



# ADVOCACY GUIDE:

Health Care Repeal Lawsuit: Pre-Decision

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# TIMELINE OF THE CASE



**February 2018:** Texas and 19 other states sue the federal government in the U.S. District Court for the Northern District of Texas, arguing that the end of the individual mandate renders the entire Affordable Care Act (ACA) unconstitutional.

**April 2018:** Led by California Attorney General (AG) Xavier Becerra, 17 Democratic AGs intervene to defend the ACA.

**June 2018:** The Trump administration's Department of Justice (DOJ) declines to defend the ACA provisions guaranteeing coverage for pre-existing conditions.

**December 14, 2018:** Federal District Judge Reed O'Connor issues a ruling declaring the entirety of the ACA unconstitutional. The ruling is widely criticized by both liberal and conservative legal experts and observers.

**December 17, 2018:** Judge O'Connor issues a stay on his ruling declaring the ACA invalid.

**February 2019:** Four more states (Colorado, Iowa, Michigan and Nevada) join California Attorney General Xavier Becerra's coalition defending the ACA in federal court. The U.S. House of Representatives is also permitted to intervene in defense of the ACA.

**March 25, 2019:** The DOJ files a brief saying that the courts should strike down the entire ACA, not just protections for pre-existing conditions.

**April 24, 2019:** Texas and the plaintiff states file their brief arguing that the entirety of the ACA should be invalidated.

**May 15, 2019:** AG Becerra and the defense file reply briefs intervening on behalf of the ACA.

**July 9, 2019:** Oral arguments begin in the 5th U.S. Circuit Court of Appeals in New Orleans.

**Fall 2019:** Decision expected from the 5th U.S. Circuit Court of Appeals.

# PRE-DECISION MESSAGING GUIDANCE



Any day now, we are expecting a ruling on the Health Care Repeal Lawsuit (*Texas v. United States*) from the 5th U.S. Circuit Court of Appeals. The stakes in this case are extraordinarily high, as a negative ruling could result in the entirety of the ACA being struck down. Regardless of the ruling, an appeal to the U.S. Supreme Court is all but guaranteed.

## HOW DID WE GET HERE?

- In February 2018, 20 Republican attorneys general and governors filed a lawsuit arguing that the end of the individual mandate, which was zeroed out in the Tax Cut and Jobs Act of 2017, invalidates the entire ACA. President Trump's DOJ chose not to defend the ACA shortly thereafter.
- In December 2018, Judge Reed O'Connor agreed with the plaintiffs in a district court ruling and struck down the entire ACA.
- This ruling was appealed to the 5th U.S. Circuit Court of Appeals. Oral arguments took place on July 9 as *Texas v. U.S.*

## WHAT'S AT STAKE?

- This case has been part of a broad scale, coordinated attack on the ACA through legislation, litigation, executive action and regulatory changes. A broad ruling to invalidate the ACA could have several consequences including:
  - » Stripping away care from tens of millions of people who receive health coverage through the ACA marketplaces;
  - » Striking down Medicaid expansion, which has led more than 20 million people in over 35 states to access health care, many for the first time;
  - » Rolling back consumer protections by ending guaranteed coverage for those with pre-existing conditions and eliminating the 10 Essential Health Benefits (EHBs) enshrined in the law, including substance use disorders treatment, mental health treatment, maternal care and more;
  - » Putting health insurers back in charge, likely forcing older adults and women to pay more for the same coverage;
  - » Ending young people's ability to stay enrolled on a parent's private health insurance until they turn 26; and
  - » Rolling back important protections for people who access reproductive health services, as well as anti-discrimination protections for members of the LGBTQ+ community, particularly trans individuals.
- The Health Care Repeal Lawsuit is a threat to our nation's health care system, and several potential outcomes would have serious and long-lasting consequences for millions of people.

