

Constitutionality of Health Care Reform: The Affordable Care Act

Overview: 1–2 sentence description of the lesson plan.

List of courses or settings for which this lesson is ideal.

Interactive strategies that will be used to help students achieve the lesson outcomes

Does your lesson plan help achieve any of the national standards for civics and government?

What is the critical question that students will be able to answer as a result of this lesson?

What should students learn or be able to do as a result of this lesson?

List of handouts, transparencies, posters, and other visual aids used to deliver your lesson.

Overview	This lesson can be used in:	Teaching strategies	National standards for civics and government
Students explore a Supreme Court case about the constitutionality of the <i>Patient Protection and Affordable Care Act</i> .	Government, Civics, Law, and Current Events courses	Group work, ranking persuasive arguments	III. A. How are power and responsibility distributed, shared, and limited in the government?

Essential Question

Does the Commerce Clause of the Constitution authorize Congress to require that almost all persons in the United States purchase health insurance?

Outcomes

As a result of this lesson, students will be able to do the following:

- Explain how the “individual mandate” relates to the stated purposes of the *Patient Protection and Affordable Care Act*
- List arguments for both sides: that the Commerce Clause allows Congress to require that all individuals purchase health insurance or pay a penalty; and that the mandate exceeds the power granted to Congress by the Commerce Clause
- Rank arguments for each side in terms of persuasiveness

Handouts

- I. The PPACA: Background
- II. Arguments For and Against the Law
- III. Essay Instructions
- IV. Teacher Guide

Preparing to teach

Copy handouts for all students. Students will need access to the Constitution during this lesson. If your classroom or textbook does not have the text of the Constitution, print copies for students.

Note that this lesson assumes prior knowledge of the Commerce Clause's limits on Congressional lawmaking. A lesson covering that material is available from Street Law, at www.streetlaw.org/resource-healthcare.

Introduction

- 1) Ask students to work with a partner to complete a KWL chart about the *Patient Protection and Affordable Care Act of 2010*. They should take out a blank sheet of paper and divide it into three columns. In the left column, they should list things they *know* about the PPACA. In the middle column, they should list things they *want to know* about the PPACA. Allow the students a few minutes to populate the left and middle columns, and instruct them to leave the right-hand column blank for now.

The Patient Protection and Affordable Care Act

- 2) Distribute **Handout 1: The PPACA – Background** to the students. Ask them to read it silently.
- 3) Complete the right column of the KWL chart (things they *learned* from the reading) as a class. Ask students to suggest things they learned from the reading, and list them on a board or chart as students also fill in the column on their papers.
- 4) Ask if any students have questions in their “want to know” column that weren’t answered by the reading, and make a “parking lot” listing these questions. You can return to them at the end of the lesson or on a later date, if they require additional research.
- 5) Clarify the “Individual Mandate” portion of the law for students, as the remainder of the lesson focuses on that aspect of the law. Tell students:

The “individual mandate” portion of the law requires all Americans to maintain a minimum level of health insurance. Starting in 2014, anyone who doesn’t purchase at least the minimum level of insurance will have to pay a penalty. Persons who have religious objections or incomes below a certain level are exempted from this requirement.

Congress imposed the individual mandate to ensure universal health care coverage and to mitigate the rising costs of health insurance. Because the new law prohibits insurance companies from denying coverage to sick people, and from charging them more than others in their communities, Congress reasoned that some Americans would avoid buying insurance until they became ill, at which point insurance companies would have to give them

List of steps to take to prepare for teaching the lesson. The level of detail can vary to meet the needs and experience of the teacher.

The sections that follow are the heart of your lesson plan and should contain everything you need to do deliver the lesson—step-by-step instructions for the teacher, student directions, slides, scripts, hypothetical problems, case studies, and discussion questions.

It’s helpful to include the amount of time you will spend on each section. Remember to give students adequate time to ask questions and practice new content and skills.

Begin your lesson with a hook: a short activity (5-10 minutes) that directly involves students, gets their attention, and prepares them for what’s coming. It might be a quick poll of the group’s opinion about something, showing a short video, or having students partner up and brainstorm answers to an opening question or two.

coverage. Congress concluded that absent these healthy people, insurance companies would have a disproportionately unhealthy pool of persons who would require expensive care and that this would lead to higher, unaffordable insurance premiums. In order to make it feasible for the insurance companies to cover sick people, Congress decided that healthy people had to be required to buy insurance.

