An Oncology Perspective on the Supreme Court’s Pending Decision Regarding the Affordable Care Act

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Introduction

Beginning on March 26, 2012, the Supreme Court of the United States heard oral arguments regarding challenges to the recent federal health care reform legislation. The Court scheduled this unusually lengthy series of arguments to last for three days—a reflection of both the high stakes and the complexity of the legal issues involved. Whatever the Court ultimately decides, the outcome will have significant political and legal implications, as well as momentous practical consequences for virtually all stakeholders in the US health care system. In this article we provide a summary of the questions under consideration by the Supreme Court regarding the health care reform legislation, and we explore how the pending decision on this high-profile matter may impact the oncology community.

The law faced obstacles from the outset. Congress engaged in a debate that was protracted and heated, even by its own standards. Due to razor-thin margins of support and an unexpected shift in party control of a single Senate seat partway through the legislative process, Congress enacted the reforms through two separate bills. The two laws, the Patient Protection and Affordable Care Act[1] and the Health Care and Education Reconciliation Act of 2010,[2] have become known collectively as the Affordable Care Act (ACA). Soon after President Obama signed the legislation into law in March 2010, opponents of the ACA began to challenge (and the Obama administration began to defend) the law’s validity in multiple federal courts throughout the United States. Following conflicting opinions issued by federal appellate courts in different parts of the country,[3,4] the Supreme Court agreed to hear the case. The Court is expected to issue its opinion in June.

Issues Before the Court
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As the justices discuss, draft, and negotiate their opinions, it is important to remember what some commentators in the press or otherwise seem to forget: the Court is not charged with deciding whether the ACA is good health care policy. Rather, the justices are contemplating whether the ACA falls within or outside the powers granted to Congress by the US Constitution, and there are a variety of considerations they must weigh as they form their conclusions.

General considerations

The Constitution delegates certain powers to the federal government while reserving all unspecified powers to the states or the people. If Congress passes a law falling outside its enumerated powers, the law can be challenged on the grounds that the federal government overstepped its authority. Most of the constitutional objections to the ACA have rested on this doctrine.

Due to the emphasis on precedent in our legal system, Supreme Court justices typically think about how other potential cases and scenarios would fare under the legal rationales on which they base their rulings. When deciding whether to allow a particular law to stand, the justices reflect on what other laws they might be required to uphold or strike down in order to consistently apply the Constitution. While considering the ACA, the justices may try to avoid hampering the Court’s ability to consider unforeseen questions that may implicate similar constitutional principles. They might seek to achieve this goal and build internal consensus by writing a narrow opinion resting upon a unique aspect of the case at hand, such as the nature of the health insurance market in the United States. However the justices navigate through the present case, they will certainly be keeping in mind whether and how their reasoning may be applied in the future.

Specific questions

The Court heard arguments on whether Congress has exceeded its powers with respect to two specific provisions of the ACA. One of these provisions is the law’s requirement that individuals maintain a minimum level of health insurance, which is often referred to as the “minimum coverage requirement” or the “individual mandate.” The other contested provision is the law’s expansion of eligibility and financial support for the Medicaid program, through which the federal government provides grants to state governments to help fund health insurance for the poor.

In defense of the law, the Obama administration contended that two powers delegated to Congress each provide sufficient authority for the minimum coverage requirement. Immediately preceding the minimum coverage requirement in the text of the ACA itself, Congress offered its own lengthy justification of why the Commerce Clause, which is a provision in the Constitution that delegates to Congress the power of regulating commerce among the states, authorizes this individual mandate. Although the precise meaning of the Commerce Clause is a subject of frequent debate, several justices noted that its powers do have limits. For example, Justice Antonin Scalia asked, “If the government can do this, what else can it not do?” and he wondered aloud whether the ACA’s supporters thought the government could force individuals to purchase broccoli. Seizing upon an aspect of the ACA that may make it unique, Justice Ruth Bader Ginsburg, later in the arguments, countered, “But the problem is … as much as they say, ‘Well, we are not in the market,’ … [the uninsured] haven’t been able to meet the bill for cancer, and the rest of us end up paying because these people are getting cost-free health care.”

In addition to the Commerce Clause, the administration argued, the Constitution’s Taxing and Spending Clause also gives Congress authority to enact the minimum coverage requirement and...
collect a penalty for noncompliance via federal income tax returns. The law’s opponents maintained
that neither power could be invoked in this case.

