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## ACA Lawsuit Would Cut Taxes for the Most Well-Off While Ending Health Coverage for Millions

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The Trump Administration and 18 state attorneys general are asking the courts to strike down the entire Affordable Care Act (ACA) as unconstitutional. If the lawsuit were to succeed, 20 million people would lose health insurance, and millions more would face higher costs for health insurance or health care.<sup>1</sup> But there would also be some winners from the lawsuit, because striking down the ACA would cut taxes sharply for the highest-income Americans and certain corporations. In effect, the Administration and the state attorneys general are seeking a massive transfer of income from low- and moderate-income Americans to people on the top rungs of the income ladder.

If their legal position were to prevail:

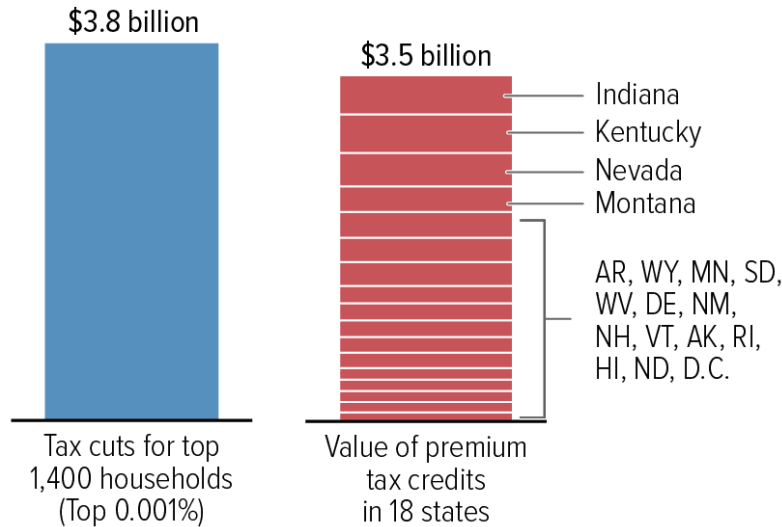
- Households with incomes over \$250,000 for couples (\$200,000 for singles) would receive tax cuts worth about \$45 billion per year. That roughly equals what low- and moderate-income consumers would lose from cuts to federal health coverage programs in 37 states (including the District of Columbia), where 6.2 million people would become uninsured.
- Most of these tax cuts would go to households with incomes over \$1 million, who would receive tax cuts averaging about \$46,000 apiece.
- The 1,400 highest-income taxpayers — the 1 in 100,000 households with annual incomes over \$53 million apiece — would receive tax cuts totaling about \$3.8 billion. That exceeds the ACA premium tax credits for over 600,000 individual market consumers with moderate incomes in 18 states (including the District of Columbia). (See Figure 1.)
- Pharmaceutical companies would pay \$2.8 billion less in taxes each year, even as seniors would pay billions more for prescription drugs because eliminating the ACA would reopen the “donut hole” gap in Medicare’s prescription drug benefit.

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<sup>1</sup> Linda J. Blumberg *et al.*, “State-by-State Estimates of the Coverage and Funding Consequences of Full Repeal of the ACA,” Urban Institute, March 26, 2019, <https://www.urban.org/research/publication/state-state-estimates-coverage-and-funding-consequences-full-repeal-aca>.

FIGURE 1

## If Successful, ACA Repeal Lawsuit Would Give Top 1,400 Households Tax Cuts Worth More Than Premium Tax Credits for 600,000 People



Note: ACA = Affordable Care Act. The red bar includes the 18 smallest states (including D.C.) by value of federal premium tax credits, which help low- and moderate-income consumers afford health insurance.

Source: CBPP calculations are for 2019 and are based on Internal Revenue Service Statistics of Income and Tax Policy Center and Urban Institute estimates.

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## Administration Stance in Lawsuit Would Lead to Billions in Tax Cuts

The lawsuit brought by the state attorneys general (*Texas v. United States*) argues that when Congress eliminated the ACA’s individual mandate penalty (the law’s financial penalty for going without health coverage), it rendered the entire ACA unconstitutional. Legal experts, including conservatives strongly opposed to the ACA, have called that argument “a mockery of the rule of law” and “outright ridiculous.”<sup>2</sup>

Nonetheless, the Administration took the nearly unprecedented stance of refusing to defend federal law in court. Initially, the Administration urged the courts to strike down the ACA’s protections for people with pre-existing health conditions but leave the rest of the law in place. But following a district court decision striking down the entire ACA, the Administration changed its position, arguing to the Fifth Circuit Court of Appeals that it, too, should strike down the entire law.

