

## The 5<sup>th</sup> Circuit can save Obamacare!

By Steven Blumrosen, July 9, 2019

Today, a Federal Court of Appeals heard oral argument on Republican President Trump's claim that all of the ACA (affectionately known as "Obamacare") is unconstitutional.

The Washington Post has taken off its editorial gloves and says "The question before the court is whether its appellate judges will taint themselves by associating with preposterous arguments."

The paper-of-Watergate-fame explains that Congress "zeroed out the mandate payment in 2017, a move that had the intent and effect of freeing Americans from government-imposed pressure to buy health insurance, and left the rest of the Obamacare system in place. For the 5th Circuit to rule that Obamacare could not function as designed without the mandate — despite the fact that congressional intentions, as of 2017, were to have it function without the mandate — would require the appellate judges to replace their policy judgment for that of the policymakers in Congress, in effect to usurp the legislative function."

[https://www.washingtonpost.com/opinions/its-time-for-an-appeals-court-to-right-the-ship-on-obamacare/2019/07/08/17d2e2e2-a1b9-11e9-b732-41a79c2551bf\\_story.html?utm\\_term=.164b21d409d5](https://www.washingtonpost.com/opinions/its-time-for-an-appeals-court-to-right-the-ship-on-obamacare/2019/07/08/17d2e2e2-a1b9-11e9-b732-41a79c2551bf_story.html?utm_term=.164b21d409d5)

In a telephonic press conference this morning, Terrie Rizzo, Chair of the Florida Democratic Party (FDP) explained, essentially, that "When the President ran for office, he said we would have great insurance. Instead, his administration has been working to make insurance worse for millions of people. This does not make America Great Again."

Congresswoman Debbie Mucarsel-Powell (FL-26) was also on the press conference. She is our nation's first immigrant member of Congress from South America. Debbie came to the U. S. from Ecuador with her mother and sisters. Her mom worked double shifts while attending night school to learn English. When Debbie was 15 years old, she helped her mother by working in a doughnut shop before spending the day in school.

She kept working and became a university administrator at FIU. She earned a Masters in International Political Economy. Through personal experience, she became involved in issues of immigration reform, commonsense gun safety, and climate change. She sits on the House Judiciary Committee's Immigration & Citizenship Subcommittee and Crime, Terrorism, & Homeland Security Subcommittee.

During the press conference, Congresswoman Mucarsel-Powell shared her concern for people who cannot afford medical care or health insurance premiums. "In Florida's 26th congressional district, we have more than 100,000 people who rely on the ACA to get their healthcare."

If Obamacare is declared totally unconstitutional, 1,560,000 more people could be without health insurance in Florida. That's a jump of 67%, according to the Urban Institute. ([https://www.urban.org/sites/default/files/publication/100000/repeal\\_of\\_the\\_aca\\_by\\_state.pdf](https://www.urban.org/sites/default/files/publication/100000/repeal_of_the_aca_by_state.pdf)).

Statewide, there are about 7.8 Million people who had pre-existing conditions before Obamacare. If they are still here and have not gone on Medicare, they could be denied coverage. The risk of still having those conditions and losing health insurance is not making patients feel great again. [Compilation of State Data on the ACA, Health and Human Services, <https://aspe.hhs.gov/compilation-state-data-affordable-care-act>.]

If a patient is not insured and cannot pay, they will go to the emergency room – and bankruptcy will, once again, become our society's insurance of last resort. The cost of medical care for those who can pay will increase to cover the cost of those who cannot. Here, in SW Florida, there are [redacted] people receiving the benefits of Obamacare in Districts [redacted]. Without Federal oversight of health insurance, America will be sicker, have greater injuries and will be more impoverished, again. That would not be great.

[Ed. note: During the press conference, the FDP assured participants this data would be provided. How long will it take? Not long (we hope).]

Regardless of how the Fifth Circuit decides Texas v. United States, someone will likely not be satisfied. The case will go to the Supreme Court and the Supreme Court may issue its opinion just before the 2020 election.

The supremacy of the Supreme Court is that it is the last resort for litigants in the Federal judicial system. Supreme Court opinions are not always entirely correct; however, they are final (at least until the court issues a different Opinion or the elected members of Congress change the law).

The Court is independent of other branches of government. Due to life-time tenure, the justices do not always do what a president or the media expect.

For example, Nixon nominated, and the Senate confirmed, 235 members of the Federal judiciary. Seven were on the "Specialty Courts" of "Customs and Patent Appeals," "Court of Claims," or "Customs Court." 179 were District Court judges, 45 were on Courts of Appeals,

and 4 were justices on the Supreme Court. The Supreme Court justices were Warren Burger (who replaced Earl Warren), Harry Blackmun, Lewis F. Powell, and William Rehnquist.

When the nation found itself in the constitutional crisis of Watergate, members of the president's staff and political supporters of the president were indicted. The Special Prosecutor, Leon Jaworski, subpoenaed tapes and documents relating to specific conversations that included the president.

Nixon claimed executive privilege and refused to release the material. Judge John Sirica on the District Court for the District of Columbia ordered the president to obey the subpoena.

The president appealed to the Court of Appeals. The Special Prosecutor took the case directly to the Supreme Court.

Lifetime tenure meant the justices could apply the facts to the law and develop their own opinions. Justice Rehnquist recused himself due to close associations, before joining the Court, with some of the alleged co-conspirators including Attorneys General John Mitchell and Richard Kleindienst.

The remaining eight members, including the three who owed their jobs to the president, ordered the president to comply with the subpoena.

The tapes were eventually released pursuant to the Supreme Court's decision in *U. S. v. Nixon*, 418 U.S. 683. The world heard the "smoking gun." That was a White House conversation between the president and Haldeman. The president talked about the conspiracy and agreed that Ehrlichman and Haldeman would prevent the FBI from investigating.

Because of the cover-up, coming directly from the Oval Office, "The eleven Republicans on the Judiciary Committee who voted against impeachment say they will change their votes. It (was) clear that Nixon will be impeached and convicted in the Senate."

<https://watergate.info/chronology/1974-chronology>

Today, in Baton Rouge, Louisiana, the 5th Circuit Court of Appeals heard oral arguments in *Texas v. United States* because Democratic states appealed a decision of the US District Court for the Northern District of Texas.

In 2017, Congress removed the provision of the ACA that required people to buy an insurance product or pay a tax. Yet, the specter of “the provision-that-is-no-longer-there” haunts the District Court where the judge agreed the ACA is so complex it cannot be implemented without the offending provision, that is no longer there.

<https://www.politico.com/newsletters/politico-pulse/2019/07/08/oral-arguments-imminent-in-obamacare-case-673413>)

The offending provision has been removed and people still have insurance and are receiving health care using Obamacare. Apparently, it is working, regardless of Republican perception of complexity.

This case - and these issues - will likely continue to the Supreme Court. Chief Justice John Roberts has declared neutrality. He has said there are no Trump courts or Obama courts, only United States courts.

Had the Democrats won the 2016 presidential election, the nation would probably not now be spending time and taxpayer dollars trying to decide whether there is an issue to litigate when the Congress has rendered the question moot.

Moral: Elections for each office on the ballot have consequences.