

HEALTHCARE IN ILLINOIS & YOUR SMALL BUSINESS

December 3, 2020



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OBAMACARE RETURNS TO THE SUPREME COURT

By

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Executive Director

NFIB Small Business Legal Center

December 3, 2020



THE ORIGINAL - *NFIB V. SEBELIUS*

(Slip Opinion)

OCTOBER TERM, 2011

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Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

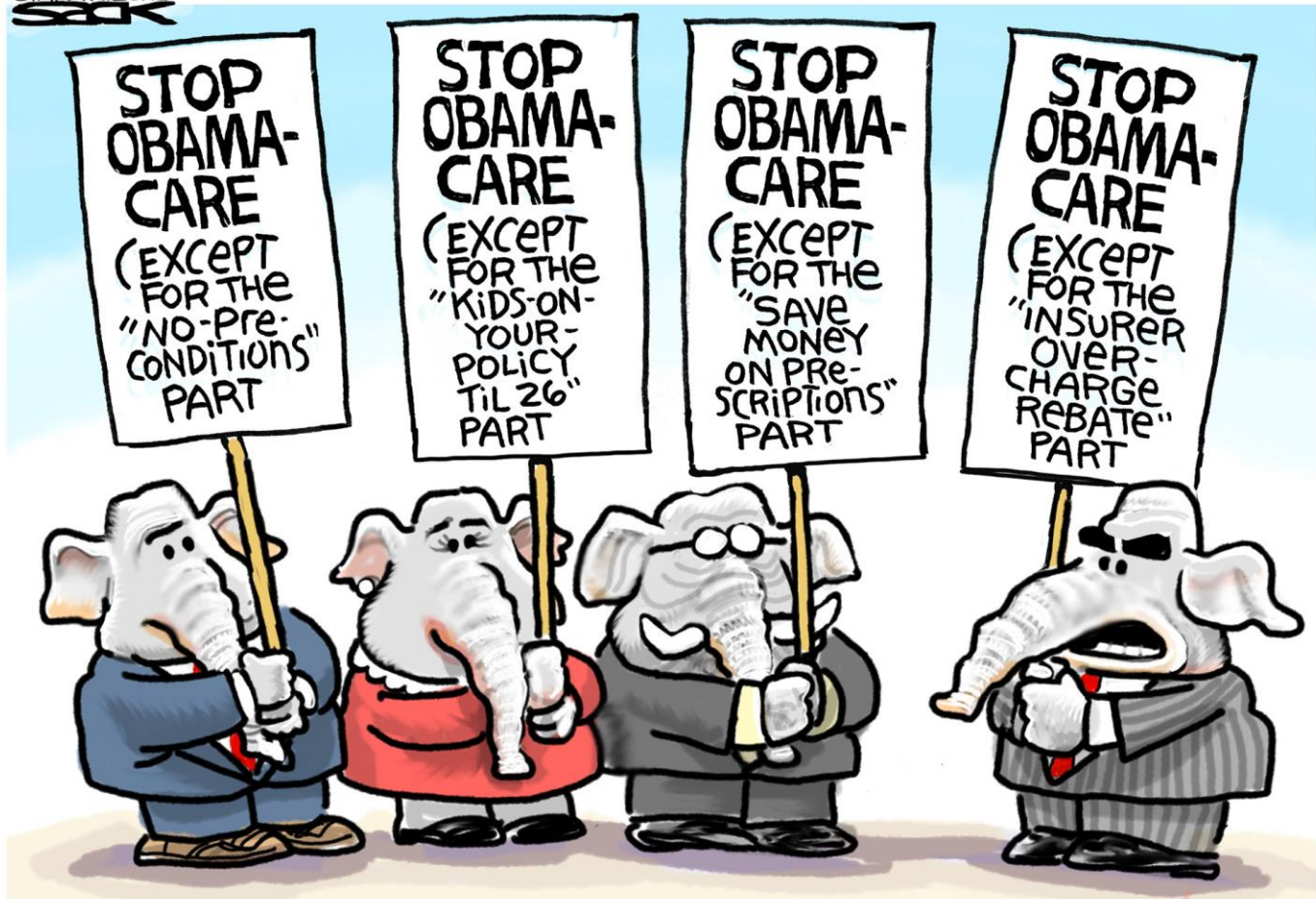
NATIONAL FEDERATION OF INDEPENDENT
BUSINESS ET AL. v. SEBELIUS, SECRETARY OF
HEALTH AND HUMAN SERVICES, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

