No. 19-10011

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

STATE OF TEXAS; STATE OF WISCONSIN; STATE OF ALABAMA; STATE OF ARIZONA; STATE OF FLORIDA; STATE OF GEORGIA; STATE OF INDIANA; STATE OF KANSAS; STATE OF LOUISIANA; STATE OF MISSISSIPPI, by and through Governor Phil Bryant; STATE OF MISSOURI; STATE OF NEBRASKA; STATE OF NORTH DAKOTA; STATE OF SOUTH CAROLINA; STATE OF SOUTH DAKOTA; STATE OF TENNESSEE; STATE OF UTAH; STATE OF WEST VIRGINIA; STATE OF ARKANSAS; NEILL HURLEY; JOHN NANTZ,

Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA; UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES; ALEX AZAR, II, SECRETARY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; UNITED STATES DEPARTMENT OF INTERNAL REVENUE; CHARLES P. RETTIG, in his Official Capacity as Commissioner of Internal Revenue,

Defendants-Appellants,

STATE OF CALIFORNIA; STATE OF CONNECTICUT; DISTRICT OF COLUMBIA; STATE OF DELAWARE; STATE OF HAWAII; STATE OF ILLINOIS; STATE OF KENTUCKY; STATE OF MASSACHUSETTS; STATE OF NEW JERSEY; STATE OF NEW YORK; STATE OF NORTH CAROLINA; STATE OF OREGON; STATE OF RHODE ISLAND; STATE OF VERMONT; STATE OF VIRGINIA; STATE OF WASHINGTON; STATE OF MINNESOTA,

Intervenor Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Texas

RECORD EXCERPTS

JOSEPH H. HUNT
Assistant Attorney General

BRETT A. SHUMATE
Deputy Assistant Attorney General

MARTIN V. TOTARO
Attorney, Appellate Staff
Civil Division, Room 7513
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
(202) 616-5374
martin.totaro@usdoj.gov

Table of Contents

TAB 1

APPEAL,CLOSED,STAYED

U.S. District Court
Northern District of Texas (Fort Worth)
CIVIL DOCKET FOR CASE #: 4:18-cv-00167-O

Texas et al v. United States of America et al
Assigned to: Judge Reed C. O'Connor
Case in other court: United States Court of Appeals Fifth Circuit, 19-10011
Franciscan Alliance, et al. v. Alex M. Azar, et al, 7:16-cv-00108-O
Cause: 28:2201 Declaratory Judgment

Date Filed: 02/26/2018
Date Terminated: 12/31/2018
Jury Demand: None
Nature of Suit: 890 Other Statutes: Other Statutory Actions
Jurisdiction: U.S. Government Defendant

Plaintiff

Texas

represented by **Darren L McCarty**
Office of the Attorney General
P. O. 12458
Mail Code 001
Austin, TX 78711
512/936-0594
Email: darren.mccarty@oag.texas.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Austin Nimocks
Office of the Attorney General of Texas
209 West 14th Street
8th Floor
Austin, TX 78701
512-936-2902
Fax: 512-936-0545
Email: austin.nimocks@oag.texas.gov
TERMINATED: 09/20/2018
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
Office of the Texas Attorney General
209 W 14th Street
PDB Ground Floor
Austin, TX 78701
512-936-2330
Fax: 512-935-0545
Email: david.hacker@oag.texas.gov
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Plaintiff

Wisconsin

represented by **Austin Nimocks**
(See above for address)

TERMINATED: 09/20/2018
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Kevin Michael LeRoy
Wisconsin Department of Justice
17 W Main St
PO Box 7857
Madison, WI 53707-7857
608-267-2221
Fax: 608-261-7206
Email: leroykm@doj.state.wi.us
TERMINATED: 12/30/2018
PRO HAC VICE
Bar Status: Not Admitted

Misha Tseytlin
Wisconsin Department of Justice
17 W Main St
PO Box 7857
Madison, WI 53707-7857
608-267-9323
Fax: 608-261-7206
Email: tseytlinm@doj.state.wi.us
TERMINATED: 12/30/2018
PRO HAC VICE
Bar Status: Not Admitted

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Plaintiff

Alabama represented by **Austin Nimocks**
(See above for address)
TERMINATED: 09/20/2018
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Plaintiff

Arizona represented by **Austin Nimocks**
(See above for address)
TERMINATED: 09/20/2018
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Plaintiff

Florida represented by **Austin Nimocks**
(See above for address)
TERMINATED: 09/20/2018
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Plaintiff

Georgia represented by **Austin Nimocks**
(See above for address)
TERMINATED: 09/20/2018
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Plaintiff

Indiana represented by **Austin Nimocks**
(See above for address)

TERMINATED: 09/20/2018
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Plaintiff

Kansas represented by **Austin Nimocks**
(See above for address)
TERMINATED: 09/20/2018
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Plaintiff

Louisiana represented by **Austin Nimocks**
(See above for address)
TERMINATED: 09/20/2018
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Plaintiff

Paul LePage represented by **Austin Nimocks**
Governor of Maine
(See above for address)
TERMINATED: 09/20/2018
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Plaintiff

Mississippi
by and through Governor Phil Bryant

represented by **Austin Nimocks**
(See above for address)
TERMINATED: 09/20/2018
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Plaintiff

Missouri

represented by **Austin Nimocks**
(See above for address)
TERMINATED: 09/20/2018
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Plaintiff

Nebraska

represented by **Austin Nimocks**
(See above for address)
TERMINATED: 09/20/2018
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Plaintiff

North Dakota represented by **Austin Nimocks**
(See above for address)
TERMINATED: 09/20/2018
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Plaintiff

South Carolina represented by **Austin Nimocks**
(See above for address)
TERMINATED: 09/20/2018
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Plaintiff

South Dakota represented by **Austin Nimocks**
(See above for address)
TERMINATED: 09/20/2018
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED

Bar Status: Admitted/In Good Standing

Plaintiff

Tennessee represented by **Austin Nimocks**
(See above for address)
TERMINATED: 09/20/2018
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Plaintiff

Utah represented by **Austin Nimocks**
(See above for address)
TERMINATED: 09/20/2018
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Plaintiff

West Virgina represented by **Austin Nimocks**
(See above for address)
TERMINATED: 09/20/2018
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Plaintiff

Arkansas represented by **Austin Nimocks**
(See above for address)
TERMINATED: 09/20/2018
Bar Status: Admitted/In Good Standing

David Jonathan Hacker
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Plaintiff

Neill Hurley represented by **Robert Earl Henneke**
Texas Public Policy Foundation
901 N Congress Avenue
Austin, TX 78701
512-472-2700
Fax: 512-472-2728
Email: rhenneke@texaspolicy.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Jonathan F Mitchell
106 East Sixth Street
Suite 900
Austin, TX 78701
512-686-3940
Fax: 512-686-3941
Email: jonathan@mitchell.law
TERMINATED: 12/11/2018
Bar Status: Admitted/In Good Standing

Plaintiff

John Nantz represented by **Robert Earl Henneke**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Darren L McCarty
(See above for address)
ATTORNEY TO BE NOTICED

Bar Status: Admitted/In Good Standing

Jonathan F Mitchell
(See above for address)
TERMINATED: 12/11/2018
Bar Status: Admitted/In Good Standing

V.

Intervenor Plaintiff

WG Hall, LLC
d/b/a AtWork Personnel
TERMINATED: 06/15/2018

represented by **Braden Heath Boucek**
Beacon Center of Tennessee
201 4th Avenue North, Ste 1820
PO Box 198646
Nashville, TN 37219
615-383-6431
Fax: 615-383-6432
Email: Braden@beacontn.org
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Philip A Vickers
Cantey Hanger LLP
Cantey Hanger Plaza
600 West 6th St Suite 300
Fort Worth, TX 76102-3685
817/877-2849
Fax: 817/877-2807
Email: pvickers@canteyhanger.com
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Scott A Fredricks
Cantey Hanger LLP
600 West 6th Street
Suite 300
Fort Worth, TX 76102
817-877-2847
Fax: 817-877-2807
Email: sfredricks@canteyhanger.com
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Intervenor Plaintiff

Quickway Distribution Services, Inc.
TERMINATED: 06/15/2018

represented by **Braden Heath Boucek**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Philip A Vickers
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Scott A Fredricks
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

V.

Defendant

United States of America represented by

Brett Shumate
US Department of Justice
950 Pennsylvania Ave
Room 3137
Washington, DC 20530
202-514-2331
Fax: 202-514-8071
Email: brett.a.shumate@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Daniel Duane Mauler
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave NW
Washington, DC 20001
202-616-0773
Fax: 202-616-8470
Email: dan.mauler@usdoj.gov
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Eric Beckenhauer
US Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave NW
Washington, DC 20530
202-514-3338
Fax: 202-616-8470
Email: eric.beckenhauer@usdoj.gov
TERMINATED: 06/08/2018
Bar Status: Not Admitted

Joel McElvain
US Department of Justice
Civil Divison, Federal Programs Branch
20 Massachusetts Ave NW

Washington, DC 20044
202-514-2988
Fax: 202-616-8202
Email: joel.mcelvain@usdoj.gov
TERMINATED: 06/08/2018
Bar Status: Not Admitted

Rebecca Kopplin
United States Department of Justice Civil Division
20 Massachusetts Ave NW
Washington, DC 20001
202-514-3953
Fax: 202-616-8470
Email: rebecca.m.kopplin@usdoj.gov
TERMINATED: 06/08/2018
Bar Status: Not Admitted

Defendant

Department of Health & Human Services represented by **Brett Shumate**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Daniel Duane Mauler
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Eric Beckenhauer
(See above for address)
TERMINATED: 06/08/2018
Bar Status: Not Admitted

Joel McElvain
(See above for address)
TERMINATED: 06/08/2018
Bar Status: Not Admitted

Rebecca Kopplin
(See above for address)
TERMINATED: 06/08/2018
Bar Status: Not Admitted

Defendant

Alex Azar
in his Official Capacity as Secretary of Health and Human Services represented by **Brett Shumate**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Daniel Duane Mauler
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Eric Beckenhauer
(See above for address)
TERMINATED: 06/08/2018
Bar Status: Not Admitted

Joel McElvain
(See above for address)
TERMINATED: 06/08/2018
Bar Status: Not Admitted

Rebecca Kopplin
(See above for address)
TERMINATED: 06/08/2018
Bar Status: Not Admitted

Defendant

United States Interval Revenue Services represented by **Brett Shumate**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Daniel Duane Mauler
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Eric Beckenhauer
(See above for address)
TERMINATED: 06/08/2018
Bar Status: Not Admitted

Joel McElvain
(See above for address)
TERMINATED: 06/08/2018
Bar Status: Not Admitted

Rebecca Kopplin
(See above for address)
TERMINATED: 06/08/2018
Bar Status: Not Admitted

Defendant

David Kautter represented by **Brett Shumate**
in his Official Capacity as Acting Commissioner of Internal Revenue
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Bar Status: Not Admitted

Daniel Duane Mauler
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Eric Beckenhauer
(See above for address)
TERMINATED: 06/08/2018
Bar Status: Not Admitted

Joel McElvain
(See above for address)
TERMINATED: 06/08/2018
Bar Status: Not Admitted

Rebecca Kopplin
(See above for address)
TERMINATED: 06/08/2018
Bar Status: Not Admitted

V.

Intervenor Defendant

State of California represented by **Kathleen M Boergers**
Office of the Attorney General of California
1515 Clay street
20th floor
Oakland, CA 94612
510-879-0011
Fax: 510-622-2270
Email: kathleen.boergers@doj.ca.gov
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Neli Nima Palma
Attorney General of California
1300 I Street
Room 1210-22
Sacramento, CA 95814
916-210-7522
Fax: 916-322-8288
Email: Neli.Palma@doj.ca.gov
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Nimrod Pitsker Elias
Attorney General of California
455 Golden Gate Avenue

Suite 11000
San Francisco, CA 94102
415-510-3444
Fax: 415-703-5480
Email: nimrod.elias@doj.ca.gov
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Intervenor Defendant

State of Connecticut represented by

Joseph Rubin
Connecticut Office of the Attorney General
55 Elm Street
PO Box 120
Hartford, CT 06106
860-808-5318
Fax: 860-808-5387
Email: joseph.rubin@ct.gov
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Neli Nima Palma
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Intervenor Defendant

District of Columbia represented by

Valerie M. Nannery
Office of the Attorney General for the
District of Columbia
441 4th Street NW
Suite 600 South
Washington, DC 20001
202-442-9596
Email: valerie.nannery@dc.gov
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Neli Nima Palma
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Robyn Renee Bender
Office of the Attorney General for the
District of Columbia

441 4th Street NW, Suite 600 South
Washington, DC 20001
202-724-6610
Fax: 202-730-0657
Email: Robyn.Bender@dc.gov
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Intervenor Defendant

State of Delaware represented by

Jessica Willey
Delaware Department of Justice
Carvel State Building
820 N French Street, 6th Fl
Wimington, DE 19801
302-674-7387
Email: Jessica.Willey@state.de.us
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

David J Lyons
Delaware Department of Justice
820 North French Street
Wilmington, DE 19801
302-577-8400
Fax: 302-577-6630
Email: david.lyons@state.de.us
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Neli Nima Palma
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Intervenor Defendant

State of Hawaii represented by

Andrea Suzuki
State of Hawaii Department of the Attorney General
465 South King Street
Room 200
Honolulu, HI 96813
808-586-4077
Fax: 808-587-3077
Email: andrea.a.suzuki@hawaii.gov
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Bar Status: Not Admitted

Heidi Marguerita Rian
Department of the Attorney General
465 S King Street
Room 200
Honolulu, HI 96813
808-587-3050
Fax: 808-587-3077
Email: Heidi.M.Rian@hawaii.gov
TERMINATED: 11/05/2018
PRO HAC VICE
Bar Status: Not Admitted

Neli Nima Palma
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Intervenor Defendant

State of Illinois represented by **David F Buysse**
Attorney General of Illinois
100 West Randolph Street
Chicago, IL 60601
312-814-7236
Email: dbuysse@atg.state.il.us
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Neli Nima Palma
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Intervenor Defendant

State of Kentucky represented by **Neli Nima Palma**
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Taylor Allen Payne
Office of the Attorney General
700 Capital Avenue
Suite 118
Frankfort, KY 40601
502-696-5480
Fax: 502-564-9380
Email: Taylor.Payne@ky.gov

PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Intervenor Defendant

State of Massachusetts represented by **Neli Nima Palma**
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Stephen B Vogel
Office of the Massachusetts Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108
617-963-2415
Fax: 617-573-5386
Email: stephen.vogel@state.ma.us
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Intervenor Defendant

State of New Jersey represented by **Jeremy Feigenbaum**
Office of the New Jersey Attorney General
Richard J. Hughes Justice Complex
25 Market Street, 8th Floor, West Wing
Trenton, NJ 08625
609-376-2690
Email: Jeremy.Feigenbaum@njoag.gov
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Neli Nima Palma
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Intervenor Defendant

State of New York represented by **Elizabeth R Chesler**
New York State Office of the Attorney General
28 Liberty Street
New York, NY 10005
212-416-8487
Fax: 212-416-8034
Email: Elizabeth.Chesler@ag.ny.gov
PRO HAC VICE

ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Neli Nima Palma
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Intervenor Defendant

State of North Carolina represented by **Neli Nima Palma**
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Intervenor Defendant

State of Oregon represented by **Scott Kaplan**
Oregon Department of Justice
100 SW Market St
Portland, OR 97201
971-673-1880
Fax: 971-673-5000
Email: scott.kaplan@doj.state.or.us
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Henry Kantor
Oregon Department of Justice
100 SW Market St
Portland, OR 97201
971-673-1880
Fax: 971-673-5000
Email: henry.kantor@doj.state.or.us
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Neli Nima Palma
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Intervenor Defendant

State of Rhode Island represented by **Maria Lenz**
Rhode Island Department of Attorney General
150 South Main Street
Providence, RI 02903

401-274-4400 x2225
Email: marialenz@riag.ri.gov
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Neli Nima Palma
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Intervenor Defendant

State of Vermont represented by **Benjamin Battles**
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
802-828-5500
Email: benjamin.battles@vermont.gov
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Neli Nima Palma
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Intervenor Defendant

State of Virginia represented by **Matthew Robert McGuire**
Office of the Attorney General
202 North Ninth Street
Richmond, VA 23219
804-786-7773
Fax: 804-371-0200
Email: mmcguire@oag.state.va.us
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Neli Nima Palma
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Intervenor Defendant

State of Washington represented by

Jeffrey T Sprung
Hagens Berman Sobol Shapiro LLP
1918 8th Ave
Suite 3300
Seattle, WA 98101
206/623-7292
Fax: 206/623-0549
Email: jeffs2@atg.wa.gov
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Neli Nima Palma
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Intervenor Defendant

State of Minnesota represented by

Neli Nima Palma
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Scott Ikeda
Minnesota Attorney General's Office
445 Minnesota Street
Suite 1100
St Paul, MN 55101
651-757-1385
Fax: 651-282-5832
Email: scott.ikeda@ag.state.mn.us
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Intervenor Defendant

U.S. House of Representatives represented by

Donald Beaton Verrilli , Jr
Munger Tolles & Olson LLP
1155 F Street NW, 7th Floor
Washington, DC 20004-1312
202-220-1100
Fax: 210-220-2300
Email: donald.verrilli@mto.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

Citizens United represented by

John Mark Brewer
800 Bering Drive
Suite 201
Houston, TX 77057
713-209-2950
Email: brewer@bplaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

American College of Physicians represented by

Chad Golder
Munger Tolles & Olson LLP
1155 F Street NW, 7th Floor
Washington, DC 20004
202-220-1100
Fax: 210-220-2300
Email: Chad.Golder@mto.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Dila Mignouna
Munger Tolles & Olson LLP
1155 F Street NW
7th Floor
Washington, DC 20004
202-220-1100
Fax: 210-220-2300
Email: Dahlia.Mignouna@mto.com
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Teresa A Reed Dippo
Munger Tolles & Olson LLP
560 Mission Street, 27th Floor
San Francisco, CA 94105-2907
415-512-4058
Fax: 415-644-6958
Email: Teresa.Reed@mto.com
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Tiffanie S Clausewitz
The Rosenblatt Law Firm
16719 Huebner Rd
Bldg 1
San Antonio, TX 78248
210/562-2900
Fax: 210/562-2929
Email: tiffanie@rosenblattlawfirm.com

ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Amicus

American Academy of Family Physicians represented by **Chad Golder**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Dila Mignouna
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Teresa A Reed Dippo
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Tiffanie S Clausewitz
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Amicus

American Academy of Pediatrics represented by **Chad Golder**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Dila Mignouna
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Teresa A Reed Dippo
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Tiffanie S Clausewitz
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Amicus

American Academy of Child and Adolescent Psychiatry

represented by **Chad Golder**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Dila Mignouna
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Teresa A Reed Dippo
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Tiffanie S Clausewitz
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Amicus

AMERICAN CANCER SOCIETY

represented by **Beth Bivans Petronio**
K&L Gates LLP
1717 Main St
Suite 2800
Dallas, TX 75201
214-939-5500
Fax: 214-939-5849 FAX
Email: beth.petronio@klgates.com
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Amicus

AMERICAN CANCER SOCIETY CANCER ACTION NETWORK

represented by **Beth Bivans Petronio**
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Amicus

AMERICAN DIABETES ASSOCIATION

represented by **Beth Bivans Petronio**
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Amicus

American Heart Association

represented by **Beth Bivans Petronio**
(See above for address)
ATTORNEY TO BE NOTICED

Bar Status: Admitted/In Good Standing

Amicus

AMERICAN LUNG ASSOCIATION represented by **Beth Bivans Petronio**
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Amicus

NATIONAL MULTIPLE SCLEROSIS SOCIETY represented by **Beth Bivans Petronio**
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Amicus

America's Health Insurance Plans represented by **Brennan Holden Meier**
Akin Gump Strauss Hauer & Feld LLP
1700 Pacific Avenue
Suite 4100
Dallas, TX 75201
214/384-4262
Email: bhmeier@akingump.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Jayant Kartik Tatachar
Akin Gump Strauss Hauer & Feld LLP
1700 Pacific Avenue
Suite 4100
Dallas, TX 75201
214-969-2800
Fax: 214-969-4343
Email: jtatachar@akingump.com
TERMINATED: 08/20/2018
Bar Status: Admitted/In Good Standing

Leslie B Kiernan
Akin Gump Strauss Hauer & Feld
1333 New Hampshire Ave NW
Washington, DC 20036
202-887-4515
Email: lkiernan@akingump.com
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Pratik A. Shah
Akin Gump Strauss Hauer & Feld
1333 New Hampshire Ave NW
Washington, DC 20036
202-887-4210

Email: pshah@akingump.com
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

American Medical Association represented by **Chad Golder**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Dila Mignouna
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Teresa A Reed Dippo
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Tiffanie S Clausewitz
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Amicus

American Hospital Association represented by **Catherine Emily Stetson**
Hogan Lovells US LLP
555 13th Street NW
Washington, DC 20004-1109
202-637-5491
Fax: 202-637-5910
Email: cate.stetson@hoganlovells.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

Federation of American Hospitals represented by **Catherine Emily Stetson**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

Catholic Health Association of the United States represented by **Catherine Emily Stetson**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

Association of American Medical Colleges represented by **Catherine Emily Stetson**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

Jonathan H. Adler represented by **Joshua L Hedrick**
Hedrick Kring PLLC
1700 Pacific Avenue, Ste 4650
Dallas, TX 75201
214-880-9600
Fax: 214-481-1844
Email: Josh@HedrickKring.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Britton D McClung
Hedrick Kring PLLC
1700 Pacific Avenue
Suite 4650
Dallas, TX 75201
214-880-9600
Fax: 214-481-1844
Email: britt@hedrickkring.com
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Joseph R. Palmore
Morrison & Foerster LLP
2000 Pennsylvania Avenue NW
Suite 6000
Washington, DC 20006
202-887-6940
Fax: 202-887-0763
Email: JPalmore@mofo.com
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

Nicholas Bagley represented by

Joshua L Hedrick
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Britton D McClung
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Joseph R. Palmore
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

Abbe R. Gluck represented by **Joshua L Hedrick**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Britton D McClung
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Joseph R. Palmore
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

Ilya Somin represented by **Joshua L Hedrick**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Britton D McClung
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Amicus

Kevin C. Walsh represented by **Joshua L Hedrick**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Bar Status: Admitted/In Good Standing

Britton D McClung
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Joseph R. Palmore
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

Small Business Majority Foundation represented by **Hyland Hunt**
Deutsch Hunt PLLC
300 New Jersey Ave NW
Suite 900
Washington, DC 20001
202-868-6915
Fax: 202-609-8410
Email: hhunt@deutschhunt.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Ruthanne Mary Deutsch
Deutsch Hunt PLLC
300 New Jersey Ave NW
Suite 900
Washington, DC 20001
202-868-6915
Fax: 202-609-8410
Email: rdeutsch@deutschhunt.com
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

Service Employees International Union represented by **Kenton J Hutcherson**
Hutcherson Law
3131 McKinney Avenue
Suite 600
Dallas, TX 75204
214-443-4200
Fax: 214-443-4210
Email: kjh@hutchersonlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Katherine Roberson-Young

Service Employees International Union
1800 Massachusetts Avenue, NW
Washington, DC 20036
202-730-7468
Fax: 202-429-5565
Bar Status: Not Admitted

Nicole G. Berner
Service Employees International Union
1800 Massachusetts Avenue, NW
Washington, DC 20036
202-730-7468
Fax: 202-429-5565
Bar Status: Not Admitted

Saerom Park
Service Employees International Union
1800 Massachusetts Avenue, NW
Washington, DC 20036
202-730-7468
Fax: 202-429-5565
Bar Status: Not Admitted

Amicus

Families USA represented by

Leslie Sara Hyman
Pulman, Cappuccio, Pullen & Benson, LLP
2161 NW Military Hwy, Suite 400
San Antonio, TX 78213
210-892-1601
Fax: 210-892-1610
Email: lhyman@pulmanlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Margaret M Dotzel
1800 M Street NW
Suite 1000
Washington, DC 20036
202-778-1998
Fax: 202-822-8106
PRO HAC VICE
Bar Status: Not Admitted

William B Schultz
Zuckerman Spaeder LLP
1800 M Street NW
Suite 1000
Washington, DC 20036
202-778-1820
Fax: 202-822-8106
Email: wschultz@zuckerman.com
PRO HAC VICE

ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

Community Catalyst represented by **Leslie Sara Hyman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Margaret M Dotzel
(See above for address)
PRO HAC VICE
Bar Status: Not Admitted

William B Schultz
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

National Health Law Program represented by **Leslie Sara Hyman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Margaret M Dotzel
(See above for address)
PRO HAC VICE
Bar Status: Not Admitted

William B Schultz
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

Center for Public Policy Priorities represented by **Leslie Sara Hyman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Margaret M Dotzel
(See above for address)
PRO HAC VICE
Bar Status: Not Admitted

William B Schultz

(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

Center on Budget and Policy Priorities represented by **Leslie Sara Hyman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Margaret M Dotzel
(See above for address)
PRO HAC VICE
Bar Status: Not Admitted

Amicus

Economic Scholars represented by **Matthew S. Hellman**
Jenner & Block
1099 New York Ave NW
Suite 900
Washington, DC 20001
202-639-6861
Email: mhellman@jenner.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Gabriel K Gillett
Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654-3456
312-840-7220
Email: GGillett@jenner.com
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

AARP represented by **Iris Y Gonzalez**
AARP Foundation
601 F Street NW
Washington, DC 20049
202/434-6289
Fax: 855/296-1218
Email: igonzalez@aarp.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Maame Gyamfi
601 E Street NW
Washington, DC 20724
202-434-6291
Email: mgyamfi@aarp.org
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

AARP FOUNDATION represented by

Iris Y Gonzalez
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Maame Gyamfi
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

Public Health Scholars represented by

Michelle L Davis
Skadden Arps Slate Meagher & Flom LLP
2521 Springer Road
Midlothian, TX 76065
713/655/5197
Fax: 713/483/9197
Email: michelle.davis@skadden.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Boris Bershteyn
4 Times Square
New York, NY 10036
212-735-3000
Email: boris.bershteyn@skadden.com
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Micah Festa Fergenson
Skadden, Arps, Slate, Meagher & Flom LLP
4 Times Square
New York, NY 10036
212-735-3000 x2258
Fax: 212-735-2000
Email: micah.fergenson@skadden.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Bar Status: Not Admitted

Amicus

The American Public Health Association represented by **Michelle L Davis**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Boris Bershteyn
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Micah Festa Fergenson
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Amicus

Mr. Carey Brian Meadors represented by **Carey Brian Meadors**
4222 Stratton Village Ln
Wilmington, NC 28409
910-547-9351
Email: brianmeadors@gmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

V.

Interested Party

The American Medical Association represented by **Chad Golder**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Dila Mignouna
(See above for address)
PRO HAC VICE
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Teresa A Reed Dippo
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Not Admitted

Tiffanie S Clausewitz
(See above for address)
ATTORNEY TO BE NOTICED
Bar Status: Admitted/In Good Standing

Date Filed	#	Docket Text
02/26/2018	1 (p.68)	COMPLAINT against All Defendants filed by Louisiana, West Virgina, Florida, South Carolina, Texas, South Dakota, North Dakota, Phil Bryant, Arizona, Arkansas, Indiana, Paul LePage, Utah, Missouri, Nebraska, Georgia, Wisconsin, Kansas, Tennessee, Alabama. (Filer fee Paid - FW0539-9014188) Clerk to issue summonses for federal and non-federal defendants. In each Notice of Electronic Filing, the judge assignment is indicated, and a link to the Judges Copy Requirements is provided. The court reminds the filer that any required copy of this and future documents must be delivered to the judge, in the manner prescribed, within three business days of filing. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at www.txnd.uscourts.gov, or by clicking here: Attorney Information - Bar Membership. If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (Attachments: # 1 (p.68) Cover Sheet) (McCarty, Darren) Modified to edit payment information on 2/27/2018 (wxc). (Entered: 02/26/2018)
02/26/2018	2 (p.105)	NOTICE of Attorney Appearance by Austin Nimocks on behalf of Alabama, Arizona, Arkansas, Phil Bryant, Florida, Georgia, Indiana, Kansas, Paul LePage, Louisiana, Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virgina, Wisconsin. (Filer confirms contact info in ECF is current.) (Nimocks, Austin) (Entered: 02/26/2018)
02/27/2018	3 (p.108)	New Case Notes: A filing fee has been paid. File to Judge O Connor. Pursuant to Misc. Order 6, Plaintiff is provided the Notice of Right to Consent to Proceed Before A U.S. Magistrate Judge. Clerk to provide copy to plaintiff if not received electronically. (wxc) (Entered: 02/27/2018)
02/27/2018	4 (p.110)	Summons Issued as to All Defendants. (wxc) (Entered: 02/27/2018)
03/01/2018	5 (p.140)	Additional Plaintiff's Motion to Intervene as "Necessary Real Parties-in-Interest" for Compensatory Damages Under a Bivens Action. (wxc) (Entered: 03/02/2018)
03/20/2018	6 (p.154)	SUMMONS Returned Executed as to Alex Azar ; served on 3/7/2018. (McCarty, Darren) (Entered: 03/20/2018)

03/20/2018	7 (p.155)	SUMMONS Returned Executed as to Department of Health & Human Services ; served on 3/7/2018. (McCarty, Darren) (Entered: 03/20/2018)
03/20/2018	8 (p.156)	SUMMONS Returned Executed as to David Kautter ; served on 3/7/2018. (McCarty, Darren) (Entered: 03/20/2018)
03/20/2018	9 (p.157)	SUMMONS Returned Executed as to United States Interval Revenue Services ; served on 3/7/2018. (McCarty, Darren) (Entered: 03/20/2018)
03/20/2018	10 (p.158)	SUMMONS Returned Executed as to United States of America ; served on 3/7/2018. (McCarty, Darren) (Entered: 03/20/2018)
03/22/2018	11 (p.159)	RESPONSE AND OBJECTION filed by Texas re: 5 (p.140) MOTION to Intervene (Attachments: # 1 (p.68) Proposed Order Denying Motion to Intervene) (McCarty, Darren) (Entered: 03/22/2018)
03/28/2018	12 (p.166)	Emergency Motion to Strike Texas Special Counsel, AG Darren McCarty's, March 22, 2018, Opposition to Add Additional Plaintiff's Motion to Intervene for "Sham Process of Service", Under Color of Law, and to Grant Additional Plaintiff's Motion to Intervene, as "Civil Rights-Other", with Brief-in-Support (wxc) (Entered: 03/28/2018)
04/05/2018	13 (p.200)	NOTICE of *Service* re: 11 (p.159) Response/Objection filed by Alabama, Arizona, Arkansas, Florida, Georgia, Indiana, Kansas, Paul LePage, Louisiana, Mississippi, Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virgina, Wisconsin (Attachments: # 1 (p.68) Exhibit(s) Certified mail receipt) (McCarty, Darren) (Entered: 04/05/2018)
04/09/2018	14 (p.206)	ANSWER to 1 (p.68) Complaint,,,,, filed by State of California, State of Connecticut, District of Columbia, State of Delaware, State of Hawaii, State of Illinois, State of Kentucky, State of Massachusetts, State of New Jersey, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Virginia, State of Washington, State of Minnesota. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms and Instructions found at www.txnd.uscourts.gov, or by clicking here: Attorney Information - Bar Membership. If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. Attorney Neli Nima Palma added to party State of California(pty:intvd), Attorney Neli Nima Palma added to party State of Connecticut(pty:intvd), Attorney Neli Nima Palma added to party District of Columbia(pty:intvd), Attorney Neli Nima Palma added to party State of Delaware(pty:intvd), Attorney Neli Nima Palma added to party State of Hawaii(pty:intvd), Attorney Neli Nima Palma added to party State of Illinois(pty:intvd),

		Attorney Neli Nima Palma added to party State of Kentucky(pty:intvd), Attorney Neli Nima Palma added to party State of Massachusetts(pty:intvd), Attorney Neli Nima Palma added to party State of New Jersey(pty:intvd), Attorney Neli Nima Palma added to party State of New York(pty:intvd), Attorney Neli Nima Palma added to party State of North Carolina(pty:intvd), Attorney Neli Nima Palma added to party State of Oregon(pty:intvd), Attorney Neli Nima Palma added to party State of Rhode Island(pty:intvd), Attorney Neli Nima Palma added to party State of Vermont(pty:intvd), Attorney Neli Nima Palma added to party State of Virginia(pty:intvd), Attorney Neli Nima Palma added to party State of Washington(pty:intvd), Attorney Neli Nima Palma added to party State of Minnesota(pty:intvd) (Palma, Neli) (Entered: 04/09/2018)
04/09/2018	15 (p.220)	MOTION to Intervene filed by District of Columbia, State of California, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Kentucky, State of Massachusetts, State of Minnesota, State of New Jersey, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Virginia, State of Washington with Brief/Memorandum in Support. (Attachments: # 1 (p.68) Exhibit(s) (Part 1), # 2 (p.105) Exhibit(s) (Part 2), # 3 (p.108) Proposed Order) (Palma, Neli) (Entered: 04/09/2018)
04/09/2018	16 (p.447)	MOTION for Leave to File Appearance Without Local Counsel filed by District of Columbia, State of California, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Kentucky, State of Massachusetts, State of Minnesota, State of New Jersey, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Virginia, State of Washington with Brief/Memorandum in Support. (Attachments: # 1 (p.68) Proposed Order) (Palma, Neli) (Entered: 04/09/2018)
04/09/2018	17 (p.472)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9110118) filed by District of Columbia, State of California, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Kentucky, State of Massachusetts, State of Minnesota, State of New Jersey, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Virginia, State of Washington (Attachments: # 1 (p.68) Certificate of Good Standing) (Palma, Neli) (Entered: 04/09/2018)
04/09/2018	18 (p.476)	Application for Admission Pro Hac Vice with Certificate of Good Standing for Attorney Kathleen Marie Boergers (Filing fee $25; Receipt number 0539-9110132) filed by State of California,(Palma, Neli) Modified on 4/10/2018 (wxc). (Entered: 04/09/2018)

04/10/2018	19	ELECTRONIC ORDER granting 17 (p.472) Application for Admission Pro Hac Vice of Neli N. Palma. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)).(Ordered by Judge Reed C. O'Connor on 4/10/2018)(chmb)(alo) (Entered: 04/10/2018)
04/10/2018	20	ELECTRONIC ORDER granting 18 (p.476) Application for Admission Pro Hac Vice of Kathleen M. Boergers. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)).(Ordered by Judge Reed C. O'Connor on 4/10/2018)(chmb)(alo) (Entered: 04/10/2018)
04/16/2018	21 (p.480)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9125434) filed by State of Illinois (Attachments: # 1 (p.68) Exhibit(s) Certificate of Good Standing - Illinois Supreme Court, # 2 (p.105) Proposed Order)Attorney David F Buysse added to party State of Illinois(pty:intvd) (Buysse, David) (Entered: 04/16/2018)
04/17/2018	22	ELECTRONIC ORDER granting 21 (p.480) Application for Admission Pro Hac Vice of David F Buysse. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 4/17/2018)(chmb)(alo) (Entered: 04/17/2018)
04/18/2018	23 (p.485)	RESPONSE filed by Alabama, Arizona, Arkansas, Florida, Georgia, Indiana, Kansas, Paul LePage, Louisiana, Mississippi, Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virgina, Wisconsin re: 12 (p.166) MOTION to Strike (Attachments: # 1 (p.68) Proposed Order Denying Emergency Motion to Strike) (McCarty, Darren) (Entered: 04/18/2018)
04/20/2018	24 (p.491)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9137673) filed by State of Kentucky (Attachments: # 1 (p.68) Exhibit(s) Certificate of Good Standing)Attorney Taylor Allen Payne added to party State of Kentucky(pty:intvd) (Payne, Taylor) (Entered: 04/20/2018)
04/23/2018	25 (p.495)	NOTICE of Attorney Appearance by Eric Beckenhauer on behalf of Alex Azar, Department of Health & Human Services, David Kautter, United States Interval Revenue Services, United States of America. (Filer confirms contact info in ECF is current.) (Beckenhauer, Eric) (Entered: 04/23/2018)
04/23/2018	26 (p.497)	MOTION (Joint) for Entry of Briefing Schedule and to Extend Time and Page Limits filed by Alex Azar, Department of Health & Human Services, David Kautter, United States Interval Revenue Services, United States of America with Brief/Memorandum in Support. (Attachments: # 1 (p.68) Proposed Order) (Beckenhauer, Eric) (Entered:

		04/23/2018)
04/23/2018	27 (p.503)	AMENDED COMPLAINT *FOR DECLARATORY AND INJUNCTIVE RELIEF* against All Defendants filed by West Virgina, Florida, South Carolina, Texas, South Dakota, North Dakota, Arkansas, Utah, Missouri, Kansas, Louisiana, Mississippi, Arizona, Indiana, Paul LePage, Nebraska, Georgia, Wisconsin, Tennessee, Alabama, Neill Hurley, John Nantz. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at www.txnd.uscourts.gov, or by clicking here: Attorney Information - Bar Membership. If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge. (McCarty, Darren) (Entered: 04/23/2018)
04/24/2018	28 (p.538)	ORDER granting 16 (p.447) Proposed Intervenors-Defendants' Motion for Leave to Appear Without Local Counsel. (Ordered by Judge Reed C. O'Connor on 4/24/2018) (skg) (Entered: 04/24/2018)
04/24/2018	29 (p.539)	NOTICE of Attorney Appearance by Robert Earl Henneke on behalf of Neill Hurley, John Nantz. (Filer confirms contact info in ECF is current.) (Henneke, Robert) (Entered: 04/24/2018)
04/24/2018	30	ELECTRONIC ORDER granting 24 (p.491) Application for Admission Pro Hac Vice of Taylor Allen Payne. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 4/24/2018)(chmb)(alo) (Entered: 04/24/2018)
04/24/2018	31 (p.541)	ORDER: The Parties' Joint Motion for Entry of Briefing Schedule and to Extend Time and Page Limits (ECF No. 26 (p.497))is GRANTED in part. See Order for further specifics. (Ordered by Judge Reed C. O'Connor on 4/24/2018) (skg) (Entered: 04/24/2018)
04/24/2018	32 (p.543)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9144549) filed by District of Columbia (Attachments: # 1 (p.68) Exhibit(s) Certificate of Good Standing)Attorney Valerie M. Nannery added to party District of Columbia(pty:intvd) (Nannery, Valerie) (Entered: 04/24/2018)
04/24/2018	33 (p.547)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9145040) filed by State of California Attorney Nimrod Pitsker Elias added to party State of California(pty:intvd) (Elias, Nimrod) (Entered: 04/24/2018)
04/25/2018	34	ELECTRONIC ORDER granting 32 (p.543) Application for Admission Pro Hac Vice of Valerie M. Nannery. If not

		already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 4/25/2018)(chmb)(alo) (Entered: 04/25/2018)
04/25/2018	35	ELECTRONIC ORDER granting 33 (p.547) Application for Admission Pro Hac Vice of Nimrod Pitsker Elias. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 4/25/2018)(chmb)(alo) (Entered: 04/25/2018)
04/25/2018	36 (p.551)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9147929) filed by State of Oregon (Attachments: # 1 (p.68) Additional Page(s) OR Certificate of Good Standing, # 2 (p.105) Proposed Order)Attorney Scott Kaplan added to party State of Oregon(pty:intvd) (Kaplan, Scott) (Entered: 04/25/2018)
04/26/2018	37 (p.556)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9147676) filed by State of Hawaii Attorney Heidi Marguerita Rian added to party State of Hawaii(pty:intvd) (Rian, Heidi) Modified text to reflect fee paid on 4/25/2018 (daa). (Entered: 04/26/2018)
04/26/2018	38 (p.561)	Extraordinary Motion for Summary Judgment Against John S. McCain for Additional Plaintiffs' Damages to be Assessed at Prove-Up Hearing, as Original Plaintiffs have Failed to Timely Reply/Rebutt said Necessary Parties Standing, Thus have Waived/Confessed said Judgment, with Alternative Administrative Remedy Proffered for John S. McCain, with Brief in Support. (wxc) (Entered: 04/26/2018)
04/26/2018	39 (p.565)	PLAINTIFF-STATES' AND INDIVIDUAL-PLAINTIFFS' APPLICATION FOR PRELIMINARY INJUNCTION filed by Alabama, Arizona, Arkansas, Florida, Georgia, Neill Hurley, Indiana, Kansas, Paul LePage, Louisiana, Mississippi, Missouri, John Nantz, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virgina, Wisconsin (Attachments: # 1 (p.68) Proposed Order Granting Application for Preliminary Injunction)Attorney Darren L McCarty added to party Neill Hurley(pty:pla), Attorney Darren L McCarty added to party John Nantz(pty:pla) (McCarty, Darren) Modified title on 4/26/2018 (ctf). (Entered: 04/26/2018)
04/26/2018	40 (p.572)	Brief/Memorandum in Support filed by Alabama, Arizona, Arkansas, Florida, Georgia, Neill Hurley, Indiana, Kansas, Paul LePage, Louisiana, Mississippi, Missouri, John Nantz, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virgina, Wisconsin re 39 (p.565) MOTION for Injunction (McCarty, Darren) (Entered: 04/26/2018)
04/26/2018	41 (p.634)	

		Appendix in Support filed by Alabama, Arizona, Arkansas, Florida, Georgia, Neill Hurley, Indiana, Kansas, Paul LePage, Louisiana, Mississippi, Missouri, John Nantz, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virgina, Wisconsin re 39 (p.565) MOTION for Injunction (McCarty, Darren) (Entered: 04/26/2018)
04/27/2018	42 (p.786)	MOTION to Expedite *Ruling on Motion to Intervene* filed by District of Columbia, State of California, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Kentucky, State of Massachusetts, State of Minnesota, State of New Jersey, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Virginia, State of Washington with Brief/Memorandum in Support. (Palma, Neli) (Entered: 04/27/2018)
04/27/2018	43 (p.797)	MOTION for Extension of Time to File Response/Reply to 15 (p.220) MOTION to Intervene filed by Alex Azar, Department of Health & Human Services, David Kautter, United States Interval Revenue Services, United States of America with Brief/Memorandum in Support. (Attachments: # 1 (p.68) Proposed Order) (Beckenhauer, Eric) (Entered: 04/27/2018)
04/30/2018	44 (p.802)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9155036) filed by State of Virginia (Attachments: # 1 (p.68) Attachment-Va. Good Standing Certificate)Attorney Matthew Robert McGuire added to party State of Virginia(pty:intvd) (McGuire, Matthew) (Entered: 04/30/2018)
04/30/2018	45	ELECTRONIC ORDER granting 36 (p.551) Application for Admission Pro Hac Vice of Scott Kaplan. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 4/30/2018)(chmb)(alo) (Entered: 04/30/2018)
04/30/2018	46	ELECTRONIC ORDER granting 37 (p.556) Application for Admission Pro Hac Vice of Heidi Marguerita Rian. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 4/30/2018)(chmb)(alo) (Entered: 04/30/2018)
04/30/2018	47	ELECTRONIC ORDER granting 44 (p.802) Application for Admission Pro Hac Vice of Matthew Robert McGuire. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 4/30/2018)(chmb)(alo) (Entered: 04/30/2018)
04/30/2018	48 (p.806)	ORDER: Defendants' Motion for Extension of Time to Respond to the Motion to Intervene by California, et al. (ECF No. 43 (p.797)) is DENIED as moot. (Ordered by Judge

		Reed C. O'Connor on 4/30/2018) (skg) (Entered: 04/30/2018)
04/30/2018	49 (p.807)	RESPONSE filed by Alabama, Arizona, Arkansas, Florida, Georgia, Neill Hurley, Indiana, Kansas, Paul LePage, Louisiana, Mississippi, Missouri, John Nantz, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virgina, Wisconsin re: 15 (p.220) MOTION to Intervene (Attachments: # 1 (p.68) Proposed Order Denying Putative Intervenor-States' Motion to Intervene) (McCarty, Darren) (Entered: 04/30/2018)
04/30/2018	50 (p.819)	ORDER: It is therefore ORDERED that Proposed-Intervenor Defendants' reply brief on their motion to intervene 42 (p.786) is due on or before May 7, 2018. (Ordered by Judge Reed C. O'Connor on 4/30/2018) (skg) (Entered: 04/30/2018)
05/01/2018	51 (p.820)	MOTION filed by Neill Hurley, John Nantz (Attachments: # 1 (p.68) Proposed Order) (Henneke, Robert) (Entered: 05/01/2018)
05/01/2018	52 (p.827)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9159829) filed by State of Vermont (Attachments: # 1 (p.68) Exhibit(s) Certificate of Good Standing)Attorney Benjamin Battles added to party State of Vermont(pty:intvd) (Battles, Benjamin) (Entered: 05/01/2018)
05/02/2018	53 (p.831)	Plaintiffs Neill Hurley and John Nantz's (the "Individual Plaintiffs") Motion for Leave to Appear Without Local Counsel (ECF No. 51 (p.820)) is GRANTED. (Ordered by Judge Reed C. O'Connor on 5/2/2018) (skg) (Entered: 05/02/2018)
05/02/2018	54 (p.832)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9162398) filed by State of Delaware (Attachments: # 1 (p.68) Affidavit(s) Certificate of Good Standing, # 2 (p.105) Affidavit(s) Affidavit of David L. Lyons, # 3 (p.108) Proposed Order Order for Admission Pro HaC Vice)Attorney David J Lyons added to party State of Delaware(pty:intvd) (Lyons, David) (Entered: 05/02/2018)
05/02/2018	55 (p.838)	NOTICE of Attorney Appearance by Joel McElvain on behalf of Alex Azar, Department of Health & Human Services, David Kautter, United States Interval Revenue Services, United States of America. (Filer confirms contact info in ECF is current.) (McElvain, Joel) (Entered: 05/02/2018)
05/03/2018	56 (p.841)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9166183) filed by State of Massachusetts (Attachments: # 1 (p.68) Exhibit(s) Certificate of Good Standing, # 2 (p.105) Proposed Order Proposed Order). Party Commonwealth of Massachusetts added. (Vogel, Stephen)

