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Legal Sidebar

Supreme Court Dismisses Challenge to the Affordable Care Act in *California v. Texas*

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On June 17, 2021, the Supreme Court issued its decision in *California v. Texas*, one of the most closely watched cases of this term. At stake in *California* was the constitutionality of the Patient Protection and Affordable Care Act's (ACA's) requirement for individuals to maintain health insurance (known as the "individual mandate") and the continued validity of the remainder of the comprehensive Act. In a 7-2 decision, the Court dismissed the lawsuit on the grounds that the plaintiffs lacked standing to sue. The Court did not reach the merits of the challenge, thereby leaving the ACA intact. This Sidebar provides background on the *California* case, examines the Court's decision, and concludes with selected legal considerations for Congress.

Background

Enacted in 2010, one of the ACA's primary goals was to "increase the number and share of Americans who are insured." In addition to providing income-based subsidies to facilitate the purchase of health insurance and increasing the scope of Medicaid coverage, the ACA, as originally enacted, also imposed financial penalties on large employers that did not offer coverage to their employees and on certain individuals who did not purchase or enroll in such coverage. This latter provision, commonly referred to as the individual mandate, required certain individuals to maintain minimum levels of health insurance and imposed financial penalties enforced as a tax on those who failed to comply. In addition, the ACA included numerous other provisions that addressed a wide array of issues, ranging from health care workforce promotion to improving access to innovative medical therapies.

Referenced by some commentators as "the most challenged statute in American history," the ACA was passed after a contentious legislative process and became the subject of numerous legal challenges soon after its enactment. Many of the early constitutional challenges to the ACA were put to rest by the Supreme Court's 2012 decision in *National Federation of Independent Business v. Sebelius (NFIB)*, a major ruling on the individual mandate and other key provisions of the Act. In *NFIB*, Chief Justice John Roberts, writing for the Court's majority, concluded that the individual mandate could "reasonably be characterized" as a valid exercise of Congress's power to levy taxes, given that the penalty possessed "the essential feature of any tax: it produces at least some revenue for the Government." Because the

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individual mandate could be plausibly construed as a tax falling within Congress's authority under Article I to impose taxes, the Court upheld the individual mandate.

In 2017, Congress passed major tax reform legislation (2017 tax revision), which reduced the amount of the financial penalty for failing to comply with the individual mandate to $0. However, the mandate's directive for certain individuals to maintain minimum levels of health insurance remains in federal law. After enactment of the 2017 tax revision, several states (state plaintiffs) and individuals (individual plaintiffs) sued the U.S. Department of Health and Human Services and the Internal Revenue Service (IRS) (collectively, federal defendants) challenging the constitutionality of the *amended* individual mandate. The plaintiffs argued that the individual mandate could no longer be reasonably characterized as a tax because it could not raise revenue with a financial penalty of $0. The plaintiffs further argued that the individual mandate could not be severed from the rest of the ACA. Under the severability doctrine, courts generally examine whether the *constitutional* parts of a statute can remain valid after other provisions have been struck down as unconstitutional.

In *California*, after determining the individual plaintiffs had standing to bring the case, the district court considered the merits of their challenge and ruled that the individual mandate was unconstitutional and the rest of the Act's provisions were not severable. On appeal, the U.S. Court of Appeals for the Fifth Circuit affirmed the district court's determination as to the individual plaintiffs' standing to sue and the individual mandate's unconstitutionality. However, the Fifth Circuit concluded that the district court had not conducted an adequate severability analysis and thus remanded that issue to the district court to conduct "a more searching inquiry" as to which ACA provisions Congress intended to remain tethered to the individual mandate. Both the state and individual plaintiffs, as well certain states that joined the litigation as intervenors to defend the individual mandate and the ACA, sought Supreme Court review of the Fifth Circuit's decision. The Court granted their petitions for certiorari.

The Supreme Court's Decision

In its majority opinion—written by Justice Stephen Breyer and joined by Chief Justice Roberts and Justices Clarence Thomas, Elena Kagan, Sonia Sotomayor, Brett Kavanaugh, and Amy Coney Barrett—the Court did not rule on the case's merits. Instead, the Court addressed the threshold issue of Article III standing.

Before a court can render a decision on the issues before it, it must first determine whether it has jurisdiction to examine the case. As part of this threshold inquiry, plaintiffs proceeding in federal courts must demonstrate that they have standing under Article III of the Constitution to bring the legal action. In general, to establish Article III standing, plaintiffs must show that they have suffered (1) a concrete, particularized injury that is (2) "fairly traceable to the challenged conduct of the defendant" (the traceability requirement) and that is (3) "likely to be redressed by a favorable judicial decision" (the redressability requirement). These standing requirements help ensure that federal courts only resolve disputes in which the plaintiff has a "personal stake in the outcome of the controversy," and prevent the judicial process from being used to usurp the powers of the political branches.

The individual and state plaintiffs in *California* each alleged their own particular injuries as the basis for their standing to sue. The Supreme Court considered the injuries each group claimed, ultimately concluding that neither group could demonstrate Article III standing.

Individual Plaintiffs

The individual plaintiffs asserted that they suffered "pocketbook injuries" in the form of payments that they made and will make each month to buy health insurance and comply with the individual mandate's minimum coverage requirement. While acknowledging that the financial penalty under the amended individual mandate is now $0, the individual plaintiffs argued that they remain subject to the amended mandate's statutory directive, which commands them to buy health insurance that they otherwise do not want and to incur the associated financial costs.