Is the Individual Mandate Constitutional?

- 6) Remind students that Congress's authority to make laws is limited by the Constitution. Have the students work in pairs, to carefully read Article 1, Section 8, to determine whether there is authority to pass a law requiring health insurance. Call on a few pairs to share their findings. Is there an explicit phrase that says Congress can pass laws requiring health insurance? Where else might Congress get the authority to make such a law?
- 7) Tell students that a majority in Congress and the President said that the authority came from the Commerce Clause. Other people disagreed, and they sued the government to stop the mandate and other parts of the law from taking effect. Their cases made it to the Supreme Court. The Supreme Court heard three cases about the PPACA in 2012, and the justices ruled on the law in late June 2012. (**See teacher guide for further information about these cases.)
- 8) Remind the students about some other related Supreme Court cases that the justices may have considered to be precedents (previous rulings that justices take into consideration when deciding cases.)

Wickard v. Filburn (1942): In an effort to increase wheat prices during the Great Depression, Congress passed a law limiting the amount of wheat that some farmers could grow. Farmer Filburn was penalized, but argued that he intended to use at least some of the wheat for personal consumption, and that Congress could not stop him from growing wheat that he did not intend to sell in interstate commerce. The Supreme Court ruled against the farmer, and said that Congress can regulate intrastate activity that, when added together with similar activity, substantially affects interstate commerce. The farmer's decision to grow his own wheat meant that he would not buy wheat from the market. If many farmers did the same thing, they would substantially affect interstate commerce.

U.S. v. Lopez (1995): Congress passed a law making it a federal crime to carry guns within a school zone. The Supreme Court ruled that Congress had exceeded its Commerce Clause authority with this law because carrying a gun in a school zone was not an *economic* activity. It said that Congress may only regulate:

- Channels of interstate commerce – including highways, waterways, and air traffic.
- People, machines, and things used in carrying out commerce, or things moving in interstate commerce.
- Economic activities that have a substantial effect on interstate commerce.

After the introduction, provide the legal content of the lesson. Try to find ways to deliver this content without always lecturing. While some lecture might be unavoidable, keep it short. Have students read, discuss, listen, and investigate. This portion should not be more than 1/3 of the lesson.

Gonzales v. Raich (2005): Even though California allowed the use of medical marijuana, a California woman who grew and used marijuana in her home was charged under federal law that made drug possession a crime. The Supreme Court ruled the federal drug law was allowed under the Commerce Clause. It said that Congress can regulate non-economic, wholly intrastate activity if “failure to do so” might undermine a broad regulatory plan. Homegrown marijuana might be traded or sold, which would disrupt the attempt to completely ban marijuana from interstate commerce.

- 9) Put students in groups of 2 or 3, and distribute **Handout 2: Arguments For and Against the Law**. Tell students that the first page of the handout includes a summary of the individual mandate, the commerce clause, and the precedents you just discussed. Give the students the following instructions:
 - Read the “Arguments that the Individual Mandate is Unconstitutional,” which are on p. 2 of the handout.
 - Discuss them with your group members.
 - Identify the most persuasive argument – the one that most convinces you that side is right. Then identify the second most persuasive argument, and so on. Rank the arguments, 1 to 6, in order of their persuasiveness to you personally.
 - Repeat these steps with the “Arguments that the Individual Mandate is Constitutional,” found on p. 3 of the handout.
- 10) Bring the class back together and review their answers together. Did students give the arguments the same rankings? Which ones were most persuasive? What questions did the arguments raise?

