



## Is it Life or Death for the Affordable Care Act?

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We will know the answer to this question shortly. A Texas Federal judge said September 5, 2018, during court proceedings in *Texas et. al v. United States of America et al*, that he'll soon issue a ruling on whether the Affordable Care Act (ACA) should be struck down given the repeal of the individual mandate, effective for 2019. In the way of background, the last big challenge to the ACA came in the 2012 case *National Federation of Independent Business v. Sebelius*, where in a 5 to 4 ruling, the Supreme Court held that requiring all Americans to secure insurance is permissible under Congress' taxing authority. Later, the ACA's individual mandate was deemed unconstitutional by congressional Republicans who repealed the mandate's individual tax penalty.

The plaintiffs in this case (filed in February 2018) are a group of 18 Republican attorney generals, led by Texas and Wisconsin, and two Republican Governors who filed suit in the Northern District of Texas asking the court to prohibit the Federal government "from implementing, regulating, enforcing, or otherwise acting under the authority of the ACA." Defending the case is technically the Justice Department under the Trump administration, but since the Trump administration announced that it would not defend the ACA, it's actually a group of 15 Democratic-led states and the District of Columbia. The Republican plaintiffs' position is that the entire ACA should be invalidated. The Justice Department's position is that elimination of the tax penalty should not require the entire law to be struck down. The Justice Department did stress their concerns that without the individual mandate tax, the provisions of the law requiring insurance companies to sell to people with preexisting conditions, and not charge them a higher premium, should be eliminated effective January 1, 2019 (when the individual tax penalty goes away).

The urgency for a quick decision is exacerbated by employers and individuals needing to know the fate of the ACA before this fall, when open enrollment for the 2019 plan year will occur. In addition, Medicaid will also be impacted by this decision since vacating the ACA will result in the loss of hundreds of billions of dollars in funding the Medicaid expansion. We will keep you posted on the outcome.

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