Surprise: Conservative Judges Decide Not to Kill All of Obamacare

But that doesn't mean the Affordable Care Act is safe. Here's what's up next.

December 19, 2019 By Trent Straube

Republican-appointed judges on a federal appeals court ruled that the Affordable Care Act's individual mandate requiring people to have health insurance is unconstitutional. But they did not strike down the entire law, also referred to as ACA or Obamacare, The New York Times reports.

In Texas v. United States, conservative judge Reed O'Connor, of the Federal District Court in Fort Worth, ruled that the entire health care law must be repealed because the individual mandate, described as "the keystone" of the law, was unconstitutional. Judges in the appeals court disagreed. They sent the case back to the district court and demanded that O'Connor analyze it again. This leaves Republicans and Democrats plenty of room to spin the ruling in their favor.

> Donald Trump failed to repeal the ACA in Congress. Now he has turned to the courts to sabotage it — and is threatening protections for more than 100 million people with pre-existing conditions in the process. We need to protect Obamacare — and build on it. https://t.co/wFWiCSHfnY
>
> — Joe Biden (@JoeBiden) December 19, 2019

So now what? O'Connor must comb through over 900 pages of the ACA, notes Vox, and explain how the individual mandate is linked to each segment of the law. When he and his clerks are finished, his decision will return to the Fifth Circuit Court of Appeals. If the court agrees that parts

of the ACA must be struck down, then the Supreme Court will likely have to hear the case.

In the meantime, states that defended Obamacare could ask the Supreme Court to step in and rule against the Texas case. (The Trump administration sided with the plaintiffs and O'Connor.)

This means the health care law is in limbo and likely to remain so way beyond next year's election. This could be good news for Republicans, who, in 2020, will not have to face millions of voters who've lost their health insurance. At the same time, Republicans can also claim they are trying to undo the health care law and have a pathway to accomplish that. Earlier this year, Republicans said they wouldn't reveal their own plan for providing health insurance until after the 2020 election.

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— Chuck Callesto (@ChuckCallesto) December 19, 2019

Democrats, meanwhile, can argue that Americans' health care is in jeopardy.

In 2012, the Supreme Court ruled that the individual mandate was constitutional because Congress had the power to impose taxes. A year after Republicans took control of both houses of Congress in 2016, they elected to reduce the fine for not having health insurance to zero dollars. This led to the Texas case in which O'Connor ruled that without the mandate the entire health care law was dead.

What will happen if the ACA is repealed? As a previous article pointed out:

- 21 million Americans could lose their insurance;
- 12 million adults could lose Medicaid coverage;
- 133 million people with protected preexisting conditions could lose coverage;

- 171 million people would no longer be protected from caps that insurers place on coverage (this is especially important for people with expensive conditions such as cancer);

- 2 million young adults under age 26 could lose coverage that they're currently getting through their parents' plans.

Vox argues that the federal court should not have heard this case to begin with because the plaintiffs did not show "standing." In these cases, plaintiffs are required to show that they were injured by the law (paying a zero-dollar fine does not constitute an injury). What's more, O'Connor's claim that the entire law is dead without the mandate—a claim of "severability"—is dubious at best.

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