

May 22, 2020: Judicial Advocacy Update

Doctors to high court: Now is worst time to undo ACA coverage gains

Striking down the Affordable Care Act (ACA) and its provisions that extend health coverage to millions would be a self-inflicted wound that could take decades to heal.

The AMA and 20 leading physician organizations tell the U.S. Supreme Court that Congress never intended to invalidate the entire Affordable Care Act (ACA) when it cut the tax penalty to \$0 for failure to comply with the law's individual mandate to purchase health insurance. That argument is stated in an amicus brief (PDF) filed in the case *California v. Texas*. The plaintiffs in the case claim that congressional action, in the 2017 Tax Cuts and Jobs Act, to get rid of the ACA's individual tax means the entire ACA should be eliminated also. The AMA and the other physician organizations call on the court to declare the individual mandate constitutional, "as a tax or otherwise." But, even if it doesn't, they are urging the court "to give proper weight" to the fact that Congress chose to leave the rest of the ACA intact when it passed the 2017 legislation. They also warn against taking people's health insurance away during the COVID-19 crisis. "Plaintiffs have attempted to reduce this law, which touches every corner of the health care delivery system, to one issue," the brief states. "They purport to tie the fate of the entire ACA to the so-called 'individual mandate.'" In so doing, the physicians argue that Texas, the Trump Administration and other plaintiff states are asking the court to do what Congress has chosen not to: "invalidate the entire ACA." Multiple precedents are cited noting that the individual mandate can indeed be severed from the rest of the ACA, allowing the law to remain in effect if the one provision is eliminated. Along with the legal arguments, the brief also explains why it would be unwise to strike down a law currently "serving as the backbone of the safety net for the millions of Americans facing sudden unemployment" due to the global COVID-19 pandemic. The Kaiser Family Foundation has estimated that job losses following COVID-19 will leave nearly 27 million people without employer-sponsored health insurance. "Invalidating provisions that have expanded access to health insurance coverage such as the guaranteed-issue and community rating provisions—or the *entire* ACA—would have a devastating impact on doctors, patients, and the American health care system in normal times," the amicus brief says. "However, striking down the ACA at a time when the system is struggling to respond to a pandemic ... would be a self-inflicted wound that could take decades to heal." If the Supreme Court allows the current 5th U.S. Circuit Court

of Appeals decision to stand, the ACA's fate will remain uncertain while a district court determines which provisions may remain and which get eliminated. These patient protections hang in the balance:

- Patients would no longer have guaranteed coverage for pre-existing conditions, including COVID-19.
- Young adults would no longer have coverage under their parents' health insurance plan until age 26
- Insurers would be allowed to generate higher profits and provide even less coverage for patient care.
- 100% coverage for certain preventive services would cease.
- Individual marketplace and premium subsidies based on income would be eliminated.
- Medicaid eligibility expansion would end, as would federal funding for Medicaid expansion.
- Annual and lifetime caps on coverage could be reinstated, leading to more bankruptcies due to health care costs.

Because numerous studies have found that uninsured patients live shorter and sicker lives, the AMA advocates expanded coverage and key health insurance reforms to help patients. The AMA's highest priority is to ensure that the millions of Americans who have gained health care insurance because of the ACA maintain their coverage and patient protections. The Supreme Court announced March 2 that it would hear *California v. Texas*, formerly *Texas v. United States*. But the date to hear oral arguments has not been set and will most likely be in the fall after the start of the court's next term in October. That term expires in late June next year and the decision must be delivered before then.

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