



TO: Douglas Holtz-Eakin, American Action Forum  
FROM: Doug Usher, Ph.D., Purple Insights  
DATE: June 19, 2012  
SUBJECT: Affordable Care Act Survey

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In coordination with the American Action Forum and Center Forward, Purple Strategies conducted two surveys of Supreme Court clerks and attorneys who have argued before the Court in advance of the decision on the Affordable Care Act (ACA) – one conducted in March just before the oral arguments and one conducted this month prior to the ruling. Our most recent poll shows that experts have become more convinced that the Court will overturn parts of the law.

**Respondents were surprised by the Justices' questioning.** When asked if the questioning was more skeptical or less skeptical about the law's constitutionality than they expected, 70% said it was more skeptical. Thirty percent (30%) said it was about what they expected. One respondent even said, "I feel like a dope, because I was one of those who predicted that the Court would uphold the statute by a lopsided majority...it now appears pretty likely that this prediction was way off."

**After the arguments, experts believe the mandate is more likely to be overturned.** As a result of the content of the oral arguments, experts now believe there is a higher probability the Court will find the Individual Mandate unconstitutional. In March, our experts believed that likelihood stood at 35%. After hearing the oral arguments and the Justices' questioning, our experts now place that probability at 57%.

**If the mandate is struck down, respondents are more likely to believe other parts of the law will go with it.** In March, 36% said that if the mandate was found unconstitutional that it would be severable from other parts of the law. Today, that estimate is down to 21%. And they now believe there is a 31% likelihood that the law will be ruled completely non-severable. They gauged the likelihood that it would be partially severable at 48%.

**By contrast, respondents believe the ACA's Medicaid Expansion provision will stand.** Respondents placed the likelihood that the Court will rule that the Medicaid Expansion provision is unconstitutional at just 22%, only three points up from March. In the event that it does fall, respondents believe it is likely to be ruled completely severable (64% likelihood).

**Respondents expect a decision by June 28<sup>th</sup>.** Our experts were asked when the Court was likely to issue its decision. Seventy-three percent (73%) said they expected the ruling to be handed down between June 25<sup>th</sup> and June 28<sup>th</sup>, with a plurality (27%) predicting June 28<sup>th</sup>.

#### Methodology

The survey was distributed to former Supreme Court clerks and attorneys who have argued before the Court and was conducted by Purple Insights, the research division of Purple Strategies. The survey was fielded May 30 to June 4, 2012 and is comprised of 56 participants: 38 former clerks of current Supreme Court justices and 18 attorneys who have argued before the Court. Eleven former clerks worked for the "Left" block of the Court, 18 clerked for the "Right" block, and 9 clerked for Justice Kennedy. The initial survey conducted prior to the oral arguments was fielded March 19 to 22, 2012. Both surveys were administered online and included follow-up phone calls and e-mails to encourage participation.