

## Texas District Court Rules ACA is Unconstitutional

On Friday evening, December 14, a federal district court judge in Texas [ruled](#) that the Affordable Care Act (ACA) is unconstitutional (“the Texas decision”).<sup>1</sup> The court reasoned that because the Individual Mandate provision of the ACA is unconstitutional, and because the Individual Mandate is inseverable from the rest of the ACA, the entire ACA must be invalidated.

Importantly, the White House and the Department of Health and Human Services (HHS) have stated that the ACA will remain the law of the land until a final decision has been reached, which means that there will be no changes to the enforcement of the ACA until the Texas decision has been reviewed by the U.S. Court of Appeals for the Fifth Circuit and, most likely, the U.S. Supreme Court.

### Background

At issue in the Texas decision was whether Congress’ amendment to the Individual Mandate through the Tax Cuts and Jobs Act (TCJA) made the Individual Mandate unconstitutional. Signed into law on December 22, 2017, the TCJA “zeroed out” (i.e., reduced to \$0) the tax penalty for the ACA’s Individual Mandate beginning on January 1, 2019. However, even though the tax penalty was reduced, the TCJA left the Individual Mandate in place, as well as the other provisions of the ACA,

including the ACA’s Employer Mandate and its tax penalty.

The Texas case commenced when a group of Attorneys General from Republican or “Red” States, along with two individuals (“the Plaintiffs”) sued the United States, the Internal Revenue Service (IRS), and HHS, asking the district court to rule that the Individual Mandate, as amended by the TCJA, is unconstitutional.

The Plaintiffs further argued that the entirety of the ACA should be struck down as unconstitutional because the Individual Mandate is inseverable from the rest of the ACA. Because the Trump Administration did not fully oppose the lawsuit,<sup>2</sup> several Attorneys General from Democratic or “Blue” States intervened as defendants (“the Defendants”). The Defendants argued that the Individual Mandate is severable from the rest of the ACA.

### What Was the Reasoning behind the Court’s Decision in Texas v. U.S.?

In order to understand the Texas decision’s reasoning, it’s important to look back at an earlier decision by the U.S. Supreme Court. Specifically, in 2012, the Supreme Court held in *Nat’l Fed’n of Indep. Bus. v. Sebelius* (“the NFIB decision”)<sup>3</sup> that the ACA’s Individual Mandate is constitutional because the

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### SYNOPSIS

- A federal judge reasoned that because the Individual Mandate provision of the ACA is unconstitutional, and because the Individual Mandate is “inseverable” from the rest of the ACA, the entire ACA must be invalidated.
- The White House and the Department of Health and Human Services stated the ACA will remain the law of the land until a final decision has been reached.

<sup>1</sup> *Texas v. U.S.*, No. 18-167 (N.D. Tex. Dec. 14, 2018).

<sup>2</sup> The Trump Administration took the position that the Individual Mandate, as amended by the TCJA, is unconstitutional, but did not agree with the Plaintiffs that the entire ACA should be invalidated as a result. Instead, the Trump Administration took the position that the Individual Mandate is inseverable from the ACA’s rule protecting individuals with preexisting conditions, as well as the ACA’s guaranteed issue and community rating provisions.

<sup>3</sup> *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012).

Individual Mandate's penalty is a "tax" for purposes of the Constitution's Taxing and Spending Clause, and therefore, is a valid exercise of Congressional authority. The Supreme Court also held that the Individual Mandate would not have been constitutional if it were to be considered an exercise of Congressional authority under the Constitution's Interstate Commerce Clause.

The *Texas* court reasoned that because the TCJA eliminated the Individual Mandate's tax, this rendered the Individual Mandate unconstitutional since the Supreme Court had already said in their 2012 *NFIB* decision that Congress can't use its powers over interstate commerce to require individuals to buy health insurance, that is, Congress would have to use its taxing power.

#### **Why Would Eliminating the Penalty for Failing to Obtain Health Coverage Make the Whole Law Unconstitutional?**

The *Texas* court reasoned that because the Individual Mandate was so "essential" to how the ACA functioned, the rest of the law couldn't stand without it. In support of this conclusion, the court relied on statements by Supreme Court judges in previous Supreme Court ACA decisions, as well as evidence of the legislative intent of both the 2010 Congress that passed the ACA and the 2017 Congress that passed the TCJA.

#### **How Did the Trump Administration and HHS Respond to this Decision?**

After the decision was published, both the Trump Administration and HHS officials responded making it clear that the ACA still remains the law of the land (until a final decision has been reached) and that the *Texas* decision does not have any impact on current Exchange plans or Exchange plans being offered for the 2019 plan year. Notably, both President Trump and HHS officials tweeted that even if the entire ACA is determined to be unconstitutional and invalidated, they would support a new law to replace the ACA that would protect people with preexisting conditions.

#### **How Does this Decision Impact Employers and Plan Sponsors? Does our Organization Still Need to Complete ACA Information Reporting for 2018?**

As noted above, the *Texas* decision will be appealed and then will be reviewed by the Fifth Circuit Court of Appeals, and then, most likely, the Supreme Court. Additionally, the White House and HHS have stated that until a final decision has been reached, they will continue to enforce the ACA, so there is nothing that employers and plan sponsors should do differently now as a result of this decision. The appeal process could take many months and it is difficult to predict precisely when a final decision could be made.

**There will be no changes to ACA enforcement until the Texas District Court's decision has been reviewed by the U.S. Court of Appeals for the Fifth Circuit and, most likely, the U.S. Supreme Court.**

In light of the above, organizations should not stop the process of, or make any changes to, their 2018 ACA information reporting as a result of the *Texas* decision. Even if this decision were to be upheld by the Supreme Court, it's unlikely that such a final decision would have any impact on an organization's 2018 ACA compliance requirements because the TCJA only zeroed out the Individual Mandate's tax penalty beginning on January 1, 2019.

**If you have additional questions, please call your Corporate Synergies Account Manager or 866.CSG.1719.**

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