Supreme Court upholds Obamacare, ruling opponents have no standing to sue

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In a decision announced June 17, the US Supreme Court struck down the latest right-wing challenge to the Affordable Care Act (Obamacare). The court handed down a 7-2 ruling that avoided the substance of the law and instead found that the states and individuals who brought the suit lacked standing because they could not demonstrate that the ACA had caused them any material injury.

The initial lawsuit, *Texas v. California*, was brought by 17 states and two individuals. States supporting the ACA countersued in *California v. Texas*, and both suits were disposed of by the court's decision. The ruling was authored by Justice Stephen Breyer, one of the five justices who first upheld the constitutionality of the ACA in 2012.

The law was also upheld in a 2015 ruling in *King v. Burwell*, where the margin was 6-3. The law has thus received growing support on the court over the past decade, even as the court's membership has shifted steadily to the right, particularly with the appointment of three new justices by President Donald Trump.

That alone makes clear that support for the ACA is not the outcome of a liberal or "progressive" political outlook. It is tied much more to the increasing dependence of giant health care, insurance and pharmaceutical companies on the flow of money from the federal government, and Wall Street looking askance at the prospect of that spigot being shut off.

Countless commentaries have been published over the last few days on the intricate legal technicalities and behind-the-scenes conflicts among the justices that produced the latest ruling. However informative, they miss the main point, which was stated bluntly in a headline in the Capitol Hill publication *Roll Call*: "Industry cheers Supreme Court ruling on health care law."

As the ensuing article explained: "Several health care industry groups had urged the Supreme Court to uphold the law in amicus briefs filed before the November oral arguments. Hospitals, physicians, insurers and others stood to lose financially if the law had been overturned."

Virtually every corporate group associated with health insurance and health care applauded the Supreme Court ruling.

Matt Eyles, president and CEO of America's Health Insurance Providers, the trade group of the health insurance industry, issued a statement saying, "We believe the Supreme Court rightly concluded this case does not belong in court, as the challengers have not suffered any injury. The ACA remains the law of the land."

He noted the more than one million people who have signed up for coverage during the special enrollment period provided by the Biden administration, on top of the more than 11.3 million already enrolled through state and federal exchanges.

These constitute, to be blunt, 12 million more paying customers for the insurance companies represented by AHIP. That was the real function of the Affordable Care Act from the very beginning. It strengthened the private, profit-gouging components of the retrograde US health care system, in which health care is not a human right of all people, but a commodity offered for profit and available only to those who can pay.

For the same reason, Chip Kahn, president of the Federation of American Hospitals, issued a statement in which he said: "The tens of millions of Americans who depend on the ACA for affordable health coverage can breathe a sigh of relief—their access to care was upheld today by the Supreme Court.

"The COVID-19 pandemic has shown the true value of this law, with a record number of consumers now getting affordable coverage through ACA exchanges."

Again, the hospital industry is breathing "a sigh of

relief" because the ACA has been a windfall to their bottom line. They are dependent on the "record number of consumers" whose hospital care is being paid for under the ACA, either through insurance policies patients have purchased on the exchanges or through the expansion of the federal Medicaid program, carried out in 38 of the 50 states under the ACA.

The stock prices for health insurers Centene Corp. and Molina Healthcare, which have a major presence on the ACA exchanges, jumped sharply in response to the court ruling.

The American Benefits Council, which represents large companies that provide health insurance coverage for employees, applauded the "cautious certainty" that would now be preserved for its member companies by the Supreme Court ruling. In a statement, the group's president, James Klein, said, "We hope the court's ruling re-establishes the ACA as settled law that can be relied upon—and improved."

Many corporate employers have dumped sections of their lower-paid workers into the ACA marketplaces, viewing this as cheaper than continuing to provide employer-paid insurance.

The Affordable Care Act was never a progressive social reform, let alone a step to establishing access to health care as a basic right. It was devised in conjunction with the insurance companies, the profit-making hospital chains and medical device and pharmaceutical industries to provide a growing market, while shifting the burden of paying for health care as much as possible onto the backs of working people.

The health care exchanges, far from attracting tens of millions of people, as Obamacare propagandists had predicted, still have only 12.3 million people enrolled after seven years, fewer than the 18.8 million people newly enrolled in Medicaid under the ACA because of expanded eligibility and outreach.

The latest Supreme Court decision thus represents a victory for the dominant faction of corporate America over a more right-wing faction that has sought to overturn the ACA primarily on ideological grounds, seeking to whip up fears of "socialized medicine," when the ACA is anything but.

The legal basis of the latest challenge to the ACA was threadbare, to say the least. In 2017, Trump's tax cut for the wealthy legislation reduced to zero the penalty paid by those who were without health insurance and refused to enroll in the subsidized market provided by Obamacare.

Texas and 17 other states argued that since the ACA mandate had been upheld by the Supreme Court in 2012 as a legitimate exercise of Congress's power to tax, the elimination of the tax meant that the ACA itself should now be considered unconstitutional. This particularly muddled argument found favor with an ultra-right federal district judge in Texas, who was then overturned on appeal, a ruling that was then appealed to the Supreme Court.

The case was further confounded as the Trump administration first supported the overturning of the mandate without the full overturning of the ACA, then shifted to advocating that the ACA as a whole be struck down, in arguments made to the court last November. Then the incoming Biden administration reversed the position of the federal government and urged the court to reject the challenge to the law.

The 7-2 ruling avoided any discussion of the underlying argument about the meaning of the word "tax" and whether the ACA rose or fell based upon it. Instead, Breyer wrote that neither the two individuals nor the states that brought the case had suffered any injury from the law, and therefore lacked standing to file a suit against it.

The two individuals, he argued, were no longer required to pay a tax penalty. They suffered no injury at all. The states claimed that the ACA mandate was encouraging people to apply for Medicaid (as is their right) for which the states must pay their share, less than 10 percent of the cost. But once the mandate was eliminated, they could not demonstrate that connection, and so lacked standing to sue.

The overwhelming consensus within the US ruling elite in favor of the ACA is demonstrated by the shift of Clarence Thomas, one of the most right-wing justices, from a vote to overturn the ACA in 2012 and 2015 to a vote to retain it—albeit on this technical ground—in 2021.