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Obamacare in the Trump Era: Where are we Now, and Where are we Going?

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Abstract

The Patient Protection and Affordable Care Act, better known as Obamacare, is the most significant US social policy reform in half a century, and the most politically fractious. Since the law was signed by President Obama, Republicans have mobilised against it, using courts and state governments to undermine the implementation of the legislation, which was set to unfold gradually over a nine-year period. As we describe in this article, however, the beginning of the Trump presidency in January 2017 marked a turning point in the politics of Obamacare. In the absence of Obama's veto, legislative retrenchment became a viable option for the first time. Yet, a combination of intra-party conflict and opposition to repeal from key stakeholders doomed Republicans' initial efforts. Nevertheless, we discuss several reasons to doubt Obamacare's political stability.

Keywords

Affordable Care Act; Obamacare; health care reform; repeal and replace; Trump; United States

The Repeal and replacement of the Patient Protection and Affordable Care Act (ACA)—better known as Obamacare—was supposed to be the signature accomplishment of the Trump administration's first term. Having campaigned on this promise since the law's enactment in 2010, introducing hundreds of bills and coordinating massive resistance to the law across the fifty states, Republican leaders appeared ready—in the words of House Speaker Paul Ryan—to 'go big' and 'go bold'. Illustrating the issue's priority, President Trump appointed Representative Tom Price (Republican—Georgia), one of Obamacare's most ardent critics, to the position of Health and Human Services Secretary. By the time the 115th Congress was seated in early January 2017, Republican leaders in the House had white papers and slide decks on what Ryan had dubbed the 'Better Way' ready to go.

To political scientists, the early months of 2017 appeared to be a moment of truth for the ACA. As the fate of the law—the most significant US social reform in a generation—hung in the balance, it was also a moment of truth for theories of policy stability and change in an era of polarisation. Did the old rules still apply? Had the ACA generated sufficient support among the public, interest groups, and government officials to insulate itself against the risk of repeal? If the Republicans' sweep in the 2016 elections was any indication, Democrats badly miscalculated by assuming that the ACA—in the absence of party-building efforts—would generate its *own* political support.[1]

The ACA was the most dramatic reform of the US health care system since the introduction of Medicare and Medicaid in the mid-1960s. However, although it extended the state's role in the provision of health insurance coverage, the law did not intend to usurp the role of employer-provided insurance through which most Americans accessed health care. Instead, the ACA sought to provide avenues to coverage for people excluded from employer-based schemes and to extend protections to individuals shunned by insurers.

The means chosen to accomplish these objectives were not, however, easy to understand. As the result of pragmatic compromises and concessions to the insurance industry and fiscal conservatives, Democrats constructed a law that required many middle-income Americans to purchase insurance on confusing and glitch-laden marketplaces and buried fiscal benefits in a tax-expenditure scheme. In addition to obscuring its benefits through complexity, the ACA's political take-off was also dragged down with the unravelling of President Obama's promise that people happy with their existing insurance would not be forced to change. Furthermore, opponents found an easy target in the so-called 'individual mandate', which stipulated that those who did not purchase insurance would have to pay a penalty. While the law did indeed provide popular consumer protections, such as a ban on insurer exclusions of individuals with pre-existing conditions, few voters in the November 2016 elections recognised that these existed. By contrast, the Supreme Court's June 2012 ruling in *NFIB v. Sebelius* allowed states to opt out of Obamacare's most visible and tangible benefit—the expansion of the Medicaid programme to cover individuals up to 138 per cent of the Federal Poverty Line. States governed by Republicans largely took this opportunity to display their opposition to Obamacare by refusing to expand Medicaid coverage, which left billions of federal dollars available to the states not taken up, and millions of low-income individuals without insurance coverage.

