



# ADVOCACY GUIDE:

Texas v. United States Lawsuit

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# TALKING POINTS

Help defend the ACA against the Texas Lawsuit



## Plaintiffs Win: Judge rules to strike down ACA

Tonight's misguided decision by District Court Judge Reed O'Connor in Texas v. Azar striking down the entirety of the Affordable Care Act (ACA) marks a devastating blow to the health security of [STATE-ians]. We hope the ruling will be appealed and that a higher court will reverse it based on weak legal grounding and the grave harm overturning the ACA would cause to [STATE-ians] and millions of Americans nationwide.

- [INSERT LANGUAGE DIRECTED AT YOUR AG OR GOV IF PLAINTIFFS]
- [INSERT LANGUAGE THANKING YOUR AG IF THEY OPPOSED THE LAWSUIT]

Judge O'Connor's ruling contradicts two prior Supreme Court rulings upholding the constitutionality of the ACA and sides with the 17 attorneys general (include your AG if applicable) and two governors who filed the politically motivated lawsuit to gut the ACA after Congress failed to repeal it.

If the ruling is upheld by a higher court, millions of [STATE-ians] will suffer. [XX million IN YOUR STATE] could lose their health care coverage and [xx# IN YOUR STATE] living with pre-existing conditions like cancer, asthma or diabetes could face exorbitantly high rates, or be denied coverage all together.

Furthermore, this decision threatens both the ACA's Medicaid expansion as well as the availability of financial assistance for consumers purchasing coverage in the individual market that have enabled xx [STATE-ians] to gain access to affordable care.

Striking down the entirety of the ACA would also strip away many consumer protections enshrined within the law and beloved by the public, including:

- Prohibitions on charging women or older adults more for the same policy as men or younger people,
- The elimination of out-of-pocket expenses for many preventive services, and
- Protections for young people under the age of 26 to stay on a parent's health plan.

STATE-ians are tired of partisan efforts to take away their health care. Polls consistently show the public supports the ACA, with 75 percent in favor or maintaining the ACA's protections for pre-existing conditions.

Instead of actively working to gut people's health coverage and pre-existing condition protections, our elected officials should focus on helping people gain access to health care coverage they and their families need to stay healthy.

We hope this ruling will be appealed, and that a higher court will reverse this decision.

# SAMPLE RESOLUTION

Help defend the ACA against the Texas Lawsuit



## A Resolution in Support of the Affordable Care Act

Whereas there are XX individuals living with a pre-existing condition in [state]; and

Whereas there are XX individuals enrolled in Medicare and XX individuals enrolled in Medicaid in [state]; and

Whereas Attorneys General from 18 states [including state], have filed suit in the United States District Court for the Northern District of Texas, arguing that the Affordable Care Act is unconstitutional; and

Whereas this lawsuit puts protections for people with pre-existing conditions at risk in the event they need to purchase their own coverage and is a direct threat to Medicaid expansion and improvements to Medicare, including reduced costs for prescription drugs; and

Whereas, on June 7, 2018, the United States Department of Justice refused to defend the constitutionality of the Affordable Care Act, despite the well-established duty of the Department to defend federal statutes where reasonable arguments can be made in their defense.

Now, therefore, be it resolved that the [City Council of city/legislature of state]

- affirms its support for the Affordable Care Act and protections for consumers with pre-existing conditions;
- calls on Attorney General XX to withdraw from the lawsuit;
- calls on the XX state legislature to pass state-level protections in the event these provisions are overturned at the federal level;

and affirms its support for Attorney General XX's defense of the Affordable Care Act.

