

NATIONAL FEDERATION OF INDEPENDENT BUSINESS *ET AL.* v. SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, *ET AL.*

Background:

President Obama signed into law the Patient Protection and Affordable Care Act (ACA) in March 2010. A number of parties sued, claiming that Congress did not have the power under the Constitution to enact such a law. The two key provisions of the ACA that were at issue are:

1. The individual mandate- this mandate requires that by 2014 all non-exempt individuals who do not receive insurance through their employers must maintain “minimum essential” health insurance coverage. The penalty for not obtaining individual insurance, known as the “shared responsibility payment,” would be collected by the IRS as part of personal income taxes.
2. Medicaid expansion- the current Medicaid program provides States with federal funding to assist pregnant women, needy families, children, and disabled individuals. The Medicaid expansion provision of the ACA would require the States to increase Medicaid coverage to all individuals under the age of 65 with income below 133% of the federal poverty level. This provision also provided more funding to the States to compensate for the expanded coverage; however, if a state did not meet the expanded requirements, then that state would lose ALL of its Medicaid funding. It is this issue that provides a thorough discussion of Federalism.

While several different district courts heard various cases regarding the ACA, the Supreme Court took this appeal from the 11th Circuit. The 11th Circuit upheld the Medicaid expansion as a valid exercise of Congress’s spending power but struck down the individual mandate. The 11th Circuit also held that the individual mandate was severable from the rest of the Act.

Opinion of Chief Justice Roberts:

The opinion begins with a discussion of Federalism. C. J. Roberts reminds us that the Federal Government possesses only those powers enumerated in the Constitution. Quoting The Federalist No. 45, Justice Roberts states that “the Framers ensured that powers which ‘in the ordinary course of affairs, concern the lives, liberties, and properties of the people’” were held by the local governments rather than the Federal Government.

INDIVIDUAL MANDATE UNDER THE COMMERCE AND NECESSARY AND PROPER CLAUSES

The Government first argued that the individual mandate was within Congress’ power under the Commerce Clause. Since the ACA expands medical coverage to more individuals, the individual mandate and its penalty are a solution to the cost-shifting issue that would result from increased costs created by unhealthy individuals and those without insurance. This cost-shifting issue, the Government contended, would have a substantial impact on interstate commerce.

C.J. Roberts rejected this argument. He contends that while the Commerce Clause is very broad and has expanded considerably over the years, the power to regulate commerce presupposes the existence of an activity to be regulated. In this case, those who do not have health insurance are not engaged in any commercial activity at all, and never has “Congress attempted to rely on that power to compel individuals *not* engaged in commerce to purchase an unwanted product.” The Court fears that permitting Congress to use the Commerce Clause to “regulate individuals precisely because they are doing nothing would open a new and potentially vast domain to congressional authority... this logic would justify a mandatory purchase to solve almost any problem.”

C.J. Roberts also held that the individual mandate cannot be sustained under the Necessary and Proper Clause as an essential component of the insurance reforms. The Necessary and Proper Clause give Congress the authority to enact provisions that are derivative of, and in service to, a granted power (here, the Commerce Clause). It was established that creating an activity to be regulated under the Commerce Clause is not an enumerated power of Congress, so even if the individual mandate is “necessary” for the insurance reforms, it is not a “proper” means of doing so.

INDIVIDUAL MANDATE AND THE POWER TO TAX

This argument forces the ACA to be read not as a command to purchase insurance, but as the imposition of a tax for going without it. Since “every reasonable construction must be resorted to in order save a statute from unconstitutionality” (citing *Hooper v. California*), this interpretation should be explored. C.J. Roberts reasons that the “shared responsibility payment” of the individual mandate can properly be interpreted as a tax. This payment acts as a tax in every regard other than its name. First, its amount is less than the cost of insurance and cannot be more. Second, it contains no scienter requirement. Third, the payment is collected solely by the IRS through the means of taxation and the IRS is not permitted to use any means of collection that is suggestive of a punitive sanction. Therefore, C.J. Roberts upholds the individual mandate under Congress’s constitutional power to tax.

MEDICAID EXPANSION AND THE SPENDING CLAUSE

The Medicaid Expansion provision of the ACA requires the States to substantially expand Medicaid coverage. Though additional funds will be provided to do so, failure to comply will result in the loss of *all* Medicaid funding to the offending state. The States argued that this exceeds Congress’s authority under the Spending Clause and C.J. Roberts agrees.

The Spending Clause permits Congress to “pay debts... and provide for the general welfare”. It has long been recognized that Congress can use this power to grant funds to the States on the condition that the States comply with certain requirements that Congress otherwise could not force upon them. The Supreme Court has always interpreted this type of relationship between the States and the Federal Government as a contractual one; thereby recognizing the sovereignty of the individual states. Normally, the states can voluntarily choose whether or not to accept Federal funds and the conditions that accompany them without the risk of penalization if they chose not to do so. This enables state officials to be held politically accountable for their decisions. The Supreme Court has struck down Spending Clause legislation when the financial

inducement exerts a “power akin to undue influence,” as this would undermine the system of federalism.

Non-compliance with the Medicaid expansion provision of the ACA would result not only in the loss of the additional funds but also any existing Medicaid funds; therefore, unwilling States would be forced to sign up for the expansion created by the ACA. C.J. Roberts points out that Medicaid spending accounts for over 20% of the average State’s total budget and federal funds cover 50-83% of that cost. Furthermore, the States have developed extensive legislation and administrations over many decades in order to accommodate Medicaid and the federal funds that accompany it. Completely eliminating all Medicaid funding to an unwilling State would be a “gun to the head” rather than mild encouragement to adopt the new standards.

The Court ultimately holds that the Medicaid expansion can remain a part of the ACA but the penalty of withholding all Medicaid funding to unwilling States is unconstitutional. The expansion must be treated like any other “contract” for federal funding where the States may voluntarily choose whether to take the funds and comply with the conditions of its use.