Yet, despite the ACA's weak political support structure, Republicans emerged from 2017 largely empty handed. After a rushed process to pass the repeal in the House of Representatives via budget reconciliation, Senate leadership's version of the bill—the Better Care Reconciliation Act—failed by a margin of 43–57, despite the party's 52–48 majority in the chamber. Pared down versions of the repeal, colloquially referred to as the 'Partial' and 'Skinny' Repeals, subsequently failed to win even a simple majority of votes. By the end of the year, the 115th Congress had only succeeded in eliminating the tax penalties imposed by the individual mandate—a feat that was only achieved by rolling the repeal into a \$1.5 trillion tax cut package.

The repeal of the individual mandate is the exception that proves the rule. Because Democrats based their design of the ACA on a fundamentally conservative, market-based policy template, they have fractured the Republican coalition for repeal. Yet the failure of Republicans to repeal the ACA 'lock, stock, and barrel' hardly suggests that Obamacare is gaining newfound political stability in the age of Trump. Indeed, polarisation complicates the process of 'locking in' significant reforms. While the law has generated voter mobilisation and support from interest group intermediaries, these actors are not uniformly interested in stabilising and fine-tuning the policy that exists. Instead, though it is still alive, the ACA is under fire from all sides. First, a growing number of voters support more comprehensive reform, such as an expansion of the Medicare programme for seniors into a national single-payer system. Simultaneously, political moderates in Congress have failed to generate the political support necessary to stabilise premiums in the ACA's insurance marketplaces, potentially further eroding confidence in those complex arrangements. Finally, conservative opponents of the ACA in both the White House and in the states have devised ways of transforming the ACA that are more insulated from immediate public disapproval, including weakening consumer protections and introducing work requirements in the Medicaid programme. Thus, while outright repeal currently seems off the table, the ACA's complex design, combined with the fractious character of contemporary American politics, means that the law's future will be one of transformation and change, rather than stability.

Passing Obamacare: the unintended consequences of pragmatism

The ACA's passage was the most significant redistributive development in US social policy in decades. Yet both its success and its structure were contingent on pragmatic legislative bargains negotiated by congressional Democrats and unorthodox manoeuvres to guide the legislation through a snarl of committees and procedural obstacles. As a result, the benefits of the ACA were often far from obvious. For example, the ACA's reliance on the tax code to provide subsidies obscures these benefits. Nor did technical glitches and high premiums—especially in rural areas with particularly sick populations—promote the law. Finally, while the public largely supported many of the ACA's benefits, many did not recognise that the law itself had in fact created them. [2]

Ultimately, the law that emerged from the legislative process fell far short of guaranteeing universal health coverage that some Democrats hoped for. The initial estimates of the ACA's impact never claimed that the law, even if faithfully implemented, would lead to universal coverage. At the time of passage, the Congressional Budget Office (CBO) predicted that over 30 million Americans would gain insurance coverage in one way or another, but this would still have left about 23 million people uninsured in 2019.

The absence of a commitment to universal coverage marked a departure from the last major attempt at health care reform, that is, President Clinton's 1993 Health Security proposal. In his 1994 State of the Union address, Clinton famously declared that he would veto any reform devised by Congress that did not 'guarantee every American private health insurance that can never be taken away'. Clinton-era policy debates influenced the ACA's design in another way, however. The law's core provisions constituted a blend of Republican and Democratic policy ideas that emerged during the 1993 debate. This included coverage mandates for employers and individuals and tax subsidies for the purchase of insurance drawn from a Republican-authored plan called the Health Equity and Access Reform Today Act of 1993 (HEART). At the same time, the ACA's authors included longstanding Democratic proposals such as a coverage expansion for low-income Americans under the Medicaid programme and insurance industry regulations designed to protect consumers from exorbitant premiums and deductibles.

While the fact that the ACA had drawn on conservative ideas winnowed the number of credible alternatives available to Republican leaders, it did little to temper political animosity. Indeed, the 2010 mid-term elections were replete with attack ads casting Obamacare—a term devised by veteran Republican strategist Frank Luntz—as a radical, unconstitutional reform. Thus, early debates over the ACA were primarily cast in ideological or

constitutional terms, setting the stage for a brutal political conflict over its implementation, which directly involved the fifty states and was scheduled to unfold gradually over a nine-year period (2010–2019).