The arguments in favor of the ACA’s Medicaid expansion relied on the Taxing and Spending Clause
and also on the Appropriations Clause, both of which are generally regarded as giving Congress
significant discretion in dictating how federal funds are spent. However, the Court has previously
indicated that Congress may not use its spending power to unduly coerce the states. The ACA’s
opponents argued that the Medicaid expansion is unconstitutionally coercive because it attaches
new terms (ie, the requirement to cover more people) to substantial existing funds (ie, the grants
the federal government already gives to the states for the original Medicaid program and its various
pre-ACA expansions). Due to the size of the Medicaid program, the argument goes, the states have
no real alternative but to continue participating in Medicaid under the ACA’s terms. The justices
discussed many sides of this issue during the oral arguments. For example, Justice Elena Kagan
stated, “It’s just a boatload of federal money for you to take and spend on poor people’s health care.
It doesn’t sound coercive to me.” Meanwhile, Chief Justice John Roberts observed, “I don’t think you
can deny that it’s a significant authority that we are giving the federal government to say, ‘You can
take away everything if the States don’t buy into the next program.’”[6]

In addition to these two central questions, the Court also heard arguments on “severability,”
addressing whether it must invalidate all or part of the ACA’s remaining provisions if it finds
Congress exceeded its authority when enacting either of the provisions discussed above. In other
words, the severability discussion concerns whether the Court would strike only the provision in
question, only the provision in question plus some closely related provisions, or the entire ACA. The
arguments on this issue mainly addressed the minimum coverage requirement and focused on the
degree to which certain provisions of the ACA are linked with that provision and what Congress
would have intended to occur if the provision were found unconstitutional. Congress often makes its
intent regarding severability explicit, but it did not do so in the ACA.

It is also worth mentioning that the Court began its marathon of arguments by considering whether
the Anti-Injunction Act of 1867 bars the Court from ruling on the constitutionality of the minimum
coverage requirement before its tax-related penalties will first be levied in 2015. The Anti-Injunction
Act generally prohibits courts from hearing a challenge to a tax before the tax has been paid. It
would certainly be anticlimactic to postpone a decision on the minimum coverage requirement for
several years, and most analysts expect the Court will find that the Anti-Injunction Act does not
apply in this case.

Potential Outcomes for Oncology

In summary, this June the Court will rule on the constitutionality of the ACA’s minimum coverage
requirement (assuming it moves past the Anti-Injunction Act issue) as well as the issue of the
Medicaid expansion. If the Court strikes the minimum coverage requirement, the Medicaid
expansion, or both, the Court will consider severability.

As a result, there are a number of permutations of rulings the Court may reach:
• The minimum coverage requirement could be stricken alone.
• The minimum coverage requirement could be stricken in combination with a small number of
closely related provisions.
• The Medicaid expansion could be stricken alone (or in combination with a small number of closely
related provisions).
• The entire ACA could be stricken.
• The entire ACA could be upheld.

These possibilities are discussed in greater detail below.

Minimum coverage requirement alone stricken

If the Court finds the minimum coverage requirement unconstitutional but leaves the rest of the law
intact, a number of problems could arise. In particular, the Obama administration asserts that the
minimum coverage requirement is necessary to properly implement the ACA’s guaranteed issue
provision (which requires health insurers to accept all qualified applicants regardless of health status
or preexisting conditions) and community rating provision (which prohibits varying health insurance
premiums based on factors other than family size, geography, age, and tobacco use). Without the
minimum coverage requirement, the administration has argued, these provisions could cause health
insurance premiums to increase and the number of insured people to decrease, since people would
be more likely to wait until they became ill before obtaining coverage. Although this circumstance would cause significant problems for all stakeholders in the health care industry, cancer care providers might be particularly affected by an increase in the number of uninsured patients. The Government Accountability Office and other entities have examined policies that might replace the minimum coverage requirement if such a situation were to arise.[7] Some methods of encouraging healthy people to obtain coverage might include modifying open enrollment periods (by making them fewer and further between), imposing penalties on those who do not enroll as soon as they become eligible, and allowing for greater variation in premium rates based on enrollee age. However, it is unlikely that any combination of these changes would have as large an impact on individuals’ decisions to purchase health care insurance as the minimum coverage requirement is expected to have. In any event, the current political climate may create insurmountable challenges for Members of Congress interested in replacing the minimum coverage requirement if it alone is stricken by the Court.

