

Fifth Circuit Rules ACA Mandate Unconstitutional but Punts on Severability Issue

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On December 18, 2019, in a divided ruling, the U.S. Fifth Circuit Court of Appeals held that the Affordable Care Act's (ACA's) mandate that an individual purchase health insurance or pay a penalty was unconstitutional. The court of appeals remanded the rest of the case back to the federal district court with instructions to specify what parts, if any, of the ACA could be severed from the mandate and upheld on their own.

In the Tax Cuts and Jobs Act of 2017, Congress reduced the penalty for not purchasing health insurance to zero. Several state attorneys general filed suit, claiming that the lack of any tax penalty for not purchasing health insurance rendered the mandate and the rest of the ACA unconstitutional, since the Supreme Court in 2012 had upheld the mandate as a tax. The district court agreed and struck down major portions of the ACA, reasoning that the unconstitutional mandate could not be severed from the rest of the ACA. In sending the ACA back to the district court, the Fifth Circuit instructed the court to amplify its reasoning and explain what parts, if any, of the ACA could survive without the mandate.

The decision in *Texas v. U.S.* is likely to push a resolution of the case past the date of the U.S. presidential election in November 2020.

Resources

The text of the Fifth Circuit Court opinion is available [here](#).

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