



# The Health Reform Challenge Before the Supreme Court

Topeka, Kansas • March 2012

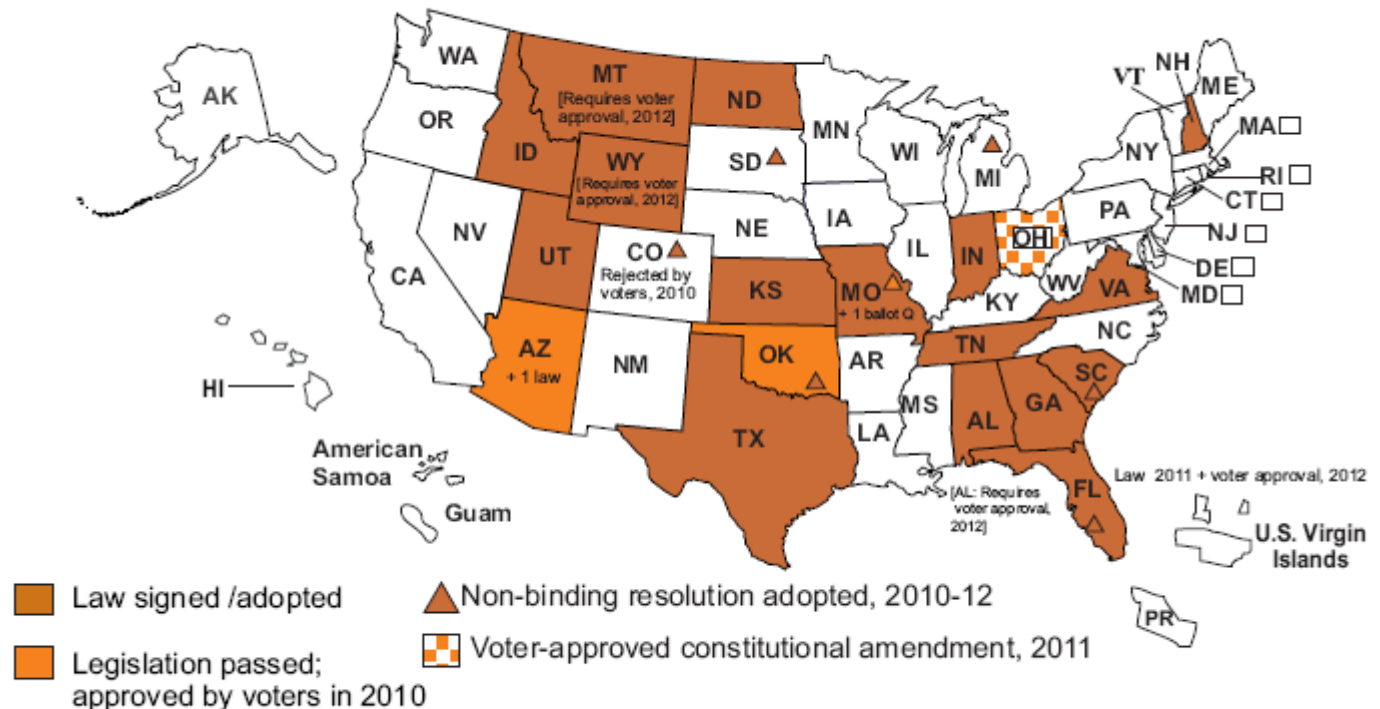
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# The Climate

## 2009-2012 State Legislation Opposing Elements of Federal Health Reform Enacted laws & constitutional provisions; Pending ballot questions in 4 states



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See NCSL report for states with multiple filed legislation.



**statehealthfacts.org**  
Your source for state health data



# The Case

- The state of Florida is the primary plaintiff along with 25 other states, the NFIB, and private individuals
- District Court invalidated the entire law
- Appeals Court held mandate unconstitutional but held that the mandate is “severable” from the rest of the law
- Supreme Court agreed in November of 2011 to hear oral arguments in the case



# The Claims

## 1. The Individual Mandate





# The Claims

## 1. The Individual Mandate

### The Commerce Clause Arguments



Everyone uses or will use health care, and the mandate is necessary for system to function



Not purchasing insurance is “inactivity”, and regulating inactivity is a slippery slope



# The Claims

## 1. The Individual Mandate

The Court needs to decide:

