

## Supreme Court's Obamacare decision established new limits on federal authority, paper says

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A new paper by an Indiana University professor sheds new light on the U.S. Supreme Court's rejection of legal challenges to the Affordable Care Act, which many critics said threatens state sovereignty and individual liberties.

The paper comes at a time when problems with the act's implementation, particularly the creation of state health care exchanges, highlight the limits of federal capabilities and the importance of state cooperation in the success of domestic government programs.

In an article in *Business Horizons*, a journal published by IU's Kelley School of Business, Tim Lemper argues that the [court](#)'s decision in *National Federation of Independent Business v. Sebelius* actually established new limits on the power of the federal government.

"The court was heavily criticized for betraying the principles of federalism and limited government in the U.S. Constitution," Lemper said. "In reality, the court's decision placed groundbreaking limits on Congress' power to regulate commerce and use federal funds to pressure states into doing its bidding.

"These aspects of the court's decision received less attention in the popular media but may actually prove to have a more significant impact on the scope of federal power in the future," said Lemper, a clinical

professor of business law at Kelley.

In his research, Lemper often takes a more critical approach to overlooked details in legislation and jurisprudence. Earlier research brought to light a drafting error in the federal trademark dilution statute, which led Congress to amend the law last fall.

In his paper, "The Supreme Struggle: 'Obamacare' and the New Limits on Federal Regulation," Lemper bases his arguments on two points raised in the court's opinion: new limits on Congress' power to regulate interstate commerce and to coerce states with the threat of losing federal funding.

In his majority opinion, Chief Justice John Roberts explained that the limits on Congress' power in the Constitution, and the reservation of powers to the states, were intended to protect individual liberty.

Details overlooked in media reports about the decision include what Justice Ruth Bader Ginsburg, in dissent, called "a novel constraint" on Congress' power to regulate interstate commerce, a sweeping and seemingly unlimited power that has been used to uphold a broad range of federal regulations on activity far beyond traditional commercial transactions, Lemper said.

"Set in historical context, the court's decision ... is significant because it establishes a new limit on Congress' expansive power under the Commerce Clause," he wrote. "Five of the nine justices concluded that the Commerce Clause gives Congress the power to regulate existing commercial activity, but does not ... allow Congress to compel individuals to become active in commerce.

"In other words, Congress can regulate activity under the Commerce Clause, but it cannot regulate inactivity."

Applying this rationale to the Affordable Care Act, the majority on the court concluded that the individual mandate (requiring individuals to buy health insurance or pay a tax penalty) exceeded Congress' power to regulate commerce because it compelled people to engage in commerce by buying health insurance.

"That the court still upheld the individual mandate as a valid exercise of Congress' more limited power to lay and collect taxes does not diminish the significance of the limit that it placed on Congress' more expansive power to regulate interstate commerce," Lemper said. "Congress' power to lay and collect taxes is more limited and less coercive than its power to regulate interstate commerce, which—before this decision—increasingly appeared to have no limit."

"The court's decision precludes Congress from venturing into new regulatory territory under the guise of regulating commerce," he said. "At the very least, it forecloses future governmental regulation that uses a person's inaction as a basis to compel them to act."

Lemper said the court's decision also broke new ground in restricting Congress' power under the Spending Clause. Seven of the justices—"a majority of rare size for this court"—held that the Affordable Care Act wrongly coerced states into accepting the Medicare expansion by threatening them with the loss of all Medicare funding (a significant portion of states' budgets) if they refused to do so.

"The court's decision is remarkable because it is the first time that the court has ever struck down a federal law under the Spending Clause on the ground that it runs counter to the system of federalism in the Constitution," he added. "For decades, the court has recognized the possibility that the federalism principles could limit Congress' power under the Spending Clause, but it had never actually done so until its decision on the Affordable Care Act."

"Its landmark holding gives real teeth to limits on Congress' power ... that had previously only existed in theory."

**More information:** [www.sciencedirect.com/science/.../S0007681313000992](http://www.sciencedirect.com/science/.../S0007681313000992)

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