



The Daily Dish

That ACA – Here We Go (Again)

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Eakinomics: That ACA – Here We Go (Again)

The most important health policy news hit the wires (a quaint term) Friday night when Texas U.S. District Judge Reed O'Connor [overturned](#) all of the Patient Protection and Affordable Care Act (aka Affordable Care Act, aka ACA, aka Obamacare) nationwide. The legal opinion hinges on two issues. First, can the federal government compel individuals to purchase health insurance? In the last legal go-round the Supreme Court dodged this question by focusing on the income tax-based penalty for being uninsured. There is no question about the federal ability to levy a tax, so the ACA withstood that test. In the Tax Cuts and Jobs Act (TCJA) last December, however, Congress got rid of the penalty, leaving the residual question: Is the individual mandate constitutional? The judge decided, no. Second, if the mandate is unconstitutional, can it be severed from the remainder of the legislation (allowing the remainder to stand), or is the entire ACA invalidated? In part because Congress did not include boilerplate language, the judge ruled the mandate is not severable and the entire ACA was invalidated.

This kicks off a legal process that will almost surely end up at the Supreme Court. More important, it triggers a political debate on health care in 2019 and during the 2020 campaigns. Sadly, the most likely future is a stale, familiar debate. Liberals/progressives/leftists will start from the perspective that everyone deserves everything health care — it is a right — and should not have to pay for it. This misses the point that not all health care is created equal — there is acute care, important chronic care, and unimportant elective care. Why should all be treated as equally important and a matter of federal policy? And it misses the fundamental point that health care is not different from other essentials — food, shelter, transportation — that the federal government ensures, but does not exclusively finance.

At the other end of the spectrum, conservatives/populists/righties will bewail the intrusion of the federal government. They will argue that “free markets” can solve this problem and families simply need to be given more choices. This ignores the fact that health care markets are hardly free and competitive — much of it due to misguided federal policies — and do not automatically work well. And it misses the point that most Americans are worried about the cost of acute care and hope that everyone has coverage. In the absence of a mandate, there has never been a convincing strategy to achieve broad coverage.

Of course, it might not work out that way. Progressives may acknowledge that there is no sensible strategy that begins with “everything for everyone.” Conservatives may recognize that “leave it to markets” just will not fly. We may see a vigorous, new debate that leads to bipartisan legislation replacing the ACA. We can only hope.