The Court concluded that the individual plaintiffs' theory of harm fails to satisfy the traceability requirement for standing because the asserted financial injury is not fairly traceable to any allegedly unlawful conduct on the part of the federal defendants. The Court noted that with a financial penalty of zero, the individual mandate no longer had any means of enforcement. According to the Court, this means there is no possible governmental action causally linked to the plaintiffs' asserted injury (i.e., the cost of purchasing unwanted health insurance). Absent this causal connection to the defendants' conduct, the Court held that no Article III standing exists.

The lack of a means of enforcement, in the Court's view, also means that the individual plaintiffs' claimed injury could not satisfy the redressability requirements for Article III standing. Because there is no possibility of enforcement of the amended individual mandate, a court could not provide any relief to the plaintiffs even if it were to rule in their favor because "there is no one, and nothing, to enjoin." According to the Court, finding that the individual plaintiffs have standing to attack an unenforceable provision would effectively allow a federal court to issue "an advisory opinion without the possibility of any judicial relief." Article III, in the Court's view, guards against federal courts assuming that kind of jurisdiction.

State Plaintiffs

Unlike the individual plaintiffs, the state plaintiffs were not directly regulated by the individual mandate. Thus, the state plaintiffs sought to establish Article III standing in two ways based on certain financial injuries that they alleged that the individual mandate caused.

First, given that individuals can comply with the individual mandate by enrolling in certain government-sponsored health care programs, the state plaintiffs argued that the statutory directive to purchase health insurance led to increased enrollment in their state health care programs, such as Medicaid and the State Children's Health Insurance Program (CHIP). Because states are partially financially responsible for these programs, the state plaintiffs asserted that they incurred additional costs from serving the new enrollees.

The Court rejected this argument, holding that, as with the individual plaintiffs, the state plaintiffs failed to satisfy the traceability requirement for standing. Because the mandate is now unenforceable, the state plaintiffs' claimed injury could not be causally linked to any allegedly unlawful government action. Moreover, the Court held that the state plaintiffs failed to show that the amended individual mandate actually caused an increase in enrollment. The Court noted that these programs offer benefits—such as no- or low-cost medical services—unrelated to the individual mandate. Therefore, in the Court's view, individuals interested in those benefits would enroll regardless of the mandate's existence, particularly if the mandate carries no penalty. As to the evidence that the state plaintiffs provided regarding increased health care program enrollment, the Court observed that only a small fraction of the statements from state officials asserting that enrollment in state health programs had risen actually attributed the increase to the individual mandate, and those statements that suggested a causal connection *predated* the reduction of the penalty to $0. The Court held that this theory of standing would require "far stronger evidence" particularly in light of its "counterintuitive" and "highly attenuated" nature.

Second, the state plaintiffs argued that they continued to incur various costs in complying with IRS reporting requirements associated with individual mandate enforcement, as well as other ACA provisions that they assert are inextricably interwoven with the individual mandate. The Court also rejected these arguments. Because these costs stemmed from different ACA provisions that "operate independently" of the individual mandate, the Court determined that any costs associated with them are not "fairly traceable" to the allegedly unlawful individual mandate, and could not support Article III standing.

The Dissent

Justice Samuel Alito wrote a dissenting opinion, joined by Justice Neil Gorsuch, in which he concluded that the plaintiffs had standing to sue, the amended individual mandate exceeded Congress's enumerated powers, and the unconstitutional mandate could not be severed from the remainder of the ACA. The dissent is notable because it relies on a theory of standing that the majority largely eschewed as not properly before the Court. **Specifically,** the dissent argued that the state plaintiffs had standing to sue on the basis that (1) the individual mandate is outside the scope of Congress's authority; and (2) the financial obligations imposed on states by various other ACA provisions (e.g., Medicaid-related requirements and requirements for state governmental employees' health insurance plans) could not be severed from the unconstitutional mandate. Phrased differently, under this theory, which Justice Thomas characterized as "standing through inseverability" in his concurring opinion, once the state plaintiffs demonstrated that the individual mandate is unconstitutional and inseverable from other ACA provisions, then the injuries that they suffered from other ACA provisions are fairly traceable to the unconstitutional mandate. In the dissent's view, several Supreme Court opinions support this theory of standing. By contrast, the majority indicated that the dissent's "novel theory" of standing had not been properly raised, argued, or briefed by the parties before the Supreme Court, and therefore expressly declined to consider that theory, leaving open a potential future avenue of inquiry.

Legal Considerations for Congress

As discussed, the Court dismissed the *California* case, and it appears the decision will have no immediate effect on the ACA or its implementation. This decision also likely creates a significant precedential obstacle for future attempts to challenge the current individual mandate through litigation, particularly given the Court's holding that for purposes of Article III standing, plaintiffs suffer no injury from a toothless, unenforceable individual mandate. Some litigants, however, may explore whether addressing some of the evidentiary deficiencies identified by the Court, or pursuing the "standing through inseverability" theory that the Court declined to consider, might make a future challenge viable.

The Court did not expressly resolve the underlying constitutionality or severability arguments regarding the individual mandate and the ACA. As a result, if Congress chooses to amend the ACA or the individual mandate, Congress may also consider addressing the severability of such amendments from the ACA's other provisions.

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