

Supreme Court Hears Third and Final Day of Health Reform Argument

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Yesterday the Supreme Court resumed for a double session to hear oral arguments regarding the issues of the mandate's severability from the rest of the Patient Protection and Affordable Care Act (PPACA) and the constitutionality of the expansion of the Medicaid program.

The Court first heard arguments regarding whether, if the individual mandate was held to be unconstitutional, it could be severed from the rest of the Health Reform Act. If the individual mandate cannot be severed from the remainder of PPACA, the entire Act would be deemed unconstitutional. The Court seemed resistant to the argument that if the individual mandate was stricken, the entire Act would be invalidated. However, the Justices did not indicate that they agreed with the notion that if the individual mandate was stricken the rest of the Act would be able to remain intact. Several Justices then pointed out that a piecemeal approach would be an onerous task forcing the Court to go through the voluminous PPACA to determine what provisions are related to the mandate and thus have to be invalidated along with it. There was no clear indication how the Court will hold with regard to this issue. What was apparent was that the Justices did not find any of the options particularly appealing.

The final issue argued before the Court was the Medicaid expansion provision. The claimants argued that the Medicaid expansion provision of PPACA "coerces" state governments to increase their share of Medicaid costs, while risking the loss of funding if they refuse. The Justices did not seem to agree with the Solicitor General's counter argument that because States have the option not to participate in the Medicaid program they cannot be coerced, as non participation would be impractical.

Justice Kennedy questioned whether accountability should be considered with regard to the issue of coercion. He expressed concern that with a federal program of this nature, the people of a state would not know who could be held accountable if that state lost its federal funding. The Solicitor General concluded by urging the Court to focus on the human aspect of this legislation, stating that its provisions were designed to "secure the blessings of liberty."

It is expected that preliminary votes on the four issues presented will be cast by the Court later this week and then the lengthy process of opinion drafting will begin. The Court's final decision is expected by the end of June.



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