



Compliance Alert

Court Strikes Down Entire ACA (But Long Appeals Process to Come)

December 17, 2018

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Late Friday, a Federal District Court in Fort Worth, Texas struck down the entire ACA.

The surprise court decision in [Texas v. United States](#) will immediately be appealed. During the appeals process, the ACA will remain in effect. The case is likely eventually headed to the U.S. Supreme Court.

Action Item: None. Wait for this third round of major ACA legal challenges to make its way to the U.S. Supreme Court in what is sure to be a long appeals process. It's status quo for employers until then.

The Court's Ruling

The short version is as follows:

- In the [Tax Cuts and Jobs Act \(TCJA\) enacted at the end of 2017](#), Congress reduced the individual mandate “tax penalty” to zero beginning in 2019. While this is typically referred to as a repeal of the individual mandate, technically it was not. Rather, the [“tax penalty” for failure to maintain minimum essential coverage was eliminated](#).
- 20 Republican state attorneys general, as well as the federal government’s DOJ in part, argued in the case that the individual mandate is no longer constitutional without the tax penalty. The basis for the argument stems from the landmark [2012 U.S. Supreme Court decision](#) finding the ACA individual mandate to be constitutional only under the federal government’s taxing power—not under the more broadly interpreted interstate commerce clause powers.
- The Texas court agreed with this argument, finding that “the Individual Mandate no longer ‘triggers a tax’ beginning in 2019,” and therefore “the Individual Mandate cannot be upheld under Congress’s Tax Power.”

- With the individual mandate ruled unconstitutional, the court turned to how that would affect the rest of the ACA. This analysis focused on the question of “severability.” In other words, could the court find the individual mandate unconstitutional but leave some or all of the remaining ACA provisions in place?
- Based on a plain text reading of the ACA, the court found “Congress stated three separate times that the Individual Mandate is *essential* to the ACA,” and it found “the lack of a severability clause covering the Individual Mandate.” Therefore, the court concluded “[o]n the unambiguous enacted text alone, the Court finds the Individual Mandate is inseverable from the Act to which it is essential.”
- The Texas court also looked to Congressional intent in 2017 when Congress passed the TJCA to eliminate the individual mandate’s tax penalty. It found that the “2017 Congress had no intent with respect to the Individual Mandate’s severability.” Further, it agreed with federal government’s DOJ position that “[t]he only thing we know for sure about Congress’ intent in 2017...is that Congress wanted to pass a tax cut.”
- The end result is that the Court struck down the entire ACA because it found “the Individual Mandate ‘is essential to’ and inseverable from ‘the other provisions of’ the ACA.”
- In its conclusion and order, the Court “declares the Individual Mandate, 26 U.S.C. § 5000A(a), **UNCONSTITUTIONAL**. Further the Court declares the remaining provisions of the ACA, Pub. L. 111-148, are **INSEVERABLE** and therefore **INVALID**.”

What It Means

The most important point for our purposes is that employers must continue to comply with the ACA. The ACA employer mandate pay or play provisions, the associated ACA reporting requirements, and all other ACA provisions that applied prior to Friday’s court ruling remain in effect today.

The 16 state attorneys general (and D.C.)—who were allowed to intervene in the case when the federal government’s DOJ did not defend the ACA in full—are certain to appeal the Texas court’s decision immediately.

California Attorney General Xavier Becerra, one of the state intervenors, [issued a press release](#) Friday night denouncing the decision and stating in part that “[t]oday’s misguided ruling will not deter us: our coalition will continue to fight in court for the health and wellbeing of all Americans.”

The case is almost certainly headed to the Fifth Circuit Court of Appeals, and then likely ultimately for another U.S. Supreme Court showdown. This would be the third major ACA constitutional case to reach the U.S. Supreme Court. The first was the 2012 individual mandate ruling, and the second was the [2015 federal exchange subsidies affirmation](#).

Summary

The Texas court’s decision Friday night surprised many by striking down the entire ACA. While the decision presents the latest in a series of major legal threats to the ACA, it is only the start of this third round of judicial battles. The court’s decision is controversial and may be overturned in whole or in part by the Fifth Circuit Court of Appeals or the U.S. Supreme Court.

In the meantime, the ACA will remain in effect during the appeals process. Employers must continue to comply with the ACA, including the employer mandate and the ACA reporting requirements, until this legal challenge reaches its full conclusion. That may be a long road.

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