Implementing Obamacare: an unending war

For Democrats, the ACA's signing ceremony signified the 'end of the debate' on health care reform. As Senator Max Baucus—a key figure in the legislative process—put it soon afterwards: 'Now it is a fact. Now it is law. Now it is history'. Yet the ACA's partisan and ideological opponents saw it differently; for them, the ACA's enactment was the beginning of a political war that would extend from Washington, DC, to the most remote state capital. In a context of increased partisanship and uniform Republican opposition to both the law and the Obama agenda more generally, the war began not five minutes after the legislation was signed, as staffers for Virginia Republican Attorney General Ken Cuccinelli II marched from his office to Richmond's federal courthouse to file the first in a series of state lawsuits intended to strike down the ACA. Speaking at a conference held by the American Enterprise Institute, conservative legal scholar Michael Greve framed the politics of the ACA bluntly:

This bastard has to be killed as a matter of political hygiene. I do not care how this is done, whether it's dismembered, whether we drive a stake through its heart, whether we tar and feather it and drive it out of town, whether we strangle it. I don't care who does it ... Any which way, any dollar spent on that goal is worth spending, any brief filed toward that end is worth filing, any speech or panel contribution toward that end is of service to the United States.[3]

By the time Greve made this speech, a well-resourced network of conservative organisations were pursuing several mutually reinforcing tactics to obstruct the implementation of the law.

First, opponents continued to protest—not just in formal institutional settings, but also in public forums, with conservative activists effectively turning opposition to the law into an issue in the 2010 mid-term elections. Second, immediately upon passage of the law, states' Attorney Generals launched legal challenges to its legitimacy, which disrupted implementation of the law. Third, after gaining control of the House of Representatives in the November 2010 mid-term elections, Republicans promptly passed motions to repeal all or significant parts of the law. These votes were symbolic while Obama remained in the White House, but they did represent continuing challenges to the efficacy of the law. Fourth, and with real practical significance, conservative activists organised at the state level to obstruct implementation of the federal law.

The effectiveness of state-level opposition was greatly enhanced by Republican advances in the 2010 mid-term elections; the party gained an extra six gubernatorial mansions and over 600 state legislative seats. In turn, the capacity of state-level opponents to stymie the law's impact increased when the Supreme Court undermined the federal government's capacity to leverage states into expanding their Medicaid programmes. In a landmark ruling in summer 2012, the Court upheld the overall constitutionality of the law, but ruled that while the federal government could offer incentives to the states to expand their Medicaid programmes, it could not threaten to withdraw all existing federal Medicaid dollars from states that did not cooperate. This decision empowered state-level opponents of the expansion, who could not afford to sacrifice existing revenues from Washington, but who were prepared to forfeit new monies. Hence, when President Trump took office, thirty-two states had expanded their Medicaid programmes, but nineteen had not. Those thirty-two did include some states, notably Ohio and Arizona, where Republican governors, attracted by the federal funds on offer, had aggressively pushed for the expansion despite opposition from their Republican controlled state legislatures. The struggles that took place within some states also indicate the importance of the details of each state's institutional structures. In Louisiana, a Democratic governor was able to overcome the Republican state legislature's opposition to expand the programme, but Virginia's Democratic governor was thwarted in his efforts to do the same.

Even fewer states took the chance to set up their own insurance marketplace. Dashing the expectations of the ACA's framers, only twelve states were operating fully functional, state-based insurance marketplaces by the end of 2016; a further eleven states had various hybrid federal-state arrangements; and twenty-eight relied entirely on the federal government to run things. Moreover, these marketplaces encountered significant problems, providing Republicans with anti-Obamacare talking points. As some insurers lost money on the marketplaces and withdrew completely or increased fees, Republicans alleged that the system was falling into a 'death spiral' as insurance premiums rose and many plans imposed higher deductibles. Importantly, rather than try to work with the Obama White House to fix these problems, congressional Republicans launched a legal challenge to the part of the ACA known as cost-sharing reductions (CSRs). Through the CSR scheme, the federal government paid insurers to help cover costs such as deductibles for some of the lowest income households. House Republicans successfully challenged the authority of the administration to fund this scheme. The Obama administration appealed the ruling and continued to pay out, but the House action represented a clear attempt to destabilise an already precarious insurance market.

