

The Supreme Court's Decision on the Affordable Care Act Health Reform Law

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Relationships under U.S. Constitution Implicated in Decision

- **Judicial Branch ~ Legislative Branch**
- **Constitution ~ Legislation**
- **Federal government ~ Individuals**
- **Federal government ~ 50 States**

- **All but one major issue in case decided 5-4**

Background on U.S. Health Care System

- **Commercial marketplace**
- **Medicare**
- **Medicaid**
- **Other programs**
- **Uninsured**

68 million

- » “Group” coverage via employment
 - Employers not required to offer
 - Fewer small employers offering coverage
- » “Individual” coverage
 - “Adverse selection,” cost, “pre-existing condition” and underwriting problems

50 – 55 million

- » Federal program for older (65+) and disabled persons
- » Available via:
 - Direct coverage from federal government; or
 - Private health plan with most cost covered by federal government

62 – 65 million

- **State program for low income persons**
 - » Federal government reimburses states for bulk of costs
 - » States vary in eligibility requirements
 - Different income thresholds
 - Some do not provide any coverage for childless adults
 - » Major drain on state budgets

40 – 50 million

- U.S. Military and their dependents
- Veterans
- Indian Health Service
- Other

50 - 55 million

- **Dependent on own funds or charity care**
- **Access problems**
- **Costs place burden on health care providers and “cost-shifts “ place burdens other coverage sources**

**Selected Elements
of Affordable Care Act
Health Reform Law
Passed by Congress in 2010**

- **Guaranteed availability and renewability.**
- **Prohibition on preexisting condition exclusions and other forms of discrimination based on health status**
- **“Lifetime” and “annual” limits prohibited for “essential benefits”**
- **Insurers must “community rate” so insurance will be less costly for sicker persons or populations**

- Subsidies provided for individuals if income exceeds 100%, but is not more than 400%, of the federal poverty line
- Taxpayers also can qualify for a tax credit if they get qualified coverage.
- Large employers penalized if they don't offer insurance
- Small employers qualify for tax credits to subsidize their contributions toward health insurance for their employees.
- States given funding to expand Medicaid coverage to cover “essential benefits” and increase eligible population
 - » All Medicaid funding could be cut off if a state doesn't expand its program

“Individual mandate”

- Most U.S. citizens and legal residents “shall” obtain and maintain “minimum essential” health insurance coverage
- Individuals must get coverage or pay a penalty -- greater of \$695 per year per family, up to a maximum of three times that amount, or 2.5% of taxable household income.
- “Mandate” viewed as critical to success of market reforms –
 - » If individuals are guaranteed coverage, and can wait to buy insurance until they are sick, the whole system collapses
 - » If health people don’t buy insurance, rates for sick people will be too expensive

Law is Controversial

- » Passed without a single Republican vote in House or Senate
- » Given nickname “ObamaCare”
- » Series of legal challenges

***National Federation of Independent
Business v. Sebelius, ____ U.S.
____ (No. 11-393) (June 28, 2012)***

- Does federal law prohibit lawsuits to bar collection of taxes?
- Does “individual mandate” exceed Congress’s power?
- Does threatening to withhold all Medicaid funding if a state does not expand its Medicaid program infringe on state’s right to be free from federal coercion?
- If either part of the law falls, must the whole law be struck down?

- “Because no party supports the Eleventh Circuit’s holding that the individual mandate can be completely severed from the remainder of the Affordable Care Act, we appointed an *amicus curiae* to defend that aspect of the judgment below.”
- “And because there is a reasonable argument that the Anti-Injunction Act deprives us of jurisdiction to hear challenges to the individual mandate, but no party supports that proposition, we appointed an *amicus curiae* to advance it.”

- **Federal statute bars lawsuits to enjoin collection of taxes**
 - » Remedy instead would be to pay tax and sue to get it back, but Court would avoid issue for years
 - » Individual mandate and associated penalty was not described by Congress as a tax, but was described as a “shared responsibility payment”
 - » Whether law imposes a tax for purposes of Anti-Injunction Act is dependent on Congressional intent
 - » Court rules 9-0 that Anti-Injunction Act does not deprive the Court of jurisdiction to hear case

“Individual Mandate” exceeds Congress’s power to regulate commerce

- “The Congress shall have Power . . . To regulate Commerce . . . among the . . . States. U.S. Const., Art. I, §8.
- Precedent supports Congress’s authority to regulate activities that substantially affect interstate commerce
 - » Government claims not buying health insurance “has a substantial and deleterious effect on interstate commerce”
- 5-4 ruling that not buying insurance is not activity and is not commerce
 - » It does not represent action by inaction, as regards how to pay for one’s health care
 - » The “broccoli” analogy – could the government make everyone buy or eat broccoli to promote better health and improve the economy?

“Individual mandate” not supported by “necessary and proper” clause

- Congress shall have Power . . . To make all Laws which shall be necessary and proper for carrying into Execution [its] Powers U.S. Const., Art I, §8 (emphasis added)
 - » Government argues mandate is necessary and proper because the mandate is an “integral part of a comprehensive scheme of economic regulation”
- By 5-4 vote, Supreme Court says no, mandate is not “incidental” and not narrow in scope.
 - » It may be “necessary,” but it’s not “proper”

“Individual mandate” is sustained as a “tax”

- **The Congress shall have Power To lay and collect Taxes. . . . U.S. Const., Art. I, §8.**
 - » Includes power to tax that which it cannot regulate or forbid
- **Under law, “shared responsibility payment” imposed for failure to buy insurance.**
 - » Law calls this a “penalty,” not a “tax,” even though it is collected like a tax by the taxing agency
 - » [Taxes are politically unpopular]
- **By 5-4 vote, Court upholds the individual mandate as a tax**
 - » Constitutionality of law does not depend on which authority Congress claimed it was exercising
 - » Between two possible interpretations of a law, “by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the Act.”
 - » It is reasonable to view the penalty as actually being a tax
 - » Penalty is not so punitive as to make it a compulsion rather than tax.
 - » Chief Justice Roberts joins the 4 dissenters from the other parts of the “mandate” ruling.

Medicaid expansion funding conditions as infringing states' rights

- **Congress shall have Power To provide for the . . . general Welfare of the United States. U.S. Const., Art. I, §8**
 - » Congress may use this power to grant federal funds to the States, and condition grant upon the States' "taking certain actions that Congress could not require them to take"
- **But the powers not delegated to the United States by the Constitution, . . . are reserved to the States respectively, or to the people. U.S. Const., Amendment 10**
 - » Spending power is exceeded if funding effectively compels state to act

Funding provision is unconstitutional compulsion

- Medicaid spending accounts for over 20% of the average State's total budget, with federal funds covering 50 to 83% of those costs
- Medicaid expansion would dramatically increase state costs, though federal government would reimburse most of the additional money
- By 5-4 vote, Court strikes down threat to withhold not just “new” Medicaid funding, but “all” Medicaid funding if state does not expand Medicaid programs is “compulsion”
 - » This “runs counter to federalism” and is unconstitutional in violation of 10th Amendment

- **What other parts of health reform law remain enforceable or are struck down since funding provision of Medicaid expansion is unconstitutional?**
 - » By 5-4 decision, rest of law is sustained
 - » States that do not expand Medicaid programs can be denied only “new” money
 - » Majority acts on basis that Congressional intent would not have been to have entire law struck if this one part were found unlawful
 - » 4 dissenters would have struck down the entire health reform law