

## Supreme Court to Hear Challenges to Health Care Reform

The Supreme Court announced on Monday, November 14, 2011 that it will hear challenges to the Patient Protection and Affordable Care Act (PPACA). President Obama signed PPACA on March 23, 2010, and legal challenges to the landmark federal health care reform law arose almost immediately. Of the several petitions before it, the Supreme Court chose to review questions from three out of the 11th Circuit, the only circuit court to invalidate the requirement that individuals have health insurance. The Court has agreed to hear the following questions:

1. Whether Congress had the power under Article I of the Constitution to enact the individual mandate provisions of PPACA;
2. If the individual mandate is not constitutional, to what extent (if any) the mandate can be severed from the remainder of PPACA;
3. Whether current challenges to the individual mandate are barred by the tax Anti-Injunction Act, which prohibits a legal challenge to a tax before the tax is paid; and
4. Whether PPACA's expansion of Medicaid is unconstitutionally coercive to the states.

### Issues to Be Argued

#### Congress's Power

Congress's power to regulate interstate commerce has generally been broadly interpreted since the New Deal, but some recent cases have limited that power. At issue here is whether PPACA's minimum essential coverage requirement is a necessary and proper act of Congress that either has substantial effects on or is essential to a broader regulation of interstate commerce.

#### Severability

If the Court were to find the individual mandate unconstitutional, it would then determine whether the mandate may be separated from the rest of the law or whether the mandate is a necessary part of the law whose other provisions (including the insurance reforms) cannot stand on their own. If the Court determines that the mandate is not severable, it could strike down the entire law, including the various insurance reforms with which employers and plans are currently required to comply.

#### Anti-Injunction Act

Some judges have determined that the legal challenge is not to the mandate itself, but rather to the *payment* required from an individual who does not obtain minimum essential coverage. PPACA calls for this payment to be administered by the IRS, and the Court will consider whether it is a tax for purposes of the tax Anti-Injunction Act, which prohibits taxpayers from challenging a tax before they have paid it. If the tax Anti-Injunction Act applies, no substantive challenge to this enforcement provision could be heard until the first payment is due in 2015.

#### Coercion by Medicaid Expansion

PPACA expanded the requirements for states determining eligibility and coverage under Medicaid. If states do not follow the new requirements, they risk losing all federal Medicaid funds, not just those tied to the new rules. The state of Florida is arguing that this provision is unconstitutionally coercive.

## What the Supreme Court's Review Means for Employers

The constitutionality of the individual mandate and the future of PPACA will be determined by the Supreme Court, with a decision expected by the end of the Court's term in June. Unless and until the Supreme Court invalidates a provision of the law, employers and plans must comply with all provisions of PPACA, although many of these provisions are not scheduled to go into effect for several years. None of the specific health care coverage requirements for public and private employers are currently under Supreme Court review.

For further information, please contact any member of Ropes & Gray's [Benefits Practice Group](#) or [Health Care Group](#).