

Opening Statement
Chairman Frank Pallone, Jr.
Committee on Energy and Commerce
Subcommittee on Health
Hearing on “Texas v. U.S.: The Republican Lawsuit and Its Impacts on Americans with Pre-Existing Conditions:”
February 6, 2019

I thank the Chairwoman for convening this hearing. We are here today because unfortunately, once again, the Affordable Care Act, and the health care of millions of Americans, is under threat. In February of last year, 20 Republican Attorneys General and Governors sued the federal government, yet again challenging the constitutionality of the law. The Trump Administration’s Department of Justice, in a significant break with longstanding tradition, sided with the plaintiffs and refused to defend the ACA’s protections for pre-existing conditions.

In December, Judge Reed O’Connor of the Northern District of Texas declared the entire ACA invalid. He ruled that because the Republican tax bill zeroed out the individual mandate, that the rest of the law must fall too.

Since then legal scholars from across the ideological spectrum have sharply criticized the ruling. Conservative legal scholar Jonathan Adler wrote in an opinion piece that the decision made a, “mockery of the rule of law and basic principles of democracy.” It is not the job of federal judges to strike down entire statutes without considering Congress’ intent. I hope my colleagues, who are always so quick to criticize “judicial activism,” will join me in condemning this judge’s decision.

Let there be no mistake - I believe in the end that this decision will be reversed on appeal and the ACA will remain the law of the land. This is a resilient law that has withstood dozens of politically motivated legal challenges and over 69 Republican repeal votes in the House of Representatives. But this is a real and serious threat to the ACA and to our health care system and that cannot be understated. Moreover, the continuing efforts to repeal the ACA continues to inject uncertainty into the markets.

Additionally, the Trump Administration’s efforts to promote junk plans and gut outreach and enrollment funds are undermining the law’s protections for pre-existing conditions and raising health care costs for working families. One of our top priorities on this Committee this year is making health care more affordable for Americans – and one of the ways we can do that is by ending the uncertainty created by the Trump Administration’s sabotage.

We welcome working in a bipartisan way. However, we are not interested in half-measures and incomplete protections. The ACA included a comprehensive set of measures to protect pre-existing conditions. It not only prevented health insurance companies from discriminating against people with pre-existing conditions, it also required insurance companies to cover a set of essential health benefits, like hospitalization, emergency services, maternity care, and substance use disorder services. It eliminated annual and lifetime limits on coverage that for years had

forced people with pre-existing conditions into bankruptcy. It expanded Medicaid, which made health insurance available to millions of Americans, including many with serious and chronic pre-existing conditions and unmet medical needs. Every one of these protections are vitally important and cannot be eliminated.

This Congress, Democrats will work to uphold the law of the land, to protect individuals with pre-existing conditions, and to hold the Trump Administration accountable for its sabotage of the ACA. The first order of business was intervening in the Texas lawsuit to defend the ACA. This Administration refuses to defend the law, and so the House of Representatives will now step in. I believe the House will prevail in overturning the district court's decision and we will continue our work to uphold and strengthen the law.

We will also be taking a close look at the ways that the Trump Administration is sabotaging people's health care. As the Chairwoman announced, next week we will review the Administration's expansion of junk plans and lack of outreach and enrollment. We will also review their unlawful 1332 guidance. This new guidance allows states to waive requirements of the law. That will result in increased costs for Americans with pre-existing conditions, seniors, and women by expanding access to junk plans and undermining the market for comprehensive coverage.

That is why today I have requested a legal opinion from the Government Accountability Office (GAO) on whether the 1332 guidance is actually a "rule" for the purposes of the Congressional Review Act. If so, we will work through expedited procedures in Congress to stop it from going into effect. I look forward to GAO's response as we continue our efforts to reverse the Trump Administration's sabotage of the ACA, and to make health care more affordable for all Americans. I yield back.