

## LEGISLATIVE ANALYSIS: BETTER CARE RECONCILIATION ACT OF 2017

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PECO 210: U.S. Political Systems  
September 11, 2017

## *Introduction*

The Better Care Reconciliation Act of 2017 (BCRA) aimed to, in its essence, roll back just about everything the Affordable Care Act has done. After the passing of the Affordable Care Act (ACA), public opinion and votes from independents favored Republicans and their effort to repeal and replace the law. The bumpy rollout of healthcare.gov, the partisan passing of the bill, and Independent voters essentially abandoning Democrats set in motion a perfect storm for the election of Donald Trump, a Republican takeover in Congress, and an effort to finally repeal and replace the Affordable Care Act. The BCRA looked to repeal many aspects of the ACA, including the individual mandate, the employer mandate, and included in the text rollbacks to Medicaid and funding cuts for abortion services. To understand the BCRA better, though, one needs to look at the political and historical context.

### *Political Context - the ACA and the Republican Takeover in Congress*

To understand the legislative history of the BCRA, it's crucial to go back to 2008 and the election of Barack Obama. Throughout his campaign, Obama promised a comprehensive healthcare plan with an employer mandate as well as an expanded Medicaid program, insurance markets, and flat premiums regardless of healthcare status.<sup>1</sup> The plan he proposed on the campaign trail ended up being the Affordable Care Act, which was first introduced as a series of bills in the House of Representatives in July of 2009, just 6 months into his presidency.<sup>2</sup> The

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<sup>1</sup> “The 2008 Presidential Candidates' Health Reform Proposals: Choices for America,” *The Commonwealth Fund*, Accessed August 29, 2017, <http://www.commonwealthfund.org/publications/fund-reports/2008/oct/the-2008-presidential-candidates-health-reform-proposals--choices-for-america>

<sup>2</sup> “Patient Protection and Affordable Care Act,” *The Wikipedia Foundation*, Accessed August 29, 2017, [https://en.wikipedia.org/wiki/Patient\\_Protection\\_and\\_Affordable\\_Care\\_Act#cite\\_note-CBO\\_Score1-408](https://en.wikipedia.org/wiki/Patient_Protection_and_Affordable_Care_Act#cite_note-CBO_Score1-408)

debate surrounding the bills were fierce, with Republicans questioning the constitutionality of the bills and the Tea Party rising out of negative sentiment for the bills. By November of 2009, the Affordable Health Care for America Act passed the House by a narrow margin of five votes.<sup>3</sup> After a series of debates, amendments, and last minute changes, the bill passed the Senate by a 60-39 vote in December 24, 2009.<sup>4</sup> The bill was then passed again by the House on March 21, 2010, with very little bipartisan support. All 178 Republicans and 34 Democrats voted against the bill, and the next day Republican lawmakers introduced a measure to repeal it. President Obama signed the ACA into law on March 23, 2010.<sup>5</sup>

This passing has lived in the minds of Republican congressmen and women for seven years. GOP Congressional hopefuls have campaigned on a platform of “Repeal and Replace” since the bill’s passing and have pinpointed holes and leaks in the system to document how bad every day Americans are suffering.<sup>6</sup>

The 2010 election proved to be as tough on Democrats as critics thought it might be, with the Democrats losing a majority in the House and losing the filibuster proof majority Senate. This change was at least partially because of the adamant campaigning against the ACA by Republicans. As the Republicans became more unified in their message, the Democrats started to lose more and more seats. Then in 2014, Democrats lost nine seats in the Senate, giving full

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<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Robert Pear, “Marco Rubio Quietly Undermines Affordable Care Act” *The New York Times*, Published December 9, 2015, <https://www.nytimes.com/2015/12/10/us/politics/marco-rubio-obamacare-affordable-care-act.html>

control of the House and Senate to Republicans. this was partially blamed on the bumpy roll-out of the ACA and [healthcare.gov](http://healthcare.gov).<sup>7</sup>

The Republican opposition to the ACA varies by the Congressperson, but always centers around how Americans are struggling. There's a common misconception that the insurance markets are imploding and that insurance companies are pulling out of the exchanges because the cost of covering sick and healthy people at the same price is too high, and that just isn't true. In fact, the Congressional Budget Office (CBO), a nonpartisan federal agency that conducts analysis on legislation, estimated in January 2017 that it expected the enrollment in the private insurance exchanges to grow by 3 million in a decade, and another study by the CBO put out in March of 2017 depicted the insurance markets as stable, and not in a "death spiral".<sup>8</sup>

Regardless of the facts, campaigning against something and being able to convince people that it's an insufferable and egregious piece of legislation seemed to do the trick for Republicans, winning back the House and the Senate in 2014 and taking the White House with the election of Donald J. Trump in 2016.

