

Date: 11/2/18

2018 Fall National Meeting
San Francisco, California

HEALTH INSURANCE AND MANAGED CARE (B) COMMITTEE

Friday, November 16, 2018

3:30 – 5:30 p.m.

Hilton San Francisco Union Square—Continental 4—Ballroom Level

ROLL CALL

Dean L. Cameron, Chair	Idaho	John Elias	New Hampshire
Jessica Altman, Vice Chair	Pennsylvania	Mike Causey	North Carolina
Lori K. Wing-Heier	Alaska	Larry Deiter	South Dakota
Nancy G. Atkins	Kentucky	Todd E. Kiser	Utah
Al Redmer Jr.	Maryland	Osbert E. Potter	Virgin Islands
Jessica Looman	Minnesota	Mike Kreidler	Washington
Mike Chaney	Mississippi	Ted Nickel	Wisconsin
Matthew Rosendale	Montana		

NAIC Support Staff: Jolie H. Matthews/Brian R. Webb/Jennifer R. Cook

AGENDA

1. Hear a Presentation on Issues Paper: “State Regulation of Coverage Options Outside of the Affordable Care Act: Limiting Risk to the Individual Market”—*Kevin Lucia (Georgetown University, Center on Health Insurance Reforms—CHIR)*
2. Hear a Panel Presentation on Association Health Plans (AHPs)—*Christopher Condeluci (Coalition to Protect and Promote AHPs), Clinton Wolf (Restaurant & Hospitality Association Benefit Trust—RHA Trust) and David Chase (Small Business Majority)*
3. Hear an Update on Legal Action Surrounding the Federal Affordable Care Act (ACA)
—*William G. Schiffbauer (Law Office of William G. Schiffbauer, Chartered)*
4. Discuss Various State Actions and Responses to Recent Federal Final Rules on Short-Term, Limited Duration Plans, AHPs and new Section 1332 Waiver Guidance—*Director Dean L. Cameron (ID)*
5. Discuss Any Other Matters Brought Before the Committee—*Director Dean L. Cameron (ID)*
6. Adjournment

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Agenda Item #1

Hear a Presentation on Issues Paper: “State Regulation of Coverage Options Outside of the Affordable Care Act: Limiting Risk to the Individual Market”—*Kevin Lucia (Georgetown University, Center on Health Insurance Reforms—CHIR)*



Georgetown University Health Policy Institute

CENTER ON HEALTH INSURANCE REFORMS

National Association of Insurance Commissioners
Health and Managed Care (B) Committee

*State Regulation of Coverage Options Outside of the
Affordable Care Act*

November 16, 2018

Center on Health Insurance Reforms

- A team of nationally recognized experts on private health insurance and health reform
- Conduct research on issues related to health policy and access to health services
- Based at Georgetown University's McCourt School of Public Policy
- www.chir.georgetown.edu



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**CENTER ON HEALTH
INSURANCE REFORMS**

State Regulation of Coverage Options Outside of the Affordable Care Act

Lucia K, Giovannelli J, Corlette S, Volk J, Palanker D, Kona M, Curran E. *State Regulation of Coverage Options Outside of the Affordable Care Act: Limiting Risk to the Individual Market*. The Commonwealth Fund, March 2018. Available at

<https://www.commonwealthfund.org/publications/fund-reports/2018/mar/state-regulation-coverage-options-outside-affordable-care-act>



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**CENTER ON HEALTH
INSURANCE REFORMS**

