National Federation of Independent Business v. Sebelius

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Summary Overview

The Supreme Court case *National Federation of Independent Business (NFIB) v. Sebelius* (2012) was a landmark case challenging the Affordable Care Act (ACA) of 2010. Liberals and progressives generally supported the ACA, viewing it as a key health care reform to expand coverage and protect consumers. Most also supported the legal defenses of the law, including its "individual mandate" requiring all uninsured persons to be covered under it. Conservatives and Republicans, on the other hand, were largely opposed to the ACA, criticizing it as government overreach, and many argued against the individual mandate and certain provisions of the law.

The ACA, often referred to as Obamacare, was enacted by Congress and signed by President Barack Obama in 2010, overhauling federal regulation of health care. Its central provisions expanded health insurance to millions of previously uninsured Americans. It was immediately challenged as an unconstitutional exercise of government authority, in particular because such authority to regulate the health care market is not explicitly delegated to Congress under the U.S. Constitution, including under the Commerce Clause. In a far-reaching decision in the case of *National Federation of Independent Business (NFIB) v. Sebelius*, the U.S. Supreme Court upheld the constitutionality of key provisions of the act under Congress's taxing powers, most notably the requirement for uninsured Americans to purchase health insurance. The Court's decision found that the ACA could not be authorized as an exercise of Congress's Commerce Clause authority, representing a rare setback to expansion of congressional powers under this clause. Likewise, the Court found that the ACA provisions affecting state Medicaid programs represented an overreach of congressional authority under its spending powers, thus invalidating its Medicaid expansion. The complicated welter of written opinions by the individual Supreme Court justices added up to sustaining most provisions of this major piece of legislation, a political victory for the Obama Administration, but only on the narrowest grounds, representing a substantial restraint on the exercise of congressional powers.

Defining Moment

The case of *National Federation of Independent Business v. Sebelius* upheld the constitutionality of the Affordable Care Act (ACA), the Obama administration's landmark health care legislation, expanding the reach of the federal government in providing access to health care insurance. If the Supreme Court did not find a legitimate constitutional authority for Congress to require uninsured Americans to purchase health insurance, the ACA would have been essentially negated. Although the Supreme Court found congressional powers to pass such legislation restricted under its Commerce Clause and spending powers, thus invalidating the Medicaid expansion (the health care program for indigent Americans), it did uphold the individual mandate to purchase health care insurance under Congress's taxing powers.

Chief Justice John Roberts wrote the Court opinion that by a five to four majority of justices upheld the individual mandate to buy health insurance as a constitutional exercise of Congress's taxing power. Other justices wrote a variety of concurrences and dissents, in essence adding up to a Supreme Court decision that the individual mandate could not be otherwise justified under the Commerce Clause, but still valid under the taxing power, and the Medicaid expansion invalidated altogether as beyond Congress's spending power, as commandeering sovereign decisions of states.

Historical Document

National Federation of Independent Business v. Sebelius (2012)

Opinion of Chief Justice John Roberts

Today we resolve constitutional challenges to two provisions of the Patient Protection and Affordable Care Act of 2010: the individual mandate, which requires individuals to purchase a health insurance policy providing a minimum level of coverage; and the Medicaid expansion, which gives funds to the States on the condition that they provide specified health care to all citizens whose income falls below a certain threshold. We do not consider whether the Act embodies sound policies. That judgment is entrusted to the Nation's elected leaders. We ask only whether Congress has the power under the Constitution to enact the challenged provisions....

This case concerns two powers that the Constitution does grant the Federal Government, but which must be read carefully to avoid creating a general federal authority akin to the police power. The Constitution authorizes Congress to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Art. I, §8, cl. 3. Our precedents read that to mean that Congress may regulate "the channels of interstate commerce," "persons or things in interstate commerce," and "those activities that substantially affect interstate commerce." *Morrison, supra*, at 609 (internal quotation marks omitted). The power over activities that substantially affect interstate commerce can be expansive. That power has been held to authorize federal regulation of such seemingly local matters as a farmer's decision to grow wheat for himself and his livestock, and a loan shark's extortionate collections from a neighborhood butcher shop. See *Wickard v. Filburn*, 317 U.S. 111 (1942); *Perez v. United States*, 402 U.S. 146 (1971).