#### *How the BCRA Changes the ACA*

One major thing the BCRA aimed to do was roll back any and all taxes associated with the Affordable Care Act (ACA) except for the so called "Cadillac Tax" where any health insurance plan over \$10,800 for an individual or \$29,500 for a family could be taxed at 40%

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<sup>7</sup> John Judis, "Here's Why the Democrats Got Crushed—and Why 2016 Won't Be a Cakewalk," *The New Republic*, Published November 5, 2014, <https://newrepublic.com/article/120138/2014-election-results-heres-why-democrats-lost-senate-gop>

<sup>8</sup> "Patient Protection and Affordable Care Act," *The Wikipedia Foundation*, Accessed August 29, 2017, [https://en.wikipedia.org/wiki/Patient\\_Protection\\_and\\_Affordable\\_Care\\_Act#cite\\_note-CBO\\_Score1-408](https://en.wikipedia.org/wiki/Patient_Protection_and_Affordable_Care_Act#cite_note-CBO_Score1-408)

starting in 2020, as opposed to not being taxed at all which is the system currently in place.<sup>9</sup> The biggest taxes the BCRA took aim at were the employer and individual mandate tax. The individual mandate of the ACA was intended to strong arm people into obtaining health insurance, whether that be through their employer or on the insurance market, and if a person didn't obtain insurance by a certain date, their income tax would rise as a result.<sup>10</sup> The BCRA totally repealed this, with Paul Ryan saying in June of this year:

“What they're basically saying at the Congressional Budget Office is, if you're not going to force people to buy Obamacare, if you're not going to force people to buy something they don't want, then they won't buy it. So it's not that people are getting pushed off a plan. It's that people will choose not to buy something they don't like or want.”<sup>11</sup>

The employer mandate was set in place to make sure that full-time employees were provided health insurance through their employers, and it required places that had over 50 full-time employees to ensure 95% of their full-time workforce and all peoples under the age of 26.<sup>12</sup> The BCRA repealed this as well with the excuse that the mandate was crippling small businesses.

Another thing the BCRA attempted to do was broaden what is called an “Age Band”. Under the current ACA, insurance providers are prohibited from making premiums for older

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<sup>9</sup> “What is the Cadillac tax?” *Tax Policy Institute*, Accessed August 29, 2017, [taxpolicycenter.org/briefing-book/what-cadillac-tax](http://www.taxpolicycenter.org/briefing-book/what-cadillac-tax)

<sup>10</sup> “Individual shared responsibility provision,” *The Wikipedia Foundation*, Accessed August 29, 2017, [https://en.wikipedia.org/wiki/Individual\\_shared\\_responsibility\\_provision](https://en.wikipedia.org/wiki/Individual_shared_responsibility_provision)

<sup>11</sup> Jon Greenburg, “Paul Ryan wrong that most of the 22 million uninsured would be uninsured by choice,” *Politifact*, Published June 28, 2017 <http://www.politifact.com/truth-o-meter/statements/2017/jun/28/paul-ryan/paul-ryan-wrong-most-22-million-uninsured-would-be/>

<sup>12</sup> “ObamaCare Employer Mandate” *Obamacare Facts*, Accessed August 29, 2017, <https://obamacarefacts.com/obamacare-employer-mandate/>

adults any more than three times the premiums for younger adults.<sup>13</sup> Under the BCRA, this would be raised to five times. For example, if a person in the 18-24 age bracket was being charged \$5,000 a year for their health insurance, a person in the 64+ age bracket could be charged \$25,000 a year for the same insurance plan.