Yet, while this story of fierce and enduring Republican antagonism to the ACA is a remarkable account of effective political resistance, it is not the whole narrative. Many millions more Americans were insured because of Obamacare: by 2015, the uninsured rate had dropped to 9.4 per cent, compared with 15.1 per cent in 2009. Some of that decline was a result of economic growth, but most was a result of changes made by the 2010 law.^[4] Hence, even though the law remained underwater in terms of public opinion throughout the Obama presidency, there were real beneficiaries and some aspects were very popular. Nevertheless, the political war raged on.

Repealing Obamacare: intra-party conflict and legislative overreach

In his first address to Congress after a widely unanticipated victory in the 2016 election, President Donald Trump called on Congress to 'repeal and replace Obamacare ... with reforms that expand choice, increase access, lower costs, and at the same time, provide better healthcare'. To do so, Trump cited several vague proposals released by his presidential campaign that included measures to allow the interstate sale of health insurance, health savings accounts, and tax credits. When it came time to translate his health care promises into policy, however, House Republicans—led by Speaker Paul Ryan—took the wheel. Cobbled together from legislative proposals advanced by conservative Republicans in previous years, Ryan's initial plan for what would become the American Health Care Act (AHCA) represented a dramatic retrenchment.^[5] The legislation released by the House Republican leadership in early 2017 eliminated subsidies for the purchase of health insurance for individuals in the insurance marketplaces established by the ACA, replacing them with age-based tax credits. For younger individuals, the effects of these repeals varied geographically: a twenty-seven-year old with an annual income of \$30,000 would see annual costs rise by \$2,000 in Nebraska but the same individual would see costs fall by \$2,000 in the state of Washington. Yet for older individuals, average annual costs rose nearly everywhere.^[6] Perhaps even more dramatically, Ryan's plan not only reversed the ACA's Medicaid expansion but eliminated Medicaid's entitlement status altogether, converting it into a per capita allotment or a fixed-dollar block grant to states. In an analysis of the AHCA published on 13 March 2017, the CBO estimated that, compared to current law, the proposed legislation would result in 24 million fewer individuals with insurance coverage by 2026.^[7]

However dramatic these changes, they did not satisfy conservative organisations like Americans for Prosperity and the Heritage Foundation, who argued that the AHCA was 'Obamacare Lite'. While the bill's changes to Medicaid and tax subsidies allowed Republicans to eliminate the surtax on high income taxpayers' net investment income, as well as other increases in payroll and excise taxes, these conservative policy demanders argued that they did not go far enough. Opposition from the House Freedom Caucus (HFC), a small but cohesive

group of thirty-one conservative House members, brought House leaders to scuttle a vote on the policy in late March. The HFC also extracted key concessions, such as a provision that allowed states to opt out of key consumer protections under the ACA. With the HFC on board, and in the absence of a revised CBO score, House leaders engineered a narrow passage vote of 217 to 213, with twenty Republicans voting against the measure.

By the time the Republican legislation reached the Senate, public attitudes towards the ACA had noticeably improved. In June 2017, according to the Kaiser Family Foundation's tracking poll, ACA favourability broke 50 per cent for the first time since its creation in 2010. With the exception of the individual mandate, public attitudes about most components of the ACA were largely favourable.^[8] Yet this shift was evidently neither quick nor strong enough to have an effect on the 115th Congress' legislative agenda. Had this been the case, Republican senators from states that expanded Medicaid might have been more likely to vote against the 25 July motion to proceed with consideration of the AHCA. There were in fact twenty Republican members of Senate from fourteen states, including Majority Leader Mitch McConnell (Republican–Kentucky), in such a position. Yet that vote, which effectively allowed ACA repeal efforts to move forward in the Senate, occurred along rigid partisan and ideological lines, with only two moderate Republican Senators—Susan Collins of Maine and Lisa Murkowski of Alaska—joining Democrats in opposition, citing complaints about the rushed legislative process and the absence of committee consideration. Vice President Mike Pence was thus forced to cast a tie-breaking vote in favour of the legislation.

