



SMALL BUSINESS  
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## TALK THAT TALK

This week the United States Supreme Court will hear oral arguments in the cases challenging the constitutionality of aspects of the Patient Protection and Affordable Care Act (PPACA). There will be six hours of presentations over three days. When will the Court render a decision? While the Court traditionally takes a break over the summer months, no guarantee they will issue their opinion before then.

The Court is actually considering a series of constitutional questions:

\*Whether Congress had the power under Article I of the Constitution to enact the minimum coverage provision.

\*Whether the suit brought by respondents to challenge the minimum coverage provision of the Patient Protection and Affordable Care Act is barred by the Anti-Injunction Act.

\*Does Congress exceed its enumerated powers and violate basic principles of federalism when it coerces States into accepting onerous conditions that it could not impose directly by threatening to withhold all federal funding under the single largest

grant-in-aid program, or does the limitation on Congress's spending power that this Court recognized in *South Dakota v. Dole*, 483 U.S. 203 (1987), no longer apply?

\*May Congress treat States no differently from any other employer when imposing invasive mandates as to the manner in which they provide their own employees with insurance coverage, as suggested by *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), or has Garcia's approach been overtaken by subsequent cases in which this Court has explicitly recognized judicially enforceable limits on Congress's power to interfere with state sovereignty?

\*Does the PPACA's mandate that virtually every individual obtain health insurance exceed Congress's enumerated powers and, if so, to what extent (if any) can the mandate be severed from the remainder of the Act?

\*Whether the PPACA must be invalidated in its entirety because it is non-severable from the individual mandate that exceeds Congress' limited and enumerated powers under the Constitution.

For those of you wondering what the Anti-Injunction Act (AIA) is, here is the answer:

It was passed in 1867. It currently states: "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." What this means is that you have to wait until a tax is paid and then file suit for a refund or to stop enforcement. If the penalties in PPACA are "taxes," then the Supreme Court could possibly "kick the can down the road" since the penalties do not begin until 2014 and the first penalties would actually be paid in 2015.

Of the questions before the Court, probably the most interesting issue from the small business community's perspective is whether if the individual mandate were to be found unconstitutional, does the rest of PPACA have to be invalidated because the rest of it depends on the individual mandate. If the Supreme Court were to rule the individual mandate is unconstitutional, but also decides it is severable, the employer mandates would stand.