Congress may also "lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States." U. S. Const., Art. I, §8, cl. 1. Put 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. See, e.g., License Tax Cases, 5 Wall. 462, 471 (1867). And in exercising its spending power, Congress may offer funds to the States, and may condition those offers on compliance with specified conditions. See, e.g., *College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U.S. 666, 686 (1999). These offers may well induce the States to adopt policies that the

Federal Government itself could not impose. See, e.g., *South Dakota v. Dole*, 483 U.S. 203, 205-206 (1987) (conditioning federal highway funds on States raising their drinking age to 21).

The reach of the Federal Government's enumerated powers is broader still because the Constitution authorizes Congress to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers." Art. I, §8, cl. 18. We have long read this provision to give Congress great latitude in exercising its powers: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *McCulloch*, 4 Wheat., at 421.

Our permissive reading of these powers is explained in part by a general reticence to invalidate the acts of the Nation's elected leaders. "Proper respect for a co-ordinate branch of the government" requires that we strike down an Act of Congress only if "the lack of constitutional authority to pass [the] act in question is clearly demonstrated." *United States v. Harris*, 106 U.S. 629, 635 (1883). Members of this Court are vested with the authority to interpret the law; we possess neither the expertise nor the prerogative to make policy judgments. Those decisions are entrusted to our Nation's elected leaders, who can be thrown out of office if the people disagree with them. It is not our job to protect the people from the consequences of their political choices.

Our deference in matters of policy cannot, however, become abdication in matters of law. "The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written." *Marbury v. Madison*, 1 Cranch 137, 176 (1803). Our respect for Congress's policy judgments thus can never extend so far as to disavow restraints on federal power that the Constitution carefully constructed. "The peculiar circumstances of the moment may render a measure more or less wise, but cannot render it more or less constitutional." Chief Justice John Marshall, A Friend of the Constitution No. V, Alexandria Gazette, July 5, 1819, in John Marshall's Defense of *McCulloch v. Maryland* 190-191 (G. Gunther ed. 1969). And there can be no question that it is the responsibility of this Court to enforce the limits on federal power by striking down acts of Congress that transgress those limits. *Marbury v. Madison, supra*, at 175-176....

In 2010, Congress enacted the Patient Protection and Affordable Care Act, 124Stat. 119. The Act aims to increase the number of Americans covered by health insurance and decrease the cost of health care. The Act's 10 titles stretch over 900 pages and contain hundreds of provisions. This case concerns constitutional challenges to two key provisions, commonly referred to as the individual mandate and the Medicaid expansion.

The individual mandate requires most Americans to maintain “minimum essential” health insurance coverage. 26 U. S. C. §5000A. The mandate does not apply to some individuals, such as prisoners and undocumented aliens. §5000A(d). Many individuals will receive the required coverage through their employer, or from a government program such as Medicaid or Medicare. See §5000A(f). But for individuals who are not exempt and do not receive health insurance through a third party, the means of satisfying the requirement is to purchase insurance from a private company.

Beginning in 2014, those who do not comply with the mandate must make a “[s]hared responsibility payment” to the Federal Government. §5000A(b)(1). That payment, which the Act describes as a “penalty,” is calculated as a percentage of household income, subject to a floor based on a specified dollar amount and a ceiling based on the average annual premium the individual would have to pay for qualifying private health insurance. §5000A(c). In 2016, for example, the penalty will be 2.5 percent of an individual’s household income, but no less than $695 and no more than the average yearly premium for insurance that covers 60 percent of the cost of 10 specified services (e.g., prescription drugs and hospitalization). Ibid.; 42 U. S. C. §18022. The Act provides that the penalty will be paid to the Internal Revenue Service with an individual’s taxes, and “shall be assessed and collected in the same manner” as tax penalties, such as the penalty for claiming too large an income tax refund. 26 U. S. C. §5000A(g)(1). The Act, however, bars the IRS from using several of its normal enforcement tools, such as criminal prosecutions and levies. §5000A(g)(2). And some individuals who are subject to the mandate are nonetheless exempt from the penalty—for example, those with income below a certain threshold and members of Indian tribes. §5000A(e)....

The Constitution grants Congress the power to “regulate Commerce.” Art. I, §8, cl. 3 (emphasis added). The power to *regulate* commerce presupposes the existence of commercial activity to be regulated. If the power to “regulate” something included the power to create it, many of the provisions in the Constitution would be superfluous....

