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Summary of the Decision by the U.S. Supreme Court on the Patient Protection and Affordable Care Act

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The Patient Protection and Affordable Care Act (ACA) was signed into law by President Obama on March 23, 2010 and will expand coverage and access for millions of Americans through its numerous provisions reforming the healthcare system. Twenty-six states, along with several private parties, challenged the ACA in a number of federal courts; in March 2012 the Supreme Court heard oral arguments regarding the ACA's constitutionality. On June 28, 2012 the Court released its opinion regarding the challenges to two key provisions of the ACA: (1) the mandatory expansion of Medicaid to cover all individuals living at or under 133% of the federal poverty level (FPL) exceeds federal power to require states to comply with federal regulation, but is constitutional if applied only to new Medicaid funds; and (2) the requirement that non-exempt individuals obtain health insurance is constitutional under Congress' authority to tax and spend. Presented here is a brief synopsis of the Supreme Court's holdings regarding the constitutionality of these key provisions of the ACA.

Key Holdings

- A. The Medicaid expansion is unconstitutional if the Secretary of Health and Human Services (HHS) has authority to withdraw all Medicaid funding from states that do not comply with the expansion. So long as the Secretary's power only applies to new Medicaid funding, the expansion is constitutional.
- B. The requirement to maintain minimum essential coverage (individual mandate) is:
 - a. Unconstitutional if dependent upon Congress's Commerce power, but
 - b. Constitutional as a tax under Congress's Taxing power.
- C. The Anti-Injunction Act (AIA) does not bar suits challenging the individual mandate. Although the mandate is a tax under Article 1 of the Constitution, Congress labeled the exaction a "penalty", indicating that it did not intend the AIA to apply.

Decision Breakdown

Background

The Chief Justice, joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan

The two ACA provisions challenged were the requirement that most adults residing in the United States obtain health insurance (subject to a monetary penalty assessed by the IRS), and the expansion of the Medicaid program to cover most individuals who are living at or below 133% FPL.

Expansion of Medicaid Up to 133% FPL is Unconstitutional if Mandatory.

The Chief Justice, joined by Justices Breyer, Kagan, Scalia, Kennedy, Thomas, and Alito

“What Congress is not free to do is penalize States that choose not to participate in that new program by taking away their existing Medicaid funding.” (55)

The court held that states must have a “legitimate choice” of whether they will participate in a federal program such as Medicaid. In other words, Congress cannot put “a gun to the head” (51) of states that do not wish to comply with its provisions. The Court found that expanding Medicaid to cover all adults up to 133% FPL is more than a mere alteration, but rather a new program of public coverage. Thus, threatening states with the removal of federal funds for Medicaid as it exists now unconstitutionally coerces implementation of an additional federal policy. Surprising states with such drastic “retroactive” conditions on Medicaid, according to the Court, is beyond Congress’ authority to amend its spending conditions. However, if the mandatory expansion is severed from the law, and the Secretary withholds only *additional* Medicaid funds from states that do not expand eligibility, the constitutional violation is remedied.

The Court’s decision means that if states choose not to expand their Medicaid eligibility levels, they cannot lose their existing Medicaid funding. Congress’ Spending power, according to the Court, does allow it to condition new funding on expanded eligibility, thus the Medicaid expansion is constitutional so long as the Secretary does not withdraw existing federal Medicaid funds from states that choose not to participate in the expansion.

The Individual Mandate Would be Unconstitutional as an Exercise of the Commerce Power

The Chief Justice

“The individual mandate ... does not regulate existing commercial activity. It instead compels individuals to *become* active in commerce by purchasing a product, on the ground that their failure to do so affects interstate commerce.” (20)

The Court held that the individual mandate is not supported by Congress’ Commerce power, because it seeks to regulate individuals who are not currently participants in the healthcare market.

The Court ruled that interstate commerce presupposes activity, and Congress does not have the power under the Commerce Clause to force individuals to enter commerce and engage in a particular activity (in this case the purchase of health insurance). The mandate would compel individuals to become active in the market for health insurance, which the Court finds is beyond Congress’s power under the Commerce Clause.

The Court further found that the use of the Commerce Clause to support the individual mandate would yield Commerce Clause jurisprudence with no limiting principle, despite the government’s claim that the realm of healthcare is unique. The Court cast aside arguments that all individuals will eventually need medical care, concluding that Congress has the power to “anticipate the *effects* on commerce of an economic activity... But we have never permitted Congress to anticipate that activity itself in order to regulate individuals not currently engaged in commerce” (26).

“The individual mandate... vests Congress with the extraordinary ability to create the necessary predicate to the exercise of an enumerated power.” (29)

The individual mandate’s constitutionality, according to the majority, also cannot be defended on the basis of the Necessary and Proper Clause. Congress has the power to enact laws that are “conducive” to the “beneficial exercise” of Congress’ Commerce power (29). However, in all cases, such laws must derive from an enumerated Congressional power. The Court agrees that the individual mandate is “necessary” to the effective administration of the ACA, but holds that it is not “proper” because it does not derive from an enumerated Congressional power. Instead, the Court determined that the mandate is an attempt by Congress “to create the necessary predicate to the exercise of an enumerated power” (29). In sum, the Court held that Congress created the necessity it seeks to depend on, rather than basing that necessity upon an enumerated power already in play.

