Will the ACA survive?

The decision last week by the U.S. Court of Appeals for the District of Columbia puts in serious jeopardy the ability of the Affordable Care Act to achieve its goal of providing health insurance coverage for virtually all Americans.

ERWIN CHEMERINSKY
CONTRIBUTING WRITER

Interestingly, on the same day, another federal appellate court, the 4th U.S. District Court of Appeals, based in Richmond, Va., came to exactly the opposite conclusion and ruled in favor of the Obama administration. The latter court is correct, though, ultimately, the issue will be resolved by the Supreme Court.

Prior to the Affordable Care Act, 50 million people in the United States were without health insurance coverage. Although enormously controversial, the ACA is succeeding. The number of people without health insurance in California has decreased by half as a result of the Affordable Care Act.

A key mechanism of the ACA is the establishment of "exchanges," through which individuals can purchase competitively priced health care coverage. To ensure that individuals can afford to pay for the insurance, the ACA provides a federal tax credit to millions of low- and middle-income Americans to offset the cost of policies purchased on the exchanges.

The health legislation calls for states to establish the exchanges. But if a state "elect[s]" not to do so – and only 16 states and the District of Columbia have created exchanges – the federal government creates the exchange. Section 36B of the ACA provides that tax credits will be available for those who purchase insurance on exchanges "established by the State." Without the tax credits, millions of Americans cannot afford this insurance.

The Internal Revenue Service interpreted the statute as allowing tax credits for exchanges created by the federal government when a state government does not do so. Challengers argue that the statute allows tax credits only for exchanges created by a state government.

The federal court of appeals in Washington, D.C., in a 2-1 decision, concluded that the text of the law allows for tax credits only for state created exchanges.

The court said, "[T]he ACA unambiguously restricts the section 36B subsidy to insurance purchased on Exchanges 'established by the State.'" The federal court of appeals in Richmond came to the opposite conclusion and held that Congress clearly had the purpose of allowing tax credits for those who purchased insurance on the exchanges, including ones created by the federal government.

For many reasons, the latter view is more persuasive. Time and again, the Supreme Court has held that in interpreting a statute, the law's purpose and context should be taken into account. For example, the Supreme Court has held that "the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." Congress' clear purpose was to provide tax credits for those qualifying and purchasing health insurance on the exchanges.

The D.C. Circuit's interpretation of the law makes little sense. It would mean that Congress wanted to allow states to undermine the Affordable Care Act by choosing to not create exchanges.

As Judge Harry Edwards noted in his dissent, the majority decision would interpret the 36B provision as a "poison pill" that would harm the exchanges not created by the states and this "surely is not what Congress intended."

It ignores the overall structure of the law to say that the IRS was wrong in allowing tax credits for federally created exchanges.

Moreover, under long-standing principles, deference must be given to the federal agency, the IRS, in interpreting ambiguities in the ACA. On countless occasions, the Supreme Court has stressed the need for deference to federal agencies as to the meaning of federal laws. The IRS interprets the law to allow tax credits for those purchasing on the federal exchange.

What happens next? The federal government has announced that it will seek review of the decision of the D.C. court's three-judge panel before all of the judges on that court.

It is expected that the full court will grant review and, given its ideological composition, reverse the panel's ruling. The challengers have announced that they will seek Supreme Court review of the 4th Circuit's decision, and that is likely to be granted. The case can be heard in the coming term and decided by June 2015.

What will the Supreme Court do? Everything about the Affordable Care Act is intensely political. The question will be whether the Roberts Court can overcome the partisanship surrounding the Affordable Care Act and follow basic principles of statutory interpretation. As a matter of statutory construction, Congress' purposes and goals could not be clearer.

Erwin Chemerinsky is the dean of UC Irvine's School of Law.

EDITORIAL

Making most of I-405 toll lanes

OCTA, not Caltrans, should retain control of lanes, revenue.

