

Affordable Care Act cases

Affordable Care Act cases, set of three legal cases—*Florida et al. v. Department of Health and Human Services et al.*; *National Federation of Independent Business et al. v. Kathleen Sebelius, Secretary of Health and Human Services, et al.*; and *Department of Health and Human Services et al. v. Florida et al.*—in which the U.S. Supreme Court on June

28, 2012, upheld key provisions of the Patient Protection and Affordable Care Act (PPACA; also called the Affordable Care Act), a comprehensive reform of U.S. health care passed by Congress and signed into law by Pres. Barack Obama on March 23, 2010. The specific questions that were decided by the court included: (1) whether Congress exceeded its enumerated powers in Article I of the U.S. Constitution (including its power to lay taxes and to regulate interstate commerce) by requiring that most Americans obtain health insurance by January 1, 2014, or pay a fine (the minimum-coverage provision, also called the “individual mandate”) and (2) whether Congress unduly “coerced” state governments into increasing their contributions to Medicaid—the national health insurance program for the poor, jointly funded by the federal government and the states—by revising eligibility requirements to add up to 17 million beneficiaries to the program by 2022. The court also considered, as a preliminary matter, the question of whether it was barred from hearing challenges to the individual mandate by the Anti-Injunction Act (1867), which generally prohibits the federal courts from hearing lawsuits intended to restrain “the assessment or collection of any tax” before it has gone into effect.

For political as well as constitutional reasons, the Affordable Care Act cases were among the most significant to reach the Supreme Court in a generation. The court’s decision was expected to clarify, if not to redefine, the scope of federal regulatory power under the commerce clause, drawing comparisons to the

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Supreme Court rulings of the 1930s on the constitutionality of Pres. Franklin D. Roosevelt's New Deal package of economic reforms. It was also likely to affect Obama's bid for reelection in November 2012 by either upholding or striking down the signature legislative achievement of his first term. Indeed, the cases galvanized Obama's conservative and libertarian opponents on one side and many of his moderate and liberal supporters on the other, the former group condemning the PPACA (and specifically the individual mandate) as emblematic of the excessive growth of federal power under his administration and the latter group defending the law as a constitutionally sound reform that would guarantee affordable health care to millions of uninsured Americans. In apparent recognition of the cases' unusual importance and complexity, the court scheduled a total of approximately six hours of oral argument—six times the limit of one hour of argument per decision that the court had observed since 1970.

District and appellate decisions

The Affordable Care Act cases originated in a suit filed in U.S. District Court for the Northern District of Florida. In *State of Florida et al. v. United States Department of Health and Human Services et al.*, Florida and 12 other states (later joined by 13 additional states, two individuals, and the National Federation of Independent Business [NFIB]) argued that in passing the individual mandate Congress had exceeded its power under the commerce clause to regulate interstate commerce, because the mandate amounted to a regulation of "inactivity"—i.e., the failure to purchase health insurance. The state plaintiffs additionally alleged that the PPACA's expansion of Medicaid was an onerous financial burden that they had been forced to accept to continue receiving federal matching funds for Medicaid beneficiaries within their borders. Although state participation in Medicaid is voluntary, the plaintiffs could not realistically opt out of the program, which had become "customary and necessary for citizens throughout the United States, including the Plaintiffs' respective states." The Medicaid expansion thus allegedly violated the spending clause of the U.S. Constitution (Article I, Section 8, Clause 1), which does not permit Congress to offer financial inducements to the states that are "so coercive as to pass the point at which pressure turns into compulsion," as the Supreme Court ruled in *South Dakota v. Dole* (1987), citing the court's decision in *Steward Machine Co. v. Davis* (1937).

In his ruling, issued in January 2011, U.S. District Court Judge Roger Vinson agreed with the government that the plaintiffs' underlying "coercion theory" was unsupported in existing case law, having been rejected in challenges to federal spending laws by "every single federal Court of Appeals." On the constitutionality of the individual mandate, however, he agreed with the plaintiffs that the commerce clause limits the scope of Congress's regulatory authority to "activities"; he thus rejected the government's claims that congressional authority was not so limited and that, in any event, the failure to purchase health insurance should be understood as an activity. Finding in addition that the individual mandate was not severable from the other provisions of the PPACA (many of which, nevertheless, were unrelated to health insurance), he declared the entire law unconstitutional. In August 2011 a three-judge panel of the Eleventh Circuit Court of Appeals reversed (2–1) Vinson's decision regarding severability but affirmed it regarding Medicaid and the individual mandate.

Certiorari petitions

In September three petitions for a writ of certiorari (a review of a lower-court decision) were filed with the Supreme Court by two groups of plaintiffs and the government: the NFIB and two individuals asked the court to reverse the Eleventh Circuit on the question of severability; the 26 state plaintiffs asked for reversal on both severability and the Medicaid expansion; and the government asked for reversal on the constitutionality of the individual mandate. The states also requested that the court strike down the PPACA's "employer mandate," which required large employers to provide "minimum essential coverage" to their employees, as unconstitutional as applied to the states themselves, while the government recommended that the court consider whether challenges to the



the government reversed its position, explaining in a subsequent related case that it had "concluded that the [Anti-Injunction Act] does not foreclose the exercise of jurisdiction in these cases.")

