SCOTUS should restrain itself—but from what?

By Steve Thorngate
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The Supreme Court has again ruled against those who seek to dismantle Obamacare. This morning I read Chief Justice Roberts's majority opinion and Justice Scalia's dissent. The latter was of course more entertaining; if you read SCOTUS opinions primarily for the entertainment value, stick with Scalia, Ginsburg, and maybe Kagan if you're a nerd.

Roberts's opinion, however, is forceful and right: "Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them." Do the tax credits for people buying insurance on the individual exchanges apply only in those states that set up their own exchange? "We doubt that is what Congress meant to do."

It's interesting that both justices appeal to limits on judicial power. Scalia mocks the majority for its expansive understanding of the notion of an exchange "established by the State." The text is clear, he says, and to read it as including the federal exchange means that "words no longer have meaning." Later Scalia's scornful gaze rests on past rulings that upheld much of Obamacare, suggesting that the Court's priority has been not justice or fairness or restraint so much as protecting this particular law. "We should start calling this law SCOTUScare," he quips. (Sure, except for that whole crippling-the-Medicaid-expansion thing. *SCOTUScare: Like original Obamacare, except meaner to poor people since 2012.*)

As for Roberts, his emphasis is on deferring to congressional *intent*. Yes, intent can be a slippery notion. But it's pretty clear here—from the rest of the text, from the record of the work that went into that text, from the common sense that Roberts appeals to. It's a big law, Congress passed it, and Roberts is loathe to gut it over what he calls a case of "inartful drafting."

Scalia sees Roberts's reluctance as in fact a rewriting of the law's text in its plain sense. But honestly, that sense has only been plain since Obamacare's opponents—with whom Scalia fairly openly sympathizes—zeroed in on it as a strategy. The law *as intended and implemented* is being protected here, it's not being changed. Ezra Klein puts this well:

> In the end, the basic finding here isn't very complicated: Obamacare was designed to work the way everyone understood Obamacare was designed to work — which is also the way Obamacare has been working, and is *also* the only way Obamacare actually will work.

Both Roberts and Scalia appeal to various precedents, and I won't pretend to have the expertise to analyze their arguments. But I'm struck by the spirit-vs.-letter thing. Scalia's point that the word "states" means states, not (say) secretaries of federal agencies, is as persuasive as it is snarky. But the meaning of a word is not the main thing at stake here. What's at stake is a major, hard-won piece of legislation that is clear in its overall intent. What's at stake is an existing reform effort that, whatever its shortcomings, is already improving the lives of millions of Americans.

What's at stake is access to insurance so that a sick newborn can spend a few weeks in the hospital without bringing financial ruin to a household she hasn't even come home to yet. I touched on my own well-insured family's experience with this in my review of Steven Brill's Obamacare book. People shouldn't have to pay the kinds of bills such a hospital stay runs up. Under Obamacare, far fewer of us do.

Scalia would undo this to avoid violating the integrity of Congress's use of the word "states."

But Roberts and Kennedy (and the Court's liberals) would not, so Obamacare lives. GOP leaders are promising to keep fighting it. They won't, not very hard anyway, but they'll keep saying so for the politics. Fine. The rest of us will be busy not being bankrupted by health-care costs anymore. We can thank the chief justice's deference to the spirit of the law.