



June 28, 2012

Supreme Court Rules Individual Mandate is a Tax

The Supreme Court has upheld the President's health care law's individual mandate in a 5-4 decision authored by Chief Justice Roberts. Associate Justices Kagan, Ginsburg, Breyer and Sotomayor joined the majority opinion's reasoning that Congress acted within its authority to tax when it enacted the law. The decision also upheld the Medicaid expansion statutory scheme, although the Court limited it to ensure its constitutional validity.

- **Anti-Injunction Act:** As an initial matter, the Court determined that Congress did not intend for the AIA to preclude judicial consideration of the mandate. The Anti Injunction Act does not apply, and therefore did not bar the case from being decided.
- **Individual Mandate:** This provision was upheld as a valid exercise of Congress's taxing power (despite the President [insisting](#) that it was not a tax). The Court specifically held that the individual mandate was beyond Congress' commerce clause power.
- **Severability:** The severability question was not reached, but the dissenting justices would have struck down the law in its entirety.
- **Medicaid Expansion:** The law's statutory scheme was [upheld](#), but narrowed by the Court. Congress can offer funds to the States under the law to expand Medicaid and require states accepting such funds to comply with conditions on their use. Congress cannot penalize States who choose not to participate in the expansion by taking away their existing Medicaid funding.

There are three main points from today's decision.

1. First, today's decision confirms that, despite the President and Congressional Democrats specifically disclaiming that the law was being enacted under the tax authority, **the health care reform law is a tax.**
2. Second, the majority opinion reminds Americans that this law is the consequence of a political decision to have an Obama presidency and a Democratic Congress. The Chief Justice rightly stated, "We possess neither the expertise nor the prerogative to make

policy judgments. Those decisions are entrusted to our Nation's elected leaders, who can be thrown out of office if the people disagree with them. It is not our job to protect the people from the consequences of their political choices."

3. Third, despite today's holding, the Court did put an end to the inexhaustible authority of Congress under the Commerce Clause. Two of the President's appointees would have upheld the Act as valid under this authority, as would the other Democrat appointees.

The Court's reasoning on each of the main questions:

On the Question of the Individual Mandate

A majority held the individual mandate is not a valid exercise of Congress's power under the Commerce Clause and the Necessary and Proper Clause; however, the majority opinion by Chief Justice Roberts concludes that the individual mandate may be upheld as within Congress's power under the Taxing Clause. As a consequence of the Court's ruling today, Americans, whether they want it or not, will be compelled to purchase a product – health insurance – or pay a penalty.

The dissenting justices interpreted the Individual Mandate constitutes a penalty for constitutional purposes that is *also* a tax for constitutional purposes. The dissent argues that the Individual Mandate cannot be treated as both under the law. They find that for the purposes of the Affordable Care Act it is clearly a "penalty" and not a "tax." As a result, they conclude the mandate could not be upheld under the Taxing Clause, despite the majority's arguments to justify the decision.

On The Question of Medicaid Expansion

Under the President's health care law, states will be obligated to expand Medicaid coverage to individuals who earn up to 133 percent of the federal poverty level starting in 2014. This was the most complicated part of the opinion, with a varying array of Justices differing on the Constitutionality of this provision, and what the Court should do if the provision were found unconstitutional.

States of course accept Medicaid funding with a bevy of conditions attached. The most controversial aspect of the law's Medicaid expansion appears to be the threat that if a state chooses not to expand Medicaid according to the dictates of Congress contained in the ACA, then Congress could take away all of that state's Medicaid funding, including funding unrelated to the expansionary scheme. The Court found this to be unconstitutionally coercive.

In practice, it appears states can now choose whether they want to participate in the Medicaid expansion or not. If they do choose to participate in the expansion, it seems to follow that they must adhere to the conditions attached to Medicaid funds. If states choose not to participate in the expansion, however, Congress does not have the authority to withhold all other Medicaid funds to that state not participating in the expansion. It would appear such states not participating in the expansion could continue to participate in Medicaid at their current manner of participation.

Dissenting Opinions

Associate Justices Scalia, Kennedy, Thomas and Alito authored a joint dissent, and concluded the issue in the case before the Court, was “not whether Congress had the *power* to frame the minimum-coverage provision as a tax, but whether it *did so*.”

Of particular note was their opinion that the law should have been struck down in its entirety. They wrote, “The Act before us here exceeds federal power both in mandating the purchase of health insurance and in denying nonconsenting States all Medicaid funding. These parts of the Act are central to its design and operation, and all the Act’s other provisions would not have been enacted without them. In our view it must follow that the entire statute is inoperative.”

The dissenting justices concluded that the majority, by its actions today, rewrote what Congress actually intended when it enacted the law. “For all these reasons, to say that the Individual Mandate merely imposes a tax is not to interpret the statute but to rewrite it. Judicial tax-writing is particularly troubling ... Imposing a tax through judicial legislation inverts the constitutional scheme, and places the power to tax in the branch of government least accountable to the citizenry.”

The dissent also admonished the majority: “The values that should have determined our course today are caution, minimalism, and the understanding that the Federal Government is one of limited powers. But the Court’s ruling undermines those values at every turn ... The fragmentation of power produced by the structure of our Government is central to liberty, and when we destroy it, we place liberty at peril. Today’s decision should have vindicated, should have taught, this truth; instead, our judgment today has disregarded it.”

Today’s Decision Directly Contradicts President Obama

President Obama [said](#) in September 2009 that the individual mandate penalty was not a tax: “For us to say that you’ve got to take a responsibility to get health insurance is absolutely not a tax increase.” When asked if he rejected calling it a tax increase, he said “I absolutely reject that notion.”

Today’s ruling, however, shows that the President violated his pledge to not raise taxes on families making less than \$250,000. An analysis from the Joint Committee on Taxation from November 2009 shows that in 2016, three-quarters of the tax imposed by the individual mandate will fall on those making less than 50 percent of the federal poverty line, which is \$120,000 of income for a family of four, or \$59,000 for an individual. Families of four making \$72,000 or less (and individuals making \$35,400 or less) will bear nearly half of the mandate tax.

Individual Mandate Penalties in Calendar Year 2016

Adjusted Gross Income as % of Federal Poverty Level	Income range for a family of four	Income range for an individual	Total Individual Mandate Payments (\$billions)	Share of Total Payments
Less than 100%	Less than \$24,000	Less than \$11,800	0.0	0%
100% to 200%	\$24,000 to \$48,000	\$11,800 to \$23,600	0.4	21%
200% to 300%	\$48,000 to \$72,000	\$23,600 to \$35,400	0.5	25%
300% to 400%	\$72,000 to \$96,000	\$35,400 to \$47,200	0.4	18%
400% to 500%	\$96,000 to \$120,000	\$47,200 to \$59,000	0.2	11%
Greater than 500%	\$120,000 or greater	\$59,000 or greater	0.5	25%
Total			2.0	100%

Source: Joint Committee on Taxation, November 20, 2009