Deciding the Case

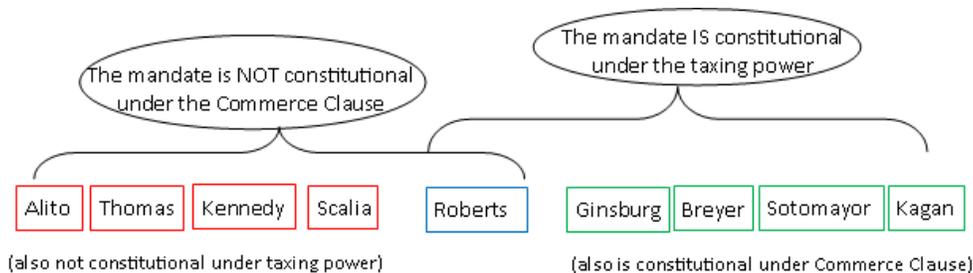
- 11) Ask students to assume the role of a Supreme Court justice. If they had to decide this case, would they decide in favor of or against the individual mandate?
- 12) Designate one end of the room “Constitutional” and the other end as “Unconstitutional.” Ask the students to stand and move toward the end of the room they agree with in this case – is the individual mandate constitutional or unconstitutional? Discuss their positions
- 13) Now ask them to consider whether or not they think requiring everyone to buy health insurance is a good idea? Is it good policy, regardless of whether you believe it is constitutional? Are there alternatives to the individual mandate that could solve the problem of the uninsured in our health care system?

Once students have some mastery of the content, have them participate in an activity(ies) to apply the content. The lesson’s activity(ies) should employ interactive teaching methods and comprise at least half of the lesson.

Consult the **Teaching Strategies** chart to help determine the best interactive methods for your lesson.

Summary and Debrief

- Optional: Assign students to assume the role of Supreme Court justices and write decisions in this case for homework. Use **Handout 3: Essay Instructions**. (If students complete the optional essay assignment, proceed with the following steps on the next class day)
- Distribute **Handout 4: The Decision**, and ask students to read through the information. Discuss the justices' rulings and the ways in which they were similar to the class vote. You might help students understand the alignment of the decision by drawing a chart on the board:



- You might choose to discuss the political impacts of the decision. In advance of the 2012 elections, what might the decision mean for candidates? After the elections, discuss ways that students observed health care playing a role in campaigns.
- Revisit the questions students raised earlier in the lesson, either in the "want to know" columns from the introductory activity, or elsewhere in discussion. Answer these questions as you are able, and create a plan with the students for obtaining answers to the other questions.

Note: Use of Community Resource People

While Street Law typically advocates the integration of legal professionals and community resource people into classroom lessons, this material may pose particular challenges. It may be difficult for teachers to find a legal expert who specializes in this area of constitutional law, but still possesses the ability to make the material accessible to students. It may also be difficult to find a legal expert who can avoid being partisan about this politically charged issue. If you do invite a legal expert to join your class for this lesson, choose someone who you feel fits those criteria and share the lesson plan with them in advance.

To wrap up the session, lead a discussion/reflection that focuses on what the students learned during the session. Students should summarize key concepts and discuss how the knowledge/skills can be used in other situations. This is the evaluative portion of the lesson. Can the students answer the lesson's essential question? Have they achieved the lesson outcomes?

Be sure to allow enough time to debrief your lesson. This oft-neglected section is an essential part of the learning process.

As you develop your lesson, determine if it would be enhanced by the addition of a community resource person (CRP). If you decide to include a CRP, indicate which steps of the lesson plans will directly involve them. One way to do this is to create a CRP icon and insert it next to the appropriate sections of the lesson plan.



Consult the section on CRPs for best practices in utilizing resource people in the classroom.

Handout I: The PPACA – Background

For many decades, American leaders have been concerned about problems in our health care system. Health care costs have increased dramatically over the past 20 years, and the price of health insurance has climbed to the point where many Americans cannot afford it individually or where their employers cannot afford to provide it as a benefit for them.

Attempts to enact sweeping health care reform failed in the 1990s. When President Obama entered office in 2009, he made health care reform a top priority. According to Congressional findings, America had 50 million people without health insurance – either because they couldn't afford it, didn't want it, or had been denied coverage by insurance providers. More than 175 million people had access to health insurance through their employers, and almost 25 million had health insurance that they purchase for themselves and their families.

When people get sick, particularly in emergencies, they seek and receive medical care whether they are insured or not. Hospitals are not allowed to turn away patients because of their inability to pay for services. If uninsured people can't pay for their medical care, those costs get shifted onto others—either to health care providers like hospitals, who then charge higher rates to cover unpaid bills, or to health insurance companies, who charge higher premiums to cover them. Congress found that this cost shift totaled \$43 billion in 2008, which represented an effective surcharge of \$400 for each policy holder.

