

Texas Federal Court Rules ACA Unconstitutional...But Please Sit Tight

Given the heavy media attention, you are probably aware that a Texas federal district court issued a [decision](#) on December 14, 2018, declaring the entire Affordable Care Act (ACA) unconstitutional. The final outcome will take a while, and the ACA remains in effect as this case moves through the appeals process. Employers (and their group health plans) should continue to comply with the ACA in the meantime.

**DO NOT HALT OR DELAY YOUR
2018 FORM 1094/1095 REPORTING.**

Texas v. Azar

In its 2012 *National Federation of Independent Businesses (NFIB) v. Sebelius* decision that preserved most of the ACA as originally written,¹ the U.S. Supreme Court held that Congress had the authority to implement the individual mandate and its penalty under the taxing power given to it by the U.S. Constitution. The individual mandate penalty was reduced to zero effective January 1, 2019, by the Tax Cut and Jobs Act of 2017 triggering the *Texas v. Azar* lawsuit over the continuing constitutionality of the ACA. This case was ultimately joined by thirty-six states and the District of Columbia giving it a distinctive red versus blue feel.

In his decision, Judge O'Connor determined that the elimination of the individual mandate penalty meant the individual mandate itself could no longer be viewed as a valid exercise of Congress' taxing power. Judge O'Connor also determined that the individual mandate was so essential to and inseparable from the ACA that this renders the entire ACA unconstitutional.

Predicting the Future

Judge O'Connor's ruling did not include an injunction, meaning the ACA is still in effect pending the appeals process. This fact was verbally repeated by the Trump administration. It is probably foolish to attempt to predict the future of *Texas v. Azar*, but if we had to:

1. **The 5th Circuit** – This is a coin flip, but the U.S. Court of Appeals for the 5th Circuit overrules the district court opinion. While the court agrees that the individual mandate is

¹ If you'll recall, the mandate for all states to participate in the Medicaid expansion was struck down.

unconstitutional, the 5th Circuit is unable to conclude that the individual mandate cannot be severed from the rest of the ACA. Whatever the outcome, the side that comes up short appeals to the U.S. Supreme Court.

2. **Congress** – If the 5th Circuit finds the ACA unconstitutional, lawmakers work in earnest to draft legislation preserving ACA protections that are popular with voters and to avoid massive disruption in the insurance industry. One of these bills will have enough bipartisan support to be enacted by Congress and signed into law by the President should the Supreme Court declare the ACA unconstitutional.
3. **The Supreme Court** – The U.S. Supreme Court agrees to hear the case and preserves the ACA again by holding that the individual mandate is severable from the remainder of the ACA and/or for other reasons. Remember, the appointments of Justices Gorsuch and Kavanaugh notwithstanding, the five justices who ruled in favor of the ACA in *NFIB v. Sebelius* in that 5-4 opinion are still present.

We'll keep you updated as this progresses.



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