

# U.S. Supreme Court Upholds ACA (Again)

On June 17, 2021, the U.S. Supreme Court (the “Supreme Court” or “Court”) delivered its long awaited ruling in [California v. Texas](#), No. 19-840 (US June 17, 2021). In a 7-2 decision, the Court rejected the constitutional challenge on a procedural issue, upholding the Affordable Care Act (ACA) in its entirety. This Alert summarizes the Court’s ruling and impact on group health plans.

## Background

This is the third case the Court has heard challenging the legal validity of the ACA and its various provisions.<sup>1</sup> *California v. Texas* worked its way through federal district court in northern Texas and the 5<sup>th</sup> Circuit Court of Appeals before the Court agreed to hear it. Certain named individuals and states led by the state of Texas (claimants) challenged the law on the basis that:

- The individual mandate is unconstitutional since the penalty was reduced to \$0 under the Tax Cuts and Jobs Act of 2017 and is no longer a tax; and
- The rest of the ACA is invalid because the individual mandate is inseparable from the ACA’s other provisions.

These claims stem from the Court’s 2012 decision upholding the constitutionality of the individual mandate as a justifiable exercise of Congress’ power to impose a tax. The district court in *Texas v. United States*<sup>2</sup> agreed with the claimants, finding that the individual mandate was unconstitutional without its corresponding tax and so interconnected with the rest of the ACA that the district court struck down the ACA in its entirety.

California and 15 other states, as well as the District of Columbia, came to the defense of the ACA and appealed to the 5<sup>th</sup> Circuit Court of Appeals. The 5<sup>th</sup> Circuit agreed that the individual mandate was unconstitutional, but it did not think the individual mandate was necessarily inseparable from the rest of the ACA.<sup>3</sup> Following the 5<sup>th</sup> Circuit’s decision, the Supreme Court announced it would hear the case before it was sent back to the district court. The Supreme Court hearings took place in November 2020, and we have been patiently waiting for its decision.

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<sup>1</sup> In 2012, the Supreme Court first heard an argument challenging the legal validity of the ACA’s individual mandate and Medicaid expansion provisions in [National Federation of Independent Business v. Sebelius](#) 567 U.S. 519 (2012). The Supreme Court heard another challenge to the constitutionality of the ACA and federal subsidies for marketplace coverage in 2015 in [King v. Burwell](#), 576 U.S. 473 (2015).

<sup>2</sup> [Texas v. US](#) (N.D. Texas, December 30, 2018).

<sup>3</sup> [Texas v. US](#) (5<sup>th</sup> Cir. Dec. 18, 2019).

## ACA Upheld Due to Lack of Standing

The Court rejected the constitutionality challenge, because the majority found the claimants did not have legal standing to challenge the individual mandate. Without legal standing to challenge the individual mandate, the argument challenging the constitutionality of the rest of the ACA failed as well.

In its ruling, the Court explained a rather complicated legal concept governing the Court's jurisdiction to hear and decide cases. Under this concept, the Court is not able to weigh in on matters unless those bringing the claim can demonstrate actual harm caused by the issue(s).

The Court found that although the Tax Cuts and Jobs Act of 2017 reduced the individual mandate penalty to \$0, the claimants did not show any past, current or future harm because of this change. This lack of harm meant that the claimants did not have standing to challenge the constitutionality of the individual mandate or other ACA provisions. It did not help the claimants that the elimination of the individual mandate penalty has had no real effect on ACA administration and compliance – including the operations of the public health insurance marketplace – for over two years.

## Impact to Employers

This means it is business as usual for employers sponsoring group health plans, since the ACA remains intact without any changes. The Court did not actually address the constitutionality of the individual mandate or the broader ACA. It is unclear whether the ACA litigation saga will continue on this issue, or whether future claims might be successful. Although the Court's concurring and dissenting opinions mention the possibility of an overall ACA constitutionality argument, it is unclear how an individual mandate argument could be successful after last week's ruling on lack of standing. A future broad challenge to the ACA may require a different approach.

One thing we know for sure is that other legal challenges to specific ACA provisions will continue, including litigation over the ACA's Section 1557 nondiscrimination rules, religious and moral exemptions to the contraceptive coverage mandate, and more. These matters are at different stages of litigation. Employers can expect to hear legal updates on the ACA as time goes on, and they may need to act accordingly when decisions appear.

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## About the Author



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