Supreme Court Rejects Third Challenge To Affordable Care Act

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On June 17, the Supreme Court rejected another court challenge to the Affordable Care Act ("ACA"), holding that the plaintiffs lacked standing to challenge its minimum essential coverage provisions. For the third time, the Supreme Court upheld the ACA. More than a decade after the ACA was enacted, the long and winding road of ACA challenges may be over and healthcare industry participants may finally be able to rely on the ACA as settled law moving forward.

In the Affordable Care Act's first trip to the Supreme Court in 2012, the Court upheld the ACA's individual mandate that most Americans purchase health insurance or pay a monetary penalty as a proper use of Congress' taxing power. But, in 2017, Congress zeroed out the penalty. In the most recent challenge, 18 states and two individuals argued that the mandate was now unconstitutional and, because it was not severable from the rest of the ACA, the entire Act must be struck down.

In a 7-2 opinion authored by Justice Breyer, the Supreme Court rejected their lawsuits on the threshold question of standing, concluding that none of the plaintiffs suffered an injury fairly traceable to the mandate due to the zeroed-out penalty and the lack of any showing that these states were injured by complying with the ACA. The Court thus did not reach the questions of the ACA's constitutionality and the severability of the mandate provision from the rest of the ACA. In dissent, Justice Alito would have found standing, proceeded to the merits, found the mandate unconstitutional, and hollowed out the entire ACA by ordering that none of the various other provisions could be enforced.

Each time since the Supreme Court first upheld the ACA, one additional justice has joined the majority. The first challenge to the ACA narrowly failed after the 5 to 4 decision penned by Chief Justice Roberts concluded that the mandate was a permissible use of Congress' taxing power. The second challenge was rejected 6 to 3, again with the Chief Justice penning the Court's decision that the ACA's subsidies for middle- and low-income Americans to purchase the mandated health insurance were available in every state, even those that set up their own individual marketplaces instead of using the federal marketplace. Now, this third challenge has been rejected 7 to 2, with three out of six Republican-appointed justices joining Justice Breyer's majority opinion and a fourth (Justice Thomas) concurring in the result.

It appears that more than a decade after it was passed, the ACA is settled law. Some congressional members now appear to be backing down from court challenges and pivoting to legislative modifications. Moving forward, health care industry participants should be able to generally rely on all the ACA's remaining provisions as a major part of the healthcare industry. While the Court's ruling makes it more difficult for future court challengers of the ACA to have their core claims resolved on the merits (unless Congress increases the current $0 penalty), it will be important to keep an eye on further developments, as Justice Breyer's majority opinion acknowledges that states may be able to show injuries related to other provisions of the ACA, even though the plaintiffs did not challenge those other provisions in these cases.

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