

Round one: Supremes ‘cold’ on side issues, warm up for Tuesday’s Obamacare main event

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The Cato Institute’s Ilya Shapiro is covering the Supreme Court’s oral arguments on President Obama’s health care overhaul for The Daily Caller.

“In an argument day that can best be described as the calm before the storm, it quickly became clear that the Supreme Court would reach the constitutional issues everyone cares about,” Shapiro emailed TheDC shortly after oral arguments wrapped up on Monday.

“That is, regardless of how the justices resolve the hyper-technical issue of whether the Anti-Injunction Act is ‘jurisdictional,’ this law — which prevents people from challenging taxes before they’re assessed or collected — does not apply to the Obamacare litigation.”

Shapiro was referring to a 1793 law that, in general, would prohibit the Supreme Court from ruling on a state court’s decision until after a lawsuit plaintiff had suffered some sort of harm. The issue is important because the plaintiffs in the case against the president’s health care law are asking the justices to act before the law takes full effect.

“There were also hints that the Court was skeptical of the government’s ‘backup’ merits argument that the individual mandate was justified under the Constitution’s taxing power,” Shapiro said, although this observation says little about the White House’s central argument that the law is justifiable under the “commerce clause” of the U.S. Constitution.

“Perhaps the only surprising aspect of today’s hearing,” Shapiro noted, “was how ‘cold’ the bench was; it’s rare for the justices to allow advocates to speak at length without interruption, but that’s what they generally did today.” [\(RELATED: Full coverage of the health care law\)](#)

Shapiro said this was an indication that the court is less interested in the side issues addressed on Monday, and far more concerned with the bigger questions to come Tuesday.

That’s yet another indication,” he said, “that the court will get past the ... appetizer to the constitutional entree.”

Shapiro is Cato’s Senior Fellow in Constitutional Studies, and editor-in-chief of the Cato Supreme Court Review.