State Regulation of Coverage Options Outside of the Affordable Care Act

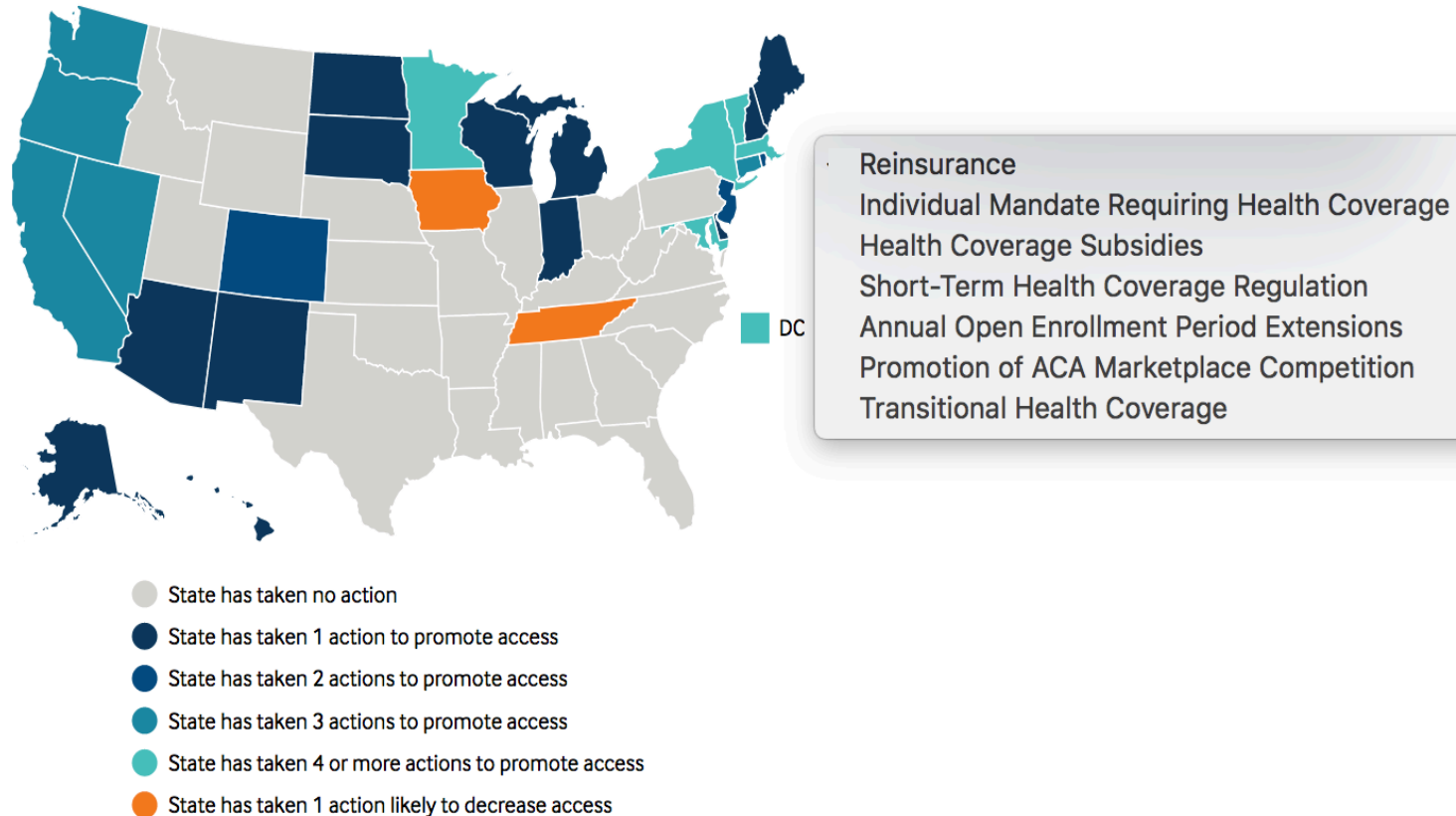
- **Goal:** To understand how states regulate coverage arrangements that do not comply with the Affordable Care Act's (ACA) individual market reforms
- **Method:** Analysis of the applicable laws, regulations, and guidance of 50 states and the District of Columbia (D.C.)
 - Analysis included rules related to transitional policies, short-term plans, association health plans, and health care sharing ministries, among others
- **Findings and Conclusions:**
 - No state's regulatory approach fully protects the individual market from adverse selection due to alternative coverage
 - States have the authority to ensure a level playing field among alternative coverage options to promote market stability



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INSURANCE REFORMS**

What Is Your State Doing to Affect Access to Adequate Health Insurance?