Agenda-setting aside, repeal faced a perilous path in the Senate. Senate leadership aimed to head off friction over their legislative vehicle—the Better Care Reconciliation Act (BCRA)—by drafting it in secret with the cooperation of a small handful of moderates and conservatives. Nevertheless, the bill failed by a margin of 43 to 57 as a result of opposition from moderates like Collins and Murkowski and from conservatives like Mike Lee (Republican–Utah) and Rand Paul (Republican–Kentucky), who believed the bill did not go far enough at eliminating market regulations and rolling back taxes under the ACA.

After the BCRA vote, Senate leaders called up the Obamacare Repeal Reconciliation Act, also known as the 'Partial Repeal'. This bill accommodated Senate conservatives by repealing all of the ACA's coverage provisions (including the individual mandate, Medicaid expansion and subsidies). It also attempted to appeal to moderate Republicans by taking cuts to traditional Medicaid off the table and leaving in place insurance market reforms. Perhaps indicative of the self-reinforcing effects of the Medicaid expansion, Republican Senators in states that took the expansion were less likely to vote in favour of partial repeal. As with BCRA, the partial repeal failed on a final passage vote.

Republican leaders called up the so-called 'skinny repeal' in a last-ditch effort to repeal only the individual mandate, the ACA's least popular measure, leaving the Medicaid expansion and other coverage provisions intact. This bill also failed, though for a more idiosyncratic reason. Back in Washington after surgery and suffering from brain cancer, Senator John McCain (Republican-Arizona), who had invited reporters to 'watch the show', dramatically turned his thumb down when his name was called, eliciting audible gasps in the chamber. While this vote was decisive in killing the skinny repeal, it remains difficult to explain. Indeed, while McCain voted against partial repeal—which brought into focus the issue of Medicaid expansion in his home state of Arizona—he had voted in favour of BCRA, which would have dramatically retrenched the ACA as well as the traditional Medicaid programme. His public statements on the vote are vague, but—along with his comments at a joint press conference with Senators Lindsey Graham (Republican–South Carolina) and Ron Johnson (Republican–Wisconsin), both of whom ultimately voted in favour of the bill—they hint that McCain's main concerns focused on legislative process, that the legislation was 'rammed through' and did not 'actually reform' health care. In any case, it seems unlikely that McCain voted against the bill due to expected reprisals from constituents who would have lost coverage if it had passed.

Following the defeat of BCRA, Senate leaders were sceptical about bringing other major ACA replacement legislation, such as the Graham–Cassidy bill, to the floor. Yet, as with BCRA, Graham–Cassidy's failure likely had more to do with ideological divisions within the Republican party than with self-reinforcing policy legacies and vested interests created by the ACA. Like BCRA, Graham–Cassidy contained large cuts to traditional Medicaid while maintaining a subsidy that conservatives like Senator Rand Paul (Republican–Kentucky) disdained. With another potentially embarrassing floor vote on the horizon, Senate leadership killed the bill. At the same time, however, Republican leaders effectively blocked consideration of a measure sponsored by Senators Lamar Alexander (Republican–Tennessee) and Patty Murray (Democrat–Washington) that restored the cost-sharing reduction payments that had been cut off by the Trump administration.