		(Entered: 05/03/2018)
05/03/2018	57 (p.846)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9166677) filed by State of Minnesota (Attachments: # 1 (p.68) Certificate of Good Standing, # 2 (p.105) Proposed Order)Attorney Scott Ikeda added to party State of Minnesota(pty:intvd) (Ikeda, Scott) (Entered: 05/03/2018)
05/03/2018	58 (p.851)	MOTION for Leave to File Brief in Support of Motion for Preliminary Injunction filed by Citizens United with Brief/Memorandum in Support. (Attachments: # 1 (p.68) Brief Amicus Curiae, # 2 (p.105) Proposed Order). Party Citizens United added.Attorney John Mark Brewer added to party Citizens United(pty:am) (Brewer, John) (Entered: 05/03/2018)
05/04/2018	59	ELECTRONIC ORDER granting 52 (p.827) Application for Admission Pro Hac Vice of Benjamin Battles. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 5/4/2018)(chmb)(alo) (Entered: 05/04/2018)
05/04/2018	60	ELECTRONIC ORDER granting 54 (p.832) Application for Admission Pro Hac Vice of David J. Lyons. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 5/4/2018)(chmb)(alo) (Entered: 05/04/2018)
05/04/2018	61	ELECTRONIC ORDER granting 56 (p.841) Application for Admission Pro Hac Vice of Stephen Vogel. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 5/4/2018)(chmb)(alo) (Entered: 05/04/2018)
05/04/2018	62	ELECTRONIC ORDER granting 57 (p.846) Application for Admission Pro Hac Vice of Scott Ikeda. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 5/4/2018)(chmb)(alo) (Entered: 05/04/2018)
05/04/2018	63 (p.875)	*** DISREGARD - INCORRECT EVENT USED *** NOTICE of Attorney Appearance by Joseph Rubin on behalf of State of Connecticut. (Filer confirms contact info in ECF is current.) (Rubin, Joseph) Modified on 5/8/2018 (wxc). (Entered: 05/04/2018)
05/04/2018	64 (p.879)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Clerk Note: Filing fee $25 paid; Receipt number 0539-9168617.) filed by State of New York (Attachments: # 1 (p.68) Certificate of Good Standing, # 2 (p.105) Proposed Order)Attorney Elizabeth R Chesler added to party State of New York(pty:intvd) (Chesler, Elizabeth) Modified on 5/4/2018 (npk). (Entered: 05/04/2018)
05/04/2018	65 (p.884)	

		ORDER granting 58 (p.851) Motion for Leave to File. The Clerk is DIRECTED to file Citizen's United, et al.'s Brief Amicus Curiae, attached as ECF No. 58 (p.851) -1, as a separate docket entry. (Ordered by Judge Reed C. O'Connor on 5/4/2018) (skg) (Entered: 05/04/2018)
05/04/2018	66 (p.885)	BRIEF AMICUS CURIAE filed by Citizens United. (skg) (Entered: 05/04/2018)
05/04/2018	67 (p.904)	REPLY filed by District of Columbia, State of California, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Kentucky, State of Massachusetts, State of Minnesota, State of New Jersey, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Virginia, State of Washington re: 15 (p.220) MOTION to Intervene (Palma, Neli) (Entered: 05/04/2018)
05/09/2018	68 (p.917)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9177058) filed by State of Connecticut (Rubin, Joseph) (Entered: 05/09/2018)
05/09/2018	69	ELECTRONIC ORDER granting 64 (p.879) Application for Admission Pro Hac Vice of Elizabeth Chesler. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 5/9/2018)(chmb)(alo) (Entered: 05/09/2018)
05/09/2018	70	ELECTRONIC ORDER granting 68 (p.917) Application for Admission Pro Hac Vice of Joseph Rubin. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 5/9/2018)(chmb)(alo) (Entered: 05/09/2018)
05/11/2018	71 (p.923)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9183538) filed by State of New Jersey (Attachments: # 1 (p.68) Exhibit(s) Certificate of Good Standing, # 2 (p.105) Proposed Order Proposed Order for Admission PHV)Attorney Jeremy Feigenbaum added to party State of New Jersey(pty:intvd) (Feigenbaum, Jeremy) (Entered: 05/11/2018)
05/14/2018	72 (p.929)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9185988) filed by State of Rhode Island (Attachments: # 1 (p.68) Cert of Good Standing)Attorney Maria Lenz added to party State of Rhode Island(pty:intvd) (Lenz, Maria) (Entered: 05/14/2018)
05/14/2018	73 (p.933)	PROPOSED ANSWER IN INTERVENTION to 27 (p.503) Amended Complaint, filed by District of Columbia, State of California, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Kentucky, State of

		Massachusetts, State of Minnesota, State of New Jersey, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Virginia, State of Washington (Palma, Neli) (Entered: 05/14/2018)
05/16/2018	74 (p.946)	ORDER: The Court finds that the Proposed Intervenor States' Motion to Intervene (ECF No. 15 (p.220)) should be and is hereby GRANTED. The Court will hold the Proposed Intervenor States to the same briefing schedule as Defendants in this case, as set by the Court's April 24, 2018 Order. See ECF No. 28 (p.538) . (Ordered by Judge Reed C. O'Connor on 5/16/2018) (plp) (Main Document 74 replaced on 5/17/2018) (skg). (Entered: 05/16/2018)
05/16/2018	75 (p.953)	Motion for Default Judgment Upon John S. McCain as the Necessary Party to the Case and to Schedule a Prove-up Hearing with Brief in Support filed by Stephen P. Wallace (wxc) (Entered: 05/16/2018)
05/16/2018	76 (p.960)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9194886) filed by State of Washington (Attachments: # 1 (p.68) Exhibit(s))Attorney Jeffrey T Sprung added to party State of Washington(pty:intvd) (Sprung, Jeffrey) (Entered: 05/16/2018)
05/17/2018	77	ELECTRONIC ORDER granting 71 (p.923) Application for Admission Pro Hac Vice of Jeremy Feigenbaum. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 5/17/2018)(chmb)(alo) (Entered: 05/17/2018)
05/17/2018	78	ELECTRONIC ORDER granting 72 (p.929) Application for Admission Pro Hac Vice of Maria Lenz. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 5/17/2018)(chmb)(alo) (Entered: 05/17/2018)
05/17/2018	79	ELECTRONIC ORDER granting 76 (p.960) Application for Admission Pro Hac Vice of Jeffrey T Sprung. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 5/17/2018)(chmb)(alo) (Entered: 05/17/2018)
05/17/2018	80 (p.964)	NOTICE of Attorney Appearance by Rebecca Kopplin on behalf of Alex Azar, Department of Health & Human Services, David Kautter, United States Interval Revenue Services, United States of America. (Filer confirms contact info in ECF is current.) (Kopplin, Rebecca) (Entered: 05/17/2018)
05/21/2018	81 (p.967)	MOTION to Intervene filed by WG Hall, LLC, Quickway Distribution Services, Inc. with Brief/Memorandum in Support. (Attachments: # 1 (p.68) Proposed Complaint in Intervention, # 2 (p.105) Proposed Order). Party WG Hall,

		LLC and Quickway Distribution Services Inc. added.Attorney Philip A Vickers added to party WG Hall, LLC(pty:intvp), Attorney Philip A Vickers added to party Quickway Distribution Services, Inc.(pty:intvp) (Vickers, Philip) (Entered: 05/21/2018)
05/21/2018	82 (p.1012)	CERTIFICATE OF INTERESTED PERSONS/DISCLOSURE STATEMENT by Quickway Distribution Services, Inc., WG Hall, LLC identifying Corporate Parent/Other Affiliate Paladian Capital, Inc. for Quickway Distribution Services, Inc.. (Vickers, Philip) (Entered: 05/21/2018)
05/21/2018	83 (p.1015)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9204609) filed by Quickway Distribution Services, Inc., WG Hall, LLC (Attachments: # 1 (p.68) Exhibit(s) Certificate of Good Standing, # 2 (p.105) Proposed Order Order for Admission Pro Hac Vice (proposeD))Attorney Braden Heath Boucek added to party Quickway Distribution Services, Inc.(pty:intvp), Attorney Braden Heath Boucek added to party WG Hall, LLC(pty:intvp) (Boucek, Braden) (Entered: 05/21/2018)
05/22/2018	84	ELECTRONIC ORDER granting 83 (p.1015) Application for Admission Pro Hac Vice of Braden H. Boucek. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 5/22/2018)(chmb)(alo) (Entered: 05/22/2018)
05/22/2018	85 (p.1020)	ORDER: Before the Court is the Proposed Plaintiff-Intervenors WG Hall, LLC d/b/a Atwork Personnel and Quickway Distribution Services, Inc.'s Motion to Intervene as Plaintiff (ECF No. 81 (p.967)). It is ORDERED that any party who wishes to file a brief in support or opposition to the above-referenced motion must do so on or before May 31, 2018. Proposed Plaintiff-Intervenors may reply to any responses filed no later than June 5, 2018. (Ordered by Judge Reed C. O'Connor on 5/22/2018) (skg) (Entered: 05/22/2018)
05/31/2018	86 (p.1021)	RESPONSE filed by District of Columbia, State of California, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Kentucky, State of Massachusetts, State of Minnesota, State of New Jersey, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Virginia, State of Washington re: 81 (p.967) MOTION to Intervene (Attachments: # 1 (p.68) Proposed Order) (Palma, Neli) (Entered: 05/31/2018)
06/04/2018	87 (p.1034)	REPLY filed by Quickway Distribution Services, Inc., WG Hall, LLC re: 81 (p.967) MOTION to Intervene (Boucek, Braden) (Entered: 06/04/2018)

06/05/2018	88 (p.1041)	NOTICE of Attorney Appearance by Brett Shumate on behalf of Alex Azar, Department of Health & Human Services, David Kautter, United States Interval Revenue Services, United States of America. (Filer confirms contact info in ECF is current.) (Shumate, Brett) (Entered: 06/05/2018)
06/07/2018	89 (p.1044)	NOTICE of Attorney Appearance by Daniel Duane Mauler on behalf of Alex Azar, Department of Health & Human Services, David Kautter, United States Interval Revenue Services, United States of America. (Filer confirms contact info in ECF is current.) (Mauler, Daniel) (Entered: 06/07/2018)
06/07/2018	90 (p.1047)	Unopposed MOTION to Withdraw as Attorney *Unopposed Motion to Withdraw Appearances* filed by Alex Azar, Department of Health & Human Services, David Kautter, United States Interval Revenue Services, United States of America (Attachments: # 1 (p.68) Proposed Order) (McElvain, Joel) (Entered: 06/07/2018)
06/07/2018	91 (p.1051)	RESPONSE filed by District of Columbia, State of California, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Kentucky, State of Massachusetts, State of Minnesota, State of New Jersey, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Virginia, State of Washington re: 39 (p.565) MOTION for Injunction (Attachments: # 1 (p.68) Appendix of Supporting Evidence - Part 1, # 2 (p.105) Appendix of Supporting Evidence - Part 2, # 3 (p.108) Proposed Order) (Palma, Neli) (Entered: 06/07/2018)
06/07/2018	92 (p.1557)	RESPONSE filed by Alex Azar, Department of Health & Human Services, David Kautter, United States Interval Revenue Services, United States of America re: 39 (p.565) MOTION for Injunction (Mauler, Daniel) (Entered: 06/07/2018)
06/07/2018	93 (p.1584)	MOTION for Extension of Time to File Response/Reply to 27 (p.503) Amended Complaint,,, filed by Alex Azar, Department of Health & Human Services, David Kautter, United States Interval Revenue Services, United States of America with Brief/Memorandum in Support. (Attachments: # 1 (p.68) Proposed Order) (Mauler, Daniel) (Entered: 06/07/2018)
06/08/2018	94 (p.1589)	ORDER granting 90 (p.1047) Motion to Withdraw as Attorney. It is therefore ORDERED that Joel McElvain, Eric Beckenhauer, and Rebecca Kopplin are no longer counsel of record for the Federal Defendants in this case. (Ordered by Judge Reed C. O'Connor on 6/8/2018) (skg) (Entered: 06/08/2018)
06/08/2018	95 (p.1590)	ORDER granting 93 (p.1584) Motion to Extend Time to File Response/Reply. It is therefore ORDERED that the Federal

		Defendant's answer to Plaintiffs' amended complaint is due no later than thirty (30) days after the Court issues an order on Plaintiffs' application for preliminary injunction. (Ordered by Judge Reed C. O'Connor on 6/8/2018) (skg) (Entered: 06/08/2018)
06/11/2018	96 (p.1591)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9245508) filed by The American Medical Association (Attachments: # 1 (p.68) Proposed Order Proposed Order)Attorney Chad Golder added to party The American Medical Association (pty:!!!) (Golder, Chad) (Entered: 06/11/2018)
06/11/2018	97 (p.1597)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9245631) filed by The American Medical Association (Attachments: # 1 (p.68) Proposed Order Proposed Order)Attorney Teresa A Reed added to party The American Medical Association (pty:!!!) (Reed, Teresa) (Entered: 06/11/2018)
06/12/2018	98 (p.1602)	ORDER denying 96 (p.1591) Application for Admission Pro Hac Vice re: Chad Golder ; denying 97 (p.1597) Application for Admission Pro Hac Vice re: Teresa A. Reed. Should applicants re-file their applications, they will not be required to pay another application fee. (Ordered by Judge Reed C. O'Connor on 6/12/2018) (skg) (Entered: 06/12/2018)
06/13/2018	99 (p.1603)	Unopposed MOTION for Leave to File BRIEF OF THE AMERICAN MEDICAL ASSOCIATION, THE AMERICAN ACADEMY OF FAMILY PHYSICIANS, THE AMERICAN COLLEGE OF PHYSICIANS, THE AMERICAN ACADEMY OF PEDIATRICS, AND THE AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY AS AMICI CURIAE IN OPPOSITION TO PLAINTIFFS MOTION FOR PRELIMINARY INJUNCTION filed by The American Medical Association, American College of Physicians, American Academy of Family Physicians, American Academy of Pediatrics, American Academy of Child and Adolescent Psychiatry (Attachments: # 1 (p.68) Exhibit(s) UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF THE AMERICAN MEDICAL ASSOCIATION, THE AMERICAN ACADEMY OF FAMILY PHYSICIANS, THE AMERICAN COLLEGE OF PHYSICIANS, THE AMERICAN ACADEMY OF PEDIATRICS, AND THE AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY AS AMICI CURIAE IN OPPOSITION TO PLAINTIFFS MOTION FOR PRELIMINARY INJUNCTION, # 2 (p.105) Proposed Order Proposed Order). Party American College of Physicians added.Attorney Chad Golder added to party American College of Physicians(pty:am), Attorney Chad Golder added to party American Academy of Family

		Physicians(pty:am), Attorney Chad Golder added to party American Academy of Pediatrics(pty:am), Attorney Chad Golder added to party American Academy of Child and Adolescent Psychiatry(pty:am) (Golder, Chad) (Entered: 06/14/2018)
06/14/2018	100 (p.1641)	MOTION Motion for Leave to Proceed Without Resident Local Counsel filed by American Academy of Child and Adolescent Psychiatry, American Academy of Family Physicians, American Academy of Pediatrics, American College of Physicians, The American Medical Association (Attachments: # 1 (p.68) Proposed Order) (Golder, Chad) (Entered: 06/14/2018)
06/14/2018	101 (p.1645)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9252018) filed by American Academy of Child and Adolescent Psychiatry, American Academy of Family Physicians, American Academy of Pediatrics, American College of Physicians, The American Medical Association (Attachments: # 1 (p.68) Proposed Order) (Golder, Chad) (Entered: 06/14/2018)
06/14/2018	102 (p.1651)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9252019) filed by American Academy of Child and Adolescent Psychiatry, American Academy of Family Physicians, American Academy of Pediatrics, American College of Physicians, The American Medical Association (Attachments: # 1 (p.68) Proposed Order)Attorney Teresa A Reed added to party American Academy of Child and Adolescent Psychiatry(pty:am), Attorney Teresa A Reed added to party American Academy of Family Physicians(pty:am), Attorney Teresa A Reed added to party American Academy of Pediatrics(pty:am), Attorney Teresa A Reed added to party American College of Physicians(pty:am) (Reed, Teresa) (Entered: 06/14/2018)
06/14/2018	103	***UNFILED PER ORDER 115 (p.1782) *** Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9252020) filed by American Academy of Child and Adolescent Psychiatry, American Academy of Family Physicians, American Academy of Pediatrics, American College of Physicians, The American Medical Association (Attachments: # 1 (p.68) Proposed Order)Attorney Dahlia Mignouna added to party American Academy of Child and Adolescent Psychiatry(pty:am), Attorney Dahlia Mignouna added to party American Academy of Family Physicians(pty:am), Attorney Dahlia Mignouna added to party American Academy of Pediatrics(pty:am), Attorney Dahlia Mignouna added to party American College of Physicians(pty:am), Attorney Dahlia Mignouna added to party The American Medical Association (pty:ip) (Mignouna,

		Dahlia) Modified on 6/14/2018 (skg). (Entered: 06/14/2018)
06/14/2018	104 (p.1656)	Unopposed MOTION for Leave to File BRIEF AMICI CURIAE IN SUPPORT OF INTERVENOR-DEFENDANTS OPPOSITION TO PLAINTIFFS MOTION FOR PRELIMINARY INJUNCTION filed by AMERICAN CANCER SOCIETY, AMERICAN CANCER SOCIETY CANCER ACTION NETWORK, AMERICAN DIABETES ASSOCIATION, MERICAN HEART ASSOCIATION, AMERICAN LUNG ASSOCIATION, NATIONAL MULTIPLE SCLEROSIS SOCIETY with Brief/Memorandum in Support. (Attachments: # 1 (p.68) Exhibit(s) Amici Curae, # 2 (p.105) Proposed Order)Attorney Beth Bivans Petronio added to party AMERICAN CANCER SOCIETY(pty:am), Attorney Beth Bivans Petronio added to party AMERICAN CANCER SOCIETY CANCER ACTION NETWORK(pty:!!!), Attorney Beth Bivans Petronio added to party AMERICAN DIABETES ASSOCIATION(pty:am), Attorney Beth Bivans Petronio added to party MERICAN HEART ASSOCIATION(pty:am), Attorney Beth Bivans Petronio added to party AMERICAN LUNG ASSOCIATION(pty:am), Attorney Beth Bivans Petronio added to party NATIONAL MULTIPLE SCLEROSIS SOCIETY(pty:am) (Petronio, Beth) (Entered: 06/14/2018)
06/14/2018	105 (p.1693)	NOTICE of Attorney Appearance by Jayant Kartik Tatachar on behalf of America's Health Insurance Plans. (Filer confirms contact info in ECF is current.). Party America's Health Insurance Plans added. (Tatachar, Jayant) (Entered: 06/14/2018)
06/14/2018	106 (p.1695)	Unopposed MOTION for Leave to File Amicus Brief of America's Health Insurance Plans filed by America's Health Insurance Plans (Attachments: # 1 (p.68) Proposed Amicus Curiae Brief, # 2 (p.105) Proposed Order) (Tatachar, Jayant) (Entered: 06/14/2018)
06/14/2018	107	ELECTRONIC ORDER granting 101 (p.1645) Application for Admission Pro Hac Vice of Chad Golder. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 6/14/2018)(chmb)(alo) (Entered: 06/14/2018)
06/14/2018	108	ELECTRONIC ORDER granting 102 (p.1651) Application for Admission Pro Hac Vice of Teresa A Reed. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 6/14/2018)(chmb)(alo) (Entered: 06/14/2018)
06/14/2018	109 (p.1734)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9252805) filed by America's Health Insurance Plans Attorney Pratik A. Shah added to party America's Health Insurance Plans(pty:am) (Shah, Pratik) (Entered: 06/14/2018)

06/14/2018	110 (p.1739)	NOTICE of Attorney Appearance by Tiffanie S Clausewitz on behalf of American Academy of Child and Adolescent Psychiatry, American Academy of Family Physicians, American Academy of Pediatrics, American College of Physicians, The American Medical Association. (Filer confirms contact info in ECF is current.) (Clausewitz, Tiffanie) (Entered: 06/14/2018)
06/14/2018	111 (p.1741)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9252820) filed by America's Health Insurance Plans Attorney Leslie B Kiernan added to party America's Health Insurance Plans(pty:am) (Kiernan, Leslie) (Entered: 06/14/2018)
06/14/2018	112 (p.1747)	ORDER granting 99 (p.1603) American Medical Association, et al.'s Unopposed Motion for Leave to File Brief as Amici Curiae. (Unless the document has already been filed, clerk to enter the document as of the date of this order.) (Ordered by Judge Reed C. O'Connor on 6/14/2018) (skg) (Entered: 06/14/2018)
06/14/2018	113 (p.1748)	BRIEF OF THE AMERICAN MEDICAL ASSOCIATION, THE AMERICAN ACADEMY OF FAMILY PHYSICIANS, THE AMERICAN COLLEGE OF PHYSICIANS, THE AMERICAN ACADEMY OF PEDIATRICS, AND THE AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY AS AMICI CURIAE N OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION re: 39 (p.565) MOTION for Injunction . (skg) (Entered: 06/14/2018)
06/14/2018	114 (p.1781)	ORDER granting 100 (p.1641) American Medical Association, et al.'s Motion to Proceed Without Local Resident Counsel. (Ordered by Judge Reed C. O'Connor on 6/14/2018) (skg) (Entered: 06/14/2018)
06/14/2018	115 (p.1782)	Order Unfiling 103 Application for Admission Pro Hac Vice with Certificate of Good Standing due to the following deficiency: The names on the application (Dahlia Mignouna) and the certificate of good standing (Dila Mignouna) do not match. The Court could not locate an attorney by the name of Dahlia Mignouna licensed in Maryland. (Ordered by Judge Reed C. O'Connor on 6/14/2018) (skg) (Entered: 06/14/2018)
06/14/2018	116 (p.1783)	ORDER granting 104 (p.1656) American Cancer Society, et al.'s Unopposed Motion for Leave to File Brief as Amici Curiae. (Unless the document has already been filed, clerk to enter the document as of the date of this order.) (Ordered by Judge Reed C. O'Connor on 6/14/2018) (skg) (Entered: 06/14/2018)
06/14/2018	117 (p.1784)	AMICI CURIAE BRIEF OF THE AMERICAN CANCER SOCIETY, AMERICAN CANCER SOCIETY CANCER ACTION NETWORK, AMERICAN DIABETES

		ASSOCIATION, AMERICAN HEART ASSOCIATION, AMERICAN LUNG ASSOCIATION, AND NATIONAL MULTIPLE SCLEROSIS SOCIETY SUPPORTING DEFENDANTS. (skg) (Entered: 06/14/2018)
06/14/2018	118 (p.1816)	MOTION For Leave To Appear Without Local Counsel filed by American Hospital Association, Federation of American Hospitals, Catholic Health Association of the United States, Association of American Medical Colleges with Brief/Memorandum in Support. (Attachments: # 1 (p.68) Proposed Order). Party American Hospital Association, Federation of American Hospitals, Catholic Health Association of the United States, and Association of American Medical Colleges added.Attorney Catherine Emily Stetson added to party American Hospital Association(pty:am), Attorney Catherine Emily Stetson added to party Federation of American Hospitals(pty:am), Attorney Catherine Emily Stetson added to party Catholic Health Association of the United States(pty:am), Attorney Catherine Emily Stetson added to party Association of American Medical Colleges(pty:am) (Stetson, Catherine) (Entered: 06/14/2018)
06/14/2018	119 (p.1822)	Consent MOTION for Leave to File Brief of Amici Curiae In Support of Intervenors-Defendants' Opposition to Plaintiffs' Application for Preliminary Injunction filed by Jonathan H. Adler, Nicholas Bagley, Abbe R. Gluck, Ilya Somin, Kevin C. Walsh with Brief/Memorandum in Support.. Party Jonathan H. Adler added.Attorney Joshua L Hedrick added to party Jonathan H. Adler(pty:am), Attorney Joshua L Hedrick added to party Nicholas Bagley(pty:am), Attorney Joshua L Hedrick added to party Abbe R. Gluck(pty:am), Attorney Joshua L Hedrick added to party Ilya Somin(pty:am), Attorney Joshua L Hedrick added to party Kevin C. Walsh(pty:am) (Hedrick, Joshua) (Entered: 06/14/2018)
06/14/2018	120 (p.1828)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9253394) filed by American Hospital Association, Association of American Medical Colleges, Catholic Health Association of the United States, Federation of American Hospitals with Brief/Memorandum in Support. (Stetson, Catherine) (Entered: 06/14/2018)
06/14/2018	121 (p.1833)	Brief/Memorandum in Support filed by Jonathan H. Adler, Nicholas Bagley, Abbe R. Gluck, Ilya Somin, Kevin C. Walsh re 119 (p.1822) Consent MOTION for Leave to File Brief of Amici Curiae In Support of Intervenors-Defendants' Opposition to Plaintiffs' Application for Preliminary Injunction (Hedrick, Joshua) Modified on 6/14/2018 (npk). Modified docket text per Order 132 (p.1986) on 6/14/2018 (skg). (Entered: 06/14/2018)
06/14/2018	122 (p.1850)	

		Unopposed MOTION for Leave to File Amicus Brief filed by American Hospital Association, Association of American Medical Colleges, Catholic Health Association of the United States, Federation of American Hospitals (Attachments: # 1 (p.68) Proposed Order) (Stetson, Catherine) (Entered: 06/14/2018)
06/14/2018	123 (p.1855)	Brief/Memorandum in Support filed by American Hospital Association, Association of American Medical Colleges, Catholic Health Association of the United States, Federation of American Hospitals re 122 (p.1850) Unopposed MOTION for Leave to File Amicus Brief (Stetson, Catherine) (Entered: 06/14/2018)
06/14/2018	124 (p.1880)	Application for Admission Pro Hac Vice with Certificate of Good Standing for Attorney Joseph R. Palmore (Filing fee $25; Receipt number 0539-9253404) filed by Jonathan H. Adler, Nicholas Bagley, Abbe R. Gluck, Ilya Somin, Kevin C. Walsh (Attachments: # 1 (p.68) Additional Page(s) Certificate of Good Standing, # 2 (p.105) Proposed Order Granting Pro Hac Vice Application) (Hedrick, Joshua) (Entered: 06/14/2018)
06/14/2018	125 (p.1885)	Unopposed MOTION for Leave to File Amicus Brief*in Opposition to a Preliminary Injunction* filed by Small Business Majority Foundation with Brief/Memorandum in Support. (Attachments: # 1 (p.68) Proposed Order, # 2 (p.105) Exhibit(s) Proposed Brief). Party Small Business Majority added.Attorney Hyland Hunt added to party Small Business Majority Foundation(pty:am) (Hunt, Hyland) (Entered: 06/14/2018)
06/14/2018	126 (p.1908)	Application for Admission Pro Hac Vice with Certificate of Good Standing for Attorney Ruthanne M. Deutsch (Filing fee $25; Receipt number 0539-9253477) filed by Small Business Majority Foundation (Attachments: # 1 (p.68) Exhibit(s) Certificate of Good Standing, # 2 (p.105) Additional Page(s) Addendum, # 3 (p.108) Proposed Order) (Hunt, Hyland) (Entered: 06/14/2018)
06/14/2018	127	ELECTRONIC ORDER granting 109 (p.1734) Application for Admission Pro Hac Vice of Pratik A. Shah. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 6/14/2018)(chmb)(alo) (Entered: 06/14/2018)
06/14/2018	128	ELECTRONIC ORDER granting 111 (p.1741) Application for Admission Pro Hac Vice of Leslie B Kiernan. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 6/14/2018)(chmb)(alo) (Entered: 06/14/2018)
06/14/2018	129 (p.1914)	ORDER granting 106 (p.1695) America's Health Insurance Plans' Motion for Leave to File Brief as Amici Curiae. (Unless the document has already been filed, clerk to enter

		the document as of the date of this order.) (Ordered by Judge Reed C. O'Connor on 6/14/2018) (skg) (Entered: 06/14/2018)
06/14/2018	130 (p.1915)	Consent MOTION for Leave to File Brief Amicus Curiae in Support of Intervenor-Defendants' Opposition to Plaintiff's Application for Preliminary Injunction filed by Service Employees International Union with Brief/Memorandum in Support. (Attachments: # 1 (p.68) Exhibit(s) Amicus Brief, # 2 (p.105) Proposed Order). Party Service Employees International Union added.Attorney Kenton J Hutcherson added to party Service Employees International Union(pty:am) (Hutcherson, Kenton) Modified on 6/14/2018 (bdb). (Entered: 06/14/2018)
06/14/2018	131 (p.1951)	BRIEF OF AMERICA'S HEALTH INSURANCE PLANS AS AMICUS CURIAE IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION 39 (p.565) MOTION for Injunction . (skg) (Entered: 06/14/2018)
06/14/2018	132 (p.1986)	ORDER granting 119 (p.1822) Consent Motion of Jonathan H. Adler, et al. For Leave to File Brief Amici Curiae. The Clerk is DIRECTED to deem the proposed brief, now as a proposed docket entry at ECF No. 121 (p.1833) , as docketed on the date it was filed. (Ordered by Judge Reed C. O'Connor on 6/14/2018) (skg) (Entered: 06/14/2018)
06/14/2018	133	ELECTRONIC ORDER granting 120 (p.1828) Application for Admission Pro Hac Vice of Catherine Stetson. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 6/14/2018)(chmb)(alo) (Entered: 06/14/2018)
06/14/2018	134	ELECTRONIC ORDER granting 124 (p.1880) Application for Admission Pro Hac Vice of Joseph R. Palmore. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 6/14/2018)(chmb)(alo) (Entered: 06/14/2018)
06/14/2018	135	ELECTRONIC ORDER granting 126 (p.1908) Application for Admission Pro Hac Vice of Ruthanne M. Deutsch. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 6/14/2018)(chmb)(alo) (Entered: 06/14/2018)
06/14/2018	136 (p.1987)	ORDER granting 125 (p.1885) Small Business Majority Foundation's Unopposed Motion For Leave to File Brief Amicus Curiae. (Unless the document has already been filed, clerk to enter the document as of the date of this order.) (Ordered by Judge Reed C. O'Connor on 6/14/2018) (skg) (Entered: 06/14/2018)
06/14/2018	137 (p.1988)	MOTION for Admission pro hac vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9252020) filed by American Medical Association (Attachments: # 1 (p.68) Proposed Order) (Mignouna, Dila).

		Modified event on 6/15/2018 (daa). (Entered: 06/14/2018)
06/14/2018	138 (p.1993)	BRIEF OF SMALL BUSINESS MAJORITY FOUNDATION AS AMICUS CURIAE IN OPPOSITION TO A PRELIMINARY INJUNCTION re: 39 (p.565) MOTION for Injunction . (skg) (Entered: 06/14/2018)
06/14/2018	139 (p.2012)	ORDER granting 118 (p.1816) American Hospital Association, et al.'s Motion for Leave to Appear Without Local Counsel ; granting 122 (p.1850) American Hospital Association, et al.'s Consent Motion for Leave to File Brief as Amici Curiae. ***Brief at entry 123 (p.1855) deemed filed on 6/14/2018 per chambers.*** (Ordered by Judge Reed C. O'Connor on 6/14/2018) (skg) (Entered: 06/14/2018)
06/14/2018	140 (p.2013)	ORDER granting 130 (p.1915) Service Employees International Union's Unopposed Motion For Leave to File Brief Amicus Curiae. (Unless the document has already been filed, clerk to enter the document as of the date of this order.) (Ordered by Judge Reed C. O'Connor on 6/14/2018) (skg) (Entered: 06/14/2018)
06/14/2018	141 (p.2014)	Unopposed MOTION for Leave to File Amicus Brief filed by Families USA, Community Catalyst, National Health Law Program, Center for Public Policy Priorities, Center on Budget and Policy Priorities (Attachments: # 1 (p.68) Exhibit(s) A - Amicus Brief, # 2 (p.105) Proposed Order). Party Families USA, Community Catalyst, The National Health Law Program, Center for Public Policy Priorities, and Center on Budget and Policy Priorities added.Attorney Leslie Sara Hyman added to party Families USA(pty:am), Attorney Leslie Sara Hyman added to party Community Catalyst(pty:am), Attorney Leslie Sara Hyman added to party National Health Law Program(pty:am), Attorney Leslie Sara Hyman added to party Center for Public Policy Priorities(pty:am), Attorney Leslie Sara Hyman added to party Center on Budget and Policy Priorities(pty:am) (Hyman, Leslie) (Entered: 06/14/2018)
06/14/2018	142 (p.2045)	MOTION Leave to Proceed Without Resident Local Counsel filed by Center for Public Policy Priorities, Center on Budget and Policy Priorities, Community Catalyst, Families USA, National Health Law Program (Attachments: # 1 (p.68) Proposed Order) (Hyman, Leslie) (Entered: 06/14/2018)
06/14/2018	143 (p.2049)	BRIEF AMICUS CURIAE OF SERVICE EMPLOYEES INTERNATIONAL UNION IN SUPPORT OF INTERVENOR-DEFENDANTS' OPPOSITION TO PLAINTIFFS' APPLICATION FOR PRELIMINARY INJUNCTION re 39 (p.565) MOTION for Injunction . (skg) (Entered: 06/14/2018)
06/14/2018	144 (p.2079)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9254239) filed by Economic Scholars (Attachments: #

		1 (p.68) Certificate of Good Standing, # 2 (p.105) Proposed Order). Party Economic Scholars added.Attorney Matthew S. Hellman added to party Economic Scholars(pty:am) (Hellman, Matthew) (Entered: 06/14/2018)
06/14/2018	145 (p.2085)	Application for Admission Pro Hac Vice with Certificate of Good Standing for Attorney William B. Schultz (Filing fee $25; Receipt number 0539-9254253) filed by Center for Public Policy Priorities, Center on Budget and Policy Priorities, Community Catalyst, Families USA, National Health Law Program (Attachments: # 1 (p.68) Exhibit(s) Certificate of Good Standing, # 2 (p.105) Proposed Order) (Hyman, Leslie) (Entered: 06/14/2018)
06/14/2018	146 (p.2091)	Application for Admission Pro Hac Vice with Certificate of Good Standing for Attorney Margaret M. Dotzel (Filing fee $25; Receipt number 0539-9254291) filed by Center for Public Policy Priorities, Center on Budget and Policy Priorities, Community Catalyst, Families USA, National Health Law Program (Attachments: # 1 (p.68) Exhibit(s) Certificate of Good Standing, # 2 (p.105) Proposed Order) (Hyman, Leslie) (Entered: 06/14/2018)
06/14/2018	147 (p.2096)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9254297) filed by Economic Scholars (Attachments: # 1 (p.68) Certificate of Good Standing, # 2 (p.105) Proposed Order)Attorney Gabriel K Gillett added to party Economic Scholars(pty:am) (Gillett, Gabriel) (Entered: 06/14/2018)
06/14/2018	148 (p.2102)	Consent MOTION for Leave to File Brief Amicus Curiae in Support of Intervenor-Defendants' Opposition to Plaintiff's Application for Preliminary Injunction filed by Service Employees International Union with Brief/Memorandum in Support. (Attachments: # 1 (p.68) Exhibit(s) Amicus Brief, # 2 (p.105) Proposed Order) (Hutcherson, Kenton) (Entered: 06/14/2018)
06/14/2018	149 (p.2138)	Unopposed MOTION for Leave to File a Brief Amici Curiae in Support of the Intervenor-Defendants filed by Economic Scholars (Attachments: # 1 (p.68) Proposed Order) (Hellman, Matthew) (Entered: 06/14/2018)
06/14/2018	150 (p.2146)	Brief/Memorandum in Support filed by Economic Scholars re 149 (p.2138) Unopposed MOTION for Leave to File a Brief Amici Curiae in Support of the Intervenor-Defendants */ Brief Amici Curiae for Economic Scholars in Support of the Intervenor-Defendants* (Hellman, Matthew) (Entered: 06/14/2018)
06/14/2018	151 (p.2179)	Application for Admission Pro Hac Vice with Certificate of Good Standing for Attorney Maame Gyamfi (Filing fee $25; Receipt number 0539-9254474) filed by AARP, AARP FOUNDATION (Attachments: # 1 (p.68) Exhibit(s), # 2 (p.105) Proposed Order). Party AARP added.Attorney Iris Y

		Gonzalez added to party AARP(pty:am), Attorney Iris Y Gonzalez added to party AARP FOUNDATION(pty:am) (Gonzalez, Iris) (Entered: 06/14/2018)
06/14/2018	152 (p.2184)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9254649) filed by Public Health Scholars, The American Public Health Association. Party Public Health Scholars and The American Public Health Association added.Attorney Boris Bershteyn added to party Public Health Scholars(pty:am), Attorney Boris Bershteyn added to party The American Public Health Association(pty:am) (Bershteyn, Boris) (Entered: 06/14/2018)
06/14/2018	153 (p.2191)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9254888) filed by Public Health Scholars, The American Public Health Association Attorney Micah Festa Fergenson added to party Public Health Scholars(pty:am), Attorney Micah Festa Fergenson added to party The American Public Health Association(pty:am) (Fergenson, Micah) (Entered: 06/14/2018)
06/14/2018	154 (p.2198)	MOTION for Leave to File Brief Amicus Curiae in Opposition to a Preliminary Injunction filed by Public Health Scholars, The American Public Health Association (Attachments: # 1 (p.68) Brief Amicus Curiae, # 2 (p.105) Appendix to Brief Amicus Curiae)Attorney Michelle L Davis added to party Public Health Scholars(pty:am), Attorney Michelle L Davis added to party The American Public Health Association(pty:am) (Davis, Michelle) (Entered: 06/14/2018)
06/14/2018	155 (p.2256)	MOTION for Leave to File Unopposed Motion of AARP and AARP Foundation For Leave to File Amici Curiae Brief in Opposition to Plaintiffs' Application for Preliminary Injunction filed by AARP, AARP FOUNDATION (Attachments: # 1 (p.68) Exhibit(s) Brief of Amici Curiae AARP and AARP Foundation in Opposition to Plaintiffs' Application for a Preliminary Injunction, # 2 (p.105) Proposed Order) (Gonzalez, Iris) (Entered: 06/14/2018)
06/15/2018	156	ELECTRONIC ORDER granting 137 (p.1988) Application for Admission Pro Hac Vice of Dila Mignouna. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 6/15/2018)(chmb)(alo) (Entered: 06/15/2018)
06/15/2018	157	ELECTRONIC ORDER granting 144 (p.2079) Application for Admission Pro Hac Vice of Matthew S. Hellman. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 6/15/2018)(chmb)(alo) (Entered: 06/15/2018)
06/15/2018	158	ELECTRONIC ORDER granting 145 (p.2085) Application for Admission Pro Hac Vice of William B. Schultz. If not

		already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 6/15/2018)(chmb)(alo) (Entered: 06/15/2018)
06/15/2018	159	ELECTRONIC ORDER granting 146 (p.2091) Application for Admission Pro Hac Vice of Margaret M. Dotzel. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 6/15/2018)(chmb)(alo) (Entered: 06/15/2018)
06/15/2018	160	ELECTRONIC ORDER granting 147 (p.2096) Application for Admission Pro Hac Vice of Gabriel K Gillett. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 6/15/2018)(chmb)(alo) (Entered: 06/15/2018)
06/15/2018	161	ELECTRONIC ORDER granting 151 (p.2179) Application for Admission Pro Hac Vice of Maame Gyamfi. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 6/15/2018)(chmb)(alo) (Entered: 06/15/2018)
06/15/2018	162	ELECTRONIC ORDER granting 152 (p.2184) Application for Admission Pro Hac Vice of Boris Bershteyn. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 6/15/2018)(chmb)(alo) (Entered: 06/15/2018)
06/15/2018	163	ELECTRONIC ORDER granting 153 (p.2191) Application for Admission Pro Hac Vice of Micah Festa Fergenson. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 6/15/2018)(chmb)(alo) (Entered: 06/15/2018)
06/15/2018	164 (p.2296)	ORDER granting: The Families USA, et al.'s Unopposed Motion For Leave to File Brief Amicus Curiae (ECF No. 141 (p.2014)); Families USA, et al's Motion for Leave to Proceed Without Local Counsel (ECF No. 142 (p.2045)); Economic Scholars' Unopposed Motion For Leave to File Brief Amicus Curiae (ECF No. 149 (p.2138)); Public Health Scholars, et al.'s Unopposed Motion For Leave to File Brief Amicus Curiae (ECF No. 154 (p.2198)) and; AARP, et al.'s Unopposed Motion For Leave to File Brief Amicus Curiae (ECF No. 155 (p.2256)). See Order for further specifics. (Ordered by Judge Reed C. O'Connor on 6/15/2018) (skg) (Entered: 06/15/2018)
06/15/2018	165 (p.2298)	BRIEF OF FAMILIES USA, COMMUNITY CATALYST, THE NATIONAL HEALTH LAW PROGRAM, CENTER FOR PUBLIC POLICY PRIORITIES, AND CENTER ON BUDGET AND POLICY PRIORITIES, AS AMICI CURIAE, IN SUPPORT OF DEFENDANT-INTERVENORS. (skg) (Entered: 06/15/2018)

06/15/2018	166 (p.2323)	BRIEF AMICUS CURIAE OF PUBLIC HEALTH SCHOLARS AND THE AMERICAN PUBLIC HEALTH ASSOCIATION. (skg) (Entered: 06/15/2018)
06/15/2018	167 (p.2362)	BRIEF OF AMICI CURIAE AARP AND AARP FOUNDATION IN OPPOSITION TO PLAINTIFFS' APPLICATION FOR A PRELIMINARY INJUNCTION re: 39 (p.565) MOTION for Injunction . (skg) (Entered: 06/15/2018)
06/15/2018	168 (p.2394)	Extraordinary Motion filed by Stephen P. Wallace (wxc) (Entered: 06/15/2018)
06/15/2018	169 (p.2403)	ORDER denying 81 (p.967) Motion to Intervene. See Order for further specifics on Employers' ability to file brief as amici curiae. (Ordered by Judge Reed C. O'Connor on 6/15/2018)(chmb)(alo) (Entered: 06/15/2018)
06/20/2018	170 (p.2411)	RESPONSE AND OBJECTION filed by Alabama, Arizona, Arkansas, Florida, Georgia, Indiana, Kansas, Paul LePage, Louisiana, Mississippi, Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virgina, Wisconsin re: 168 (p.2394) MOTION (Attachments: # 1 (p.68) Proposed Order) (McCarty, Darren) (Entered: 06/20/2018)
07/02/2018	171 (p.2415)	Reply to re: 170 (p.2411) Response filed by Stephen P. Wallace (wxc) (Entered: 07/02/2018)
07/02/2018	172 (p.2419)	Extraordinary Motion filed by Stephen P. Wallace (wxc) (Entered: 07/02/2018)
07/03/2018	173 (p.2426)	MOTION for Extension of Page Limits filed by Alabama, Arizona, Arkansas, Florida, Georgia, Neill Hurley, Indiana, Kansas, Paul LePage, Louisiana, Mississippi, Missouri, John Nantz, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virgina, Wisconsin (Attachments: # 1 (p.68) Proposed Order on Unopposed Motion for Extension of Page Limits) (McCarty, Darren) (Entered: 07/03/2018)
07/03/2018	174	ELECTRONIC ORDER granting 173 (p.2426) Motion. Plaintiffs' reply brief may be up to thirty (30) pages. (Ordered by Judge Reed C. O'Connor on 7/3/2018)(chmb)(alo) (Entered: 07/03/2018)
07/05/2018	175 (p.2432)	REPLY filed by Alabama, Arizona, Arkansas, Florida, Georgia, Neill Hurley, Indiana, Kansas, Paul LePage, Louisiana, Mississippi, Missouri, John Nantz, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virgina, Wisconsin re: 39 (p.565) MOTION for Injunction (Attachments: # 1 (p.68) Exhibit(s) Supplemental Appendix in Support of Plaintiffs' Application for Preliminary Injunction) (McCarty, Darren) (Entered: 07/05/2018)

