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What You Need to Know About the Supreme Court's Decision on Health Care Reform

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By now, most everyone is aware of the basic issues decided by the Supreme Court in *National Federation of Independent Business v. Sebelius*, 132 S. Ct. 1133 (2012) as it relates to the Patient Protection and Affordable Care Act (PPACA)—President Obama's signature health care reform law. Whether or not you agree with the decision, most can agree that the determination that the law is constitutional in part and unconstitutional in part potentially alters the course of Congress and legislating beyond the health care field.

In a 5–4 decision, Justice Roberts delivered the Court's opinion. A brief synopsis of the issues and holdings decided by the Court is as follows:

- Individual Mandate—PPACA requires every individual to purchase and maintain essential health insurance coverage by 2014. Failure to comply with this provision would result in a "shared responsibility payment" to the Internal Revenue Service (IRS). While the Court refused to allow Congress to impose the payment under the Commerce Clause or the Necessary and Proper Clause of the Constitution, it deemed the shared responsibility payment to be constitutional under Congress's power to levy and collect taxes. The impact of the Court's holding on this provision spans beyond the argument of whether the shared responsibility payment is a penalty or a tax; rather, it institutes boundaries upon Congress's authority (or lack thereof) to regulate individuals because they are failing to act.
- Anti-Injunction Act (AIA)—The AIA requires taxes to be paid prior to challenging them in court. The Court held that because PPACA does not require the shared responsibility payment to be treated as a tax for AIA purposes, the AIA does not apply.
- Severability—Because the individual mandate was upheld, the Court did not determine severability.
- Medicaid Expansion—PPACA offers states federal funding for expansion of threshold Medicaid beneficiaries to include adults who live at or below 133 percent of the federal poverty level. However, failure to expand Medicaid would result in a state's loss of all federal Medicaid funding (to put that into context, that could result in more than 10 percent of a state's total budget). The Court held that offering states an ultimatum under the Spending Clause is unconstitutional. As a remedy, therefore, states may have the option of participating in Medicaid expansion and have access to increased funds, but opting out of expansion cannot result in a state losing all of its Medicaid funding.

Justices Ginsberg, Sotomayor, Breyer, and Kagan (the Concurring Justices) concurred in part and dissented in part. The Concurring

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Justices contend that Chief Justice Roberts's "novel constraint on Congress's commerce power gains no force from our precedent and for that reason alone warrants disapprobation," and they take the position that Congress properly exercised its authority under the Commerce Clause and the Necessary and Proper Clause. The Concurring Justices disagree with the Chief Justice that Congress may not regulate inactivity on these bases.

With respect to the Medicaid Expansion decision, the Concurring Justices disagree with Chief Justice Roberts, contending the Medicaid Expansion merely extends what states have already been required to do and, thus, is not coercive. Despite this position, the Concurring Justices agree with the Chief Justice in the remedy.

Justices Kennedy, Scalia, Thomas, and Alito all dissented (the Dissenting Justices). In their dissent to the Individual Mandate, the Dissenting Justices agree with the majority that failure to do something is not commerce and, thus, may not be regulated. However, with respect to characterizing the "shared responsibility payment" as a tax or a penalty, the Dissenting Justices stated, "[T]he issue is not whether Congress had the *power* to frame the minimum-coverage provision as a tax, but whether it *did* so." Because the statute characterizes the shared responsibility payment as a penalty, the Dissenting Justices contend that the majority rewrote the statute "to be what it is not." Using similar reasoning, the Dissenting Justices accused the Chief Justice of using rhetoric to hold that the AIA does not apply.

The Dissenting Justices agreed with the majority that the method in which Medicaid Expansion was to be instituted extended beyond Congress's power under the Spending Clause. However, the Dissenting Justices dissented to the remedy, arguing that the "most natural remedy" would be invalidating the entire expansion because states that have opted out would still have to pay for those states that opt in by way of increased taxes.

Whether you agree or disagree with PPACA or the Supreme Court's decision, this opinion affects more than the health care world. Limiting the Commerce Clause and upholding tax-like penalties may lead to interesting future lawmaking by Congress.

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