

December 26, 2018

ACA Ruled Unconstitutional – Now What for Employers?

On December 14, 2018, the much-anticipated decision was issued in [Texas v. United States](#) in which the District Court found the Patient Protection and Affordable Care Act (ACA) unconstitutional given the current terms of the individual mandate.

From an employer perspective, this case does not require or even provide opportunities for change as the ACA continues to be the law of the land as the case works its way through the system. As such, employers should continue their health coverage strategies per the ACA and comply with all of its requirements.

The Case

The key issue in the case was the individual mandate. The plaintiffs in the case brought action arguing that the individual mandate was unconstitutional and, as a result, the ACA is unconstitutional due to the individual mandate not being severable from the remainder of the ACA. This case was essentially a result of the Tax Cuts and Jobs Act of 2017 (TCJA), as under the TCJA the individual mandate penalty under the ACA was reduced to zero (effectively eliminating the penalty).

United State District Court Judge Reed O'Connor spent a fair amount of time in the decision discussing the [National Federation of Independent Business v. Sebelius](#) case where the Supreme Court focused on the individual mandate penalty and found it in the nature of a tax. However, with the TCJA doing away with the penalty, the questions became (1) whether the individual mandate itself was constitutional with a zero dollar penalty (or tax) and (2) whether the entire ACA itself was constitutional in the event that the individual mandate was unconstitutional (i.e. the severability issue).

The Court's two key findings in Texas v. United States (in the words of Judge O'Connor):

(1) "The Court today finds the Individual Mandate is no longer fairly readable as an exercise of Congress's Tax Power and continues to be unsustainable under Congress's Interstate Commerce Power. The Court

therefore finds the Individual Mandate, unmoored from a tax, is unconstitutional."

(2) "The Court finds the Individual Mandate 'is essential to' and inseverable from 'the other provisions of' the ACA."

Post-Decision Considerations

From a litigation perspective, the next step is an appeal to the Fifth Circuit (and the Supreme Court thereafter). We may be years from a resolution on this issue as the case makes its way through the legal system. Right now, the ACA continues to "live" as is.