

## Supreme Court Upholds Affordable Care Act (Again) in California v. Texas

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For the third time since its passage, the United States Supreme Court has saved the Affordable Care Act (“ACA”) from a legal challenge. In a 7-2 decision in [California v. Texas](#), the Court held that several Republican-led states and private individuals who had sought to strike down the ACA in its entirety lacked standing to bring the challenge in the first place. This case marks a substantial defeat for opponents of the ACA, and we anticipate that any future challenges are likely to be aimed at more narrow aspects of the landmark health care law.

### Background

In 2012, the Supreme Court [upheld a challenge](#) to the constitutionality of the ACA’s individual mandate (which required most Americans to either maintain a minimum level of healthcare coverage or pay a monetary penalty) on the grounds that the individual mandate was an appropriate exercise of Congress’s *taxing* power. At the same time, Chief Justice Roberts, joined by the rest of the Court’s conservative bloc, held that the *Commerce Clause* did not provide a basis to uphold the individual mandate.

Fast forward to 2017. Congress amended the individual mandate to set at zero the tax imposed on those who do not maintain healthcare coverage. At the same time, Congress left the remaining provisions of the ACA intact including the language requiring that individuals “shall” buy health insurance.

Shortly thereafter, two private individuals and a group of Republican-led states (including Texas) filed suit in the United States District Court for the Northern District of Texas, challenging the constitutionality of the individual mandate again. They argued that because the tax penalty had been reduced to zero, the individual mandate was no longer a valid exercise of Congress’s taxing power. These plaintiffs further argued that entirety of the ACA – in addition to the individual mandate – was also invalid, because the individual mandate was not “severable” from the remainder of the ACA. California and fifteen other Democratic-led states and the District of Columbia intervened to defend the ACA.

[The District Court found for the plaintiffs](#), holding the individual mandate both unconstitutional and unseverable from the rest of the ACA, rendering the entire statute invalid. On appeal, the Fifth Circuit [upheld the District Court’s decision](#) that the individual mandate was unconstitutional, but remanded the case to the District Court for further review on the issue of severability.

The Democratic-led states sought review from the Supreme Court. At the time the Supreme Court granted review, many legal analysts speculated that there was a significant likelihood the Court would find the individual mandate unconstitutional and that the future of the ACA may depend on whether the individual mandate is severable from the rest of the ACA.

### The Supreme Court Upholds the ACA

In a 7-2 decision, the Court reversed the Fifth Circuit and upheld the ACA in its entirety. The Court held that both the individual plaintiffs and the State plaintiffs lacked standing to challenge the individual mandate. As a result, the Court did not need to reach the merits of the constitutional challenge to the individual mandate, or determine whether the individual mandate was “severable” from the rest of the ACA.

Justice Stephen Breyer, writing for the majority, stated that because Congress had zeroed out the tax penalty, the individual plaintiffs could not demonstrate an injury traceable to the individual mandate. (For a federal court to have jurisdiction, a plaintiff must “allege personal injury fairly traceable to the defendant’s alleged unlawful conduct and likely to be addressed by the relief requested.”

*DaimlerChrysler v. Cuono*, 547 U.S. 332, 342 (2006)). Here, because the government could no longer to enforce the individual mandate against those who fail to comply, the individual plaintiffs could not show that a government action was the cause of their decision to purchase health insurance.

Similarly, the majority held that the State plaintiffs had not demonstrated that the individual mandate had increased enrollment in state Medicaid plans or state-employee benefit plans. While the States did show injuries related to other provisions to the ACA, this could not serve as the basis for standing because it was not fairly traceable to the individual mandate, which is the provision of the ACA that the States asserted was unconstitutional.

Justice Clarence Thomas concurred separately, agreeing that plaintiffs had not demonstrated standing, but leaving open the possibility that a future plaintiff could do so by arguing harm related to inseverable provisions of a law. Justice Thomas concluded, however, that the plaintiffs had not properly raised this issue in the lower courts or in its opening brief, meaning the Court had no choice but to dismiss for lack of standing.

In a scathing dissent, Justice Samuel Alito, joined by Justice Neil Gorsuch, charged that the Court had ducked the constitutional issue to save the ACA. Justice Alito wrote that States' costs of compliance with the ACA were injuries sufficient to establish standing, even if they were not directly traceable to the individual mandate. Further, Justice Alito concluded that the Court should have reached the merits of the case, held the individual mandate to be unconstitutional because it no longer falls under the taxing power as it does not collect any revenue, and that many of the most significant provisions of the ACA were inseverable and much of the law should fall.

## The Future of the ACA

The Court's decision in *California v. Texas* is a substantial defeat for opponents of the ACA. A challenge based on the individual mandate will be very difficult for future plaintiffs to sustain, since there are six votes for the proposition that there is no legal injury created by the mandate so long as the tax-penalty for non-compliance remains at zero.

ACA opponents will also continue face other barriers to judicial repeal even if future plaintiffs are able to establish standing. Several conservative members of the Court, including Justice Kavanaugh and Justice Barrett, have reinforced that there is a strong presumption that an unconstitutional provision in a law is severable from the remainder of the law or statute. For this reason, much of the ACA would likely survive even if individual key provisions were found unconstitutional.

While the ACA remains a target for judicial challenge, the Court's most recent decision will make it increasingly difficult for the ACA's opponents to bring wholesale challenges to the law. Instead, any continued litigation on the ACA is likely to be focused on challenges to more targeted provisions of the Act. We will continue to monitor these developments in the weeks and months ahead.

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