The BCRA also changed an ACA regulation on tax credits for the poor. Under the ACA, anyone with an income within 100-400% of the Federal Poverty Line (FPL) would obtain tax credits for insurance on the marketplace if they were not insured by an employer and also not eligible for Medicaid.<sup>14</sup> The BCRA capped these tax credits at 350% FPL, meaning that people below the FPL would be able to obtain tax credits, but that people from 350-400% FPL would see their premiums go up.<sup>15</sup> With this and a few other measures modifying the ACA and the tax code, the BCRA essentially makes premiums higher for older people. Under current ACA law individuals with an income above 150% FPL pay the same percentage of their income tax to a benchmark healthcare plan. However, the BCRA attempted to raise premiums for individuals making above 150% FPL as they got older. The Kaiser Family Foundation gives this example, “Under the BCRA, starting in 2020, a 24-year-old would contribute about 6.4% of income, while a 60-year-old would have to contribute 16.2% of income.”<sup>16</sup>

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<sup>13</sup> Tricia Neuman, Karen Pollitz, and Larry Levitt. “How the Senate Better Care Reconciliation Act (BCRA) Could Affect Coverage and Premiums for Older Adults,” *Kaiser Family Foundation*, Published Jun 29, 2017, <http://www.kff.org/health-reform/issue-brief/how-the-senate-better-care-reconciliation-act-bcra-could-affect-coverage-and-premiums-for-older-adults/>

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

A major thing the BCRA looked to change was Medicaid, mostly rolling back the Medicaid expansion put in place under the ACA. The BCRA would limit federal funding to states that expanded Medicaid under the ACA, driving states to roll back on their Medicaid coverage as well as incentivizing them to keep their Medicaid enrollee list low. There was also a new cap proposed on the overall expansion of Medicaid over time on a per capita basis, further rolling back the Medicaid expansion.<sup>17</sup>

A unintended consequence of all of these things is a government healthcare system that goes untouched within the bill: Medicare. If individuals under the age of 65 go uninsured or lose insurance thanks to the projected premium hikes and the rollback of the Medicaid expansion, it is believed that these individuals could just wait until they get to be 65, enroll in the Medicare program, and use the benefits associated with the Medicare program to greater extent than if they had been previously insured.<sup>18</sup> This could cause Medicare spending to go up, which would result in higher premiums for adults on Medicare. Older adults on Medicare could also be affected by the proposed cuts to Medicaid, because 11 million people enrolled in Medicare also receive supplemental coverage under Medicaid to offset some of the premium costs associated with Medicare and expenses not covered under Medicare, such as nursing homes.<sup>19</sup> The deep cuts to Medicaid would detach these adults from the service, leaving their premiums and out of pocket costs higher than they would pay under the ACA.<sup>20</sup>

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<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

### *The BCRA in Congress and Trump*

As far back as 2015, Donald Trump had campaigned on repealing and replacing the ACA with a plan that would have “insurance for everybody”, “no cuts to Social Security, Medicare & Medicaid”, leaving no one uninsured, and leaving “nobody...worse off financially”.<sup>21</sup> This seemingly impossible and incredibly vague healthcare plan would never quite come to fruition though, because on March 20, 2017, exactly 3 months into the Presidency of Donald Trump and almost 7 years to the date that Barack Obama signed the ACA into law, House Republicans introduced the American Health Care Act of 2017 (AHCA), a bill that aimed to repeal portions of the ACA without plugging the holes it was creating, using the guides of the Internal Revenue Code to only repeal sections of the ACA within the scope of the federal budget as to not create a whole new healthcare system.<sup>22</sup> This was aimed to be the “Repeal” of “Repeal and Replace”. The CBO estimated the plan would increase the number of uninsured people to 23 million people but also decrease the federal budget deficit by \$119 billion (about 1%) over the same period of time.<sup>23</sup> It would do both of these things mainly by rolling back the Medicaid expansion implemented under the ACA and cutting Medicaid coverage for lower income Americans. There was also a massive tax cut to the wealthy, one of many commonalities between the AHCA and the BCRA. The bill would not only repeal a 3.8% tax on investment income on people earning more than \$200,000 a year which is used to help fund the ACA, but also push back the “Cadillac

