US Supreme Court justices signal support for upholding Affordable Care Act

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On Tuesday, key justices on the US Supreme Court appeared ready to uphold the Affordable Care Act (ACA) against the latest challenge from Republican Party opponents of the legislation.

In the course of oral arguments, most of the justices gave a skeptical hearing to Texas Republicans and President Trump's lawyers, who argued that the ACA, also known as Obamacare, should be struck down in its entirety because Congress had eliminated the tax penalty for those who did not have insurance.

The ACA, which was signed into law by President Obama in 2010 and took effect in 2014, required those who do not have insurance through their employer or a government program such as Medicare or Medicaid to obtain coverage from a private insurer under threat of a financial penalty—the so-called "individual mandate."

Obamacare survived two earlier challenges in the Supreme Court. In a 5-4 ruling in June 2012, Chief Justice John Roberts joined with the nominally liberal wing of the high court at the time to uphold the individual mandate to purchase insurance. The court also ruled that the federal government could not withdraw existing Medicaid funding from states that decided not to participate in an expansion of eligibility for the program under the ACA.

In June 2015, the high court ruled 6-3 that the federal government could provide nationwide tax subsidies to help lower-income people buy health insurance, rejecting the argument that the subsidies should be available only in states that had set up insurance exchanges, or market places, for people who lacked insurance to buy coverage.

In 2017, the Republican-led Congress cut the tax penalty to zero for those who lacked insurance as part of a year-end tax overhaul.

In the oral arguments on Tuesday, several justices said that while this "zeroing out" of the penalty effectively ended the mandate, removal of this provision did not invalidate the rest of the ACA, including its insurance premium subsidies for 20 million people and its coverage for tens of millions more with preexisting medical conditions.

Chief Justice Roberts said Congress did nothing more in 2017 than eliminate the tax penalty for those who did not have insurance. "Here, Congress left the rest of the law intact," he said. "That seems to be compelling evidence on the question" that the rest of the law should stand.

Justice Brett Kavanaugh, one of three justices appointed by President Trump, said that while he felt the mandate was unconstitutional, that should not affect the rest of the law. "It seems very clear the proper remedy is to sever the mandate provision and leave the rest," he said.

Justices Roberts and Kavanaugh, joined by the three liberal justices on the court, could form a majority to uphold the law when a decision is handed down in the spring of 2021.

A *Wall Street Journal* column on the ACA's return to the Supreme Court gives an indication of the ruling elite's attitude toward the ACA. The *Journal* writes: "The Court has a chance to make clear that Congress can't use its taxing power as a constitutional end-run to impose other mandates on individuals."

It continues: "At the same time, there's no valid legal argument for overturning the entire ACA. The GOP Congress surgically zeroed out the penalty, thereby severing from the law. Premiums and enrollment in the exchanges have since been stable, so the mandate is clearly not essential to insurance markets. The economic reliance interests on the ACA have also grown since 2012, as amicus briefs from hospitals, physician groups and insurers attest."

In other words, hospital chains and insurers continue to profit from the insurance premiums paid on the Obamacare exchanges.

The Democratic presidential campaign of Joe Biden and Kamala Harris placed emphasis on their pledge to defend

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and expand the ACA against any threats by the Republicans to undermine it. At the Senate confirmation hearing last month for Amy Coney Barrett, Trump's most recent appointee to the Supreme Court, Senator Harris repeatedly questioned her about the impact her appointment would have on the ACA.

Other Democrats on the Senate Judiciary Committee followed a similar line of questioning of Barrett, making no mention of Trump's effort to stack the court with right-wing justices who would uphold any attempts on his part to challenge the legitimacy of the election, which is precisely what he is now doing.

In remarks Tuesday following the oral arguments before the Supreme Court on the ACA, President-elect Biden called the Trump administration's call for the law to be struck down "simply cruel and needlessly divisive," saying it would lead to 20 million Americans seeing their health coverage "ripped away in the middle of the nation's worst pandemic."

The reality is that Biden-Harris' transition plan to confront the COVID-19 crisis offers only vague and wholly inadequate proposals. In particular, there is no explanation of where the funding will come from for increased testing and adequate personal protective equipment for health care workers. Nor is there any proposal for a new stimulus plan to provide the resources needed by the millions of families, schools and small businesses that are facing a catastrophic situation, which will only worsen as the pandemic grows in the coming winter months.

All Biden is offering are hollow calls for unity with the Republicans. Answering reporters' questions about the Trump administration's refusal to concede the election and the General Services Administration's failure to recognize him as president-elect, stopping the release of millions in funding for his transition to the White House, Biden downplayed the very real threat of a Trump election coup.

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