

# Obamacare And Politics

By Ed Gaelick



I am fairly certain the vast majority of you are tired of the politics surrounding the Patient Protection and Affordable Care Act or PPACA also known as the ACA or Obamacare. It's hard to speak on the topic without getting political. The reason is that it is political. I'd like to outline the history of politics leading up to passage of the ACA and conclude with the current status of King vs Burwell, the most recent challenge to the ACA, heard by the US Supreme Court on March 4th, which is expected to rule on this case in June.

Health care reform was a major topic of discussion during the 2008 Democratic presidential primaries. Once President Obama was inaugurated, he began the reform process in 2009. There were committees established, many meetings, consultation with health care experts, and drafting of bills from both the House of Representatives and Senate.

Once the Democrats adopted the individual mandate as the central component of reform, the Republicans began to ferociously oppose it, calling it unconstitutional. Lobbyists entered the scene and the wheeling and dealing began. In addition, many elected officials held town meetings; some to solicit public opinion, some to gain support, and some to protest the mandate. It was very clear this was a hugely polarizing topic.

Republicans in the Senate were in the minority but vowed to filibuster any bill they did not support. Since the Democrats had 58 votes and needed 60 votes to gain passage, Democrats negotiated 24/7 over the next few months.

Al Franken (just sworn into office after a hotly contested Senate battle in Minnesota) and Arlen Specter of Pennsylvania, who changed parties from Republican to Democrat, gave them the 60 votes; but the passing of Ted Kennedy of Massachusetts brought the Democrats back under 60.

Attention was focused on Joe Lieberman, an independent from Connecticut who refused to support the Senate bill unless the "public option" was taken out. Once that was promised, Lieberman agreed to vote with the

Democrats. Senate Majority Leader, Harry Reid, then moved on to address Senator Ben Nelson's concerns to win filibuster proof support.

After a 13 hour negotiation, Nelson's support was won after promising modification on abortion language within the bill and an offer to provide Nebraska with higher Medicaid reimbursement (referred to as the "Cornhusker Kickback" which was subsequently repealed). With 60 votes, the Senate voted to end debate.

Kennedy's Senate seat was won by Scott Brown, a Republican, so Democrats were back to 59 votes, assuming Brown voted with his party, meaning Democrats could no longer break a filibuster in the Senate.

The only way Democrats would be able to move this forward in the House of Representatives, was for the House to abandon its own health reform bill and pass the Senate's bill with no changes. However, the House Democrats were not happy with the content of the Senate bill and had expected to be able to negotiate changes before passing a final bill.

Any bill that came from Conference that differed from the Senate bill would need to be passed in the Senate, over another Republican filibuster, so, the House Democrats really got creative and agreed to pass the Senate bill "as is" on condition that it be amended by a subsequent "budget change" bill, which could be passed with a simple majority via the "Reconciliation Process".

And that is what happened. A bill that is over 2,000 pages with 20,000 pages of regulations to enforce the law, which affects so much of our economy, was passed by a simple majority because of politics. Hence we have Obamacare.

Not one Republican has voted in favor of it and the Republican Party has voted to repeal the ACA 40 times. The US Supreme Court ruled on the constitutionality of the "mandate" as a tax penalty (5-4) keeping the law alive but ruled against parts of the law pertaining to the constitutionality of

withholding Medicaid reimbursements to states unwilling to expand Medicaid.

Since then, many provisions of the ACA law have been changed. From an insurance advisor perspective, it's challenging to keep up with the constant changes.

As Democrats continue to fight back criticism and legal challenges, Republicans push forward with efforts to derail or repeal Obamacare.

Four families in Virginia (the plaintiffs known as "King") filed a lawsuit that made it to the US Supreme Court arguing that Congress intentionally restricted payment of subsidies to state exchanges to induce states into setting up their own exchanges so their citizens could receive subsidies.

The ACA legislation includes very clear language that subsidies are available to those "enrolled in through an Exchange established by the State" (restated in nine different locations of the law). The government (the defendant known as "Burwell", or Sylvia Burwell, the secretary of the Department of Health and Human Services) argued that the law intends for federal exchanges to be treated identically to state exchanges (and therefore qualifying individuals are entitled to subsidies whether or not their state has set up an exchange) or if the law were ambiguous, that the regulation at issue was a permissible interpretation of the law. What happens if the US Supreme Court rules in favor of King is anyone's guess but it certainly has those taking advantage of the subsidies from "Federally established" exchanges sweating this one out.

*In 1985, Ed Gaelick established PSI Consultants, LLC where he specializes in company sponsored employee benefits, business planning and personal insurance. Throughout his career, Ed has received many of the highest professional honors awarded in the insurance industry. His dedication, integrity and fortitude have earned him great respect from his clients, staff and peers.*

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