

THE U.S. SUPREME COURT'S DECISION ON THE AFFORDABLE CARE ACT

IN 2010, CONGRESS PASSED AND PRESIDENT OBAMA SIGNED INTO LAW THE AFFORDABLE CARE ACT, THE FIRST MAJOR HEALTH-CARE REFORM IN ALMOST 50 YEARS. THE LAW WAS IMMEDIATELY CHALLENGED, AND IN JUNE 2012, THE U.S. SUPREME COURT RULED ON WHETHER THE LAW WAS CONSTITUTIONAL.

On June 28, 2012, hundreds of demonstrators gathered outside the Supreme Court waiting for the court to issue its ruling on the Affordable Care Act, the Obama administration's plan to reform health insurance. For three days in March, the Supreme Court had heard oral arguments on the challenges to the law. For weeks after the oral arguments, commentators had been trying to predict whether the court would strike down the federal law's mandate requiring everybody to have a government-approved level of health insurance. And there was constant speculation about whether Justice Kennedy, often a "swing vote," would side with the "liberal" justices and vote to uphold the law or join the "conservatives" to strike it down.

The ruling surprised almost everyone. In two separate opinions, a 5–4 majority of the court ruled that the "individual mandate" exceeded Congress' power under the commerce clause, but it did *not* strike down the law. Instead, a different majority voted 5 to 4 that the individual mandate, which imposes a financial "penalty" on adults who do not have insurance, could be considered a "tax" and was therefore within Congress' power to levy taxes. And the court upheld another key part of the law expanding the Medicaid program, but it struck down a part of the law that required states to participate in the expansion or risk losing *all* the Medicaid funds they were already receiving.

Making Health Care Affordable

When President Obama was elected, he promised to reform the



President Barack Obama signed the Affordable Care Act into law on March 23, 2010.

FDR Library and Museum

health care system. It was not an easy task. No president since Lyndon Johnson in 1965 (who signed Medicare and Medicaid into law) had been able to pass a major health-care reform law.

Congress held numerous debates, and the press reported about the pros and cons of the legislation that was being proposed. A bill, titled the Patient Protection and Affordable Care Act (ACA), finally passed in March 2010. The ACA was intended to make health care available and affordable to most of the 50 million Americans who were currently uninsured. The Congressional Budget Office (CBO) estimated that with the ACA in place, 32 million more Americans would have health-care coverage by 2019.

An important part of the ACA is to expand the Medicaid program. Medicaid is a joint federal-state program that provides medical care to certain needy people. The states pay part of the costs and the federal government pays an average of 57 percent of the cost. Under the ACA, Medicaid would be expanded to cover an estimated 16 million people who are currently uninsured.

The other key provisions in the ACA focus on making health insurance more affordable and accessible to people who are not poor enough to qualify for Medicaid. The law is designed to make buying insurance easier and less costly. Insurers could no longer deny coverage to people who are already sick — i.e., those with a "pre-existing condition." ▶

They could not charge sick people higher premiums. And they could not put a cap on the amount they will pay during a person's lifetime.

Perhaps most important, the law requires everyone to have insurance. People who don't have insurance through their employer or from a government health plan (like Medicare or Medicaid) must buy it from the market or pay a penalty. This provision is called the "individual mandate." Its purpose is to keep the cost of premiums as low as possible. If more people (including the relatively young and healthy) buy insurance, insurance companies have more money to pay for those who are sick, and the cost of premiums can be lower. The individual mandate became the most controversial part of the new law.

Road to the Supreme Court

On the same day that President Obama signed the ACA into law, the state of Florida filed a lawsuit against the federal government claiming that the individual mandate was unconstitutional. Florida was joined by 12 other states — and later by 13 more states, two individuals, and the National Federation of Independent Business. The Florida District Court ruled that Congress did not have the power under the commerce clause to require people to buy health insurance. The federal government appealed, and the 11th Circuit affirmed the lower court's opinion. Similar lawsuits were filed around the country, claiming that the individual mandate — and various other provisions of the law — were unconstitutional.

