

Impact of *Texas v. Azar* on Employer-Sponsored Health Care

On December 14, a Texas federal district court judge held that the Affordable Care Act (ACA)—in its entirety—was now unconstitutional. The case, *Texas v. Azar*, was brought earlier this year by 20 Republican attorneys general and governors, as well as two individuals. ***We believe this ruling will have no immediate impact—for employers or anyone else as the ruling's effect was stayed pending appeal.*** However, the publicity over the ruling is likely to cause confusion while turning up the political heat over health care reform.

Specifics of the Ruling

The plaintiffs in *Texas v. Azar* argued that when Congress set the individual mandate tax penalty to zero as part of the tax reform package passed in 2017, it stripped out an essential provision and rendered the ACA an impermissible Congressional overreach. When the Supreme Court upheld the ACA's validity in 2012, it found that while Congress lacked Constitutional authority to compel citizens to purchase health insurance, the ACA's individual mandate was a proper constitutional exercise of Congress's taxing authority. In *Texas v. Azar*, the district court ruled that when Congress eliminated the individual mandate penalty, the entire ACA became unconstitutional because the law cannot survive absent a provision that served as the basis for its constitutionality.

It's important to note that in 2017 Congress did not eliminate the individual mandate—it simply set the individual mandate penalty to zero and made no other substantive changes to ACA. As a result, it's likely that the legal question to be decided on appeal is whether Congress's setting the rate of a tax to zero constitutes the effective repeal of a tax, invalidating the ACA as an impermissible exercise of authority reserved to the States.

The most likely legal process going forward will involve an appeal to the Fifth Circuit Court of Appeals. Depending on how quickly the Fifth Circuit can rule, an appeal to the Supreme Court would likely not occur until the Fall of 2019 or later, potentially putting a Supreme Court ruling in the middle of the 2020 Presidential election cycle.

The Political Implications

There has been a stalemate in major changes to health policy since the Republicans' failed attempt to repeal and replace the ACA in Summer of 2017. However, *Texas v. Azar* will certainly change the dynamic of the political debate over health care going forward.

The somewhat muted response of Republicans to the ruling shows just how the politics of the ACA has shifted as the law has become more popular over the past two years. Over half of Americans (53%) now have a favorable view of the ACA—in part influenced by the repeal of the unpopular individual mandate penalty and the stabilization of premiums in the exchanges.

Once the new Congress is convened in January, we expect the new House Democratic majority to quickly move a bill to protect the ACA's insurance market reforms, including guaranteed issue

for pre-existing conditions and the law's essential benefit mandates. The Senate GOP will likely ignore the House bill, considering it unnecessary until the Supreme Court rules.

The ruling may also increase the push by House Democrats to expand Medicare and Medicaid coverage as a first step towards enacting a single-payer system, efforts not likely to be taken up by a Republican-controlled Senate. It could also increase the likelihood that bipartisan bills regarding affordability (especially regarding drug prices), surprise medical bills, and repeal of ACA taxes (such as the Cadillac tax) will advance through Congress next year as the GOP attempts to shift the debate back to health care costs. Affordability remains a serious concern, especially for those ineligible for taxpayer or employer subsidies and deductibles.

The ruling could create confusion among employees, especially those who get coverage in the exchanges or through Medicaid. On the other hand, there will likely be no impact on providers and carriers, as they have already adjusted to what was effectively a repeal of the individual mandate after Congress zeroed out the tax penalty for those who do not have coverage.

What We're Doing

The American Health Policy Institute will continue our efforts to engage with HR Policy members on the broader issue of health care reform so that you're informed and aware of the various proposals. In 2019, we will be holding listening sessions around the country to gauge where the employer community stands on specific reform proposals. In preparation for these discussions, please be sure to read our recently-released paper, [Employers and the US Health Care System](#). This is the first part in our series designed to help prepare you to engage in the coming debate on health care reform.

Meanwhile, HR Policy will continue to push its lobbying objectives to protect employee health insurance, including repeal of the Cadillac Tax and other ACA taxes, protection of the employer tax exclusion, strengthening ERISA preemption, and modernization of Health Savings Accounts.