Commonwealth Fund dashboard, available at:

<https://www.commonwealthfund.org/blog/2018/understand-how-consumers-are-faring-individual-health-insurance-markets-watch-states>

Short-Term Plans

- What are they?
 - In the past, gap-filler coverage; exempt from ACA market rules
 - Risk to individuals
 - Risk to market, exacerbated by mandate penalty repeal
- What changed under the new federal rule?
 - Extends allowable plan terms to less than 12 months (up from 3 months)
 - Permits renewals that extend duration of coverage up to 36 months
 - Changes consumer notice requirements



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Short-Term Plans

- New federal framework, but states “retain broad authority”
- Over 20 states identified as regulating short-term plans above the federal minimal standards
- State approaches
 - Adhere to federal default approach
 - Effectively ban short term plans
 - Limit duration of coverage (including consecutive policies) to shorter periods
 - Require plans to adhere to some of the same rules as the broader market
- Driving concerns among states
 - Inadequate coverage, market segmentation, deceptive marketing, sale of short-term plans through national association health plans, no definitive data



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Association Health Plans

- What are they?
 - Association Health Plans (AHPs) are health plan sponsored by an employer-based association (e.g. professional or trade group); single, large employer status, exempt from state regulation of individual and small group market rules
 - Risks to individuals
 - Risks to providers, other issuers
 - Risks to markets, mitigated by other options available to small employers
- What changed under the new federal rule?
 - Easier to qualify for single, large employer status
 - Allows membership by self-employed individuals
 - Bans use of health status in eligibility and premium determinations but allows for use of other factors
 - Raises possibility of future federal preemption



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INSURANCE REFORMS**

Association Health Plans

- New federal framework, but states “retain broad authority”
 - AHPs are MEWAs and fall under state regulation according to ERISA
- Reviewed 20 states identified as addressing AHP flexibility under the new pathway since final AHP rule.
- State approaches
 - Adhering to federal default approach (Some)
 - Prohibiting formation of new AHPs (Some)
 - Applying formation requirements (Most)
 - Maintaining the “look through” approach (Many)
 - Limiting membership to small employers (Many)
 - Requiring self-funded AHPs to meet commercial licensure (Many)
 - Asserting jurisdiction over out-of-state AHPs; Apply same rules to in-state and national AHPs (Most)
- Diving Concerns Among Regulators
 - Fraud, insolvency and market segmentation, no reliable mechanism to identify and monitor national AHPs



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**CENTER ON HEALTH
INSURANCE REFORMS**

Thank You

Kevin Lucia, J.D., M.H.P.

Research Professor

Georgetown University Center on Health Insurance
Reforms

kwl@georgetown.edu



Georgetown University Health Policy Institute

**CENTER ON HEALTH
INSURANCE REFORMS**

Agenda Item #2

Hear a Panel Presentation on Association Health Plans (AHPs)—
Christopher Condeluci (Coalition to Protect and Promote AHPs),
Clinton Wolf (Restaurant & Hospitality Association Benefit Trust—
RHA Trust) and David Chase (Small Business Majority)

Coalition to Protect and Promote Association Health Plans

*Balancing the Regulation of AHPs
With the Flexibility To Offer
a Large Employer Plan*

Why Do Employers Offer Health Coverage?

- Large employers offer health coverage to attract and retain talented workers
 - And to ensure that their employees are healthy and productive
- Small employers want to offer the same type of health coverage large employers offer
 - To attract and retain talented workers to compete with large employers
 - And to make sure their employees are healthy and productive

Why Do Small Employers Support AHPs?

- Small employers are NOT trying to dismantle the Affordable Care Act
- Small employers just want the same things large employers have
 - A bigger “risk pool” they can manage and control
 - “Scale” in purchasing
 - Lower administrative costs in the “large group” market
 - Offering an employer plan is voluntary, and small employers are *not* penalized for *not* offering coverage (yet they continue to want to offer comprehensive coverage)

Why Do Independent Contractors Support AHPs?

- Independent contractors are NOT trying to dismantle the Affordable Care Act
 - Many independent contractors are benefiting from the ACA through subsidized coverage available to them through an ACA Exchange
- BUT, independent contractors in the “unsubsidized” individual market are struggling
 - Many of them have exited the market entirely
- AHPs allow an independent contractor to participate in a large employer plan, one that is comprehensive and more affordable

Why Do People Oppose AHPs?

