

An Unusual Letter Regarding Obamacare to the U.S. Supreme Court

By Stephanie Olivera Mittica

On February 10, 2021, Deputy Solicitor General Edwin Kneedler penned a two-page letter to the U.S. Supreme Court setting forth the Biden Administration's position regarding the constitutionality of the Affordable Care Act, also known as Obamacare.

The Administration's letter came approximately three months after the Court heard arguments regarding the constitutionality of the Affordable Care Act in *California v. Texas*, No. 19-840. In November, the Trump Administration argued against Obamacare and requested that it be invalidated entirely given the 2017 tax change that eliminated a penalty for not having insurance. Specifically, the Trump Administration argued that absent a tax penalty, the individual mandate to have insurance is unconstitutional.

Mr. Kneedler's February 10 correspondence, however, stated that was no longer the position of the presidential administration and requested that the Court uphold Obamacare. The correspondence attempted to minimize the effects of the 2017 tax change on the individual mandate. In the alternative, Mr. Kneedler requested that should the Court find the individual mandate unconstitutional that the provision be severed rather striking down Obamacare in its entirety.

It is unclear what effect, if any, the Biden Administration's eleventh-hour plea will have on the Court's decision considering that a vote on the issue by the justices has more than likely already occurred. What is certain is that the Biden Administration has vowed to protect and build on Obamacare. We can expect a decision from the Court by June.

Roetzel will continue to monitor developments in this area. For more information and insight on this matter, please contact one of the listed Roetzel attorneys.

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