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## *Texas v. United States: State Actions to Preserve the ACA*

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# Overview of *Texas v. U.S.*

- **December 2018: District court ruled**
  - Individual mandate is unconstitutional now that there is no tax penalty
  - Individual mandate is unseverable from remainder of ACA
  - Entire ACA invalid
- **July 2019: Oral arguments heard before 5<sup>th</sup> Circuit Court of Appeals with 3 key questions:**
  - Whether parties have standing
  - Whether individual mandate is unconstitutional now that there is no tax penalty
  - Whether part or all of ACA is severable from mandate
- **What's next:**
  - Waiting for decision, which could take months
  - Expect appeal to Supreme Court regardless of outcome



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# Possible Outcomes *Texas v. U.S.*

## 1. One party found not to have standing

- Plaintiffs don't have standing: case thrown out
- U.S. House doesn't have standing but intervening states do
- No intervenors have standing

## 2. Mandate found constitutional

- Status quo remains

## 3. Mandate found unconstitutional

- What, if any, parts of ACA are severable?
- Does decision apply nationwide, or only in plaintiff states?



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# *Texas v. U.S.:* Severability

## **1. Individual mandate found fully severable**

- Only individual mandate invalidated

## **2. Individual mandate not severable**

- Entire ACA invalidated

## **3. Part of ACA severable**

- Court decides which parts, could be any part of ACA
- Potential for all or part of Title I to be inseverable with other provisions remaining
- DOJ initially argued some pre-existing condition protections inseverable

# State Action Leading Up to *Texas v. U.S.*

## 2014:

- Seven states – CT, HI, MD, MA, MN, OR, VT – implemented early market reforms, established a state-based marketplace, and planned to expand their Medicaid programs
  - Market reforms: coverage of young adults, coverage of essential health benefits, etc.
- Five states – AL, MO, OK, TX, WY – did not implement any of the law's three major provisions

## 2018:

- How many states have adopted: community rating, a prohibition on preexisting condition exclusions, and/or guaranteed issue?
  - Community Rating: 14 states
  - Guaranteed Issue: 9 states
  - Preexisting Conditions: 10 states



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# State Action to Codify the ACA Since February 2018

State	Annual or Lifetime Limits Prohibited	Community Rating	Essential Health Benefits	Guaranteed Issue	Maximum Out-of-Pocket Limit	Nondiscrimination	Preexisting Conditions	Preventive Services Without Cost Sharing
Connecticut	✓	-	✓	-	-	-	-	✓
Delaware	-	✓	✓	✓	-	✓	✓	-
Florida	-	-	✓	-	-	-	✓*	-
Hawaii	-	-	-	-	-	-	✓	-
Indiana	-	-	-	-	-	-	✓	-
Louisiana*	✓	✓	✓	-	-	✓	✓	✓
Maine	✓	✓	✓	✓	✓	✓	✓	✓
Maryland	-	-	-	-	-	-	-	-
Nevada	-	-	-	✓	-	✓	✓	-
New Hampshire	✓	✓	✓	✓	-	✓	✓	✓
New Mexico	✓	✓	✓	✓	✓	✓	✓	✓
Vermont	✓	-	-	✓	-	-	✓	✓
Washington	✓	-	-	✓	-	-	✓	✓
Wisconsin	✓	-	-	✓	-	-	✓	✓

\*Provision/s go into effect only if a federal law is enacted invalidating the ACA or the ACA is invalidated by SCOTUS

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# Other Areas of State Activity

## Executive Orders Directing Agencies to Uphold the ACA's Principles

- New Jersey: State agencies that regularly interact with the public must provide information regarding the ACA and ways to enroll
- Rhode Island: Office of the Health Insurance Commissioner shall guard against health plans that discriminate based on preexisting conditions

## Bulletins Clarifying Insurance Requirements

- Maine: Clarifying state law on dependent coverage, the medical loss ratio, annual and lifetime limits, and essential health benefits, among other provisions

## Commissions to Study Consumer Protections

- North Dakota: The legislative management shall consider studying the feasibility and desirability of state guaranteed issue provisions

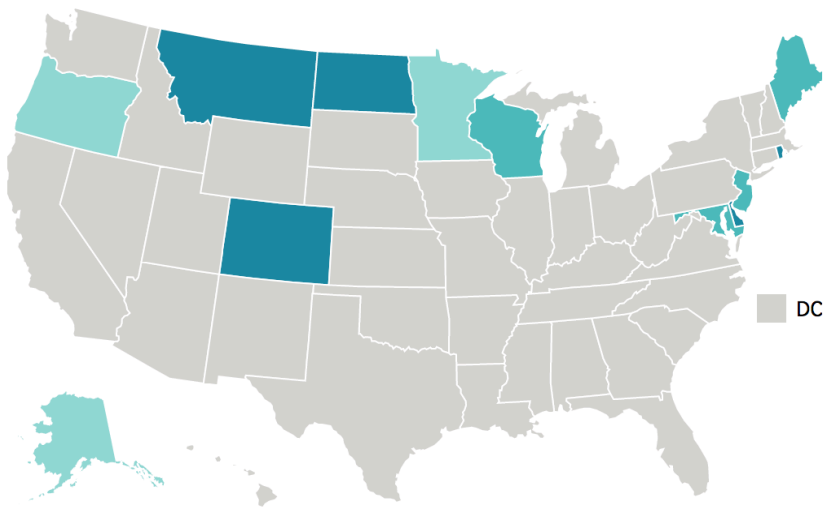


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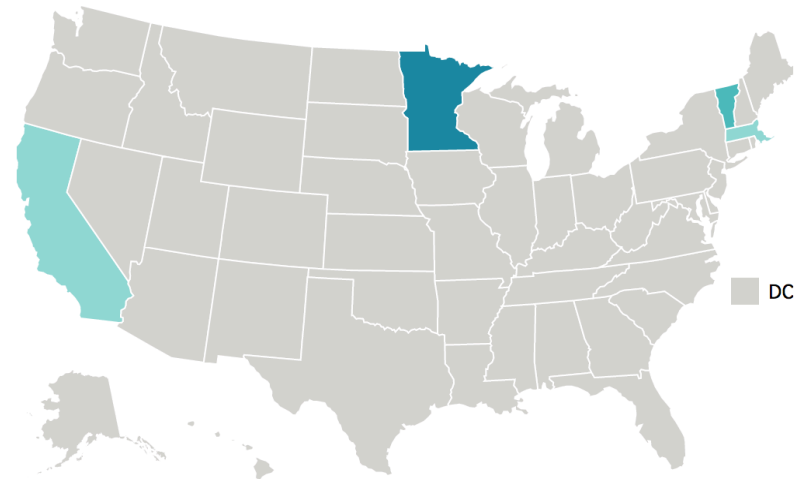
# Areas of State Activity Beyond Early Market Reforms

## Action on Reinsurance



- Does not operate a reinsurance program
- Waiver-funded reinsurance program since 2018
- Waiver-funded reinsurance program since 2019
- Waiver-funded reinsurance program planned for 2020

## Action on Subsidies



- Provides no premium or cost-sharing subsidies
- Provides premium subsidies
- Provides premium and cost-sharing subsidies
- Provided premium subsidies in 2017, only



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# Areas for Consideration

1.

“Baking in” the ACA’s consumer protections gives states a starting point for preserving their policies, if there is an adverse ruling

2.

If only part of Title I is invalidated, then states may retain status quo if insurance protections are codified in state law

3.

If premium tax credits are invalidated, states will need to reassess how to keep coverage affordable. But “baking in” protections changes the starting point of the conversation.



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