



THE SMALL BUSINESS LEGISLATIVE COUNCIL ALERT

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- **SUPREME COURT DISMISSES LATEST CHALLENGE TO THE AFFORDABLE CARE ACT**

SUPREME COURT DISMISSES LATEST CHALLENGE TO THE AFFORDABLE CARE ACT

Today (June 17, 2021), the Supreme Court rejected the latest challenge to the Affordable Care Act (ACA).

The consolidated case of California, et al. v. Texas, et al. posed two critical questions for the Justices: (1) is the ACA's individual mandate unconstitutional now that there is no penalty for not buying insurance? and (2) if the individual mandate is unconstitutional, is the entire ACA unconstitutional?

In its decision, the Supreme Court didn't actually answer either question. Instead, in a 7-2 decision, the Court dismissed the case ruling that the parties challenging the ACA (eighteen states and two individuals) did not have standing to raise these issues.

Let's start with quick refresher on what this case was all about and what happened before it hit the Supreme Court -

The foundation of this case originated when the Tax Cuts and Jobs Act (TCJA) of 2017 reduced the penalty for non-compliance with ACA's individual mandate to zero. The parties challenging the ACA in the California v. Texas case argued that not only did this change render the individual mandate unconstitutional (because it no longer stems from Congress' power to tax) it also rendered the entirety of the ACA unconstitutional.

In December of 2018, a federal district court judge in Texas ruled in favor of the challengers holding that both the individual mandate and the ACA were unconstitutional in light of the TCJA change. The effect of the ruling was stayed and the case was promptly appealed to the 5th Circuit Court of Appeals.

Approximately a year later, in December 2019, the 5th Circuit upheld part of the District Court's decision and remanded the remainder back to the lower court for reconsideration. Specifically, the 5th Circuit agreed that the reduction of the individual mandate penalty to zero rendered the individual mandate unconstitutional. The appellate court did not reach a conclusion on the continued viability of the ACA as a whole and instead remanded that issue to the District Court instructing the District Court to conduct a more thorough analysis of which parts of the ACA could stand on their own, as severable from the unconstitutional individual mandate, and which were inextricably linked to the mandate and would therefore be themselves unconstitutional. In taking this action, the 5th Circuit stated that the District Court needed to "employ a finer-toothed comb" before reaching a conclusion on whether the ACA as a whole was unconstitutional. The 5th Circuit also instructed the District Court to consider whether the outcome should apply just to the states challenging the law or to the entire country. The 5th Circuit's decision was appealed by both sides before the District Court engaged in any reconsideration.

With the 5th Circuit issuing its decision in December of 2019, the big question at that time was whether the case would go to the Supreme Court before the November 2020 elections. The Supreme Court ultimately declined to fast track the case and heard oral arguments in the case on November 10, 2020.

Back to the Supreme Court's decision -

In a decision penned by Justice Breyer (joined by Justices Roberts, Thomas, Sotomayor, Kagan, Kavanaugh and Barrett) the Supreme Court reminded the parties that a party must have standing before the courts have the authority to adjudicate a claim. As the Court summarized “[a] plaintiff has standing only if he can ‘allege personal injury fairly traceable to the defendant’s allegedly unlawful conduct and likely to be redressed by the requested relief.’” Declining to consider the two underlying questions being raised, the Court concluded that “[n]either the individual nor the state plaintiffs have shown that the injury they will suffer or have suffered is ‘fairly traceable’ to the ‘allegedly unlawful conduct’ of which they complain.”

Specifically, as to the two individuals who claimed to have been damaged because the individual mandate required them to purchase health insurance, the Court concluded that there was no traceable harm because, with the penalty at zero there is no mechanism for enforcing the penalty. In other words, that the individuals were injured by incurring costs to purchase insurance was not the result of actual or threatened enforcement of an unlawful act – because there is no potential for enforcement.

As to the states, the states claimed that they had suffered two types of injuries. First, indirect injuries caused by the fact that the individual mandate had increased the number of enrollees in state run insurance programs which increased costs for the state. Then, direct financial injuries in having to expend money to comply with various administrative and other related expenses to ensure ACA compliance. The Court concluded that increase in costs in state run programs was not traceable to the enforcement of the individual mandate. Further, the Court found the ACA requirements that the states complained had increased their costs were found in other parts of the ACA, not the individual mandate.

In sum, the Court concluded that none of the challengers had a traceable injury sufficient to establish standing and remanded the case to the lower Court to be dismissed. Thus, the now eleven year old ACA lives to stand another day, sparing Congress and the markets from the potential frenzy of trying to figure out how to respond to some or all of the ACA being struck down.