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<sup>21</sup> Henry Jackson, “6 promises Trump has made about health care,” *Politico*, Published March 13, 2017, <http://www.politico.com/story/2017/03/trump-obamacare-promises-236021>

<sup>22</sup> “American Health Care Act of 2017,” *The Wikipedia Foundation*, Accessed August 29, 2017, [https://en.wikipedia.org/wiki/American\\_Health\\_Care\\_Act\\_of\\_2017](https://en.wikipedia.org/wiki/American_Health_Care_Act_of_2017)

<sup>23</sup> “H.R. 1628, American Health Care Act of 2017,” *Congressional Budget Office*, Published May 24, 2017, <https://www.cbo.gov/publication/52752>

Tax” implementation date to 2025.<sup>24</sup> The House bill passed narrowly by a 217-213 vote, effectively sending the bill to the Senate for deliberation.<sup>25</sup> President Trump held a gathering in the Rose Garden with House Republicans to celebrate the passing of the bill on May 4, saying “Yes, deductibles will be coming down, but very importantly, it's a great plan, and ultimately that's what it's all about.”<sup>26</sup>

The Senate version of the bill was crafted very much in secret, causing bipartisan concerns of transparency in the drafting of the bill. On June 22, 2017, a working draft of the Senate healthcare bill was released.<sup>27</sup> The Better Care Reconciliation Act was different from the AHCA in a few key ways. Medicaid would be rolled back more gradually in the BCRA, and the individual mandate in the ACA would be replaced differently in the AHCA and BCRA.<sup>28</sup> In the AHCA, if a person went 63 days without coverage, insurance companies could add a 30% surcharge to their premiums when they enrolled. In the BCRA, if a person went 63 days without coverage they would have to wait up to six months to obtain a new plan.<sup>29</sup>

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<sup>24</sup> Scott Horsley, “GOP Health Care Bill Would Cut About \$765 Billion In Taxes Over 10 Years,” *National Public Radio*, Published May 4, 2017, <http://www.npr.org/2017/05/04/526923181/gop-health-care-bill-would-cut-about-765-billion-in-taxes-over-10-years>

<sup>25</sup> “American Health Care Act of 2017,” *The Wikipedia Foundation*, Accessed August 29, 2017, [https://en.wikipedia.org/wiki/American\\_Health\\_Care\\_Act\\_of\\_2017](https://en.wikipedia.org/wiki/American_Health_Care_Act_of_2017)

<sup>26</sup> Osita Nwanevu, “Trump on the AHCA Passing the House: “Hey! I’m President! Can You Believe It?”, *Slate*, Published May 4, 2017, [http://www.slate.com/blogs/the\\_slate/2017/05/04/trump\\_on\\_the\\_ahca\\_passing\\_the\\_house\\_he\\_y\\_i\\_m\\_president\\_can\\_you\\_believe\\_it.html](http://www.slate.com/blogs/the_slate/2017/05/04/trump_on_the_ahca_passing_the_house_he_y_i_m_president_can_you_believe_it.html)

<sup>27</sup> “American Health Care Act of 2017,” *The Wikipedia Foundation*, Accessed August 29, 2017, [https://en.wikipedia.org/wiki/American\\_Health\\_Care\\_Act\\_of\\_2017](https://en.wikipedia.org/wiki/American_Health_Care_Act_of_2017)

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

The CBO score was released for the bill four days later on June 26, 2017, and it stated that while the BCRA would decrease the budget deficit by \$473 billion over 10 years (roughly 5%) it would leave 17 million people uninsured by 2018 and 27 million by 2020.<sup>30</sup> It would also increase individual market premiums by 25% in 2018 and 50% in 2020, and roughly half the U.S. population wouldn't be able to obtain insurance because there would be no providers participating in the marketplaces in their areas.<sup>31</sup>

On July 14, 2017, Senator John McCain (R-NV) had surgery to remove a blood clot above his eye, and it was found out later that he had developed brain cancer. Mitch McConnell announced that he would delay the vote on the "motion to proceed", essentially starting debate and work on the bill, until McCain returned.<sup>32</sup> On July 17, Senator Mike Lee (R-UT) and Senator Jerry Moran (R-KS) joined Senator Rand Paul (R-KY) and Senator Susan Collins (R-ME) in announcing that they would vote no on the bill, effectively killing it as Republicans did not have the votes to pass a motion to proceed let alone a full bill.<sup>33</sup> Senators Lee and Moran released similar statements as to why they would vote no on the bill, with Lee's echoing his prior statements on the legislation, which read:

"No, the Senate healthcare bill released yesterday does not repeal Obamacare. It doesn't even significantly reform American healthcare.