07/16/2018	176 (p.2501)	ORDER: The Court ORDERS all parties to file any additional information they wish to present in opposition to considering these issues on summary judgment. Any additional information any party wishes to present should be filed on or before July 30, 2018. See FED. R. CIV. P. 56(f)(3). (Ordered by Judge Reed C. O'Connor on 7/16/2018) (trt) (Entered: 07/16/2018)
07/23/2018	177 (p.2502)	RESPONSE AND OBJECTION filed by Alabama, Arizona, Arkansas, Florida, Georgia, Indiana, Kansas, Paul LePage, Louisiana, Mississippi, Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virgina, Wisconsin re: 168 (p.2394) MOTION, 5 (p.140) MOTION to Intervene, 172 (p.2419) MOTION (Attachments: # 1 (p.68) Proposed Order) (McCarty, Darren) (Entered: 07/23/2018)
07/25/2018	178 (p.2506)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9337890) filed by Wisconsin (Attachments: # 1 (p.68) Affidavit(s) Certificate of Good Standing, # 2 (p.105) Proposed Order Proposed Order)Attorney Kevin Michael LeRoy added to party Wisconsin(pty:pla) (LeRoy, Kevin) (Entered: 07/25/2018)
07/26/2018	179	ELECTRONIC ORDER granting 178 (p.2506) Application for Admission Pro Hac Vice of Kevin Michael LeRoy. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 7/26/2018)(chmb)(alo) (Entered: 07/26/2018)
07/26/2018	180 (p.2511)	MOTION for Leave to File Amicus Brief*(Unopposed)* filed by Carey Brian Meadors with Brief/Memorandum in Support. (Attachments: # 1 (p.68) Exhibit(s) Amicus Brief of Carey Brian Meadors). Party Meadors, Carey Brian added.Attorney Carey Brian Meadors added to party Carey Brian Meadors(pty:am) (Meadors, Carey) (Entered: 07/26/2018)
07/30/2018	181 (p.2521)	RESPONSE filed by Alabama, Arizona, Arkansas, Florida, Georgia, Neill Hurley, Indiana, Kansas, Paul LePage, Louisiana, Mississippi, Missouri, John Nantz, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virgina, Wisconsin re: 176 (p.2501) Order Setting Deadline/Hearing, (McCarty, Darren) (Entered: 07/30/2018)
07/30/2018	182 (p.2528)	RESPONSE filed by District of Columbia, State of California, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Kentucky, State of Massachusetts, State of Minnesota, State of New Jersey, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Virginia, State of Washington re: 176 (p.2501) Order Setting Deadline/Hearing, (Palma, Neli) (Entered: 07/30/2018)

08/03/2018	183 (p.2535)	REPLY re: 5 (p.140) MOTION to Intervene filed by Stephen Wallace. (npk) (Entered: 08/03/2018)
08/14/2018	184 (p.2547)	ORDER: Before the Court is Plaintiffs' Application for Preliminary Injunction (ECF No. 39 (p.565)), filed April 26, 2018. The Court sets this matter for oral hearing on Monday, September 10, 2018, at 9:30 a.m. in the Second Floor Courtroom of the Eldon B. Mahon United States Courthouse, located at 501 W 10th Street, Fort Worth, Texas. (Ordered by Judge Reed C. O'Connor on 8/14/2018) (skg) (Entered: 08/14/2018)
08/16/2018	185 (p.2548)	MOTION to Continue *Hearing* filed by District of Columbia, State of California, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Kentucky, State of Massachusetts, State of Minnesota, State of New Jersey, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Virginia, State of Washington (Palma, Neli) (Entered: 08/16/2018)
08/17/2018	186 (p.2554)	NOTICE of Attorney Appearance by Brennan Holden Meier on behalf of America's Health Insurance Plans. (Filer confirms contact info in ECF is current.) (Meier, Brennan) (Entered: 08/17/2018)
08/17/2018	187 (p.2556)	Unopposed MOTION to Withdraw as Attorney filed by America's Health Insurance Plans with Brief/Memorandum in Support. (Attachments: # 1 (p.68) Proposed Order) (Tatachar, Jayant) (Entered: 08/17/2018)
08/19/2018	188 (p.2560)	ORDER granting in part and denying in part 185 (p.2548) Motion to Continue. Motion Hearing reset for 9/5/2018 09:30 AM in US Courthouse, Courtroom 2nd Floor, 501 W. 10th St. Fort Worth, TX 76102-3673 before Judge Reed C. O'Connor. (Ordered by Judge Reed C. O'Connor on 8/19/2018) (Judge Reed C. O'Connor) (Entered: 08/19/2018)
08/20/2018	189 (p.2561)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9394234) filed by District of Columbia (Attachments: # 1 (p.68) Certificate of Good Standing)Attorney Robyn Renee Bender added to party District of Columbia(pty:intvd) (Bender, Robyn) (Entered: 08/20/2018)
08/20/2018	190 (p.2565)	ORDER granting 187 (p.2556) Motion to Withdraw as Attorney. Jayant Kartik Tatachar is withdrawn as counsel and the Clerk of Court is DIRECTED to update the docket sheet to reflect AHIP's lead new counsel of record Brennan H. Meier. See ECF No. 186 (p.2554) . (Ordered by Judge Reed C. O'Connor on 8/20/2018) (skg) (Entered: 08/20/2018)
08/21/2018	191	ELECTRONIC ORDER granting 189 (p.2561) Application for Admission Pro Hac Vice of Robyn Renee Bender. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on

		8/21/2018)(chmb)(alo) (Entered: 08/21/2018)
08/21/2018	192 (p.2566)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9398905) filed by Wisconsin (Attachments: # 1 (p.68) Exhibit(s) Certificate of Good Standing, # 2 (p.105) Proposed Order)Attorney Misha Tseytlin added to party Wisconsin(pty:pla) (Tseytlin, Misha) (Entered: 08/21/2018)
08/22/2018	193	ELECTRONIC ORDER granting 192 (p.2566) Application for Admission Pro Hac Vice of Misha Tseytlin. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 8/22/2018)(chmb)(alo) (Entered: 08/22/2018)
08/22/2018	194 (p.2572)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9401092) filed by State of Delaware (Attachments: # 1 (p.68) Exhibit(s))Attorney Jessica Willey added to party State of Delaware(pty:intvd) (Willey, Jessica) (Entered: 08/22/2018)
08/23/2018	195	ELECTRONIC ORDER granting 194 (p.2572) Application for Admission Pro Hac Vice of Jessica Willey. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 8/23/2018)(chmb)(alo) (Entered: 08/23/2018)
08/23/2018	196 (p.2576)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9404825) filed by State of Oregon (Attachments: # 1 (p.68) Additional Page(s) Certificate of Good Standing, # 2 (p.105) Proposed Order)Attorney Henry Kantor added to party State of Oregon(pty:intvd) (Kantor, Henry) (Entered: 08/23/2018)
08/24/2018	197	ELECTRONIC ORDER granting 196 (p.2576) Application for Admission Pro Hac Vice of Henry Kantor. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 8/24/2018)(chmb)(alo) (Entered: 08/24/2018)
08/31/2018	198 (p.2581)	Withdrawl of Extraordinary Motion to Intervene as Moot re: 168 (p.2394) MOTION filed by Stephen P. Wallace (bcr) (Entered: 08/31/2018)
09/05/2018	199	ELECTRONIC Minute Entry for proceedings held before Judge Reed C. O'Connor: Oral Agument held on 9/5/2018. Attorneys for Plaintiff's - Darren McCarty, Misha Tseytlin, Robert Henneke, Brett Shumate and, Daniel Mauler.Attorneys Defendant's - Nimrod Elias, Neli Palma, Henry Kantor,Stephen Vogel, and Valerie Nannery. (Court Reporter: Shawn McRoberts) (No exhibits) Time in Court - 3:15. (chmb) (Entered: 09/10/2018)
09/19/2018	200 (p.2583)	

		Unopposed MOTION to Withdraw as Attorney *for Plaintiff States (Austin R. Nimocks)* filed by Alabama, Arizona, Arkansas, Florida, Georgia, Indiana, Kansas, Paul LePage, Louisiana, Mississippi, Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virgina, Wisconsin (Attachments: # 1 (p.68) Proposed Order) (Nimocks, Austin) (Entered: 09/19/2018)
09/20/2018	201 (p.2587)	ORDER granting 200 (p.2583) Motion to Withdraw as Attorney. Austin R. Nimocks is withdrawn as counsel for Plaintiffs and the Clerk of Court is DIRECTED to update the docket sheet consistent with this Order. (Ordered by Judge Reed C. O'Connor on 9/20/2018) (skg) (Entered: 09/20/2018)
10/30/2018	202 (p.2588)	Application for Admission Pro Hac Vice with Certificate of Good Standing (Filing fee $25; Receipt number 0539-9552111) filed by State of Hawaii (Attachments: # 1 (p.68) Proposed Order Proposed Order Pro Hac Vice, # 2 (p.105) Exhibit(s) Certificate of Good Standing)Attorney Andrea Suzuki added to party State of Hawaii(pty:intvd) (Suzuki, Andrea) (Entered: 10/30/2018)
10/30/2018	203 (p.2593)	Unopposed MOTION to Withdraw as Attorney *and to Substitute Counsel* filed by State of Hawaii (Attachments: # 1 (p.68) Proposed Order) (Rian, Heidi) (Entered: 10/30/2018)
11/05/2018	204	ELECTRONIC ORDER granting 202 (p.2588) Application for Admission Pro Hac Vice of Andrea A. Suzuki. If not already done, Applicant must register as an ECF User within 14 days (LR 5.1(f)). (Ordered by Judge Reed C. O'Connor on 11/5/2018) (chmb) (Entered: 11/05/2018)
11/05/2018	205 (p.2596)	ORDER granting 203 (p.2593) Motion to Withdraw as Attorney. Attorney Heidi Marguerita Rian terminated. (Ordered by Judge Reed C. O'Connor on 11/5/2018) (skg) (Entered: 11/05/2018)
11/05/2018	206 (p.2597)	ORDER granting 180 (p.2511) Carey Brian Meadors's Unopposed Motion For Leave to File an Amicus Brief Amicus. The Clerk is DIRECTED to file Mr. Meadors's brief, now attached to his motion at ECF No. 180 (p.2511) -1, as a separate docket entry. (Ordered by Judge Reed C. O'Connor on 11/5/2018) (skg) (Entered: 11/05/2018)
11/05/2018	207 (p.2598)	AMICUS BRIEF OF CAREY BRIAN MEADORS. (skg) (Entered: 11/05/2018)
11/16/2018	208 (p.2603)	Notice Received from State of Maine Office of the Attorney General (wxc) (Entered: 11/16/2018)
12/08/2018	209 (p.2608)	Unopposed MOTION to Withdraw as Attorney *for Individual Plaintiffs (Jonathan F. Mitchell)* filed by Neill Hurley, John Nantz (Mitchell, Jonathan) (Entered: 12/08/2018)
12/11/2018	210 (p.2610)	ORDER granting 209 (p.2608) Plaintiffs' Counsel Jonathan F. Mitchell's Unopposed Motion to Withdraw as Counsel.

		Jonathan F. Mitchell is withdrawn as counsel for Plaintiffs Neill Hurley and John Nantz, and the Clerk of Court is DIRECTED to update the docket sheet consistent with this Order. (Ordered by Judge Reed C. O'Connor on 12/11/2018) (skg) (Entered: 12/11/2018)
12/14/2018	211 (p.2611)	[STAYED per order of Dec 30 2018] ORDER granting Plaintiffs partial summary judgment (Ordered by Judge Reed C. O'Connor on 12/14/2018) (Judge Reed C. O'Connor) Modified on 12/31/2018 (wrb). (Entered: 12/14/2018)
12/16/2018	212 (p.2666)	ORDER: Accordingly, the Court ORDERS the parties to meet and confer byDecember 21, 2018 and to then jointly submit to the Court by January 4, 2019 a proposed schedule for resolving Plaintiffs remaining claims in the Amended Complaint. (Ordered by Judge Reed C. O'Connor on 12/16/2018) (chmb) (Entered: 12/16/2018)
12/17/2018	213 (p.2667)	MOTION re 211 (p.2611) Order on Motion for Injunction filed by District of Columbia, State of California, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Kentucky, State of Massachusetts, State of Minnesota, State of New Jersey, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Virginia, State of Washington with Brief/Memorandum in Support. (Attachments: # 1 (p.68) Brief in Support of Motion to Clarify, etc., # 2 (p.105) Proposed Order) (Palma, Neli) (Entered: 12/17/2018)
12/18/2018	214 (p.2711)	NOTICE of Attorney Appearance by David Jonathan Hacker on behalf of Alabama, Arizona, Arkansas, Florida, Georgia, Indiana, Kansas, Paul LePage, Louisiana, Mississippi, Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virgina, Wisconsin. (Filer confirms contact info in ECF is current.) (Hacker, David) (Entered: 12/18/2018)
12/18/2018	215 (p.2714)	ORDER: The Court ORDERS the Plaintiffs and Federal Defendants to file their responses by Friday, December 21, 2018 and the Intervenor Defendants to reply by Wednesday, December 26, 2018. (Ordered by Judge Reed C. O'Connor on 12/18/2018) (chmb) (Entered: 12/18/2018)
12/21/2018	216 (p.2716)	RESPONSE AND OBJECTION filed by Alex Azar, Department of Health & Human Services, David Kautter, United States Interval Revenue Services, United States of America re: 213 (p.2667) MOTION re 211 (p.2611) Order on Motion for Injunction (Mauler, Daniel) (Entered: 12/21/2018)
12/21/2018	217 (p.2733)	RESPONSE filed by Alabama, Arizona, Arkansas, Florida, Georgia, Neill Hurley, Indiana, Kansas, Paul LePage, Louisiana, Mississippi, Missouri, John Nantz, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virgina, Wisconsin re: 213 (p.2667) MOTION re 211 (p.2611) Order on Motion for Injunction

		(Hacker, David) (Entered: 12/21/2018)
12/26/2018	218 (p.2740)	REPLY filed by District of Columbia, State of California, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Kentucky, State of Massachusetts, State of Minnesota, State of New Jersey, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Virginia, State of Washington re: 213 (p.2667) MOTION re 211 (p.2611) Order on Motion for Injunction (Palma, Neli) (Entered: 12/26/2018)
12/28/2018	219 (p.2750)	MOTION to Withdraw as Attorney filed by Wisconsin (LeRoy, Kevin) (Entered: 12/28/2018)
12/30/2018	220 (p.2755)	ORDER GRANTING STAY AND PARTIAL FINAL JUDGMENT: On December 17, 2018, the Intervenor Defendants moved the Court to clarify that the December 14, 2018 Order is not binding or to enter a stay if the Order is binding and to enter final judgment or certify the Order for immediate appeal. See ECF No. 213 (p.2667) . The Court finds that the December 14, 2018 Order declaring the Individual Mandate unconstitutional and inseverable should be stayed. Accordingly, the Court ORDERS that the December 14, 2018 Order, (ECF No. 211 (p.2611)), and the Partial Final Judgment severing Count I and finalizing that Order---which will issue by separate order---be stayed during the pendency of the Order's appeal. (Ordered by Judge Reed C. O'Connor on 12/30/2018) (Judge Reed C. O'Connor) (Entered: 12/30/2018)
12/30/2018	221 (p.2785)	Final Judgment on Count I: The Court issued its order granting partial summary judgment on Count I of Plaintiffs' Amended Complaint, and has determined that it should be severed from the remaining claims. December 14, 2018 Order, ECF No. 211 (p.2611) . In accordance with Federal Rule of Civil Procedure 54(b), the Court therefore DECLARES that 26 U.S.C. § 5000A(a) is UNCONSTITUTIONAL and INSEVERABLE from the remainder of the Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119-1045 (2010). (Ordered by Judge Reed C. O'Connor on 12/30/2018) (Judge Reed C. O'Connor) (Entered: 12/30/2018)
12/30/2018	222	ELECTRONIC ORDER granting 219 (p.2750) Motion to Withdraw as Attorney. Attorney Kevin Michael LeRoy and Misha Tseytlin terminated (Ordered by Judge Reed C. O'Connor on 12/30/2018) (Judge Reed C. O'Connor) (Entered: 12/30/2018)
12/31/2018	223 (p.2786)	STAY ORDER AND ADMINISTRATIVE CLOSURE. The Court has entered a partial judgment on Count I in this case (ECF No. 221). The Court determines the remainder of this case should be STAYED pending further orders. The Clerk is therefore instructed to submit a JS-6 form to the Administrative Office, removing this case from the statistical

		records. Nothing in this Order shall be considered a dismissal or disposition of the remaining clams. The parties are directed to notify the Court upon the conclusion of the appeal of the partial judgment within 14 days of any decision. Should further proceedings in the meantime become necessary or desirable, any party may initiate it by filing an appropriate pleading. (Ordered by Judge Reed C. O'Connor on 12/31/2018) (trt) (Entered: 12/31/2018)
01/03/2019	224 (p.2787)	NOTICE OF APPEAL as to 221 (p.2785) Order on Motion for Miscellaneous Relief,, 211 (p.2611) Order on Motion for Injunction to the Fifth Circuit by District of Columbia, State of California, State of Connecticut, State of Delaware, State of Hawaii, State of Illinois, State of Kentucky, State of Massachusetts, State of Minnesota, State of New Jersey, State of New York, State of North Carolina, State of Oregon, State of Rhode Island, State of Vermont, State of Virginia, State of Washington. Filing fee $505, receipt number 0539-9680293. T.O. form to appellant electronically at Transcript Order Form or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. IMPORTANT ACTION REQUIRED: Provide an electronic copy of any exhibit you offered during a hearing or trial that was admitted into evidence to the clerk of the district court within 14 days of the date of this notice. Copies must be transmitted as PDF attachments through ECF by all ECF Users or delivered to the clerk on a CD by all non-ECF Users. See detailed instructions here. (Exception: This requirement does not apply to a pro se prisoner litigant.) Please note that if original exhibits are in your possession, you must maintain them through final disposition of the case. (Palma, Neli) (Entered: 01/03/2019)
01/03/2019	225 (p.2793)	NOTICE of Attorney Appearance by Donald Beaton Verrilli, Jr on behalf of U.S. House of Representatives. (Filer confirms contact info in ECF is current.) (Verrilli, Donald) (Entered: 01/03/2019)
01/03/2019	226 (p.2795)	MOTION to Intervene filed by U.S. House of Representatives with Brief/Memorandum in Support. (Attachments: # 1 (p.68) Exhibit(s) Proposed Answer, # 2 (p.105) Proposed Order Proposed Order) (Verrilli, Donald) (Entered: 01/03/2019)
01/03/2019	227 (p.2830)	MOTION Appear Without Local Counsel filed by U.S. House of Representatives (Attachments: # 1 (p.68) Proposed Order Proposed Order) (Verrilli, Donald) (Entered: 01/03/2019)
01/04/2019	228 (p.2918)	Notice of Filing of Official Electronic Transcript of Hearing on Motion for Preliminary Injunction Proceedings held on 09/05/2018 before Judge Reed O'Connor. Court Reporter/Transcriber Shawn McRoberts, Telephone number (214) 753-2349. Parties are notified of their duty to review

		the transcript. A copy may be purchased from the court reporter or viewed at the clerk's office. If redaction of personal identifiers under MO 61 is necessary, file a Redaction Request - Transcript within 21 days. If no action is taken, the entire transcript will be made available through PACER without redaction after 90 calendar days. The clerk will mail a copy of this notice to parties not electronically noticed. (137 pages) Redaction Request due 1/25/2019. Redacted Transcript Deadline set for 2/4/2019. Release of Transcript Restriction set for 4/4/2019. (smm) (Entered: 01/04/2019)
01/04/2019	229 (p.2836)	Transcript Order Form: re 224 (p.2787) Notice of Appeal, transcript requested by State of California for 9/5/18 Motion for Preliminary Injunction Hearing (Court Reporter: Shawn McRoberts.) Payment method: Other Reminder to appellant: this document must also be filed with the appeals court. (tle) (Entered: 01/04/2019)
01/04/2019	230 (p.2844)	NOTICE OF APPEAL as to 221 (p.2785) Order on Motion for Miscellaneous Relief,, 211 (p.2611) Order on Motion for Injunction to the Fifth Circuit by Alex Azar, Department of Health & Human Services, David Kautter, United States Interval Revenue Services, United States of America. T.O. form to appellant electronically at Transcript Order Form or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. IMPORTANT ACTION REQUIRED: Provide an electronic copy of any exhibit you offered during a hearing or trial that was admitted into evidence to the clerk of the district court within 14 days of the date of this notice. Copies must be transmitted as PDF attachments through ECF by all ECF Users or delivered to the clerk on a CD by all non-ECF Users. See detailed instructions here. (Exception: This requirement does not apply to a pro se prisoner litigant.) Please note that if original exhibits are in your possession, you must maintain them through final disposition of the case. (Attachments: # 1 (p.68) Exhibit(s) A, # 2 (p.105) Exhibit(s) B) (Mauler, Daniel) (Entered: 01/04/2019)
01/04/2019	231 (p.2904)	MOTION to Stay re 226 (p.2795) MOTION to Intervene filed by Alex Azar, Department of Health & Human Services, David Kautter, United States Interval Revenue Services, United States of America with Brief/Memorandum in Support. (Attachments: # 1 (p.68) Proposed Order) (Mauler, Daniel) (Entered: 01/04/2019)
01/07/2019		USCA Case Number 19-10011 in United States Court of Appeals Fifth Circuit for 224 (p.2787) Notice of Appeal, filed by State of Virginia, State of Hawaii, State of Rhode Island, State of Minnesota, State of Kentucky, State of Vermont, State of New Jersey, State of Connecticut, State of Oregon, State of Illinois, District of Columbia, State of North Carolina, State of Delaware, State of Massachusetts, State of

		California, State of New York, State of Washington, 230 (p.2844) Notice of Appeal, filed by David Kautter, Department of Health & Human Services, United States of America, Alex Azar, United States Interval Revenue Services. (tle) (Entered: 01/07/2019)
01/08/2019	232 (p.2910)	ORDER STAYING BRIEFING: Accordingly, the motion to intervene, (ECF No. 226 (p.2795)), is STAYED and the motion to stay briefing, (ECF No. 231 (p.2904)), is DENIED as moot. (Ordered by Judge Reed C. O'Connor on 1/8/2019) (skg) Modified text on 1/8/2019 (trt). (Main Document 232 replaced on 1/8/2019) (trt). (Entered: 01/08/2019)
01/11/2019	233 (p.2912)	ORDER of USCA No. 19-10011 as to 224 (p.2787) Notice of Appeal, filed by State of Virginia, State of Hawaii, State of Rhode Island, State of Minnesota, State of Kentucky, State of Vermont, State of New Jersey, State of Connecticut, State of Oregon, State of Illinois, District of Columbia, State of North Carolina, State of Delaware, State of Massachusetts, State of California, State of New York, State of Washington, 230 (p.2844) Notice of Appeal, filed by David Kautter, Department of Health & Human Services, United States of America, Alex Azar, United States Interval Revenue Services. IT IS ORDERED that the opposed motion of appellants United States of America, United States Department of Health and Human Services, Alex Azar, II, Secretary, U.S. Department of Health and Human Services, United States Department of Internal Revenue and Charles P. Rettig to stay proceedings in this court in light of lapse of appropriations is GRANTED (tle) (Entered: 01/11/2019)
01/29/2019	234 (p.2915)	ORDER of USCA No. 19-10011 as to 224 (p.2787) Notice of Appeal ; 230 (p.2844) Notice of Appeal. IT IS ORDERED that the motion of appellants United States of America, United States Department of Health and Human Services, Alex Azar, II, Secretary, U.S. Department of Health and Human Services, United States Department of Internal Revenue and Charles P. Rettig to lift the stay of proceedings is GRANTED. (tle) (Entered: 01/29/2019)

TAB 2

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

TEXAS, WISCONSIN, ALABAMA, ARKANSAS, ARIZONA, FLORIDA, GEORGIA, INDIANA, KANSAS, LOUISIANA, PAUL LePAGE, Governor of Maine, GOVERNOR PHIL BRYANT OF THE STATE OF MISSISSIPPI, MISSOURI, NEBRASKA, NORTH DAKOTA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, UTAH, WEST VIRGINIA, NEILL HURLEY, and JOHN NANTZ, Plaintiffs,	§	
v.	§	Civil Action No. 4:18-CV-00167-O
UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ALEX AZAR, in his Official Capacity as SECRETARY OF HEALTH AND HUMAN SERVICES, UNITED STATES INTERNAL REVENUE SERVICE, and DAVID J. KAUTTER, in his Official Capacity as Acting COMMISSIONER OF INTERNAL REVENUE, Defendants.	§	

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

TO THE HONORABLE REED O'CONNOR:

The Patient Protection and Affordable Care Act (the "Affordable Care Act," "the

ACA" or "the Act"), as recently amended, forces an unconstitutional and irrational regime onto the States and their citizens. Because this recent amendment renders legally *impossible* the Supreme Court's prior savings construction of the Affordable Care Act's core provision—the individual mandate—the Court should hold that the ACA is unlawful and enjoin its operation.

NFIB v. Sebelius, 567 U.S. 519 (2012), held that in enacting the ACA, Congress sought to do something unconstitutional: impose a mandate to obtain health insurance by requiring that most Americans "shall" insure that they are "covered under minimum essential coverage." 26 U.S.C. § 5000A(a). "Congress [wrongly] thought it could enact such a command under the Commerce Clause[.]" *NFIB,* 567 U.S. at 562 (Roberts, C.J.). The Supreme Court, however, interpreted the mandate to be part-and-parcel of a tax penalty that applies to many (but not all) of those to whom the mandate applies. Thus, even though Congress sought to do something unconstitutional in enacting the mandate under the Commerce Clause, the Supreme Court salvaged its handiwork as a lawful exercise of the taxing power. But things changed on December 22, 2017.

On December 22, 2017, the President signed into law the Tax Cuts and Jobs Act of 2017. This new legislation eliminated the tax penalty of the ACA, without eliminating the mandate itself. What remains, then, is the individual mandate, without any accompanying exercise of Congress's taxing power, which the Supreme Court already held that Congress has no authority to enact. Not only is the individual mandate now unlawful, but this core provision is not severable from the rest of the ACA—as four Justices of the Supreme Court already concluded. In fact, Congress stated in the legislative text that the ACA does not function without the individual mandate.

The ACA's unconstitutionality follows from three holdings in *NFIB* and the

aforementioned provision in the Tax Cuts and Jobs Act of 2017. First, a majority of the Supreme Court held that Congress lacks the constitutional authority to compel citizens to purchase health insurance. *NFIB*, 567 U.S. at 558 (Roberts, C.J.); *id.* at 657 (Scalia, Kennedy, Thomas, and Alito, JJ., dissenting) (hereinafter "Dissenting Op."). Second, the same majority concluded that the ACA included a mandate to buy health insurance that applies to most (but not all) citizens, and a separate tax penalty that applies to most (but not all) of those required to buy insurance under the mandate. *Id.* at 562–63 (Roberts, C.J.); *id.* at 663 (Dissenting Op.). Third, a different majority held that, as a matter of constitutional avoidance, it was "fairly possible" to reinterpret the mandate and tax penalty as a single "tax," which Congress may enact under its taxing authority. *Id.* at 564–74. In reaching this end, the majority concluded that Congress's taxing-power interpretation was only "fairly possible" because the provision at issue raised "at least some revenue for the Government." *Id.* at 564 (citing *United States v. Kahriger*, 345 U.S. 22 (1953)). Indeed, the raising of "at least some revenue" was "*the essential* feature of *any* tax." *Id.* (emphasis added). After all, if a provision raises no revenue, it cannot be said "to *pay* the Debts and *provide* for the common Defence and general Welfare of the United States." U.S. Const. art. I, § 8, cl. 1 (emphasis added).

Pursuant to the Tax Cuts and Jobs Act of 2017, starting in 2019, the tax penalty is eliminated by reducing the tax to zero. Pub. L. No. 115-97, § 11081, 131 Stat. 2054. The individual mandate itself, however, remains. But because the tax penalty provision in the ACA no longer raises *any* revenue, the Supreme Court's avoidance reading is no longer possible. As the Congressional Budget Office explained, the Tax Cuts and Jobs Act of 2017 "eliminate[s]" the "individual mandate penalty . . . *but [not] the mandate itself*." Congressional Budget Office, *Repealing the Individual Health Insurance Mandate: An Updated Estimate* 1, (November 2017)

(emphasis added) (hereinafter "CBO 2017 Report").[1] Because the tax penalty raises $0, it lacks "*the essential* feature of *any* tax," and the avoidance interpretation adopted in *NFIB* to save the individual mandate from its unconstitutionality is no longer "fairly possible."

Following the enactment of the Tax Cuts and Jobs Act of 2017, the country is left with an individual mandate to buy health insurance that lacks any constitutional basis. The invalidity of the ACA's core provision (individual mandate) thus follows from *NFIB*.

Once the heart of the ACA—the individual mandate—is declared unconstitutional, the remainder of the ACA must also fall. *NFIB*, 567 U.S. at 691–708 (Dissenting Op.). As Congress made clear, "[t]he requirement [for individuals to buy health insurance] is *essential* to creating effective health insurance markets." 42 U.S.C. § 18091(2)(I) (emphasis added). "[T]he absence of th[is] requirement would undercut Federal regulation of the health insurance market." *Id.* § 18091(2)(H). In particular, "the guaranteed issue and community rating requirements *would not work* without the coverage requirement [i.e., Section 5000A]." *King v. Burwell*, 135 S. Ct. 2480, 2487 (2015) (emphasis added). So because the remainder of ACA does not "function in a manner consistent with the intent of Congress," the whole Act must fall with the mandate. *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 684–85 (1987) (describing severability analysis) (emphasis added).

Absent the individual mandate, the ACA is an irrational regulatory regime governing an essential market. The ACA's stated objectives are "achiev[ing] near-universal [health-insurance] coverage," 42 U.S.C. § 18091(2)(D), "lower[ing] health insurance premiums," *id.* § 18091(2)(F), and "creating effective health insurance markets," *id.* § 18091(2)(I). But without the "essential" mandate, coverage will

[1] *See* https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53300-individualmandate.pdf.

decrease, premiums will rise, and markets will become irrational. *See id.* Thus, the post-mandate ACA lacks "some footing" in the "realities" of the health-insurance market, *Heller v. Doe*, 509 U.S. 312, 321 (1993), and has no "plausible policy reason" for forcing continued compliance, *Armour v. City of Indianapolis*, 566 U.S. 673, 681 (2012).

In all, the ACA is unlawful and the Court should enjoin its operation. Therefore, Plaintiffs seek declaratory and injunctive relief against the United States of America, United States Department of Health and Human Services, Alex Azar, in his official capacity as Secretary of Health and Human Services, United States Internal Revenue Service, and David J. Kautter, in his official capacity as Acting Commissioner of Internal Revenue, regarding Defendants' actions implementing and enforcing the Patient Protection and Affordable Care Act.

I. PARTIES

1. Plaintiff States are all sovereigns within the United States.

2. Plaintiff Paul LePage is the Governor of Maine and Chief Executive of the Maine Constitution and the laws enacted by the Maine Legislature. Me. Const. art. V, Pt. 1, § 1.

3. Plaintiff Phil Bryant is the Governor of Mississippi and brings this suit on behalf of Mississippi pursuant to Miss. Code Ann. § 7-1-33.

4. Plaintiff Neill Hurley is a citizen and resident of Texas and a citizen of the United States. Mr. Hurley maintains minimum essential health insurance coverage, which he purchased on the ACA-created exchange. Mr. Hurley is subject to the individual mandate and objects to being required by federal law to comply with it.

5. Plaintiff John Nantz is a citizen and resident of the State of Texas and a citizen of the United States. Mr. Nantz maintains minimum essential health

insurance coverage, which he purchased on the ACA-created exchange. Mr. Nantz is subject to the individual mandate and objects to being required by federal law to comply with it.

6. In addition to performing various sovereign functions and prerogatives, all Plaintiff States function as significant employers with tens of millions under their collective charge.[2]

7. Defendants are the United States of America, the United States Department of Health and Human Services ("Department"), Alex Azar, in his official capacity as Secretary of Health and Human Services, the United States Internal Revenue Service ("Service"), and David J. Kautter, in his official capacity as Acting Commissioner of Internal Revenue.

8. The Department is a federal agency and is responsible for administration and enforcement of the laws challenged here. *See generally* 20 U.S.C. § 3508; 42 U.S.C. §§ 202–03, 3501.

9. The Service is a bureau of the Department of Treasury, under the direction of the Acting Commissioner of Internal Revenue, David J. Kautter, and is responsible for collecting taxes, administering the Internal Revenue Code, and overseeing various aspects of the Act. *See generally* 26 U.S.C. § 7803 *et. seq.*; *see* https://www.irs.gov/affordable-care-act/affordable-care-act-tax-provisions.

10. Any injunctive relief requested herein must be imposed upon the Department, Secretary, Service, and the Acting Commissioner for Plaintiffs to obtain full relief.

II. JURISDICTION AND VENUE

11. The Court has jurisdiction pursuant to 28 U.S.C. § 1331 because this

[2] *See, e.g.*, U.S. Census Bureau, *State and Local Government Employment and Payroll Data: March 2015 Annual Survey of Public Employment & Payroll*, http:// factfinder.census.gov/bkmk/table/1.0/en/GEP/2015/00A4.

suit concerns the constitutionality of the ACA. The Court also has jurisdiction to compel the Secretary of Health and Human Services and Acting Commissioner of Internal Revenue to perform their duties pursuant to 28 U.S.C. § 1361.

12. The Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by 5 U.S.C. § 706, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of the Court.

13. Venue is proper under 28 U.S.C. § 1391 because the United States, two of its agencies, and two of its officers in their official capacity are Defendants; and a substantial part of the events giving rise to the Plaintiffs' claims occurred in this District. Further, a plaintiff "resides" in this district, a "substantial part of the events [ ] giving rise to the claim occurred" in this district, and "no real property is involved." *Id.* § 1391(e)(1).

III. FACTUAL BACKGROUND

A. The Individual Mandate and the Affordable Care Act.

14. In 2010, Congress enacted a sweeping new regulatory framework for the nation's healthcare system by passing the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119, and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029, collectively and commonly referred to as the "Affordable Care Act." *See Patient Protection and Affordable Care Act*, Pub. L. No. 111-148, 124 Stat. 119-1025 (Mar. 23, 2010) (hereinafter, collectively, "the Affordable Care Act," "the ACA" or "the Act"). President Obama signed the Patient Protection and Affordable Care Act (H.R. 3590, 111th Cong.) into law on March 23, 2010, and the Health Care and Education Reconciliation Act (H.R. 4872, 111th Cong.) into law on March 30, 2010.

15. The ACA has the express statutory goals of "achiev[ing] near-universal [health-insurance] coverage," 42 U.S.C. § 18091(2)(D), "lower[ing] health insurance

premiums," *id.* § 18091(2)(F), and "creating effective health insurance markets," *id.* § 18091(2)(I).

16. The ACA contains three main features relevant to this lawsuit.

17. First, the ACA contains an "individual mandate" on most Americans to purchase health insurance and, separately, a tax penalty for most who fail to comply. ACA § 1501; 26 U.S.C. § 5000A.

a. The statutory title of the individual mandate is "Requirement To Maintain Minimum Essential Coverage," ACA § 1501; 26 U.S.C. § 5000A(a), and the statutory title for the tax penalty is "Shared Responsibility Payment," ACA § 1501; 26 U.S.C. § 5000A(b). The individual mandate provides: "An applicable individual shall . . . ensure that the individual . . . is covered under minimum essential coverage." 26 U.S.C. § 5000A(a).

b. Subsection (b) of Section 5000A—the "Shared Responsibility Payment"—imposed a tax "penalty" on individuals who failed to comply with Subsection (a): "If a taxpayer who is an applicable individual . . . fails to meet the requirement of subsection (a) . . . then . . . there is hereby imposed on the taxpayer a penalty with respect to such failure[ ]." 26 U.S.C. § 5000A(b)(1). Subsection (c) determines the amount of the tax penalty with a multi-step formula. *Id.* § 5000A(c).

c. Some Americans are exempt from the individual mandate, *see* 26 U.S.C. § 5000A(d)(2)–(4); *id.* § 1402(g)(1), while others are subject to the mandate but exempt from the tax penalty, see 26 U.S.C. § 5000A(e)(1)–(5). "Many individuals . . . [will] comply with a mandate, even in the absence of penalties, because they believe in abiding by the nation's laws." Congressional Budget Office, *Key Issues in Analyzing Major*

Health Insurance Proposals 53 (Dec. 2008).[3]

18. Second, the ACA imposes regulations on health-insurance companies.

a. The Act requires health insurance companies to "accept every employer and individual in the State that applies for [ ] coverage," regardless of preexisting conditions (commonly termed "guaranteed issue"). ACA § 1201; 42 U.S.C. § 300gg-1–4.

b. The Act prohibits insurance companies from charging individuals higher premiums because of their health (commonly termed "community rating"). ACA § 1201; 42 U.S.C. § 300gg-4(a)(1).

c. The Act imposes numerous coverage requirements on all health-insurance plans, termed "essential health benefits" in the Act, and limitations on "cost-sharing" on all plans. *See* ACA §§ 1301–02; 42 U.S.C. §§ 18021–22.

d. The Act charges "the Secretary" with the authority to "define the essential health benefits" that plans must include. ACA § 1302; 42 U.S.C. § 18022. Such benefits "shall include" at least "ambulatory patient services," "emergency services," "hospitalization," "maternity and newborn care," "mental health and substance use disorder services, including behavioral health treatment," "prescription drugs," "rehabilitative and habilitative services and devices," "laboratory services," "preventive and wellness services and chronic disease management," and "pediatric services, including oral and vision care." ACA § 1302; 42 U.S.C. § 18022(b)(1)(A)–(J) (capitalization altered).

19. Third, the ACA contains other regulations to promote access to health insurance and the affordability of that insurance.

[3] *See* https://www.cbo.gov/sites/default/files/110th-congress-2007-2008/reports/12-18-keyissues.pdf.

a. Employers of 50 or more full-time employees (defined as working "on average at least 30 hours [ ] per week," ACA § 1513; 26 U.S.C. § 4980H(c)(4)(A)) must offer affordable health insurance if one employee qualifies for a subsidy to purchase health insurance on the health-insurance exchanges created by the ACA. *See* ACA § 1513; 26 U.S.C. § 4980H.

b. Covered employers that fail to offer any insurance must pay a penalty of $2,000 per year per employee. ACA § 1513; 26 U.S.C. § 4980H(a), (c)(1). If the employer fails to offer affordable insurance, then it must pay $3,000 per year per employee. ACA § 1513; 26 U.S.C. § 4980H(b); 79 Fed. Reg. 8544, 8544 (Feb. 12, 2014).

c. The Act also authorizes refundable tax credits to make insurance purchased on the exchanges more affordable for individuals between 100% and 400% of the poverty line. *See* ACA § 1401; 26 U.S.C. § 36B.

d. The Act substantially expanded Medicaid, requiring States to cover—with an expanded benefits package—all individuals under 65 who have income below 133% of the poverty line. 42 U.S.C. § 1396; *see generally NFIB*, 567 U.S. at 574–80 (Roberts, C.J.) (describing expansion and holding that forcing States to comply is unconstitutional).

e. The Act also imposes additional insurance taxes and regulations, like a tax on high cost employer-sponsored health coverage, 26 U.S.C. § 4980I, a requirement that insurance providers cover dependents up to 26 years of age, 42 U.S.C. § 300gg-14(a), the elimination of coverage limits, *id.* § 300gg-11, and a reduction in federal reimbursement rates to hospitals, *see* 42 U.S.C. § 1395ww.

f. Finally, the Act contains a grab bag of other provisions. For example,

the Act imposes a 2.3% tax on certain medical devices, 26 U.S.C. § 4191(a), creates mechanisms for the Secretary to issue compliance waivers to States attempting to reduce costs through otherwise-prohibited means, 42 U.S.C. § 1315, and regulates the display of nutritional content at certain restaurants, 21 U.S.C. § 343(q)(5)(H).

20. According to Congress's own findings, the ACA's provisions do not function rationally without the individual mandate.

a. Congress stressed the importance of Section 5000A's individual mandate with explicit findings in the text of the ACA itself. ACA § 1501; 42 U.S.C. § 18091.

b. Chief among these legislative findings is Section 18091(a)(2)(I), which provides:

> Under sections 2704 and 2705 of the Public Health Service Act [42 U.S.C. 300gg-3, 300gg-4] (as added by section 1201 of this Act), if there were no requirement [to buy health insurance], many individuals would wait to purchase health insurance until they needed care. By significantly increasing health insurance coverage, the requirement [to buy health insurance], together with the other provisions of this Act, will minimize this adverse selection and broaden the health insurance risk pool to include healthy individuals, which will lower health insurance premiums. *The requirement is essential to creating effective health insurance markets in which improved health insurance products that are guaranteed issue and do not exclude coverage of pre-existing conditions can be sold.*

42 U.S.C. § 18091(a)(2)(G) (emphasis added). Even after the recent legislative change, the individual mandate remains part of the ACA, permitting the ACA to function exactly as Congress outlined and intended.

c. Other legislative findings from Section 18091 reinforce this point.

i. "By significantly reducing the number of the uninsured, the requirement, together with the other provisions of th[e] [ACA],

will significantly reduce [health care's] economic cost." *Id.* § 18091(2)(E). "[B]y significantly reducing the number of the uninsured, the requirement, together with the other provisions of th[e] [ACA], will lower health insurance premiums." *Id.* § 18091(2)(F).

ii. "The requirement is *an essential part* of [the Government's] regulation of economic activity, and the absence of the requirement would undercut Federal regulation of the health insurance market." *Id.* § 18091(2)(H) (emphasis added).

iii. "[T]he requirement, together with the other provisions of th[e] [ACA], will significantly reduce administrative costs and lower health insurance premiums. The requirement is *essential* to creating effective health insurance markets that do not require underwriting and eliminate its associated administrative costs." *Id.* § 18091(2)(J) (emphasis added).

d. The Supreme Court explained that the ACA's provisions are "closely intertwined," such that "the guaranteed issue and community rating requirements *would not work* without the coverage requirement [i.e., Section 5000A]." *King*, 135 S. Ct. at 2487 (emphasis added); *NFIB*, 567 U.S. at 547–48 (Roberts, C.J).

e. Upsetting this balance "would destabilize the individual insurance market" in the manner "Congress designed the Act to avoid." *King*, 135 S. Ct. at 2493.

B. The Individual Mandate and the Tax Penalty Are Inextricably Intertwined—One Cannot Exist Without the Other under *NFIB v. Sebelius*.

21. In *NFIB v. Sebelius*, 567 U.S. 519 (2012), the constitutionality of the

ACA was challenged by most of the Plaintiff States herein.

22. As relevant here, the States argued that Section 5000A "exceeded Congress's powers under Article I of the Constitution." *Id.* at 540 (Roberts, C.J.). Specifically, the States argued that: (1) the Commerce Clause did not support the individual mandate; (2) Congress's tax power did not support the mandate; and (3) if Section 5000A is unconstitutional, the Court must enjoin the entire ACA because it is non-severable. *See id.* at 538–43 (Roberts, C.J.).

23. A majority of the Supreme Court held (via the opinion of the Chief Justice and the four-Justice dissenting opinion) that the individual mandate exceeded Congress's power under the Commerce Clause and the Necessary and Proper Clause. *Id.* at 558–61 (Roberts, C.J.); *id.* at 657 (Dissenting Op.).

24. A different majority (via the opinion of the Chief Justice and the four-Justice concurring opinion) then held it was "fairly possible" to read the individual mandate plus its tax penalty as a single, unified tax provision, and thus could be supported under Congress's tax power. *Id.* at 563 (Roberts, C.J.).

25. Under this alternate tax interpretation, Section 5000A is no longer "a legal command to buy insurance" backed up by a threat of paying a penalty that is applicable to some, but not all, of those to whom the mandate applies; "[r]ather, it makes going without insurance just another thing the Government taxes, like buying gasoline or earning income." *Id.* (Roberts, C.J.).

26. "The *essential* feature" of the Court's alternative tax holding is that the tax penalty "produces at least some revenue for the Government." *Id.* at 564 (Roberts, C.J.) (citing *Kahriger*, 345 U.S. at 28 n.4) (emphasis added). "Indeed, the payment is expected to raise about $4 billion per year by 2017." *Id.* (Roberts, C.J.). Absent that "essential feature," the Court's alternative interpretation was not "fairly possible" under both the Constitution's text and longstanding Supreme Court precedent.

27. The *NFIB* dissent rejected this alternate reading. The dissent explained that Section 5000A is "a mandate that individuals maintain minimum essential coverage, [which is] *enforced by a penalty*." *Id.* at 662 (Dissenting Op.) (emphasis added). It is "a mandate to which a penalty is attached," not "a simple tax." *Id.* at 665 (Dissenting Op.).

