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SUPREME COURT TO HEAR HEALTH REFORM CASE IN MARCH

The Supreme Court is scheduled to hear arguments for and against the Patient Protection and Affordable Care Act (PPACA) beginning March 26th and continuing for three days. The main argument will focus on the constitutionality of the individual mandate, which requires most Americans to carry health insurance beginning in 2014. Opponents will argue that Congress lacks the authority to require individuals to obtain insurance coverage.

The Supreme Court has three options. It can decide that:

- 1) The law (health care reform as a whole) is constitutional
- 2) The individual mandate is unconstitutional, but cannot be severed from the rest of the law (thus voiding the entire Act)
- 3) The individual mandate is unconstitutional, and can be severed from the rest of the law (thus keeping the rest of the Act in effect)

Adverse selection is a real concern if the Court finds the individual mandate unconstitutional and severable (number 3 above). Many believe this to be the most likely scenario based on the Court's history and, at the same time, the worst outcome. If the individual mandate is determined to be unconstitutional, it will be argued that the requirement on insurers to accept all applicants (regardless of their health status) should be excluded from the Act as well.

Additionally, even if it is ruled that the individual mandate is constitutional, the penalty for an individual not having health insurance coverage remains relatively small. As a result, it is likely that a large number of uninsured individuals will remain uninsured. This outcome will trigger adverse selection as well, as some individuals will choose to pay the penalty (which will be substantially less expensive than purchasing insurance) and obtain coverage only when the need occurs.

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