In November 2011, the Supreme Court agreed to hear the case from the 11th Circuit. By that time, other appellate courts had made conflicting rulings — two Circuit Courts ruling that the mandate was constitutional and one other Circuit striking it down. Instead of following the usual practice of limiting oral argument on each case to one hour, the court scheduled three days and more than five hours for oral argument.

The first day of oral argument was devoted to a technical issue of law. The Anti-Injunction Act bars lawsuits "for the purpose of restraining the assessment or collection of any tax." In other

words, people who object to a tax may not sue until the government has actually collected the tax. If the Anti-Injunction Act applied to this case, it would have delayed the court from hearing the case until the health-care law was fully implemented. Neither the Obama administration nor those challenging the health-care law wanted the court to delay hearing the case. An independent lawyer was brought in to argue that the Anti-Injunction Act barred the lawsuit. All nine Supreme Court justices ultimately agreed that the Anti-Injunction Act did not apply to this case, and it did not need to be delayed.

Can the Government Make You Eat Broccoli?

On day two, the court heard arguments on the individual mandate. The question before the court was whether Congress can compel individuals to buy a product — i.e., health insurance — from private companies. Both parties focused on the commerce clause of the Constitution. It gives Congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes." (Art.1, sec. 8, cl. 3)

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The government argued that the mandate was a valid exercise of Congress' power under the commerce clause. It noted that health-care spending amounted to about one-fifth of our national economy. Like it or not, almost all people require and receive health care at some time in their life. When people need health care and do not have insurance, they often don't pay the bills. And when hospitals don't get paid, they pass on the cost to insurers, and the result is that premiums for those who do have insurance go up. The government argued

that the decision not to buy insurance affects the market for insurance by increasing premiums for the insured and that the individual mandate would make premiums go down.

The states argued that the commerce clause only allows the regulation of activity, and not "inactivity." People who chose not to purchase insurance are not involved in commerce, and Congress does not have the power to regulate how people should spend their money. The states argued that giving Congress the power to impose the individual mandate would start down a slippery slope, where people could be required to buy all kinds of products. As Judge Vinson, in the Florida District Court wrote, "Congress could require people to buy and consume broccoli at regular intervals . . . because people who eat healthier tend to be healthier and . . . put less of a stress on the health care system."

The broccoli argument took hold. The word "broccoli" was mentioned multiple times during oral argument and also in the justices' written opinions. Ultimately Chief Justice Roberts ruled that the commerce clause did not authorize the individual mandate. "Congress," he wrote, "has never attempted to rely on that power to compel individuals not engaged in commerce to purchase an unwanted product [like broccoli.]" Though the commerce clause does give Congress broad power to regulate commerce, it does not give Congress the same power to regulate what we do *not* do. And therefore, Justice Roberts concluded, the ACA's individual mandate is unconstitutional. Four other justices agreed with this reasoning, although they did not join the chief justice's opinion.

Is a Penalty the Same as a Tax?

Even though the court majority ruled that the commerce clause did not authorize the individual mandate, that did not end the matter. The government also argued that the mandate could be upheld as within the power the Constitution gives to Congress "to lay and collect taxes." (Art. 1, sec. 8, cl. 1). And indeed the ACA provides that the "penalty" on a person who does not have insurance is paid to the

IRS and is “assessed and collected in the same manner” as a tax penalty.

The states objected to the government’s argument based on the wording of the ACA. The individual mandate section of the ACA does not use the word “tax.” It states that individuals must be covered by “minimum essential coverage,” and if they are not, “there is imposed on the taxpayer a penalty” in an amount determined by the IRS. The states argued that if Congress had intended to invoke its taxing power, it would have used the word “tax” and not the word “penalty.”

But Chief Justice Roberts disagreed, and four other justices agreed with him on that point. A law, he wrote, should not be struck down just because Congress used the wrong labels. Requiring an individual to pay a financial penalty for not obtaining health insurance “may reasonably be characterized as a tax.” And it is therefore constitutional under the taxing power. In support of his decision Justice Roberts quoted Justice Oliver Wendell Holmes:

It is well settled that as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that which will save the Act.

