

DEMAND JUSTICE

Amy Coney Barrett and the Affordable Care Act: Health Care on the Line

Will the Supreme Court Obliterate the Affordable Care Act?

Just one week after the election, on November 10, the Supreme Court will hear oral arguments in *California v. Texas*, a lawsuit brought by Republican attorneys general and supported by President Trump that seeks to invalidate the Affordable Care Act (ACA) in its entirety.

While the lawsuit has been derided by [legal scholars across the ideological spectrum](#), Republican lower court judges have backed the fringe legal theories advanced by Republican AGs and the Trump Department of Justice.

- If Trump and his allies succeed in securing five votes at the Supreme Court, **protections for 133 million people with pre-existing conditions will be abolished, 23 million people will lose their health care**, and the entire health care system will descend into a chaotic nationwide meltdown.
- Of the eight current Justices, only four (Roberts, Breyer, Kagan, and Sotomayor) have voted to uphold the ACA in the past. Justices Thomas and Alito have both voted twice to strike down some or all of the law's major provisions.
- The next Justice could be the deciding vote that determines whether health care for tens of millions of people, protections for pre-existing conditions, and other provisions of the ACA that benefit almost everyone, will stay or go.
- “The case was worrisome enough when Chief Justice John Roberts held the swing vote. **But if President Trump succeeds in seating a new justice, the political gravity of the court will lurch even further to the right. A case that once looked like a Hail Mary would stand a real chance of success,**” [wrote University Michigan Law Prof. Nicholas Bagley and Andy Slavitt, former Acting Administrator of the Centers for Medicare and Medicaid Services.](#)

Amy Coney Barrett's Alarming Record of Criticizing Pro-ACA Supreme Court Rulings

- Based on her own past statements, we simply cannot trust Amy Coney Barrett to protect our health care and protections for pre-existing conditions.

DEMAND JUSTICE

- Amy Coney Barrett has sharply criticized **both** major rulings that upheld the ACA: *NFIB v. Sebelius* (2012) and *King v. Burwell* (2015).
- Of the 2012 decision, [she wrote](#): “Chief Justice Roberts pushed the Affordable Care Act beyond its plausible meaning to save the statute.” She went on to suggest that Justice Scalia’s view in dissent, [“that the entire ACA should have been thrown out](#), was the correct approach according to the [“statutory textualism to which most originalists subscribe.”](#)
- In 2015, she praised the dissent in *King v. Burwell*, saying it had [“the better of the legal argument.”](#) Had the dissenters prevailed in that case, the non-partisan [Urban Institute estimated](#) that more than 8 million people would have lost health coverage and premiums would have gone up by 35% in 34 states. The sudden drop in health care spending would have sent the entire health care system into a chaotic nationwide meltdown.

Trump Vowed to Appoint Anti-ACA Judges, Unlike “Absolute Disaster” Roberts

- In 2015, Trump [tweeted](#): “If I win the presidency, my judicial appointments will do the right thing unlike Bush’s appointee John Roberts on ObamaCare.”
- After Chief Justice Roberts voted to uphold the ACA for the second time, Trump called him [“an absolute disaster”](#) and said that Roberts [“let us down.”](#)
- In 2016, [Trump said](#): “I will work with people that I respect, conservative people, and we’ll appoint judges that will be good. And I don’t think I’ll have any catastrophic appointment like Justice Roberts.”
- On September 24, 2020, Trump once again promised to obliterate the ACA: “I’m in court to terminate this really, really terrible situation.”

Amy Coney Barrett on *NFIB v. Sebelius* (2012)

- She wrote: “Chief Justice Roberts pushed the Affordable Care Act beyond its plausible meaning to save the statute. He construed the penalty imposed on those without health insurance as a tax, which permitted him to sustain the statute as a valid exercise of the taxing power; had he treated the payment as the statute did - as a penalty - he would have had to invalidate the statute as lying beyond Congress’s commerce power.” [Countering the Majoritarian Difficulty](#) (2017).

DEMAND JUSTICE

- “*NFIB v. Sebelius* might be explained by the fact that Chief Justice Roberts has not proven himself to be a textualist in matters of statutory interpretation. Even in straight-up statutory interpretation cases, Chief Justice Roberts has found himself on the opposite side of staunch textualists like Justices Scalia, Thomas, and Alito precisely because of his willingness to depart from ostensibly clear text to better serve the statutory purpose. . . . This methodology, when combined with Chief Justice Roberts’ devotion to constitutional avoidance, has yielded cases like *NFIB v. Sebelius*. To the extent that *NFIB v. Sebelius* expresses a commitment to judicial restraint by creatively interpreting ostensibly clear statutory text, its approach is at odds with the statutory textualism to which most originalists subscribe. Thus Justice Scalia, criticizing the majority’s construction of the Affordable Care Act in both *NFIB v. Sebelius* and *King v. Burwell*, protested that the statute known as Obamacare should be renamed ‘SCOTUScare’ in honor of the Court’s willingness to ‘rewrite’ the statute in order to keep it afloat. For Justice Scalia and those who share his commitment to uphold text, the measure of a court is its fairminded application of the rule of law, which means going where the law leads. By this measure, it is illegitimate for the Court to distort either the Constitution or a statute to achieve what it deems a preferable result.” [Countering the Majoritarian Difficulty](#) (2017).

Amy Coney Barrett on *King v. Burwell* (2015)

- In a June 2015 radio interview, Barrett commented briefly on the Supreme Court’s opinion in *King v. Burwell*. The interview focused on language in the Affordable Care Act stating that tax credits or subsidies would be authorized for those who bought insurance in marketplaces “established by the State,” and whether the phrase applied not only to state-established exchanges but also to the federally-established exchanges. Barrett argued that the dissent had “the better of the legal argument.” Amy Barrett, Interview, [SCOTUS Upholds State Health Care Subsidies](#), NPR On Point, WBUR, June 25, 2015.

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