed in March 2010. Nearly all of the lawsuits were based on constitutional grounds, challenging the constitutionality of the law's individual mandate. The U.S. Courts of Appeals that reviewed the cases were split in their decisions.

The U.S. Supreme Court heard oral arguments regarding the health care reform law March 26-28, 2012. The Justices heard six hours of oral argument on the law's constitutionality and related issues. This is an extraordinary amount of time for oral argument—most modern court cases only receive one hour of oral argument—and is indicative of the importance of the health care reform law challenges.

This Gowrie Group Legislative Brief outlines the legal issues surrounding the law and reviews the three days of oral arguments heard by the Supreme Court.

LEGAL CHALLENGES TO THE HEALTH CARE REFORM LAW

Individual Mandate

The main legal controversy surrounding the health care reform law has been whether Congress had the authority under the Constitution’s Commerce Clause to pass the health care reform law's individual mandate. The Commerce Clause gives Congress the power to regulate multi-state, economic activity.

Beginning in 2014, the individual mandate generally requires individuals to purchase health insurance or pay a penalty. Opponents of the health care reform law argue that the Commerce Clause does not give Congress the power to regulate economic inactivity (that is, the decision not to purchase health insurance). Proponents of the law point to the health care costs associated with the uninsured to demonstrate the economic effect of not purchasing health coverage.

Medicaid Expansion

The Supreme Court also heard a challenge to the health care reform law’s expansion of Medicaid. The law requires states to expand eligibility for Medicaid to cover additional individuals beginning in 2014. However, this portion of the case is not expected to have the same impact as a ruling on the constitutionality of the individual mandate.

Tax Anti-Injunction Act

The initial question for the Court is whether it can even make a decision on the merits of the lawsuit. An 1867 law—the Tax Anti-Injunction Act—could put a procedural roadblock in the way of a resolution. This law states that a tax must be effective before a lawsuit can challenge it. This law could affect the health care reform case because the penalty associated with the individual mandate is collected in the same way as a tax. If the Court finds that the Tax Anti-Injunction Act applies to this situation, a ruling could be delayed until 2015 or later.

Despite the potential application of this law, the Court heard arguments on all issues related to the case. However, it remains to be seen whether the Court will decide it has the authority to decide the case’s merits.
SUPREME COURT REVIEW

Day One: The Anti-Injunction Act

On the first day of oral arguments, the Court questioned whether the Tax Anti-Injunction Act would delay a ruling until after the individual mandate takes effect. Attorneys for both sides argued that the Anti-Injunction Act should not apply in this situation and should not delay a decision on the constitutionality of the law. To ensure that it reviewed all aspects of the issue, the Court appointed an independent attorney to present the argument for the other viewpoint: that the Anti-Injunction Act bars the Court from hearing a challenge until a penalty under the law is imposed.

The Justices’ questions appeared to indicate that they were leaning away from applying the Anti-Injunction Act, meaning that they would be able to progress to reviewing the merits of the case. The discussion partly turned on the terminology used in the law; the law refers to a “penalty” for violating the mandate, not a “tax.”

Justice Breyer stated that “the purpose of the Anti-Injunction Act is to prevent interference with the revenue stream” and noted that this particular legal challenge does not interfere with revenue collection. Justice Sotomayor also mentioned that the Court will generally hear extraordinary cases, indicating that the health care reform challenge is such a case and suggesting that the Court would move forward with a decision.

Day Two: The Individual Mandate

The Court’s review of the constitutionality of the individual mandate itself was the mostly highly-anticipated portion of the oral arguments. The key issue here is whether Congress has the authority under the Constitution to require individuals to purchase health insurance. Most of the arguments centered on whether enacting the mandate fell within the Congressional power to regulate interstate commerce. Opponents of the law argue that forcing people to engage in commerce is not the same as regulating commerce and is not permissible.

The direction of the Justices’ questioning regarding the individual mandate varied. Justices Alito and Scalia appeared skeptical of the Obama Administration’s arguments. Although Justice Thomas did not speak, he is expected to vote against the law. Justices Breyer, Ginsburg, Sotomayor and Kagan seemed to indicate that Congress acted appropriately in passing the law. Chief Justice Roberts and Justice Kennedy will likely cast the decisive votes on this issue.

