



Welcome to the SIG University Webinar Series
**ACA Supreme Court Case
Update: What Happened and
What You Should Know!**

Stacy Barrow, Esq. | *Marathas, Barrow,
Weatherhead, and Lent ,LLP*

November 12, 2020



Questions?

During the webinar if you have any questions please feel free to...

📱 Text Richard: (443) 250-8606

💬 Zoom Chat: Enter questions via the “Chat” feature in the Zoom meeting

Reminders

1. Slides and resources will be emailed after the webinar and are available on silbs.com/sig-university
2. Complete our 2-minute post webinar [SURVEY](#)** All completed surveys will be entered to win a Yeti tumbler!

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Presenter: Stacy Barrow, Esq., *Marathas, Barrow, Weatherhead, and Lent ,LLP*

UPCOMING

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November 17th, 1 PM – 2 PM EST

Presenters: Kerry Graves, *NAMI (National Alliance on Mental Illness) Metropolitan Baltimore* and Julie Wald, *Namaste Wellness*

[Post Election Webinar](#)

November 17th, 3 PM – 4 PM EST

Presenters: Sarah Flotte, *Perkins Coie, LLP*, Stacy Barrow, Esq., *Marathas, Barrow, Weatherhead, and Lent, LLP* and Joel Wood, *Council of Insurance Agents and Brokers*



Webinars



Post-Election Update

Silberstein Insurance Group

November 12, 2020

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Agenda



- 2020 Election Update
- *California v. Texas* (ACA Constitutionality case)
- What's Next for the ACA?

2020 Election Update



- Electoral College results according to Associated Press
 - Joe Biden: 290
 - Donald Trump: 217
- Senate Races
 - Going into the election, Republicans held a 53-47 seat majority
 - Republicans flipped Alabama, held seats in Maine, Iowa, North Carolina, South Carolina and Kansas
 - Democrats flipped seats in Arizona and Colorado, giving them a net gain of +1
 - Post election: 50-48 – both Georgia seats will have runoff elections January 5

2020 Election Update



■ House Races

- Republicans defeated incumbents in South Carolina, Iowa and New Mexico, held seats in Missouri, Michigan and Ohio
- Democrats will maintain majority, but will be smallest in 18 years

■ Immediate impact?

- Stock market seems to like election outcome – likely due to divided Congress
- Much of the implementation of the ACA is done by executive action, so a Senate majority may not be all that important to advance healthcare policy
- Expect to see some (if not all) of the actions that President Trump's administration took be undone by President Biden's administration

California v. Texas



- Background: 20 states and 2 individuals claim individual mandate is unconstitutional due to changes made by the Tax Cuts and Jobs Act
 - Dec. 2018: Judge O’Connor (TX) rules that entire ACA is unconstitutional
 - Dec. 2019: 5th Circuit holds ACA’s individual mandate unconstitutional, remands to district court to determine which parts may be “severed”
- Reasoning: When the Supreme Court found the individual mandate constitutional in 2012, it did so on the basis that it qualifies as a tax because it provides at least *some* revenue to the government
 - The 5th Circuit court of appeals held that the mandate no longer operates as a tax and therefore is unconstitutional

California v. Texas



- Appeals court directed lower court to determine if the ACA is unconstitutional only in the remaining Plaintiff States (TX, AL, AR, AZ, FL, GA, IN, KS, LA, MO, MS, NE, ND, SD, SC, TN, UT, WV) or if the decision should extend nationwide
- In the interim, case was brought to U.S. Supreme Court by the Intervenor States: CA, CO, CT, DC, DE, HA, IA, IL, KY, MA, MI, MN, NJ, NY, NC, NV, OR, RI, VT, VA, WA
 - It was unusual for the federal government not to defend an existing federal law
- MT and OH filed briefs arguing that the mandate is unconstitutional but severable
- Governors of MD, ME, NH, NM, PA and WI argued that ACA should be upheld
- All but four states (AK, ID, OK, WY) have taken a position
- Oral arguments were heard Nov. 10
 - Decision expected before end of Court's term in June 2021
 - A decision to repeal the entire ACA would have an enormous impact, including a loss of coverage for 10+ million Americans

California v. Texas



- Questions presented at oral argument:
 - Whether the individual and state plaintiffs in this case have standing to challenge the individual mandate?
 - Whether reducing the individual mandate penalty to \$0 rendered it unconstitutional?
 - If so, whether the individual mandate is severable from the rest of the ACA?

California v. Texas



- Possible Outcomes:
 - ACA upheld or case is dismissed on procedural grounds (lack of standing)
 - Entire ACA judicially repealed (unlikely)
 - Parts of ACA judicially repealed (individual mandate and accompanying parts)
 - ACA's prohibition on pre-existing condition exclusions and its guaranteed issue and community rating rules often considered an instrumental part of the individual mandate
 - Other parts, such as the employer mandate and ACA reporting would remain in effect
 - Individual mandate unconstitutional, remanded to lower court to decide which parts are severable
 - Individual mandate unconstitutional, is severed from the rest of the law
 - Most likely outcome

State Individual Mandates



- States have implemented individual mandates after the repeal of the ACA's individual mandate
- Effective
 - 2019: New Jersey and Washington DC
 - 2020: California, Vermont, and Rhode Island
 - Massachusetts since 2006
- Most resemble the federal individual mandate before repeal

What's Next for the ACA?



- Democrats may try to build on ACA to lower health costs and Rx prices
 - Could increase ACA's subsidies to cover more middle-class families
 - Ensure that families who don't have affordable *family* coverage from an employer can qualify for premium tax credits
 - Support reinsurance initiatives to further lower premiums, deductibles, and other out-of-pocket costs
- Push hold-out states to adopt Medicaid expansion
 - Renew ACA's financial assistance to encourage states that haven't expanded Medicaid to reconsider
- Fund federal and state efforts to increase health coverage enrollment and help individuals navigate the health insurance system

Single Payer is Not the Answer



- Prior state attempts abandoned due to cost constraints (CA, CO, VT)
- Biden health care approach:
 - Expand on ACA, build public option alongside of private health insurance plans sold through the Marketplace
 - For people who cannot get affordable employer-sponsored coverage
 - Could take more of a private-sector approach, similar to Medicare Advantage
 - Possibly lower Medicare age to 60



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