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Texas plaintiffs personalize uphill legal challenge to overturn Obamacare

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AUSTIN, Texas — Two self-employed Texans, John Nantz and Neill Hurley, have leading roles in the latest legal effort to kill Obamacare.

The men are the named plaintiffs in a [lawsuit by 20 states](#) that argues Congress fatally undercut the law when it repealed the individual mandate penalty in tax cut legislation. Nantz and Hurley say the mandate compels them to buy costly insurance that doesn't fit their needs — even though the financial penalty for not complying is disappearing next year.

The case — which conservatives hope will be the fifth Obamacare challenge considered by the Supreme Court — hinges on whether the rest of the law can legally survive without the mandate. And red states will have to make the long-shot argument that scrapping the mandate altogether will ultimately help people like Nantz and Hurley.

In contrast to earlier lawsuits against Obamacare where the plaintiffs did not want to comply with the law, Nantz and Hurley contend, "We're going to injure ourselves voluntarily by unnecessarily complying," said Stephen Vladeck, a constitutional law professor at the University of Texas.

The first arguments will be aired in Fort Worth later this year before District Court Judge Reed O'Connor, a George W. Bush appointee who ruled in 2016 against Obamacare regulations that bar health care providers from discriminating against transgender patients or women who had an abortion. The suit is led by Texas Attorney General Ken Paxton and his counterpart in Wisconsin; California is [leading](#) an effort by a group of states to intervene on behalf of Obamacare.

To improve its prospects, Texas sought out rare birds like Nantz and [Hurley](#), who say they feel compelled to buy health insurance even without the threat of a financial penalty. They put a human face to the problems the state says Obamacare created.

"The states have improved their situation by bringing in individuals," said Tom Miller, a resident health policy fellow at the American Enterprise Institute, who likened the pair to someone "who doesn't take a tag off of their mattress" because of the legal warning.

Miller and other legal experts still predict courts will be reluctant to revisit an issue that the Supreme Court already decided, and unravel a law that's been in place for eight years. But

conservatives are pressing on, hoping to bring what would be the fifth Obamacare challenge to the Supreme Court, including cases centering on birth control coverage rules.

Central to the arguments in this case is what Congress intended when it passed the law: Plaintiffs argue lawmakers' decision to eliminate the mandate penalty means the legal premise of the mandate has crumbled. And if the mandate is effectively gone, they argue, the rest of the law should disappear.

The CBO estimates that eliminating the mandate's tax penalty will prompt 3 million people to forgo Obamacare plans next year, raising exchange premiums by 15 percent.

Nantz, a management consultant based in Austin, and Hurley, whose Houston-area company works on parking system technologies, say that they feel obligated to buy insurance that's too expensive because they want to comply with the mandate.

"I think my clients agree with their moral and ethical obligation to comply with the law even if it's a law that they disagree" with, said Robert Henneke, general counsel at the Texas Public Policy Foundation, a conservative research institute representing the pair.

Henneke said that the organization found the men through their work with the foundation — Nantz is a member of the Austin Liberty Leadership Council, the TPPF's young professionals group, and he's written an op-ed criticizing the Austin city government for exacerbating the city's rising housing prices.

The 31-year-old was a Stanford student when the Affordable Care Act passed in 2010. After graduating, he worked for the consulting firm McKinsey and wrote a book with support from the libertarian Cato Institute about the federal government. He founded his own consulting firm in 2014, according to his LinkedIn profile.

Since then, he's switched health plans multiple times and is now enrolled in a plan with upstart insurer Oscar paying \$267 a month for a plan with a \$6,500 annual deductible. But Nantz, who is unmarried and has no children, doesn't want to completely forgo insurance. He believes that Obamacare's other provisions, such as preventing insurers from rejecting and charging more to sicker and older individuals, mean that he's paying too much for coverage that he doesn't want.

"I think young people, particularly the many who do not qualify for subsidies, have gotten taken advantage of by the ACA," Nantz wrote in response to an emailed list of questions. Like Nantz, Hurley also doesn't want to give up health coverage, but he believes that Obamacare's provisions have restricted his choice of plans. The 39-year-old Katy resident had plans heavily subsidized through his employers that covered his wife and two children until 2016. When he shopped for plans on the federal exchange after he started his own company, he said that he couldn't find one that accepted his family's providers.

Now he pays a monthly premium of \$1,082 for a plan with a family annual deductible of \$12,000. He says that he would consider alternatives that the Trump administration is proposing, such as association health plans, if they satisfy the mandate, but ideally he hopes that the repeal of the mandate — and ultimately the health law — will give him a greater choice of plans.

That will be tough for the red states to prove — they not only have to convince courts that the mandate is now inextricably linked to the rest of the law, but that getting rid of it will help people like Nantz and Hurley.

Judges may not dig too deeply into the litigants' personal stories unless Nantz and Hurley decide to drop their coverage, or find work that offers employer-sponsored coverage. Courts didn't delve deeply into plaintiffs' circumstances when deciding another legal challenge against the health law a few years ago.

If courts agree with the plaintiffs and repeal the mandate, people like Nantz and Hurley say they would no longer be compelled to buy insurance. But there's no guarantee that private insurers, faced with rising costs, would offer plans that they prefer.

“I think they fit into the category of people who are injured by the Affordable Care Act writ large, but they are not in the category of people who have been injured by a penalty-free mandate,” said Nicholas Bagley a health law professor at the University of Michigan. “These people will be in a worse spot if the mandate is repealed.” That's because many health experts expect that premiums would rise even more without the mandate, because the insurance markets will skew more toward older and sicker customers.

Added the University of Texas' Vladeck, "The Supreme Court tends not to have a lot of patience of even creative efforts by lawyers to relitigate something they have already decided."