

THE  
NATIONAL LAW REVIEW

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## “I get knocked down, but I [might] get up again”: The Survival of the ACA

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Monday, June 25, 2018

Since the inauguration of President Trump, the Affordable Care Act (ACA) has taken quite a few significant jabs and blows. When Congress failed to repeal the ACA, Congress instead eliminated the individual mandate penalty through the GOP tax bill. The individual mandate penalty was one of the main pillars of the ACA because it effectively widened the pool of participants who buy health insurance in order to keep costs down. While removal of this penalty hit the ACA where it hurt, the true threat to the stability of the ACA arose when the Trump Administration announced that it would no longer defend the ACA against a challenge filed by twenty states that believe the individual mandate itself is unconstitutional and that key parts of the act are invalid. What is the outlook for the ACA?

### Congressional Efforts to Repeal

The House has voted to repeal or amend the ACA at least 50 times, but their efforts have never made it past the Senate. Despite this history of failure, there are still Republicans pushing for the repeal of the ACA. On June 19, 2018, [a coalition of conservatives released](#) the outline of a new plan for repealing and replacing the ACA. The plan emphasizes the use of block grants, implementing risk pools, removing essential health benefits, and minimum loss ratio requirements. As it stands, the plan will likely succumb to the

fate of its predecessors. Even if the bill passed the House, there are fewer Republicans in the Senate than the last time the repeal went to a vote. However, if after the upcoming mid-term elections the Republicans win Senate seats in Montana and Missouri and keep the majority in the House, the ACA could truly be in jeopardy.

### Lawsuits

Meanwhile, twenty states have filed a lawsuit against the ACA’s individual mandate arguing that the elimination of the tax penalty without the elimination of the mandate is unconstitutional because it leaves the mandate without the exercise of Congress’s taxing power. The Supreme Court’s 2012 ruling may come back to haunt ACA proponents. The Supreme Court held that the individual mandate is constitutional because it constitutes a tax and that the ACA could not function without the mandate in place. Those filing suit argue that because the tax penalty is eliminated it is a tax-less mandate and thus unconstitutional because Congress cannot exercise its taxing power. As such, the mandate is *sucha* key provision that the whole ACA should be thrown out if the provision cannot be severed. In other words, the whole cannot exist without the entirety of its parts.

### States Embrace Medicaid Expansion

Amid the slew of blows taken by the ACA, there is one provision left unscathed—Medicaid expansion. The number of states expanding Medicaid continues to grow. For example, Virginia recently passed an expansion of Medicaid, and the Governor of Utah signed a Medicaid expansion bill. Interestingly, some Republican-leaning states have embraced the expansion due in part to the current Administration’s support of work requirements. In fact, Maine



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is currently in a dispute with its Governor about the implementation of the expansion of Medicaid that was approved by Maine voters.

## **The Outlook**

With the ACA constantly under attack from multiple vantage points, it is safe to say that the Act will have to fight to survive. Although heavily dependent on the November elections, it is possible that the ACA will survive additional congressional efforts to repeal the bill. Further, the popularity of Medicaid expansion would make it difficult to repeal the bill in its entirety. More states are embracing Medicaid Expansion, and there is evidence available of the positive effects expansion has on access to care. The survival of the ACA really hinges on how U.S. District Judge Reed O'Connor interprets the law as he presides over the twenty-state suit, especially considering that the Trump Administration has already stated that it does not intend to defend the ACA. Stakeholders will have to wait patiently to see how the outcome of the upcoming elections and the pending lawsuit will affect the ACA's future.

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