



Written by [R. Cort Kirkwood](#) on December 15, 2018

## Judge Sets Up Another War Between the States – Over ObamaCare

A federal judge in Texas declared Friday that the Affordable Care Act is unconstitutional.

The big losers aren't just President Barack Obama and the socialist healthcare advocates who pushed the monstrous bill known as ObamaCare through Congress, but also the intervenor defendants — those states controlled by radical Democrats who fought against the states, led by Texas, that filed the lawsuit.

The losers promise an appeal.

Get ready for another War Between the States.

### The Case

GOP-led states filed the lawsuit that ended in the [ruling from U.S. District Judge Reed O'Connor](#) of the federal district court in Fort Worth. He declared the law unconstitutional because Congress, in 2017, removed the ACA's financial penalty for not purchasing or obtaining health insurance.

That penalty, meant to enforce the individual mandate that everyone have health insurance, was inextricably tied to the ACA, the court ruled. Without the penalty, the rest of the ACA must fall.

"The Court today finds the Individual Mandate is no longer fairly readable as an exercise of Congress's Tax Power and continues to be unsustainable under Congress's Interstate Commerce Power," the judge wrote. "The Court therefore finds the Individual Mandate, unmoored from a tax, is unconstitutional."

The tax issue was the plaintiffs' fine point, and created not just by the original ACA but also by another act of Congress in 2017.

The original ObamaCare bill contained an individual mandate that required all Americans to buy insurance or face a penalty. Opponents argued in court that the mandate was unconstitutional because it forced Americans to buy something and punished them for not buying it. The U.S Supreme Court ruled that while the mandate itself was unconstitutional under the Commerce Clause, because the penalty was essentially a tax, the mandate was a constitutional exercise of the taxing power of Congress.

So the nine solons upheld the constitutionality of ObamaCare. Never mind that, based on such "logic," any federal program could be deemed constitutional if it is attached to a tax that is deemed constitutional.

But then, in 2017, Congress passed a bill that zeroed the penalty, leaving the mandate to do so intact. That's where the ACA becomes unconstitutional, the [Bush-appointee wrote](#).

"The Court finds the Individual Mandate can no longer be fairly read as an exercise of Congress's Tax Power and is still impermissible under the Interstate Commerce Clause — meaning the Individual





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Mandate is unconstitutional,” he wrote.

### **Ruling Based on Reasoning In Original ObamaCare Decision**

[O’Connor’s ruling](#) is rooted in the [U.S. Supreme Court’s decision in 2012](#), authored by Chief Justice John Roberts, that upheld the constitutionality of the ACA.

“The Supreme Court held the Individual Mandate was unconstitutional under the Interstate Commerce Clause but could fairly be read as an exercise of Congress’s Tax Power because it triggered a tax.” It stood until the Tax Cuts and Jobs Act of 2017 “eliminated that tax,” O’Connor wrote. “The Supreme Court’s reasoning ... thus compels the conclusion that the Individual Mandate may no longer be upheld under the Tax Power. And because the Individual Mandate continues to mandate the purchase of health insurance, it remains unsustainable under the Interstate Commerce Clause — as the Supreme Court already held.”

“The Individual Mandate, unmoored from a tax,” he concluded, “is unconstitutional.”

But he also noted that “the ACA’s text and the Supreme Court’s decisions ... make clear the Individual Mandate is inseverable from the ACA.... Congress intended the Individual Mandate to serve as the keystone, the linchpin of the ACA. That is a conclusion the Court can reach without marching through every nook and cranny of the ACA’s 900-plus pages because Congress plainly told the public” that the mandate was essential to the ACA’s “regulatory scheme.”

That being the case, the court ruled that the ACA itself is “invalid.”

### **The Left Is Furious**

Unsurprisingly, the radical Left is furious.

[The New York Times dutifully reported the lament of California’s attorney general](#). “Today’s ruling,” Xavier Becerra declared, “is an assault on 133 million Americans with pre-existing conditions, on the 20 million Americans who rely on the A.C.A.’s consumer protections for health care, on America’s faithful progress toward affordable health care for all Americans.”

As well, [he tweeted](#), “Today’s misguided ruling in *Texas v. US* will not deter us: our coalition will continue to fight in court for the health and wellbeing of all Americans.”

The Donald was effusive, as ever. “As I predicted all along, Obamacare has been struck down as an UNCONSTITUTIONAL disaster!” he tweeted. “Now Congress must pass a STRONG law that provides GREAT healthcare and protects pre-existing conditions. Mitch and Nancy, get it done!”

The case will undoubtedly land again in the U.S. Supreme Court. Then we’ll see whether Trump’s appointees, Associate Justices Neil Gorsuch and Brett Kavanaugh, vote as liberals fear.

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