

# Law of the Land

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The Patient Protection and Affordable Care Act, better known as Obamacare, is the law of the land. Passed by Congress in 2009 and signed into law by President Obama in 2010, it has now withstood judicial review by the Supreme Court almost entirely intact. Contrary to what many commentators predicted, the Court apparently found that invalidating one part of the law did

not invalidate it entirely, despite its lack of a severability clause. What does this mean for the United States? For emergency physicians? As Inspector Harry Callahan said in *Magnum Force*, "A man's got to know his limitations." So, the honest answer is that I am not sure.

As an emergency physician, I am hopeful. Not only will ED volume almost certainly go up when more people have insurance, as occurred in Massachusetts after Romneycare became law—more ED patients will be insured. Emergency departments have been America's medical safety net for 25 years, required by law to take care of all comers, regardless of either their ability or willingness to pay for that care—but Congress neglected to include any funding with that mandate. Thus, we have been carrying a huge charity burden ever since EMTALA became law. Obamacare should reduce that burden, shifting some of it from the tiny fraction of Americans who are emergency physicians to taxpayers in general, where it more fairly belongs. And, if having insurance turns out to be the equivalent of being able to get good primary and specialty medical care, many more Americans will be healthier. That would obviously be a great accomplishment.

As a taxpayer, I am nervous. Emergency physicians are in the 20% of Americans who pay roughly 70% of all federal taxes and almost 90% of federal income taxes. In fact, most of us are in the top 5% of taxpayers, those who earn more than about \$160,000 per year who pay approximately 60% of federal income taxes—while earning about 35% of the income, by the way. That means we are among the minority of Americans who will be picking up the check. Furthermore, the law includes several tax increases, in addition to the now-famous individual mandate noncompliance penalty. These include an increase in the Medicare tax, which unlike the Social Security tax has no ceiling, and a tax on dividend income. The dividend tax will especially hit those who have fled traditional stocks in search of safer, less volatile investments.

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As a citizen, I am frightened. Our country is already hurtling towards financial catastrophe, driven by the entitlement spending that even now consumes almost 60% of the federal budget. When near-future obligations are added to current expenditures, Medicare and Medicaid are the biggest drivers of federal deficit spending—and thus the main economic threat to our nation's future. No mechanism to fully fund Obamacare is included in the bill, and the partial funding that is included assumes cuts in Medicare that Congress has been unwilling to make so far. It will be a surprise if our politicians find the spines they seem to have lost somewhere on the campaign trail, suddenly becoming more courageous and statesmanlike than they have been—so there is no reason to believe those assumed cuts will occur, or that alternatively, the tax base will be broadened to include more Americans. Unless there are additional drastic changes made in Obamacare, Medicare, Medicaid, and the private insurance industry—in our whole health care delivery system—the day of reckoning for the United States will approach even faster.

As someone who believes in the political philosophy of the Founding Fathers, I am disappointed. Patrick Henry said, "The Constitution is not an instrument for the government to restrain the people, it is an instrument for the people to restrain the government—lest it come to dominate our lives and interest." Chief Justice Roberts believes the federal government has powers the framers of the Constitution never dreamed of, based on its authority to tax. It now seems that any of us can be fined for anything, including doing nothing, under the federal government's ability to tax us. I am disappointed with this leap in government power, but not surprised. It will go down in history with other Supreme Court decisions that vastly expanded the power of the federal government: *Helvering v. Davis* in 1937, which gutted the Ninth and Tenth Amendments and did away with the Enumerated Powers doctrine; *Wickard v. Filburn* in 1942 and *Gonzales v. Raich* in 2005, which twisted the Commerce Clause beyond all recognition and made the phrase "interstate commerce" meaningless; and now *NFIB v. Sebelius*. Even if Obamacare is good public policy, I would feel safer if the Supreme Court had made us amend the Constitution to achieve it.

What do you think of the Supreme Court's decision? Happy, sad, a bit of both, undecided? Do you judge the issue mainly as an emergency physician, a taxpayer, or a citizen? Feel free to celebrate, complain, or argue with other Academy members at the new "Letters to the Editor" feature on the AAEM website. ■

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