Many of the people without insurance would prefer to have it, but have been turned away because they were not healthy or had a previous history of illness. In some cases, insurers would cover people with a pre-existing illness, but did so at extremely high rates. Medical insurance companies calculate premiums and decide who to cover based on the risk that they'll get sick and need medical bills paid. So they charge more for people who are more likely to get sick.

Congress considered several options for health care reform in 2009. Some members of Congress wanted to start a government-run health insurance plan, and fund it by collecting a tax. (The government already provides health insurance for people over age 65, in a program called Medicare, and for the very poor, in a program called Medicaid, which are paid for by taxes.) Others wanted to keep the current commercial market for health insurance, but require employers to pay a portion of employees' insurance premiums. Another option was to create tax incentives and reduce regulations to make insurance more competitive, thereby driving down costs. Some argued that the federal government should leave health care reform to the states.

Members of Congress and the American public fiercely debated the different proposals during 2009 and early 2010. The law that Congress passed in 2010, the *Patient Protection and Affordable Care Act*, included several components intended to improve access to health care and reduce costs. Among other things, it required large employers to provide access to health insurance for employees, expanded programs to assist the poor, and prohibited insurance companies from denying coverage or charging higher premiums to individuals with preexisting medical conditions. Congress set a

Handouts can help summarize legal content, guide activities, and serve as an evaluation tool.

Consider the reading level of your students when developing handouts.

requirement that all Americans purchase and maintain at least a minimum level of health coverage. They reasoned that in order for insurance companies to be able to afford to cover people who are more likely to get sick, they need everyone else to buy health insurance to spread the risk around.

Several groups were exempt from the requirement that all Americans buy health insurance, including those in prison and those with a religious objection. People who were not exempt from the requirement and yet refused to buy health insurance would have to pay a penalty. People who are too poor to afford insurance would not have to pay the penalty.

The *Affordable Care Act* was very controversial. Not a single Republican voted for the bill in either the House or the Senate. Within minutes of President Obama signing the bill into law, several groups and states sued the federal government in Court, arguing that parts of the bill were unconstitutional. Many Republicans have campaigned on promises to repeal the law.

Handout 2: Arguments For and Against the Law

The Patient Protection and Affordable Care Act of 2010 – Individual Mandate

The PPACA included several components designed to make health insurance more available and to reduce the costs of health insurance and health care. One of these components required almost all Americans to maintain a minimum level of health insurance. Anyone who didn't have the minimum level of insurance would have to pay a penalty (except for people below a certain income level), starting in 2014. The law also prohibited insurance companies from denying coverage to sick people, and from charging them more than others in their communities.

Issue

Is Congress's requirement that Americans maintain health insurance constitutional under the Commerce Clause?

Article I, Section 8: The Commerce Clause

The Congress shall have the power ...to regulate Commerce ... among the several States ...

Precedents

Wickard v. Filburn (1942): To increase wheat prices during the Great Depression, Congress passed a law limiting the amount of wheat that some farmers could grow. Farmer Filburn challenged the law, arguing that he intended to use at least some of the wheat for personal consumption, and that Congress could not stop him from growing wheat that he did not intend to sell in interstate commerce. The Supreme Court rejected Filburn's argument and held that Congress can regulate intrastate activity when that activity, in the aggregate, would substantially affect interstate commerce. The farmer's decision to self-supply wheat meant that he would not buy wheat from the market. If many farmers did the same thing, they would substantially affect interstate commerce.

U.S. v. Lopez (1995): Congress passed a law making it a federal crime to carry guns within a school zone. The Supreme Court ruled that Congress had exceeded its Commerce Clause authority with this law. It said that carrying a gun in a school zone is not an *economic* activity. The Court said that Congress may only regulate:

- channels of interstate commerce – including highways, waterways, and air traffic.
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Gonzales v. Raich (2005): Although California allowed the use of medical marijuana, a California woman who grew and used marijuana in her home was charged under federal law that made drug possession a crime. The Supreme Court ruled the federal drug law was allowed under the Commerce Clause. It said that Congress can regulate non-economic, wholly intrastate activity if "failure to do so" might undermine a broad regulatory plan. Homegrown marijuana might be traded or sold, which would disrupt the attempt to completely ban marijuana from interstate commerce.