Minimum coverage requirement and other key insurance reforms stricken
Alternatively, the Court could decide to strike the minimum coverage requirement and also strike a limited number of ACA provisions that are closely related to that requirement. For example, the Obama administration has argued that the community rating and guaranteed issue provisions are so inextricably linked with the minimum coverage requirement that they too would have to be stricken if the minimum coverage requirement were invalidated.

If the Court agrees with the administration on this point, it would remove desirable safeguards that protect individuals with cancer. The ACA’s existing guaranteed issue provision ensures that individuals with cancer and cancer survivors will be able to access coverage on the individual insurance market even after being diagnosed with cancer. The community rating provision prevents insurers from penalizing cancer patients and survivors with exorbitant premiums. Removing these protections would, in many cases, leave these vulnerable people in the same difficult situations they confronted prior to the ACA’s passage.

Medicaid expansion stricken
The Medicaid expansion, through which an estimated 16 million people will be added to the Medicaid roles, is a major component of the ACA’s efforts to reduce the number of uninsured Americans. If the Court finds the Medicaid expansion to be unconstitutionally coercive, the Court could allow the expansion to remain in effect for states that voluntarily accept it, or it could eliminate the expansion completely.

If the Court finds that eliminating the Medicaid expansion undercuts the minimum coverage requirement (which might leave some people with a mandate to obtain coverage but no means of doing so absent Medicaid eligibility), the Court might also invalidate the ACA’s insurance market reforms or the law in its entirety on the basis of a ruling that the Medicaid expansion is unconstitutional. It is also worth noting that, while some believe that the Medicaid expansion could be stricken in a relatively narrow manner, others argue that a ruling striking the expansion could threaten the constitutional basis of a number of other laws, including Medicaid in its current form and the Clean Air Act.

Entire law stricken
If the Court finds the minimum coverage requirement or the Medicaid expansion to be unconstitutional and decides that Congress would have intended for the entire law to be invalidated absent the offending provision, a number of important protections that are of particular interest to the oncology community and are relatively unrelated to the disputed sections of the ACA would be lost. For example, the ACA:
- Eliminates annual and lifetime benefit limits, which are particularly problematic for cancer patients, cancer survivors, and other individuals with conditions that are expensive to treat.
- Prohibits insurance companies from rescinding coverage except in cases of fraud or intentional misrepresentation of material fact. Prior to enactment of the ACA, there were concerns that some insurance companies investigated beneficiaries who had recently been diagnosed with cancer or another costly disease in order to identify undisclosed conditions that would provide grounds for cancelling coverage.
- Requires Medicare, Medicaid, and private insurers to cover a variety of preventive services, including many cancer screenings, often without cost sharing.
• Requires health insurers to cover the routine patient costs associated with participation in clinical trials for the treatment of cancer and other life-threatening diseases. These are just a sampling of the protections that would be eliminated if the entire ACA were invalidated.

Entire law stands

If the Court decides that the provisions it is considering do not violate the Constitution, all of the ACA reforms that have been discussed over the last several years will remain in place. The federal government is still working to implement the ACA as originally scheduled by soliciting comments and issuing regulations on the law’s numerous programs.

Conclusion

A number of media reports of the ACA’s week at the Supreme Court attempted to extrapolate from the justices’ questions how they were likely to rule on these important issues. Although some observers were surprised that certain justices’ statements seemed to signal reluctance to rule the law constitutional, forecasting Supreme Court decisions is a highly speculative endeavor. As a practical matter, many states and businesses are operating under the assumption that the law will stand, at least with regard to ACA deadlines approaching in the near term. Although this article has not touched on every nuance relevant to the Court’s consideration of the ACA, we hope this discussion will assist the oncology community in contextualizing the oral arguments and understanding how each of the Court’s potential rulings may impact cancer patients and cancer care professionals. Regardless of how the Court rules, its opinion will provide a clearer picture of how the federal government may interact with the health care industry in years to come.

References:

REFERENCES


2. Pub L No. 111-152.


4. Seven-Sky v. Holder, 661 F.3d 1 (DC Cir. 2011).


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