<sup>2</sup> Jonathan H. Adler and Abbe R. Gluck, “What the Lawless Obamacare Ruling Means,” *New York Times*, December 15, 2018, <https://www.nytimes.com/2018/12/15/opinion/obamacare-ruling-unconstitutional-affordable-care-act.html>; Ilya Somin, “Thoughts on the Trump Administration’s Decision Not to Defend Obamacare,” *Reason*, June 9, 2018, <https://reason.com/2018/06/09/thoughts-on-the-trump-administrations-de>.

Striking down the ACA would end the law's expansion of Medicaid to low-income adults, eliminate the health insurance marketplaces and premium tax credits that help millions of people afford individual market coverage, and end nationwide protections for people with pre-existing health conditions, as well as a range of other coverage expansions and consumer protections.

It would also eliminate the law's revenue measures. This analysis focuses on three such provisions, which together comprise the majority of the revenue that the law raises.<sup>3</sup>

- *Medicare tax on high earners.* The ACA imposed a 0.9 percent tax on earnings over \$250,000 for couples (\$200,000 for single filers), with the proceeds going to the Medicare Trust Fund.
- *Medicare Net Investment Income Tax.* The ACA also imposed a 3.8 percent tax on unearned income (such as capital gains, dividends, taxable interest, and royalties) for couples with income over \$250,000 (\$200,000 for single filers).
- *Pharmaceutical company fee.* The ACA imposed a \$2.8 billion annual fee on pharmaceutical companies, allocated based on their sales of brand-name drugs.

## **Lawsuit Would Transfer Income from Low- and Moderate-Income People to High-Income People**

The ACA used revenue raised from taxes on high-income people and corporations to help pay for Medicaid expansion to low-income adults and premium tax credits that help moderate-income people afford individual market coverage. (Premium tax credits are available to people with incomes between 100 and 400 percent of the federal poverty line, or about \$25,000 to \$100,000 for a family of four.)

Striking down the ACA would thus transfer billions of dollars each year from low- and middle-income people (who would lose subsidized health coverage) to high-income households and corporations (which would receive large tax cuts).

- Households with incomes over \$250,000 for couples (\$200,000 for singles) would receive tax cuts worth a total of about \$45 billion.<sup>4</sup> That amount roughly equals what low- and moderate-

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<sup>3</sup> The ACA also included other revenue measures, such as a fee on insurance companies, a tax on high-cost health plans (the "Cadillac tax"), and limits on tax deductions for insurance company executives. These other provisions are mostly smaller and/or have been temporarily suspended by policymakers.

<sup>4</sup> These and other estimates for high-income households include only the two Medicare taxes; total tax cuts, taking into account other provisions of the ACA, would be slightly larger. Tax-cut estimates are based on Tax Policy Center (TPC) estimates of tax cuts from eliminating the Additional Medicare Tax in 2017 (TPC tables T16-0301 and T16-0302) and the Net Investment Income Tax in 2018 (TPC tables T18-0190 and T18-0191). To estimate tax cuts in 2019, we assume the value of the tax cuts would increase linearly through 2025 (for which estimates are available from TPC tables T16-0303, T16-0304, T16-0311, and T16-0312). While some of these estimates predated the 2017 tax law, that law did not directly alter the two Medicare taxes and does not appear to have significantly affected the taxes' revenue or distributional effect. For example, TPC estimates of the distribution and total effect of the Net Investment Income Tax were similar both before and after the enactment of the 2017 tax law, as are Joint Committee on Taxation estimates of the revenue from that provision.

income consumers would lose from cuts to federal health coverage programs in 37 states (including the District of Columbia), where 6.2 million people would become uninsured.<sup>5</sup>

Table 1 compares the value of the tax cuts, total premium tax credits, and federal cost of the ACA coverage provisions by state.<sup>6</sup>

