



American
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U.S. Supreme Court Upholds Individual Mandate to Buy Health Insurance; Rejects Medicaid Expansion Requirements

WASHINGTON, D.C. (June 28, 2012) — On June 28, 2012, in a 5-4 decision, the U.S. Supreme Court upheld the individual mandate to buy health insurance under Congress' taxing power, and hence ruled that the Patient Protection and Affordable Care Act (ACA) is constitutional. Chief Justice John G. Roberts, wrote the opinion for the majority, joining with the court's four liberal justices — Stephen G. Breyer, Ruth Bader Ginsburg, Elena Kagan and Sonia Sotomayor — in upholding the law. Justices Samuel A. Alito, Anthony Kennedy, Antonin Scalia and Clarence Thomas dissented. According to Chief Justice Roberts, “[P]ut simply, Congress may tax and spend. This grant gives the Federal Government considerable influence even in areas where it cannot directly regulate. The Federal Government may enact a tax on an activity that it cannot authorize, forbid or otherwise control.” Alternatively, Justice Kennedy summed up the view of the dissent: “In our view, the entire Act before us is invalid in its entirety.”

Although the court upheld the individual mandate, it struck down in part the requirement for states to expand Medicaid coverage by a 7-2 margin. Under this aspect of the ruling, the court found that Congress acted constitutionally in offering states funds to expand coverage to millions of new individuals and states can agree to expand coverage in exchange for those new funds. If a state accepts the expansion funds, then it must follow the rules and expand coverage. However, a state can refuse to participate in the expansion without losing all of its Medicaid funds, keeping in place its current Medicaid program. Speaking for the majority, Chief Justice Roberts stated: “Nothing in our opinion precludes Congress from offering funds under the ACA 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.” Thus, as pointed out by Roberts, “[A]s practical matter, that means states may now choose to reject the expansion; that is the whole point. But that does not mean all or even any will.” Justices Ginsburg and Sotomayor dissented from this ruling, believing that the entire Medicaid expansion program is constitutional, even the provision threatening to cut off all funding unless states agreed to the expansion.

While the opinion settles the constitutional debate on the issues before the court, many unanswered questions remain. For example, will all the states now move forward to implement insurance exchanges? Will some states refuse to expand Medicaid coverage? Will most individuals opt to pay the modest “tax” and forego purchasing more costly health insurance? Will other aspects of the law (e.g., the Independent Payment Advisory Board, or IPAB) be found unconstitutional in subsequent litigation? Will the political fallout from this decision influence the upcoming national elections one way or the other?

One thing is certain: the Supreme Court's ruling on this case is far from the last word on health-care reform, and the American Association of Neurological Surgeons and Congress of Neurological Surgeons will continue to seek repeal of certain aspects of the ACA that are onerous to the practice of medicine and that are detrimental to patients' access to quality care. Provisions in the law, such as the IPAB, Physician Quality Reporting System (PQRS) and the Value Based Payment Modifier, only seek to further penalize health-care providers without doing anything to improve patient care. Additionally, neurosurgery continues our efforts to repeal Medicare's flawed sustainable growth rate (SGR) formula and to pass medical liability reform — two critical aspects of health reform that were not addressed in the ACA.

The full opinion in *National Federation of Independent Business et al v. Sebelius*, is available at:
<http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf>.

Founded in 1931 as the Harvey Cushing Society, the American Association of Neurological Surgeons (AANS) is a scientific and educational association with nearly 8,200 members worldwide. The AANS is dedicated to advancing the specialty of neurological surgery in order to provide the highest quality of neurosurgical care to the public. All active members of the AANS are certified by the American Board of Neurological Surgery, the Royal College of Physicians and Surgeons (Neurosurgery) of Canada or the Mexican Council of Neurological Surgery, AC. Neurological surgery is the medical specialty concerned with the prevention, diagnosis, treatment and rehabilitation of disorders that affect the entire nervous system including the spinal column, spinal cord, brain and peripheral nerves. For more information, visit www.AANS.org.

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