Arguments that the Individual Mandate is Unconstitutional

Rank these arguments by how persuasive they are to you from 1 to 6. Put a “1” next to the most persuasive argument, a “2” next to the second most convincing, and so on.

- _____ This law isn’t regulating people who are engaged in commerce. It is forcing people to engage in commerce against their will. The Commerce Clause allows the government to regulate interstate commerce, but not to create commerce by forcing people to buy things.
- _____ Congress is trying to regulate *inactivity*, not economic *activity*. People who don’t have health insurance aren’t engaging in economic activity.
- _____ Congress has never used the Commerce Clause to pass a law that forces individuals to purchase a product. That suggests that Congress never thought it had that power before. Congress is using the Commerce clause to do something that it hasn’t tried in 220 years.
- _____ A law must be both “necessary and proper.” The individual mandate is not proper because it is inconsistent with the values of the Constitution. The Framers intended that the federal government’s powers would be “few and defined” and the states’ powers would be “numerous and indefinite.” The states are traditionally responsible for protecting the health and safety of their citizens, and that division of powers is designed to limit the federal government’s ability to interfere with issues central to individual liberty.
- _____ If this law were upheld, there would be no limit on Congress’s Commerce Clause power. If Congress can force people to buy insurance, it could force people to buy anything. Whether we buy something will always affect the national market for things, so Congress could use the same logic to force individuals to purchase anything for which there is a national market—for example, making people buy cars to improve the auto industry.
- _____ The federal government argues that the individual mandate is an essential part of a broader regulatory plan to fix the health care system. Just being essential to this reform doesn’t make it constitutional, though. There are other ways that Congress could have helped insurance companies with the added costs of insuring everyone—for example, they could have raised taxes and helped pay for sick people’s insurance or made it easier for insurers to compete with each other, lowering prices.

Arguments that the Individual Mandate is Constitutional

Rank these arguments by how persuasive they are to you from 1 to 6. Put a “1” next to the most persuasive argument, a “2” next to the second most convincing, and so on.

- _____ According to the Supreme Court, the Commerce Clause authorizes Congress to regulate “activities that substantially affect interstate commerce.” The health care market makes up 18% of the U.S. economy and is nationwide. As a group, uninsured people consume and cannot pay for billions of dollars’ worth of health care every year. The costs of that unpaid care are shifted onto the rest of society and have a substantial effect on interstate commerce.
- _____ The decision not to buy health insurance is a form of economic activity. Almost all Americans will inevitably need medical services at some point in their lives, and hospitals are required to treat sick people, even when they cannot pay. So when people don’t buy insurance, they are making an economic decision to shift their health care costs onto other people. This law just regulates how and when people pay for the inevitable use of health care.
- _____ In *Wickard v. Filburn*, the Supreme Court ruled that Congress could use the Commerce Clause to limit the amount of wheat a farmer could grow. If many farmers grew extra wheat, the Court said, they would substantially affect interstate commerce. The refusal of many people to purchase health insurance could have the same effect on the market for health insurance.
- _____ In *Gonzalez v. Raich*, the Supreme Court said that Congress could regulate intrastate, non-economic activity if it was an “essential part of a broader regulatory scheme designed to regulate economic activity.” The individual mandate is an essential part of the *Affordable Care Act*’s plan to reduce health care costs. If healthy individuals don’t have to buy insurance, then the insurance companies won’t be able to afford to insure sick people.
- _____ Upholding this law won’t allow Congress to force people to buy other things. Buying health insurance is a unique economic activity. Everyone consumes health care but no one knows when and how much they will need. Because health care costs can be so high and unpredictable, and are mostly paid for through insurance, buying health insurance is not like buying cars or any other product.
- _____ The Courts should defer to Congress and the need to address pressing economic problems. A law should be presumed constitutional unless proven otherwise. The Constitution entrusts policy decisions to the democratically elected branches of government (Congress and the President), and the Court should rarely interfere with these policy decisions.

Handout 3: Essay

Imagine that you are a Supreme Court justice, and you've just heard arguments in the case about the individual mandate provision of the *Affordable Care Act*. Now you must write a decision in this case.

Your decision should include:

- A summary of the issue in this case.
- A statement saying whether you are ruling that the individual mandate to purchase insurance is constitutional or unconstitutional.
- At least three reasons for your decision.

