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Jackson & Campbell, P.C.
2300 N Street, N.W.
Suite 300
Washington, D.C. 20037-1194
202.457.1600 (p)

SCOTUS Opinion: Congress Ordered to Pay Unprofitable Insurers Under the Affordable Care Act

1 May 2020

The Patient Protection and Affordable Care Act contained a program under which, each year, profitable insurance plans "shall" pay an amount into the government, and the government "shall" make payments to unprofitable plans, thus limiting risk for those insurers who participated in the online exchanges. The Act did not appropriate any funds for the yearly payments. Over several years, the government incurred a $12 billion deficit in the program, owing more to unprofitable plans than was being paid by profitable plans. However, Congress' appropriations riders effectively left no money with which to make those payments. The insurance companies for some of the unprofitable plans sued, arguing that the government had to make the payments under the Tucker Act. The Federal Circuit held that while the Affordable Care Act created an obligation for the government to pay, the subsequent appropriations riders repealed or suspended that obligation.

The Court, in an 8-1 decision by Justice Sotomayor, reversed, and held that the government had to pay the claims. The Court read the "shall" obligation literally and held that the failure of the Act to appropriate money, and Congress' appropriations riders, did not override the obligation. Congress had to expressly abrogate the obligation, which did not happen here. Justice Alito dissented, arguing that while the Affordable Care Act did create an obligation that was not rescinded, the Tucker Act did not create a private cause of action by implication.

A link to the opinion in *Maine Community Health Options v. United States* is here:
https://www.supremecourt.gov/opinions/19pdf/18-1023_m64o.pdf

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TAGGED: Maine Community Health Options v. United States, Patient Protection and Affordable Care Act, online exchanges, Tucker Act