

## The Anti-Injunction Act

### Background

Before the Supreme Court issues its opinion on the Patient Protection and Affordable Care Act (PPACA), it must determine if they are issuing their decision 3 years prematurely due to the legal constraints of the Anti-Injunction Act. The Act provides, “*no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person.*” The Justices must determine if they have standing to hand down an opinion on the individual mandate since the penalty for noncompliance is not effective until 2015. Under the Anti-Injunction Act, it is traditionally necessary that a specific person is affected by the law, specifically the penalty for noncompliance, before they can pursue a law suit. The Supreme Court has decided to allocate ninety minutes of the unprecedented five and a half hours of oral argument to the Anti-Injunction Act.

### In the Courts

The 4th Circuit Court in Richmond, VA was the first to raise this argument in the case *Liberty University vs. Geithner*. In their opinion, the judges concluded Liberty University filed their suit on the individual mandate prematurely since the individual mandate to purchase health insurance is not enacted until 2014, and the first monetary penalties for noncompliance will not be issued until the year after. Judge Motz wrote, “Because this suit constitutes a pre-enforcement action seeking to restrain the assessment of a tax, the Anti-Injunction Act strips us of jurisdiction. Accordingly, we must vacate the judgment of the district court and remand the case with instructions to dismiss for lack of jurisdiction.”

This decision was echoed by the United States Court of Appeals for the District of Columbia Circuit. Judge Brett M. Kavanaugh agreed that PPACA’s tax penalties do not go into effect until 2015 and the Anti-Injunction Act “poses a jurisdictional bar to our deciding this case at this time.”

### Arguments Against the Anti-Injunction Act

Unlike the other arguments before the Supreme Court regarding the PPACA, both the government and the states agree that the Anti-Injunction Act should not be used to bar the Supreme Court ruling on the individual mandate. Both parties want the high court to decide on the merits of the Constitutionality mandate as well as set a historical legal precedent on the use of the Anti-Injunction Act in instances where no person has been affected by a specific statute.

## The States' Opinion

The states' do not believe the use of the Anti-Injunction Act is applicable in this case because they are challenging the individual mandate, not the penalty associated with the mandate. They argue the mandate is a free-standing legal requirement while the penalty is purely a means to enforce the mandate. The states' believe it is important to note that the penalty is not structured like a tax in statute and therefore is not tax, which invalidates the use of the Anti-Injunction Act. Further, they challenge there is a greater burden to Americans due to the mandate's effects not the actual penalty associated with it and the states seek to not remove only the penalty, but the whole mandate.

## Federal Government Opinion

The administration will argue that the Anti-Injunction Act is invalid in this case because the aforementioned Act only is applied to revenue-raising tax-statutes. In this instance, the federal government is not classifying the mandate as a revenue raiser. They also attest that the purpose of the Anti-Injunction Act is to protect the government's ability to assess and collect taxes. Since they assume the Supreme Court will have rendered a decision on the lawsuit before the government will collect any of the taxes that will result from the mandate, the Anti-Injunction Act is not needed.

## Why this is important

It is important to note that both courts who determined the Anti-Injunction Act barred ruling on the constitutionality of the individual mandate qualified the penalty associated with noncompliance as a tax. This determination is vital because without it, the Anti-Injunction Act does not apply. The administration has largely based its argument that the individual mandate is Constitutional due to the commerce clause; however, this broadens their argument by identifying Congress' authority to levy and collect taxes. If the Supreme Court accepts the Anti-Injunction argument it also accepts the arguments that the mandate is a tax; therefore validating the administration's argument. It would then most likely view the individual mandate as completely within the power of Congress.

The debate over a deeming the noncompliance fee a tax or a penalty is now up to the Supreme Court. Its decision will not only have ramifications for anti-injunction argument, but also reach into the other issues being brought before the Court.