In a 5-to-4 decision, the Supreme Court upheld the Affordable Care Act by ruling that the individual mandate is legal under Congress' power of taxation, while giving states more flexibility in deciding whether to participate in the law's Medicaid expansion. What does today's decision mean for the implementation of the law and the political effort to repeal it? Nick Gillespie sat down with Reason Magazine Senior Editor Peter Suderman to discuss today's ruling.

**Speakers:** Nick Gillespie, Peter Suderman

**Nick Gillespie:** Hi I'm Nick Gillespie with Reason TV, it is June 28th, Thursday June 28th. Obamacare decision has just come down and it has been upheld by the Supreme Court. We are talking to Peter Suderman, Peter is this a win for the Obama administration.

**Peter Suderman:** Yes this is a win for the Obama administration and a loss for those who oppose Obamacare. However the form of the decision that came down was really unexpected and kind of weird and there were some silver linings from it.

**Nick Gillespie:** Nobody quite saw this outcome. We knew the case and the law was either going to be upheld or down, how is it a bizarre decision.

**Peter Suderman:** Well the decision that came down was kind of the opposite of what everyone expected for a couple of reasons. For one thing the mandate was upheld as constitutional but not under the commerce clause which was the primary argument for the constitutionality of the individual mandate.

**Nick Gillespie:** Okay so how is this, I mean you’ve talked about it as a bizarro decisions.

**Peter Suderman:** Right exactly. So instead the court ruled that the mandate was constitutionally under Congress's taxing power which is an odd ruling because even a lot of liberal justices have previously said that that argument just doesn’t fly, but that’s the ruling that Justice John Roberts decided to go with.

**Nick Gillespie:** That is that congress has the right to regulate interstate commerce, and this falls under that even if it's forcing somebody to do something they wouldn’t be doing otherwise.

**Peter Suderman:** Right exactly. So instead the court ruled that the mandate was constitutionally under Congress's taxing power which is an odd ruling because even a lot of liberal justices have previously said that that argument just doesn’t fly, but that’s the ruling that Justice John Roberts decided to go with.

**Nick Gillespie:** And clearly most of the proponents of the law steered clear of the taxing argument, I mean they were leaning on the commerce clause ruling.

**Peter Suderman:** Right, in particular President Obama has insisted on the record that the mandate is not a tax and democrats in congress changed the language of the bill during the bill writing process so that it would not say that the mandate was a tax.

**Nick Gillespie:** So now what about the silver linings?

**Peter Suderman:** There are two big silver linings. The first is that the majority opinion, written by Chief Justice Roberts, does accept that this is not justifiable under the commerce clause and accepts the activity and inactivity distinction that opponents to the law have made for so long.

**Nick Gillespie:** So that’s good because it says even as is massively expands congress, or the federal governments power over a lot, the Supreme Court is at least saying hey the government doesn’t have absolute control.

**Peter Suderman:** Right, they’re saying that there are limits to Congress’s power under the commerce clause to regulate, there are limits to Congress’s ability to regulate Commerce, and that this is beyond those limits. The other silver lining is that the Medicaid expansion, while not ruled unconstitutional, the court ruled that states can opt out of the Medicaid expansion without risking the loss of existing federal Medicaid funds. This is a little bit of a
complicated issue, but basically the law had said that states could continue to participate in Medicaid have to expand Medicaid as the law calls for, otherwise they will get zero federal Medicaid funds, and what this says is that this is not the case.

Nick Gillespie: So in that small sense the Supreme Court actually recognizes that the states have an independent standing from the federal government.

Peter Suderman: Yes, that’s correct, and that the Medicaid expansion the way it was structured the financing now that the requirement that you buy in totally or not at all was coercive even though Medicaid is technically a voluntary program.

Nick Gillespie: A lot of the chattering beforehand all focused on whether or not Justice Kennedy was going to go limp in the clinches, it turns out to be Justice John Roberts, did anyone see that coming?

Peter Suderman: You know if you look at what Roberts said when he was confirmed that he wanted to be an umpire, that he wanted to be as neutral as possible, and sort of his long history of insisting on extremely narrow rulings, this does fit with that to some extent. But no really most people were not expecting Roberts to side with the liberal majority and especially if Kennedy sided with the conservatives.

Nick Gillespie: Two final questions, what are the prospects for repeal or massive retrenchment against this law? How can that play out?

Peter Suderman: The answer is that we won’t really know until after the election in November. Depends on whether Mitt Romney beats Obama for the presidency, it depends on whether republicans take back the Senate. We have republicans in control on the House, the Senate, and the Presidency; I would say that there is a pretty good chance that the law will at least be substantially changed if not repealed.

Nick Gillespie: It’s also true, I mean you have written about how the republicans have also started to find parts of Obama care they ‘hey we’re okay with some of this stuff’ can you talk about that?

Peter Suderman: Republicans are going to have a tough time it looks like at really committing to full repeal. A number of them have said ‘look we want to keep the good parts of Obamacare we want to keep some of the insurance expansion provisions perhaps some of the preexisting condition regulations on insurers.’ So there is going to be a debate in the party over the next couple of weeks over the next couple of days between now and the election. But really we aren’t going to see any actual legislative movement until after November. Between now and then it’s going to be a big political battle and the biggest part of that is going to be Republicans are going to take this decision and say look Obama you said this was not a tax hike, you promised not to raise taxes on middle income earners and the Supreme Court has said that this is only justifiable as a tax, you’re a tax hiker.

Nick Gillespie: Final question, you know the justifications for health care reform were at least two fold. I mean there were more, but one was that it was going to help reduce health care costs going forward. Is there any chance that this legislation in whatever form it ends implanting is actually going to cut costs, and the second is it was supposed to expand coverage to a lot of people. 40 million, 50 million, you hear different numbers of who are uninsured this is going to increase the insured rolls by 30 million, 32 million. Will it actually help the people now getting coverage, will it help them be healthier and live happier and better lives.

Peter Suderman: It may be that many enough states opt out of the Medicaid expansion that the numbers are significantly lower than we expected.

Nick Gillespie: But does that mean much for the uninsured?

Peter Suderman: It’s really tough to say the Jury is still out on the health value of being covered by health insurance. We’ve seen in health insurance experiments that people say they feel better but we haven’t seen a lot of objective health measures by which they actually are better and so like I said the Jury is still out. On the cost issue the CBO says that this law is going to cost a trillion dollars in new spending. Is it going to bring down the cost of insurance, well it is going to subsidize the cost of private insurance, but as we know from the long history of health subsidies and other subsidies, when you subsidize
something what happens is is that the market raises the price to account for those subsidies. I think it is at least very unlikely that ultimately this law helps contain insurance, the cost of insurance premiums; helps slow the growth of medical spending overall.

**Nick Gillespie:** Thank you. Peter Suderman of Reason Magazine. Big cover of health care. For Reason TV I’m Nick Gillespie.

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