

Supreme Court Hears Health Reform Argument

by Catherine J. Flynn, Michael A. Moroney and Lauren A. DeWitt

March 27, 2012

The Supreme Court is currently hearing oral arguments regarding the constitutionality of the Patient Protection and Affordable Care Act (PPACA), the sweeping health care reform legislation law.

There are several issues being addressed during the course of oral arguments. The threshold issue is whether the Anti-Injunction Act (AIA) prohibits this suit from being brought before the Court, potentially halting the lawsuit before the constitutionality of PPACA is determined. The AIA bars claimants from asking for a refund on a tax before that tax has actually been collected and paid. If PPACA's individual health insurance mandate and its penalties are deemed to be a tax to which the AIA applies, then the Court may hold that this lawsuit cannot be brought until the individual mandate provision takes effect in 2014.

The key issue on which arguments will be heard is the constitutionality of the individual mandate provision. The individual mandate provision requires most Americans to purchase some type of health insurance. The question before the Court is whether the federal government has the authority, under the commerce clause, to regulate economic *inactivity*. The economic inactivity the mandate seeks to regulate is the failure to purchase health insurance.

The Court will also hear oral arguments on the issue of severability. Essentially, the severability question is whether the individual mandate is deemed to be unconstitutional under the commerce clause, must the entirety of PPACA be deemed unconstitutional or can the individual mandate provision be severed from the rest of Act.

The final issue that will be heard by the Court is whether provisions of PPACA constitute Medicaid "coercion." Specifically, the claimants assert that PPACA "coerces" state governments to expand their share of Medicaid costs, while risking the loss of funding if they refuse. If the Medicaid expansion provisions are deemed to be coercive by the Court, it will render them unconstitutional.

Yesterday the Court concluded arguments regarding the threshold issue of the AIA. The Court addressed three ways in which the AIA could be determined to not preclude suit in this instance thus allowing the Court to rule on the constitutionality of the mandate. The first would be if it held that the AIA did not take away a court's jurisdiction. The second would be if it held that the AIA was not intended to close the courts to every type of tax challenge. Finally, the third would be if it held that the AIA did not apply to the mandate provision, as it is not the type of provision that falls under the AIA.

The Justices did not seem to be leaning towards the notion that the suit was barred under the AIA. The Court referred to significant case law in which the government had waived its right under the AIA to bar tax suits in those instances. The argument was advanced by the Solicitor General that the Court need not decide whether the AIA is jurisdictional, as the AIA does not apply to the mandate and penalties of PPACA. Through their questions and commentary, the Justices did not appear to be convinced that the AIA did not apply and seemed to lean more towards a jurisdictional analysis.

The Court will continue oral arguments on the mandate itself and its constitutionality under the commerce clause.



Catherine J. Flynn is Chair of the Health Law Group. She can be reached at 973.854.1070 or cflynn@wglaw.com.



Lauren A. DeWitt is an Associate in the Health Law Group. She can be reached at 973.854.1072 or ldewitt@wglaw.com.



Michael A. Moroney is a Partner in the Health Law Group. He can be reached at 973.854.1060 or mmoroney@wglaw.com.