



## Republicans are still trying to destroy Obamacare, and they're still losing

**Conservatives want to protect your right a totally avoidable death due to a lack of health insurance. It's the principle of the thing**

By Scott Lemieux  
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The Republican party's effort to deny any (if not all) access to affordable healthcare for as many people as humanly (though not humanely) possible took a major blow on Thursday, when the full DC circuit court of appeals decided to review the anti-Obamacare decision issued by two Republican-appointed judges earlier this year.

Since that opinion made *Bush v Gore* look like a model of thoughtful jurisprudence, the Obama administration asked the full court to reconsider. It will, and their pending ruling is bad news for conservatives who want to preserve Americans' precious freedom to die totally avoidable deaths because they lack health insurance.

"Today's decision by the DC Circuit to grant *en banc* review of *Halbig v. Burwell* is unwise and unfortunate. It has the appearance of a political decision," sniffed Michael Cannon of the conservative-libertarian Cato Institute. The chutzpah it takes for one of the *architects* of the case to accuse the judges who voted to re-hear it of being "political" is like the Atlantic Ocean accusing the creek running behind your house of having too much water.

But nothing will stop the Obamacare truthers – not logic, reason, legal rulings, common sense or human decency.

Earlier this year, based on a hyper-literal reading of an isolated part of the Affordable Care Act, a two-judge panel from the court ruled that Congress did not intend to provide subsidies to participants in federal health insurance exchanges in order to make their insurance affordable – though they did so for state exchanges. Their argument – that Congress went through the trouble to create a federal backstop in case certain states didn't establish exchanges while intentionally (but secretly) intending for the backstop to fail – is both absurd on its face and inconsistent with the understanding of literally everyone involved in passing the statute. The only evidence that supporters of that

interpretation can cite for their bizarre interpretation of the law is a stray, repudiated *YouTube comment* by a consultant.

Unlike the bizarre ruling that conservatives loved, the decision to re-hear the case is legally unassailable: the relevant federal law explicitly says that disagreements between circuits are a legitimate basis for reviewing a decision. And though the plaintiffs in the case first argued that other people should risk their health and lives sacrificed to show proper reverence for the literal text of federal laws, they showed less interest in the language of the law in their legal replies to the request for review. (Pro-tip: When you're invoking the principle of adherence to the strict letter of the law to justify stripping people of their health insurance, it's probably best if you don't discard those principles the moment that they become inconvenient for your political purposes.)

It is unusual for the court to agree to a full review – but it's also highly unusual for an unrepresentative panel to issue a widely-derided ruling that would have massive policy consequences. If this Obamacare case isn't important enough to merit a re-hearing, what would be?

The desperation of the great legal minds behind this lawsuit to avoid a re-hearing in court is telling. They know that their argument that millions of people should lose medical coverage because the card says “Moops” (or, in the even more ridiculous version of the argument, that eighth-century Spain was in fact invaded by the “Moops”) has no chance of convincing any judge who isn't also a fanatical opponent of Obamacare. Indeed, in a rational universe, their arguments would be looked at in the same light as arguments that Obama is ineligible to serve as president because he was born in Kenya.

Rather than denying that their argument is now dead in the water, however, Obamacare truthers are reviving an idiotic Republican talking point from last year. There is now a Democratic majority on the court, Cato's Cannon charges, because “President Obama and Senate Democrats then ‘packed’ the D.C. Circuit with their judicial nominees” – an absurd characterization of events. The supposed “court-packing” involved Obama nominating people to fill existing vacancies, after which they were approved by a majority of the Senate. What dastardly lawlessness!

While the judges' confirmations were preceded by a long-overdue rule change in the Senate, what Cannon leaves out of the story is that the Republican minority did not object to individual nominees. Instead, they argued that none of Obama's nominees should fill *any* vacancies on the court ... because the nation's second-most important appellate court should've apparently be permanently controlled by the nominees of a party that was decisively repudiated at the ballot box twice. “Elections should not have consequences” is not a credo of which anyone should be proud.

And yet, this contempt for democracy saturates the entire legal campaign against the Affordable Care Act. A series of *ad hoc* legal arguments, each more absurd than the last, are raised in order to sabotage or nullify legislation passed by the people's representatives that its political opponents have been unable to overturn through the electoral process.

Michael S Greve, who heads one of the group funding the lawsuit against the federal Obamacare exchanges, has been admirably candid about the reason for his legal campaign.

This bastard has to be killed as a matter of political hygiene. I do not care how this is done, whether it's dismembered, whether we drive a stake through its heart, whether we tar and feather it and drive it out of town, whether we strangle it.

He's certainly free to pursue his political goals, however odious they are. But the federal courts are not required to accept his invitation to give the statute a nonsensical reading in order to strip people of their access to healthcare.

Greve's offensive isn't over: the US supreme court could still decide to hear his little case, although it is now much less likely. But his campaign to destroy the federal exchanges – and thus limit Obamacare's effectiveness for his political ends, with the minor side effect of stripping as many of 7.3 million Americans of their health insurance – is now much less likely to succeed.