



Is Trump Moving Away From His Promise to Repeal ObamaCare?

After meeting with President Barack Obama at the White House on Thursday, word is that President-elect Donald Trump may have been charmed by the president's praise of ObamaCare to the point where he will preserve parts of the law he promised to repeal.

On November 11, the *Wall Street Journal* reported that Trump told the paper in an exclusive interview "he would consider leaving in place certain parts" of ObamaCare. The *Journal* continued: "[He] showed a willingness to preserve at least two provisions of the law after Mr. Obama asked him to reconsider repealing it during their meeting.... Mr. Trump said he favors keeping the prohibition against insurers denying coverage because of patients' existing conditions, and a provision that allows parents to provide years of additional coverage for children on their insurance policies."

That's surely not sitting well with the millions of Americans who voted for the former businessman who, while campaigning for the office he will soon hold, committed to repealing and replacing the healthcare law he called "a disaster."

Post-presidential powwow, however, Trump is taking a less aggressive tone. "Either Obamacare will be amended, or repealed and replaced," he told the *Journal*.

After learning about this, liberty-minded and recently re-elected Representative Justin Amash (R-Mich.) tweeted: "It has begun."

Politico reported on November 11 that Trump's apparent softening of his ObamaCare opposition has caused a "rift" in the Republican Party, particularly in Congress. From Politico:

Trump's statement heaped new confusion on how the GOP will move forward with its campaign pledge to repeal and replace Obamacare. A party rift was already emerging between lawmakers and advocacy groups who want a slow and orderly transition to give notice to the millions now covered — and those who want to repeal the entire law within minutes of Trump's inauguration. And that's only one of the disagreements as lawmakers, Trump's transition team and conservative groups wade through the complicated policy and political ramifications of how to repeal Obamacare and how to replace it.



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Any weakening or waffling by the president-elect on the issue of abandoning ObamaCare is going to create immediate enemies on Capitol Hill. Republicans in the House of Representatives, for example, passed a bill in 2015 that would have repealed the entirety of the Affordable Care Act. These lawmakers are unlikely to readily accept that, when they finally have a Republican president, they won't be able to get such a measure onto his desk and into the list of public laws.

There are other congressional Republicans, though, who would favor a plan that would retain the "reasonable" parts of ObamaCare.

Later on November 11 — and likely in response to the recoil by many Republicans upon hearing that their new president-elect might move away from his campaign commitment to kill his predecessor's healthcare scheme — a couple of Trump transition team members provided a "road map" for repealing ObamaCare. Here are the three main suggestions made by Paul Winfred and Brian Blase as published in Politico:

First, Congress should weigh which actors are in the best position to make difficult decisions about economic tradeoffs. For example, economists estimate that the age 26 mandate results in a wage reduction of \$1,200 for every worker regardless of whether they have dependents. Rather than a one-size-fits-all Washington mandate, employers and workers should decide whether the coverage is worth the wage reduction.

Second, Congress should ensure people who act responsibly are protected from developing an expensive medical condition. Congress should consider allowing states to develop different approaches in how to do this—allowing for the diversity and learning that comes from true federalism. One potential idea is guaranteed renewability—people with insurance must be able to renew their plan without the risk of a higher premium if they develop a medical condition.

Third, Congress must develop a better way to address the affordability of health care for lower income Americans. The Medicaid expansion has proved too costly and has provided too little benefit to enrollees to justify the cost. It has primarily benefited big insurance companies and hospitals. A far better approach is to deliver assistance more directly to people while freeing up the supply side of health care to provide people with lower-priced options.

Transition team road maps and presidential backsliding aside, there are several members of the congressional GOP caucus who are pushing for passing a bill to repeal the entirety of the ObamaCare legislation, to be ready for President Trump's signature on Inauguration Day.

"It should crumble immediately because Americans can't afford it," said Representative Andy Harris (R-Md.), a member of the Freedom Caucus quoted in the Politico story. Harris, the blog reports, wants the individual mandate provision "repealed right away."

The "individual mandate" is that provision of the ObamaCare "laws" that forces every American, regardless of ability or desire, to purchase a qualifying healthcare insurance plan or pay a tax penalty for failure to comply.

Infamously, in 2012 the U.S. Supreme Court in a 5-4 decision upheld the individual mandate, in a ruling that re-wrote the measure in a manner that undeniably destroyed the separation of powers and the exclusive constitutional authority of Congress to pass laws for the United States.

As I [wrote in 2012](#), the ruling:

demonstrates a bizarre interpretation of the Constitution wherein the majority of the justices held



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that while the Constitution does not grant Congress the power to compel the purchase of a commodity, it does have the power to tax anyone who doesn't make such a purchase.

Chief Justice Roberts, writing for the Court, held while the 'individual mandate is not a valid exercise of Congress's power under the Commerce Clause and the Necessary and Proper Clause,' it is valid as an exercise of the taxing power granted the federal government by the Constitution.

Roberts wrote in the majority opinion, "The Affordable Care Act describes the payment as a 'penalty,' not a 'tax.' That label cannot control whether the payment is a tax for purposes of the Constitution, but it does determine the application of the Anti-Injunction Act. The Anti-Injunction Act therefore does not bar this suit."

And with that pronouncement, Chief Justice Roberts became a legislator, as Congress clearly declared that the individual mandate was an exercise of the authority granted to the legislative branch in the Commerce Clause and Necessary and Proper Clause.

What will happen once the "elect" is removed from Donald Trump's title, is anyone's guess. It is unlikely that ObamaCare will remain in its present form given that even Bill Clinton criticized the measure while stumping for his wife on the campaign trail.

Republicans in Congress and in homes around the country will watch and see if Donald Trump fulfills his campaign promise to "repeal and replace" or if he'll continue down the conciliatory path he pointed to following his meeting with the architect of the federal healthcare monstrosity, President Barack Obama.

Constitutionalists, however, recognize that there is another more reliable way to reject ObamaCare and all other unconstitutional acts of the federal government.

The states, through the exercise of the Tenth Amendment and their authority to rule as sovereign entities, could stop ObamaCare at the state borders by enacting state statutes nullifying the healthcare law and criminalizing state participation in administering or executing the unconstitutional provisions thereof.

Nullification is the "rightful remedy" and is a much more constitutionally sound method of checking federal usurpation and is quicker and less complicated than an attempt to have the law repealed by Congress or overturned by a future federal bench more respectful of the Constitution. That said, there is no reason that concerned citizens should not use every weapon in the Constitutional arsenal, including working to convince Congress to repeal this offensive act.

The Supreme Court's ratification of ObamaCare's individual mandate can be seen as a mandate of another sort.

Americans should now recur to their state legislators and demand that they commit themselves to boldly asserting the sovereignty of the states and forcing the raging bull of the federal government back within the small and well-defined corral built by our Founding Fathers, regardless of the ebb and flow of presidential policy.



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