



## Views On The Supreme Court Review: No Matter What The Decision, Reform Will Go On; The Case Threatens The Court's Legacy

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Commentators offer a wide variety of views as they look back on last week's case at the high court.

### [The Washington Post](#): The Court Can't Stop The Health-Care Revolution

Listening to the lawyers talking nonstop last week about health care gave me a headache, so I decided to consult one of the nation's top doctors. He offered a real-world diagnosis of what's happening in health care — and a reminder of how much it's changing, regardless of what the Supreme Court decides about Obamacare. My medical guru is Delos "Toby" Cosgrove, chief executive of Cleveland Clinic, a \$6 billion network that's one of the biggest and best providers in the country (David Ignatius, 3/30).

### [The New York Times](#): The Roberts Court Defines Itself

For anyone who still thought legal conservatives are dedicated to judicial restraint, the oral arguments before the Supreme Court on the health care case should put that idea to rest. There has been no court less restrained in signaling its willingness to replace law made by Congress with law made by justices (3/31).

### [The Wall Street Journal](#): Assailing The Supreme Court

After last week's Supreme Court argument on ObamaCare, the political left seems to be suffering a nervous breakdown. Only a week ago, the liberal consensus was that the federal mandate to buy insurance couldn't possibly be overturned. Now as panic sets in, the left has taken to mau-mauing the Justices by saying that if they overturn the mandate they'll be acting like political partisans. The High Court's very "legitimacy" will be in question, as one editorial put it—a view repeated across the liberal commentariat (4/1).

### [Boston Globe](#): If Obamacare Is Struck Down, The Court Loses

If the US Supreme Court strikes down Obamacare, there will be one big loser. No, not Barack Obama. Nor Congress. It will be the high court itself. This was a case many thought the government would win relatively easily, based both on a landmark 1942 precedent and on a 2005 case whose six-vote majority included Antonin Scalia and Anthony Kennedy. But judging from Wednesday's arguments and exchanges, the court's conservative judicial activists are much less likely to take a traditionally broad and deferential view of Congress's Commerce Clause powers in this matter (Lehigh, 3/30).

[Chicago Tribune](#): Justice Kennedy's Obamacare Swing Vote

Obamacare faced a tough crowd at the U.S. Supreme Court last week. But those tough, probing questions from Justice Anthony Kennedy, the court's key swing voter, give defenders of the Affordable Care Act reasons to have hope (Clarence Page, 4/1).

[The Washington Post](#): Commentary: Small-Business Owners Say The Future Looks Bleak If Health Care Law Overturned

As a group of long-standing small-business owners who have been suffering for decades under ever-rising health-care costs, it's frightening to think the safeguards put in place by the law could be undone with the drop of a gavel. The new law has already reined in costs through provisions such as the medical loss ratio. ... Just a couple years ago, a member of our group ... was quoted a 130 percent increase to his premium. This year, because of the MLR provision, (Walt Rowen's) premium increased by just 4 percent — the smallest increase he's seen to his premiums in 10 years (Jamal Lee, 4/1).

[The Washington Post](#): Eat Your Broccoli, Justice Scalia

My first thought on perusing the briefs filed in the combined cases was to notice what wasn't there: any involvement on the part of Corporate America. For the past 20 years, big business has complained endlessly about escalating health-care premiums, which they correctly blamed on "cost-shifting," including paying indirectly for the free care provided to the workers at firms that did not provide health benefits. ... Yet despite the fact that "Obamacare" did all of those things and more, there was not a single brief in support of the law from an organization representing big business (Steven Pearlstein, 3/31).

[The Washington Post](#): Could Defeat For Obamacare Mean Victory For Obama?

If the Supreme Court knocks out the guts of the Affordable Care Act — the individual mandate requiring people to purchase health insurance or pay a fine — the battle within the Obama campaign will be fierce. The president will be faced with two stark alternatives: launch the political equivalent of a drone strike on the Supreme Court and use the ruling to energize his base, or accept the decision and move on, hoping to neutralize the divisive law in the general election (Mark Penn, 3/30).

[The Washington Post](#): The Right's Stealthy Coup

Last week's Supreme Court oral arguments on health care were the most dramatic example of how radical tea partyism has displaced mainstream conservative thinking. It's not just that the law's individual mandate was, until very recently, a conservative idea. Even conservative legal analysts were insisting it was impossible to imagine the court declaring the health-care mandate unconstitutional, given its past decisions (E.J. Dionne Jr., 4/1).

[Arizona Republic](#): Court Walks A Fine Line On 'Obamacare'

It would not be an act of judicial activism for the U.S. Supreme Court to declare that the individual mandate in "Obamacare" exceeds Congress' constitutional authority. It would be an act of judicial activism to invalidate the entire law simply because the individual mandate is unconstitutional. The job of the U.S. Supreme Court is to enforce the limits on governmental authority that are contained in the Constitution. It does woefully too little of that (Robert Robb, 3/31).

