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Fate of Health Reform is Uncertain After Supreme Court Oral Arguments

After three days of historic oral arguments before the U.S. Supreme Court, the fate of the Affordable Care Act (ACA), the momentous 2010 health reform law, is uncertain, given robust questioning of the ability of Congress to force individuals to purchase health insurance. During six and a half hours of arguments over three days, the Court heard arguments concerning four questions surrounding the ACA:

- whether the Court has jurisdiction to hear the case under the 1867 Anti-Injunction Act, which prohibits courts from hearing cases involving a tax before the tax is due;
- whether Congress has the power to require individuals to maintain a minimum of health insurance;
- whether the rest of the ACA can remain if the individual mandate is found unconstitutional; and
- whether the expansion of the Medicaid program imposes an undue burden on the states.

Given the vigorous questioning of all sides by the Court, observers were left wondering how the Court will rule. A decision by the Court is expected in late June.

Can the Court Hear This Case Under the Anti-Injunction Act?

On March 26, the Court heard arguments whether the 1867 Anti-Injunction Act, which bars lawsuits “for the purpose of restraining the assessment or collection of any tax,” precludes the Court from considering the merits of the constitutionality of the ACA. The ACA imposes a penalty – assessed and collected by the IRS – on those who fail to obtain health insurance coverage beginning in 2014. If this penalty is truly a penalty, then the AIA does not bar the Court from ruling. If, however, the penalty is a “tax,” the case is premature and may only be brought when the first tax is actually paid in 2015.

Only one lower court, the U.S. Fourth Circuit Court of Appeals, has held that the Anti-Injunction Act prevents the matter from being heard. Because of the uniqueness of this issue, the Supreme Court took the unusual measure of appointing special counsel to argue this position. However, both the Obama Administration and the counsel for the States took the position that the Anti-Injunction Act does not apply and the Court is free to rule on the merits.

The Supreme Court justices were skeptical that the Anti-Injunction Act barred a decision on the case. Chief Justice Roberts also noted that the Court ruled in 1937 that the government could waive its right to delay such cases. Given the historic importance of the ACA, it appears likely that the Court will issue an opinion in this case and not delay its decision.

Is the Individual Mandate Constitutional?

On March 27, the Court heard arguments on the individual mandate that requires individuals to maintain minimum health insurance coverage. The Court focused heavily on the government's ability to force individuals to purchase health insurance as part of its power to regulate interstate commerce. Justice Kennedy, seen as a key swing vote, seemed skeptical of the expansion of government authority, even if it was clear that an individual's purchase of health insurance affected interstate commerce, which has typically been the keystone of whether Congress has exceeded its powers under the Constitution's Commerce Clause. Justice Kennedy stated that the government had a "heavy burden" in defending a federal mandate to purchase health insurance. From their questioning, it was unclear how the Court would rule on the mandate, although the Court's conservative justices appeared to have the upper hand in controlling this part of the argument.

Could the Entire Health Reform Act Be Declared Unconstitutional?

On March 28, the Court heard arguments on whether the individual mandate is severable from the rest of the ACA. If the Court were to rule the individual mandate unconstitutional, the Court would then be left with the decision to declare the entire ACA unconstitutional or sever the mandate, and let the rest of the ACA stand. The justices struggled with this dilemma, wondering aloud if "half a loaf were better than no loaf" and whether Congress intended the individual mandate to stand on its own. The justices also questioned whether there was any standard for severability. Some of the justices wondered aloud if "legislative inertia" would prevent Congress from fixing the ACA if the mandate were severed from the rest of the statute.

Medicaid Expansion Under Review

Finally, the Court heard arguments debating whether the Medicaid expansion in the ACA imposed an undue – and unconstitutional – burden on the states. Medicaid is a joint state-federal program, with the federal government paying approximately 60% of Medicaid costs. Under the ACA, the Medicaid program was expanded to include adults earning up to 133% of the federal poverty income level. Some states challenged the expansion, saying the law coerces them to cover more poor citizens than they wish, under threat of being kicked out of the Medicaid program. Before oral arguments, many Court observers thought this issue would merit little attention from the Court. However, the conservative wing of the Court aggressively questioned the Obama administration's defense of this part of the law, drawing into question whether the court might curtail Congress's ability to make further changes to the Medicaid program.

A Decision Is Expected in Late June

While it is difficult to predict how the Court will ultimately rule, it is clear that the government faces an uphill battle convincing the conservative justices that Congress was within its powers when it enacted health care reform in 2010. The Court is expected to issue a decision on or near its last day of this term, which falls on June 25, 2012.