

HEALTH CARE FOR AMERICA NOW!

Trump Administration Refuses to Defend the ACA: Lawsuit Would Take Away Protections for People with Pre-Existing Conditions

What Happened?

On Thursday, June 7, the Trump administration officially threw its support behind a [new legal challenge](#) (*Texas et al. v. United States et al*) to the Affordable Care Act (ACA), arguing that the law's protections for people with pre-existing conditions are unconstitutional.

The lawsuit, now before a federal district judge in Texas, comes from officials in 20 conservative states (see [list](#)). Leading legal scholars say this challenge to the ACA is [without merit](#) and that the Department of Justice's (DOJ) highly-unusual refusal to defend existing federal law is a ["war on the rule of law."](#)

The Supreme Court has already rejected two legal challenges to the law in 2012 and in 2015, upholding the ACA in both instances.

What are the Issues?

The lawsuit's key argument is that Congress intended for the pre-existing condition protections to work in tandem with the law's individual mandate, which dictates that people have insurance or pay a penalty. The plaintiffs argue that since Congress eliminated the penalty as part of the Republican tax law passed in December of 2017, the pre-existing condition protections are also invalid.

That would mean insurers would no longer be subject to "guaranteed issue" (a requirement that they sell policies to anybody, regardless of medical status) or "community rating" (a prohibition on charging higher premiums to people with pre-existing conditions). Insurance companies could therefore go back to denying, limiting and over-charging anyone that they determine has a pre-existing condition. Before the ACA, anything from high blood pressure to mental illness to domestic abuse could be considered a pre-existing condition and used as a pretext to charge more or deny coverage.

There are over 130 million people in the United States with pre-existing conditions. See how many by state or Congressional District [here](#).

Responding to the Legal Challenge:

The fundamental weakness with the Republican states' case is that Congress has taken action since it passed the Affordable Care Act, changing the ACA and making the lawsuit's central argument moot. Congress has the right to change laws and in this case, Congress left pre-existing protections in place even as it reduced the individual mandate penalty to zero. Contrary to what the lawsuit suggests, the individual mandate in the ACA has not been repealed—only the penalty was changed—yet the rest of the law continues to function as before. That means that that the other provisions of the law are, in fact, "severable" or able to stand on their own even. These provisions are not, in fact, indispensable to one another.

“If Congress had wanted to repeal the guaranteed issue and community rating provisions of the law, it would’ve done so — but it didn’t,” [Nicholas Bagley](#), a law professor at the University of Michigan, told HuffPost. Bagley is one of many experts who gives this case a slim chance of success, including [scholars who supported previous challenges](#).

DOJ’s refusal to uphold and defend the ACA makes this lawsuit the latest in a years-long pattern of partisan Republican attacks on the law. In fact, the failure of the DOJ to defend the ACA against the lawsuit was so unprecedented that three career DOJ attorneys asked to remove themselves from the case. [One has since resigned](#).

In response to the legal challenge, attorney generals in 17 states have filed a motion opposing the case, including California, Connecticut, Delaware, Hawaii, Illinois, Kentucky, Massachusetts, Minnesota by and through its Department of Commerce, New Jersey, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, Washington, and the District of Columbia.

Consumer protections and rules for insurance companies that stop discrimination against older people, women and people with pre-existing conditions have always been the most popular provisions in the ACA. That’s why the lawsuit is creating a huge opportunity to educate voters about the Republican’s broader anti-ACA agenda and to mobilize public opinion against those who continue to attack the law and take away our healthcare in Congress, in states and in the courts.

- [Patient groups](#) including the American Diabetes Association and the American Lung Association are filing briefs opposing the lawsuit.
- [Experts](#) are warning that the lawsuit could impact not only people who get coverage under the ACA, but also spill over into employer-provided coverage for some employees who may be changing jobs or work for smaller employers.

MORE READING:

Trump Administration Takes New Aim At Obamacare’s Pre-Existing Protections

https://www.huffingtonpost.com/entry/trump-obamacare-justice-lawsuit_us_5b19d81be4b0bbb7a0dafeef

ACA lawsuit could jeopardize 52 million Americans’ access to health care

https://www.washingtonpost.com/news/wonk/wp/2018/06/08/aca-lawsuit-could-jeopardize-52-million-americans-access-to-health-care/?utm_term=.3b436b686096

Legal scholars think the new Obamacare lawsuit is “ludicrous”

<https://www.vox.com/policy-and-politics/2018/6/8/17441512/obamacare-lawsuit-texas-trump>

The New Obamacare Lawsuit Could Undo Far More Than Protections for Pre-existing Conditions

<https://www.nytimes.com/2018/06/12/upshot/the-new-obamacare-lawsuit-could-undo-far-more-than-protections-for-pre-existing-conditions.html>