



LEGISLATIVE BRIEF

Supreme Court Will Review Health Care Reform Law in 2012

A number of legal challenges to the health care reform law have been filed in federal court since the law was passed in March 2010. Nearly all of the challenges have been based on constitutional grounds. So far, four U.S. Courts of Appeals - the 4th, 6th, 11th and D.C. Circuits - have ruled on challenges to the health care reform law. Two of the courts have upheld the law, one has not and one has ruled that the plaintiff did not have standing to bring a challenge.

On Nov. 14, 2011, the U.S. Supreme Court announced that it will review the health care reform law during its 2012 term. This development is significant to the fate of the health care reform law because the Supreme Court will ultimately decide whether or not the law is constitutional. It is expected that the Supreme Court will issue its decision by June 2012, which would be just over four months from the 2012 presidential election.

This Power Group Companies Legislative Brief provides an overview of legal challenges to the health care reform law and outlines possible Supreme Court decisions regarding the law's constitutionality.

INDIVIDUAL MANDATE

While some of the challenges to the health care reform law have been decided based on procedural grounds, the main substantive controversy has been whether Congress had the authority under the Constitution's Commerce Clause to pass the health care reform law's individual mandate. The Commerce Clause gives Congress the power to regulate multi-state, economic activity.

Beginning in 2014, the individual mandate generally requires individuals to purchase health insurance or pay a penalty. The individual mandate is a key component of the health care reform law. Health care policy experts have suggested that, without the individual mandate, health care reform's other insurance market reforms would be difficult to implement.

If the individual mandate is ruled invalid and health insurers are still required to comply with the law's guaranteed issue and preexisting condition exclusion restrictions, it is speculated that health insurance costs would skyrocket because people would tend to buy coverage only when they actually need it.

Opponents of the health care reform law argue that the Commerce Clause does not give Congress the power to regulate economic inactivity (that is, the decision not to purchase health insurance). Proponents of the law point to the health care costs associated with the uninsured to demonstrate the economic effect of not purchasing health coverage.

LOWER COURT RULINGS

The lower court rulings, to date, are split. Some courts have upheld the law as constitutional, while others have concluded that a portion of the law, or the entire law, is unconstitutional.

For example, in January 2011, a federal district court in Florida ruled that Congress does not have the authority to require individuals to buy insurance. The Florida district court went further than others that have reviewed the law,

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holding that the individual mandate cannot be separated from the rest of the law, so the entire statute is invalid. The Florida court issued a stay of its decision while the case proceeds through the appeals process.

At the U.S. Circuit Court level, the courts have decided as follows:

- In June 2011, the **6th Circuit** became the first Court of Appeals to rule on the constitutionality of the health care reform law. The court held that it was constitutional for Congress to pass a law requiring individuals to purchase health insurance or pay a penalty.
- In August 2011, the **11th Circuit** ruled that it was unconstitutional for Congress to pass the health care reform law's individual mandate. In making this decision, the 11th Circuit upheld the Florida district court decision. However, the Court of Appeals overturned Florida's decision to invalidate the entire law, instead striking only the individual mandate. The Court of Appeals stated that Congress has broad power to deal with the problems of the uninsured, "but what Congress cannot do...is mandate that individuals enter into contracts with private insurance companies for the purchase of an expensive product from the time they are born until the time they die."
- In September 2011, the **4th Circuit** overturned a Virginia court and dismissed challenges to the health care reform law's constitutionality based on procedural grounds, finding that the plaintiffs, including the state of Virginia, did not have standing to sue.
- On Nov. 8, 2011, the **D.C. Circuit** also upheld the constitutionality of health care reform's individual mandate. The opinion stated that the fact that Congress has never before issued an individual mandate requiring the purchase of something "seems to us a political judgment rather than recognition of constitutional limitations."

SUPREME COURT REVIEW

The Supreme Court will likely hear arguments on the health care reform law in March 2012. The justices have decided to hear 5½ hours of oral argument on the law's constitutionality and related issues, which will likely be spread over two or more days. This is an extraordinary amount of time for oral argument – most modern court cases only receive one hour of oral argument – and is indicative of the importance of the health care reform law challenges.

It is difficult to predict how the Supreme Court will rule on the health care reform law. However, it is likely that the Court will rule in one of the following ways:

- The Supreme Court may agree with the 6th and D.C. Circuits and rule that Congress acted within its constitutional authority when enacting the individual mandate.
- The Supreme Court may agree with the 11th Circuit and rule that Congress exceeded its constitutional authority when enacting the individual mandate. In this case, the Supreme Court will likely address whether other portions of the law can be severed from the individual mandate or whether the entire law is invalid.
- Although it seems unlikely, the Supreme Court may agree with the 4th Circuit and rule that, since the individual mandate does not go into effect until 2014, it is not yet ready for judicial review.

Power Group Companies will continue to monitor the status of the health care reform law and will provide updated information as it becomes available.