



## Supreme Court upholds health care law, and, according to Texas Gov. Rick Perry, 'has abandoned us'

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By Mark Lisher

Stunning partisans on the left and the right, the Supreme Court this morning upheld the Patient Protection and Affordable Care Act by a vote of 5 to 4.

Chief Justice John Roberts wrote the decision for the majority comprised of Stephen Breyer, Ruth Bader Ginsburg, Elena Kagan and Sonia Sotomayor. Justices Samuel Alito, Anthony Kennedy, Antonin Scalia and Clarence Thomas were in the minority.

The Supreme Court majority came to its conclusion by deciding that the individual mandate in the 2,000-page Affordable Care Act, requiring citizens who chose not to buy health insurance to pay a penalty was, instead, a tax.

The court also ruled unconstitutional the authority of the federal government in the so-called ObamaCare bill to withhold federal funds from states refusing to cooperate in the expansion of the Medicaid program.

Gov. Rick Perry today said the "Court utterly failed in its duty to uphold the Constitutional limits placed on Washington," in a statement issued to the press. "Now that the Supreme Court has abandoned us, we citizens must take action at every level of government and demand real reform, done with respect for our Constitution and our liberty.

"Freedom was frontally attacked by passage of this monstrosity. Obamacare is bad for the economy, bad for health care, bad for freedom. Americans have made clear their overwhelming opposition to its convoluted, burdensome and overreaching mandates."

The reasoning for upholding the Affordable Care Act as a tax rather than a mandate is certain to be the subject of furious legal argument.

The court's decision refers to the mandate as a "shared responsibility payment" to the federal government. Failure to make such a payment results in a penalty collected by the Internal Revenue Service in the same way as a tax, the ruling says.

The majority made clear that an individual mandate as outlined in the Affordable Care Act would illegitimately force individuals to engage in commerce by buying health insurance.

"Construing the Commerce Clause to permit Congress to regulate individuals precisely because they are doing nothing would open a new and potentially vast domain to congressional authority," the Roberts decision says. "Congress already possesses expansive power to regulate what people do. Upholding the Affordable Care Act under the Commerce Clause would give Congress the same license to regulate what people do not do. The Framers knew the difference between doing something and doing nothing. They gave Congress the power to regulate commerce, not to compel it. Ignoring that distinction would undermine the principle."

Instead, the decision does what Congress failed to do in drafting the bill: find the reasoning for its health insurance requirement on the grounds that Congress possesses the power to "lay and collect taxes."

Texas' Greg Abbott, one of the 12 original attorneys general to sign on to the ObamaCare lawsuit, took note of what he called "a novel application of the facts" in a statement he issued today from Washington, D.C.

"The Court did what Congress was afraid to do--called ObamaCare a tax on all Americans," Abbott wrote. "This is particularly ironic since President Obama, himself, insisted this was not a tax."

In addition to its clearest delineation of the Commerce Clause in more than 15 years, the Court said the federal government would be in violation of the Constitution if it cut off funding to states that refused to expand Medicaid in the ways outlined in the Affordable Care Act.

Justices Breyer and Kagan joined Roberts in the opinion that Congress has no constitutional power to withhold existing federal grants as a way of compelling participation in expanding a program.

Along with the individual mandate, the forced expansion of Medicaid was the impetus for the lawsuit filed March 23, 2010, by the state of Florida against the U.S. Department of Health and Human Services.

Eventually, 26 states would sign onto the suit decided by the court today.

The 11th Circuit Court of Appeals had ruled with the states and against the individual mandate and against the state and Congress' right to force the states to expand Medicaid.

"The threatened loss of over 10 percent of a State's overall budget is economic dragooning that leaves the States with no real option but to acquiesce in the Medicaid expansion," today's ruling says.

The ruling goes on to repudiate the government's claim "that the expansion is properly viewed as only a modification of the existing program, and that this modification is permissible because Congress reserved the 'right to alter, amend, or repeal any provision' of Medicaid."

"This is an historic victory for individual liberty, states' rights, and limited government," Abbott said. "Today the Supreme Court made crystal clear that the federal government is more restrained than yesterday. The Court also agreed that States are individual sovereigns that cannot be commandeered by the federal government. In this instance, by forcing States to expand Medicaid, the federal government tried to hold States hostage."

Brooke Rollins, president of the Texas Public Policy Foundation called the Medicaid portion of the ruling a silver lining. "This," she said in a statement, "at least protects, to some extent, the prerogatives of the states under the Tenth Amendment."

To say that those following ObamaCare to the nation's highest court were surprised by the decision would be a Grand Canyon-sized understatement.

Liberal legal experts and pundits were all but throwing themselves off of metaphorical bridges on Wednesday. Politico's Roger Simon concluded before today's decision that the High Court has lost its honor, that it was accountable to no one in America.

Conservative groups like the Heritage Foundation had already laid the groundwork for market based reforms, assuming the court would invalidate at least the individual mandate.

After the ruling, roles were reversed. Peter Suderman, senior editor for the libertarian Reason magazine and website, noted how different the outcome was in comparison to expectations.

"Although the overall ruling is a victory for supporters of ObamaCare, the particulars of the Supreme Court's decision today are almost exactly the opposite of what most observers expected. It's like a ruling from Bizarro World."

Patrick Gaspard, executive director of the Democratic National Committee was more succinct when he tweeted, "it's constitutional. Bitches."

A short time later he followed with, "I let my scotus (Supreme Court of the United States) excitement get the better of me. In all seriousness this is an important moment in improving the lives of all Americans."

However surprised, the ruling today changed few minds. President Obama praised the court and reiterated the justness of the Affordable Care Act in spite of its political divisiveness.

Republican presidential candidate Mitt Romney, who hoped for a repeal by the court, said the responsibility for the repeal falls now to the people.

"As you might imagine I disagree with the Supreme Court decision, and I agree with the dissent," Politico reports Mitt Romney saying just after the ruling. "Obamacare was bad policy yesterday, it's bad policy today. If we want to replace Obamacare, we have to replace Obama."

Arlene Wohlgemuth, health care specialist for the Public Policy Foundation, said today renaming the health care mandate a tax does not legitimize it.

“Congress now needs to act quickly to repeal this law and take a new approach to health care reform,” Wohlgemuth said. “But this time, we need to fix health care the right way – with patient-centered reforms that emphasize the patient-doctor relationship and allow them to make more effective and economical health care choices with less interference from insurance companies or government.”

Trevor Burrus, co-author of important amicus briefs filed in the case for the Cato Institute’s Center for Constitutional Studies, warned of irrational exuberance on the day before the ruling.

Burrus, who wrote passionately for the repeal of ObamaCare, cautioned that the Supreme Court was deciding on a single case, neither rolling back nor pushing forward the role of the federal government in the lives of individuals.

Either decision, he said, would continue to be fought in the court of public opinion.

“It’s a big decision, we all know that,” Burrus said. “But contrary to what some have said or written, there is no sky is falling here. What we’ve seen is the expansion of constitutional interpretation to the point that it now matters so much to people who is going to control their health care choices and the choices of their kids.

“That’s the importance of this case.”