SCOTUS ACA Ruling Allows Employers to Consider Improvements

By Steve Lucke, Melinda Maher, and Meredith Gingold

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The U.S. Supreme Court has dismissed the third major legal challenge to the Affordable Care Act. Dorsey & Whitney LLP attorneys say that with court challenges to the ACA no longer looming, the outlook for improvements through the regulatory and legislative process may now be better than before.

The U.S. Supreme Court recently dismissed the latest challenge to the Affordable Care Act. As the most recent sequel to what Justice Samuel Alito called "our epic Affordable Care Act trilogy," *California v. Texas* marks the third time the Supreme Court has rebuffed challenges to the act. Employers may now move ahead with greater certainty that the ACA may well be here to stay and consider possible improvements.

From the ACA's inception, employers have taken a keen interest in its provisions as it imposes on them numerous obligations, chiefly through the "employer mandate" requiring those with 50 or more employees to pay a penalty if they fail to provide "minimum essential coverage."

In addition, employers are required to report the value of the health insurance coverage that they offer their employees and are subject to audit and penalty provisions. Notwithstanding these obligations, over time, many employers increasingly have warmed to the ACA, especially as compared to less desirable alternatives. At various points, trade and advocacy groups that work with employers have filed amicus briefs in support of the act.

The Latest Challenge

Given the ACA's importance and unsettled history, the employer community cast a cautious eye on the latest challenge, which arose out of legislation that Congress passed in 2017 setting to zero the penalty for violating the act's requirement that individuals have health coverage (commonly known as the "individual mandate"). This legislation prompted several individuals, along with Texas and 17 other states, to argue that the basis upon which the Supreme Court originally had upheld the law—that it was a "tax"—no longer existed.

The plaintiffs then argued that because the individual mandate could not be severed from the law's remaining provisions, the entire ACA should be declared unconstitutional.

In its ruling, the Supreme Court dismissed the suit without reaching the merits of the constitutional claims, holding that the plaintiffs lacked constitutional standing to proceed. Writing for the majority, Justice Stephen Breyer concluded that with a penalty of zero, the individual mandate had no teeth, and that although Texas and the other states may have incurred increased costs under the ACA, they could not trace that injury to the now toothless individual mandate. As such, the plaintiffs lacked Article III standing.

Only two justices dissented, arguing that because the plaintiffs were seeking to invalidate the entire ACA, which was "inseverable" from the individual mandate, they did suffer an injury sufficient to confer standing.

The ACA's survival suggests that absent congressional action, it may well be here to stay. Notably, Chief Justice John Roberts voted against all three challenges to the law, and Justices Anthony Kennedy, Clarence Thomas, Brett Kavanaugh, and Amy Coney Barrett each did so once. Although the latest dismissal does not foreclose more lawsuits, including on the basis of arguments the justices considered to have been waived, the ACA's durability throughout this "trilogy" of cases dims the prospects of upsetting its basic structure through Supreme Court action.

Decision Opens Door to Incremental Changes

Because the ACA remains intact, the decision requires no significant changes from employers. Nevertheless, with three major Supreme Court decisions behind them, employers may now move forward with greater certainty. The American Benefits Council, which advocates for many large employers on benefits matters, expressed the hope that the Supreme Court's ruling "re-establishes the ACA as settled law that can be relied upon —and improved."

Such improvements may include incremental changes to the act. As the Small Business Majority stated, "[W]e hope that Congress focuses on strengthening the law and creating even more opportunities for small business owners to access quality coverage at an affordable price."

Changes that many employers have sought include the elimination of the employer mandate, which was originally intended to work in tandem with the now abandoned individual mandate. Short of eliminating the employer mandate, many employers would welcome a reduction in associated reporting requirements, as well as amendments allowing them to subsidize employee premiums on the exchanges in a tax favored way—without triggering the shared responsibility penalty.

Whether the political environment is conducive to such changes remains to be seen, but with Supreme Court challenges to the ACA no longer looming, the outlook for improvements through the regulatory and legislative process may now be better.

Jurisdictional Defenses

Finally, the Supreme Court's ruling supplements jurisdictional defenses that employers may draw upon to defeat class actions and other major lawsuits. Few Supreme Court watchers expected the current challenge to be dismissed on constitutional standing grounds alone, but the decision bolsters a growing line of cases deciding claims on this basis.

Beginning with *Spokeo v. Robins*, 578 U. S. 330 (2016), the Supreme Court has increasingly placed jurisdictional limits on federal court plaintiffs suing for statutory violations when they suffered no "concrete" or "particularized" injury. Last term, it held in *Thole v. U.S. Bank,* 140 S. Ct. 1615 (2020), that employees participating in a company-sponsored retirement plan that had lost millions due to alleged fiduciary breaches lacked Article III standing because their own benefits were not at risk.

Relying on these precedents, employers have since defeated on constitutional standing grounds claims by employees seeking health plan benefits, as well as claims by plaintiffs alleging statutory violations for breaches of financial, biometric, and other personal data.

Indeed, just one week after it rejected the latest challenge to the ACA, the Supreme Court in *TransUnion v. Ramirez* ruled again on constitutional standing grounds that a class could not include individuals mistakenly identified as suspected terrorists on credit reports that were never disseminated to third parties— adding further to the arsenal of jurisdictional defenses available to employers and businesses.

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