

Beyond the Beltway:
Health Webinars for Journalists

Health Care in the Courts

September 25, 2018



 #AllHealthLive

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Materials

At allhealthpolicy.org

- Agenda
- Resources List
- Experts List
- Speaker Bios
- Speaker Presentations
- Video (posted later)

Agenda

1:30 p.m. – 1:35 p.m. Introduction

- Sarah Dash, MPH, Alliance for Health Policy

1:35 p.m. – 1:55 p.m. Panelist Opening Remarks

- Timothy Jost, J.D.,
Washington and Lee University School of Law
- Mary Anne Pazanowski, J.D.
Bloomberg Law

1:55 p.m. – 2:45 p.m. Audience Questions

Submit any time during the webinar via the questions panel on your GoToWebinar menu

2:45 p.m. Conclude

Today's Panelists



Timothy Jost, J.D.

Washington and Lee University
School of Law



Moderator

Sarah Dash, MPH

Alliance for Health Policy
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**Mary Anne
Pazanowski, J.D.**

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Timothy Jost, J.D.

Emeritus Professor,
Washington and Lee University
School of Law



Affordable Care Act Litigation

Timothy Stoltzfus Jost

Over 100 lawsuits have been filed involving the ACA

- Four reached the Supreme Court
- Three categories of current litigation
 - Lawsuits challenging the ACA itself or pre-Trump regulations promulgated under it.
 - Lawsuits challenging Trump administration policies.
 - Lawsuits brought by insurers claiming money due from U.S. government.

Lawsuits challenging ACA and regulations

- Texas v. Azar, lawsuit brought by Texas and 19 other Republican AGs and governors challenging constitutionality of the ACA.
 - Department of Justice sided with Texas but would only invalidate guaranteed issue and community rating requirements and preexisting condition exclusion ban.
 - California and 16 other Democratic AGs defending statute.
- Franciscan Alliance v. Azar. Private plaintiffs and eight states sued to invalidate regulations under ACA 1557 prohibiting discrimination against transgender individuals.
 - Stayed pending new regulations.
- Texas v. US. six states suing for recovery of funds paid to reimburse Medicaid managed care plans for health insurance provider fee.
 - Judge ruled for plaintiffs and ordered disgorgement.

Lawsuits challenging ACA regulations

- Risk adjustment lawsuits
 - Minuteman Health v. HHS, risk adjustment regulations upheld
 - New Mexico Health Connections v. HHS, risk adjustment transfer formula vacated
- AARP v. EEOC, challenged wellness program rules

Cases Challenging Trump Administration Rules

- California v. HHS, preliminary injunction granted against Trump contraception rules
 - on appeal to 9th circuit
 - Also cases in Massachusetts (dismissed for lack of standing), Pennsylvania, and Washington.
- California v. Trump. Challenge to cut off of cost-sharing reduction payments
 - dismissed but can refile
- New York v. DOL. Twelve-state challenge to Association health plan rule
 - New York has moved for summary judgment

Cases challenging Trump Administration Rules

- *Columbus v. Trump*. Four cities and two individuals challenging range of Trump administration actions under Take Care clause.
- *Maryland v. United States*. Lawsuit brought by Maryland AG to have ACA declared valid.
- *Association for Community Affiliated Plans v. U.S.* Insurer, provider, and patient groups challenging short-term rule.

Health insurer cases in Court of Claims

- Risk corridor cases
 - Moda and Land of Lincoln—federal circuit court of appeals judgment for U.S.
 - request for en banc reconsideration.
- Cost-sharing reduction cases
 - Montana Coop case, judgment against U.S. for failure to pay cost-sharing reduction payments in 2017.

Mary Anne Pazanowski, J.D.

Legal Reporter,
Bloomberg Law



Health Care in the Courts

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- ACA Litigation

--2010: 13 states sue government in federal court in Florida, arguing ACA, or at least its provision requiring people to have health insurance, is unconstitutional; 7 more states join that lawsuit

--2012: Supreme Court (5-4) rejects claim, saying Congress had authority to enact ACA under its taxing and spending clause power because fine for noncompliance is a tax

--2018: 20 states sue government in federal district court in Texas, arguing ACA is unconstitutional because Congress, in Tax Reform and Jobs Act, repealed fine for noncompliance

--2018: DOJ sides with states, but would invalidate only three provisions; 16 “blue” states join case to defend law; oral argument held Sept. 5

- ACA Litigation: Trends
- Growing Coordinated Effort by States:

Texas v. Azar—20 red state plaintiffs brought suit; 16 states, including D.C., intervened to defend ACA

California v. HHS--16 states challenged contraceptive mandate rule change

California v. Trump—19 states challenged administration's refusal to pay cost-sharing reduction reimbursements.

New York v. Dep't of Labor—12 states challenging association health plan rule

- ACA Litigation: Trends (cont'd)
- Red/Blue State Split:

Texas v. Azar, 20 red states arguing to undo ACA; 15 states arguing to keep it

Planned Parenthood of Greater Ohio v. Himes, Ohio Planned Parenthood defunding case; 15 states file brief supporting Ohio; 16 states filed brief opposing Ohio law

- DOJ joining parties opposing federal law or regulations: *Texas v. Azar*, *Franciscan Alliance v. Azar* (stay issued)
- Judge-shopping: *Texas v. Azar* filed in federal court division that has only one judge

- Medicaid Litigation:
- Multiple cases involving states' efforts to defund Planned Parenthood by declaring that state no longer will include provider's affiliates in its Medicaid program
- Most federal appeals courts have said states may not end Planned Parenthood affiliates' Medicaid provider agreements, one has sided with state
- Supreme Court is scheduled to decide at Sept. 24 conference if it will review two of them:

Andersen v. Planned Parenthood of Kansas & Mid-Missouri, from the 10th Circuit, and *Gee v. Planned Parenthood of Gulf Coast, Inc.*, from the 5th Circuit.

- Medicaid Litigation (cont'd):
- Work Requirements:

Bevin v. Stewart (E.D. Ky.)—Court dismissed Kentucky’s request that it declare the state’s program lawful

Stewart v. Azar (D.D.C.)—Court said HHS Secretary exceeded his authority when granting Kentucky Medicaid waivers that would allow state to adopt work requirements; Secretary has reopened new comment period on state’s waiver application

Gresham v. Azar (DDC)—Complaint seeks injunction against Arkansas’s Medicaid work requirement

Administrative Procedure Act—cases allege HHS isn’t following proper procedures, i.e., isn’t engaging in “notice and comment” rulemaking

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Audience Q&A



Timothy Jost, J.D.

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Moderator

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Please fill out the evaluation survey you will receive immediately after this presentation and by email this afternoon!

Save the date for our next webinar...

Potential Midterm Election Implications for Health Care

Tuesday, October 16, 2018

1:30 – 2:45 p.m. ET

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