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

Background

On March 23, 2010, President Barack Obama signed into law The Patient Protection and Affordable Care Act (ACA), designed to expand coverage to 32 million people at a cost of $940 billion over 10 years. The law contains an individual mandate, low-income subsidies, an expansion of Medicaid, insurance reforms and the creation of state-based health insurance exchanges. It also calls 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 began filing 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 and decided on the constitutionality of the Act'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, the Anti-Injunction Act ("AIA") bars lawsuits that attempt to restrain the assessment or collection of taxes until after that assessment. Known as "pay first, litigate later," the AIA applies only to taxes, which are used to raise funds, and 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, imposes 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 Anti-Injunction Act 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 in 2014. 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 compels 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"[1]. 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 Roberts said that the Court has the duty to adopt any reasonable interpretation of a statute to avoid a finding of unconstitutionality. In this case, even though the most straight forward 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. Interestingly, this decision (that Congress had the authority under its power to tax), is a majority holding which means there is no minority opinion for this piece of the case.

3) The Medicaid Expansion

[1] NATIONAL FEDERATION OF INDEPENDENT BUSINESS ET AL. *v*. SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT No. 11–393. Argued March 26, 27, 28, 2012—Decided June 28, 2012

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 would require states to provide Medicaid to individuals making less than $14,856 and a family of four making less than $30,657. The ACA does require 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, which grants the federal government its power of taxation, incentive for state action when a state is able to voluntarily and knowingly accept the terms of such program. Here, however, the Court ruled Congress exceeded its authority under this clause because the threat of losing all 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 can withhold only the funding related to the ACA's expansion if and when a state refuses 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."

What This Means for New Jersey

The Supreme Court's decision provides 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 445,000 individuals through the Medicaid expansion and the subsidized coverage on the exchange.

Two major issues will need to be decided quickly in New Jersey – how to implement the health insurance exchanges created under the ACA and whether to expand Medicaid eligibility in the state. The ACA mandates that states create health insurance exchanges, designed to make purchasing of health insurance clearer and more streamlined, either through a state-created entity or through the federal government. The N.J. Legislature had adopted legislation to create an individual and a small group exchange in March 2012, but the legislation was vetoed by the Governor in May 2012 on the grounds that it was due to the uncertainty of the supreme court decision, the lack of adequate representation on its board of directors, and the increased cost to the state. It is unclear at this time what mechanism New Jersey will use to create the exchange; however, the state must act fast because the ACA set a fall 2013 deadline for exchanges to begin enrollment.

On the Medicaid expansion, New Jersey's program already meets most guidelines of Medicaid expansion under the ACA. Children and families are already covered up to 133 percent of the federal poverty level. The only population that is not up to that 133 percent level is childless adults. However, should the State opt out of the Medicaid expansion, it would leaving nearly 500,000 single, very low income individuals without insurance through Medicaid, yet likely unable to afford insurance through the exchange because of a lack of federal subsidies. Additionally, if New Jersey rejects the Medicaid expansion, it will forego about 93 percent federal funding for the program between 2014 and 2022.