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Supreme Court Rewrites ObamaCare; Rules Individual Mandate Is Permissible Tax

"Simply put, Congress may tax and spend." With those historic words, the Supreme Court forced upon the United States a bleak dawn of a brave new world in which the federal government cannot be checked in its march toward totalitarianism.

In a 5-4 decision the Supreme Court upheld the joint venture of the President and Congress to force every American, regardless of ability or desire, to purchase a qualifying health care insurance plan by 2014 or face a tax penalty for failure to comply.

Today's ruling demonstrates a bizarre interpretation of the Constitution wherein the majority of the justices held that while the Constitution does not grant Congress the power to compel the purchase of a commodity, it does have the power to tax anyone who doesn't make such a purchase.

Chief Justice Roberts, writing for the Court, held while the "individual mandate is not a valid exercise of Congress's power under the Commerce Clause and the Necessary and Proper Clause," it is valid as an exercise of the taxing power granted the federal government by the Constitution.

In her partial dissent, Justice Ruth Bader Ginsberg disagrees with the Chief Justice's interpretation of the constitutional limits of the Commerce Clause. Ginsberg writes:

> When contemplated in its extreme, almost any power looks dangerous. The commerce power, hypothetically, would enable Congress to prohibit the purchase and home production of all meat, fish, and dairy goods, effectively compelling Americans to eat only vegetables. Cf. Raich, 545 U. S., at 9; Wickard, 317 U. S., at 127–129. Yet no one would offer the "hypothetical and unreal possibilit[y]," Pullman Co. v. Knott, 235 U. S. 23, 26 (1914), of a vegetarian state as a credible reason to deny Congress the authority ever to ban the possession and sale of goods.

Ginsberg, therefore, believes that concerned citizens and constitutionalists should not worry about the future imposition of a "vegetarian state" because it's just "hypothetical." That isn't to say, however, that Congress couldn't make such a mandate under its broad Commerce Clause power, she insists.

Furthermore, don't be fooled by the Chief Justice's more narrow reading of the Commerce Clause. While he rightly reasons that Congress's power to regulate commerce is limited and not intended to place all behavior within the power of Congress to control, his analysis of the individual mandate as an expression of the taxing power makes it clear that the taxation clause gives Congress that immense and unlimited power, even if the Commerce Clause does not.

Then, lest anyone misunderstand exactly what will now be required under ObamaCare, the Court declared: "The most straightforward reading of the individual mandate is that it commands individuals to purchase insurance." Your federal overlords now command you to purchase a qualifying healthcare

plan and will impose an additional tax should you refuse to obey.

In a fair reading of the decision, the Supreme Court says that the penalty for failure to purchase healthcare insurance is not a tax for the purpose of the application of the Anti-Injunction Act, but it is a tax for the purpose of interpreting the taxing power of the Constitution. The relevant portion of the majority opinion reads:

> The Affordable Care Act describes the payment as a "penalty," not a "tax." That label cannot control whether the payment is a tax for purposes of the Constitution, but it does determine the application of the Anti-Injunction Act. The Anti-Injunction Act therefore does not bar this suit.

The reasoning upholding the individual mandate as a tax expressly contradicts President Obama's public defense of his pet legislation. In an interview with George Stephanopoulos of ABC News in 2009, President Obama adamantly denied that the individual mandate was a tax. "I absolutely reject that notion," the President said.

One doubts, however, that the President will quibble now over the labels. A penalty or a tax, ObamaCare is unconstitutional regardless of how many black-robed tyrants say otherwise.

Later, Chief Justice Roberts displays a deplorable disregard for principles of freedom and individual liberty. In his opinion, Chief Justice Roberts wrote, "Neither the Affordable Care Act nor any other law attaches negative legal consequences to not buying health insurance, beyond requiring a payment to the IRS." That's it. The Chief Justice of the Supreme Court is telling Americans that having to pay the IRS a tax penalty for not buying a health insurance policy is no big deal and not a "negative legal consequence."

One practical effect of today's ruling is that by removing the ObamaCare scheme from its safe and secure Commerce Clause mooring, the Supreme Court has rewritten the law and converted the individual mandate into a tax, thus placing it within the authority of Congress to define.

This is judicial activism at its finest. The Supreme Court was so determined to endow the federal government with unlimited power and to toss the notion of enumerated powers onto the scrap heap of history that it was willing to effect a fundamental change to the law as enacted by Congress and the President.

As Justice Antonin Scalia wrote in his dissent:

> For all these reasons, to say that the Individual Mandate merely imposes a tax is not to interpret the statute but to rewrite it. Judicial tax-writing is particularly troubling. Taxes have never been popular, see, e.g., Stamp Act of 1765, and in part for that reason, the Constitution requires tax increases to originate in the House of Representatives. See Art. I, §7, cl. 1. That is to say, they must originate in the legislative body most accountable to the people, where legislators must weigh the need for the tax against the terrible price they might pay at their next election, which is never more than two years off. The Federalist No. 58 "defend[ed] the decision to give the origination power to the House on the ground that the Chamber that is more accountable to the people should have the primary role in raising revenue."