[View this sample resolution as a Word document](#)

# SOCIAL MEDIA GUIDE

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Community Catalyst created an action page to help people communicate with their elected officials about the importance of defending the ACA in light of the Trump administration deciding not to. You can view the take action page here: <http://bit.ly/Action-PreX>

## Suggested Posts:

- Recently, a federal judge sided with Republican AGs and ruled that the ACA was unconstitutional, including protections for people w/ pre-existing conditions. Use our tool to tweet at your members of Congress & ask them to protect people with PreX. #130MillionStrong <http://bit.ly/Action-PreX>
- .@HealthPolicyHub's new tool allows you to tweet at your members of Congress with a custom message about why it is important for the @senjudiciary to defend the ACA in court. Check it out! #ProtectOurCare #130MillionStrong <http://bit.ly/Action-PreX>
- The @GOP's latest attempt to gut the ACA and wipe away protections for people with pre-existing conditions is upon us. Reach out to your members of Congress and ask them to defend the ACA against these attacks! #ProtectOurCare >> <http://bit.ly/Action-PreX>
- Have your members of Congress signed on to protect the ACA yet? Use our new tool and thank your members if they are health care heroes and make your voice heard if they are in need of some convincing! Take action >> <http://bit.ly/Action-PreX>
- The Trump administration is refusing to defend the ACA in court and now it is up to Congress to defend the widely supported health care law. Tell your members of Congress to #ProtectOurCare! <http://bit.ly/Action-PreX>
- Live in a 'blue state'? Some Democratic representatives still have not signed on to protect the ACA in court against attacks from Republican AGs. Make your voice heard >> <http://bit.ly/Action-PreX>

[Download our accompanying graphic](#)

# DRAFT OP-ED

Help defend the ACA against the Texas Lawsuit



***NOTE: this could be submitted by a state legislator, local elected official or head of a consumer advocacy organization***

During [Congressional Republicans'] relentless efforts to repeal the Affordable Care Act (ACA) last year, I frequently heard from constituents [people] who were deeply worried they or a loved one would lose the pre-existing condition protections the law has afforded them over the past eight years. Before the ACA put pre-existing condition protections in place, insurance companies could – and did – deny health insurance to millions of Americans with common conditions such as diabetes, asthma, cancer and even pregnancy. And if they didn't deny coverage outright, they could charge prohibitively steep premiums that effectively denied access to coverage. So, gaining pre-existing protections under the ACA has been a lifeline for Texans like [ADD SOMEONE'S STORY IF YOU HAVE ONE].

When ACA repeal efforts failed last year, there was widespread relief. However, our health care and critical pre-existing condition protections for 130 million Americans – including [xxx] here in [Texas] – are in jeopardy once again today because of the actions of our Attorney General, [Ken Paxton].

On December 14, U.S. District Court Judge Reed O'Connor ruled in favor of the plaintiffs in Texas v. Azar, including Attorney General [Paxton] and 16 other state attorneys general, seeking to invalidate the entire ACA. The judge's decision will be appealed to a higher court. But if it prevails, it would threaten care and coverage for [Texans] and tens of millions of other Americans and eliminate vital life-saving protections that benefit all of us and our families.

Going back to the dark days when insurance companies could deny people care based on their health status would be immensely unpopular with the public. In fact, a June Kaiser Family Foundation poll found 76 percent of voters said that it's very important for the protections for pre-existing conditions to remain in place. One in four Americans currently lives with a pre-existing condition, and millions more are at risk, given the likelihood of developing a chronic health condition at some point in life.

Despite overwhelming opposition from the public at large, the Trump Justice Department – charged with enforcing and defending federal law – partially sided with the plaintiffs in this case by declining to defend the ACA in court, effectively advocating for the rollback of protections for people with pre-existing conditions. When asked in a Hart Research poll about the Justice Department's decision to argue against protections for people with pre-existing conditions, two-thirds of voters voiced their disapproval.

If AG Paxton and his fellow plaintiffs prevail, it would be an unprecedented attack on our health care. It would not only gut protections for people with pre-existing conditions but also end protections that prevent insurance companies from charging women and adults over 50 significantly higher premiums than others. This would be a return to the time when older

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Americans could be charged an “age tax” of up to five times more for the same coverage as someone younger. In fact, studies by AARP say premiums for someone over 50 could increase by more than \$4,000 a year. Women could be charged up to 50 percent more, just because they are women. People could be discriminated against not only based on conditions they already have but also on conditions insurers thought they were more likely to get – putting women and LGBTQ+ individuals at a higher risk of being unable to access coverage.

Fortunately, a group of 17 state attorneys general, led by California Attorney General Xavier Becerra, will continue their efforts to defend the ACA in the absence of such action by the federal DOJ. [Texans] need to stand with them in opposition to these devastating efforts to undermine our health care by demanding our AG withdraw from the lawsuit.

