

Texas v US

Considerations for State Legislators

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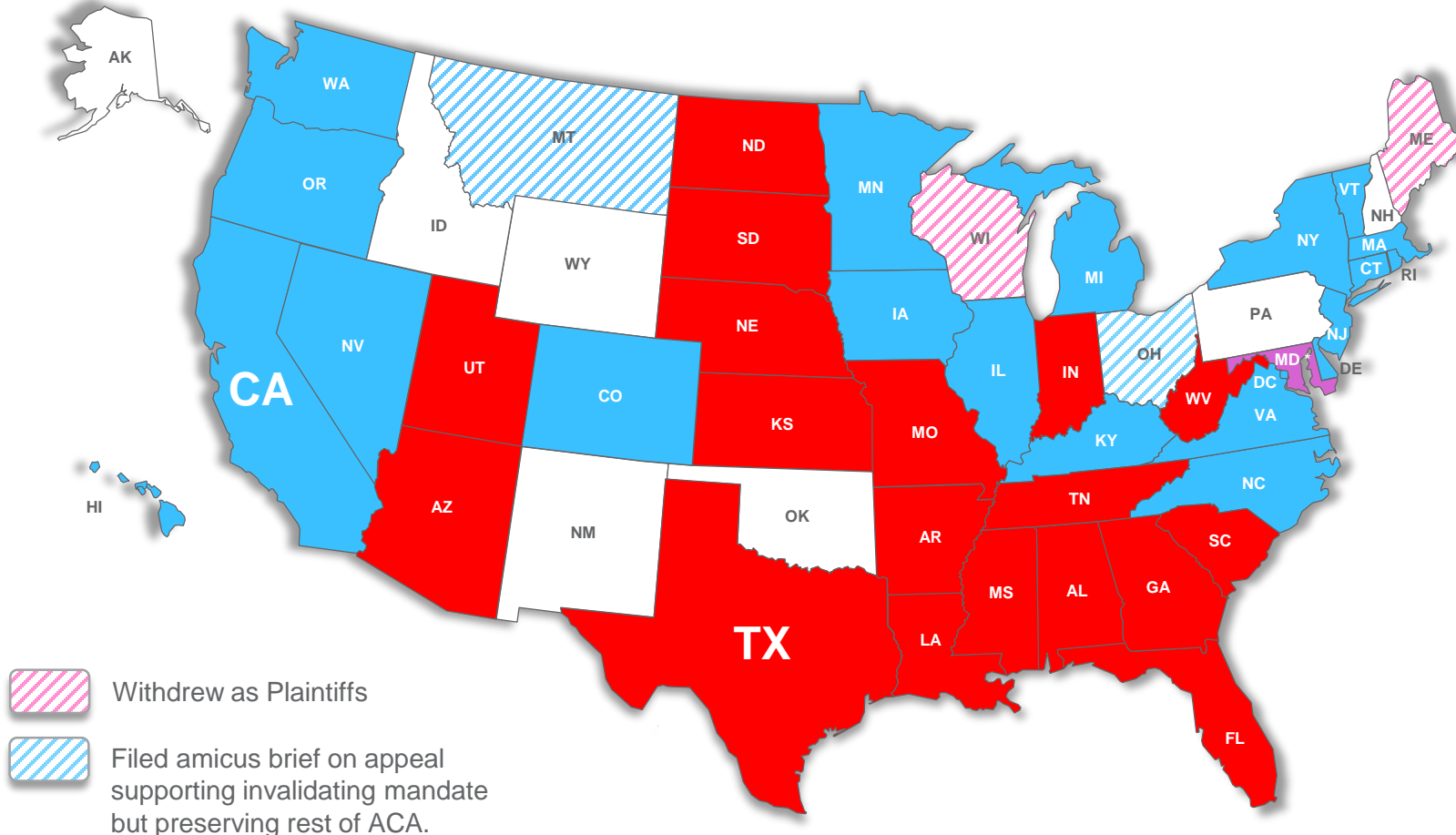
December 13, 2019

Who is AHIP?

