



Health law a loser despite court victory

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Unfortunately for supporters of President Obama's health law, yesterday's Supreme Court ruling does nothing to validate or lend the law legitimacy. Half of the ruling was a clear defeat for "Obamacare." And the portion that supporters are hailing as a victory will prove hollow.

The court invalidated a key part of the Obama health law designed to expand health insurance coverage. Each state has a Medicaid program that provides health insurance to the poor (among others). Federal grants to states cover 56 percent of overall Medicaid spending. That comes to an average 12 percent of a state's entire budget.

The Obama health law threatened to withhold the federal share of Medicaid funding — which amounts to hundreds of billions of dollars over a 10-year period — unless states dramatically expanded their programs. A Cato Institute colleague estimates that, for example, this mandate would cost New Jersey taxpayers \$35 billion and New Yorkers \$52 billion over the next 10 years. This mandate was so expensive that 26 states sued to block it.

The Supreme Court agreed. Though the particulars of the ruling will take some time to sort out, the court told states they can refuse to expand their Medicaid programs without sacrificing their existing Medicaid funding. It is difficult to interpret that holding as anything but a defeat for the Obama health law.

And while supporters hail the court's refusal to strike down the law's "individual mandate" requiring Americans to purchase a private health insurance plan, it is not the case that the court affirmed that mandate as constitutional.

During congressional debate, supporters of this law claimed that the individual mandate was an exercise of Congress' power to regulate commerce. Congress and the president swore up and down that the mandate was not a tax, because calling it a tax would have doomed the entire law. The statute frames the mandate as grounded in the Commerce Clause of the Constitution, and refers to the penalty for non-compliance as a "penalty" — not a tax. States and a handful of citizens filed suit against the mandate because forcing people to purchase a private product is not regulating commerce but compelling commerce.

Again, the court agreed. The justices ruled 5-4 that requiring citizens to purchase health insurance is not a valid use of the Commerce Power. But in a truly bizarre twist, they held that the mandate could be justified as a use of Congress' taxing power. The split decision came about because Chief Justice John Roberts sided with the court's conservatives on the commerce power question, but flipped his vote on the taxing power question. As a result, the court upheld the individual mandate as a valid use of the very taxing power that Congress swore it was not using.

What Congress said the individual mandate is — an exercise of the Commerce Power — the court said is not constitutional. But what Congress said the mandate is not — an exercise of the Taxing Power — the court ruled is constitutional. Everybody got that?

This ruling has created two enormous problems for American democracy and the rule of law.

First, Roberts' flip-flop means the Supreme Court just upheld a law that Congress did not pass and never would have passed. If Congress had called the mandate a tax, the law never would have reached the president's desk.

Second, the Supreme Court just told Congress it is okay to lie to the people in order to get a bill passed. As a result of this ruling, a future Congress could enact a broccoli mandate by saying, "Don't worry, this isn't a tax. We're using our power to regulate commerce. And we're sure the Supreme Court will agree with us this time."

The Obama health law can't take many more victories like this.