Ari Drayman
Professor Broscious
PSC 339 Constitutional Law I
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Opinion of the Court

SUPREME COURT OF THE UNITED STATES

No. 19-840

California et al. v. Texas et al.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

[December 4, 2020]

Mr. Chief Justice Roberts delivered the opinion of the Court.

Today, we resolve constitutional challenges to two provisions of the Patient Protection and Affordable Care Act of 2010: Whether the individual and state plaintiffs, in this case, have established standing to challenge section §5000A of the individual mandate; and whether reducing the amount specified in section §5000A(c) to zero rendered the minimum-coverage provision unconstitutional and if so, is the minimum-coverage provision severable from the rest of the Act? We do not consider whether the Act embodies reasonable policies. That judgment is given to the nation's elected leaders. We only ask whether Congress has the power under the Constitution to uphold the challenged provisions.

In 2010, Congress enacted the Patient Protection and Affordable Care Act to help increase the number of Americans covered by health insurance and to decrease the cost of healthcare. In 2012, the Court determined in the case *National Federation of Independent Business v. Sebelius* 567 U.S. __ (2012), that the individual mandate of the Affordable Care Act

was unconstitutional under the Commerce Clause. However, the mandate could be read as exercising Congress' power to tax, because the Act provides that the "penalty" would be paid to the Internal Revenue Service with an individual's taxes and were "assessed and collected in the same manner" as tax penalties. Five years later, the Tax Cuts and Jobs Act of 2017 zeroed out the penalty for violating the individual mandate. The plaintiffs of the case thus argued that reducing the amount specified in section §5000A(c) to zero is a "command for people to purchase insurance" making it out of compliance with the law. As a result, this causes the individual mandate to be inseparable from the rest of the Affordable Care Act causing it to be unconstitutional as a whole.

The Court thinks otherwise on this matter. In *National Federation of Independent Business v. Sebelius* 567 U.S. __ (2012), it was found that under the Taxing and Spending Clause, Congress does have the power to require American citizens to buy health insurance. However, the First Amendment mentions that "Congress shall make no law prohibiting the free exercise thereof; or abridging the freedom of speech" which means that citizens have two choices when it comes to the individual mandate: buy the insurance it provides or purchase health insurance from somewhere else. Therefore, although citizens are required to have health insurance, they are not "commanded" to purchase health insurance from the Affordable Care Act as people reserve the right to buy insurance provided by another entity such as their employer. As for the Act being out of compliance with the law, the Court has found no evidence of such claims. Over two centuries ago in *McCulloch v. Maryland,* 17 U.S. 316 (1819) Chief Justice Marshall determined that although the states retained the power of taxation, the Court holds the power to enact judicial review. From the Court's perspective, in the Tax Cuts and Jobs Act of 2017, Section §5000A's penalty amount had been reduced on purpose which means that the

intent of the government was for the tax to be zero and can be changed at a later date if they so choose. The states have no say in this matter making §5000A(c) an operative clause and in compliance with the law as it causes no injury to anyone who does not purchase insurance from the Affordable Care Act.

This brings up the question of whether the individual and state plaintiffs have established standing to challenge the minimum coverage provision in section §5000A of the individual mandate. *Cooper v. Aaron* 358 U.S. 1 (1958) helps answer this question. In this case, the Court held that state officials are bound by federal court orders that are derived from the Supreme Courts' decisions. Additionally, since the Supremacy Clause of Article VI makes the Constitution the supreme law of the land and *McCulloch v. Maryland,* 17 U.S. 316 (1819) makes the Court the final interpreter of the Constitution, in the case of *Cooper v. Aaron* 358 U.S. 1 (1958), this means that the precedent outlined in *Brown v. Board of Education* 347 U.S. 483 (1954) is binding in all states, regardless of any state laws contradicting the ruling. Therefore, *National Federation of Independent Business v. Sebelius* 567 U.S. __ (2012) serves as precedent on all matters pertaining to the Patient Protection and Affordable Care Act including section §5000A of the individual mandate. As such, every state must follow the ruling presented in *National Federation of Independent Business v. Sebelius* 567 U.S. __ (2012) and there would need to be concrete evidence to create standing for this case to have the Court overturn its ruling on matters that already have precedent. However, the legislative intent from the plaintiffs is viewed by this Court as a form of anticipatory action as they were not able to show that any parties were injured by the individual mandate of the Affordable Care Act being "out of compliance." Also, there appear to be no legal consequences other than to pay a tax for not

having health insurance which was established in *National Federation of Independent Business v. Sebelius* 567 U.S. __ (2012).

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Section §5000A of the individual mandate is constitutional. Although the individual mandate cannot be upheld as an exercise of Congress's power under the Commerce Clause as determined in *National Federation of Independent Business v. Sebelius* 567 U.S. __ (2012), it is within Congress's powers to change a tax at will even if it is zero dollars. In this case, the "penalty" does not "command for people to purchase insurance" from the Affordable Care Act policy as they have a choice to buy insurance from an employer which means Section §5000A of the individual mandate complies with the law.

As for standing, the plaintiffs do not provide enough evidence to challenge the ruling provided in *National Federation of Independent Business v. Sebelius* 567 U.S. __ (2012) as their case is based on anticipatory action rather than concrete facts. Thus, no portion of section §5000A of the individual mandate needs to be struck down at this time.

The Framers created a Federal Government of limited powers and gave this Court the duty of enforcing those limits. The Court does so today. The Court does not express any opinion on the wisdom concerning the individual mandate of the Affordable Care Act. Under the Constitution, that judgment is reserved for the citizens of the United States. The judgment of the Court of Appeals for Fifth Circuit is hereby reversed. *It is so ordered*.

For this case, there will be several concurrences and dissents from other justices. Justices Kagan, Sotomayer, and Breyer will write concurring opinions to the case focusing on the important concerns about the practical implications of overturning the Affordable Care Act in a pandemic. They will also focus on justifying the Affordable Care Act as an equal protection

issue. Additionally, Justice Breyer will discuss how this case presents a separation of powers issue in line with the conservative justice's dissents. As for dissents, Justices Thomas, Alito, Kavanaugh, and Barrett will each write a dissent focusing on the separation of powers issues within the case and how a tax cannot be zero dollars as it does not provide any funds to the Internal Revenue Service. Additionally, these justices will argue that this case does have standing in the Court despite the NFIB case serving as precedent on the Affordable Care Act and the individual mandate. Justice Thomas will also say that since the individual mandate of the Affordable Care Act is unconstitutional and is essential to the operation of the Act, it is not severable from the rest of the Affordable Care Act and will make it unconstitutional in its entirety.

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