Is Texas v. United States "Great News for America" or Yet Another Procedural Skirmish in the Battle for "Obamacare?"

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Is Texas v. United States "Great News for America" or Yet Another Procedural Skirmish in the Battle for "Obamacare?"

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This past December, the U.S. District Court for the Northern District of Texas found that the Affordable Care Act was unconstitutional.[2] The case at issue, *Texas v. United States*, is an attempt by twenty state attorneys general, alongside two individual Texas residents, to revisit the Supreme Court's holding in *National Federation of Independent Businesses v. Sebelius* in the wake of recent amendments to the ACA.[3] Judge Reed O'Connor held that the statute's individual mandate is unconstitutional, as amended by the Tax Cuts and Jobs Act, because it exceeded Congress' congressional power to tax.[4] Moreover, Judge O'Connor found that the remaining provisions of the ACA were not severable from the individual mandate, so the entire statute was unconstitutional.[5]

Reaction from the legal and political community was immediate and heated. President Donald Trump expressed his approval of the decision via tweet, stating that the decision was "Great news for America!"[6] Political supporters of the ACA decried the decision, including Senator Chuck Schumer, who described the decision as "devastating" and "ask[ed] senators – Democrats and Republicans – to intervene in the case when it is appealed and say that the judge is completely off base."[7] Commentators across the legal community questioned the decision on the merits, arguing that the court's interpretation of the newly-amended ACA were erroneous.[8]

While the merits of the case are far from settled, the trial court's decision raises several interesting procedural points that may allow an appellate court to avoid reaching the substantive issue. In particular, it is debatable whether the individual plaintiffs had standing to challenge the law. A party seeking to invoke the jurisdiction of a federal court must have *standing* to bring suit under Article III of the Constitution.[9] The Supreme Court interprets Article III to require the plaintiff show (1) that they suffered "injury in fact"; (2) a causal connection between the injury and the conduct brought before the court; and (3) that a favorable decision by the court will redress the injury.[10] Generally, a plaintiff's injury must be *particularized* and *concrete*; it must affect the plaintiff in a personal way.[11]

In this case, however, the individual plaintiff's injuries present a tricky, legal question. On one hand, the plaintiffs suffer no legal penalty for failure to comply with the individual mandate because the tax penalty assessed for failing to purchase qualifying insurance has been eliminated.[12] On the other hand, one could argue, as the court does, that the individual plaintiffs have standing because they purchased a qualifying plan out of a sense of legal obligation that they would not have purchased but for the individual mandate.[13] The latter argument runs into to trouble when one considers the Supreme Court's opinion in *Clapper v. Amnesty International USA*.[14] There, the Supreme Court held that a plaintiff's "fears of hypothetical future harm" is insufficient to support a finding of injury in fact, and any costs incurred in prevention of that harm were "self-inflicted".[15] Under that

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line of reasoning, the government could argue that the individual plaintiff's belief that they were compelled to purchase qualifying health insurance was "self-inflicted" harm because they were unlikely to incur any legal penalty. Essentially, the absence of an enforcement mechanism for the individual mandate complicates the court's rationale that the plaintiff's suffered harm for their decision to purchase ACA-approved health insurance.

The political debate of the legitimacy of the ACA will likely continue on well-past this case. While the court's decision renewed the public debate around government-funded health care and will undoubtedly continue to cause noise in the Fifth Circuit, this current challenge presents procedural hurdles which should allow the Circuit Courts to put off the battle till another day.

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[1] The University of Kentucky College of Law, J.D. expected 2020.

[2] Robert Barnes, *Controversial ruling on health care law could face a skeptical Supreme Court – if it gets there*, Wash. Post (Dec. 17, 2018) https://www.washingtonpost.com/politics/courts_law/controversial-ruling-on-health-care-law-could-face-a-skeptical-supreme-court–if-it-gets-there/2018/12/17/81e40476-020f-11e9-b6a9-0aa5c2fcc9e4_story.html?utm_term=.820c3e523a82.

[3] Katie Keith, *Federal Judge Strikes Down Entire ACA; Law Remains in Effect*, Health Aff. (Dec. 15, 2018) https://www.healthaffairs.org/do/10.1377/hblog20181215.617096/full/. The substantive issue before the court concerned the effect of Congress' decision to "zero-out" the individual mandate tax penalty in the 2017 Tax Cuts and Job Act. *See* Tax Cuts and Jobs Act § 11081, 131 Stat at 2092.

[4] *Texas v. United States*, 340 F. Supp. 3d 579 (N.D. Tex. 2018).

[5] *Id.*

[6] Donald J. Trump (@realDonaldTrump), Twitter (Dec. 14, 2018, 6:16 PM), https://twitter.com/realDonaldTrump/status/1073763695807877120.

[7] Nancy Cordes, *Wall Street, Congress react to federal judge ruling Obamacare unconstitutional*, CBS News (Dec. 17, 2018), https://www.cbsnews.com/news/wall-street-congress-react-to-federal-judge-ruling-obamacare-unconstitutional/; *Federal Judge Ruled 2010 Affordable Care Act Unconstitutional*, KTVN 2 News (Dec. 17, 2018, 8:28 AM PST), http://www.ktvn.com/story/39655057/federal-judge-ruled-2010-affordable-care-act-unconstitutional; *20 Million American's Healthcare In Limbo After Affordable Care Act Ruling*, WREG (Dec. 17, 2018, 8:21 AM), https://wreg.com/2018/12/17/20-million-americans-healthcare-in-limbo-after-affordable-care-act-ruling/.

[8] Jonathan H. Adler & Abbe R. Gluck, *Opinion: An Obamacare Case So Wrong It Has Provoked A Bipartisan Outcry*, N.Y. Times (Dec. 15, 2018), https://www.nytimes.com/2018/06/19/opinion/an-obamacare-case-so-wrong-it-has-provoked-a-bipartisan-outcry.html. (arguing that the court's severability argument contradicts both the plain-language of the statute and Congressional intent.); *see also* Nicholas Bagley, *The Latest ACA Ruling Is Raw Judicial Activism and Impossible to Defend*, Wash. Post (Dec. 15, 2018), https://www.washingtonpost.com/opinions/2018/12/15/latest-aca-ruling-is-raw-judicial-activism-impossible-defend/?utm_term=.4a84768d090b.

[9] The requirement for standing comes from the language in the Constitution that the "Judicial Power shall extend to all Cases . . . [and] to Controversies." Essentially, standing is a way of determining whether the issue before the court is a case or controversy. *See* U.S. Const. art III, § 2.

[10] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

[11] *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016).

[12] *See* TCJA § 11081.

[13] *Texas v. United States*, 340 F. Supp. 3d 579, 596 (N.D. Tex. 2018).

[14] 568 U.S. 398 (2013).

[15] *Id.* In *Amnesty International*, the plaintiffs alleged that they had to increase costs in order to secure their communications with parties that they believed were likely targets of United States surveillance. The court found this injury to be too speculative.

Tags: Aaron Wallace Meek, Affordable Care Act, Clapper v. Amnesty International USA, Fifth Circuit, National Federation of Independent Businesses v. Sebelius, Obamacare, standing, Texas v. United States

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