

ACA COMPLIANCE BULLETIN



Supreme Court Declines to Expedite ACA Case

On Jan. 21, 2020, the United States Supreme Court [denied](#) motions to expedite consideration of *Texas v. Azar*, the lawsuit challenging the constitutionality of the Affordable Care Act's (ACA) individual mandate.

This decision follows a federal appeals court [ruling](#) that the individual mandate is unconstitutional due to the elimination of the individual mandate penalty in 2019. The appeals court remanded the case to the lower court to determine whether the rest of the ACA can remain in place without the individual mandate. However, the U.S. House of Representatives and several states asked the Supreme Court to take up the case before the lower court issued a ruling.

This lawsuit was filed in 2018 by 18 states as a result of the 2017 [tax reform law](#) that eliminates the individual mandate penalty. In 2012, the U.S. Supreme Court upheld the ACA on the basis that the individual mandate is a valid tax. With the penalty's elimination, the appeals court in this case determined that the individual mandate is no longer valid under the U.S. Constitution.

Action Steps

Because the Supreme Court declined to expedite the case, the lower court is now tasked with determining whether the rest of the ACA may be severed from the individual mandate provision.

The lower court's ruling is expected to ultimately be appealed to the Supreme Court. As a result, a final decision is not expected to be made until that time. In addition, it is likely that any ruling eliminating the ACA will be stayed pending appeal.

Highlights

- The Supreme Court declined to expedite consideration of a lawsuit challenging the validity of the individual mandate.
- A federal appeals court ruled that the individual mandate is unconstitutional due to the elimination of the penalty.
- The lower court will determine whether the rest of the ACA may remain in place without the individual mandate.

Important Dates

January 21, 2020

The Supreme Court denied motions to expedite *Texas v. Azar*

December 18, 2019

An appeals court invalidated the individual mandate due to the elimination of the penalty



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Background

The ACA imposed an “individual mandate” beginning in 2014, which required most individuals to obtain acceptable health insurance coverage for themselves and their family members or pay a penalty. In 2012, the U.S. Supreme Court upheld the constitutionality of the ACA in its entirety, including the individual mandate provision, as a valid use of Congress’s power to impose taxes. However, the 2017 Tax Cuts and Jobs Act reduced the ACA’s individual mandate penalty to zero, effective beginning in 2019.

Texas v. Azar

In its 2012 ruling, the Supreme Court indicated (and both parties agreed) that the individual mandate is an essential element of the ACA, and that the remainder of the law could not stand without it. Following the 2017 tax reform law’s enactment, 18 Republican-controlled states filed a lawsuit arguing that the elimination of the individual mandate penalty rendered the remainder of the ACA unconstitutional.

In December 2018, a federal district court judge agreed, ruling that the individual mandate could no longer be considered a valid exercise of Congressional tax power. Because the court also found the individual mandate to be an essential element of the ACA, it determined that the entire law was invalid without it. However, the ruling was appealed, and the White House announced that the ACA would remain in place until a final decision is made.

The U.S. Court of Appeals for the Fifth Circuit ultimately agreed with the lower court’s ruling, determining that the individual mandate is no longer constitutional without the penalty attached, but did not rule as to whether the individual mandate may be severed from the remainder of the ACA. Instead, it sent the case back for the lower court to make this determination. The appeals court instructed the lower court to determine:

- Which ACA provisions are actually inseverable from the individual mandate; and
- Whether the court’s ruling should apply only in the states that sued in this case.

Supreme Court’s Decision

Before the lower court could issue a ruling, the House and several states filed motions with the Supreme Court requesting that it take up the case earlier than under normal procedures. The motions argued that the question of the individual mandate’s validity is too important to wait for the lower court’s ruling. However, the Supreme Court disagreed, finding that there is no emergency that would justify expediting the case, and denied the motions.

Despite this denial, the lawsuit is expected to ultimately be appealed to the Supreme Court, which means that a final decision will not be made until that time. Until then, it is likely that any ruling eliminating the ACA in its entirety will be stayed pending appeal. In December 2018, the Department of Health and Human Services confirmed that it will administer and enforce all aspects of the ACA.

While these appeals are pending, all existing ACA provisions will continue to be applicable and enforced. These rulings do not impact the 2020 Exchange enrollment, the ACA’s employer shared responsibility (pay or play) penalties and related reporting requirements, or any other applicable ACA requirement.