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<sup>30</sup> "H.R. 1628, Better Care Reconciliation Act of 2017," *Congressional Budget Office*, Published June 26, 2017, <https://www.cbo.gov/publication/52849>

<sup>31</sup> "American Health Care Act of 2017," *The Wikipedia Foundation*, Accessed August 29, 2017, [https://en.wikipedia.org/wiki/American\\_Health\\_Care\\_Act\\_of\\_2017](https://en.wikipedia.org/wiki/American_Health_Care_Act_of_2017)

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

It cuts taxes. It bails out insurance companies. It props up Obamacare through the next election. It lays out plans to slow Medicaid spending beginning in 2025, but that probably won't happen. And it leaves in place the ham-fisted federal regulations that have driven up family health insurance premiums by 140 percent since Obamacare was implemented.

As the bill is currently drafted, I won't vote for it.”<sup>34</sup>

On July 25, 2017, Senate Republicans released a heavily stripped down version of the bill, only including provisions all Senate Republicans agreed on. It was drafted solely to pass the motion to proceed, and it did with a 51-50 vote. John McCain returned to the Senate chambers just in time to cast his vote.<sup>35</sup>

This triggered what is called a “vote-o-rama” in the Senate. The Senate is in the chambers for hours on end, voting on every amendment to the bill that is proposed. Other bills can also be introduced and voted on. The Senate voted on several amendments and bills within a 24 hour period of the bill being approved to proceed, and all of them had failed. Republican leadership in the Senate decided to introduce a measure called the Health Care Freedom Act (HCFA) which was dubbed a “skinny repeal” of the ACA.<sup>36</sup> It would repeal such things as the individual and employer mandate, among other unpopular aspects of the ACA. The vote on the bill (which was still being drafted at the time of voting) was in the early morning of July 27, and was killed with a 49-51 vote with Senators John McCain, Susan Collins, and Lisa Murkowski voting against the

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<sup>34</sup> Senator Mike Lee, “The Missing Ingredient in BCRA: Humility” *Senate.gov*, Published June 23, 2017, <https://www.lee.senate.gov/public/index.cfm/2017/6/the-missing-ingredient-in-bcra-humility>

<sup>35</sup> “American Health Care Act of 2017,” *The Wikipedia Foundation*, Accessed August 29, 2017, [https://en.wikipedia.org/wiki/American\\_Health\\_Care\\_Act\\_of\\_2017](https://en.wikipedia.org/wiki/American_Health_Care_Act_of_2017)

<sup>36</sup> Ibid.

bill, siding with all Democrats and Independents.<sup>37</sup> The bill was then returned to the Senate calendar for further deliberation.

*Analysis: The Congressional Fallout From the ACA*

After the passing of the ACA, the Republicans made campaigning against it and nitpicking its flaws the cornerstone of their platform. The initial tail that was told of bipartisanship and Republican input was a flawed and Republicans knew it, and they actively campaigned against the Democrats for this among other reasons.<sup>38</sup> The ACA was put to the floor for debate and was the second longest Senate floor debate in Senate history, but the truth of the bill is much deeper than that. Harry Reid (D-NV), the Senate Majority leader negotiated the majority of the bill in his office while the bill Republicans thought was going to be the final piece of legislation was being debated on the Senate floor. Reid and Chuck Schumer (D-NY), the current Minority Leader, shuttled abortion advocates and anti-abortion Senators in and out of offices, met with moderate Democrats to gain their support, and drafted provisions and amendments behind closed doors and without the input of the Republicans on the floor.<sup>39</sup> When the final bill was drafted, Reid revealed it to the floor, ceasing debate and putting in the amendments he had crafted behind closed doors.<sup>40</sup> Over three days, a series of votes were held to deal with Reid's amendments. All of the votes were split 60-39, the makeup of Democrats and

<sup>37</sup> Ibid.

