



## Obamacare to face Trump-backed constitutional challenge in court Tuesday

Tucker Higgins

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Obamacare will get its day in court — again.

A federal appeals court in New Orleans will hear 90 minutes of oral arguments on Tuesday afternoon over the constitutionality of the Affordable Care Act, the landmark health-care legislation passed nearly a decade ago under President Barack Obama, in a case that could have sweeping ramifications for the nation's health system.

It's the latest in a long line of attempts to dismantle the law, known as Obamacare. To date, the legislative and legal attempts have been met with little success. Congress, despite two years of GOP control and a Republican president, has not repealed the law. And the Supreme Court has upheld its core provisions twice.

But Texas and a group of other Republican-led states have not given up.

Late last year, the states succeeded in getting a federal judge in Texas to strike down the law, though that ruling has not been implemented. And on Tuesday, defending that ruling, they will face off against Democratic-led states and the House of Representatives in arguments before a three-judge panel of the U.S. 5th Circuit Court of Appeals.

The Republican states are joined by the Trump administration. The Department of Justice, after first asking the court to only invalidate certain provisions of the Affordable Care Act, is now asking the court to do away with the measure in its entirety.

Experts say that if the Fifth Circuit invalidates Obamacare, there is virtually no telling what the immediate result would be. Though, if the court strikes down the law, the decision will almost certainly be reviewed by the Supreme Court.

“The whole health-care system would be in disarray,” said Aviva Aron-Dine, the vice president for health policy at the Center on Budget and Policy Priorities. “It really would just throw things into chaos.”

At stake is the health-care coverage of about 20 million people, protections for those with pre-existing conditions, and the expansion of Medicaid, which provides coverage to low-income adults.

The outcome could affect the presidential race. A decision could come by fall, potentially igniting new arguments over health care in the midst of the 2020 campaign. The median time between oral arguments and a ruling is about two months, according to Fifth Circuit data.

Democrats are already poised to make health care a central issue, and an adverse ruling could fuel the party's efforts. Democratic candidates referenced health care more than any other issue during the 2018 midterm races that saw the party seize control of Congress's lower chamber.

Republicans have vowed to replace Obamacare with health-care legislation of their own, but the party has not been able to form a consensus around any particular bill.

### **Odds of striking down Obamacare**

Legal experts say it's unlikely that the appeals court will strike down the Affordable Care Act in its entirety.

"Striking down a statute of this importance nine years after it was adopted and five years after it was fully implemented, one that reaches into every nook and cranny of the health-care system, would be completely unprecedented," said Nicholas Bagley, a law professor at the University of Michigan Law School who teaches administrative and health law.

Even some who advocate for the repeal of the Affordable Care Act doubt the merits of Texas's lawsuit.

"I would be more than astonished if this case led to the overturning of the ACA," said Michael Cannon, the director of health policy studies at the libertarian Cato Institute and the co-editor of a book titled "Replacing Obamacare."

The fundamental legal argument Texas is putting forward rests on the Supreme Court's rationale for upholding the Affordable Care Act's individual mandate provision in 2012. In that case, Chief Justice John Roberts reasoned that it was permissible for Congress to pass a law requiring those without insurance to pay a fee under the legislative body's taxing power.

Five years later, the GOP-dominated Congress reduced the individual mandate fee to \$0, effectively eliminating it. That change means the law is no longer permissible as a tax, Texas and the Trump administration are arguing. Because the individual mandate is a core part of Obamacare, the whole 974-page law must go, they say.

Cannon said he is interested in whether the three judges even get to those questions — or if they appear likely to rule against the Republican states because they have not been harmed by a \$0 penalty, and therefore don't have grounds, or standing, to sue.

"The plaintiffs claim that even though there is no penalty for not purchasing insurance, the law still injures them because the law contains the command: 'Thou shalt obtain health insurance,'" he said. "I think most observers, including ACA's supporters and many opponents, say that doesn't give you standing, you don't have standing because you feel compelled, there must be some concrete injury."

Bagley said that, ultimately, the case required Texas to win three separate legal arguments, each of which could be difficult.

“The legal argument that they’ve got standing is thin. The argument that the individual mandate is unconstitutional is groundless. And the claim that the remedy is to invalidate the entirety of the ACA is absurd,” he said.