By the end of 2017 the individual mandate remained the most unpopular provision of the law, and eliminating it seemed to be the last best option for Republican leaders seeking to claim credit for repealing (parts of) Obamacare. Yet despite the unpopularity of the mandate itself, the CBO continued to make dire predictions about the effects of repeal on insurance coverage. Surveys conducted by the Kaiser Family Foundation in fall 2017 revealed that, whereas only 42 per cent of Americans opposed repeal of the individual mandate, that number jumped by 20 per cent when respondents learned about the effects of repeal.^[9] This may help explain why Republican leaders folded mandate repeal into a \$1.5 trillion Tax Cuts and Jobs Act. By zeroing out the penalties imposed by the mandate (rather than repealing the mandate itself), Republicans also generated over \$300 billion in savings that could be put towards the proposed tax cuts. The Tax Cuts and Jobs Act passed along party lines before the end of the year.

The future of Obamacare

Although most of the ACA survived the first year of the Trump presidency, its long-term future remains uncertain. Four main, interlocking, factors account for this uncertainty. First, the policy flaws that undermined the ACA's capacity to build a broad-based self-sustaining constituency of support largely remain in place. In particular, the prospect of increasing premiums and higher deductible payments in the individual insurance market still looms.

Second, while their legislative efforts to repeal and replace the ACA largely failed, Republicans have proved much more effective in pursuing a 'death by a thousand cuts' strategy aimed at gradually undermining the reform. For instance, the Trump administration has used executive authority to withhold payments to insurers; to restrict advertising of ACA-covered insurance plans; to reduce time for open enrolment; to cut funding for in-person assistance; and to open ACA marketplaces to insurance plans with low actuarial value that cover a narrower range of essential health benefits than other plans.^[10] Additionally, the administration suggested that, under Section 1115 of the Social Security Act, states could require individuals to work or engage in unpaid 'community engagement' as a condition of Medicaid eligibility, which would represent a fundamental shift in the nature of the programme.

Third, although the popularity of the ACA had increased at the beginning of the Trump presidency, in March 2018, the law's approval rate remained at 50 per cent, with 42 per cent of respondents still opposing it. In fact, it seems that the ACA hit its highest levels of favourability during and immediately after the repeal fight.^[11] Overall, the public remains divided over health care reform, and amongst self-identified Republicans in the electorate, opposition to the ACA remains strong. Hence, the failure to 'repeal and replace' in 2017 does not mean that political battle over the future of health care arrangements in the US is over. Republican legislators were certainly bruised by their failure to turn their extended period of rhetorical dismissal of the ACA into a policy reality, but their frustration should not be misinterpreted as acknowledgment that the ACA is a settled matter. President Trump himself has predicted that the ACA will implode and that the necessity for a Republican driven reform will then arise.

Finally, there is some political movement trying to shift health care politics in a very different direction. On the left of the Democratic party, the focus is less on stabilising the ACA than on further expanding coverage, either through a single payer approach or, for more moderate Democrats, via a 'supercharged' public option called Medicare Extra.[12] Associated with Senator Bernie Sanders (Independent–Vermont) and his supporters, this push for universal coverage through more direct government intervention is at odds with both Republican policy preferences and the pro-market policy design of the ACA.

The ACA thus offers a profound lesson about how new policies create a new politics. Even when major social reforms provide benefits to pivotal constituencies, they may also unleash political forces that are difficult to predict and even more difficult to control. While Democrats believed that a moderate, market-based reform would pre-empt Republican attacks while satisfying proponents of more radical change, the ACA only seemed to intensify those hostilities. Eight years after its passage, the law remains a 'transitional' policy—built on a market-oriented base but committed, albeit vaguely, to inclusive and redistributive goals. What the ACA will transition into remains unclear, but considering the strong ideological and partisan divergence over health care reform, the debate over the future of the ACA is likely to remain on the agenda in coming years. In a critical policy domain, with many millions of Americans' health security in the balance, both sides of the partisan divide seem happy to engage in a high stakes political gamble. Republicans in Washington have failed in their direct effort to repeal the ACA, but they continue to blame the law and its Democrat authors for the wider ills of the health care system. Democrats, on the other hand, anticipate that the public will come to see the Trump administration and Republicans as 'owning' any further emerging problems, meaning that Democrats will once again be the party called on to fix health care.

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Footnotes

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