

Supreme Court Hears Second Day of Health Reform Argument

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Yesterday the Supreme Court heard oral arguments regarding the constitutionality of the Patient Protection and Affordable Care Act's (PPACA) individual healthcare mandate, which requires most Americans to purchase some type of health insurance.

Florida and 25 other states argued that the federal government does not have the authority, under the commerce clause, to regulate economic inactivity. Specifically, the claimants assert that the federal government cannot compel individuals to enter into commerce, in this instance to purchase mandated health insurance.

Chief Justice Roberts, along with Justices Alito and Scalia, expressed concern that to uphold the constitutionality of the individual mandate would be an unprecedented step towards governmental regulation of private choice by allowing Congress to force Americans into the market place to buy insurance they do not want and may never need. The Solicitor General countered the Justices' comments by pointing to the uniqueness of the healthcare industry arguing that such measures are appropriate in this instance.

Justices Breyer, Ginsburg, Kagan and Sotomayor, through their comments and questions, seemed inclined to uphold Congress' power to utilize the mandate in the healthcare context. It was Justice Kennedy who appeared as the potential deciding vote. Justice Kennedy questioned at the outset of oral arguments whether the government has the power to "create commerce in order to regulate it?" However, by the end of the morning, he indicated that if limiting principles were present within the mandate, it might survive the constitutionality question.

The Court will resume for a third and final day to hear arguments regarding the issues of severability of the mandate provision from the rest of the Act and the constitutionality of the expansion of the Medicaid program.



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