

Introduction

(The Patient Protection and Affordable Care Act's Road to the Supreme Court of the United States)

Coverage, accessibility, cost accountability and quality of health care are just a few of the issues the Obama Administration claimed to reform with the Patient Protection and Affordable Care Act (P.L. 111-148, PPACA). Proponents of the legislation praised how successful PPACA would be in addressing the woes plaguing the American health care system; opponents, however, projected the Act would do more harm than good. Despite PPACA being signed into law on March 23, 2010, and amended on March 30, 2010 by P.L. 111-152, the Health Care and Education Reconciliation Act of 2010 (HCERA), its provisions have been subject to legal debates over the statute's constitutionality.

While the impact of the law is heavily debated, four primary arguments surround the debate against PPACA's constitutionality before the Supreme Court. These include the **individual mandate**, the application of the **Anti-Injunction Act**, the lack of a **Severability Clause** in the statute, and the **Medicaid expansion** contained in the law. As of January 1, 2014, under the Patient Protection and Affordable Care Act, all U.S. citizens are required by law to either purchase qualified health insurance deemed so by the federal government or be covered under a government-sponsored program. If an individual chooses not to partake in either option a "tax penalty" of \$95.00 or 1% of income, whichever is greater, will be imposed. By 2016, however, the penalty stands to increase to \$695.00 for an uninsured adult up to \$2,085.00 per household, or 2.5% of income, whichever is more. (*insert hyper-links for 4 arguments above*)

Aside from issuing a "tax penalty," the Patient Protection and Affordable Care Act will also issue employer penalties. By 2014 the health care law will require all businesses, larger than 25 full-time employees and eligible for a tax credit, to begin offering affordable coverage. If not, the employer is subject to penalties for either not providing any health insurance to their employees or not providing affordable enough coverage. The penalty for

businesses who do not offer coverage, but have employees who have received a premium tax credit or cost sharing subsidy in an exchange, is \$2,000.00 annually times the number of full time employees minus 30; increasing each year by the growth in insurance premiums. Additionally, employers that do not offer affordable coverage will pay a \$3,000.00 annual penalty for each full time employee receiving a tax credit, up to a maximum of \$2,000.00 times the number of full time employees minus 30. The penalty is increased similarly to the employers who do not offer any coverage at all--- each year by the growth in insurance premiums.

The most pressing argument against PPACA comes from opponents who argue Congress does not have the authority under the Commerce Clause to enact the individual mandate--- forcing citizens into health coverage or, essentially, charging them a fine. Many insist that the individual mandate is essential to upholding the entirety of the law and without it the law should fall. In support of their argument, opponents point to the lack of provision(s) within the U.S. Constitution guaranteeing a right to health care services from the government for those who cannot afford it; despite proponents who argue the power of Congress to enact the law exists within both the Commerce Clause and the Necessary and Proper Clause.

Six challenges to the Patient Protection and Affordable Care Act arose within the U.S. District Courts; of those cases, two have been ruled on and two have been dismissed within the U.S. Circuit Court of Appeals. The first decision handed down on June 29, 2011, by the Sixth Circuit Court of Appeals in Cincinnati, upheld the entirety of the health care law. The second ruling was announced on August 12, 2011, from the Eleventh Circuit Court of Appeals in Atlanta. This decision found the individual mandate to be unconstitutional, but found the provision severable from the rest of the law. Therefore, the Eleventh Circuit issued their opinion that the rest of the law should still stand.

Despite the Eleventh Circuit finding that the “district court placed undue emphasis on the [PPACA’s] lack of severability clause,” it recognized the proximity of the severability question, with specific regard to two reforms

under the health care law: guaranteed issue health insurance, and the prohibition on preexisting condition exclusions. The Eleventh Circuit's opinion is important for three primary reasons. First, the court's ruling establishes a circuit split because of the Sixth Circuit's ruling that upholds the constitutionality of the individual mandate; meaning, Supreme Court review was anticipated. Second, this is the first decision handed down from a judge appointed by a Democrat to rule against the Obama Administration on the constitutionality of any provision within the health care law. Lastly, the Eleventh Circuit case has been considered, perhaps, the most important legal challenge to PPACA. This has much to do with the fact that 26 states have contested it, in addition to the National Federation of Independent Business, as well as, the questionability behind the validity of PPACA's conditions on states' access to federal Medicaid funds--- claiming them coercive.

On September 28, 2011, in response to the Eleventh Circuit Court's ruling, the Justice Department petitioned the Supreme Court of the United States (SCOTUS) to decide the constitutionality of the individual mandate within the Patient Protection and Affordable Care Act; particularly asking for review of the Eleventh Circuit Court's decision. The Supreme Court announced on November 14, 2011, that it would hear challenges against PPACA and granted a writ of certiorari in the case *Florida v. HHS* (Health and Human Services). By ordering a writ of certiorari, the Court enabled itself to review the decisions and proceedings of the lower courts, including the transmittance of records per case, through an appeal to determine whether any irregularities were made in original rulings.

Shortly following their announcement, SCOTUS also declared it would rule on the constitutional challenges on PPACA from two other appellate cases associated with *Florida v. HHS* including: *U.S. Department of Health and Human Services (HHS) v. Florida* (No. 11-393) and *National Federation of Independent Business v. Sebelius* (No. 11-393). The four central issues combined from the court's decisions will be considered through an unusual 5.5 hours of oral arguments presented to the Supreme Court.

While the Court has already prioritized time for arguments regarding issues over the individual mandate, SCOTUS has also requested that both parties involved in *Florida v. HHS* raise the question of whether or not the suit violates the Anti-Injunction Act. This stems from whether the individual mandate qualifies as either a “tax penalty” or a “fine” on the participants involved. Additionally, in the examination of The National Federation of Independent Business, a party to the *Florida v. HHS* lawsuit, the issue of severability will be discussed.

The oral arguments will begin on March 26th and continue through March 28th of this year. On March 26th, SCOTUS will hear 1 hour of arguments on the Anti-Injunction Act. Day 2 will include 2 hours on the individual mandate, and day 3 will include 2.5 hours of debate regarding the Severability Clause and Medicaid expansion.

The United States Justice Department is remaining staunch in its argument that if the Court finds the health law’s mandate unconstitutional, it should only strike the community rating and guaranteed issue provision, not the entire law. Regardless of if or which way the Supreme Court rules on PPACA, their decision or lack-there-of will both economically and politically change U.S. health care history--- making it easily the most consequential and far reaching issue to be debated before the U.S. Supreme Court since *Brown v. Board of Education*.