

The Supreme Court Speaks: The Patient Protection and Affordable Care Act Decision

Nat'l Fed'n of Indep. Bus. v. Sebelius (2012)

The Affordable Care Act

- Insurance coverage reforms, such as
 - Individual mandate
 - Creation of state-based insurance exchanges
 - Subsidies for low-income individuals' insurance
 - Prohibition of insurance denials, limits on how premiums set
 - Medicaid expansion
- Delivery system reforms
- Chain restaurant calorie labeling requirements
- ... And numerous other provisions

Four Opinions

- Chief Justice Roberts (joined by others in parts)
 - Upheld the mandate
 - Declared the Medicaid expansion unconstitutional
- Justice Ginsburg (joined by others in parts)
 - Wanted to uphold the ACA in its entirety
- Justices Scalia, Kennedy, Thomas, Alito
 - Wanted to declare mandate & expansion unconstitutional
 - Wanted to strike down the ACA in its entirety
- Justice Thomas
 - Wanted to abandon precedent under which Congress may regulate “economic activity [that] substantially affects interstate commerce” because it gives the federal government too expansive a view of Commerce Clause powers

The ACA Decision

	Content of the Roberts Opinion	Opinion Is Joined by	In Agreement with Conclusion

The ACA Decision

	Content of the Roberts Opinion	Opinion Is Joined by	In Agreement with Conclusion
	Explanation of enumerated powers, role of Court.		

The Relevant Constitutional Powers

The Congress shall have Power To lay and collect Taxes . . . , to pay the Debts and provide for the common Defence and general Welfare of the United States . . .

To regulate Commerce . . . among the several States . . .

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution . . .

The ACA Decision

	Content of the Roberts Opinion	Opinion Is Joined by	In Agreement with Conclusion
	Explanation of enumerated powers, role of Court.		

The ACA Decision

	Content of the Roberts Opinion	Opinion Is Joined by	In Agreement with Conclusion
	Explanation of enumerated powers, role of Court.		
I	Description of the Patient Protection and Affordable Care Act, the legal challenges, and lower courts' rulings.	Ginsburg, Breyer, Sotomayor, Kagan	

The ACA Decision

	Content of the Roberts Opinion	Opinion Is Joined by	In Agreement with Conclusion
	Explanation of enumerated powers, role of Court.		
I	Description of the Patient Protection and Affordable Care Act, the legal challenges, and lower courts' rulings.	Ginsburg, Breyer, Sotomayor, Kagan	
II	Because Congress described the penalty associated with the individual mandate as a "penalty" rather than a "tax," the Anti-Injunction Act does not bar this suit.	Ginsburg, Breyer, Sotomayor, Kagan	Scalia, Kennedy, Thomas, Alito

The ACA Decision

	Content of the Roberts Opinion	Opinion Is Joined by	In Agreement with Conclusion
	Explanation of enumerated powers, role of Court.		
I	Description of the Patient Protection and Affordable Care Act, the legal challenges, and lower courts' rulings.	Ginsburg, Breyer, Sotomayor, Kagan	
II	Because Congress described the penalty associated with the individual mandate as a "penalty" rather than a "tax," the Anti-Injunction Act does not bar this suit.	Ginsburg, Breyer, Sotomayor, Kagan	Scalia, Kennedy, Thomas, Alito
IIIA	The mandate is not a valid exercise of Congress's power under the Commerce Clause or the Necessary & Proper Clause.		Scalia, Kennedy, Thomas, Alito

The Federal Government's Commerce Clause Arguments

The mandate is constitutional because it:

- Is part of a broader economic regulatory scheme
 - Is necessary to make insurance reforms effective
 - Complements other components of the ACA
- Regulates conduct with a substantial effect on commerce
 - Regulates financing of health care
 - Prevents cost shifting

The Roberts Commerce Clause Opinion

- “The power to *regulate* commerce presupposes the existence of commercial activity to be regulated.”
- “. . . the Government’s logic would justify a mandatory purchase to solve almost any problem.”
 - Many Americans don’t eat a balanced diet.
 - This increases health care costs, which are borne by others.
 - “Congress could address the diet problem by ordering everyone to buy vegetables.”