Moreover, Senate and House Democrats have filed resolutions in support of the ACA in response to the Administration’s decision not to challenge the Texas lawsuit. If enacted, the resolutions would give Senate and House legal counsel the authority to intervene on their respective chamber’s behalf in the Texas v. Azar suit, further bolstering defense of the ACA and its consumer protections. [Texans] should reach out to our representatives in the House and Senate and call on them to act in the best interest of their constituents and sign on to the resolutions to protect our health care. Our access to the health care and protections we need – as well as many lives – are on the line.

**[View the draft op-ed as a Word document](#)**



# EVENT GUIDE

Help defend the ACA against the Texas Lawsuit



One of the many ways to show your opposition to the undermining of the ACA and consumer protections for pre-existing conditions is to organize a public event calling out the Attorney General (or in some cases, the Governor) of your state for their extremist views.

***The goal of the rally is to educate the public and show AGs & lawmakers what is at stake in this fight.***

## Keep in mind:

- The best location for this action will be outside of the offices of the Attorney General, Governor's office, or, if needed, a courthouse.
- Ask attendees to take action by contacting their Senators/Members of Congress and asking them to sign onto S.Res 581 // H.Res 1031 so that Congress can step in to defend the lawsuit on behalf of people with pre-existing conditions.
- These events are both media and organizing opportunities to get your members and leaders ready for ongoing threats to the ACA and consumer protections in health care. Be sure to collect attendee information and have a plan for engaging them beyond the rally.
- If your AG or Governor was a plaintiff in the suit, this would be a great time to try and go viral by getting them on FB Live or Instagram video, having to defend their work to gut the ACA and end consumer protections for pre-existing conditions. Think creatively and be sure to keep us in the loop on your plans!

**Once the lawsuit decision comes down, please plan your event ASAP** so we can contribute to a scale of activity with our allies across the country and so that we can show the depth and breadth of the public outcry to the lawsuit.

Send the details of your event to Emily Polak ([epolak@communitycatalyst.org](mailto:epolak@communitycatalyst.org)) ASAP. Be sure to include TIME, LOCATION, ADDRESS INCLUDING ZIP, SPEAKERS and a SHORT DESCRIPTION.

## BEFORE YOUR RALLY:

### 1. Choose a date, time and location.

Rallies are often held during business hours (starting no earlier than 8:30 am and no later than 4:30 pm), when we have the best chance of getting media and the attention of lawmakers. In this case, the hearing is set to begin at 9:00 am Central so anytime in the morning to coincide with the hearing coverage would work. Additionally, lunch hour is often a good time during the business day to turn out the most people — and it's a convenient time for reporters.

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## 2. Line up speakers.

Here are a few examples of speakers it may make sense to invite:

- People with compelling personal stories pre-existing conditions and access to coverage and care. For example, someone who has previously been denied coverage because of pre-existing condition(s).
- Small business owners who can speak to the economic impact of affordable coverage and the ACA.
- Community leaders who have influence over public opinion and can generate media coverage.
- Lawmaker(s) from municipal, state, or federal government have a unique role and stature in public policy debates and can provide a helpful counterpoint if your AG/ Governor is a plaintiff in the suit.
- Clergy are able to bring a deeply moral perspective and can add tremendous impact to your speaking program.
- Labor leaders are often able to bring a helpful perspective as well as assist in building the event (turnout).

It is very important that you prepare your speakers well. Make sure to have a prep call or meeting with everyone who is speaking at your rally so that they are familiar with lawsuit, talking points, and the program.

## 3. Plan logistics.

**Do you need a sound system?** If you're in a large city where you've had large crowds in the past, you should arrange to have at least a basic sound system.

**Do you need a permit for your event?** In most communities, you do not need a permit to stand on public property — including public sidewalks. However, depending on the location of your event, you may want to check with local authorities ahead of time. Many AG or Governors' offices are on state property and will require permits. If you are unsure, just check with local authorities. In addition, if you have a sound system, you are more likely to need to arrange a permit.