The subject of toll lanes along the North County extension of the I-405 has been controversial since the possibility first presented itself. Late last year, Caltrans told the Orange County Transportation Authority that tolls lanes along the North County I-405 extension were a matter of when, not if.

The attitude at the time among the majority of the OCTA board, along with many county residents, seemed to be, "let them try." That attitude apparently hasn't changed, but the reprieve on toll lanes was short-lived. Caltrans is back and as adamant as ever about getting toll lanes added to the I-405 between Seal Beach and Costa Mesa.

In response, some on the OCTA board are calling for a delay in the widening project, even if it means bringing Caltrans plans to a halt. That tact seems overzealous, especially when the plan simply isn't as onerous as many are making it out to be.

In 2006, voters approved Measure M2, a half-cent general sales tax, to fund transportation improvements, including an additional general-purpose lane on the I-405 in both directions, north of the 73. Voters still are entitled to their lane, and the project should continue in a timely matter.

What has changed, however, is the future of the car pool lane. While Caltrans has yet to present a plan, or how it intends to fund its project, OCTA's previous proposal would have converted both the current car pool lane and a proposed new lane into so-called "high-occupancy toll" lanes. High-occupancy toll lanes are essentially just a free car pool lane that single drivers also could access for a fee.

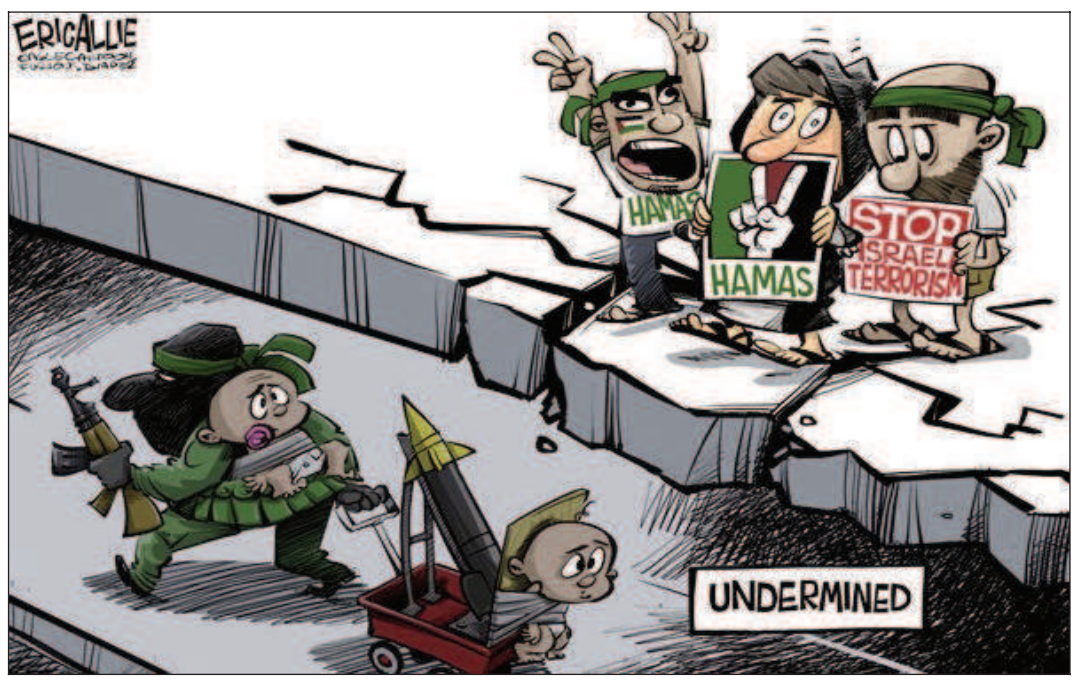
Opponents contend that approach would have left drivers with the same number of "free" lanes that they started with, as the current four general-purpose lanes and one "free" car pool lane would be replaced by five general-purpose lanes and one, or two, toll lanes. How a car pool lane accessible only to cars carrying at least two people is more "free" than one accessible for carpooling, and anyone willing to pay a fee, is questionable.

