The Dénouement of the Supreme Court’s ACA Drama

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The Supreme Court decision on June 28, 2012, in National Federation of Independent Business v. Sebeliusупholding nearly all of the Affordable Care Act (ACA)marked the dénouement of a drama that began in March 2010, when President Barack Obama signed the law. In three lengthy, interconnected opinions, members of the Court sent the contentious debate about the ACA’s expansion of health insurance coverage from the courts back to the political process, while setting out competing philosophies on the reach of federal power and the Court’s role in policing constitutional limits on federal action. Although the decision resolves legal doubt about the challenged provisions’ constitutionality, its impact on access to health insurance and health care, state Medicaid programs, the 2012 elections, and the legal status of future congressional efforts to regulate private conduct and control states’ use of federal funds will become clear only “in the fullness of time.”

Chief Justice John Roberts’s opinion — operating in combination with the opinion written by Justice Ruth Bader Ginsburg or the joint opinion from Justices Antonin Scalia, Anthony Kennedy, Clarence Thomas, and Samuel Alito, depending on the issue — reflects the outcome, if not the reasoning, on all the issues (see graphic, available with the full text of this article at NEJM.org).

First, the Court determined that the penalty for failure to comply with the individual mandate to obtain health insurance coverage was not a “tax” for purposes of the Anti-Injunction Act, so review of the provision’s constitutionality need not be delayed. Only on this issue did the Court reach a unanimous result, and different justices arrived there by different routes.

Second, the Court ruled that the ACA’s minimum coverage or individual mandate provision exceeds Congress’s powers under the Commerce Clause but upheld it as a valid exercise of Congress’s power to tax. Roberts noted that “Congress has never attempted to rely on [the commerce] power to compel individuals not engaged in commerce to purchase an unwanted product.” He characterized the Court’s precedents as distinguishing between “activity” which Congress could regulate and “inactivity” which the commerce power does not reach. Because of this conclusion, Roberts and the four justices on the joint opinion also concluded that the provision was not valid under the constitutional clause permitting Congress to take actions deemed “necessi-
sary and proper” for exercising its enumerated powers.

Next, Roberts considered whether the mandate was a valid exercise of the federal taxing power. Relying on precedents requiring the Court to give a statute an interpretation that preserves its validity, if one is possible, Roberts concluded that the mandate could reasonably be read as “establishing a condition — not owning health insurance — that triggers a tax — the required payment to the [Internal Revenue Service].” That Congress had labeled the payment a “penalty” rather than a “tax” was not determinative, he concluded, of whether it could be viewed as a tax for constitutional purposes. Rejecting the arguments of the joint opinion, he stated that Congress’s failure to use “magic words or labels” would not invalidate otherwise constitutional taxes and that unlike a penalty that punishes unlawful conduct, the payment was a tax that someone chooses to pay rather than buy health insurance. Ginsburg, who, along with Justices Stephen Breyer, Sonia Sotomayor, and Elena Kagan, would have upheld the mandate under the Commerce Clause and the Necessary and Proper Clause, joined the part of Roberts’s opinion upholding it as a valid exercise of the taxing power.

Third, in a surprising alignment, Breyer and Kagan joined Roberts and the four justices on the joint opinion to rule that Congress could not condition the federal Medicaid funds that states currently receive on their agreement to participate in the ACA’s Medicaid expansion. Despite the principle that under its power to spend for the “general welfare” Congress may attach conditions to federal funds provided to the states, the seven justices concluded that by tying not only new money but also existing Medicaid payments to participation in the expansion, the policy crossed the line from encouragement to coercion, violating the 10th Amendment. Roberts further argued that the expansion made Medicaid “no longer a program to meet the health care needs of the neediest among us but an element of a national plan to provide universal health insurance coverage.” He concluded that the states had not agreed to, nor could have anticipated, such a drastic change in the Medicaid program.

Finally, regarding whether the remaining provisions should survive overruling of one provision, Roberts and the four justices on the Ginsburg opinion voted to sustain the rest of the law, reasoning that Congress would not have wanted the entire statute to fall because of a constitutional problem with the Medicaid provision.

The Court’s decision settles doubt about the ACA’s constitutionality and clears the path for implementation and innovations in care delivery and cost control. Regarding the Medicaid expansion, the decision creates uncertainty. With weakened incentives for participating in the expansion, states may opt out for ideological or financial reasons. In addition, under the ACA, some Medicaid populations are not eligible for federal subsidies to obtain health insurance on the exchanges. As the Court noted, Congress was relying on the Medicaid expansion to help reduce the numbers of uninsured Americans. Without all states participating, the ACA will fall short of its goals.

No Supreme Court decision can resolve political uncertainty about the ACA’s long-term viability. The outcome of the 2012 federal elections may determine the fate of health care reform. State leaders who oppose the ACA may decide to wait and see what the election portends.

Roberts introduced his opinion with a disquisition on “both the limits of federal power, and [the Court’s] own limited role in policing these boundaries.” Noting the broad powers that the Constitution grants the federal government for regulating commerce and accomplishing through taxation and spending what it cannot regulate directly, he stated that the Necessary and Proper Clause gives Congress “great latitude in exercising its powers.” Roberts explained this “permissive reading of these powers” as justified by a “general reticence to invalidate the acts of the Nation’s elected leaders.” The Court, he stated, “possesses neither the expertise nor the prerogative to make policy judgments,” but it could not abdicate its responsibility “to enforce the limits on federal power by striking down acts of Congress that transgress those limits.”

Despite this expression of judicial modesty, Roberts’s opinion could supply a rationale for future limitations on Congress’s regulatory ability. Ginsburg’s dissent criticized his “crabbed reading of the Commerce Clause” as evoking “the era in which the Court routinely thwarted Congress’s efforts to regulate the national economy in the interest of those who labor to sustain it.” Arguing for judicial deference to reasonable congressional regulatory judgments, she wrote that Roberts’s limited reading “should not have staying power.”

Similarly, by characterizing the Medicaid expansion as a “shift in
kind, not merely degree” and outlining possible criteria for invalidating federal spending conditions as unconstitutionally coercive, the Roberts opinion could give states more leverage in resisting federal standards accompanying receipt of federal funds. Ginsburg argues that these judgments fall outside the judiciary’s competency. Only future cases will indicate whether the analysis in the ACA case marks a shift in the Supreme Court’s Commerce Clause and 10th Amendment doctrines or was a rationale specific to this case.

Disclosure forms provided by the author are available with the full text of this article at NEJM.org.

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