



June 28, 2012



## **A Divided United States Supreme Court Upholds Affordable Care Act**

Today the U.S. Supreme Court upheld the most controversial provision in the Patient Protection and Affordable Care Act (“Affordable Care Act” or “Act”) by a vote of 5 to 4 in *National Federation of Independent Business et al. v. Sebelius*, 567 U.S. \_\_\_\_ (2012), *available online at* <http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf>. The Court held that the individual mandate of the Affordable Care Act, which requires most Americans to maintain “minimum essential” health insurance coverage, 26 U.S.C. §5000A, (referred to hereafter as the “individual mandate”), may be upheld as within the Congress’s power under the U.S. Constitution’s Taxing Clause. Chief Justice John Roberts, writing for the majority of the Court, noted that the individual mandate need not be read as punishing unlawful conduct. Rather, it may also be read as imposing a tax on those who forego insurance. In upholding the individual mandate, the Court stated that “precedent demonstrates that Congress had the power to impose the exaction in §5000A under the taxing power, and that §5000A need not be read to do more than impose a tax. That is sufficient to sustain it.”

The Court also considered the Act’s expansion of Medicaid coverage to all individuals under the age of 65 with income below 133 percent of the poverty level. The Act provides that a state which does not participate in the Medicaid expansion would lose all of its Medicaid funding. The Court held that the Medicaid expansion violates the Constitution by threatening the states with loss of their existing Medicaid funding if they decline to comply with the expansion. The Court held that the Constitutional violation is remedied by precluding the government from applying the Act to withdraw existing Medicaid funds. As such, the Medicaid expansion is upheld so long as the government does not withhold existing Medicaid funds from those states that decline to participate in the Medicaid expansion. Such states will simply not receive the extra funding associated with the Medicaid expansion. The Court held further that the remedy does not require striking down other provisions of the Affordable Care Act and those remain unaffected.

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Chief Justice Roberts concluded by stating “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.”

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