



The Nevada Policy Research Institute

For Immediate Release
June 28, 2012

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NPRI: Supreme Court ruling on ACA deals blow to liberty, undermines efforts to deliver quality, affordable care

LAS VEGAS — Responding to news that the U.S. Supreme Court has ruled that the Affordable Care Act’s “individual mandate” provision is constitutional, but only if characterized as a federal tax, Joseph Becker, chief legal officer and director of NPRI’s Center for Justice and Constitutional Litigation, issued the following comments:

Today’s U.S. Supreme Court ruling that the individual mandate provision of the Affordable Care Act can be constitutionally spared but only if characterized as a “federal tax” results in a practical and significant blow to individual liberty. On a more positive note, the Court did hold that the individual mandate was outside the federal government’s powers under both the “Commerce Clause” and the “Necessary and Proper” clause, indicating there remain at least some limits to federal regulatory powers.

If the taxing power of the federal government includes the power to impose a tax higher than the cost of purchasing the government-ordained good, however, when faced with the choice of a \$5,000 tax or a \$4,000 insurance policy, most would, as a practical matter, opt for the latter — a huge loss of liberty as a practical matter.

Our nation’s founders intended the constitution to greatly restrict the power of the federal government, but unfortunately, this ruling further expands federal authority. Not even King George believed he had the authority to compel colonists to buy the tea tossed overboard in Boston Harbor, yet we now have an expansion of federal authority which, through the force of taxation, mandates as a practical matter that citizens must buy private-sector goods.

As illuminated by Justice Scalia in the dissent, the Court went to great lengths to find any justification to uphold the individual mandate, even to the extent of reclassifying as a tax what had been established as a “penalty” for failure to purchase the government’s preferred product.

The Court’s ruling confirms, however, the central point of an *amicus* brief joined by NPRI’s Center for Justice and Constitutional Litigation. The *amicus* brief — linked below — states that if the mandate were upheld using the “Commerce Clause,” no one could realistically claim that the U.S.

Constitution limited federal power. The brief was authored by Timothy Sandefur of the Pacific Legal Foundation and Ilya Shapiro and others from the Washington, D.C.-based Cato Institute, and co-signed by the Competitive Enterprise Institute, 13 other liberty-minded organizations and a bipartisan group of 333 state legislators.

Geoffrey Lawrence, deputy policy director at NPRI, noted that there are sound policy changes suitable and available to improve health care. Said Lawrence:

Just because the Supreme Court has ruled that the Affordable Care Act is constitutional doesn't change the damage this flawed policy will do to individuals in America's health care system.

The primary shortcoming of the health care industry is that government policies have induced too much cost-shifting and neutered the effectiveness of the price system. The ACA just doubles down on this shortcoming by increasing the degree of cost-shifting to ludicrous proportions.

Small businesses will pay more, families and individuals will pay more, and states could pay more. Perhaps politicians will be able to successfully create the illusion that this is not the case by shifting most health care costs off onto various classes of taxpayers, but the end result is that Americans will now pay even more for health care — even if they do so indirectly.

Everyday Nevadans are already beginning to feel how this maze of cost-shifting will affect them. The ACA has already forced [businesses to close](#). Individuals are being forced to drop their private insurance for inferior government plans.

The silver lining in this decision is that states will have the option not to pay billions more in Medicaid costs. If Nevada elects to participate, ACA's Medicaid expansion will cost the State of Nevada [\\$5.4 billion](#) in the next decade.

Long-term solutions in health care will only come when governments at both the federal and state levels stop interfering in the market place. In order to restore a sense of order and cost control in the health care industry, policymakers need to restore the characteristic organizing feature of all markets: a functioning price system. Consumers need to have greater control over the use of their own health care dollars and providers need to be held accountable to the demands of discriminating health care consumers.

Fortunately, a solution already exists for restoring this price-sensitivity to the health care industry: health savings accounts, or HSAs, combined with "catastrophic care" insurance coverage. HSAs return control over health care decisions to patients and cut out the bureaucratic middlemen by giving the patient a non-taxable individual spending account from which the patient and patient's doctor can make decisions over planned medical procedures. "Catastrophic care" insurance coverage, on the other hand, insures against the unforeseen — the true function of insurance.

When patients and doctors control health care finances, the market can efficiently allocate health care resources, and any need for bureaucratic rationing evaporates.

Read more:

- [U.S. Dep't of Health & Human Services v. Florida, amicus brief on individual mandate](#)
- [Cato @ Liberty: Cato's final Obamacare brief — on the individual mandate — joined by 16 other groups and 333 state legislators](#)
- [The Impact of Obamacare on Nevada's Medicaid Spending](#)
- [To fix health-care costs, begin with prices](#)

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