Roberts Commerce Clause Opinion, cont.

- “[The Government] argues that because sickness and injury are unpredictable but unavoidable, ‘the uninsured as a class are active in the market for health care’”
but
 - “The Commerce Clause is not a general license to regulate an individual from cradle to grave, simply because he will predictably engage in particular transactions.”
- Even if the mandate is necessary for insurance reforms, it is not “proper” because it would expand federal authority too much.

	Content of the Roberts opinion	Opinion Is Joined by	In Agreement with Conclusion
IIIB	The mandate must be construed as imposing a tax, if such a construction is reasonable.		

	Content of the Roberts opinion	Opinion Is Joined by	In Agreement with Conclusion
IIIB	The mandate must be construed as imposing a tax, if such a construction is reasonable.		
IIIC	The mandate is a valid exercise of Congress's power under the Taxing Clause.	Ginsburg Breyer Sotomayor Kagan	

The Roberts Taxing Clause Opinion

- “the Government asks us to read the mandate not as ordering individuals to buy insurance, but rather as imposing a tax on those who do not buy that product.”
- “The exaction the Affordable Care Act imposes . . . looks like a tax in many respects.”
 - Paid into the Treasury, raises revenue, enforced by IRS
 - Govt says that someone who pays fully complies with the law
 - Relatively small amount, no scienter requirement, no criminal prosecution allowed
 - Congress’s label doesn’t decide the issue
 - OK for a tax to affect conduct

The Roberts Taxing Clause Opinion, cont.

- If “it is troubling to interpret the Commerce Clause as authorizing Congress to regulate those who abstain from commerce, perhaps it should be similarly troubling to permit Congress to impose a tax”
- “Three considerations allay this concern.”
 - Constitution contemplates taxes that apply regardless of whether activity occurs (capitation taxes)
 - Taxing power is limited: Some previous cases have invalidated punitive exactions to regulate behavior
 - Authority under taxing power limited to requiring payment, nothing more
- So penalty “may reasonably be characterized as a tax.”

	Content of the Roberts opinion	Opinion Is Joined by	In Agreement with Conclusion
IIIB	The mandate must be construed as imposing a tax, if such a construction is reasonable.		
IIIC	The mandate is a valid exercise of Congress's power under the Taxing Clause.	Ginsburg Breyer Sotomayor Kagan	
IIID	Explanation of why Roberts must reject Commerce Clause argument before turning to the Taxing Clause argument.		

	Content of the Roberts opinion	Opinion Is Joined by	In Agreement with Conclusion
IIIB	The mandate must be construed as imposing a tax, if such a construction is reasonable.		
IIIC	The mandate is a valid exercise of Congress's power under the Taxing Clause.	Ginsburg Breyer Sotomayor Kagan	
IIID	Explanation of why Roberts must reject Commerce Clause argument before turning to the Taxing Clause argument.		
IVA	Congress exceeds its authority under the Spending Clause by using a threat to withhold existing Medicaid funds to coerce states to expand Medicaid.	Breyer, Kagan	Scalia Kennedy Thomas Alito

	Content of the Roberts opinion	Opinion Is Joined by	In Agreement with Conclusion
IIIB	The mandate must be construed as imposing a tax, if such a construction is reasonable.		
IIIC	The mandate is a valid exercise of Congress's power under the Taxing Clause.	Ginsburg Breyer Sotomayor Kagan	
IIID	Explanation of why Roberts must reject Commerce Clause argument before turning to the Taxing Clause argument.		
IVA	Congress exceeds its authority under the Spending Clause by using a threat to withhold existing Medicaid funds to coerce states to expand Medicaid.	Breyer, Kagan	Scalia Kennedy Thomas Alito
IVB	If existing funds are not withdrawn from states refusing to expand Medicaid, the constitutional violation is remedied.	Breyer, Kagan	Ginsburg, Sotomayor