The Supreme Court ruled in 2012 that the Affordable Care Act (ACA) was constitutional pursuant to Congress’ power to levy taxes. Since that decision, Congress reduced the ACA’s individual mandate’s tax penalty to $0. With the individual mandate effectively repealed, a divided panel of the Fifth Circuit held all the provisions of ACA unconstitutional. Recently, the Supreme Court agreed to review the Fifth Circuit’s decision.

IN DEPTH

In 2012, the Supreme Court determined that the ACA’s mandate requiring individuals to maintain health insurance was constitutional. The Court’s decision focused on the penalty the ACA imposed on those who did not have insurance, which the Court found to be within Congress’ taxing power. Congressional Republicans then reduced the tax penalty to $0, launching new lawsuits attacking the constitutionality of the ACA. One such suit, brought by Republican state officials in Texas, reached the Fifth Circuit. In a 2-1 decision, the Fifth Circuit found the penalty-free mandate
unconstitutional, but did not decide the larger question of the constitutionality of the rest of the ACA without the individual mandate. The Fifth Circuit remanded the case to the district court to consider whether the mandate could be severed from the rest of the Act. Recently, the US Supreme Court agreed to review the Fifth Circuit’s decision, and arguments are likely to be set for this fall.

**McDermott Thoughts:**

The Fifth Circuit’s divided decision, and the Supreme Court’s agreeing to review that decision, further emphasizes healthcare as a hot topic in the upcoming elections. Questions of the ACA’s constitutionality have implications on individuals, businesses, the health-insurance industry and the economy generally.

In reviewing this case, the justices may decide the fate of every provision of the ACA. In addition to the mandate that most people carry health insurance, the ACA barred insurers from denying coverage—or charging more—to people with existing health conditions. It also allowed young adults to stay on their parents’ plans until they turned 26 and expanded the availability of Medicaid coverage for limited-income Americans. The ACA contains hundreds of other provisions, including ones that require contraception coverage and federally recommended vaccines to be covered at no cost, and that mandate nutritional labeling on restaurant menus and vending machines. Repeal of the ACA will have far-reaching ramifications.

Since the Supreme Court’s 2012 decision upholding the ACA, the Supreme Court has changed, although Chief Justice John Roberts famously broke the tie in 2012 when he voted to uphold the Act. We expect that the Supreme Court will be flooded with amicus briefs by interested organizations and industries, and it remains to be seen whether the Court will strike the ACA or, as it did before, find reasoning to uphold its constitutionality.

© 2020 McDermott Will & Emery