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## HEALTH CARE REFORM SURVIVES SUPREME COURT SCRUTINY, ALTHOUGH NOT ENTIRELY INTACT

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Health care reform just got a clean bill of health from the United States Supreme Court. The Court recently ruled on the constitutionality of the Patient Protection and Affordable Care Act ("PPACA"), and generally upheld the legislation in a 5-4 decision written by Chief Justice John G. Roberts. In an outcome considered surprising to some, Roberts was joined in his opinion by the four justices who had been appointed to the Court by Democratic presidents. Certain individual justices wrote and/or joined concurring and dissenting opinions as well. The Court upheld the individual mandate to purchase health coverage, concluding that the mandate is permissible under the taxing authority of Congress. However, the Court rejected the argument put forward by the Obama administration that the individual mandate was a valid exercise of the power of Congress under the Commerce Clause of the Constitution. It will be interesting to see whether this restrictive ruling on the Commerce Clause might come back to haunt future Congresses and presidents in areas unrelated to health care reform without regard to which political party is in power.

By way of a quick refresher, the Court considered four questions during oral arguments held earlier this year. The main issue was whether Congress had the power under the Constitution to impose the individual mandate to purchase health coverage. A second issue addressed whether other parts of PPACA had to be struck down if that mandate was invalidated. The third issue before the Court considered whether PPACA's expansion of Medicaid imposed undue coercion of the states (as discussed below, the Court surprised most observers with their decision on this issue). The fourth and final issue asked whether the above questions were ripe for adjudication at this time since the mandate is not yet in effect (this fourth issue was rejected by the Court).

Because the mandate is constitutional, the Court was not required to decide whether other parts of PPACA had to be struck. Subject to the possibility of congressional repeal (or amendment), the entire statute survives this courtroom brawl essentially as is.

The decision is not a complete win for the Obama administration. In a bit of a surprise, the Court upheld the expansion of Medicaid coverage contained in PPACA but concluded that it was impermissible for the federal government to withdraw existing Medicaid funding from states that opt out of this expansion. No lower court decision had taken this position. The practical

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implications of this portion of the Court's opinion on the expansion of Medicare are as yet unclear, but a handful of states already have indicated that they likely will opt out of the Medicaid expansion.

The Court's decision will have a profound impact on employers, the states and health care providers. Employers, many of which have been frozen in place while awaiting this decision, will have to move forward with plans to implement the provisions of PPACA that become effective in the near term (such as the uniform explanation of coverage) and in subsequent years (when plan design and coverage issues will have to be analyzed). Federal agencies charged with implementing PPACA already have issued regulatory guidance on certain provisions of the law, but much more guidance (including the refinement of previously issued interim guidance) is needed and anticipated. There is much homework to do.

The Court's decision clearly does not mark the end of the battle in this country over health care reform. Congressional Republicans as well as Mitt Romney, the presumptive GOP nominee for president, have stated loudly and frequently that their goal is to repeal PPACA in its entirety. Supporters of PPACA generally concede that refinements to the law will be needed. Health care reform remains a main issue of contention in the fall's presidential elections. The Court's decision is likely to have an impact on the debate.

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