

Impact of

the 2020 Presidential Election

on Healthcare Reform
and The ACA

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Introduction

There are a number of factors to consider with regard to the impact of the 2020 election on the future of ACA. Each branch of the federal government currently is in a position to impact the future of healthcare reform. To summarize the situation:

1. The Supreme Court heard oral arguments on the ACA on November 10, 2020 in *California v. Texas* challenging the constitutionality of the ACA on the basis of the elimination of the individual mandate.
2. President-Elect Biden has proposed numerous healthcare initiatives, many of which are expected to be enhancements to the ACA.
3. The balance of power in The United States Senate will not be determined until the Georgia run-off election on January 5, 2021. Control of the Senate will determine the ability of President-Elect Biden to move legislative priorities through the Congress.

For purposes of this update I will summarize the implications and opportunities related to the ACA and Healthcare reform generally in the context of each of the items outlined above.



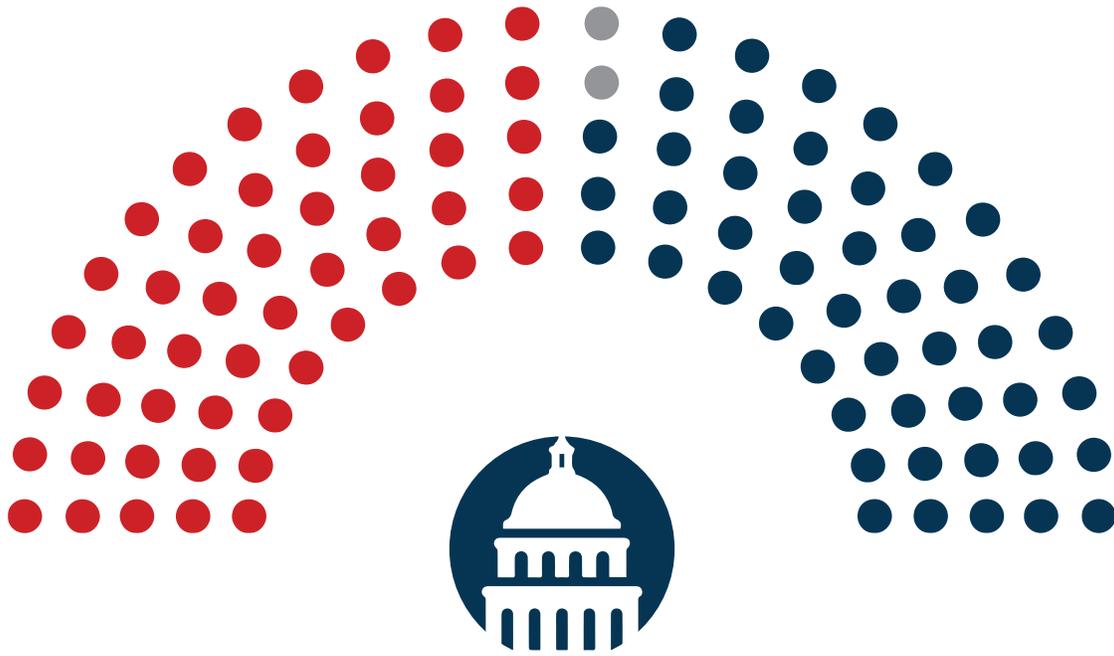
The U.S. Supreme Court

Oral arguments in *California v Texas* were heard by the court on November 10, 2020. At issue is the constitutionality of the ACA as a result of the 2017 tax reform bill which eliminated the individual penalty associated with the individual insurance mandate within the ACA. The court had previously held that the penalty was a tax and as such upheld the ACA as constitutional under the taxing authority of the Congress.

