

CLIENT ALERT

Affordable Care Act Survives Third Supreme Court Challenge

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On June 17, the U.S. Supreme Court issued an opinion in *California v. Texas*, holding 7-2 that a group of states and individuals lacked standing to challenge the constitutionality of the Affordable Care Act (ACA). The Court did not reach the plaintiffs' merits arguments, which specifically challenged the constitutionality of the ACA's individual mandate and the entirety of the Act itself.

California v. Texas represents the third attempt to challenge the ACA at the Supreme Court, which decided the prior challenges in 2012 and 2015. Enacted in 2010, the ACA requires most Americans to obtain health coverage and, as originally crafted, imposed a monetary penalty, or a "shared responsibility" payment, on those who failed to do so ("the individual mandate"). Since its enactment, as we have discussed here, millions of Americans have obtained health insurance through the ACA and health insurers have transformed their business operations to meet the law's requirements. At issue in *California v. Texas* was whether Congress had the constitutional authority to enact the ACA in its current form and, if not, whether the entire law must fall.

In many ways, this case is a sequel to the historic 2012 Supreme Court case *National Federation of Independent Business v. Sebelius*, where the Court upheld the ACA's individual mandate. There, the Court reasoned that, because the penalty for not complying with the individual mandate (i.e., the shared responsibility payment) effectively operated like a tax, it was a valid exercise of Congress's taxing power. But in 2017, as part of the Tax Cuts and Jobs Act ("TCJA"), Congress effectively nullified the individual mandate by setting the shared responsibility payment at zero dollars. As a result of the TCJA, while uninsured Americans are still technically in violation of the individual mandate, they do not owe the government any money for that violation and thus cannot be penalized for non-compliance.

Texas, along with 17 states ("the state plaintiffs") and two individuals ("the individual plaintiffs"), challenged the constitutionality of the newly reformed Act, claiming that the individual mandate could no longer be justified by Congress's taxing power (nor any other enumerated power) because the mandate does not generate any revenue. They also argued that, because it is central to the functioning of the ACA as a whole, the individual mandate is not severable from the rest of the ACA, rendering the Act as a whole invalid. In 2019, the U.S. Court of Appeals for the Fifth Circuit agreed with the plaintiffs that zeroing out the penalty associated with the individual mandate rendered the mandate unconstitutional, but remanded the case to the district court to reconsider its severability analysis before going the further step of striking down the entire ACA. Because the United States itself chose not to defend the ACA once on appeal, California and 15 other states filed a petition for a writ of certiorari, which the Supreme Court granted.

In its decision, the Court did not reach the merits of the plaintiffs' arguments, finding instead that the plaintiffs lacked standing to raise them in the first place. First, the Court addressed the individual plaintiffs' claim that they suffered monetary harm because the individual mandate compelled them to purchase health insurance. Without the monetary penalty, the Court reasoned that the individual mandate has no means of enforcement. There is thus "no possible Government action that is causally connected to the plaintiffs' injury—the cost of purchasing health insurance." Because the provision is unenforceable,

the Court emphasized that ruling on the mandate’s constitutionality would amount to an unconstitutional declaratory judgement: “[t]o find standing here to attack an unenforceable statutory provision would allow a federal court to issue what would amount to an advisory opinion without the possibility of any judicial relief” (internal quotations omitted).

With regard to the state plaintiffs, the Court similarly concluded that Texas and the other states failed to meet the threshold requirement of standing and could not proceed to the merits of their case. The state plaintiffs argued that they sustained two forms of monetary injuries: (1) the cost associated with increased use of state-operated medical insurance programs and (2) increased administrative expenses associated with the states’ compliance with the individual mandate. The Court found that the state plaintiffs had not demonstrated how their first alleged injury was traceable to any unlawful government conduct in implementing the now unenforceable individual mandate. Moreover, the state plaintiffs failed to prove how the presence of the individual mandate, without the threat of a penalty, would lead more individuals to enroll in beneficial state-operated medical insurance programs.

The Court also addressed the state plaintiffs’ argument that they have been injured by increased administrative costs associated with the ACA, including the cost of providing information on state health insurance coverage to beneficiaries and to the IRS. Rejecting this argument, the Court emphasized that other provisions of the Act—not the individual mandate—impose these requirements on the state plaintiffs and operate independently of the individual mandate. Thus, a declaration that the individual mandate is unconstitutional would have no impact on the other provisions, which would remain intact and continue to impose the cost that the states complained of. In other words, the alleged injury is not “fairly traceable” to the allegedly unlawful provision—the individual mandate.

Because the plaintiffs could not meet the threshold matter of standing, the Court reversed and remanded the decision back to the lower court with instructions to dismiss the case. In doing so, the Court left the ACA intact for the third time, and prevented a potentially seismic shift in America’s healthcare system in the midst of a global pandemic.

Interestingly, Justice Thomas—who in the two prior ACA cases has voiced strong objections to the constitutional validity of the ACA—wrote in a concurrence that while he continues to disagree on the Court’s prior ACA decisions, he agreed with the majority in this case because the plaintiffs’ lack of standing prevented the Court from taking up the merits again. Justice Alito, however, joined by Justice Gorsuch, dissented, reasoning that because the state plaintiffs clearly bore costs on account of ACA provisions that would be eliminated if the Act were stricken, as plaintiffs were seeking, the state plaintiffs had standing. Justice Alito disagreed that the Court’s precedents on standing required a plaintiff challenging a statute on constitutional grounds to show that its injury is “traceable” directly to the challenged provision. The dissent stated that the ACA would continue to stand based on a “penalty” being construed as a “tax” that no longer taxes, while states bearing the cost of implementing the ACA have no means of challenging the law.

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