- A belief that AHPs will offer “skimpy coverage” or “junk insurance”
- Concern over fraudulent behavior and the desire to protect consumers
- A desire to protect the “small group” and “individual” markets, and fear of market segmentation

AHPs and Comprehensive Coverage

- Contrary to what opponents of AHPs have been saying, AHPs that are operating today – and those that will operate come Jan. 1, 2019 – are offering comprehensive coverage
- For example, Land O’Lakes, Inc. is offering 8 different plan designs
 - All of these plan designs cover the 10 “essential health benefit” categories, along with the “services” that fall within these categories that are “medically necessary”
- The National Restaurant Association, the Nevada Chambers of Commerce, the Wisconsin Manufacturers, and franchisees like ACE Hardware will offer comprehensive coverage
 - Through multiple plan designs, some that cover all of the EHBs and others that provide more flexible coverage

AHPs and Comprehensive Coverage

- As we know, AHPs are not new, and AHPs have been in operation even before the ACA was enacted
- These AHPs offer comprehensive coverage to their members
 - For example, most AHPs cover the 10 “essential health benefits” or – just like large employers – they offer multiple plan designs, some that cover all of the EHBs and others that provide more flexible coverage
- And, they comply with State law applicable to fully-insured or self-insured AHPs operating in a particular State

AHPs and Fraud

- We have no illusions of the past history of AHPs and fraud
 - However, this is *past* history, and it should not be viewed as “a given” that history will repeat itself
- Since the early 2000s, additional regulatory measures have been put in the law to police AHPs
 - States have added to their enforcement authority and approval processes
 - Congress gave the DOL increased enforcement authority over MEWAs, with the ability to impose civil and criminal penalties, along with increased disclosure requirements
- Our Coalition is open to adding additional enforcement tools to State and/or Federal law, and we want to work with State regulators to root out fraudulent activity

AHPs and Market Segmentation

- Critics argue that only healthy small employer groups and healthy independent contractors will be attracted to AHPs
- Economics 101 tells us that less healthy groups and less healthy individuals will be attracted to AHPs as well. Why?
 - Because AHPs will offer comprehensive coverage at a lower cost
- AHPs can offer comprehensive coverage at a lower cost because of:
 - Lower administrative costs in the “large group” market
 - No “risk adjustment,” which results in defensive pricing
 - The flexibility to provide benefit offerings like tele-health or value-based insurance designs, which are not options in the “individual” or “small group” markets

What Are Our “Asks”?

- “Large group” status for fully-insured AHPs
 - The Obama Administration confirmed that the “look through” rule recognizes that AHPs sponsored by a “bona fide group or association of employers” as defined under ERISA must be treated as a “large group” plan (if 51 or more employees are a part of the “bona fide group”)
 - This “aggregation rule” is permitted under the PHSA and ERISA, not just the Tax Code’s “controlled group” rules
- Allow “unrelated” small employers AND independent contractors to participate in an AHP
 - Even though the final AHP regulations are being challenged in the court, the final regulations are currently the law until a court tells us otherwise

How Can We Help?

- We can advocate for the “minimum value” standard to apply to AHPs
 - This will ensure that AHPs are offering comprehensive coverage
 - Land O’Lakes, the Restaurants, the Chambers, and other existing AHPs already meet this standard
- We can work with the NAIC and State Insurance Commissioners to:
 - Develop rules that would permit “large group” plan status, and equitably resolve “situs State” vs. “non-situs State” issues
 - Develop a certification process for self-insured AHPs
 - Even though there is already a certification process in most States, developing uniform rules is critical for States to consider

How Can We Help?

- We can work with Federal policymakers to provide additional funding – in the form of a reinsurance program or other risk mitigation program – to help the current “individual” AND “small group” markets
 - With the new make-up of Congress, “improving” the ACA could be a reality, and a reality that we support
- We can work with Federal policymakers to provide additional funding to support the DOL’s MEWA enforcement authority created under the ACA
- We can work with Federal policymakers to provide additional funding to the States for their enforcement efforts

Questions?

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AHPs and Small Business Healthcare

David Chase

Vice President, National Outreach

Small Business Majority

November 16, 2018



About Small Business Majority



- **Small business education and advocacy organization** – founded and run by small business owners. Been in business since 2005.
- **National** – 8 offices in Washington, D.C., California, Colorado, Illinois, Maryland, Missouri and Virginia
- **Focus on issues of top importance to small businesses** (<100 employees) and the self-employed, including access to capital, workforce, healthcare, retirement, taxes and more; work supported by **extensive research**
- Our **Entrepreneurship Program** brings resources and education to small business owners in key areas of running and growing a small business
- Visit our Small Business Resource Portal: www.smallbusinessportal.org

Small businesses struggling with costs

- Soaring **cost** of health insurance – especially for small businesses – 54% of businesses <10 employees don't offer (*Kaiser study*)
- 28% **self-employed**: not covered pre-ACA
- Small firms paid on average **18% more** than large businesses for fewer benefits



