

# **Federal Appeals Court that Affirmed ICWA Rules ACA Mandate Unconstitutional; Lower Court Will Reconsider the Entire Law's Validity**

Category: Policy Blog

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Today, the U.S. Court of Appeals for the Fifth Circuit ruled that the Patient Protection and Affordable Care Act (Affordable Care Act / Obamacare) individual mandate is unconstitutional. The appeals court narrowed a broader ruling from a Texas federal district court that found the entire Affordable Care Act was unconstitutional. The appeals court did not invalidate the entire law, but instead sent it down to a lower court to reconsider whether any of the law can survive.

Whenever part of a statute is ruled unconstitutional, a court must then determine how much of the statute to invalidate. This is known as the severability doctrine. The U.S. Supreme Court test for severability is whether other provisions can exist with independent legal effect. Courts typically avoid striking entire laws if they can stand without the provisions that are found invalid. Many legal scholars have pointed to Congress's decision to zero out just the mandate penalty in 2017 as proof that lawmakers meant for the rest of the ACA to stand.

This challenge to Obamacare was brought by more than a dozen Republican-led states that argued the law is no longer constitutional after Congress removed the penalty for not purchasing insurance in the 2017. The majority of the appeals court panel was made up of Republican-appointed judges, although they said the entire law did not need to fall. The other judge on the panel (Democratic-appointed) disagreed with the majority's decision in a lengthy dissent.

In August, this same appeals court published its decision in *Brackeen v. Bernhard*, which was a challenge to the Indian Child Welfare Act (ICWA). The appeals court affirmed that ICWA is constitutional recognizing the unique political status of tribes and American Indians and Alaska Natives. This was a big win for Indian Country.

The future of the law remains uncertain. It is highly likely to be challenged to the Supreme Court. This development could renew pressure on Obamacare opponents to explain how they plan to preserve the law's insurance protections, after failing to agree on a replacement for years. If the entire Affordable Care Act is found invalid, it will jeopardize health care coverage for the roughly 20 million Americans covered through the law and its preexisting conditions protections.