

## **Supreme Court unlikely to kill Obamacare**

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The Supreme Court on Tuesday signaled it is unlikely to kill Obamacare, as Republicans challenged the legality of its individual mandate at the high court for the third time in hopes that the 6-3 conservative majority would finally do away with President Barack Obama's signature health care law.

Even if a majority of the court decides the mandate to buy health insurance is no longer valid, a sufficient number of justices signaled they could sever the requirement from the rest of the 2010 Affordable Care Act. That would leave intact its consumer protections, vast expansion of subsidized private insurance and expansion of Medicaid coverage.

“Hard to argue that Congress intended the entire ACA to fall when the same Congress ... did not even try to repeal the rest of the act,” said Chief Justice John G. Roberts Jr. “I think, frankly, they wanted the court to do that, but that’s not our job.”

Republican lawmakers have tried repeatedly to repeal and replace the massive health care overhaul after the justices, led by Chief Justice Roberts, upheld its mandate — a prod to get healthy people to have insurance — as a tax in 2012.

Republicans have failed each time. But in 2017, the GOP majority in Congress approved tax cuts that put the penalty for not buying health insurance at \$0.

A group of conservative states led by Texas is now arguing in court that eliminating the tax penalty made the entire program unconstitutional based on the justices' 2012 ruling.

In the dispute Tuesday, the court is considering if zeroing out the tax makes the rest of the law illegal, or if the individual mandate can be removed from the rest of the ACA.

They are also considering if a \$0 penalty is enough of an injury to get the dispute heard — and settled — by the courts.

Two of the six Republican-appointed justices seemed inclined during oral arguments Tuesday to allow the health care law to stand.

Chief Justice Roberts questioned whether there's standing for the case to be brought, meaning did the tax cut cause enough injury to get the justices involved.

Donald Verrilli, the attorney for the House of Representatives who argued against striking down Obamacare, said filling out IRS paperwork isn't enough of an injury to result in a court striking down the entire health care law.

But Kyle Hawkins, the solicitor general of Texas, said if Obamacare remains in place, people will view it as a mandate to buy health coverage and states could see more people signing up for Medicaid.

“The mandate as it exists today is unconstitutional. It’s a naked command to purchase health insurance,” Mr. Hawkins said.

Justice Brett M. Kavanaugh, though, said the case was “straightforward” in that the court could remove the individual mandate — if it’s ruled unconstitutional now that there is no tax penalty — while not doing away with the law altogether.

Striking the law entirely would be a seismic move. It would upend a provision that barred insurers from denying coverage to people with preexisting conditions — protection considered sacrosanct by members of both parties at this point — and jeopardize mechanisms that provided insurance to roughly 20 million Americans.

Income-based subsidies help people afford private insurance on Obamacare’s “exchanges,” while millions of Americans in dozens of states were able to get Medicaid coverage after the law expanded the federal-state program with generous funding from Washington.

A decision that eliminated the law would send congressional Democrats scrambling for quick fixes, while some Republicans would argue the other side needs to strike a compromise including free-market changes.

The justices have weighed in on Obamacare multiple times in its decade-long history. While it upheld the law’s framework in the 2012 decision, it made its expansion of Medicaid optional for states. The justices later tweaked Obamacare’s contraception rules in a pair of decisions.

Yet the court in 2015 rejected a challenge, 6-3, that claimed Obamacare’s subsidies could flow only to states that set up their own exchanges instead of relying on the federally operated HealthCare.gov website.

Justice Amy Coney Barrett participated in Tuesday’s oral arguments after not recusing herself from the dispute.

Senate Democrats said the president’s appointment of Justice Barrett just weeks before the case was argued was meant to be a final vote to do away with Obamacare altogether.

At her confirmation hearings last month, Democrats grilled her on whether she would recuse herself. Justice Barrett denied discussing the lawsuit with any executive branch officials and refused to say if she would recuse herself from the case.

As a law professor at the University of Notre Dame, she wrote critically of Obamacare when the high court upheld the law in 2012.

Ilya Shapiro, the publisher of the libertarian Cato Institute’s Supreme Court Review, said the court does not have a clear majority of justices who would throw out Mr. Obama’s program, but there may be enough votes to sever the individual mandate from the rest of the law.

He also said Justice Barrett could be the deciding vote on the issue of standing, or if there is a legitimate injury for the court to weigh the case.

“So, it’s possible that the court would dismiss the case on standing grounds without even reaching the merits. But regardless, there’s no chance that the entire Affordable Care Act falls, so those who claimed that Justice Barrett threatened the health care of millions were either disingenuous or didn’t understand the case,” Mr. Shapiro said.

A ruling is expected by the end of June when the high court generally wraps up its term.