<sup>38</sup> Glenn Kessler, "History Lesson: How the Democrats pushed Obamacare through the Senate," *The Washington Post*, Published June 22, 2017, [https://www.washingtonpost.com/news/fact-checker/wp/2017/06/22/history-lesson-how-the-democrats-pushed-obamacare-through-the-senate/?utm\\_term=.5d28fb40f993](https://www.washingtonpost.com/news/fact-checker/wp/2017/06/22/history-lesson-how-the-democrats-pushed-obamacare-through-the-senate/?utm_term=.5d28fb40f993)

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

Republicans in the Senate at the time with Jim Bunning (R-KY) absent from the vote.<sup>41</sup> The partisan votes were a poignant example of the divisive nature in which the Democrats pushed through the final version of the bill. Republicans were furious, with Saxby Chambliss (R-GA) saying “I do not remember, in my 15 years in the Congress, both in the House and in the Senate, any major piece of legislation such as this being debated and ultimately brought to a final vote within such a short period of time.”<sup>42</sup> Right after the Senate passage of the ACA, Massachusetts Republican Scott Brown was elected, breaking the Democrats filibuster-proof majority in the Senate.<sup>43</sup> This forced the House to work to pass the Senate version of the bill, with no House-Senate conference happening to come to a consensus because any bill that came out of that conference would need 60 votes to pass the Senate, something the Democrats did not have.<sup>44</sup> The House ultimately passed the Senate version of the ACA, with 34 Democrats and all 178 Republicans voting against the bill.<sup>45</sup> Republicans were so upset that the day after the House passage they introduced a measure to repeal the bill.

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<sup>41</sup> Jeffrey Young, “Senate passes historic healthcare reform legislation in 60-39 vote,” *The Hill*, Published December 24, 2017, <http://thehill.com/homenews/senate/73537-senate-passes-historic-healthcare-reform-bill-60-40>

<sup>42</sup> Glenn Kessler, “History Lesson: How the Democrats pushed Obamacare through the Senate,” *The Washington Post*, Published June 22, 2017, [https://www.washingtonpost.com/news/fact-checker/wp/2017/06/22/history-lesson-how-the-democrats-pushed-obamacare-through-the-senate/?utm\\_term=.5d28fb40f993](https://www.washingtonpost.com/news/fact-checker/wp/2017/06/22/history-lesson-how-the-democrats-pushed-obamacare-through-the-senate/?utm_term=.5d28fb40f993)

<sup>43</sup> Scott Brown was elected to fill the seat of Ted Kennedy who had passed away in August 2009, with Paul Kirk (D-MA) temporarily filling his seat. Scott Brown campaigned on giving the GOP their 41st Senate vote to sustain filibusters

<sup>44</sup> “Patient Protection and Affordable Care Act,” *The Wikipedia Foundation*, Accessed August 29, 2017, [https://en.wikipedia.org/wiki/Patient\\_Protection\\_and\\_Affordable\\_Care\\_Act#cite\\_note-CBO\\_Score1-408](https://en.wikipedia.org/wiki/Patient_Protection_and_Affordable_Care_Act#cite_note-CBO_Score1-408)

<sup>45</sup> Ibid.

Republicans were furious, and rightfully so. The partisan push through of the ACA with the original appearance of cohesion caused a ripple effect Democrats did not seem to see coming. This push through and bill became a rallying cry for the Tea Party, which started to rear its ugly head in late 2009. The Tea Party was unanimous in their opposition to the measure, campaigning for and funding Congressional candidates that wanted to repeal the law. Scott Brown (R-MA), Mike Lee (R-UT), Rand Paul (R-KY), Nikki Haley (R-SC), and Marco Rubio (R-FL) were all elected in the 2010 Senate elections in the wake of the Tea Party movement.<sup>46</sup> In the 2010 elections, Republicans gained 63 seats in the House and control of that chamber, as well as six seats in the Senate, giving Democrats just a four seat majority in the Senate. While healthcare reform in the United States has never ended well for the party that proposed it, this still caught Democrats off guard.<sup>47</sup> There were several reasons for this.

