

The Supreme Court - June 17, 2021

Today, the Supreme Court of the United States issued the following decisions:

California v. Texas, Nos. 19-840, 19-1019: The Affordable Care Act's individual mandate, as it is commonly known, requires individuals to maintain a minimum level of health insurance coverage. As originally passed, the Act imposed a monetary penalty if an individual failed to maintain the minimum level of health insurance coverage, a penalty which was collected with the individual's tax return and enforced by the IRS. In the first major challenge to the individual mandate, the Supreme Court held in *NFIB v. Sebelius*, 567 U.S. 519 (2012), that the penalty was a tax and thus the individual mandate and penalty were constitutional under Congress' taxing power. In 2017, however, Congress lowered the penalty to \$0. Plaintiffs—several states and individuals—subsequently brought suit to have the individual mandate declared unconstitutional, arguing that because the penalty no longer raised revenue, it was no longer a tax and the individual mandate could no longer be sustained under Congress' taxing power. Plaintiffs further argued that the individual mandate was not severable from the Act and that, as a result, the entire Act must be struck down. Today, in an opinion by Justice Breyer, the Court held 7-2 that Plaintiffs lacked standing to challenge the individual mandate as amended by Congress in 2017. As to the Individual Plaintiffs, the Court held that although they had ostensibly incurred costs maintaining health insurance because of the individual mandate, the Individual Plaintiffs could not point to any injury fairly traceable to the individual mandate's threatened or actual *enforcement*. Because the penalty is \$0, the Court reasoned, the individual mandate is unenforceable and there is no government action that could injure the individual Plaintiffs sufficient to confer standing. The same is true of the State Plaintiffs, the Court held. The State Plaintiffs could not point to any actual or threatened enforcement of the individual mandate that has caused individuals to enroll in state benefit programs that the individuals would otherwise forego. Further, the Court held, the State Plaintiffs did not have standing to challenge the individual mandate even though other provisions of the Act may be enforceable and impose costs on the State Plaintiffs. Justice Thomas filed a concurring opinion. Justice Alito, joined by Justice Gorsuch, filed a dissenting opinion, stating he

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would find that the State Plaintiffs have standing, that the individual mandate is unconstitutional, and that, as a result, the Act should be struck down in its entirety.

View the Court's [decision](#).

Fulton v. City of Philadelphia, No. 19-123: The City of Philadelphia enters into annual contracts with private foster care agencies to place some of the City's foster children with foster families. Private foster agencies evaluate prospective families and, in so doing, consider statutory criteria including existing family relationships and the family's ability to care for and nurture the child. The private foster care agency then has the responsibility to either approve, disapprove, or provisionally approve the prospective family. Catholic Social Services (CSS), a private foster agency, has provided these services to the City for over 50 years. Although no same-sex married couple has ever approached CSS for approval, CSS has indicated that it will not certify any same-sex married couple because to do so, CSS claims, would be an endorsement of same-sex marriage and a violation of CSS's religious views that marriage is between a man and a woman. Upon learning that CSS would not certify same-sex married couples, the City informed CSS that such a refusal would be a violation of, among other things, a non-discrimination provision in their contract and that the City would no longer make referrals to CSS or enter into any further contracts with CSS unless CSS agreed to certify same-sex married couples. CSS sued, arguing that the City's contractually-premised referral-freeze violated the Free Exercise Clause of the First Amendment. The district court and the Third Circuit, however, upheld the contract as "neutral and generally applicable" under *Employment Division v. Smith*, 494 U.S. 872 (1990). Today, in an opinion by Chief Justice Roberts, the Court reversed, holding that the City had burdened CSS's religious exercise and violated CSS's rights under the Free Exercise Clause. The Court concluded, among other things, that the contract was not "generally applicable" under *Smith* as it contained a system of entirely discretionary exemptions to the City's non-discrimination requirements. The Court further concluded that the City offered no compelling reasons for denying exemptions to CSS, while making them available to others, and thus the City's decision to deny CSS an exemption could not survive strict scrutiny. Justice Barrett filed a concurring opinion, agreeing with the Court's conclusion that it was unnecessary in this case to consider whether to overrule *Smith*. Justices Alito and Gorsuch both filed opinions concurring in the judgment, but arguing that the Court should have accepted CSS's invitation to overrule *Smith*.

View the Court's [decision](#).

Nestlé USA Inc. v. Doe, Nos. 19-416, 19-453: Plaintiffs—six individuals from Mali—allege that they were trafficked as child slaves on cocoa farms in the Ivory Coast, a West African country responsible for the majority of the world's cocoa supply. Defendants—Nestlé USA Inc. and Cargill Inc.—are U.S.-based companies which purchase, process, and sell cocoa. While Defendants did not own or operate the Ivory Coast cocoa farms on which Plaintiffs were allegedly enslaved, Defendants purchased cocoa from those farms and provided technical and financial assistance in exchange for the exclusive right to purchase cocoa. Plaintiffs sued Defendants for aiding and abetting their enslavement,

alleging that Defendants knew or should have known that the farms were exploiting children. The district court dismissed Plaintiffs' suit on grounds that the Alien Tort Statute (ATS), a statute which gives federal courts jurisdiction to hear certain civil suits filed by aliens, does not apply to extraterritorial conduct. The Ninth Circuit, however, reinstated Plaintiffs' suit, holding that Plaintiffs had pleaded sufficient domestic conduct because Plaintiffs had pleaded that Defendants' financing decisions were made in the United States. Today, in an opinion by Justice Thomas, the Court reversed the Ninth Circuit. Plaintiffs, the Court held, did not allege any more domestic conduct by the Defendants than general corporate activity. This was not enough to sustain Plaintiffs' claim, the Court held, particularly in light of the fact that nearly all the conduct that Plaintiffs alleged aided and abetted their enslavement occurred overseas. The final part of Justice Thomas' opinion, joined only by Justice Gorsuch and Justice Kavanaugh, argued that the Court cannot recognize a new cause of action under the ATS to support Plaintiffs' suit and that, for this additional and independent reason, Plaintiffs' suit fails. Justice Gorsuch filed a concurring opinion, emphasizing his agreement with Justice Thomas that courts should not have discretion to recognize new causes of action under the ATS. Justice Sotomayor filed an opinion concurring in part and concurring in the judgment. Justice Sotomayor argued, in contrast to Justice Thomas and Justice Gorsuch, that the Court's precedents as well as the text and history of the ATS permit courts to recognize new causes of action. Justice Alito filed a dissenting opinion, contending that the Court sidestepped the primary question presented by the petitions for certiorari—that is, whether domestic corporations are immune from liability under the ATS. Justice Alito stated that he would answer that question in the negative and remand for further proceedings.

View the Court's [decision](#).