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## ACA Repeal Lawsuit Would Cut Taxes for Top 0.1 Percent by an Average of \$198,000

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In the midst of a global pandemic and major recession, the Trump Administration and 18 state attorneys general are expected to file briefs this week asking the Supreme Court to strike down the entire Affordable Care Act (ACA). President Trump affirmed his commitment to his Administration's stance last month, saying "we want to terminate health care under Obamacare."<sup>1</sup> Striking down the law would cause millions to lose their health coverage, while delivering a large tax cut to the highest-income Americans and certain corporations.

Prior to the COVID-19 crisis, striking down the ACA would have caused 20 million people to lose health coverage, the Urban Institute estimated.<sup>2</sup> With the Supreme Court likely to decide the case in 2021, striking down the law would lead to even larger coverage losses, as millions more people are expected to turn to ACA programs for coverage due to the recession.<sup>3</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. If the Administration's position prevails:

- The highest-income 0.1 percent (1 in 1,000) households would receive tax cuts averaging about \$198,000 per year, the Tax Policy Center estimates.<sup>4</sup> (See Figure 1.) This group has annual incomes over \$3 million.

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<sup>1</sup> Devlin Barrett, "Trump Vows Complete End of Obamacare Law Despite Pandemic," *Washington Post*, May 6, 2020, [https://www.washingtonpost.com/world/national-security/trump-obamacare-supreme-court/2020/05/06/4a53ba54-8fe1-11ea-9e23-6914ee410a5f\\_story.html](https://www.washingtonpost.com/world/national-security/trump-obamacare-supreme-court/2020/05/06/4a53ba54-8fe1-11ea-9e23-6914ee410a5f_story.html).

<sup>2</sup> Jessica Banthin *et al.*, "Implications of the Fifth Circuit Court Decision in *Texas v. United States*," Urban Institute, December 19, 2019, <https://www.urban.org/research/publication/implications-fifth-circuit-court-decision-texas-v-united-states>.

<sup>3</sup> Bowen Garrett and Anuj Gangopadhyaya, "How the COVID-19 Recession Could Affect Health Insurance Coverage," Urban Institute, May 2020, <https://www.urban.org/research/publication/how-covid-19-recession-could-affect-health-insurance-coverage>.

<sup>4</sup> See Tax Policy Center tables T20-0169 and T20-0170. Estimates are for 2019; estimates for later years would likely be modestly larger.

- Households with annual incomes over \$1 million would receive tax cuts averaging about \$42,000 per year.
- Tax cuts for households with incomes over \$200,000 would cost the federal government a total of about \$30 billion in 2020. That’s over one-third of the federal cost of the ACA’s expansion of Medicaid to low-income adults, meaning that it could pay for health coverage for over 4 million people.

FIGURE 1

### ACA Repeal Lawsuit, If Successful, Would Give Windfall to Highest-Income Households

Income group	Share of total tax cut	Average tax cut
Lowest fifth	3%	\$40
Second fifth	3%	\$50
Middle fifth	3%	\$50
Fourth fifth	4%	\$80
Next 10 percent	3%	\$110
Next 5 percent	2%	\$210
Next 4 percent	14%	\$1,580
Next 0.9 percent	25%	\$13,140
Top 0.1 percent	42%	\$198,250

Note: ACA = Affordable Care Act. Chart shows the distribution of ACA revenue measures in 2019.

Source: Tax Policy Center

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In effect, the Administration and the state attorneys general are seeking a massive transfer of resources from low- and moderate-income people to those at the top of the income scale. The lawsuit would also widen racial gaps, with Black and Hispanic people disproportionately likely to lose health coverage and the overwhelming share of the tax cuts flowing to white people.

### Administration’s Stance in Lawsuit Would Lead to Tens of Billions in Tax Cuts

The ACA repeal case that will be decided by the Supreme Court (*California v. Texas*) 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>5</sup> Nonetheless, the Administration took the nearly unprecedented stance of refusing to defend federal law in court, ultimately adopting the position of the state attorneys general that the entire law should be struck down.