Our national study pre-ACA: Small business health costs would **more than double** by 2018 to **\$2.4 trillion** without healthcare reform

Healthcare

How the ACA has benefitted small biz

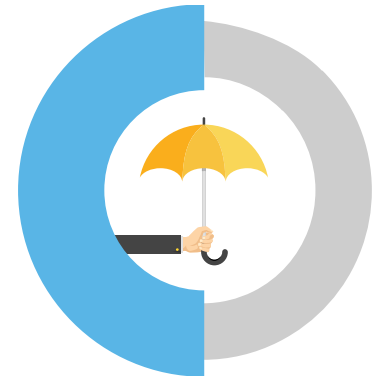
- Over the past several years, the ACA has provided healthcare to more than **20 million individuals** who otherwise couldn't access coverage, including **more than 5.7 million small business owners or self-employed**.
- More than half of all ACA marketplace enrollees are small business owners, self-employed individuals or small business employees.

More than half of marketplace enrollees are small business owners or self-employed entrepreneurs.

53%

Small business owners and self-employed

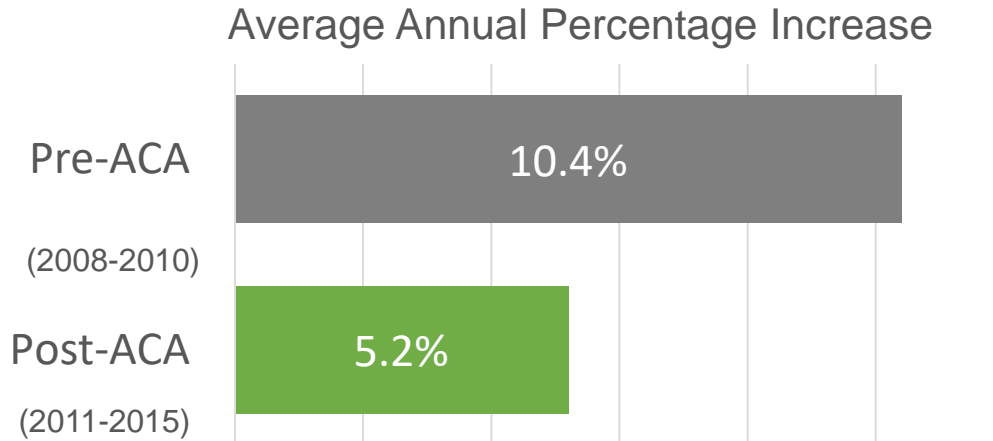
Other enrollment



Healthcare

How the ACA has benefitted small biz

- Premium increases in small group market are declining after ACA



- Costs have stabilized for small business under the ACA.

Healthcare

How AHPs hurt small business



- AHPs are detrimental to small businesses in a variety of ways, including:
 - **Will cause disruptions and increased premiums** in the small group and individual marketplaces by creating separate risk pools.
 - **Require fewer consumer protections** by making it easier for plans to charge higher fees based on factors like gender, occupation and industry, age and group size.
 - **Offer less comprehensive coverage** without essential health benefits.

Healthcare

How AHPs hurt small business



- Prior to the ACA, multiple employer MEWAs and AHPs operated with disastrous results.
- Small businesses were often the victim of scams or on the hook for costly medical expenses for issues they thought their plan covered.
- An Urban Institute analysis of Oregon's regulation of AHPs prior to the ACA found that policies and lack of regulatory oversight increased the potential for adverse selection in the remaining small group market in the state.

Healthcare

How AHPs hurt small business

- Group health plans are exempt from most state regulation. While group health plans have to follow state laws regarding fair marketing practices, **states cannot regulate the underlying employer-health plan.**





Questions?



Small Business Majority
www.smallbusinessmajority.org

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Small Business Majority



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Agenda Item #3

Hear an Update on Legal Action Surrounding the Federal Affordable Care Act (ACA)—*William G. Schiffbauer (Law Office of William G. Schiffbauer, Chartered)*

***UPDATE ON
THE STATUS OF FEDERAL
AFFORDABLE CARE ACT
LITIGATION***

NAIC Fall National Meeting
Health Insurance and Managed Care (B) Committee – Part 2
San Francisco, California
November 16, 2018

By
William G. Schiffbauer, Esq.

