

Can the Patient Protection and Affordable Care Act Stand Without its Architects?

Four years have passed from the passage of the Patient Protection and Affordable Care Act, and some key members of Congress are stepping down in 2014.

BY JEFFREY J. KIMBELL AND KENNETH L. HODGE

After the inauguration of the 111th Congress and the President on January 20, 2009, the Democratic Party controlled the White House, the House of Representatives, and the Senate, a chamber where a filibuster-proof 60 members caucused with the Democrats. Voters had been kind to the party in 2006 (even more so in 2008, handing the White House to President Barack Obama), and Democrats had a perceived mandate to legislate as they saw fit, and Republicans could do little to thwart their efforts. Democrats envisioned numerous reforms with their new majority, including capping emissions and reigning in Wall Street banks. Health care reform, however, was the real target for a number of the most senior members of the Democratic Party who had witnessed the Clinton-era health reform efforts come and go. The economic recession of 2008 hit many people hard, and many Americans became concerned with issues such as rising health care costs and securing health insurance coverage. Democrats in Congress were perceptive of those changes, and they sought to deliver on campaign promises made by President Obama to address the concerns of the populace. The mantra was lower costs, more coverage, and higher quality.

However, even with a supermajority, the task was not easy. Passing what we now know as the Patient

Protection and Affordable Care Act (ACA), or Obamacare, required a lot of vote wrangling. After all, many of the provisions in the bill were unprecedented. The minimum essential coverage mandate is an unprecedented requirement on individuals, and providing subsidies for low-income Americans to purchase health insurance required cuts to other areas of health care that did not enjoy being the piggy bank to fund new legislation. Thus, it took strong leadership to make these things happen. This included some notable faces in Congress, including then-House Speaker Nancy Pelosi (D-CA) and Senate Majority Leader Harry Reid (D-NV). It also included some lesser-known lawmakers.

THE PLAYERS

Four Congressional committees—2 in the House and 2 in the Senate—are largely responsible for the passage of health legislation such as the ACA due to their jurisdiction over federal programs such as Medicare, Medicaid, insurance regulation, and tax policy: These are the Senate Finance Committee; the Senate Health, Education, Labor, and Pensions (HELP) Committee; the House Ways and Means Committee; and the House Energy and Commerce Committee. The chairpersons of these committees have broad discretion to set the committees' agendas. They have the authority to

schedule hearings on various topics and can choose how or when their committees will debate legislation. These powers make the chairperson's priorities a major asset, or obstacle, for any given issue.

Fortunately for Democrats, these committees were chaired by members who were among the health reform effort's strongest supporters: Senator Max Baucus (D-MT), who chaired the Senate Finance Committee until February 2014 and was a strong supporter of Sen. Harry Reid; Senator Tom Harkin (D-IA), who still chairs the Senate HELP Committee; Congressman Charles Rangel (D-NY), who chaired the House Ways and Means Committee until an ethics scandal removed him from the post in 2010; and Congressman Henry Waxman (D-CA), who led the House Energy and Commerce Committee until 2010 and was a key ally to Speaker Pelosi.

As President Obama headed toward victory in 2008, the ACA debate began to pick up. Sen. Baucus held hearings in his committee and spent months trying to convince Republicans to get behind the effort. In the end, not a single Republican in the House or Senate voted for the final bill, but Sen. Baucus was able to secure a vote from Senator Olympia Snowe (R-ME) on an early version of the bill when it was deliberated in his committee.

Sen. Harkin, who took up the mantle as Chairman of the HELP Committee after the death of Senator Ted Kennedy (D-MA) in August 2009, quickly began shepherding the legislation through his committee. He helped craft many of the law's preventive care provisions and has been a fierce advocate of protecting funding for the law's Prevention and Public Health Fund, as well as mandatory coverage for maternity care. Together, Sens. Harkin and Baucus introduced an amendment that eventually became known as the ACA.

In the House, similar efforts began to manifest. After President Obama and a new Congress took office in January 2009, Rep. Waxman aimed to take over the Energy and Commerce Committee from then Chairman John Dingell (D-MI). Rep. Waxman had an ideology more aligned with Speaker Pelosi, and several of President Obama's campaign priorities, such as environmental and health care issues, were also among Rep. Waxman's long-time legislative goals. In 2009 when the Energy and Commerce Committee was selecting its new chairman, Rep. Waxman employed a secret ballot to oust Rep. Dingell and secure the post. He then worked tirelessly to spearhead the House version of the ACA, taking the baton from Rep. Dingell to cement his legacy as a chief architect of the law.

In the House Ways and Means Committee, Chairman Rangel led many of the early efforts behind the bill, but his ethics investigation hampered his ability to operate

throughout the debate in 2009 and eventually cost him his chairmanship in 2010, before the bill ultimately was passed and signed into law. However, Rep. Rangel has remained a staunch advocate of the law since its passage, defending it tooth and nail from Republican attempts to dismantle it.

