



New chances for Supreme Court ruling against Obamacare set to fire up Democrats

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The death of Justice Ruth Bader Ginsburg has brought the case to determine the fate of Obamacare back to the forefront, a development that politicians say will fire up Democratic voters.

The Supreme Court will hear oral arguments in the case that could throw out the entire law, also known as the Affordable Care Act, just one week after Election Day. President Trump said shortly after Ginsburg's death on Friday that he will nominate a judge to replace her this weekend. Pushing through a nominee perceived to be a vote to strike down Obamacare could prove disastrous for vulnerable Republicans.

"In every Senate race where, say, only a quarter to maybe half of the electorate's even aware of this lawsuit, they're now going to know this lawsuit is real," said Brad Woodhouse, a Democratic strategist and executive director of the pro-Obamacare group Protect our Care.

Woodhouse added that the threat of losing healthcare coverage will galvanize Democratic voters to turn out and, therefore, "could turn out to be a political disaster for Republicans."

"It's going to be an issue where Republicans in the last 43 days in this race are on the defensive," Woodhouse said.

Republicans up for reelection in states that rejected Trump in 2016, such as Sens. Susan Collins of Maine and Cory Gardner of Colorado, will feel pressure not to advance Trump's nominee, according to Douglas Holtz-Eakin, former director of the Congressional Budget Office and president of the conservative policy think tank American Action Forum. Collins has already said she won't vote to confirm a nominee before the election.

Following the failed GOP attempt to replace Obamacare in 2017, Democrats ran on healthcare in the 2018 midterm elections and took back the House. The party was able to mobilize voters who wanted to defend the popular parts of Obamacare, such as protections for people with preexisting conditions.

Since then, Republicans have tried hard to avoid the impression that they do not favor maintaining protections for people with preexisting conditions. "We will always and very strongly protect patients with preexisting conditions, and that is a pledge from the entire Republican Party," Trump said in his speech accepting the 2020 nomination. Yet, the

administration has not put out a plan for ensuring such protections in the case Obamacare is struck down.

“Republicans were highly unsuccessful in fending off the Democrats in the midterm elections, and they ran on healthcare and the ACA,” Holtz-Eakin told the *Washington Examiner*. “I think a lot of centrist Republicans took note of that, and they're not going to leave themselves exposed by saying we have to get rid of the ACA.”

Getting a Trump nominee on the court before oral arguments are heard on Nov. 10 “could happen,” Michael Cannon, the libertarian Cato Institute's director of health policy studies, told the *Washington Examiner*, but it cannot be guaranteed that vulnerable senators will push another conservative judge through.

“[Getting a vote] is extremely hard because the pressure is going to be a mess on both sides and against certain vulnerable and moderate Republicans on taking that step,” Cannon said.

The case in question, *California v. Texas*, follows Congress's move in 2017, as part of the GOP tax overhaul, to zero out the financial penalty for people without health insurance, known as the individual mandate. A group of Republican state attorneys general argued that, since the mandate was thought to be an integral part of the insurance program, the entire law should be struck down. The Trump Justice Department has signed on to the case.

In December 2018, U.S. District Judge Reed O'Connor in Texas accepted the Republican argument and declared the law unconstitutional. One year later, a panel of judges on the 5th Circuit of Appeals in New Orleans agreed that the portion of the law requiring most people to have coverage is unconstitutional since Congress eliminated the financial penalty in 2017. But the New Orleans panel of judges sent the case back to O'Connor to suggest that other parts of the law could still stand.

Democratic attorneys general defending law asked the Supreme Court to hear the case this year. Without Ginsburg, though, the case could end in a tie and years of additional litigation. Obamacare would stand unchanged in the meantime.

Trump said he will announce his court pick over the coming weekend, just over a month out from Election Day.