

Protect Our Care: A dark day in Court for Americans' health care

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MILWAUKEE, WI – Yesterday, state Republican and Trump administration lawyers took to the Fifth Circuit Court of Appeals to double down on their argument that the Affordable Care Act should be overturned. If they succeed in court, 20 million Americans would lose coverage, 130 Americans with pre-existing conditions would lose critical protections, the uninsured rate would increase by 65 percent, and the American health care system would be thrown into chaos.

The facts of the matter are simple: Republicans are behind this politically-motivated lawsuit. The administration and Republicans in Congress and have had ample opportunity to defend Americans' health care and have refused to do so time and again. If the Affordable Care Act is struck down, lives will be lost, and Trump and his Republican allies will be to blame. Yesterday's hearing made crystal clear that we have very real reason to be concerned.

Los Angeles Times: Federal Appeals Court Appears Skeptical Of Obamacare, Putting Future Of Law In Doubt. "The three judges on the appeals court panel in New Orleans asked few questions about how the latest legal challenge could affect Americans' access to health insurance. Instead, two of the judges – both appointed by Republican presidents – focused more on why the law should remain on the books after Congress in 2017 scrapped a tax penalty against people who didn't have health insurance. That provision was once deemed essential to the law's program for guaranteeing Americans insurance. The penalty was also crucial to the healthcare law's survival when it first came before the Supreme Court in 2012 in a

lawsuit that alleged the insurance requirement was unconstitutional.” [Los Angeles Times, 7/9/19]

New York Times: Appeals Court Seems Skeptical About Constitutionality Of Obamacare Mandate. “The two Republican appointees, Jennifer Walker Elrod, appointed by President George W. Bush in 2007, and Kurt Engelhardt, appointed by President Trump in 2018, seemed particularly skeptical of the Democratic defendants’ argument that Congress had fully intended to keep the rest of the law when it eliminated the penalty for going without insurance as part of its 2017 tax overhaul. The arguments in the United States Court of Appeals for the Fifth Circuit were a stark reminder of the enormous stakes of the case, not only for millions of people who gained health insurance through the law but for the political futures of Mr. Trump and other candidates in the 2020 elections.” [New York Times, 7/9/19]

Wall Street Journal: Appeals Court Signals Peril For Affordable Care Act. “Texas and the other Republican plaintiffs argued that the ACA’s insurance mandate couldn’t be upheld under the Constitution if there was no financial penalty, because the Supreme Court previously upheld the mandate based on Congress’s taxing power...A three-judge Fifth Circuit panel on Tuesday appeared receptive to that argument. ‘If you no longer have the tax, why isn’t it unconstitutional?’ asked Judge Jennifer Elrod, a George W. Bush appointee.” [Wall Street Journal, 7/9/19]

Washington Post: “Federal Appeals Court Judges Expressed Skepticism Tuesday That The Nearly Decade-Old Law That Refashioned The Nation’s Health-care System Should Remain Intact...” “Federal appeals court judges expressed skepticism Tuesday that the nearly decade-old law that refashioned the nation’s health-care system should remain intact after Congress eliminated a tax penalty for Americans who fail to carry health insurance. During oral arguments in a case with momentous stakes for consumers and politicians ahead of the 2020 elections, two members of a three-judge panel of the U.S. Court of Appeals for the 5th Circuit grilled lawyers representing Democratic-led states and the U.S. House to explain why the Affordable Care Act remains valid.” [Washington Post, 7/9/19]

CNN: Republican-appointed Judges Appear To Side With Texas Challenge To Obamacare. “Two Republican-appointed judges hearing a Trump-backed challenge to Obamacare strongly suggested Tuesday that when Congress eliminated the penalty for not buying health insurance it threw the entire landmark health care law into question, including protections for those with pre-existing conditions. Such a ruling would threaten to wipe away coverage for millions of Americans and have a

dramatic impact on a presidential race that is already focused on access to and costs of health care, nearly 10 years after President Barack Obama signed his signature domestic achievement.” [CNN, 7/9/19]

CBS News: Appeals Court Appears Ready To Rule Obamacare Unconstitutional. “The Affordable Care Act, and the health coverage of millions of Americans, could face a major threat to its future. A federal appeals court in New Orleans appears ready to rule that a core provision of Obamacare is unconstitutional.” [CBS News, 7/10/19]

Politico: Appeals Court Skeptical Obamacare Can Survive. “In December, U.S. District Court Judge Reed O’Connor sided with the Republican-led states, shocking legal experts. The lawsuit was once seen as a long-shot, but it’s received serious consideration by Republican-appointed judges. Appellate Judge Jennifer Elrod, a George W. Bush appointee, on Tuesday posited that lawmakers — who failed to agree on an Obamacare replacement plan two years ago — deliberately eliminated the mandate penalty because they knew the rest of the law would have to fall. She said perhaps lawmakers thought, ‘Aha, this is the silver bullet that’s going to undo Obamacare.’” [Politico, 7/9/19]

HuffPost: Future Of Obamacare Uncertain As Appeals Court Grills Democratic Defenders. “A federal appeals court panel grilled Democratic attorneys general on Tuesday about whether Obamacare violates the U.S. Constitution, as it weighs whether to uphold a Texas judge’s ruling striking down the landmark healthcare reform law...Republicans have repeatedly tried and failed to repeal Obamacare since its 2010 passage. The Justice Department would normally defend a federal law, but the Trump administration has declined to take that position against a challenge by 18 Republican-led states.” [HuffPost, 7/9/19]

Washington Examiner: ‘Congress Can Fix This’: Judges Weigh Striking Down Obamacare. “Federal appeals judges in New Orleans are entertaining the idea of striking some or all of Obamacare, appearing uncertain during oral arguments Tuesday over whether Congress intended to toss the entire healthcare law...Judge Kurt Engelhardt, who was appointed by President Trump, questioned why Congress couldn’t step in to remedy the situation. He argued that lawmakers could pass legislation to clarify that the law could remain in place even without the penalty in order to render moot the question about severability.” [Washington Examiner, 7/9/19]

Mother Jones: A Federal Court Appears Ready To Buy The GOP’s Argument To Kill

Obamacare. “The fate of the Affordable Care Act remains uncertain following a hearing about the law at a federal appeals court in New Orleans. The hearing concerned a lawsuit originally filed by Republican state attorneys general in a Texas district court in 2018, which alleges that the entirety of Obamacare should be invalidated because Congress used the 2017 tax cut law to zero out the financial penalty for the ACA’s individual mandate. In 2012, the Supreme Court upheld the ACA on the grounds that the individual mandate counted as a tax.” [Mother Jones, 7/9/19]

Nicholas Bagley, Professor Of Health Law At University Of Michigan: “It’s Safe To Say That The ACA’s Defenders Had A Tough Day In Court.” “Just how receptive is hard to say, and it’s always hazardous to read too much into oral argument. But it’s safe to say that the ACA’s defenders had a tough day in court...Neither Judge Elrod and Judge Engelhardt appeared troubled about whether the red states had standing to sue. And they were downright hostile to the argument that the ACA should be understood to leave people a choice about whether to buy insurance. Doesn’t the law say that people ‘shall’ buy coverage? And doesn’t Congress know how to repeal or amend a law when it wishes to? The judges listened respectfully when the lawyer for the House of Representatives patiently explained that the Supreme Court has authoritatively interpreted that language to give people a choice about whether to buy insurance or not. And Marty Lederman is right that the argument is embarrassing on its own terms. But they appeared unmoved.” [The Incidental Economist, 7/10/19]