



# Experts, top Democrats say ACA likely to stand while Republicans slam individual mandate after SCOTUS hearing

Questions from Justice Barrett, new 6-3 conservative majority, were closely watched

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Cato Institute's Ilya Shapiro tells 'Fox & Friends' there is no chance ObamaCare will be destroyed, but the individual mandate could be struck down.

Top Democrats and legal experts on Tuesday were optimistic that the Supreme Court will uphold the Affordable Care Act (ACA) in the most recent challenge against the law while Republicans continued to slam the individual mandate in the act as "plainly unlawful" and more broadly slammed the health care law as a "one-size-fits-all approach."

The flurry of commentary Tuesday follows oral arguments in the case, *California v. Texas*, in which the majority of the justices appeared to favor at the very least preserving the bulk of the law while throwing out the individual mandate, and it even appeared possible the court would throw out the entire case based on standing.

"We just finished oral arguments at the Supreme Court to defend the entire Affordable Care Act. The ACA saves lives. It is the law of the land. It is legal. We are confident the Supreme Court will agree," tweeted California Attorney General Xavier Becerra, a Democrat.

Texas Attorney General Ken Paxton, however, slammed the ACA, which is also known as ObamaCare, and framed its effort to overturn the law as a defense of federalism.

"It is plainly unlawful for the federal government to order private citizens to purchase subpar insurance they don't want," Paxton said. "The framers' constitutional design leaves it to the states to design and implement the best healthcare system for their citizens, particularly those with preexisting conditions. Today, Texas seeks to preserve that federalism. It's time to end Obamacare's one-size-fits-all approach and let the states do what works for them."

Legal experts, however, did not appear optimistic about the red states' legal challenge, which was led by Paxton's Texas.

"As predicted, there appears at least five votes for severability. Yet, the Senate Democrats and many in the media fostered this false narrative about the imminent death of the ACA and some directly accused Barrett of being a judicial shill to carry out a conspiracy on the Court," conservative legal commentator Jonathan Turley said. "Obviously, anything can still happen but today's oral argument shows how this unrelenting narrative in the Senate and the media was maintained in willful disregard of the legal facts."

Chief Justice John Roberts and Trump appointee Justice Brett Kavanaugh appeared to support using "severability" to save the bulk of the ACA while excising the individual mandate, a concept which Justice Samuel Alito also appeared to entertain as well. Meanwhile, Roberts, along with Justices Clarence Thomas and Amy Coney Barrett, seemed receptive to arguments that the case could be thrown out entirely based on a lack of standing for the red states behind the lawsuit.

Comments at oral arguments are not necessarily an accurate measure of how the justices will vote. But the consensus among legal observers is that the ACA will almost certainly remain.

"The Court did not express even the slightest interest in setting aside the entire Affordable Care Act," Josh Blackman, a law professor at the South Texas College of Law, Houston, said. Blackman is also an adjunct scholar for the libertarian Cato Institute. "I still think a majority of the Court may find that the mandate remains an unconstitutional requirement to buy insurance. But the Court will likely stop there."

"The oral argument today in California v. Texas highlighted that a solid majority of the Supreme Court believes in the Founders' vision of a limited federal government," added Erin Hawley, a senior legal fellow at the Independent Women's Law Center. She noted that even though some of the conservative justices were suspicious of some elements of the red states' case for overturning the entire ACA, they were generally hostile to the idea that the government can force people to buy health insurance.

Hawley continued: "The government may not force individuals to buy a product like health insurance under the Commerce Clause and Congress cannot zero out a tax and still claim to be operating under the taxing power. This means that the individual mandate is unconstitutional."

Vice President-elect Kamala Harris also weighed in, saying that "each and every vote for Joe Biden was a vote to protect and expand the Affordable Care Act, not tear it away in the midst of a global pandemic."

She also said the case "is a blatant attempt to overturn the will of the people."

Meanwhile, Alfredo Ortiz of the conservative Job Creators Network slammed the ACA over its economic effect.

"ObamaCare has been a disaster for America's small business community and our entire country," Ortiz said. "Since ObamaCare was signed into law, more than 30% of small business owners have dropped insurance coverage for employees due to rising premiums."

Ortiz also noted the "consensus in both parties that we need to protect those with preexisting conditions" as a reason why people should not be worried about the potential -- however increasingly unlikely -- that the ACA falls. "We don't need Obamacare to achieve that worthy goal," of protecting those with preexisting conditions, Ortiz said.

The justices are expected to rule on California v. Texas by summer 2021, although a ruling could come down much sooner as the court heard the case early in its term, which started in October.

The majority and dissenting opinions in the case are likely to be closely examined as it is one of the first hot-button issues that the court has taken on with its new 6-3 GOP-appointed majority with Barrett on the bench.

