New Jersey Hospital Association

NJHA ISSUE BRIEF

Supreme Court Ruling on the Patient Protection and Affordable Care Act (PPACA)

Issue Brief

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In deciding The National Federation of Independent Business v. Sebelius, the U.S. Supreme Court provided some clarity on the Patient Protection and Affordable Care Act. This Issue Brief will provide background on the case, a discussion of the Court's holding and its impact on New Jersey.

Background

On March 23, 2010, President Barack Obama signed into law The Patient Protection and Affordable Care Act (ACA), which was designed to expand coverage to 32 million people at a cost of $940 billion over 10 years. The law contained an individual mandate, low-income subsidies, an expansion of Medicaid, insurance reforms and the creation of state-based health insurance exchanges. It also called for new, nonprofit, consumer-owned and -oriented plans (or CO-OPs), as well as multi-state health plans overseen by the federal Office of Personnel Management, to compete with other private health plans in the insurance exchanges.

Almost as soon as the President signed the bill, those opposed to it filed lawsuits, arguing that the law violates various provisions of the U.S. Constitution. Many of those lawsuits worked their way through the federal courts. In November 2011, the U.S. Supreme Court agreed to hear two cases from the 11th Circuit Court of Appeals. These two cases, which were filed in Florida, were consolidated by the Supreme Court.

The Court held three days of oral argument in March 2012, and issued its decision on June 28, 2012.

The Supreme Court's Decision

The Supreme Court looked past the threshold matter of whether the case was ripe for review because of the Anti-Injunction Act (AIA) and decided on the constitutionality of the ACA's two major provisions, the individual mandate and the Medicaid expansion. The Court ultimately upheld both provisions, although it did limit the Medicaid expansion. Chief Justice John Roberts, an appointee of President George W. Bush, issued the Court's decision.

1) The Anti-Injunction Act

In general, AIA barred lawsuits that attempted to restrain the assessment or collection of taxes until after that assessment. Known as "pay first, litigate later," the AIA applied only to taxes that are used to raise funds, not penalties, which are imposed as punishment for unlawful acts. Had the Supreme Court determined that the ACA imposed a tax, then the Court could not have ruled on the merits of the case until 2015.

The Court held that the ACA, for the purposes of this limited jurisdictional issue, imposed a penalty and not a tax for failure to purchase health insurance. Chief Justice Roberts, in writing the majority opinion, emphasized that Congress intentionally chose to label the failure to purchase health insurance as a "shared responsibility payment," which was explicitly described by Congress as a penalty and not a tax. In making this ruling, the majority focused on the plain statutory language of the ACA, finding that Congress' intentional use of the term penalty was dispositive.

Therefore, the Court held that the AIA does not apply to the ACA.

2) The Individual Mandate

The minimum essential coverage provision of the ACA, commonly known as the individual mandate, requires most individuals to maintain a minimum level of health insurance coverage for themselves and their tax dependents beginning this year. The Act provided multiple avenues for satisfying the individual mandate – for example, through employer-sponsored insurance, a government-sponsored plan (such as Medicare or Medicaid) or an individual insurance plan, such as those that would be offered through the newly-created health insurance exchange.

A five-justice majority, consisting of the four "conservative" justices and the Chief Justice, held that the individual mandate exceeded Congress' authority under the Commerce Clause because the mandate essentially compelled individuals to purchase health insurance, thereby compelling economic activity instead of regulating it. Here, we heard Chief Justice Roberts refer to the often-discussed broccoli analogy. Roberts rejected the government's argument that healthcare's unique place in the marketplace justified congressional action under the Commerce Clause and made this case distinct from one that mandated the purchase of broccoli, for example, by stating that the special nature of health insurance and healthcare financing "does not mean the compelled purchase of the first is properly regarded as a regulation of the second."

A separate five-justice majority, however, upheld the individual mandate as a valid exercise of Congress' power to tax. In so holding, the five justices – the four "liberal" justices and Chief Justice - said that the Court had the duty to adopt any reasonable interpretation of a statute to avoid a finding of unconstitutionality. In this case, even though the most straightforward reading of the statute is that it is a requirement that individuals purchase insurance, the alternate reading of the statute - that the law is a tax on individuals – is "fairly possible" and therefore must be upheld. The majority concluded that the "shared responsibility payment" is a tax because it is paid into the Treasury by individuals when they file their tax returns, relies upon the Internal Revenue Service to enforce the law and determines the amount of the payment based on taxable income, number of dependents and tax filing status. Interestingly, the majority found that Congress' labeling of the "shared responsibility payment" as a "penalty" as opposed to a "tax" was not controlling for purposes of determining the constitutionality of the provision.

It is interesting to note that the decision that Congress had the authority, under its power to tax, is a majority holding and that there is no minority opinion for this piece of the case.

3) <u>The Medicaid Expansion</u>

The ACA also expanded eligibility for access to Medicaid benefits by requiring participating states (i.e., all states) to cover nearly every individual under the age of 65 with household incomes at or below 133 percent of the federal poverty level (FPL) beginning in January 2014. In real numbers, this expansion required states to provide Medicaid to individuals making less than $14,856 and a family of four making less than $30,657. The ACA required the federal government to cover 100 percent of the states' costs of the expansion beginning in 2014, but decreases the federal funding to 90 percent in 2020.

The Court found that Congress can use the Spending Clause as incentive for state action when a state is able to voluntarily and knowingly accept the terms of such a program. Here, however, Congress exceeded its authority under this clause because the threat of losing <u>all</u> of a state's Medicaid funding for failure to abide by this expansion does not provide states with a true choice. Specifically, Roberts found that "[t]he threatened loss of over 10 percent of a State's overall budget is economic dragooning that leaves the States with no real option but to acquiesce in the Medicaid expansion." This is the first time that the Supreme Court has invalidated federal legislation on the grounds that it is coercive.

To remedy this unconstitutional provision, the Court invalidated this penalty provision. Therefore, Congress could withhold only the funding related to the ACA's expansion if and when a state refused to comply. The Court did leave open the possibility that Congress could assign some other penalty for failure to expand. Additionally, the Court held that the unconstitutional condition was severable from the rest of the ACA, finding that "Congress would have wanted to preserve the rest of the Act."

<u>**New Jersey Impact**</u>

This decision provided legal clarity to the ACA, which has been under a cloud of litigation since the day it was enacted. Roughly 1.3 million individuals in New Jersey are uninsured, and the

ACA is estimated to reduce that number by approximately 940,000 individuals through the Medicaid expansion and the subsidized coverage on the exchange.

In the immediate aftermath of the NFIB v. Sebelius case, the state needed to determine how to implement the health insurance marketplace created under the ACA and whether to expand Medicaid eligibility in the state. The ACA required states to create health insurance marketplaces, designed to make purchasing of health insurance clearer and more streamlined, either through a state-created entity or through the federal government. New Jersey opted to utilize the Federally Facilitated Marketplace.

On the Medicaid expansion, New Jersey's program already met most guidelines of Medicaid expansion under the ACA. Children and families are already covered up to 133 percent of the federal poverty level. Only childless adults who make less than 133 percent of the Federal Poverty Line were not eligible for Medicaid benefits in New Jersey. The only population that was not up to that 133 percent level was childless adults. On February 26, 2013, Governor Christie announced his decision to expand Medicaid eligibility in New Jersey.

Conclusion

The National Federation case cleared up some of the legal uncertainty surrounding the ACA, however cases surrounding other provisions of the ACA continue their way through the courts. NJHA will continue to monitor these cases and their impact on the state.