THE AFFORDABLE CARE ACT SURVIVES SUPREME COURT CHALLENGE: WHAT HAPPENS NEXT?

Date: 18 June 2021

Public Policy and Law Alert

By: Karishma Shah Page, Tracy L. Lawless, Amy Carnevale, Victoria K. Hamscho

The Supreme Court issued its much-anticipated opinion in *California v. Texas* regarding the constitutionality of the Affordable Care Act (ACA), rejecting the third major challenge to the law. The Supreme Court held in a 7–2 opinion that the states and individuals that brought the lawsuit challenging the ACA's individual mandate do not have standing to challenge the law. The Supreme Court did not reach the merits of the challenge, but the decision ends the case. The Supreme Court's decision came as the Biden administration seeks to strengthen and build on the ACA. As part of his Build Back Better Agenda, President Biden has proposed expanding the ACA's premium tax credits for marketplace health insurance coverage and endorsed proposals to offer a public health insurance option and lower the Medicare eligibility age. This client alert provides an overview of these developments and what to expect next.

BACKGROUND

As described in our *Triage* podcast episode here, the Supreme Court heard oral arguments in *California v. Texas* last year regarding the constitutionality of the ACA. At issue was whether the ACA's individual mandate to maintain health insurance was beyond Congress' powers given that it no longer raises tax revenues and, if so, whether other parts of the law would need to be struck down along with the mandate. In 2012, the Supreme Court upheld the mandate as a constitutional exercise of Congress' taxing powers, reasoning, in part, that the mandate could be read as an option to maintain health insurance or pay a tax because the penalty for not complying produced revenue for the government and had other attributes of a tax.[1]

However, in 2017, Congress set the penalty for failing to comply at zero dollars after attempts to repeal and replace the ACA.[2] Shortly thereafter, Texas and over a dozen states, as well as two individuals, brought a lawsuit in federal district court arguing that the individual mandate is unconstitutional because it can no longer be justified under Congress' taxing power after the penalty for failing to comply with the mandate was set at zero dollars. More importantly, they argued that the individual mandate is essential and inseverable from the rest of the ACA, requiring the entire law to be struck down along with it.

In 2018, the U.S. District Court for the Northern District of Texas agreed with the plaintiffs, holding that the 2017 amendments to the law setting the amount for failing to comply to zero dollars rendered the individual mandate unconstitutional.[3] As described in our client alert here, in 2019, the U.S. Court of Appeals for the Fifth Circuit affirmed the district court's decision that the individual mandate is unconstitutional, but it vacated the district court's ruling that required striking down the rest of the ACA.[4] As a result, the Supreme Court was reviewing not only whether the individual mandate is unconstitutional, but also whether it is inseverable from other parts of the ACA, which would require them to also be struck down.

©2005-2026 K&L Gates LLP. All Rights Reserved.

SUPREME COURT'S DECISION

Justice Stephen Breyer delivered the opinion of the Supreme Court and was joined by all but two conservative justices, Samuel Alito and Neil Gorsuch. The Supreme Court held that the states and individuals that brought the lawsuit do not have standing to challenge the law.[5] In order to have standing, a plaintiff must allege “personal injury” that is “fairly traceable” to the alleged unlawful conduct.[6] The Supreme Court held that neither the state nor individual plaintiffs had shown that the injury they will suffer or have suffered is “fairly traceable” to the allegedly unlawful conduct of which they were complaining.[7]

The individuals pointed to harm in the form of past and future payments. However, with the penalty for failing to comply zeroed out, the Supreme Court noted that the Internal Revenue Service can no longer seek a penalty from those who fail to comply, holding that “because of this, there is no possible government action that is causally connected to the plaintiffs' injury—the costs of purchasing health insurance.”[8] The Supreme Court noted that their cases have consistently spoken of the need to assert an injury that is the result of a statute's actual or threatened enforcement, whether in the present or in the future, adding that unenforceable statutory language alone is not sufficient to establish standing.[9]

The states pointed to increased use and cost of state medical insurance programs and administrative and related compliance expenses. However, the Supreme Court held that they had failed to show how these were traceable to the challenged provision rather than other provisions of the ACA.[10] With respect to increased use and cost of state medical insurance programs, the Supreme Court held that the states had not shown that the mandate, without any prospect of penalty, will injure them by leading more individuals to enroll in these programs.[11] Similarly, with regard to increased administrative and related expenses, the Supreme Court held that they were the product of other provisions that were not being challenged.[12]

