Texas v. United States: Texas Federal Court “Strikes Down” the ACA

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On Friday, December 14, 2018, a federal district court judge in Texas issued a widely anticipated opinion that struck down the entire Patient Protection and Affordable Care Act (“ACA”) as unconstitutional. The judge ruled in favor of the plaintiffs by determining that the “individual mandate”[1] is no longer a tax and is therefore an unconstitutional exercise of congressional authority. The judge also found that the individual mandate was inseverable from the rest of the ACA, which makes the entire ACA, not just the guaranteed issue and community rating provisions, unconstitutional.

Texas v. United States, the lawsuit to enjoin the enforcement of the ACA, was filed on February 26, 2018 by Republican state attorneys general and governors from 20 states. Although the Trump Administration declined to defend the case, attorneys general from 16 states and the District of Columbia stepped in to defend the ACA. The basis for the plaintiffs’ challenge to the constitutionality of the individual mandate is that the individual mandate “penalty” will be reduced to $0 starting in 2019 as part of the 2017 Tax Cuts and Jobs Act. The ACA had originally been upheld by the U.S. Supreme Court back in 2012 in National Federation of Independent Businesses (NFIB) v. Sebelius, on the grounds that the individual mandate was a legitimate exercise of the congressional taxing power. The plaintiffs argue that now that the penalty is $0 and no longer raises revenue for the government, the individual mandate is no longer a tax and therefore is unconstitutional. The plaintiffs further argue that the entirety of the ACA relies on the continued existence of the individual mandate, making the individual mandate inseverable from the rest of the ACA. Thus, the plaintiffs allege, the individual mandate being unconstitutional makes the entire ACA unconstitutional.

This ruling, if it stands, would almost certainly have significant consequences. The ruling potentially puts at risk the continued coverage of millions of Americans who are currently covered as a result of the ACA’s Medicaid expansion, private insurance subsidies, guaranteed issue, and similar provisions. However, the ruling will have no immediate effect on health coverage since the ACA will remain in place until the appeals have been exhausted, which could take years.

The ruling will almost certainly be appealed, first to the U.S. Court of Appeals for the Fifth Circuit, and then potentially to the U.S. Supreme Court. Since a split in circuit court decisions is one of the factors that the Supreme Court considers when deciding whether to grant review of a case, it is worth noting that, with the Texas v. United States decision, there is now the potential for such a split. In an Eleventh Circuit case, the Eleventh Circuit Court of Appeals found the individual mandate to be severable from the rest of the ACA. In turn, if the Fifth Circuit upholds the Texas v. United States ruling, there would be a circuit split to be considered by the Supreme Court.

While the future is unknowable, legal scholars and analysts across the political spectrum have derided the court’s findings and expressed skepticism that it would be upheld on appeal. Nicholas Bagley, a University of Michigan law professor, health law guru and contributor at The Incidental Economist declared “This is insanity in print, and it will not stand up on appeal.” Jonathan H. Adler, a conservative legal scholar whose work helped inspire prior unsuccessful efforts to challenge the ACA, remarked that the Texas federal court “mangl[e]d multiple legal doctrines” in reaching its decision and expressed doubt that the opinion would survive appeal. However, not everyone shares that opinion. President Trump, for his part, celebrated the ruling, tweeting that it “will lead to GREAT HealthCare results for Americans!” We note, however, that as of the time of this writing, there does not appear to be any politically viable replacement legislation should the district court’s ruling be upheld.
If the case reaches the Supreme Court, it will be particularly interesting to see how Chief Justice John Roberts votes, given that he was the deciding vote to uphold the ACA in *NFIB v. Sebelius* and decided in favor of the Obama Administration’s position in *King v. Burwell*. Justice Brett Kavanaugh could be another Justice to watch should the case make its way to the Supreme Court, as certain key Republican Senators indicated during the confirmation process that Justice Kavanaugh’s judicial past suggests he would be unlikely to strike down the law.

[1] Unless certain exemptions apply, the ACA imposes a penalty tax on individuals who do not have minimum essential coverage for themselves and their dependents. The ACA’s penalty tax is commonly called the “individual mandate.”

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