Major Pending Litigation

I. *Texas et al v. United States of America et al*, pending in the U.S. District Court, Northern District of Texas

II. *State of New York et al v. United States Department of Labor et al*, pending in the U.S. District Court, District of Columbia

III. *Association for Community Affiliated Plans et al v. United States Department of the Treasury et al*, pending in the U.S. District Court, District of Columbia

I. *Texas et al v. United States of
America et al*

I. *Texas v. US*

PLAINTIFF PARTIES

TEXAS

WISCONSIN

ALABAMA

ARKANSAS

ARIZONA

FLORIDA

GEORGIA

INDIANA

KANSAS

LOUISIANA

MAINE

MISSISSIPPI

MISSOURI

NEBRASKA

NORTH DAKOTA

SOUTH CAROLINA

SOUTH DAKOTA

TENNESSEE

UTAH

WEST VIRGINIA

I. *Texas v. US*

TIMELINE

December 22, 2017, Tax Cut and Jobs Act of 2017 is signed into law.

February 26, 2018, complaint filed by 20 Republican-led states.

April 9, 2018, petition filed to intervene as Defendants by 17 Democrat-led states-DC.

I. *Texas v. US*

TIMELINE

April 26, 2018, the Republican-led state plaintiffs file brief request preliminary injunction.

May 16, 2018, court grants Democrat-led states-DC motion to intervene.

I. *Texas v. US*

TIMELINE

June 7, 2018, Federal agencies file Defendant reply brief to the complaint.

June 7, 2018, Democrat-led intervenor states-DC file reply brief.

I. *Texas v. US*

TIMELINE

July 5, 2018, Republican-led States file reply to the Federal agencies.

September 5, 2018, oral argument held before Judge Reed C. O'Connor.

I. *Texas v. US*

TIMELINE

Ruling could come anytime between now and the end of this enrollment period.

Parties will appeal immediately to the Fifth Circuit Court of Appeals – 1 year.

Parties will file Petition for Certiorari to SCOTUS after Fifth Circuit rules – 1 year.

I. *Texas v. US*

PLAINTIFF'S ARGUMENTS

Tax Cut and Jobs Act of 2017 eliminated ACA individual mandate tax penalty.

Stand-alone mandate without tax penalty is not supported by the Commerce Clause.

I. *Texas v. US*

PLAINTIFF'S ARGUMENTS

Request court to preliminarily enjoin the enforcement of the individual mandate.

Community-rating, guaranteed-issue provisions are inseverable from mandate.

I. *Texas v. US*

PLAINTIFF'S ARGUMENTS

Injunction must apply to the rest of the ACA major provisions based on *NFIB v. Sebelius* dissent.

I. *Texas v. US*

FEDERAL DEFENDANTS' REPLY

The Individual Mandate is Unconstitutional After the Tax Cut and Jobs Act.

The Mandate is Not Severable from the Guaranteed Issue and Community Rating Provisions.

The Mandate, Guaranteed-Issue, and Community Rating Provisions are Severable from ACA.

I. *Texas v. US*

FEDERAL DEFENDANTS' REPLY

Preliminary Injunctive Relief is Not Warranted but a Declaratory Judgment would be appropriate.

Request a holding that the individual mandate will be unconstitutional as of January 1, 2019.

I. *Texas v. US*

STATE-INTERVENOR DEFENDANTS' REPLY

Individual mandate penalty remains and production of revenue is not a constitutional requirement.

The penalty can be characterized as a tax with a delayed effective date or suspension.

Penalty payments will continue to raise revenue because liability for 2018 is not due until April 2019.

I. *Texas v. US*

STATE-INTERVENOR DEFENDANTS' REPLY

The Tax Cut and Jobs Act amendment to reduce the penalty to \$0 is unconstitutional.

If the Individual Mandate as amended is found to be unconstitutional it is severable from the entire ACA.

I. *Texas v. US*

INTERVENOR-DEFENDANT PARTIES

CALIFORNIA

NEW JERSEY

DISTRICT OF COLUMBIA

DELAWARE

HAWAII

RHODE ISLAND

KENTUCKY

MASSACHUSETTS

MINNESOTA

CONNECTICUT

NEW YORK

NORTH CAROLINA

OREGON

ILLINOIS

VERMONT

VIRGINIA

WASHINGTON

I. *Texas v. US*

ORAL ARGUMENT HIGHLIGHTS

The District Court appears to agree with the Plaintiff's arguments that the mandate is now unconstitutional.

