

SCOTUS on ACA, Day 1: Supreme Court Signals Reluctance to Postpone ACA Decision on Procedural Grounds

March 27, 2012

The Supreme Court of the United States (SCOTUS) yesterday heard oral argument from three attorneys on a procedural issue that, if found worthy by the Court, would postpone any ruling on the constitutionality of the Patient Protection and Affordable Care Act (ACA) until 2015 at the earliest. [Audio tapes](#) and a [written transcript](#) of the session were released yesterday afternoon, and the consensus of Court watchers is that the Justices seemed disinclined to use the procedural issue to postpone a decision on the ACA.

The procedural question before the court concerns financial penalties that the ACA will impose on individuals who do not purchase insurance for themselves and their dependents, starting in 2014. The financial penalties will range from the greater of (i) \$95 per person/\$285 max per family or (ii) 1% of household income in 2014, to the greater of (i) \$695 (capped at \$2,085 per family) or (ii) 2.5% of household income in 2016, after which the \$695 amount periodically will be adjusted for inflation in \$50 increments, and the family cap limited to three times that amount. Persons who do not obtain insurance in 2014 must pay the applicable penalty with their federal income taxes beginning on April 15, 2015.

Federal law contains provisions that prevent taxpayers from challenging a tax at any time before they have actually paid the tax, and unsuccessfully requested a refund from the IRS. The legal term for this law is the “anti-injunction act” or more specifically the “tax anti-injunction act,” codified at [26 U.S.C. § 7421\(a\)](#).

Neither the federal government nor Florida and the 25 other states opposing the ACA planned oral argument on the impact, on the case, of the tax anti-injunction act, so the Supreme Court appointed a prominent appellate lawyer, Robert A. Long, to argue this issue before them. The Solicitor General, for the federal government, and a third attorney on behalf of Florida and the 26 other states opposing the ACA, also presented oral argument on the issue. Only the Solicitor General, Donald B. Verrilli, Jr., argued that the tax anti-injunction act did not prevent the Court from ruling on the individual mandate. In other words, the attorney the Court appointed to argue the issue asserted that the tax anti-injunction act did bar Court evaluation of the individual mandate until after financial penalties first are paid in 2015.

The Court, however, seemed disinclined to view the anti-injunction act as “jurisdictional” – i.e., an obstacle to ruling on the mandate and the ACA. Of the nine Justices, only one – Justice Clarence Thomas – refrained from questioning counsel on the issue. And of the many questions that other members of the Court posed, most suggested a view that the individual mandate was a self-standing law that it could rule on, independent of the financial penalty/tax issue. This appeared to be the case across the board, with skeptical questions coming from conservative Justice Scalia and Chief Justice Roberts, not only from the more “liberal” Justices Ginsberg, Sotomayor and Kagan. This skepticism was perhaps bolstered by the Court’s own inconsistent prior rulings on the tax anti-injunction act.

A decision from the Court will not likely appear until June 2012, and the most important oral argument is occurring today, March 27, on the constitutionality of the individual mandate.

http://www.supremecourt.gov/oral_arguments/argument_audio_detail.aspx?argument=11-398-Monday

http://www.supremecourt.gov/oral_arguments/argument_transcripts/11-398-Monday.pdf

<http://www.law.cornell.edu/uscode/text/26/7421>