### *The Independents Problem*

Real Clear Politics pointed to the 2009 gubernatorial elections in Virginia and New Jersey as a clear sign of where the Congressional elections could go; not because of Republicans, but because of Independents. Since November 2009, Obama had a less than 50% approval rating from Independents, and the Independents that voted for Democrats in 2010 went to the Republican side *en masse*. A Gallup poll found that in June 2010 Independents were leaning

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<sup>46</sup> “Electoral history of the Tea Party movement”, *The Wikipedia Foundation*, Accessed September 12, 2017, [https://en.wikipedia.org/wiki/Electoral\\_history\\_of\\_the\\_Tea\\_Party\\_movement#2010\\_election](https://en.wikipedia.org/wiki/Electoral_history_of_the_Tea_Party_movement#2010_election)

<sup>47</sup> Robert Saldin, “Healthcare Reform: A Prescription for the 2010 Republican Landslide?” *The Forum* 8, Issue 4, (2010): 5

towards Republican candidates, with the GOP winning Independents by over 10%.<sup>48</sup> In 2008, the Democrats won the Independent vote by 8%.<sup>49</sup> This should have been counteracted by the fact that at the time, a higher number of registered voters identified as Democrats (35%) than Republicans (31%).<sup>50</sup> However, as we know, this was not the case. This was not the only major factor that influenced the election, however.

#### *Public Opinion*

A 2010 Kaiser Family Foundation Poll found that 49% of Americans wanted to repeal parts or all of the law, while only 40% would leave the law as is.<sup>51</sup> A Harvard study on the 2010 midterms and the ACA found that while public opinion was on the Democrats side for a bit in 2009, a summer of divisive town halls with Democrats having to defend the proposed measure to disgruntled constituents pulled the Republicans ahead.<sup>52</sup> The Democrats pulled ahead once again once they retreated back to Washington, but by the time the bill was up for debate on the House

<sup>48</sup> Jeffrey Jones, “Independent Voters Favor GOP in 2010 Election Tracking”, *Gallup*, Published July 1, 2010, <http://www.gallup.com/poll/141086/independent-voters-favor-gop-2010-election-tracking.aspx>

<sup>49</sup> Jay Cost, “Health Care Reform Has Endangered the Democratic Majority”, *Real Clear Politics*, Published August 31, 2010, [https://www.realclearpolitics.com/horseraceblog/2010/08/healthcare\\_reform\\_has\\_endangered\\_1.html](https://www.realclearpolitics.com/horseraceblog/2010/08/healthcare_reform_has_endangered_1.html)

<sup>50</sup> Jeffrey Jones, “Independent Voters Favor GOP in 2010 Election Tracking”, *Gallup*, Published July 1, 2010, <http://www.gallup.com/poll/141086/independent-voters-favor-gop-2010-election-tracking.aspx>

<sup>51</sup> Robert Saldin, “Healthcare Reform: A Prescription for the 2010 Republican Landslide?” *The Forum* 8, Issue 4, (2010): 8

<sup>52</sup> Ibid.

floor, the Republicans pulled even again.<sup>53</sup> By the time President Obama signed the bill into law in March 2010, they were ahead.<sup>54</sup> The Harvard study states:

“Critically, the GOP’s surges in the generic ballot occurred when healthcare was front and center, but also when the economy appeared to be improving—a factor that presumably would work in the ruling Democrats’ favor.”<sup>55</sup>

Obama’s polling numbers seemed to pull in sync with the healthcare debate. His polling numbers first dipped below 50% when the healthcare debate was boiling up in Congress in November 2009, and his numbers took an exceptionally strong hit in regards to Independents.<sup>56</sup> On March 18, 2010, three days before the House passed the ACA and five days before Obama signed the bill, more people disapproved of Obama than approved for the first time in his presidency.<sup>57</sup> Exit polling data from the 2010 midterms echoed the public opinion polling numbers seen earlier, but to a much greater extent.