Not Giving the States a Choice

Because of the individual mandate, many people who were previously uninsured will be buying health insurance. The ACA also increases the number of people with health coverage by expanding the Medicaid program.

Congress passed the original Medicaid act in 1965. The law gives states federal matching funds to provide health care to the poor. (The federal government pays between 50 and 83 percent of the states’ Medicaid costs). Before the ACA, only certain groups were covered: pregnant women, families with dependent children, and people who are sick and disabled. Adults without dependent children could not receive Medicaid no matter how low their income. The ACA made a big change in the existing law by requiring states to cover *all* adults with incomes below 133 percent of the

Federal Poverty Level (FPL). The federal government initially will pay 100 percent of the cost for the newly eligible adults (and 90 percent after 2020). This change is expected to provide coverage to 16 million people not previously covered.

The 26 states that challenged the ACA claimed that they should have a choice whether to make the big changes required by the ACA, but they don’t really have a choice because the law gives the federal government power to “withhold all or merely a portion of funding from a noncompliant state.” That means that if a state decides not to expand Medicaid, it could lose all of the federal funding it receives for its existing Medicaid program. For the average state, that would mean losing at least 10 percent of its entire budget. (In 2009, most states received more than \$1 billion each in federal Medicaid funding — and nearly one third received more than \$5 billion). With so much money at stake, the states claimed that they would have no real choice.

The government argued that the ACA is just one more of many amendments that over the years have been made to the Medicaid law. Moreover, when Congress originally passed the Social Security Act (of which Medicaid is a part), it reserved “the right to alter, amend or repeal any provision.”

But the states claimed that the ACA is not just an amendment to the existing Medicaid act, and further, under our federal system, there must be a limit on Congress’ power to use federal dollars to coerce states. The ACA, they claimed, exceeds that limit.

Chief Justice Roberts and six other justices agreed. The government does have power under the Constitution to “pay the Debts and provide for the common Defence and general Welfare of the United States . . .” (Art. 1, sec. 8, cl. 1). Congress, Roberts wrote, may use this power (the “Spending Power”) to grant funds to the states with the condition that the states take actions that Congress could not require them to take. But Congress may only go so far with financial inducements. When “pressure turns into compulsion,” he wrote, the legislation runs contrary to our system of federalism. For Roberts,



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Chief Justice John Roberts surprised many when he voted to uphold the Affordable Care Act’s individual mandate.

therefore, the Medicaid expansion provision of the ACA is constitutional, except for the financial penalty part that allows the government to withhold *all* Medicaid funding from states that choose not to expand their programs.

Saving the ACA With ‘Severability’

If one portion of a law is ruled to be unconstitutional, should the rest of the law still go into effect? The states argued that the answer is no. They claimed that if certain portions of the ACA were found to be unconstitutional, such as the individual mandate, the entire act should be struck down because those portions were not “severable.” Since the court ultimately held the mandate to be constitutional, the court did not have to decide the severability question with respect to the mandate.

But the states also argued that the whole Medicaid expansion program of the ACA should be set aside, because the invalid financial penalty enforcement portion could not be severed from the rest. Roberts and four other justices, however, held that invalidating the financial penalty did not affect the Medicaid expansion portion ▶

of the ACA because of a “severability” clause in the original Medicaid act. The clause specifies that if any section of the Medicaid law is held invalid, “the remainder of the chapter . . . shall not be affected thereby.” Therefore the rest of the states’ Medicaid programs are not affected, and the states that choose not to participate in the expansion will not lose the federal funds for those pre-existing programs. As far as the effect on the rest of the ACA, Roberts held that the test is whether Congress would have wanted to preserve the rest of the act. He determined that the answer was yes. Without the financial penalty, some states may choose not to participate in expanding Medicaid coverage. But “we do not believe that Congress would have wanted the whole Act to fall simply because some may choose not to participate.”

Aftermath

The Affordable Care Act was a hugely important milestone for the president. It was passed by a narrow margin in Congress. And it will affect millions of Americans.