The individual mandate, however, 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. Construing the Commerce Clause to permit Congress to regulate individuals precisely *because* they are doing nothing would open a new and potentially vast domain to congressional authority. Every day individuals do not do an infinite number of things. In some cases they decide not to do something; in others they simply fail to do it. Allowing Congress to justify federal regulation by pointing to the effect of inaction on commerce would bring countless decisions an individual could *potentially* make within the scope of federal regulation, and—under the Government’s theory—empower Congress to make those decisions for him....

In this case [of the prosed expansion of state Medicaid programs], the financial "inducement" Congress has chosen is much more than "relatively mild encouragement"—it is a gun to the head. Section 1396c of the Medicaid Act provides that if a State's Medicaid plan does not comply with the Act's requirements, the Secretary of Health and Human Services may declare that "further payments will not be made to the State." 42 U. S. C. §1396c. A State that opts out of the Affordable Care Act's expansion in health care coverage thus stands to lose not merely "a relatively small percentage" of its existing Medicaid funding, but all of it. Dole, supra, at 211. Medicaid spending accounts for over 20 percent of the average State's total budget, with federal funds covering 50 to 83 percent of those costs. See Nat. Assn. of State Budget Officers, Fiscal Year 2010 State Expenditure Report, p. 11, Table 5 (2011); 42 U. S. C. §1396d(b). The Federal Government estimates that it will pay out approximately $3.3 trillion between 2010 and 2019 in order to cover the costs of pre-expansion Medicaid. Brief for United States 10, n. 6. In addition, the States have developed intricate statutory and administrative regimes over the course of many decades to implement their objectives under existing Medicaid. It is easy to see how the Dole Court could conclude that the threatened loss of less than half of one percent of South Dakota's budget left that State with a "prerogative" to reject Congress's desired policy, "not merely in theory but in fact." 483 U. S., at 211-212. The threatened loss of over 10 percent of a State's overall budget, in contrast, is economic dragooning that leaves the States with no real option but to acquiesce in the Medicaid expansion....

The Affordable Care Act is constitutional in part and unconstitutional in part. The individual mandate cannot be upheld as an exercise of Congress's power under the Commerce Clause. That Clause authorizes Congress to regulate interstate commerce, not to order individuals to engage in it. In this case, however, it is reasonable to construe what Congress has done as increasing taxes on those who have a certain amount of income, but choose to go without health insurance. Such legislation is within Congress's power to tax.

As for the Medicaid expansion, that portion of the Affordable Care Act violates the Constitution by threatening existing Medicaid funding. Congress has no authority to order the States to regulate according to its instructions. Congress may offer the States grants and require the States to comply with accompanying conditions, but the States must have a genuine choice whether to accept the offer. The States are given no such choice in this case: They must either accept a basic change in the nature of Medicaid, or risk losing all Medicaid funding. The remedy for that constitutional violation is to preclude the Federal Government from imposing such a sanction. That remedy does not require striking down other portions of the Affordable Care Act.

The Framers created a Federal Government of limited powers, and assigned to this Court the duty of enforcing those limits. The Court does so today. But the Court does not express any opinion on the wisdom of the Affordable Care Act. Under the Constitution, that judgment is reserved to the people.

The judgment of the Court of Appeals for the Eleventh Circuit is affirmed in part and reversed in part.

It is so ordered.

Document Analysis

The constitutionality of the ACA, enacted in 2010, was challenged in several federal courts. The decision of the Court of Appeals for the Eleventh Circuit was reviewed in 2012 by the U.S. Supreme Court, the nation's highest judicial authority interpreting and applying the U.S. Constitution. Two essential aspects of the ACA were challenged: the individual mandate, requiring uninsured individuals to purchase a health insurance policy providing a minimum level of coverage; and the Medicaid expansion, granting funds to the States on the condition that they provide expanded health care to low-income residents. The end result of the Supreme Court's document is to legitimate the individual mandate but invalidate the Medicaid expansion.

Chief Justice Roberts begins his opinion by reviewing the powers of Congress and the federal government under the U.S. Constitution, essential planks in understanding federal-state relations and the separation of powers. Congress only has authority to enact legislation under powers delegated to it under the United States Constitution. The purported powers Congress possessed to enact the ACA under the Constitution were essentially four: (1) Article 1, Section 8, Clause 3, giving Congress the power "to regulate commerce...among the several states...."; (2) Article I, Section 8, Clause 1, which gives Congress the power to tax; (3) Article I, Section 8, Clause 1, giving Congress the power to spend revenues it collects; and (4) the Necessary and Proper Clause, in Article I, Section 8, giving Congress the power to make laws necessary and proper to execute its delegated powers.