Supreme Court finds that Congress *can* require
Americans to buy health insurance under the
Commerce Clause....

But it *can* require them to buy it using their taxing
power.

***Court found “individual mandate” penalty was a tax
and constitutional.***



SO WE'RE AGREED—REPEAL AND REPLACE OBAMA CARE! (EXCEPT FOR THE "REPLACE" PART)...

REPEAL AND REPLACE

Congress tries ... and fails .. to repeal Affordable Care Act (ACA) 70 times.

December 2017 --Congress passes and President Trump signs the Tax Cuts and Jobs Act (TCJA).

TCJA contains a provision that changes to \$0 the penalty for not carrying health insurance.

Americans still must report on their tax form whether or not they have health insurance.

DO OVER? -- *CALIFORNIA V. TEXAS*

Questions before the Supreme Court:

- 1) Do the plaintiffs and states have standing to sue?
- 2) Because the penalty for not carrying health insurance is now \$0, is the individual mandate unconstitutional?
- 3) If the individual mandate is unconstitutional, does that mean all of Obamacare must fall or can the rest of the law survive without the mandate?

In the Supreme Court of the United States

THE STATES OF CALIFORNIA, COLORADO, CONNECTICUT,
DELAWARE, HAWAII, ILLINOIS, IOWA, MASSACHUSETTS,
MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW YORK,
NORTH CAROLINA, OREGON, RHODE ISLAND, VERMONT,
VIRGINIA, AND WASHINGTON, ANDY BESHEAR, THE
GOVERNOR OF KENTUCKY, AND THE DISTRICT OF COLUMBIA,
Petitioners,

v.

THE STATE OF TEXAS, *et al.,*
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

XAVIER BECERRA
Attorney General of California
KATHLEEN BOERGENS
*Supervising Deputy Attorney
General*
NIMROD PITSKER ELIAS
NELI N. PALMA
Deputy Attorneys General

MICHAEL J. MONGAN
Solicitor General
SAMUEL P. SIEGEL*
HELEN H. HONG
Deputy Solicitors General
AMARI L. HAMMONDS
*Associate Deputy Solicitor
General*

POSSIBLE OUTCOMES

- 1) Court finds the states have standing to challenge ACA, the individual mandate unconstitutional, and individual mandate *essential* to operation of ACA, so the whole law must fall.
- 2) Court finds the states have standing to challenge the ACA, the individual mandate is unconstitutional, and individual mandate *not essential* to operation of ACA, so rest of law stands.
- 3) Court finds the states have standing to challenge ACA and the individual mandate is constitutional.
- 4) Court finds the states do not have standing to challenge the ACA.



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CELEBRATING
20Years

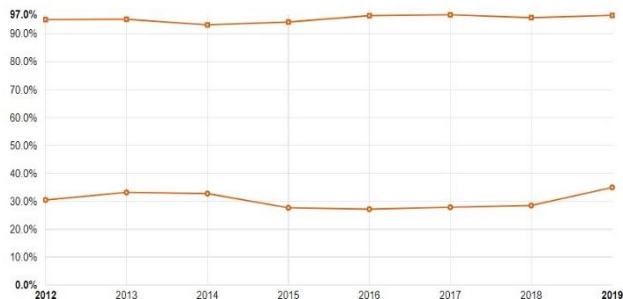
Small Business Health Insurance: State Legislative Landscape in 2021

