

Issue Summary

2012 U.S. Supreme Court Decision on PPACA

July 2012

Decision

The U.S. Supreme Court ruled in a 5-4 decision that the Patient Protection and Affordable Care Act's (PPACA) "individual mandate" is constitutional under Congress' taxation power. Because the mandate is constitutional, the court did not need to rule on what other parts of the law should be invalidated or "severed." Therefore, the entire law stands and its complex framework remains intact.

While the Supreme Court did not have a majority to uphold the individual mandate under the Obama Administration's primary defense — that it was a constitutional exercise of the commerce clause — the Court was able to muster a majority to rule that the mandate is a tax and therefore a constitutional exercise of Congress' taxation authority. The Court interpreted the individual mandate as an option to purchase health insurance (have "minimum essential coverage") or to pay a penalty to the IRS ("a tax") and upheld the provision on the basis that the PPACA merely uses a tax penalty as a means of incentivizing an individual to have health insurance ("minimum essential coverage").

On a separate question, the Court also ruled that the determination that the individual mandate's penalty provision functions as a tax was not sufficient to label the mandate as a tax for purposes of applying the Anti-Injunction Act (which would have delayed the Court from ruling on the matter until the funds were collected under the individual mandate penalty provision in 2014).

The Court also made a narrow ruling that PPACA's Medicaid expansion was constitutional as long as states are not denied existing federal funding if they fail to comply with the Medicaid expansion provisions under PPACA. The Court held that Congress exceeded its powers by threatening to withhold all Medicaid funds from states that decline to expand Medicaid coverage.

Practitioner Impact

Employers should proceed to comply with all of the law's provisions, and evaluate where they currently are in the compliance process. In particular, those who have taken a "wait-and-see" approach should immediately proceed with preparations to comply with the current law and regulations, as these employers may be the most unprepared. Employers need to continue preparing to comply with the remaining 2012 and 2013 regulations, such as providing employees with the required Summary of Benefits and Coverage, the value of employer coverage on IRS Form W-2, the \$2,500 cap dollar limits on health-care flexible spending accounts, the increase in

Background

On March 23, 2010, Pres. Barack Obama signed the Patient Protection and Affordable Care Act (PPACA), and on March 30, 2010, he signed the Health Care and Education Reconciliation Act of 2010 (HCERA). Collectively, these are known as the Affordable Care Act.

Soon after the Affordable Care Act was signed into law, Florida's attorney general filed suit against the law, along with 12 other states. The National Federation of Independent Business, four private individuals and 13 additional states later joined this case and other parties filed several other lawsuits challenging the constitutionality of the law. In fall 2011, the U.S. Supreme Court agreed to hear three cases (*National Federation of Independent Business v. Sebelius*; *Department of Health and Human Services v. Florida*; and *Florida v. Department of Health and Human Services*) to determine the constitutionality of the Affordable Care Act. On March 26, 27 and 28, 2012, the court devoted an unprecedented six hours spread over three days to hear the cases argued together (the Supreme Court usually devotes only one hour for arguments) which included arguments about whether the:

- Case should not be heard until the mandate goes into effect in 2014
- Individual mandate's constitutionality could be decided in court
- Law's expansion of Medicaid was constitutional
- Entire law should be thrown out if the mandate is found to be unconstitutional (severability).

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Medicare withholding for those earning more than \$200,000 per year, the state exchange coverage notices, and the elimination of the tax deduction for employers for the Medicare Part D subsidy, as well as other provisions affecting the business and workforce.

That states are now able to decide whether they will participate in the Medicaid expansion may have some effect on employers in certain industry sectors that have low-income employees. Employers that fall into this category should stay well-informed if their states choose not to participate in the expansion.

Employers may or may not need to provide a special communication to employees about the Supreme Court decision. What has been communicated already remains, and organizations can continue to implement health-care reform as regulatory guidance is issued. If employers have communicated all along to stakeholders and have complied with all relevant provisions, then perhaps only those companies that have been relatively silent on the effect of the law may need to address the decision. Either way, it is important to be proactive and transparent in employer communications to senior leaders, employees and others.

Employers need to ensure that employees understand upcoming changes, such as the new \$2,500 health care flexible spending account limit, and have the resources they need to make decisions accordingly. This may simply be addressed at the next open enrollment period, or employers may choose to address the Supreme Court ruling to ensure employees understand the immediate implications for their employer-sponsored health program.

Employers who have not yet conducted health-care reform strategic discussions should make that a priority, as strategies will need to be deployed for 2013, 2014 and beyond. Employers must estimate how the Affordable Care Act will affect their business. Any employers who have not yet conducted any financial modeling as part of their broader assessment of the effect of the 2010 law on their health-care strategy should do so.

Rising health-care costs remain a critical business issue. Within the context of compliance with the Affordable Care Act, employers need to continue exploring solutions that attempt to address the underlying cost drivers along with alternative strategies and approaches to mitigate rising costs and improve overall workforce health and productivity.

Background (continued)

The most important court challenge centered on the “individual mandate,” a requirement that all Americans obtain health insurance or most will have to pay a fine. Challengers argued it was an unconstitutional expansion of federal power; the government, they said, could regulate commerce but could not force people to participate in it. The Administration argued that the individual mandate was needed to fix basic flaws in the insurance market and that it was crucial to provisions like the requirement that insurers accept all applicants without regard to pre-existing health conditions. The Administration presented three alternative arguments:

- The individual mandate is constitutional under Congress’ power to regulate Commerce under the Commerce Clause of the Constitution
- The individual mandate is constitutional under the “necessary and proper” clause in the Constitution because it is “necessary” to the operation of the rest of the Act and therefore “proper” for Congress to require it.
- The penalty for not complying with the individual mandate is a “tax” that Congress can impose using its constitutional taxing power.

The Supreme Court issued **its final ruling** on the constitutionality of PPACA on June 28, 2012.