

WHERE DID WE START?

11TH CIRCUIT COURT OF APPEALS

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Held:

ACA Individual Mandate is Unconstitutional because the Interstate Commerce Clause does not allow Congress to require the purchase of insurance

The Medicaid Expansion is Constitutional; Congress' spending power allows it

The ACA is severable so the rest of the ACA aside the Individual Mandate survives

UNITED STATES SUPREME COURT RULING

National Federation of Independent Business v. Sebelius- June 28, 2012

ACA Individual Mandate is Constitutional not on the basis of Congress' Power under the Commerce Clause but under its Taxing Power

The Medicaid Expansion is Unconstitutional as a violation of Congress' Spending Power but valid after the penalty in 42 U.S.C. 1396c is removed



MORE RULINGS

Although the individual mandate is found to be a tax on those who do not buy insurance under the ACA, it is not a tax for purposes of the Anti-Injunction Act

The individual mandate is not a valid exercise of power under the Necessary and Proper clause

The tax (penalty) enacted under the ACA complies with the Direct Tax Clause in the Constitution; it is not a direct tax or capitation

MEDICAID EXPANSION

DUELING OPINIONS; CHIEF JUSTICE ROBERTS AND JUSTICE GINSBURG

MAJORITY OPINION BY ROBERTS (7-2)

JUSTICE ROBERTS, JOINED BY KAGAN AND BREYER, SCALIA, KENNEDY, THOMAS AND
ALITO

JUSTICE GINSBURG AND SOTOMAYOR DISAGREE



MAJORITY OPINION ON MEDICAID

Why did the Court find that the Medicaid Expansion exceeds the Spending Power of Congress

- (a) ACA expansion is a new grant
- (b) Expansion was unforeseen when states first signed on to Medicaid
- (c) Threatened loss is so large States have no real choice

MINORITY OPINION ON MEDICAID EXPANSION

WHY DID JUSTICE GINSBURG DISAGREE

- (a) Medicaid is a single grant program with the aid to enable the poor to pay for health care; since 1965 there have been multiple expansion all with the same aim
- (b) Supreme Court caselaw in Pennhurst requires unambiguous condition of grant funds not foreseen conditions 40 years later; Congress made clear conditions in 2014 known in 2011
- (c) Steward Machine holding (1937) held the tax constitutional; States' reliance on funds limits Congress' power is backwards; It is Congress that is tasked with spending for the general welfare

INTERESTING NOTE ON TAXES

²⁶Federal taxation of a State's citizens, according to the join dissenters, may diminish a State's ability to raise new revenue. This, in turn, could limit a State's capacity to replace a federal program with an "equivalent" state-funded analog. Post, at 40. But it cannot be true that "the amount of the federal taxes extracted from the taxpayers of a State to pay for the program in question is relevant in determining whether there is impermissible coercion." Post, at 37. When the United States Government taxes United States citizens, it taxes them "in their individual capacities" as "the people of America" — not as residents of a particular State. See *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 839 (1995) (KENNEDY, J., concurring). That is because the "Framers split the atom of sovereignty[,]... establishing two orders of government" — "one state and one federal" — "each with its own direct

NOTE CONTINUED

relationship” to the people. *Id.*, at 838.

A State therefore has no claim on the money its residents pay in federal taxes, and federal “spending programs need not help people in all states in the same measure.” See Brief for David Satcher et al. as *Amici Curiae* 19. In 2004, for example, New Jersey received 55 cents in federal spending for every dollar its residents paid to the Federal Government in taxes, while Mississippi received \$1.77 per tax dollar paid. C. Dubay, Tax Foundation, *Federal Tax Burdens and Expenditure by State: Which States Gain Most from Federal Fiscal Operations?* 2 (Mar.2006). Thus no constitution problem was created when Arizona declined for 16 years to participate in Medicaid, even though its residents’ tax dollars financed Medicaid programs in every other state.

WHAT IS THE ACTUAL HOLDING ON MEDICAID EXPANSION

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Nothing in our opinion precludes Congress from offering funds under the Affordable Care Act to expand the availability of health care, and requiring that States accepting such funds comply with the conditions on their use. What Congress is not free to do is to penalize States that choose not to participate in that new program by taking away their existing Medicaid funding. Section 1936c give the Secretary of Health and Human Services the authority to

do just that. it allows her to withhold all “further [Medicaid] payments... to the State” if she determines that the state is out of compliance with any Medicaid requirement, including those contained in the expansion. 42 u.s.c. §1396c. In light of the court’s holding, the secretary cannot apply §1396c to withdraw exiting Medicaid funds for failure to comply with the requirements set out in the expansion.

That fully remedies the constitutional violation we have identified. The chapter of the United States Code that contains §1396 includes a severability clause confirming that we need go no further. That clause specifies that “[i]f any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby.” §1303. Today’s holding does not affect the continued application of 1396c to the existing Medicaid program. Nor does it affect the Secretary’s ability to withdraw funds provided under the Affordable Care Act if a State that has chosen to participate in the expansion fails to comply with the requirement of that Act .



DECISION TO FIND THE EXPANSION UNCONSTITUTIONAL DID NOT INVOLVE THE ACA

NOW WHAT WILL HAPPEN?

- **COULD HHS ALTER THE PENALTY FOR A VIOLATION OF THE ACA?**
 - **WILL MULTIPLE STATES OPT OUT?**
 - **WILL THIS ALTER THE ACTIONS OF HHS?**
 - **WILL OKLAHOMA HAVE LESS UNINSURED OR MORE UNINSURED?**
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