28. The dissent explained that the structure of Section 5000A supported the mandate-attached-to-a-penalty-that-sometimes-applies reading: Section 5000A mandates that individuals buy insurance in Subsection (a), and then in Subsection (b) it imposes the penalty for failure to comply with Subsection (a). *Id.* at 663 (Dissenting Op.). Section 5000A exempts "some" people from the mandate, but not the penalty—"those with religious objections," who "participate in a health care sharing ministry," and "those who are not lawfully present in the United States." *Id.* at 665 (Dissenting Op.) (citations omitted). "If [Section] 5000A were [simply] a tax" and "no[t] [a] requirement" to obtain health insurance, exempting anyone from the mandate provision, but not the penalty provision, "would make no sense." *Id.* (Dissenting Op.).

29. The Chief Justice agreed with the dissent's primary conclusion (thereby creating a majority) that the "most straightforward reading of" Section 5000A "is that it commands individuals to purchase insurance." *Id.* at 562 (Roberts, C.J.). "Congress thought it could enact such a command under the Commerce Clause, and the Government primarily defended the law on that basis." *Id.* (Roberts, C.J.). The "most natural interpretation of the mandate" is that it is a command backed up by a penalty, not a tax. *Id.* at 563 (Roberts, C.J.).

C. The Tax Cuts and Jobs Act of 2017 Repealed The Tax Penalty, Leaving Only the Unconstitutional Individual Mandate.

30. On December 22, 2017, the President signed into law the Tax Cuts and

Jobs Act of 2017. Among many other provisions, the new law amended Section 5000A. Pub. L. No. 115-97, § 11081.

31. This amendment reduces the operative parts of Section 5000A(c)'s tax penalty formula to "Zero percent" and "$0." Pub. L. No. 115-97, § 11081. This change applies after December 31, 2018. *Id.* After the Tax Cuts and Jobs Act of 2017, Section 5000A(a) still contains the individual mandate, requiring "[a]n applicable individual" to "ensure that the individual . . . is covered under minimum essential coverage," but Section 5000A(b)'s tax "penalty" for an individual who "fails to meet th[is] requirement" is now $0.

32. The House Conference Report of the Tax Cuts and Jobs Act of 2017 agreed. "Under the [ACA], individuals must be covered by a health plan that provides at least minimum essential coverage or be subject to a tax (also referred to as a penalty) for failure to maintain the coverage (commonly referred to as the 'individual mandate')." H.R. Rep. No. 115-466, at 323 (2017).[4] "The Senate amendment reduces the amount of the individual responsibility payment, enacted as part of the Affordable Care Act, to zero." *Id.* at 324. The Conference Report is silent about the individual mandate itself.

33. The CBO's report on the Tax Cuts and Jobs Act of 2017 explains that the bill "eliminate[s]" the "individual mandate penalty . . . *but [not] the mandate itself*." CBO 2017 Report 1. The CBO added that "a small number of people who enroll in insurance because of the mandate under current law would continue to do so [post elimination of the individual mandate's penalty] solely because of a willingness to comply with the law." *Id.*

34. In the Tax Cuts and Jobs Act of 2017, Congress did not amend or repeal the ACA's legislative findings that the individual mandate is essential to the

[4] *See* https://www.gpo.gov/fdsys/pkg/CRPT-115hrpt466/pdf/CRPT-115hrpt466.pdf.

operation of the ACA.

35. As the Supreme Court explained in *NFIB*, "the *essential* feature of any tax" is that it "produces some revenue." 567 U.S. at 564 (emphasis added).

36. Section 5000A, as amended by the Tax Cuts and Jobs Act of 2017, now "produces" no revenue (beginning Jan. 1, 2019). Accordingly, it is not possible to interpret the individual mandate as part of a single unified tax provision.

37. Instead, the "most natural interpretation of the mandate," *id.* at 563 (Roberts, C.J.), is now the *only* interpretation possible: an unconstitutional command from the federal government to individuals to purchase a product.

D. The ACA, As Amended, Imposes Serious Injury and Irreparable Harm Upon the States and Their Citizens.

38. As Congress itself found, the ACA's provisions only work rationally with the individual mandate—a mandate now unconstitutional under *NFIB*.

39. The unconstitutional individual mandate, along with the ACA itself, significantly harms and impacts the States, as independent sovereigns, in various ways:

a. Imposing a burdensome and unsustainable panoply of regulations on a market that each State has the sovereign responsibility to regulate and maintain within its own borders, to wit:

i. The ACA imposes a health insurance exchange in each State for consumers to shop for health plans and access subsidies to help pay for coverage. Under the ACA, States can choose between three types of exchanges:

1. State-based exchange (adopted by 16 States, plus the District of Columbia), including five federally-supported exchanges, which rely on the Healthcare.gov technology

platform;

2. State-partnership with a federally facilitated exchange (adopted by six States), or
3. Federally-facilitated exchange (adopted by 28 States). Defendant HHS established and imposed the exchange infrastructure on the States and certifies at the federal level that participating health plans meet the federal requirements to sell plans on the exchange. The ACA does not grant States statutory authority to enforce the ACA and HHS maintains the authority to take enforcement action. For States involved in the federally-facilitated exchange, carriers must file plans with both the state regulatory authority and CMS (Centers for Medicare and Medicaid Services), even if they do not plan to participate in the exchange. Whether they are sold on or off the federal Marketplace, all individual and small group health insurance plans must include the essential health benefits package and comply with other federal requirements.

ii. The ACA also imposed myriad market reforms on the States, including guaranteed issue, prohibition on preexisting condition exclusions, and modified community ratings.

b. By forcing state, non-federal governmental officials and citizens to comply with the mandates of the ACA, including the individual mandate, and all of the ACA's associated rules and regulations, instead of state-based policy regarding health insurance, Plaintiffs are injured. Sovereigns suffer injury when their duly enacted laws or policies are

enjoined or impeded. *See Alfred L. Snapp & Son, Inc. v. Puerto Rico*, 458 U.S. 592, 601 (1982) (recognizing the interest of a sovereign in its "power to create and enforce a legal code, both civil and criminal"); *Alaska v. U.S. Dep't of Transp.*, 868 F.2d 441, 443 n.1 (D.C. Cir. 1989) (agreeing that the State has standing to seek declaratory and injunctive relief "because DOT claims that its rules preempt state consumer protection statutes, [and therefore] the States have suffered injury to their sovereign power to enforce state law"); *Maryland v. King*, 133 S. Ct. 1, 3 (2012) (citing *New Motor Vehicle Bd. v. Orrin W. Fox Co.,* 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers) ("It also seems to me that any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.")); *Planned Parenthood of Greater Texas Surgical Health Servs. v. Abbott*, 734 F.3d 406, 419 (5th Cir. 2013) ("When a statute is enjoined, the State necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws."); *Coalition for Econ. Equity v. Wilson,* 122 F.3d 718, 719 (9th Cir. 1997); *Illinois Dep't of Transp. v. Hinson*, 122 F.3d 370, 372 (7th Cir. 1997) (State has standing where it "complains that a federal regulation will preempt one of the state's laws.").

c. The unconstitutional individual mandate, along with the ACA itself, significantly harms and impacts the States by compelling them to take corrective action, at great cost, to save their insurance markets, to wit:

   i. On January 21, 2018, Governor Scott Walker of Wisconsin called on the Legislature to pass "a state-based reinsurance program" for individuals purchasing insurance on the ACA's exchanges, which will "stabilize[ ]" the market after "insurers exit[ ] [and]

shock rate increases." Governor Scott Walker, Press Release, Governor Walker Proposes Health Care Stability Plan to Stabilize Premiums for Wisconsinites on Obamacare (Jan. 21, 2018).[5] This proposal would cost $200 million, split between State and federal funds. Governor Scott Walker, Memo Accompanying Jan. 21, 2018 Press Release.[6] The Wisconsin Legislature passed a reinsurance program in February 2018.[7] Wisconsin's reinsurance program is necessary because the ACA's regulations of the individual market causes health-insurance premiums to rise substantially. Without Wisconsin's intervention, plans in the individual market would either not be offered, or would be prohibitively expensive.

ii. Wisconsin's Insurance Commissioner, like the insurance commissioners of all States, will need to take other corrective actions to protect Wisconsin citizens from the ACA's irrational regime.

iii. While the Texas Legislature did not adopt most ACA requirements into Texas law, the Texas Department of Insurance ("TDI") monitors the impact of the ACA on the Texas insurance market and takes action, when warranted, to protect consumers and minimize market disruptions. For example, TDI developed navigator rules to address insufficient federal standards for navigators, 28 TAC §§ 19.4001–19.4017, and the ACA-forced

[5] *See* https://walker.wi.gov/press-releases/governor-walker-proposes-health-care-stability-plan-stabilize-premiums-wisconsinites.

[6] *See* https://jwyjh41vxje2rqecx3efy4kf-wpengine.netdna-ssl.com/wp-content/uploads/2018/01/180120Overview.pdf.

[7] *See* Wisconsin State Legislature, Senate Bill 770, https://docs.legis.wisconsin.gov/2017/proposals/reg/sen/bill/sb770.

dissolution of the Texas Health Insurance Pool caused insurance coverage disruptions given the difficulties with the federal health exchange rollout, requiring TDI to issue an emergency rule extending existing insurance coverage for Texas Health Insurance Pool enrollees.

iv. Moreover, like other States, many health insurers have withdrawn from Texas due to unsustainable rising costs. Some federally designated regions of Texas have only one insurance carrier offering healthcare plans. Texas residents and employers, including Texas itself as an employer, suffer as a result of this lack of choice and higher costs.

v. Likewise, the ACA has wrought havoc on the health insurance market in Nebraska. In 2017, two insurers exited Nebraska's individual market, leaving only a single insurer remaining. Aetna announced its withdrawal from Nebraska's individual market in May 2017, citing an expected loss of $200 million for 2017 in the four states Aetna sold individual coverage. In June 2017, Blue Cross and Blue Shield of Nebraska also announced its withdrawal from Nebraska's individual market, citing an expected loss of $12 million for 2017, in addition to the approximately $150 million loss the company experienced in Nebraska from 2014 to 2016. In the wake of these companies' departures, only a single insurer, Medica, is left in Nebraska's individual market. Nebraskans are left to hope Medica—which itself raised premiums in plan year 2017 by an average of nearly 31 percent—remains in the market for 2019.

vi. In Missouri, the Interim Committee on Stabilizing Missouri's Health Insurance Markets, a bi-partisan committee of the Missouri House, was formed to work on solving the rising instability plaguing the Missouri insurance markets as a result of the ACA. The committee voted unanimously to create the "Missouri Reinsurance Plan," and legislation to establish the Missouri Reinsurance Plan, introduced on February 22, 2018. H.B. 2539, 99th General Assembly (Mo. 2018).[8]

vii. Governor Otter of Idaho recently issued an Executive Order to the Idaho Department of Insurance to "approve [health-insurance plans] that follow all State-based requirements, even if not all [ACA] requirements are met." Office of Governor C.L. "Butch" Otter, Executive Order No. 2018-02 (Jan. 5, 2018).[9] The Idaho Department of Insurance has issued a bulletin implementing this order. Idaho Dep't of Ins., Bulletin No. 18-01 (Jan. 24, 2018).[10]

viii. Maryland began investigating the enactment of its own state-level individual mandate to replace the amended ACA individual mandate.[11]

ix. Other States will need to take similar corrective measures to address the ACA's irrational regime.

40. The unconstitutional individual mandate, along with the ACA itself, significantly harms and impacts the States as Medicaid and CHIP providers:

---

[8] *See* https://www.house.mo.gov/billtracking/bills181/hlrbillspdf/5903H.01I.pdf.
[9] *See* https://gov.idaho.gov/mediacenter/execorders/eo2018/EO%202018-02.pdf.
[10] *See* https://doi.idaho.gov/DisplayPDF?Id=4712.
[11] *See* Josh Hicks, *With Obama's Federal Mandate Disappearing, Md. Democrats Push 'Down Payment' Plan*, Wash. Post (Jan. 9, 2018), https://www.washingtonpost.com/local/md-politics/md-democrats-push-insurance-down-payment-plan-to-replace-federal-mandate/2018/01/09/bc0afbb0-f4f4-11e7-beb6-c8d48830c54d_story.html?utm_term=.789a454ab8bf.

a. The United States Congress created the Medicaid program in 1965. *See* Social Security Amendments of 1965, Pub. L. No. 89-97, 79 Stat. 286 (1965). Medicaid is jointly funded by the United States and the States to provide healthcare to individuals with insufficient income and resources. *See generally* 42 U.S.C. §§ 1396-1396w. To participate in Medicaid, States must provide coverage to a federally-mandated category of individuals and according to a federally-approved State plan. *See* 42 U.S.C. § 1396a; 42 C.F.R. §§ 430.10–430.12. All 50 States participate in the Medicaid program.[12]

b. The United States Congress created the Children's Health Insurance Program ("CHIP") in 1997. *See* Balanced Budget Act of 1997, Pub. L. No. 105-33, Title IV, Subtitle J, 111 Stat. 251 (Aug. 5, 1997). The federal government and the States jointly fund CHIP to provide healthcare for uninsured children that do not qualify for Medicaid. *See* 42 U.S.C. § 1397aa. CHIP covers children in families who have too much income to qualify for Medicaid, but cannot afford to buy private insurance. CHIP provides basic primary health care services to children, as well as other medically necessary services, including dental care. All States now participate in CHIP since its creation in 1997.

c. Because Medicaid and CHIP are entitlement programs, States cannot limit the number of eligible people who can enroll, and Medicaid and CHIP must pay for all services covered under the program. Providing health care to individuals with insufficient income or resources through the Medicaid or CHIP programs is a significant function of state

[12] *Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2014 through September 30, 2015*, 79 Fed. Reg. 3385 (Jan. 21, 2014).

government.

d. One avenue for individuals to comply with Section 5000A's individual mandate is to apply for Medicaid or CHIP. 26 U.S.C. § 5000A(f)(1)(A)(iii). Thus, because of the individual mandate and the ACA, many individuals became eligible for Medicaid, or may have been previously eligible but opted not to enroll. Either way, the individual mandate requires millions more to enroll in Medicaid, imposing additional costs on the States. This reality does not represent "unfettered choices made by independent [state] actors," *ASARCO Inc. v. Kadish,* 490 U.S. 605, 615 (1989), but is rather a direct consequence of the individual mandate and the ACA, leaving Medicaid as the only option through which numerous individuals may comply.

e. As the CBO explained before both the enactment of ACA and the enactment of the Tax Cuts and Jobs Act of 2017, at least some individuals will obtain health insurance because of the mandate, even absent any tax penalty. *See* CBO 2017 Report 1.

f. The mandate forcing more individuals onto Medicaid or CHIP causes significant monetary injuries to the States, because these programs obligate the States to share the expenses of coverage with the federal government.

41. Pursuant to 26 U.S.C. § 4980H, the ACA harms the States as large employers:

a. The ACA requires States, as large employers, to offer their employees health-insurance plans with minimum essential benefits defined solely by the Federal Government.

b. If a State wished to pursue other health-insurance policies for its

employees, perhaps by offering insurance with a different assortment of coverage benefits, the Federal Government will tax or penalize the State. 26 U.S.C. § 4980H.

c. The ACA imposes a 40% "[e]xcise tax" on "high cost employer-sponsored health coverage." 26 U.S.C. § 4980I. As an employer, Wisconsin must do "considerable work" restructuring its health-insurance offerings to avoid this costly measure.[13] This work "may have a significant effect on future plan design and maximum benefit limitations."[14]

d. Because of the costs of the ACA, a major Wisconsin health insurer, Assurant Health, ceased its Wisconsin operations.[15] This cost Wisconsin approximately 1,200 jobs.[16]

e. The ACA resulted in the repeal of Wisconsin's high-risk pool, the Health Insurance Risk-Sharing Plan, which effectively managed the health-insurance needs of high-risk individuals before the full implementation of the ACA. Wis. Stat. §§ 149.10–.53 (2011–12) (statutory framework for Wisconsin Health Insurance Risk-Sharing Plan), *repealed by* 2013 Wis. Act 20, § 1900n; *see generally* Wis. Legislative Audit Bureau, Report 14-7 Health Insurance Risk-Sharing Plan Authority at p.1 (June 2014) (describing history of Wisconsin's HIRSP, including dissolution and repeal).

f. If state employees obtain subsidized insurance from an exchange instead of from a state plan, the Federal Government will tax or penalize

[13] Segal Consulting, Second Report—Observations and Recommendations for 2017 and Beyond, prepared for Wisconsin Group Insurance Board Department of Employee Trust Funds, at p. 141 (Nov. 17, 2015), http://etf.wi.gov/boards/agenda-items-2015/gib1117/item3ar.pdf.
[14] *Id*. at 142.
[15] *See* Guy Boulton, Milwaukee-Based Assurant Health To Be Sold Of Or Shut Down, Milwaukee Journal Sentinel (Apr. 28, 2015), http://archive.jsonline.com/business/assurant-considering-sale-of-milwaukee-based-assurant-health-b99490422z1-301614251.html.
[16] *Id*.

the State.

g. More employees will join state-sponsored plans because of the mandate, imposing additional costs upon the States. *See* CBO 2017 Report 1. In Texas, for example, from FY13–FY17, the Texas Group Benefits Program, administered by the Employees Retirement System of Texas, spent $487 million on ACA-related costs. *2016 Group Benefits Program Comprehensive Annual Report*, Employees Retirement System of Texas (Feb. 2017).[17]

h. Nebraska, for example, has borne significant new costs at the behest of the ACA. Nebraska, like other States, must offer non-full time employees (*i.e.*, employees working 30–39 hours per week) health insurance plans with premiums identical to those offered to full time employees.

i. In Missouri, revenue is drained by faster-than-projected growth in health care expenditures, driven in part by the impact of the ACA. Accordingly, Governor Greitens's budget for Fiscal Year 2018 includes more than $572 million in cuts across Missouri state government and reduces the State's workforce by 188 positions. Mo. Office of Admin., Summary, The Missouri Budget, (2018).[18] For Fiscal Year 2019, the problems continue. "Health care costs paid by the government continue to skyrocket. Obamacare has still not been repealed, and the cost of health care continues to rise. Taxpayers pay more and more for government health care every year with little or no improvement in

[17] *See* https://ers.texas.gov/About-ERS/Reports-and-Studies/Reports-and-Studies-on-ERS-administered-Benefit-Programs/FY16-GBP-Comprehensive-Annual-Report.pdf.
[18] *See* https://oa.mo.gov/sites/default/files/FY_2018_Budget_Summary_Abridged.pdf.

> results." Mo. Office of Admin., Fiscal Year 2019 Budget Priorities, The Missouri Budget.[19]
>
> In South Dakota, the estimated cost impact of the ACA upon the South Dakota State Employee Benefits Program for FY 2015–2018 is as follows: $10,400 for the review of denied appeals; $19,140,252 for the elimination of the lifetime maximum; $4,575,200 for the expanded preventive services paid only by the plan; $3,202,942 for the Transitional Reinsurance Program fee (fee imposed on self-funded plans); $172,141 for the Patient Centered Outcomes Research Institute fee (fee imposed on self-funded plans); $1,514,205 for the expanded health plan eligibility for part-time employees who did not meet the pre-ACA eligibility definition; $100,000 for the Form 1095-C administration. To date, South Dakota is unable to accurately estimate the cost of the pre-existing conditions exclusion or the expanded eligibility for adult dependent children to age 26, though upon information and belief, those qualifiers have increased the costs for South Dakota's taxpayers.

42. Under the ACA health insurance plans available to Individual Plaintiffs Hurley and Nantz, Individual Plaintiffs pay dramatically more than prior to the ACA, have lost access to the doctors and health care providers of their choice, and are unable to purchase a health insurance plan that meets their needs and preferences.

43. The ACA injures Individual Plaintiffs Hurley and Nantz by mandating that they purchase minimum essential health insurance coverage despite the Supreme Court's determination that the requirement is unconstitutional. Despite the

[19] *See* https://oa.mo.gov/sites/default/files/FY_2019_Budget_Summary.pdf.

reduction of the individual mandate penalty to $0.00 under the Tax Cuts and Jobs Act, Individual Plaintiffs have an obligation to comply with the individual mandate under the ACA while it remains federal law, despite the provision's unconstitutionality.

44. The ACA further injures the Individual Plaintiffs by establishing a health-care insurance regulatory system that prevents the Individual Plaintiffs from purchasing health insurance under a free-market system that would allow them to have lower premiums, choice in provider, and options for health insurance plans.

45. The ACA further injures the Individual Plaintiffs by requiring them to divert resources from their businesses in order to obtain qualifying health insurance coverage, regardless of their judgment as to whether maintaining such coverage is a worthwhile cost of doing business, thereby harming their abilities to maintain their own businesses.

46. In the absence of the ACA, the Individual Plaintiffs would purchase a health-insurance plan different from the ACA-compliant plans that they are currently required to purchase were they afforded the option without the ACA.

47. Each of the injuries to Individual Plaintiffs is caused by the Defendants' continued enforcement of the Affordable Care Act, and each of these injuries will be redressed by a declaratory judgment from this Court pronouncing the Affordable Care Act unconstitutional.

IV. CLAIMS FOR RELIEF

COUNT ONE

Declaratory Judgment That the Individual Mandate of the ACA Exceeds Congress's Article I Constitutional Enumerated Powers

48. Plaintiffs incorporate the allegations contained in paragraphs 1 through 47 as if fully set forth herein.

49. Section 5000A's individual mandate exceeds Congress's enumerated powers by forcing Individual Plaintiffs to maintain ACA-compliant health insurance coverage. Congress lacks the authority under the Commerce Clause and Necessary and Proper Clause to command individuals to purchase health insurance, and the individual mandate cannot be upheld under any other provision of the Constitution.

50. As a majority of the Supreme Court concluded, the "most straightforward reading of" Section 5000A "is that it commands individuals to purchase insurance." *NFIB*, 567 U.S. at 562–63 (Roberts, C.J.); *id*. at 663–65 (Dissenting Op.). Thus, Congress lacks authority under the Commerce Clause and Necessary and Proper Clause to command individuals to purchase health insurance.

51. In *NFIB*, a different majority of the Supreme Court saved Section 5000A from unconstitutionality by interpreting it not as a mandate enforced by a separate tax penalty, but by combining the mandate with the tax penalty and treating those provisions as a single tax on individuals who chose to go without insurance. 567 U.S. at 563 (Roberts, C.J.).

52. The Constitution grants to Congress the "Power to lay and collect Taxes . . . to pay the Debts and provide for the common Defence and general Welfare of the United States." U.S. Const. art. I, § 8, cl. 1.

53. A provision that raises no revenue is not a tax because it does nothing to "pay the Debts" or "provide for the common Defense and general Welfare of the

United States." Indeed, "the essential feature of any tax" is the "produc[tion] [of] at least some revenue for the Government." *NFIB*, 567 U.S. at 564–65, 574.

54. The Tax Cuts and Jobs Act of 2017 reduced Section 5000A's tax penalty to $0. Pub. L. No. 115-97, § 11081. Accordingly, Section 5000A no longer possesses "the essential feature of any tax"; it no longer "produces at least some revenue for the Government."

55. Therefore, after Congress amended Section 5000A, it is no longer possible to interpret this statute as a tax enacted pursuant to a valid exercise of Congress's constitutional power to tax. Rather, the only reading available is the most natural one; Section 5000A contains a stand-alone legal mandate.

56. No other provision of the Constitution supports Congress's claimed authority to enact Section 5000A's individual mandate. Accordingly, Section 5000A's individual mandate is unconstitutional.

57. The remainder of the ACA is non-severable from the individual mandate, meaning that the Act must be invalidated in whole.

58. Alternatively, and at the very minimum, as even the Obama Administration conceded in its briefing in *NFIB*, the guaranteed-issue and community-rating provisions are non-severable from the mandate and must be invalidated along with the individual mandate.

59. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, irreparable injury.

60. Plaintiffs are entitled to a declaration that the individual mandate of the ACA exceeds Congress's Article I constitutionally enumerated powers. Plaintiffs also are entitled to a permanent injunction against Defendants from implementing, regulating, or otherwise enforcing any part of the ACA because its requirements are unlawful and not severable from the unconstitutional individual mandate.

COUNT TWO

Declaratory Judgment That the ACA Violates the Due Process Clause of the Fifth Amendment to the Constitution

61. Plaintiffs incorporate the allegations contained in paragraphs 1 through 60 as if fully set forth herein.

62. The Due Process Clause of the Fifth Amendment provides "nor shall any person . . . be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

63. The Fifth Amendment contains an "implicit" "equal protection principle" binding the federal Government. *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1686 (2017).

64. Legislation that imposes irrational requirements violates the Due Process Clause.

65. Given that Section 5000A's individual mandate is unconstitutional, the rest of the ACA is irrational under Congress's own findings.

66. The ACA lacks a rational basis now that the individual mandate's tax penalty has been repealed.

67. Section 18091(2)(I), the chief legislative finding in the ACA, explains that "[t]he requirement [to buy health insurance] is *essential* to creating effective health insurance markets in which improved health insurance products that are guaranteed issue and do not exclude coverage of pre-existing conditions can be sold." 42 U.S.C. § 18091(2)(I).

68. Given that the ACA's "essential" feature—the individual mandate—is unconstitutional, the law now imposes irrational requirements, in violation of the Due Process Clause.

69. Because of Defendants' actions, Plaintiffs have suffered, and

continue to suffer, irreparable injury.

70. Plaintiffs are entitled to a declaration that the ACA violates the Due Process Clause to the Fifth Amendment. Plaintiffs also are entitled to a permanent injunction against Defendants from implementing, regulating, or otherwise enforcing any part of the ACA because its requirements are unlawful and not severable from the unconstitutional individual mandate.

COUNT THREE

Declaratory Judgment That the ACA Violates the Tenth Amendment to the United States Constitution

71. Plaintiffs incorporate the allegations contained in paragraphs 1 through 70 as if fully set forth herein.

72. The Tenth Amendment provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X.

73. Legislation that is irrational is outside the powers delegated to the United States by the Constitution.

74. Under Congress's own findings, the ACA lacks a rational basis now that the individual mandate's tax penalty has been repealed and the individual mandate is unconstitutional. *See supra* ¶¶ 53–62.

75. The ACA is therefore not within the powers delegated to the United States.

76. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, irreparable injury.

77. Plaintiffs are entitled to a declaration that the ACA violates the Tenth Amendment to the United States Constitution. Plaintiffs also are entitled to a permanent injunction against Defendants from implementing, regulating, or

otherwise enforcing any part of the ACA because its requirements are unlawful and not severable from the unconstitutional individual mandate.

COUNT FOUR

Declaratory Judgment Under 5 U.S.C. § 706 that Agency Rules Promulgated Pursuant to the ACA Are Unlawful

78. Plaintiffs incorporate the allegations contained in paragraphs 1 through 77 as if fully set forth herein.

79. The Administrative Procedure Act requires the Court to hold unlawful and set aside any agency action that is, among other things, (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (b) contrary to constitutional right, power, privilege, or immunity; and (c) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right. 5 U.S.C. § 706(2).

80. The Department and Service are both "agenc[ies]" under the Administrative Procedures Act, 5 U.S.C. § 551(1), and the regulations and rules promulgated pursuant to the ACA are "rules" under the Administrative Procedures Act, 5 U.S.C. § 551(4).

81. Because the ACA exceeds Congress's Article I Constitutional enumerated powers and violates the Fifth and Tenth Amendments to the Constitution for the reasons described in prior paragraphs, all regulations promulgated pursuant to, implementing, or enforcing, the ACA are arbitrary and capricious, contrary to law, and in excess of agency authority.

82. Because of Defendants' actions, Plaintiffs have suffered, and continue to suffer, irreparable injury.

83. Plaintiffs are entitled to a declaration that regulations promulgated pursuant to, implementing, or enforcing the ACA violates the Administrative

Procedure Act. Plaintiffs also are entitled to a permanent injunction against Defendants from implementing, regulating, or otherwise enforcing any part of the ACA because its requirements are unlawful and not severable from the unconstitutional individual mandate.

COUNT FIVE

Injunctive Relief Against Federal Officials from Implementing, Regulating, or Otherwise Enforcing the ACA

84. Plaintiffs incorporate the allegations contained in paragraphs 1 through 83 as if fully set forth herein.

85. Plaintiffs are entitled to a permanent injunction against Defendants from implementing, regulating, or otherwise enforcing any part of the ACA because its requirements are unlawful and not severable from the unconstitutional individual mandate.

V. PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court:

A. Declare the ACA, as amended by the Tax Cuts and Jobs Act of 2017, to be unconstitutional either in part or in whole.

B. Declare unlawful any and all rules or regulations promulgated pursuant to, implementing, regulating, or otherwise enforcing the ACA.

C. Enjoin, preliminarily and permanently, Defendants and their employees, agents, successors, or any other person acting in concert with them, from implementing, regulating, enforcing, or otherwise acting under the authority of the ACA.

D. Award Plaintiffs their reasonable costs, including attorneys' fees.

E. Grant Plaintiffs any and all such other and further relief to which they are justly entitled at law and in equity.

Respectfully submitted this the 23rd day of April, 2018,

BRAD SCHIMEL
Attorney General of Wisconsin

STEVE MARSHALL
Attorney General of Alabama

LESLIE RUTLEDGE
Attorney General of Arkansas

MARK BRNOVICH
Attorney General of Arizona

PAM BONDI
Attorney General of Florida

CHRISTOPHER CARR
Attorney General of Georgia

CURTIS HILL
Attorney General of Indiana

DEREK SCHMIDT
Attorney General of Kansas

JEFF LANDRY
Attorney General of Louisiana

JOSH HAWLEY
Attorney General of Missouri

DOUG PETERSON
Attorney General of Nebraska

WAYNE STENEHJEM
Attorney General of North Dakota

ALAN WILSON
Attorney General of South Carolina

MARTY JACKLEY
Attorney General of South Dakota

HERBERT SLATERY, III
Attorney General of Tennessee

SEAN REYES
Attorney General of Utah

PATRICK MORRISEY
Attorney General of West Virginia

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

BRANTLEY D. STARR
Deputy First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

/s/ Darren McCarty
DARREN McCARTY
Special Counsel for Civil Litigation
Texas Bar No. 24007631
darren.mccarty@oag.texas.gov

AUSTIN R. NIMOCKS
Special Counsel for Civil Litigation

Attorney General of Texas
P.O. Box 12548, Mail Code 001
Austin, Texas 78711-2548
Tel: 512-936-1414

ATTORNEYS FOR PLAINTIFF-STATES

TAB 3

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

TEXAS, WISCONSIN, ALABAMA, ARKANSAS, ARIZONA, FLORIDA, GEORGIA, INDIANA, KANSAS, LOUISIANA, PAUL LePAGE, Governor of Maine, MISSISSIPPI, by and through Governor Phil Bryant, MISSOURI, NEBRASKA, NORTH DAKOTA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, UTAH, WEST VIRGINIA, NEILL HURLEY, and JOHN NANTZ,	§	CIVIL ACTION NO. 4:18-CV-00167-O
Plaintiffs,	§	
v.	§	
UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ALEX AZAR, in his Official Capacity as SECRETARY OF HEALTH AND HUMAN SERVICES, UNITED STATES INTERNAL REVENUE SERVICE, and DAVID J. KAUTTER, in his Official Capacity as Acting COMMISSIONER OF INTERNAL REVENUE,	§	
Defendants.	§	

DECLARATION OF JOHN NANTZ

I, John Nantz, do hereby declare:

1. I am a citizen of the United States and a resident of Austin, Texas.

2. I am 31 years old.

3. I am single. I have no dependents.

4. I am self-employed, and the founder of a management consulting business. I advise clients on maximizing growth potential, and develop organizational plans and digital strategic plans.

5. I am ineligible for health insurance coverage through an employer, Medicare, Medicaid, or the Children's Health Insurance Program.

6. I am ineligible to receive a subsidy from the federal government to purchase health insurance coverage.

7. I am currently covered under an individual health insurance plan that meets minimum standards mandated by the Affordable Care Act.

8. For the 2018 calendar year, I purchased health insurance from Oscar Insurance based on a recommendation from Stride Health (an individual insurance advisory company). I am enrolled in the Oscar Saver Bronze Plan, an ACA-compliant individual health insurance plan.

9. My monthly premium is $266.56. I must pay a deductible of $6,500.00 annually before my health insurance company begins to pay for covered health care services. As stated on Oscar Insurance's website, "You pay the full price for covered medical services until you spend $6,500.00. After that, Oscar pays the full amount of your covered medical care (in-network only)". The plan also includes a select set of complimentary services including an annual routine physical examination and Doctor on Demand access. The full list of complimentary services can be found at https://www.hioscar.com/benefits/preventive/.

10. I have been enrolled in an ACA-mandated plan since 2014. Before that, I was enrolled in an employer-sponsored plan offered by McKinsey & Company, which offered access to a much wider network of providers. The cost of my current plan is high given the high deductible, limited network of providers and my age and health status. I enrolled in this plan because I was required by the ACA to do so; I do not believe it provides sufficient value to warrant the cost.

11. My plan is an Exclusive Provider Organization (EPO) Plan. I am limited to using the health care providers within the network. The plan provides no out-of-network benefits.

12. I am young and in good health. I have received minimal professional medical care for years with my use of the healthcare system limited almost exclusively to seeing sports therapists and chiropractors which I have paid out-of-pocket or with my HSA. The money that I have paid for ACA-mandated health insurance premiums would have been much better spent on additional contributions to a Health Savings Account and/or basic catastrophic insurance, which would be my preferred insurance option.

13. The ACA has greatly increased my health insurance costs. My preference would be to purchase reasonably-priced insurance coverage that is consumer-driven in accordance with my actuarial risk. I would maintain health insurance coverage through a plan that offers low premiums and a high deductible priced according to my risks and lifestyle choices. This would be available to me in a consumer-driven, competitive insurance market. In this situation, I would contribute to a Health Savings Account, which I would use to pay for my health expenses.

14. The ACA's individual mandate requires me to divert resources from my business endeavors in order to obtain qualifying health insurance coverage, regardless of my own judgment as to whether maintaining such coverage is a worthwhile cost of doing business. The additional costs imposed upon me by the individual mandate place a burden on my business.

15. I value compliance with my legal obligations, and believe that following the law is the right thing to do. The repeal of the associated health insurance tax penalty did not relieve me of the requirement to purchase health insurance. I continue to maintain minimum essential health insurance coverage because I am obligated to comply with the Affordable Care Act's individual mandate, even though doing so is a burden to me.

I declare under penalty of perjury under the laws of the State of Texas and the United States that the foregoing is true and correct.

Executed on this 23 day of April, 2018.

John Nantz

JOHN NANTZ

TAB 4

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

TEXAS, WISCONSIN, ALABAMA, ARKANSAS, ARIZONA, FLORIDA, GEORGIA, INDIANA, KANSAS, LOUISIANA, PAUL LePAGE, Governor of Maine, MISSISSIPPI, by and through Governor Phil Bryant, MISSOURI, NEBRASKA, NORTH DAKOTA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, UTAH, WEST VIRGINIA, NEILL HURLEY, and JOHN NANTZ,	§	CIVIL ACTION NO. 4:18-CV-00167-O
Plaintiffs,	§	
v.	§	
UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ALEX AZAR, in his Official Capacity as SECRETARY OF HEALTH AND HUMAN SERVICES, UNITED STATES INTERNAL REVENUE SERVICE, and DAVID J. KAUTTER, in his Official Capacity as Acting COMMISSIONER OF INTERNAL REVENUE,	§	
Defendants.	§	

DECLARATION OF NEILL HURLEY

I, Neill Hurley, do hereby declare:

1. I am a citizen of the United States and a resident of Katy, Texas.

2. I am thirty-nine years old.

3. I am married. I have two dependent children.

4. I am self-employed, and own a consulting business. I am a technology consultant in the parking industry.

5. I am ineligible for health insurance coverage through an employer, Medicare, Medicaid, or the Children's Health Insurance Program.

6. I am ineligible to receive a subsidy from the federal government to purchase health insurance coverage.

7. I am currently covered under a family health insurance plan that meets minimum standards under the Affordable Care Act. This plan also covers my wife and our two children. My health insurance company is Community Health Choice, and we are enrolled in the HMO Bronze Plan.

8. I selected and enrolled in my health insurance plan online through www.healthcare.gov - the health insurance marketplace established by the federal government and managed by the U.S. Centers for Medicare and Medicaid Services.

9. My monthly premium is $1,081.70. I must pay a deductible of $6,000.00 annually for myself and for each covered family member or until our combined family deductible expenses meet the overall family deductible of $12,000.00 annually.

10. I first enrolled in an ACA Gold plan in 2016. I paid a monthly premium of $912.60. I renewed that plan in 2017, even though the monthly premium had increased by 17 percent to $1,071.50. In October of 2017, I received a notice from my health insurance company that my monthly premium for the same plan would increase by 49 percent to $1,594.84 if I elected to renew coverage for 2018. I had to enroll in the Bronze plan, which provides an inferior level of coverage, because I could no longer afford to pay for the Gold plan.

11. I was enrolled in a health insurance plan through my previous employer before the ACA mandated that I obtain coverage. My previous plan was widely accepted by the health care providers in our local area. I only had to pay a low co-pay for physician visits instead of meeting a high deductible before any benefits are provided. My monthly premiums under my previous plan were only $425.00.

12. I was unable to obtain a plan through the federal marketplace that was accepted by all of my and my family's health care providers. I opted to enroll in a plan that was accepted by my children's pediatrician. Our family practice physician, ENT specialist, dermatologist, urgent care facility and urologist do not accept our ACA plan, so we had to find new health care providers that we would not otherwise choose. Our new health care providers are not of the same quality as I and my family had before. Some of our new health care providers have limited the number of appointments available to patients with ACA plans, which delays my ability to timely access health care for me and my family.

13. The ACA prevents me from obtaining care from my preferred health care providers and has greatly increased my health insurance costs. I would purchase reasonably-priced insurance coverage that allowed me to access care locally from my preferred service providers, were I not limited to the plans provided through the federal health insurance marketplace.

14. The ACA's individual mandate requires me to divert resources from my business endeavors in order to obtain qualifying health insurance coverage, regardless of my own judgment as to whether maintaining such coverage is a worthwhile cost of doing business. The additional costs imposed upon me by the individual mandate place a burden on my business.

15. I value compliance with my legal obligations, and believe that following the law is the right thing to do. The repeal of the associated tax penalty did not relieve me of the requirement to purchase health insurance. I continue to maintain minimum essential health insurance coverage because I am obligated to comply with the Affordable Care Act's individual mandate.

I declare under penalty of perjury under the laws of the State of Texas and the United States that the foregoing is true and correct.

Executed on this 23 day of April, 2018.

NEILL HURLEY

TAB 5

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

TEXAS, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
UNITED STATES OF AMERICA, et al.,	§	**Civil Action No. 4:18-cv-00167-O**
	§	
Defendants,	§	
	§	
	§	
CALIFORNIA, et al.	§	
	§	
Intervenors-Defendants.	§	

MEMORANDUM OPINION AND ORDER

The United States healthcare system touches millions of lives in a daily and deeply personal way. Health-insurance policy is therefore a politically charged affair—inflaming emotions and testing civility. But Article III courts, the Supreme Court has confirmed, are not tasked with, nor are they suited to, policymaking.[1] Instead, courts resolve discrete cases and controversies. And sometimes, a court must determine whether the Constitution grants Congress the power it asserts and what results if it does not. If a party shows that a policymaker exceeded the authority granted it by the Constitution, the fruit of that unauthorized action cannot stand.

Here, the Plaintiffs allege that, following passage of the Tax Cuts and Jobs Act of 2017 (TCJA), the Individual Mandate in the Patient Protection and Affordable Care Act (ACA) is unconstitutional. They say it is no longer fairly readable as an exercise of Congress's Tax Power

[1] *See Nat'l Fed'n of Indep. Businesses v. Sebelius (NFIB)*, 567 U.S. 519, 530–38 (2012) (noting the wisdom of legislative policy is entrusted to the Nation's elected leaders).

and continues to be unsustainable under the Interstate Commerce Clause. They further urge that, if they are correct, the balance of the ACA is untenable as inseverable from the Invalid Mandate.

Resolution of these claims rests at the intersection of the ACA, the Supreme Court's decision in *NFIB*, and the TCJA. In *NFIB*, the Supreme Court held the Individual Mandate was unconstitutional under the Interstate Commerce Clause but could fairly be read as an exercise of Congress's Tax Power because it triggered a tax. The TCJA eliminated that tax. The Supreme Court's reasoning in *NFIB*—buttressed by other binding precedent and plain text—thus compels the conclusion that the Individual Mandate may no longer be upheld under the Tax Power. And because the Individual Mandate continues to mandate the purchase of health insurance, it remains unsustainable under the Interstate Commerce Clause—as the Supreme Court already held.

Finally, Congress stated many times unequivocally—through enacted text signed by the President—that the Individual Mandate is "essential" to the ACA. And this essentiality, the ACA's text makes clear, means the mandate must work "together with the other provisions" for the Act to function as intended. All nine Justices to review the ACA acknowledged this text and Congress's manifest intent to establish the Individual Mandate as the ACA's "essential" provision. The current and previous Administrations have recognized that, too. Because rewriting the ACA without its "essential" feature is beyond the power of an Article III court, the Court thus adheres to Congress's textually expressed intent and binding Supreme Court precedent to find the Individual Mandate is inseverable from the ACA's remaining provisions.

Construing the Plaintiffs' Application for Preliminary Injunction, (ECF No. 39), as a motion for partial summary judgment, the Court therefore **DENIES** Plaintiffs' request for an injunction but **GRANTS** summary judgment on Count I of the Amended Complaint. *See* FED. R. CIV. P. 56(f); July 16, 2018 Order, ECF No. 176.

I. BACKGROUND

More than any factual developments, the background to this case involves the nuances of the ACA, *NFIB*, and the TCJA, which the Court traces below.

A. The ACA

The ACA became law on March 23, 2010. *See* Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119-1045 (2010). Congress intended the ACA to achieve "near-universal" health-insurance coverage and to "lower health insurance premiums" through the "creation of effective health insurance markets" and new statutory requirements for individuals and insurance companies. *See, e.g.*, 42 U.S.C. §§ 18091(2)(D), (2)(F), and (2)(I). It pursued these goals through a carefully balanced restructuring of the Nation's health-insurance ecosystem.

For starters, the ACA established a "[r]equirement to maintain minimum essential coverage"—commonly known as the "Individual Mandate." 26 U.S.C. § 5000A(a). To compel compliance with the Individual Mandate, Congress imposed a tax penalty on individuals who were subject to the requirement but chose to disobey it. *Id.* § 5000A(b). The ACA labeled this penalty the "[s]hared responsibility payment." It was originally to be assessed at either $695.00 or a 2.5 percent share of a family's household income—whichever was greater. *Id.* § 5000A(c).

From the start, Congress exempted some individuals from Individual Mandate. For example: those qualifying for a "[r]eligious exemption[]," *id.* § 5000A(d)(2)(A); "member[s] of a health care sharing ministry," *id.* § 5000(d)(2)(B); individuals who are "not . . . citizen[s] or national[s] of the United States . . . or alien[s] lawfully present in the United States," *id.* § 5000A(d)(3); and "[i]ncarcerated individuals," *id.* § 5000A(d)(4). At the same time, Congress exempted five categories of individuals from the shared-responsibility payment but not the Individual Mandate. *See id.* § 5000A(e). This means several classes of individuals are obligated

by § 5000A(a) to obtain minimum-essential coverage but are not subject to the tax penalty for failure to do so.[2]

Congress also wanted to ensure affordable health insurance for those with pre-existing conditions. *See* 42 U.S.C. § 18091(2)(I) ("By significantly increasing health insurance coverage, the [Individual Mandate], together with the other provisions of this Act, will minimize . . . adverse selection and broaden the health insurance risk pool to include healthy individuals, which will lower health insurance premiums . . . [and] creat[e] effective health insurance markets in which improved health insurance products that are guaranteed issue and do not exclude coverage of pre-existing conditions can be sold."). Congress therefore required insurers to cover high-risk individuals via the "guaranteed-issue" and "community-rating" provisions. The guaranteed-issue provision requires insurers to "accept every employer and individual in the State that applies for . . . coverage." *Id.* § 300gg-1. The community-rating provision prohibits insurers from charging higher rates to individuals based on age, sex, health status, or other factors. *Id.* § 300gg-4.

The ACA includes many other integral regulations and taxes as well. These include, among other things, an excise tax on high-cost insurance plans, 26 U.S.C. § 4980I; the elimination of coverage limits, 42 U.S.C. § 300gg-11; and a provision allowing dependent children to remain on their parents' insurance until age 26, *id.* § 300gg-14(a). The ACA also implemented an employer mandate and an employer-responsibility assessment. These provisions require employers with at least fifty full-time employees to pay the federal government a penalty if they fail to provide their employees with ACA-compliant health-plan options. *See* 26 U.S.C. § 4980H.

[2] These classes included "[i]ndividuals who cannot afford coverage," *id.* § 5000A(e)(1); taxpayers with income "less than 100 percent of the poverty line for the size of the family involved," *id.* § 5000A(e)(2); members of an Indian tribe, *id.* § 5000A(e)(3); individuals experiencing "short coverage gaps" in health insurance, *id.* § 5000A(e)(4); and individuals who have received a "hardship" exemption from the Secretary of Health and Human Services, *id.* § 5000A(e)(5).