Today, the U.S. Supreme Court not only re-wrote ObamaCare, but it simultaneously united the power of making and interpreting law into their own unelected hands.

As it stands now, the people's representatives may presume to pass laws in accordance with their constitutionally enumerated powers, but if the Supreme Court wishes to rubber stamp the president's

pronouncements and afford them the power of law, the justices will simply substitute language permitting any imaginable act of despotism in open defiance of any congressional intent to the contrary.

Now that the Court has legislated, Americans must read the individual mandate of ObamaCare in light of constitutional limits on the taxing and spending clauses.

Article I, §9, clause 4 of the Constitution reads: "No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken." This requirement means that any "direct Tax" must be apportioned so that each State pays in proportion to its population.

If the individual mandate imposes a tax, as the Court insists that it does, it is a direct tax, and thus it is unconstitutional because Congress did not apportion that tax among the states according to population.

How does the Court get around this seemingly significant roadblock? By declaring that "A tax on going without health insurance does not fall within any recognized category of direct tax." Put simply, the Supreme Court says that since there is no precedent for considering the individual mandate a direct tax it is not a direct tax and will not be subjected to the constitutional restrictions on direct taxes. Black is white, white is black. Peace is war. War is peace.

Next, and perhaps most importantly, it is irrational to believe that the Constitution would purport to give Congress the power to raise revenue for unconstitutional purposes. That is to say, logically, taxes may only be collected and those funds subsequently spent on those items that fall within the limited scope of authority afforded to the central government. The Constitution defines those limits as the general welfare and defense.

No one would sensibly argue that the individual mandate is an act in defense of the United States, but there are those who will say that by providing access to medical care insurance to those who would otherwise be unable to afford it, ObamaCare promotes the general welfare and is thus constitutional.

James Madison disagreed. As he wrote in 1792, "If Congress can do whatever in their discretion can be done by money, and will promote the general welfare, the Government is no longer a limited one possessing enumerated powers, but an indefinite one subject to particular exceptions."

And that, Mr. Madison, is precisely the government we have today, despite your best efforts to prevent it.

In addition to the individual mandate forcing Americans to buy a good or commodity (health insurance), there are even more frightening aspects of ObamaCare empowering the federal government to force us to live according to how the government decides best.

For example, the much-maligned "death panels" are now the law; federal funding for abortion is now the law, the reduction of states to mere vassals of the federal emperor is now law. As John Birch Society CEO Art Thompson said, the federal government now "will intrude on every aspect of life in America, from cradle to grave."

And most importantly, Washington may now decide who gets to the cradle and who gets sent to the grave.

Not a single one of our Founding Fathers, not even the most ardent advocate of a powerful central government, would have remained a single day at the Philadelphia Convention if they believed that the government they were creating would become the instrument of tyranny that it has become.

In their dissent, four justices expressed this same sad description of America in 2012.

> The case is easy and straightforward, however, in another respect. What is absolutely clear, affirmed by the text of the 1789 Constitution, by the Tenth Amendment ratified in 1791, and by innumerable cases of ours in the 220 years since, is that there are structural limits upon federal power — upon what it can prescribe with respect to private conduct, and upon what it can impose upon the sovereign States. Whatever may be the conceptual limits upon the Commerce Clause and upon the power to tax and spend, they cannot be such as will enable the Federal Government to regulate all private conduct and to compel the States to function as administrators of federal programs.

How has our Republic become an elected tyranny? Sadly, the states and the people have sat idly by as if in a stupor while those who would destroy freedom and our Constitution have passed one after the other law exceeding the boundaries of power set in our founding document.

The saddest fact, however, is that not only has Congress passed unconstitutional laws, the president issued despotic edicts, and the Courts upheld every unimaginable expansion of federal power, but the states have obeyed these orders as if heeding their master's voice.

The states have become mere administrative units of the federal government. They have allowed themselves to become such. They may occasionally pull at the leash or nip at the hand that feeds them, but they slaver over the scraps handed them by their federal masters.

As the states have become servants, they may yet regain their proper role as masters. In this there is hope, in fact.

The states, through the exercise of the Tenth Amendment and their natural right to rule as sovereign entities, may stop ObamaCare at the state borders by enacting state statutes nullifying the healthcare law and criminalizing state participation in administering or executing the unconstitutional provisions thereof.

Nullification is the "rightful remedy" and is a much more constitutionally sound method of checking federal usurpation and is quicker and less complicated than an attempt to have the law repealed by Congress or overturned by a future federal bench more respectful of the Constitution. That said, there is no reason that concerned citizens should not use every weapon in the Constitutional arsenal, including working to convince Congress to repeal this offensive act.

The Supreme Court's ratification of ObamaCare's individual mandate can be seen as a mandate of another sort. Americans should now turn their attention to removing from office every congressman who voted in favor of the "law" and electing those candidates for state legislature who will commit themselves to boldly asserting the sovereignty of the states and forcing the raging bull of the federal government back within the small and well-defined corral built by our Founding Fathers.

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