



Written by [Michael Tennant](#) on April 2, 2019

## ObamaCare's Future — and Perhaps Trump's — In Judges' Hands

President Donald Trump took office with a promise to repeal and replace ObamaCare. Between individual-mandate repeal and some regulatory changes, he has had some success. However, much of the law remains on the books, and with Democrats now controlling the House of Representatives, the battle over ObamaCare's future is largely being waged in the courts.



The most significant case by far is [Texas v. Azar](#), which challenges the Affordable Care Act's (ACA) constitutionality in light of the individual mandate's repeal. Brought by officials from 20 Republican-controlled states, the lawsuit contends that since (1) the Supreme Court found the ACA constitutional on the grounds that the individual-mandate penalty was an exercise of Congress' taxing power and (2) that penalty has now been eliminated, the ACA must therefore be invalidated in its entirety.

In December, U.S. District Court Judge Reed O'Connor in Fort Worth, Texas, found for the plaintiffs in the case. Democrat-run states then appealed the decision to the Fifth Circuit Court of Appeals. Last week, the Trump administration told the circuit court that it agreed with O'Connor's decision and [would not defend the ACA](#). Most observers expect the case to end up before the Supreme Court.

Also last week, U.S. District Court Judge James Boasberg in Washington, D.C., struck down Medicaid work requirements imposed by Arkansas and Kentucky. The Trump administration, believing that able-bodied adults should earn their keep, approved the state programs, which mandated that Medicaid recipients "work, volunteer or complete other activities for at least 80 hours a month," according to [The Hill](#).

Boasberg ruled the work requirements, which have cost more than 18,000 people their healthcare coverage, were inadmissible because they ran counter to the express purpose of Medicaid and because the administration had not considered potential coverage losses and other potential negative effects on beneficiaries when approving the plans. The administration says it will continue to approve work requirements but hasn't yet announced whether it will appeal Boasberg's decision.

On Thursday, U.S. District Court Judge John Bates [invalidated](#) the administration's expansion of the eligibility requirements for [association health plans](#), which allowed sole proprietors and small businesses to obtain group health insurance that costs less because it doesn't fall under the ACA's expensive mandates. Bates called the move an "end-run" around Congress.



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The administration's reinterpretation of the 1974 Employee Retirement and Income Security Act (ERISA) to permit more people to participate in association plans "unreasonably expands the definition of 'employers' to include groups without any real commonality of interest and to bring working owners without employees within ERISA's scope despite Congress's clear intent that ERISA cover benefits arising out of employment relationships," Bates wrote.

The administration has not yet announced an appeal of the ruling.

Other legal challenges are also in the pipeline. Thirteen states and the District of Columbia are suing to overturn the administration's regulation allowing employers to opt out of offering contraceptive coverage if they have religious or moral objections to doing so; in January, a federal judge issued a [nationwide injunction](#) against the rule while the lawsuit plays out. Earlier this month, 21 states plus the District of Columbia, the American Medical Association, and Planned Parenthood filed [lawsuits](#) against the administration's recent rule banning healthcare providers who receive federal family-planning funds from referring women for abortions.

No one, of course, knows how these cases will all end. But everyone knows the legal system is slow, so one shouldn't expect a resolution to any or all of them in the near future — which could pose a problem for Trump, who will be up for reelection next year.

"By the time these cases get through the courts," retired law professor Timothy Jost told the [Associated Press](#), "there simply isn't going to be time for the administration to straighten out any messes that get created, much less get a comprehensive plan through Congress" before the election.

Trump said Friday he has a plan "that is going to be much less expensive than ObamaCare," though he has yet to reveal it, let alone explain how he is going to convince Congress to pass it.

ObamaCare's future is still very much up in the air. Trump had better hope it doesn't come crashing down on his reelection bid.

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