The Individual Mandate Would be Constitutional as a Tax

The Chief Justice

“[I]t is well-established that if a statute has two possible meanings, one of which violates the Constitution, courts should adopt the meaning that does not do so.” (31)

The Canon of Constitutional Avoidance (a principle of statutory interpretation) requires that when two “fairly possible” readings for a statutory provision exist, the Court must choose the reading that would avoid finding the provision unconstitutional. In this case, the mandate would not be constitutional if construed as an exercise of the Commerce power; therefore, since it is fairly possible to read the provision as a tax, the Court must do so if the mandate would thus survive constitutional scrutiny. Here, the Court must view the individual mandate as a tax since doing so is both “fairly possible” and yields a constitutional result.

The Individual Mandate is a Tax

The Chief Justice, joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan

“The Federal government does not have the power to order people to buy health insurance... The Federal government does have the power to impose a tax on those without health insurance.” (44)

The individual mandate is constitutional as an exercise of Congress’ power under Article 1’s Taxing Clause of the Constitution. The mandate “looks like a tax in many respects” (33), in that the penalty for being uninsured is paid through individuals’ taxes, it does not apply to people who do not pay federal income tax, is assessed and collected in the same manner as taxes (by the IRS), and the amount to be paid is determined by factors familiar to the tax realm such as taxable income, number of dependents, and filing status. The Court takes a “functional approach” (35) to conclude that the mandate is indeed a tax.

The Court used a three-part test to determine whether the individual mandate is a tax or an exaction (which would not fall under the Taxing power). First, it asked whether the amount that an individual would have to pay under the mandate is so high that it reaches the level of a punitive measure rather than a tax. Second, the Court inquired whether the mandate contains a scienter (intent) requirement. Third, it asked whether failing to comply with the mandate would result in any punitive action by the government. Answering all three questions in the negative, the Court held that the mandate is a tax and is thus supported by Congress's power to "tax and spend for the general welfare."

Establishing that the mandate should be construed as a tax, Chief Justice Roberts found that the requirement that individuals purchase insurance amounts to a regulatory tax, which is not a new concept and is supported by precedent as constitutional.

The Court further rejected the argument that if the mandate is a tax, it violates the Direct Tax clause, finding that because the penalty is triggered by "specific circumstances," it is not a direct tax (which is levied on all individuals, regardless of the particular circumstances of their situation).

Finally, though the regulation of inactivity is problematic from the Commerce Clause perspective, the Court found that similar limitations do not apply to constitutional analysis under the Taxing power. It again applied a three-part analysis to come to this conclusion. First, the Constitution allows for the use of taxation regardless of level of activity, as shown by its contemplation of capitations (taxes that everyone must pay, regardless of specific activity) in the text. Second, the ability to regulate taxation is limited. (Though the Court did not articulate any particular limits, it is conceivable that a tax could be too punitive to pass constitutional muster, yet because the Court determined the mandate is not punitive, this part of the test was irrelevant). Third, Congress's power to tax is broader than its Commerce power, but does not hold the same potential for regulating individual actions. Thus, allowing Congress to tax inactivity still provides individuals with a choice of whether to comply with a regulation or pay the tax.

In sum, the individual mandate is held to be a regulatory tax by the Court, meant to encourage individuals to purchase health insurance, and is constitutional under Congress's power to tax.

The Anti-Injunction Act

The Chief Justice, joined by Justices Ginsburg, Breyer, Sotomayor, Kagan

"The Affordable Care Act does not require that the penalty for failing to comply with the individual mandate be treated as a tax for purposes of the Anti-Injunction Act. The Anti-Injunction Act therefore does not apply to this suit, and we may proceed to the merits." (15)

The AIA, at its most basic, bars litigation that would obstruct the collection of taxes, requiring plaintiffs to sue for redress only after a tax has gone into effect. If the AIA applied to the mandate, the Court could not consider a challenge against it until 2014.

The Court held that because Congress labeled the exaction as a “penalty,” rather than a “tax,” Congress did not intend the AIA to apply. As both the AIA and the ACA are “creatures of Congress’s own creation,” the Court must look to Congressional intent when determining whether one Act pertains to another.

The Court also found that the statute’s direction to assess and collect the penalty in the same manner as taxes does not imply that the AIA is applicable. It refers only to the procedural process for penalty collection, which the AIA does not address.

Finally, while § 6201(a) of the Internal Revenue Code requires courts to treat assessable penalties as a tax, the Court found that the “argument has force only if § 6201(a) is read in isolation” (14). Thus, the ACA does not require the penalty to be treated as a tax for purposes of the AIA.

Conclusions

The ACA offers the promise of meaningful access to healthcare for many who have, until now, been unable to obtain health coverage. While the Court’s ruling limits the tools with which the Secretary of HHS can ensure that all provisions of the ACA are implemented by states, its decision to hold substantially all of the ACA constitutional is an important step in spurring ACA implementation and furthering progress toward fulfilling the promise of healthcare reform. It will remain critical for state advocates to push local legislatures to adopt the voluntary Medicaid expansion in exchange for substantial federal monetary support. Individuals living at or below 133% FPL are the only legal residents left behind by the Court’s interpretation of the ACA.