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Thinking The Unthinkable: What If The Whole Affordable Care Act Goes Down?

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After this week's [oral arguments](#) at the Supreme Court, lawmakers and health policy experts are starting to ponder what had — until recently — been unthinkable to many: What if the court strikes down the *entire* Affordable Care Act?

Heading into the week, most supporters of the law had assumed that at worst, the court might find unconstitutional the requirement that most Americans either [have health insurance or pay a penalty](#). And it might also invalidate a few key insurance provisions that are immediately tied to that, such as requiring insurance companies to sell to people with pre-existing health conditions.

But listen to [the tenor of the arguments](#). (And here is the requisite warning that you can never tell what the court might or might not do from the questions justices ask.) There seemed to be enough skepticism from the conservative justices that people are now talking about a very real possibility that the court could throw out the entire law, all 2,700 pages, later this summer.

So what would that mean in practice? Obviously none of the things that haven't taken effect yet would happen. But what about the parts of the law that are already in operation?

Health lawyers mostly aren't sure, but their opinions generally range from "God only knows" to "bedlam" to "chaos."

Here are just a few of the questions a complete declaration of unconstitutionality might raise:

- Five million seniors have gotten rebates for their prescription drugs. More than 360,000 small businesses are getting tax credits for providing health insurance to their workers. Will all these people have to give that money back?
- Almost every state, including many that have sued to block the health law, has received millions of dollars to start planning to put the law into effect. Will they have to give that money back? And will people in those states being paid with those dollars lose their jobs?
- About 50,000 people are enrolled in temporary "Pre-Existing Condition Insurance Plans" for those who were previously uninsured for at least six months. If the law is declared invalid, that program would very likely have to shut down in fairly short order, leaving those people once again uninsured.
- There is also some reason to think the law's disruption could interfere with the operations of the Medicare program for the elderly. The health law made a lot of [changes](#) to the way Medicare works and pays doctors and hospitals and health plans. The regulations spelling out this year's payment rates were based on the health law being in place. So if the law is struck down, there's a possibility that Medicare couldn't pay any claims until officials go back through the entire rule-making process — which, by law, takes several months.
- In some cases the federal government would simply lose the ability to enforce rules. So things that are now required would simply become options. For example: The 2.5 million young people on their parents' health plans are covered by insurance contracts. They're probably OK, at least until the end of the plan year, although the federal law requiring that coverage would cease to be in effect. That would be the same for most of the insurance changes, such as restrictions on annual limits insurance companies can impose. But if the law is struck down, after the plan year ends, insurers would be free to reimpose the old rules.

Obviously, not everyone thinks it would be a bad thing to have the law go away.

One example, from Michael Cannon of the libertarian [Cato Institute](#): If insurers didn't have to cover pre-existing conditions for children, he says, "maybe some insurers would return to states" where they [stopped offering](#) coverage.

And there could be other benefits as well, he says. If the entire law were to go away, "we would have just dodged this whole [nasty debate](#) over religious freedom and abortion."