Handout 4: The Decision

This case had a very interesting resolution at the Supreme Court. A majority of the justices agreed that the individual mandate was NOT allowed under the Commerce Clause. They agreed with the states' arguments that the law was trying to create commerce rather than regulate it, and said that the Commerce Clause can only be used to regulate economic *activity* as opposed to economic *inactivity*.

The law wasn't dead yet, though. A different majority of five justices agreed that the individual mandate IS allowed under Congress's taxing powers. The Constitution gives Congress the power "to lay and collect taxes." These five justices agreed that the law is effectively a tax for three reasons:

1. Because the penalty is not a criminal punishment.
2. Because the penalty is low enough not to force people into buying insurance, and
3. Because the penalty is paid on an individual's yearly tax form.

Although the lawyers for the federal government had argued strongly that the law was constitutional under the Commerce Clause, they also told the justices that even if the law wasn't an appropriate use of Congress's Commerce power, it was a valid use of its taxing power.

Four of the justices in this majority would have also upheld the law under the Commerce Clause. They said that everyone was going to have to use health care eventually, and therefore most everyone would participate in the market for health care. Requiring these people to purchase insurance, they said, would not be creating commerce. Instead, they argued, it would be an acknowledgement that their failure to purchase insurance while still being part of the health care market was already affecting commerce.

In the end, the law was upheld by a five justice majority and, unless it is repealed by Congress, will continue to go into effect. Almost everyone in the United States will be required to maintain a minimum level of health insurance beginning in 2014. People will report whether they have insurance on their federal tax forms, and will pay a penalty if they do not have the required level of insurance.

Teacher Guide

Background about the Supreme Court cases

The Supreme Court heard overlapping cases related to the constitutionality of the *Affordable Care Act*. As Lyle Denniston of SCOTUSblog wrote, “the Supreme Court has limited its review to four constitutional issues: the constitutionality of the individual insurance-purchase mandate; the authority of the courts to decide the mandate issue; the fate of other parts of the law if the mandate is struck down; and the constitutionality of the expansion of the Medicaid program for the poor.” The Court heard arguments on March 26, 27, and 28, 2012.

The first case, *U.S. Department of Health & Human Services v. Florida*, revolved around two issues: 1) Does Congress have authority under the Commerce Clause to enforce an individual mandate? 2) Is the lawsuit against the individual mandate premature and therefore barred because of the *Anti-Injunction Act*? The Court heard two hours of argument for the first issue, and one hour of argument on the second issue. This lesson deals with the first question, about the Congress’s authority to enforce an individual mandate. The second question deals with whether the case can even be brought before the Court at this stage. The *Anti-Injunction Act* says that federal taxes cannot be challenged in court before they take effect. Some people considered the individual mandate penalty to be a tax for *Anti-Injunction Act* purposes (as the penalty will be assessed when people file their income tax returns).

Another Supreme Court case, *National Federation of Independent Business v. Sebelius*, focused on the question of whether, assuming the individual mandate is unconstitutional, the mandate was severable from the rest of the *Affordable Care Act*. If the Court ruled that the individual mandate was unconstitutional and the ACA couldn’t survive without the individual mandate, then the entire Act would have been thrown out. That case also dealt with whether Congress had impermissibly coerced the states into accepting a Medicaid expansion that required states to either grant Medicaid coverage to more of their residents or face a significant loss in federal funding. The Court heard an hour-and-a-half of argument on the severability issue, and one hour on the Medicaid expansion issue.

The parties in this case were the federal government (arguing that the law was constitutional), and 26 states, four individuals without health insurance, and the National Federation of Independent Business (arguing that the law was unconstitutional).

More than thirty cases challenging the law were filed in federal courts. Several district and appellate courts heard these various cases. These lower courts reached varying and sometimes conflicting decisions on the different parts of the law. The 6th Circuit and the DC Circuit both ruled that the mandate was constitutional and the 4th Circuit rejected two challenges to the law because the plaintiff lacked standing to bring one and the other was premature. The cases that the Court accepted came from Florida. In one Florida case, the 11th Circuit ruled that the individual mandate was unconstitutional, but that the rest of the act could be enforced. Even though some courts ruled parts of the law unconstitutional, those rulings were put on hold while the Supreme Court reviewed

Developing a teacher guide containing background information and links to additional resources can be helpful to other law students who might teach your lesson in the future.

the case, so no part of the law was blocked from implementation. The Obama Administration was therefore putting many parts of the law into practice while the case was being decided. An example of an important provision that had already gone into effect is the requirement that insurance companies provide health coverage for dependent children up to age twenty-six.

