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SUPREME COURT DISMISSES ANOTHER CHALLENGE TO THE AFFORDABLE CARE ACT

Insights
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Thanks to a ruling today by the U.S. Supreme Court, the Affordable Care Act remains fully intact and will remain the law of the land for the foreseeable future. In a 7-to-2 vote, the Court dismissed a case that challenged the constitutionality of the Patient Protection and Affordable Care Act's (ACA) minimum essential coverage provision, known as the "individual mandate." The Court ruled that the plaintiffs, a group of states led by Texas and two individuals, did not have standing – or a legal right to sue – to challenge the constitutionality of the ACA. The Court did not even address the merits of whether the individual mandate was constitutional, perhaps leaving the question for another day. **In light of this decision, employers' reporting requirements to the IRS remain unchanged.** What else do you need to know about today's critical decision?

Background

In 2010, Congress passed the ACA with three goals: near-universal health-insurance coverage; lower insurance premiums; and creation of effective health insurance markets. To achieve these goals, the ACA includes key features that have been described as a "three-legged stool." These key features are: (1) a requirement that Americans buy minimum essential health insurance, known as the "individual mandate"; (2) a guaranteed-issue provision; and (3) a community-rating provision.

Along with these key features are numerous other provisions that Congress enacted to help accomplish the ACA's stated goals. The individual mandate subjects taxpayers to a

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“shared responsibility” payment for any month during which they or their spouses failed to maintain a minimum level of health insurance coverage. Minimum essential coverage may be offered through group health plans or group health insurance coverage offered by an employer to an employee.

This case is not the first time the ACA’s opponents have challenged the constitutionality of the individual mandate. In 2012, the Supreme Court concluded the individual mandate was constitutional and upheld the law by a slim five-member majority in *NFIB v. Sebelius*. The Court found the shared responsibility payment effectively imposed a tax on individuals who did not obtain health insurance, and thus concluded that the individual mandate was a constitutional exercise of Congress’s taxing power.

Congress also proposed several bills between 2010 and 2016 to repeal, defund, delay, or amend the ACA, but none of these efforts were successful. However, in 2017, Congress passed the Tax Cuts and Jobs Act (TCJA) and reduced the shared responsibility payment for failing to obtain health insurance to \$0.

Lower Courts Uphold the Right to Sue

Setting the shared responsibility payment to \$0 prompted the current litigation. Texas, along with 17 other states and two individuals, filed suit in federal court challenging the constitutionality of the individual mandate and the validity of the entire statute. Their argument: the Supreme Court only determined the individual mandate was constitutional by reading the provision as a tax, and the TCJA undermined any ability to characterize the individual mandate as a tax because it no longer generates revenue. Because the individual mandate was essential to and inseverable from the rest of the ACA, they argued, killing the individual mandate means that the entire statute must be struck down.

The initial, or threshold question, that the District Court in Texas had to consider before it could reach the issue of whether the individual mandate is constitutional was whether the state and individual plaintiffs had standing to bring these claims under the ACA. In order to maintain a lawsuit in federal court, a plaintiff must establish (1) it has experienced an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) is likely to be redressed by a favorable judicial decision.

The District Court considered the standing of the state and individual plaintiffs separately. The two individual plaintiffs, Neill Hurley and John Nantz, argued they had standing to challenge the individual mandate because it still creates a legal obligation even though Congress zeroed out the shared responsibility payment. Hurley and Nantz argued the mandate required them to spend money every month they otherwise would not, thus creating an economic harm.

Texas and the other state challengers argued that they had standing to sue based on a “pocketbook,” or financial, injury. The states argued their pocketbook injury occurred for two reasons that were traceable to the individual mandate. First, they argued the individual mandate forced individuals to enroll in Medicaid and Children’s Health Insurance Program (CHIP), which increased the state’s cost to fund these programs. Second, they argued the reporting requirements related to the individual mandate created increased administrative costs.