Given the recent shift in the court, with 6 of the 9 judges having been appointed by Republican Presidents, there is some speculation that the ACA may be in jeopardy from a legal perspective. However, while the court is now configured in a 6 to 3 "conservative" majority, the outcome is hardly pre-determined. There are 3 potential outcomes:

1. The State of Texas must first prove standing by showing damages in order for the court to move forward with a ruling. The State of Texas has argued that simply 1 person enrolling in Medicaid in The State of Texas as a result of their belief that they are required to do so by law is sufficient to establish damages, since \$1 additional to the state's outlays would constitute damages. Several Justices implied some skepticism in this argument during oral arguments. If the court determines that the state was harmed and has standing, then they will issue a ruling in June of 2021. If however they determine that the State of Texas does not have standing they could simply choose to issue no ruling and the ACA would stand.
2. If it is determined that the State has standing the court will then issue a ruling in late June of 2021. The ruling could go in one of two directions:
 - a. The court could strike down the entire ACA as unconstitutional on the basis of the 2017 elimination of the "individual tax".
 - b. The court could sever the unconstitutional provisions of the ACA and leave the remainder of the ACA intact.

It seems probable, based on precedent, that the court would look toward the intent of the Congress when the ACA was passed for guidance. In doing so, one could surmise that the court would look to severability as the solution, thereby preserving the remaining components of the legislation.



The U.S. Senate

While the purpose of this document was to understand the impact a Biden Presidency would have on the future of the ACA and healthcare reform, that can not be ascertained without first looking at the balance of power in the U.S. Senate. Given the November 3, 2020 election results Republican's currently hold 50 seats and Democrats hold 48. The State of Georgia requires that a run-off election be held if no candidate receives more than 50% of the vote. This is an unusual election year in that both Georgia Senate seats were up for re-election in the same year and neither party was able to achieve a majority in either race. Republicans need just one of the two Georgia Senate seats to retain their Senate majority. Should the Democrats win both seats in Georgia, the Senate will be configured 50/50 with Vice-President Elect Harris having the tie breaking vote as President of The Senate. While this will technically give the majority to Democrats, it will severely limit the ability to move legislation forward without bi-partisan support. Again, there are multiple scenarios that could occur from the Legislative side.

1. Republicans could retain a slim majority in the Senate. This would be sufficient to block President-Elect Biden's policy agenda, including healthcare, at least from a legislative perspective. That said, the decision of the Supreme Court could force the Senate to act. If The Court were to strike down The ACA in its entirety that would eliminate several popular components of The ACA which the legislature, the Senate in particular, may feel compelled to address, this includes "pre-existing condition" and "unlimited life time maximums".
2. If Democrats gain control of the Senate they will have little opportunity to move legislation where 60 votes are needed to break a filibuster, given the 50/50 split between Democrats and Republicans with the Vice President casting the deciding vote. Any new legislation would require 60 votes for cloture, however, Democrats could still make some enhancements or modifications using the budget reconciliation process. Under a budget reconciliation approach a bill can be passed with a simple majority, giving the Vice President the tie breaking vote if needed.

Under the budget reconciliation process Congress can use reconciliation to make changes that impact spending, revenues and the federal debt limit. In the Senate, rules require that reconciliation bills not be major policy changes with little budgetary impact. Debate on reconciliation is limited to 20 hours and all amendments, in the Senate, must be germane to the bill. All of these rules limit the types of changes that could be made to our healthcare system outside of the normal order of Senate business.