WHAT TO EXPECT NEXT

The Supreme Court's decision comes as the Biden administration seeks to protect and build on the ACA. In February, the administration sent a letter to the Supreme Court to communicate its position that the individual mandate is constitutional and that, even if it was found to be unconstitutional, it is severable from the rest of the ACA, which would allow the rest of the law to stand.[13] Acknowledging that the prior administration had taken a different position, the current administration stated that it had reconsidered the government's position and that the United States no longer adheres to the former position.[14]

President Biden said in a statement that the Supreme Court's decision “affirms that the Affordable Care Act is stronger than ever,” adding that he looks forward to “working with the Congress to build on this law so that the American people will continue to have access to quality and affordable health care.”[15] During his presidential campaign, and in the months since he took office, President Biden has vowed to protect and build on the ACA. The American Rescue Plan Act, President Biden's COVID-19 relief package enacted earlier this year, temporarily expanded the scope and eligibility of the ACA's tax credits for marketplace health care coverage.[16] As part of the American Families Plan, the human infrastructure component of his Build Back Better Agenda, President Biden is proposing to make permanent the expansion of the ACA tax credits under the American Rescue Plan Act.[17]

The American Families Plan also provided that President Biden has a:

©2005-2026 K&L Gates LLP. All Rights Reserved.

plan to build on the Affordable Care Act and lower prescription drug costs for everyone by letting Medicare negotiate prices, reducing health insurance premiums and deductibles for those who buy coverage on their own, creating a public option and the option for people to enroll in Medicare at age 60, and closing the Medicaid coverage gap.[18]

President Biden elaborated on his health policy priorities as part of his Fiscal Year 2022 Budget Request, which supports policies and programs to lower the cost of prescription drugs; improve Medicare, Medicaid, and the ACA; and create a public option that would be available through the ACA marketplace.[19]

Given the Supreme Court's decision, the immediate focus likely will continue to be on making permanent the expanded ACA tax credits and reversing course on policies advanced by the prior administration that are perceived to undermine the ACA. However, Congress is actively considering legislative proposals on drug pricing reform, the public option, and Medicare eligibility age and benefits. These proposals will continue to be debated as Congress and the Biden administration look to strengthen and build upon the ACA.

K&L Gates will continue to monitor these developments. As the health policy debate continues, stakeholders should stay engaged and active as policy proposals take shape. K&L Gates' public policy and law and health care and FDA practices are ready to help stakeholders engage in the health policy debate and develop government relations and regulatory strategies to position them in the years ahead.

FOOTNOTES

[1] *See* Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519, 563-564 (2012).

[2] *See* Tax Cuts and Jobs Act, Pub. L. No. 115-97, § 11081, 131 Stat. 2054, 2092 (2017).

[3] *See* Texas v. United States, 340 F. Supp. 3d 579 (N.D. Tex. 2018).

[4] *See* Texas v. United States, 945 F.3d 355 (5th Cir. 2019).

[5] *See* California v. Texas, 593 U.S. __ (2021).

[6] *See* DaimlerChrysler Corp. v. Cuno, 547 U. S. 332, 342 (2006).

[7] *See California*, slip op. at 5.

[8] *Id*.

[9] *Id*. at 2.

[10] *Id*. at 14.

[11] *Id*. at 15.

[12] *Id*. at 16.

[13] *See*, Dep't of Just., California v. Texas, No. 19-840 & Texas v. California, No. 19-1019, Letter to the Honorable Scott S. Harris, Clerk, Supreme Court of the United States (Feb. 10, 2021).

[14] *Id*.

[15] *See* White House, Statement by President Joe Biden on the U.S. Supreme Court Decision Upholding the

©2005-2026 K&L Gates LLP. All Rights Reserved.

Affordable Care Act (June 17, 2021).

[16] *See* H.R. 1319, American Rescue Plan Act of 2021 (117th Congress 2021–2022); Pub. L. No. 117-2.

[17] *See* White House, Fact Sheet: The American Families Plan, Statements and Releases (Apr. 28, 2021).

[18] *See* White House, Off. of Mgmt. & Budget, Budget of the U.S. Government: FY 2022 at 23–24 (2021).

[19] *Id*.

KEY CONTACTS



KARISHMA SHAH PAGE
PARTNER

WASHINGTON, DC
+1.202.778.9128
KARISHMA.PAGE@KLGATES.COM



TRACY L. LAWLESS
GOVERNMENT AFFAIRS COUNSELOR

PITTSBURGH, HARRISBURG
+1.412.355.8910
TRACY.LAWLESS@KLGATES.COM



AMY CARNEVALE
GOVERNMENT AFFAIRS ADVISOR

WASHINGTON, DC, BOSTON
+1.202.661.3736
AMY.CARNEVALE@KLGATES.COM



VICTORIA K. HAMSCHO
ASSOCIATE

WASHINGTON, DC
+1.202.778.9137
VICTORIA.HAMSCHO@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.