



How to finally kill Obamacare

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The Supreme Court is more likely to act if Republicans have an alternative bill ready.

Thanks to four justices of the Supreme Court, there is now a clear path to repealing and replacing the Affordable Care Act next year, finally bringing Obamacare to an end.

But Republicans won't accomplish this by waiting for the court or just voting to repeal the law one more time. The only way they can succeed is by crafting their own replacement — and they need to start right away.

Until the Supreme Court agreed to hear [King v. Burwell](#), which challenges the legality of the IRS rule allowing Obamacare subsidies in states that have not built their own insurance exchanges, the conventional wisdom was that Congress would pass a symbolic bill to repeal Obamacare that everyone knows would be vetoed by the president. Then they'd move on. Obamacare would survive at least until 2017.

But the decision to hear *King* changes everything. Insiders know that this challenge has a decent chance of success. Rather than asking the court to establish some grand constitutional principle, the justices are merely being asked to hold the IRS to the actual wording of the law, which is not nearly so heavy a lift.

Financial risk

The eventual outcome of the case doesn't matter as much as the decision to hear it. With the lawsuit now looming over them, all the "stakeholders" — such as insurance companies and health care providers — know that the subsidies for health insurance in [27 states representing 60% of the population](#) are in serious jeopardy. And the end of these subsidies means the end of the insurance mandate for businesses in those states, which kicks in only if employees are eligible for subsidies on an exchange.

There is now a serious financial risk that did not exist before the Supreme Court agreed to hear this case.

Insurance and health care companies need an insurance policy against the collapse of the insurance market. Republicans in Congress need a way to resist the enormous political pressure that will be applied to simply "fix" the health care law by allowing subsidies to flow through the federal exchange. And Democrats need to salvage something from all their efforts to pass the law.

Repeal, replace

In short, now everyone needs to invest in devising a replacement for Obamacare. Even better, by developing such an alternative, Republicans can make a favorable ruling more likely.

As a rule, Supreme Court justices are reluctant to invalidate a law on which many relied. It will be far easier for the justices to enforce the law's existing language if they know there is a viable alternative that can be enacted by both houses of Congress and signed by the president within a week of their ruling.

To devise such a replacement, the Senate and the House must use "[regular order](#)" and their committees to do actual legislating with input from the Democratic minority.

Because everyone will now know that their handiwork may very well become law, everyone has an incentive to take this project seriously.

The first line of any such bill should be the complete repeal of each and every word of the Affordable Care Act. This monstrosity must not be allowed to survive in any form. In its place, the new Congress should write a replacement bill that would:

Restore the private insurance market using [actuarially based](#) insurance priced [according to risk](#). For example, young people would pay much less than older people.

Restore consumer choice to buy true private insurance limited to the terms they want to pay for, including policies insuring only against the catastrophic health care costs, and [medical savings accounts](#).

Increase competition by allowing state-regulated insurance to be sold [across state lines](#) so consumers can keep their policies when moving from one state to another.

Increase equity by extending the tax benefits now available [only to employer-based insurance](#) to all health insurance. Like car insurance, you shouldn't have to change health insurance policies when [changing jobs](#).

With the [Democrats now in the minority](#), such a bill is very likely to be bipartisan if it contains a "refundable" tax credit for health insurance for all Americans, regardless of income — essentially extending to everyone the very subsidies that the court will strike down.

By participating in the process, not only can they ensure that subsidies are included, they also can claim victory. Rightly or wrongly, Democrats can say that, without it, Republicans would never have supported reforming the previously dysfunctional health insurance system.

Visible alternative

With or without bipartisanship, however, Republicans need to have a well-vetted replacement in the pipeline. To make a favorable ruling in *King* more likely, the legislative wheels must be visibly in motion by the time of oral arguments in March.

Before the Supreme Court took this case, Republicans in Congress were limited to symbolic action against Obamacare. Now, thanks to voters in November and the justices who voted to hear the case, beginning in January, Republicans in Congress can craft a bipartisan market-based replacement that the president will be compelled to sign in June when the court announces its decision. Simply by acting as legislators, Republicans in the next Congress can actually repeal and replace Obamacare.

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