The court faced a daunting task in ruling on the ACA case. The nine justices

expressed deep differences of opinion. Four justices (Scalia, Thomas, Alito, and Kennedy) joined in a strong dissent. Justices Ginsburg and Sotomayor voted with Roberts to uphold the law, but nevertheless wrote their own quite lengthy opinion, disagreeing with aspects of his reasoning. Nevertheless, in an exercise of judicial restraint, Roberts upheld a piece of legislation initiated by the executive branch and passed by Congress. The role of the court, Justice Roberts made clear, is not to strike down a law with which a member of the court does not agree. “It is not our role,” he wrote, “to forbid it or pass upon its wisdom.” Rather, whenever possible, the court should uphold legislation passed by Congress, which is elected by the people.

Some critics worry that the ACA decision will limit Congress’ power under the commerce clause. Others view this as a positive step, seeing the decision as the first significant limit on the federal government’s spending power. Some advocates of expanding health care are concerned about what will happen to low-income adults in states that choose to opt out of the Medicaid expansion. The future effects of the decision are difficult to predict.

What is clear is that by upholding the ACA, the court has allowed the first major expansion of health care in the United States in almost 50 years to remain in effect.

FOR DISCUSSION

1. What is the Affordable Care Act? What parts of it were challenged in court?
2. What is the interstate commerce clause? Do you agree with the court decision that the mandate in the ACA could not be upheld under the commerce clause? Explain.
3. The mandate was upheld on other grounds. What were they? Do you agree with the court? Explain.
4. What is Medicaid? How did the court rule on Medicaid expansion? Do you agree with the court? Explain.
5. How did the court rule on the issue of severability? Do you agree with the court? Explain.

ACTIVITY

The Commerce Clause

In his opinion for the court, Chief Justice John Roberts concluded that the individual mandate could not be upheld under the Constitution’s commerce clause. “The individual mandate forces individuals into commerce precisely because they elected to refrain from commercial activity. Such a law cannot be sustained under a clause authorizing Congress to ‘regulate Commerce.’ ”

In this activity, students will look at several cases and decide whether Congress has the power *under the commerce clause* to enact this legislation. (For the purpose of the activity, students do not consider whether other parts of the Constitution give Congress the power to enact this legislation.) Divide the class into small groups. Each group should discuss the following questions for each case:

1. Does this law regulate interstate commerce? (Think of all the possible effects that it could have on interstate commerce.)
2. Does the law require anyone to engage in commercial activity that the person otherwise would not engage in?
3. Should this law be upheld under the interstate commerce clause? Explain.

Case #1: Auto insurance. Imagine that Congress has passed a law requiring that all truckers who drive on federally funded interstate highways buy automobile insurance.

Case #2: Flu shot. Imagine that a flu pandemic has broken out and threatens the health of everyone in the U.S. Congress passes a law requiring everyone to get a flu shot.

Case #3: Marijuana grown solely for personal use. In the Controlled Substances Act (1970), Congress banned (among other things) growing marijuana even solely for personal use. (*Gonzales v. Raich*, 2005)

Case #4: 1964 Civil Rights Act. Among other things, the act banned hotels, restaurants, theaters, retail stores, and other facilities open to the public from refusing service to anyone because of the person’s race, color, religion, or national origin. (*Heart of Atlanta Motel v. U.S.*, 1964)

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Standards Addressed

U.S. Supreme Court's Decision

National High School Civics Standard 18: Understands the role and importance of law in the American constitutional system and issues regarding the judicial protection of individual rights. (2) Knows historical and contemporary practices that illustrate the central place of the rule of law.

National High School U.S. History Standard 31: Understands economic, social, and cultural developments in the contemporary United States. (5) Understands major contemporary social issues and the groups involved....

California History-Social Science Standard 11.11: Students analyze the major social problems and domestic policy issues in contemporary American society.

California History-Social Science Standard 12.5: Students summarize landmark U.S. Supreme Court interpretations of the Constitution and its amendments.

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