

A New Lawsuit Threatens Obamacare. Here's What's at Stake and What to Expect in Oral Arguments.

Image



A protest in May against a Republican attempt to change the health law. A lawsuit in Texas is challenging the law's constitutionality. Credit Credit Gabriella Demczuk for The New York Times

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The [Affordable Care Act](#) has survived numerous court battles and repeal efforts, but a new case is threatening the law's future once again. A federal judge in Fort Worth, Tex., will hear arguments Wednesday on whether to grant a preliminary injunction that would suspend the health law until the case is decided. He has also indicated that he might go straight to ruling on the merits of the case.

It focuses on whether the law's requirement that most Americans have health insurance is unconstitutional, but has much broader implications. The Justice Department made a

highly unusual decision this summer: though it disagreed with the plaintiffs that the entire law should be struck down, it decided not to defend the individual mandate or several other central provisions, including protections for people with pre-existing conditions. That prompted a coalition of 16 states and the District of Columbia, led by California, to intervene to defend the law, saying that to pause it or invalidate key components would threaten the health care of millions of people.

Presiding over the case is [Judge Reed O'Connor](#) of the Federal District Court for the Northern District of Texas, who was appointed by President George W. Bush. The judge has previously blocked Obama-era efforts to extend medical leave protections to same-sex couples and to include gender-identity discrimination as a form of sex discrimination under the health law.

Who brought this latest case and why?

The case is being brought by a group of 20 Republican state attorneys general and the governors of Maine and Mississippi. They argue that the law is unconstitutional and should be struck down.

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The reason, they say, is that in 2012 the Supreme Court upheld the health law based on Congress's taxation power. Congress, the court said, could impose a tax penalty on people who did not have health insurance.

But Congress enacted a tax bill in December 2017 that zeroed out that tax penalty. The plaintiffs argue that the health law's requirement that most people have insurance — the so-called individual mandate — no longer functions as a tax, and therefore is unconstitutional.

That leads to a central question in the case: does tugging at the individual mandate unravel the entire health law, including popular provisions like its protections for people with pre-existing medical conditions? The plaintiffs argue that if the mandate is unconstitutional, it cannot be severed from the law's other requirements. If the mandate falls, they say, so must the entire law.

Who are the defendants?

Technically the federal government is the defendant — the case is called Texas v. United States. But [in June](#), the Trump Administration sided with the plaintiffs on the individual mandate, arguing in a brief that it and the pre-existing conditions protections were unconstitutional. The administration did not challenge certain other parts of the law, however, like the establishment of health insurance marketplaces and premium subsidies for low- and moderate-income people which, it said, could continue without the mandate.

The administration has asked Judge O'Connor for “summary judgment” — in effect to rule immediately on the constitutionality of the individual mandate and [other issues](#), instead of granting a preliminary injunction.