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ACA Advisor

## What you need to know about the Affordable Care Act



### Status of Court Case Challenging ACA Constitutionality

Updated March 2020

On March 2, 2020, the U.S. Supreme Court (Supreme Court) [announced](#) that it will hear the court case challenging the ACA's constitutionality. Previously, the Supreme Court [declined](#) expedited review of the case.

On December 18, 2019, the U.S. Court of Appeals for the Fifth Circuit (Appeals Court) [held](#) that the Patient Protection and Affordable Care Act's (ACA's) individual mandate is unconstitutional.

The Appeals Court remanded the case to the District Court for additional analysis on whether the individual mandate can be severed from the ACA. The Appeals Court is also directing the District Court to consider the government's new arguments regarding the relief that should be provided to the plaintiff states and the two individual plaintiffs in the case.

To be clear, the Appeals Court decision and the Supreme Court's order to hear the case do not impact employers' group health plans at this time.

#### **Background**

In 2018, 20 states filed a [lawsuit](#) asking the District Court to strike down the ACA entirely. The lawsuit came after the U.S. Congress passed the Tax Cuts and Jobs Act of 2017 (TCJA) that reduced the individual mandate penalty to \$0, starting in 2019.

The plaintiffs argued that, without the penalty, the individual mandate is unconstitutional because it can no longer be considered a tax. The plaintiffs argued that the individual mandate is not severable from the rest of the ACA so if the individual mandate is unconstitutional, then the rest of the ACA is unconstitutional.

The U.S. Department of Justice (DOJ) responded that the individual mandate is unconstitutional without the penalty. The DOJ also argued that because the guaranteed issue and community rating provisions are inseparable from the individual mandate, the guaranteed issue and community rating provisions are also unconstitutional.



The individual mandate requires most people to have a certain level of health insurance coverage or pay a penalty (for 2018, the penalty was \$695 per adult and \$347.50 per child, or 2.5 percent of household income, whichever was greater). Guaranteed issue prohibits insurers from basing coverage eligibility on an individual's medical history and from excluding preexisting conditions on new plans. In the individual and small group markets, adjusted community rating means that premiums cannot be based on medical history and can only vary based on age, tobacco use, and geographic area.

Although the DOJ asked the District Court to declare the individual mandate, guaranteed issue, and community rating provisions to be unconstitutional as of January 1, 2019, the District Court went further than the DOJ's request.

On December 14, 2018, the District Court issued a [declaratory order](#) that the individual mandate is unconstitutional. The District Court found that the individual mandate is unconstitutional without the penalty and that the individual mandate is inseverable from the rest of the ACA. Because of its findings, the District Court declared that the individual mandate and the entire ACA – including its guaranteed issue and community rating provisions – are unconstitutional.

The District Court did not grant the plaintiffs' request for a nationwide injunction to prohibit the ACA's continued implementation and enforcement. The District Court's declaratory judgment simply defined the parties' legal relationship and rights under the case (for example, that the individual mandate is unconstitutional as applied to the individual plaintiffs).

On December 30, 2018, the District Court issued two orders. The first [order](#) grants a stay of its December 14 order. This means that the District Court's order regarding the ACA's unconstitutionality will not take effect while it is being appealed. The second [order](#) enters the December 14 order as a final judgment so the parties may immediately appeal the order.

On December 31, 2018, the District Court issued an order that stays the remainder of the case. This means that the District Court will not be proceeding with the remaining claims in the case while its December 14 order is being appealed. After the appeal process is complete, the parties are to alert the District Court and submit additional court documents if they want to continue with any remaining claims in the case.

### **Current Status of ACA Case**

On December 18, 2019, the Appeals Court held that the ACA's individual mandate is unconstitutional. The Appeals Court explained that the ACA's individual mandate was based on Congress' taxing power. According to the Appeals Court, because the individual mandate can no longer be construed as a tax after the TCJA reduced the individual mandate penalty to \$0, there is no other constitutional provision that allows Congress to impose the individual mandate.

The Appeals Court sent the case back to the District Court for additional analysis:

- to explain precisely which parts of post-2017 ACA are inseverable from the individual mandate and
- to consider whether to prohibit enforcement of only those ACA provisions that injure the plaintiffs or to declare the ACA unconstitutional only as to the plaintiff states and the two individual plaintiffs.



Although the Appeals Court decision declares the individual mandate to be unconstitutional, its majority decision did not address whether the entire ACA is unconstitutional.

On January 3, 2020, the defendant [state attorneys general](#) and the [U.S. House of Representatives](#) asked the Supreme Court to hear an appeal of the Appeals Court decision on whether the plaintiffs have a legal right to sue, whether the individual mandate is now unconstitutional, and if the individual mandate is unconstitutional, can it be separated from the rest of the ACA. The defendants also requested an [expedited](#) briefing schedule for the case to be heard in 2020. The plaintiffs ([18 state attorneys general](#) and [two individual plaintiffs](#)) and the [federal government](#) filed briefs opposing expedited review and requesting the Supreme Court to affirm the District Court's ruling. On January 21, 2020, the Supreme Court denied expedited review of the case. However, On March 2, 2020, the Supreme Court announced that it will hear the case.

The Appeals Court decision and the Supreme Court's order do not impact employers' group health plans at this time. However, employers should stay informed for the final decision in this case.

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