## WHAT CAN WE DO?

- We need people to prepare now for several potential outcomes. No matter the ruling, the fight to preserve the ACA is far from over. While it's easy to feel helpless about judicial proceedings, there are concrete actions you can take:
  - » Hold President Trump and his DOJ accountable for this lawsuit.
  - » Urge your senator to publicly ask the U.S. Senate to become an intervener in the lawsuit, similar to action the U.S. House took earlier this year.
  - » Call or write your attorney general to demand they withdraw from the plaintiffs' side if they had previously signed on to strike down the ACA.
  - » Thank your champions! If you have a senator, representative, governor or attorney general that has spoken out in favor of the ACA and against the Health Care Repeal Lawsuit, please thank them for their support.
  - » Identify state and local government officials (e.g., mayors and county commissioners) who may be willing to publicly support the ACA.
  - » You can ask your state government to analyze what effects an ACA repeal would have on your state's health care and economy.
- And beyond these concrete actions, the Health Care Repeal Lawsuit (*Texas v. U.S.*) has actually given us a powerful tool to highlight the work currently underway to increase quality of care and access to coverage.
- Despite this pending lawsuit that aims to take away the health care of millions, Democratic officials and House Democrats stepped in to defend the case and passed bills in the House to protect pre-existing conditions and strengthen the ACA.

# SOCIAL MEDIA GUIDE



As we await a ruling on the Health Care Repeal Lawsuit (*Texas v. U.S.*) from the 5th U.S. Circuit Court of Appeals, visibly and loudly supporting the ACA and keeping plaintiff Attorneys General accountable are essential activities. Social media can help demonstrate and underscore support for the ACA and in particular can help:

- Highlight success in your state including enrollment numbers and consumer stories.
- Share what your state can do to safeguard the law. Call on state elected officials to enact protections and thank them for the steps they've already taken.
- Call on your AG to protect the ACA. Thank AGs who are speaking out against the Health Care Repeal Lawsuit (*Texas v. U.S.*) and call on AGs who are supporting the lawsuit to withdraw from it. (The National Association of Attorneys General has [a list of AG Twitter accounts.](#))

## SUGGESTED POSTS:

### Highlight Successes in State:

The Affordable Care Act has expanded #Medicaid coverage to more than ##### [STATEIANS]. The Health Care Repeal Lawsuit continues the coordinated attack on the ACA, despite what we know to be true. The ACA is working and [STATEIANS] know that. **#WeObject**

From insuring millions on the ACA marketplaces to keeping kids on their parents' health plan to guaranteeing coverage regardless of a pre-existing condition, the ACA is making us healthier every day. Attempts to dismantle the ACA will strip coverage from millions of Americans. **#WeObject**

### Supportive AG:

The Affordable Care Act ensures ### people in [STATE] receive health coverage. Thank you, @AGHandle for protecting our access to health coverage. Join us in thanking [AG NAME] by calling xxx-xxx-xxxx **#WeObject**

Thank you @AGHandle for working to protect health coverage for [STATEIANS]. It is essential [STATE] stand strong against attempts to dismantle access to health coverage through the Health Care Repeal Lawsuit. **#WeObject**

### Plaintiff AG:

The Affordable Care Act ensures ### people in [STATE] receive health coverage. @AGHandle wants to strip away that care and is supporting the Health Care Repeal Lawsuit. Call xxx-xxx-xxxx and tell [AG NAME] that [STATE] shouldn't support *Texas v. U.S.* **#WeObject**

.@AGHandle we and thousands of other [STATEIANS] are calling on you to withdraw from the Health Care Repeal Lawsuit. If the courts find in favor of the plaintiffs, they will roll back essential protections and limit access to health care across [STATE]. **#WeObject**

# RAPID RESPONSE PRESS CONFERENCE



As we await the release of the 5th U.S. Circuit Court of Appeals' ruling in the Health Care Repeal Lawsuit (*Texas v. U.S.*), we want to be sure that health advocates and our allies are well-poised to respond. In addition to social media content, we want to be swift in our response to members of the media and their audiences, ensuring that we, as experts in the field, are able to provide timely and succinct talking points that shape the narrative in both the immediate and long-term aftermath of a ruling.

For this reason, we have drafted the following document to guide you in setting up a press conference as quickly as possible following the release of a ruling from the court.

