

Even If Overturned, ObamaCare's Legacy Will Live On

WRITTEN BY MICHAEL TENNANT
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On Monday the U.S. Supreme Court will begin hearing oral arguments in the states' lawsuit against ObamaCare. If the court, as it should, strikes down the entire law, friends of the Constitution will have reason to celebrate.

They may, however, want to keep some of their champagne in reserve, for while all the provisions of the law would then be null and void at the federal level, the effects of those that have already been implemented may not easily be undone, according to the [Washington Post](#).

This should come as no surprise to anyone who has been following the ongoing saga of ObamaCare. In February 2011 Dr. Lloyd M. Krieger argued in a [Wall Street Journal](#) [op-ed](#) that “the law has already yielded profound, destructive changes that will not be undone by repeal or defunding alone.”

Similarly, and even more pointedly, U.S. District Judge Roger K. Vinson — whose [decision](#) overturning the whole of ObamaCare, which the 11th Circuit Court of Appeals [upheld](#) in part, is the case the Supreme Court will be hearing this week —

observed when he reluctantly [granted](#) the Obama administration a stay of his decision pending appeal:

Reversing what is presently in effect (and what will be put into effect in the future) may prove enormously difficult. Indeed, one could argue that was the entire point in front-loading certain of the Act's provisions in the first place. It could also be argued that the Executive Branch seeks to continue the implementation, in part, for the very reason that the implemented provisions will be hard to undo once they are fully in place.

The mandates that apply to insurance companies may prove the most difficult to reverse, says the *Post*, because they have already been codified by most states. Among these are requirements that children be allowed to remain on their parents' health insurance until age 26; that no lifetime limits be imposed on benefits; that beneficiaries' coverage not be revoked because of inaccuracies on their insurance applications; and that plans cover preventive services at no cost. Except in rare instances — such as South Dakota's law implementing the young-adults requirement, which specifically states that it will automatically be repealed if ObamaCare is overturned — if states wanted these requirements to be repealed, they would have to pass legislation to that end.

Unfortunately, as Georgetown University professor Sabrina Corlette told the *Post*, these mandates “are really very popular.” Many people believe they are getting something for nothing via these rules and therefore will be loath to support repeal. They do not realize that such coverage mandates “have driven up the cost of many insurance plans,” as the Cato Institute's director of health policy studies, Michael Cannon, told the paper. Thus, they also do not grasp that, in Cannon's words, “there will be more affordable coverage options” if these mandates are repealed. State legislators and Governors who might support repeal would do so at their own electoral peril.

States, many of which are already experiencing budgetary woes, would also be faced with maintaining, on their own dimes, high-risk insurance pools and burgeoning Medicaid rolls. The pools were established by the healthcare law to cover Americans who could not otherwise obtain insurance because of preexisting conditions; they now cover about 50,000 people. If the law were struck down, the federal government would probably not continue to fund them, leaving states holding the bag; few would be likely to bear the burden of high insurance claims. The law also prevented states from tightening Medicaid eligibility rules without providing them with sufficient funds to cover all the new enrollees. If it were overturned, states would have the option of making the rules stricter to save money. These provisions, which have a direct effect on states' bottom lines, are far more likely to be undone than the insurance mandates, whose hidden costs are borne by policyholders.

New Medicare benefits are certain to go by the wayside following a Supreme Court decision in favor of the Constitution. Those benefits include free preventive services for all seniors and drug discounts for those in the “doughnut hole” of Medicare Part D. With millions of Americans having taken advantage of those expanded benefits, seniors' groups are sure to lobby Congress to restore them if ObamaCare is invalidated. Knowing that seniors are one of the most reliable voting blocs in the country, lawmakers, despite all their rhetoric about staring down the deficit, might very well comply.

Of course, all this is predicated on a complete overturning of ObamaCare, an outcome of which no one can be certain. Lower courts have disagreed on whether the law, in whole or in part, is constitutional. Even Supreme Court justices one might expect to reject the law out of hand, such as [Antonin Scalia](#) and [Chief Justice John Roberts](#), may

yet be persuaded to uphold all or part of it. What *is* certain is that even if the court does strike down the whole law, ObamaCare's legacy will haunt Americans for years to come.