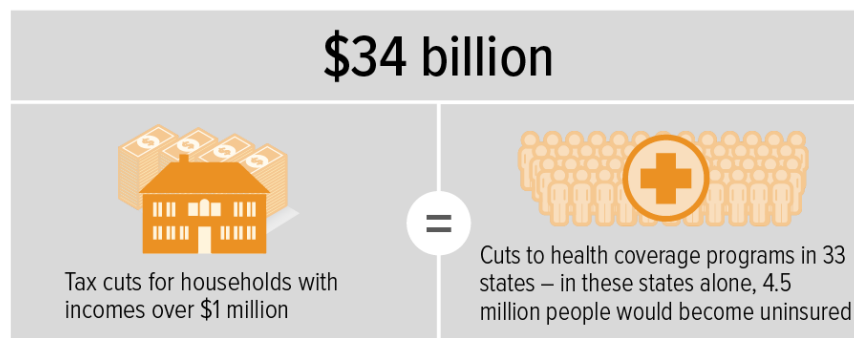
- Households with incomes over \$1 million would receive tax cuts totaling roughly \$34 billion. That amount exceeds what low- and moderate-income consumers would lose from cuts to federal coverage programs in 33 states (including the District of Columbia), where 4.5 million people would become uninsured. (See Figure 2.)

Annual tax cuts for this group would average about \$46,000 apiece. That's roughly equal to premium tax credits for seven marketplace consumers or the federal cost of Medicaid expansion coverage for eight adults.<sup>7</sup>

FIGURE 2

## ACA Repeal Lawsuit Reflects Skewed Priorities

Lawsuit would eliminate coverage expansions and high-income taxes that help pay for them, giving millionaires a \$34 billion annual tax cut



Note: ACA = Affordable Care Act.

Source: CBPP calculations from Tax Policy Center and Urban Institute data.

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<sup>5</sup> These are the 37 states where the coverage expansions have the lowest cost. Estimates of how ACA repeal would affect federal spending and coverage in 2019 are from Blumberg *et al.*

<sup>6</sup> We distribute the Tax Policy Center's estimate of the total tax cuts by state using data from Matthew Gardner and Meg Wiehe, "Affordable Care Act Repeal Includes a \$31 Billion Tax Cut for a Handful of the Wealthiest Taxpayers: 50-State Breakdown," Institute on Taxation and Economic Policy, March 17, 2017, <https://itep.org/affordable-care-act-repeal-includes-a-31-billion-tax-cut-for-a-handful-of-the-wealthiest-taxpayers-5/>.

<sup>7</sup> The Congressional Budget Office estimates that the federal cost of Medicaid expansion coverage is about \$5,600 in 2019, on average. Congressional Budget Office, "Federal Subsidies for Health Insurance Coverage for People Under Age 65: 2019 to 2029," May 2, 2019, <https://www.cbo.gov/publication/55085>. Premium tax credit estimates are annualized figures from the Centers for Medicare & Medicaid Services, "Early 2019 Effectuated Enrollment Snapshot," August 12, 2019, <https://www.cms.gov/sites/default/files/2019-08/08-12-2019%20TABLE%20Early-2019-2018-Average-Effectuated-Enrollment.pdf>.

- The highest income 0.001 percent of tax filers — that is, the 1,409 households with incomes over \$53 million apiece — would receive tax cuts worth a total of about \$3.8 billion. That amount exceeds the total value of premium tax credits for over 600,000 people in 18 states (including the District of Columbia).

Annual tax cuts for this group would average about \$2.7 million apiece.<sup>8</sup>

Striking down the ACA would also transfer billions of dollars from seniors to pharmaceutical companies. Eliminating the ACA's branded drug fee would cut taxes for pharmaceutical companies by \$2.8 billion each year. At the same time, at least 5 million seniors would pay at least \$1,000 more per year, on average, for prescription drugs because eliminating the ACA would reopen the Medicare "donut hole": a range of beneficiaries' drug spending where the Medicare prescription drug benefit initially provided no coverage, requiring beneficiaries to pay 100 percent of the costs.<sup>9</sup> The ACA gradually eliminated the donut hole.

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<sup>8</sup> For the methodology behind the top 0.001 percent calculation, see Brandon DeBot, Chye-Ching Huang, and Chuck Marr, "ACA Repeal Would Lavish Medicare Tax Cuts on 400 Highest-Income Households: Each Would Get Average Tax Cut of About \$7 Million a Year," Center on Budget and Policy Priorities, January 12, 2017, <https://www.cbpp.org/research/federal-tax/aca-repeal-would-lavish-medicare-tax-cuts-on-400-highest-income-households>. These revised calculations focus on the top 1,409 households (the top 0.001 percent) because the IRS has stopped publishing data for the top 400 taxpayers.