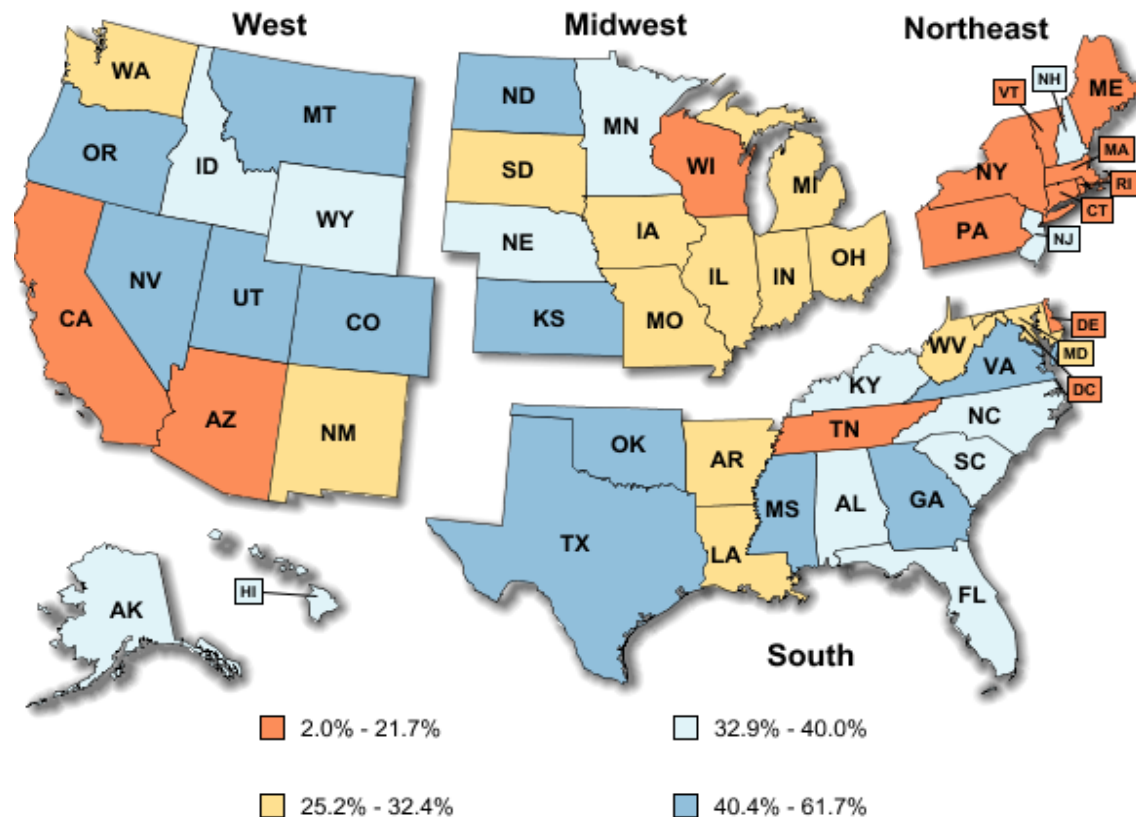
- If the individual mandate is a valid use of Congress' Commerce Power
- If the Necessary and Proper Clause makes it a valid exercise of the Commerce Power
- And/or does the penalty constitute a tax, making it subject to Congress' Taxing Power



# The Claims

## 2. The Medicaid Expansion

Estimated Increase in Medicaid Enrollment and Spending in 2019, Relative to Baseline







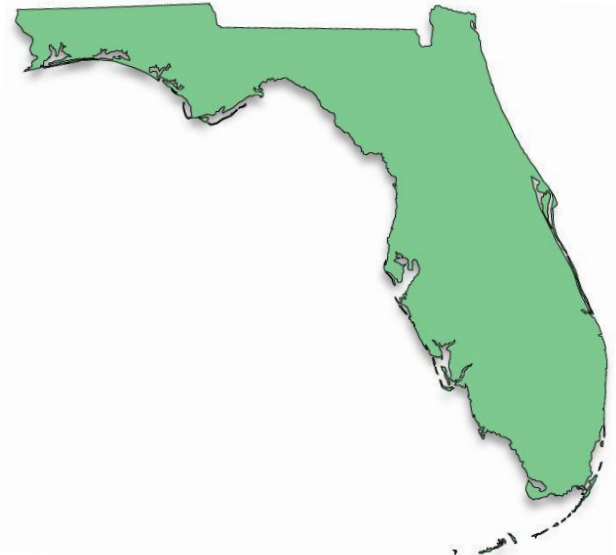
# The Claims

## 2. The Medicaid Expansion

### The Arguments



The expansion is an appropriate exercise of Congressional Spending Power, and conditional funding has always been a part of the choice to participate in Medicaid



The expansion is so significant, it amounts to coercion, and given the significant role Medicaid plays states do not really have a “choice” to not participate



# The Claims

## 2. The Medicaid Expansion

The Court needs to decide:

- Is this use of the Congressional Spending Power “coercive”
- If so, does the rest of the law need to be struck down



