



What the Kavanaugh Nomination Means for People with Disabilities: Access to Health Care

President Trump has nominated Judge Brett Kavanaugh to replace Justice Anthony Kennedy on the Supreme Court. As a Supreme Court Justice, Judge Kavanaugh would be asked to rule on some of the biggest questions our country faces, including whether the Affordable Care Act (ACA) will stay in place. Among other things, the ACA: expanded Medicaid in 33 states and the District of Columbia; created insurance marketplaces and subsidies; required insurers to cover certain benefits, including mental health services, and to allow young adults to stay on their parents' insurance; and banned insurers from discriminating against people based on their health status. Since it was passed in 2010, the ACA has enabled millions of people with disabilities to access needed health care. Now, with the nomination of Judge Kavanaugh to the Supreme Court, that progress is in danger.

Didn't we save the ACA last year?

Last year, the disability community and others fought very hard to defeat attempts to repeal the ACA. Still, the ACA remains under constant attack. And while most of the ACA remains in place, Congress repealed the tax penalty for people who do not have health insurance. In addition, new lawsuits have been filed challenging the ACA.

The Supreme Court will almost certainly be called upon to decide one or more of these new challenges to the ACA. The first such case to reach the Supreme Court may be a lawsuit called *Texas v. U.S.*, filed by a group of states contending that the ACA is unconstitutional. The states argue that since the Supreme Court originally upheld the ACA based on Congress's power to impose a tax on people who did not have health insurance, now that the tax penalty is gone, the entire ACA must fall as well. The Department of Justice is refusing to defend the ACA, instead urging the court to strike down several crucial protections in the law – including the requirement that insurers must sell health insurance to people with pre-existing conditions, and the ban on charging sicker people higher rates. Losing these protections would make health insurance either unaffordable, or entirely unavailable, for many people with disabilities. The *Texas* case is currently in a lower court, but will likely go to the Supreme Court soon.

What does Judge Kavanaugh think about the ACA?

We can't say for sure how Judge Kavanaugh would rule in any particular challenge to the ACA. But we do know that he thinks the ACA is a bad law. He has made it clear that he thinks the federal government overstepped its bounds in passing the ACA, and that the Supreme Court got it wrong when it originally upheld the law. He has even said that the President could decide on his own not to enforce key parts of the ACA, even though the courts have already found the law constitutional. Based on everything he has said, we expect Judge Kavanaugh to rule against the ACA. Because of the current makeup of the Supreme Court, Judge Kavanaugh's vote could result in devastating outcomes for people with disabilities.