Additional information about the “Individual Mandate”

In discussing this law, students might point to requirements that all drivers maintain car insurance, and ask why these aren’t the same thing. The main reason is that those are state laws, not federal. Additionally, an individual can avoid those requirements by choosing not to own a car.

This lesson focuses solely on the Commerce Clause-related arguments about the individual mandate. However, both sides also argued over whether the individual mandate was allowed under Congress’s taxing power. The federal government argued that the law operates like a tax, as the IRS assesses and collects the penalty for non-compliance. Since Congress has broad power to collect taxes to provide for the general welfare, the federal government said the law should be upheld under that power if not under the Commerce Clause. The states argued that Congress specifically intended this not to be a tax law, and that the they were not challenging the collection of the penalty, they were challenging the rule that people have to buy health insurance, which has nothing to do with taxes. Members of Congress and the administration avoided calling the Act a tax during the legislative process to avoid the political consequences of being seen to have raised taxes. Generally, the Supreme Court has held that it does not matter what label Congress uses in legislation as long as the Court finds that it acted pursuant to one of its enumerated powers. In this case, a five justice majority did uphold the law under Congress’s taxing power. It is important to note that the definition of tax for *Anti-Injunction Act* purposes is different from the definition of a tax for constitutional purposes.

Additional information about the Decision

The Court did not overturn its longstanding precedent set in *Wickard v. Filburn*, but instead distinguished this case from that line of cases using a distinction between activity and inactivity. The idea of “regulating commerce,” said the Chief Justice and the four dissenting Justices, requires that the commerce to be regulated already exists. In *Wickard*, the commerce that existed was the growing of wheat. The individual mandate, the Court said, instead forces people who are not engaged in an activity to become active in commerce by purchasing a product. This, according to the Court, is forcing commerce rather than regulating it.

Even though Congress never called the mandate a tax, the Court held that it was one for constitutional purposes. Supreme Court precedent places a heavy emphasis on finding democratically legislated statutes to be constitutional if at all possible. As the majority opinion said, “[t]he question is not whether that is the most natural interpretation of the mandate, but only whether it is a ‘fairly possible’ one. ... As we have explained, ‘every reasonable construction must be

resorted to, in order to save a statute from unconstitutionality.” Since the mandate penalty could be construed as functioning as a tax, the Court evaluated it as a tax. The Supreme Court said that the mandate was not a tax for *Anti-Injunction Act* purposes because the real issue for that was whether or not Congress labeled something as a tax, not whether it functions as a tax. Since the *Anti-Injunction Act* simply prevents the government from being sued at an earlier date, it is Congress’s prerogative to label something in a way that allows for lawsuits earlier.

The one aspect of the PPACA that the Court found unconstitutional was the provision that said states had to accept and eventually pay for a 10% increase in Medicaid eligibility to provide greater medical protection for the working poor. If they did not join then the government could have revoked their existing Medicaid funding. This threatened the loss of about 10% of each state’s budget. The Court said that this gave states no meaningful option to say no and as such was unconstitutionally coercive.

Resources

- SCOTUSblog provides in-depth information about all the cases before the Supreme Court each term. They have overviews, analysis, and links to all the petitions and briefs for the cases, www.scotusblog.com/category/special-features/health-care/
- New York Times provides a page collecting their reporting about the Affordable Care Act, http://topics.nytimes.com/top/news/health/diseasesconditionsandhealthtopics/health_insurance_and_managed_care/health_care_reform/index.html
- ACA Litigation Blog, by a law professor at Santa Clara University, <http://acalitigationblog.blogspot.com/>
- Healthcare.gov is the federal government’s website about the Affordable Care Act, www.healthcare.gov
- The Heritage Foundation, a conservative think tank, has a research page laying out the case against “ObamaCare,” www.heritage.org/research/projects/the-case-against-obamacare#ref1