[The New York Times](#): The Genius Of The Mandate

In arguments before the Supreme Court last week, the health care mandate was defended as a

kind of technocratic marvel — the only policy capable of preventing the complex machinery of reform from leaking smoke and spitting lug nuts. But the mandate is actually a more political sort of marvel. In the negotiations over health care reform, it protected the Democratic bill on two fronts at once: buying off some of the most influential interest groups even as it hid the true cost of universal coverage (Ross Douthat, 3/31).

#### [The Baltimore Sun](#): A Death-Knell For Employer-Funded Insurance

The Supreme Court directed a harsh spotlight on Obamacare this past week, but the problems with the law go far beyond the constitutionality of the "individual mandate." One of the great unknowns generated by the passage of Obamacare goes directly to the heart of health care choice: the notion that increased employer costs and regulatory burdens would cause employers to simply pay fines (and send their newly insurance-deprived employees to state-run exchanges) rather than continue employer-subsidized insurance (Robert L. Ehrlich Jr., 4/1).

#### [JAMA](#): Can The Affordable Care Act Proceed Without The Mandate? Should It?

As a policy person and an economist, the answer for me is that the lack of a mandate need not take down the rest of the bill. If the entire bill goes down, it would be far preferable that it be by an act of Congress, as happened with the Medicare Catastrophic Act in 1989, and not by the Supreme Court. Because most of the significant changes regarding ACA-related subsidies and the establishment of state health insurance exchanges don't occur until 2014, there is ample time for the Congress to make clear its intentions as a result of any action taken by the Court (Gail Wilensky, 3/30).

#### [CNN](#): In Opposing Obamacare, We Were Serious The Whole Time

"Can you create commerce in order to regulate it?" With those words, Justice Anthony Kennedy sent the legal establishment reeling. Was the Supreme Court really taking seriously the preposterous claims of the Tea Party-inspired hacks who were suing the federal government? Was there really a chance that five justices, acting as would-be partisan hacks themselves, would throw out President Obama's signature achievement? ... In a word, yes (Ilya Shapiro, 3/2).

#### [CNN](#): After The Mandate, Government-Run Health Care Would Grow

Suppose the Supreme Court does rule that the health care mandate is unconstitutional? What happens then? (I'm not saying that they will, but let's play "what if?") The famous individual mandate is just one piece of the new health care law enacted in 2010. Take away the mandate, and here are two principal elements left behind:... The majority of those who'd gain health coverage under the new health care law, an estimated 18 million people, would gain it from being enrolled in Medicaid, the health care program for the poor... The new health care law forbids insurers to refuse coverage on the basis of "pre-existing conditions" (David Frum, 4/2).

#### [San Francisco Chronicle](#): Supreme Court Should Support Health Care Act

Part of a worthy law may be better than none. But saving the entirety of Obamacare would be best. This court and past ones have upheld Congress' right to oversee commercial affairs, a significant and essential duty of government. The issue, divisive as it is, is still one that the high court should support as constitutionally sound (4/1).

#### [Minneapolis Star Tribune](#): Is Health Care Mandate A Tax?

While some of its key reforms are valuable, I have doubts about Obamacare, most of all about its

ability to control costs. But if it is to be abandoned, it should be forthrightly repealed as an unwanted policy.... In 2009, in a television interview, President Obama rejected the tax label for his mandate -- er, provision -- in tolerably unmistakable language. "It is absolutely not a tax increase," he declared, adding, "I absolutely reject that notion." But now, the survival of the president's main achievement may hinge on the willingness of a few Supreme Court justices to give his "absolutism" no more respect than it deserves (D.J. Tice, 3/31).

[The Miami Herald](#): Uphold Healthcare Reform

The indispensable need for change — to cut costs, provide universal coverage, increase efficiency and eliminate waste and unfair practices — will exist regardless of whether the Patient Protection and Affordable Care Act that Congress passed two years ago is upheld. ... The court should uphold the law. But whatever decision it makes, there can be no denying that reform in one form or another is coming our way because healthcare is too important to ignore (4/1).

[Minneapolis Star Tribune](#): Michele Bachmann: The Health Care Debate

Obamacare represents the greatest expansion of federal power, the largest entitlement program and the largest social-engineering project of our lifetimes. Obamacare allows the government to tell you what you must purchase. But government should never infringe on personal liberty like this, as it opens a gateway to more egregious government abuses of power that border on tyranny, including socialized medicine (Michele Bachmann, 3/31).

[MinnPost](#): Health Care Case Illustrates Problem Of Life-Time Supreme Court Appointments

It seems likely that this diatribe/tour-of-the-Constitution will be taken as sour grapes by a liberal who fears that the health care law will be struck down and has decided to vent spleen at the poor old framers. In fact, I had been working on this and other similar diatribes/tours-of-the-Constitution for an occasional series that I hope to produce before Election Day. So I moved it up and here it is (Eric Black, 3/30).

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