“Amongst all voters, 49% opposed health care reform, while 43% supported it. For independents, 51% were opposed, and 39% were in favor. When intensity was factored in, the gap was much wider. 44% of all voters strongly opposed the Democrats’ health care reform, while only 24% strongly favored it. Among independents, 43% were strongly opposed, compared to 18% in strong support. There was also a stark intensity

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<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

divide amongst partisans. 87% of Republicans strongly opposed the Affordable Care Act, while only 49% of Democrats strongly supported it.”<sup>58</sup>

### *Were Republicans Smart or Was the Public Upset?*

My original thoughts going into writing this conclusion was that the Republicans crafted a master campaign platform on which to run their 2010 midterm candidates, and that that was the way in which they swept the elections. This seems to be untrue. Whether or not Republicans ran a stellar campaign against the ACA seems to be irrelevant because all they had to do was hear what people were saying. They won over Independents in greater numbers than they had seen in over six years, before this splitting the Independent vote with Democrats in 2004, then losing it in 2006 and 2008. It seems that it is much easier to oppose a measure than to propose a measure. Republicans didn’t run a smart campaign, people were just unhappy. Had the Democrats actually produced a bipartisan version of the ACA, maybe the Republicans wouldn’t have wiped the floor in 2010 and 2012. Granted, if that happened we might not have the ACA we have today, and we might not have 92.2% of Americans under health insurance as of 2016.<sup>59</sup>

### *Where Are We Now?*

The culmination of the partisan push through of the bill, public opinion, healthcare reform’s history of unpopularity, and the Independents flocking to the GOP resorted in gridlock for practically the rest of Obama’s presidency. The Democrats failed to win back a majority in the House in 2012, only winning eight of the 25 seats they needed to take back a majority. They

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<sup>58</sup> Ibid, 9.

<sup>59</sup> Dylan Scott, “The state of American health care, in 5 charts,” *Vox Media*, Published September 12, 2017, <https://www.vox.com/policy-and-politics/2017/9/12/16297660/state-of-american-health-care-5-charts>

kept their majority in the Senate by 6 votes (with 2 of the 6 being Independents), and won 2 more seats than they had previously. In 2014, however, Republicans gained 14 seats in the House and 9 seats in the Senate, the largest gain in the Senate by a party since 1980. The Republicans had full control over the House and Senate. While not all of this can be blamed on the ACA, it sure as hell didn't help. The bumpy rollout of [healthcare.gov](#) and the government shutdown in 2013 didn't aid an already low Congressional approval rating, tanking it to the lowest approval rating in Gallup's history (9%).<sup>60</sup> It also didn't help Obama's numbers, which steadily declined throughout the whole of 2013.<sup>61</sup>

The 2016 election proved turbulent for Democrats and the ACA alike, with President Trump and Congressional Republicans once again campaigning on a promise of "Repeal and Replace", a mantra they had used for almost 7 years. Their attempts to repeal the ACA with the AHCA, BCRA, and "skinny repeal" bills ultimately met their death, with healthcare reform looking exceedingly unlikely. At present, the ACA has a record high approval rating of 55%, 2016 showed a record low uninsured rate, and the insurance markets are doing fine. Things are looking promising for the ACA, as long as the Trump administration doesn't drop a bombshell in cutting the tax "bailouts" used to lower the cost of deductibles on people making less than 250% of the Federal Poverty Line.

### *Conclusion*

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<sup>60</sup> Frank Newport, "Congressional Approval Sinks to Record Low," *Gallup*, Published November 12, 2013, <http://www.gallup.com/poll/165809/congressional-approval-sinks-record-low.aspx>

<sup>61</sup> Lydia Saad, "Obama's Job Approval Declined Steadily Throughout 2013," *Gallup*, Published January 3, 2014, <http://www.gallup.com/poll/166727/obama-job-approval-declined-steadily-throughout-2013.aspx>

The AHCA and subsequent BCRA looked to repeal a law that Republicans have hated since the day it was signed. The partisan push through cost Democrats the election and their majority in the House in 2010, with the effects lingering into the 2012 and 2016 elections. Public opinion on the ACA was never great until the Trump administration tried to repeal it. In conclusion, the American Health Care Act of 2017 and the Better Care Reconciliation Act of 2017 might have saved the Affordable Care Act, for now.

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