



## Appellate Court Invalidates ACA's Individual Mandate?

Issue Date: December 2019

In a 2-1 vote, a three-judge panel in the U.S. Court of Appeals for the 5th Circuit ("appellate court") has upheld the ruling by a U.S. District Court judge in Texas v. the United States that the individual mandate of the Affordable Care Act (ACA) is unconstitutional. However, the appellate court did not rule on whether this means that the entire ACA is unconstitutional. Instead, it sent the case back to the Texas District Court for further analysis.

### Background

The U.S. Supreme Court ruled in 2012 (*National Federation of Independent Businesses (NFIB) v. Sebelius*) that Congress had the right to impose the individual mandate under its power to tax. Congress subsequently reduced the individual mandate penalty/tax to \$0.00 beginning in 2019, but did not actually repeal that section of the law. In 2017, the *Texas v. the United States* case was filed by Republican Attorneys General from 20 states, who argued that the mandate could no longer be considered a tax and was therefore unconstitutional. Furthermore, the plaintiffs argued that the individual mandate was not severable from the rest of the ACA and that therefore the entire ACA should be invalidated. Democratic Attorneys General from 16 states and the District of Columbia intervened in 2018 as defendants of the law.

In December 2018, a U.S. District Court Judge in Texas ("district court") agreed with the plaintiffs, ruling that the individual mandate was unconstitutional and was not severable from the rest of the ACA. In January 2019, the defendants, later joined by additional states and the U.S. House of Representatives, appealed the district court's decision to the Fifth Circuit.

The appellate court considered three main issues:

1. Whether the parties involved had standing (i.e., had suffered some sort of injury) to invoke the court's jurisdiction;
2. Whether the ACA's individual mandate, as amended in 2017, is unconstitutional; and
3. If the mandate is unconstitutional, whether it can be severed from the rest of the ACA.



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Regarding the first issue, the appellate court ultimately found that all parties had standing with respect to the case. Here, we break down the second two issues a bit more:

### The Constitutionality of the Individual Mandate

The appellate court ruled that the individual mandate, in its current form with a \$0.00 penalty, is unconstitutional because it can no longer be considered a tax. Since Congress had already reduced the penalty to \$0.00, this part of the appellate court's decision has no practical effect.

### Severability of the Individual Mandate from Remainder of ACA

The appellate court took a very different approach to the more consequential issue of the district court's ruling regarding severability and the impact on the rest of the ACA. The district court judge argued that because the 2010 Congress found the individual mandate "essential" to its plan to reshape health insurance markets, the mandate is therefore inseparable from the rest of the ACA. If upheld, this would have meant that if the individual mandate is unconstitutional, the entire law must also fall.

However, the appellate court ruled that the district court opinion does not adequately explain how other provisions of the ACA "rise or fall on the constitutionality of the individual mandate." Specifically, it noted that the district court's opinion does not give enough consideration to the intent of the 2017 Congress in zeroing out the mandate; nor does it explain how this was evidence of an understanding that no part of the ACA could survive without the mandate.

The appellate court remanded the case back to the district court to more carefully consider whether any and which ACA provisions (if not all) are severable from the individual mandate. In what can only be read as a public criticism of the district court's opinion, the appellate court stated that "[I]t is no small thing for unelected, life-tenured judges to declare duly enacted legislation passed by the elected representatives of the American people unconstitutional. The rule of law demands a careful, precise explanation of whether the provisions of the ACA are affected by the unconstitutionality of the individual mandate as it exists today."

## Summary

This appellate court ruling does not have any immediate effect on the law. Finding that the individual mandate is unconstitutional is a moot point as there is currently no penalty tied



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to the mandate. However, regardless of what the district court ultimately concludes on its review, the case is virtually guaranteed to be appealed back to the appellate court, and ultimately to the Supreme Court. It is possible that parties to the lawsuit may immediately appeal directly to the Supreme Court in lieu of waiting for the district court to make its determination, but the Supreme Court may not even agree to hear the case at this point. In any case, it is very unlikely that this case will be resolved before next year's election.

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