



TOPIC: **U.S. Supreme Court Upholds Patient Protection and Affordable Care Act**

EXECUTIVE SUMMARY: ON JUNE 28, THE U.S. SUPREME COURT ISSUED IT'S LONG AWAITED DECISION UPHOLDING THE CONSTITUTIONALITY OF THE *PATIENT PROTECTION AND AFFORDABLE CARE ACT*. THIS ISSUE OF *MULTI-ELERT* WILL SUMMARIZE THAT DECISION AND IT'S IMPLICATIONS FOR TRUSTEES AND PROFESSIONAL ADVISORS OF MULTIEMPLOYER HEALTH AND WELFARE PLANS.

PURPOSE: **INFORMATIONAL**

CATEGORY: **JUDICIAL DECISION**

ISSUER: **SUPREME COURT OF THE UNITED STATES**

TARGET AUDIENCE: **HEALTH AND WELFARE FUND TRUSTEES AND PROFESSIONAL ADVISORS**

FORWARD COMMENTS TO: Multi-Elert@nccmp.org

REFERENCE: **VOL. XII, ISSUE 5**

FOR ADDITIONAL BACKGROUND SEE: ***NATIONAL FEDERATION OF INDEPENDENT BUSINESS ET AL. V. SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES ET AL.***

LINK: [HTTP://WWW.SUPREMECOURT.GOV/OPINIONS/11PDF/11-393C3A2.PDF](http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf)

*National Federation of Independent Business Et Al. v.
Sebelius, Secretary of Health and Human Services Et Al.*

U.S. Supreme Court Upholds the Affordable Care Act

On June 28, 2012, the Supreme Court released its decision on the Affordable Care Act (ACA).¹ In sum, the Court, in a 5-4 decision, upheld the ACA's individual shared responsibility payment (more commonly known as the "individual mandate") as a valid exercise of Congress's taxing power.² It also upheld the ACA's 2014 expansion of the Medicaid program (to cover people with incomes up to 133% of the Federal Poverty Level), with the limit that the federal government cannot terminate a state's existing Medicaid funds if a state chooses not to implement the Medicaid expansion. Thus, it appears that states may choose whether or not to expand their Medicaid programs as provided under the ACA and thereby receive additional federal funds.

The individual mandate is the ACA requirement that nearly all people have health coverage in place or pay a financial penalty when they file their federal income tax return. The Court described the amount of the financial penalty in 2016 as 2.5% of a taxpayer's household income, but not less than \$695 or more than the average yearly premium for a basic health plan. Writing for a 5-4 majority, Chief Justice John Roberts concluded that Congress has the power to impose a tax of this magnitude on people who go without health coverage. The tax is permissible even though it is "plainly designed" to influence behavior – in this case, to encourage people to buy health insurance coverage.

Because the individual mandate was upheld, there was no need for the Court to consider if other related provisions of the law should be struck down. This means that all of the ACA requirements that group health plans have been implementing – and now must continue to implement, plus all of the structural changes (Exchanges, subsidies to buy Exchange coverage, etc.) that take effect in 2014, remain the law of the land. There will continue to be political reactions to the decision from now on through elections. For example, House Majority Leader Boehner has announced that the House will vote on a bill to repeal the ACA soon. Although this bill is expected to pass the House, consideration by the Senate is unlikely this year, given the Democratic majority in the Senate. Therefore, plan sponsors should continue implementation efforts.

Of course, the Court's decision does not address or resolve the continuing uncertainty over how many of the ACA's provisions affect multiemployer plans. These include items such as how the 90-day waiting period will apply to multiemployer plans, how the employer shared responsibility penalty applies to contributing employers, and whether and if so, under what circumstances, employees for whom contributions are required to be made to multiemployer plans may receive access to the premium assistance tax credit that allows individuals to purchase subsidized coverage in the state health insurance Exchanges. The NCCMP continues to vigorously pursue clarification and further guidance from the Administration with respect to these issues and will keep you informed of any developments as they occur.

Sponsors of multiemployer plans should continue to monitor regulatory guidance in these areas. Plan sponsors may wish to carefully examine the impact of the Exchanges and federal subsidies on their participants, particularly those who are low-income.

¹ The cases that were decided are *National Federation of Independent Business v. Sebelius* (No. 11-393), *U.S. Department of Health and Human Services v. Florida* (No. 11-398) and *Florida v. Department of Health and Human Services* (No. 11-400).

² The Court also found that the individual mandate is *not* a valid exercise of Congress's authority under the commerce clause of the Constitution. However, because the Court did find a valid basis for the mandate, i.e., the Congress's taxing authority, the end result is that the mandate is constitutional.

We strive to ensure that the information contained in this and every issue of Multi-Elert is correct to the extent information is available. Nevertheless, the NCCMP does not offer legal advice. Plan fiduciaries should rely on their own attorneys and other professional advisors for advice on the meaning and application of any Federal laws or regulations to their plans.

* * * * *

If you have questions about the NCCMP, or about this or other issues of Multi-Elert, please contact the NCCMP, by phone at (202) 737-5315 or by e-mail at nccmp@nccmp.org.
