

GOP senators' effort fails to repeal health care law

By Kelly Kennedy, USA TODAY

Updated 8h 21m ago |

WASHINGTON — An effort Wednesday by Republican senators to repeal last year's health care law failed as expected, but some political watchers say the vote may help influence the courts that will ultimately decide the law's fate.

By Brendan Smialowski,

From left, Sens. Mitch McConnell, R-Ky., and John Cornyn, R-Texas, listen to Sen. Orrin Hatch, R-Utah, discuss the health care law Wednesday.

The Senate voted 51-47, along party lines, on an amendment that would have repealed the health care law.

The [House of Representatives](#) voted to repeal the health care law last month. The Senate approved a separate amendment that eliminates a health law provision requiring small businesses to file tax paperwork when they pay a vendor more than \$600.

While an attempt to repeal the law in Congress seems unlikely to pass, the Supreme Court will likely decide the law's fate.

By voting for repeal, House and Senate Republicans sent a message, said Michael Cannon of the [Cato Institute](#), a libertarian think tank that opposes the law. "The Supreme Court will feel much more comfortable striking it down," Cannon said.

There may be some truth to that, experts say, though judges are supposed to make decisions independent of politics.

Henry Greely, a law professor at Stanford University, said it seemed unlikely the politics would sway the Supreme Court justices because "the political opposition to the bill has long been clear." But, "I do think that, to some extent, justices might be influenced by how controversial an issue is. This one is very controversial."

He cited other cases that seemed influenced by politics, culture and controversy, including the Pentagon Papers, which allowed *The New York Times* to publish classified documents about the [Vietnam War](#), and [Brown v. Board of Education of Topeka](#), which ended school segregation.

In recent years, Supreme Court rulings on congressional power to regulate certain state activities have been closely decided and not entirely consistent, sometimes favoring states, sometimes Washington.

In a 2005 case testing a federal drug law that invalidated a California policy allowing the medicinal use of marijuana, the court sided with Congress.

In a 2010 case, the court broadly interpreted congressional power as it declared Congress has authority to permit continued civil commitment of sex offenders after they have served their prisoner time.

Still, the overall bent of the high court is conservative.

Of the nine justices, five were appointed by Republican presidents, four by [Democratic](#) presidents.

On the health care dilemma, the lower-court judges who have upheld the law so far happen to have been appointed by Democratic presidents. Those who have ruled it unconstitutional have been appointed by Republicans.

David Freeman Engstrom, also at Stanford, said the judges in this case need to think beyond health care because their decision could have implications in other areas.

"There are so many things that the government does where the policies haven't been challenged, but could be based on this decision," he said.

Engstrom said he has a "hopeful" view that the judges hold themselves to a different standard when they make decisions, but he also said they have a "judicial ideology" that is part of the reason they were appointed in the first place — it aligns with the political ideology of the president who appointed them.

On the health care dilemma, the lower court judges who have upheld the law so far happen to have been appointed by Democratic presidents. Those who have ruled it unconstitutional have been appointed by Republicans.

David Freeman Engstrom, also at Stanford, said the judges in this case need to think beyond health care because their decision could have implications in other areas.

"There are so many things that the government does where the policies haven't been challenged, but could be based on this decision," he said.

Engstrom said he has a "hopeful" view that the judges hold themselves to a different standard when they make decisions, but he also said they have a "judicial ideology" that is part of the reason they were appointed in the first place — it aligns with the political ideology of the president who appointed them.

