



## **An oral history of Obamacare's 7 near-death experiences**

**Why the law is still standing and why it isn't yet safe.**

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The Affordable Care Act has lived in a constant state of mortal peril.

Over the past seven years, Republicans have taken their best shot to take down Obamacare, a law they have painted as an unacceptable overreach of government and infringement on personal liberty and free enterprise.

But the health care law, the most significant expansion of the American social safety net in a generation, has endured — so far.

“I can't think of any parallels to the ACA's long series of near-death experiences, which began when it was under debate in Congress and has continued ever since,” Paul Starr of Princeton University, who wrote [the definitive history](#) of American health care, told me last week.

In this battle over the role the federal government should play in guaranteeing a certain level of material security, supporters of an activist government have won narrow but crucial victories, with deciding votes often cast by unlikely allies. Supreme Court Chief Justice John Roberts ruled to uphold the law; Sen. John McCain blocked a bid to overturn it.

There are two big lessons from the Affordable Care Act's series of near-death experiences: The more embedded it is in American life, the harder it is to reverse.

But as long as its fiercest ideological opponents remain deeply committed to overturning it, Obamacare will never be truly safe.

Here are the seven moments Obamacare could have failed but didn't — as described to us by the people who helped shape both the policy itself and the fight against it.

January 2010: Scott Brown elected to US Senate

The Affordable Care Act's first near-death experience came before it was ever signed into law. Democrats had a 60-vote supermajority in the Senate as they undertook health care reform in 2009, but it was a supermajority with zero margin for error. The party was split by fights over abortion and the public option. When Sen. Ted Kennedy (D-MA) died of brain cancer in August 2009 and Republican Scott Brown won his seat five months later, there was a very real belief that it could spell doom for health care reform.

JIM MANLEY, an aide to Senate Majority Leader Harry Reid at the time:

It was the Friday before the special election. I had staffed Sen. Reid on a trip up to New York to give a speech.

I went to his hotel room that morning to pick him up. The door was open, and I walked in. He was sitting at a desk.

He literally had just gotten off the phone with [White House Chief of Staff] Rahm [Emanuel]. He told me, "Rahm says we're gonna lose the seat next Tuesday."

That's when Sen. Reid realized that his whole world, his whole legislative strategy, was gonna change.

JON FAVREAU, President Obama's speechwriter:

We were all very depressed. We were all very angry. Everyone except Barack Obama.

I've heard from [Obama's senior adviser David] Axelrod that there was a meeting after the election with Obama and a few other senior advisers. Some urged the president to scale back the Affordable Care Act in the wake of Brown's win — push for an expansion of children's health care and a patients' bill of rights and call it a day. They said that if he kept pushing for the ACA, he'd waste all of his political capital and end up a one-term president.

Obama responded by saying something like, "We didn't come here to put my approval ratings up on a shelf and admire them. We came here to get hard things done. And if getting this done makes me a one-term president, so be it."

Through some procedural chicanery, Democratic leaders managed to use the bill the Senate had already passed before Brown's election and the Senate tool of budget reconciliation to cobble together a plan and send it to President Obama's desk in March 2010. Seven years later, Republicans' attempt to repeal it would rely on reconciliation as well.

June 2012: Supreme Court decision on Obamacare's constitutionality

Even before Obamacare was signed into law, Republicans were plotting how to get it overturned. They settled on an argument against the individual mandate, the law's requirement that every American buy health insurance or pay a penalty, which they argued was unconstitutional because the government had no authority to require people to buy something. The case reached the Supreme Court for oral arguments in March 2012, two years before the mandate was scheduled to take effect.

For a brief, frenzied moment when the 5-4 decision came down in June, Obamacare was declared dead. Reporters rushed out before Chief Justice John Roberts had finished reading his ruling and reported the law would be overturned. Roberts had actually ruled, however reluctantly, that Congress's taxing authority gave it the right to impose the mandate.