America's Health Insurance Plans (AHIP) is the national association whose members provide coverage and health-related services that **improve and protect the health and financial security of consumers, families, businesses, communities and the nation.**

Texas v. United States

Plaintiff and Intervenor States



Plaintiff States (17 states, 1 Governor):

TEXAS (lead state), Alabama, Arkansas, Arizona, Florida, Georgia, Indiana, Kansas, Louisiana, Mississippi (Phil Bryant as Governor), Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Utah, West Virginia

Intervenor Defendant States (20 states and DC):

CALIFORNIA (lead state), Colorado, Connecticut, District of Columbia, Delaware, Hawaii, Illinois, Iowa, Kentucky, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, Washington

MARYLAND: Filed separate lawsuit asking court to validate the ACA. Case dismissed without prejudice.

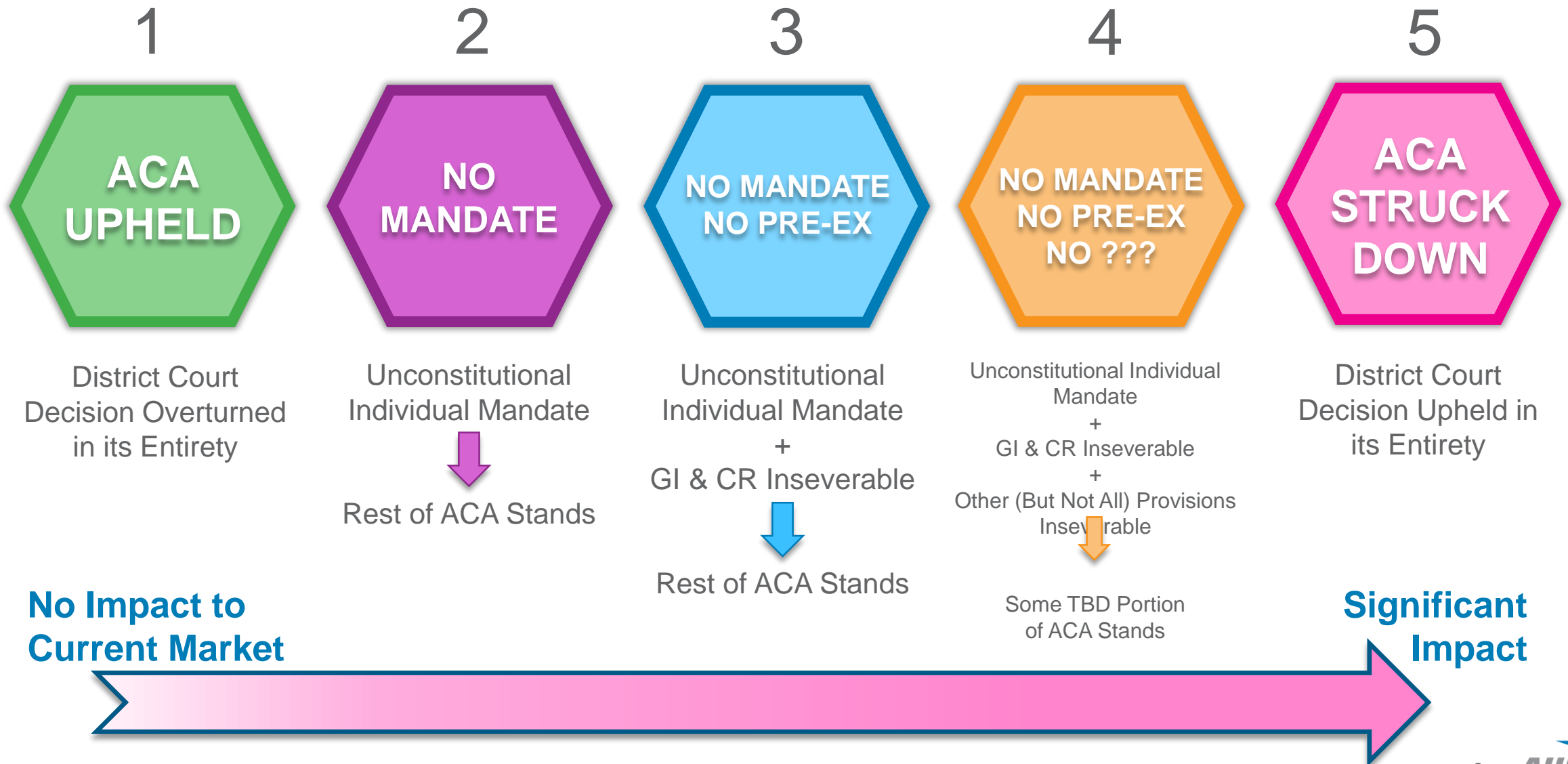
Current State

- Lawsuit challenging the constitutionality of the individual mandate, and the entire Affordable Care Act (ACA), filed in the federal district court of the Northern District of Texas.
- Federal Government did not defend ACA, led to intervention by California and 20 other states and U.S. House of Representatives (*intervenors*).
- District Court found the zeroed-out individual mandate penalty unconstitutional and invalidated all of the ACA (non-severable).
- **Decision stayed pending resolution of appeal pending in the Fifth Circuit.**
