

Supreme Court Upholds the ACA in 7-2 Decision

July 1, 2021

Quick Facts

- On June 17, 2021, the SCOTUS issued a 7-2 decision in *California et. al. v. Texas et. al.* upholding the ACA.
- The Court ruled that none of the plaintiffs demonstrated the requisite standing, the legal concept that requires parties bringing or defending a lawsuit to have a legal interest or injury in a matter that permits them to file or defend a lawsuit.
- The decision ends a case that has been working its way through the courts since a Texas judge first ruled that the ACA was unconstitutional in 2018.

Introduction

The Supreme Court of the United States (SCOTUS) issued a ruling that rejected a lawsuit claiming the Affordable Care Act (ACA) was unconstitutional. In the case *Texas v. California*, the plaintiffs argued that the entire law was unconstitutional due to a change made by Congress in 2017 where Congress reduced the tax for failure to carry health insurance (the “individual mandate”) to \$0.00.

Background

In December of 2018, Judge Reed O’Connor of the U.S. District Court for the Northern District of Texas (District Court) **ruled** in [*Texas v. United States*](#) that when Congress passed the [*Tax Cut and Jobs Act of 2017*](#) (TCJA) setting the individual mandate penalty to zero dollars, both the U.S. Constitution and federal law no longer protected the provision. Judge O’Connor stated that the individual mandate was no longer a tax but an illegal order requiring consumers to purchase a commercial product. He held that because the ACA contained no “severance clause” – a provision that guarantees the remaining provisions of a law survive if one part is struck down – striking the individual mandate as unconstitutional invalidated the entire ACA. Thus, based on Judge O’Connor’s ruling, the ACA is unconstitutional, and its protections and requirements are void.

The case was appealed to the Fifth Circuit Court of Appeals (Circuit Court) on December 18, 2019. The Circuit Court issued a 2-1 **opinion** that partially agreed with the District Court’s decision, agreeing with the lower court that the individual mandate is unconstitutional because the TCJA zeroed out the penalty. However, the Circuit Court remanded the case to the District Court to reconsider whether some or all of the ACA can survive without an individual mandate.

On Monday, March 2, 2020, the Supreme Court of the United States agreed to hear [*Texas v. United States*](#) and provide a final ruling in the controversy. The Supreme Court denied an expedited hearing

request and chose to hear arguments during its 2020 Fall term. The questions presented to the Court for resolution were:

1. Whether the individual and state plaintiffs, in this case, have established Article III standing to challenge the minimum coverage provision in Section 5000A(a).
2. Whether reducing the amount specified in Section 5000A(c) to zero rendered the minimum coverage provision unconstitutional.
3. If so, whether the minimum coverage provision is severable from the rest of the ACA.

SCOTUS heard oral arguments about the case during its October 2020 hearings. During oral arguments it appeared several Justices were in favor of upholding the ACA. [View the transcripts of the oral arguments.](#)

2021 SCOTUS Decision

On June 17, 2021, SCOTUS issued a 7-2 decision in *California et. al. v. Texas et. al* stating that the plaintiffs did not have standing to bring the case to court in the first place, so it was unnecessary to rule on other details of the case. The Chief Justice John Roberts and Justices Clarence Thomas, Sonya Sotomayor, Elena Kagan, Brett Kavanaugh, and Amy Coney Barrett agreed with an opinion written by Justice Steven Breyer. The majority of the Court decided that the individual and state plaintiffs failed to demonstrate, standing, which is a past or future legal injury fairly traceable to the federal government enforcing the specific statutory provision of the ACA, the individual mandate, that they asserted was unconstitutional. Justice Breyer's opinion concluded that the Supreme Court is reversing the Fifth Circuit's judgment in respect to standing, vacating the judgment, and remanding the case with instructions to dismiss.

Justice Breyer wrote that unenforceable statutory language alone is not sufficient to establish standing, as the redressability requirement makes clear. He further wrote that whether a legal harm or injury is redressable depends on the relationship between the judicial relief requested and the injury suffered by the plaintiff(s). Justice Thomas also wrote a concurring opinion in which he agreed that the plaintiffs failed to demonstrate that the harm they could trace to some unlawful conduct by the federal government's enforcement of the individual mandate.

The majority and concurring opinions of the Court found that the individual plaintiffs' argument on standing failed because the challenged statutory provision tells individuals to obtain minimum essential coverage but has no means of enforcement. The Court held that the State plaintiffs did not have standing because they did not show how the \$0 mandate caused the States, as entities, a direct injury resulting from a variety of increased administrative and related expenses. According to the Court, the States also failed to connect how enforcement of ACA without a penalty caused them to allege indirect injury in the form of increased costs to run state-operated medical insurance programs. Further, the majority stated that to find standing to attack an unenforceable statutory provision would allow a federal court to issue an unconstitutional advisory opinion without a remedy.

The Court also declined to consider a new theory of standing advanced by the plaintiffs. In its opinion, the Court stated that the plaintiffs failed to timely raise and argue their novel alternative theory of standing. Justice Thomas, in his concurrence, stated that the Court should not address the standing-through-inseparability argument for several reasons. He said it was not justiciable because the theory was not raised in the lower courts or their briefs, and the courts have not addressed the issue in any detail at any point before. Plus, Justice Thomas stated that in previous cases the Court was inconsistent in describing whether inseparability is a remedy or merits question. Consequently, the

Court could not decide to provide the relief sought by the plaintiffs, which was declaratory relief. The States and individuals wanted a judicial statement that the provision of ACA they were challenging was constitutionally invalid, thus invalidating the entire law. The Court's majority opinion stated that it would not need to decide on this issue because the seven majority Justices ruled the plaintiffs lacked standing. According to the Court, like in any other lawsuit for every other type of remedy, declaratory relief actions must satisfy the Constitution's Article III's case-or-controversy requirement, standing.

The Court did not settle the question of whether the \$0 individual mandate penalty affects the ACA's constitutionality. The majority opinion stated that the Court did not need to reach the question of the ACA validity, because the plaintiffs lacked the standing necessary to raise them. The dissent written by Justice Samuel Alito and agreed to by Justice Neil Gorsuch stated that the theory of standing advanced by the plaintiffs had merit and the Court should grant the relief requested by the plaintiffs. According to the dissent, the Court had the necessary precedent to entertain the theory of standing and relief requested by the plaintiffs.

Conclusion

The Court ended what it called the third installment of the ACA trilogy, and closes a case that has been working its way through the courts since a Texas judge first ruled that the ACA was unconstitutional in 2018. With the constitutionality of the ACA no longer in question, the end of this case may allow Congress to consider addressing some of the technical issues with the ACA that have bipartisan support, including possible changes to employer reporting and the employer shared responsibility rules (i.e the employer mandate). [View the related Compliance Insight.](#)

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