The District Court agreed with the individual and state plaintiffs and determined they had standing to bring their lawsuit. On appeal, the 5th Circuit Court of Appeals agreed and found that the individual plaintiffs presented evidence they purchased insurance as a result of the individual mandate solely because they were obligated to comply with mandate. The Supreme Court then agreed to hear the case and resolve the dispute.

SCOTUS Dismisses Case on Standing Grounds

Today, the Supreme Court dismissed the states’ and individual plaintiffs’ case, ruling that they lack standing to bring a lawsuit challenging the constitutionality of the individual mandate. The Supreme Court disagreed with the 5th Circuit’s and the District Court’s decisions that the states and individual plaintiffs met their burden to prove they have standing.

During oral argument, the justices spent a significant amount of time questioning both sides about whether the individual mandate creates a legal command. The California Solicitor General Michael Mongan, representing those states defending the ACA, argued the individual plaintiffs lacked standing because the individual mandate no longer creates a legal command and there is no threat it will be enforced against them. He argued the state plaintiffs lacked standing

because they failed to present any evidence showing the amended individual mandate inflicted a fiscal injury on them.

While the Justices appeared divided on the issue during oral argument, they ruled today that both the state and individual plaintiffs lack standing. The Court's ruling focuses on the fact that nothing will happen to the individual plaintiffs if they fail to purchase health insurance, so their alleged injury is not traceable to government action. The Court explained that the individual plaintiffs' problem "lies in the fact that the statutory provision, while it tells them to obtain that coverage, has no means of enforcement . . . Because of this, there is no possible Government action that is causally connected to the plaintiffs' injury—the costs of obtaining health insurance."

Ultimately, while the individual mandate may operate as a legal command, the individual plaintiffs will not face any legal consequence if they fail to comply with that command. "To 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," the Court said. And issuing such an advisory opinion "would threaten to grant unelected judges a general authority to conduct oversight of decisions of the elected branches of Government." The individual plaintiffs' self-inflicted injury does not create the actual injury required to have standing to sue, the majority concluded.

The Court also ruled that the state plaintiffs lack standing to bring a challenge against the ACA, finding that they failed to present sufficient evidence to trace their reporting burden under the ACA to the individual mandate. Similar to the individual plaintiffs, "the state plaintiffs failed to show that this injury is directly traceable to any actual or possible unlawful Government conduct in enforcing § 5000A." The state plaintiffs also failed to show "that the challenged minimum essential coverage provision, without any prospect of penalty, will harm them by leading more individuals to enroll in" state-operated or state-sponsored insurance programs.

Finally, the Court also rejected the state plaintiffs' argument that § 5000A(a)'s minimum essential coverage provision caused them to incur additional costs directly. The ACA provisions that impose administrative costs operate independently of the minimum essential coverage provision. "To show that the minimum essential coverage requirement

is unconstitutional would not show that enforcement of any of these other provisions violates the Constitution," the Court said. The state plaintiffs only attacked the constitutionality of the minimum essential coverage provision and failed to allege that they "suffered an injury fairly traceable to the defendant's allegedly unlawful conduct."

What Does This Mean For Employers?

As noted above, the ACA remains fully intact and will remain the law of the land for the foreseeable future. This means that you still need to comply with the employer reporting requirements under the ACA, which are separate and distinct from the amended individual mandate.

The ACA requires insurers, self-insuring employers, other coverage providers, and applicable large employers to furnish statements to employees and covered individuals with information regarding the health care coverage offered to them. While the shared responsibility payment has been reduced to \$0 by Congress, the employer reporting requirements under the ACA remain the same. You may face penalties from the IRS if you do not furnish the appropriate forms to employees and covered individuals.

We'll continue to monitor developments affecting employers at the Supreme Court so make sure you are signed up to receive the latest information through our [Fisher Phillips Insight service](#). If you have questions about reporting requirements for health care coverage offered to employees under the ACA, please consult a member of the Fisher Phillips [Employee Benefits Practice Group](#) or your Fisher Phillips attorney.