

No. 4:18-cv-00167-O

**In the United States District Court
FOR THE NORTHERN DISTRICT OF TEXAS**

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,
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* DAVID J. KAUTTER, *in
his Official Capacity as Acting* COMMISSIONER OF INTERNAL REVENUE,

DEFENDANTS.

**PLAINTIFF-STATES' AND INDIVIDUAL-PLAINTIFFS'
APPLICATION FOR PRELIMINARY INJUNCTION**

1. Plaintiff-States (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 Carolina; Tennessee; Utah; and West Virginia) and Individual-Plaintiffs (Neill Hurley and John Nantz) seek a preliminary injunction to enjoin the enforcement of the Patient Protection and Affordable Care Act ("ACA") and its associated regulations.

2. As set forth in the accompanying brief in support, Plaintiffs have met their burden of showing that a preliminary injunction should issue:

a. *First*, they have established a likelihood of success on the merits. The ACA's central provision, the individual mandate, can longer be construed as part-and-parcel of a tax penalty—the savings construction adopted in *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012)—because Congress eliminated the tax penalty for *every* individual. And once that provision is enjoined, the community-rating and guaranteed-issue provisions that the United States in *NFIB* conceded were inseverable from the mandate, and ultimately, the entire ACA, must also be enjoined from enforcement.

b. *Second*, Plaintiffs are likely to suffer numerous irreparable harms absent an injunction. The evidence submitted with the accompanying brief demonstrates that the individual mandate causes substantial and irreparable financial harm to the Individual Plaintiffs and to the State Plaintiffs because the ACA requires them to spend money for which there is no known avenue for later recovery. The ACA's remaining, nonseverable provisions also severely and irreparably drain the States' financial resources by increasing their Medicaid and employer-insurance costs, and dramatically curtail state sovereignty by preempting or effectively displacing state law.

c. *Third*, the balance of the equities and the public interest strongly favor an injunction. Not only does the United States lack a legitimate interest

in enforcing an unconstitutional mandate, but once the enforcement of the mandate is enjoined, the remainder of the ACA must be enjoined to prevent harms that Congress itself predicted and sought to prevent.

3. For these reasons and those set forth in detail in the accompanying brief in support, the Court should issue a preliminary injunction enjoining Defendants from enforcing the Affordable Care Act and its associated regulations.

Dated, April 26, 2018

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CERTIFICATE OF SERVICE

I certify that the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Darren McCarty
DARREN MCCARTY

CERTIFICATE OF CONFERENCE

I certify that on April 25, 2018, I conferred with counsel for Defendants, Eric Beckenhauer, about Plaintiff-States' and Individual-Plaintiffs' Application for Preliminary Injunction. Defendants stated that Defendants will respond to Plaintiffs' preliminary injunction application on June 7, 2018.

/s/ Darren McCarty
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