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. The largest of these provisions are two taxes that apply exclusively to high-income households:

- *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 incomes over \$250,000 (\$200,000 for single filers).

The Tax Policy Center estimates also take into account the repeal of additional ACA revenue measures, including a \$2.8 billion annual fee on pharmaceutical corporations, limits on contributions to medical Flexible Spending Accounts, and the ACA employer mandate (a penalty that applies to certain employers not offering adequate health coverage).

## **Lawsuit Would Transfer Resources From Low- and Moderate-Income People to High-Income People and Would Widen Racial Gaps**

The ACA used the revenue raised from taxes on high-income people and pharmaceutical corporations to help pay for Medicaid expansion to low-income adults, premium tax credits that make individual market coverage affordable for moderate-income people, and other coverage improvements. (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 moderate-income people (who would lose subsidized health coverage) to high-income households and corporations (which would receive large tax cuts). Tax cuts for households with incomes above \$200,000 alone would cost the federal government about \$30 billion in 2020.<sup>6</sup> That’s more than a

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<sup>5</sup> Center on Budget and Policy Priorities, “Suit Challenging ACA Legally Suspect But Threatens Loss of Coverage for Millions,” updated June 17, 2020, <https://www.cbpp.org/research/health/suit-challenging-aca-legally-suspect-but-threatens-loss-of-coverage-for-millions>.

<sup>6</sup> The Joint Committee on Taxation estimated in 2017 that repeal of the two Medicare taxes, which would only benefit households with incomes over \$200,000, would cost \$28 billion in 2020; the Tax Policy Center estimates indicate that these households would also receive about \$2 billion from repeal of the other ACA revenue measures. See <https://www.jct.gov/publications.html?func=startdown&cid=4984> and <https://www.jct.gov/publications.html?func=startdown&cid=4988>.

third of the federal cost of the ACA's Medicaid expansion, meaning that it would pay for providing health coverage to more than 4 million people.<sup>7</sup>

And while the coverage losses from ending Medicaid expansion and the ACA's premium tax credits would be concentrated among low- and moderate-income people, the benefits of the tax cuts would go overwhelmingly to those with the very highest incomes. For all income groups below the top decile, annual tax cuts would average about \$100 or less, and for those between the 90<sup>th</sup> and 95<sup>th</sup> percentiles (incomes of about \$250,000 to \$350,000), they would average about \$200. More than two-thirds of the total value of the tax cuts would flow to those in the top 1 percent of the income distribution and 42 percent to those in the top tenth of 1 percent — the highest-income 1 in 1,000 households, which would receive tax cuts averaging \$198,000 per year.

### **ACA Repeal Would Also Widen Racial Gaps**

Striking down the ACA would also widen racial gaps, with particularly large health coverage losses among Black and Hispanic people. In its pre-COVID-19 estimates, the Urban Institute projected that ACA repeal would cause nearly 1 in 10 non-elderly Black people, and 1 in 10 Hispanic people, to lose coverage, compared to about 1 in 16 white people. Meanwhile, the tax cuts that would result from striking down the law would flow disproportionately to white households, which are three times likelier than Black or Hispanic households to be in the top 1 percent of the income scale.<sup>8</sup>

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<sup>7</sup> The Congressional Budget Office estimates that the federal government will spend \$78 billion in 2020 to cover 12 million people newly eligible for Medicaid through the ACA Medicaid expansion. See <https://www.cbo.gov/system/files/2020-03/51298-2020-03-healthinsurance.pdf>.

<sup>8</sup> Chye-Ching Huang and Roderick Taylor, "How the Federal Tax Code Can Better Advance Racial Equity," Center on Budget and Policy Priorities, July 25, 2019, <https://www.cbpp.org/sites/default/files/atoms/files/7-25-19tax.pdf>.