



Written by [Michael Tennant](#) on February 27, 2018

States Sue to Overturn ObamaCare in Light of Mandate Penalty Repeal

Twenty states are suing to overturn ObamaCare on the basis that the recent repeal of the individual-mandate penalty renders the Supreme Court's 2012 decision upholding the law "legally impossible."

Texas and Wisconsin are leading the [lawsuit](#), which was filed Monday in the U.S. District Court for the Northern District of Texas. The remaining plaintiffs are Alabama, Arkansas, Arizona, Florida, Georgia, Indiana, Kansas, Louisiana, Maine, Mississippi, Missouri, Nebraska, North Carolina, South Carolina, South Dakota, Tennessee, Utah, and West Virginia.



As the complaint makes clear, the Supreme Court, in 2012's *NFIB v. Sebelius*, employed some rather tortured reasoning to find the Affordable Care Act (ACA) constitutional. On the one hand, the court ruled that the individual mandate was unconstitutional in that it required Americans to purchase health insurance, the claims of Congress to such power under the Constitution's Commerce Clause notwithstanding. On the other hand, the court decided that the penalty for noncompliance with the mandate was a tax, which falls within the constitutional powers of Congress. "Thus," explains the complaint, "even though Congress sought to do something unconstitutional in enacting the mandate under the Commerce Clause, the Supreme Court salvaged its handiwork as a lawful exercise of the taxing power."

Just before Christmas, however, President Donald Trump signed into law a tax-reform bill that repealed the individual-mandate penalty. "What remains, then, is the individual mandate, without any accompanying exercise of Congress's taxing power, which the Supreme Court already held that Congress has no authority to enact," reads the brief. Therefore, the plaintiffs argue, the court has no choice but to strike down the mandate.

Furthermore, they maintain, the mandate "is not severable from the rest of the ACA." Congress did not include a severability clause in the legislation. In fact, Congress explicitly stated that the mandate was not severable, noting in the ACA itself that the mandate "is essential to creating effective health insurance markets" and that its absence "would undercut Federal regulation of the health insurance market." In addition, the Obama administration argued in court that the mandate was not severable, and four Supreme Court justices concurred.

Given that the individual mandate can no longer be justified as an exercise of the taxing power of Congress and that it cannot be excised from the law, the states are asking the court to overturn the entire ACA.

"Texans have known all along that Obamacare is unlawful and a divided Supreme Court's approval rested solely on the flimsy support of Congress' authority to tax. Congress has now kicked that flimsy



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support from beneath the law,” Texas Attorney General Ken Paxton said in a [statement](#). “The U.S. Supreme Court already admitted that an individual mandate without a tax penalty is unconstitutional. With no remaining legitimate basis for the law, it is time that Americans are finally free from the stranglehold of Obamacare, once and for all.”

The states have made an excellent case; the question now is how the Justice Department will respond. “This case puts the Trump Administration in a really, really tough bind,” [tweeted](#) South Texas College of Law professor Josh Blackman. The administration is opposed to ObamaCare, but will it now be forced to defend the constitutionality of the ACA in court? Blackman thinks the Justice Department “will likely oppose [the lawsuit] on standing and other justiciability grounds.”

The plaintiffs, fortunately, have already thought of this and included several pages in their complaint detailing the injuries states have suffered under ObamaCare. The ACA, they claim, preempts state laws regarding health insurance; compels states “to take corrective action, at great cost, to save their insurance markets”; increases state Medicaid and Children’s Health Insurance Program (CHIP) costs by requiring people to have coverage, inducing many low-income Americans to enroll in these programs; and imposes costly mandates on the health-insurance plans states offer to their employees. In his press release, Paxton said that despite having refused to expand Medicaid or create a state insurance exchange, “Texas must pay the IRS, through its Medicaid managed care organizations, an additional \$120 million per year solely due to Obamacare and its implementing regulations.”

Here’s hoping these states can succeed where others, including Congress, have failed by ridding America, once and for all, of what the plaintiffs call “an unconstitutional and irrational regime.”





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