*NFIB Webinar – Healthcare in
Illinois & Your Small Business*

December 3, 2020

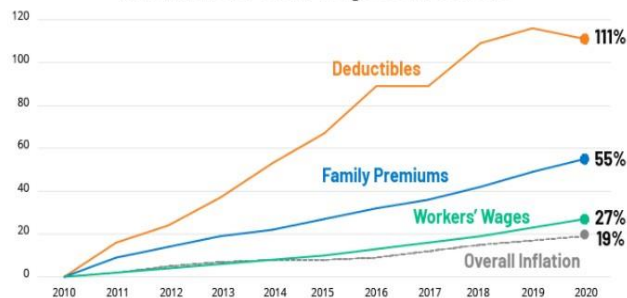


Illinois Employer Coverage Landscape



• Firms with Fewer than 50 Employees
 ■ Firms with 50 Employees or More
 ■ Illinois

Employer Premiums and Deductibles Have Risen Much Faster than Wages Since 2010



Graphs courtesy of Kaiser Family Foundation (kff.org)

Where Does Your Health Care Dollar Go?

Your premium—how much you pay for your health insurance coverage each month—helps cover the costs of the medications and care you receive and improves health care affordability, access and quality for everyone. [Here is where your health care dollar really goes.](#)



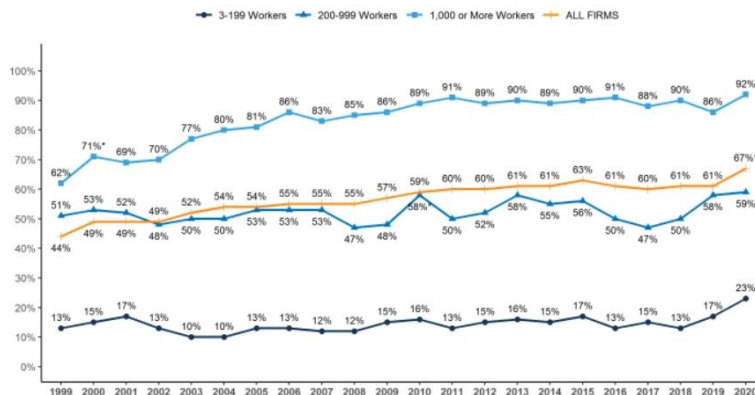
This data represents how commercial health plans spend your premiums. This data includes employer-provided coverage as well as coverage you purchase on your own. Data reflects averages for the 2016-18 benefit years. Percentages do not add up to 100% due to rounding.

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Illinois Legislative Environment

- Pro-ACA state—
 - Medicaid Expansion
 - State Pre-Ex Protections
 - Other ACA coverage requirements codified
- IL Health Insurance Marketplace – Partnership State
- Expanding number of health insurance coverage mandates

Percentage of Covered Workers Enrolled in a Self-Funded Plan, by Firm Size, 1999-2020



* Estimate is statistically different from estimate for the previous year shown ($p < .05$).

NOTE: Includes covered workers enrolled in self-funded plans in which the firm's liability is limited through stoploss coverage. Overall, 67% of covered workers are in a self-funded plan in 2020. Due to a change in the survey questionnaire, funding status was not asked of firms with conventional plans in 2006; therefore, conventional plan funding status is not included in the averages in this figure for 2006. See the glossary at the end of Section 10 for definitions of self-funded, fully-insured, and level-funded premium plans.

SOURCE: KFF Employer Health Benefits Survey, 2018-2020; Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 1999-2017

Looking Ahead

- New Biden Administration and post-Supreme Court Decision – Potential Impact on the State
- COVID Impact – Permanent Insurance Changes and Requirements?
 - New Benefit Mandates (e.g., Telehealth, Vaccination – provider access/distribution)
- Benefit Changes – Impact on Premiums
 - Cost-Sharing Restrictions
- Addressing Gaps in Coverage – State Health Reform Efforts
 - Affordability Study (Medicaid Buy-In)
 - Who pays?

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