



A Closer Look: The Supreme Court's Health Care Decision

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On June 28, 2012, the Supreme Court upheld the Affordable Care Act. Since then, there has been a lot of analysis and speculation about how and why the Court reached its decision. And while legal scholars will no doubt spend years assessing the broader constitutional implications of the ruling, the consequences for those who care about improving health care in America are fairly straightforward.

The Individual Responsibility Provision

Background: Leading up to the ruling, most public attention focused on the fate of the individual responsibility provision (or mandate). The individual responsibility provision requires that, starting in 2014, most people will need to either obtain health insurance or qualify for an exemption (based on economic hardship, for example), or they will have to pay a financial penalty on their tax return. Lower courts were divided on the constitutionality of the individual responsibility provision: Two appeals courts upheld the law, but one struck it down.

Ruling and Impact: In a 5-4 opinion written by Chief Justice John Roberts, the Supreme Court ruled that the individual responsibility provision is constitutional. This means that the implementation of the law goes forward. This includes all the reforms in the insurance market, such as protections for people with pre-existing conditions; establishment of consumer-friendly exchanges; and tax credits for working families to make coverage affordable. Other parts of the law that were at risk in the event of a negative decision, such as improved prescription drug coverage for people with Medicare, also remain in place.

Analysis: Most of the pre-decision speculation focused on whether the Court would find the individual responsibility provision justified by Congress's constitutional power to regulate matters pertaining to interstate commerce. This is the question that divided the lower courts. In fact, the Supreme Court ruled 5-4, with Chief Justice Roberts joining the four other conservative justices, that the provision was *not* permissible under the commerce clause.

Instead, the Court adopted an alternative argument to uphold the law. It ruled 5-4, this time with Chief Justice Roberts joining the four more liberal justices, that the individual responsibility provision is justified under the Constitution's taxation authority. The overwhelming majority of Americans will never pay this tax because they already have health insurance. In addition, the millions who will be able to afford insurance once the law

and its tax credits are in full effect will also be spared this tax. But starting in 2014, those few Americans who refuse to pay for insurance that they could otherwise afford (and who do not qualify for a hardship exemption) will have to make an additional payment on their tax return because of the individual responsibility provision. Therefore, although the provision is justifiable under Congress's power to collect taxes, most Americans will never pay any additional tax.

The Court's ruling on the commerce clause may turn out to have significant implications in other areas, as it is potentially the first significant narrowing of Congress's power in this area since the 1930s. But for the health care law, there is no real impact from the individual responsibility provision being upheld under the taxation power rather than the commerce clause. The end result for the Affordable Care Act is clear: The law is constitutional, and its implementation moves forward.

The Medicaid Expansion

Background: Starting in 2014, the Affordable Care Act's Medicaid expansion requires all states to expand Medicaid eligibility to individuals under 65 with incomes up to 133 percent of poverty, with virtually all of the costs of that expansion paid for by the federal government. The expansion will mainly extend coverage to parents and adults without dependent children.¹ Under Medicaid law, a state that does not expand this coverage could, in theory, lose all of its federal Medicaid funding. The states challenging the expansion argued that this was coercive, even though the federal government is paying for more than 90 percent of the costs.² Legal scholars were surprised that the Supreme Court decided to hear the state's challenge to the Medicaid expansion since all of the lower courts that ruled on this issue agreed that the expansion was constitutional.

Ruling and Impact: The Supreme Court ruled 5-4 that the Medicaid expansion is constitutional, with Chief Justice Roberts joining the more liberal justices and writing the opinion. However, the Court ruled 7-2 that the penalty of potentially withholding all of a state's existing Medicaid funds was unconstitutional. Five justices agreed that the remedy for that constitutional violation is to give the states a choice to reject the Medicaid expansion without any risk of losing existing Medicaid funding. That is the *only* aspect of the Affordable Care Act that the opinion changes. All other parts of the Affordable Care Act remain in place, and nothing in the existing Medicaid program is affected. If a state adopts the expansion, Medicaid program requirements apply to the expansion. If a state takes up the expansion and fails to comply with those requirements for that population, all of its expansion funds could be withheld.

However, by making the expansion an option for states, the Court's decision creates the possibility that some states will not expand Medicaid in January 2014. This would result in a coverage gap in these states. Because premium tax credits are not available to individuals with incomes below 100 percent of the poverty level, this gap could leave many uninsured.

Analysis:

The Constitution's spending clause allows Congress to spend money to promote the general welfare. Medicaid is one of many programs that fall under the spending clause. It is well-accepted legal doctrine that, under spending clause programs, Congress can offer money to the states and put terms and conditions on states' use of that money. This decision marks the first time that the Supreme Court has found the terms and conditions that Congress applied to be unconstitutionally coercive. Chief Justice Roberts based this conclusion on the fact that the amount of money at stake (all Medicaid funding) is such a large part of state economies that states cannot realistically afford to lose that funding, and therefore, they do not have a real choice about whether to accept the expansion or not. Chief Justice Roberts also based the coercion finding on the Court's assessment that the expansion is so distinct from the current Medicaid program that it constitutes a different program. Threatening to withhold all funding from one program for a state's failure to take up a separate program is unconstitutional.

The Court has never before placed these kinds of limits on spending clause programs. This ruling could have significant implications for Congress's future ability to modify spending clause programs to meet society's changing needs. At the same time, the Court did not define what constitutes a coercively large amount of funding, nor did it outline how, in future cases, it would define what makes a program the same as or different than an existing one.

For the Affordable Care Act, however, the Medicaid expansion itself is constitutional. The ruling only limits the penalty on states for failing to expand Medicaid. Because some governors are now questioning whether they will accept the expansion's generous federal funding, advocates in those states need to make a compelling case that expanding Medicaid is in the best interest of their state and its residents.

Conclusion

The Supreme Court's decision to uphold the Affordable Care Act was a tremendous victory for American families. While there is much work to be done, especially in states where governors are hesitating to expand Medicaid, implementation of the law can continue to move forward, bringing us closer to achieving affordable, high-quality health care for all Americans.

Endnotes

¹ Families USA, *A Summary of the Health Reform Law* (Washington: Families USA, April 2010), available online at <http://www.familiesusa.org/assets/pdfs/health-reform/summary-of-the-health-reform-law.pdf>.

² The federal government will pay for 100 percent of the expansion in the first three years, with the federal share gradually going down to 90 percent in 2020, where it will remain.

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