

## The Supreme Court Ruling on "Obamacare"

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On 28 Jun 2012, the U. S. Supreme Court issued its ruling regarding the constitutionality of the individual mandate under The Patient Protection and Affordable Care Act (PPACA) of 2010, a.k.a. "Obamacare". The court's majority (5-4) opinion, led by Chief Justice John Roberts, found that the individual mandate, requiring every citizen to prove they have health insurance, is constitutional because the penalty for failure to do so is regarded as a tax. Therefore, they said, the mandate conforms to the Constitution because of Congress' unlimited power to tax. It rejected the authority to impose the mandate under the Interstate Commerce Clause.

I had published a paper [1] three weeks prior to this ruling in which I speculated that the Court may in fact uphold Obamacare on the grounds that it would be regarded as a non-voluntary tax. I had claimed then that the Court might use the mandatory Social Security tax as a precedent. Although the Obamacare ruling did not in fact justify it in that manner, I am content with being more than half-right on the speculation that a tax argument would be used to uphold it.

Some critics claim the Justice Roberts "re-wrote" the law to give it the illusion of conforming to the Constitution, since the President and Congress all claimed that the individual mandate penalty was not a tax. I do not see what they are alarmed about. If Roberts "re-wrote" the law, it means that he must have "read" it, which is more than the members of Congress did before they voted for it. No member of Congress who voted for it should be offended by having the Court explain it to them, so long as it was upheld. The mandate penalty being cast as a tax should also not offend any member of Congress. Remember, all the members of Congress, their families, their staff, and their families are all exempt from Obamacare. At least they had enough common sense to protect themselves from this law, but what about you?

The net result of this ruling is that the Court found a way to justify an expansion of the arbitrary powers claimed by the federal government. If the individual mandate is a permitted tax, then the funding is secure; the funding is the means of establishing and consolidating the new power. Without the "tax" or "penalty", or more accurately, the coercive economic method, the new power over the entire health care system would necessarily become inoperative.

The Republicans are now claiming that this ruling will energize the people to elect Governor Mitt Romney to the Presidency on the grounds that he has promised to "repeal" it. He is either using the wrong word or Mr. Romney hasn't read the Constitution either, since a President does not have the power to "repeal" Congressional legislation. The most he could do in this case is issue an Executive Order exempting all the states. If that is what he means, he should say so. But it will be a difficult argument for Romney, since he is the godfather of the individual mandate established while he was Governor of Massachusetts ("he was for it before he was against it", as Senator John Kerry of Massachusetts once said).

Even if the Republicans take control of the Senate, retain control of the House, and Mr. Romney becomes President, I do not think Obamacare will be repealed. There are a lot of tactical reasons involving the proportional allocation of "federal money" to the states, but I think the main reason it will never be repealed is because the Republicans like the expansion of government power just as much as the Democrats do. Maybe they will prove me wrong, but it is better to prepare for the full onslaught of Obamacare rather than count on politicians to keep their promises.

[1] Edward D. Duvall, "Why The Supreme Court May Validate Obamacare", 4 Jun 2012, <http://edduvall.com>