But just as Congress funneled nearly all Americans into health-insurance coverage on the one hand—through the Individual Mandate and employer mandate, e.g.—it also significantly reduced reimbursements to hospitals by more than $200 billion over ten years on the other. 42 U.S.C. §§ 1395ww(b)(3)(B)(xi)–(xii), 1395ww(q), 1395ww(r), and 1396r-4(f)(7).

Notably, several ACA provisions are tied to another signature reform—the creation and subsidization of health-insurance exchanges. *See id.* §§ 18031–44. Through these and other provisions, the ACA allocated billions of federal dollars to subsidize the purchase of health insurance through government-run exchanges. Plus, the ACA expanded the scope of Medicaid, adding millions of people to the eligibility roster. *See id.* § 1396a(a)(10)(A)(i)(VIII).

The ACA also lays out hundreds of minor provisions, spanning the Act's 900-plus pages of legislative text, that complement the above-mentioned major provisions and others.

B. *NFIB*

After the ACA took effect, states, individuals, and businesses challenged its constitutionality in federal courts across the country.[3] One of those cases reached the Supreme Court in 2012. *See NFIB*, 567 U.S. at 519. In *NFIB*, twenty-six states, along with several individuals and an organization of independent businesses, challenged the ACA's Individual Mandate and Medicaid expansion as exceeding Congress's enumerated powers. In short, the Supreme Court held the Individual Mandate was beyond Congress's Interstate Commerce Power but salvageable under its Tax Power. The decision was highly splintered and warrants explanation.

[3] In the interest of brevity, a full history of the lower-court decisions leading up to *NFIB* is not included here. But legal scholars have documented that history to help explain this complex statutory scheme and the Supreme Court's decision in 2012. *See, e.g.*, JOSH BLACKMAN, UNPRECEDENTED: THE CONSTITUTIONAL CHALLENGE TO OBAMACARE 79–158 (2013) [hereinafter "BLACKMAN"].

1. Chief Justice Roberts

Chief Justice Roberts authored a lengthy opinion considering several issues. *See id.* at 530–89. Only certain parts of that opinion garnered a majority of votes or otherwise reached a conclusion agreed to by a majority of the Supreme Court. Here are the pertinent parts.

In **Part III-A**, Chief Justice Roberts concluded the Individual Mandate is not a valid exercise of Congress's power under the Interstate Commerce Clause. *Id.* at 546–61 (Roberts, C.J.). The Government argued the Individual Mandate could be sustained under the Interstate Commerce Clause because individual decisions to not buy health insurance collectively "ha[ve] a substantial and deleterious effect on interstate commerce." *Id.* at 548–49 (citing Brief for United States). It also asserted insurance reforms without a mandate would create cost-shifting problems whereby insurers would increase premiums to cover the costs of high-risk individuals. *Id.* at 547–48.

The Chief Justice disagreed and held the Interstate Commerce Clause authorizes regulating "activity," not inactivity. *Id.* at 553. He warned the Government's theory would "extend[] the sphere of [Congress's] activity and draw[] all power into its impetuous vortex." *Id.* at 554 (quoting THE FEDERALIST NO. 48, at 309 (James Madison)). "The Framers gave Congress the power to *regulate* commerce," he reasoned, "not to *compel* it." *Id.* at 555 (emphasis in original).

Though no other Justice joined this part of the Chief Justice's opinion, the "joint dissent"—consisting of Justices Scalia, Kennedy, Thomas, and Alito—reached the same conclusion on the Interstate Commerce Clause question. *Id.* at 657 (joint dissent). Accordingly, a majority of the Supreme Court found the Individual Mandate is unconstitutional under the Interstate Commerce Clause,[4] and even the four Justices not reaching that conclusion recognized it as the holding of the

[4] The same five Justices also found that the Individual Mandate could not be upheld as an essential component of the ACA's insurance reforms under the Necessary and Proper Clause. *Id.* at 560 (Roberts, C.J.); *id.* at 654–55 (joint dissent).

Court. *See id.* at 572 (majority) ("The Court today holds that our Constitution protects us from federal regulation under the Commerce Clause so long as we abstain from the regulated activity.").

In **Part III-B**, the Chief Justice concluded that, because the Individual Mandate is impermissible under the Interstate Commerce Clause, the Supreme Court was obligated to entertain the Government's argument that the mandate could be upheld under the Tax Power. *Id.* at 561–63 (Roberts, C.J.). He noted that "[t]he most straightforward reading of the mandate is that it commands individuals to purchase insurance." *Id.* at 562. "But, for the reasons explained above, the Commerce Clause does not give Congress that power." *Id.*

In **Part III-C**, the Chief Justice wrote a majority opinion, joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan, holding that 26 U.S.C. § 5000A—including the Individual Mandate and the shared-responsibility payment—was a constitutional exercise of Congress's Tax Power. *Id.* at 563–74 (majority). The Supreme Court's analysis in this section focused more on the shared-responsibility payment than on the Individual Mandate. *See, e.g.*, *id.* at 563 ("The exaction the Affordable Care Act imposes on those without health insurance looks like a tax in many respects. The '[s]hared responsibility payment,' as the statute entitles it, is paid into the Treasury . . . ."); *id.* at 566 ("The same analysis here suggests that the shared responsibility payment may for constitutional purposes be considered a tax."); *id.* at 568 (reasoning "the shared responsibility payment merely imposes a tax citizens may lawfully choose to pay in lieu of buying health insurance"); *id.* at 569 ("Our precedent demonstrates that Congress had the power to impose the *exaction* in § 5000A under the taxing power." (emphasis added)).

The Supreme Court's conclusion that § 5000A constituted a constitutional exercise of Congress's Tax Power turned on several factors. First, the shared-responsibility payment "is paid into the Treasury by taxpayers when they file their tax returns." *Id.* at 563 (cleaned up). Second,

the amount owed under the ACA "is determined by such familiar factors as taxable income, number of dependents, and joint filing status." *Id.* (citing 26 U.S.C. §§ 5000A(b)(3), (c)(2), (c)(4)). And "[t]he requirement to pay is found in the Internal Revenue Code and enforced by the IRS, which . . . must assess and collect it 'in the same manner as taxes.'" *Id.* at 563–64. Third and finally, the shared-responsibility payment "yields the *essential* feature of any tax: It produces at least some revenue for the Government." *Id.* at 564 (citing *United States v. Kahriger*, 345 U.S. 22, 28 n.4 (1953)) (emphasis added). On these bases, the Supreme Court held, "The Federal Government does have the power to impose a tax on those without health insurance. Section 5000A is therefore constitutional, because it can reasonably be read as a tax." *Id.* at 575.

Finally, in **Part IV**, Chief Justice Roberts was joined by Justices Breyer and Kagan in concluding that the ACA's Medicaid-expansion provisions unconstitutionally coerced States into compliance—but given the existence of a severability clause, the unconstitutional portion of the Medicaid provisions could be severed. *Id.* at 575–88 (Roberts, C.J., joined by Breyer and Kagan, JJ.). While Justice Ginsburg, joined by Justice Sotomayor, disagreed that the ACA's mandatory Medicaid expansion was unconstitutionally coercive, *see id.* at 624–45 (Ginsburg, J., joined by Sotomayor, J.), she agreed with the Chief Justice's conclusion—*only* because the Chief Justice found the expansion unconstitutional—that the offending provisions could be severed from the remainder of the Act, *see id.* at 645 ("But in view of THE CHIEF JUSTICE's disposition, I agree with him that the Medicaid Act's severability clause determines the appropriate remedy.").

2. Joint Dissent

Justices Scalia, Kennedy, Thomas, and Alito agreed with the Chief Justice that the Individual Mandate exceeds Congress's powers under the Interstate Commerce and Necessary and

Proper Clauses, but they concluded § 5000A could not be characterized as a tax.[5] *Id.* at 652–57 (joint dissent). The joint dissent noted that Congress rejected an earlier version of the ACA that "imposed a tax instead of a requirement-with-penalty" and reasoned that characterizing § 5000A, including the Individual Mandate, as a tax was therefore contrary to congressional intent. *Id.* at 669 (citations omitted).

Because the joint dissenters concluded the Individual Mandate and the Medicaid expansion were unconstitutional, they—and only they—addressed whether "all other provisions of the Act must fall as well." *Id.* at 691. The dissenters noted that the ACA "was passed to enable affordable, 'near universal' health insurance coverage." *Id.* at 694 (citing 42 U.S.C. § 18091(2)(D)). And to effectuate this goal, the ACA "consists of mandates and other requirements; comprehensive regulation and penalties; some undoubted taxes; and increases in some governmental expenditures, decreases in others." *Id.* The dissenters then asked whether this "closely interrelated" scheme could "function in a coherent way and as Congress would have intended, even when the major provisions establishing the Individual Mandate and Medicaid Expansion are themselves invalid." *Id.* at 691, 694. They opined it could not.

In passing the ACA, the dissenters noted, Congress understood the fiscal concerns surrounding healthcare reform and engineered a system whereby "it did not intend to impose the inevitable costs on any one industry or group of individuals." *Id.* at 694. The dissenters reasoned the ACA "attempts to achieve near-universal health insurance coverage by spreading its costs to individuals, insurers, governments, hospitals, and employers—while, at the same time, offsetting significant portions of those costs with new benefits to each group." *Id.* at 695. In a nutshell:

> the Federal Government bears the burden of paying billions for the new entitlements mandated by the Medicaid Expansion and federal subsidies for

[5] The joint dissent also agreed the ACA's Medicaid expansion exceeded "Congress' power to attach conditions to federal grants to the States." *NFIB*, 567 U.S. at 671.

> insurance purchases on the exchanges; but it benefits from reductions in the reimbursements it pays to hospitals. Hospitals lose those reimbursements; but they benefit from the decrease in uncompensated care, for under the insurance regulations it is easier for individuals with pre-existing conditions to purchase coverage that increases payments to hospitals. Insurance companies bear new costs imposed by a collection of insurance regulations and taxes, including "guaranteed issue" and "community rating" requirements to give coverage regardless of the insured's pre-existing conditions; but the insurers benefit from the new, healthy purchasers who are forced by the Individual Mandate to buy the insurers' product and from the new low-income Medicaid recipients who will enroll in insurance companies' Medicaid-funded managed care programs. In summary, the Individual Mandate and Medicaid Expansion offset insurance regulations and taxes, which offset reduced reimbursements to hospitals, which offset increases in federal spending.

Id. at 695–96. "In summary, the Individual Mandate and Medicaid Expansion offset insurance regulations and taxes, which offset reduced reimbursements to hospitals, which offset increases in federal spending." *Id.* at 696. And Congress intended the Individual Mandate and Medicaid Expansion to work *together* with the rest of the ACA. *Id.* (citing 42 U.S.C. §§ 18091(2)(C), (2)(E), (2)(F), (2)(G), (2)(I), (2)(J)).

Next, the joint dissenters detailed the ACA's major provisions. They concluded, given the above, that these provisions—insurance regulations and taxes; hospital-reimbursement reductions and other reductions in Medicare expenditures; health-insurance exchanges and their federal subsidies; and the employer-responsibility assessment—are all inseverable from the Individual Mandate. *See id.* at 697–703. They concluded the same with respect to the ACA's minor provisions. *See, e.g.*, *id.* at 704 ("if the major provision were unconstitutional, Congress would not have passed the minor one"). In sum, the joint dissenters would have declared the ACA "invalid in its entirety." *Id.* at 707.

C. The TCJA

On December 22, 2017, the Tax Cuts and Jobs Act of 2017 was signed into law. *See* Pub. L. No. 115-97, 131 Stat. 2054 (2017). Congress passed the TCJA through budget reconciliation,

"an expedited procedure [for] considering legislation that would bring existing spending, revenue, and debt limit laws into compliance with the current fiscal priorities established in the annual budget resolution." Megan S. Lynch & James V. Saturno, *The Budget Reconciliation Process: Stages of Consideration*, at 1, CONGRESSIONAL RESEARCH SERVICE (Jan. 4, 2017). Budget reconciliation limits congressional action to fiscal matters.

In the TCJA, Congress reduced the ACA's shared-responsibility payment to zero, effective January 1, 2019. *See* TCJA § 11081. Congress took no other action pertaining to the ACA. Nor could it. The reconciliation process limited Congress to doing exactly what it did: reducing taxes. *See* Fed. Defs.' Resp. 16 n.4, ECF No. 92 ("Although Congress was able to revoke the tax penalty, it could not have revoked the guaranteed-issue or community-rating provisions through reconciliation."); Sept. 5, 2018 Hr'g Tr. at 36:7–12 (Intervenor Defendants) [hereinafter "Hr'g Tr."] ("Congress did not repeal any part of the ACA, including the shared responsibility payment. In fact, it could not do so through the budget reconciliation procedures it used.").

II. PROCEDURAL BACKGROUND

Plaintiffs are the States of Alabama, Arizona, Arkansas, Florida, Georgia, Indiana, Kansas, Louisiana, Mississippi, Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin, Governor Paul LePage of Maine (the "State Plaintiffs"), and individuals Neill Hurley and John Nantz (the "Individual Plaintiffs" and, collectively with the State Plaintiffs, "Plaintiffs").

Defendants are the United States of America, the United States Department of Health and Human Services ("HHS"), Alex Azar, in his official capacity as Secretary of HHS, the United States Internal Revenue Service (the "IRS"), and David J. Kautter, in his official capacity as Acting Commissioner of Internal Revenue (collectively, the "Federal Defendants").

Finally, the States of California, Connecticut, Delaware, Hawaii, Illinois, Kentucky, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, and Washington, and the District of Columbia intervened as defendants (collectively, the "Intervenor Defendants").

The Plaintiffs sued the Federal Defendants seeking, among other things, a declaration that the Individual Mandate, as amended by the TCJA, is unconstitutional and that the remainder of the ACA is inseverable. Am. Compl. 2, ECF No. 27. Their theory is that, because the TCJA eliminated the shared-responsibility tax payment, the tax-based saving construction developed in *NFIB* no longer applies. *Id.* at 2–3. Plaintiffs further argue that, as the four joint dissenters reasoned in *NFIB*, the Individual Mandate is inseverable from the rest of the ACA. Pls.' Br. Prelim. Inj. 35, ECF No. 40 (citing *NFIB*, 567 U.S. at 691–703 (joint dissent)) [hereinafter "Pls.' Br."].

The Federal Defendants agree the Individual Mandate is unconstitutional and inseverable from the ACA's pre-existing-condition provisions. But they argue all other ACA provisions are severable from the mandate. The Intervenor Defendants argue all the Plaintiffs' claims fail.

The Plaintiffs filed an Application for Preliminary Injunction, (ECF No. 39), on April 26, 2018; the Federal Defendants and the Intervenor Defendants responded, (ECF Nos. 91 and 92), on June 7, 2018; and Plaintiffs replied, (ECF No. 175), on July 5, 2018. Because the Federal Defendants argued a judgment, as opposed to an injunction, was more appropriate, the Court provided notice of its intent to resolve the issues in this case on summary judgment. *See* July 16, 2018 Order, ECF No. 176 (citing FED. R. CIV. P. 56(f)(3)). The parties responded. *See* ECF Nos. 177–79.

The Plaintiffs argued they desire a preliminary injunction but are unopposed to "*simultaneously* considering Plaintiffs' application as a motion for partial summary judgment on

the constitutionality of the ACA's mandate." *See* Pls.' Resp. July 16, 2018 Order, ECF No. 181 (emphasis in original). The Intervenor Defendants opposed converting the preliminary-injunction briefing to a summary-judgment ruling because they wished to more fully brief issues such as Article III standing, the Interstate Commerce Clause, and the scope of injunctive relief. Intervenor Defs.' Resp. July 16, 2018 Order 2, ECF No. 182. At the hearing, the Federal Defendants requested the Court "to defer any ruling until after the close of the open enrollment period which is in mid December, [as] that would ensure that there is no disruption to the open enrollment period." Hr'g Tr. at 30:15–18.

The Court finds the Intervenor Defendants adequately briefed and argued at the September 5, 2018 hearing the standing and Interstate Commerce Clause issues. The Court therefore construes the application as a motion for partial summary judgment.

III. LEGAL STANDARDS

A. Article III Standing

"Every party that comes before a federal court must establish that it has standing to pursue its claims." *Cibolo Waste, Inc. v. City of San Antonio*, 718 F.3d 469, 473 (5th Cir. 2013). Standing doctrine is rooted in the Constitution's grant of judicial power to adjudicate cases or controversies. "The doctrine developed in our case law to ensure that federal courts do not exceed their authority as it has been traditionally understood." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

"The doctrine of standing asks 'whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.'" *Cibolo Waste*, 718 F.3d at 473 (quoting *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11 (2004)). Standing has both constitutional and prudential components. *See id.* (quoting *Elk Grove*, 542 U.S. at 11) (stating standing "contain[s] two strands: Article III standing . . . and prudential standing"). The "irreducible constitutional

minimum" of Article III standing consists of three elements. *Spokeo*, 135 S. Ct. at 1547; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The plaintiff must have (1) suffered an injury in fact (2) that is fairly traceable to the challenged conduct of the defendant and (3) that is likely to be redressed by a favorable decision. *Lujan*, 504 U.S. at 560–61. It is not necessary for all plaintiffs to demonstrate Article III standing. Rather, "one party with standing is sufficient to satisfy Article III's case-or-controversy requirement." *Texas v. United States*, 809 F.3d 134, 151 (5th Cir. 2015) (quoting *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 52 n.2 (2006)).

"Prudential standing requirements exist in addition to 'the immutable requirements of Article III,' . . . as an integral part of 'judicial self-government.'" *ACORN v. Fowler*, 178 F.3d 350, 362 (5th Cir. 1999) (quoting *Lujan*, 504 U.S. at 560). "The goal of this self-governance is to determine whether the plaintiff 'is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial power.'" *Id.* (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 546 n.8 (1986)). The Supreme Court has observed that prudential standing encompasses "at least three broad principles," including "the general prohibition on a litigant's raising another person's legal rights . . . ." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1386 (2014); *Cibolo Waste*, 718 F.3d at 474 (quoting *Elk Grove*, 542 U.S. at 12).

As the parties invoking jurisdiction, the Plaintiffs must show the requirements of standing are satisfied. *See Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

B. Summary Judgment

Summary judgment is proper when the pleadings and evidence show "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). "[T]he substantive law will identify which facts are material." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine issue of material fact exists "if the

evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* The movant makes a showing that there is no genuine issue of material fact by informing the court of the basis of its motion and by identifying the portions of the record that reveal there are no genuine material-fact issues. *See* FED. R. CIV. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

When reviewing the evidence on a motion for summary judgment, the court must resolve all reasonable doubts and inferences in the light most favorable to the non-movant. *See Walker v. Sears, Roebuck & Co.*, 853 F.2d 355, 358 (5th Cir. 1988). The court cannot make a credibility determination in light of conflicting evidence or competing inferences. *Anderson*, 477 U.S. at 255. And if there appears to be some support for the disputed allegations, such that "reasonable minds could differ as to the import of the evidence," the court must deny the motion for summary judgment. *Id.* at 250.

IV. ANALYSIS

The Court's analysis involves three separate inquiries and conclusions. First, the Court finds the Parties satisfy the applicable standing requirements. Second, the Court finds the Individual Mandate can no longer be fairly read as an exercise of Congress's Tax Power and is still impermissible under the Interstate Commerce Clause—meaning the Individual Mandate is unconstitutional. Third, the Court finds the Individual Mandate is essential to and inseverable from the remainder of the ACA.

A. Article III Standing

No party initially challenged the Plaintiffs' standing. But amici raised the issue[6] and the Intervenor Defendants addressed it at oral argument. *See, e.g.*, Hr'g Tr. at 52–58; 64–68. And

[6] The American Medical Association filed an amicus brief that argued the Individual Plaintiffs lack standing because they "seek to leverage their own voluntary decisions to purchase minimum essential coverage into cognizable injuries-in-fact" and therefore impermissibly base standing on a self-inflicted injury. *See* Br. of

because Article III standing is a requirement of subject-matter jurisdiction, it cannot be waived. *See FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990) ("The federal courts are under an independent obligation to examine their own jurisdiction.").

The Individual Plaintiffs, who are citizens and residents of the State of Texas, challenge the Individual Mandate as an unconstitutional requirement to purchase ACA-compliant health insurance. They argue they are injured by the "obligation to comply with the individual mandate . . . despite the provision's unconstitutionality." Am. Compl. ¶ 43, ECF No. 27. Injury-in-fact must be both particularized and concrete, not conjectural or hypothetical. *Spokeo*, 136 S. Ct. at 1548 (quoting *Lujan*, 504 U.S. at 560). For an injury to be particularized, it "must affect the plaintiff in a personal and individual way." *Id.* Under *Lujan*, a concrete and particularized injury generally exists if the "plaintiff is himself an object of the action (or forgone action) at issue. If he is, there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it." *Lujan*, 504 U.S. at 561–62. The question of "whether someone is in fact an object of a regulation is a flexible inquiry rooted in common sense" and "underlies all three elements of standing." *Contender Farms, LLP v. USDA*, 779 F.3d 258, 264, 266 (5th Cir. 2015).

In *Contender Farms*, a company and its principal, McGartland, challenged a regulation under the Horse Protection Act that required certain entities to suspend horse trainers who engaged in "soring." *Id.* at 262. The Fifth Circuit analyzed whether the plaintiffs had standing to challenge the regulation and the scope of the agency's rulemaking authority. Applying a "commonsense approach to the facts in [the] case," the court held first that the plaintiffs were the object of the challenged regulation because the regulation "target[ed] participants in Tennessee walking horse

---

the Am. Med. Ass'n et al. 7, ECF No. 113. The Association also challenged the State Plaintiffs' standing, arguing their alleged injury is too attenuated and speculative to support standing. *See id.* at 11–12.

events like Contender Farms and McGartland." *Id.* at 265. Second, the court determined the regulation amounted to an increased regulatory burden because it subjected the plaintiffs to "harsher, mandatory penalties" for violation of the soring rules—it also required competitors to "take additional measures to avoid even the appearance of soring." *Id.* at 266. Because "[a]n increased regulatory burden typically satisfies the injury in fact requirement," and because the Fifth Circuit found that causation and redressability naturally flowed from the type of injury alleged, the plaintiffs satisfied Article III standing. *Id*.

Here, the Individual Plaintiffs are the object of the Individual Mandate. It requires them to purchase and maintain certain health-insurance coverage. *See* 26 U.S.C. § 5000A(a); *see also* Pls.' App. Supp. Prelim. Inj., Ex. A (Nantz Decl.) ¶ 15, ECF No. 41 ("I am obligated to comply with the [ACA's] individual mandate"); Pls.' App. Supp. Prelim. Inj., Ex. B (Hurley Decl.) ¶ 15, ECF No. 41 ("I continue to maintain minimum essential health coverage because I am obligated . . . ."). *Cf. Lujan*, 504 U.S. at 561–62; *Time Warner Cable, Inc. v. Hudson*, 667 F.3d 630, 636 (5th Cir. 2012).

The American Medical Association argues the Individual Plaintiffs have created their own financial injury because they can choose not to comply with the Individual Mandate and, beginning in January 2019, no penalty will be assessed against them. *See* Br. Am. Med. Ass'n 8–9, ECF No. 113; Hr'g Tr. at 37:9–16. But this argument begs a leading question in this case by assuming the Individual Plaintiffs need not comply with the Individual Mandate. Moreover, a showing of economic injury is not required.

In warning lower courts not to conflate the "actual-injury inquiry with the underlying merits" of a claim, the Fifth Circuit recognizes that standing can be established where a plaintiff alleges that a federal statute or regulation "deters the exercise of his constitutional rights." *Duarte*,

759 F.3d at 520. Here, the Individual Plaintiffs allege just that. They claim "Section 5000A's individual mandate exceeded Congress's enumerated powers by forcing Individual Plaintiffs to maintain ACA-compliant health insurance coverage." Am. Compl. ¶ 49, ECF No. 27. Intervenor Defendants, meanwhile, contend the Individual Mandate remains a constitutional exercise of Congress's tax or regulatory authority. As a result, the "conflicting contentions of the parties . . . present a real, substantial controversy between parties having adverse legal interests, a dispute definite and concrete, not hypothetical or abstract." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979) (quoting *Railway Mail Assn. v. Corsi*, 326 U.S. 88, 93 (1945)). The Individual Plaintiffs have therefore sufficiently alleged an injury in fact that sits at the center of a live controversy.

"Causation and redressability then flow naturally from" the injury created by the Individual Mandate. *Contender Farms*, 779 F.3d at 266. Without it, the Individual Plaintiffs would not be required to maintain health-insurance coverage and would not be subject to an increased regulatory burden. A favorable decision for the Plaintiffs—a declaration that the Individual Mandate is unconstitutional—would redress the alleged injury. The Individual Plaintiffs, for example, would be free to forego purchasing health insurance altogether or to otherwise purchase health insurance below the "minimum essential coverage" better suited to their health and financial realities. At a minimum, they would be freed from what they essentially allege to be arbitrary governance.

The Court finds the Individual Plaintiffs have standing to challenge the constitutionality of the Individual Mandate.[7] And because the Individual Plaintiffs have standing, the case-or-controversy requirement is met. *See Watt v. Energy Action Educ. Found.*, 454 U.S. 151, 160 (1981)

[7] The Court does not analyze whether the Individual Plaintiffs have prudential standing to bring their claims because "prudential standing (unlike Article III standing) is not jurisdictional, meaning that prudential standing has been forfeited" and is not properly before the court, if, like here, no party contests it. *Grocery Mfrs. Ass'n v. EPA*, 693 F.3d 169, 181 (D.C. Cir. 2012) (Kavanaugh, J., dissenting).

("Because we find California has standing, we do not consider the standing of the other plaintiffs."); *Rumsfeld*, 547 U.S. at 53 n.2.

B. The Individual Mandate

With standing satisfied, the Court "must . . . determine whether the Constitution grants Congress powers it now asserts, but which many States and individuals believe it does not possess." *NFIB*, 567 U.S. at 534 (Roberts, C.J.). The Court recalls the principles undergirding *NFIB*. Namely, "deference in matters of policy cannot . . . become abdication in matters of law." *Id.* at 538. This means "respect for Congress's policy judgments . . . can never extend so far as to disavow restraints on federal power that the Constitution carefully constructed." *Id.* "The peculiar circumstances of the moment may render a measure more or less wise, but cannot render it more or less constitutional." *Id.* (quoting Chief Justice John Marshall, *A Friend of the Constitution No. V*, Alexandria Gazette, July 5, 1819, *reprinted in* JOHN MARSHALL'S DEFENSE OF *MCCULLOCH V. MARYLAND* 190–91 (G. Gunther ed. 1969)). "And there can be no question that it is the responsibility of this Court to enforce the limits on federal power by striking down acts of Congress that transgress those limits." *Id.* (citing *Marbury v. Madison*, 5 U.S. 137, 175–76 (1803)).

The question of constitutionality is straightforward: Is the Individual Mandate a constitutional exercise of Congress's enumerated powers when the shared-responsibility payment is zero? Because the Supreme Court upheld the Individual Mandate under Congress's Tax Power, the Court will begin there before proceeding to an Interstate Commerce Clause analysis. The Court finds that both plain text and Supreme Court precedent dictate that the Individual Mandate is unconstitutional under either provision.

1. Congress's Tax Power

In *NFIB*, the Supreme Court held 26 U.S.C. § 5000A to be a constitutional exercise of Congress's Tax Power. *Id.* at 570 (majority) ("Our precedent demonstrates that Congress had the power to impose the exaction in § 5000A under the taxing power, and that § 5000A need not be read to do more than impose a tax. That is sufficient to sustain it."). That power authorizes Congress to "lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States." U.S. CONST. art. I, § 8, cl. 1. Previously, the shared-responsibility provision, 26 U.S.C. § 5000A(b), imposed an "exaction" for failure to obey the Individual Mandate, *id.* § 5000A(a). The question here is whether an eliminated shared-responsibility exaction continues to justify construing the Individual Mandate as an exercise of Congress's Tax Power to implement § 5000A.

The Plaintiffs and Federal Defendants say "no." Pls.' Br. 26, ECF No. 40; Fed. Defs.' Resp. 11, ECF No. 92. The Intervenor Defendants, on the other hand, argue § 5000A can still fairly be read as a tax because it continues to satisfy the tax factors discussed in *NFIB*, including that previous shared-responsibility payments will make their way into the treasury for years to come. Intervenor Defs.' Resp. 16–22, ECF No. 91.

a. Sections 5000A(a) and (b) Are Distinct

It is critical to clarify something at the outset: the shared-responsibility payment, 26 U.S.C. § 5000A(b), is distinct from the Individual Mandate, *id.* § 5000A(a). For one thing, the latter is in subsection (a) while the former is in subsection (b).[8] And the Plaintiffs challenge only the Individual Mandate, not the shared-responsibility penalty, as unconstitutional. *See, e.g.*, Am. Compl. ¶ 49, ECF No. 27 ("Section 5000A's *individual mandate* exceeds Congress's enumerated

[8] Subsection (c) sets the amount of the shared-responsibility payment erected in subsection (b), *see id.* § 5000A(c), and it is the subsection set at zero per cent by the TCJA, *see* TCJA § 11081(a).

powers . . . ." (emphasis added)); *id.* ("the individual mandate cannot be upheld under any other provision of the Constitution"); *id.* at ¶¶ 55–56 ("[A]fter Congress amended Section 5000A, it is no longer possible to interpret this statute as a tax enacted pursuant to a valid exercise of Congress's constitutional power to tax. Rather, the only reading available is the most natural one; Section 5000A contains a stand-alone legal mandate . . . Accordingly, Section 5000A's *individual mandate* is unconstitutional." (emphasis added)). The Court cannot ignore that the Individual Mandate, § 5000A(a), is separate and distinct from the shared-responsibility penalty, § 5000A(b).[9]

Other ACA text and functionality demand §§ 5000A(a) and (b) not be lumped together, too. Most obviously, Congress exempted some individuals from the shared-responsibility penalty *but not the Individual Mandate*. *See* 26 U.S.C. § 5000A(e). For example, § 5000A(e)(1) provides that "[i]ndividuals who cannot afford coverage" are exempt from the penalty, but not the mandate. *Id.* § 5000A(e)(1). "Members of Indian tribes" are also subject to the mandate but not the penalty. *See id.* § 5000A(e)(3). Congress could not possibly have intended the mandate and penalty to be treated as one when it treated them as two.[10]

Congress's codified ACA findings support the distinction as well. As the Plaintiffs argue, those "findings identify the individual mandate itself—'[t]he *requirement*' to purchase health insurance"—while "making no mention of the separate tax penalty that attaches to some individuals' failure to comply with the mandate." Pls.' Br. 8–9, ECF No. 40 (citation omitted) (emphasis in Plaintiffs' Brief). The Court agrees the findings highlight that Congress believed that,

[9] *See* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 174–79 (2012) (Surplusage Canon) [hereinafter "READING LAW"].

[10] Federal agencies recognize this as well. *See, e.g.*, CENTERS FOR MEDICARE & MEDICAID SERVICES, ONE PAGER – INDIAN EXEMPTION, https://marketplace.cms.gov/technical-assistance-resources/exemption-indian-health-care-provider.pdf (last visited December 2018) ("Under the Affordable Care Act, everyone who can afford to is now required by law to have health coverage . . . However, those who can't afford coverage or meet other conditions may qualify for [a shared-responsibility-payment] exemption.").

"if there were no *requirement*"—i.e., no Individual Mandate—"many individuals would wait to purchase health insurance until they needed care." 42 U.S.C. § 18091(2)(I) (emphasis added). That is the belief it acted on and on which it formed its intent.[11]

The 2010 Congress therefore intended the mandate and penalty to be distinct. The 2017 Congress solidified that intent. Section 11081 of the TCJA is entitled "Elimination of shared responsibility payment for individuals failing to maintain minimum essential coverage." TCJA § 11081. This section amends 26 U.S.C. § 5000A(c)—the provision setting the amount of the shared-responsibility penalty, *id.* § 5000A(b)—to "[e]liminat[e]" the existing payment and replace it with "Zero percent" and "$0." TCJA § 11081(a). It does not eliminate the Individual Mandate. So, just as the 2010 Congress subjected *some* individuals to the Individual Mandate but no shared-responsibility payment, the 2017 Congress subjected *all* applicable individuals to the Individual Mandate but no shared-responsibility payment. Congress never intended the two things to be one.

As described below, the Supreme Court's Tax Power analysis in *NFIB* proceeded along these lines—recognizing the Individual Mandate as separate and distinct from the shared-responsibility penalty. This distinction is critical to the Court's remaining legal analysis.

b. Section 5000A(a) Can No Longer Be Sustained as an Exercise of Congress's Tax Power

NFIB does not contravene Congress's intent to separate the Individual Mandate and shared-responsibility penalty. To the extent the Supreme Court held § 5000A could be fairly read as a tax,

[11] *See also* CONGRESSIONAL BUDGET OFFICE, KEY ISSUES IN ANALYZING MAJOR HEALTH INSURANCE PROPOSALS 53 (Dec. 2008), *available at* https://www.cbo.gov/sites/default/files/110th-congress-2007-2008/reports/12-18-keyissues.pdf (December 2008) ("[S]ome compliance is generally observed, even when there is little or no enforcement of mandates. Compliance, then, is probably affected by an individual's personal values and by social norms. Many individuals and employers would comply with a mandate, even in the absence of penalties, because they believe in abiding by the nation's laws.").

it reasoned only that the Individual Mandate could be viewed as part and parcel of a provision supported by the Tax Power—not that the Individual Mandate *itself* was a tax.

The Supreme Court stated its "precedent demonstrate[d] that Congress had the power to impose the *exaction* in § 5000A under the taxing power"—and § 5000A(b) is the exaction—"and that § 5000A need not be read to do more than impose a tax. That is sufficient to sustain it." *NFIB*, 567 U.S. at 570 (emphasis added). In other words, it was only because of the totally distinct shared-responsibility payment, or exaction, that the Supreme Court could construe § 5000A as a tax provision. As the Government argued at the time, and as Chief Justice Roberts recognized, that meant "the mandate [could] be regarded as establishing a condition—not owning health insurance—that *triggers a tax*." *Id.* at 563 (Roberts, C.J.) (emphasis added).

Put plainly, because Congress had the power to enact the shared-responsibility exaction, § 5000A(b), under the Tax Power, it was fairly possible to read the Individual Mandate, § 5000A(a), as a functional part of that tax also enacted under Congress's Tax Power. Therefore, § 5000A *as a whole* could be viewed as an exercise of Congress's Tax Power.

The majority's analysis compels this conclusion.[12] In its very first breath under Part III-C, the majority reasoned:

> The exaction the Affordable Care Act imposes on those without health insurance looks like a tax in many respects. The "[s]hared responsibility payment," as the statute entitles it, is paid into the Treasury by "taxpayer[s]" when they file their tax returns. 26 U.S.C. § 5000A(b). It does not apply to individuals who do not pay federal income taxes because their household income is less than the filing threshold in the Internal Revenue Code. § 5000A(e)(2). For taxpayers who do owe the payment, its amount is determined by such familiar factors as taxable income, number of dependents, and joint filing status. §§ 5000A(b)(3), (c)(2), (c)(4). The requirement to pay is found in the Internal Revenue Code and enforced by the IRS, which—as we previously explained—must assess and collect it "in the same manner as taxes."

[12] *Accord* Intervenor Defs.' Resp. 17, ECF No. 91 ("In *NFIB*, the Supreme Court explained that the *shared responsibility payment* 'looks like' a tax in several respects." (emphasis added)).

NFIB, 567 U.S. at 563–64 (majority) (final citation to ACA omitted). The Supreme Court's baseline analysis thus turned on the following: the *exaction* looks like a tax; it is *paid* into the treasury; it does not apply to individuals who pay no federal income taxes; familiar tax factors are applied to folks who owe *the payment*; and the requirement *to pay* is in the revenue code. *Id.* Only one of those factors applies to the Individual Mandate, § 5000A(a): it is in the Internal Revenue Code. But the Individual Mandate is not in § 5000A(b), is not called the shared-responsibility payment, is not an exaction, is not paid into the Treasury or otherwise a payment, does not exclude those who pay no federal taxes for income reasons, and is not determined by familiar tax factors. Section 5000A(b) is all those things.

Crucially, after assessing § 5000A(b) against the factors above, the Supreme Court concluded § 5000A "yields the essential feature of any tax: It produces at least some revenue for the Government." *Id.* at 564 (citing *United States v. Kahriger*, 345 U.S. 22, 28 n. 4 (1953)).

The Supreme Court thus identified three basic criteria to conclude § 5000A could be viewed as an exercise of the Tax Power: (1) a payment is paid into the Treasury, (2) the payment amount is determined with reference to income and other familiar factors, and (3) the payment produces revenue for the Government. *Id.* at 563–64. In their brief, the Intervenor Defendants urge the "shared responsibility payment continues to maintain these tax-like characteristics." Intervenor Defs.' Resp. 18, ECF No. 91. But at the hearing, they seemed to concede § 5000A will no longer meet the first and second criteria starting January 1, 2019. *See* Hr'g Tr. at 70:10–16; 70:23–25. They instead focus on the third factor, contending the "production of revenue at all times is not a constitutional requirement for a lawful tax." Intervenor Defs.' Resp. 18, ECF No. 91.

But the Intervenor Defendants downplay the Supreme Court's most crucial conclusion: § 5000A "yield[ed] the *essential* feature of any tax: It produce[d] at least some revenue for the

Government." *NFIB*, 567 U.S. at 564 (emphasis added); *accord Rosenberger v. Rector and Visitors of Univ. of Virginia*, 515 U.S. 819, 841 (1995) ("A tax, in the general understanding of the term, and as used in the Constitution, signifies an exaction for the support of the Government." (citation omitted)). Not indicative, not common—essential.[13] Thus, the bottom line is the Individual Mandate was buoyed by Congress's Tax Power only because it "trigger[ed]" a provision that "produce[d] at least some revenue for the Government." And it was high tide when the Supreme Court decided *NFIB* because the shared-responsibility payment was still a payment. But with the TCJA, the tide has gone out. Section 5000A no longer contains an exaction.

The Intervenor Defendants argue that "[e]ven if Plaintiffs were correct that a constitutionally-valid tax must produce revenue at all times"—a condition the Supreme Court called essential—"it will be years before the shared responsibility payment ceases to do so." Intervenor Defs.' Resp. 21, ECF No. 91. They contend that, due to the frequency of late payments and deferrals, the government will continue to receive revenue from 2018 shared-responsibility payments "until 2020 or beyond." *Id.*

Intervenor Defendants cite no authority for the proposition that the relevant timeframe to analyze tax revenue is the tax year in which it is remunerated. Plaintiffs reply that "the revenue Intervenor-Defendants identify is attributable to tax year 2018." Pls.' Reply 8 n.9, ECF No. 175.

It is a well-accepted practice that tax revenue is attributable to the tax year in which it is assessed, not the one in which it is paid. *See, e.g.*, *NFIB*, 567 U.S. at 563 ("the payment is expected to raise about $4 billion *per year* by 2017") (emphasis added); CONGRESSIONAL BUDGET OFFICE, ANALYSIS OF MAJOR HEALTH CARE LEGISLATION ENACTED IN MARCH 2010, at 14 (Mar. 30, 2011)

[13] *See Essential*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 777 (1986) (defining as "of or relating to an essence"; "having or realizing in itself the essence of its kind"; and "necessary, indispensable"); *see also* BLACK'S LAW DICTIONARY (10th ed. 2014) ("1. Of, relating to, or involving the essence or intrinsic nature of something. 2. Of the utmost importance; basic and necessary.").

(analyzing *by fiscal year* estimated budgetary effects of ACA tax credits and revenue from excise taxes). When individuals file tax returns in April 2019, for example, the taxes they pay and the returns they receive will affect the government's 2018 tax-year revenue. The same holds true even if individuals receive deferrals or make late payments in the months and years thereafter. And at any rate, because the TCJA eliminated the shared-responsibility payment "beginning after December 31, 2018," that provision no longer *produces* revenue for the Government—present tense—and any future monies that come in will be because the provision once *produced* revenue for the Government—past tense. So, it is true the shared-responsibility payment once had the essential feature of any tax. But it no longer does.

Finally, the Intervenor Defendants point to three examples of Congress delaying or suspending taxes within the ACA: the Cadillac Tax, the Medical Device Tax, and the Health Insurance Providers Fee. Intervenor Defs.' Resp. 18– 20. Drawing on these examples, the Intervenor Defenders argue "[t]he shared responsibility payment has not been rendered unconstitutional merely because it will be $0 in 2019." *Id.* at 18.

As an initial matter, suspending or delaying a tax is not equivalent to eliminating it. And the TCJA does not suspend collection of the shared-responsibility payment, it eliminates it. *See* TCJA § 11081 ("Elimination of shared responsibility payment for individuals failing to maintain minimum essential coverage."). Put differently, until a change in law, there is no shared-responsibility payment. True, Congress may reinstate the payment in the future. But that would be a change in law. The Court cannot rule on a hypothetical counterfactual. It may only "say what the law is," not what it someday could be. *Marbury*, 5 U.S. at 177.

But at a more fundamental level, the Intervenor Defendants' argument demonstrates they misapprehend the Plaintiffs' basic position. The Intervenor Defendants assert: "The *shared*

responsibility payment has not been rendered unconstitutional merely because it will be $0 in 2019." Intervenor Defs.' Resp. 18, ECF No. 91 (emphasis added). The Plaintiffs do not argue that; they argue the *Individual Mandate* is unconstitutional. And as the Court has explained, the text of the ACA and TCJA, as well as the Supreme Court's reasoning in *NFIB*, all hinge on an understanding that the Individual Mandate and the shared-responsibility payment are two very different creatures. The saving construction in *NFIB* was available only because § 5000A(a) triggered a tax.[14] And § 5000A(b) was a tax because it produced some revenue for the Government. *Sozinsky v. United States*, 300 U.S. 506, 513–14 (1937); *United States v. Ross*, 458 F.2d 1144, 1145 (5th Cir. 1972) ("The test of validity is whether on its face the tax operates as a revenue generating measure and the attendant regulations are in aid of a revenue purpose.").

Under the law as it now stands, the Individual Mandate no longer "triggers a tax" beginning in 2019. So long as the shared-responsibility payment is zero, the saving construction articulated in *NFIB* is inapplicable and the Individual Mandate cannot be upheld under Congress's Tax Power. *See NFIB*, 567 U.S. at 574 ("Congress's authority under the Taxing power is limited to requiring an individual to *pay money* into the Federal Treasury, no more." (emphasis added)).

2. Congress's Interstate Commerce Power

Because the Individual Mandate can no longer be read as an exercise of Congress's Tax Power, the Court takes up the Intervenor Defendants' argument that the mandate is now sustainable under the Interstate Commerce Clause.

[14] This distinction also explains why the Cadillac Tax, the Medical Device Tax, and the Health Insurance Providers Fee are all inapposite. Even if, for example, Congress had eliminated the payment under Medical Device Tax—which it did not—the analogy would not hold for the fact pattern before the Court. Instead, to make the Medical Device Tax analogous, it would need to contain a provision requiring all applicable individuals to purchase medical devices. And it would also need to contain a separate provision taxing any applicable individual who did not purchase medical devices. Then, if Congress delayed or suspended the tax under that scheme, the Medical Device Tax would be at least usefully analogous. But the Medical Device Tax does not tax inactivity and is therefore unhelpful here.

The Constitution grants Congress the power to "regulate Commerce . . . among the several States." U.S. CONST. art. 1, § 8, cl. 3. Before *NFIB*, the Supreme Court had never considered whether Congress's power to regulate interstate commerce allowed it to compel citizens into commerce—i.e., to regulate *inactivity*. 567 U.S. at 647 (joint dissent) (identifying issue of first impression). As outlined above, the Supreme Court concluded it does not. It therefore held the Individual Mandate could not be sustained under the Interstate Commerce Clause. *See id.* at 572 (majority).

The Plaintiffs argue this issue is decided because the Supreme Court already concluded in *NFIB* that the Individual Mandate cannot be upheld under the Interstate Commerce Clause. Pls.' Br. 22, ECF No. 40.[15] The Intervenor Defendants respond that the Individual Mandate "may now be sustained under the Commerce Clause" because "with a tax of zero dollars, there is no compulsion." Intervenor Defs.' Resp. 18 n.17, ECF No. 91. They argue the constitutional problem identified in *NFIB*—Congress "*compelling* the purchase of insurance"—is no longer a problem because a tax of zero dollars imposes no legal consequence on individuals who do not comply with the Individual Mandate. *Id.* (emphasis in original); *see also* Hr'g Tr. at 37:9–25, 66:14–68:7.

The Individual Mandate provides: "An applicable individual shall . . . ensure that the individual . . . is covered under minimum essential coverage . . . ." 26 U.S.C. § 5000A(a). The Intervenor Defendants argue the provision "gives the individuals the same choice they've always had—to either purchase insurance or pay the tax." Hr'g Tr. at 67:17–19. But the Intervenor

[15] The Federal Defendants did not separately brief the Interstate Commerce Clause issue but agree with the Plaintiffs. *See* Fed. Defs.' Resp. 11, ECF No. 92 ("[O]nce the associated financial penalty is gone, the 'tax' saving construction will no longer be fairly possible and thus the individual mandate will be unconstitutional. As a majority of the Supreme Court held in *NFIB*, '[t]he Federal Government does not have the power to order people to buy health insurance. Section 5000A would therefore be unconstitutional if read as a command.'" (citations omitted)).