RANDY BARNETT, the Georgetown law professor who helped craft the constitutional argument against the mandate:

It was a kick in the gut. I didn't want to prejudge the case. I did feel really good about how we did in oral arguments. I was optimistic. But I certainly had allowed for the possibility that anything could happen, especially with the outrage and the vitriol that had been dumped on the Court and Chief Justice Roberts after oral arguments, where we did pretty well.

I wasn't following on the media. I was following on SCOTUSblog, so I knew we'd lost.

But I did get a Google chat message from my mom, telling me she was so excited we'd won. She'd seen it on Fox News or CNN. I said, "No, Mom, we lost." That's the only reason I would have known about the false calls, because of my mom. She went through that roller coaster.

Once those feverish few minutes had passed, the law was still standing.

DAVID AXELROD, longtime Obama adviser and strategist for the 2012 campaign:

I was sitting in [2012 campaign manager] Jim Messina's office at the campaign headquarters in Chicago. Hundreds of campaign workers were gathered in the bullpen outside the door, watching the coverage on TV.

Messina, who was a key member of the White House team on the ACA, was staring at his computer, hitting refresh on Twitter. I was watching the TV. He let out a Scaramucci-worthy expletive when the first report came that the Court had ruled against us.

We were in the midst of lamentation when we could hear cheering outside.

We looked at each other, checked our devices, and learned that the initial reports were wrong. We leaped up, gave each other a hug, wiped away tears, and tore out into the bullpen to join the celebration.

Roberts did strike an important blow to the law, though, on a secondary issue that hadn't gotten nearly as much attention: Roberts said the government could not force states to expand Medicaid under Obamacare. Many Republican-led states still haven't, leaving an estimated 2.6 millions poor Americans uninsured and the ACA's full vision for coverage expansion unfulfilled.

CINDY MANN, the top Medicaid official for the Obama administration at the time:

Nobody, from the legal pundits to the states to the solicitor general, people just did not think that this legal argument had legs. Obviously everybody was wrong, so it's neither here nor there, but it came as a complete surprise to people. All states were preparing to go forward. We were not in the position that states were going to test the [health and human services] secretary's limits.

I was at the office, we were watching on TV, we were in the CMS administrator's office. Several of us had gathered there hearing they were about to read the decision. We also had our lawyers reading as soon as they got the decision. There was a big cheer and then it was like, "Oh, wait, wait, wait. There's this other thing."

It was clear to me the second the decision came down that this was going to be a very big issue, in contrast to some others at a pretty high levels who said that, "Oh, this is just a nick. It was such an incredible deal. It'll be an option, but everybody will jump in."

But you look at the map, it's states [that] historically have not taken up other options that were available to them to expand their Medicaid program, with the overlay of the antipathy that grew up around the ACA that made it: "I shall not do Obamacare."

November 2012: President Obama wins reelection

Republicans had successfully won back the House in 2010 by running congressional campaigns relentlessly focused on Obamacare. The GOP's 2012 candidate for the White House, Mitt Romney, had pledged to repeal it on the first day of his presidency.

But Obama prevailed handily in his bid for a second term. For at least the next four years, the president's veto pen would protect his signature legislative achievement.

AXELROD:

We always knew that health care reform was on the ballot in 2012, even though our program was crafted along the lines Mitt Romney had followed in Massachusetts. Because of stout Republican resistance, he would be compelled to go in a different direction. So one of the great satisfactions of the election night was the knowledge that he would have the ability to see the ACA through.

FAVREAU:

It was on our minds for sure, but wrapped up in a larger concern about what Romney winning would do to Obama's legacy and legislation — Dodd-Frank, ACA, even the Recovery Act investments were all part of it.

Also, it was a tough issue for Romney to campaign on, since every time he criticized Obamacare, we'd remind everyone it was based on his plan.