- Timing – 5th Circuit decision after mid-December 2019 likely pushes SCOTUS timing to 2021 final determination

If the TX v. US Ruling Is Ultimately Upheld at SCOTUS, Then...

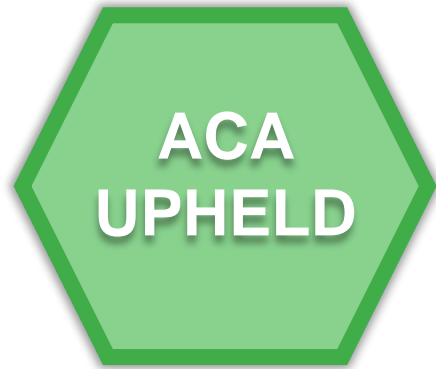
- Millions of people across the country would be at risk of losing health care coverage, either through the individual marketplaces or Medicaid expansion.
- Millions of Americans would lose important health insurance protections, including coverage of preventative services at no cost, dependent coverage to age 26, protections for people with pre-existing conditions, essential health benefits, annual and lifetime limits, and caps on out-of-pocket cost-sharing.
- States would lose millions of dollars in federal funds.
- States would lose funds to combat the opioid epidemic. Research has shown that access to opioid use disorder treatment grew in states that expanded Medicaid.
- Hospitals and other health care providers would experience an increase in uncompensated care.
- Major programs to improve quality of payment and health care delivery would end.

Possible 5th Circuit Outcomes



Potential Outcomes & Market Implications

1



All Markets Stable

No Changes to
Current Market
Rules

2



**Individual Market
Impact**

Stable compared
with 2019 operations

3



**Commercial Market
Impact**

Consumer Protections
Eliminated -
Pre-existing conditions,
underwriting

4



**Commercial Market
Impact**

Consumer Protections
Eliminated –
Pre-existing conditions,
underwriting, AV, EHB,
Cost-sharing???

Exchange Market
Destabilized??