In an opinion joined in part by four other justices, thus becoming the decision of the Court, Chief Justice Roberts both upheld (the individual mandate) and invalidated (Medicaid expansion) portions of the ACA. First, the ACA could not be authorized under the Commerce Clause because its individual mandate does not regulate existing commercial activity among the states, the explicit language of the Commerce Clause, but creates such activity, by requiring individuals, otherwise not participating in such commerce, to become active in commerce by purchasing insurance. This purported regulation of inactivity is distinguished from such historic Commerce Clause cases as *Wickard v. Filburn* (1942), allowing Congress to regulate a farmer's decision to grow wheat for himself and his livestock, and *Perez v. United States* (1971), allowing Congress to regulate a loan shark's extortionate collection from a neighborhood butcher shop. Unlike these examples of commercial activity, however localized and particularized, the proximity and degree of connection between individuals currently without health insurance and their subsequent commercial activity in purchasing insurance is too lacking to fall under the Commerce Clause. Allowing Congress to regulate such inactivity would represent the furthest, and an illegitimate, expansion of congressional authority under the Commerce Clause. Second, in contrast, Congress has explicit taxing power and could use this power to increase taxes on individuals who could afford health insurance but decide to forego it. Thus, the individual mandate was constitutional as within Congress's power to tax.

Third, however, Congress could not use its spending powers to enforce Medicaid expansion by threatening existing Medicaid funding. Congress may attempt to persuade states to act by offering financial incentives, but it cannot compel states to act by coercive inducements that represent "a gun to the head" and thus infringe on state sovereignty. Under the ACA, states must either change their Medicaid regulations or risk loss of all Medicaid funding, which would represent a devasting blow to state budgets and their ability to care for their citizens. Thus, the Medicaid expansion under the ACA is struck down. Fourth, the disputed provisions of the ACA cannot be validated by the necessary and proper clause if they lack an independent basis of authority in the Constitution.

Essential Themes

The case of *National Federation of Independent Business v. Sebelius* brought together several important political and constitutional strands. Politically, it represented whether the Obama administration's landmark health care legislation, the ACA, would survive judicial scrutiny. Constitutionally, it represented a long-standing debate over congressional authority in the health care field, dating back to the New Deal, and the passage of the Medicare and Medicaid Acts in 1965. From a broader perspective, it tested the reach of Congress in regulating spheres of commerce and activity under the Commerce Clause.

In particular, the ACA provided access to a health care exchange for Americans without health care insurance to obtain such insurance, with a penalty levied on certain Americans who did not purchase insurance. It also expanded Medicaid coverage by granting funds to states on the condition that they provide expanded health care to certain low-income citizens. The Court's decision upholding the individual mandate under congressional taxing power saved the essential provisions of the act. Nevertheless, congressional power to regulate in the field of health care, and more broadly in other fields as well, under the Commerce Clause seems to have been substantially circumscribed, as well as its power to shape state legislation through financial grants, resulting in the Court invalidating the Medicaid expansion provisions of the ACA.

As such *National Federation of Independent Business v. Sebelius* became the first of a series of Supreme Court cases, including *King v. Burwell* (2015) and *California v. Texas* (2021), upholding the ACA.

—Howard Bromberg, JD, JSM

Bibliography and Additional Reading

Drachsler, David. *"NFIB v. Sebelius*, the Commerce Clause and Activity/Inactivity." February 12, 2022. ssrn.com/abstract=4033357 or dx.doi.org/10.2139/ssrn.4033357.

Lindsay, Matthew. "Federalism and Phantom Economic Rights in *NFIB v. Sebelius.* " *University of Cincinnati Law Review* 82 (2018): 687-745. scholarship.law.uc.edu/uclr/vol82/iss3/1.

Outterson, Kevin, Nicole Huberfeld, and Elizabeth W. Leonard. "Plunging into Endless Difficulties: Medicaid and Coercion in *National Federation of Independent Business v. Sebelius*." *Boston University Law Review* 93 (2013): 1-89. scholarship.law.bu.edu/faculty_scholarship/9.