In November 2011 the Supreme Court agreed to review all but one of these questions (regarding the employer mandate), dividing them between *Florida et al.*

v. *Department of Health and Human Services et al.* (Medicaid expansion) and two new cases, *National Federation of Independent Business et al. v. Kathleen Sebelius, Secretary of Health and Human Services, et al.* (severability) and *Department of Health and Human Services et al. v. Florida et al.* (the individual mandate and the Anti-Injunction Act). By that time the court had received, but not granted, petitions for certiorari in three other appellate cases challenging the PPACA: *Thomas More Law Center et al. v. Barack Hussein Obama et al.*, in which the Court of Appeals for the Sixth Circuit upheld the individual mandate as constitutional; *Commonwealth of Virginia v. Kathleen Sebelius, Secretary of the Department of Health and Human Services*, in which the Court of Appeals for the Fourth Circuit dismissed the state's challenge to the individual mandate for lack of standing; and *Liberty University et al. v. Timothy Geithner, Secretary of the Treasury of the United States, et al.*, in which the Fourth Circuit ruled that the plaintiff's challenge to the individual mandate was barred by the Anti-Injunction Act.

Majority and dissenting opinions

The Supreme Court heard oral arguments in the Affordable Care Act cases on March 26–28, 2012. In its decision, the court held unanimously (9–0) that it was not prevented by the Anti-Injunction Act from considering the challenge to the individual mandate in *Department of Health and Human Services et al. v. Florida et al.* Chief Justice John Roberts, writing for a 5–4 majority on the constitutionality of the individual mandate and of the Medicaid expansion, argued that the Anti-Injunction Act does not apply to suits against the individual mandate, because the PPACA describes the payment required of those who fail to obtain minimum essential coverage by 2014 as a “penalty” and not as a “tax.” The fact that the penalty “shall be assessed and collected in the same manner” as taxes does not require that it be treated as a tax for the purposes of the Anti-Injunction Act.

Roberts rejected the government's main argument for the constitutionality of the individual mandate—that it is a legitimate exercise of Congressional power under the commerce clause—on the grounds that “the power to *regulate* commerce presupposes the existence of commercial activity to be regulated” and that failure to purchase health insurance does not constitute an activity in the relevant (ordinary) sense of the term. “The individual mandate,” he wrote, “does not

regulate existing commercial activity. It instead compels individuals to *become* active in commerce by purchasing a product, on the ground that their failure to do so affects interstate commerce.” Roberts also dismissed the government’s contention that the mandate is constitutional under the “necessary and proper” clause (which grants to Congress the power “To make all Laws which shall be necessary and proper for carrying into Execution” its constitutionally enumerated powers) because it is, in the government’s words, an “integral part of a comprehensive scheme of economic regulation.” Although the individual mandate may be “necessary” to make feasible the PPACA’s provisions prohibiting insurance companies from denying coverage to applicants with preexisting conditions and from charging such applicants higher rates, it is not a “proper” means of achieving that goal, because it would unduly expand federal power, enabling Congress to “reach beyond the natural limit of its authority and draw within its regulatory scope those who otherwise would be outside of it.”

Roberts then turned to the government’s alternative argument, that the individual mandate is constitutional if it is considered as a tax on individuals who do not purchase health insurance rather than as a regulation requiring them to do so. Although that construal is not the most natural reading of the statute, he argued, it is a reasonable one. Furthermore, although the mandate is called a “penalty” rather than a “tax” in the PPACA, Congress is nevertheless within its taxing power to impose it, because the mandate is functionally equivalent to a tax but not to a penalty. Because well-established precedent requires the courts to adopt any reasonable interpretation of a statute that is necessary to preserve its constitutionality, the Supreme Court is obliged to accept the government’s argument that the mandate is a valid exercise of Congress’s taxing power, he concluded.

Regarding the question of Medicaid expansion, Roberts found that the PPACA was indeed coercive of the states because, under existing Medicaid law, the Secretary of Health and Human Services (HHS) would be permitted to withhold all federal Medicaid funds (including those for existing beneficiaries) from states that refused to expand their Medicaid rolls (under the PPACA, the federal government would pay 100 percent of the cost of new beneficiaries for three years and approximately

90 percent of the cost thereafter). In view of the enormous sums of money the states stood to lose, the secretary's withholding authority amounted to a "gun to the head." Rather than strike down the expansion in its entirety, however, he ruled that the secretary may not withhold funds for existing Medicaid beneficiaries from states that refuse to participate in the expansion.

Roberts's opinion was joined by Ruth Bader Ginsburg, Sonia Sotomayor, Stephen Breyer, and Elena Kagan with respect to the constitutionality of the individual mandate as a tax; by Breyer and Kagan with respect to the unconstitutionality of the Medicaid expansion under existing Medicaid law; and by Ginsburg, Sotomayor, Breyer, and Kagan with respect to the remedy of limiting the withholding authority of the HHS secretary. In a separate opinion, joined by Sotomayor, Ginsburg held that the individual mandate was constitutional under both the commerce clause and the "necessary and proper" clause and that the Medicaid expansion as originally conceived by Congress was not coercive of the states. Her opinion was joined by Breyer and Kagan with respect to the constitutionality of the individual mandate under the commerce and "necessary and proper" clauses. In an unusual jointly written dissent, Samuel A. Alito, Jr., Anthony Kennedy, Antonin Scalia, and Clarence Thomas rejected both the individual mandate and the Medicaid expansion in its entirety and argued that all of the PPACA should be struck down. Thomas also filed a separate dissent.

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