

MarketWatch

Supreme Court could rule Thursday on constitutionality of Obamacare

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With just three weeks left until the Supreme Court's self-imposed deadline of June 30 for rulings in its current term, there remain dozens of cases that it must resolve, including a judgement on the constitutionality of the Affordable Care Act.

The case, *California v. Texas*, hinges on an argument made by Republican governors and attorneys general, and supported by the Trump administration, that after the successful GOP effort in 2017 to eliminate individual penalties for not maintaining health insurance, the entire law must be struck down.

The argument follows from a 2012 case against the ACA mandate that all Americans get insured, or else face a monetary penalty. In a 5-4 decision, conservative Chief Justice John Roberts, joined by the court's four liberals, wrote an opinion ruling the law was constitutional because the mandate was actually a constitutional exercise of the government's right to tax, not an unconstitutional requirement that all Americans must purchase a product on the marketplace. With the erasure of the penalty for those lacking insurance, supporters of *California v. Texas* say the previous justification for the law's constitutionality has been eliminated.

But most legal observers say the law will likely be upheld.

"This challenge is considered the weakest existential legal threat to the ACA to reach the Supreme Court thus far," Katie Keith, lawyer and principal at Keith Policy Solutions, wrote in a [recent blog post](#). "Many of the Justices seemed skeptical during [oral argument](#) that the Court should strike down all or parts of the ACA even if it finds the mandate to be unconstitutional."

Even Michael Cannon of the libertarian Cato Institute, an opponent of the health-care **XLV, 0.97%** law, said the Supreme Court should rule 9-0 to strike down the lawsuit. "California v. Texas is a meritless case, both because there's no mandate to challenge any more, under John Roberts's taxing power argument or otherwise, and thus no one has standing to challenge it," he wrote in a blog post last year.

From the archives (November 2020): Supreme Court increasingly likely to uphold Obamacare even after Barrett’s confirmation, analysts say

The public also is opposed to overturning the law, according to a recent poll by the Kaiser Family Foundation. The survey showed 55% of Americans have a favorable opinion of Obamacare, while 34% don’t like it.

Though the law garnered lackluster support during the Obama administration, its popularity has surged in recent years. Especially popular are provisions in the law that prevent insurers discriminating against customers with preexisting conditions and that allow people 26 and under to stay on their parents’ plans.

This growing popularity has been used as a cudgel against Republicans who voted against the law, and it figured in the debate over whether conservative Justice Amy Coney Barrett should be confirmed just days before the last election.

Overturning Obamacare has been a top goal for Republicans ever since its passage 11 years ago, but every attempt to do so in the courts or Congress has failed. The most recent attempt in 2017 failed in the Senate by a 49-51 vote, with three Republicans — Sen. Susan Collins of Maine, Sen. Lisa Murkowski of Alaska and the late Sen. John McCain of Arizona — crossing the aisle to vote with the Democrats.

Democrats argued that Barrett would vote to overturn Obamacare in an effort to pressure Republicans into refraining from confirming her until after November’s presidential election, letting the victor nominate the next Supreme Court justice. Her final confirmation vote was 52-48, with one Republican, Sen. Susan Collins of Maine, voting against Barrett’s accession to the highest court in the land.

During Barrett’s confirmation hearing, Republicans were eager to say that Barrett was not a vote to overturn Obamacare, despite the party’s attempts to end it.

“The left is suggesting that Judge Barrett’s confirmation would be the demise of the Affordable Care Act and the protection for preexisting conditions,” Republican Sen. Chuck Grassley of Iowa said last October. “That’s outrageous.”

That stance suggests some Republicans may not wish to see the law erased by the Supreme Court, because it would require them to deal with the political blowback that would occur if Americans lost protections against preexisting conditions.

The court’s upcoming decision also could be important for President Joe Biden’s agenda, as he campaigned on expanding the program to provide higher subsidies for those who purchase insurance on the Obamacare exchanges and to increase the standards of insurance plans to be subsidized. In February, the Biden administration notified the court that it was removing its support for overturning the law, reversing former President Donald Trump’s policy.