



ObamaCare Mandate Killed. What Does This Do to ObamaCare?

The tax bill kills the ObamaCare mandate. How did that happen? And what does this do to ObamaCare?

“The individual mandate is being repealed,” crowed President Trump during a Wednesday cabinet meeting at the White House, in response to news that the final version of the tax “reform” bill was in the process of passing the House of Representatives. With House passage, the bill now goes to Trump’s desk for his signature, and Trump rightly raised the significance of the repeal of the ObamaCare mandate, which had required American citizens to purchase health insurance.



“When the individual mandate is being repealed, that means Obamacare is being repealed,” Trump explained. “So, the individual mandate is being repealed.... In this bill, not only do we have massive tax cuts and tax reform, we have essentially repealed Obamacare, and we’ll come up with something that will be much better, whether it’s block grants or whether it’s taking what we have and doing something terrific. But Obamacare has been repealed in this bill.”

Not much was said about the inclusion of the mandate repeal in the tax bill, and Trump said that was the way he wanted it. “I told people specifically, ‘Be quiet with the fake news media,’ because I don’t want them talking too much about it. But now that it’s approved, I can say.”

Technically, ObamaCare remains law, but without the mandate, it has been delivered a serious blow. For those who favor individual liberty and limited government, it was clearly the most onerous part of the so-called Affordable Care Act passed early in Obama’s presidency on a party-line vote. Without the mandate, the insurance industry has no reason to lobby to keep the law.

Trump thanked Senate Majority Leader Mitch McConnell and House Speaker Paul Ryan for their leadership in getting the tax bill passed, which included the repeal of the mandate. But the real hero of the tactic of inserting the mandate repeal into the bill is Senator Tom Cotton (R-Ark.). When the bill went to a conference committee of House and Senate members, Cotton pushed for senators to insist on including the mandate repeal in the bill.

The seeds for the repeal were sown in the legal efforts of the National Federation of Independent Business (NFIB). In the case *NFIB v Sebelius*, the NFIB managed to get before the Supreme Court a constitutional challenge of ObamaCare’s individual mandate. It appeared that the Supreme Court might strike the mandate down as unconstitutional, but Chief Justice John Roberts “saved” the mandate by his decision to call the mandate a “tax,” which he argued was constitutional, rather than claiming that the



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mandate was constitutional based on the “commerce clause,” as the Obama administration was arguing. The Obama administration argued that the federal government could simply order Americans to purchase a product (health insurance) because the Constitution gives Congress the power to regulate interstate commerce.

Roberts threw out the commerce regulation justification, but in an apparent effort to find a reason to uphold the law, he said the mandate was simply another tax. ObamaCare supporters on the Supreme Court, knowing they needed his vote to uphold the law, went along with Roberts, and in a 5-4 decision ObamaCare was saved.

Republicans made ultimate repeal of the mandate a major issue in the 2010 off-year congressional elections, and easily won control of the House of Representatives. But with President Obama still in the White House, poised to veto any repeal, and with the Senate still in Democrat hands, not even willing to have a vote on repeal, Republicans now called for replacing Obama with a Republican in 2012. Obama was narrowly re-elected, but Republicans made mandate repeal a major issue in the 2014 off-year elections, and took the Senate. They then began to pass multiple bills to repeal ObamaCare; however, Obama vetoed all these efforts.

Now the Republicans argued that they needed the presidency to finally repeal the hated mandate. With the election of Trump, it appeared that the mandate was dead. But now, Republicans who had been calling for repeal for seven years failed earlier this year to repeal the mandate — because some Republicans who had been voting for repeal during the Obama years changed their minds, and voted to keep ObamaCare. Most remarkably, Senator John McCain (R-Ariz.), who had campaigned in a tough re-election primary that he was going to kill ObamaCare, left a hospital bed in Arizona to return to Washington to vote to save ObamaCare!

Now the mandate is repealed. It disappears in 2019. If the Republicans are willing, they can now begin to chip away at the entire ObamaCare law, replacing it over time with alternatives that inject the free market into the health care field — a move that is long overdue.

Whether the Republicans will actually do that remains to be seen, but at least the unconstitutional mandate is dead. And that should be celebrated.

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