The District Court is primarily concerned with the scope of severability and application to all or only the Plaintiff states.

I. *Texas v. US*

ORAL ARGUMENT HIGHLIGHTS

The 111th Congress in 2010 characterized the mandate as integral to guaranteed-issue and community rating.

The 115th Congress in 2017 only repealed the amount of the penalty and left the remainder of the ACA in place.

I. *Texas v. US*

AMICUS BRIEFS SUPPORTING INTERVENORS

American Medical Association

American Academy of Family Physicians

American College of Physicians

American Academy of Pediatrics

American Academy of Child and Adolescent Psychiatry

American Cancer Society

Cancer Action Network

I. *Texas v. US*

AMICUS BRIEFS SUPPORTING INTERVENORS

American Diabetes Association

American Heart Association

American Lung Association

National Multiple Sclerosis Society

American Hospital Association

Association of American Medical Colleges

Catholic Health Association of the United States

Federation of American Hospitals

I. *Texas v. US*

AMICUS BRIEFS SUPPORTING INTERVENORS

America's Health Insurance Plans
Small Business Majority Foundation
Service Employees International Union
Families USA
Community Catalyst
National Health Law Program
Center for Public Policy Priorities
Center on Budget and Policy Priorities

I. *Texas v. US*

AMICUS BRIEFS SUPPORTING INTERVENORS

AARP

Public Health Scholars

American Public Health Association

Law Professors Group

Jonathan Adler

Nicholas Bagley

Abbe Gluck

Ilya Somin

Kevin Walsh

I. *Texas v. US*

AMICUS BRIEFS SUPPORTING GOP PLAINTIFFS

Citizens United

Downsize DC

Gun Owners of America

Conservative Legal Defense and Education Fund

Eberle Communications Group

Restoring Liberty Action Committee

II. *State of New York et al v. United States Department of Labor et al*

II. *New York v. US DOL*

PLAINTIFF PARTIES

NEW YORK

MASSACHUSETTS

DISTRICT OF COLUMBIA

CALIFORNIA

DELAWARE

KENTUCKY

MARYLAND

NEW JERSEY

OREGON

PENNSYLVANIA

VIRGINIA

WASHINGTON

II. *New York v. US DOL*

TIMELINE

June 21, 2018, U.S. Department of Labor publishes final rule for Association Health Plans.

July 26, 2018, complaint filed by State of New York and 11 other states (10 Democrat-led).

II. *New York v. US DOL*

TIMELINE

August 23, 2018, Plaintiff States file brief and requests preliminary injunction.

October 30, 2018, Defendant U.S. DOL files brief and requests summary judgment and dismissal.

II. *New York v. US DOL*

TIMELINE

Court has ordered plaintiff-States to file reply briefs by November 28, 2018.

Court has ordered defendant-DOL to file reply briefs by December 19, 2018.

No date has yet been set by the Court for oral argument – likely early next year.

II. *New York v. US DOL*

PLAINTIFF'S ARGUMENTS

Final rule unlawfully overrides the Affordable Care Act's employer-group market structure with association plan.

Final rule unlawfully expands the ERISA definition of "employer" to include a "working owner".

Final rule is an arbitrary and capricious departure from long-standing interpretations of "bona fide association".

II. *New York v. US DOL*

FEDERAL DEFENDANTS' REPLY

ERISA statutory term “employer” includes a group or association of employers acting in relation to employee benefit plan.

AHP final rule is a reasonable interpretation of ERISA term “employer” because it is ambiguous and “group or association” is undefined.

II. *New York v. US DOL*

FEDERAL DEFENDANT S' REPLY

Federal agencies may permissibly modify long-held sub-regulatory guidance and not foreclosed by other statutory provisions.

Statutory definition of “employer” is silent with respect to number of “employees” and final rule is a “reasonable” interpretation.

II. *New York v. US DOL*

AMICUS BRIEFS SUPPORTING US DOL

State of Texas

State of Nebraska

State of Georgia

State of Louisiana

Chamber of Commerce of the United States

Society for Human Resource Management

III. *Association for Community Affiliated
Plans et al v. United States
Department of the Treasury et al*

III. *ACAP v. US TREASURY*

PLAINTIFF PARTIES

ASSOCIATION FOR COMMUNITY AFFILIATED PLANS

NATIONAL ALLIANCE ON MENTAL ILLNESS

MENTAL HEALTH AMERICA

AMERICAN PSYCHIATRIC ASSOCIATION

AIDS UNITED

THE NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES

LITTLE LOBBYISTS, LLC

III. *ACAP v. US TREASURY*

TIMELINE

August 3, 2018, ACA Tri-Agencies publish final rule for Short-Term, Limited-Duration Health Insurance.

