

VIEWPOINT

The Affordable Care Act Resurrected Curtailing the Ranks of the Uninsured

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On June 17, 2021, in *California v Texas*, a majority of the US Supreme Court rejected the latest challenge to the constitutionality of the Affordable Care Act (ACA) on the grounds that the plaintiffs lacked standing to bring their claims.¹ This ruling marks the third time that the US Supreme Court rejected a challenge to the constitutionality of the ACA.¹ The new lease on life for the ACA creates a window of opportunity for curtailing the ranks of the uninsured. Living up to this imperative will require the executive and legislative branches of the federal government to make the most of the policy options available to them. This Viewpoint reviews the national coverage gap and its potential redress by enhancing federal outreach to the uninsured, rendering permanent the health insurance benefits of the American Rescue Plan Act (ARPA), and establishing a federal health insurance program for low-income adults in states that did not expand their Medicaid programs.

The 2019 American Community Survey of the US Census Bureau revealed that an estimated 29.6 million individuals lacked health insurance.² Comparable estimates were reported by the National Health Interview Survey of the US Centers for Disease Control and Prevention, which estimated that for January through June 2020, 11.1% of US residents (an estimated 30 million younger than 65 years) were uninsured.³ Both surveys noted that the proportion of individuals

ters and of in-person assistance on HealthCare.gov proved equally limited.⁵

One course of action toward improving the national state of uninsurance is to markedly bolster federal marketing, outreach, and enrollment assistance. Continued sustained efforts along these lines remain all but indispensable if the national state of uninsurance is to be rendered a thing of the past. Examples of such mobilization drives by the executive branch abound. The latest such effort unfolded in the wake of an executive order on strengthening Medicaid and the ACA issued by President Joe Biden on January 28, 2021.⁶ In observance of the president's directive, the US Department of Health and Human Services (HHS) established a special enrollment period (February 15-May 15, 2021) with the federally facilitated marketplaces (HealthCare.gov). A total of \$50 million was committed to this effort. Subsequent extension of the special enrollment period through August 15, 2021, sought to introduce consumers to the savings afforded by the ARPA. Looking ahead, the Centers for Medicare & Medicaid Services has recently proposed to extend the 2022 annual open enrollment period by 30 days. Enhanced assistance by government navigators was to expand and improve counseling to consumers.

A parallel strategy for reducing the ranks of the uninsured is to render permanent the temporary marketplace insurance benefits instituted by the ARPA. As noted by President Biden, it is his goal to render permanent the temporary premium subsidies, deductibles, and tax credits enabled by the ARPA as part of the American Families Plan.⁷ A

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without health insurance in states that did not expand their Medicaid program (14 states) was nearly twice that of those in states that did expand Medicaid (17.1% vs 9.1%).⁴ Low-income Black, Latino, and Native American adults were disproportionately affected, with self-reported rates of 12%, 22%, and 28%, respectively.⁴ The most common reason given by eligible adults for their lack of health insurance was that the requisite coverage was unaffordable, reported by 73.7%.⁴ Frequent reference (reported by 18.4% of respondents) was also made to the view that signing up with a health insurance plan was difficult and confusing.⁴ Among the survey respondents, 25.3% deemed themselves ineligible for health insurance coverage.⁴ A similar proportion (21.3%) concluded that they neither needed nor wanted health insurance.⁴ A recent survey by the Urban Institute of 9032 uninsured adults revealed limited familiarity with the health insurance marketplaces and the subsidies thereof.⁵ Awareness of the existence of state-based exchange call cen-

component of the president's budget for fiscal year (FY) 2022, a \$200 billion investment in ARPA benefits, is to "enable millions of uninsured people to gain coverage."⁸ It is all but certain that the extension of the ARPA benefits will be embodied in the yet-to-be enacted FY2022 Omnibus Appropriations Bill, the framework agreement of which was passed by the Senate on August 10, 2021.⁹ The final financial parameters of the House version of the FY2022 Omnibus Appropriations Bill remain to be determined. All indications are that the 2022 spending package will rely on the budget reconciliation process with an eye toward bypassing the prospect of a Senate filibuster. Alternative legislative vehicles for rendering permanent the ARPA health insurance benefits could be afforded by the Improving the Health Insurance Affordability Act of 2021 (S 499, 117th Cong, 1st Sess [2021]) or the Health Care Affordability Act of 2021 (HR 369, 117th Cong [2021]), which are sponsored by Sen Jeanne Shaheen (D, New Hampshire) and Rep Lauren Underwood (D, Illinois), respectively.