## FORMAT:

Health advocates and their allies host a press conference with key stakeholders and advocacy organizations representing consumers who would be directly affected by a rollback of protections enshrined in the ACA (including guaranteed coverage for those with pre-existing conditions, Medicaid expansion populations, etc.).

We encourage you to pull together a rapid response event with 3-5 participants with a stake in our health care system (some sample spokespersons are listed below).

Consider using [Facebook Live](#), Twitter and Instagram to draw attention to the event with the hashtag **#WeObject**.

## GOAL:

We want to quickly and plainly put the ruling in context for our state's residents with the following messages:

- The fight to preserve the Affordable Care Act is far from over. While it's easy to feel helpless about judicial proceedings, there are concrete actions you can take:
  - » Hold President Trump and his DOJ accountable for this lawsuit.
  - » Urge your **senator to publicly ask the U.S. Senate to become an intervener** in the lawsuit, similar to action the U.S. House took earlier this year.
  - » **Call or write your attorney general** to demand they withdraw from the plaintiff's side if they had previously signed on to strike down the ACA.
  - » **Thank your champions!** If you have a senator, representative, governor or attorney general that has spoken out in favor of the ACA and against the Health Care Repeal Lawsuit, please thank them for their support.
  - » **Identify state and local government officials** (e.g., mayors and county commissioners) who may be willing to publicly support the ACA.
  - » You can **ask your state government to analyze what effects** an ACA repeal would have on your state's health care and economy.
- Beyond these concrete actions, the Health Care Repeal Lawsuit (*Texas v. U.S.*) has actually given us a powerful tool to highlight the work currently underway to increase quality of care and access to coverage.
- To counter this pending Health Care Repeal Lawsuit that aims to take away the health care of millions, Democratic officials and House Democrats stepped in to defend the case and passed bills in the House to protect pre-existing conditions and strengthen the ACA.

# RAPID RESPONSE PRESS CONFERENCE



## LOCATION:

Please pick a location that is easily accessible for speakers and members of the media, with adequate parking and good visuals.

- Federal courthouse
- State House
- Hospital or community health center
- Health care facility
- Community center

## PARTICIPANTS:

Each participant should talk about how a rollback of the ACA would impede access to health care and harm their health, their family's health, their finances and/or their ability to live independently.

- Elected official or other policymakers who are unequivocal in their support for the ACA
- Consumer Health Advocates
  - » State or community-based consumer health advocacy organization
  - » Lead budget or legal health advocacy organization
  - » Disease or population-specific consumer advocate or advocacy group
- Provider/Health System
  - » Hospital or community health center staff (represented by a physician or decision-maker)
  - » Health care provider (nurse, therapist, etc.)
- Consumer/Patient Groups
  - » Disability rights provider/advocate/patient
  - » LGBTQ+ community members/providers/advocates
  - » Substance use disorders provider/advocate/patient
  - » Mental health provider/advocate/patient
  - » Older adults provider/advocate/patient

## MEDIA LIST:

Be sure your press list is up-to-date. Be sure to include reporters, columnists, assignment editors and others who are likely to cover health, politics, or court proceedings. Also include mainstream as well as niche media, remembering to include print, digital, TV and radio.

## PRESS ADVISORY:

Draft a press advisory that covers the who, what, where, when and why of the event. Be sure to also include key points of contact.

# RAPID RESPONSE PRESS CONFERENCE



## **PRESS RELEASE:**

Draft a press release that covers the event and is ready for press that are able to both attend and not attend the event. Be sure to include key quotes from press conference participants and any relevant information that can assist in drafting a news piece, including any data points as well as personal stories.

## **TALKING POINTS:**

Community Catalyst has included talking points for your use on page 2 of this guide. Please be sure to customize your messaging to highlight a state or community-based angle when and where possible.

## **SOCIAL MEDIA:**

If possible, have a member of your staff live tweet the event, and send photos and quotes from speakers after the event, as well. Ask your followers to take one of the actions outlined above.

Consider using [Facebook Live](#), Twitter and Instagram to draw attention to the event with the hashtag **#WeObject**. Also encourage participants as well as attendees to engage on social media before, during and after the event.