

Health Care Reform Act Supreme Court Oral Arguments

The Supreme Court of the United States just finished hearing oral arguments about whether the Health Care Reform Act ("HCRA") is constitutional.

Parties. The Supreme Court is reviewing the constitutionality of the HCRA as part of a lawsuit between the following parties.

- **Challengers.** 26 states, the National Federation of Independent Business and individuals without health insurance challenge the constitutionality of the HCRA.
- **Supporters.** The Departments of Health & Human Services, Treasury and Labor, along with the Secretary to each Department, support the constitutionality of the HCRA.

Provisions Challenged. The Parties dispute the constitutionality of the following provisions of the HCRA.

- **Individual Mandate.** Under the Individual Mandate, if non-exempt individuals fail to maintain health coverage for themselves or their dependents, they must pay a fee under the Internal Revenue Code ("Code"), called a shared responsibility payment (generally, an annual payment of \$95 in 2014, which will increase to \$695 by 2016).
- **Medicaid Expansion.** Medicaid Expansion requires states to expand Medicaid eligibility in 2014 to those under age 65 with a household income at or below 133% of the Federal Poverty Level. The federal funding will initially cover the total cost of the expansion, but will decrease over time.

Arguments. The Parties presented arguments on four issues outlined in the chart below.

Issue	Description	Challenger's Arguments	Supporter's Arguments
Tax Anti-Injunction Act	<p>The first issue is whether the shared responsibility payment is a tax under the Tax Anti-Injunction Act ("AIA").</p> <ul style="list-style-type: none"> • Under the AIA, a court cannot review a tax until it is assessed and paid or it is assessed and the Internal Revenue Service files an action. • If the shared responsibility payment is a tax, then the Supreme Court <u>cannot</u> review the Individual Mandate yet. 	<p>The Challengers argue that the shared responsibility payment is a penalty, instead of a tax, so that the Supreme Court <u>can</u> review the Individual Mandate.</p>	<p>The Supporters also argue that the shared responsibility payment is a penalty, instead of a tax, so that the Supreme Court <u>can</u> review the Individual Mandate.</p> <p><u>Comment:</u> The Court has appointed independent counsel to argue that the shared responsibility payment is a tax.</p> <p><u>Comment:</u> The Supporters take the opposite position for the constitutional arguments described below and argue that the shared responsibility payment is a tax.</p>

<p>Individual Mandate</p>	<p>The second issue is whether the Individual Mandate is a legitimate exercise of Congress' power under the Commerce Clause, the Necessary and Proper Clause and the Tax and Spend Clause of the U.S. Constitution.</p> <ul style="list-style-type: none"> • <u>The Commerce Clause and the Necessary and Proper Clause.</u> Under these clauses, Congress can regulate activities that affect interstate economic activities through any necessary and proper means. • <u>The Tax and Spend Clause.</u> Under this clause, Congress can tax and spend for the general welfare of citizens. 	<p>The Challengers argue that the Individual Mandate is an invalid exercise of this power, because it compels individuals to <u>enter into</u> the economic activity of purchasing health coverage, instead of <u>regulating</u> an economic activity.</p> <p>The Challengers argue that the Individual Mandate is an invalid exercise of this power, because the shared responsibility payment is a penalty, instead of a tax.</p>	<p>The Supporters argue that the Individual Mandate is within Congress' power, because it regulates national health care consumption and furthers the general regulation of the health care industry.</p> <p>The Supporters argue that the Individual Mandate is within Congress' power, because the shared responsibility payment is a tax under the Constitution.</p>
<p>Medicaid Expansion</p>	<p>The next issue is whether Medicaid Expansion violates the Tax and Spend Clause. Under this clause, Congress can place conditions on federal funds provided to states, but cannot directly regulate states.</p>	<p>The Challengers argue that Medicaid Expansion is an invalid exercise of this power, because it coerces states to expand Medicaid eligibility in order to receive federal funding.</p>	<p>The Supporters argue that Medicaid Expansion is within Congress' power to place conditions on federal funding of state programs.</p>
<p>Severability</p>	<p>Finally, if the Supreme Court decides that the Individual Mandate is unconstitutional, then it will also decide whether it can be severed from the rest of the HCRA, so that provisions unrelated to the Individual Mandate can remain intact.</p>	<p>The Challengers argue that, if the Supreme Court decides that the Individual Mandate is invalid, it should strike down the entire HCRA to fulfill congressional intent.</p>	<p>The Supporters argue that, if the Supreme Court decides that the Individual Mandate is invalid, then only the Guaranteed-Issue and Community-Rating Provisions of the HCRA are inseverable from the Individual Mandate.</p> <ul style="list-style-type: none"> • The Guaranteed-Issue Provisions prohibit private insurers from denying coverage based on pre-existing conditions. • The Community-Rating Provisions prohibit private insurers from charging higher premiums based on medical factors. <p>They concede that, without the Individual Mandate, these provisions would cause health insurance premiums to increase (because unhealthy individuals would buy insurance, but healthy individuals would not). This would not fulfill Congress' intent to lower the cost of healthcare under the HCRA.</p> <p>However, they argue that the rest of the HCRA (including other individual and group market reforms) should remain, because it can advance Congress' goal of expanding affordable healthcare without the Individual Mandate.</p>

Timeline. If you would like to follow the Supreme Court's review of the HCRA, go to: www.supremecourt.gov. The Supreme Court's review will continue to follow the timeline below.

- **March 26, 2012.** Oral arguments on the Anti-Injunction Act.
http://www.supremecourt.gov/oral_arguments/argument_transcripts/11-398-Monday.pdf
- **March 27, 2012.** Oral arguments on the Individual Mandate.
http://www.supremecourt.gov/oral_arguments/argument_transcripts/11-398-Tuesday.pdf
- **March 28, 2012.** Oral arguments on Medicaid Expansion and Severability.
http://www.supremecourt.gov/oral_arguments/argument_transcripts/11-393.pdf
http://www.supremecourt.gov/oral_arguments/argument_transcripts/11-400.pdf
- **Summer 2012.** Before the Supreme Court recesses in June or July, it is expected to issue a written opinion on the constitutionality of the HCRA.

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