

# ACA COMPLIANCE BULLETIN

## DOJ SUPPORTS FEDERAL COURT RULING INVALIDATING THE ACA

### OVERVIEW

On Dec. 14, 2018, a federal judge [ruled](#) in *Texas v. Azar* that the entire Affordable Care Act (ACA) is invalid due to the elimination of the individual mandate penalty in 2019. In response, on March 25, 2019, the U.S. Department of Justice (DOJ) filed a [letter](#) with the Fifth Circuit Court of Appeals **agreeing with the lower court's ruling**. This means that the DOJ believes the lower court's ruling should stand, and the ACA should be struck down as unconstitutional.

Following the ruling, however, the federal judge issued a stay and [partial final judgment](#) in the case. As a result, **the ACA will remain in place pending appeal**. The Department of Health and Human Services (HHS) also [confirmed](#) that it will continue administering and enforcing all aspects of the ACA.

### ACTION STEPS

This ruling is being appealed and will likely be taken up by the Supreme Court. As a result, a final decision is not expected to be made until that time. However, despite the Administration's support of the lower court's ruling invalidating the ACA, the White House has announced that **the ACA will continue to remain in place pending appeal**.

### HIGHLIGHTS

- A federal judge ruled that the entire ACA is invalid due to the elimination of the individual mandate penalty.
- This ruling will likely be taken up by the Supreme Court.
- The DOJ issued a letter supporting the lower court's ruling.
- The ACA will remain in place pending appeal.

### IMPORTANT DATES

#### December 14, 2018

A federal judge ruled that the entire ACA is invalid due to the elimination of the individual mandate penalty

#### January 1, 2019

Individuals will no longer be penalized under the ACA for failing to obtain acceptable health insurance coverage

Provided By:

Thornburg Insurance Agency



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## Background

The ACA imposes an “individual mandate,” which requires most individuals to obtain acceptable health insurance coverage for themselves and their family members or pay a penalty. In 2011, a number of lawsuits were filed challenging the constitutionality of this individual mandate provision.

In 2012, the U.S. Supreme Court upheld the constitutionality of the ACA in its entirety, ruling that Congress acted within its constitutional authority when enacting the individual mandate. The Court agreed that, while Congress could not use its power to regulate commerce between states to require individuals to buy health insurance, it could impose a tax penalty using its **tax power** for individuals who refuse to buy health insurance.

However, a 2017 tax reform bill, called the [Tax Cuts and Jobs Act](#), reduced the ACA’s individual mandate penalty to zero, effective beginning in 2019. As a result, beginning in 2019, individuals will no longer be penalized for failing to obtain acceptable health insurance coverage.

## Texas v. Azar

Following the tax reform law’s enactment, 20 Republican-controlled states filed a lawsuit again challenging the ACA’s constitutionality. The plaintiffs, first, argued that the individual mandate can no longer be considered a valid tax, since there will no longer be any revenue generated by the provision.

In addition, in its 2012 ruling, the Supreme Court indicated (and both parties agreed) that the individual mandate is an essential element of the ACA, and that the remainder of the law could not stand without it. As a result, the plaintiffs argued that the elimination of the individual mandate penalty rendered the remainder of the ACA unconstitutional.

The DOJ has chosen not to fully defend the ACA in court and, instead, 21 Democratic-controlled states and the U.S. House of Representatives intervened to defend the law.

## Federal Court Ruling

In his ruling, Judge Reed O'Connor ultimately agreed with the plaintiffs, determining that the individual mandate can no longer be considered a valid exercise of Congressional tax power. According to the court, “[u]nder the law as it now stands, the individual mandate no longer 'triggers a tax' beginning in 2019.” As a result, **the court ruled that “the individual mandate, unmoored from a tax, is unconstitutional.”**

*Because the court determined that the individual mandate is no longer a valid tax, but is an essential element of the ACA, it ultimately ruled that the ACA is invalid in its entirety.*

Because the court determined that the individual mandate is no longer valid, it now had to determine whether the provision is “severable” from the remainder of the law (meaning whether other portions of the ACA can remain in place or whether the entire law is invalid without the individual mandate).

In determining whether the remainder of the law could stand without the individual mandate, the court pointed out that “Congress stated three separate times that the individual mandate is essential to the ACA ...

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[and that] the absence of the individual mandate would 'undercut' its 'regulation of the health insurance market.' Thirteen different times, Congress explained how the individual mandate stood as the keystone of the ACA ... [and,] 'together with the other provisions' [the individual mandate] allowed the ACA to function as Congress intended." As a result, the court determined that **the individual mandate could not be severed, making the ACA invalid in its entirety.**

Although the initial ruling did not stay the ruling pending appeal, on Dec. 20, 2018, Judge O'Conner issued a stay and partial final judgment in the case, confirming that the ACA will remain in place pending appeal. In addition, this ruling is being appealed, and the White House announced that the ACA will remain in place until a final decision is made. On Dec. 17, 2018, HHS also confirmed that it will continue administering and enforcing all aspects of the ACA.

## DOJ Statement

On appeal, the DOJ filed a letter with the U.S. Court of Appeals for the Fifth Circuit supporting the lower court's decision. According to the letter, the DOJ has determined that the lower court's ruling should be affirmed. This means that the DOJ also believes the ACA to be unconstitutional, and agrees that it should be invalidated in its entirety.

All briefs and responses in this appeal are due by mid-May 2019, and oral arguments will be scheduled shortly thereafter. Following oral arguments, a decision on the appeal will be issued. However, many industry experts anticipate that the Supreme Court will likely take up the case, which means that a final decision will not be made until that time.

## Practical Impact

While these appeals are pending, all existing ACA provisions will continue to be applicable and enforced. Although the individual mandate penalty will be reduced to zero beginning in 2019, employers and individuals must continue to comply with all other applicable ACA requirements. This ruling does not impact the 2019 Exchange enrollment, the ACA's employer shared responsibility (pay or play) penalties and related reporting requirements, or any other applicable ACA requirement.