U.S. SUPREME COURT WILL HEAR ACA CHALLENGE

On March 2, 2020, the Supreme Court agreed to hear a case directly challenging the constitutionality of the Affordable Care Act ("ACA"),[1] but it is likely that the fate of ACA will not be decided before the 2020 presidential election.

In *Texas v. United States*[2], multiple plaintiffs challenged the ACA in the District Court for the Northern District of Texas. Judge O'Connor ruled that the individual mandate in the ACA was unconstitutional because the penalty for not purchasing health insurance was reduced to zero dollars, thus no longer a tax pursuant to Congress's taxing power. Judge O'Connor then declared the entire ACA invalid because the individual mandate was an essential feature of the landmark legislation, without which the remainder of the ACA must fall.

The Department of Justice, Democratic states and the House of Representatives appealed Judge O'Connor's ruling to the Fifth Circuit,[3] which affirmed that the individual mandate was unconstitutional and sent the case back to Judge O'Connor to determine if any provisions of the ACA could be severed from the individual mandate. The Democratic states and House of Representatives filed a petition for certiorari with the United States Supreme Court.[4]

PETITION FOR CERTIORARI GRANTED

On March 2, 2020, the Supreme Court granted the appellants' petition for certiorari, meaning the Court will determine the ultimate fate of the ACA. The Court's decision is significant insofar as it could have denied certiorari until the Texas District Court had a chance to reconsider the constitutionality of the ACA pursuant to the Fifth Circuit's remand back to the District Court for a more thorough analysis. However, the Supreme Court may have elected to grant the petition because the outcome of the case will affect so many Americans and the matter at stake is too important to permit it to languish in the Texas District Court. The Court will also allow 33 state hospital associations to file a brief supporting the position that the rest of the ACA should be preserved, even if the individual mandate is unconstitutional. The Court is expected to hear arguments in its fall term, which begins in October 2020 and ends in June 2021. Given the timing, it is very unlikely the case will be decided before the presidential election in November 2020.

ANALYSIS

Many stakeholders are pleased that the Supreme Court has agreed to hear the ACA challenge case. Nancy Pelosi welcomed the court's decision stating, "[the] sooner the GOP's dangerous anti-healthcare lawsuit is ended, the better."[5] Currently, the remaining Democratic presidential candidates maintain their support for the ACA, and the issue will continue to be important during election season. Sen. Ron Wyden succinctly stated, "pre-existing condition protections are on the chopping block this fall."[6] Although the outcome of this case is uncertain, some commentators believe the Supreme Court is skeptical of the sweeping argument that the entire ACA is unconstitutional.[7] If this is true, at least part of the ACA may be preserved. On the other hand, the impact of a Supreme Court decision striking down, or significantly limiting the ACA, could spark a strong response from the millions of individuals who would lose insurance coverage and/or providers whose uninsured populations would undoubtedly rise.

Stay tuned for further updates.

If you have any questions or would like any additional information about this topic, please contact:

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[references]

[1] *California, et al., Petitioners v. Texas, et al.* No. 19-10011 (March 02, 2020).

[2] Texas, et al. v. United States, et al., No. 4:18-cv-00167 (U.S. Dist., N.D. Tex. Dec. 14, 2018).

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[3] State of Texas et al. v. United States, et al., No. 19-10011 (5th Cir. Dec. 18, 2019 as revised Jan. 9, 2020)

[4] The expedited request for review was denied, see {insert link to: https://hallrender.com/2020/01/27/fate-of-obamacare-remains-uncertain-during-election-season/ and to: https://hallrender.com/2020/01/10/texas-v-united-states-house-of-representatives-and-defender-states-petition-supreme-court-for-review-will-obamacare-fall/}, but today's announcement suggests that the Court will not shy away from the issue.

[5] Cristina Cabrera, *SCOTUS To Take Up Key Obamacare Case As GOP Works to Undermine Law*, Talking Points Memo, Mar. 2, 2020 @ https://talkingpointsmemo.com/news/scotus-supreme-court-aca-obamare-individual-mandate.

[6] Adam Liptak and Abby Goodnough, *Supreme Court to Hear Obamacare Appeal*, New York Times, Mar. 2, 2020 @ https://www.nytimes.com/2020/03/02/us/supreme-court-obamacare-appeal.html (last visited on Mar. 2, 2020).

[7] Mark Sherman, *Supreme Court will again decide fate of Obamacare—but decision is not likely until after 2020 election*, Associated Press, Mar. 2, 2020 @ https://www.capitalgazette.com/news/nation-world/ct-nw-supreme-court-obamacare-20200302-nfq7nzhuhjd6jdqjhmnyqugko4-story.html.

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