

FATE OF OBAMACARE REMAINS UNCERTAIN DURING ELECTION SEASON

On January 21, 2020, the Supreme Court denied a motion to expedite consideration of a petition for certiorari in a case directly challenging the constitutionality of the Affordable Care Act ("ACA").^[1] Given the Supreme Court's decision, it is likely that the fate of Obamacare will not be decided until sometime after 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. On December 14, 2018, Judge O'Connor ruled that the individual mandate requiring individuals to purchase health insurance under the ACA was unconstitutional because the penalty for non-compliance was reduced to zero dollars. A zero dollar penalty could not be considered a "tax" pursuant to Congress's taxing power. Judge O'Connor deemed the individual mandate to be a vital centerpiece of the landmark legislation and declared the entire ACA invalid because the remaining portions of the legislation could not be severed from the individual mandate.

The Department of Justice, certain Democratic states, and the House of Representatives appealed Judge O'Connor's ruling to the Fifth Circuit.^[3] In an opinion issued on December 18, 2019, the Fifth Circuit affirmed that the individual mandate was unconstitutional but declined to strike the down entire ACA. The Fifth Circuit remanded the case back to the District Court for further consideration as to whether any of the provisions of the ACA could be severed from the individual mandate and preserved.

To avoid putting the fate of the ACA back in the hands of Judge O'Connor, the Democratic states and House of Representatives filed a petition for certiorari with the United States Supreme Court and requested expedited review. Without comment, the Supreme Court announced that the request for expedited review was denied. Presumably, the Court will consider the request for cert at a later date. Click [here](#) for a detailed discussion of *Texas v. United States*.

ANALYSIS

The Supreme Court's denial of expedited review could be viewed as a political win for the Trump administration in a presidential election year.^[4] A Supreme Court decision striking down, or significantly eviscerating the ACA, could cause a vitriolic backlash from the millions of individuals who would lose insurance coverage and/or providers whose uninsured populations would undoubtedly rise. It is unlikely that Judge O'Connor will issue a new ruling before November 2020.

While a Supreme Court decision may not play a role in the presidential election, the ACA is likely to remain an important issue during election season. On January 21, 2020, Senator Joe Biden tweeted his reaction to the Supreme Court's announcement: "*Coverage for millions of Americans and protections for pre-existing conditions are on the ballot. We have to protect the progress we've made and show up to the polls to defend the Affordable Care Act.*"^[5] Senator Biden's response suggests that the ACA is a big issue for voters that will be addressed at the polls.

Although the outcome of this case remains uncertain, many commentators believe the Supreme Court would likely uphold the ACA based on its current composition.^[6] If the case drags on and President Trump is reelected, some worry that another conservative Supreme Court Justice would place the ACA in greater jeopardy.^[7]

Stay tuned for further updates.

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

- Adele Merenstein at amerenstein@hallrender.com or (317) 752-4427;
- Dwayne Barrs at dbarrs@hallrender.com or (214) 615-2008; or
- Your regular Hall Render attorney.

[references]

^[1] *California, et al., Petitioners v. Texas, et al.* No. 19-10011

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

[3] Texas, et al. v. United States, et al., No. 19-10011 (5th Cir. Dec. 18, 2019 as revised Dec. 20, 2019)

[4] The U.S. Department of Justice specifically asked the Supreme Court not to review the case until after the case is reconsidered in the District Court for the Northern District of Texas. Katie Keith, *Trump Administration, Plaintiffs Urge Against Expedited Review in Texas*, Health Affairs Blog, Jan. 11, 2020 @ <https://www.healthaffairs.org/doi/10.1377/hblog20200111.835640/full/> (last visited on Jan. 22, 2020).

[5] Susannah Luthi, *Supreme Court Won't Fast-track Obamacare Case*, Politico, Jan. 21, 2020 @ <https://www.politico.com/news/2020/01/21/supreme-court-wont-review-obamacare-lawsuit-before-the-election-101356> (last visited on Jan. 22, 2020).

[6] Peter Sullivan, *Democrats' Worries Grow as ObamaCare Court Fight Drags On*, The Hill, Jan. 5, 2020 @ <https://thehill.com/policy/healthcare/476733-dem-worries-grow-as-obamacare-court-fight-drags-on> (last visited on Jan. 23, 2020).

[7] Id.

[/references]