Defendants' position is logically self-defeating and contrary to the evidence in this case, the language of the ACA, and Fifth Circuit and Supreme Court precedent.

a. The Intervenor Defendants' Position Is Logically Inconsistent

At the threshold, the Intervenor Defendants hope to have their cake and eat it too by arguing the Individual Mandate does absolutely nothing but regulates interstate commerce. That is, they first say the Individual Mandate "does not compel anyone to purchase insurance." Hr'g Tr. at 37:12. Yet they ask the Court to find the provision "regulate[s] Commerce . . . among the several States." U.S. CONST. art. 1, § 8, cl. 3. The Intervenor Defendants' theory, then, is that Congress regulates interstate commerce when it regulates nothing at all. But to "regulate" is "to govern or direct according to rule" and to "bring under the control of law or constituted authority." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1913 (1986). Accepting Intervenor Defendants' theory that the Individual Mandate does nothing thus requires finding that it is not an exercise of Congress's Interstate Commerce Power. *Cf. Gibbons v. Ogden*, 22 U.S. 1, 189–90 (1824) ("Commerce . . . is *regulated* by *prescribing rules* . . . ." (emphasis added)).

b. The Intervenor Defendants' Position Contradicts the Evidence

Despite the Intervenor Defendants' logical gymnastics, the undisputed evidence in this case suggests the Individual Mandate fixes an obligation. The Individual Plaintiffs assert they feel compelled to comply with the law. Pls.' App. Supp. Prelim. Inj., Ex. A (Nantz Decl.) ¶ 15, ECF No. 41 ("I value compliance with my legal obligations . . . [t]he repeal of the associated health insurance tax penalty did not relieve me of the requirement to purchase health insurance"); Pls.' App. Supp. Prelim. Inj., Ex. B (Hurley Decl.) ¶ 15, ECF No. 41 ("I continue to maintain minimum essential health coverage because I am obligated to comply with the [ACA's] individual mandate"). This should come as no surprise. "It is the attribute of law, of course, that it binds; it

states a rule that will be regarded as compulsory for all who come within its jurisdiction." HADLEY ARKES, FIRST THINGS: AN INQUIRY INTO THE FIRST PRINCIPLES OF MORALS AND JUSTICE 11 (1986). Law therefore has an enormous influence on social norms and individual conduct in society. *See* CONGRESSIONAL BUDGET OFFICE, KEY ISSUES IN ANALYZING MAJOR HEALTH INSURANCE PROPOSALS at 53 (Dec. 2008) (noting compliance "is generally observed, even when there is little or no enforcement"). That is the point.

Undoubtedly, now that the shared-responsibility payment has been eliminated, more individuals will choose not to comply with the Individual Mandate. *See* CONGRESSIONAL BUDGET OFFICE, REPEALING THE INDIVIDUAL HEALTH INSURANCE MANDATE: AN UPDATED ESTIMATE at 1 (Nov. 8, 2017). And that is likely to undermine Congress's intent in passing the ACA: Near-universal healthcare and reduced healthcare costs. *See id.* But the fact that many individuals will no longer feel bound by the Individual Mandate does not change either that some individuals will feel so bound—such as the Individual Plaintiffs here—or that the Individual Mandate is still law.

c. The Intervenor Defendants' Position Is Contrary to Text and Binding Precedent

And therein lies the rub. The Individual Mandate is law. 26 U.S.C. § 5000A(a). To be precise, the "*[r]equirement* to maintain minimum essential coverage" is still law. *Id.* § 5000A(a) (emphasis added). As the Intervenor Defendants concede, Congress "deliberately left the rest of the ACA untouched"—*including* the Individual Mandate. Hr'g Tr. at 40:12–13.

That the Individual Mandate persists, the Court must conclude, is no mistake. "[I]t is no more the court's function to revise by subtraction than by addition." READING LAW, *supra* note 9, at 174. The surplusage canon holds that, while "[s]ometimes lawyers will seek to have a crucially important word ignored," courts must "avoid a reading that renders some words altogether redundant" or "pointless." *Id.* at 174, 176. And this is just as true when parties "argue that an entire

provision should be ignored." *Id.* at 175; *see also Yates v. United States*, 135 S. Ct. 1074, 1085 (2015) ("We resist a reading . . . that would render superfluous an entire provision . . . .").

To accept the Intervenor Defendants' argument that the Individual Mandate does nothing would be doubly sinful under the canon against surplusage—it would require ignoring both the mandatory words of the provision and the function of the provision itself. As to the words of the provision, it is entitled, "Requirement to maintain minimum essential coverage," and provides that "[a]n applicable individual shall . . . ensure" that she or he is covered under an appropriate plan. 26 U.S.C. § 5000A(a). These words must be interpreted according to their plain meaning. *See United States v. Yeatts*, 639 F.2d 1186, 1189 (5th Cir. 1981) ("A basic canon of statutory construction is that words should be interpreted as taking their ordinary and plain meaning." (citing *Perrin v. United States*, 444 U.S. 37, 42 (1980))); READING LAW, *supra* note 9, at 69.

The words "requirement" and "shall" are both mandatory. Webster's defines "requirement" as "something required," "something wanted or needed," and "something called for or demanded." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1929 (1986). And it provides the following as the non-archaic meaning of "shall": "used to express a command or exhortation." *Id.* at 2085. But a plethora of binding caselaw already establishes that there is nothing permissive about a Congressionally enacted requirement that properly[16] employs the verbiage "shall." *See, e.g.*, *Fed. Express Corp. v. Holowecki*, 552 U.S. 389, 399 (2008) (reasoning "'shall' imposes obligations on agencies to act"); *Lopez v. Davis*, 531 U.S. 230, 241 (2001) (noting "shall" indicates an intent to "impose discretionless obligations"); *Crane v. Napolitano*, No. 3:12-cv-03247-O, 2013 WL

[16] There are some instances where drafters improperly use the word "shall" as part of a negative command. For example, "Neither party *shall* claim reimbursement for its expenses from the other party." READING LAW, *supra* note 9, at 113. In such an instance, "shall" means something more akin to the traditionally permissive "may." But § 5000A(a) is not a negative command. And "[w]hen drafters use *shall* . . . correctly"—as in § 5000A(a)—"the traditional rule holds"—i.e., "that *shall* is mandatory." *Id.* at 112.

1744422, at *8 (N.D. Tex. Apr. 23, 2013), *aff'd sub nom. Crane v. Johnson*, 783 F.3d 244 (5th Cir. 2015) ("Congress's use of the word 'shall' . . . imposes a mandatory obligation").

This is precisely why Chief Justice Roberts, in explaining his road to the *NFIB* majority, noted that the Individual Mandate "reads more naturally as a command to buy insurance." *NFIB*, 567 U.S. at 574 (Roberts, C.J.). Indeed, the Chief Justice reasoned that he "would uphold it as a command if the Constitution allowed it." *Id.* But because courts "have a duty to construe a statute to save it, if fairly possible," *id.*, and because "§ 5000A [could] be interpreted as a tax" at the time, *id.*, the Chief Justice construed the Individual Mandate "as establishing a condition . . . that triggers a tax," *id.* at 563. In other words, to the extent the majority construed the Individual Mandate as something other than a standalone mandate, it did so only because it was possible to construe the provision as triggering a tax. That "fundamental construct," as the Intervenor Defendants call it, *see* Hr'g Tr. at 66:15, was just that—a construct. And in light of this Court's finding on the Tax Power today, the construct no longer holds.

But even under the *NFIB* construct, the Individual Mandate created an obligation.[17] As the majority noted, "the individual mandate clearly aims to induce the purchase of health insurance."[18] *NFIB*, 567 U.S. at 567 (majority). It continued, "Neither the Act nor any other law attaches negative legal consequences to not buying health insurance, beyond requiring a payment to the IRS." *Id.* at 568. And the Government agreed at the time, "if someone chooses to pay rather than obtain health insurance, they have fully complied with the law." *Id.*

[17] *Cf.* READING LAW, *supra* note 9, at 63 (Presumption Against Ineffectiveness).
[18] That conduct-inducing characteristic is what led five Justices to conclude the Individual Mandate was unsustainable under the Interstate Commerce Clause. *See NFIB*, 567 U.S. at 552 (Roberts, C.J.) ("The individual mandate, however, does not regulate existing commercial activity. It instead compels individuals to *become* active in commerce . . . ."); *id.* at 649 (joint dissent) ("To be sure, purchasing insurance is 'Commerce'; but one does not regulate commerce that does not exist by compelling its existence.").

The logic of the *NFIB* construct is that an individual can comply with the law after disobeying the Individual Mandate only by paying the shared-responsibility payment. "The only thing they may not lawfully do is not buy health insurance and not pay the resulting tax." *Id.* at 574 n.11. But this means the Individual Mandate is no more optional than the tax.

If an individual can satisfy the law only by satisfying either Condition 1 (the Individual Mandate) or Condition 2 (the tax), then both conditions are equally optional and mandatory. To state it differently, under the *NFIB* construct, failing Condition 1 no more triggers Condition 2 than failing Condition 2 triggers Condition 1. So, an individual who disobeys the Individual Mandate can satisfy the law only by paying a tax, but an individual who disregards the tax can satisfy the law only by obeying the Individual Mandate. And only in a world where the Individual Mandate were truly non-binding could an individual disobey the Individual Mandate and forego the tax. But under the *NFIB* majority's construct, that is not the case. That is because logic demands that the Individual Mandate was never—pardon the oxymoron—a non-binding law.

The remainder of the ACA proves that, too. As noted above, § 5000A(e), did and still does exempt some individuals from the eliminated shared-responsibility payment but not the Individual Mandate—"a distinction that would make no sense if the mandate were not a mandate." *Id.* at 665 (joint dissent). What is more, Congress exempted, and continues to exempt, certain individuals from the Individual Mandate itself. *See* 26 U.S.C. § 5000A(d)(1). Why would Congress exempt individuals from a mandate that is not mandatory? To ask is to answer.

At least five Justices agreed the Individual Mandate reads more naturally as a command to buy health insurance than as a tax,[19] and those five Justices agreed the mandate could not pass

[19] Justices Ginsburg, Breyer, Kagan, and Sotomayor seemingly took no position on this construction but instead reasoned that the Individual Mandate was constitutional even it were construed as a command. *See, e.g.*, *NFIB*, 567 U.S. at 610 (Ginsburg, J., joined by Breyer, Kagan, and Sotomayor, JJ.) ("Requiring

muster under the Interstate Commerce Clause. Given that the Individual Mandate no longer "triggers a tax," the Court finds the Individual Mandate now serves as a standalone command that continues to be unconstitutional under the Interstate Commerce Clause.

* * *

The Court today finds the Individual Mandate is no longer fairly readable as an exercise of Congress's Tax Power and continues to be unsustainable under Congress's Interstate Commerce Power. The Court therefore finds the Individual Mandate, unmoored from a tax, is unconstitutional and **GRANTS** Plaintiffs' claim for declaratory relief as to Count I of the Amended Complaint.

C. Severability

Since the Individual Mandate is unconstitutional, the next question is whether that provision is severable from the rest of the ACA. The Plaintiffs and the Federal Defendants agree, based on the text of 42 U.S.C. § 18091 and all the opinions in *NFIB*, that the guaranteed-issue and community-rating provisions of the ACA are inseverable from the Individual Mandate. *See* Pls.' Br. 30–35, ECF No. 40; Fed. Defs.' Resp. 13–16, ECF No. 92; Pls.' Reply 9, ECF No. 175. The Plaintiffs, however, argue the Individual Mandate is inseverable from the entire ACA, pointing again to § 18091 and *NFIB*. Pls.' Br. 27–40, ECF No. 40. The Intervenor Defendants first argue the Individual Mandate is severable from all provisions in the ACA. Intervenor Defs.' Resp. 28–33, ECF No. 91. But they also specifically urge that the guaranteed-issue and community-rating provisions are severable from the Individual Mandate. *Id.* at 33–43.

Notably, the parties dispute which Congress's intent controls—the 2010 Congress that passed the ACA or the 2017 Congress that passed the TCJA. *See* Pls.' Reply 14, ECF No. 175 (arguing the intent of the 2010 Congress controls); Intervenor Defs.' Resp. 28–30, ECF No. 91

---

individuals to obtain insurance unquestionably regulates the interstate health-insurance and health-care markets, both of them in existence well before the enactment of the ACA.").

(contending the intent of the 2017 Congress controls); Hr'g Tr. at 43–44. This is a bit of a red herring because, applying the relevant standards, the Court finds both Congresses manifested the same intent: The Individual Mandate is inseverable from the entire ACA.

Because the story begins with the 2010 Congress, the Court begins there as well, analyzing both plain text and Supreme Court precedent. But first, a word about severability doctrine.

1. Severability Doctrine

The doctrine of severability is rooted in the separation of powers. *See Ayotte v. Planned Parenthood of N. New Eng.*, 546 U.S. 320, 329–30 (2006); *Regan v. Time, Inc.*, 468 U.S. 641, 652–53 (1984) (plurality opinion). The Supreme Court has therefore frequently severed unconstitutional provisions from constitutional ones.[20] This practice reflects a judicial duty to "try to limit the solution to the problem." *Ayotte*, 546 U.S. at 328. In other words, "a court should refrain from invalidating more of the statute than is necessary." *Regan*, 468 U.S. at 652.

Severability, however, is possible only where "an act of Congress contains unobjectionable provisions *separable* from those found to be unconstitutional." *Id.* (quoting *El Paso & Ne. R. Co. v. Gutierrez*, 215 U.S. 87, 96 (1909)) (emphasis added). Were a court to overplay deference to sever an inseverable statute, it would embrace the very evil the doctrine is designed to deter. *See, e.g.*, *R.R. Ret. Bd. v. Alton R.R. Co.*, 295 U.S. 330, 362 (1935) ("[W]e cannot rewrite a statute and give it an effect altogether different from that sought by the measure viewed as a whole."). Put bluntly, severing an inseverable statute "is legislative work beyond the power and function of the

[20] *See, e.g.*, *Chadha*, 462 U.S. at 931–35 (severing the legislative-veto provision from the remainder of the Immigration and Nationality Act); *Alaska Airlines*, 480 U.S. at 684–97 (holding the legislative-veto provision severable from the remainder of the Airline Deregulation Act of 1978); *New York v. United States*, 505 U.S. at 186–87 (holding the take provision severable from the remainder of the Low-Level Radioactive Waste Policy Amendments Act of 1985); *Buckley v. Valeo*, 424 U.S. 1, 108–09 (1976) (holding campaign expenditure limits severable from other provisions in the Federal Election Campaign Act of 1971).

court." *Hill v. Wallace*, 259 U.S. 44, 70 (1922). For that reason, the Supreme Court has also readily held whole statutes unconstitutional due to an inseverable part.[21]

In light of these background principles, the test for severability is often stated as follows: "Unless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law."[22] *Alaska Airlines*, 480 U.S. at 684. Even under this statement of the rule, "[t]he inquiry into whether a statute is severable is essentially an inquiry into legislative intent." *Mille Lacs*, 526 U.S. at 191.[23] It "requires judges to determine what Congress would have intended had it known that part of its statute was unconstitutional." *Murphy*, 138 S. Ct. at 1486–87 (Thomas, J., concurring). And consistent with the separation of powers, "enacted text is the best indicator of intent." *Nixon v. United States*, 506 U.S. 224, 232 (1993); *cf. United States v. Maturino*, 887 F.3d 716, 723 (5th Cir. 2018) ("Text is the alpha and the omega of the interpretive process.").

So, a court's severability analysis begins with a bread-and-butter exercise: parsing a provision's text and gleaning the ordinary meaning. *See Murphy*, 138 S. Ct. at 1486 (Thomas, J., concurring) ("Because courts cannot take a blue pencil to statutes, the severability doctrine must be an exercise in statutory interpretation."). If the text reflects Congress's intent that an

---

[21] *See, e.g.*, *Wallace*, 259 U.S. at 70 ("Section 4 with its penalty to secure compliance with the regulations of Boards of Trade is so interwoven with those regulations that they cannot be separated. None of them can stand."); *Alton*, 295 U.S. at 362 ("[W]e are confirmed by the petitioners' argument that, as to some of the features we hold unenforceable, it is 'unthinkable' and 'impossible' that the Congress would have created the compulsory pension system without them. They so affect the dominant aim of the whole statute as to carry it down with them."). *See also Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 191 (1999) (applying "the severability standard for statutes" to an Executive Order and holding "it is clear that President Taylor intended the 1850 order to stand or fall as a whole").

[22] This statement of the rule represents something of a departure from the Supreme Court's reasoning in other decisions that there is a "presumption . . . of an intent that, unless the act operates as an entirety, it shall be wholly ineffective." *Alton*, 295 U.S. at 362 (citing *Wallace*, 259 U.S. at 70). But even as stated in *Alton*, the crux of the inquiry is Congressional "intent."

[23] *See Murphy v. Nat'l Collegiate Athletic Ass'n,*, 138 S. Ct. 1461, 1485–87 (2018) (Thomas, J. concurring) (discussing the problems with applying the modern severability doctrine as a remedy rather than an exercise in statutory interpretation).

unconstitutional provision not be severed—i.e., if "it is evident" Congress "would not have enacted those provisions which are within its power, independently of that which is not," *Alaska Airlines*, 480 U.S. at 684—the analysis ends. The provision is inseverable.

If the text does not reflect a clear legislative intent, however, the court must ask whether the constitutional provisions, severed from the unconstitutional one, would remain "fully operative as a law." *Free Enterprise*, 561 U.S. at 509 (citing *New York*, 505 U.S. at 186; *Alaska Airlines*, 480 U.S. at 684). This is because "Congress could not have intended a constitutionally flawed provision to be severed from the remainder of the statute if the balance of the legislation is incapable of functioning independently." *Alaska Airlines*, 480 U.S. at 684. Here too the touchstone is intent.

Applying these standards, the Court finds the 2010 Congress expressed through plain text an unambiguous intent that the Individual Mandate not be severed from the ACA. Supreme Court precedent supports that finding. And in passing the TCJA through the reconciliation process, the 2017 Congress further entrenched the intent manifested by the 2010 Congress.

2. The Intent of the 2010 Congress

The Intervenor Defendants contend that, "even if it were proper to consider the legislative intent of the 2010 Congress that passed the minimum coverage provision in its original . . . form—and to graft that intent onto a statutory amendment passed by a different Congress—that would still be of no assistance to Plaintiffs." Intervenor Defs.' Resp. 30, ECF No. 91. They first briefly point to the fact that several ACA provisions went into effect before the Individual Mandate. *Id.* at 31–32. They then argue that, "[i]n light of the ACA's numerous stand-alone provisions addressing a vast array of diverse topics, it is not remotely 'evident' that Congress would want the extraordinary disruption that would be caused by" a finding of inseverability. *Id.* at 32–33. Finally,

the Intervenor Defendants devote ten pages to explaining why the Individual Mandate is specifically severable from the guaranteed-issue and community-rating provisions, arguing Congress intended to end discriminatory underwriting practices and that Congress's findings are irrelevant as they focused on an adverse-selection problem that no longer exists. *Id.* at 33–43.

a. The ACA's Plain Text

"[T]he touchstone for any decision about remedy is legislative intent, for a court cannot use its remedial powers to circumvent the intent of the legislature." *Ayotte*, 546 U.S. at 330 (citation and quotation marks omitted). And if it is "the well-established rule that the plain language of the enacted text is the best indicator of intent," *Nixon*, 506 U.S. at 232, then the intent of the 2010 Congress could not be clearer. Congress codified its intent plainly in 42 U.S.C. § 18091, "Requirement to maintain minimum essential coverage; findings." Those findings are not mere legislative history—they are enacted text that underwent the Constitution's requirements of bicameralism and presentment; agreed to by both houses of Congress and signed into law by President Obama. *See INS v. Chadha*, 462 U.S. 919, 951 (1983) (noting "the Framers were acutely conscious that the bicameral requirement and the Presentment Clauses would serve essential constitutional functions" and "[i]t emerges clearly that the prescription for legislative action . . . represents the Framers' decision that the legislative power of the Federal government be exercised in accord with a single, finely wrought and exhaustively considered, procedure").

The findings state Congress intended to "significantly increas[e] healthcare coverage," "lower health insurance premiums," ensure that "improved health insurance products that are guaranteed issue," and ensure that such health insurance products "do not exclude coverage of pre-existing conditions." 42 U.S.C. § 18091(2)(I). And Congress intended to achieve those goals in a

very specific way. Congress knew that "[i]n the absence of the requirement,[24] some individuals would make an economic and financial decision to forego health insurance coverage and attempt to self-insure, which increases financial risks to households and medical providers." *Id.* § 18091(2)(A). So, Congress designed "[t]he requirement, *together* with the other provisions of this Act" to "add millions of new customers to the health insurance market." *Id.* § 18091(2)(C) (emphasis added).

"The requirement," Congress intended, would "achieve[] near-universal coverage"—a major goal of the ACA—"by building upon and strengthening the private employer-based health insurance system." *Id.* § 18091(2)(D). Congress believed this would work because "[i]n Massachusetts, a similar requirement ha[d] strengthened private employer-based coverage." *Id.* Moreover, Congress stated "the requirement, together with the other provisions of this Act, will significantly reduce [the] economic cost" caused by uninsured individuals. *Id.* § 18091(2)(E). Congress also intended the Individual Mandate to achieve another stated goal: "By significantly reducing the number of the uninsured, the requirement, together with the other provisions of this Act, will lower health insurance premiums." *Id.* § 18091(2)(F). And "the requirement, together with the other provisions of this Act," Congress stated, "will improve financial security for families." *Id.* § 18091(2)(G).

If there were any lingering doubt Congress intended the Individual Mandate to be inseverable, Congress removed it: "The requirement is an *essential* part of this larger regulation of economic activity, and *the absence of the requirement would undercut Federal regulation* of the health insurance market." *Id.* § 18091(2)(H) (emphasis added). That is because, "if there were no requirement, many individuals would wait to purchase health insurance until they needed care."

[24] In § 18091, the Individual Mandate is "referred to as the 'requirement.'" *Id.* § 18091(1).

Id. §18091(2)(I). And that would undermine the entire project. So, Congress intended "the requirement, together with the other provisions of this Act," to "minimize this adverse selection and broaden the health insurance risk pool . . . which will lower health insurance premiums." *Id.* In other words, "[t]he requirement is *essential* to creating effective health insurance markets in which improved health insurance products that are guaranteed issue and do not exclude coverage of pre-existing conditions can be sold." *Id.* (emphasis added).

Congress closed by adding that it intended "the requirement, together with the other provisions," to "significantly reduce administrative costs and lower health insurance premiums." *Id.* § 18091(2)(J). "The requirement is *essential*," Congress reiterated, "to creating effective health insurance markets that do not require underwriting and eliminate its associated administrative costs." *Id.* (emphasis added).

All told, Congress stated three separate times that the Individual Mandate is *essential* to the ACA.[25] That is once, twice, three times and plainly. It also stated the absence of the Individual Mandate would "undercut" its "regulation of the health insurance market." Thirteen different times, Congress explained how the Individual Mandate stood as the keystone of the ACA. And six times, Congress explained it was not just the Individual Mandate, but the Individual Mandate "together with the other provisions" that allowed the ACA to function as Congress intended.

As the Supreme Court has repeatedly explained, "The best evidence of congressional intent . . . is the statutory text that Congress enacted."[26] *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 392

[25] *See supra* note 13 (defining "essential" as, among other imperatives, "the essence of its kind," "indispensable," and "[o]f the utmost importance; basic and necessary") (citations omitted).

[26] It is also instructive to consider what text Congress did not enact. In *NFIB*, the Supreme Court held that the unconstitutional portions of the ACA's Medicaid-expansion provisions could be severed from the constitutional portions because Congress included a severability clause. *See NFIB*, 567 U.S. at 585–86 (Roberts, C.J., joined by Breyer and Kagan, JJ.); *id.* at 645 (Ginsburg, J., joined by Sotomayor, J.). In severing the unconstitutional portions of the Medicaid-expansion provisions, the Supreme Court was "follow[ing] Congress's explicit textual instruction." *Id.* at 586 (Roberts, C.J., joined by Breyer and Kagan,

n.4 (2013) (citing *West Virginia Univ. Hospitals, Inc. v. Casey*, 499 U.S. 83, 98 (1991)).[27] On the issue of severability, the text of the ACA is unequivocal. Virtually every subsection of 42 U.S.C. § 18091 is teeming with Congress's intent that the Individual Mandate be inseverable—because it is *essential*—from the entire ACA—because it must work *together* with the other provisions.

On the unambiguous enacted text alone, the Court finds the Individual Mandate is inseverable from the Act to which it is essential.[28]

b. The Supreme Court's ACA Decisions

While the ACA's plain text alone justifies finding complete inseverability, this text-based conclusion is further compelled by two separate Supreme Court decisions. All nine Justices to address the issue, for example, agreed the Individual Mandate is inseverable from at least the pre-

JJ.); *accord id.* at 645 (Ginsburg, J., joined by Sotomayor, J.) ("I agree . . . that the Medicaid Act's *severability clause* determines the appropriate remedy." (emphasis added)). The Supreme Court's Medicaid-severability analysis in *NFIB* thus supports this Court's finding of Individual Mandate inseverability in two ways. First, it confirms the Court must foremost look to Congress's "explicit textual instruction"—here, that the mandate is "essential" to the ACA. *See* 42 U.S.C. § 18091(2). Second, it confirms Congress knew exactly how to signal its intent that an offending ACA provision be severed from non-offending provisions—i.e., through enacted text. *Cf. Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (quoting *Russello v. United States,* 464 U.S. 16, 23 (1983))). Yet Congress sent up no such signals anywhere in the ACA with respect to the Individual Mandate. While not dispositive, the lack of a severability clause covering the Individual Mandate is therefore not only consistent with Congress's repeated statements that the Individual Mandate is "essential" to the ACA but also probative of Congress's intent on its own terms.

[27] *See also EEOC v. Hernando Bank, Inc.*, 724 F.2d 1188, 1190 (5th Cir. 1984) (noting severability requires "the court [to] inquire into whether Congress would have enacted the remainder of the statute in the absence of the invalid provision" and reasoning "Congressional intent and purpose are best determined by an analysis of the language of the statute in question").

[28] *See Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450 (2002) (reasoning statutory construction "ceases if the statutory language is unambiguous and the statutory scheme is coherent and consistent" (cleaned up)); *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) ("[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there . . . When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" (citing *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241–42 (1989); *Rubin v. United States*, 449 U.S. 424, 430 (1981); *United States v. Goldenberg*, 168 U.S. 95, 102–03 (1897); and *Oneale v. Thornton*, 6 Cranch 53, 68 (1810))).

existing-condition provisions.[29] In *NFIB*, Chief Justice Roberts explained "Congress addressed the problem of those who cannot obtain insurance coverage because of preexisting conditions or other health issues . . . through the [ACA's] 'guaranteed-issue' and 'community-rating' provisions." *NFIB*, 567 U.S. at 547–48 (Roberts, C.J.). But these "reforms sharply exacerbate [the] problem" of healthy individuals foregoing health insurance. *Id.* at 548. "The reforms also threaten to impose massive new costs on insurers," the Chief Justice continued. *Id.* "The individual mandate was Congress's solution to these problems. By requiring that individuals purchase health insurance, the mandate prevents cost shifting . . . [and] allows insurers to subsidize the costs of covering the unhealthy individuals the reforms require them to accept." *Id.* The Individual Mandate, the Chief Justice thus explained, was the fulcrum on which the macro-level trade-offs pivoted.

Justice Ginsburg, joined by Justices Breyer, Kagan, and Sotomayor, agreed. She wrote: "To make its chosen approach work . . . Congress *had* to use some new tools, *including a requirement* that most individuals obtain private health insurance coverage." *Id.* at 596 (Ginsburg, J., joined by Breyer, Kagan, and Sotomayor, JJ.) (citing 26 U.S.C.§ 5000A) (emphasis added). She elaborated: "To ensure that individuals with medical histories have access to affordable insurance, Congress devised a three-part solution." *Id.* at 597. Part one: guaranteed issue. *Id.* Part two:

[29] The Federal Defendants here are consistent in taking the same position the previous administration took during the *NFIB* litigation. *See* Br. for Resp. (Severability) at 45, *NFIB*, 567 U.S. 519 (No. 11-393) ("Congress's findings establish that the guaranteed-issue and community-rating provisions are inseverable from the minimum coverage provision."); *id.* at 11; *see also* Memorandum from Att'y Gen. Jefferson B. Sessions III for Speaker Paul Ryan (June 7, 2018) (on file with the Dep't of Justice) (noting that, "[i]n *NFIB*, the Department previously argued that if Section 5000A(a) is unconstitutional, it is severable from the ACA's other provisions, except" the guaranteed-issue and community-rating provisions). Also notable is that many of the Intervenor Defendants appeared as amici in *NFIB* and expressly declined to challenge the Government's concession that the community-rating and guaranteed-issue provisions were inseverable from the Individual Mandate. *See* Br. for California et al. as Amici Curiae Supporting Respondents at 3 n.2, *NFIB*, 567 U.S. 519 (No. 11-393) ("Respondents have conceded that the guaranteed issue and community rating provisions that go into effect in 2014 should be invalidated if the Court concludes the minimum coverage provision is unconstitutional. Amici States do not seek to challenge this concession."). But that was then, and this is now.

community rating. *Id.* "But these two provisions, Congress comprehended, *could not work* effectively unless individuals were given a powerful incentive to obtain insurance." *Id.* (emphasis added). Congress drew this lesson from the "disastrous" results of seven different states that experienced "skyrocketing insurance premium costs, reductions in individuals with coverage, and reductions in insurance products and providers" after "enact[ing] guaranteed-issue and community-rating laws without requiring universal acquisition of insurance coverage." *Id.* at 597–98 (citations and quotation marks omitted).

Based on these lessons, "Congress comprehended that guaranteed-issue and community-rating laws *alone will not work*." *Id.* at 598 (emphasis added). So, taking a cue from Massachusetts, "Congress passed the minimum coverage provision as a *key component* of the ACA." *Id.* at 599 (emphasis added). As did the Chief Justice, then, Justices Ginsburg, Breyer, Kagan, and Sotomayor all understood what Congress understood: Without the Individual Mandate, the guaranteed-issue and community-rating provisions "could not work."

Make that nine Justices. As the joint dissent explained, "Insurance companies bear new costs imposed by a collection of insurance regulations and taxes, including 'guaranteed issue' and 'community rating' requirements to give coverage regardless of the insured's pre-existing conditions." *Id.* at 695 (joint dissent). But, keeping with the careful balance described by the other Justices, "the insurers benefit from the new, healthy purchasers who are forced by the Individual Mandate to buy the insurers' product and from the new low-income Medicaid recipients who will enroll in insurance companies' Medicaid-funded managed care programs." *Id.* at 695–96. Because the Supreme Court held the ACA's Medicaid Expansion could not be compulsory, *see id.* at 575–85 (Roberts, C.J.), the Court's finding today that the Individual Mandate is unconstitutional means

both components the joint dissenters found to be inseverable from the pre-existing-conditions provisions have now fallen.

In *King v. Burwell*, the Supreme Court reaffirmed many of the Justices' severability conclusions from *NFIB*. *See* 135 S. Ct. 2480, 2485–87 (2015). There, a six-Justice majority recounted the history of several states attempting to expand health-insurance coverage without implementing a mandate—an experiment that repeatedly "led to an economic 'death spiral.'" *Id.* at 2486. It then explained what all nine Justices in *NFIB* expressed: the guaranteed-issue provision, the community-rating provision, and the Individual Mandate "are closely intertwined." *Id.* at 2487. And citing directly to Congress's findings for support,[30] the Supreme Court stated unequivocally: "Congress found that the guaranteed issue and community rating requirements *would not work* without the coverage requirement." *Id.* (citing 42 U.S.C. § 18091(2)(I)) (emphasis added).

So, after *King*, the Government[31] and all nine Justices had agreed that *at least* the guaranteed-issue and community-rating provisions "could not work" without the Individual Mandate.[32] And all of them cited Congress's findings in reaching that conclusion.

But the reasoning in the above opinions also confirms the Individual Mandate is inseverable from the *entirety* of the ACA. *See, e.g.*, *King*, 135 S. Ct. at 2486 (noting the successful Massachusetts model used by Congress relied not only on a mandate but instead on "[t]he

[30] As noted above, the Intervenor Defendants argue Congress's ACA findings are no longer relevant to severability because they addressed only how the ACA would be *created*, not how it would work. *See* Intervenor Defs,' Resp. 39–43, ECF No. 91. But the Supreme Court relied on those findings in 2015—after the ACA was up and running—when deciding *King*. *See* 135 S. Ct. at 2487.

[31] *See* Randy Barnett, C*ommandeering the People: Why the Individual Health Insurance Mandate Is Unconstitutional*, 5 N.Y.U. J.L. & LIBERTY 581, 614–21 (2010) (detailing the Government's position leading up to the *NFIB* litigation that the Individual Mandate was constitutional under the Interstate Commerce Clause because it was "essential" to "a broader regulatory scheme").

[32] The Intervenor Defendants nearly agree. *See* Intervenor Defs,' Resp. 37, ECF No. 91 ("To be sure, Congress intended that the requirement to purchase health insurance, along with the community-rating and guaranteed-issue provisions, would work together harmoniously to increase the number of insured Americans and lower premiums.").

combination of these three reforms—insurance market regulations, a coverage mandate, *and tax credits*" (emphasis added)). Notably, the joint dissent in *NFIB* was the only block of Justices to fully consider severability because it was the only block of Justices to find the Individual Mandate unconstitutional—which is now the controlling framework. And they explained why the Individual Mandate was inseverable from the ACA as a whole. That explanation is consistent with the reasoning offered in the Chief Justice's opinion and in Justice Ginsburg's opinion.

The joint dissent first detailed how "[t]he whole design of the [ACA] is to balance the costs and benefits affecting each set of regulated parties." *Id.* at 694; *accord id.* at 548 (Roberts, C.J.) (noting "the mandate prevents cost shifting"); *id.* at 593 (Ginsburg, J., joined by Breyer, Kagan, and Sotomayor, JJ.) (noting Congress wanted to address "[t]hose with health insurance subsidiz[ing] the medical care of those without it"). To that end, "individuals are required to obtain health insurance"; insurers must "sell them insurance regardless of . . . pre-existing conditions and . . . comply with a host of other regulations . . . [and] pay new taxes"; "States are expected to expand Medicaid eligibility and to create regulated marketplaces"; "[s]ome persons who cannot afford insurance are provided it through the Medicaid Expansion, and others are aided in their purchase of insurance through federal subsidies"; "[t]he Federal Government's increased spending is offset by new taxes and cuts in other federal expenditures"; and certain employers "must either provide employees with adequate health benefits or pay a financial exaction." *Id.* at 694–95 (joint dissent) (citations omitted). "In short," the joint dissent explained, "the Act attempts to achieve near-universal health insurance coverage by spreading its costs to individuals, insurers, governments, hospitals, and employers—while, at the same time, offsetting significant portions of those costs with new benefits to each group." *Id.* at 695; *accord id.* at 596 (Ginsburg, J., joined by Breyer, Kagan, and Sotomayor, JJ.) ("A central aim of the ACA is to reduce the number of

uninsured U.S. residents . . . The minimum coverage provision advances this objective." (citing 42 U.S.C. §§ 18091(2)(C) and (I))). Congress, in other words, "did not intend to impose the inevitable costs on any one industry or group of individuals." *Id.* at 694 (joint dissent); *accord id.* at 548 (Roberts, C.J.) (noting "the mandate forces into the insurance risk pool more healthy individuals, whose premiums on average will be higher than their health care expenses" which "allows insurers to subsidize the costs of covering the unhealthy individuals the reforms require them to accept").

As the joint dissent concluded, "the Act's major provisions are interdependent." *Id.* at 696 (joint dissent). Indeed, the ACA "refers to these interdependencies as 'shared responsibility.'" *Id.* (citations omitted). And the joint dissent cited Congress's findings to buttress its conclusion on the Individual Mandate's complete inseverability, noting that "[i]n at least six places, the Act describes the Individual Mandate as working 'together with the other provisions of this Act.'" *Id.* (citing 42 U.S.C. §§ 18091(2)(C), (E), (F), (G), (I), and (J)). The joint dissent further noted that the ACA "calls the Individual Mandate 'an essential part' of federal regulation of health insurance and warns that 'the absence of the requirement would undercut Federal regulation of the health insurance market.'" *Id.* (citing 42 U.S.C. § 18091(2)(H)).

"In sum, Congress passed the minimum coverage provision as a *key component of the ACA*." *Id.* at 599 (Ginsburg, J., joined by Breyer, Kagan, and Sotomayor, JJ.) (emphasis added); *accord id.* at 539 (majority) ("This case concerns constitutional challenges to two *key provisions*, commonly referred to as the individual mandate and the Medicaid expansion." (emphasis added)). Not a key component of the guaranteed-issue and community-rating provisions, but of the ACA. The Supreme Court's only reasoning on the topic thus supports what the text says: The Individual Mandate is essential to the ACA.

c. The Individual Mandate is Inseverable from the Entire ACA

The ACA's text and the Supreme Court's decisions in *NFIB* and *King* thus make clear the Individual Mandate is inseverable from the ACA. As Justice Ginsburg explained, "Congress could have taken over the health-insurance market by establishing a tax-and-spend federal program like Social Security." *Id.* at 595 (Ginsburg, J., joined by Breyer, Kagan, and Sotomayor, JJ.). But it did not. "Instead of going this route, Congress enacted the ACA . . . To make its chosen approach work, however, Congress had to use . . . a requirement that most individuals obtain private health insurance coverage." *Id.* (citing 26 U.S.C.§ 5000A). That requirement—the Individual Mandate—was *essential* to the ACA's architecture. Congress intended it to place the Act's myriad parts in perfect tension. Without it, Congress and the Supreme Court have stated, that architectural design fails. "Without a mandate, premiums would skyrocket. The guaranteed issue and community rating provisions, in the absence of the individual mandate, would create an unsustainable death spiral of costs, thus crippling the entire law." BLACKMAN, *supra* note 3, at 147; *accord NFIB*, 567 U.S. at 597 (Ginsburg, J., joined by Breyer, Kagan, and Sotomayor, JJ.) (noting the mandate was essential to staving off "skyrocketing insurance premium costs"). Congress simply never intended failure.

Yet the parties focus on particular provisions. It is like watching a slow game of Jenga, each party poking at a different provision to see if the ACA falls. Meanwhile, Congress was explicit: The Individual Mandate is *essential* to the ACA, and that essentiality requires the mandate to work *together* with the Act's other provisions. *See* 42 U.S.C. § 18091. If the "other provisions" were severed and preserved, they would no longer be working *together* with the mandate and therefore no longer working as Congress intended. On that basis alone, the Court must find the Individual Mandate inseverable from the ACA. To find otherwise would be to introduce an entirely new regulatory scheme never intended by Congress or signed by the President. And the Court

"cannot rewrite a statute and give it an effect altogether different from that sought by the measure viewed as a whole." *Murphy*, 138 S. Ct. at 1482 (quoting *Alton*, 295 U.S. at 362).

Even if the Court preferred to ignore the clear text of § 18091 and parse the ACA's provisions one by one, the text- and precedent-based conclusion would only be reinforced: Upholding the ACA in the absence of the Individual Mandate would change the "effect" of the ACA "as a whole." *See Alton*, 295 U.S. at 362. For example, the Individual Mandate reduces the financial risk forced upon insurance companies and their customers by the ACA's major regulations and taxes. *See* 42 U.S.C. §§ 18091(2)(C), (I). If the regulations and taxes were severed from the Individual Mandate, insurance companies would face billions of dollars in ACA-imposed regulatory and tax costs without the benefit of an expanded risk pool and customer base—a choice no Congress made and one contrary to the text. *See NFIB*, 567 U.S. at 698 (joint dissent); 42 U.S.C. § 18091(2)(C) and (I). Similarly, the ACA "reduce[d] payments by the Federal Government to hospitals by more than $200 billion over 10 years." *NFIB*, 567 U.S. at 699 (joint dissent). Without the Individual Mandate (or forced Medicaid expansion), hospitals would encounter massive losses due to providing uncompensated care. *See* BLACKMAN, *supra* note 3, at 2–4 (discussing the free-rider and cost-shifting problems in healthcare). This would, as Plaintiffs argue, "distort the ACA's design of 'shared responsibility.'" Pls.' Br. 36, ECF No. 40 (citing *NFIB*, 567 U.S. at 699 (joint dissent)).

The story is the same with respect to the ACA's other major provisions, too. The ACA allocates billions of dollars in subsidies to help individuals purchase a government-designed health-insurance product on exchanges established by the States (or the federal government). *See, e.g.*, 26 U.S.C. § 36B; 42 U.S.C. § 18071. But if the Individual Mandate falls, and especially if the pre-existing-condition provisions fall, upholding the subsidies and exchanges would transform the

ACA into a law that subsidizes the kinds of discriminatory products Congress sought to abolish at, presumably, the re-inflated prices it sought to suppress. *Cf. Williams v. Standard Oil Co. of Louisiana*, 278 U.S. 235, 244 (1929), *overruled in part on other grounds by Olsen v. Nebraska ex rel. W. Reference & Bond Ass'n*, 313 U.S. 236 (1941) ("The taxes imposed by section 10 are solely for the purpose of defraying the expenses of the division of motors and motor fuels, and since the functions of that division practically come to an end with the failure of the price-fixing features of the law, it is unreasonable to suppose that the Legislature would be willing to authorize the collection of a fund for a use which no longer exists.").

Nor did Congress ever contemplate, never mind intend, a duty on employers, *see* 26 U.S.C. § 4980H, to cover the "skyrocketing insurance premium costs" of their employees that would inevitably result from removing "a key component of the ACA." (Ginsburg, J., joined by Breyer, Kagan, and Sotomayor, JJ.). And the Medicaid-expansion provisions were designed to serve and assist fulfillment of the Individual Mandate and offset reduced hospital reimbursements by aiding "low-income individuals who are simply not able to obtain insurance." *Id.* at 685 (joint dissent).

The result is no different with respect to the ACA's minor provisions. For example, the Intervenor Defendants assert that, "[i]n addition to protecting consumers with preexisting medical conditions, Congress also enacted the guaranteed-issue and community-rating provisions to reduce administrative costs and lower premiums." Intervenor Defs.' Resp. 35, ECF No. 91; *see also id.* at 34 ("Congress independently sought to end discriminatory underwriting practices and to lower administrative costs."). But Congress stated explicitly that the Individual Mandate "is *essential* to creating effective health insurance markets that *do not require underwriting* and *eliminate its associated administrative costs*." 42 U.S.C. § 18091(2)(J) (emphasis added). At any rate, to the extent most of the minor provisions "are mere adjuncts of the" now-unconstitutional Individual

Mandate and nonmandatory Medicaid expansion, "or mere aids to their effective execution," if the Individual Mandate "be stricken down as invalid" then "the existence of the [minor provisions] becomes without object." *Williams*, 278 U.S. at 243.

Perhaps it is impossible to know which minor provisions Congress would have passed absent the Individual Mandate. But the level of legislative guesswork entailed in reconstructing the ACA's innumerable trade-offs without the one feature Congress called "essential" is plainly beyond the judicial power. *See Alton*, 295 U.S. at 362; *Wallace*, 259 U.S. at 70. And there is every reason to believe Congress would not have enacted the ACA absent the Individual Mandate—given the Act's text as interpreted by the Supreme Court—but "no reason to believe that Congress would have enacted [the minor provisions] independently." *NFIB*, 567 U.S. at 705 (joint dissent).

In sum, the Individual Mandate "is so interwoven with [the ACA's] regulations that they cannot be separated. None of them can stand." *Wallace*, 259 U.S. at 70.

* * *

Neither the ACA's text nor Supreme Court precedent leave any doubt. The 2010 Congress never intended the ACA "to impose massive new costs on insurers" while allowing widespread "cost shifting." *Id.* at 548 (Roberts, C.J.). It never intended the ACA to go on without the signature provision that everyone knew would "make its chosen approach work"—the signature provision Congress "had to use." *Id.* at 596 (Ginsburg, J., joined by Breyer, Kagan, and Sotomayor, JJ.). It never agreed to a law that would lead to "disastrous" results like "skyrocketing insurance premium costs, reductions in individuals with coverage, and reductions in insurance products and providers." *Id.* at 597–98 (citations and quotation marks omitted). And Congress never intended to excise "a key component of the ACA." *Id.* at 599.

Historical context confirms Congress would not have enacted the ACA absent the constitutional infirmities.[33] *See Free Enterprise*, 561 U.S. at 509 (considering "the statute's text" and "historical context"). Every state's attempt to do so failed miserably. *See King*, 135 S. Ct. at 2485–86. To leave the ACA in place without the Individual Mandate—or, even more drastically, to leave it in place without either the Individual Mandate or the provisions covering pre-existing conditions as the Federal Defendants suggest—would thus be wildly inconsistent "with Congress' basic objectives in enacting the statute." *Booker*, 543 U.S. at 259 (citing *Regan*, 468 U.S. at 653).

