



Supreme Court Rejects A Challenge To The Affordable Care Act's Individual Mandate Because Plaintiffs Have No Standing

***Texas v. California*, No. 19-1019,
consolidated with *California v. Texas*,
No. 19-840**

Decided June 17, 2021

Today, the Supreme Court rejected another challenge to the Affordable Care Act's individual mandate because the plaintiffs lacked standing to challenge it.

Background:

In 2012, the Supreme Court rejected constitutional challenges under the Commerce Clause to the requirement in the Affordable Care Act ("ACA") that individuals must maintain health insurance coverage. The Court reasoned that the ACA was not a command to buy health insurance—which Congress would lack the power to enact—but merely a tax for not doing so. In December 2017, Congress amended the ACA to eliminate the penalty for not buying health insurance, but Congress did not eliminate the ACA's individual mandate to maintain health insurance coverage.

Two individuals and several states, including Texas, then challenged the individual mandate as unconstitutional, arguing that because it no longer carried a penalty, it no longer qualified as a tax. They also argued that because the individual mandate is essential to the ACA, the entire statute must be struck down. The Trump Administration refused to defend the ACA's constitutionality. Several states, including California, intervened to defend the statute and challenge the plaintiffs' Article III standing. The Fifth Circuit held that the plaintiffs possessed standing, held the individual mandate is unconstitutional, and directed the district court to consider an appropriate remedy on remand.

"Neither the individual nor the state plaintiffs have shown that the injury they will suffer or have suffered is 'fairly traceable' to the 'allegedly unlawful conduct' of which they complain."

Justice Breyer,
writing for the Court

Gibson Dunn submitted an *amicus* brief on behalf of First Focus on Children and The Children's Partnership in support of petitioner:

The State of California

Gibson Dunn Named
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Issue:

(1) Whether the plaintiffs have Article III standing to challenge the constitutionality of the ACA's

individual mandate; (2) whether the individual mandate is unconstitutional because it no longer qualifies as a tax, and (3) if the individual mandate is unconstitutional, whether the entire ACA must be struck down.

Court's Holding:

The individual plaintiffs do not have Article III standing to challenge the ACA's individual mandate. Even if payments necessary to hold the insurance coverage required by the ACA were an injury, that injury is not traceable to the government, because without any penalty for noncompliance the statute is unenforceable. The states do not have Article III standing either, because they have not shown their injuries are fairly traceable to *unlawful* government conduct.

What It Means:

- The Court's ruling leaves unresolved the merit questions presented in the case: whether the individual mandate is constitutional or whether it is severable from the rest of the ACA. The Court will likely be asked to revisit these legal issues in the future.
- This decision is the latest of several high-profile cases this Term in which the Court has declined to reach the merits because of a lack of Article III standing. The Court similarly found a lack of Article III standing in *Trump v. New York* and *Carney v. Adams*.
- Two dissenting Justices, in an opinion written by Justice Alito and joined by Justice Gorsuch, would have held that (1) the state plaintiffs possess standing in light of the increased regulatory and financial burdens from complying with the ACA, and they did not forfeit these claims, and (2) the individual mandate is unconstitutional and not severable from the rest of the ACA.

The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:



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