October 2013: the government shuts down over Obamacare, while [HealthCare.gov](http://HealthCare.gov) gets off to a disastrous start

The 17-day government shutdown in October 2013 wasn't an existential threat to the law's future. Senate Democrats still controlled the upper chamber, and Obama was in the White House. But it made clear that Republicans knew their opportunity to stop the ACA was slipping away.

In late September and early October, the most right-wing elements in Congress, led by Sen. Ted Cruz (R-TX), shut down much of the federal government for 17 days, demanding that Congress

either delay or defund Obamacare before it was fully implemented. Around the same time, the law's insurance marketplaces stumbled into existence, beset by technological failures.

ANDY SLAVITT, who was brought in to fix [HealthCare.gov](http://HealthCare.gov) after the botched rollout:

There are few major technology projects that haven't gotten in trouble, but probably none that had the fate of an entire health care system and millions of people's lives. We were better off not knowing how deep the hole was or how little time we had. And the rules of a turnaround allow you to operate at light speed. We had five weeks to do this, and two weeks in we still had the same amount of rope to climb as when we started.

But the team was amazing, and we convinced each other we could do it. Seeing people start to enroll was amazing. After the start the first time, 50,000 people enrolled in a day and then did it the next day and the next; we couldn't believe it. The people working on the ACA trained in paranoia early and constantly expect that if something can go wrong, to plan for it.

But the shutdown failed, and the marketplaces, despite their stuttering start, succeeded. That fall, millions of people enrolled in health coverage. In January, the Medicaid expansion took effect, covering millions more people. The uninsured rate fell dramatically over the next year, according to [Gallup](http://Gallup), from 18 percent to 13 percent.

CHIP ROY, then-chief of staff to Sen. Ted Cruz:

When those of us involved with defund in 2013 said that once in place, Obamacare would prove very close to impossible to remove, we were met with outright hostility and were told we need a new president and the majority — that we should "deal with the art of the possible."

Well, here we sit. And the self-fulfilling prophecy of the "art of the possible" is here again. Only now we have the White House and Congress, but are told we need 60 votes and to accept that senators from one state have the power to tell the citizens of another state they literally cannot contract for services outside of the federal framework.

And despite the apoplectic left's protests, we've literally not yet had a vote on actual repeal. Not one. It's mind-boggling.

Cruz argued at the time that once Obamacare was in place, it would be nearly impossible to remove. So far, it looks like he was right.

June 2015: Supreme Court ruling on legality of law's insurance subsidies

As Obamacare took effect, covering millions more people, it still faced lawsuits meant to challenge its existence. The Supreme Court took up *King v. Burwell* for oral arguments in March 2015. The law's opponents argued that the text of the ACA did not permit the law's insurance subsidies to be available in states that had allowed the federal government to set up their marketplace.

If the justices had agreed, it would have been a devastating blow — invalidating subsidies essential for millions of lower-income and middle-class Americans who buy private coverage in most of the country.

But the Court ruled 6-3 in favor of these subsidies. Roberts and Justice Anthony Kennedy sided with the Obama administration and ruled that the subsidies were permissible in every state, no matter who had established the marketplace. The Court's conservative chief justice had saved Obamacare for a second time.

MICHAEL CANNON, the Cato Institute scholar who helped craft the legal challenge:

Obamacare keeps surviving not because it has nine lives, but because the executive and judicial branches keep rewriting the Affordable Care Act, outside the legislative process, to save it from constitutional and political accountability.

It's not that Obamacare has nine lives. It's that Obamacare has 90 or 900 or 9,000 committed ideologues who are willing to violate the law to protect it from the voters.

What we have left is no longer the law Congress enacted. The ACA was a legitimate law, duly passed by Congress. Obamacare is an illegitimate law that no Congress ever passed or ever could have passed.

The ACA *is* dead. Long live Obamacare.

