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Department of Justice's Stance on Legal Challenge to ACA Reignites Fight over Protections for Pre-Existing Conditions

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On June 7, the Department of Justice (DOJ) filed a legal brief in support of a lawsuit from 20 states seeking to invalidate the Affordable Care Act (ACA), urging the federal court considering the case to strike down the ACA's protections for pre-existing conditions. The Texas-led lawsuit, *Texas v. United States Department of Health and Human Services*, claims that Congress's recent elimination of the ACA's individual mandate penalty means that the individual mandate is now unconstitutional. As a result, the plaintiffs argue that the entire statute is now invalid because the individual mandate is central to the law. The Trump Administration agreed in its filing that the individual mandate is unconstitutional and claims that the federal court should also strike down the ACA's guaranteed issue and community rating provisions because those provisions are too closely tied to the individual mandate. In a letter to House Speaker Paul Ryan, Attorney General Jeff Sessions acknowledged that the executive branch typically defends existing federal law, but stated that this is a "rare case where the proper course" is to forgo a defense.

The Trump Administration's filing has elevated the political profile of this case, which had not received much attention prior, and reignited fights over the ACA's protections for pre-existing conditions. Democrats have highlighted the DOJ's filing, claiming that it shows that the Trump Administration and Congressional Republicans cannot be trusted to maintain protections for people with pre-existing conditions. In addition, on June 14, more than two dozen trade groups representing insurers, hospitals, providers, and consumers filed amicus briefs criticizing the initial lawsuit and arguing against the DOJ's call to invalidate the ACA's protections for pre-existing conditions. An ideological mix of constitutional law scholars also joined together to argue that if the individual mandate provision is struck down, the rest of the ACA statute should remain in place.

Some Republican lawmakers have defended the ACA's protections for pre-existing conditions against the DOJ's claims. Senate Health, Education, Labor and Pensions Committee Chairman Lamar Alexander (R-TN) issued a statement criticizing Attorney General Jeff Session's argument, stating "I didn't hear a single senator say that they also thought they were repealing protections for people with pre-existing conditions" when Congress approved repeal of the individual mandate penalty. Senate Majority Leader Mitch McConnell (R-KY) also issued a statement claiming that "Everybody I know in the Senate – everybody – is in favor of maintaining coverage for pre-existing conditions."

If the lawsuit were to succeed, it could have a dramatic impact on the private insurance market and for the uninsured rate. However, legal scholars consider it a longshot at best, pointing to the fact that Congress repealed the individual mandate penalty while leaving the insurance protections in place as proof of congressional intent to sever the individual mandate from the other provisions of the law.