

The Affordable Care Act Back at the Supreme Court

November 12, 2020

This week, the Supreme Court heard oral arguments in *California v. Texas*—a recent lawsuit bringing another challenge to the Affordable Care Act. In 2012, in *NFIB v. Sebelius*, the Supreme Court upheld the ACA as constitutional exercise of Congress’s taxing power; but Congress in 2017 eliminated the individual mandate which served as a basis for the tax rationale—and a group of states and individual plaintiffs sued to challenge the law’s validity once again. This episode recaps the arguments and how the justices—including Justice Amy Coney Barrett, whose faced many questions about the ACA during her confirmation hearings—reacted to the arguments on both sides. Host Jeffrey Rosen was joined by two experts on the Affordable Care Act and the Constitution: Abbe Gluck of Yale Law School, author of *The Trillion Dollar Revolution: How the Affordable Care Act Transformed Politics, Law, and Health Care in America*, and Ilya Shapiro of the Cato Institute, author of *Religious Liberties for Corporations? Hobby Lobby, the Affordable Care Act, and the Constitution*.

Some terms that will be helpful to know for this week:

- **Standing:** the ability of a person or party to bring a lawsuit in court. For instance, if the person who brings the lawsuit has suffered some “injury” or will be likely to suffer an injury if a particular wrong is not remedied, they may have standing to bring the case.
- **Severability:** a legal principle that allows an unconstitutional or unenforceable provision or part of law to be “severed” out from the rest of the law, leaving the remaining parts of the law intact and in force.

FULL PODCAST

PARTICIPANTS

Abbe Gluck is a Professor of Law and Faculty Director of the Solomon Center for Health Law and Policy at Yale Law School, as well as a Professor of Internal Medicine at Yale Medical School. She’s the author of multiple works including *The Trillion Dollar Revolution: How the Affordable Care Act Transformed Politics, Law, and Health Care in America*. She filed an amicus brief on behalf of the petitioner, California, in this case.

Ilya Shapiro is the director of the Robert A. Levy Center for Constitutional Studies at the Cato Institute and publisher of the Cato Supreme Court Review. He is the author of multiple publications, including most recently *Supreme Disorder: Judicial Nominations and the Politics of America’s Highest Court*, as well as *Religious Liberties for Corporations? Hobby Lobby, the*

Affordable Care Act, and the Constitution. He filed an amicus brief on behalf of individual petitioners in this case.

Jeffrey Rosen is the president and CEO of the National Constitution Center, a nonpartisan nonprofit organization devoted to educating the public about the U.S. Constitution. Rosen is also professor of law at The George Washington University Law School and a contributing editor of *The Atlantic*.

ADDITIONAL RESOURCES

- *Texas v. California* oral argument transcript
- *NFIB v. Sebellius* (2012)
- *Seila Law v. CFPB* (2019)
- *Chevron v. Natrual Resources Defense Council* (1984)

This episode was engineered by David Stotz and Greg Scheckler, and produced by Jackie McDermott. Research was provided by Alexandra “Mac” Taylor, Ashley Kemper, and Lana Ulrich.