

No. 4:18-cv-00167-O

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**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.

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

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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

BRAD D. SCHIMEL  
Wisconsin Attorney General

MISHA TSEYTLIN  
Wisconsin Solicitor General

KEVIN M. LEROY  
Wisconsin Deputy Solicitor General

State of Wisconsin  
Department of Justice  
17 West Main Street  
P.O. Box 7857  
Madison, Wisconsin 53707-7857  
Tel: (608) 267-9323

*Attorneys for Wisconsin*

/s/ Robert Henneke  
ROBERT HENNEKE  
Texas Bar No. 24046058  
rhenneke@texaspolicy.com  
Texas Public Policy Foundation  
901 Congress Avenue  
Austin, Texas 78701  
Tel: (512) 472-2700

*Attorney for Individual-Plaintiffs*

Respectfully Submitted,

KEN PAXTON  
Attorney General of Texas

JEFFREY C. MATEER  
First Assistant Attorney General

BRANTLEY D. STARR  
Deputy First Assistant Attorney  
General

JAMES E. DAVIS  
Deputy Attorney General for Civil  
Litigation

/s/ Darren McCarty  
DARREN MCCARTY  
Special Counsel for Civil Litigation  
Texas Bar No. 24007631  
darren.mccarty@oag.texas.gov

AUSTIN R. NIMOCKS  
Special Counsel for Civil Litigation

DAVID J. HACKER  
Special Counsel for Civil Litigation

Attorney General of Texas  
P.O. Box 12548, Mail Code 001  
Austin, Texas 78711-2548  
Tel: 512-936-1414

*Attorneys for Texas*

### **Additional Counsel**

STEVE MARSHALL  
Attorney General of Alabama

JOSH HAWLEY  
Attorney General of Missouri

LESLIE RUTLEDGE  
Attorney General of Arkansas

DOUG PETERSON  
Attorney General of Nebraska

MARK BRNOVICH  
Attorney General of Arizona

WAYNE STENEHJEM  
Attorney General of North Dakota

PAM BONDI  
Attorney General of Florida

ALAN WILSON  
Attorney General of South Carolina

CHRISTOPHER M. CARR  
Attorney General of Georgia

MARTY JACKLEY  
Attorney General of South Dakota

CURTIS HILL  
Attorney General of Indiana

HERBERT SLATERY, III  
Attorney General of Tennessee

DEREK SCHMIDT  
Attorney General of Kansas

SETH REYES  
Attorney General of Utah

JEFF LANDRY  
Attorney General of Louisiana

PATRICK MORRISEY  
Attorney General of West Virginia

### **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  
DARREN MCCARTY