FOUR YEARS LATER

The ACA had its 4th birthday on Sunday, March 23, but, in our opinion, it has not been heralded as a success to date. The online rollout of the law's health insurance exchanges was disastrous, and Republicans have made the ACA their seminal issue in 3 straight election cycles. The law played a big role in taking the Speaker's gavel from Rep. Nancy Pelosi, and it nearly cost her the position as leader of the House Democrats. This November, Republicans are in a good position to regain control of the Senate, partly due to the votes many Democratic incumbents took on the ACA, including several Senate freshman, such as Senators Mark Begich (D-AK) and Kay Hagan (D-NC), who rode President Obama's electoral wave to their own victories in conservative states in 2008.

Democrats have had a hard time navigating this scenario, with members from more moderate areas backing away from the law. However, the law's champions—Sens. Baucus and Harkin and Reps. Waxman and Rangel—have defended the law against attacks, even arguing that it did not go far enough. Over the previous 4 years they have constantly touted the law's popular provisions, such as coverage for preexisting conditions and dependents up to age 26. They have also defended the law from Republican claims that it will increase insurance premiums, prevent people from keeping their current health plan or doctor, and do little to reduce health care costs. On the law's 4th birthday, Minority Leader Pelosi claimed the law "is a winner," much to the delight of Republicans looking to advance in the 2014 elections. The public will be the body that ultimately decides who is right.

Despite the fact that Republicans used the law's unpopularity to reap political gains, the ACA is the law of the land. It has withstood more than 50 repeal votes, a presidential election in 2012, and a Supreme Court ruling in 2012. Although more court challenges and repeal votes likely are forthcoming, the law's architects have been able to hold the line against attacks for 4 years. However, this might change in the near future.

Of the law's architects, only Sen. Baucus from conservative Montana has had any real risk of political ramifications. Thus it was not entirely surprising when, heading into a potentially perilous election this November, Sen. Baucus announced his retirement and was later nominated and confirmed to serve as the US Ambassador to

China; he resigned his Senate seat on the day of his confirmation and was sworn in on February 6, 2014. Although he remained a prominent supporter of the ACA, Sen. Baucus was also critical of the administration's implementation of the law, notably referring to it as a "train wreck." Sen. Baucus also expressed concerns regarding how the law was passed. "It is my belief that for major legislation to be durable, sustainable, it has to be bipartisan," Sen. Baucus said. "I mean, one party can't jam legislation down the other party's throat. It leaves a bitter taste."

Ambassador Baucus is not the only ACA architect to leave Congress. In early 2013, Senate HELP Committee Chairman Tom Harkin announced that he would not seek reelection in 2014, citing his age and a wish to turn the seat over to someone new. Rep. Waxman announced his own retirement in January 2014. After 40 years in the House, Rep. Waxman apparently felt his legacy was complete. He is known for subpoenaing tobacco industry executives as an investigative watchdog and creating the generic drug industry alongside Senator Orrin Hatch (R-UT). He still claims passage of the ACA fulfilled a "life-long dream" to provide insurance coverage to Americans. However, his decision was probably influenced by the fact that Republicans are likely to control the House for the foreseeable future. Other key players in the passage of the ACA, such as Rep. Dingell and Senator Jay Rockefeller (D-WV), are also retiring. Thus, very few of the ACA's most vocal stalwarts in Congress are left.

So what does this all mean? Is the ACA now vulnerable? Are we entering a new phase in the life of President Obama's signature legislation?

The answers to these questions remain to be seen, and the future offers many shades of gray. Many of the law's major provisions have just begun to take effect. The administration has recovered from the disastrous beginning of the exchange rollout and made HealthCare.gov easier to navigate. Furthermore, President Obama, the law's most capable protector, is in office through 2016 to guide the law through adolescence. However, the law's poor rollout and sustained popularity issues have exposed some Democrats who could be open to making substantive changes to the law, especially without the law's architects around to buttress the party's typically strong stance against changing it. This is significant because, in the years before their departures, the ACA's architects made sure to circle the wagons when Congressional discussions included making any changes to the law. They warned their colleagues that making changes would set a political precedent that would "open the book" on rewriting the ACA and jeopardize the law's future.

On the other hand, political winds are fickle, so if Republicans win control of the Senate and retain control of the House in the 2014 elections they will be more in control to set the Congressional agenda. However, Republicans need to create and find support for their proposals if they want them to have any effect. Lately, the party has advanced policies as messaging instead of legislation that could actually become law. This tactic could backfire on Republicans if it continues, and their new majority could be short-lived if their alternatives to the ACA turn out to be lackluster. Given the law's already significant staying power, it may be safe to claim the law's architects have left the ACA on solid ground. That said, Congress is always looking to renovate. ■

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