



UBA
Compliance Brief

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The U.S. Supreme Court and the Future of the Affordable Care Act

Part 1

5-Minute Read

Amy Coney Barrett was sworn in as President Trump's third U.S. Supreme Court (Supreme Court) Justice on October 26, 2020, to fill the seat vacated by Justice Ruth Bader Ginsburg's death. During the contentious confirmation hearings, along political party lines, Justice Barrett was continuously questioned regarding her views on the constitutionality of the Patient Protection and Affordable Care Act (ACA) due to the upcoming Supreme Court's review of the ACA. Justice Barrett's vote could be a deciding factor on whether the ACA remains law.

On November 10, 2020, the Supreme Court will hear oral arguments in the case of *California v. Texas*, which is a consolidation of 20 cases filed by state attorneys general and governors. Over the next several months, until the Supreme Court issues its decision, we will explore the impact of a decision to overturn the ACA on the delivery of employer-sponsored health insurance coverage in the United States.

ACA Constitutionality Challenges

The three main issues in *California v. Texas* are: 1) whether Texas, the accompanying states, the federal government, and two individual plaintiffs have "standing" to sue, which means having a sufficient connection to and harm by the ACA as a precondition to challenging the law; 2) whether the elimination of the ACA's penalty for individuals who do not maintain minimum essential coverage (MEC), also known as the individual mandate, renders the individual mandate unconstitutional; and 3) if the individual mandate is unconstitutional, whether the remainder of the ACA's provisions are unable to be separated from the individual mandate, thereby making the entire ACA unconstitutional.



The Issue of Standing

Standing considers whether the parties challenging the constitutionality of the ACA can bring suit in federal court. In order to have standing to sue, the parties must establish that: 1) they have suffered an injury of a legally protected interest; 2) there is a causal connection between the injury and the conduct before the court; and 3) it is likely that a favorable decision by the court will remedy the injury. Therefore, the parties challenging the ACA must establish before the Supreme Court that they have suffered an injury that is fairly traceable to the ACA's individual mandate and that the Supreme Court's ruling that the individual mandate is unconstitutional would likely remedy the injury.

Unconstitutionality of the Individual Mandate

In the prior Supreme Court's decision in *NFIB v. Sebelius* in 2012, the Supreme Court upheld the individual mandate penalty based upon the Court's opinion that the penalty could be construed as a tax consistent with Congress' taxing power under the U.S. Constitution. Under the Tax Cuts and Jobs Act enacted in 2017, however, the individual mandate penalty was reduced to zero dollars beginning in 2019. Now that the penalty is zero dollars for failure to comply with the individual mandate, the issue before the Supreme Court is whether the individual mandate can still be upheld as constitutional under Congress' taxing power or under other Congressional powers such as under the necessary and proper or the commerce clauses under the U.S. Constitution.

Severability of the Individual Mandate from the ACA

In the event the Supreme Court rules the individual mandate to be unconstitutional, the issue becomes one of severability; whether only the individual mandate provision should be ruled to be unconstitutional or whether the entire ACA should also be ruled to be unconstitutional. Severability is a rule of construction which severs the defective or unconstitutional provisions of a law, while allowing the remaining provisions of the law to continue in effect. If the Supreme Court rules that the individual mandate is unconstitutional and inseverable from other portions of the ACA, the entirety of the ACA may be deemed unconstitutional.

Alternatively, the Supreme Court could conclude that the unconstitutionality of the individual mandate does not render the remaining portions of the ACA unconstitutional, thereby severing the unconstitutional individual mandate provisions. The federal government's position is that the individual mandate is inseverable from the guaranteed issue and community rating provisions, and that these provisions are inseverable from the remainder of the ACA. Accordingly, the federal government believes the ACA should be ruled unconstitutional in its entirety.

We will continue to provide helpful insights into the case until the Supreme Court rules on the fate of the ACA, which is expected by June 2021.

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