**What roles need to be filled?** This depends on the size and details of your event, but here are some roles to consider planning for:

- Greeter: As the rally host, you'll have a lot to attend to — so it's good to designate someone specifically to attend to the people who come to your event, greeting them as they arrive, talking with them, making them feel welcome, and signing them in.
- Emcee: This person starts and concludes the rally, introduces speakers, and keeps the program on time. Think of this person as the "master of ceremonies."
- Cheer-leader: This person leads chants and cheers at the rally.
- Visuals & Sign Coordinator: This person is in charge of coordinating a group of folks



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- who will make or print signs and other visuals for the event.
- **Media Coordinator:** To greet reporters, help cameras get the shots they need, hand out releases, and wrangle speakers to the reporters.

## 4. Prepare Material

You will want to make or print signs to hold at your event. Other materials you may want to have on hand include: sign-in sheets, copies of the media advisory/release, and notes about what you want to say.

## 5. Recruit people to your event.

**Hit the phones:** The most tried-and-true way we know to get people out to events is to pick up the phone and call them.

**Emails & Social Media:** Send a series of alerts to your lists, put up a Facebook event page, and use your social media channels to build a crowd.

Remember that about 50% of the people who RSVP yes to your event will not attend so build in a lot of cushion to your turnout goal.

## 6. Contact the press

Leading up to your event, it's helpful to do earned and social media work customizing the template press materials ( release) to send to media.

Send out a press advisory 2-3 days before and again the night before or morning of the event

Follow-up with a call after you've sent the advisory. Make it clear why it is incredibly important that they cover your rally. This call is the most important part of earning media coverage.

Finalize your press release and send it out immediately after the rally is over

## 7. Have a final check-in call with your group.

Walk through the event from start to finish making sure everything is ready and everyone is clear about his or her role. Anyone who is speaking or playing a role should be on the call.

## 8. Make final preparations — including reminder calls

In the last 24 hours before your event, make sure you are ready! Re-read this guide and

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review all your materials. Check in with any local organizational partners (if applicable) the day before the event to finalize any logistics items and talk through any questions.

## STAGING THE RALLY

Arrive at least 30 minutes early. Typically, some folks will show up early, and you'll want to be there to greet them.

Welcome people as they arrive, and ask folks to start displaying their signs.

Start as close to on time as possible. Do not wait more than ten minutes after your advertised start-time — especially if any reporters are there.

*Sample 1-hour rally agenda, assuming a start-time of 12:00 noon:*

- Starting at 11:45 am – Greet reporters as they arrive. You can usually identify reporters as people with notebooks who are not participating in the rally. TV reporters usually arrive in vans with TV station logos on them and will have large cameras. Radio reporters often have visible recording equipment also. Again, it is best if someone is set up to do just this task and nothing else.
- 11:45 am -12:05 pm – As people arrive, greeters welcome them and sign them in. You will want at least one designated greeter — more if you anticipate more than 40 people.
- 11:45 am -12:10 pm – Lead the crowd in cheers and chants. Again, it's best if someone is set up with a megaphone or other sound system for this
- 12:10 -12:15 pm – Emcee officially starts the event, thanks people for coming, and briefly states why you're all there. You should let people know how long the rally will go.
- 12:15-12:20 pm – First speaker (introduced by emcee)
- 12:20-12:25 pm – Second speaker (introduced by emcee)
- 12:25-12:30 pm – Third speaker (introduced by emcee)
- 12:30-12:40 pm – Emcee wraps up prepared statements (and takes questions from the media, if needed)
- 12:40-12:50 pm – Continued chanting and cheering
- 12:50-12:55 pm – Emcee thanks people again for coming, and repeats any important next step actions people should take.

### Quick Tips:

- The public event should take no more than one hour.

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- People often tend to huddle close together — and this often makes their signs less visible and makes the crowd look smaller. Encourage folks to spread out and to make their signs visible to the public and the media.
- Chants are often a great energizer.
- Have fun!

## POST-RALLY: FOLLOW UP!

It's important to hold a quick (30 minutes!) to debrief your rally and to talk about next steps. Plan that gathering to take place within 5 days of your event.

