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High court's sex offender ruling endorses federal authority

In a case that may affect the healthcare overhaul, the justices vote 7 to 2 to give Congress 'broad authority' to enact all laws that are 'necessary and proper' to carrying out its constitutional power.

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Reporting from Washington, D.C.

The Supreme Court set a potential blueprint Monday for upholding the recently enacted healthcare law and its mandate that all Americans have insurance, saying Congress has a "broad authority" to pass laws that are "rationally related" to its constitutional aims.



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The Constitution not only gives Congress the power to regulate interstate commerce, the justices said, but the authority to enact all laws that are "necessary and proper" to carrying out this authority.



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The "choice of means" for carrying out its aims is left "primarily ... to the judgment of Congress," said Justice Stephen G. Breyer in U.S. vs. Comstock.



The ruling arose from a constitutional challenge not to the healthcare mandate, but to the federal authority to hold sex criminals after they have completed their prison terms. Fifteen years ago, the court upheld similar state laws, so this case involved only the reach of federal power.

Last year, a federal appeals court in Virginia struck down the law that authorized federal prisons to hold sex criminals who are deemed dangerous. Its judge said Congress "had exceeded its authority" in passing this part of the Adam Walsh Child Protection and Safety Act of 2006.

The case was the first clear test of federal authority to come before the high court in five years, and was argued just as Congress neared final passage of the broad healthcare law. In January, Solicitor General Elena Kagan, now President Obama's nominee to the court, appeared before it to defend a broad reading of congressional power in the Comstock case.

At the same time, conservative "tea party" activists, among others, were insisting that the Constitution

tightly limits the power of Congress. They contend that the health insurance mandate should be struck down because it exceeds the power given to Congress.

For its part, the Obama administration said it planned to defend the mandate as a necessary means of regulating the cost of health insurance nationwide.

In the sex offender case, the court upheld by a 7-2 vote Congress' power to authorize holding sex criminals beyond their sentences. Breyer's opinion, which spoke for five of the justices, said Congress can do what it deems necessary to carry out its constitutional authority.

Although the Constitution does not say that Congress can establish crimes or prisons, Breyer said, Congress can regulate interstate commerce — and most federal crimes, such as drug trafficking, have a clear interstate link. So if Congress can send criminals to prison, it can also require that they be held indefinitely if they are deemed dangerous, he said.

Quoting 19th century Chief Justice John Marshall, Breyer said Congress may use "all means which are appropriate" to carry out its constitutional powers.

Breyer also rejected the notion that such prison terms invade the sovereign terrain of the states, a complaint voiced in this case and in the debate over healthcare. It is true the 10th Amendment limits "powers not delegated to the United States," Breyer said. If Congress has a delegated power, such as over interstate commerce, it may regulate it in a way that infringes on the state's authority, he said.

Chief Justice John G. Roberts Jr. and Justices John Paul Stevens, Ruth Bader Ginsburg and Sonia Sotomayor joined Breyer's opinion.

Justices Anthony M. Kennedy and Samuel A. Alito Jr. agreed with the outcome, but took issue with parts of Breyer's broad statement of congressional powers.

Roger Pilon, vice president of the libertarian Cato Institute and a critic of the healthcare law, called Breyer's opinion "a breathtaking expansion of federal power. It could pave the way for the court to find that Congress has the power, with Obamacare, to order individuals to buy healthcare from private vendors."

Only Justices Clarence Thomas and Antonin Scalia set out the small-government theory of congressional power voiced by those challenging the constitutionality of the health insurance mandate. Thomas said Congress had only the "powers enumerated in the Constitution," and holding prisoners beyond their terms goes beyond a specific enumerated power.

Five years ago, in its last major opinion on congressional power, the court upheld the authority of federal agents to raid the homes of Californians who grew marijuana for personal use. Even though some of the justices questioned this federal power, they said that because Congress can regulate the national market in marijuana, it can punish those who grew marijuana for their own use.

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