The Biden Presidency

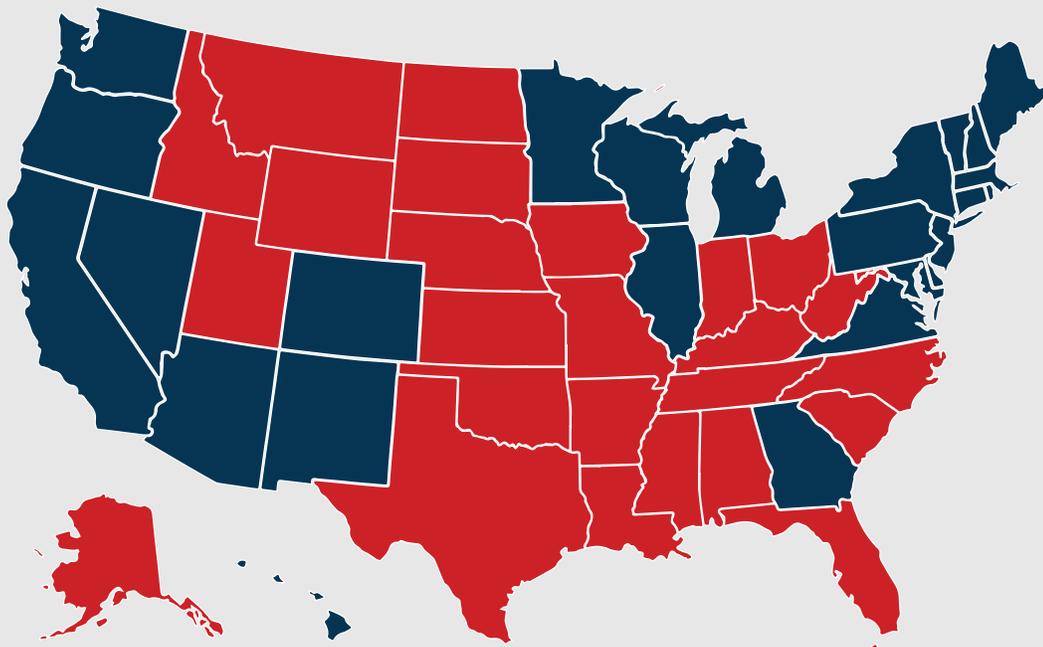
Throughout the 2020 Presidential campaign healthcare played a central role. President-Elect Biden focused on a number of policy initiatives for his administrations first term. The key policy initiatives included:

- A public option similar to Medicare
- Ending the surprise medical billing
- Lowering drug prices
- Increasing premium tax credits for insurance
- Drug importation
- Slowing consolidation in the healthcare sector

The most controversial and far reaching of Biden's proposals is of course the addition of a "public insurance" option similar to Medicare. There are a number of factors that make the progression of a public option highly unlikely over the course of the first term. The first, is of course the balance of power in the Senate. Without a broader majority in the Senate this type of sweeping legislation is not likely.

Areas where there is likely some bipartisan support include controls on surprise billing practices and lowering drug prices, the foundation for both have already begun under the current administration. Additionally, increasing tax credits to families for the purchase of medical plans is also likely to garner bipartisan support.

Other areas of potential change from a regulatory, as opposed to a legislative perspective include drug importation and consolidation in the healthcare sector could face considerable opposition from special interest groups.



Final Comments

In the short run the greatest potential for change in U.S. healthcare policy rests with the United States Supreme Court. Ultimately, the decision in *California v. Texas* will set the future priorities for both the Executive and Legislative branch. With the exception of the possibility that the court could strike down The ACA, we are likely to experience small, incremental changes in the healthcare landscape during the first two years of a Biden Presidency. The mid-term elections in 2022 will set the stage for more sweeping reform or usher in another two years of status quo, as the balance of power in both The House and The Senate may be in question.





Dan Yost has more than 20 years' experience in the insurance industry and has managed insurance services for multi-million dollar corporations. He holds a deep and expansive knowledge of the industry and is experienced in both top and bottom line growth, relationship management and overall client satisfaction. Dan brings to Vertus an understanding of industry operations from front line annuity products to the diverse needs of companies with tens of thousands of employees.

Dan is a partner and Chief Operating Officer of Vertus. As an executive of the company he is responsible for the oversight and management of company operations and directs strategic growth, sales and profitability. He ensures that all areas of the company, including sales, service, finance and technology, fulfill the corporate mission and have the tools and resources needed to meet strategic growth initiatives.

Prior to joining Vertus, Dan served as an account executive and registered representative of MetLife where he was series 6 and 63 licensed. He had overall responsibility for 23 clients with 25,000 or more employees and total premium in excess of \$750 million annually. With MetLife he also held positions as Manager-Proposals, Director of Learning & Development, Member of the National Account Planning Board, Director Client Services, and Director Sales Strategy & Productivity.

Early in his career Dan worked as a claims examiner and in annuity services. He is licensed in Life, Health, Property and casualty insurance in Illinois and numerous other states.

Dan holds a BA from Ripon College where he majored in politics and government. He serves on the Antioch Police Pension Board, the Ripon College Alumni Board, and serves as president of his Homeowners Association. Dan is also a member of the Sons of the American Revolution and was recently elected to The Village of Antioch Board of Trustees.

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