



Written by [Raven Clabough](#) on March 26, 2019

Trump's DOJ Supports Judge's Ruling That Could End ObamaCare

In a surprising turn of events on Monday, the Trump administration said it supports a federal judge's ruling that the entire Affordable Care Act is unconstitutional and will not defend the federal healthcare law, prompting ire from Democrats.

"The Department of Justice has determined that the district court's judgment should be affirmed," three Justice Department lawyers [wrote](#) to the Fifth Circuit Court of Appeals. "Because the United States is not urging that any portion of the district court's judgment be reversed, the government intends to file a brief on the appellees' schedule."



U.S. District Court Judge Reed O'Connor ruled in December that ObamaCare's individual mandate was unconstitutional, thus making all of the Affordable Care Act invalid. The ruling came out of the *Texas v. Azar* case, in which the constitutionality of the individual mandate was challenged. O'Connor determined that the reasoning used by Justice John Roberts to call the mandate a tax was not applicable following the Tax Cuts and Jobs Act of 2017 (TCJA), which eliminated the individual mandate.

Judge O'Connor [wrote](#),

In [*National Federation of Independent Business v. Sebelius*], 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. The TCJA eliminated that tax. The Supreme Court's reasoning in NFIB — buttressed by other binding precedent and plain text — 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.

At the threshold, the Intervenor Defendants hope to have their cake and eat it too by arguing the Individual Mandate does absolutely nothing but regulates interstate commerce. That is, they first say the Individual Mandate "does not compel anyone to purchase insurance." Hr'g Tr. at 37:12. Yet they ask the Court to find the provision "regulate[s] Commerce . . . among the several States." U.S. CONST. art. 1, § 8, cl. 3. The Intervenor Defendants' theory, then, is that Congress regulates interstate commerce when it regulates nothing at all. But to "regulate" is "to govern or direct according to rule" and to "bring under the control of law or constituted authority."

O'Connor concludes that if the individual mandate is unconstitutional, and, being "essential" to the Affordable Care Act, is also "inseverable" from the Affordable Care Act, the ACA is "invalid."



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On Monday, Trump's Justice Department wrote to the Fifth Circuit Court of Appeals that it believes the court's judgment should be affirmed. Justice Department spokesperson Kerri Kupec said the department "has determined that the district court's comprehensive opinion came to the correct conclusion and will support it on appeal."

"The Justice Department is no longer asking for partial invalidation of the Affordable Care Act, but says the whole law should be struck down," Abbe R. Gluck, a law professor at Yale who has closely followed the litigation, said Monday. "Not just some of the insurance provisions, but all of it, including the Medicaid expansion and hundreds of other reforms. That's a total bombshell, which could have dire consequences for millions of people."

Reacting to the Justice Department's unwillingness to defend the federal healthcare law against the suit, House Speaker Nancy Pelosi said on Monday, "Tonight in federal court, the Trump administration decided not only to try to destroy protections for Americans living with pre-existing conditions but to declare all-out war on the health care of the American people."

The *Washington Times* observes that the Justice Department's decision will have a major impact on Tuesday when Democrats propose measures to make ObamaCare more "generous."

Meanwhile, President Trump seems to view this as an opportunity for the GOP to offer a better alternative to ObamaCare. He tweeted on Tuesday, "The Republican Party will become 'The Party of Healthcare!'"

Politico reports that a group of Democratically held states will be challenging the Texas ruling. Legal experts believe that the Fifth Circuit's ruling will be appealed to the Supreme Court.

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