## Chart of Key Issues in NFIB v. Secretary Sebelius,

## **Department of Health and Human Services**

ISSUE	FEDERAL GOVERNMENT ARGUED	STATE PLAINTIFFS ARGUED	U.S. SUPREME COURT HELD
Is the challenge to the constitutionality of the individual mandate barred by the Tax Anti-Injunction Act?  The Anti-Injunction Act (AIA) is a federal law that precludes, with certain exceptions, an individual from suing the federal government to stop a tax from being assessed or collected. This issue turns on whether the penalty for failure to purchase health insurance under the ACA is a tax under the AIA and subsequently barred from court review until the mandate becomes effective in 2014 and a penalty is assessed for failure to purchase qualified coverage is assessed in 2015? [1]	The "penalty" for not purchasing health insurance is a "tax" because it is administered by the Internal Revenue Service. Under the Anti Injunction Act, a tax may only be challenged after it has been assessed.  The individual mandate is barred from the court's review until it becomes effective in 2014, a penalty is assessed for failure to purchase qualified coverage and the assessed penalty is challenged. This would likely occur when the individual files a 2014 tax return.	The Anti Injunction Act does not bar challenges to the individual mandate because individuals who do not purchase insurance must pay a "penalty" not a "tax." The goal of the "penalty" is to encourage individuals to purchase insurance, not to raise revenue.	The Anti-Injunction Act does not apply as a procedural bar to this case.
Does the individual mandate exceed Congress' powers under the Commerce Clause of the U.S. Constitution?  The Commerce Clause gives broad authority to the Congress on matters of interstate commerce and foreign trade.	<ul> <li>Congress may require         Americans to purchase         health insurance pursuant to         its constitutional authority to         regulate commerce among         the states.     </li> <li>The individual</li> <li>mandate is a tool to help</li> <li>decrease cost shifting to</li> <li>individuals within the</li> <li>healthcare market.</li> </ul>	<ul> <li>The mandate is unconstitutional because Congress lacks the power to compel citizens to become active participants in a private market.</li> <li>The Commerce Clause grants Congress the authority to regulate "activity" within the commercial market; "inactivity" is outside of congressional control.</li> </ul>	The court upheld the individual mandate as constitutional under Congress' Article 1 taxing power.

If the individual mandate is found to be unconstitutional, can other provisions of the ACA be saved? Does the lack of a severability clause in the ACA require the whole Act to fall if any provision is found to be unconstitutional?

The ACA, unlike many acts, does not have a severability clause, which requires that if any provision is struck from the law, unrelated provisions remain in effect.

- If the individual mandate is struck down, only two provisions of the law should not survive. The provision which prevents insurance companies from:

  (1) refusing coverage to individuals with pre-existing conditions; and (2) charging higher premiums based on a person's medical history
- The remainder of the law should stand because the other provisions are unrelated to the mandate.
- The individual mandate is so "inextricably intertwined" with the other provisions of the law, that if it is ruled unconstitutional, the entire law must fall due to the lack of a severability clause in the ACA.

The individual mandate was upheld.

Did Congress unconstitutionally coerce the states into agreeing to substantially expand the Medicaid program by threatening to withhold states' federal Medicaid funding?

At what point do grant conditions imposed on states by the federal government cross the line or, in the case of Medicaid, involve such a large part of a state's economy that participation in the program and the associated conditions are no longer voluntary.

- Congress has the authority to attach conditions on the receipt of federal funds pursuant to its grant of power under the Spending Clause of the Constitution.
- The Supreme Court has never ruled any such condition coercive.

- The Medicaid expansion is coercive.
- Medicaid funding has become so important to states that they must participate in the program and thus comply with the federal requirements.
- There must be some limit to the congressional regulation of states in this manner.

The court upheld the Medicaid expansion, but makes it a voluntary provision as opposed to a mandatory provision. The court would not permit HHS to penalize states by withholding all Medicaid funding for choosing not to participate in the expansion.