

U.S. Supreme Court to Take on Affordable Care Act ... Again

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This term, the U.S. Supreme Court returns to a challenge to the Affordable Care Act (ACA). In the consolidated cases of *California v. Texas* (No. 19-840) and *Texas v. California* (No. 19-1019), the Court will consider whether a group of states and private individuals have standing to challenge the ACA. If that procedural hurdle is cleared, the Court then must consider whether the ACA's individual mandate is constitutional, and, if it is not, whether that requirement can be severed from the ACA or whether the entire ACA must fall.

Background

In 2012, the Court determined that the ACA's individual mandate was unconstitutional under the Commerce Clause, but the mandate could fairly be read as exercising Congress' power to tax, because failure to comply with it would trigger a tax under the individual shared responsibility penalty provision of the ACA. *National Federation of Independent Businesses v. Sebelius (NFIB)*, 567 U.S. 519. (For details, see our article, [United States Supreme Court Upholds Health Care Reform Law.](#))

Congress later reduced the individual shared responsibility penalty triggered by violating the individual mandate to zero in the Tax Cuts and Jobs Act of 2017 (TCJA).

After the TCJA was passed, a block of states and two individuals filed suit against the federal government challenging the individual mandate. Because the federal government responded to the lawsuit by advocating for an order declaring the individual mandate unconstitutional and severing the ACA's individual mandate, guaranteed issue provisions, and community-rating requirements (and, on appeal, for total invalidation of the ACA), additional states intervened to defend the ACA.

The district court declared that the ACA's individual mandate is unconstitutional because the only basis on which the Supreme Court upheld its constitutionality in *NFIB* (*i.e.*, the power to tax) was eliminated when Congress passed the TCJA, reducing the individual shared responsibility penalty amount to zero and nullifying its revenue raising potential. The district court also determined that the individual mandate is essential to, and thus inseparable from, the remainder of the ACA, meaning the entire ACA must be invalidated. The court also rejected the argument that the plaintiffs lacked standing to challenge the constitutionality of the ACA.

The U.S. Court of Appeals for the Fifth Circuit affirmed in part (2-1) the district court's ruling and the Supreme Court accepted both blocks of states' and the federal governments' petitions for review.

Issues Before the Court

There are three potential issues before the Court:

1. The Court will determine whether the plaintiff states and private individuals have

suffered an injury sufficient to create standing to challenge the constitutionality of the individual mandate. It will consider whether the individual plaintiffs have been injured because they only purchased insurance because they felt compelled to under the ACA, and whether the states have been injured because the individual mandate causes more individuals to buy insurance and increases the states' administrative costs associated with tracking and reporting on ACA compliance as employers of these individuals.

2. If the Court finds that standing exists, it will decide whether Congress' setting the penalty tax at zero rendered the individual mandate an unconstitutional "command to purchase insurance," as the lower courts held, or whether Americans can choose whether to purchase insurance or not, with no penalty for the latter. If the Court adopts the second view, the ACA will stand as is.
3. If the Court agrees with the lower courts that the individual mandate is unconstitutional, it must decide whether the individual mandate is severable from the rest of the ACA or if it is so intertwined with the remaining provisions that the entire statute must be invalidated.

Jackson Lewis attorneys will continue to monitor the cases and provide updates. For more reporting on this and other developments, see our blog, [Benefits Law Advisor](#). Jackson Lewis attorneys are available to help plan administrators understand the issues.

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