

U.S. Supreme Court Upholds Affordable Care Act

The U.S. Supreme Court has released its much-anticipated decision on the constitutionality of various provisions of the Patient Protection and Affordable Care Act (ACA).

In the two major issues before the Court, it upheld the so-called individual mandate as a legitimate constitutional exercise of Congress' taxing authority. The Court also upheld the ACA's requirement for states to expand eligibility under their Medicaid programs, but struck down the provision that could have required non-complying states to forfeit 100 percent of their Medicaid funding. The text of the Supreme Court's decision, released June 28, is available at: <http://www.drinkerbiddle.com/Templates/media/files/Top%20Trends/Health%20Care%20Reform/SCOTUS%20ACA.pdf>.

Upcoming Event

Please join us **Thursday, July 12, at noon Eastern** for a webinar and in-person seminar in our Washington, D.C., and Chicago offices. We will discuss what the Supreme Court's decision means for various health care stakeholders.

Click [here](#) to register.

Individual Mandate Upheld

The ACA provides that beginning in 2014 virtually all Americans must maintain health insurance coverage (e.g., "individual mandate"). The government argued the Commerce Clause of the Constitution – which addresses the power to regulate interstate economic activity – gives it the authority to regulate the purchase of health insurance. Under this theory because everyone will use health care at some point in their lives, Congress can require people to buy insurance to limit the costs imposed by the uninsured on other people in the market. Those bringing the suit argued that the individual mandate exceeds Congress' authority, which does not extend to the regulation of inactivity (e.g., the failure to purchase health insurance).

The Court ruled that the Commerce Clause does not grant the Federal Government the authority to require citizens to purchase health insurance. However, the Court also found that the individual mandate is a constitutional exercise of Congress' taxing authority, because the penalty for those not purchasing insurance is essentially a tax.

Although the mandate remains in force, many remain skeptical of its ability to encourage people to purchase insurance, given the relatively small payment required should individuals fail to purchase insurance, and that failure to pay the tax has no criminal or civil implications. Thus, for many people, it may still be cheaper to pay the tax than to go out and purchase insurance. Moreover, given that the other coverage expansion provisions, such as restrictions on annual policy limits and prohibition of pre-existing conditions were also upheld by the Court, many people may be incentivized to pay the tax and delay purchasing insurance until they become seriously ill.

Medicaid Expansion Limited

Earlier this Spring, the Court heard arguments on whether the ACA's expansion of Medicaid to benefit nearly all people under the age of 65 whose household income is at or below 133 percent of poverty is constitutional. The government then argued that the Spending Clause of the Constitution gives Congress the right to attach conditions to states who choose to receive federal funds. The 26 state plaintiffs countered the Medicaid expansion provisions were coercive because if the states do not expand Medicaid coverage, the federal government could take away all their existing Medicaid funding. Today, the Court let stand the ACA's requirement for states to expand eligibility under their Medicaid programs, but invalidated the provision that would have forced states that did not comply potentially to forfeit all of their Medicaid funding. The Court stated that any forfeiture of a state's Medicaid funds must be limited only to those related to the expansion requirement.

The decision leaves open the question of how the Federal government can require states to implement the Medicaid expansion requirement. The Federal government may need to offer states additional financial incentives, or find some other means to ensure their cooperation.

Severability

The Affordable Care Act does not contain a severability clause, which Congress can insert into legislation at the time of drafting to clarify what parts of the bill can stand separate from other parts of the bill, should any particular provision be invalidated. In its briefs, the government argued that if the Court were to strike down the individual mandate, only the guaranteed-issue and community rating provisions of the law should be invalidated; all other provisions of the Act could be severed (or separated out) and survive. Those bringing suit argued that the ACA's requirements were so intertwined that if the individual mandate were found to be unconstitutional, the entire Act must be invalidated.

Because the Court upheld the individual mandate requirement, it found no need to decide whether the other provisions of the ACA would need to be severed from the law. Thus, the additional provisions of the ACA, such as those applicable to Medicare (e.g., closing of the Medicare Part D coverage gap) and certain taxes on medical devices and pharmaceutical manufacturers, were upheld by the Court's decision.

Anti-Injunction Act

The Anti-Injunction Act prevents lawsuits challenging the imposition of a tax from proceeding until the tax is actually assessed. Under the ACA, virtually all Americans who do not maintain some form of health insurance coverage will be assessed a penalty imposed by the Internal Revenue Service. The issue before the Court was whether this penalty constituted a tax, and if so, whether the Anti-Injunction Act precluded the Court from ruling on the constitutionality of the ACA until the tax was imposed – which would not be until people file tax returns in April 2015.

On this issue the Court held the Anti-Injunction Act did not apply (notwithstanding its later determinations that the individual mandate imposed a tax) and thus could rule on the remaining constitutional questions.

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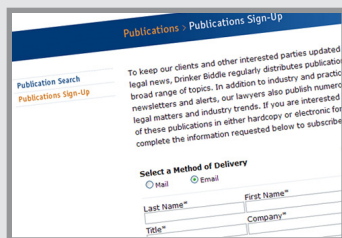
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