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Supreme Court Rules on the ACA & Interplay Between the First Amendment & LGBTQ Community

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On June 17, 2021, the Supreme Court issued two decisions that may concern employers and their businesses.

In ***Fulton v. City of Philadelphia***, the Supreme Court unanimously ruled that Catholic Social Services ("CSS"), a foster care agency located in Philadelphia, has the right to refuse to work with same-sex couples when screening for potential foster parents. The City of Philadelphia refused to refer children to CSS upon learning that the agency would not certify same-sex couples as parents due to its religious beliefs on marriage. CSS and several affiliated foster parents filed suit, alleging that the referral freeze violated the Free Exercise and Free Speech Clauses of the First Amendment.

The Supreme Court ruled that CSS "seeks only an accommodation that will allow it to continue serving the children of Philadelphia in a manner consistent with its religious beliefs; it does not seek to impose those beliefs on anyone else." Thus, the Court held that "it is plain that the city's actions have burdened CSS's religious exercise by putting it to the choice of curtailing its mission or approving relationships inconsistent with its beliefs." Because the Court found that the City violated the Free Exercise Clause of the First Amendment, it did not rule on the agency's Free Speech claim.

In ***California v. Texas***, the Supreme Court upheld the penalty provisions of the Affordable Care Act ("the Act"), holding that Texas, seventeen other state plaintiffs and two individuals did not have standing to challenge the constitutionality of 26 U. S. C. §5000A(a)), the part of the Act that nullified the monetary penalty for failing to obtain minimum essential health insurance coverage.

In 2010, the Act required many Americans to obtain minimum essential health insurance coverage and imposed a monetary penalty on most individuals who failed to do so. In *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012), the Supreme Court upheld the Act as an exercise of Congress' taxing power. In 2017, amendments to the Act reduced the penalty to $0. Shortly after the Amendment took effect, Texas and the other plaintiffs filed suit, seeking an order declaring the Amendment unconstitutional, a finding that the rest of the Act is not severable from §5000A(a), and an injunction against enforcement of the rest of the Act.

The Supreme Court held that the plaintiffs did not have standing to challenge §5000A(a)'s minimum essential coverage provision because they had "not shown a past or future injury fairly traceable to defendants' conduct enforcing the specific statutory provision they attack as unconstitutional." The Court was unpersuaded by the state plaintiffs' claims of indirect injury in the form of increased costs to run state-operated medical insurance programs and direct injury resulting from increased expenses. In essence, the Court found that plaintiffs had "not shown that any kind of Government action or conduct has caused or will cause the injury they attribute to §5000A(a)."

The Supreme Court is set to issue other decisions on a variety of other matters before its term ends on June 30, including the free speech rights of public school students off-campus; whether certain academic-related perks can be provided to NCAA athletes; and voting-rights issues. Miller Canfield will continue to provide updates as the Court issues its decisions.

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As always, please consult your attorneys at Miller Canfield, or the authors of this alert, with any questions or concerns that you may have related to these decisions.