

# Suit Challenging ACA Legally Suspect But Threatens Loss of Coverage for Tens of Millions



The Trump Administration and 18 Republican state attorneys general are asking the Supreme Court to strike down the entire Affordable Care Act (ACA) as unconstitutional. Oral arguments are scheduled for November 10, with a decision likely next spring. The ACA remains the law of the land for now, and legal experts across the political spectrum view the case against it as extremely weak. But if the courts “[terminate](#)” the ACA, as President Trump again urged in May, some [20 million](#) people would become uninsured — likely many more when accounting for COVID-19’s effects on ACA participation. In addition, if the Administration prevails, millions more could be charged more or denied coverage altogether because they have a pre-existing condition or would lose other important protections.

## Lawsuit Background and Trump Administration’s Position

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The state attorneys general [filed](#) their lawsuit with a Texas district court in February 2018. The crux of their argument is that the Supreme Court’s 2012 decision in *National Federation of Independent Business v. Sebelius* upheld the ACA’s individual coverage requirement under Congress’ taxing power, and the 2017 tax law zeroed out that tax penalty. Without the tax in place, they claim, the coverage requirement is unconstitutional, making the rest of the ACA also unlawful — an argument that ignores Congress’ choice to leave the ACA intact when it zeroed out the tax penalty.

From the start the Trump Administration has refused to defend the ACA, an unprecedented move that seems to have led two senior career attorneys to withdraw from the case and one to [resign](#). But the government’s specific position on the case has changed. In June 2018 the Justice Department (DOJ) largely agreed with the plaintiffs’ reasoning, but it asked the court to strike down not the entire law but two critical consumer protections that it said were inextricably linked to the mandate: the prohibitions on insurers denying coverage to people with pre-existing conditions (guaranteed issue) and on charging people higher premiums because of their health status (community rating). The Administration has [since endorsed striking down the entire ACA, in line with](#) its many legislative and executive attempts to repeal or undermine it.

The District Court judge [ruled](#) in favor of the plaintiff states and invalidated the entire ACA in December 2018 but stayed the decision. In December 2019 the Fifth Circuit [concurred](#) that the individual mandate was unconstitutional but sent the case back to the District Court to determine which, if any, portions of the ACA could remain and whether the decision should apply nationwide. In an August 2020 [brief](#), Texas again urged the Supreme Court to institute nationwide repeal.

A group of Democratic attorneys general led by California [intervened](#) to defend the law in court following the Trump Administration’s refusal to do so. Following the Fifth Circuit decision, these attorneys general appealed to the Supreme Court, which has agreed to hear the case, now called *California v. Texas*.

## What Happens if Trump Administration Prevails?

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Striking down the ACA would increase the number of uninsured people by 20 million, or 65 percent, the Urban Institute [estimated](#) in late 2019. (Urban also provided estimates by state and [demographic group](#).) Actual coverage losses would almost certainly be higher when accounting for the historic public health and economic crises that have caused many people to lose jobs or income, making [many of them](#) eligible for the ACA’s help. And striking down the law would end not only the ACA’s major coverage expansions — such as the Medicaid expansion, premium tax credits, and health insurance marketplaces — but other important protections as well, harming tens of millions of people who would remain insured.

- Insurers could once again put annual and lifetime limits on coverage, including for people with employer plans.
- Young adults would no longer be able to stay on their parents’ plans up to age 26.
- Insurers could reimpose cost sharing for preventive services, including under employer plans and Medicare.
- Reversing the ACA’s changes to how Medicare pays plans and providers and how state Medicaid programs determine eligibility would cause [massive disruption](#).
- Medicare beneficiaries would face higher prescription drug costs due to the Medicare “donut hole” reopening.

Higher-income households, meanwhile, would reap [\\$45 billion](#) in tax cuts each year, with an average \$46,000 per year for those with incomes over \$1 million.

If the courts threw out only parts of the law, the result would be nearly as devastating. For example, allowing insurers to again discriminate based on health status would jeopardize coverage for millions who could be charged more, denied coverage for certain diagnoses, or blocked from individual market coverage altogether. Eliminating ACA protections could also let insurers charge higher premiums to women and people in certain occupations, reimpose pre-existing condition exclusions in [employer coverage](#), and make premium tax credits [nearly impossible](#) to administer.

## Case Is “Absurd,” “Ludicrous,” Say Experts Across Political Spectrum

Legal experts, including [experts opposed](#) to the ACA and who supported other legal challenges to the law, almost uniformly agree that the arguments in this case are “[absurd](#)” or “[ludicrous](#).” Two Republican state attorneys general (from Montana and Ohio) submitted an [amicus brief](#) stating that “to describe [the District Court’s position] is to refute it.” Fifth Circuit Judge Carolyn King’s [dissent](#) called the district court opinion striking down the ACA “textbook judicial overreach.” And Republican Senator Lamar Alexander has called the Administration’s position that the 2017 tax bill effectively repealed the ACA “[flimsy](#)” and “as [far-fetched](#) as any I’ve ever heard.”

There are many problems with the arguments that Republican state attorneys general are making in calling for repeal. Chief among them is that they ignore Congress’ unambiguous decision to zero out the individual mandate but leave the rest of the ACA intact. They argue that the mandate is so central to the ACA or its pre-existing condition exclusion that, without it, some or all of the law must be struck down. But while the Congress that passed the ACA said the mandate was important for the reformed insurance market to function, the Congress that zeroed out the penalty decided to keep the other provisions in place. Longstanding legal principles say that Congress, not the court, gets to make that decision – as even a brief from [past litigants](#) against the ACA noted.

## Major Stakeholders Have Highlighted Catastrophic Effects on the Health System

Those filing Supreme Court briefs opposing the Administration and Republican states’ arguments include the following.

- **Health care providers and insurers.** [American Hospital Association and Federation of American Hospitals](#); [36 state hospital associations](#); [American Medical Association](#), [American Academy of Family Physicians](#), [American College of Physicians](#), [American Academy of Pediatrics](#), and [17 other medical societies](#); [National Association of Community Health Centers](#); [America’s Health Insurance Plans](#); and [Blue Cross Blue Shield Association](#).
- **Patient and nonprofit groups.** [American Cancer Society](#), [American Diabetes Association](#), [American Lung Association](#), and [March of Dimes](#); [AARP](#); [Families USA](#), [Community Catalyst](#), and [CBPP](#); [National Health Law Program](#); and [SEIU](#).
- **Other nonpartisan experts.** [Bipartisan economists](#), [health policy scholars](#), [public health experts](#), and [small business representatives](#).

### States Suing for Immediate End to ACA

Alabama  
Arkansas  
Arizona  
Florida  
Georgia  
Indiana  
Kansas  
Louisiana  
~~Maine~~  
Mississippi  
Missouri

Nebraska  
North Dakota  
South Carolina  
South Dakota  
Tennessee  
Texas  
Utah  
West Virginia  
~~Wisconsin~~

### States Defending ACA

California  
*Colorado*  
Connecticut  
District of Columbia  
Delaware  
Hawai’i  
Illinois  
*Iowa*  
Kentucky  
Massachusetts  
*Michigan*

Minnesota  
*Nevada*  
New Jersey  
New York  
North Carolina  
Oregon  
Rhode Island  
Vermont  
Virginia  
Washington

Note: Strikethrough indicates states that have removed themselves from the lawsuit. Italics indicate states joining after the initial filing. Republican attorneys general from Montana and Ohio filed an *amicus* brief arguing that the mandate is unconstitutional but severable.