

EMPLOYEE BENEFIT ALERT



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The Supreme Court Agrees to Hear Important ACA Case

The Supreme Court has announced that it will hear *California v. Texas* (formerly known as *Texas v. United States*) during its next term. The Court will consider whether to affirm the lower court's ruling that the individual mandate portion of the Affordable Care Act (ACA) is unconstitutional. More importantly, the Court will decide whether the individual mandate is severable from the rest of the ACA. If it is not, the entire ACA could be ruled unconstitutional.

HISTORY OF THE CASE

In 2017, the *Texas v. the United States* case was filed by Republican Attorneys General from 20 states. The plaintiffs argued that the ACA individual mandate was unconstitutional because it could no longer be considered a tax after Congress had reduced the tax/penalty to \$0.00. Furthermore, it was argued that the individual mandate was not severable from the rest of the ACA and that therefore the entire ACA should be invalidated. Democratic Attorneys General from 16 states and the District of Columbia intervened in 2018 as defendants of the law.

In December 2018, a U.S. District Court Judge in Texas ruled that the individual mandate was unconstitutional and was not severable from the rest of the ACA, meaning that the entire ACA should be invalidated. In January 2019, the defendants, later joined by additional states and the U.S. House of Representatives, appealed the district court's decision.

In 2019, a three-judge panel in the U.S. Court of Appeals for the 5th Circuit upheld a portion of the ruling by the district court that the individual mandate is unconstitutional. However, the appellate court did not rule on the severability issue to determine whether the entire ACA is unconstitutional. Instead, it sent the case back to the district court for further analysis.

After the appellate court's decision, a group of 21 Democratic Attorneys General, led by California, filed an appeal asking the Supreme Court to hear the case instead of waiting for the district court to issue a new ruling. The plaintiffs in the case then asked the Supreme Court to uphold the district court's original decision and declare the entire ACA to be invalid.

WHAT'S NEXT

The Supreme Court initially denied the appeal to hear the case on an expedited time frame but has now agreed to hear the case during the next term, which begins in October 2020. A decision will be issued before the end of the Court's term, but the decision will not be issued before the November elections.

In the meantime, the appellate court ruling that the individual mandate is unconstitutional will have little or no impact on the ACA since Congress had already eliminated the penalty tied to the mandate. The important issue for the Supreme Court to decide will be whether the individual

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mandate is severable from the rest of the law. If it is treated as separate from the rest of the law, the decision will have little impact on the future of the ACA. However, if the Supreme Court upholds the lower court ruling that the individual mandate is unconstitutional, and then also rules that it cannot be severed from the rest of the ACA, the entire ACA could be deemed unconstitutional. The impact of such a ruling would be significant and could have far-reaching consequences for the delivery of health care, the insurance industry, and employer sponsored benefits.

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