

ACA Survives Legal Challenge, Protecting Coverage for Tens of Millions



The Supreme Court ruled in June 2021 that the challengers to the Affordable Care Act (ACA) lacked standing, effectively throwing out the lawsuit argued by 18 Republican state attorneys general and the Trump Administration. The ACA remains the law of the land, after the defeat of a case that legal experts across the political spectrum viewed as extremely weak.

Lawsuit Background

The state attorneys general, led by Texas, [filed](#) their lawsuit with a Texas district court in February 2018. The crux of their argument was that the Supreme Court's 2012 decision in *National Federation of Independent Business v. Sebelius* upheld under Congress' taxing power the ACA's requirement that individuals have coverage or pay a penalty, and the 2017 tax law zeroed out that penalty. Without the tax, they claimed, the coverage requirement was unconstitutional, making the rest of the ACA also unlawful — an argument that ignored Congress' choice to leave the ACA intact when it zeroed out the penalty.

From the start the Trump Administration refused to defend the ACA, an unprecedented move that seems to have led two senior career attorneys to withdraw from the case and one to [resign](#). But the government's specific position on the case changed. In June 2018 the Justice Department largely agreed with the plaintiffs' reasoning, but it asked the court to strike down not the entire law but two critical consumer protections that it said were inextricably linked to the mandate: the prohibitions on insurers denying coverage to people with pre-existing conditions (guaranteed issue) and on charging people higher premiums because of their health status (community rating). Later, the Trump Administration [endorsed striking down the entire ACA, in line with](#) its many legislative and executive attempts to repeal or undermine it.

A group of Democratic attorneys general led by California [intervened](#) to defend the law in court given the Trump Administration's refusal to do so. The district court judge [ruled](#) in favor of the plaintiff states and invalidated the entire ACA in December 2018 but stayed the decision. In December 2019 the Fifth Circuit [concurred](#) that the individual mandate was unconstitutional but sent the case back to the district court to determine which, if any, portions of the ACA could remain and whether the decision should apply nationwide.

Following the Fifth Circuit decision, California appealed to the [Supreme Court](#), where again [Texas](#) and the [Trump Administration](#) urged the Supreme Court to institute a total nationwide repeal. The case, now called *California v. Texas*, was argued on November 10, 2020, and on February 10, 2021, the Biden Administration [informed](#) the Court of the government's change in position. On June 17, 2021, the Court [held](#) that the states didn't have standing to challenge the law because they didn't experience any injury "fairly traceable" to the challenged provisions. Similarly, the individuals who joined the case couldn't show injury from a zero-dollar penalty for failure to enroll in coverage. This result meant that the Court didn't need to address the issue of severability.

What Would Have Happened if Texas Had Prevailed?

Striking down the ACA would have increased the number of uninsured people by 21 million, or 69 percent, the Urban Institute estimated in October 2020. (Urban also provided estimates by [state](#) and [demographic group](#).) And striking down the law would have ended not only the ACA's major coverage expansions — such as [Medicaid expansion](#), premium tax credits, and health insurance marketplaces — but other [important protections](#) as well, harming tens of millions of people.

- Insurers could have once again put annual and lifetime limits on coverage, including for people with employer plans.
- Young adults would no longer have been able to stay on their parents' plans up to age 26.
- Insurers could have reimposed cost sharing for preventive services, including under employer plans and Medicare.
- Reversing the ACA's changes to how Medicare pays plans and providers and how state Medicaid programs determine eligibility would have caused [massive disruption](#).
- Medicare beneficiaries would have faced higher prescription drug costs due to the Medicare "donut hole" reopening.

Higher-income households, meanwhile, would have received very large tax cuts from repeal of the ACA’s revenue measures, worth an average [\\$42,000](#) per year for those with incomes over \$1 million.

If the courts threw out only parts of the law, the result would have been nearly as devastating. For example, allowing insurers to again discriminate based on health status would have jeopardized coverage for millions who could be charged more, denied coverage for certain diagnoses, or blocked from individual market coverage altogether — a particularly dire consequence in a [pandemic](#). Eliminating ACA protections could have also let insurers charge higher premiums to women and people in certain occupations, reimpose pre-existing condition exclusions in [employer coverage](#), and make premium tax credits [nearly impossible](#) to administer.

Case Was “Absurd,” “Ludicrous,” Say Experts Across Political Spectrum

Legal experts, including [experts opposed](#) to the ACA and who supported other legal challenges to the law, almost uniformly agree that the arguments in this case were “[absurd](#)” or “[ludicrous](#).” Two Republican state attorneys general (from Montana and Ohio) submitted an [amicus brief](#) stating that “to describe [the district court’s position] is to refute it.” Fifth Circuit Judge Carolyn King’s [dissent](#) called the district court opinion striking down the ACA “textbook judicial overreach.” And Republican Senator Lamar Alexander called the Trump Administration’s position that the 2017 tax bill effectively repealed the ACA “[flimsy](#)” and “as [far-fetched](#) as any I’ve ever heard.” as any I’ve ever heard.”

There are many problems with the arguments that Republican state attorneys general made in calling for repeal. Chief among them is that they ignored Congress’ unambiguous decision to zero out the individual mandate but leave the rest of the ACA intact. They argued that the mandate is so central to the ACA or its pre-existing condition exclusion that, without it, some or all of the law must be struck down. But while the Congress that passed the ACA said the mandate was important for the reformed insurance market to function, the Congress that zeroed out the penalty decided to keep the other provisions in place. Long-standing legal principles say that Congress, not the court, gets to make that decision — as even a brief from [past litigants](#) against the ACA noted.

Major Stakeholders Highlighted Catastrophic Effects on the Health System

Those filing Supreme Court briefs opposing the Trump Administration and Republican states’ arguments included:

- **Health care providers and insurers.** American Hospital Association and Federation of American Hospitals; [36 state hospital associations](#); [American Medical Association](#), [American Academy of Family Physicians](#), [American College of Physicians](#), [American Academy of Pediatrics](#), and [17 other medical societies](#); [National Association of Community Health Centers](#); [America’s Health Insurance Plans](#); and [Blue Cross Blue Shield Association](#).
- **Patient and nonprofit groups.** [American Cancer Society](#), [American Diabetes Association](#), [American Lung Association](#), and [March of Dimes](#); [AARP](#); [Families USA](#), [Community Catalyst](#), and [CBPP](#); [National Health Law Program](#); and [SEIU](#).
- **Other nonpartisan experts.** [Bipartisan economists](#), [health policy scholars](#), [public health experts](#), and [small business representatives](#).

States That Sued for Immediate End to ACA

Alabama
 Arkansas
 Arizona
 Florida
 Georgia
 Indiana
 Kansas
 Louisiana
~~Maine~~
 Mississippi
 Missouri

Nebraska
 North Dakota
 South Carolina
 South Dakota
 Tennessee
 Texas
 Utah
 West Virginia
~~Wisconsin~~

States That Defended ACA

California
Colorado
 Connecticut
 District of Columbia
 Delaware
 Hawai’i
 Illinois
Iowa
 Kentucky
 Massachusetts
Michigan

Minnesota
Nevada
 New Jersey
 New York
 North Carolina
 Oregon
 Rhode Island
 Vermont
 Virginia
 Washington

Note: Strikethrough indicates states that removed themselves from the lawsuit. Italics indicate states joining after the initial filing. Republican attorneys general from Montana and Ohio filed an *amicus* brief arguing that the mandate is unconstitutional but severable.