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## The Health Care Reform Law (PPACA): Controversies in Ethics and Policy

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In March, 2010, the Patient Protection and Affordable Care Act (PPACA) was signed into law by President Obama. The law has been controversial, to say the least. Both political parties believe that it is one of the most important pieces of social legislation to have been enacted in several decades, but they look at this law through decidedly different lenses. The same can be said of scholars and think tanks on the left and on the right. What are the fundamental differences between these contrasting views? In October 2011, 19 months after passage of the law, a conference — *The Health Care Reform Law (PPACA): Controversies in Ethics and Policy* — was held at the Medical University of South Carolina to explore some of those differences.

The U.S. Supreme Court was petitioned to hear the case against the PPACA in September 2011, and the writ of certiorari was granted on November 14, 2011,<sup>1</sup> indicating the Court's intention to resolve several constitutional questions about the law. In four extraordinary sessions on March 26–28, 2012, the Court heard arguments for and against several aspects of the law. It handed down its decision on June 28, 2012, and, to the surprise of most observers, upheld the most critical component of the law, the insurance mandate.<sup>2</sup> It is not surprising, however, that debate over the policies enacted under the law has not cooled; rather, it has become, if anything, more intense, and is likely to be a major factor in the presidential and congressional elections this November. The breakdown of how each justice voted is depicted in the Figure.

This symposium's debates and point-counterpoint sessions dealt with fundamental issues, so the discussions are just as relevant today as they were when the conference was held. The topics addressed such issues as the responsibilities of individuals versus those of society to provide health care, the morality of market-based health care reforms, the effectiveness of consumer-driven health care reforms, and the role of the principle of justice in grounding health care reform. Much political jousting over the PPACA will precede the elections of 2012, and all of the issues discussed in this symposium will explicitly or implicitly play an important role in the resulting polemics.

Addressing the question of who is responsible for health care, Allan Brett points to a national commitment to rescue people with urgent medical needs, a commitment that requires physicians to advocate for universal access to health care.<sup>3</sup> Ronald Hamowy also sees our society as essentially compassionate, but argues that compassion should not be expressed in the form of political coercion to support health care; rather, because free markets are far more efficacious than coercive laws in addressing social problems, he asserts that the generosity and charity of the American people will ensure that no one in need of health care will be denied.<sup>4</sup>

James Taylor argues that free-market provision of health care is more efficient than its provision by government and is more morally sound because it better respects the autonomy of persons by refraining from imposing values upon them.<sup>5</sup> Taking an opposing position, Len Nichols grounds the morality of the PPACA in scriptural concepts of community and mutual obligation; he advocates implementing, with appropriate amendments, the PPACA as rapidly and fully as possible.<sup>6</sup>

In defending the efficacy of consumer-driven health care, Robert Moffit asserts that health care reform should be aligned with the primacy of personal choice and expand consumer control through defined-contribution financing, which will make the provision of health care far more efficient than it is today.<sup>7</sup> John Geyman, to the contrary, asserts the opposite: consumer-driven reforms, he says, have been ineffective in containing costs, and, by restricting access to care, have led to underuse of necessary care, lower quality, and worse outcomes.<sup>8</sup>

Paul Menzel grounds his belief in mandating insurance for a basic minimum of care on the dual principles of social justice and just sharing of the costs of illness (with its corollary principle of fairness).<sup>9</sup> Griffin Trotter disagrees, arguing that no single conception of justice can ground health care reform because to do so would require both nationally widespread support for a particular conception of justice and belief that this conception provides strong rationale for health care reform — neither of these conditions is met in this country today.<sup>10</sup>

The PPACA has largely survived constitutional challenges. In his critical majority-creating opinion on the insurance mandate, Chief Justice John Roberts wrote: “Members of this Court are vested with the authority to interpret the law; we possess neither the expertise nor the prerogative to make policy judgments. Those decisions are entrusted to our Nation’s elected leaders, who can be thrown out of office if the people disagree with them. It is not our job to protect the people from the consequences of their political choices.”<sup>11</sup> He was, in essence, thrusting the debate back into the political arena, where, in his view, it properly belongs. Whether that view is correct or not, the future of the PPACA is now clearly a political question that will be settled in the Congressional debates and executive decisions that will follow the elections of 2012.

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## Biography

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U.S. Supreme Court Justice	Applicability of the Anti-Injunction Act		Constitutionality of the Individual Mandate			Medicaid Expansion		Severability	
	Penalty is not a tax, review not barred	Penalty is a tax, review barred	Commerce Clause	Necessary and Proper Clause	Tax power	Constitutional	Risk of all Medicaid Funds not coercive, no 10 <sup>th</sup> Amendment violation	Risk of all Medicaid Funds Coercive, violates 10 <sup>th</sup> Amendment	ACA stands without expansion
John G. Roberts, Jr.	<input checked="" type="checkbox"/>				<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> (as severed)		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Antonin Scalia	<input checked="" type="checkbox"/>							<input checked="" type="checkbox"/>	
Anthony M. Kennedy	<input checked="" type="checkbox"/>							<input checked="" type="checkbox"/>	
Clarence Thomas	<input checked="" type="checkbox"/>							<input checked="" type="checkbox"/>	
Samuel A. Alito, Jr.	<input checked="" type="checkbox"/>							<input checked="" type="checkbox"/>	
Ruth Bader Ginsburg	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Stephen G. Breyer	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> (as severed)		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Sonia M. Sotomayor	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Elena Kagan	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> (as severed)		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Adapted from Landers R.M. "The Dénouement of the Supreme Court's ACA Drama" *New England Journal of Medicine* 367 (July 19, 2012): 198-199.

**Figure 1.**  
How the Justices Voted on the Several Disputed Sections of the PPACA