

Supreme Court Upholds Affordable Care Act

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June 28, 2012 — The Supreme Court today declared in a 5-4 vote that the Affordable Care Act (ACA) — the most significant healthcare legislation since the creation of Medicare — is also a constitutional act.

The high court declared that the law's most controversial provision — the individual mandate to obtain insurance coverage or else pay a penalty — was permissible under the taxation powers of Congress as defined by the Constitution.

The ruling comes as a shock to many observers, who predicted the court would strike down the individual mandate, if not the entire law, after its 5-member conservative wing voiced misgivings about the provision during oral arguments in March. The court decision also represents an early Christmas present for President Barack Obama, who seeks reelection this fall against a Republican opponent committed to rolling back "Obamacare."

The individual mandate was at the core of a lawsuit filed against the ACA by officials from 26 states, all but 1 of whom were Republican, as well as a business association. Similar to their Republican allies in Congress, the plaintiffs claimed that the mandate violated the Constitution's Commerce clause, which empowers Congress to regulate interstate commerce. They argued that although healthcare is a form of interstate commerce, Congress cannot compel "inactive" individuals to engage in commerce; that is, to buy or sell something. To allow the mandate to stand, they said, would open the door to further encroachments on personal liberty.



A federal district court in Florida and a federal appeals court in Georgia sided with the plaintiffs and invalidated the individual mandate. However, the Supreme Court had other precedents to follow.

The majority of lower federal courts that ruled on similar challenges to the ACA gave the mandate a clean bill of health, agreeing with the Obama administration's argument that contrary to the law's critics, individuals foregoing insurance coverage actively participate in the healthcare marketplace because they will eventually require medical

attention. Their decision not to get coverage is bad for everyone else because the cost of their free or subsidized care is passed on to others in the form of higher provider costs and higher premiums, according to the administration. In addition, the decision by healthy Americans to go uninsured leaves the existing risk pool of insured Americans smaller and sicker, driving up premiums even more.

The mandate helps cure all these problems, the administration contended, by forcing "free riders" to finance their healthcare now as opposed to later, if at all.

During the oral arguments in March, several conservative Supreme Court justices did not appear to buy into the administration's point of view.

"Here the government is saying that the federal government has a duty to tell the individual citizen that it must act," said Associate Justice Anthony Kennedy, "and that is different from what we have in previous cases, and that changes the relationship of the federal government to the individual in a very fundamental way."

As it turned out, the Supreme Court did uphold the individual mandate, but in a way that few expected. The 5-member conservative majority — Chief Justice John Roberts Jr, and Associate Justices Kennedy, Antonin Scalia, Clarence Thomas, and Samuel Alito, Jr — agreed that the mandate violated the Commerce clause as spelled out in the lower court decisions. However, Roberts joined Associate Justices Elena Kagan, Sonia Sotomayor, Stephen Breyer, and Ruth Bader Ginsburg as a separate majority in upholding the mandate as a lawful exercise in taxation.

Writing for this determinative second majority, Roberts said that the court could construe the penalty for failing to obtain insurance as a tax, which Congress is authorized to levy under the Constitution's Taxing clause. "Congress's use of the Taxing clause to