November 2016: Donald Trump wins the White House

If Hillary Clinton had won in 2016, four more years of protection from a Democratic veto pen likely would have assured the law's future. Instead, Trump came into office promising to repeal Obamacare on day one. With Republicans in control of the House and the Senate, he seemed to have the tools to follow through on that pledge. The ACA was in true jeopardy.

NEERA TANDEN, who worked on health care reform in the Obama White House and advised Clinton's 2016 campaign:

I thought about health care at, like, 3 in the morning of election night. My gut reaction was [Trump] would start an onslaught, but it would be harder for them than they thought.

We had discussions three or four years ago how the 2016 election would cement the law or not. I didn't think it would be easy for them, but I thought this was the largest death blow.

CHRIS JENNINGS, who also worked on health care reform in the Obama White House and then advised the Clinton campaign:

I walked into the streets of New York about 2:30 am or so and just strolled the alleys for hours by myself until daybreak. I think I was walking off denial and starting to think through the implications.

My first feeling was that we were failing in our most basic responsibility to win. We were failing all those in the Obama administration, the Congress, the governors, the stakeholders, and, most important, the people throughout the nation who were relying on the ACA and on Hillary (and those of us working for her) to carry the torch and strengthen the law.

I simply couldn't accept that. It triggered a need to commit myself and anyone I could entice to do all we could to defend the ACA and who it helped. I boarded the first train back to DC that

morning. Although I was exhausted, I kept my ringing and buzzing cell on and started fielding countless emails, texts, and calls from depressed and demoralized people. As I was counseling them that “we can get through this and protect the law,” I found myself concurrently counseling and convincing myself that it could be true.

July 2017: Republicans fail to repeal and replace Obamacare

Republicans had unified control of Congress and a Republican in the White House. But it proved difficult to actually fulfill the promise of repealing and replacing Obamacare. Moderates reluctantly admitted they wanted to keep much of the law, particularly its Medicaid expansion. Conservatives wanted to go further than most of their colleagues and undo popular provisions like protections for people with preexisting medical conditions.

The House, after coming up short the first time, mashed together a bill that (barely) passed in May. But after two months of talk, Senate Republicans couldn't find any bill that 50 of their own would support. They voted down three different bills — a robust repeal-and-replace plan, repeal only, and “skinny” repeal — over three days.

It was a remarkable rebuke for Republicans. They had never had a better chance to stop Obamacare. But they failed.

TOPHER SPIRO, who worked on the ACA as a Senate Democratic staffer in 2009 and helped mobilize opposition to the Republican bills:

Whenever I take a moment to step back and think about it all, I get very emotional. And that's because I see very directly how for many people, this fight means everything. Just after the vote, one woman sent me a video of her autistic daughter smiling and dancing, and it makes me tear up whenever I think about it. Another woman told me she could not stop crying. I knew the vote would literally help many, many people sleep better. So most of all, I felt a wave of relief.

The future: Republicans either keep trying to kill the law or become its stewards

Not everybody is ready to give up — particularly President Trump. But Republicans are running out of proposals to test, and the latest might be more radical than any of their other plans. The Trump administration could also try to sabotage the law and force the issue. Obamacare will continue to live in a certain amount of jeopardy as long as the GOP is responsible for it.

“It's generally true that the odds of reversing any program diminish the longer it remains in effect,” Starr, the Princeton professor who wrote the history of health care, said. “The Republican leadership, however, has clearly been prepared to ignore all the objections from those groups in the case of the ACA. That's impressive evidence of how much the partisan and ideological stakes mattered.

“If that continues to be so,” he continued, “all the usual bets are off.”

But there are signs that Republicans are turning toward a more constructive relationship with Obamacare. Sen. Lamar Alexander (R-TN) is undertaking a bipartisan effort to stabilize its

markets. Several senior Republicans have urged Trump not to sabotage the law, as a lawsuit that they themselves pursued gives him the opportunity to do.

It's possible, after seven failed attempts to kill Obamacare, that Republicans will reconcile themselves to its existence. But it's not assured.