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ACA Survives Latest Supreme Court Challenge

The Supreme Court released its opinion today in a highly anticipated third challenge to President Obama's signature health care law, the Patient Protection and Affordable Care Act ("ACA").

The 7-2 majority opinion, authored by Justice Breyer, decided *Texas v. California* on procedural grounds, holding that because the Tax Cuts and Jobs Act of 2017 set the individual mandate penalty at $0, the plaintiffs were unable to establish harm.

Justice Thomas filed a concurring opinion that would also have decided the case on a lack of standing grounds. Justices Alito and Gorsuch would have endorsed a novel theory of standing through inseverability. In short, the dissenting opinion would have found that a case or controversy existed because plaintiffs were harmed by certain provisions of the ACA that were inseverable from an unlawful provision—even though they were not harmed by the actual provision that they argued was unlawful.

However, the majority opined that severability analysis (in which the Court determines whether Congress would have intended that certain closely-related provisions stand or fall together when the constitutionality of only one is at issue) should not be considered until after a provision has already been determined to be unlawful, and thus could not factor into the initial question of whether plaintiffs have standing to bring a lawsuit.

The Supreme Court had previously upheld the bulk of the ACA in two prior lawsuits, *National Federation of Independent Business v. Sibelius*, in 2012, and *King v. Burwell*, in 2015.