September 14, 2018, complaint filed by Association for Community Affiliated Plans and 6 other organizations.

October 2, 2018, the court orders expedited briefing schedule defendant's reply, and plaintiff's response.

III. *ACAP v. US TREASURY*

TIMELINE

October 15, 2018, Defendant-Tri-Agencies file reply to complaint and oppose motion for preliminary injunction.

October 22, 2018, Plaintiff's file reply brief in support of request for preliminary injunction.

October 26, oral argument hearing held before Judge Richard Leon regarding preliminary injunction.

III. *ACAP v. US TREASURY*

TIMELINE

The Court said a ruling would not be issued before the end of the year and so is expected early next year.

The Parties are expected to appeal to the D.C. Circuit Court of Appeals – a 1 year process.

III. *ACAP v. US TREASURY*

PLAINTIFF'S ARGUMENT

Final rule exceeded agencies authority and discretion and circumvents the purposes of the Affordable Care Act.

Final rule interprets “limited duration” to unreasonably encompass a renewal for up to three years.

III. *ACAP v. US TREASURY*

PLAINTIFF'S ARGUMENT

“Short-term” should be based on the 3 month “short coverage gap” exemption from the mandate penalty.

Final rule does not provide a reasoned explanation for changing prior law and arbitrary and capricious.

III. *ACAP v. US TREASURY*

FEDERAL DEFENDANTS' REPLY

Congress did not define “short-term, limited-duration insurance” and delegated authority to the agencies.

Both HIPAA and the ACA maintained this authority for the agencies to issue regulations defining STLDI.

III. *ACAP v. US TREASURY*

FEDERAL DEFENDANTS' REPLY

A “short coverage gap” is an exemption from the penalty tax along with hardship and financial constraints.

The final rule’s provision to permit renewal of 36 months restricts duration and so is “limited”.

III. *ACAP v. US TREASURY*

ORAL ARGUMENT HIGHLIGHTS

The Court expressed support for the Defendant-Tri-Agencies position and that STLDI offered a choice.

The Court suggested that the Plaintiffs drop the request for a preliminary injunction and proceed to merits.

The Court rejected the Plaintiffs “11th hour” request for an expedited ruling prior to November 1.

III. *ACAP v. US TREASURY*

ORAL ARGUMENT HIGHLIGHTS

The Court observed that the case is about the insurance industry that markets the ACA being protected.

The Court observed that more insurance options was a net benefit and would help young people get coverage.

The Court suggested that STLDI plans should “play out” in the market and see if it really impacts ACA insurers.

III. *ACAP v. US TREASURY*

AMICUS BRIEFS SUPPORTING PLAINTIFFS

AARP

AMERICAN CANCER SOCIETY

CANCER ACTION NETWORK

AMERICAN HEART ASSOCIATION

AMERICAN LUNG ASSOCIATION

CYSTIC FIBROSIS FOUNDATION

EPILEPSY FOUNDATION

GLOBAL HEALTHY LIVING FOUNDATION

HEMOPHILIA FEDERATION OF AMERICA

LEUKEMIA AND LYMPHOMA SOCIETY

III. *ACAP v. US TREASURY*

AMICUS BRIEFS SUPPORTING PLAINTIFFS

MARCH OF DIMES

NATIONAL COALITION FOR CANCER SURVIVORSHIP

NATIONAL MULTIPLE SCLEROSIS SOCIETY

AMERICAN MEDICAL ASSOCIATION

AMERICAN COLLEGE OF PHYSICIANS

AMERICAN OSTEOPATHIC ASSOCIATION

AMERICAN ACADEMY OF FAMILY PHYSICIANS

AMERICAN ACADEMY OF PEDIATRICS

AMERICAN COLLEGE OF OBSTETRICIANS AND
GYNECOLOGISTS

III. *ACAP v. US TREASURY*

AMICUS BRIEFS SUPPORTING PLAINTIFFS

THE HIV MEDICINE ASSOCIATION

MEDICAL SOCIETY OF THE DISTRICT OF COLUMBIA

THE END