



ObamaCare goes on trial

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Today, the Supreme Court will take up perhaps one of the most important cases we'll see in our lifetime. Over the next three days, members of the nation's High Court [will hear arguments on the constitutionality of the Patient Protection and Affordable Care Act](#) (PPACA), also known as ObamaCare.

While we've seen several important cases over the 20 years that have dealt with economic and civil liberties — including property rights, free speech, and habeas corpus, [Department of Health and Human Services v. Florida](#) deals directly with the limitations placed on Congress by the Constitution.

The question of whether or not ObamaCare is good policy is meaningless to the Supreme Court. The issue at hand isn't that law [won't keep health insurance premiums](#), or [because it raises taxes](#) or that it is [unpopular with the American public](#). The only thing that matters, or at least should matter, is the Constitution.

During today's oral arguments, the Supreme Court will hear an hour of arguments on whether or not legal challenges to the individual mandate are barred by the [Anti-Injunction Act](#). The reason for this question is because the penalties that would be imposed by the individual mandate won't be in place until 2014. Since no one has been necessarily impacted by the policy, the theory is that the court could punt until it's implement.

However, this particular issue hasn't been an huge deal to this point, and I doubt it will be now. Most members of the Court are ready to move forward on these arguments, choosing to go ahead and get them out of the way.

Tomorrow's oral arguments will deal with the constitutionality of the individual mandate, which is the centerpiece of PPACA and the focal point of attacks by many conservatives and libertarians. This is the most important of the three days that the Court will hear arguments on ObamaCare.

The Obama Administration has been changing its legal strategy on the individual mandate, which requires all Americans to purchase health insurance coverage, in recent

days. They initially had said that the authorization for the individual mandate rested in the Commerce Clause. If that's the case, the power of the Congress is virtually limitless. But they've [moved on to the Necessary and Proper Clause](#), which affords Congress latitude to enact provisions to carry out policy. It's still likely that the Commerce Clause will come up at some point in oral arguments.

Most legal analysts believe that Necessary and Proper Clause will be more amicable to Court members, including Justices Antonin Scalia and Anthony Kennedy; the latter being the most crucial due to his "swing vote" status. But it's hard to see the four conservative members of the Court siding with Obama Administration here. Even with Scalia endorsing an expansive view of the Commerce Clause in the past, what the individual mandate does, penalizing economic inactivity, seems like a bridge too far.

The Court has allotted two hours for arguments on the individual mandate.

On Wednesday — the third and final day of arguments, the Court will hear 90 minutes of arguments on the severability of the PPACA should they strike down the individual mandate.

In his opinion, Judge Roger Vinson ruled that the [entire PPACA was struck down](#) due to the lack of a "severability clause" after he found the individual mandate to be unconstitutional. While this may not seem important to most people, the Court may be more willing to strike down the individual mandate while leaving other provisions in place. However, that may prove difficult because the writers of ObamaCare didn't have the foresight to include severability.

Also on Wednesday, the Court will hear arguments on the constitutionality of Medicaid expansion, which poses a huge fiscal burden on states. The Court has allotted an hour for this argument.

If you're interested in following the case, here are some places you can read summaries and opinions on the arguments:

- [SCOTUSBlog](#)
- [Cato @Liberty](#)
- [Volokh Conspiracy](#)

We'll be posting audio the Supreme Court provides of the oral arguments the day after they are made available, as well as providing commentary on the events of the next few days. Let's keep our fingers crossed that the Supreme Court will do the right thing and kill the individual mandate.