



THE SMALL BUSINESS LEGISLATIVE COUNCIL QUICK ALERT

DECEMBER 17, 2018

As you may have already heard, on Friday evening, the U.S. District Court for the Northern District of Texas issued a surprising decision ruling that the Affordable Care Act (ACA) is unconstitutional.

At the heart of this case is the provision in the 2017 Tax Cuts and Jobs Act which reduced the penalty for non-compliance with the individual mandate (which required most individuals to get health insurance coverage or pay a penalty) to zero. The individual mandate was previously held to be a constitutional exercise of Congress' power of taxation. The twenty states that brought the lawsuit seeking invalidation of the mandate argued that, now that the penalty has been reduced to zero, the individual mandate is no longer constitutional. Although the Trump Administration's Department of Justice indicated that it did not agree with the plaintiffs' argument that, in light of the unconstitutionality of the individual mandate, the entire law should be struck down, it did not intervene in the case to defend any part of the law. Rather, the law is being defended by a coalition of Democrat state attorneys general.

The general expectation among experts was that Republican appointed District Judge Reed O'Connor would find the individual mandate unconstitutional. But Judge O'Connor took things a step further, in ruling that the functional elimination of the individual mandate penalty caused the entire ACA to become unconstitutional.

The ruling did not include any type of injunction to immediately stay the ACA (which would have caused unprecedented chaos in the health insurance industry which represents a huge chunk of the American economy). The case will be appealed to the Fifth Circuit and, from there, is likely to go up before the Supreme Court. Thus, it may be quite some time before the future of the ACA is clear. In the meantime, while the ACA remains in full force and effect, the decision has added further uncertainty and instability to an already shaky situation.

The SBLC will be reviewing Judge O'Connor's full decision and other related developments and will provide more analysis to come.

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