



Affordable Care Act Survey

Sponsored by: American Action Forum, Center Forward, and Purple Strategies
June 2012

Methodology

The survey was administered by Purple Insights, the research division of Purple Strategies. The survey was fielded May 30 through June 4, 2012.

The survey is comprised of 56 participants: 38 former clerks of current Supreme Court justices, and 18 attorneys who have argued before the Court.

All of those in the initial sample were contacted first via e-mail, and were then reached by phone at least once to encourage participation. We provided three follow-up e-mails as additional encouragement to participate. The survey was administered online.

Of the Supreme Court clear, 11 clerked for the “left” block of the Court (Justices Breyer, Ginsburg, Kagan, Sotomayor), 18 clerked for the “Right” block of the Court (Justices Alito, Roberts, Scalia, Thomas), and 9 clerked for Justice Kennedy. Given the tenures of the various members of the court blocks, this is a representative division of the populations of former clerks.

This document includes tracking data from the following previous Affordable Care Act survey conducted among the same sample of experts between March 19 and 22, just prior to the oral arguments on the case.

1. On a scale of zero to 100, what do you believe is the probability that the SCOTUS majority will decide the Anti Injunction Act applies to the individual mandate? *Showing Average*

June 2012 (Prior to Decision Announcement)	13
March 2012 (Prior to Oral Arguments)	27

2. On a scale of zero to 100 what do you believe is the probability that the SCOTUS majority will find the individual mandate unconstitutional? *Showing Average*

June 2012 (Prior to Decision Announcement)	57
March 2012 (Prior to Oral Arguments)	35

3. If the Supreme Court rules that the individual mandate is <u>unconstitutional</u>, what do you believe is the probability of each of the following findings? Please enter a number between 0 and 100 for each outcome – the total of all three must equal 100. <i>Showing Average</i>	June 2012 (Prior to Decision)	March 2012 (Prior to Arguments)
The individual mandate is completely severable	21	36
The individual mandate is partially severable	48	38
The individual mandate is non-severable	31	27

4. On a scale of zero to 100 what do you believe is the probability that the SCOTUS majority will find the Medicaid expansion unconstitutional? *Showing Average*

June 2012 (Prior to Decision Announcement)	22
March 2012 (Prior to Oral Arguments)	19

5. If the Supreme Court rules that the Medicaid expansion is <u>unconstitutional</u>, what do you believe is the probability of each of the following findings? Please enter a number between 0 and 100 for each outcome – the total of all three must equal 100. <i>Showing Average</i>	June 2012 (Prior to Decision)	March 2012 (Prior to Arguments)
The Medicaid Act is severable	64	65
The Medicaid Act is non-severable	22	19
This will be decided in the next term	14	16

6. Based on what you know or have heard about the oral arguments which of the following best characterizes your view:

As a whole the justices questioning indicated that they were more skeptical about the law's constitutionality than I had expected	70
As a whole the justices questioning was about what I expected.	30
As a whole the justices questioning indicated that they were less skeptical about the law's constitutionality than I had expected	0

7. On what date is the Court most likely to release their decision? (Day/Month).

June 14 to June 22, 2012	11
June 25, 2012	25
June 26 to June 27, 2012	21
June 28, 2012	27
June 29, 2012 or later	16

8. If you have any specific comments you would like to add you can enter them here. You need not fill out this section. [MOST ILLUSTRATIVE OPEN-END RESPONSES, TAKEN VERBATIM]

- “I feel like a dope, because I was one of those who predicted that the Court would uphold the statute by a lopsided majority -- maybe even 8-1. Although you never know, it now appears pretty likely that this prediction was way off.”
- “The case largely depends on which way Kennedy and to a lesser extent Roberts go. Before oral argument, I thought the plaintiffs had a 35% chance. The argument led me to up that estimate to 50%.”
- “From what I read of the initial survey results, compared to the surveyed group as a whole I was more bullish before oral argument that the justices would strike the individual mandate as an unconstitutional exercise of the Interstate Commerce Clause power. I was less surprised by the tenor of the oral arguments than others. But: although the usual caveats apply, the collegiality and tone the Court as a whole has shown since then makes me less bullish than I was. If you look at other terms where the "conservative" majority prevailed on divisive issues like this one (see for a very specific example OT2006), well before this time in the term calendar the "liberal" justices often show significant frustration with forthcoming conservative decisions by issuing stinging dissents or oral argument lines of questioning in what would otherwise be less divisive cases. For example, I wonder whether we would have seen the gentle tone we saw in the AZ immigration case from Justice Sotomayor if a decision was forthcoming that will strike down a central feature of President Obama's signature bill. Probably reading too much into it but the Court's tenor lately gives me pause.”
- “Court may not reach Medicaid question because will find mandate unC and non-severable, thus mooting the Medicaid question.”
- “5-4, either way.”