This tells the Court all it needs to know. Based on unambiguous text, Supreme Court guidance, and historical context, the Court finds "it is evident that the Legislature would not have enacted" the ACA "independently of" the Individual Mandate. *Alaska Airlines*, 480 U.S. at 684. That is to say, Congress "would not have enacted those provisions which are within its power, independently of [those] which [are] not." *Murphy*, 138 S. Ct. at 1482 (quoting *Alaska Airlines*, 480 U.S. at 684). "Though this inquiry can sometimes be elusive, the answer here seems clear." *Free Enterprise*, 561 U.S. at 509 (cleaned up). Congress intended the Individual Mandate to serve as the keystone, the linchpin of the ACA. That is a conclusion the Court can reach without marching through every nook and cranny of the ACA's 900-plus pages because Congress plainly told the public when it wrote the ACA that "[t]he minimum coverage provision is . . . an 'essential par[t] of a larger regulation of economic activity'" and "without the provision, 'the regulatory scheme [w]ould be undercut.'" *NFIB*, 567 U.S. at 619 (Ginsburg, J., joined by Breyer, Kagan, and Sotomayor, JJ.) (quoting but not citing Congress's findings in 42 U.S.C. § 18091).

In the face of overwhelming textual and Supreme Court clarity, the Court finds "it is 'unthinkable' and 'impossible' that the Congress would have created the" ACA's delicately

[33] *See, id.* ("In coupling the minimum coverage provision with guaranteed-issue and community-rating prescriptions, Congress followed Massachusetts' lead.").

balanced regulatory scheme without the Individual Mandate. *Alton*, 295 U.S. at 362. The Individual Mandate "so affect[s] the dominant aim of the whole statute as to carry it down with" it. *Id.* To find otherwise would "rewrite [the ACA] and give it an effect altogether different from that sought by the measure viewed as a whole." *Alton*, 295 U.S. at 362. Employing such a strained view of severance would be tantamount to "legislative work beyond the power and function of the court." *Wallace*, 259 U.S. at 70.

3. The Intent of the 2017 Congress

Looking for any severability-related intent in the 2017 Congress is a fool's errand because the 2017 "Congress did not repeal any part of the ACA, including the shared responsibility payment. In fact, it could not do so through the budget reconciliation procedures that it used." Hr'g Tr. at 36:7–10 (Intervenor Defendants); *accord id.* at 98:1–3 (Federal Defendants) ("The only thing that we know for sure about Congress' intent in 2017 . . . is that Congress wanted to pass a tax cut."). So, asking what the 2017 Congress intended with respect to the ACA qua the ACA is unhelpful. There is no answer.

But suppose it is true the intent of the TCJA-enacting Congress of 2017 controls severability rather than the intent of the ACA-enacting Congress of 2010. The Intervenor Defendants argue the Court should infer that, by eliminating the shared-responsibility payment while leaving the rest of the ACA intact, the 2017 Congress intended to preserve the balance of the ACA. Intervenor Defs.' Resp. 28–30, ECF No. 91; Hr'g Tr. at 42:10–11 ("The 2017 Congress that amended § 5000A(c) deliberately left the rest of the ACA intact . . . .").

But consider what Congress did *not* do in 2017—or ever. First and foremost, it did not repeal the Individual Mandate. As the Court described in great detail, *see supra* Part IV.B.1.a, the shared-responsibility payment is not the Individual Mandate. That matters. The Individual

Mandate, not the shared-responsibility payment, is "essential" to the ACA. *See* 42 U.S.C. § 18091. And the 2017 Congress did not repeal it. *Accord* Hr'g Tr. at 42:10–11 (Intervenor Defendants) ("The 2017 Congress that amended § 5000A(c) deliberately left the rest of the ACA intact . . . ."). So, at best, searching the 2017 Congress's legislation for severability-related intent would create an inference that the 2017 Congress, like the 2010 Congress, intended to preserve the Individual Mandate because the 2017 Congress, like the 2010 Congress, knew that provision is essential to the ACA. Intervenor Defendants' argument that the 2017 Congress manifested an intent of severability is therefore unavailing. Indeed, one would have to take the incorrect view that the shared-responsibility payment *is* the Individual Mandate to accept the argument that the 2017 Congress, by eliminating the *payment*, intended to sever the *Individual Mandate*.

Secondly, the 2017 Congress did not repeal 42 U.S.C. § 18091, which every Supreme Court Justice to review the ACA cited and which definitively establishes Congress's intent that the Individual Mandate be "an essential part of" its "regulation of the health insurance market." 42 U.S.C. § 18091(2)(H); *see generally supra* Part IV.C.1.a. Finally, given the 2017 Congress repealed neither the Individual Mandate nor § 18091, the 2017 Congress did nothing to repudiate or otherwise supersede the Supreme Court's *NFIB* and *King* opinions detailing the Individual Mandate's essentiality to the ACA.

The Intervenor Defendants thus ask the Court to infer a severability-related intent from a Congress that did not and could not amend the ACA and that therefore did not and could not repeal the Individual Mandate or the enacted text stating the mandate is "essential" to the whole scheme when working "together with the other provisions." They then ask the Court "to graft that intent" onto the Congress that *did* pass the ACA, that *did* employ the Individual Mandate as the keystone, and that *did* memorialize its intent through enacted text stating the Individual Mandate is essential.

The Court finds the 2017 Congress had no intent with respect to the Individual Mandate's severability. But even if it did, the Court would find that "here we know exactly what Congress intended based on what Congress actually did." Hr'g Tr. at 42:8–10 (Intervenor Defendants). If the 2017 Congress had any relevant intent, it was to preserve § 18091 and to preserve the Individual Mandate, which the 2017 Congress must have agreed was essential to the ACA.

4. Severability Conclusion[34]

In some ways, the question before the Court involves the intent of both the 2010 and 2017 Congresses. The former enacted the ACA. The latter sawed off the last leg it stood on. But however one slices it, the following is clear: The 2010 Congress memorialized that it knew the Individual

[34] The Intervenor Defendants also argue the Court should forego a traditional severability analysis and instead remedy the harm to Plaintiffs by striking TCJA § 11081. Intervenor Defs.' Resp. 22–24, ECF No. 91. For this, the Intervenor Defendants rely on *Frost v. Corporation Commission of Oklahoma*, a case in which the Supreme Court held that "when a *valid* statute is amended and the *amendment is unconstitutional*, the amendment 'is a nullity and, therefore, powerless to work any change in the existing statute . . . .'" 278 U.S. 515, 525–27 (1928) (citation omitted) (emphasis added). *Frost* is inapposite. There, the Appellant challenged the amendment, not the original statute, on equal-protection grounds and won. *Id.* at 517, 523–24. The Supreme Court held the amendment to be "a nullity," not because it rendered the original statute unconstitutional but because it was unconstitutional itself. *Id.* at 526 (reasoning that because "the *amendment* is void for unconstitutionality, it cannot be given" "its practical effect [which] would be to repeal *by implication* the requirement of the existing statute in respect of public necessity" (emphasis added)). The original statute therefore was permitted to "stand as the only valid expression of legislative intent." *Id.* at 527. But here, the Plaintiffs challenge the original statute, not the TCJA. Nor would it make sense for them to challenge the TCJA—Congress has plenary power to lay and repeal taxes, as the Intervenor Defendants argue. *See, e.g.*, Intervener Defs.' Resp. 19, ECF No. 91 ("In light of the broad taxing power afforded by the Constitution, it is not unusual for Congress to enact taxes with delayed effective dates . . . ."); *accord* Pls.' Reply 13–14, ECF No. 175 (citing *Brushaber v. Union Pac. R.R. Co.*, 240 U.S. 1, 12 (1916)); Hr'g Tr. at 72:23–24. Plus, the TCJA repeals nothing "by implication." And at any rate, *Frost* is not a license for courts to reach out and hold unchallenged constitutional acts unconstitutional as a remedial safety valve. *See* Josh Blackman, *Undone: the New Constitutional Challenge to Obamacare*, 23 TEX. REV. L. & POL. (forthcoming 2018) (manuscript at 35–36) ("*Frost*'s bite is not available in *Texas v. United States* for a simple reason. Because of how Texas structured its challenge, the district court is presented with a narrower menu of options with respect to severability. No one—not the Plaintiffs, not the Intervenors—has challenged the constitutionality of the TCJA. Federal courts lack a roving license to flip through the U.S. Code with a red pencil to void one statute in order to save another. Invalidating the 2017 tax cut is simply not an option in the Texas litigation because it has not been challenged." (citations omitted)). To the extent *Frost* is relevant here, it stands only for the proposition that a court should hold unconstitutional acts invalid and constitutional ones valid. The unconstitutional act in this case is the Individual Mandate, not the TCJA.

Mandate was the ACA keystone, *see* 42 U.S.C. § 18091; the Supreme Court stated repeatedly that it knew Congress knew that, *see, e.g.*, *NFIB*, 567 U.S. at 547 (Roberts, C.J.) (citing 42 U.S.C. § 18091(2)(F)); *King*, 135 S. Ct. at 2487 (citing 42 U.S.C. § 18091(2)(I)); and knowing the Supreme Court knew what the 2010 Congress had known, the 2017 Congress did not repeal the Individual Mandate and did not repeal § 18091.

"The principle of separation of powers was not simply an abstract generalization in the minds of the Framers: it was woven into the documents that they drafted in Philadelphia in the summer of 1787." *Chadha*, 462 U.S. at 946 (quoting *Buckley*, 424 U.S. at 124). For that reason, the Court respects Congress's plain language. And here, "[t]he language is plain. There is no room for construction, unless it be as to the effect of the Constitution." *In re Trade-Mark Cases*, 100 U.S. 82, 99 (1879). "To limit this statute in the manner now asked for," therefore "would be to make a new law, not to enforce an old one. This is no part of [the Court's] duty." *Id.*

The Court finds the Individual Mandate "is essential to" and inseverable from "the other provisions of" the ACA.

V. CONCLUSION

For the reasons stated above, the Court grants Plaintiffs partial summary judgment and declares the Individual Mandate, 26 U.S.C. § 5000A(a), **UNCONSTITUTIONAL.** Further, the Court declares the remaining provisions of the ACA, Pub. L. 111-148, are **INSEVERABLE** and therefore **INVALID**. The Court **GRANTS** Plaintiffs' claim for declaratory relief in Count I of the Amended Complaint.

SO ORDERED on this **14th day** of **December, 2018**.

Reed O'Connor
UNITED STATES DISTRICT JUDGE

TAB 6

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

TEXAS, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
UNITED STATES OF AMERICA, et al.,	§	**Civil Action No. 4:18-cv-00167-O**
	§	
Defendants,	§	
	§	
	§	
CALIFORNIA, et al.	§	
	§	
Intervenors-Defendants.	§	

ORDER GRANTING STAY AND PARTIAL FINAL JUDGMENT

On December 14, 2018, the Court entered its Order granting partial summary judgment on Count I of the Plaintiffs' Amended Complaint. *See* ECF No. 211. On December 16, 2018, the Court ordered the Parties to meet and confer and, by January 4, 2019, to jointly propose a schedule for resolving the Plaintiffs' remaining claims. *See* ECF No. 212. On December 17, 2018, the Intervenor Defendants moved the Court to clarify that the December 14, 2018 Order is not binding or to enter a stay if the Order is binding and to enter final judgment or certify the Order for immediate appeal. *See* ECF No. 213.

I. BACKGROUND

Plaintiffs are the States of Alabama, Arizona, Arkansas, Florida, Georgia, Indiana, Kansas, Louisiana, Mississippi, Missouri, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin, Governor Paul LePage of Maine (the "State Plaintiffs"), and individuals Neill Hurley and John Nantz (the "Individual Plaintiffs" and, collectively with the State Plaintiffs, "Plaintiffs").

Defendants are the United States of America, the United States Department of Health and Human Services ("HHS"), Alex Azar, in his official capacity as Secretary of HHS, the United States Internal Revenue Service (the "IRS"), and David J. Kautter, in his official capacity as Acting Commissioner of Internal Revenue (collectively, the "Federal Defendants").

Finally, the States of California, Connecticut, Delaware, Hawaii, Illinois, Kentucky, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Oregon, Rhode Island, Vermont, Virginia, and Washington, and the District of Columbia intervened as defendants (collectively, the "Intervenor Defendants").

The Plaintiffs sued the Federal Defendants seeking, among other things, a declaration that the Individual Mandate of the Patient Protection and Affordable Care Act (ACA), Pub. L. 111-148, 124 Stat. 119-1045 (2010), as amended by the Tax Cuts and Jobs Act of 2017 (TCJA), Pub. L. No. 115-97, 131 Stat. 2054 (2017), is unconstitutional and that the remainder of the ACA is inseverable. Am. Compl. 2, ECF No. 27. Their theory is that, because the TCJA eliminated the shared-responsibility tax, the tax-based saving construction developed by the Supreme Court in *National Federation of Independent Businesses v. Sebelius (NFIB)*, 567 U.S. 519 (2012), no longer applies. Am. Compl. 2–3, ECF No. 27. Plaintiffs further argue that, as the four joint dissenters reasoned in *NFIB*, the Individual Mandate is inseverable from the rest of the ACA. Pls.' Br. Prelim. Inj. 35, ECF No. 40 (citing *NFIB*, 567 U.S. at 691–703 (joint dissent)) [hereinafter "Pls.' Br."].

The Federal Defendants agree the Individual Mandate is unconstitutional and inseverable from the ACA's pre-existing-condition provisions. But they argue all other ACA provisions are severable from the mandate. The Intervenor Defendants argue all of Plaintiffs' claims fail.

The Plaintiffs filed an Application for Preliminary Injunction, (ECF No. 39), on April 26, 2018; the Federal Defendants and the Intervenor Defendants responded, (ECF Nos. 91 and 92), on

June 7, 2018; and Plaintiffs replied, (ECF No. 175), on July 5, 2018. Because the Federal Defendants argued a judgment, as opposed to an injunction, was more appropriate, the Court provided notice of its intent to resolve the issues raised by the Application for Preliminary Injunction on summary judgment. *See* July 16, 2018 Order, ECF No. 176 (citing FED. R. CIV. P. 56(f)(3)). The parties responded. *See* ECF Nos. 177–79.

On December 14, 2018, the Court issued its order denying the Plaintiffs' request for a preliminary injunction but granting summary judgment on Count I of the Amended Complaint, finding the Individual Mandate is unconstitutional because it no longer triggers a tax and is inseverable from the remainder of the ACA. *See* Dec. 14, 2018 Order, ECF No. 211. On December 17, 2018, the Intervenor Defendants moved the Court to (1) clarify whether the December 14, 2018 Order is immediately binding on the parties and (2) stay the order or certify it for appeal, as appropriate. *See* Intervenor Defs.' Mot. Stay, ECF No. 213. The Court ordered expedited briefing, *see* ECF No. 215, and the Parties promptly complied, *see* ECF Nos. 216, 217, and 218.

As an initial matter, the Court recognizes the Parties' diligent work on this delicate and complex matter. Counsel have conducted themselves with grace and professionalism, consistently advocating zealously on behalf of their clients with candor and class. And it is no small feat, the Court acknowledges, to prepare such crisp briefing, with so many moving parts, on an expedited basis during the holiday season. For all this, the Court is grateful.

Having reviewed the briefing and applicable law, the Court finds it is most efficient and appropriate to **GRANT** the Intervenor Defendants' request for final judgment on the December 14, 2018 Order granting summary judgment on Count I of the Amended Complaint and to **GRANT** the Intervenor Defendants' request for a stay of that judgment.

II. LEGAL STANDARDS

A. Partial Final Judgment

Federal Rule of Civil Procedure 54(b) provides: "When an action presents more than one claim for relief . . . the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." FED. R. CIV. P. 54(b). This Rule "permits district courts to authorize immediate appeal of dispositive rulings on separate claims in a civil action raising multiple claims." *Gelboim v. Bank of Am. Corp.*, 135 S. Ct. 897, 902 (2015). "As both the rule's text and the Supreme Court have made clear, a district court deciding whether to certify a judgment under Rule 54(b) must make two determinations." *Briargrove Shopping Ctr. Joint Venture v. Pilgrim Enterprises, Inc.*, 170 F.3d 536, 539 (5th Cir. 1999) (citation omitted). First, the court must determine that it is entering judgment on "an ultimate disposition of an individual claim entered in the course of a multiple claims action." *Id.* (citation omitted). Second, the court must determine that no "just reason for delay exists." *Id.* (citation omitted).

B. Stay of Judgment

"The party requesting a stay bears the burden of showing that the circumstances justify an exercise of [the Court's] discretion." *Nken v. Holder*, 556 U.S. 418, 433–34 (2009). To determine whether to grant a stay pending appeal courts consider four factors: "(1) whether the stay applicant has made a strong showing that he [or she] is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Campaign for S. Equality v. Bryant*, 773 F.3d 55, 57 (5th Cir. 2014) (quoting *Veasey v. Perry*, 769 F.3d 890, 892 (5th Cir. 2014)). But when "evaluating these factors, [the Fifth Circuit] has

refused to apply them 'in a rigid . . . [or] mechanical fashion.'" *Id*. (quoting *United States v. Baylor Univ. Med. Ctr*., 711 F.2d 38, 39 (5th Cir. 1983)).

III. ANALYSIS

A. The Court Will Enter Partial Final Judgment

Given the Parties' inquiries about whether the Court's December 14, 2018 Order is final and binding—and the unanimous agreement that the Order should be immediately appealable[1]—the Court finds it is most efficient to enter a partial final judgment under Rule 54(b) on the Order and then stay it pending appeal.

The Federal Defendants suggest it would be inappropriate for the Court to enter partial final judgment under Rule 54(b) "because the Amended Complaint presents only one claim for purposes of Rule 54(b)—that the individual mandate is unconstitutional and that it is not severable from the rest of the ACA."[2] They assert that "Counts I through V represent merely alternative theories of relief or different forms of remedy."[3] The Court finds that Counts I through V of the Amended Complaint are not mere redundancies.

Count I, for example, asks for a declaratory judgment that the Individual Mandate is unconstitutional.[4] Count II, however, raises a Due Process Clause claim and asserts that because "Section 5000A's individual mandate is unconstitutional, the rest of the ACA is irrational under Congress's own findings" and that "[t]he ACA lacks a rational basis now that the individual mandate's tax penalty has been repealed."[5] It is true this claim is likely moot if the Court's December 14, 2018 Order is affirmed on appeal; but if the Order is reversed in whole or in part,

[1] *See, e.g.*, Intervenor Defs.' Mot. Stay 14, ECF No. 213-1; Fed. Defs.' Resp. 6, ECF No. 216; Pls.' Resp. 5, ECF No. 217.
[2] Fed. Defs.' Resp. 8, ECF No. 216.
[3] *Id.*
[4] *See* Am. Compl. 28, ECF No. 27.
[5] *Id.* at 30.

the Plaintiffs could still seek relief under the theory put forth in Count II. And Count IV, for example, presents an APA claim that presupposes the ACA's unconstitutionality but seeks different relief entirely.[6] The claims, in other words, are related but distinct.

Moreover, the Court finds that summary judgment on Count I is an "ultimate disposition of an individual claim." *Pilgrim Enterprises*, 170 F.3d at 539 (citation omitted). By the Court's Order, the Plaintiffs have succeeded on Count I—the entry of summary judgment "dispose[d] of that claim *entirely*." *Monument Mgmt. Ltd. P'ship I v. City of Pearl*, 952 F.2d 883, 885 (5th Cir. 1992) (emphasis in original). And that claim—that the Individual Mandate is unconstitutional—is the Plaintiffs' "*primary* claim." *Id.* (emphasis in original). Plus, for the reasons discussed in the below stay analysis, the Court finds there is "no just reason for delay[ing]" appeal of the December 14, 2018 Order. *See Pilgrim Enterprises*, 170 F.3d at 539.

The Court therefore **GRANTS** the Intervenor Defendants' motion for final judgment on the December 14, 2018 Order, (ECF No. 211), granting summary judgment on Count I of the Amended Complaint and declaring the Individual Mandate unconstitutional and inseverable.

B. The Order is Stayed

The Intervenor Defendants bear the burden of demonstrating that a stay is warranted. *Nken*, 556 U.S. at 433–34. In their briefing, the Intervenor Defendants address all four factors relevant to a district court's analysis of whether to exercise its discretion to grant a stay pending appeal.[7] For the reasons set forth below, the Court finds the Intervenor Defendants cannot carry their burden on the first relevant factor—likelihood of success on the merits. But the Intervenor Defendants prevail on the remaining elements, and the Plaintiffs do not argue otherwise.

[6] *Id.* at 32.
[7] *See* Intervenor Defs.' Mot. Stay 7–14, ECF No. 213-1.

1. The Intervenor Defendants Are Unlikely to Succeed

The Intervenor Defendants put forth a very powerful narrative in this case—one they assert the Fifth Circuit is likely to adopt. In truth, the narrative presents a forceful, surface-level appeal. It goes something like this.

The Individual Plaintiffs have no standing because they suffer no injury. After the TCJA, there is no tax penalty for non-compliance with the Individual Mandate. And anyways, the Individual Mandate is purely optional. So, at most, the ACA presents the Individual Plaintiffs with a simple choice between buying ACA-compliant insurance or "paying" a $0 tax. No harm, no foul.

But even if the choice between buying insurance and doing nothing creates standing, the Intervenor Defendants continue, the Individual Mandate is constitutional. It is constitutional as an exercise of Congress's Tax Power because the now-eliminated shared-responsibility payment still satisfies a number of the tax factors discussed in *NFIB*. And even if the Individual Mandate is no longer salvageable as an exercise of the Tax Power, it may now be viewed as a proper exercise of Congress's Interstate Commerce Power because it does not compel anyone to do anything.

Finally, even if the Individual Mandate is unconstitutional, it is severable from the remainder of the ACA. We know that because the 2017 Congress that passed the TCJA eliminated the shared-responsibility payment but left the rest of the ACA intact.

So stated, this narrative is compelling. But it rests on two crucial premises, without which it falls apart. First, it is premised on a belief that written law is not binding. Second, it is premised on the view that the Supreme Court's reasoning in *NFIB* did not simply craft a saving construction but instead permanently supplanted Congress's intent by altering the very nature of the ACA. In the Court's view, neither of these premises hold and therefore neither does the narrative. The Court

therefore finds the Intervenor Defendants are unlikely to succeed on the merits of their appeal for at least the following basic reasons.

a. Standing

The Intervenor Defendants assert that, on appeal, they "are likely to establish that the Individual Plaintiffs do not have standing to maintain this action" because, after January 1, 2019, the Individual Plaintiffs will not be put to a choice "between purchasing minimum essential coverage, on the one hand, and paying the penalty for not doing so, on the other." Intervenor Defs.' Mot. Stay 8, ECF No. 213-1 (citing *Hotze v. Burwell*, 784 F.3d 984, 993 (5th Cir. 2015)). The Court finds it unlikely that the Fifth Circuit will hold the Individual Plaintiffs lack standing to challenge the constitutionality of the Individual Mandate—under *Hotze* or otherwise.

In *Hotze*, the plaintiffs challenged the ACA as unconstitutional under the Origination Clause and the Takings Clause, unlike the Individual Plaintiffs here who, like the plaintiffs in *NFIB*, challenge the Individual Mandate as beyond Congress's enumerated powers.[8] In deciding the case, the Fifth Circuit did not hold that an individual may challenge the constitutionality of the ACA *only if* the individual pleads that they lack ACA-compliant coverage and are therefore faced with a choice between purchasing insurance or paying a penalty.[9] Instead, it held on the basis of the pleadings before it that the plaintiffs failed to adequately plead that precise dilemma and that doing so would have been "the most straightforward" way to demonstrate standing. *Id.* at 994 ("Accordingly, we hold that Dr. Hotze has failed to demonstrate standing on the most straightforward ground—that is, that the ACA forces him to choose between paying the penalty and purchasing compliant insurance.").

[8] *Compare Hotze*, 784 F.3d at 986, *with NFIB*, 567 U.S. at 530–32.
[9] *See Hotze*, 784 F.3d at 993 (noting the distinction in other circuits that "plaintiffs . . . who already have minimum essential coverage *ordinarily* will not have an injury in fact for standing purposes" (emphasis added)).

Specifically, Dr. Hotze pleaded that the "ACA compels Plaintiff Hotze and other Texans to pay enormous penalties to the federal government, or else purchase health insurance that is far more expensive and less useful than existing employer-based coverage." Complaint at 1, *Hotze v. Sebelius*, 991 F. Supp. 2d 864 (S.D. Tex. 2014) (No. 4:13-cv-01318).[10] This "purchase or penalty" theory of economic injury forced the court to contend with the fact that Dr. Hotze never actually pleaded the facts necessary to support *his own theory of standing*—i.e., that he was put to a concrete choice between the costs of obeying 26 U.S.C. § 5000A(a) or paying the penalty amount set by § 5000A(c).[11] To the contrary, the complaint there suggested Dr. Hotze faced no such dilemma because he was covered by his employer. *See Hotze*, 784 F.3d at 989 ("[T]he complaint at no point clearly alleges that the health-insurance policy that Braidwood already provides to Dr. Hotze fails to satisfy the mandates.").

Hotze, then, is not a broad holding that individuals lack standing to challenge the Individual Mandate's constitutionality unless they first disobey that provision and fail to maintain compliant coverage. To read *Hotze* in such a manner would run headlong into the well-established doctrine that individuals need not first disobey a law to earn standing to challenge it.[12] Instead, *Hotze* is a

[10] *See also id.* at 6 ("Plaintiffs will suffer irreparable harm in being compelled to switch to a more expensive government-approved insurance plan that does not cover or reimburse for desired medical services."); *id.* at 6–7 ("Plaintiffs will suffer unrecoverable financial losses from the implementation of ACA, which they will have no practical way of recouping from the federal government or from private, government-approved insurance carriers."); *id.* at 7 ("Plaintiffs have already suffered harm by the reduction in market choice for affordable health insurance, as insurance premiums have already increased in the market due to ACA.").

[11] *See Hotze*, 784 F.3d at 994 ("Given the complaint's allegation that Dr. Hotze has an employer-provided health-insurance plan, coupled with the complaint's failure to allege that this plan falls into the narrow category of employer-provided plans that do not constitute 'minimum essential coverage' under § 5000A, we cannot 'reasonably ... infer[ ]' that Dr. Hotze lacks the minimum essential coverage required by the mandate." (citations omitted)).

[12] *See, e.g.*, *Steffel v. Thompson*, 415 U.S. 452, 459 (1974); *Planned Parenthood of Gulf Coast, Inc. v. Gee*, 862 F.3d 445, 455 (5th Cir. 2017), *cert. denied*, 139 S. Ct. 408 (2018) ("This argument ignores the well-established principle that a threatened injury may be sufficient to establish standing . . . The Individual Plaintiffs thus need not wait to file suit until PPGC is forced to close its doors to them and all other Medicaid beneficiaries." (citing *Comsat Corp. v. FCC*, 250 F.3d 931, 936 (5th Cir. 2001); *Loa–Herrera v. Trominski*, 231 F.3d 984, 988 (5th Cir. 2000))).

narrow, fact-specific holding that the plaintiff failed to adequately plead his own purchase-or-penalty theory of standing. *Hotze*, 784 F.3d at 991 ("Thus, although we do not doubt that many have suffered an injury in fact at the hands of the individual mandate, the plaintiffs' complaint *does not adequately allege* that Dr. Hotze is among them." (emphasis added)).

Importantly, the Individual Plaintiffs here chart a different course than Dr. Hotze. Their pleadings clearly allege they are required by the Individual Mandate to *maintain* insurance they do not want to *continue* purchasing—i.e., they are required by a law to continue activity they do not want to engage in—and that this requirement is inherently beyond Congress's enumerated powers. *See* Am. Compl. 5, ECF No. 27 ("Mr. Hurley maintains minimum essential health insurance coverage, which he purchased on the ACA-created exchange."); *id.* at 27 ("In the absence of the ACA, the Individual Plaintiffs would purchase a health-insurance plan different from the ACA-compliant plans that they are currently required to purchase were they afforded the option without the ACA."); *id.* at 28 ("Section 5000A's individual mandate exceeded Congress's enumerated powers by forcing Individual Plaintiffs to maintain ACA-compliant health insurance coverage.").

The Fifth Circuit is therefore likely to find that the Individual Plaintiffs pleaded a sufficient injury in two respects.[13] First, unlike the purely theoretical and contradictory allegations in *Hotze*,[14] the Individual Plaintiffs here actually allege a clear and present injury. Indeed, the Individual Plaintiffs put it quite plainly: "In the absence of the ACA, the Individual Plaintiffs would purchase a health-insurance plan different from the ACA-compliant plans that they are currently required to purchase."[15] Compl. 27, ECF No. 27. There is no equivocation, there is no speculation. The

[13] *See, e.g.*, *Time Warner Cable, Inc. v. Hudson*, 667 F.3d 630, 636 (5th Cir. 2012) (holding the plaintiffs alleged a "sufficient economic *and* constitutional injury" (emphasis in original)).
[14] *See* Complaint at 1–7, *Hotze*, 991 F. Supp. 2d 864 (S.D. Tex. 2014) (No. 4:13-cv-01318).
[15] It is also worth noting that the Fifth Circuit in *Hotze* held that Dr. Hotze failed to adequately plead an injury caused by the *possibility* of being faced with a choice between accepting undesirable health insurance or violating the Individual Mandate only because that injury presupposed the decision of a third party—Dr.

Individual Plaintiffs allege they are bound to purchase something they do not want to purchase and that if they were not so bound they would not make the purchase.[16] And whereas Dr. Hotze would face his injury only were his employer to stop providing ACA-compliant coverage, the Individual Plaintiffs here face their alleged injury now—they are being required to continue buying something they do not want.

Second, as discussed in the Court's Order,[17] the Individual Plaintiffs sufficiently allege that they are the direct objects of an unconstitutional exercise of power traceable to the Individual Mandate that will be redressed by a holding that the mandate is invalid.[18] That is to say, the Individual Plaintiffs allege a straightforward constitutional injury: Congress legislated in a way the Constitution does not allow and the Individual Plaintiffs are the direct object of that legislation. The "alleged violation[] of the Constitution here [is] not immaterial, but form[s], rather, the sole

---

Hotze's employer. *See Hotze*, 784 F.3d at 995 ("The existence of Dr. Hotze's alleged injury rests on . . . a third-party decision: Dr. Hotze will be injured by the individual mandate, the plaintiffs say, because, once the employer mandate takes effect, Braidwood may offer him less desirable insurance, which may prompt him to drop his employer-provided insurance, which he will not be able to do without violating the individual mandate. Speculation about a decision made by a third party . . . constitutes an essential link in this chain of causation."). The court therefore left open the possibility that such a choice could constitute sufficient injury if not contingent on a third-party decision. The Individual Plaintiffs allege such an injury here. *See* Am. Compl. 27, ECF No. 27.

[16] *See Doe v. Chao*, 540 U.S. 614, 624–25 (2004) (noting that "an individual subjected to an adverse effect has injury enough to open the courthouse door"); *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 103 (1998) (noting "the constitutional 'case' or 'controversy' . . . point has always been the same: whether a plaintiff 'personally would benefit in a tangible way from the court's intervention.'" (quoting *Warth v. Seldin*, 422 U.S. 490, 508 (1975))).

[17] *See* December 14, 2018 Order 16–17, ECF No. 211.

[18] Compl. 26, ECF No. 27 ("The ACA injures Individual Plaintiffs Hurley and Nantz by mandating that they purchase minimum essential health insurance coverage despite the Supreme Court's determination that the requirement is unconstitutional."); *id.* at 27 ("Individual Plaintiffs have an obligation to comply with the individual mandate under the ACA while it remains federal law, despite the provision's unconstitutionality."); *id.* at 5 ("Mr. Hurley is subject to the individual mandate and objects to being required by federal law to comply with it."); *id.* at 6 ("Mr. Nantz is subject to the individual mandate and objects to being required by federal law to comply with it."); *id.* at 27 ("Each of the injuries to Individual Plaintiffs is caused by the Defendants' continued enforcement of the Affordable Care Act, and each of these injuries will be redressed by a declaratory judgment from this Court pronouncing the Affordable Care Act unconstitutional.").

basis of the relief sought." *Bell v. Hood*, 327 U.S. 678, 683 (1946). "And it is established practice for [the Supreme] Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution." *Id.* at 684.

The Individual Plaintiffs' allegation is therefore likely to satisfy the test for constitutional injury on appeal.[19] And to the extent existing constitutional-injury doctrine deals largely with the infringement of enumerated rights, rather than the violation of the Constitution's structural protection of rights, the Court finds it unlikely the Fifth Circuit would rely on such an untenable distinction.[20] The Individual Plaintiffs allege they are subject to a congressional act that inherently

[19] *See, e.g.*, *Hudson*, 667 F.3d at 636–37 ("TCA and Time Warner need not prove that they will sustain a quantifiable economic injury. *Cf. Minneapolis Star & Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 588 (1983) (observing that 'the very selection of the press for special treatment threatens the press not only with the current differential treatment, but with the possibility of subsequent differentially more burdensome treatment' and '[t]hus, even without actually imposing an extra burden on the press, the government might be able to achieve censorial effects'). S.B. 5 subjects the plaintiffs to disparate treatment . . . Because the legislation targets the plaintiffs for exclusion from this benefit provided to similarly situated speakers, TCA and Time Warner have shown constitutional injury sufficient to establish standing."); *Texas Cable & Telecomms. Ass'n v. Hudson*, 265 F. App'x 210, 217–18 (5th Cir. 2008) ("In addition to competitive or economic injury, a constitutional injury also provides standing."); *Duarte ex rel. Duarte v. City of Lewisville*, 759 F.3d 514, 520 (5th Cir. 2014) (holding plaintiff sufficiently pleaded constitutional injury because he alleged he was "the target of the . . . ordinance restricting where registered child sex offenders, like him, can live"); *Hollis v. Lynch*, 827 F.3d 436, 441–42 (5th Cir. 2016) (holding plaintiff pleaded sufficient constitutional injury by challenging law banning machine guns as infringing Second Amendment rights and then holding the Second Amendment challenge failed on the merits); *accord Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 664–66 (1993).

[20] *See* U.S. CONST. amend. IX ("The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."); *United States v. Lopez*, 514 U.S. 549, 552 (1995) ("We start with first principles. The Constitution creates a Federal Government of enumerated powers . . . As James Madison wrote: 'The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.' . . . This constitutionally mandated division of authority 'was adopted by the Framers to ensure protection of our fundamental liberties.'" (citations omitted)); *cf Bond v. United States*, 564 U.S. 211, 221 (2011) ("The Framers concluded that allocation of powers between the National Government and the States enhances freedom . . . by protecting the people, from whom all governmental powers are derived."); *id.* ("[F]ederalism secures to citizens the liberties that derive from the diffusion of sovereign power." (quoting *New York v. United States,* 505 U.S. 144, 181 (1992))); *id.* ("Federalism secures the freedom of the individual."); *id.* at 222 ("The structural principles secured by the separation of powers protect the individual as well."); *id.* ("In the precedents of this Court, the claims of individuals . . . have been the principal source of judicial decisions concerning separation of powers and checks and balances."); *PHH Corp. v. Consumer Fin. Prot. Bureau*, 881 F.3d 75, 164 (D.C. Cir. 2018) (en banc) (Kavanaugh, J., dissenting) ("To prevent tyranny and protect individual liberty, the Framers of the Constitution separated

exceeds that body's power. And "[i]f the constitutional structure of our Government that protects individual liberty is compromised, individuals who suffer otherwise justiciable injury"—such as the requirement to purchase an unwanted product—"may object." *Bond*, 564 U.S. at 223.

This raises one final point: The Intervenor Defendants argue the Individual Plaintiffs cannot plead a constitutional injury (or any justiciable injury, for that matter) because the Individual Mandate no longer compels compliance. *See* Intervenor Defs.' Mot. Stay 8, ECF No. 213-1 ("Beginning January 1, 2019, the Individual Plaintiffs will no longer be on the horns of that dilemma; as a result, the Fifth Circuit is likely to hold that they lack standing."). But standing analysis and merits analysis are fundamentally separate inquiries, and this line of attack conflates them.[21] That is, it rests on the premise that written law, like § 5000A(a), is not binding—which is one of the Intervenor Defendants' premiere merits arguments in this case.[22] That the Individual Mandate does nothing is the Intervenor Defendants' leading argument for why the mandate

---

the legislative, executive, and judicial powers of the new national government."). *See also* THE FEDERALIST NO. 84 (Alexander Hamilton) ("[W]hy declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?"); RANDY E. BARNETT, OUR REPUBLICAN CONSTITUTION 191 (2016) ("Madison's blasé attitude about the Tenth Amendment was in stark contrast with the imperative he felt to add what eventually became the Ninth Amendment. This provision was needed, he said, to guard against 'one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system, namely, that 'by enumerating particular exceptions to the grant of power, it would disparage those rights which were not placed in that enumeration.'" (citations omitted)).

[21] *See Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2663 (2015) ("[O]ne must not 'confus[e] weakness on the merits with absence of Article III standing.'" (citing *Davis v. United States*, 131 S.Ct. 2419, 2434 n. 10 (2011); *Warth*, 422 U.S. at 500)); *Steel Co.*, 523 U.S. at 94 (noting the Ninth Circuit's "doctrine of hypothetical jurisdiction" and "declin[ing] to endorse such an approach because it carries the courts beyond the bounds of authorized judicial action and thus offends fundamental principles of separation of powers"); *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990) ("Our threshold inquiry into standing 'in no way depends on the merits of the [petitioner's] contention' . . . and we thus put aside for now [petitioner's] Eighth Amendment challenge and consider whether he has established the existence of a 'case or controversy.'" (quoting *Warth*, 422 U.S. at 500)); *Bell*, 327 U.S. at 682 ("[I]t is well settled that the failure to state a proper cause of action calls for a judgment on the merits, and not for a dismissal for want of jurisdiction.").

[22] *See* December 14, 2018 Order 17, ECF No. 211 ("But this argument begs a leading question in this case by assuming the Individual Plaintiffs need not comply with the Individual Mandate.").

permissibly "regulates" interstate commerce.[23] Putting aside the logical difficulty of that argument, the Supreme Court has made clear that whether a challenged "statute in fact constitutes an abridgment of the plaintiff's" constitutional protections "is, of course, irrelevant to the standing analysis."[24] So, the Fifth Circuit is unlikely to skip ahead to the merits to determine § 5000A(a) is non-binding and therefore constitutional and then revert to the standing analysis to use its merits determination to conclude there was no standing to reach the merits in the first place. It is instead likely to hold that the Intervenor Defendants' merits argument that the Individual Plaintiffs need not comply with the law is an inappropriate ground for challenging standing[25]—and likely inappropriate on the merits.

This then brings into focus the proper injury inquiry for the Individual Plaintiffs' constitutional challenge: Do the Individual Plaintiffs sufficiently allege that the Individual Mandate *operates* to injure them? The inquiry is not whether the Individual Plaintiffs are injured if they break the law—i.e., if they *disobey* the Individual Mandate. The Court does not ask whether a plaintiff is injured by a challenged law if they choose to disregard the law they challenge as unconstitutional—the injury arises from following the law as Congress intended. That is the entire

---

[23] *See, e.g.*, Intervenor Defs.' Mot. Stay 9, ECF No. 213-1 ("In *NFIB*, The Supreme Court held that the requirement of maintaining minimum coverage went beyond Congress's powers under the Commerce Clause because it '*compels* individuals' to participate in commerce . . . But once the penalty for failing to maintain coverage is reduced to zero, it will lose its coercive effect." (citation omitted)).

[24] *Meese v. Keene*, 481 U.S. 465, 473 (1987) (citation omitted).

[25] *See, e.g.*, *Gee*, 862 F.3d at 455 ("LDHH also argues that the Individual Plaintiffs have not and will not sustain any legal injury . . . because the Individual Plaintiffs have a right to choose only a 'qualified' provider, and PPGC is no longer a qualified provider. This contention turns on the sole substantive question before us on appeal, and we decline to allow LDHH to bootstrap this issue into our standing inquiry."); *Duarte*, 759 F.3d at 520 ("The factors the district court found significant may ultimately bear on whether Duarte can show constitutional injury to merit an award of damages or injunctive relief—on which we express no opinion. But the district court improperly relied on these considerations in dismissing the Duartes' constitutional challenge for lack of standing."); *Croft v. Governor of Texas*, 562 F.3d 735, 746 (5th Cir. 2009) ("The ADF *amicus* claims that a moment of silence cannot violate the Establishment Clause, as there is no active religious component. But that is a question to be determined on the merits, which must come after determining whether we have jurisdiction to hear the case.").

point of a constitutional challenge. Were courts to assess whether plaintiffs are injured by *disregarding* allegedly unconstitutional laws, courts would not only be implicitly sanctioning lawlessness but would be foreclosing a large swath of constitutional challenges already entertained by the Supreme Court.[26]

In this regard, the Individual Plaintiffs' alleged injury—the requirement to purchase an unwanted product—is not self-inflicted, it is congressionally inflicted. Congress intended to achieve something through the Individual Mandate, the Individual Plaintiffs allege, that is beyond its constitutional reach. It would be illogical to ask whether the allegedly unconstitutional Individual Mandate injures the Individual Plaintiffs when it is ignored. The answer is obviously "no," but it is also obviously irrelevant. Answering whether the Individual Mandate injures the Plaintiffs by unconstitutionally requiring them to do something requires analyzing what the law requires them to do, not whether the Plaintiffs can get away with not doing it.

In sum, the pleadings satisfy *Hotze* and otherwise sufficiently state a constitutional injury sufficient to meet the Article III requirements of standing. And to the extent an independent, justiciable injury other than regulation by unconstitutional legislation is necessary, the Individual Plaintiffs have alleged that, too—they are required to purchase a product that, in the absence of

[26] For example, the Supreme Court did not ask in *Clements v. Fashing* whether the officeholders would be injured if they simply *disregarded* the law and did not resign their current offices upon announcing candidacy. 457 U.S. 957, 961–62 (1982) ("We find the uncontested allegations in the complaint sufficient to create an actual case or controversy. The officeholder-appellees have alleged that they have not and will not announce their candidacy for higher judicial office because such action will constitute an automatic resignation of their current offices pursuant to § 65."). And Chief Justice Marshall never asked whether William Marbury would be injured if he *ignored* the law and began serving as a justice of the peace without an official commission from James Madison. *See Marbury v. Madison*, 5 U.S. 137, 137 (1803) ("This motion was supported by affidavits of the following facts; that notice of this motion had been given to Mr. Madison; that Mr. Adams, the late president of the United States, nominated the applicants to the senate for their advice and consent to be appointed justices of the peace of the district of Columbia; that the senate advised and consented to the appointments; that commissions in due form were signed by the said president appointing them justices, &c. and that the seal of the United States was in due form affixed to the said commissions by the secretary of state; that the applicants have requested Mr. Madison to deliver them their said commissions, who has not complied with that request.").

§ 5000A(a), they allege they would not purchase. If the Fifth Circuit has held that an allegation of death to whooping cranes—majestic as they are—is sufficient injury-in-fact to confer standing on an individual,[27] surely it is unlikely to hold that an allegation of unconstitutional coercion is not. And while it may not agree on the merits of that allegation, it may not thereby dismiss it at the threshold. The Court therefore finds the Intervenor Defendants are unlikely to succeed on their standing argument.

b. Merits

The Intervenor Defendants also contend they are likely to succeed on the merits of the Plaintiffs' claims. First, the Intervenor Defendants assert they are likely to succeed in arguing the Individual Mandate "can still be upheld as a lawful exercises of Congress's taxing power" because "Section 5000A will retain most of the features that the Supreme Court pointed to in concluding that it could fairly be construed as a tax" and because "the Fifth Circuit is unlikely to share this Court's view that the production of revenue at all times is the *sine qua non* of a tax." Intervenor Defs.' Mot. Stay 8–9, ECF No. 213-1. They also assert the Fifth Circuit "has upheld the constitutionality of a statute that taxed the making of machine guns, even though federal law had subsequently banned the possession of machine guns, and even though the federal government no longer collected the tax." *Id.* at 9 (*United States v. Ardoin*, 19 F.3d 177, 179–80 (5th Cir. 1994)).

