

Dept. of Justice: Federal government agrees with important aspects of AG Schimel's lawsuit against Obamacare

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MADISON, Wis. – Late yesterday, the United States Department of Justice (US DOJ) conceded in court filings that Obamacare's central provision, the individual mandate, is unconstitutional, and that a federal judge should strike it down along with other central provisions of the law before January 1, 2019. US DOJ's position that these other central provisions cannot lawfully stand if Obamacare's individual mandate is invalidated is consistent with critical concessions also made by US DOJ under President Obama.

Attorney General Brad Schimel's lawsuit, filed earlier this year on behalf of 20 states, challenged the constitutionality of the Affordable Care Act, also known as the ACA or Obamacare. Schimel argued that when Congress voted to remove the individual-mandate tax in December 2017, the constitutional underpinnings of the entire law fell apart.

"I am pleased that the U.S. Department of Justice properly understood that there is no good legal defense for Obamacare's central provisions," said Attorney General Schimel. "As I have long said, Obamacare is unconstitutional and we look forward to the courts vindicating that position."

When the United States Supreme Court considered the constitutionality of the ACA in 2012, the Court ruled that the law was constitutional only because the individual mandate could be fairly construed as a tax, even though Congress did not explicitly establish the mandate under its taxing power. But in December 2017, Congress revised the tax code and eliminated the individual-mandate tax, thereby rendering the law unconstitutional in full. On February 26, 2018, twenty states—led by

Attorney General Schimel and Texas Attorney General Ken Paxton—sued to strike down the ACA in light of the new provision in the tax code.

In a brief filed yesterday, US DOJ agreed with Attorney General Schimel that the ACA's individual mandate, community-ratings provisions, and guaranteed-issue provision must be invalidated. But the US DOJ further argued, contrary to the States' position, that certain other provisions of the ACA, such as the one allowing those under age 26 to remain on their parents health insurance, should remain in place.

By almost any measure, the ACA has largely been a failure. Despite former President Obama's claims that the ACA would extend health insurance to every American and that everyone who liked their doctor could keep their doctor, over 30 million Americans remain uninsured, and according to the United States Department of Health and Human Services, average individual market premiums more than doubled between 2013 and 2017.

The federal court is expected to issue a decision on the case later this year.