

Special OSR Legislative Affairs Update – 3/26/2012

The Supreme Courts Hears Challenge to Affordable Care Act

Today, the Supreme Court begins the hearings of five and a half hours of arguments pertaining to the constitutionality of the 2010 Affordable Care Act, also called “Healthcare Reform” and “Obamacare”.

Who is participating?

Of the many lawsuits challenging the Affordable Care Act, the Supreme Court is considering one filed on behalf of 26 states against the Department of Health and Human Services, *Florida v. DHHS*, and a lawsuit brought on behalf of two individuals who do not have health insurance, *National Federation of Independent Business v. Sebelius*.

What is being decided?

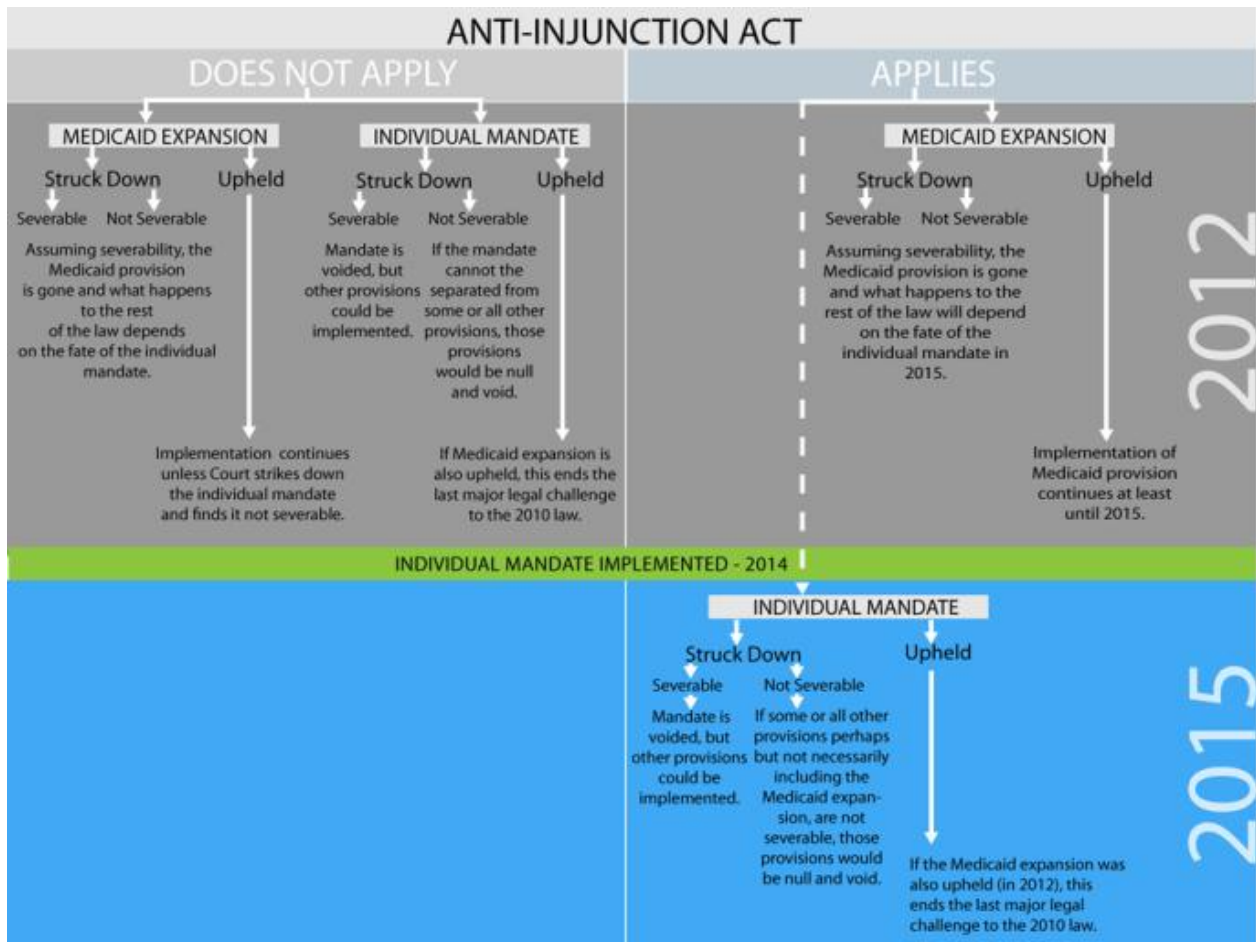
1. Do the courts have the power to decide the case now or in 2015?
 - The Anti-Injunction Act (AIA) is a 19th century law which contends that a tax can only be challenged after it has been applied, e.g. 2015. Currently, neither the plaintiffs nor the federal government argue that the individual mandate is a tax, it is instead a “penalty” assessed for non-compliance with the law. A third-party counsel is arguing the position that it is indeed a tax. If the court finds that this is the case, they may rule the courts have no power to determine the merits of the case.
2. Does the individual mandate violate the “commerce” clause of the Constitution?
 - Article I, Section 8 of the U.S. Constitution says “Congress shall have Power. . . to regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes.” The existing precedent provides that Congress can regulate any economic activity that Congress rationally concludes is in the stream of or substantially affects interstate commerce. The federal government is arguing that this clause applies to the “willfully or helplessly” uninsured because they will undoubtedly have an impact on commerce. The plaintiffs argue that this clause compels individuals to “enter the stream” of commerce, a violation of constitutional power to force a particular behavior thus leaving no limit on Congressional power under this clause.
 - The “Necessary and Proper clause” states “Congress shall have Power. . . to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” The federal government argues this clause gives Congress the power to enact laws to execute their enumerated powers, i.e. the Commerce clause. Most legal scholars believe this argument would not survive a challenge if the Commerce clause is found invalid.
3. Does the federal government have the right to expand Medicaid?
 - The states argue that the ACA’s expansion of Medicaid, which greatly extends eligibility to approximately 16 million more people, is an unconstitutional coercion to participate in Medicaid. The argument has been struck down in all previous cases.

4. Is the rest of the law severable?

- Many times a clause is added to a Bill which states that if a portion is struck down at a later date, then it is the intention of Congress that the remaining portions would remain in force. This was not included in the ACA. The Supreme Court will decide if this was the original intent of the Congress and if not, which provisions should be struck down with the individual mandate.

Note: Many third party briefs, including the AAMC, have argued against severability and that the Bill should be struck down in total with the individual mandate.

What are the possible outcomes?



From: <http://www.kaiserhealthnews.org/Stories/2011/November/18/supreme-court-health-law-chart-2012.aspx>