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Yet another critical element in the effort to drive down the national rate of uninsurance is the introduction of health exchange options to states that have not as yet expanded their Medicaid programs. Doing so will all but eliminate the coverage gap by providing health care insurance to an estimated 2 million to 5 million presently uninsured individuals. Absent such intervention, the Medicaid-eligible individuals in question are likely to remain uninsured for years to come. The notion of "ACA expansion extension and filling the Medicaid Coverage Gap" is presently slated for passage via the yet-to-be enacted FY2022 Omnibus Appropriations Bill.⁹ Consideration could also be given to the Medicaid Saves Lives Act, the Senate (S 2315, 117th Cong, 1st Sess [2021]) and House (HR 4595, 117th Cong [2021]) versions of which were sponsored by Sen Raphael Warnock (D, Georgia) and Rep Carolyn Bourdeaux (D, Georgia), respectively. Both bills call on the secretary of the Department of Health and Human Services to "establish a program to provide health care coverage to low-income adults in states that have not expanded Medicaid." This plan is advantaged by the reality that the federal government already operates successful marketplaces in all nonexpansion states.

The prospect of curtailing the ranks of the uninsured hinges on the continued viability of the ACA. While the decision in *California v Texas* proved essential in ensuring the future of the ACA, it did not signify the end to future challenges to the law.¹⁰ One such challenge is already being adjudicated by Judge Reed C. O'Connor in the

US District Court for the Northern District of Texas, the same trial court from which *California v Texas* sprung. The case in question, *Kelley v Becerra*, challenges the constitutionality of the zero cost-sharing coverage of preventive services (eg, vaccines) mandated by Section 2713 of the ACA. Two challenges are of particular note. One challenge pertains to the so-called nondelegation doctrine according to which Congress was vague in delegating to others the determination of what preventive services fall within Section 2713.

The more worrisome challenge is the second one, which touches on the way the individuals making the decision are appointed, that is, officers of the Health Resources and Services Administration, the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, and the US Preventive Services Task Force of the Agency for Healthcare Research and Quality. As the US Supreme Court understood it, the appointments clause of the US Constitution requires that "principal" but not "inferior" officers be nominated by the president with the advice and consent of the Senate. The argument made by the plaintiffs is that the "principal" officers were not correctly appointed and that their exercise of power is problematic. While *Kelley v Becerra*, unlike its 3 predecessors, does not seek to completely upend the ACA, its effect on coverage of key preventive services could be significant. Congress could, in theory, step in to specify directly what should be covered in a zero-cost way. However, given the current political gridlock, these issues might not be resolved in the very near future.

ARTICLE INFORMATION

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REFERENCES

1. Bagley N. *California v Texas*: ending the campaign to undo the ACA in the courts. *N Engl J Med*. 2021; 385(8):673-675. doi:10.1056/NEJMp2110516
2. US Census Bureau. Health insurance coverage in the United States: 2019: current population reports. Published September 2020. Accessed September 13, 2021. <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-271.pdf>
3. National Center for Health Statistics. Health insurance coverage: early release of estimates from the National Health Interview Survey, 2019. Published September 2020. Accessed September 13, 2021. <https://www.cdc.gov/nchs/data/nhis/earlyrelease/insur202009-508.pdf>
4. Finegold K, Conmy A, Chu RC, Bosworth A, Sommers BD. Trends in the US uninsured population, 2010-2020. Office of the Assistant Secretary for Planning and Evaluation. Published February 11, 2021. Accessed September 13, 2021. <https://aspe.hhs.gov/reports/trends-us-uninsured-population-2010-2020>
5. Haley JM, Wengle E. Many uninsured adults have not tried to enroll in Medicaid or marketplace coverage. The Urban Institute. Published January 28, 2021. Accessed September 13, 2021. <https://www.urban.org/research/publication/many-uninsured-adults-have-not-tried-enroll-medicaid-or-marketplace-coverage>
6. The White House. Executive order on strengthening Medicaid and the Affordable Care Act. Published January 28, 2021. Accessed September 13, 2021. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/executive-order-on-strengthening-medicaid-and-the-affordable-care-act/>
7. The White House. Fact sheet: the American Families Plan. Published April 28, 2021. Accessed September 13, 2021. <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/28/fact-sheet-the-american-families-plan/>
8. The White House. Budget of the US government: fiscal year 2022. Published May 2021. Accessed September 13, 2021. https://www.whitehouse.gov/wp-content/uploads/2021/05/budget_fy22.pdf
9. Senate Democrats. FY2022 budget resolution agreement framework. Published August 9, 2021. Accessed September 13, 2021. <https://www.democrats.senate.gov/imo/media/doc/MEMORANDUM%20for%20Democratic%20Senators%20-%20FY2022%20Budget%20Resolution.pdf>
10. Bagley N. The next major challenge to the Affordable Care Act. *The Atlantic*. Published June 18, 2021. Accessed September 13, 2021. <https://www.theatlantic.com/ideas/archive/2021/06/next-major-challenge-affordable-care-act/619159/>