That approach isn't something philosophically objectionable, as it would be akin to a user fee, a preferable way for funding our infrastructure system as opposed to gas and sales taxes imposed on everyone.

Certainly though, there were real concerns about the high-occupancy toll lane proposal. The economic impact on businesses along the route of limiting opportunities for motorists to exit would have to be mitigated. Also, a plan to redefine a car pool as having three or more riders, which seems inconsistent with commuting realities of our sprawling region, should be scrapped.

But ultimately, as OCTA goes back and reviews its options, it should reconsider high-occupancy toll lanes. A system responsive to local leaders, and toll revenue that remains in local hands, is preferable to a Caltrans-imposed system with no guarantees on how, or where, toll revenue is spent.

ERIC ALLIE / CAGLE CARTOONS



LETTERS TO THE EDITOR

E-cig rules protect our children

I applaud the efforts of those Westminster City Council members who voted to limit promotional materials and the availability of vaping devices such as e-cigarettes near schools in their community ["Hold off on e-cig regulations," Opinion, July 23].

Use of these devices by California students is growing at a concerning rate, despite the current restrictions on direct sales to minors. A recent study found adolescents using these devices were more likely to smoke regular cigarettes and less likely to quit smoking. E-cigarette use by underage students has doubled in a single year, and they are not without risk. Short term use of vaping devices can temporarily impair lung function and may cause difficulty breathing. Many chemicals identified in e-cigarette aerosol are on California's Proposition 65 list of carcinogens and reproductive toxins, including benzene, formaldehyde and lead. Adults in Westminster can still access vaping devices under the new regulations, but restrictions in advertising and hours are a measured step in the growing effort to protect minors from the dangers of nicotine addiction and the possibility of long-term health risks. I encourage parents to discuss the risks of these devices with their children.

Marc Lerner, M.D.
Pediatrician
Irvine

WEALTHY DO THEIR SHARE

It was interesting to read Teri Sforza's makeshift research on which California ZIP codes are the most generous when it comes to charitable giving ["Salary doesn't equal charity," Front page, July 28]. The point, I gather, is that the well-to-do are more miserly than their poorer counterparts. I think that might have some veracity when we're talking about people like the Clintons and that notorious skinflint, Vice President Joe Biden. That said, what Ms. Sforza should have mentioned is that financially successful people are reluctant to give because, unfortunately, they're tapped-out. The top 10 percent of taxpayers pay over 70 percent of the country's taxes. When you have a statistic like that, it's hard to feel somebody else's pain.

David Monreal
Lake Forest

NETANYAHU TAKING LESSONS FROM PUTIN?

Some 298 innocent civilians suffered horrible and gruesome deaths when a missile brought down an airliner over Ukraine. Putin blamed the tragedy on the government of Ukraine, claiming that this would not have happened if the they had agreed to a cease-fire. And the Republicans, in unison, blamed President Barack Obama for this tragedy, for not having been tough enough on Russia.

A thousand innocent Palestinian civilians, including hundreds of children, are torn to shreds by missiles or crushed under crumbling rubble from bombs, in Gaza. Israeli Prime Minister Netanyahu blames Hamas for continuing the savage carnage because Hamas did not agree to an unconditional cease-fire. Sound familiar? Is he taking lessons from Putin? And the Republicans and Democrats, in unison, proclaim Israel's right to defend itself. Putin has no soul, Republicans have no shame, Democrats have no spine and Netanyahu has no scruples! The world has been silently watching the brutal collective imprisonment of 2 million human beings for the past eight years.

