

Supreme Court Agrees to Hear Additional Challenge to the Affordable Care Act

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On Wednesday, August 19, the United States Supreme Court (the Court) agreed to hear a challenge to the constitutionality of the portion of the Affordable Care Act (ACA) that requires individuals to obtain qualifying health insurance (the Individual Mandate). The Court had previously ruled that the Individual Mandate was a constitutional exercise of the federal government's authority under the taxing power of the U.S. Constitution; however, it also ruled that the ACA would not be sustainable as an exercise of the broader power to regulate interstate commerce.

This new challenge arises because the government has, essentially, eliminated the "tax" portion of the Individual Mandate. In the Tax Cuts and Jobs Act, passed in 2017, Congress reduced the "shared responsibility payment" for those who fail to obtain qualifying health insurance to zero. The basis of the current challenge maintains that without this revenue-raising component, the Individual Mandate is not constitutionally justifiable under the taxing power, and therefore, is an overreach of the federal government's authority.

Additionally, the Court has agreed to hear a related challenge regarding the severability of the Individual Mandate. Specifically, the Court has agreed to decide whether invalidating the Individual Mandate renders the *entire* ACA unenforceable or just that provision. If the ACA were ruled unenforceable as a whole, this could have seismic effects throughout the healthcare and insurance industries. For example, there are a number of provisions of the ACA that are politically uncontroversial, but which depend upon other components of the entire law to remain economically feasible. One example is the elimination of the pre-existing condition exclusion limitation, which could render health insurance unaffordable to those with pre-existing conditions without the community rating requirements of the ACA.

Oral argument in the case is not scheduled to take place until November 20, 2020. We expect the pending case to be a major topic of discussion in the run-up to the national presidential election.

If you have questions or would like further information, please contact L. Stephen Bowers (bowers@whiteandwilliams.com; 215.864.6247).

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