

ACA on Life Support: The Affordable Care Act, Medicaid Expansion, and Reckoning with Sebelius During the COVID-19 Pandemic

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In an effort to address the cost of healthcare and the number of uninsured people in the United States, Congress passed the Patient Protection and Affordable Care Act, commonly called the "Affordable Care Act," "ACA," or "Obamacare," in 2010. Signed into law by President Barack Obama, the Act required states to expand Medicaid coverage to various segments of the population not previously covered by the program, or states may lose all of their federal Medicaid funding. Additionally, a provision known as the "individual mandate" required those uninsured by the government or their employer to either pay a small penalty to the Internal Revenue Service or purchase private insurance. In 2012, a group of 26 states and other parties sued Health and Human Services Secretary, Kathleen Sebelius, and related parties regarding the constitutionality of the statute. In a 5-4 decision, the U.S. Supreme Court in *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012), found the individual mandate constitutional under Congress's power to tax but found the Medicaid expansion provision to be unconstitutionally coercive under Congress's spending power.

This note will seek to further contextualize Justice Ginsburg's dissent, which argued the Medicaid expansion provision should not have been struck down by the majority, as the states are merely expecting Medicaid funds from Congress, but they are not at all entitled to them if they do not meet the criteria set by Congress, in the present moment. This note will explore the COVID-19 pandemic and the role that the states and the federal government ought to play in ensuring the general welfare of the nation is protected, primarily by either expanding Medicaid or otherwise ensuring free healthcare in response to the greatest economic and health crisis in over a century. To achieve this, the note will revisit the ACA and the Supreme Court's spending clause analysis given the changing dimensions of the healthcare debate, with employer-sponsored insurance enrollment declining (along with overall employment) and government insurance and subsidies for COVID-19 testing dominating the market, and analyze, through a policy-oriented lens, whether states ought to take the lead in closing the so-called "coverage gap," or whether Congress should have the power to expand insurance in a cooperative federalism model, especially in a deadly pandemic emergency which was not at all contemplated by the Court in *Sebelius*.

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