The Court discussed whether or not the power of Congress could be limited in the future if the individual mandate is allowed to stand. For example, the Justices asked if Congress could also mandate the purchase of gym memberships, cell phone purchases and health foods such as broccoli. The Solicitor General, arguing in favor of the law, attempted to distinguish health care from any other industry based on its unique characteristics, suggesting that Congress would not be able to exercise this type of power in other situations.

Day Three: Severing the Individual Mandate and Medicaid Expansion

On the final day of oral arguments, the Court discussed what should happen to the rest of the health care reform law if the individual mandate is found to be unconstitutional. Opponents of the law argued that without the individual mandate, the law cannot function as intended and would have to be struck down in its entirety. However, the Obama Administration took the position that only certain provisions of the law—those related to guaranteed issue and underwriting restrictions—would be invalid. Accordingly, those parts of the law could be severed and all other provisions could stand.

The Justices’ questions seemed to suggest that the provisions of the law related to and affected by the individual mandate would have to be stricken if the individual mandate is found to be unconstitutional. However, opinions appeared divided on whether only those provisions would be struck down. Justices Kagan, Breyer, Ginsberg and
Sotomayor focused on the number of health care reform provisions that were unrelated to the individual mandate. Their discussion suggested that those parts of the law should be unaffected by a ruling on the individual mandate.

The Court also addressed whether the Medicaid expansion required by health care reform is constitutional. The states challenging the law argued that the conditions to receive federal funds for the Medicaid expansion threatened the independence of the states as well as their fiscal integrity. The Justices again appeared divided on whether the conditions imposed by the federal government were too burdensome.

POSSIBLE OUTCOMES

Although the Justices seemed to indicate their positions on the health care reform law through their questions, it is difficult to predict how the Supreme Court will rule on the health care reform law. However, it is possible to identify possible outcomes of Court’s review related to the individual mandate:

- **Decline to Review the Law.** The Court might decide that the challenge is premature, based on the fact that no individual has yet been required to purchase insurance or pay a penalty. This would simply delay what are likely inevitable further challenges to the law. The Court seems unlikely to take this approach. However, if it does, implementation of the health care reform law would continue as currently required until a future challenge is ripe for review.

- **Uphold the Entire Law.** The Court could agree with the 6th and D.C. Circuits and rule that Congress acted within its constitutional authority when enacting the individual mandate. If so, the implementation of the law would continue as scheduled. However, this ruling would leave the door open for Congress to attempt to change the law.

- **Strike Down the Entire Law.** The individual mandate is a key component of the health care reform law. If the Court determines that the individual mandate is unconstitutional, it could also find that the rest of the law cannot stand without it. Health care policy experts have suggested that, without the individual mandate, health care reform’s other insurance market reforms would be difficult to implement. This approach would likely affect popular provisions of the law that are already effective.

- **Strike Down Only the Individual Mandate.** Despite these concerns, it is possible that the Court could strike down only the individual mandate, leaving the remainder of the law intact. If the individual mandate is ruled invalid and health insurers are still required to comply with other rules like the guaranteed issue, preexisting condition exclusion and underwriting restrictions, it is speculated that health insurance costs would skyrocket because people would tend to buy coverage only when they actually need it.

- **Strike Down the Individual Mandate and Related Provisions.** Because of the potential impact on the health insurance market, the Court could strike down provisions related to the individual mandate if it finds they cannot be separated. This would avoid potential drastic effects on premiums, but would also interfere with increasing the number of covered individuals, which was a main purpose of the law.

WAITING FOR THE DECISION

The Justices have likely already made their decisions on the issues being reviewed. According to the Court’s standard procedure, the Justices met on March 30, 2012, to cast their votes, which will remain confidential until the Court’s formal opinion is released. The next part of the process involves drafting the official opinions—the majority opinion along with any concurring or dissenting opinions. The Court’s decision is expected to be released sometime in June.

Gowrie Group will continue to monitor the status of the health care reform law and will provide updated information as it becomes available.