

History Will Remember Chief Justice John “Marshall” Roberts

by Donald Scarinci

History may record that the decision to uphold the Affordable Care Act was the legacy case for U.S. Supreme Court Justice John G. Roberts Jr. His position and his actions in this case are exactly what [Chief Justice John Marshall](#) would have done if this case came before him.

Roberts has long admired Justice Marshall who was appointed by President John Adams in 1801 and served as the Chief Justice of the United States Supreme Court from 1801 to 1835. It was Justice Marshall, in fact, who ended the practice of separate opinions by each justice and initiated the concept of creating one opinion of the Supreme Court. Marshall also established the court as a neutral arbiter of disputes without the taint of political interference or influence.

In an interview in *The Atlantic* published in 2007, Roberts made it clear that he thinks the Supreme Court has lost its way since the days of the Marshall Court, losing both its political neutrality and its ability to speak with one voice. “I think the Court is also ripe for a similar refocus on functioning as an institution, because if it doesn’t it’s going to lose its credibility and legitimacy as an institution,” he stated. In the 2007 interview, Roberts also said that he would embrace Marshall’s use of “twistifications” to arrive at a just result that would preserve the institutional legitimacy of the Court. Last week, that is exactly what Roberts did.

In deciding to uphold the Affordable Care Act, Roberts elegantly bridged the gap between the Court’s liberal and conservative justices. He agreed with the four liberal justices in holding that the Affordable Care Act’s individual mandate was valid under Congress’s taxing power. But he also sided with the four conservatives in deciding that the mandate violated the Commerce Clause. In doing so, he upheld a groundbreaking healthcare law, while also limiting the power of Congress to make such sweeping changes under the auspices of its commerce power.

Some Supreme Court watchers are comparing Roberts’ healthcare opinion to Chief Justice Marshall’s decision in [Marbury v. Madison](#) with good reason. Both men crafted a decision that handed the current Administration a much-needed practical result, but also clearly defined the constitutional power of Congress and the President. More importantly, they also both convinced their colleagues to go along with the decision.

The Affordable Care Act was a true test for Roberts and there is no question that Justice John Marshall would have been pleased with his decision and with the way he handled it. Roberts’ place in history as one of America’s greatest Chief Justices is secure.