# The Claims

## 3. Severability





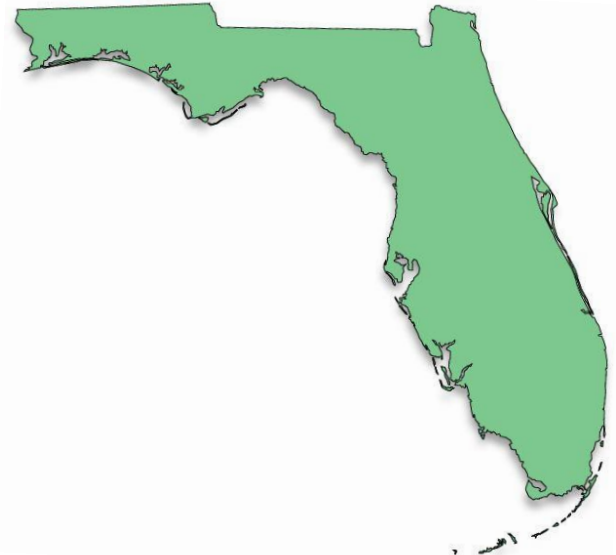
# The Claims

## 3. Severability

### The Arguments



If the mandate is struck down, only those pieces of the ACA directly related to it should be struck down



If the mandate is struck down, the whole law should be struck down (and the same is true for the Medicaid expansion)



# The Claims

## 3. Severability

The Court needs to decide if the individual mandate is unconstitutional and if so:

- Should the entire law be stricken
- Should the pre-existing condition and health status rating provisions be stricken, but the rest of the law upheld
- Should everything but the individual mandate be upheld



# The Claims

## 4. The Anti-Injunction Act (AIA)

Form **1040** U.S. Individual Income Tax Return **2011** OMB No. 1545-0074 IRS Use Only—Do not write in this space.

For the year ending 2011, or other tax year beginning , 2011, ending , 20

Your first name and initial Last name

Joint return, spouse's first name and initial Last name

Home address (number and street). If you have a box, see instructions. Apt. no.

City, town or post office, state, and ZIP code. If you have a foreign address, also complete spaces below (see instructions).

Foreign country name Foreign province/county Foreign postal code

**Filing Status**

1 ☐ Single

2 ☐ Married filing jointly (even if only one had income)

3 ☐ Married filing separately. Enter spouse's SSN above and full name here. ▶

4 ☐ Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶

5 ☐ Surviving widow(er) with dependent child

**Exemptions**

6a ☐ Yourself. If someone can claim you as a dependent, do not check this box.

b ☐ Spouse

**Dependents:**

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input type="checkbox"/> if child under age 17 qualifying for child tax credit (see instructions)
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>

If more than four dependents, see instructions and check here ☐

d Number of exemptions claimed

**Boxes checked on 6a and 6b**

No. of children on 6c who:

- ☐ lived with you
- ☐ did not live with you due to divorce or separation

Dependent on 6c not on 6a or 6b above

and numbers on lines above ▶ ☐



# The Claims

## 4. The Anti-Injunction Act (AIA)

The Court needs to decide:

- If the individual mandate penalty is a tax
- How the AIA impacts its ability to rule on the case





# What happens next?

Depending on the ruling;

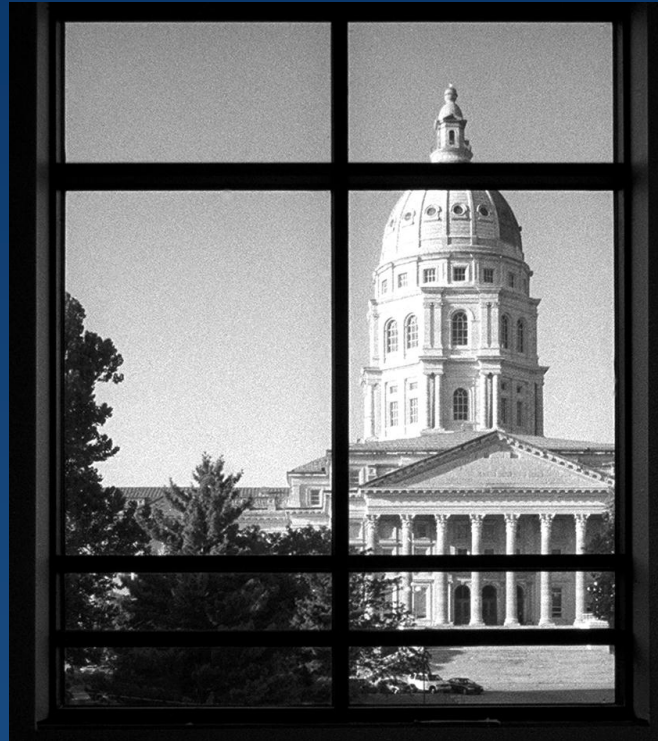
- Enact state-level insurance regulations to expand coverage
- Enact state-level incentives—or penalties—to encourage Kansans to get health insurance
- Implement health reform provisions





# Kansas Health Institute

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*Information for policy makers. Health for Kansans.*