Next, the Intervenor Defendants argue they "are likely to succeed on their alternative theory that, if the minimum coverage provision can no longer be fairly construed as a tax, it no longer violates the Commerce Clause" because "once the penalty for failing to maintain coverage is reduced to zero, it will lose its coercive effect." *Id.* The Intervenor Defendants then insist that, even if the Fifth Circuit holds the Individual Mandate unconstitutional, the court is likely to hold

[27] *See Aransas Project v. Shaw*, 775 F.3d 641, 648 (5th Cir. 2014) (per curiam) (holding plaintiff sufficiently "alleged injury (death to cranes and injury to those who enjoy them)").

that "the appropriate remedy is to strike the amendment and order that the statute operate the way it did before the amendment was adopted." *Id.* (citing *Frost v. Corp. Comm'n Okla.*, 278 U.S. 515, 525 (1928)). Finally, the Intervenor Defendants argue that, even if they lose on all the above arguments, they "are likely to succeed on their argument" that the Individual Mandate "is severable from the rest of the ACA." *Id.* at 10. This is because the 2017 Congress "zeroed out the penalty for failing to maintain minimum coverage while leaving the rest of the ACA intact." *Id.*

The Court disagrees with each of the Intervenor Defendants' contentions for the reasons set out in the Court's 55 pages of analysis in the December 14, 2018 Order. *See* ECF No. 211. But the Court finds it appropriate to briefly summarize the logic of why the Intervenor Defendants' arguments, though well-made, are ultimately unavailing and unlikely to succeed on appeal.

i. Unconstitutional Under the Tax Power[28]

The Individual Mandate can no longer be saved as an exercise of Congress's Tax Power for the following reasons:

- The Individual Mandate, 26 U.S.C. § 5000A(a), and the shared-responsibility payment, §§ 5000A(b) and (c), are textually and functionally distinct.[29]
- The Supreme Court's decision in *NFIB* recognized this distinction.[30]
- The Supreme Court held the Individual Mandate could be saved under Congress's Tax Power because it triggered the shared-responsibility payment, which could be plausibly read as a tax.[31]

[28] *See* December 14, 2018 Order 19–27, ECF No. 211.
[29] *Id.* at 20–22.
[30] *See id.* at 22 ("*NFIB* does not contravene Congress's intent to separate the Individual Mandate and shared-responsibility penalty. To the extent the Supreme Court held § 5000A could be fairly read as a tax, it reasoned only that the Individual Mandate could be viewed as part and parcel of a provision supported by the Tax Power—not that the Individual Mandate itself was a tax. The Supreme Court stated its 'precedent demonstrate[d] that Congress had the power to impose the exaction in § 5000A under the taxing power'—and § 5000A(b) is the exaction—'and that § 5000A need not be read to do more than impose a tax. That is sufficient to sustain it.'" (quoting *NFIB*, 567 U.S. at 570 (emphasis added))).
[31] *Id.* at 23–24.

- The Supreme Court held the shared-responsibility payment could be treated as the tax the Individual Mandate triggered based on the following factors: The payment
  - "is paid into the Treasury by 'taxpayer[s]' when they file their tax returns,"
  - "does not apply to individuals who do not pay federal income taxes because their household income is less than the filing threshold,"
  - "amount is determined by such familiar factors as taxable income, number of dependents, and joint filing status,"
  - "is found in the Internal Revenue Code and enforced by the IRS," and
  - "yields the essential feature of any tax: It produces at least some revenue for the Government."[32]
- In light of the TCJA, § 5000A(b) no longer "looks like a tax in many respects."[33] It now fails at least Factor 1 (no longer paid by taxpayers into the Treasury), Factor 3 (no amount and $0 is not determined by familiar factors), Factor 4 (not enforced by the IRS) and, crucially, Factor 5 (no longer yields the "essential feature" of a tax).
- Section 5000A(b) now fails four out of the five factors identified by the Supreme Court as justifying its saving construction, including the one feature the Supreme Court identified as "essential."[34] The mandate therefore no longer triggers a tax.

Accordingly, the Court finds the Fifth Circuit is likely to draw a straight line from the majority's reasoning in *NFIB* and agree that the Individual Mandate cannot be sustained under the saving construction that construed the mandate as triggering a tax.[35]

---

[32] *NFIB*, 567 U.S. at 563–64.

[33] *Id.* at 563; *see* December 14, 2018 Order 24–25, ECF No. 211.

[34] The Intervenor Defendants contend that "the Fifth Circuit is unlikely to share this Court's view that the production of revenue at all times is the *sine qua non* of a tax." Intervenor Defs.' Mot. Stay 9. This Court does not have a view on the issue. But the Supreme Court does. *See NFIB*, 567 U.S. at 564 (reasoning that "the essential feature of any tax" is that "[i]t produces at least some revenue for the Government"). And the Court finds that the Fifth Circuit is likely to follow it.

[35] Nothing in *United States v. Ardoin*, 19 F.3d 177 (5th Cir. 1994), alters this analysis. There, the Fifth Circuit held that 26 U.S.C. §§ 5821, 5861(d), (e), (f), (l), 5871, and 5845 remained permissible exercises of Congress's Tax Power even though the provisions taxed an illegal activity and an Executive branch agency refused to accept applications to pay the taxes created by the provisions. *Ardoin*, 19 F.3d at 179–80. The *Ardoin* decision does not abrogate the Supreme Court's holding that the generation of revenue is the essential feature of a tax—and not only because a Fifth Circuit opinion ought not be read to contravene Supreme Court precedent. The two attacks on the constitutionality of the tax provisions in *Ardoin* were that they (1) taxed an activity that was no longer legal and (2) were no longer enforced by the Bureau of Alcohol,

ii. Unconstitutional Under the Interstate Commerce Power[36]

The Individual Mandate continues to be unsustainable under Congress's Interstate Commerce Power, as the Supreme Court already held, for the following reasons:

- The Supreme Court held the Individual Mandate is unconstitutional under the Interstate Commerce Clause.[37]
- The Individual Mandate no longer triggers a tax, so the saving construction crafted in *NFIB* no longer applies.[38]
- Even under the saving construction crafted in *NFIB*, the Individual Mandate was a requirement to act—otherwise, the failure to act would not have triggered a tax.[39]

Tobacco, and Firearms (ATF). As to the first challenge, the court reasoned that "Congress can tax illegal conduct" so that "[a]lthough it is illegal to possess or manufacture these weapons, one illegally doing so would be required to register them with ATF and pay taxes on them." *Id.* at 180. The illegality of the activity did not render the legislation a nullity. Here, even though applicable individuals are required to purchase ACA-compliant health insurance, if someone disobeyed that requirement they would not be subject to a tax—because it is gone. The Intervenor Defendants make that point repeatedly. As to the second challenge, the court reasoned that, whatever the agency's enforcement decisions, the *legislation* continued to give "ATF . . . the authority to tax now-illegal machineguns . . . Thus, the basis for ATF's authority to regulate—the taxing power—still exists; it is merely not exercised." *Id.* Here, however, the IRS's authority to tax noncompliance is gone. In other words, *Ardoin* confirms that legislative text is the proper object of any analysis of legislative activity—Executive actions do not constitutionalize or de-constitutionalize Legislative actions. And here, Congress itself *legislatively eliminated* the shared-responsibility payment.

[36] *See* December 14, 2018 Order 27–34, ECF No. 211.

[37] *NFIB*, 567 U.S. at 572 (majority).

[38] *See* Josh Blackman, *Undone: the New Constitutional Challenge to Obamacare*, 23 TEX. REV. L. & POL. (forthcoming 2018) (manuscript at 17) ("Now that the penalty has been zeroed out, and the saving construction cannot hold, we are left with '[t]he *most straightforward reading* of the mandate.' What is that reading? Section 5000A 'commands individuals to purchase insurance.'" (quoting *NFIB*, 567 U.S. at 562)).

[39] *See* December 14, 2018 Order 32–33, ECF No. 211; *accord* Intervenor Defs.' Mot. Stay 9, ECF No. 213-1 ("In *NFIB*, the Supreme Court held that *the requirement of maintaining minimum coverage* went beyond Congress's powers under the Commerce Clause because it '*compels* individuals' to participate in commerce." (citing *NFIB*, 567 U.S. at 552) (first emphasis added, second emphasis in Motion)). As the Intervenor Defendants recognize, the Supreme Court in *NFIB* did not hold that the *shared-responsibility payment* impermissibly compelled the purchase of health insurance. Instead, the Chief Justice reasoned that "[t]he *individual mandate* . . . compels individuals to *become* active in commerce by purchasing a product." *NFIB*, 567 U.S. at 552 (Roberts, C.J.) (first emphasis added). The elimination of the shared-responsibility payment, but not the Individual Mandate, does not obviate that text-driven reasoning.

- All that remains now is a written law with plain text that mandates the Individual Plaintiffs to purchase minimum essential coverage—which the evidence suggests they and others will do.[40]
    - Plain text confirms the Individual Mandate is a mandate.[41] It is entitled, "*Requirement* to maintain minimum essential coverage."[42] It states, "An applicable individual *shall* . . . *ensure* that the individual . . . is covered."[43]
    - Five Supreme Court Justices concluded "[t]he most straightforward reading of the mandate is that it commands individuals to purchase insurance. After all, it states that individuals 'shall' maintain health insurance."[44]
    - Surrounding text confirms the Individual Mandate creates an obligation in the absence of the shared-responsibility payment.[45] Section 5000A(e), for example, "did and still does exempt some individuals from the eliminated shared-responsibility payment but not the Individual Mandate."[46] Section

---

[40] *See* December 14, 2018 Order 29–30, ECF No. 211; *accord* Blackman, *supra* note 38, at 12 ("According to a November 8, 2017 report from CBO and the Joint Committee on Taxation, CBO observed that 'with no penalty at all, only a small number of people who enroll in insurance because of the mandate under current law would continue to do so solely because of a willingness to comply with the law.' The number is no doubt 'small,' but it is not zero. No matter how small this class is, such virtuous individuals do exist. Therefore, a certain number of individuals are *still* affected by a penalty-less mandate. The mandate still has force, even if no penalty accompanies it." (citation omitted)).

[41] *See* December 14, 2018 Order, 30–32, ECF No. 211. *See also United States v. Kaluza*, 780 F.3d 647, 658 (5th Cir. 2015) ("When construing statutes and regulations, we begin with the assumption that the words were meant to express their ordinary meaning." (quoting *Bouchikhi v. Holder,* 676 F.3d 173, 177 (5th Cir.2012))); *Wheeler v. Pilgrim's Pride Corp.*, 591 F.3d 355, 364 (5th Cir. 2009) (en banc) (Jones, J., concurring) ("Proper statutory analysis begins with the plain text of the statute.").

[42] 26 U.S.C. § 5000A(a) (emphasis added).

[43] *Id.* (emphasis added); *see Fed. Express Corp. v. Holowecki*, 552 U.S. 389, 399 (2008) (reasoning "'shall' imposes obligations on agencies to act"); *Lopez v. Davis*, 531 U.S. 230, 241 (2001) (noting "shall" indicates an intent to "impose discretionless obligations").

[44] *NFIB*, 567 U.S. at 562 (Roberts, C.J.); *id.* at 662 (joint dissent) ("In this case, there is simply no way, 'without doing violence to the fair meaning of the words used,' *Grenada County Supervisors v. Brogden,* 112 U.S. 261, 269 (1884), to escape what Congress enacted: a mandate that individuals maintain minimum essential coverage, enforced by a penalty.").

[45] *Id.* at 665 (joint dissent) (noting that "some are exempt from the tax who are not exempt from the mandate—a distinction that would make no sense if the mandate were not a mandate"); *see Doe v. KPMG, LLP*, 398 F.3d 686, 688 (5th Cir. 2005) ("When interpreting a statute, we start with the plain text, and read all parts of the statute together to produce a harmonious whole.").

[46] December 14, 2018 Order 33, ECF No. 211. It is not surprising Congress would subject some individuals to the mandate but not the penalty. Congress's stated goal was to "add millions of new consumers to the health insurance market, increasing the supply of, and demand for, health care services, and . . . increase the number and share of Americans who are insured." 42 U.S.C. § 18091(2)(C). Congress made a policy

5000A(d) "exempted, and continues to exempt, certain individuals from the Individual Mandate itself."[47]

- Reading the Individual Mandate to be anything other than a mandate would twice violate the canon against surplusage by rendering the mandatory words of § 5000A(a) ineffective—i.e., "requirement" and "shall"—and rendering whole provisions of § 5000A ineffective—i.e., §§ 5000A(d) and (e).[48]

- Written law is binding, with or without the specter of an enforcement provision.[49]
  - The Individual Mandate, § 5000A(a), is federal law—having satisfied the Constitution's bicameralism and presentment requirements—and federal

---

decision that some individuals should not be subject to the penalty but should still be bound to satisfy their legal obligation to maintain minimum essential coverage. That policy decision has always been embedded in the ACA's plain text.

[47] December 14, 2018 Order 33, ECF No. 211.

[48] *Id.* at 31; *accord NFIB*, 567 U.S. at 665 (joint dissent).

[49] December 14, 2018 Order 29–30, ECF No. 211. The Intervenor Defendants assert the Plaintiffs are not bound by federal law unless compelled by "force, threats, or overwhelming pressure." *See* Intervenor Defs.' Mot. Stay 9, ECF No. 213-1. In other words, "might makes right." But "might makes right" is incompatible with the concept of a "government of laws, and not of men." *See* John Adams, NOVANGLUS ESSAYS NO. 7 (Feb. 6, 1775). And it is incompatible with the concepts of equality and, relatedly, government by consent. *See* THE DECLARATION OF INDEPENDENCE (U.S. 1776) ("We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, *deriving their just powers from the consent of the governed*." (emphasis added)). That the binding nature of law is justified by something other than brute force is a first principle of American society and in the very nature of a written Constitution—as well as constitutionally sanctioned statutes. *Cf.* Nicholas C. Dranias, *Consideration As Contract: A Secular Natural Law of Contracts*, 12 TEX. REV. L. & POL. 267, 270–71 (2008) (contrasting those such as John Locke and St. Thomas Aquinas "who viewed law as deriving its justification from natural principles of morality [against] those who viewed law as having, and needing, no justification other than the force that backs it" and noting that "Lockean philosophy provided the theoretical substance of the Declaration of Independence, the Federalist Papers, the popularly distributed pamphlets of Thomas Paine, and the Constitution"); *id.* (noting Locke rejected the "pre-philosophical tradition best exemplified by the words of Thrasymachus in Plato's Republic: 'I say that justice is simply what is good for the stronger'"); Hadley Arkes, *The Natural Law Challenge*, 36 HARV. J.L. & PUB. POL'Y 961, 963 (2013) ("He [John Marshall] assumed [in *Gibbons v. Ogden*] that all of his literate readers understood that, before we can carry out a demonstration, certain axioms had to be in place—like the law of contradiction. They were things that had to be grasped, as the saying went, *per se nota* as true in themselves. As Hamilton put it in the Federalist No. 31, there are certain 'primary truths, or first principles, upon which all subsequent reasonings must depend.' They contain, he said, 'an internal evidence which antecedent to all reflection or combination commands the assent of the mind.'" (citations omitted)). In any event, the Intervenor Defendants' view does not comport with *NFIB*'s recognition that the Individual Mandate *itself* is compulsory. *See NFIB*, 567 U.S. at 552 (Roberts, C.J.) ("The *individual mandate* . . . compels individuals to *become* active in commerce by purchasing a product." (first emphasis added)).

law is *inherently* binding on those within its jurisdiction.[50] Not even the Founders, who were leery of Federal power, argued otherwise.[51]

- This is as true with respect to the Constitution as it is with respect to the Individual Mandate: Most of the Constitution's provisions are unaccompanied by a penalty—tax or otherwise. Yet time and again courts recognize the Constitution, as written law, is inherently binding.[52]

The Individual Mandate no longer triggers a tax and therefore can no longer be read as an exercise of Congress's Tax Power. That being true, the Court finds the Fifth Circuit is unlikely to either disagree with the Supreme Court's *NFIB* holding that the mandate is unsustainable under Congress's Interstate Commerce Power or accept the alternative theory that the mandate, though it regulates interstate conduct, is simply not binding.

---

[50] *See, e.g.*, U.S. CONST. art. VI. ("[T]he laws of the United States . . . shall be the supreme law of the land; and the judges in every state shall be bound thereby."); *United States v. Grumka*, 728 F.2d 794, 797 (6th Cir. 1984) (per curiam) ("It is the duty of all citizens to obey the law . . . ."); *Montero v. City of Yonkers*, 890 F.3d 386, 396 (2d Cir. 2018) (noting the "obligation as a citizen to obey the law").

[51] *See, e.g.*, THE FEDERALIST NO. 28 (Alexander Hamilton) ("It merits particular attention in this place, that the laws of the Confederacy as to the enumerated and legitimate objects of its jurisdiction will become the Supreme Law of the land, to the observance of which all officers, legislative, executive, and judicial in each State will be *bound by the sanctity of an oath*." (emphasis added)).

[52] Consider, for example, a suit against the President brought by Intervenor Defendant the District of Columbia alleging violations of the Constitution's Emoluments Clauses. *See* Complaint ¶ 2, *District of Columbia v. Trump*, No. 8:17-cv-01596 (D. Md. June 12, 2017), ECF No. 1. The Foreign Emoluments Clause provides that "no person holding any office of profit or trust under them, *shall*, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state." U.S. CONST. art. I, § 9, cl. 8. (emphasis added). The Domestic Emoluments Clause provides that "[t]he President *shall*, at stated times, receive for his services, a compensation, which *shall* neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them." *Id.* art. II, § 1, cl. 7 (emphasis added). Neither of the clauses includes an enforcement provision—certainly, neither imposes a tax penalty. But both use the word "shall," and both are binding by nature. Intervenor Defendant the District of Columbia understands that basic truth in the context of its suit against the President. There, the District of Columbia asserts, "Applied to President Trump's diverse dealings, the *text and purpose of the clause* speak as one: absent the consent of Congress, private enrichment through the receipt of benefits from foreign governments *is prohibited*." Complaint ¶ 6, *Trump*, No. 8:17-cv-01596 (D. Md. June 12, 2017), ECF No. 1 (emphasis added); *accord* Pls.' Opp'n Mot. Dismiss 59, No. 8:17-cv-01596 (D. Md. Nov. 7, 2017) ("Because 'the President is *bound* to abide by the *requirements*' of these Clauses, his *obligation* to comply with them 'is ministerial and *not discretionary*.'" (citation omitted) (emphasis added)). The President is prohibited not by "force, threats, or overwhelming pressure" but by the text and purpose of a provision that states what he shall and "shall not" do. The Individual Mandate is no different.

iii. *Frost* Is Not Dispositive[53]

Frost does not control or require invalidating Congress's tax bill for the following reasons:

- In *Frost*, the plaintiff challenged the later-in-time legislation.[54] Here, the Plaintiffs do not challenge the later-in-time legislation.[55]
- In *Frost*, all parties agreed the earlier-in-time legislation was constitutional—and the Supreme Court *expressly relied on that concession*.[56] Here, the entire case is about the constitutionality of the earlier-in-time legislation.
- In *Frost,* the later-in-time legislation did not render an earlier law unconstitutional—it was *itself* unconstitutional because *it* created disparately treated classes.[57] Here, the later-in-time TCJA is constitutional.
    - Anyways, the later-in-time TCJA does not render the ACA unconstitutional—it abrogates the ground on which the Supreme Court concluded the ACA could be saved.[58]

---

[53] *See* December 14, 2018 Order 54 n.34, ECF No. 211.

[54] *Frost*, 278 U.S. at 518–19; *see id.* at 519 (pleading that "that *the proviso*, as construed and applied by the commission . . . was invalid as contravening the due process and equal protection of the law clauses of the Fourteenth Amendment" (emphasis added)).

[55] *See* Am. Compl. 28, ECF No. 27 ("Section 5000A's individual mandate exceeds Congress's enumerated powers by forcing Individual Plaintiffs to maintain ACA-compliant health insurance coverage."). To acknowledge what the Plaintiffs claim and do not claim is not to "conclude that a party can plead its way around *Frost*." Intervenor Defs.' Mot. Stay 10, ECF No. 213-1. It is a recognition of the fundamental rule in district court proceedings that a claim not raised in the complaint is not properly before the court. *Cf. Cutrera v. Bd. Supervisors La. State Univ.*, 429 F.3d 108, 113 (5th Cir. 2005) ("A claim which is not raised in the complaint . . . is not properly before the court."); *Fisher v. Metropolitan Life Ins. Co.*, 895 F.2d 1073, 1078 (5th Cir. 1990) ("As the district court correctly noted, this claim was not raised in [plaintiff's] second amended complaint . . . and, as such, was not properly before the court.").

[56] *Frost*, 278 U.S. at 519 ("Both parties definitely concede the validity of these provisions, and, for present purposes at least, we accept that view."); *id.* at 526 ("Here it is conceded that the statute, before the amendment, was entirely valid.").

[57] *Id.* at 524 (noting the "classification *created by the proviso*" (emphasis added)); *id.* ("*[T]he proviso*, as here construed and applied, baldly creates one rule for a natural person and a different and contrary rule for an artificial person." (emphasis added)); *id.* (reasoning the proviso, not the original law, "produces a classification"); *id.* (reasoning the proviso, not the original law, "is essentially arbitrary"); *id.* at 525 (acknowledging "the inequality created by" the proviso, not the original law).

[58] *See NFIB*, 567 U.S. at 574–75 (Roberts, C.J.) ("[T]he statute reads more naturally as a command to buy insurance than as a tax, and I would uphold it as a command if the Constitution allowed it. It is only because the Commerce Clause does not authorize such a command that it is necessary to reach the taxing power question. And it is only because we have a duty to construe a statute to save it, *if fairly possible*, that § 5000A can be interpreted as a tax. Without deciding the Commerce Clause question, I would find no basis to adopt such a saving construction." (emphasis added)).

- *Frost* stands only for the proposition that courts may invalidate unconstitutional action and preserve constitutional action; it does not empower the judiciary to construe constitutional action as unconstitutional to preserve unconstitutional action as constitutional.

For these reasons, the Fifth Circuit is unlikely to invalidate Congress's *constitutional* tax law under the guise of *Frost*, a decision that invalidated an *unconstitutional* law. To read *Frost* as empowering courts to invalidate Congress's constitutional legislation to save a judicial opinion that admittedly construed unconstitutional legislation as something other than what Congress intended would go above and beyond any limits on the judicial power yet seen.

iv. Individual Mandate Inseverable[59]

The Individual Mandate is entirely inseverable for the following straightforward reasons:

- The test for severability is congressional intent.[60]
- Congressional intent is expressed through enacted text.[61]

[59] *See* December 14, 2018 Order 34–55, ECF No. 211.

[60] *See id.* at 35–37; *accord Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 191 (1999) ("The inquiry into whether a statute is severable is essentially an inquiry into legislative intent."); *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 685 (1987) ("The more relevant inquiry in evaluating severability is whether the statute will function in a *manner* consistent with the intent of Congress." (emphasis in original)); *Regan v. Time, Inc.*, 468 U.S. 641, 653 (1984) (plurality) ("Whether an unconstitutional provision is severable from the remainder of the statute in which it appears is largely a question of legislative intent, but the presumption is in favor of severability."). *But see R.R. Ret. Bd. v. Alton R.R. Co.*, 295 U.S. 330, 362 (1935) (majority) (recognizing "the presumption . . . of an intent that, unless the act operates as an entirety, it shall be wholly ineffective" (citing *Williams v. Standard Oil Co.*, 278 U.S. 235, 242 (1929); *Utah Power & Light Co. v. Pfost*, 286 U.S. 165, 184 (1932))).

[61] *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) ("[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there."); *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) ("The task of resolving the dispute over the meaning of [a provision] begins where all such inquiries must begin: with the language of the statute itself." (citing *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985))); *Kaluza*, 780 F.3d at 658 ("The starting point in discerning congressional intent is the existing statutory text." (quoting *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004))); *Hotze*, 784 F.3d at 997 (noting "the best evidence of Congress's intent is the statutory text" (quoting *NFIB*, 567 U.S. at 544)); *EEOC v. Hernando Bank, Inc.*, 724 F.2d 1188, 1190 (5th Cir. 1984) ("Congressional intent and purpose are best determined by an analysis of the language of the statute in question.").

- If the enacted text is unambiguous, no further inquiry is permitted.[62]
- The enacted text is unambiguous: The Individual Mandate is "essential" to the ACA.[63]
    - The Supreme Court relied on the import of this plain text before *and* after the exchanges were created and the Individual Mandate was in effect.[64]
    - The past two Administrations have agreed the Individual Mandate is inseverable from the guaranteed-issue and community-rating provisions.[65]
    - No Congress—not in 2017, not ever—repealed the Individual Mandate.[66]
    - No Congress—not in 2017, not ever—repealed the ACA's Findings.[67]
    - The Court cannot rely on the 2017 Congress's elimination of *the shared-responsibility payment* to treat the textually and functionally distinct *Individual Mandate* as implicitly repealed when Congress left the Individual Mandate as enacted text and left in place other text that calls the

[62] *Germain*, 503 U.S. at 253–54 ("When the words of a statute are unambiguous, this first canon is also the last: 'judicial inquiry is complete.'"); *Ron Pair*, 489 U.S. at 241 ("[W]here, as here, the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917))).

[63] *See* December 14, 2018 Order 37–41, ECF No. 211.

[64] *See* December 14, 2018 Order 41–46, ECF No. 211; *King v. Burwell*, 135 S. Ct. 2480, 2487 (2015) (citing 42 U.S.C. § 18091(2)(I)); *NFIB*, 567 U.S. at 556 (Roberts, C.J.) ("It is precisely because these individuals, as an actuarial class, incur relatively low health care costs that the mandate helps counter the effect of forcing insurance companies to cover others who impose greater costs than their premiums are allowed to reflect." (citing 42 U.S.C. § 18091(2)(I))); *id.* at 596 (Ginsburg, J., joined by Breyer, Kagan, and Sotomayor, JJ.) ("A central aim of the ACA is to reduce the number of uninsured U.S. residents . . . The minimum coverage provision advances this objective." (citing 42 U.S.C. §§ 18091(2)(C) and (I))); *id.* at 650 (joint dissent) ("First, the Government submits that § 5000A is 'integral to the Affordable Care Act's insurance reforms' and 'necessary to make effective the Act's core reforms.' . . . Congress included a 'finding' to similar effect in the Act itself." (citations omitted)).

[65] *See* December 14, 2018 Order 42, n.29, ECF No. 211.

[66] *See* 26 U.S.C. § 5000A(a). The 2017 Congress, in passing the TCJA, reduced the shared-responsibility payment to $0. It did not repeal the Individual Mandate.

[67] *See* 42 U.S.C. § 18091. "All told, Congress stated three separate times that the Individual Mandate is essential to the ACA. That is once, twice, three times and plainly. It also stated the absence of the Individual Mandate would 'undercut' its 'regulation of the health insurance market.' Thirteen different times, Congress explained how the Individual Mandate stood as the keystone of the ACA. And six times, Congress explained it was not just the Individual Mandate, but the Individual Mandate 'together with the other provisions' that allowed the ACA to function as Congress intended." December 14, 2018 Order 40, ECF No. 211. The 2017 Congress did not repeal this plain text.

Individual Mandate—not the functionally distinct shared-responsibility payment—"essential."[68]

- The Constitution's separation of powers prohibits the Court from doing for Congress what Congress tried and failed to do itself.[69]
- Floor statements and policy arguments do not supplant enacted text or allow the Court to construe what Congress did and did not do as what a party asserts Congress *almost* did and did not do.[70]

---

[68] *See Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1624 (2018) ("The intention must be clear and manifest. And in approaching a claimed conflict, we come armed with the strong presumption that repeals by implication are disfavored and that Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute." (cleaned up)); *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 664 (2007) ("The Ninth Circuit's reading of § 7(a)(2) would not only abrogate § 402(b)'s statutory mandate, but also result in the implicit repeal of many additional otherwise categorical statutory commands . . . While the language of § 7(a)(2) does not explicitly repeal any provision of the CWA (or any other statute), reading it for all that it might be worth runs foursquare into our presumption against implied repeals."); *Posadas v. Nat'l City Bank of New York*, 296 U.S. 497, 503 (1936) ("The amending act just described"—like the TCJA—"contains no words of repeal; and if it effected a repeal of section 25 of the 1913 act, it did so by implication only. The cardinal rule is that repeals by implication are not favored."); *Lockhart v. United States*, 546 U.S. 142, 149 (2005) (Scalia, J., concurring) (noting an "already-powerful presumption against implied repeals"); *United States v. Cavada*, 821 F.2d 1046, 1047 (5th Cir. 1987) ("We say, therefore, that there is a presumption against implicit repeal."); *Victorian v. Miller*, 813 F.2d 718, 721 (5th Cir. 1987).

[69] For example, the House passed H.R. 3762 in 2015 which included a repeal of the Individual Mandate. *See* CONGRESSIONAL RESEARCH SERVICE, LEGISLATIVE ACTIONS IN THE 112TH, 113TH, AND 114TH CONGRESSES TO REPEAL, DEFUND, OR DELAY THE AFFORDABLE CARE ACT 7 (February 7, 2017). But that version of the bill could not garner the necessary votes in the Senate: "Lacking . . . a supermajority in the Senate, the Republicans chose instead to modify the provisions so that they would not violate the Byrd Rule. The Senate version kept the mandates but eliminated the penalties for noncompliance." *Id.* at 8. This is one example of how Congress attempted to, but did not, repeal the mandate. And it is a powerful illustration of why the thing Congress *did* do—eliminate the shared-responsibility payment—is not the thing Congress *did not* do—repeal the Individual Mandate. Yet the Intervenor Defendants insist the Court must construe the former as the latter. This is far beyond the Court's power. *See Epic Sys. Corp.*, 138 S. Ct. at 1624 ("[I]t's the job of Congress by legislation, not this Court by supposition, both to write the laws and to repeal them."); *United States v. Goldenberg*, 168 U.S. 95, 102–03 (1897) ("The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of words and the rules of grammar. The courts have no function of legislation, and simply seek to ascertain the will of the legislator.").

[70] *See, e.g.*, Intervenor Defs.' Resp. 29–30, ECF No. 91 (collecting statements by members of 2017 Congress). "More fundamentally, . . . intentions do not count unless they are enshrined in a text that makes it through the constitutional processes of bicameralism and presentment." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1487 (2018) (Thomas, J., concurring) (citing *Wyeth v. Levine*, 555 U.S. 555, 586–588 (2009) (Thomas, J., concurring in judgment)). But "[b]ecause we have a Government of laws, not of men, we are governed by legislated text, not legislators' intentions—and especially not legislators' hypothetical intentions." *Id.* (cleaned up).

- Congress included a severability clause for Medicaid Expansion but not for the Individual Mandate, which Congress called "essential."[71]
- The 2017 Congress's "decision" to not repeal the remainder of the ACA was not a "decision" that supports an inference of severability intent—it was a consequence of the TCJA being passed as part of the budget and reconciliation process.[72]
- If Congress intends to sever the Individual Mandate from the remainder of the ACA, Congress can sever the Individual Mandate from the remainder of the ACA. The Court cannot do that for Congress.[73]

Accordingly, the Fifth Circuit is unlikely to accept the Intervenor Defendants' countertextual severability argument based on extratextual evidence.[74] Policy arguments and

---

[71] *See* December 14, 2018 Order 40, n.26, ECF No. 211. As noted in the December 14, 2018 Order, the absence of a severability clause is by no means dispositive, but it is certainly of evidentiary value in a situation where one provision—the Individual Mandate—was called "essential" and contained no severability clause while another part of the statute—Medicaid Expansion—was not called "essential," did contain a severability clause, and was expressly held by the Supreme Court to be severable to the extent necessary *due to the severability* clause. *See NFIB*, 567 U.S. at 586 (Roberts, C.J., joined by Breyer and Kagan, JJ.) (noting the Supreme Court was "follow[ing] Congress's explicit textual instruction"); *id.* at 645 (Ginsburg, J., joined by Sotomayor, J.) ("I agree . . . that the Medicaid Act's severability clause determines the appropriate remedy."); *see also id.* at 544 (majority) ("Where Congress uses certain language in one part of a statute and different language in another, it is generally presumed that Congress acts intentionally." (citing *Russello v. United States*, 464 U.S. 16, 23 (1983))).

[72] *See* CONGRESSIONAL RESEARCH SERVICE, THE BUDGET RECONCILIATION PROCESS: STAGES OF CONSIDERATION ii (January 4, 2017) ("In adopting a budget resolution, Congress is agreeing upon its budgetary goals for the upcoming fiscal year. Because it is in the form of a concurrent resolution, however, it is not presented to the President or enacted into law. As a consequence, any statutory changes concerning spending or revenues that are necessary to implement these policies must be enacted in separate legislation."). Even if it were appropriate to look beyond the unambiguous text of the ACA, in other words, the 2017 Congress demonstrated *no legislative intent* to leave the ACA intact when it passed the TCJA because the TCJA gave Congress *no legislative choice* on the matter.

[73] *See, e.g.*, *Alton*, 295 U.S. at 362 ("[W]e cannot rewrite a statute and give it an effect altogether different from that sought by the measure viewed as a whole."); *Hill v. Wallace*, 259 U.S. 44, 70 (1922) (severing an inseverable statute would be "legislative work beyond the power and function of the court"); *Oneale v. Thornton*, 10 U.S. 53, 68 (1810) ("Men use a language calculated to express the idea they mean to convey. If the legislature had contemplated various and successive sales, so that any intermediate contract or purchaser was within the view of the lawmaker and intended to be affected by the power of resale given to the commissioners, the words employed would have been essentially different from those actually used.").

[74] The Intervenor Defendants assert, "Nor is the Fifth Circuit likely to conclude that the 2017 Congress demonstrated an intent to unwind the entire ACA by choosing not to repeal Section 5000A(a) or 42 U.S.C. § 18091." Intervenor Defs.' Mot. Stay 10 n.5, ECF No. 213-1. This is a mischaracterization of the Court's reasoning and conclusion. The Court did not conclude "the 2017 Congress demonstrated an intent to unwind the entire ACA"—it concluded exactly the opposite. The Court concluded that, if any intent can be inferred from the 2017 Congress's budget and reconciliation legislation at all, it is that Congress intended to *preserve*

countertextual evidence do not change the text Congress enacted, and "[a]s Justice Kagan recently stated, 'we're all textualists now.'"[75] This reflects a deep-seated respected within the judiciary for its role within the separation of powers: Discerning congressional intent from the end product of a constitutionally mandated process for legislative action. "If the text is sufficiently clear, the text usually controls. The text of the law is the law."[76] And the enacted text could not be clearer as to Congress's intent that the Individual Mandate not be severed from the ACA. To accept the Intervenor Defendants' countertextual argument based on extratextual evidence would represent a breathtaking conception of the judicial power.[77]

2. The Equities Favor a Stay

As to the remaining elements of the stay analysis, the Intervenor Defendants assert "[t]he equities . . . tip overwhelmingly in favor of a stay." Intervenor Defs.' Mot. Stay 11, ECF No. 213-

---

the Individual Mandate—which remains on the books—because it understood the mandate was "essential" to the remainder of the ACA. In other words, the enacted text the Court has to work with unequivocally communicates that (1) the Individual Mandate is essential to the ACA functioning as Congress intended, (2) the mandate operates independently of the tax penalty, and (3) the mandate remains on the books. And because courts are better positioned to interpret written law than pick policy, Congress must be the one to repeal the Individual Mandate if that is what it intends to do. It has not.

[75] Brett M. Kavanaugh, *Fixing Statutory Interpretation*, 129 HARV. L. REV. 2118, 2118 (2016) (reviewing Robert A. Katzmann, JUDGING STATUTES (2014)) (citation omitted). *See* John F. Manning, *Textualism and Legislative Intent*, 91 VA. L. REV. 419, 424 (2005) ("Textualists . . . deny that Congress has a collective will apart from the outcomes of the complex legislative process that conditions its ability to translate raw policy impulses or intentions into finished legislation. For them, intended meaning never emerges unfiltered; it must survive a process that includes committee approval, logrolling, the need for floor time, threatened filibusters, conference committees, veto threats, and the like. For better or worse, only the statutory text navigates all those hurdles. Accordingly, whereas intentionalists believe that legislatures have coherent and identifiable but *unexpressed* policy intentions, textualists believe that the only meaningful collective legislative intentions are those reflected in the *public meaning* of the final statutory text.")

[76] Kavanaugh, *supra* note 75, at 2118.

[77] *See* Transcript of Oral Argument at 36, *NFIB*, 567 U.S. 519 (2012) (No. 11-393) ("JUSTICE KENNEDY: When you say judicial restraint, you are echoing the earlier premise that it increases the judicial power if the judiciary strikes down other provisions of the Act. I suggest to you it might be quite the opposite. We would be exercising the judicial power if one Act was—one provision was stricken and the others remained to impose a risk on insurance companies that Congress had never intended. By reason of this Court, we would have a new regime that Congress did not provide for, did not consider. That, it seems to me can be argued at least to be a more extreme exercise of judicial power than to strike -than striking the whole.").

1. To this point, the Intervenor Defendants catalog the real-life impact the Court's December 14, 2018 Order is likely to have in the absence of time for lawmakers to respond. *See id.* at 13 ("Suddenly declaring [the ACA] void would cause chaos for patients, providers, insurance carriers, and the federal and state governments."). Meanwhile, the Intervenor Defendants point out, "since open enrollment in Texas for 2019 has concluded, the Individual Plaintiffs have already purchased (or declined to purchase) ACA-compliant insurance for 2019. In other words, the Court's decision cannot affect the choices that they have already made for next year." *Id.* at 12.

The Plaintiffs suggest certifying the Order for appeal and therefore do not brief the stay analysis; instead, they "leave to the Court's discretion whether [a stay] may be appropriate under these unique Circumstances." Pls.' Resp. 5–6, ECF No. 216. The Federal Defendants "do not object to Intervenor-Defendants' request that the Court stay enforcement of the Order pending appeal, given the potential for disruption to the healthcare markets if immediate implementation were required." Fed. Defs.' Resp. 10–11, ECF No. 216. "Indeed, the ACA has now been in effect for several years," the Federal Defendants continue, "and it is in the parties' and the public's interest that appellate review be exhausted before the Federal Defendants begin implementing the Court's judgment." *Id.* at 11.

The Intervenor Defendants' arguments on the equities of a stay are well-taken. And the Plaintiffs' and Federal Defendants' agreement, or lack of disagreement, that a stay is warranted for those reasons is telling. The Court therefore **GRANTS** the Intervenor Defendants' request for a stay of the Rule 54(b) Final Judgment on the December 14, 2018 Order.

IV. CONCLUSION

"The American rule of law . . . depends on neutral, impartial judges who say what the law is, not what the law should be."[78] And courts must refrain from resolving policy disputes, relying instead on *text*-based decisions. The more courts step into breaches for Congress, the more courts will be called upon to step into breaches for Congress. That would represent a fundamental shift in the Constitution's careful balancing of powers—not only on the Judiciary-Legislature plane, but also on the citizen-government plane. If the judicial power encompasses ignoring unambiguous enacted text—the text citizens read to know what their representatives have done—to approximate what a judge believes Congress meant to do, *but did not*, then policymaking lies in the hands of unelected judges and Congress may transfer politically unwinnable issues to the bench. This the Constitution does not allow. This the Supreme Court does not allow. And for those reasons, the Court finds it is powerless to read the ACA as the Intervenor Defendants request and believes the Fifth Circuit is unlikely to disagree.

But because many everyday Americans would otherwise face great uncertainty during the pendency of appeal, the Court finds that the December 14, 2018 Order declaring the Individual Mandate unconstitutional and inseverable should be stayed. Accordingly, the Court **ORDERS** that the December 14, 2018 Order, (ECF No. 211), and the Partial Final Judgment severing Count I and finalizing that Order—which will issue by separate order—be stayed during the pendency of the Order's appeal.

SO ORDERED on this **30th day** of **December, 2018**.

Reed O'Connor
UNITED STATES DISTRICT JUDGE

[78] Kavanaugh, *supra* note 75, at 2119.

TAB 7

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

TEXAS, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	
UNITED STATES OF AMERICA, et al.,	§	**Civil Action No. 4:18-cv-00167-O**
	§	
Defendants,	§	
	§	
	§	
CALIFORNIA, et al.	§	
	§	
Intervenors-Defendants.	§	

FINAL JUDGMENT ON COUNT I

The Court issued its order granting partial summary judgment on Count I of Plaintiffs' Amended Complaint, and has determined that it should be severed from the remaining claims. December 14, 2018 Order, ECF No. 211. In accordance with Federal Rule of Civil Procedure 54(b), the Court therefore **DECLARES** that 26 U.S.C. § 5000A(a) is **UNCONSTITUTIONAL** and **INSEVERABLE** from the remainder of the Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119-1045 (2010).

SO ORDERED on this **30th day** of **December, 2018**.

Reed O'Connor
UNITED STATES DISTRICT JUDGE

TAB 8

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

TEXAS, WISCONSIN, ALABAMA, ARKANSAS, ARIZONA, FLORIDA, GEORGIA, INDIANA, KANSAS, LOUISIANA, PAUL LePAGE, Governor of Maine, Governor Phil Bryant of the State of MISSISSIPPI, MISSOURI, NEBRASKA, NORTH DAKOTA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, UTAH, WEST VIRGINIA, NEILL HURLEY, and JOHN NANTZ, Plaintiffs, v. UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ALEX AZAR, in his Official Capacity as SECRETARY OF HEALTH AND HUMAN SERVICES, UNITED STATES INTERNAL REVENUE SERVICE, and CHARLES P. RETTIG, COMMISSIONER OF INTERNAL REVENUE SERVICE, Defendants.	Civil Action No. 4:18-cv-00167-O
CALIFORNIA, CONNECTICUT, DISTRICT OF COLUMBIA, DELAWARE, HAWAII, ILLINOIS, KENTUCKY, MASSACHUSETTS, MINNESOTA by and through its Department of Commerce, NEW JERSEY, NEW YORK, NORTH CAROLINA, OREGON, RHODE ISLAND, VERMONT, VIRGINIA, and WASHINGTON, Intervenor-Defendants.	

INTERVENOR-DEFENDANTS' NOTICE OF APPEAL

PLEASE TAKE NOTICE that the Intervenor-Defendants hereby appeal to the United States Court of Appeals for the Fifth Circuit from this Court's December 30, 2018 Order, ECF No. 221, entering a Final Judgment on Count I of Plaintiff's Amended Complaint. Previously and on December 14, 2018, the Court entered an Order granting partial summary judgment on Count I of the Amended Complaint. ECF No. 211. On December 30, 2018, the Court granted the Intervenor-Defendants' request for entry of partial final judgment on Count I of the Amended Complaint, and also granted the Intervenor Defendants' request for a stay of that judgment. ECF No. 220. Accordingly, and pursuant to Federal Rule of Civil Procedure 54(b), the Court entered partial final judgment on Count I of the Amended Complaint, ECF No. 221. The Intervenor-Defendants hereby appeal from the partial final judgment entered by the Court, ECF No. 221, as well as the orders underlying that partial final judgment, including but not limited to the order granting partial summary judgment (ECF No. 211).

Dated: January 3, 2019

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JULIE WENG-GUTIERREZ
Senior Assistant Attorney General
KATHLEEN BOERGERS
Supervising Deputy Attorney General

/s/ Neli N. Palma

NELI N. PALMA
NIMROD P. ELIAS
Deputy Attorneys General
California State Bar No. 203374
California State Bar No. 251634
1300 I Street, Suite 125
Sacramento, CA 94244-2550
Telephone: (916) 210-7522
Fax: (916) 322-8288
E-mail: Neli.Palma@doj.ca.gov
Attorneys for Intervenor-Defendants

TAB 9

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

TEXAS, *et al.*, Plaintiffs, v. UNITED STATES OF AMERICA, *et al.*, Defendants, and CALIFORNIA, *et al.*, Intervenor-Defendants.	Civil Action No. 4:18-cv-00167-O

FEDERAL DEFENDANTS' NOTICE OF APPEAL

Defendants United States of America, the U.S. Department of Health & Human Services ("HHS"), Alex Azar, in his official capacity as Secretary of HHS, the U.S. Internal Revenue Service ("IRS"), Charles P. Rettig, in his official capacity as Commissioner of the IRS (collectively, the "Federal Defendants"), hereby appeal to the United States Court of Appeals for the Fifth Circuit from this Court's December 30, 2018 Order (ECF No. 221), entering a Final Judgment on Count I of Plaintiffs' Amended Complaint (Exhibit A), and the underlying Memorandum Opinion and Order granting partial summary judgment as to Count I of the Amended Complaint entered by this Court on December 14, 2018 (ECF No. 211) (Exhibit B).

Dated: January 4, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

BRETT A. SHUMATE
Deputy Assistant Attorney General

JEAN LIN
Acting Deputy Director

/s/ *Daniel D. Mauler*
DANIEL D. MAULER
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
(202) 616-0773
(202) 616-8470 (fax)
dan.mauler@usdoj.gov

Counsel for the Federal Defendants

CERTIFICATE OF SERVICE

I certify that on January 4, 2019, I filed the foregoing document with the Clerk of Court via the CM/ECF system, causing it to be served electronically on all counsel of record.

/s/ *Daniel D. Mauler*
DANIEL D. MAULER
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
(202) 616-0773
(202) 616-8470 (fax)
dan.mauler@usdoj.gov

Counsel for the Federal Defendants

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2019, I electronically filed the foregoing record excerpts with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

s/Martin V. Totaro

MARTIN V. TOTARO

CERTIFICATE OF COMPLIANCE

1. Pursuant to Fifth Circuit Rule 25.2.13, I have complied with this Court's privacy-redaction requirements;

2. The electronic version of these record excerpts is an exact copy of the paper document that I will file with the Court when requested to do so; and

3. These record excerpts have been scanned for viruses using Symantec Endpoint Protection version 14, updated on March 20, 2019, which detected no viruses.

s/Martin V. Totaro

MARTIN V. TOTARO