

## ***Guide to the Issues in Obamacare***

By Mario Loyola  
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Over at the *American Interest*, my Texas [Public Policy](#) Foundation colleagues and I have published a [Guide to the Issues](#) for next week's oral argument. The piece follows another that Professor Richard Epstein and I wrote earlier this week along with Cato's Ilya Shapiro, also at the *American Interest*, [on the issue of severability](#) – what to do with the rest of the law if the individual mandate is unconstitutional. For a fuller exposition of our arguments, here are the three briefs that Professor Epstein and I wrote for the Supreme Court (variously joined by others here and at Cato Institute, and 36 Texas state legislators): (1) [individual mandate](#), (2) [severability](#), and (3) [Medicaid expansion](#).

The case has all the makings of a historic decision, for better or worse. Several trends in Supreme Court jurisprudence in recent decades are coming to a head, with several lines of precedent, particularly those dealing with the Commerce Clause and federal coercion of state governments, badly in need of refinement if not wholesale revision. The severability issue also raises troubling constitutional question, for it has the potential to leave the country saddled with a law that would never have been enacted by any Congress. Still, the Court has been increasingly protective of the limits on federal power, and more willing to insist that the Constitution is more than just “some rigid idea about what government could or could not do,” as President Obama so charmingly describes the document he is sworn to protect.

Brace yourselves, countrymen. The Supreme Court doesn't get any more exciting than this.

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