

Gavel to Gavel: Analyzing the court's decision

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On June 28, the Supreme Court issued its ruling on the constitutionality of President Obama's Patient Protection and Affordable Care Act.

Here is a basic, apolitical, legal analysis of the decision:

The federal government can only exercise powers specifically enumerated in the Constitution or its amendments. Otherwise, power resides with the states.

The ACA was enacted under the authority of the commerce clause, which allows government regulation of commerce among states and of activities that have a substantial effect on interstate commerce.

The act's individual mandate requires most individuals to purchase a product (health insurance) or pay a penalty. However, the commerce clause affords power to regulate existing activity – not inactivity, which only states can do. Thus, the individual mandate cannot be sustained under the commerce clause.

Next, the government asserted authority under the necessary and proper clause, arguing that the individual mandate is an integral part of a comprehensive scheme of economic regulation. The court disagreed, saying the clause doesn't grant powers beyond those specifically enumerated.

In a third argument, the government asserted that the individual mandate may be upheld under the power to tax. The language refers to a penalty for those who choose not to

purchase insurance as required.

Interested only in a word's practical application, the court was unconcerned by the government's use of the word penalty – instead of tax – in its argument.

The court compared a penalty designed to punish with a tax: the funds are paid into the U.S. Treasury; the requirement to pay is found in the Internal Revenue Code, enforced by the IRS and reported on the income tax form; the amount due for most Americans will be far less than the price of insurance; and no knowledge or intent is required (as would be expected of a penalty/punishment).

Thus, while termed a penalty, it's really a tax, designed to influence conduct – like cigarettes are taxed to discourage smoking. Here, the conduct the Affordable Care Act is attempting to encourage is the purchase of health insurance. And, if you don't, you'll be taxed accordingly.

Politics aside, the court utilized well-established constitutional law to sustain the authority for the individual mandate of the Affordable Care Act. Perhaps they should have quoted Shakespeare, who addressed the same issue (albeit more eloquently and much more succinctly): "What's in a name? That which we call a rose. By any other name would smell as sweet."

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