5



All Markets Impacted

- ACA Consumer Protections Eliminated
- MLR Eliminated
- No Premium Tax Credits (APTC)
- Exchange Market Destabilized
- Medicaid Expansion Eradicated, HCBS funding & FMAP impacts;
- Impacts to mental health parity;
- Impacts to drug rebates
- MA: "Donut Hole" returns; cost-sharing; payment structure; ACOs
- Employer Mandate Eliminated

**State-level Policies May Be
Possible to Remedy Some Impacts**

State Considerations

Key State Considerations in Scenarios 2 and 3

- **Stabilizing the Individual Market and Consumer Access**
 - Incentives for broad enrollment/affordability
 - Need for risk sharing program (reinsurance, risk adjustment, high-risk pool)
 - Medicaid continuity plan (if applicable)
- **Preserving Certain Consumer Protections**
 - No application of pre-existing medical condition exclusions in policies
 - Dependent coverage to age 26
 - No-cost preventive care
 - Some level of EHBs and annual/lifetime dollar limits

NOTE: Viable state remedies to stabilize commercial market would depend on most features of ACA remaining in place: Medicaid expansion, Federal APTC, Standard benefits (EHB, annual/lifetime limits, metal levels), and Risk adjustment

Pairing Incentives with No-Pre Existing Condition Exclusion Critical

- To promote access to affordable coverage options for everyone, **new policies to protect people with pre-existing conditions must also include incentives to encourage broad enrollment and continuous coverage.**
 - Without a requirement or incentive to maintain coverage, young and/or healthy individuals will enroll only when they need to access services because they get sick or injured. Those who use health care services regularly, or who anticipate using services, will be the only people enrolling on a regular basis – creating an unbalanced risk pool.
- **Without these incentives** to bring a broad cross-section of people into the market, the **market may deteriorate** because individuals and families drop coverage as it becomes unaffordable.
 - Moreover, past experience in states that added such protections without incentives to encourage coverage have led to market dysfunction – **health insurance providers have exited the market, reducing coverage options for consumers.**
- **Enacting pre-existing condition protections as a stand-alone policy will not ensure access to coverage. In fact, they could lead to a lack of affordable coverage options for everyone** shopping for insurance in the individual market.

Protecting a Stable Marketplace/Consumer Access

- Incentives to promote broad participation in insurance and continuous coverage include:
 - A defined open enrollment period
 - Defined special enrollment periods
 - Subsidies to help people afford coverage and care
 - Public exchanges to provide consumers with a place to shop for comprehensive health care coverage regardless of pre-existing conditions

State Examples

	Maine	Louisiana	Idaho
Market Stabilization Program	<p>Maine Guaranteed Access Reinsurance Association (MGARA)</p> <ul style="list-style-type: none"> Status: Active 2012-2013; Suspended until 1/1/2019 where MGARA will be re-started under states 1332 waiver. Eligibility: Claims-based 	<p>Louisiana Guaranteed Benefits Pool (SB 173)</p> <ul style="list-style-type: none"> Status: Triggered if ACA deemed unconstitutional & APTC available Eligibility: "Claims for healthcare services provided to eligible individuals with expected high healthcare costs." Program details and funding TBD 	<p>Individual High-Risk Reinsurance Pool (HRP)</p> <ul style="list-style-type: none"> Status: Inactive. (Active beginning 2001-2013) Eligibility: Claims-based 5 HRP Plans available: Basic, Standard, Catastrophic A, Catastrophic B and the HSA Compatible Plan
Market Requirements	<p>LD 1 / Chapter 5 (enacted 3/19/19)</p> <ul style="list-style-type: none"> GI and GR Pre-ex protections Community rating 3:1 age rating Tobacco rating EHBs with AV levels Lifetime & annual limits Age 26 OE and SEPs MLR at least 80% 	<p>SB 173 (enacted 6/20/19)</p> <ul style="list-style-type: none"> Pre-ex protections Community rating 5:1 age rating EHBs with AV levels Lifetime & annual limits Age 26 OE and SEPs 	<p>Individual Health Insurance Availability Act (Title 41, Chpt 52)</p> <ul style="list-style-type: none"> G.I. to HRP plans and GR 12-month pre-ex allowed (waived for allowed creditable coverage) Rating no more than 50% of index rate State Mandated Benefits

**Thank
you!**