If the media was present at your event, follow up with them and send them any photos or other information from your event, and ask them when they plan to publish their story. It is also helpful to ask them if they need any other information for their coverage.

If the media was not present at your event, give them a call to let them know how it went, and send in or drop off photos and a summary of the outcome of the event.

### 2. Follow-up with folks who attended your rally:

- Call through your sign-up sheets to thank people for coming and ask them to attend the debrief/next steps meeting.
- Debrief with any anyone who took on leadership roles during the event. This includes greeters, the Emcee and other coordinators.
- Share any news coverage and press clippings with attendees and with us (CLobue@communitycatalyst.org).
- It is often helpful to do a quick post-event debrief summary that highlights attendees, themes, good quotes, clips, and 2-3 of your best photos.
- Send a thank-you note to any of the speakers from your event.

# EVENT PRESS RELEASE

Help defend the ACA against the Texas Lawsuit



## FOR IMMEDIATE RELEASE

EVENT DATE

Contact:

Name

Phone/Email

## [TEXANS] RALLY IN FRONT OF AG PAXTON'S OFFICE TO PROTEST LAWSUIT THAT WOULD END PRE-EXISTING CONDITION PROTECTIONS

**(City, State)** – Today, [hundreds, dozens] of [Texas] business, faith, political, labor and community leaders, consumer advocates and people with pre-existing health conditions rallied [outside of the office of Attorney General Ken Paxton (R-TX)], condemning their leadership in a lawsuit aiming to gut the Affordable Care Act (ACA) and end protections for people with pre-existing health conditions like cancer, diabetes and asthma. [Last week/month], a federal judge found in favor of the plaintiffs and ruled that the ACA's individual mandate is unconstitutional due to the repeal last December of the requirement that people purchase health insurance or pay a fine (the individual mandate penalty), and, therefore, the entire health law should be thrown out. The decision likely will be appealed to a higher court.

This ruling puts protections for 130 million people with pre-existing conditions – including xx [Texans] – at risk in the event they need to purchase their own health coverage. Moreover, the Trump Justice Department has partially sided with the plaintiffs in the case by declining to defend the ACA in court, effectively advocating for the rollback of protections for people with pre-existing conditions.

“It’s unconscionable that our own attorney general who is supposed to be defending the rights of [Texans] is leading the charge on a lawsuit that could strip me of the health care I need to treat [my breast cancer],” said xxxxx. “[AG Paxton] doesn’t care about fighting for us and would rather spend his time undermining people’s access to care.”

A June Kaiser Family Foundation poll found 76 percent of voters said that it is very important for the protections for pre-existing conditions to remain in place. One in four Americans lives with a pre-existing condition, and millions more are at risk, given the likelihood of developing a chronic health condition at some point in life.

“As a member of the faith community, I’m deeply concerned about the potential impact a dismantled ACA would have on members of my congregation who struggle with chronic health conditions and need affordable, comprehensive health care to live and take care of their families,” said xxx. “It would threaten care for tens of millions people here in [Texas]

# EVENT PRESS RELEASE

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and across the country and eliminate vital protections that benefit everyone.”

The lawsuit, joined by the Justice Department, also aims to get rid of protections that prevent insurance companies from charging women and adults over 50 more for their health care coverage.

“Repeal of the ACA would take us back to a time when older Americans could be charged an ‘age tax’ of up to five times more for the same coverage as someone younger and women could be charged up to 50 percent more, just because they are women,” said xxx. That’s outrageous, and women in Texas won’t stand for it.”

Seventeen state attorneys general, led by California Attorney General Xavier Becerra, have intervened to defend the ACA in the absence of such action by the U.S. Department of Justice. Senate and House Democrats have filed resolutions in support of the ACA in response to the Administration’s decision not to challenge the Texas lawsuit, and they have indicated they move to file appeals in their respective chambers.

“We stand with the 17 attorneys general who are fighting against this lawsuit and the Trump Administration’s relentless efforts to sabotage the ACA,” said xxx. “And we call on our congressional delegation to act in the best interest of their constituents and take action to protect our health care,” said xxxxx.

Others who participated in today’s rally include:

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[\*\*View the sample press release as a Word document\*\*](#)