



National Federation of Independent Business v. Sebelius

132 S. Ct. 2566 (2012)

Country: United States

Region: Americas

Year: 2012

Court: Supreme Court

Health Topics: Health care and health services, Health systems and financing, Poverty

Human Rights: Right to due process/fair trial, Right to liberty and security of person, Right to property

Facts

After significant political struggles, the US Congress enacted the Patient Protection and Affordable Care Act in 2010. This act had two components, 1) it obligated individuals to maintain "minimum essential" health insurance coverage through an individual mandate, 2) it contained an expansion of the federal Medicaid program that is run by US states.

The constitutionality of both parts was bitterly contested. The individual mandate was challenged as unconstitutional as the federal government cannot force individuals to purchase health insurance, assuming it wasn't provided to their through their work or a government program. As a significant portion of uninsured adults cannot access a public health program, even with the expansion of the Medicaid program, the individual mandate results in requiring individuals to buy private health insurance. Starting in 2014, if anyone did not have sufficient health insurance, they would have to pay a "shared responsibility payment" to the Internal Revenue Service, the primary tax collection agency of the federal government. Whether this payment is considered a penalty or a tax affects the constitutionality of the Act.

The Medicaid expansion was challenged as unconstitutional as it carried a threat to remove all funding for states that didn't accept the expansion. Medicaid is primarily financed through the federal government, but it's implemented through the states that can determine the requirements to be a member of that state's Medicaid system. The current Act would have removed all previous Medicaid funding from a state if the state did not accept the expansion component of the Patient Protection and Affordable Care Act.

Decision and Reasoning

The Supreme Court upheld the individual mandate as within Congress's taxing powers. The individual mandate could not be supported under either the Commerce Clause or Necessary and Proper Clause of the constitution, two clauses commonly used to support Congressional action, as the Act compelled commerce instead of regulated it and because the individual mandate is not a "proper" means for implementing Congress's constitutional powers. Even though the "shared responsibility payment" is described as a penalty in the Act and not a tax, the payment can functionally be viewed as a tax.

The threat of removing Medicaid funding from states that refused the Medicaid expansion was found unconstitutional. The Constitution limits the federal government's ability to require states to regulate activity that falls within the states' jurisdiction, including Medicaid. Using threats of terminating over 10 percent of a State's overall budget to pressure states to implement a regulation is also unconstitutional. The Supreme Court found that the Act could be made constitutional by removing the ability to terminate all funding of Medicaid and instead keep funding levels at before the current Act.

Decision Excerpts

In the Affordable Care Act, Congress addressed the problem of those who cannot obtain insurance coverage because of preexisting conditions or other health issues. It did so through the Act's "guaranteed-issue" and "community-rating" provisions. These provisions together prohibit insurance companies from denying coverage to those with such conditions or charging unhealthy individuals higher premiums than healthy individuals. See 309 U.S. 300, 303, 304. The guaranteed-issue and community-rating reforms do not, however, address the issue of healthy individuals who choose not to purchase insurance to cover potential health care needs. In fact, the reforms sharply exacerbate that problem, by providing an incentive for individuals to delay purchasing health insurance until they become sick, relying on the promise of guaranteed and affordable

coverage. The reforms also threaten to impose massive new costs on insurers, who are required to accept unhealthy individuals but prohibited from charging them rates necessary to pay for their coverage. This will lead insurers to significantly increase premiums on everyone. See Brief for America's Health Insurance Plans et al. as Amici Curiae in No. 11-393 etc. 8-9. Pg. 16-17

The exaction the Affordable Care Act imposes on those without health insurance looks like a tax in many respects. The shared responsibility payment, as the statute entitles it, is paid into the Treasury by taxpayer[s] when they file their tax returns. 26 U. S. C. §5000A(b). It does not apply to individuals who do not pay federal income taxes because their household income is less than the filing threshold in the Internal Revenue Code. §5000A(e)(2). For taxpayers who do owe the payment, its amount is determined by such familiar factors as taxable income, number of dependents, and joint filing status. §5000A(b)(3), (c)(2), (c)(4). The requirement to pay is found in the Internal Revenue Code and enforced by the IRS, which as we previously explained "must assess and collect it in the same manner as taxes." *Supra*, at 13-14. This produces the essential feature of any tax: it produces at least some revenue for the Government. *United States v. Kahriger*, 345 U. S. 22, 28, n. 4 (1953). Indeed, the payment is expected to raise about \$4 billion per year by 2017. Congressional Budget Office, *Payments of Penalties for Being Uninsured Under the Patient Protection and Affordable Care Act* (Apr. 30, 2010), in *Selected CBO Publications Related to Health Care Legislation, 2009-2010*, p. 71 (rev. 2010). Pg. 33

Permitting the Federal Government to force the States to implement a federal program would threaten the political accountability key to our federal system. "[W]here the Federal Government directs the States to regulate, it may be state officials who will bear the brunt of public disapproval, while the federal officials who devised the regulatory program may remain insulated from the electoral ramifications of their decision." *Id.*, at 169. Spending Clause programs do not pose this danger when a State has a legitimate choice whether to accept the federal conditions in exchange for federal funds. In such a situation, state officials can fairly be held politically accountable for choosing to accept or refuse the federal offer. But when the State has no choice, the Federal Government can achieve its objectives without accountability, just as in *New York v. Printz*. Indeed, this danger is heightened when Congress acts under the Spending Clause, because Congress can use that power to implement federal policy it could not impose directly under its enumerated powers. Pg. 48