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Compliance Brief

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about compliance, *at a glance*



The U.S. Supreme Court and the Future of the Affordable Care Act

Part 2

2-Minute Read

On November 3, 2020, millions of Americans will cast their votes in support of presidential candidates with diametrically opposed views on the future of health care in this country. President Trump has been unwavering in his opposition to the Affordable Care Act (ACA) and has made a consistent effort to diminish the ACA's efficacy, consistent with the President's 2016 campaign promise. Like-minded congressional opponents of the ACA were also instrumental in passing the Tax Cuts and Jobs Act which essentially resulted in the repeal of the unpopular individual mandate (reduced the penalty for not complying to zero dollars beginning in 2019), viewed by many as punitive to economically vulnerable individuals. Presidential candidate Biden, on the other hand, is an ardent supporter of the ACA. The polarity in the views communicated by both candidates may have a profound effect on the delivery of employer-provided health care in years to come based upon the outcome of the election.

In our prior [Advisor](#), we addressed *California v. Texas*, which challenges the constitutionality of the ACA on three grounds: 1) whether Texas, the accompanying states, the federal government, and two individual plaintiffs have "standing" to sue, which means having a sufficient connection to and harm by the ACA as a precondition to challenging the law; 2) whether the elimination of the ACA's penalty for individuals who do not maintain minimum essential coverage (MEC), also known as the individual mandate, renders the individual mandate unconstitutional; and 3) if the individual mandate is unconstitutional, whether the remainder of the ACA's provisions are unable to be separated from the individual mandate, thereby making the entire ACA unconstitutional.

Neither Presidential candidate can predict how the Supreme Court will rule on the ACA case and whether any portion of the ACA will be preserved. President Trump's appointment of Justice Amy Coney Barrett to the Supreme Court on October 26, 2020, to fill the seat vacated due to Justice Ruth Bader Ginsburg's death, suggests to some that the Court will have the necessary votes to repeal the ACA as unconstitutional. It is important to note, however, that the constitutionality of the ACA was most recently



upheld by the Supreme Court's decision in *NFIB v. Sebelius* in 2012. The majority opinion was authored by Justice John Roberts, a 2005 appointee of Republican George W. Bush.

Candidate Biden has pledged that if elected President, he will create Bidencare if the Supreme Court strikes down the ACA. Both candidates, however, do appear to agree on the preservation of protections for preexisting conditions.

We will continue to provide helpful insights into the case until the Supreme Court rules on the fate of the ACA, which is expected in 2021.

11/2/2020

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