<sup>9</sup> These estimates are for 2015, when the ACA only partially closed the donut hole, and thus underestimate savings in 2020 (when the hole will be fully closed). Centers for Medicare & Medicaid Services, "More than 10 Million People with Medicare Have Saved Over \$20 Billion on Prescription Drugs Since 2010," February 8, 2016, <https://www.cms.gov/newsroom/press-releases/more-10-million-people-medicare-have-saved-over-20-billion-prescription-drugs-2010>. See also Juliette Cubanski, Tricia Neuman, and Anthony Damico, "Closing the Medicare Part D Coverage Gap: Trends, Recent Changes, and What's Ahead," Kaiser Family Foundation, August 21, 2018, <https://www.kff.org/medicare/issue-brief/closing-the-medicare-part-d-coverage-gap-trends-recent-changes-and-whats-ahead/>.

TABLE 1

## State Estimates

	Impact of Lawsuit			Premium Tax Credits	
	High-income tax cuts (millions of dollars)	Federal funding cut (millions of dollars)	Increase in uninsured (thousands of people)	Total (millions of dollars)	Consumers (thousands of people)
Alabama	-230	-1,155	143	1,066	146
Alaska	-50	-540	68	115	14
Arizona	-500	-2,119	297	734	123
Arkansas	-290	-1,778	299	258	55
California	-8,230	-22,403	3,789	7,192	1,254
Colorado	-780	-2,812	400	766	114
Connecticut	-1,270	-1,851	223	458	74
Delaware	-70	-302	28	167	19
District of Columbia	-200	-281	34	4	1
Florida	-3,430	-9,342	1,560	10,367	1,599
Georgia	-900	-2,318	461	2,448	380
Hawaii	-110	-305	11	105	16
Idaho	-100	-594	79	462	79
Illinois	-1,910	-2,997	605	1,574	250
Indiana	-350	-3,046	497	393	96
Iowa	-170	-1,398	187	457	43
Kansas	-300	-545	62	537	76
Kentucky	-280	-4,146	379	389	64
Louisiana	-400	-3,606	494	455	76
Maine	-70	-495	83	422	59
Maryland	-710	-2,939	345	699	122
Massachusetts	-1,940	-1,718	102	648	217
Michigan	-730	-5,191	720	1,035	223
Minnesota	-610	-1,841	265	240	64
Mississippi	-110	-717	100	580	81
Missouri	-500	-1,161	169	1,221	177
Montana	-100	-1,092	112	259	37
Nebraska	-140	-774	52	808	81
Nevada	-420	-1,170	282	336	67
New Hampshire	-170	-366	89	155	31
New Jersey	-1,700	-2,698	595	792	181
New Mexico	-120	-2,165	226	157	33
New York	-6,010	-10,149	607	506	130

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	Impact of Lawsuit			Premium Tax Credits	
	High-income tax cuts (millions of dollars)	Federal funding cut (millions of dollars)	Increase in uninsured (thousands of people)	Total (millions of dollars)	Consumers (thousands of people)
<b>North Carolina</b>	-720	-4,570	503	3,565	439
<b>North Dakota</b>	-100	-180	25	87	19
<b>Ohio</b>	-800	-4,414	741	715	149
<b>Oklahoma</b>	-320	-1,236	146	1,062	136
<b>Oregon</b>	-340	-2,552	372	572	106
<b>Pennsylvania</b>	-1,270	-5,052	858	1,927	299
<b>Rhode Island</b>	-110	-509	67	112	28
<b>South Carolina</b>	-290	-1,653	242	1,370	190
<b>South Dakota</b>	-80	-200	12	175	26
<b>Tennessee</b>	-560	-1,586	168	1,316	182
<b>Texas</b>	-4,300	-6,456	1,733	5,247	907
<b>Utah</b>	-240	-991	102	876	175
<b>Vermont</b>	-60	-169	13	116	22
<b>Virginia</b>	-980	-4,679	642	1,788	250
<b>Washington</b>	-1,250	-4,150	565	629	126
<b>West Virginia</b>	-70	-1,045	162	172	19
<b>Wisconsin</b>	-420	-1,017	153	1,278	171
<b>Wyoming</b>	-170	-243	12	247	23
<b>U.S. total</b>	<b>- 44,950</b>	<b>-134,718</b>	<b>19,877</b>	<b>57,057</b>	<b>9,250</b>

Source: High-income tax cuts are the elimination of the ACA's Additional Medicare Tax and Net Investment Income Tax and are calculated from Tax Policy Center and Institute for Taxation and Economic Policy estimates. Tax cuts are rounded to the nearest \$10 million. Lawsuit impacts are Urban Institute estimates. Premium tax credits are annualized estimates based on CMS data for February 2019. Totals may not add due to rounding.