Jamshed Dastur
Newport Beach

DETROIT'S WATER POLICIES

I am a retired Detroit Water Department employee living in Orange County since 2009. When I retired after 30 years, Detroit was trying to collect the huge amount of money owed on delinquent water bills. This was, and is, an ongoing problem for that troubled city. The usual water bill for a single family house in Detroit is well under $20 a month, billed quarterly. The exception to that figure is when there is a large wastage of water due to a constantly running toilet or leaking pipes in a residence. Even then, the Detroit Water Department will forgive the excess charges if the cause is repaired. When I left, the rule was that we did not shut off someone's water unless the bill was over $100 and more than nine months past due. Can you imagine any utility providing such generous terms?

Now, after accepting a reduction in my very modest pension (in California terms – a meager pension) to aid bankrupt Detroit, and giving up medical and dental coverage, I learn that my former neighbors want free water as a "human right." ["What will be the next 'human right'"? Opinion, July 26].

When will the madness stop? If free water is a "human right," isn't free electricity and gas, too? When I pay more than $50 a month for water service to my small apartment, I remember the days when that was my bill for two months for a house, including lawn watering. But, even then I didn't think that my water should be free.

Bert G. Osterberg
Costa Mesa

School spending goes up, test scores don't

By LISA SNELL
CONTRIBUTING WRITER

Since 1970, spending on K-12 education has increased by 80 percent in California, and, nationally, it has tripled in inflation-adjusted dollars. However, the latest results from the National Assessment of Educational Progress tests, known as the "Nation's Report Card," show no national score improvements for high school seniors in reading and math, and little progress for the country's students over the past decade.

The results make it clear there is no relationship between increasing school spending and increasing academic performance. California has been a particularly dismal example of this trend.

In real inflation-adjusted dollars, California spends $27 billion more a year than it did in 1970, when the current National Assessment of Educational Progress exam began.

In 2013, California's fourth-graders ranked 47 of 50 states in both math and reading on the National Assessment of Educational Progress tests. California's eighth-graders performed only slightly better, ranking 45th in math and 42nd in reading last year.

In addition, the state's NAEP scores show that the achievement gap separating white students from their black and Latino peers is larger than the national average. For example, in 2013 the achievement gap in reading between white and black 4th-graders was 30 points – more than the national average and a wider gap since the 2011 NAEP exam.

That achievement gap helps explain why the American Civil Liberties Union recently sued school districts in Compton and Los Angeles on behalf of kids in low-income schools.

"Something as basic as learning time – real learning time – is disproportionately distributed to kids as a function of their ZIP Code," said Mark Rosenbaum, chief counsel of the ACLU of Southern California.

The kids attending the schools named in the lawsuit generate per-pupil funding for their districts and schools, but the students are often warehoused in "service" classes where they receive no actual instruction with large class sizes and long-term substitutes.

Gov. Jerry Brown has argued that a major shift in education funding through the new Local Control Funding Formula, which offers school districts more control over spending and less regulation at the district level, will help remedy education inequities outlined in the lawsuit.

Gov. Brown's proposed budget for fiscal 2014-15, which earmarks $4.5 billion for the local formula, is a small step in the right direction, but it stops short of allowing the money to follow children to their schools. School principals deserve decision-making authority over their school's resources so they can better target funding to instructional goals at the school level. Parents deserve purchasing power in public schools and the right to choose the best schools for their children. If their neighborhood school is failing, or simply a poor fit for their child, the student should be free to go elsewhere.

We now have decades of evidence that sending more and more money to public schools hasn't improved results.

Next year, California will spend more than $60 billion on K-12 education, but it's clear the state doesn't need to spend more. It needs to spend smarter.

Rather than increase school administrators and central office employees, California should decentralize education by focusing on school-level autonomy for principals and embracing funding models where funding always follows the child to the school of his or her parents' choice.

We now have decades of evidence that sending more and more money to public schools hasn't improved results. Giving parents and students the ability to choose their own schools could provide a badly needed jolt of accountability and improvement.

Lisa Snell is director of education at Reason Foundation.