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## Background

The “individual mandate” provision of the ACA as originally enacted in 2010 required most U.S. residents to obtain minimum essential health insurance coverage or pay a monetary penalty. The individual mandate penalty withstood a legal challenge in 2012 when the Supreme Court ruled it was a valid exercise of Congress’ taxing power. However, Congress effectively eliminated the individual mandate penalty by reducing it to zero effective January 1, 2019.

As a result, Texas (along with other states and two individuals) filed a lawsuit against federal officials. The plaintiffs alleged that the ACA’s individual mandate to obtain health insurance was unconstitutional without the tax penalty; that the individual mandate provision was not severable from the rest of the ACA; and therefore, that no provision of the ACA was enforceable.

After a tumultuous, see-saw litigation trail in the U.S. District Court for the Northern District of Texas and U.S. Court of Appeals for the Fifth Circuit, the Supreme Court agreed to review the case.

## Court Decision

On June 17, 2021, the Supreme Court issued its 7-2 decision dismissing the case on the grounds that the individual and state plaintiffs did not have standing to bring the lawsuit

because they had not incurred nor were expected to incur any financial injury that was “fairly traceable” to the ACA’s individual mandate.

The Court was not persuaded by the individual plaintiffs’ claims of monetary harm due to the costs of purchasing health insurance, because there was no penalty or other consequence to plaintiffs for failing to obtain such health insurance under the individual mandate. Similarly, the Court held that the states failed to demonstrate how their increased costs (allegedly due to an influx of individuals participating in state-operated insurance programs, such as Medicaid, and administrative expenses related to other ACA provisions) were attributable to the “unenforceable” individual mandate.

Interestingly, by dismissing the case on the threshold issue of standing, the Court did not address the questions of whether the individual mandate without a penalty is unconstitutional, and if so, whether this one provision can be separated from the ACA without striking down the entire Act. Therefore, those issues remain unresolved.

## Employer Action

There is no impact to employer-sponsored health plans or other requirements under the ACA. We will continue to monitor litigation in this area and provide updates of further developments.